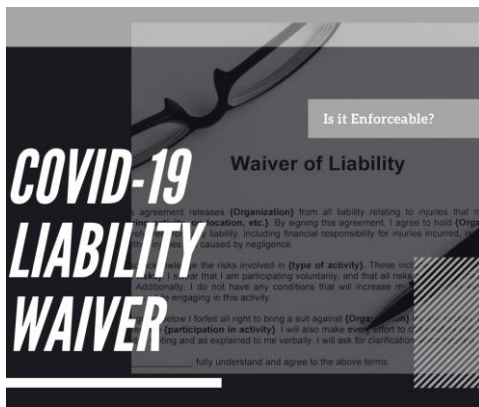


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Is That COVID-19 Liability Waiver You Executed on Behalf of Your Child Valid?

by Peter Gojcaj



As Governor Whitmer starts loosening restrictions pursuant to her various executive orders, children have started engaging in their favorite organized team sports. Various sports entities who cater to these children have begun to require parents to sign COVID-19 liability waivers on behalf of their minor children.

Are these waivers enforceable? *Woodman v. Kera, LLC*, 486 Mich 228 (2010), held that certain liability waivers that parents sign on behalf of their children are not enforceable. In *Woodman*, a child's father signed a document purporting to waive his son's claims concerning playing at a bounce party. While playing at

a birthday party held at the defendant's premises, the five year old broke his leg by falling off an inflatable slide. The mother of the child filed a three count complaint alleging gross negligence, negligence, and violation of Michigan's Consumer Protect Act. The Michigan Supreme Court went through a lengthy process of analyzing Michigan history concerning waivers of liability signed by parents or guardians. In essence, the *Woodman* court ruled that unless authorized by statute a parent or guardian is without power to bind a child or the child's estate, and especially concerning personal injury waivers.

Various statutes provide that guardians ad litem, approved by a court, may settle or approve settlement or judgment concerning a minor. Because no statute was on point concerning the five year old that injured himself at a bounce house, the *Woodman* Court ruled that the

purported waiver that the child's father signed was invalid.

Perhaps invalid executed waivers could be one reason that certain Michigan high schools have canceled or postponed their high school athletic school sports to the spring. Other high schools have postponed or suspended recreational activity involving a sport if one or two children test positive for COVID-19. Of course, these sport entities are taking into account everyone's health, including the childrens, parents, coaches, and referees. Certainly various sports entities, school districts, coaches, counselors, teachers, and any business may face liability even though the parents of the children may have signed COVID-19 liability waiver agreements.

Some entities have included in these purported COVID-19 liability waivers for minors certain indemnity language that requires a parent to indemnify

the entity, if a child is hurt and later sues. This language could expose the parents to personal liability, if they sue.

COVID-19 has opened up a Pandora's box concerning liability and minors. There are discussions in Congress concerning COVID-19 liability

immunity, but it is undetermined whether it would apply (if it becomes law) to parents executing liability waivers on behalf of their children in sports.

We are certainly in uncharted territory concerning COVID-19, liability waivers, and parents executing such reported

agreements on behalf of their children.◇

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