

BOLHOUSE, BAAR & LEFERE, P.C.
ATTORNEYS AT LAW

PARENTAL WAIVERS NOT ENFORCEABLE IN MICHIGAN

Joel W. Baar

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Any company that obtains parental waivers for minor children, as well as the parents of minor children, should be aware of the recent Michigan Supreme Court ruling in *Woodman vs. Kera, LLC*.

The question presented in that case was whether a parent has the right to contractually waive liability for injury of their child before the injury occurs. The Michigan Supreme Court found that a parent's waiver is not enforceable, and is therefore ineffective to waive the child's right to sue. The court's opinion appears to go even further, suggesting that a parent does not have the ability to contract on behalf of a child or waive any legal claim the child may have unless the state legislature passes a specific law permitting such action.

What does this decision mean for you if you are a business owner dealing with children's activities? In effect, any waiver of liability in your contract is not as binding as it would have been prior to this ruling. Additionally, even if your contract did not include such wording and was signed by a minor's parent, the contract may be voided by the child if the child wishes to exercise his or her legal rights. What does this decision mean for you if you are the parent? If your child's participation is contingent upon your signing such a waiver, you can probably feel comfortable signing it, knowing that it is going to be very difficult to enforce on the part of the company.

So what can a company do to protect itself? Unless and until the legislature passes a law allowing parental waivers, it is unclear what, if anything, a business owner can do in order to effectively obtain parental waivers. Unfortunately, the Michigan Supreme Court's opinion offers no clear guidance as to how those working with children can shield themselves from potential liability. One possible approach may be to amend the contract to require the parent to agree not to bring a lawsuit in the name of the child, and perhaps even to defend and indemnify the company in the event that the child, or someone on behalf of the child, brings a claim against it.

If your business deals with children's activities, we strongly encourage you to work with an attorney to ensure your liability clauses have the best possibility of standing up in court if they are challenged.