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MICHIGAN SUPREME COURT SIDES WITH KIDS AND STRIKES DOWN PREINJURY WAIVERS

(June 18, 2010 – Grand Rapids, MI) – Today the Michigan Supreme Court ruled, in *Woodman v. Kera, LLC, d/b/a Bounce Party*, that business and recreational providers catering to children cannot avoid liability for negligently harming children by hiding behind preinjury waivers they require parents to sign.

Bounce Party, a for-profit business, petitioned the Michigan Supreme Court to reverse the decision of the Michigan Court Appeals, which found its preinjury waiver invalid and against Michigan law.

Upholding over 130 years of Michigan common law, the Michigan Supreme Court confirmed that a parent cannot waive, release, or compromise claims by or against their children. Justice Young, writing for the majority, noted that this common law rule was “longstanding and undisturbed”¹ and that arguments by the for-profit business that such waivers are valid were “entirely unpersuasive.”²

The case was handled by Paul McCarthy of Rhoades McKee, a Grand Rapids law firm. “The Supreme Court’s decision confirms what should be obvious: organizations and businesses catering to children must exercise ‘ordinary care’ for their protection,” stated McCarthy. “Parents expect and have every right to expect that those organizations catering to children adhere to the minimum standard of care required by law,” continued McCarthy. “To legitimize a preinjury waiver is to immunize a party from the consequences of negligently harming a child. By immunizing negligence, you encourage it,” said McCarthy.

Some argue that pre-injury waivers are needed in order to make recreational activities available to children. “Nonsense” says McCarthy. “The fact of the matter is that waivers have never been valid. Furthermore, the answer is insurance. Providers of activities obtain insurance in the event of injury, just like Bounce Party did here. Parents, on the other hand, cannot purchase insurance to compensate for injuries caused by a recreational provider’s negligence. That’s the fundamental problem with pre-injury waivers: they transfer onto families the cost of a recreational provider’s negligence.” That, says McCarthy, “goes against holding people accountable for their negligence, particularly when children are at risk.”

¹ Lead Opinion, p. 12.

² Lead Opinion, p. 13.

Justice Young noted that “enforcing the common law would protect minors’ contractual and property rights and presumably encourage greater care in preventing negligent injuries to children.”³ The majority concluded that changes to the common law should be left to the Michigan Legislature.

In that regard, pending before the Michigan Legislature is House Bill 4970 that would authorize a narrow exception by authorizing preinjury waivers, but only as to recreational activities run by a non-profit, nongovernmental organization.

The Woodmans were relieved by the decision. “We just wanted to make sure that other businesses wouldn’t stand behind these waivers as an excuse for poor behavior.” “We are pleased with the Court’s decision.”

According to McCarthy, the vast majority of states that have decided this issue have struck down the pre-injury waivers.

More About the Case:

Bounce Party, a business that caters to families with young children, advertised itself as “safe” and “supervised.” In truth, it was neither. The owner of the business consciously disregarded both the supervision and safety requirements imposed by the manufacturer of the 20-foot slide. A fundamental problem with a preinjury waiver is that parents have no knowledge of what risks the recreational provider may have created. The Woodmans, for example, had no reason to know that Bounce Party was providing none of the supervision required for proper use of the slide. Nor did the Woodmans have reason to know that Bounce Party discarded and did not use the slide mats that the manufacture expressly required for safe use of the slide.

The document Bounce Party innocuously advertised as a “free invitation” in its marketing materials was characterized in litigation as a “preinjury exculpatory waiver.”

About Rhoades McKee (www.rhoadesmckee.com):

Founded in 1960, Rhoades McKee is a 52-member, Grand Rapids-based law firm representing clients and businesses in a wide range of legal matters, including business, tax and corporate law; real estate, construction and environmental law; labor and employment law; health care law; estate planning and probate law; family law; professional liability and insurance defense; bankruptcy law; and litigation and dispute resolution.

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³ Lead Opinion, p. 19.