

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

6.24.11

## New Law Allows Limited Parental Waiver of Child Injury Claims

By Sidney A. Klingler

Under a new law signed by Governor Snyder on June 20, 2011, parents may, under certain circumstances, waive the rights of their minor child to sue for injuries sustained while participating in recreational activities.

The legislation responds to the Michigan Supreme Court's decision in *Woodman v Kera, L.L.C.*, 486 Mich 228; 785 NW2d 1 (2010), issued one year ago. The Michigan Supreme Court held that a preinjury waiver signed by a parent on behalf of a child was unenforceable, because a parent cannot contractually bind a child at common law.

The new legislation allows parents to release sponsors or organizers of recreational activity as well as paid or volunteer coaches or persons who assist in conducting recreational activity. The statute defines recreational activity as "active participation in an athletic or recreational sport."

The legislative abrogation of *Woodman*, however, comes with very significant limitations. It applies only to recreational activities sponsored or organized by *nongovernmental, nonprofit* organizations. The defendant in the *Woodman* case, a commercial play area business featuring inflatable play equipment, would be unaffected by the legislation. The legislation will benefit churches, private schools, and other nonprofit and nongovernmental organizations such as Little League Baseball and Softball.

The new legislation preserves a child's right to sue for injury or death resulting from the negligence of any person. A parent can only release claims for injuries resulting solely from *the inherent risks of the recreational activity*. A parent may not release any person from liability for their own negligence, or that of their employees or agents, that causes or contributes to the death of their child.

### SECRET WARDLE NOTES:

The Supreme Court's ruling in *Woodman v Kera, LLC*, that a parent cannot waive their child's claim for injuries, remains largely intact. The new law applies only to recreational activities sponsored or organized by *nongovernmental, nonprofit* organizations, and only allows a parent to release liability for injuries resulting from the *inherent risks of recreational activity*. The law does not protect any person from liability for negligence that causes or contributes to the injury or death of a child.

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The Legislature has created a narrow exception to the rule of *Woodman*. The parental release of liability authorized by the new statute will not operate to the benefit of for-profit businesses or governmental entities, although it does not affect the operation of governmental immunity, nor of preexisting law protecting owners or renters of land from claims by persons for injury while hiking, fishing, hunting, etc. A parent may now release a child's claim for injuries resulting solely from risks inherent in recreational activity sponsored by *nongovernmental, nonprofit* organizations.

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