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Parents, Kids & Releases: Midwest Courts *Still* Not In Agreement

By Alexander "Sandie" Pendleton of *Kohner, Mann & Kailas, S.C.*

Many businesses, organizations and events have parents sign waiver-of-liability forms on behalf of minors. Recent Minnesota and Michigan court decisions again show that Midwest courts come to conflicting conclusions on whether those forms are enforceable.

In a decision released in 2009 involving a boy who was injured during "horse-play" at a baseball camp, a Minnesota appellate court concluded that the registration and waiver form signed by the boy's mother barred the boy's and his parents' claims against the camp. Appellate decisions in North Dakota and in Wisconsin have come to similar conclusions in cases involving parents signing such forms for minors. (Note that the Wisconsin Supreme Court—which has tended to disfavor the enforceability of waiver agreements—has not yet ruled on this issue).

In contrast, courts in other Midwest states have come to an opposite conclusion, holding that as a matter of public policy or common law, courts in those states will not enforce such releases. Those states include Michigan and Illinois. (For details about the recent Michigan decision, see our article "Michigan Supreme Court Holds Releases Signed by Parents Unenforceable"). As to Iowa, Indiana and South Dakota, currently there is insufficient published case law to predict whether courts there will enforce pre-injury parental waivers of minors' injury claims.

Given the uncertainty in this area, caution remains important. Carefully crafted and deployed agreement terms are essential, if a business, organization or individual wants to have any hope of convincing a court to enforce the terms of a waiver of liability form.

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About Kohner, Mann & Kailas, S.C.

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