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Iowa Supreme Court Holds that Pre-Injury Releases Signed by Parents are Unenforceable; Alabama Court Follows Suit

By Alexander "Sandie" Pendleton

On November 5, 2010, the Iowa Supreme Court ruled that, under Iowa law, no parent has the authority to enter into an enforceable waiver on behalf of the parent's minor child. The decision has important ramifications for businesses, organizations, schools, governmental agencies and individuals who provide recreational or educational opportunities in Iowa, and is more evidence of a growing nationwide trend towards judicial invalidation of such parental waivers.

The *Galloway* case arose out of an "Upward Bound" educational outreach program run by the University of Northern Iowa. Youth participants as part of the program were given the option of attending various educational field trips, and their parents or guardians were required to sign waiver agreements as a condition of the minors being permitted to take part in the trips. In *Galloway*, the then-14-year-old minor plaintiff's mother signed the waiver, and the plaintiff was injured while on the field trip. Suit was commenced on behalf of the injured minor, and the trial court granted the State of Iowa (representing the University) summary judgment based on the waiver.

The Supreme Court reversed, broadly holding that all parental waivers in Iowa were void as against public policy. The majority opinion, written by Justice Daryl Hecht, focused on the analysis of public policy considerations that favor protection of children's rights. Justice Hecht emphasized a distinction between waivers signed by participants themselves, and waivers signed on behalf of a third party (such as a minor). The court observed that parents who sign waivers of liability on behalf of their children are not the ones who participate in the activities. Justice Hecht also believed it significant that many parents are ill-equipped to assess in advance the nature and gravity of risks of injury faced by children when they are participating in those activities, especially when parents are not present to assess risk when the activity occurs.

While acknowledging the deference and respect the State generally gives to parents' decisions affecting their children's interests, the decision notes that in Iowa (as in many other states) parents' authority to make decisions on behalf of their children is limited in many contexts. For example, when a child is injured in an accident, a parent has no authority after the accident occurs to settle the child's claim without court approval. Such limitations, Justice Hecht went on to say, accord children a measure of protection from their parents' careless or ill-considered decisions.

The State argued that, if parental waivers were rendered unenforceable, then recreational, cultural and educational opportunities for children would be curtailed because youth organizations would not want to expose themselves to liability. The majority rejected this argument and found such fears were "speculative and overstated." Justice Hecht noted in conclusion that, if the Iowa legislature found the court's analysis of public policy considerations erroneous, the legislature was free to adopt a different rule (as legislatures in other states, such as Colorado, have done in the wake of similar state high court decisions).

The majority's reasoning was opposed by two justices, who argued that courts should resolve issues based on public policy only when public policy considerations were clear and apparent. Both judges felt that, in this case, it was best to leave to the legislative branch the decision of whether or not waivers signed by parents on behalf of their children should be valid as a matter of law.

Of interest, in *Galloway* the court could have considered basing its ruling on a more narrow ground (for example, that the waiver in question was not adequately drafted), or could have limited its holding (for example, to a holding that governmental entities providing educational opportunities cannot rely upon waivers, but that others in other situations may). Instead, the court did not limit its ruling, and thus it appears *all* parental waivers in Iowa are now void.

The decision in *Galloway* is consistent with how courts in a majority of jurisdictions that have directly addressed the question have resolved the issue. The *Galloway* court notes that its decision is consistent with the holdings on this issue in nine other states, and inconsistent with decisions in only three other states.

Additionally, since the decision in *Galloway*, another court has come to the same conclusion. In *J.T. ex rel. Thode v. Monster Mountain, LLC*, a federal district court interpreting Alabama law voided on public policy grounds a waiver used by a motorcycle motocross park. The case arose out of injuries to a minor competitive rider, sustained while riding at an Alabama motocross track.

In addition to waiver provisions, indemnification provisions were in the agreements signed by the adults in both *Galloway* and in *J.T. ex rel. Thode*. Absent from the *Galloway* decision was any discussion of whether the indemnification provision of the agreement signed by the minor's mother was enforceable. In contrast, in *J.T. ex rel. Thode* the district court indicated its decision was limited only to the issue of the enforceability of the waiver provision, not the enforceability of the indemnification provision.

The decisions in *Galloway, J.T. ex rel Thode,* and similar cases underscore the importance of a well-thought-through risk management program for those who provide recreational or educational opportunities to minors. Risk management programs require consideration of legal issues (user agreements, waivers, indemnification terms), but also consideration of operational risk management issues (facility and activity design, staff training, risk and accident evaluation, etc.) and insurance issues (scope of coverage, exclusions, amount of coverage, etc.). If we can assist you as you design and implement a plan on the above issues, do not hesitate to give us a call.

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About Pendleton: Alexander "Sandie" Pendleton is a shareholder with the Milwaukee law firm of Pendleton Legal, S.C. Sandie has over twenty years of experience counseling clients involved in sports and recreational activities, including power sports activities, and is a frequent speaker and writer on recreational liability issues.

About Pendleton Legal, S.C.: At Pendleton Legal, S.C., we continue to believe the right to the "Pursuit of Happiness" is a right worth preserving. Our S/F/R Team (Sports, Fitness & Recreation Team) guides and fights for businesses and organizations that provide recreational opportunities and products, so that our clients are not overwhelmed by liability that might otherwise threaten their continued success (or even existence). Preserving the right is often not an easy or simple task, but we know this mission is an important one to our clients, and to the future of a free society. In addition to our S/F/R services, we provide legal expertise across the numerous areas of law encountered by businesses and organizations in the normal course of their day-to-day operations and growth. If you would like to explore whether we can help your organization achieve its mission, contact us**.**