Waiver Keeps Baseball School From Being Tagged with Liability

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The Minnesota Baseball Instructional School operates summer baseball camps on the campus of the University of Minnesota. In June 2005, one of the participants, T.J. (as a minor, his name was not released), sustained a permanent eye injury when he was struck by a woodchip thrown by another participant. The injury happened not on a baseball field, but in a campus courtyard, after lunch.

As a result of T.J.'s injury, his father filed a claim of negligence against the instructional school on behalf of his minor son. In its defense, the school argued that an exculpatory clause contained in the camp's registration materials insulated it from liability. The district court agreed and granted summary judgment.

T.J.'s father took his case to the Court of Appeals of Minnesota, where he argued that the district court erred since there was a question as to whether T.J.'s mother actually signed the form containing the exculpatory clause. (The school was unable to produce the assumption-of-risk agreement and release signed by T.J.'s mother.) The boy's father argued that even if T.J.'s mother signed the form, T.J. could only assume those risks that are inherent in the activity of playing baseball, and that the form's exculpatory clause violated public policy.

Over the years, sports attorneys (including this one) have repeatedly stated that a well-written waiver, signed by an adult, will be upheld by courts in most states. The legality of waivers signed by or on behalf of minors is not so clear-cut, however. Because minors are legally able to revoke any contract they enter into until they reach the age of majority (18 in most states), many organizations require either a parent to sign on behalf of the minor, or have both the minor and his or her parent sign. The majority of states have held that although the parent may relinquish his or her right to sue, a minor still retains the right. However, a growing number of states are willing to enforce a waiver against the minor, as *Moore v. Minnesota Baseball Instructional School* [2009 Minn. App. Unpub. LEXIS 299] demonstrates.

In reviewing, and rejecting, the father's first claim, the appeals court held that even though the school was unable to produce the actual online enrollment form that T.J.'s mother filled out, circumstantial evidence suggested that T.J.'s mother signed the form. The court noted that the school was able to produce a document generated from archived enrollment data indicating that T.J. enrolled in the camp, as well as a roster of children who participated in the 2005 camp that also contained T.J.'s name. Given that a child could only participate (or have his or her name even show up on the list) if the emergency medical form was signed and returned to the school,

there was evidence to show that T.J.'s mother did indeed sign it. (While T.J.'s mother did not recall filling out the form, she conceded that she must have filled it out.)

The crux of the father's second argument was that, since an injury from a thrown woodchip was not an inherent risk of playing baseball, it was not covered under the exculpatory clause. The appeals court held that while this might be true, it was not important to the outcome of the case. A plain reading of the waiver in question, the appeals court held, showed that the first time the word "activities" occurred in the document, it was used to describe "the activities that make up the school." It was not, the court held, limited to the activity of playing baseball; since lunch-break activities were part of the school, and T.J. was injured during the lunch break, the injury was covered under the exculpatory clause.

Finally, in reviewing the father's argument that the exculpatory clause violated public policy, the appeals court held that in order to determine if an exculpatory clause violates public policy, Minnesota courts must use a two-pronged test. The first examines whether there was a disparity of bargaining power between the parties, generally known as a contract of adhesion. The second examines the types of services being offered or provided, taking into consideration whether it is a public or essential service.

While the appeals court found that the exculpatory clause was part of a take-it-or-leave-it agreement and that T.J.'s mother had no ability to negotiate the agreement, the services offered (instructional baseball training) did not comprise an educational activity, nor was the training either of great importance to the public or a practical necessity for some members of the public. The exculpatory clause, the court ruled, thus did not violate public policy.

Although the Court of Appeals of Minnesota upheld the lower court's decision in *Moore*, in another state the school's failure to retain a copy of the exculpatory clause could have proved costly. In order to ensure that an organization is protected, it pays for administrators to keep complete records. This is especially true when a camper is injured and needs to go to a hospital. In such cases, the organization should not only have an accident report on file, but it should also anticipate a lawsuit and save all documents and waivers in use at the time of the accident.

Second, as the court noted, when creating a waiver (or a waiver's specific exculpatory clause), be sure that the language is broad enough to cover all the activities associated with your organization, not just the main activity. Had the Minnesota Baseball Instructional School's exculpatory clause only covered baseball, the school would have lost.

Finally, if possible, make sure that both the minor and his or her parents sign all forms. Once again, while the legality of the waiver against the minor in such cases may not stand up in court, a growing number of states are willing to enforce them against the minor as well as his or her parents.

Moore v. Minnesota Baseball Instructional School
http://mn.findacase.com/research/wfrmDocViewer.aspx/xq/fac.%5CMN%5C2009%5C20090331_0000511.MN.htm/qx