



Pitching the Youth Sports Liability Waiver

Agreements Can Provide Protections from Claims

By Brian Kern

As long as organized youth sports exist and there are kids to play them, youth sports liability waivers to cover associated risks will be standing guard in the dugouts, bullpens and penalty boxes.

Thirty percent of parents report that their child has been injured while playing a team sport; half of those say the child has been injured more than once, according to Safe Kids Worldwide, an international nonprofit organization dedicated to preventing unintentional childhood injuries. Nearly a quarter of those parents report the injury was serious, the organization said.

Bill Anthony, an attorney and subject matter expert with Agajanian, McFall, Weiss, Tetreault & Crist LLP, said waivers in youth sports primarily serve two purposes: a deterrent to filing litigation or the pursuit of claims; and—in many jurisdictions—a valid defense to liability for defendants.

"Families may decide to not pursue a claim in light of their knowledge of having signed the agreement," Anthony said. "Waivers can help defendants seek summary judgment at an early stage in the case. Many times motions are filed and won, resulting in no indemnity paid by the insurance company and with limited attorneys fees involved. Other times, the existence of the document often forces the plaintiff to explore settlement opportunities early in litigation, often while motions are pending."

Anthony said if mediation can take place while a motion regarding a liability waiver is pending, it is often the time at which the defendant has the most leverage to settle at a

reduced amount.

"Although it is not an easy calculation, the existence and validity of waivers in youth sports should reduce the total dollar amount (for indemnity and defense costs) expended by insurance companies on youth sports claims," Anthony noted.

Baseball has the highest fatality rate among all sports for children ages 5 to 14, according to Safe Kids Worldwide. Each year, three to four children die from injuries sustained while playing baseball. In 2002, nearly 116,900 children ages 5 to 14 were treated in hospital emergency rooms for baseball- or softball-related injuries, the organization reported.

"Sports providers and facilities should use an agreement whenever feasible in connection with any activity that involves the risk or injury, damage or harm to a participant," Anthony said. "The more dangerous an activity, the more important these agreements become," he added.

The Right Agreement

There are three basic aspects of the liability agreements including a waiver and release, an express assumption of the risk and indemnity, and hold harmless provisions, according to Anthony.

"By the waiver and release portion of the agreement, the parent is typically releasing the sport organizer and facility operator and owner from legal liability arising from the activities, including liability for negligent con-

duct," Anthony said. "As such, even if the organizer, operator or owner makes a mistake in enforcing the rules, maintaining the field, supervising the game, etc., the parent or guardian specifically agrees that it will not file a lawsuit for said mistake, even if it results in injury."

The agreement acknowledges that mistakes can be made; however, individuals may be unwilling to organize or operate youth sports if they will be held liable for every mistake that is made, Anthony said.

By the express assumption of the risk provisions, the parent is acknowledging that there are inherent and serious risks and dangers involved in the sports activity, and that the parent assumes those risks and the harm that may result.

Thirty percent of parents report that their child has been injured while playing a team sport.

"This is a formal acknowledgement that playing the sport may result in bodily injury, and the parent is agreeing not to pursue a claim for damages which result from the risks and dangers," Anthony explained. With the indemnity and hold harmless provisions, parents agree that if their child sues

the sport organizer, owner and/or operator, the parent or guardian agrees to indemnify and holds them harmless. As such, the parent or guardian is essentially agreeing that he or she will be responsible to pay back the organizer, operator and/or owner and make them whole if the child pursues a claim despite the waiver, Anthony said.

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Enforceable, Not Enforceable, Undecided

Participation of children — especially girls — in organized and informal sports continues to grow, according to Safe Kids Worldwide.

Nearly three-quarters of U.S. households with school-age children have at least one child who plays organized sports.

“Adult waiver and release agreements are generally enforceable in all jurisdictions throughout the country with a few exceptions, but there is far more controversy surrounding agreements signed by a parent or legal guardian on behalf of a participating child,” Anthony said.

Some jurisdictions, such as California and Ohio, have case law specifying that minor agreements are enforceable and not contrary to public policy. In several jurisdictions, including New York and Pennsylvania, case law holds that minor agreements are not enforceable and are contrary to public policy, Anthony said.

“A large bulk of the remaining jurisdictions



have either not addressed the issue or remain undecided,” Anthony said. “The typical rule is that such agreements can provide liability protection against claims for ordinary negligence, but that they cannot exempt a party from liability for gross negligence, willful misconduct and intentional torts. So long as the agreements are drafted clearly and unambiguously, and so long as they are presented properly, they should generally be enforced.”

Waiver and release agreements encourage growth of the market and help keep insurance premiums reasonable, Anthony said. Sport providers repeatedly facing litigation due to participant injuries could elect to leave the industry, reducing competition and participant alternatives, he added.

“We also believe that without the protections of waiver and release agreements, sports could be dumbed-down to reduce risks,” Anthony said. “Organizations will be less apt to encourage participants to attempt new and

different activities within a sport, and participation may become less vigorous. Restrictions and limitations on competition could result.

“In these respects, youth sports being in jeopardy is a relative analysis. Ultimately without enforceable agreements, there will be an impact, but that impact will not likely rise to the level of extinction,” he added.

Even with waiver and release agreements, sports organizers and facility owners and operators still face the threat of litigation, he said.

“While agreements can provide protection against ordinary negligence, they typically do not provide protection against intentional tort claims, gross negligence claims, willful misconduct claims, product liability claims and claims for violations of statutory duties of care. As such, liability is not alleviated altogether,” Anthony said.

Reduced expenditure on claims and positive track records for insureds should result in lower premium rates. And reasonable premium rates should contribute to the health and proliferation of youth sports, Anthony said. **■**