Falling Flat: The Enforceability of Trampoline Park Waivers Against Minors

by Joshua M. Rappaport & Scott Rudin

What do dying strip malls, abandoned sporting-goods stores, and old warehouses have in common? They may be the new home of a trampoline park! Trampoline parks, as we know them, emerged in 2006 and have grown substantially since then.[1] As of 2021, there were an estimated 701 trampoline parks operating in the United States.[2] In Illinois alone, you'll find dozens of trampoline parks that are home to birthday parties, rainy day respite, and wall-to-wall trampolines. But while parks may seem like an energetic child's dream, how safe are they really? Not very.

From 2014 to 2018, emergency room visits for trampoline park-related injuries increased 211 percent from 6,200 in 2014 to 19,300 in 2018, and that number has undoubtedly grown in tandem with the increase in parks.[3] 59 percent the children who visit the ER with injuries from a trampoline park present with a leg fracture, though injuries can be much more severe.[4] From what I have seen from the defendant trampoline parks' surveillance video from inside the facilities, these parks are often poorly supervised and the instruction to children can range from lacking to nonexistent. I have seen these parks even be poorly lit intentionally, similar to "cosmic bowling," but adding precision landing by a child from a trampoline in the mix. These issues are highlighted especially in comparison with how truly dangerous the equipment can be when used in foreseeable ways by children, who the parks are marketed to.

Unsurprisingly, trampoline parks have sought to protect themselves from liability resulting from injury by requiring releases and/or waivers to be signed before you jump. Because the clientele for these parks is so frequently minor children, this usually means a parent or guardian signing the waiver on their behalf. However, as the seasoned ITLA litigator knows:

> "In the absence of statutory or judicial authorization, a parent cannot waive, compromise, or release a minor child's cause of action merely because of the parental relationship. This rule has also been extended to render ineffective releases or exculpatory agreements for future tortious conduct by other persons where such releases had been signed by parents on behalf of their minor children.[5]

A prospective client comes to your office. He tells you that he took his 8-year-old to the brand new trampoline park for her cousin's birthday party. He arrived with his child, excited and ready to jump. He was quickly handed a liability waiver to sign on behalf of his daughter, releasing the park from any liability should she get injured. The language (assuming he read it) read something along the lines of "*by signing this document, you are giving up your and/or your minor's legal rights including the right to bring a lawsuit in court and/or have the claim decided by a jury.*" Amidst a chorus of laughter, shrieking, and his daughter begging him to let her go play, he hurriedly signed the waiver on her behalf and off she goes. The parks typically require signing of the release prior to entry. Most parents are not going to deprive their kid from joining the party, while already at the park's doors. Likewise, most parents probably are not going to stop and read a full waiver in the doorway of a trampoline park and then turn around and leave with their child based on its contents.

Back to our scenario; shortly after entry, a much larger child double-jumps on your child's trampoline (double-jumping a trampoline is against the rules and can cause serious injury, which you may or may not have been told) causing your child to break her leg upon landing. The medical bills are starting to pile up and your prospective client asks you what you can do about it. Your prospective client knows he signed a release, but is the release and waiver really enforceable?

As far as the release and waiver pertain to releasing the park from liability as to a minor's cause of action, no, the releases and waivers are not enforceable. We as plaintiff's attorneys know this. The people drafting the releases and waivers for the trampolines parks in Illinois surely know this. *Meyer by Meyer v. Naperville Manner*, is crystal clear that a parent cannot release a minor's cause of action without statutory or judicial authorization in these circumstances.[6]

There are several reasons for why this policy exists: (1) it protects an injured minor child where his or her parents are unwilling or unable to provide for his or her care, (2) if not enforced, the minor child would not have any alternative method of recourse against the negligent party for compensation, and (3) this policy prevents a conflict of interest between the parent and the minor child.[7] When a minor child has a potential cause of action, they are a ward of the court, the

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court has broad discretion to protect the best interests of the minor.[8] A parent generally may not release a minor's cause of action after an injury, so there is little reason to conclude that they may release the cause of action *prior* to the injury.

So the question has become: why do these ever growing in popularity trampoline parks continue to require parents to sign waivers and releases so blatantly against Illinois law upon entry? My theory is that the parks hope just to discourage enough people from bringing potentially meritorious lawsuits based on the public's lack of knowledge regarding the enforceability of the waivers to keep profitability up. My experience has been, once the lawsuit on behalf of the minor has been filed, there has been very little attempt by the defendant trampoline parks to actually enforce the releases of liability found in these waivers.

Instead, the trampoline parks have gotten creative with the waivers to try to get around *Meyer* in other ways. Instead of just trying to release liability or waive your cause of action, at least two new ways to avoid litigation have arisen: arbitration clauses and indemnity agreements. Fortunately, for those injured, Illinois case law extends to overrule even these despite their creativity and intent of muddying the waters around *Meyer*.

Arbitration Clauses

The purpose of any arbitration agreement is to release, compromise, or waive the legal right to pursue litigation and a have a jury trial and instead arbitrate. Sound familiar? In *Meyer v. Naperville Manner, Inc.*, the court held that the policy reasons behind the rule barring the waiver, compromise, or release of a minor child's cause of action by their parent extends to releases or exculpatory agreements for future tortious conduct.[9] Compromise and waiver are the key words in the *Meyer* holding that defeat the arbitration clauses; the policies and reasoning in *Meyer* apply squarely to arbitration agreements. Trampoline park defendants will frequently argue that an arbitration agreement is not a waiver or release of liability, but merely submits the dispute to arbitration. Sure, the claim could still exist and potentially have a good result in arbitration. Yet, the minor's right to a jury trial cannot be waived nor compromised. Replacing the right with arbitration, is still a compromise, the degree of compromise is irrelevant. See the arbitration clause added below and note the bonus of the clause altering the statute of limitations, even for a minor.

ARBITRATION OF DISPUTES; TIME LIMIT TO BRING CLAIM

☑ I understand that by agreeing to arbitrate any dispute as set forth in this section, I am waiving my right, and the right(s) of the minor child(ren) above, to maintain a lawsuit against SZ and the other Releasees for any and all claims covered by this Agreement. By agreeing to arbitrate, I understand that I will **NOT** have the right to have my claim determined by a jury, and the minor child(ren) above will **NOT** have the right to have claim(s) determined by a jury. Reciprocally, SZ and the other Releasees waive their right to maintain a lawsuit against me and the minor child(ren) above for any and all claims covered by this Agreement, and they will not have the right to have their claim(s) determined by a jury. **ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO MY OR THE CHILD'S ACCESS TO AND/OR USE OF THE SKY ZONE PREMISES AND/OR ITS EQUIPMENT, INCLUDING THE DETERMINATION OF THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE BROUGHT WITHIN ONE YEAR OF ITS ACCRUAL (i.e., the date of the alleged injury) AND BE DETERMINED BY ARBITRATION IN THE COUNTY OF THE SKY ZONE FACILITY, ILLINOIS, BEFORE ONE ARBITRATOR. THE ARBITRATION SHALL BE ADMINISTERED BY JAMS PURSUANT TO ITS RULE 16.1 EXPEDITED ARBITRATION RULES AND PROCEDURES. JUDGMENT ON THE AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. THIS CLAUSE SHALL NOT PRECLUDE PARTIES FROM SEEKING PROVISIONAL REMEDIES IN AID OF ARBITRATION FROM A COURT OF APPROPRIATE JURISDICTION.**

Clearly, compelling arbitration, even while technically allowing a claim to proceed, is a still of a waiver compromise of the minor's rights. The degree and/or favorability of the compromise and waiver do not matter. It is a waiver of a jury trial, waiver of the court's warding of the minor, and even waives the discovery process being supervised by the court. The Supreme Court of Illinois holds that "[b]ecause the right to jury trial is of constitutional dimension, courts will liberally construe statutes which regulate exercise of the right. (T)he inclination of the court should be to protect and enforce the right."[10] A parent' signature alone does not eclipse the minor's constitutional right to jury trial, despite the legalese signed upon entry to a trampoline park. Even though compelling arbitration would not release the entire claim, it certainly compromises it, most obviously in losing the constitutional right to a jury trial. Although, arbitration may be favorable in some circumstances, defendant cannot compel your minor's lawsuit to their chosen playing field under *Meyer*.

Indemnification Agreements

These policies and principals of protecting the minor also apply to indemnification agreements. Adding indemnification agreements, which most lay people probably will not understand or bother to look up, assuming they even are reading the agreement, is another creative method trampoline parks have instituted in an attempt to get around an explicit waiver but find the same result. Indemnification agreements are still forbidden under *Meyer*. Indemnification clauses attempt to circumvent a child's cause of action by shifting liability and its defense to the parent or other signer. However, to compel indemnification of the defendant through an injured party's parent constitutes a waiver,

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compromise, and release of the minor plaintiff's cause against the defendant, likewise against *Meyer*, just through more steps. In a current pending lawsuit against an Illinois trampoline park, the injured minor's father signed a waiver upon entry to the park with the indemnification agreement seen below, in addition to their standard waiver of liability that it knows is against Illinois law.

> (d) agree to indemnify and hold Park Owner harmless from and against any and all losses, liabilities, claims, obligations, costs, damages, and/or expenses whatsoever, including, but not limited to, any and all attorneys' fees, costs, damages and/or judgments directly or indirectly arising out of, or relating to my acts or omissions while participating in any activities at the Park;

The indemnification shifts the defense of any claims and liabilities back to the parent and the signer. The trampoline parks will argue that there is no release or waiver here, is it just the parents who now must be responsible, no matter what happens in the park. Regardless of validity, the parent's homeowners insurance will not cover this type of indemnity agreement as it relates to the parent's own child. Homeowner's insurance policies do not contain coverage for bodily injury to insureds. Insureds of homeowners insurance typically includes the policyholder and residents of their household, which of course would include the injured minor in many circumstances. Since in the case I am currently litigating, the injured minor is in fact a resident of his parent's home, he is an insured and therefore (among likely many reasons including the validity of the indemnification clause) the homeowners' insurance will not be covering any indemnification claim. Since an indemnification claim has no valid insurance behind it, the clause in the waiver then compromises the minor's claim without judicial or statutory authorization making it against Illinois law.

By attempting to enforce an indemnification agreement signed by a minor child's parent, the defendant effectively bars the viability of the claim. This is exactly the type of purported release, waiver, or compromise which *Meyer* addressed and found to be ineffective as a matter of law, it is just a different way of getting there. Even if the indemnification provision of the agreement could be dealt with in isolation, it would still result in the minor being forced to waive their claim in all

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practicality. Ultimately, these policies apply to waiver and compromise of legal rights by pre-tortious parental signed releases, rending both arbitration clauses and indemnification clauses ineffective against the minor ineffective. These clauses are creative and attempt to circumvent *Meyer*, but practically fail.

In the case I am currently litigating with the indemnification clause, I will note that that the trampoline park to date has merely threatened to file a third party complaint against the parent and put his homeowner's insurance on notice. The defense has not actually done it. I think if they believed in its validity, they would have done it already. For what it is worth, the homeowner's insurance agrees that there are serious doubts regarding the validity of the indemnification clause in the first place.

It is clear that the policy reasons set forth in *Meyer* extend to protect minors from explicit waivers of liability and pre-emptive releases. It is also clear that trampoline parks and their legal teams are aware of this but require the signing of a waivers and release upon entry regardless. Arbitration clauses and indemnification clauses do not waive liability or release claims but nonetheless, waive and compromise minor's rights in violation of waiver. There is no qualifier in Illinois law for what percentage of a minor's rights can be waived or compromised before *Meyer* is violated. A minor is a ward of the court and that must be treated with the upmost seriousness. Indemnification leads to solvency and insurance coverage issues, so while not a direct waiver or release, the practical effect puts the clause in violation of *Meyer* since it can stop the minor's case in its tracks – which of course is the trampoline park's intent.

On the other hand, arbitration could potentially see a claim through to its end, but there is no reason to allow a trampoline park to stay litigation and compel you there if you would rather litigate where you filed. As trampoline parks continue to grow in popularity and as the law continues to develop, there is no doubt that trampoline parks will continue to develop methods of minimizing and avoiding liability. For now, you can confidently advise that potential client that their minor child has a right to pursue their claim.

Endnotes

[1] "Trampoline Parks Industry in the US – Market Research Report," *IBISWorld*, last modified December 30, 2021, https://www.ibisworld.com/united-states/market-research-reports/trampoline-parks-industry/.

[2] *Id.*

[3] Andrew Mazan, "Consumer Product Safety Commission Reports 211% Increase in Injuries," Last modified November 18, 2019, https://www.trampolineparklawsuits.com/2019/11/18/consumer-product-safety-commission-reports-211-increase-in-injuries/.

[4] *Id.*

[5] *Meyer by Meyer v. Naperville Manner*, 262 Ill. App. 3d 141, 146 (1994).
[6] 262 Ill. App. 3d 141, 146.
[7] *See Meyer by Meyer v. Naperville Manner*, 262 Ill. App. 3d 141 (1994).
[8] *Wreglesworth v. Arctco, Inc.*, 316 Ill. App. 3d 1023, 1023 (2000).
[9] *See* 262 Ill. App. 3d 141.
[10] *Hernandez* v. *Power Const. Co.*, 73 Ill.2d 90, 95 (1978).

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