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Addressing the Special Handling of Hospitality Claims Involving Minor Children of All Ages

I. Claims Involving Minor Children – How Are They Different and Similar To Adult Claims?

As professionals that deal with litigation matters we may be tasked with evaluating hospitality claims where the question arises whether a child, the parents, or the environment caused or contributed to the injury. For example, are the parents of a 6 year old child playing near a pool with his parents around responsible to monitor his safety? Does a 6 year old child recognize the danger presented to him by a swimming pool? Did the property owner have any safeguards in place such as a lifeguard, lifejackets, etc.? Was the lifeguard attentive and monitoring as expected? Were lifejackets being used by the parents? These may be some of the questions that may arise during the evaluation process. When evaluating a claim involving a child, it is important to evaluate the age of the minor as well as the circumstances of the alleged at-fault-party, and to be familiar with state specific statutes regarding parental liability.

The applicable standard of care in evaluating a minor claim is the same - was the person's conduct when measured against the reasonable, ordinary and prudent person appropriate? For the parents' conduct, this is measured objectively, taking into consideration the physical characteristics, the average mental ability, and the knowledge of an average member in the community. For a child a majority of courts declare that the child is required to conform to a standard of care of a child of similar age, education, intelligence and experience.

Generally, children over the age of 14 can be found capable of negligence when it is determined that they met the reasonable person standard and yet failed to act appropriately. Many states declare that a child under the age of seven is incapable of negligence. A child between the ages of seven and fourteen is presumed to be incapable of negligence, but the presumption may be rebutted by showing the child in question possesses the skill, capacity or understanding of the activity involved.

Parents of the minor child may found at fault for the negligence of a minor child if they it can be demonstrated that they knew or should have known the child's habits, predispositions or inclinations toward behaviors relevant to the incident and if they had the opportunity and ability to control and discipline the child but made no reasonable effort to do so. The parent may also be held responsible for supporting or encouraging the negligent act.

Injuries to children can be different than those sustained by adults both physically and psychologically because they can have an impact on the child's development. Thus, there can be prolonged recovery for the child due to dealing with multiple surgeries or developmental delays, depending on the injury.

II. Types of Hospitality Claims Involving Minor Children

The most common types of claims involving children in hospitality are slips, trips, and falls, defective or dangerous products used on the premises, swimming pool accidents, sports accidents, and dog bites.

III. Issues Relevant to Claims of Minors

In this section issues that result in injuries to minor children in the hospitality environment are discussed. This include:

- a) Wrongful death actions involving minor children
- b) Product or premises design
- c) Standard of care
- d) Parent's appreciation of risk/contribution to causation
- e) Minor child's level of development and appreciation of risk/contribution to causation
- f) Duty for care based on requirements by law
- g) Signage/warnings including the adequacy of that signage
- h) Attractive nuisance

IV. Pre and Post Litigation Handling of Claims Involving Minor Children

This section will discuss how a claim involving a minor child should be handled pre-litigation and post-litigation as well as the stage at which it is best to involve counsel and/or a subject matter expert that can assist in the evaluation process.

V. Liability waivers as they pertain to minors

This section will deal nationwide laws parental waivers, arbitration agreements, and indemnities related to parental or child's litigation rights. In addition, this section will discuss liability waivers for protection from liability for injuries to minors by business establishments as well as settlements related to claims involving minors. The section will discuss when the law provides that a natural guardian, on behalf of the minor may waiver in advance any claim against a commercial activity provider resulting from "inherent risks" of the activity. In addition, this section will discuss issues related to risk transfer documents and that a liability waiver is not an alternative to a documented robust safety program.

VI. Determining Whether to Contest Liability Or Get an Early Resolution

The section will discuss when it is in the best interest of the business establishment to contest liability by taking a case all the way to a trial and when getting to an early resolution is beneficial, regardless of liability, because the indemnity costs substantial in comparison to the expense of

litigation. The section will discuss why focusing on issues related to determining damages or simply achieving a settlement are in the best interests of the business establishment because engaging in lengthy discovery and depositions on issues related to liability may be counterproductive and expensive. In addition, this section will discuss rules related to jury instructions for trials involving minors regarding age of reason and rules related to the testimony of minors.