

What turns an accident into a lawsuit...

A look inside the plaintiff's attorney's playbook



AMUSEMENT INSURANCE RESOURCES

- “The inefficient regulation of the Amusement Industry – which includes travelling carnivals, water parks and huge theme resorts- has resulted in needless injuries. Plaintiff lawyers are in a position to hold the industry accountable and improve safety...”

- From Trial Journal | August 2012

The starting point...

- 44 out of 50 states have some form of regulation for our industry.
 - “While the industry claims it regulates itself sufficiently and has proper motivation to do so, only a patchwork of voluntary standards, and federal, state and local laws regulates amusement ride safety for the public”

Inadequate Regulation?



High Profile Example...Teagan Marti

- 12 Yr. old female
- Terminal Velocity Ride
- Patron released prematurely
- Fell 100 feet

- Operator error
- Operator found guilty of 2nd degree reckless injury
- Civil litigation still in process.

High Profile Example...Teagan Marti

- Quote from Stuart Grossman, attorney for the Marti family:
 - The operator claimed he did not intend for the accident to occur and just 'blacked out'.
 - "he {the ride operator} represents a class of people who are given an awesome responsibility and can't just be 'blacking out' or not concentrating or whatever it might be."

Teagan Marti

- Accidents usually result from a combination of circumstances and an amalgam of human error, inadequate inspections, damaged parts, rust, corrosion, defective design and defective or deficient maintenance.

Why accidents happen...

- To create and use a combination of legal theories:
 - Product liability
 - Negligence
 - Premises liability
 - Criminal liability
 - Inadequate security
 - Breach of duty
- They must quickly and carefully identify the defendant that owned or operated the ride in order to begin their arguments.

Litigation Strategy...

- What can you do?
 - Establish company procedures for accident management.
 - Run accident drills
 - Mock investigations
 - First aid scenarios
 - Media/Press management
 - Policy for non-spoilation of scene/evidence
 - Policy of non-admission of guilt

Defense Hurdles....

- Lawyers will attack staffing and supervision
 - They will challenge:
 - Operator age
 - Operator experience
 - Operator training
 - Operator distractions (Cell Phones?)
 - Company policy on drug and alcohol use

Their legal arguments...

- **Client Conduct**

- Was the patron in compliance with all the rules and warnings posted regarding the ride?
 - Are all warnings and rules properly posted...bi-lingual?
- Assumption of Risk?
 - Remember a plaintiff cannot assume concealed risks of which he or she is unaware the risk must be known and fully comprehended or obvious to the plaintiff.

Their legal arguments...

- Assumption of Risk

- Nalwa v. Cedar Fair

- “We conclude the primary assumption of risk doctrine, though most frequently applied to sports, applies as well to certain other recreational activities including bumper car rides. We further conclude the doctrine applies to the ride here, even though amusement parks are subject to state safety regulations and even though, as to some rides, park owners owe participants the heightened duty of care of a common carrier for reward....”

A win for the good guys!

Their legal arguments...

- **Client Conduct**

- **Children**

- The amusement owner or operator may be held liable if a small child was sent alone on a ride.
 - The ride owner or operator owes a higher duty of care to a child due to the fact they are not capable of discerning the associated risks of the ride.

Their legal arguments...

- **Duty of care**

- Cases usually involve a breach of duty by the owner or operator that is owed the plaintiff.
- They will want to find out...
 - Who controlled the ride?
 - Who maintained the ride?
 - Was the ride properly equipped with all manufacturers supplied or recommended safety equipment?

Their legal arguments...

- They will go after...
 - Improper training of staff
 - Failure to inspect or maintain ride
 - Evidence of:
 - Complete maintenance manuals
 - Complete maintenance logs
 - Complete pre-opening checklists
 - Complete operator training records
 - Complete inspection records
 - Complete testing records
 - Modification records
 - Operational manuals
 - Compliance with state inspection records

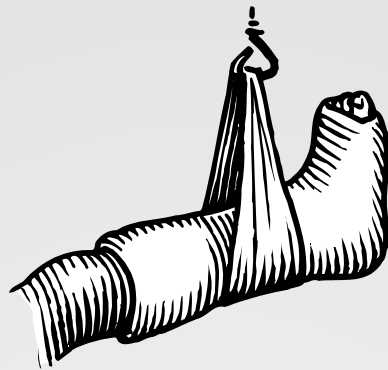
Yet even more arguments...

- As an owner or operator you can identify within your organization the weaknesses that can be exploited by the plaintiffs bar.
- You have the ability utilize all tools available to reduce the likelihood of an accident and then the knowledge of what to do when one occurs.

What can you do?

Accidents Happen...

A pro-active guide to managing accidents, incidents and claims for Amusement Ride Operators



- **GUIDING PRINCIPLES OF ACCIDENT MANAGEMENT**

- Respond Immediately and with Sincerity
- NEVER, EVER ADMIT LIABILITY
- Immediately capture and document all facts and statements
- Do not discard the device or attraction.
- Follow up with sincerity and empathy
- NEVER, EVER ADMIT LIABILITY

Accidents Happen...

- What do I do if there is an accident on my ride?

1. Calmly assess the situation.
 1. Sincerely and empathetically approach the situation.
 2. Quickly determine if First Aid is necessary or if advanced medical care is necessary.
 3. Be calm and confident.

Accidents Happen...

- What do I do if there is an accident on my ride?

1. Administer First Aid
 1. All staff should be trained on basic First Aid principles and techniques.
 2. Unit should have at least two (2) fully stocked First Aid Kits.
 3. If medical attention is required, call 911.

Accidents Happen

- What do I do if there is an accident on my ride?

- Document Facts

Monkey Jack's
RESTAURANT & BAR

ACCIDENT REPORT (Internal)

Please fill out this form to the best of your knowledge as soon as an accident occurs in your facility.
DO NOT forget to inform a member of management and/or owner of the incident.

Accident Date/Time: _____ Report Date: _____

Manager on Duty: _____ Was the Injured Person(s) your party guest, walk-in guest or employee? _____

Person's Name(s) & Age(s): _____ Did the parent/guardian fill out the waiver? If Yes, provide a copy with this report. _____

Guardian Name and Address (if minor): _____

Parent/Guardian's Home #: _____ Parent/Guardian's Cell #: _____ Other Important #: _____

Extent of Injuries: _____

Action Taken (ice pack, medical treatment, etc.): _____

ACCIDENT DESCRIPTION

Please attach original notes describing the guests' view of exactly what happened.

You **MUST** follow up with the parent/guardian/injured person(s) the **VERY** next day, no matter how small big the incident. Please explain how the injured person is doing & what treatments the person has had, if any. Also please list dates/times of all attempted follow-ups.

Please attach any original notes of Witness Statement(s): _____

WITNESS INFORMATION

Name:	Phone Number:	Driver's License #:
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Accident Reporter's Printed Name and Signature: _____ Position: _____ Date signed: _____

Accidents Happen...

- What do I do if there is an accident on my ride?

- Incident Report

- Accurately capture all relevant facts...how and what happened?
- NEATLY complete the incident report
- Do not give a copy of the report to the customer
- Take photos of the ride and surrounding environment – keep a digital camera on hand with each unit.
- Secure and save any video or photographic images of the event
- Capture and document witness statements. Non-related parties are best.

Accidents Happen

- What do I do if there is an accident on my ride?

- Create incident file
 - Include
 - Incident Report
 - Witness Statements
 - Photos
 - Videos
 - Staff Statements
 - Document, document, document any and all facts and statements made

Accidents Happen...

- What do I do if there is an accident on my ride?
- Contact your insurance broker or company immediately.
- As required, contact the authority having jurisdiction over amusement rides in the state you are operating in.
- Secure device and scene

Accidents Happen...

- Key points to remember when the incident occurs.
 - Be sincere and empathetic
 - NEVER, EVER ADMIT LIABILITY
 - Remain calm and confident
 - Not all incidents end up as claims, but all incidents can impact company's reputation.
 - Document, document, document!!!

Accidents Happen...

- What is a claim vs. what is an incident?
- Not every incident ends up becoming a claim, but every claim begins as an incident.
- Even the most innocent incidents, involving the nicest people can turn into nasty claims.
- Don't assume anything.

Accidents Happen...

- What is a claim vs. what is an incident?

- Claim triggers
 - Demand for money
 - Verbal
 - Written
 - Legal
 - Letter of Representation
 - Telephone contact from an attorney
 - Demand for payment from a third party
 - Insurance company
 - Hospital

Accidents Happen...

- Key Points to remember
 - Never admit liability or negligence.
 - Never agree to make any payments without prior consultation from insurance company or legal counsel.
 - Document every incident, no matter how small it may appear.

Accidents Happen...

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