

The Playbook

A LOOK AT THE PLAYGROUND CONSTRUCTION INDUSTRY • SPRING 2002

NOTICE OF SUMMONS
LIABILITY - LAWSUIT.

acord GENERAL LIABILITY LOSS NOTICE (OTHER THAN AUTOMOBILE)

PRODUCER: [] PRODUCER PHONE (A/C, NO., EXT.): [] FOR COMPANY USE ONLY: []
 COMPANY: [] POLICY NUMBER: []
 POLICY EFF. DATE (MM/DD/YY): [] POLICY EXP. DATE (MM/DD/YY): [] DATE (MM/DD/YY) & TIME OF LOSS: [] PREVIOUSLY REPORTED: []
 CODE: [] SUB CODE: []

INSURED
 NAME & ADDRESS: Playtime "R" Us, 1000 S. Playtime Rd., Playland, USA 00000
 INSURED'S RESIDENCE PHONE (A/C, NO., EXT.): 800-000-0000
 INSURED'S BUSINESS PHONE (A/C, NO., EXT.): 800-000-0000
 PERSON TO CONTACT: S. Salazar
 WHERE TO CONTACT: Office
 WHEN: AM Only
 CONTACT'S RESIDENCE PHONE (A/C, NO.): [] CONTACT'S BUSINESS PHONE (A/C, NO., EXT.): []

LOSS
 LOCATION OF ACCIDENT (INCLUDE CITY & STATE): []
 DESCRIPTION OF ACCIDENT (USE REVERSE SIDE, IF NECESSARY): Single Wave Poly Slide
 Slide
 AUTHORITY CONTACTED: S. Salazar

POLICY INFORMATION
 COVERAGE PART OR FORMS (INSEP): []
 LIMITS: BI [] PD [] CSL []
 UMBRELLA/EXCESS POLICY IN FORCE? []
 TYPE OF LIABILITY: PREMISES INSURED IS [] OWNERS []
 OWNER'S NAME & ADDRESS (IF NOT INSURED): []
 PRODUCTS INSURED IS: [] MANUFACTURER: [] VENDOR: [] OTHER: []
 MANUFACTURER'S NAME & ADDRESS (IF NOT INSURED): Best Manufacturing, 1000 S. Middletown, USA
 WHERE CAN PRODUCT BE SEEN? Office
 OTHER LIABILITY INCLUDING COMPLETED OPERATIONS (EXPLAIN): []
 EQUIPMENT: Equipment
 OWNERS PHONE (A/C, NO., EXT.): [] TYPE OF PRODUCT: []
 MANUFACT. PHONE (A/C, NO., EXT.): []

INJURED/PROPERTY DAMAGED
 NAME & ADDRESS (INJURED/OWNER): John Doe
 AGE: 12 SEX: M OCCUPATION: Student EMPLOYERS NAME & ADDRESS: Playtime "R" Us
 PHONE (A/C, NO., EXT.): 800-000-0000
 DESCRIBE INJURY: Cut finger on slide FATALITY: [] WHERE TAKEN: Doctor WHAT WAS INJURED DOING?: Sliding
 PHONE (A/C, NO., EXT.): 800-000-0000
 DESCRIBE PROPERTY (TYPE, MODEL, ETC.): Slide ESTIMATE AMOUNT: \$150.00 WHERE CAN PROPERTY BE SEEN?: AT Site--Anytown, USA 00000
 WHEN?: []

WITNESSES
 NAME & ADDRESS: Jill Doe
 BUSINESS PHONE (A/C, NO., EXT.): 800-000-0000 RESIDENCE PHONE (A/C, NO.): []
 REMARKS: See attached notes
 REPORTED BY: S. Salazar
 ACORD 3 (8/82-c) NOTE: IMPORTANT CALIFORNIA

GOT IN\$URANCE?

PRSRRT STD.
 US POSTAGE
 PAID
 ASHTON, ID
 PERMIT NO 9



NIPCA
 NATIONAL PLAYGROUND CONTRACTORS ASSOCIATION

- Setting The Standard For Playground Construction -

This article is an edited version of a report by Rolf Huber, from Canadian Playground Advisory Inc.. You may read the entire article at www.everplay.com. The NPCA would like to extend a thanks to Canadian Playground Advisory Inc., and Everplay for their permission to reprint this article.

PLAYGROUND SURFACING, INJURY SEVERITY & LIABILITY

Over the past 25 years a significant volume of material has been produced with regard to playground injuries and injury reducing playground surfacing. The publication of various standards in Canada, the United States and other countries has added to the awareness of professionals in all aspects of playground design an heightened awareness of risk by those engaged in the installation and operation of playground facilities.

Numerous studies have indicated that 60-70% of all playground injuries requiring medical attention are as a result of a fall to the surface under the playground equipment or an intermediate platform. Nearly half of these injuries are head injuries.

The issue of risk management, liability and the risk exposure of the designer, manufacturer, contractor, owner or operator of any play space has become a significant problem. Understanding the criteria and standards that have been established and the potential for injury will assist in determining what, if any, risk is involved. It is important to understand three important aspects of the problem: liability and negligence, formal tests and test procedures for the evaluation of playground surfacing, and the ability to perform tests of installed surfaces and the availability of experts to provide evidence and testimony.

Negligence and Liability

Since negligence is a common law concept dependent upon legal precedent however modified by legislation, it is important to make assessments of legal liability and business risk in conjunction with an expert within the legal profession. These professionals will be able to provide guidance as to the specific liability for negligence and occupiers liability that could attach to:

- an employee who may be a direct or proximate cause of an injury;
- the contractor(s) and manufacturer(s) involved in the playground;
- the designer and /or specifier of the playground;
- the supervisor, manager, owner and/or operator of the playground;
- members of the board operating the playground; and
- any unit of government or agency that has sponsored or funded of the construction of the playground.

In 1856 Baron Alderson stated what has become the most commonly accepted definition of negligence as: "the omission to do something which a reasonable man, guided upon those considerations that ordinarily regulate the conduct of human affairs, would do, or something which a prudent or reasonable man would not do."¹ The level of care that is to be provided is also based upon the determination as whether the owner/operator of the playground is an inviter or an occupier. An invitee should be protected from danger about which the owner knows or at least about which the prudent owner should know.² The occupier is liable to a licensee in respect of a concealed trap or danger notwithstanding the negligence of the licensee, who, if he had exercised great care, could have detected the danger in time to avoid it, but whose lack of care was induced, in part at least, by the continuing sense of false security created by the trap.³ In addition the degree of care that must be provided to the user by particular individual parties will be determined by the skill or knowledge of the individuals relative to the involvement of those individuals.

It is obvious that the exposure to liability is very real. The volume of documentation with regard to playground safety and the standards that have been developed have provided the knowledge required to prevent most serious injuries and liability in the playground and to properly manage risk. As indicated above this has the effect of significantly increasing the required standard of care and thereby the exposure of all persons involved in the provision of the playground.

Formal Tests and Procedures for Playground Surfacing

To understand the degree of protection that is being provided through the installation of an appropriate surface, it is important to understand that the test procedures and pass/fail criteria have been time tested and developed through the input of professionals throughout the world. At present the standard quoted in North America is the ASTM F-1292, which states:



National Playground Contractors Association

