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Recreational Equipment

Should Safety Worries Rob Fun Out of Theme Park Rides?

Amusement and carnival park rides in the U.S. are regulated for safety—albeit haphazardly—at the state level.

But that wasn't always the case.

Before 1981, the Consumer Product Safety Commission regulated the safety of fixed amusement park rides.

But Congress limited the agency's authority in a bitter budget deal, and future attempts at reversing that restriction have failed.

Plaintiffs' attorney Robert A. Clifford says the amusement park industry's legislative arm, the International Association of Amusement Parks and Attractions (IAAPA), has a "large lobbying presence in Washington, D.C. and to date has successfully lobbied against federal oversight."

The trade group spends more than \$600,000 a year lobbying against federal oversight, and in 2015 "spent an all-time high of \$1,160,000," Clifford, the founder and senior partner at Clifford Law Offices in Chicago, said.

Four Part Series on Amusement Park Ride Safety and Liability

- Four-part series examines amusement park ride safety and industry liability
- Part 2 of 2: Park rides are generally safe, but diffused regulation and a lack of reliable data on ride safety raise concerns
- Part 3 and 4: How do lawsuits over amusement park rides fare, and what role do liability releases and assumption of the risk play?

Asked if periodic suits spurred by rider injuries suggest a lack of safety regulation in these areas, defense attorney Michael J. LeVangie, with the LeVangie Law Group in Sacramento, Calif., offered an emphatic "No."

"The amusement industry is now heavily regulated and the manufacturers and theme park operators take the safety of their parks and events very seriously," LeVangie told Bloomberg BNA.

"The amount of engineering that goes into the development of amusement rides is truly unbelievable," he said.

"We have never seen an event involving an amusement provider where additional regulation would have altered the cause of the event," he said.

LeVangie acknowledged that litigation can bring to light areas where improvement in manufacture or process could be improved.

"However, for the most part, recreation/amusement litigation, like all litigation, raises the cost of doing business and potentially limits the recreation options for all of us," he said.

Clifford takes a different view.

"This is a very dangerous business because it deals with people's lives and safety, yet there is no consistent enforcement of regulations, no national standards and even some states have no regulations at all," he said.

"The public needs to be more proactive in insisting on greater safety measures before the next tragic headline," he said.

Litigation or Regulation? But plaintiffs' attorney Daniel G. Kagan told Bloomberg BNA that he's "not a fan of more regulation as a solution." He prefers lawsuits.

In this age of fiscal shortcomings in public budgets, it is not realistic to rely upon such agencies as the Maine Fire Marshall's Office to inspect each and every ride and become the "guarantor" of public safety, said said Kagan, with Berman & Simmons in Lewiston, Maine.

The best way to promote safety is to make the consequences of ignoring it unbearably high, he said.

And the way to do that is to "allow those who are harmed by those who ignore safety concerns to recover fully for the harms they experienced," he said.

"The tort system is, and must continue to be, the policeman of our community endeavors. If you want to minimize occurrences of harm-causing negligent behavior, we must continue to make the consequences of negligent behavior cost a lot of money," Kagan said.

Adverse publicity also serves as a check on bad actors.

Everyone interviewed by Bloomberg BNA agreed that family-friendly theme parks are especially sensitive to perceptions of risk.

"Whether ultimately liable or not in a court of law, injuries on rides will be tried in the court of public opinion with adverse impacts on public relations, insurance rates, profits," Professor James Kozlowski, an authority on recreational safety and liability, told Bloomberg BNA. Kozlowski is a professor at George Mason University's School of Recreation, Health, and Tourism in Manassas, Va.

Recent Amusement Park Ride Accidents

Recent Amusement Park Ride Accidents:

- Boy killed in August while riding on a waterslide at the Schlitterbahn Waterpark in Kansas City.
- Three children injured in August after falling out of a Ferris wheel at a county fair in Greenville, Tenn.
- Boy falls from roller coaster in August at SoakZone amusement park in Ligonier, Pa.
- Girl injured on a carnival ride in May in Omaha, Neb.
- Six injured on amusement park ride in August at Ocean Beach Park in New London, Conn.

Are States Filling the Safety Gap? As far as the regulatory structure that exists, the void in federal oversight over fixed amusement park rides has somewhat been filled by the states.

But the results are uneven.

Cameron Jacobs, IAAPA's media relations manager, said as a general matter that amusement park rides operated by its members are inspected for safety each day before any guest steps on board.

Inspections—whether they be voluntary or mandatory—typically involve mechanical, electrical, and operational inspections.

Rides are also inspected in accordance with the guidelines outlined by the attraction manufacturer, which can lead to additional detailed inspections and specialized maintenance procedures on a weekly, monthly, or annual basis, he said.

Currently 44 of 50 states regulate amusement parks, according to the IAAPA.

The six states without state oversight—Alabama, Mississippi, Montana, Nevada, Utah and Wyoming—contain “few, if any amusement parks,” the industry group says.

But Clifford, the plaintiffs' attorney, said the “patchwork” state laws that govern amusement park safety and the inconsistent enforcement of those laws is a “real problem.”

Some states only exercise minimal oversight, such as requiring operators to carry insurance, Clifford said.

And the abilities of each state to monitor its laws are often hampered by financial and personnel constraints, he said.

He singled out Utah as a special concern, because a state law, the Amusement Park Rider Responsibility Law, statutorily establishes that riders of “sufficient age and knowledge” assume the risks of injury at amusement park rides.

“This type of law is particularly disturbing because visitors have no way of knowing the maintenance and upkeep of these type of complicated vehicles that can project people reportedly with unexpectedly high G-forces,” Clifford said.

Florida is “somewhat of an anomaly,” Clifford said, because state inspectors are responsible for examining rides except for those in parks that employ more than 1,000 people.

Parks like Walt Disney World, Universal and Sea World are required to hire their own full-time inspectors, he said.

Florida and perhaps as many as a dozen more states also do not require theme parks to report injuries unless a fatality is involved or the injured rider is immediately hospitalized for at least 24 hours, he said.

On the other hand, New Jersey and Pennsylvania are two of the “toughest states” in promoting safety because they have state-trained inspectors and engineers who routinely inspect rides, he said.

Defense attorney Jordan Lipp, a partner at Davis, Graham & Stubbs in Denver, told Bloomberg BNA that in his home state the Colorado Department of Labor and Employment, Division of Oil and Public Safety (OPS), is responsible for regulating amusement rides.

Under OPS regulations, amusement rides must be inspected annually by certified inspectors, the operators must perform daily inspections, the operators must report certain events / injuries to OPS, and must maintain certain levels of insurance, he said.

Every state varies in its regulations of rides and its enforcement of those regulations, Lipp said. “And, there are certain rides, depending upon the state, that remain unregulated.”

According to Kozlowski, a trend toward innovation in the industry—in a bid to create more challenging “thrill” rides or a higher and faster roller coaster—is presenting significant challenges for state safety regulators.

There are, however, international ride standards promulgated by ASTM International. Many states incorporate those standards in their regulations, he said.

Should Patrons Worry About Safety? Do patchwork regulations and shifting media interest leave consumers vulnerable?

Yes, Clifford said, “Consumers should be very concerned about amusement park ride safety.”

“As proactive as one may be in being careful, the large volume and consistent use of these rides does not allow for routine safety checks,” he said.

Clifford said new rides present their own set of safety concerns.

On new rides, “pinch points” or “zones of danger” are not readily apparent from the drawing board, he said.

Only after new rides are opened and go through public testing do certain design flaws become apparent, he said.

“Amusement park owners and operators should not hype the opening of a new ride before fulfilling their obligations to thoroughly test it for possible flaws not seen in the diagrams and plans,” he said.

Safety is paramount, but we must also be sensitive to the role small-town fairs play in Maine and across the U.S., Kagan, the plaintiffs' attorney, said.

“Yes, of course, consumers should be concerned about ride safety,” but whether that means they should “deprive themselves and their families of these experiences, only they can decide,” Kagan said.

“Making public the safety inadequacies in midways and carnival rides is a necessary and critical step to changing the haphazard culture that some midway and carnival ride operators bring to the industry,” Kagan said.



“But at the same time it is sad, because midways and carnival rides are part of our culture, nationally and locally,” he said.

“The way to assure that rides are as safe as they are fun is to make it financially untenable for operators to do otherwise,” he said.

“Many of these operations are asset-poor, so those who hire them for local fairs and events should force them to have adequate insurance,” he said. “Insurers will act with self-interested oversight of the operators they insure, in order to hold down their exposure to losses.”

The insurers will teach their insureds how to run their businesses safely, he said. “Those who do not learn will find themselves uninsurable, which in turn means they will go out of business.”

“It all starts with holding the operators financially accountable for the harms they cause,” Kagan said.

LeVangie, the defense attorney, said that most litigation against theme parks involves relatively minor injury allegations.

“The significant injuries and deaths recently in the media are not indicative of the litigation seen on a regular basis,” he said.

And the recent tragic news stories concerning accidents involving amusement rides will “assuredly increase the industry’s ongoing efforts to continually improve ride safety while assuring an exciting product,” LeVangie said.

What About Traveling Carnival Rides? Kozlowski said he is more concerned about traveling carnival rides than fixed amusement park rides at major theme parks.

“Unlike a theme park, changing environmental conditions associated with traveling carnival rides put added stress on equipment maintenance” and small operators have problems retaining qualified personnel, he said.

By comparison, for large theme parks “ride safety is of paramount importance in order to stay profitable and remain in business,” Kozlowski said.

Clifford, the plaintiffs’ attorney, said traveling carnival rides are especially difficult to monitor because of their transient nature.

They operate from “the moment they are set up until they stop without adequate inspection during what could be up to two weeks of constant use,” he said.

LeVangie said traveling rides vary greatly “but in general are very safe.”

However, the nature of traveling carnivals and fairs, and their rides, results in repeated assembly and disassembly of attractions, which creates a “higher risk for error” than seen in a location-based amusement attraction, LeVangie said.

Lipp disagreed with his defense colleague, saying traveling rides may actually offer an advantage over fixed rides in terms of safety.

Because these temporary rides get broken down and reassembled each time, inspectors can see the inside of a ride to see if there are internal issues that otherwise would not be visible, he said.

Ahead: In Part 3 and 4 we look at lawsuits over amusement park rides, examine the role of liability releases and assumption of the risk, and explore how typical suits fare against the amusement park industry.

BY BRUCE KAUFMAN

To contact the reporter on this story: Bruce Kaufman in Washington at bkaufman@bna.com

To contact the editors responsible for this story: Steven Patrick at spatrick@bna.com; Jeffrey D. Koelemay at jkoelemay@bna.com