Summer Recreational Exposures

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With summer fast approaching there will be situations in which a member will allow the use of a play structure) bounce house, slide etc) at a district facility for a birthday party or special community event. A recent court decision provides additional clarity on the potential liability exposure to the entity.

- Brian M. Grossman v. Santa Monica-Malibu Unified School District
- Court of Appeal, Second Appellate District (March 25, 2019)

Plaintiff Brian Grossman suffered injuries after falling off an inflatable slide at an annual carnival fundraiser held at a school in the Santa Monica-Malibu Unified School District (the school district). The carnival was organized by the booster group and parent-teacher association (PTA) which are separate from the school district. The school district approved the use of the school for the carnival and permitted promotions of the carnival at the school. The school district did not charge for the use of the school. No written materials or oral instructions relating to safety precautions were provided by the school district. The school district did not plan, set up operate, or supervise the carnival or inspect the rides. The booster group hired WOW Party Rental, Inc. (WOW Rental) to rent and set up the inflatable slide and also James Event Productions, Inc. (James Event) to provide the other attractions and the generator for the slide. Plaintiff filed suit for negligence, alleging he fell because the inflatable slide was not tethered to the ground.

The trial court granted the school district's summary judgment motion and concluded, "[W]ith no facts showing how [the school district] was negligent with respect to its ownership or maintenance of the school facilities or grounds, [Grossman] cannot meet his burden of proof to show [the school district] breached any duty towards him." The trial court also ruled that plaintiff raised a triable issue of fact as to whether the school district was estopped from arguing Grossman submitted his claim to the wrong person. The Court of Appeal affirmed the judgment and dismissed the school district's cross-appeal as moot.

The Court of Appeal held that the Education Code allocates liability between school districts and entities allowed to use the school district grounds, including the booster group that planned and held the carnival fundraiser. Education Code section 38134, subdivision (i) (1) provides "A school district authorizing the use of school facilities or grounds under subdivision (a) is liable for an injury resulting from the negligence of the school district in the ownership and maintenance of the school facilities or grounds. An entity using the school facilities or grounds under this section is liable for an injury resulting from the negligence of that entity during the use of the school facilities or grounds...."

The Court explained that there is no evidence plaintiff's injuries resulted from the school district's "ownership and maintenance of the school facilities or grounds," but rather his injuries arose from the alleged negligence of the booster group and others by not tethering the slide to the ground "during the use" of the school grounds. In addition, Education Code section 38134, subd. (i) (2) clarifies that that the Education Code does not alter Government Code section 835 which limits

a public entity's liability to "an injury caused by a dangerous condition of public property." The court stated that as a matter of law the inflatable slide was not a dangerous condition of public property within the meaning of Government Code section 835.

COMMENT

Summary judgment was properly granted based upon evidence that plaintiff's injuries were not caused by the school district's ownership and maintenance of the school facilities or grounds. It should also be noted that a public entity should make sure that the owner of the attraction has proper insurance in place and the entity is named as an Additionally Named Insured for the event. ©Low Ball & Lynch, 2019

IMPORTANT LEGAL REMINDER

On September 30, 2018, Governor Jerry Brown approved SB 1343, which amends Government Code §§ 12950 and 12950.1, greatly expanding the requirements for providing anti-harassment training. Previously, only supervisors were required to be trained and only for companies with 50 or more employees. However, the new law requires that both supervisors and employees be trained every two years for any company with five or more employees.

While there are many questions still outstanding as to the practical implementation of this new law, the Department of Fair Employment and Housing's (DFEH) currently published interpretation is that ALL employees must be trained in calendar year 2019, even if the company provided training in calendar year 2018.

Highlights of the new law include:

- By January 1, 2020, California employers with five or more employees are required to provide: (1) at least two hours of classroom or other effective training and education regarding sexual harassment prevention to supervisory employees; and (2) one hour of sexual harassment prevention training and education to nonsupervisory employees. New employees must be trained within six months of hire.
- On or after January 1, 2020, in addition to regular employees, employers will also be required to provide temporary or seasonal employees with sexual harassment prevention training within 30 calendar days after the hire date or within 100 hours worked, if the employee is expected to work for less than six months. If the temporary employee is provided by a temporary services employer, training must be provided by the temporary services employer, not the client.
- As noted, the DFEH's current interpretation of the new law is that all covered employers are required to provide training in calendar year 2019, on or before January 1, 2020, even if training was provided in 2018. Thereafter, anti-harassment training must be provided once every two years.

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