

THE Litigator



OCT 2007

Journal of the Ontario Trial Lawyers Association

The Liability of Premises Owners & Occupiers:

From
“A” Amusement Parks
to “Z” Zoos

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Amusement Parks: Danger at Every Turn

by Russ Howe

Statistics tell us that the number of injuries that occur at amusement rides reflect the same rate as, or slightly higher than, recreational sporting activities such as hockey, football, etc. – and those are just injuries related to rides.

as well as traveling festivals which appear in mall parking lots. Some of these cases are quite serious, and the affected individuals are clearly in need of representation.

This article will endeavour to give an overview of some of the areas where liability can attach to an amusement facility operator, as well as look at the law and some practical problems in, and opportunities for, prosecuting these types of cases on behalf of plaintiffs.

Introduction

Amusement parks are usually viewed as places where a family can take young children for a day of endless thrills and entertainment. Those of us who have litigated against either permanent amusement facilities or traveling amusement or circus companies know that is simply not true. There are a multitude of ways for an individual to be injured while at an amusement park, ranging from the obvious and trivial, to hidden threats which can result in death. The injuries sustained are often suffered by the weakest members of our community, children and adolescents. Statistics tell us that the number of injuries that occur at amusement rides reflect the same rate as, or slightly higher than, recreational sporting activities such as hockey, football, etc. – and those are just injuries related to rides. If one factors in other types of injuries and harmful events that occur at amusement parks, there is clearly a substantial number of torts committed on these premises on a regular basis.

Understanding and representing individuals injured at amusement parks does not require the development of a particularly different skill-set than a general personal injury practice. Depending on your location, you may be faced with opportunities to represent individuals injured at amusement parks on a regular basis. My practice, being in York Region, will receive a number of calls every year from individuals who are injured or harmed in some fashion at Canada's Wonderland. In addition we have had the opportunity to represent individuals who are injured at similar operations at the Markham Fair and other large festivals,

Occupier's Liability Claims

Many claims that arise out of amusement park injuries are governed by regular occupiers' liability law. Slip and fall claims are common as people go on and off of rides and in other circumstances. There are many hazardous areas in amusement parks that are not appropriately signed, maintained, etc. in the same way that any building or outside area would be. There is an advantage in dealing with amusement parks in that they are expected to move large numbers of people through them in safety, many of whom are typically children. Visitors are often distracted by the sights and sounds, and thus are not paying as close attention to potential hazards as they otherwise might be. This obviously will lower the value of defence arguments with respect to contributory negligence.

Particular attention should be paid to weather conditions at amusement parks. There are obviously periods of time when equipment will be shut down because of weather-related issues, and the facility will of course not make any money on those rides. Operators may try to rush equipment and areas back into operation after inclement weather but before the area is safe, in order to maximize revenue. In one case involving Canada's Wonderland, the ride in question was accessed by traveling up a wooden ramp to the access point. A rain storm occurred and the ramp became wet and the ride was closed down for a short period of time. The ride was reopened before the ramp was dry and the plaintiff slipped and fell while traveling up the wet and rather slippery wood ramp. The result was a badly fractured ankle. These types of case are quite common, with the profit motive working against the amusement park on the liability issue.

Crime and Security

What may not seem obvious is that a good deal of crime takes place in amusement parks. Larger amusement parks such as Canada's Wonderland are particularly known for their crime problems amongst youth, and special relationships have in fact been set up with local law enforcement to ensure that extra investigative and enforcement resources are available for such parks. In some cases there are different sentencing provisions for crimes committed on the park premises. Once a park creates a special relationship with local law enforcement outside of the norm, they have effectively admitted their awareness of a crime problem on their premises, and the question then becomes whether they have taken adequate steps to prevent the type of crime that injured your client.

These cases are often framed much like premises security cases. Appropriate experts must be retained to comment on the security in the area and whether it was adequate to protect your client. Causation is always an issue as there must be some way to connect the likelihood of your client being a victim had specific crime-reduction measures been taken – measures that your expert says would have been reasonable and necessary for the security of patrons on the premises. Parks are not particularly interested in litigating these cases, which can be detrimental to their public image – especially, if there is any media coverage of the crime or injury in question. Counsel should

also keep in mind that where an individual, particularly a young person, is a victim of a violent or sexual crime, the psychological trauma can have a devastating impact over the individual's life.

Claims Against Employee Predators

While there may be reasonable screening of employees at major theme parks owned by large corporations, smaller organizations seem to ignore this function. There are instances where those who are working at theme parks have undiscovered criminal records as sex offenders or even pedophiles. Some of the small traveling amusement operations that criss-cross Ontario collect virtually no information about their new employees and make no effort to ensure that they do not pose risks to patrons. Where an employee of a recreational facility commits crimes such as assault or sells drugs to youth on site, the employer stands to be found potentially liable for not having taken reasonable or adequate steps during the hiring process, which at a minimum would include criminal background checks, to ensure that the employee was someone who was reasonable to employ around children. Indeed, particularly in these security-sensitive times, any amusement company that hires individuals to take on any positions which place them front and centre with the public, without performing some form of background or security check, is putting patrons at potentially serious risk of harm and themselves at corresponding risk of liability.

In one case in which our office was involved, a "carnie" in his early twenties ran off with a fourteen-year-old girl after having met her and developed a relationship with her over a long weekend in a community where the carnival was visiting. This caused significant trauma for the parents, and for the young girl involved. The information that the carnival gathered before hiring this individual was virtually non-existent, and our subsequent investigation turned up that he had a significant criminal record and was clearly not suitable to be working in a position of trust with children.

Carnivals tend to pay very low rates for seasonal workers and have a very high turn-over of unskilled staff. In almost every aspect of a legal claim, the lack of qualification and low quality of employees will work against the amusement park operator on the liability issue.

Rides and Slides

There are number of reported cases in Ontario which deal with injuries in amusement parks involving rides and slides. If one takes the time to examine the slide cases, one is impressed with the number of cases where liability has

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been found against water park operators based on fairly narrow liability theories. Similar results have been noted with rides.

In the case of slides, water slides and water parks, experts are often sourced from the field of water safety. Engineers are required, and supervision and signage are often the focal issues. Slides and water parks can obviously be inherently dangerous, with even small errors potentially resulting in drowning or catastrophic injuries. Thus it would appear that the duty of care on an amusement park operator can and should be quite high. Cases involving rides can be as unique as the rides or those who ride them. Some rides result in fatalities and others produce soft tissue injuries or other orthopaedic injuries. While each ride is unique in many ways, fortunately a great deal of technical information is usually available about the ride as it must be certified for use in Canada with the appropriate government agencies. Certification documents relating to a ride in any case you are involved in must be accessed before discovery. Obviously the operational parameters set out in the registration and certification documents allow counsel to properly develop the case.

A great deal of information about rides and the accidents which occur on them is available on the internet. Simple internet searches about a specific ride and the accidents which occurred on the ride provide excellent results. Attention must be paid to detail in the searches. As rides can also be known by several different names, ensuring that you maximize the information available about the ride will take a thorough and exhaustive search. A great deal can be found in this regard; however, it will likely be incomplete, particularly in Ontario where it seems that carnival operators tend to ignore the legislation which requires them to report accidents to the governing body.

It can be argued that once the plaintiff is on the ride the situation is completely out of his or her control. The music and general noise level surrounding the ride is usually quite loud making it difficult for the unsecured plaintiff to make the dangerous situation known to the operators. The operators of the ride may be poorly trained or intoxicated while on the job. Few rides are equipped with panic or signal devices, so that if at the beginning of a ride cycle an individual is injured or becomes unsecured, he or she has absolutely no way to signal this information to the ride operator. At a recent trial, the defence engineering expert conceded that the plaintiff, once she had entered the ride, had virtually no control over the conditions of the ride or her safety. The defence engineer conceded that the plaintiff's conduct was not a factor in causing her injuries.

In ride situations one must always be careful with children where the defence argues that the rider tried to escape the ride. Some statistics show that injuries on rides often occur when unsupervised adolescents or children

attempt to escape from the ride in a fashion which is not contemplated by the design of the machinery. This can unfortunately lead to the defendants pleading over against parents for failing to train and supervise, and can dilute liability arguments if the allegations are established.

There are two legal issues that often crop up in prosecuting ride cases. The first is whether or not the operator of the ride is a "common carrier". If an operator of the ride is a common carrier, this would have a significant positive impact upon liability. Unfortunately, in *Mallais v. D.A. Campbell Amusements Limited*¹, the court ruled that ride operators do not have the same duty as the common carrier, as a ride is not a form of transport in the traditional sense of a common carrier. While the reasoning in this particular case was not lengthy, or necessarily persuasive, it is binding law in Ontario. Thus, ride operators continue to face the same duty of care as any other occupier or service provider, rather than the higher standard or care imposed on a common carrier.

The second issue raises the question of subsequent repairs. Operators of rides are known to incorporate safety enhancements – whether procedurally, equipment-wise, or both – after the occurrence of an accident. There is usually some tussle as to whether this evidence can go in with respect to either liability generally or the cost/inconvenience of a measure which could have been taken in the first place to enhance safety. This issue was dealt with in a recent case in which our firm was involved, and the court's ruling permitted the plaintiff to present the evidence of subsequent repair for both of the above-noted purposes. Simple research on the internet can often reveal whether other safety elements were available that could have adopted by the ride operator. This can be powerful evidence as well.

Legislation

There is Ontario legislation that regulates the use of amusement rides. It is currently the *Technical Safety and Standards Act, 2000*². Depending on the date of the incident, the appropriate act may have been the *Amusement Devices Act, 1990*³. Both statutes contain useful guidance which can help the plaintiff build a case and set out the duties for operators and others. There are also significant regulations that have been promulgated under these statutes that one must be familiar with in order to prosecute a case effectively. Taken from the earlier statute, here are three useful examples of the regulations dealing with the operation of amusement rides:

Section 9(3) of Regulation 20, amended to O.Reg 228/01 under the *Amusement Devices Act*, deals with the obligations of operators. It states:

9. (1) Every licensee shall ensure that each attendant or operator of the licensee has such knowledge, training and experience that,

- a) each operator of an amusement device is able to operate the amusement device safely without supervision;
- b) each attendant is able to carry out his or her responsibilities without supervision; and
- c) each attendant and operator is aware of the hazardous situations that may occur with respect to persons using the amusement device to which the attendant or operator is assigned.

Section 9(4) of Regulation 20, amended to O.Reg 228/01 under the Amusement Devices Act, deals with obligations of attendants. It states:

9. (4) Every attendant shall,

- (a) be located at the area or position designated to the attendant by the

operator of the amusement device to which the attendant is assigned;

- (b) be responsible for the safe functioning and use of the amusement device or component that is within the scope of the attendant's duties as assigned by the licensee and as set out in this regulation; (Emphasis added)
- (c) ensure that persons move safely to or from the amusement device to which the attendant is assigned;
- (d) ensure that persons using the amusement device to which the attendant is assigned are properly instructed with respect to the use of the area and components under the attendant's supervision; (Emphasis added)
- (e) ensure that all components of the amusement device to which the attendant is assigned are properly engaged and that all necessary safety measures in the circumstances are taken before a signal to the operator is given to an operator or

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to a person using the amusement device.
(Emphasis added)

Section 17(2) of the *Amusement Devices Act* deals with the reporting requirements of a carnival after an accident or any incident indicating that the device may be dangerous. It states:

17(2) Every licensee responsible for an amusement device that is involved in an accident or in any incident indicating that the device is potentially dangerous shall notify the Director, by telephone, within twenty-four hours after the accident or incident, and shall submit to the Director, within seven days after the accident or incident, a written report setting out the particulars of the accident or incident.
(Emphasis added)

Resources

The internet can be a great source of information when investigating amusement ride cases, standards, technical information, etc. Even simple searches will return copious amounts of useful information for building your case against the defendant. Once again, care must be taken to ensure that, where there are multiple names for the ride, they are all fully searched.

There are numerous large-scale studies in the United States relating to injuries at amusement parks and rides. In an amusement park case in which we were involved, it was surprising at trial in cross-examining the defence expert to learn that he had neither read nor even heard of any of these U.S. studies. Plaintiff's counsel should certainly be familiar with these studies as should your expert before giving evidence at trial on these issues.


Ryerson University includes a program of study on safety for amusement park rides, and both their website and faculty can be quite helpful in investigating and prosecuting these cases.

The following list contains a number of websites that we have found useful in investigating and advancing amusement park cases:

www.cpsc.gov
www.iaapaimis.org
www.saferparks.org
www.rideaccidents.com
www.ryerson.ca/thrill
www.naarso.com
www.tssa.org

Conclusion

Considering the frequency of incidents that occur in amusement parks where individuals are injured through the negligence of the operators, it is surprising that not more of these cases are being brought forward. Amusement park operators who invite families in to enjoy the premises and enjoy safe fun, do not always live up to that promise. It appears that the traveling amusement park organizations may be employing those who are not fit for the job; nor may they be conducting background checks, or training and supervising their attendants properly. This has resulted in tragic consequences for some patrons. In ride situations operators have complete control over the safety of individuals who entrust themselves to the operators' care; the operators' duties should indeed be measured against a high standard for that reason. Yet, injuries keep occurring nonetheless.

Amusement parks are a part of our culture, and have the potential to be a positive aspect of our lives. One of the steps we can take as plaintiffs' counsel to make amusement parks and traveling carnivals safe or more safe, is to bring forth meritorious cases against careless operators with the goal of holding them accountable for their failures. Take the time to examine these cases closely when you are approached, and consider going forward against amusement parks both to achieve appropriate results for the injured, and to help restore these treasured institutions to the fun and safe places we remember them. 

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Notes

¹ 2007 ONCA 82 (CanLII)

² S.O. 2000, c. 16

³ R.S.O. 1990, c. A.20

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