

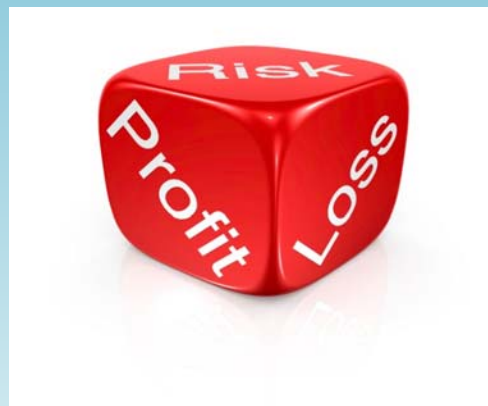
# Preventing Lawsuits through Proactive Risk Management

PRESENTED TO THE FRPA CONFERENCE  
AUGUST 31, 2015

**FRPA**  
FLORIDA RECREATION  
& PARK ASSOCIATION

## Learning Outcomes

- Learn to recognize proactive risk management techniques in order to prevent legal action and provide for program success.



# Learning Outcomes

- Recognize the need to examine all recreational programs for potential risk exposures and evaluate your programs for possible legal exposures or risks.



# Learning Outcomes

- Be able to comprehend and recognize potential hazards and threats to their programs and implement action to prevent or minimize the hazard.



# Roger Moore

- Assistant Director of Risk Management
- Broward County
- 30 Years of Risk Management experience
- Private and government



## Are You Smarter Than Any One Person?

**Yes or No?**

But How About 68,464 People

**Yes**

*of course you are*

- Florida 2014 Lawyers Per Capita
  - 19,893,297 Population
  - 68,464 Lawyers
  - 3.4 Lawyers per 1000 population

## Lawyer Stuff

- **Let's Talk Lawyerly Language**
- **How Can I get Sued?**
- **Standard of care**
- **Negligence**
- **Recovery of money – it is all about the money**



## Standard of Care

- **Invitees**
  - Higher standard of care
- **Trespassers**
  - Less of standard, but still a standard
- **Care, custody or control**
  - Much higher standard



## Keys to a Negligence Case or How to Get the Big Bucks

- If you show that you were careful and the other person was careless, the careless, or negligent, person must typically pay your injury damages
  - Injuries
  - Property
  - Liability
- If a negligent person causes an accident while working for someone else, the employer is also legally responsible

### Automobile Collision



## Negligence

In order to establish negligence as a Cause of Action under the law of torts

- 1) a plaintiff must prove that the defendant had a duty to the plaintiff
- 2) the defendant breached that duty by failing to conform to the required standard of conduct
- 3) the defendant's negligent conduct was the cause of the harm to the plaintiff
- 4) and the plaintiff was, in fact, harmed or damaged.



## Recovery of Money

- Conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm
  - If an accident is caused on dangerous property or by a defective product
- If an accident is caused on dangerous property or by a defective product
  - The owner of the property or the maker or seller of the product is liable regardless of whether he or she actually created the danger or defect



## Keys to a Negligence Case or How to Get the Big Bucks

- If you were also careless, your right to be compensated is reduced to the extent your carelessness was responsible for the accident
  - your comparative negligence
- You do not need to “prove” anything
  - only to make a reasonable argument that the other person was negligent
    - even if there is a plausible argument that the other person was careful
  - Customer buys coffee in the drive through window
    - Places the hot coffee between their legs
    - Coffee spills



## Protection From Lawsuits



Clean up on Isle 6

### Standard of Care

- Set time for isle checks
- Spill kits on isles
- Immediate response to spills
- Cameras
- Documentation

## F. S. 768.28 – Government Entity

### Sovereign Immunity

- Limited to government agencies
  - their sub-divisions
- \$200,000 per occurrence
- \$300,000 aggregate
- Claims bills
  - The State Senate
  - The State House



**Learn to recognize proactive risk management techniques in order to prevent legal action and provide for program success.**

**LEARNING OUTCOME**

**Let's Talk Risk Management**  
**HOW CAN I PREVENT GETTING SUED?**



## How to Avoid Being Sued, Hopefully

- Risk avoidance
- Risk reduction
- Risk transfer
- Risk acceptance



## How to Avoid Being Sued, Hopefully

- Risk avoidance
  - Don't do the activity
  - Not always possible
- Risk reduction
  - Weigh the risks
  - Is it worthwhile
- Risk transfer
  - Buy insurance
  - Use a vendor
    - Not always a "cure-all"
- Risk acceptance
  - Accept the risk



## Bounce House Accident

- City sponsored
- Lawsuits
  - Arrived within two days
  - All of the children represented
- Suit defendants
  - Bounce house company
  - City
  - Event organizers



## Bounce House Accident

- Let's proactive it
- Waterspout
  - Anything you can do about it?
    - Weather
    - Weather warning devices
- Bounce house company
  - Contract
  - Meet some industry standard
  - Insurance



- **Bounce house-related injuries rose 1500% from 1995 to 2010**
  - A study by Dr. Gary Smith of the Nationwide Children's Hospital
- **In 2010**
  - 31 children were treated in emergency departments each day on average
  - About one child every 45 minutes



Is it worth it?

**What do  
you gain?**

## Recap of Proactive Steps

- **Risk avoidance**
  - Would you do it?
- **Risk reduction**
  - Is it worthwhile?
  - Do you prevent injuries to your clients?
- **Risk transfer**
  - Hire a vendor with insurance?
- **Risk acceptance**
  - Would you accept the risk knowing you will be sued in an injury?



**Recognize the need to examine all recreational programs for potential risk exposures and evaluate your programs for possible legal exposures or risks.**

## **LEARNING OUTCOME**

### **So How Do You Protect Yourself and Your Entity**

- Lots of Ways
  - Proactive Risk Management
    - Don't wait for the hammer to drop
  - Do the right thing
  - Inspect
  - Examine all vendor's and their insurance
  - Background check everyone



## Proactive Steps

- Risk avoidance
- Risk reduction
- Risk transfer
- Risk acceptance



Be proactive, just Don't participate just to be the "***Next Great Thing***"

"We're still working out the kinks," one worker said sheepishly.

*City of XXXX water slide*

## Slip Sliding

- Waivers
  - Adult
  - Children
- Slippery
  - One person was using soap to go faster
- “Not functioning properly”
- Do your homework

## Water Slide



## Slip Sliding

- Injuries?
  - Do we have a lawsuit?
  - Is there negligence?
- What about the waiver?
- What about insurance?

## Water Slide





## Recap of Proactive Steps

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  - Would you do it?
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## FAILBlog



Photo Credit: Getty Images

Tuesday  
MARCH 11

Do The Right Thing?

**Common sense  
is not so  
common.**

***Voltaire***

## Inspect, Inspect, Inspect

- Use a reasonable standard
  - NPRA
  - CPSC
  - ANSI
- Document the process
  - Use electronic means to keep a record
  - 5 Year history
  - Use a good inspection form
- Make sure your inspectors are trained
  - Certifications



## Maintenance Reporting and Repair

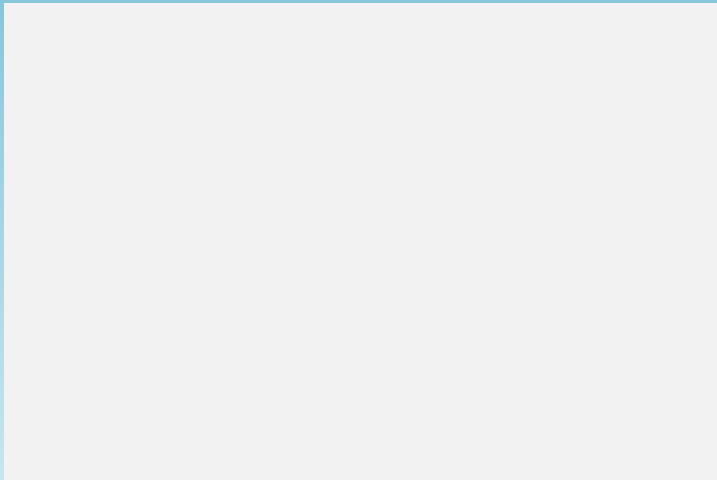
- Four Rs
  - Report the problem
  - Repair the problem
  - Restrict the problem
  - Remove the problem





**This is What you  
Want Everything  
to Look Like**

Caption



**This is What I  
Usually Looks  
Like**

Caption



## NYC Parks Inspections

[www.nycgovparks.org/park-features/parks-inspection-program](http://www.nycgovparks.org/park-features/parks-inspection-program)

## Signage

- Make your signs clear and uncluttered
- Put your signs where they can be seen
- Enforce your rules
  - Stop inappropriate actions immediately
  - No favoritism



## Signage



- Relevant to the location
- Language barriers
- Enforced by all personnel
- Use ordinances if necessary
- Use law enforcement
- Do not use employees as police
- Take down signs that are not relevant to the location
- Repair signs as necessary

## Threats to a Parks and Recreation Program

- Loss of funding
  - Do lawsuits qualify?
  - Attorney fees to defend are usually more than a jury verdict
  - Time for personnel to be interviewed and deposed
- Reputation risk
  - Do patrons want to go to bad facilities?



## Have Any Of These

What's wrong with this one?



What's wrong with this one?



## How About This?





## Anything Wrong Here?



## See Any Problems Here?





## This is how it should look



- Good impact zones
- Proper height from exit to ground
- Signs are in place
  - Sign required adult supervision
- Every bolt was original equipment

## Insurance

What could possibly go wrong?



Please tell me I have insurance for this!

- How much is enough?
- Do your vendors really have insurance?
- What is an ***Acord 25*** form?
- What needs to be covered?
- How do I find out this stuff?

Be able to comprehend and recognize potential hazards and threats to their programs and implement action to prevent or minimize the hazard.

## **LEARNING OUTCOME**



### **Water Walking Balls**

Anybody using these?

Vendors requesting to use these on your property?

Have you approved them?



## Proactive Steps

- Risk avoidance
- Risk reduction
- Risk transfer
- Risk acceptance



## Consumer Product Safety Commission

### Water Walking Balls



### CPSC

- Warns against them
  - Myrtle Beach has banned them
- Oxygen may be quickly depleted
  - Carbon dioxide may accumulate
  - Heat stress
  - Most can only be opened from the outside
  - Drowning possibility
- One child in Massachusetts nearly died after being in a ball for a short time

## Water Walking Balls and Employees

- Maybe considered a confined space entry for your employees who use them
  - Occupational Safety and Health Administration
- Permit Required Confined Space
  - Not designed for continuous occupancy
  - Has a limited or restricted means of entry and exit
  - Contains or has the potential to contain a hazardous atmosphere
  - Has a material that has the potential to engulf an entrant
  - Contains a safety and health hazard such as heat stress



## Recap of Proactive Steps

- Risk avoidance
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- Risk reduction
  - Is it worthwhile?
  - Do you prevent injuries to your clients?
- Risk transfer
  - Hire a vendor with insurance?
- Risk acceptance
  - Would you accept the risk knowing you will be sued in an injury?



## How About These?



## Proactive Steps

- Risk avoidance
- Risk reduction
- Risk transfer
- Risk acceptance



## How About These?



- ✓ Hard floors
- ✓ Neck Injuries
- ✓ Elbow and arm injuries
- ✓ Trips and falls
- ✓ Limited visibility



- ✓ Knee Injuries
- ✓ Concussions
- ✓ Contusions
- ✓ Improper assembly
- ✓ Improper use

## Recap of Proactive Steps

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  - Would you accept the risk knowing you will be sued in an injury?



## Background Checks

### Who do you check?

- Everyone
- Remember “Standard of Care”
- Particularly children programs
- Investigate any complaints
  - Call HR immediately
  - Call law enforcement if necessary
- Follow procedures for care and custody of children

### How Often?

- Depends
- FBI’s new program
- FDLE PACER program
- Job changes
- Transfers
- All volunteers
  - Never just use someone



## Standard of Care

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## Background Checks

### Vermont

- 11% error rate on the Sex Offender Registry
- Allowed sex offenders to be left off the list
- Audit found other issues
- Did not include out of state convictions

### Level 2

- Standard for biometric background checks
- Fingerprinting
  - Biometrics
- Avoids name changes
  - Marriage
  - Name variations
  - Name changes
  - Moving from area to area



## Proactive Steps Practical Exercise

- Fill out the sheet
- Would you do this?



## Questions

