

## Playground Liability

### Objectives

The objectives of this large loss claim review are to:

- Examine a CIRMA liability loss that occurred at a school district's playground.
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned

### Incident Background

The loss occurred on the playground at a Connecticut elementary school. The age of the playground equipment at the time of the incident was approximately 12-years old. On the date of the incident, a 5-year old Kindergarten student lost his grip and fell approximately 9.5 feet from an arch climber. The student sustained several injuries, including a broken right leg and abrasions to his hands and arms. While staff sought medical attention for the injured student, a 7-year old first-grade student with special needs wandered off to a brook behind the school and was missing for about 30 minutes.

### Investigation

- The incident occurred during outdoor recess at an elementary school.
- At the time of the incident, four (4) classes, which included four (4) school staff members and approximately fifty-eight (58) students, were present.
- While outside, a 5-year old Kindergarten student approached the arch climber playground equipment and began to crawl on top of the structure.
- Students who witnessed the event stated that the 5-year old continued to crawl atop the arch climber until he reached the highest point of the equipment (later determined to be approximately 9.5 feet above the protective surfacing), at which point he lost his grip and fell to the surfacing below, landing primarily on his right leg and hands.
- The four (4) school staff members that were present did not witness the event; however, they heard the commotion caused by the other students on the playground, prompting two (2) staff members to respond to the area around the arch climber to assess the situation.
- Upon arrival, the staff members observed the Kindergarten student laying on the ground beneath the arch climber, holding his right knee and crying.
- Although the two (2) staff members could not discern what occurred from the injured student due to his crying, they were informed by the students who witnessed the incident that the Kindergarten student fell from the arch climber and landed on his right knee.
- The school principal and school nurse were subsequently called to the scene and, after a quick assessment of the situation, the staff members made the decision that 911 and the injured student's parents needed to be called. Emergency Services (911) was called approximately ten (10) minutes after the student's fall.
- School staff decided that, in order for the ambulance to have a path to the playground area, that the remaining fifty-seven (57) students must be brought inside to finish recess in their classrooms (in accordance with the school's injured student protocols).
- Approximately twelve (12) minutes after the student's fall, the four (4) school staff members responsible for supervising recess began to line their students up to head back into the school, and all staff members conducted a "head-count" of the students who were lined up.
- At this time, one staff member, a first-grade teacher, observed that one of her students, a 7-year old special needs student, was not lined-up and not visibly seen within the outside student activity areas.
  - Note: there is a wooded area that is seen from the playground.
- The school principal was immediately notified of the missing student and enacted the school's secure building protocol (approximately fourteen (14) minutes following the student's fall).
  - The purpose of enacting the secure building protocol was to conduct a head count in each classroom and office area to determine whether or not the student was accounted for inside the building.

- Simultaneously, while the inside head count was being conducted, 911 was again called and local law enforcement was notified of the missing student, and immediately responded back to the school.
- While local law enforcement was in the process of responding, the school principal directed school staff to begin searching the wooded area to look for the missing student.
- After approximately fifteen (15) minutes of searching, a school staff member observed the 7-year old student in the wooded area near a brook.
  - It was determined that the brook was approximately .09 miles (430 feet) away from the edge of the playground.
  - Note: this was approximately thirty (30) minutes after the student's fall occurred.
- Upon finding the student, the school staff member texted her principal to notify her that the missing student had been found.
  - Note: the school staff member texted the principal because she did not have her school radio at the time of the incident.

## Injury and Damages

As a result of the events that occurred on the date of the student's fall, two (2) lawsuits were filed by two (2) separate families against the school district, the school, and its officers.

- **Lawsuit 1:**

The parents of the 5-year old Kindergarten student who fell off of the arch climber filed a notice of intent to sue the school alleging a failure to supervise, failure to maintain playground equipment, and unsafe conditions (claiming that the equipment was not appropriate for the age group). The student experienced a broken right leg and abrasions to his hands and arms as a result of the fall, which totaled approximately \$16,000 in medical payments.

The investigation determined that the arch climber was appropriate for a playground designed for children ages 5 through 12 years of age. However, further investigation by the school district included a review of the CCTV footage from the playground area, which showed that the four (4) school staff members congregated in a corner of the playground area with their backs turned to the equipment and were talking at the time of the incident. Furthermore, additional findings determined that a preventative maintenance program had not been followed by the school district. This claim settled out of court for \$25,000, inclusive of the student's medical expenses and emotional distress.

- **Lawsuit 2:**

The parents of the 7-year old student with special needs filed a notice of intent to sue claiming failure to supervise and emotional distress. While it was determined that the school district followed its emergency response protocols once the child was observed to be missing, the review of CCTV footage from the investigation into the student's fall created potential concern for defense. Thus, this claim was settled out of court for \$25,000.

**The result of both lawsuits associated with these two incidents created a total severity of \$50,000.**

## Key Recommendations/Action Items

CIRMA Risk Management offers a value-added service to its members regarding playground liability. This service provides playground assessments to enhance the current efforts to maintain the playground equipment. Recommendations are made based on current risk management best practices. As a result, CIRMA Risk Management recommends that each member consider the following:

- Enforcing supervision by staff/faculty to ensure the safety of students. Supervisors should be enforcing playground rules and expected behaviors and should direct users to the age-appropriate equipment.
- Posting signage at accessible entry locations indicating the recommended age appropriateness of the equipment, in accordance with the recommended guidelines contained in CPSC Playground Safety Handbook Section 2.2.5.
- Providing and maintaining the perimeter of the playground utilizing a fence, in accordance with the recommended guidelines contained in CPSC Playground Safety Handbook Section 2.4.2.2.
- Regularly assessing and maintaining equipment, including the surfacing material, to maintain a standard of care and to identify new hazards. in accordance with the recommended guidelines contained in CPSC Playground Safety Handbook Section 2.4.2.2.

- Ensuring proper installation of playground equipment is completed by a qualified individual with knowledge of all current ASTM and CPSC standards in accordance with the manufacturer's recommendations.
  - Consider contracting out the installation of playground equipment to professional installers.
  - After assembly and before its first use, equipment should be thoroughly inspected by a person qualified to inspect equipment for safety.
  - Manufacturer's assembly and installation instructions along with all other materials collected concerning the equipment should be kept in a permanent file.

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For more information on this topic, please contact your CIRMA Risk Management Consultant.