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Message from the President...

Having just returned from the NRPA at Indianapolis and then the ASLA at San Francisco, we should all be proud of the progress our industry has made these past few years. We seem to be taking steps forward of historical proportion as we further expand the evolution of play. The bold and dramatic displays put forth by our members at the NRPA and ASLA represent great progress as an industry towards developing products and programs that meet our customers specific needs and objectives. Many customers and industry experts commented on how far we have come these past few years and we should all feel good about these accomplishments.

With this in mind, we must not rest on our laurels at IPEMA! Now is the time for us to continue to build upon our public outreach programs through our Voice of Play initiative. We have established the

Voice of Play website as an industry resource and now have the opportunity to expand from this foundation to spread the many positive reasons for the public to embrace and promote play opportunities in their respective communities. As mentioned at the NRPA membership meeting, we can build this campaign on factual based information on the benefits of play to society including:

- Educational...play = learning, higher reading levels & IQ scores

- Fighting Obesity...we are the calories out solution
- Intellectual...play programs higher brain areas for future use
- Social Benefits...early social skills become life social skills
- Universal...early acceptance of all abilities continues on

As we strive to grow our stable membership, we must continue to provide services and advocacies towards growing funding for play.



IPEMA President, Tom Norquist, thanks Teri Hendy for her service on the Voice of Play Board of Advisors

An important step towards this goal was recently accomplished by the addition of IPEMA associate members who will bring a wealth of knowledge and passion for play to our organization from the non-manufacturing community. These new associate members will be invited to participate in our different committee activities towards helping society better understand the

importance of play throughout life, especially the childhood years. Please remember that all of you are invited to participate in our many different committee meetings, please contact our wonderful staff at IPEMA to learn more on how you can participate and help make a difference! We need you!

With great pleasure, I thank the membership for your vote of confidence in electing Lloyd Reese as our president-elect, Randy Watermilller as our director at large and the

Continued on page 2

Message from the President *cont...*

re-election of Keith Sacks as director and Bill Clapp as secretary. We should all be extremely grateful for your dedicated 2007 Board that includes Tim Ahern as incoming president, Curtis Cleveland as treasurer, Bill Clapp as secretary, Richard Hawley as surfacing representative, Keith Sacks as lower dues representative, Ted Illjes as surfacing certification chair, Lloyd Reese as equipment certification chair, and Steve King as immediate past president. These individuals commit a great deal of personal time and energy to assure that IPEMA continues to lead in promoting play as one of life's great developmental phenomena.

We look forward to our November Board meeting in Tampa in conjunction with ASTM F08 meetings that will include an intense 2008 activities work plan/budgeting

session. If you have ideas or suggestions on how IPEMA can better serve the industry or improve our services, please forward them to our staff by October 25th so they can include these ideas at our Board meeting.

Finally, I want to personally wish all of you a wonderful and blessed holiday season. Spend time with your families and reflect upon this wonderful industry that you are so much a part of and remember, what we do helps children develop into our future innovators and leaders.

Play On!

Tom Norquist
President

New IPEMA Membership Category- Associate Level

At the IPEMA Membership meeting held Tuesday, September 25th, the membership approved a bylaws amendment and creation of a new membership category.

Richard Hawley, IPEMA Membership Chair, presented the bylaws change. Hawley and the board of directors were repeatedly being approached by sales representatives and key industry players about an opportunity to be more involved with IPEMA. "I approached the Board with a rough draft of this concept in April 2007 and we have been moving forward from that point," said Hawley. The new level, associate membership, is open to any individual or entity involved in the industry, who is not a manufacturer. The new bylaws read, "Associate Membership in the International Play Equipment Manufacturers Association shall be open to any individual or entity that is involved in selling or utilizing play equipment and related products within the scope of their operation or employment, but not engaged in the manufacturing of play equipment and related products. This level of membership does not enjoy voting privileges and cannot hold office in the Association; however, Associate Members may attend membership meetings and receive other benefits and responsibilities of membership as determined by the Board of Directors (Article IV-Membership, Section 2)." In addition to the associate

membership bylaws change, IPEMA's manufacturer members are now referred to as active members.

The Board of Directors is very excited to have this new level of membership that will allow IPEMA's membership to include the industry as a whole. Associate members will receive quarterly membership e-newsletters, up-to-date industry information, services of legislative tracking, access to the IPEMA member's area on the website, a one-time package of "Value of Play" brochures, networking opportunities with manufacturers, and more. IPEMA is in the process of developing a new Associate member logo to be used by our new members.

The hope is that the new member category will increase the knowledge of company representatives and consultants in regards to IPEMA's mission and the value of play, as well as provide more dialogue amongst industry members. Involvement from associate members, whose line of work lies outside of manufacturing, will allow IPEMA to see and be involved in a bigger picture of the industry.

If you know of anyone who would be interested in this membership category, please direct them to <http://www.ipema.org/MemberDirectory/default.aspx>.

Advocacy Committee Report

The Advocacy Committee continues to monitor any and all activity as it pertains to potential or active legislation affecting our industry. It is currently acting as an Ad Hoc committee and addresses topics as they become “hot.”

Denise Calabrese, Executive Director, and the rest of the IPEMA staff continue to review and keep the committee and the general membership abreast of legislative activities by posting their findings on the IPEMA website every quarter. Please go to www.IPEMA.org to view the information and see what is happening.

If you or anyone in your company is aware of other legislation or movements that will either positively or negatively affect the industry, please contact me at timahern@bciburke.com and we will look into it further.

Remember the purpose of this committee is to make sure that we stay on top of positive and negative legislation that can effect the whole industry. It is then up to us to marshal IPEMA resources to make sure that our industry voice is clearly heard by the people influencing and making these decisions. Thanks in advance for your contribution to this effort.

Read our most recent report on page 8.

Education Committee Report

The Education Committee is responsible for the Quarterly Sales Report. This report summarizes sales by market segment and geographical areas as reported by voluntary participants in the program. The report is published only to the companies that participate in the program by reporting their sales information. No participant's information is reported to IPEMA, its staff, its Board of Directors, or non-participating members.

The report allows the participant to compare their results to the industry in general and also get an idea of the size of the play equipment and surfacing market. The participants report their sales confidentially to a third party that then creates the quarterly report.

Confidentiality is critical to the success of the program and several safeguards are incorporated into the program:

- Three participants are required to be added at the same time to avoid segregation of each company's sale information to other participants.
- Statistical rounding of information is incorporated into the report to avoid implying a particular participant's information while not adversely affecting the accuracy of the report.
- No information is included in a particular category if there are fewer than three participants reporting in that category.

There are currently 14 companies participating in the program. Obviously, the more participants in the program, the more worthwhile it is in defining the size of the market.

A blank report is included on page 16 to give you an idea of the information provided in the report. If you are interesting in participating in this reporting program and receiving the quarterly report, please contact the IPEMA administrative office for more information.

The Education Committee has ideas for other programs that can benefit IPEMA members but we need your support. If you would like to be a member of the Education Committee or have ideas that would benefit IPEMA's membership, please contact the IPEMA administrator.

View the blank example report on page 16.

A permanent job opportunity - direct hire- is available for someone who is interested in joining the staff as an Outside Sales Manufactures Rep. for the Playground Equipment Industry in Southern California. The main requirement is industry sales experience - inside or outside. An ideal candidate will have about 2-3 years experience. Additionally, this company is looking to hire an Inside Sales Rep. This individual does not need to have industry experience, though business-to-business phone sales experience is required. If you or someone you know is interested in either the Inside Sales or Outside Sales positions, please don't hesitate to reply to Sandy Weinberg, Professional Staffing Resources, at sweinberg@mypsr.com All conversations will be kept confidential and phone interviews will be arranged to accommodate working schedules.

Success at NRPA Congress

Even before the doors opened to the public at NRPA in Indianapolis, IN, IPEMA already claimed success. On Tuesday, September 25, 2007, IPEMA held its membership meeting and reception at the Marriott Downtown, located across from the convention center.

The IPEMA membership meeting was held at 6:00 pm and included 30 attendees, plus IPEMA staff. Much was accomplished at this annual meeting. The members walked away having approved the 2008 Board of Directors slate, a new membership category, and were updated on the equipment certification committee, surfacing certification committee, education committee and marketing committee activities. In addition, this was the last membership meeting to be held with Tom Norquist presiding as IPEMA president. To view the membership meeting minutes, please go to www.ipema.org and log into the Members Only area.

Following the membership meeting was a successful reception, also held in the Marriott Downtown. Attendees included IPEMA members, sales reps for members,

industry consultants, fellow associations, etc. With cocktails and a buffet of both hot and cold hors d'oeuvres, attendees had the opportunity to catch up with one another before NRPA kicked off.

IPEMA also took this time to thank Teri Hendy, Voice of Play Board of Advisor member, who was in attendance. Tom Norquist, President, and Lesley Sillaman-Hitchman, Euro RSCG Magnet, presented Teri with a token of our appreciation. A big thank you to all of our Board of Advisor members who have contributed to the success of this initiative.

IPEMA was also present at the trade show to promote the certification program, Voice of Play initiative, our new associate membership, and the benefits of play. At booth 1612, Lesley Richards, IPEMA Certification Coordinator; Bethany Dennis, IPEMA Communications Manager; Lesley Sillaman-Hitchman, Euro RSCG Magnet, IPEMA PR Company; Janice Gudenau, DTL; and Keith Shelton, DTL were able to take time to connect with industry members. We look forward to seeing you at NRPA 2008!

At the conclusion of the membership meeting, Tom Norquist thanks the membership for a wonderful presidency



The IPEMA Booth welcomed NRPA attendees to learn more about play

**Save the Date for 2008 NRPA!
October 14-18, 2008
Baltimore, MD**



IPEMA Membership Reception Snapshots



Meet IPEMA's Newest Board Member

In 2007, IPEMA welcomed Keith Sacks of Rubberecycle, LLC to the Board of Directors. Learn more about Keith below...

"As the newest member and the Lower Dues Representative with IPEMA, I would like to introduce myself and give you some background on my company and their product line.

My name is Keith Sacks and I am the Director of Sales for Rubberecycle. Rubberecycle is the exclusive manufacturer of Playsafer™ rubber mulch. Playsafer™ is a unique shock-absorbent product ideal for all playgrounds.

I am also a new member to the Marketing Committee. At this point in time, I am in the process of working on spreading the word and involving other groups in our quest. One of my main objectives for next year is to pursue the Medical Field (AMA) to encourage them to join in our commitment to encourage the benefits of play. As advocates for safe play areas for children, partnering with the Medical Field would coordinate our mission and help us to get the word out. The reality that children who suffer from adolescent obesity should be exercising more, is a subject that the AMA has in fact been working on for



several years. In the forum of 2002, two of their objectives were to "reduce the proportion of children and adolescents who are overweight or obese", and to "increase the proportion of adolescents who engage in vigorous physical activity that promotes cardio respiratory fitness 3 or more days per week for 20 or more minutes per occasion." U.S. Surgeon General Richard Carmona, MD called obesity the greatest threat to public health today.

The Expert Committee recommends that assessment of levels of physical activity and sedentary behaviors should be performed in all pediatric patients at a minimum, at each well child visit for anticipatory guidance. One of the recommendations is for the child to have 60 minutes of at least moderate physical activity per day. With the Medical field as our partner, we would be able to emphasize the benefits of play to

patients and parents.

Another avenue that I am investigating is to educate children on the advantage of play and to identify the hazards of playgrounds. To this end I am interested in exploring the concept of using a "Character Mascot" as a teaching tool that will appeal to children, and help to stress the importance of Playground Safety and reinforce the benefits of play."

NRPA Partnership to Play Every Day

Visa USA, along with Olympic Gold medalist Kerri Walsh and two-time Olympian Mike Lambert, announced today its support for a national campaign to increase and improve the spaces where America's youth can play.

The campaign, the Partnership to Play Every Day, is a collaboration among NRPA, YMCA of the USA, and the National Association for Sport and Physical Education. With corporate sponsor Visa, these organizations are working to increase the spaces and quality of play for our country's children and youth.



a jump-start grant to dramatically enhance youth volleyball programs, allowing area youth to get involved in Olympic sports in their own community. The grant is expected to triple the number of locations and participants in this program by enhancing facilities, purchasing equipment and providing scholarships to area children.

Visa USA, with the help of other Beijing Olympic hopefuls, launched its support for the collaboration at an event in Washington, D.C. in August and will also conduct similar jump-start grant events in New York in the months ahead with the goal of encouraging other businesses and individuals to

As part of the effort, Visa and the Olympians presented the San Francisco Recreation and Park Department with

Continued on page 15.

Playgrounds for Peace

“Playgrounds for Peace” founded in 2007 on the premise that “children who play together - can learn to live together.” “Playgrounds for Peace” effectively blends together proven theories of social modelling, conflict resolution and public diplomacy to operate in a historically divided region that brings together thousands of children from different religious, racial, and cultural backgrounds.

The playgrounds will attract all children to participate in activities that enable them to learn how to live as friends and neighbors. A key component to “Playgrounds for Peace” effectiveness is that it targets children aged 1-14. These are the children old enough to pick up the basics of play and sport, but young enough wherein many prejudices have



not yet been cemented. Through the power of play, sport and education and the strategic integration of public diplomacy, “Playgrounds for Peace” plans to alter the pattern of preconceived prejudice and equip children with the skills and education needed to address the serious social and health issues they face.

This program is currently looking for companies to partner with. If you are interested in working with “Playgrounds for Peace,” please contact:

Jason White

121 Fortis Green Road, London, UK
N10 3HP

+44 (0)787 554 7701

jason@playgroundsforpeace.org

In the News...

Tag, You're Suspended

“A Colorado Springs, Colo., elementary school has banned playground tag in what might be a growing trend. “It caused a lot of conflict on the playground,” said Cindy Fesgen, assistant principal of the Discovery Canyon Campus. Some children apparently complained they were harassed or chased against their will. Nationally, several other schools have banned tag and other games because of accidents and arguments, according to *The* (Colorado Springs) *Gazette*. Conn Iggulden, co-author of *The Dangerous Book for Boys*, said it's not a good trend, especially for boys. “The whole ‘health and safety’ overprotective culture isn't doing our sons any favors,” Iggulden said in an Amazon.com interview. “Boys need to learn about risk. They need to fall off things occasionally, or — and this is the important bit — they'll take worse risks on their own. If we do away with challenging playgrounds and cancel school trips for fear of being sued, we don't end up with safer boys — we end up with them walking on train tracks.”

Source: 30 August 2007. <http://www.citizenlink.org/content/A000005367.cfm>

Begging for Teachers, Many Say, 'I Quit!', and 'Crisis' May Be Looming

“Bureaucracy and student discipline problems are driving teachers from the profession in school districts across the

country, as revealed by a three-day series in the *Mobile Press-Register* and an Alabama research study by the Center for Teaching Quality. “Schools across the country are experiencing shortages as colleges are churning out fewer teachers, and a substantial percentage of teachers leave the classroom every year,” Rena Havner of the *Press-Register* reports. “The profession once viewed as being one of the most noble is now associated with hardships - the paperwork, student discipline problems, and so on.” ... One teacher in the study eloquently explained how bureaucracy undermines student discipline: “Our students who want to learn and try their best on a daily basis are missing out on quality instructional time while teachers are busy completing the paperwork needed to correct an ongoing discipline issue.”

Source: *Mobile Press-Register*, 15 July 2007, <http://cgood.org/schools-newscommentary-watch-1487.html>

PlayCore employees swing into action for YWCA

“...The fenced play area was built in 1992 next to the Jeffris Flats Building that houses Transitional Living Program participants and their minor children. On Sept. 22, the playground (underwent) a transformation thanks to PlayCore/Swing-N-Slide's 2007 Employee Build Program. The slide and monkey bars will be replaced with a bigger, better and safer play set. The new playground

Continued on page 10.

Research Report- May- July 31, 2007

Bills were researched by the following subject areas:

Equipment Manufacturing Requirements

Playground Safety

Procurement/State Budget Issues (Appropriations/Changes in Procurement affecting playground equipment manufacturing)

Liability (Product Liability, Joint & Several etc.)

Lifestyle (Child Obesity, Recess etc.)

Appropriations/procurement bills are generally not noted here because of the legislative cycle.

- **TX 2007 SB 530 Summary** (http://www.statescape.com/ssBillText/TX2007/TX_2007_SB_000530_Current_2282.htm) was signed into law on June 15. It requires that students have physical activity as part of the school curriculum and have a physical assessment yearly. It provides for a study on the importance of daily recess for elementary students.

Product Liability

- **CA 2007-2008 AB 1549 Summary** (http://www.statescape.com/ssBillText/CA20072008/CA_20072008_AB_001549_Current_4255.html) 1549 no action
- **OR 2007 HB 2909 Summary** (http://www.statescape.com/ssBillText/OR2007/OR_2007_HB_002909_Current_1604.html) hearing held 5/18; referred to Elections, Ethics & Rules Committee 6/21
- **OR 2007 SB 444 Summary** (http://www.statescape.com/ssBillText/OR2007/OR_2007_SB_000444_Current_2433.html) product liability civil actions in committee upon adjournment
- **VA 2007 HB 2685 Summary** (http://www.statescape.com/ssBillText/VA2007/VA_2007_HB_002685_Current_0379.htm) no action upon adjournment
- **OK 2007 SB 646 Summary** limitation of damages – no action
- **IA 2007 SSB 1146 Summary** (http://www.statescape.com/ssBillText/IA2007/IA_2007_SSB_001146_Current_4993.html) and **IA 2007 HSB 127 Summary** (http://www.statescape.com/ssBillText/IA2007/IA_2007_HSB_000127_Current_1002.html) eliminates statute of repose for bringing product liability lawsuits – no action
- Signed into law as Act 315, **AR 2007 SB 904 Summary** (http://www.statescape.com/ssBillText/AR2007/AR_2007_SB_000904_Current_0294.pdf) clarifies scope of product liability law.
- **WI 2007-2008 AB 147 Summary** (http://www.statescape.com/ssBillText/WI20072008/WI_20072008_AB_000147_Current_4014.pdf) (SB 59) – no action

Other Tort Bills

- **NJ 2006-2007 SB 771 Summary** (http://www.statescape.com/ssBillText/NJ20062007/NJ_20062007_SB_000771_Current_7840.htm) no action
- **TX 2007 HB 3354 Summary** (http://www.statescape.com/ssBillText/TX2007/TX_2007_HB_003354_Current_3000.htm) no action
- **OK 2007 SB 805 Summary** and **OK 2007 HB 1886 Summary** no action
- **CA 2007-2008 AB 1549 Summary** (http://www.statescape.com/ssBillText/CA20072008/CA_20072008_AB_001549_Current_4255.html) stipulates when a death or injury claim may be made – no action
- **MO 2007 SB 545** (http://www.statescape.com/SSBillText/MO2007/MO_2007_SB_000545_Current_1394.pdf#xml=http://www.statescape.com/Billsearch) and **PA 2007-2008 HB 123 Summary** (http://www.statescape.com/ssBillText/PA20072008/PA_20072008_HB_000123_Current_1001.htm) shifts liability to manufacturer (away from seller) no action

Research Report *continued*

- **UT 2007 HB 45 Summary** (http://www.statescape.com/ssBillText/UT2007/UT_2007_HB_000045_Current_1738.htm) expands definition of fault to joint and several liability – no action
- **NY 2007-2008 AB 4401 Summary** (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_AB_004401_Current_1114.htm) caps on damages – amended in committee
- **IL 2007-2008 HB 1894 Summary** (http://www.statescape.com/ssBillText/IL20072008/IL_20072008_HB_001894_Current_0652.htm) repealing joint and several liability – re-referred to Rules Committee
- **OK 2007 HB 1438 Summary** (governmental exemption from liability) – no action

Playground Safety (equipment) Standards

- **MA 2007-2008 SB 1392 (Tracked) Summary** (http://www.statescape.com/ssBillText/MA20072008/MA_20072008_SB_001392_Current_4303.htm) said that MA will have playground safety standards as comprehensive as federal standards. IPEMA supports this consistency. Status: No action—still in Committee on Public Safety & Homeland Security
- **NEW MI 2007-2008 SB 623 (Tracked) Summary** (http://www.statescape.com/ssBillText/MI20072008/MI_20072008_SB_000623_Current_2982.htm) introduced 6/27. It requires posting of a notice when play structures contain chromated copper arsenate.
- **TX 2007 SB 972 (Tracked) Summary** (http://www.statescape.com/ssBillText/TX2007/TX_2007_SB_000972_Current_5058.htm) deals with use of child safety and child products, right now (not explicitly) exempting play equipment whose use is not confined to children 8 and below. Passed committee, on House calendar.

What Constitutes a Playground

- **NY 2007-2008 SB 684 (Tracked) Summary** (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_SB_000684_Current_9798.htm) defines playground and prohibits smoking: Passed Senate 6/20 and sent to Senate. The Children Safety Zone Act was introduced in Oklahoma **OK 2007 HB 2191 Summary** but that measure saw no action.

Product Safety

- **NJ 2006-2007 SB 265 (Tracked) Summary** (http://www.statescape.com/ssBillText/NJ20062007/NJ_20062007_SB_000265_Current_0610.htm) concerns sales of unsafe or recalled children's products. Although meant for smaller children's toys, it could be construed as including some playground equipment e.g. swings where use is intended for those six years of age and younger. Status: Passed both House and Senate, awaiting Governor's Approval. (Companion bill was AB 2554.)

Other Areas

- **AR 2007 HB 1813 (Tracked)** (http://www.statescape.com/SSBillText/AR2007/AR_2007_HB_001813_Current_4154.pdf#xml=http://www.statescape.com/Billsearch) (Act 953) signed into law, the law governs playground equipment purchases in city parks
- **NY 2007-2008 AB 7395 (Tracked) Summary** (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_AB_007395_Current_2573.htm) provides tax credits to businesses that fund new playgrounds or renovations to existing playgrounds – no action
- **MN 2007-2008 HB 2355 (Tracked) Summary** (http://www.statescape.com/ssBillText/MN20072008/MN_20072008_HB_002355_Current_8500.htm) (SB 1208) specifies health and safety use of school district monies –no action

In the News...

has two slides, five climbing areas, two bridges, two enclosures with a steering wheel, a storefront, ladder, seats and a hexadome roof. The ground will be covered with wood fiber...Without the contributions, Parker said, the playground wouldn't have happened. "It has a significant value that we would not be able to sustain under the YWCA's budget," she said. Martha Pearson, program director, put it this way: "This is a dream come true."

Source: Gazette, 18 August 2007, <http://www.gazetteextra.com/ywcaplay081807.asp>

Playground Accident May Lead to Lawsuit

Parents of a third grade student at Mead Elementary School have filed a legal notice that they plan to file a \$10 million lawsuit against the school district and builders of the school playground. The construction company calls the potential lawsuit "frivolous." The parents of Alex (A.J.) Ranasinghe say their son suffered serious head injuries when he tripped on the playground last October. They claim the accident could have been avoided by simple precautionary measures. The 9-year-old boy was running across the playground when he tripped on a retaining wall and fell onto some nearby asphalt. He lost consciousness and the family says he has permanent head injuries...Schaefer contends the curb where the boy tripped should have been painted a bright color. He also says a lack of wood chips on the playground contributed to the tripping hazard...The St. Vrain Valley Re-1-J School District declined to comment due to the pending litigation. However Scott Carlson, one of the playground builders, described the legal action as "frivolous," saying there are no requirements to paint retaining walls that surround playgrounds."

Source: CBS Television Stations, Inc.

Meet IPEMA's New Certification Coordinator

The International Play Equipment Manufacturers Association welcomes Lesley Richards as the new Certification Coordinator. Hope Walker is no longer with IPEMA, as she is now pursuing another career opportunity.

After training for several weeks with Hope, Lesley officially joined IPEMA on August 20th. She will be working with Detroit Testing Laboratory to assist you with certification and re-certification, as well as tracking certification logo usage. You can reach Lesley at certification@ipema.org or by calling 717-238-1744.

Lesley joins us with over 11 years of experience in finance, sales and customer service. In addition, Lesley has been a dance instructor for over 15 years. We look forward to having Lesley on staff!

Schools removing some playground equipment to comply with new law

"Schools (in Ohio) are removing some swings and merry-go-rounds from playgrounds to comply with a new law aimed at protecting students from safety hazards. The changes are forcing schools to spend more money, but few are complaining...Schools with older buildings face the most work to comply, but all schools will be affected in some way. Among requirements, all are being told to lock up cleaning materials and chemicals used in labs...The Legislature passed "Jarod's Law" in 2005. Jarod Bennett died two years earlier after a 290-pound table being wheeled by another child tipped over and fractured the boy's skull in a school gymnasium in Lebanon, about 25 miles north of Cincinnati."

Source: The Associated Press

Safer Games in Greek Playgrounds

"Playtop Licensing Limited has added to its growing list of overseas licensees by appointing Ergosport to cover the Greece and Cyprus territories. Ergosport managing director, Petros Rekkas, believes it's an important move for the company: "Having Playtop in our portfolio reflects the Ergosport philosophy of only using quality products and suppliers. I believe the Greek and Cypriot markets are ready for this type of wet-pour surfacing for playgrounds – one that offers limitless design possibilities whilst keeping children safer." The appointment of Ergosport takes the number of countries now covered by Playtop to over 30."

Source: Press Release, 28 September 2007



Struggling with obtaining enough insurance to meet your contract needs? If you're a U.S. member of the International Playground Contractors Association (NPCAI), Western Heritage makes getting insurance child's play.

The Playground Equipment Installation Program, which comes with your NPCAI membership, offers a deluxe set of features including:

- A nonauditable policy
- General Liability (occurrence form)
- Available Errors and Omissions Coverage for playground inspectors
- No minimum deductible unless there are losses
- \$5,000 minimum premium
- Quick turnaround for certificates
- Competitive rates



Don't monkey around—grab hold of the most comprehensive insurance around with Western Heritage's Playground Equipment Installation Program

Don't let your coverage slide. You won't find this all-inclusive package anywhere else. Play it safe—apply or renew today!



For more information, please contact:

Steve Carraway
317-808-7265 • 800-800-CITY (2489)
scarraway@citysecurities.com



Defense Themes in Playground Equipment Design Defect Cases

By David N. Lutz, Norma M. Gant and Shane V. Bohnen
Bowman and Brooke LLP¹

This article is part of an ongoing series of regular features about product liability law as it affects playground equipment manufacturers. Product liability cases involve claims that the product was defective and unreasonably dangerous for its intended use.² Such claims are often articulated under a theory of strict liability (the product was defective and unreasonably dangerous) and a theory of negligence (the manufacturer failed to exercise reasonable care). Some claims will seek punitive damages, which typically requires a showing of willful and reckless disregard for the rights and safety of others.

These claims are particularly attractive to personal injury attorneys because they involve injuries to children, with whom juries are inclined to sympathize. A child's pain and suffering may have more verdict potential than that of adults, and the prospect for future health complications can be particularly lucrative. This article will identify useful strategies for developing defense themes for defending the design of playground equipment.

Due Care story. Plaintiff's case will focus on the one particular hazard scenario and specific design feature plaintiff alleged to be at issue in your case and will want the jury to view that design feature in isolation. Yet, the manufacturer did not design its product specifically for this particular plaintiff and his accident scenario. The design process considered numerous potential hazards around which the manufacturer designed accordingly and there are numerous other aspects that are reasonably safe and make it an enjoyable and useful product. Develop the due care story, including the history of the product and how much time and effort the manufacturer put into designing, testing and evaluating the product. Identify the process for design development and safety review, including how long it takes and how many people participate. Develop your extensive participation in industry groups and other activities which promote safety. If it was based on a previous product, develop the success of that product, including the number of years that product has been offered, how many units have been sold and other information to confirm that the product and any predecessors products are "tried and true."

Articulate the various potential safety hazards considered in the design process and the precautions taken to promote

safety, even if they do not relate to this accident. These may include recessed bolts, the spacing of certain equipment from others and the soft surface to cushion falls. This may be relevant in strict liability, and certainly will be for negligence and punitive damages claims. Some jurisdictions allow a jury instruction to consider the product as a whole.

The Utility and Usefulness of The Product. Plaintiff will criticize the product as defective and unreasonably dangerous and you must obviously respond with evidence showing that the design is reasonable. In addition, stress the usefulness and utility of the product. Assemble the research showing that playground equipment is invaluable to children's development. Most jurisdictions permit evidence of the usefulness and utility of the product, so identify the specific physical and social skills the equipment helps kids develop. Show that the design choices were intended to develop these skills, to appeal to children, and to encourage them to return to the playground again. Those skills presumably played some role in the design, and you should be prepared to articulate the consideration of them, secure admissions in cross-examination of plaintiff's experts and have your experts discuss them.

Many jurisdictions require a balancing of the risk and utility of the product to determine whether it is defective. With playground equipment, the risk and utility are intertwined. Some level of risk is inherent in the use and utility of playground equipment. An arch climber or a ladder with bar rungs may not be the least risky means of reaching a platform, but its purpose is not merely to help someone ascend the platform. Its purpose is to provide a challenging means of reaching the platform which will develop the child's climbing skills, large muscle strength and hand-eye coordination, amongst others. Develop the purpose of the product so its utility is defined on your terms, not the plaintiff's terms.

Show the extent to which the design process balanced these considerations by designing the equipment to provide challenge in a reasonably safe manner. Find examples of ways in which the manufacturer deliberately designed to allow challenge while still protecting against failure. For example, perhaps the manufacturer placed a balance beam low to the ground to provide challenge while minimizing the height of a fall. Use the CPSC guidelines

Continued on next page.

Defense Themes *continued*

to develop the theme that the play system includes equipment of different risk/challenge and just as the design provides multiple means of reaching each part of the system with varying levels of challenge, kids and supervising parents need to use common sense about taking on an appropriate level of risk.

Comparative Risk. The plaintiff will play to the inclination of parent-jurors to protect kids from harm and risk. The jury will determine not whether the product was dangerous, but whether it was *unreasonably* dangerous. Developing evidence of other risks children routinely face will help put in context whether the dangers associated with using the product were unreasonable. If plaintiff is allowed to cite CPSC statistics concerning injuries on playground equipment, put them in context by comparing them with risks of activities kids might do when they are not playing on playground equipment. Develop evidence concerning the risk of injury to kids playing sports, several of which have higher injury rates than playing on playground equipment. Develop evidence concerning the risk of other activities, such as riding a bike, riding an all-terrain vehicle and swimming. Since plaintiff wants to focus on a specific hazard, this is an area where you can, as well. If the CPSC data is admissible, it should at least be limited to data relating to the product and injury mode.

Industry Standards and Custom. Evidence that the design complied with applicable ASTM standards and CPSC requirements is generally admissible in products liability cases. These standards were developed through years of research, engineering research and statistics in the field. If the product conforms to these requirements, you have credible authority to point to in support of the design. Use the IPEMA certification of compliance with ASTM and CPSC standards and the standards themselves. Compliance with standards does not guarantee a defense verdict, but it will help show the product is reasonably safe and plaintiff's expert's opinions are outside the mainstream.

Industry custom is similar to industry standards and evidence that the product is similar to competitor products in the industry is generally admissible on at least some causes of action. Develop the book on the competition to show that everyone uses the same allegedly defective design. Assemble product brochures and photograph similar competitor products in the field – especially in the

jurisdiction so the jury knows its widespread use in their community. Maybe the jury has even supervised their kids on a similar product. There is safety in numbers and the more products of more manufacturers that fit within the plaintiff's expert's definition of product defect, the more those expert opinions appear to be litigation expedience rather than generally accepted design science. Isolate your adversary as outside the mainstream by showing that the product is mainstream.

Safety History. One topic of discovery will undoubtedly be the presence or absence of other claims of injury involving the equipment. Plaintiff will want to put in as much evidence of other incidents as possible, including accidents involving your products and general accident data. To be admissible at trial, other incidents must be substantially similar to the accident involved in your case, including substantial similarity of product, accident circumstances and alleged claim of defect or failure. You may be able to keep out CPSC accident data (assuming it is unfavorable to you), as the CPSC data may not give sufficient information for plaintiff to show substantial similarity. (The CPSC data also suffers from other infirmities, such as the method of reporting and the fact that it is multiple hearsay). Plaintiff will draw the lines broadly to get as large a number as possible, so draw those lines as narrowly as necessary to report the fewest number of substantially similar claims and, ideally, none. The absence of other substantially similar claims is also generally admissible.

Whether to underscore the significance of no prior claims or to put in context any other claims which do exist, you should develop the number of products which are being defined as "substantially similar" for purposes of this analysis, and more is better. This derives from the simple statistical fact that three claims involving 1,000 products has more jury appeal than three prior claims involving a 100,000 similar products. Develop also information about how many years that group of products has been in the field and ideally attempt to identify how many hours of use and/or how many children (i.e., consumers) have used the product. Prior incidents seem more understandable if you can show how many years those products have been in the field and how extensively they are used by how many children. For example, if you can put in evidence that the product has seen a million kid-days of use, three accidents will not seem very compelling.

Continued on next page.

Defense Themes *continued*

Alternative Designs. Most jurisdictions require that the plaintiff offer a reasonable alternative design that would have allegedly prevented the plaintiff from being injured. Plaintiff will need to show that the claimed alternative design was both feasible and that it would have prevented the accident (i.e., the lack of plaintiff's proposed design caused the injury) and you should attack on both grounds.

In addition, you should also examine the effect of the alternative design on the utility and purpose of the product and the possible creation of new hazards. Emphasize the extent to which the proposed alternative design would actually impede the purpose of the product. For example, a staircase is not a reasonable alternative design to a climbing wall, a ladder is not an alternative design to an arch climber and a zip line is not an alternative to overhead climbing bars because they are different products with different purposes and the selection of those alleged alternative design would impair the purpose of the product at issue and the skills you intend it to build.

Plaintiff's Fault. The fault of plaintiff is always admissible to rebut a negligence cause of action, but might be admissible on a strict liability cause of action only to support a causation defense (i.e., whether the product defect was the cause of the injury). Some jurisdictions do not allow a defendant to claim negligence by a child plaintiff, while some jurisdictions do. Even if a child plaintiff can be found negligent, a child plaintiff is more difficult to blame because children are seen as more sympathetic, naive and in greater need of protection from their own mistakes than adults. These reasons for sympathy suggest the themes to develop with the child-plaintiff. Develop her knowledge, experience and sophistication. Find out her experience playing on playground experience, as she will have likely played on the equipment or variations of it many times before. Find out how she typically used the equipment, how she saw others using it, and what she understood to be the proper way to use it. Develop her knowledge of risk and the obviousness of it, including previous falls by her and which she witnessed. Develop her knowledge of how to properly play on the equipment and her failure to do so. Stress the extent to which these matters and risks are within the common sense comprehension of children.

The Fault of Others. The product is likely to have been owned by some other entity, such as a school or

governmental entity, which was likely responsible for maintaining the equipment and for supervising its use, including developing rules concerning its safe and proper use. Identify the maintenance practices of the owner, including whether they followed the recommendations with respect to proper maintenance of the product. Find out whether they installed the product properly (if they did so at all) and whether they altered the product. Find out what instructions they provided with respect to supervision of children and whether they followed their procedures and enforced their rules. If they did not, develop the case of fault against them. Beware that government entities have sometimes limited and sometimes absolute immunity for certain kinds of claims under certain conditions, so blaming the property owner may not always accomplish as much as you hope.³

Developing these themes will help you defend your product against design defect claims.

(Footnotes)

¹David Lutz (Minneapolis) and Norma Gant (Detroit) are partners and Shane Bohnen (Minneapolis) is an associate of Bowman and Brooke, a national law firm specializing in the defense of product liability cases and the defense of litigation involving children.

²Restatement (Third) of Torts, ¶2. Product liability law varies from state to state, but many states' law is consistent with the Restatement. For questions about specific states, contact your counsel or the authors.

³One of the authors of this article, David Lutz, published an article on the IPEMA website a couple years ago about claims of immunity by governmental entities. If you would like a copy, please email him at david.lutz@bowmanandbrooke.com

Has your company been involved in your local community and would you like to gain additional media coverage? Contact IPEMA's Public Relations firm to assist you in writing a newsworthy article about your company, its relationship with IPEMA, and your community involvement. Contact Lesley Sillaman at Euro RSCG Magnet by emailing lesley.sillaman@eurorscg.com or by calling (412) 456-7839.

Calendar of Events

October 31, 2007

Class Disrupted: Disorder and Its Effects on Learning and School Culture
Washington D.C.
Visit www.cgood.org for more information.

November 5, 2007

Health Courts, Administrative Compensation & Patient Safety: Research, Policy & Practice
Cheyenne, Wyoming
Visit www.cgood.org for more information.

November 5, 2007

Common Good Healthcare Event
Equality Center of the Human Rights Campaign
Washington D.C.
Visit www.cgood.org for more information.

October 21-23, 2007

Massachusetts Recreation & Park Association Conference & Trade Show
Sturbridge Host Conference Center, Sturbridge, MA
For more info visit: www.massrecandpark.org

October 25-28, 2007

National Institute on Recreation Inclusion
Reston, VA
Visit www.nrpa.org to register.

November 6-9, 2007

Wisconsin Recreation & Park Assoc Conference
Kalahari Resort & Convention Center, Wisconsin Dells, WI
If you have questions contact Juliene Hefter at jhefter@wprweb.org

November 6-8, 2007

Oklahoma Recreation & Park Society Annual Conference
ORPS Annual Conference, Tulsa, OK
Visit www.orps.net

November 12-16, 2007

Tennessee Recreation and Parks Association Conference
Gatlinburg, TN
For more info call: 614-494-5770

For a listing of NPSI Courses and even more events, visit www.ipema.org

Partnership to Play Every Day *continued*

improve local parks, facilities and playgrounds in their communities.

“For America’s kids, the time to play is today,” said Kerri Walsh, who hails from nearby Saratoga, Calif., and graduated from Stanford University in 1999. “We need everyone’s help in providing all kids with access to safe and well-equipped spaces and places where they can play, have fun and maybe even pursue their own Olympic dreams.”

“We’re thrilled to welcome Visa and these Olympic athletes to the Partnership for Play Every Day team,” said Yomi Agunbiade, general manager, San Francisco Recreation and Park Department. “We share a common goal to get America’s youth moving, and we need influential voices like these to rally all Americans around increasing the number of spaces and places where our kids can play.”

About Partnership for Play Every Day

NRPA, YMCA of the USA, and the National Association for Sport and Physical Education are working together as

conveners of the Partnership for Play Every Day to increase the spaces and quality of play for our country’s children and youth. These organizations have a proud legacy of providing physical education, physical activity, childcare, after-school programs and youth sports to millions of children throughout the country. Through this collaboration with more than 30 of the nation’s leading nonprofits, government agencies, academic organizations and corporations, we can create and sustain the momentum for a national movement to ensure that all kids get 60 minutes of physical activity every day. For more information, visit www.playeveryday.org.

A big “thank-you” to RMD
Americas for advertising IPEMA
certified surfacing on their product
bag at Lowe’s.



**IPEMA Play Equipment Sales
Benchmarking Report**

Sales Quarter	1st Quarter
Sales Year	2006

Note that samples for each item and each period may differ. Results may be impacted by mergers and acquisitions. Since results are compiled from the latest data which may add to and/or revise previous periods, the sum of this period's sales plus previously reported YTD sales may differ from this period's YTD sales.

Surfacing Sales						
	Engineered Wood Fiber	Manufactured Rubber Tile	Poured-In-Place (incl. site labor)	Loose Fill Rubber	Other Surfaces	All Surfacing Sales
1st Qtr 2006 vs. 4th Qtr 2005						
1st Qtr 2006 vs. 1st Qtr 2005						
YTD 2006 vs. YTD 2005						
YTD 2006 Sales Distribution						

Play Equipment Market Sales							
	Composite Playstructures	Independent Playstructures	Site Amenities	Skate Parks	Sports & Fitness	Other Play Equipment	All Play Equipment Market Sales
1st Qtr 2006 vs. 4th Qtr 2005							
Sales Outside of US & CA							
Daycare & Early Childhood							
Housing & Developers							
Parks & Recreation							
Hospitality							
Schools							
Other US & CA Markets							
All Play Equip. Market Sales							
1st Qtr 2006 vs. 1st Qtr 2005							
Sales Outside of US & CA							
Daycare & Early Childhood							
Housing & Developers							
Parks & Recreation							
Hospitality							
Schools							
Other US & CA Markets							
All Play Equip. Market Sales							
YTD 2006 vs. YTD 2005							
Sales Outside of US & CA							
Daycare & Early Childhood							
Housing & Developers							
Parks & Recreation							
Hospitality							
Schools							
Other US & CA Markets							
All Play Equip. Market Sales							
YTD 2006 Sales Distribution							
Sales Outside of US & CA							
Daycare & Early Childhood							
Housing & Developers							
Parks & Recreation							
Hospitality							
Schools							
Other US & CA Markets							
All Play Equip. Market Sales							

Canadian Play Equipment Sales							
YTD 2006 Sales Distribution	Composite Playstructures	Independent Playstructures	Site Amenities	Skate Parks	Sports & Fitness	Other Play Equipment	All Canadian Play Equipment Sales
Alberta							
British Columbia							
Manitoba							
New Brunswick							
Newfoundland							
Northwest Territories							
Nova Scotia							
Ontario							
Prince Edward Island							
Quebec							
Saskatchewan							
Yukon & Nunavut							
All Canadian Play Equipment Sales							



**IPEMA Play Equipment Sales
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U.S. Play Equipment Sales							
YTD 2006 Sales Distribution	Composite Playstructures	Independent Playstructures	Site Amenities	Skate Parks	Sports & Fitness	Other Play Equipment	All U.S. Play Equipment Sales
Alabama							
Alaska							
Arizona							
Arkansas							
California							
Colorado							
Connecticut							
Delaware							
Dist. Of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois							
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland							
Massachusetts							
Michigan							
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							
New Hampshire							
New Jersey							
New Mexico							
New York							
North Carolina							
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont							
Virginia							
Washington							
West Virginia							
Wisconsin							
Wyoming							
All U.S. Play Equipment Sales							



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YTD 2006 Sales Distribution						

Play Equipment Market Sales							
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YTD 2006 Sales Distribution							
Sales Outside of US & CA							
Daycare & Early Childhood							
Housing & Developers							
Parks & Recreation							
Hospitality							
Schools							
Other US & CA Markets							
All Play Equip. Market Sales							

Canadian Play Equipment Sales							
YTD 2006 Sales Distribution	Composite Playstructures	Independent Playstructures	Site Amenities	Skate Parks	Sports & Fitness	Other Play Equipment	All Canadian Play Equipment Sales
Alberta							
British Columbia							
Manitoba							
New Brunswick							
Newfoundland							
Northwest Territories							
Nova Scotia							
Ontario							
Prince Edward Island							
Quebec							
Saskatchewan							
Yukon & Nunavut							
All Canadian Play Equipment Sales							



**IPEMA Play Equipment Sales
Benchmarking Report**

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Sales Year	2006

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U.S. Play Equipment Sales							
YTD 2006 Sales Distribution	Composite Playstructures	Independent Playstructures	Site Amenities	Skate Parks	Sports & Fitness	Other Play Equipment	All U.S. Play Equipment Sales
Alabama							
Alaska							
Arizona							
Arkansas							
California							
Colorado							
Connecticut							
Delaware							
Dist. Of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois							
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland							
Massachusetts							
Michigan							
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							
New Hampshire							
New Jersey							
New Mexico							
New York							
North Carolina							
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont							
Virginia							
Washington							
West Virginia							
Wisconsin							
Wyoming							
All U.S. Play Equipment Sales							

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