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Message from the President...



Happy Holidays and a Blessed New Year to All! As I step into the shoes that Tom Norquist so capably filled in 2006 and 2007, I look forward to this task with anticipation. First

of all, I would like to thank Tom for his inspiration and drive over the past two years. Under Tom's presidency IPEMA increased its membership benefits, researched and hired a public relations firm to promote IPEMA which in turn brought us the "Voice of Play" website and campaign, and promoted our organization and the importance of play for all. The last two years under Tom's leadership have been very successful for IPEMA and I hope to build upon these successes.

I would also like to thank Steve King for his leadership throughout the years, as he steps down as Immediate Past President. Steve has provided insightful leadership for IPEMA and its Board during his involvement over the years. Thank you for all you have done Steve! We welcome Randy Watermiller of Landscape Structures to our Board of Directors in 2008, while Lloyd Reese, Playpower LT Farmington, Inc. will become the President-Elect.

It is my belief that it is the duty of the Board of Directors to maximize the benefits for its members and to promote and encourage greater involvement by its membership on the various committees. With that said, we took a day in November to plan the 2008

budget. IPEMA will once again be working with Euro RSCG Worldwide PR in public relations efforts. Over the last year and a half we have focused our efforts towards trade media and on getting the Voice of Play message out. In 2008 we will now begin to promote IPEMA and the value of play to the consumer market through media and the help of our PR company. In addition, IPEMA will continue to track legislation, work to foster affiliations with like-minded organizations, continue to sponsor the Joe Frost Library, disseminate the quarterly sales reports, distribute the quarterly e-newsletter, update our websites with timely information, and more. As President, I will continue to ensure that IPEMA is fiscally responsible and looks to the future with each activity and how our member's money and other resources are being utilized.

As was announced this fall, IPEMA has approved a new level of membership- Associate Membership. The Associate Membership category is for those companies or individuals that have an interest or business related to play, but are not manufacturers. We encourage these individuals or organizations to become involved in IPEMA so that they may learn more about the industry, make contact with manufacturers, and be a part of promoting play and the IPEMA mission. If someone you know may be interested in this new membership category, direct them to the IPEMA website, www.ipema.org, for more information. In addition, if you would like to promote IPEMA Associate Memberships to those that you conduct business with, contact IPEMA Headquarters and they can send you applications to send out with your mailings.

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Message from the President...*continued*

Lastly, I along with the rest of the IPEMA Board strongly believe in member participation and product certification. Please read more about the various committee activities in this newsletter and consider becoming active with the committee that best suits your talents and interests. These committees make important decisions and recommendations for the entire membership and they need your involvement!

I thank you again for your membership and participation in IPEMA and I look forward to an outstanding 2008.

Sincerely,
Tim Ahern

Certification Committee Updates

The Equipment Certification announces the 2008 committee members are: Scott Liebelt, Lloyd Reese, Curtis Cleveland, Wes Sutton, Nathaniel Lockhart, Tom Fitzpatrick, Mark Koch and Bill Clapp.

The Surfacing Certification Committee has also announced its 2008 committee members: Ted Illjes, Chairman; Keith Sacks, Secretary; Tom DiScipio; Elouise Bird; Nick Demetrakas; Mike Hayward; and Richard Hawley, Vice-Chairman. The remaining two positions will be left open at this point in time.

The ASTM F-2075 logo has been updated and no longer includes 4.4 and 4.6 section notifications. A new copy of the logo will be sent out with new license agreements, however, if you need one beforehand, please contact certification@ipema.org.

Marketing & PR Committee Update

The Marketing & PR Committee is excited to start 2008 with a fresh plan for IPEMA. With directive from the IPEMA Board of Directors, Euro RSCG PR Worldwide, our public relations firm, will be moving forward with a plan to focus on consumer media. The Voice of Play initiative continues to be a great way to access consumers, as many utilize www.voiceofplay.com as a resource. In addition, we will once again have a Board of Advisors (BOA) to give us perspective, as well as a neutral party opinion, when writing and pitching articles. Beyond resources, these Advisors will also be writing articles on behalf of IPEMA. Please read more about the BOA on page 3.

The 2008 Marketing & PR Committee includes Tom Norquist, Chair; Elouise Bird; Randy Watermiller; Anne-Marie Spencer; Keith Sacks; Ted Illjes; and Robert Heath.

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

IPEMA Membership Meeting & Reception will be held October 14th.

2008 Board of Advisors for “Voice of Play” Initiative

Voice of Play goal is to increase outreach to consumers about the benefits of play

The International Play Equipment Manufacturers Association (IPEMA) announces its 2008 Board of Advisors for the “Voice of Play” initiative. The Board is comprised of four well-known experts in the academic and professional communities in the fields of childhood development, children’s play and playground design safety. This year’s Board includes: Dr. Joe Frost, Teresa (Teri) Hendy, Ken Kutska and Dr. Fran Wallach.

“This year’s Board is an outstanding group that will help us continue to advance our goal of teaching the world about the many proven benefits kids get from play,” said Tim Ahern, IPEMA President. “We are grateful to have Joe, Teri and Fran continue to serve, and thrilled to welcome Ken to the Board. This group’s dedication to making play better for children is unparalleled.”

The Voice of Play campaign is centering outreach on five focus areas of research about children and play:

- *Intellectual benefits – various research surrounding brain development in kids through play*
- *Social benefits – the valuable, real-life social lessons kids learn on the playground*
- *Educational value – the way play helps kids develop skills used in other areas of their education*
- *Universal accessibility – accessible playgrounds introduce kids to varying levels of physical and mental abilities early in life, which helps them grow up to be more accepting of differences*
- *Physical benefits – specifically fighting obesity and helping kids develop healthy habits early*

Board members, who will serve one-year terms, beginning January 1, 2008, are:

Dr. Joe Frost — Dr. Joe Frost is often called the contemporary father of play advocacy. He is the Parker Centennial Professor Emeritus at the University of Texas at Austin, where he taught for 34 years. He has authored, co-authored, or edited 18 books, several having been translated into other languages, as well as six volumes of published and unpublished papers, reports and articles. Frost is known worldwide for his work in children’s play and play environments and

continues to direct a 30 year-old research program addressed to this field. He has also lectured and served as a consultant worldwide and is a former president of the Association for Childhood Education International and of the International Play Association (IPA/USA). He recently donated an expanding research collection to the University of the Incarnate Word on children’s play and play environments, co-sponsored by IPEMA.

Teresa (Teri) Hendy – Teri Hendy is president and owner of Site Masters, Inc. (SMI), a design and safety consulting company based in Cincinnati, Ohio. For the past 20 years, Hendy has been actively involved as a design and safety consultant to the school, park and recreation industry and is a nationally recognized author, speaker and expert in the field. She is currently serving as co-chair of the National Playground Safety Institute (NPSI) Curriculum Committee. Hendy brings extensive knowledge of the standards and guidelines that apply to the playground industry as she has actively worked with the ASTM subcommittees and the Consumer Product Safety Commission since 1987.

Ken Kutska – Ken is president of Children and Recreation Environment, Inc., a company that consults on playground safety systems and markets an all-purpose safety surface system adhesive for use in outdoor environments. Kutska’s 35+ year career in park and recreation management includes serving for 30+ years as the Director of Parks and Planning for Wheaton Park District. He also has served on numerous playground industry boards and committees including, the Illinois Park and Recreation Association (IRPA), the National Park and Recreation Association (NRPA), the NRPA’s National Playground Safety Institute and the American Society for Testing Materials (ASTM) subcommittee on public playground equipment.

Fran Wallach – Dr. Frances Wallach, president of Total Recreation Management Services, Inc., is a nationally-known expert with more than 30 years of experience in park and playground safety, planning, design and evaluation, including expertise in program and

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IPEMA Welcomes Members in New Category of Membership

At the September membership meeting a new membership category allowing non-manufacturing companies to join IPEMA as an associate member was approved by all those in attendance. Associate membership is opening the way to more diverse perspectives for the organization. Several companies have already joined under the new category, with the first three signing up during NRPA 2007.

Associate membership in IPEMA is 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.

Samuel "Butch" DeFillippo of PlaySafe was the first consultant to join. "I feel fortunate that we've been able to enhance people's lives," Butch said. "I feel that we should give back to the industry."

Butch founded PlaySafe in 1997, having spent two decades working in the parks and recreation industry. He offers consulting, training and audits, as well as master plans and feasibility studies. Based in New Mexico, PlaySafe has clients in 17 states, as well as in the United Kingdom.

The company's mission, "Always do good," is prominently displayed on the web site, reflecting Butch's philosophy of providing the best that he can. "I think we're going to see more supervision requirements in the future," Butch said. "We're working toward making physical changes to make playgrounds safer."

Butch added that the industry and the product are always changing. "A playground is not a static environment, but a dynamic environment," he said.

Safety is a top priority for Scott Burton as well. President of Safety Play, Scott has been providing design, inspection, safety audits and expert witness testimony, among other services, since 1988, and was a play equipment manufacturer since 1981. He sold his manufacturing

company in 1993, when he became a full-time consultant. He has been a Certified Playground Safety Inspector since 1992.

Working out of his Florida home, Scott has traveled to many states and countries for his work, including Jamaica, Guatemala and Sweden. He consulted with the Swedish furniture company IKEA to certify that their stores' indoor playgrounds would meet American standards.

He was eager to become the third associate member of IPEMA because of the opportunity to network and contribute his perspective. "I'm coming in with the idea of 'how can I make it better?'" Scott said. He hopes that IPEMA would be open to the idea of having a third-party perform certified safety audits for the equipment its members supply.

He would like to see a national law requiring compliance with guidelines from the American Society for Testing and Materials as well as the Consumer Product Safety Commission, he said. Results of that legislation, he hopes, would be to create safer playgrounds (and therefore fewer lawsuits) as well as more business for manufacturers and consultants, as consumers would need to upgrade equipment to meet requirements.

J.C. Bousch is in his eighth year as a play consultant with his company, Design for Play. Based in California, Design for Play offers design and inspection services, as well as education focused on child and brain development. He shares a vision with IPEMA, he said, in his passion for play and its role in child development.

"I want to get the message out that play is important, physically as well as in brain development," J.C. said. He serves clients around the U.S. and lectures around the world on child development. In addition, he is working with manufacturers and ASTM in efforts to reconsider playground design.

"We need to make them more challenging for today's technology-minded child," J.C. said. "They need to be more open-ended to challenge kids' minds." But he doesn't just want to transfer the video game to the playground. J.C. said just adding light or sound to equipment is not the answer. "I'm not saying I'm totally

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Series Aims to Improve Access for People With Disabilities

The National Recreation and Park Association has announced the launch of its Inclusive Recreation Training Series, courses designed to educate park and recreation employees on the opportunities and requirements for enhancing accessibility to recreation. The courses are now available for purchase online at www.nrpa.org/inclusion.

The Inclusive Recreation Training Series offers two levels of education:

Introduction to Inclusive Recreation (two hours)

Appropriate for any recreation staff, this fundamental overview covers basics, best practices, terminology, and sensitivity and includes a great introduction to effective behavior management practices. This course is ideal for support staff and seasonal employees or as a prerequisite to the second course.

Developing Inclusive Recreation (four hours)

Geared toward more experienced recreation professionals, this course provides a more detailed response to questions regarding requirements, funding, process, models, and training. It even includes a section on basic program

adaptation to help participants understand how adaptation works.

Lonny Zimmerman, M.A., CLP, manager of the Adaptive Recreation Division for the city of Las Vegas Department of Leisure Services and a co-creator of the new program, says, "Park and recreation agencies can't risk operating without a staff-wide understanding of the basic principles of inclusion and implementation. It's also really expensive to send their frontline staff to conferences. The Inclusive Recreation Training Series was designed to help agencies offer affordable learning opportunities that can advance the key concepts and practices of inclusive recreation."

For more information or to register for the courses, visit the [NRPA Web site](http://www.nrpa.org), or call 800.626.6772.



Board of Advisors for "Voice of Play" Initiative

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equipment design for physically challenged children. Before her current position, she served as superintendent of the Nassau County, N.Y. Department of Recreation and Parks. She also has served as a board member and officer for many industry organizations including the American Society for Testing and Materials (ASTM) Sub-Committee on Public Playground Equipment Safety and was an instructor for the NRPA Annual Safety School and for the National Playground Safety Institute (NPSI.) Wallach is also an Adjunct Associate Professor at New York University.

IPEMA Welcomes Members *continued*

against it. I just haven't seen anything so far that really works...Kids will lose interest as soon as they master it, just like a video game."

Instead, J.C. wants to create play areas with more complexity, that encourage kids to use their imaginations. "I see a lost generation of kids who aren't exposed to the kinds of activities we were," he said. "They need to be outdoors and active.... Play is really very simple and I'd like to see us get back to that."

These first three associate members of IPEMA are the beginning of what the Board of Directors and Membership Chair, Richard Hawley, hope will be an active group of industry members. More information regarding associate membership is available on the IPEMA website at www.ipema.org.

IPEMA Regulatory Report- Calendar Year 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. (N = 10) NEW One bill, PA 2007-2008 HB 137 (Tracked), would have provided an appropriation for lead testing in playgrounds. Status: Referred to Health and Human Services Committee – no action

TX 2007 SB 530 Summary 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) Civil actions: product liability Status: referred to Judiciary Committee; no action
- OR 2007 HB 2909 Summary Relating to statutes of limitation Status: hearing held 5/18; referred to Elections, Ethics & Rules Committee
- OR 2007 SB 444 Summary product liability civil actions in committee upon adjournment
- VA 2007 HB 2685 Summary Accrual of right of action; product liability cases Status: stricken from docket by Court of Justice; Dead
- OK 2007 SB 646 Summary limitation of damages; Status: Referred to Judiciary Committee - no action
- IA 2007 SSB 1146 Summary and IA 2007 HSB 127 Summary eliminates statute of repose for bringing product liability lawsuits – Referred to Judiciary Committee -no action

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Have You Taken the Time to Visit the



Visit www.voiceofplay.com today!

Questions? Comments? Let us know. The website is constantly being updated and we want to hear your feedback.

Email communications@ipema.org with these comments.



In the News

Bill includes \$454 million for Texas military projects- Families also receive child care help in legislation

“The \$516 billion sweeping government spending bill before Congress provides \$129 million for child care centers at 16 military installations, including locations where there have been heavy deployments of troops to Iraq and Afghanistan... President Bush had requested only three child development centers, but Congress added 13 others, said Rep. Chet Edwards, chairman of the House Appropriations subcommittee with oversight for military construction and VA spending. The money would provide child care for about 3,500 children of all ages... A Defense Department survey reported a need for 35,000 child care spaces this year...”

Source: 18 December 2007, <http://www.chron.com/disp/story.mpl/headline/metro/5388984.html>

Kids more active when playground has balls, jump ropes, UNC study shows

“Children play harder and longer when their child care centers provide portable play equipment (like balls, hoola hoops, jump ropes and riding toys), more opportunities for active play and physical activity training and education for staff and students, according to a study published in the January 2008 issue of the American Journal of Preventive Medicine. Researchers at the University of North Carolina School of Public Health examined environmental factors that encourage children to be active with greater intensity and for longer periods of time. Increased activity levels help children maintain a healthy weight, the researchers say, which is critical as obesity rates climb nationwide, especially among children... Researchers assessed the physical and social environmental factors thought to influence healthy weight at 20 childcare centers across North Carolina. Then they evaluated the physical activity levels of children attending the centers. Additional data were gathered through interviews and documents provided by the child care directors. The study showed that children had more moderate and vigorous physical activity and fewer minutes of sedentary activity when their center had more portable play equipment, including balls, hoola hoops, jump ropes and riding toys, offered more opportunities for active play (inside and outside), and had physical activity training and education for staff and students. Stationary equipment, like climbing structures, swings and balance beams, were associated with lower intensity physical activity, researchers said, but are beneficial

to other aspects of child development, such as motor and social skills.”

Source: 11 December 2007, http://www.eurekalert.org/pub_releases/2007-12/e

Playground Injuries Surprisingly Common

“Playgrounds are supposed to be safe and fun places for children to play, but the Consumer Product Safety Commission reports about 200,000 kids are treated every year in U.S. emergency rooms for playground-related injuries.” It seems that the most common injuries are off of monkey bars or other climbing equipment,” said Dr. Laurel Blakemore. Dr. Blakemore said she believes that most injuries are among children five to nine years old. “Generally, the most common thing that we see in orthopedics is falls, so [there are] fractures,” Dr. Blakemore said. “They break their arms when they fall with outstretched arms or legs, but they can also get head injuries and neck injuries.” Dr. Blakemore said some fractures are serious enough to require surgery. She calls on parents and caregivers to help prevent falls in the first place. “It may not be what the kids are doing wrong, but what rather we’re doing wrong in terms of how you build playgrounds and the amount of supervision,” Dr. Blakemore added. With almost 60 percent of all injuries being caused by falls to the ground, the Consumer Product Safety Commission recommends playgrounds be built with thick, protective surfacing underneath equipment....”

Source: 26 October 2007,

http://www.cfnews13.com/Health/YourHealth/2007/10/25/playground_injuries_surprisingly_common.html#

Reinventing recess: Schools try to play it safe

“School recess isn’t what it used to be. But it may be safer. The playground games and equipment that many parents fondly remember are disappearing. Some schools have shortened recess in the name of academics and banned activities such as tag, Red Rover and king of the mountain as too dangerous. Teeter-totters and merry-go-rounds are a thing of the past, too. School officials say they’re acting in the interest of safety. But critics say the concerns are overblown – and even damaging to children... Dr. Joe L. Frost, an early childhood education expert at the University of Texas at Austin, said he cares about safety. But he fears children are losing “opportunities to develop physically, cognitively and

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Meet IPEMA's Newest Board Member

Randy Watermiller of Landscape Structures, Inc. (LSI) joins the 2008 IPEMA Board of Directors as Member-at-Large. His involvement with IPEMA since its inception, as well as active participation on the Marketing & PR Committee and with the website, are the perfect segway into participation on the board.

Randy commented that he "really just happened into the field." He has been a part of LSI for over eighteen years and has enjoyed being a part of the play industry. When asked his favorite day on the job, Randy responded that the best part of his job is playing on the prototypes. Involved in product development at LSI has given Randy the opportunity to be present through each change and advancement that the industry feels. "...I have many favorites [pieces of equipment], but I have to say at this point it is Evos because it appeals to many different needs." Evos playstructures offer physical, mental and creative challenges. Highly



configurable, there are currently 25 versatile Evos components to choose from.

Randy believes IPEMA's strength lies in its ability to effectively provide information to the market to both educate and promote the playground industry. He comments, "In the past twelve months, I believe IPEMA has successfully elevated their presence in the industry through a focused PR plan."

Randy's main goal as a member of the board is to help establish and execute the plans to elevate IPEMA's exposure within the industry and perhaps the general public. He looks forward to working as a member of the board to promote the industry and find ways to work more effectively with other organizations within our industry.

In his spare time, he enjoys biking, camping, and keeping up with all the activities his children are involved with.

In the News...continued

socially" when recess activities are curtailed. "There seems to be a dearth of information about the value of play," Dr. Frost said. "Kids need places for make-believe play. "The best playgrounds are not necessarily the playgrounds that have the biggest, prettiest or most expensive equipment." School landscapes are now full of mega-structures that blend slides, bridges, towers and monkey bars into one composite unit. Sleek and strong plastics envelop steel frames, enticing play with the equipment's bright colors and imaginative shapes. Schools have changed out a lot of the old equipment for safety reasons. But Dr. Susan Hudson, education director for the National Program for Playground Safety in Iowa, said newer, trendy equipment is not necessarily safer...Nationally, statistics kept by the Consumer Product Safety Commission don't show a definitive trend. Injuries have gone up and down between 2000 and 2006...Pressure from state officials to pack more instruction into a school day has whittled away the minutes that children have that chance to flirt with danger on the playground. New requirements for structured physical education also have chipped away at playtime..."

Source: 17 October 2007, *The Dallas Morning News*, <http://www.dallasnews.com/sharedcontent/dws/dn/education/stories/101307dnmetplaysafe.359193d.html#>

Schools Find It Easy To Be Green

"Imagine learning in the classroom without having to turn on the lights. That's exactly what two schools in Colorado Springs are doing by relying on natural light. They're being recognized nationally as two of the most energy efficient schools in the country...Outside, again it looks like an ordinary playground. But the sun's energy under the ground is actually what is used to heat and cool this school. "At one point my playground had 70 holes, 300 feet deep," said principal Denise Rubio Gurnett..."It's a lot cheaper to extract energy out of the ground and bring it into the building than it is to burn fossil fuel," said Fernandez. Even in the gym, kids dribble basketballs without turning on the lights because enough natural light comes in through the skylights. With these changes, McAuliffe and Freedom Elementary use nearly 70% less energy than the average school."

Source: 14 November 2007. <http://www.kktv.com/news/headlines/11320911.html>

IPEMA Regulatory Report *continued*

- Signed into law as Act 315, [AR 2007 SB 904 Summary](#) clarifies scope of product liability law.
- [WI 2007-2008 AB 147 Summary](#) (SB 59) (http://www.statescape.com/ssBillText/WI20072008/WI_20072008_AB_000147_Current_4014.pdf) relating to: product liability of manufacturers, distributors, and sellers. Status: Referred to Committee on Judiciary and ethics – no action
- [NEW PA 2007-2008 HB 1005 Summary](#) (http://www.statescape.com/ssBillText/PA20072008/PA_20072008_HB_001005_Current_3454.htm) establishes statute of repose (15 years) for product liability; Status: Referred to Judiciary Committee – no action

Other Tort Bills

- [NJ 2006-2007 SB 771 Summary](#) Modifies the tort liability of product sellers Status: Referred to Judiciary - no action
- [TX 2007 HB 3354 Summary](#) Relating to the liability of a manufacturer or seller of a non-consumer safety product Status: Referred to Civil Practices Committee - no action
- [OK 2007 SB 805 Summary](#) and [OK 2007 HB 1886 Summary](#) An Act relating to tort reform; providing for determination of attorney fees in class actions; providing for judicial discretion to modify the fee award; requiring attorney fees to include non-cash benefits in certain circumstances; defining terms; establishing a statute of repose for product liability actions; Status: SB 805 referred to Judiciary; HB 1886 amended passed by Judiciary & Public Safety Committee
- [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; Referred to Judiciary – no action
- [MO 2007 SB 545](#) shifts liability to manufacturer (away from seller) no action although hearing on SB 545 was scheduled and then canceled by the Senate Judiciary & Civil and criminal Jurisprudence Committee
- [PA 2007-2008 HB 123 Summary](#) (http://www.statescape.com/ssBillText/PA20072008/PA_20072008_HB_000123_Current_1001.htm) providing for liability rules applicable to product sellers. Status: referred to Judiciary Committee – no action
- [UT 2007 HB 45 Summary](#) expands definition of fault to joint and several liability; Status: Bill killed
- [NY 2007-2008 AB 4401 Summary](#) (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_AB_004401_Current_1114.htm) caps on damages – amended in Judiciary 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); Referred to Judiciary & Public Safety Committee – no action
- [NEW PA 2007-2008 HB 860 Summary](#) (http://www.statescape.com/ssBillText/PA20072008/PA_20072008_HB_000860_Current_7537.htm) caps on non-economic damages in liability cases; Status: Referred to Judiciary Committee – no action
- [NEW PA 2007-2008 HB 850](#) replaces joint and several liability with comparative negligence standard; Status: Referred to Judiciary Committee – 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: NEW: House concurred
- [MA 2007-2008 HB 2338 \(Tracked\)](#) (http://www.statescape.com/SSBillText/MA20072008/MA_20072008_HB_002338_Current_7779.pdf#xml=http://www.statescape.com/Billsearch) relative to playground safety standards. Status: Senate concurred
- [MA 2007-2008 HB 4206 \(Tracked\)](#) (http://www.statescape.com/SSBillText/MA20072008/MA_20072008_HB_004206_Current_5795.pdf#xml=http://www.statescape.com/Billsearch) safety standards for challenge courses and rock climbing wall facilities; Status: passed House committee.

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IPEMA Regulatory Report *continued*

- MI 2007-2008 SB 623 (Tracked) Summary (http://www.statescape.com/ssBillText/MI20072008/MI_20072008_SB_000623_Current_2982.htm) introduced 6/27/07. It requires posting of a notice when play structures contain chromated copper arsenate. Status: Referred to Committee on Local, Urban, and State Affairs – no action
- TX 2007 SB 972 (Tracked) Summary 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. NEW Status: Bill died.
- NY 2007-2008 AB 5792 (Tracked) Summary (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_AB_005792_Current_1423.htm) State grants to school districts for replacement or sealing of wood which has been treated with chromated copper arsenate used in construction of playgrounds on school property; Status: Referred to Education Committee – no action
- MN 2007-2008 HB 509 (Tracked) Summary (http://www.statescape.com/ssBillText/MN20072008/MN_20072008_HB_000509_Current_2564.htm) posting a notice when play structure contains chromated copper arsenate. Status: referred to Environment & Natural Resources Committee (SB 1086) – no action
- NEW IL 2007-2008 HB 4152 (Tracked) Summary (http://www.statescape.com/ssBillText/IL20072008/IL_20072008_HB_004152_Current_2104.htm) indoor playground inspection where food is sold; Referred to House Rules Committee – no action

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 6/20/07 and sent to Assembly where it was referred to Code Committee.
- The Children Safety Zone Act was introduced in Oklahoma OK 2007 HB 2191 Summary and was referred to the Human Services Committee - no action.
- TN 2007-2008 SB 1248 (Tracked) (http://www.statescape.com/SSBillText/TN20072008/TN_20072008_SB_001248_Current_0639.pdf#xml=http://www.statescape.com/Billsearch) expands use of recycled, shredded tires in playgrounds; Status: No action.
- A number of bills (not listed) were introduced re playgrounds being a smoking free zone.

Product Safety

- NJ 2006-2007 SB 265 (Tracked) Summary 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. NEW Status: Signed into law as PL 2007, C124; effective 2/1/08. (Companion bill was AB 2554.)
- MN 2007-2008 HB 1622 (Tracked) lead-containing children's items prohibited; Status: passed House committee
- TN 2007-2008 SB 1567 (Tracked) (http://www.statescape.com/SSBillText/TN20072008/TN_20072008_SB_001567_Current_1535.pdf#xml=http://www.statescape.com/Billsearch) enact Children's Product Safety Act; Status: passed House committee (Companion bill is HB 1948, referred to Commerce Committee.)
- WI 2007-2008 SB 37 (Tracked) (http://www.statescape.com/SSBillText/WI20072008/WI_20072008_SB_000037_Current_8768.pdf#xml=http://www.statescape.com/Billsearch) regulates sales of children's toys and equipment; Status: Passed Senate committee; Referred to Joint Committee on Finance
- NEW MI 2007-2008 SB 174 (Tracked) Summary (http://www.statescape.com/ssBillText/MI20072008/MI_20072008_SB_000174_Current_9542.htm) prohibited manufacture of toys with lead content over federal limit. Status: To the Governor 12/18/07
- NEW MI 2007-2008 HB 4240 (Tracked) Summary (http://www.statescape.com/ssBillText/MI20072008/MI_20072008_HB_004240_Current_9194.htm); protection; prohibited products; manufacture, sale, or exchange of toys with lead . Status: Passed House

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IPEMA Regulatory Report *continued*

- NEW DC 2007-2008 B 116 (Tracked) Summary (http://www.statescape.com/ssBillText/DC20072008/DC_20072008_B_000116_Current_7044.pdf) regarding lead-based paint remediation (more on residential threat) introduced
- NEW IN 2007 SB 511 (Tracked) Summary prohibits manufacturing, remanufacturing, retrofitting, distributing, selling an unsafe children's product. Meant for smaller toys such as for a day care center, language could be construed as applying elsewhere. Status: died
- NEW MO 2008 HB 1361 (Tracked) Summary (http://www.statescape.com/ssBillText/MO2008/MO_2008_HB_001361_Current_9385.htm) prohibits manufacture, remanufacture, retrofitting, distributing, selling "unsafe" children's products as defined although retrofitting is OK if meeting federal standards. Status: Pre-filed House bill 2008 – not yet referred to committee
- NEW NY 2007-2008 SB 6636 (Tracked) Summary (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_SB_006636_Current_6227.htm) relates to hazardous toys and other articles, equipment for use by children; Status: Pre-filed for 2008 and referred to Consumer Protection Committee

Other Areas

- AR 2007 HB 1813 (Tracked) signed into law as Act 953, the law governs playground equipment purchases in city parks effective 7/1/07
- 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; Status: Referred to Ways & Means Committee – no action
- MN 2007-2008 HB 2355 (Tracked) Summary (http://www.statescape.com/ssBillText/MN20072008/MN_20072008_HB_002355_Current_8500.htm) (Companion bill is SB 1208) specifies health and safety use of school district monies; Status: Referred to Education Committee –no action
- RI 2007 SB 128 (Tracked) Summary provides state grants to schools and municipalities to help playgrounds be compliant with new state disabled access law; Status: Referred to Finance Committee - no action
- NEW NJ 2006-2007 AB 2554 (Tracked) Summary and NJ 2006-2007 AB 265 Summary prohibits sale or resale of recalled children's play equipment and toys; Status: AB 2554 killed; SB 265 passed as law effective 3/1/2008
- NEW NY 2007-2008 AB 9610 (Tracked) Summary (http://www.statescape.com/ssBillText/NY20072008/NY_20072008_AB_009610_Current_5339.htm) Prohibits the sale of toys and play equipment which are subject to a government or manufacturer recall text similar NJ 2006-2007 SB 265 (Tracked) Summary Status: pre-filed for 2008 – not yet referred to committee

Membership Renewals & License Agreements Coming Soon!

Keep an eye out for 2008 membership renewals and certification licensing agreements to arrive at your door. If any contact information has changed within the past year, please let admin@ipema.org know.

Renewals & Agreements are due March 31, 2008.



2008 IPEMA Board of Directors

The International Play Equipment Manufacturers Association (IPEMA) welcomes the 2008 Board of Directors. Tim Ahern of BCI-Burke Company, LLC of Fond du Lac, WI is IPEMA's newly elected President. Ahern displays dedication to the industry, organization and IPEMA board of directors.

Other IPEMA officers include: President-Elect, Lloyd Reese of Playpower LT Farmington Inc. (Farmington, MO); Secretary, Bill Clapp of Playland International, Inc. (Carrollton, GA); Treasurer, Curtis Cleveland of Playworld Systems (Lewisburg, PA); and Immediate Past President, Tom Norquist of GameTime (Fort Payne, AL). Also joining the board for 2008 are Director of Lower Dues, Keith Sacks of Rubberecycle LLC (Lakewood, NJ); Member-at-Large Director, Randy Watermill of Landscape Structures (Delano, MN); Surfacing Certification Committee Seat, Ted Illjes of Zeager Bros. Inc. (Middletown, PA); and Surfacing Representative, Richard Hawley of TotTurf by Robertson Industries, Inc. (Chandler, AZ).

The Board conducted their annual budget meeting on November 12, 2007 in Tampa, Florida.



News from NPCAI

The International Playground Contractors Association will be holding a Playground Construction School March 13-15, 2008 in Charlotte, North Carolina. This is the first time an industry-wide International school will be held in North Carolina. The school will cover a wide range of commercial playground installation techniques, tools, and issues, and will conclude with an installation of a structure on the final day.

Among the topics that will be covered:

- Industry Information
- Site Analysis
- Job Site Safety
- Reading Blueprints
- Working with Common Materials and Hardware
- Working with General Contractors
- Working with Manufacturers & Their Representatives
- Guidelines and Standards
- Installation Techniques
- Tools of the Trade
- Surfacing Installation and Requirements
- Finishing the Job
- Playground Construction as a Business
- State Requirements

It has always been the mission of the NPCAI to promote proper playground installation. This course, along with the qualified contractor program, is a significant step in achieving this goal. The Playground Construction School creates a standard of installation to help ensure that all commercial playgrounds are installed correctly and safely.

The Playground Construction School is not limited to playground contractors and installers. Attendees from municipal park departments have found the course most beneficial as they need to know what to look for when hiring playground contractors or inspecting newly installed play equipment and/or surfacing. Playground equipment representatives and surfacing sales representatives need to know about installation to better communicate with their customers. Knowing the procedures of playground installations is educational to landscape architects planners and designers as well.

To enroll, please contact the NPCAI office at 888-908-8519 or download an enrollment form at www.playground-contractors.org. This program is open to anyone interested in learning about the installation trade.

Manufacturers vs Component Suppliers: How to Prevent Liability

Kenneth Ross is Of Counsel to Bowman and Brooke LLP in Minneapolis where he practices in the areas of product safety and liability prevention and counsels manufacturers, product sellers and insurers on ways to identify, evaluate and minimize the risk of product liability and contractual liability. Mr. Ross can be contacted at kenrossesq@comcast.net or 952-933-1195. An earlier version of this article was published by the Defense Research Institute's Product Liability Committee.

Introduction

One of the more perplexing and potentially dangerous areas of product liability concerns the liability of the original equipment or finished product manufacturer ("OEM") versus the liability of component part and raw material suppliers. This is especially important for manufacturers of playground equipment as they purchase many components and accessories, some of which are manufactured by foreign companies who usually cannot be sued in the United States.

The plaintiff will always sue the OEM because the OEM's name is on the product. Sometimes the OEM will sue the component supplier if they can be sued in the court where the case is pending. If this happens, determining liability is a complex analysis of the actions and inactions of everyone in the chain of production and distribution.

Involving such suppliers in litigation can significantly increase the cost of the litigation and can result in damaging evidence being created since the defendants will tend to point fingers at each other. These disputes are very factually intensive and cannot easily be resolved early in the case. As a result, manufacturers of finished products and their suppliers need to consider ways in which they can minimize the chance of accidents before the product is sold and how, if accidents occur, they and others in the chain of production can work together and defend themselves.

Basic Law

The law generally says that if the component is defective and the defect in the component causes harm, then the component supplier is liable if they are a part in the case. However, the supplier can also be liable if the seller substantially participates in the integration of the component into the design of the product and the integration causes the product to be defective and the defect causes harm.

In both of these situations, it seems fair to hold the supplier responsible. However, many times the comparable responsibility of various suppliers, the OEM,

and possibly the distributor of the component or finished product, can make a fair apportionment very difficult.

Where the component is not defective and the supplier did not participate in the selection or integration of the component into the final product, the law generally would hold the supplier not liable. This is based on the premise that the OEM is the expert in the design and manufacture of the finished product and is a "sophisticated purchaser" as opposed to a supplier who may or may not know how its components or material are being used.

Is the Component Defective?

It is difficult enough with final products to determine whether they are defective. With components, it can be even harder. Components can be designed for many applications. And, there are components that have different levels of function.

Some components, such as switches, do not function unless integrated into other products. Other components, such as motors, can function on their own but still may be incorporated into another product. The law may treat these differently, especially when considering the knowledge of the various parties when selecting and installing the component.

Usually, the OEM selects the product from a catalog or after discussion with personnel from the component manufacturer or their distributor. If the OEM did not consult the component supplier and selected the wrong component for the application, the product is not itself defective and the component manufacturer should not be liable. However, the OEM can still try to blame the supplier who provided incorrect or unclear information in the catalog and that is the reason why they selected the wrong product.

The component can itself have manufacturing and design defects and defects in warnings and instructions. Liability of the component manufacturer under these theories would be based on the same law as that for OEMs.

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Manufacturers vs Component Suppliers *continued*

Raw materials can be defective if they are contaminated or have the wrong formulation. These are manufacturing defects. While raw materials cannot be defectively designed, the supplier can fail to warn. If the OEM or component supplier uses the wrong raw material, it may be because the raw material supplier did not warn against such use. In addition, the raw material supplier may have failed to warn about some hazard involving the use of the raw material or failed to instruct about how to use the raw material in the manufacture of the component or product. Or, maybe the OEM didn't ask and made certain assumptions or incorrect interpretations of sales literature or instructions.

On the other hand, the OEM or component supplier can fail to warn the user and, in that case, it may be their responsibility and not that of the raw material supplier. However, it may be the responsibility of the raw material supplier to warn or instruct the OEM or component supplier about any hazards that exist during foreseeable use of the component or final product made from the raw material.

Substantial Participation

The component supplier can be liable if they are substantially involved in the integration of their component into a final product, and the integration causes a defect and harm. Of course, the OEM could also be responsible.

Determining substantial participation is a very difficult factual and legal issue. In addition, it places the various parties in a quandary when the product is being designed and manufactured. Under the law, the component or raw material supplier is "discouraged" from substantially participating in the selection or integration of their product into a finished product. This is not a desired result but certainly an understandable one. Unfortunately, the lack of participation may create a problem in the final product and result in safety problems, incidents and lawsuits.

While the component supplier has an interest in having its products installed and used safely and correctly, it does not want to increase its potential liability by offering advice that may or may not be correct. Despite that, if there are any questions by the purchaser concerning selection, installation, use and maintenance of the

component, the supplier should provide assistance if they feel competent to do so.

There is some case law that says that merely designing a component to a manufacturer's specifications does not necessarily constitute substantial participation. Also, providing technical services or advice concerning the use of a component part does not, by itself, constitute substantial participation. However, if a jury believed that the supplier knew or should have known of a problem with the OEM's use of their component and didn't say anything, then they may want to try to keep them in the case based on negligent omission rather than substantial participation.

Again, the possible fact scenarios are plentiful and can become very complex as the number of possible culpable parties increases. As these parties try to blame each other, the plaintiff's attorney can sit back and have the defendants make his case.

Preventative Measures

From the supplier's side, I think you want to deal with OEMs who seem to be careful about the selection of components and knowledgeable about the uses to which they will be subjected. If the OEM asks questions, it is incumbent on the supplier to be as helpful as it can be to assist the OEM in selecting the correct component and installing it correctly. While this will fall over the line into "substantial participation," hopefully problems are minimized or prevented and the issue of who is liable never needs to be addressed.

The supplier also should try to deal with OEMs who know how to correctly install the component and OEMs who adequately warn and instruct the final product user or maintenance personnel on how to install, use, and maintain the final product and its components.

For OEMs, I think they should buy components from suppliers who are willing to be of assistance to the extent it is necessary. If the supplier, usually on the advice of counsel, takes the position that it gives no advice other than what is contained in the sales literature, and the OEM makes the final decision, then maybe the OEM wants to go to another supplier. Whether to change

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Manufacturers vs Component Suppliers *continued*

suppliers should be based, in part, on the OEM's comfort with making the final selection of the component.

In addition, the OEM wants to purchase from a supplier who manufactures the product correctly and in compliance with specifications and who supplies to the OEM all warnings and instructions necessary for the proper installation of the component and for the proper and safe use and maintenance of the component.

In the post-sale area, OEMs want to be sure that the suppliers will inform the OEM if there are any problems with the component as used by other OEMs. And the supplier wants to confirm that the OEM has a good post-sale monitoring system and will quickly inform the supplier if there is a problem that is potentially being caused by the component. Of course, the OEM would like to have the component supplier agree to pay for any recall caused by a defect in the component.

If some problems do occur, the parties will need to reconstruct what advice was given by each party and what was the basis of that advice. Unfortunately, many times memories fade and documentation of the sale or design process is unclear, especially many years after design when most problems arise.

The best way for the respective parties to deal with this issue is to have clear and documented communications on what is being supplied, who selected the part, and what was the basis of the selection. If the component part supplier suggested the part, there should be documentation on what information was used by the supplier to make the recommendation. Similarly, if the OEM makes the final decision, they should clearly document the basis for the decision. And, one or more parties need to keep this documentation long enough to use in the defense of litigation.

Each party must evaluate whether their actions and decisions are justified and how critical of a problem might arise if there has been a mistake. Selling the wrong shade of paint can be a big financial problem, but no safety problems will result. Selling the wrong plastic, engine, valve, switch, or chemical can, in many situations, create big problems.

It is difficult for the purchase order terms and conditions or sales documentation to deal with all potential issues in this area. At a minimum, the contracts could contain mutual indemnification provisions which provide that the responsible party will indemnify the non-responsible party to the extent they are responsible. That, at least, raises the possibility that, if culpability is determined, the responsible party will protect the blameless party in the event of a claim or litigation or some other problem such as a recall.

Unfortunately, culpability is usually in dispute and these contractual provisions, if they come into play, may not work until the litigation is almost over. However, at least there is a common understanding that fair apportionment of financial responsibility is the goal.

All of the preventive measures described above are seriously impacted if the component supplier is located in a foreign country. This makes it more difficult to get contractual or insurance protection, confirm that the component is being manufactured correctly, and ensure that documentation to help defend the OEM and the supplier is being created and kept. These potential problems need to be considered and anticipated when buying a component from a foreign supplier that could create a safety issue if it is defective.

Conclusion

It is important for all parties to be proactive and consider the consequences of bad decisions. Each of the parties should do what they can to prevent themselves and someone else from making bad decisions and they should not just rely on the law or an indemnification agreement to protect them. Such protection may not work and innocent product users may suffer. Working together to prevent safety problems in products will benefit all parties in the chain of production and distribution.

Questions about your Certification or how to use the Certification logo? Come across a company mis-using the IPEMA logo? Let us know!

Contact Lesley Richards at certification@ipema.org.

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