



Cases Involving Minors: There Is Nothing Minor About It

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No one ever wants to see one of their patrons get hurt at their business. That sentiment rings even truer when that patron is kid. But despite the hope that kids will be safe at your business, this unfortunately will never be true. This is particularly true in the Retail & Hospitality Industry. Every aspect of the industry serves to attract kids. Whether it is family entertainment center, hotel with pools and waterslides, pizza places, amusement parks, or almost any retail store, kids will be attracted to the location, and will find any manner of way to get hurt.

Since you can never eliminate injuries to any customer base, let alone kids, it is imperative to have a strategy to address how and where minors get hurt when adults typically do not, how to address a claim when they are made, and how to effectively litigate them if a suit is ever filed.

Where Will Kids Get Hurt?

In the Retail & Hospitality Industry, the most prevalent attraction for children will be the hotel pool. If hotels are marketing to the family traveler, then a pool is a must. But the existence of a pool increases the chances of personal injury claims, particularly related to children. A proper pool safety plan is a must, and it needs to address issues that are very kid specific. For instance, does the pool have a wading or “zero-depth” area where kids frequent? Does this area have attractions, like slides and swings? Is your hotel going to staff lifeguards? Are they required? Finally, what about signage, whether you have lifeguards or not. All of these issues need to be addressed and evaluated.

Another place for kids to get hurt in hotels is the exercise room. Most exercise rooms are restricted to guests 16 years of age or older, but do not have an attendant monitoring who is in the room. What if a parent brings a child into the room while they are exercising? Most kids will want to try the variety of attractive dangers, like the free weights, resistance bands, exercise cycles, and treadmills. But these items are not designed for children, and the results are almost predictable. To protect yourself against these types of potential claims, it may not be enough to restrict access to the exercise room via key entry. And what if your facility has moved to mobile access or smart device where everyone in the family has access? The exercise room is a sneaky location for potential injuries to the youngest of guests.

Kids will often find all kinds of ways that are less obvious to endanger themselves. Things that would not be considered a danger, or at least be considered an obvious danger to adults, become potential dangers for children. For example, if your cleaning crew leaves out some of their cleaning supplies, you can assume that an adult would ignore the potentially dangerous item on a cleaning cart. That assumption is misplaced with children. So when cleaning is active during the business day while kids are around, protecting the cleaning cart will be something to consider.

The list of other potential dangers that only impact kids at times seems never ending. You generally do not have need to concern yourself with the idea that an adult patron will get their fingers stuck in a door, or that the shelf edges are eye level for kids but not for adults. Hot food buffet are not a concern for adults, but they are for kids as they try to manipulate a hot waffle iron. And it can be argued that almost nothing is an obvious danger to a child, even with a big warning sign that a child may not be able to read or appreciate. And when something happens, it will

certainly be a “mystery” as to what happened, especially if the child was alone and needs to explain what occurred.

A Retail & Hospitality company needs to think about these things, and almost look at their environment from a child’s perspective, both visually and mentally. Does this look like something a kid might want to engage with; is it attractive to a 6 year old? Teaching your staff that they should look for safety issues for adults and kids is important when a large portion of your business is family driven.

How to Handle as a Claim?

Once a child gets hurt, addressing this in the claim status is critical. All Retail & Hospitality companies would prefer to resolve a claim than to litigate a lawsuit, and that sentiment is stronger for claims by minors. But you will likely be dealing with the child’s parent, who were not attentive enough to their child to keep them from getting hurt in the first place. Moreover, you will never talk to the actual injured party, which is unusual for resolving a claim. One thing to consider when a child gets injured is to maintain as much video surveillance as possible, not only of the claim but of the child claimant and family after the claim. If part of the claim that the injury “ruined” their time at the water park, amusement park, or vacation, then take a look at the video of this family after the incident. If the family is claiming that the incident at the hotel pool made the child terrified of water, does video show the child engaging in the pool the following day? Moreover, does the video show the parents or guardians not paying attention to what the child does, both before, during, and after the incident? This type of information can help control claim value.

And once you have resolved the claim on behalf of a minor, it is not as easy as executing a release and issuing a settlement check. Most states will require some level of court review of a settlement, normally through probate court. This type of review is required to ensure that the family is not selling the case short or is somehow being fooled into a lower level of settlement by a sophisticated Retail & Hospitality company and their lawyers. Typically, the judge in probate court will want to be informed of the nature of the injury, review the last medical records (hopefully the discharge notes), and often times request a medical explanation of what possible future medical issues, if any, exist. Some courts will also require that the minor claimant be brought to court so the judge can view for themselves how this child has recovered. Importantly, the court will want to see how the settlement will be broken down between attorney’s fees, medical liens, and what is going to the child.

This type of review becomes even more difficult if the claim was resolved with direct discussion with the child’s family without representation. To put the appropriate petitions before the court, counsel for the Retail & Hospitality company may end up filing the petition, and the court might require a guardian ad litem to report to the court. That is a decision that is up to the judge, and may end up extending the claim and the costs. Regardless of the court hoops, it is always better to resolve this as a claim.

What if a Suit Is Filed?

If a suit cannot be avoided, and the minor claimant brings a suit, litigating a suit where the injured party is not the plaintiff and the injured party starts with an overwhelming position of sympathy has unique challenges. Counsel defending against this case must realize from the beginning that optics of defending a suit involving an injured child are much different. All aspects of defending the case will be scrutinized differently. For example, if a deposition of a child proceeds, who else will be present? If the plaintiff is not the parent, are the parents allowed to attend? Are both parents allowed, even if only one is the plaintiff? And what if there are issues between the parents?

If a child claimant is of school age, you will also want to investigate the full picture of the child. Subpoenaing school records will tell you a bit more about the child than you might get from a deposition. It is also a little more challenging to obtain a full background on your claimant, but finding out what types of activities the claimant is involved in will also need to be part of the plan.

But by far the biggest issue in litigating this type of case is the wild card of how a vigorous defense against a child will be perceived. Many times mock juries and focus groups will provide a window into how an aggressive defense will be accepted. The mock juries can tell you whether they feel you are picking on a kid, or if you are blaming the parents too much.

In the end, dealing with claims and suits involving minors have many different layers of involvement than adult claims. Understanding the differences and working to address them up front will result in a better result down the road.