

BUILDING SAFER ATHLETIC FIELDS

Careless planning, construction, or maintenance of a playground is an invitation to an accident and lawsuit.

by Jim Leatzow

So many potential liabilities are created by athletic field design, construction and maintenance that you need to look at each separately to understand them all.

The first liability risks belong to every member and element of the design team. To avoid liability, designers must consider factors such as soil suitability for specialized turf, irrigation, drainage, equipment specification, lighting, plant material in common areas, fencing, signage, training surfaces, traffic and pedestrian walkways.

The second liability exposure

arises during the construction, when the designer's plans are implemented.

Thirdly, the landowner has the final responsibility for an athletic field and the activities exercised on it.

In today's litigious society, the suing party (plaintiff) will attempt to enjoin as many of these original parties involved as possible in order to create a "deeper pocket."

The design stage

The most basic design must begin with an examination of the specific soil. It should be tested by a laboratory to determine if it will support suffi-

cient cushioning material (turf) to keep the field safe.

Drainage is also a very important aspect of the design. If you end up with standing water on a field, plant material cannot survive.

Depending on the field's use, it may be critical to include a crown to enhance water run-off.

Also, specify hardy turf that can withstand the rigors of a sports field environment.

When a sport field has a "tot lot" adjacent to it, it is critical to use the specified equipment, which has been in use for quite some time and proven itself to be safe for children's play.

Cushioning material

All areas, be they tot lots or sport fields, require cushioning material. Specify future maintenance, including specific manufacturer's equipment maintenance instructions.

Irrigation and lighting are also potential liability problems. For example, if the irrigation system is improperly designed, it might not provide sufficient water flow and result in bare spots. Or perhaps the sprinkler heads clog easily or stay in an upright position. Compacted soil around sprinkler heads requires the property owner to keep refilling the soil around it. The designer should include this



THE DEEP POCKET THEORY IN PRACTICE

A few years ago, a young mother brought her 18-month-old son to a neighborhood park. She encouraged the child to climb up a slide, even though it was typically used by older children. Unfortunately, the small child fell from the top of the ladder, hit his head on hard, compacted ground and remains forever a slow learner.

The mother ultimately sued the park district (which owned the property), the contractor (who installed the slide a decade earlier) and the manufacturer of the slide.

The litigation was long and extremely costly before the jury ruled in favor of the plaintiff. The judgement? The three parties were ordered to pay approximately \$3 million apiece.

Before you get angry about this case, or perhaps even dismiss it as a fluke, you should realize that similar cases are frequently replayed in our court system.

The problems that cause these kinds of claims to happen do not have simple, one-line answers. But

it is not sufficient to throw up our hands in defeat and say, "We live in a litigious society, so what can we do?"

In the above case, there was a maintenance issue pertaining specifically to a lack of cushioning material under the playground equipment. If more thorough maintenance steps had been taken, it's likely that the award would have been substantially reduced, if not nixed altogether.

Still, we're victims of the "deep pocket" theory, which says, in effect, that an injured party has the right to recovery regardless of who is at fault. This is a reality; the only way it's going to change is through a grassroots effort to achieve tort reform.

The public needs to understand that it is not the faceless, "rich" insurance companies that are paying out these large awards. The monies paid in cases like this translate into higher premiums for every kind of insurance available.

—Jim Leatzow □

issue in their specifications. Also, make sure the lighting is sufficient and provides adequate security.

Prime firm

The "prime" design firm is the one that lines up subcontractors for specific work. The prime firm can and will be held responsible for the deficiencies, real or merely perceived, of every subcontractor working under it.

If the prime design firm hires subcontractors without verifying that they carry their own professional liability insurance, then the prime can expect to be called upon to defend any litigation that comes about as a result of their subcontractors' work.

When construction begins, the insurance exposure becomes one of a general liability nature. Exposure does not begin until the public begins using the design in its final form.

Ample security

It is important to make sure that adequate protection is implemented to keep the public from gaining access to the construction site. Signage, as well as barriers, may be needed to prevent kids from gaining access to equipment or materials. On a large project, security may be needed to protect the facility from uninvited guests.

It is especially important to make certain that adequate fencing and appropriate signage are used to keep unwanted guests out of areas that are inherently dangerous and to provide adequate fencing for spectators to keep them from harm. Fencing takes on a critical dimension when athletic fields are placed close to or adjacent to roads and other areas of vehicular traffic.

Exactly who is responsible for security ought to be addressed in the contract and work agreements between the appropriate parties.

Maintenance responsibilities

Once the athletic field has been constructed, accepted and turned over to the landowner, a new set of exposure to risk begins.

The landowner has a legal duty of care to provide five essentials to the public. The property owner must:

1. Keep the premises in repair;
 2. Inspect the premises to discover hidden or obvious hazards;
 3. Remove those hazards or warn the public about their existence;
 4. The owner must anticipate typical uses and activities by the public and take reasonable precautions to protect the public from foreseeable dangers;
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Compacted, bare ground and the injuries resulting from it primarily affect the landowner, who has final responsibility for a field after it's constructed.

5. Conduct operations on the premises with reasonable care for the safety of the public using the facility. Most claims concerning athletic fields involve a lot of finger-pointing, usually because there are so many parties involved. The plaintiff (injured party), construction firm and property owner may all attempt to show that faulty de-

sign in some way contributed to an injury. The design team may attempt to show that the facility was not constructed as originally designed.

The property owner may be attacked for failing to provide adequate maintenance, cushioning material, and routine inspections of equipment and facilities.

The most important step in reducing liability exposure begins when the contracts and work agreements are signed by all parties.

The documents should be extremely specific about who is responsible for what. Furthermore, the parties should include expected or anticipated maintenance schedules (it is not unreasonable for the design team specialists to inform the property owner of future maintenance needs).

The designers should make periodic observations of the facility during construction. This important practice can make a tremendous difference in negating potential lawsuits after a project is built.

When choosing plant material, keep the users of the field in mind. It would not make sense to use sharp, thorned plants if even the most remote chance existed of a youngster running into it and getting hurt.

Liability poses major challenge

Whether justified or not, many of today's liability lawsuits are directed at the maintenance and care of the facilities, and ultimately at the individuals responsible for that maintenance.

I recently met with two different attorneys who asked me to serve as an expert witness on two separate cases. One attorney is representing a private school where a soccer player supposedly stepped into a depression during a game and severely damaged a knee. The second attorney represents a private corporation with recreational facilities. An employee, who was playing in an organized softball game, claims to have broken an ankle while running around second base after tripping in a hole.

Eyeing a settlement

Both of these episodes occurred in 1985. One will go to trial in 1990, the other in 1991. The plaintiffs' goal is to prove that the facilities were poor and that the maintenance staffs were negligent in performing their duties.

We all know that it takes money to maintain a good turf. Administrators who withhold needed dollars from landscaping need to understand that the money paid out for just one lawsuit that goes against your facility could purchase an abundant supply of maintenance supplies for many years.

Possibly 90 percent of athletic field problems are soil-related. A professional who has knowledge and expertise in the field of soil science is invaluable in the planning and construction of athletic facilities.

Knowledge of soil modification and management, drainage and irrigation are essential to the success of an athletic field. Most severe injuries occur on hard, compacted surfaces with a sparse turf cover. A well-maintained natural grass turf with correct soil composition pro-

vides the athlete forgiveness.

A useful tool

The Clegg Impact Testing Apparatus is a tool that is assisting researchers in assessing the hardness of athletic field surfaces. It's proving to be extremely valuable by calling attention to potential problems.

The lower its reading, the softer the surface. An athletic field that is properly watered, fertilized, aerified, mowed and with a firm but resilient surface may have a reading between 30 and 50. Good synthetic turf surfaces may have readings averaging between 80 and 90 or more.

When used by a competent technician, this tool has the capability to convince administrators to at least consider correcting a situation before it is too late.

Establishing standards

A recent inspection of some athletic fields in the Los Angeles area revealed some extremely high readings, especially where no turf cover was present.

Surfaces we expected to be hard, such as the top of sprinkler heads and the running track surrounding a football field, had readings of 270 or higher. However, we were sorry to find compacted, bare areas in the center of two local football fields with readings between 160 and 180.

If an injury occurred on a field with high readings like the ones mentioned above, a subsequent lawsuit could lead to a large settlement for the plaintiff.

Negligence is much more difficult to prove if we progress toward improving our facilities.

—Kent Kurtz □

Dr. Kurtz has been a professor in the Ornamental Horticulture Department at California State Polytechnic University and is an editorial advisor to *LANDSCAPE MANAGEMENT*.

Deep pockets?

The willingness of the public to perceive us as "deep pockets" and grant injured parties huge awards is one of several issues that plague the insurance industry. These issues will remain until the public understands that we all lose when outrageous monetary awards are granted.

You can and should protect yourself, especially on projects that ultimately involve children at play. The work agreements, sufficient observation during construction, competent participants in the project and adequate insurance should provide protection to you and the public.

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