May An Amusement, Golf Course or Recreational Facility be Held Negligent When Customers Are Harmed For Injuries Occurring Upon Such Facility?”

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Negligence is the failure to use ordinary care. In order for a person to recover for a negligence claim, they must show:

- the defendant owes a duty to the victim;
- the defendant breached that duty;
- the breach was the cause of the injury to the victim; and
- there must be an injury.

Whether a customer can sue a facility for negligence is contingent upon whether that facility owed the customer a duty of care. A duty of care is a legally enforceable obligation to conform to a particular standard of conduct. Whether a facility has a duty to customers depends on several factors. These factors include:

- the relationship of the parties;
- the social utility of the actor’s conduct;
- the nature of the risk imposed;
- the forseeability of the harm incurred;
- the consequences of imposing a duty upon the actor; and
- the public interest in the proposed solution.

The court will find that there is a duty when the conduct of the facility creates an unreasonable risk of harm to others. However, this risk of harm must be foreseeable.

Generally, amusement and recreation facilities do not have a duty to customers when the customers voluntarily expose themselves to a risk inherent in the activity in question. Therefore, if there is not a duty to customers, customers will not be able to bring a claim for negligence. However, this only applies to risk inherent to the activity in question. For example, colliding with another skier at the foot of the mountain is a risk that is inherent to downhill skiing. Since this is not an unreasonable risk and is inherent to the activity, there is no duty of the ski resort to the skiers. Colliding with another skier is a foreseeable risk to which a customer exposes himself when he decides to downhill ski. Risks that are inherent to the activity are risks that are common, frequent, and expected.

However, customers can also experience injuries that are not inherent to the activity. For example, although being struck by a baseball while in the stands at a baseball game is a risk inherent to attendance at a baseball game, being struck by a baseball while walking on the inner concourse is not a risk inherent to attending a baseball game. Amusement facilities may have a duty in regards to these types of injuries, when the conduct of the facility foreseeably creates an unreasonable risk of harm not inherent in the activity to others.

Therefore, facilities may not be responsible for some injuries to which customers voluntarily expose themselves. However, facilities must exercise ordinary care towards other risks that may not be inherent in the activity, but are foreseeable and may cause injury.

For additional information contact a member of our Hospitality Practice Group.