

January 2007

Fixed Site Amusement Rides: Who Regulates Safety?

Ronald J. Cereola

James Madison University, Harrisonburg, VA

Reginald Foucar-Szocki

James Madison University, Harrisonburg, VA

Follow this and additional works at: <https://digitalcommons.fiu.edu/hospitalityreview>



Part of the [Hospitality Administration and Management Commons](#)

Recommended Citation

Cereola, Ronald J. and Foucar-Szocki, Reginald (2007) "Fixed Site Amusement Rides: Who Regulates Safety?," *Hospitality Review*: Vol. 25 : Iss. 2 , Article 4.

Available at: <https://digitalcommons.fiu.edu/hospitalityreview/vol25/iss2/4>

This work is brought to you for free and open access by FIU Digital Commons. It has been accepted for inclusion in Hospitality Review by an authorized administrator of FIU Digital Commons. For more information, please contact dcc@fiu.edu.

Fixed Site Amusement Rides: Who Regulates Safety?

Abstract

There is currently no national regulation of fixed site (ex. roller coaster) amusement ride safety. The current regulatory system is highly fragmented and consists of many disparate efforts by State and local agencies, judicial intervention in the form of tort litigation and industry self regulatory compliance. The Federal government has no authority over fixed site ride safety. The authors review the state of fixed site ride regulation and the merits of both centralized and de-centralized regulation, including a proposed Federal statute conferring jurisdiction of the matter upon the Consumer Products Safety Commission. They conclude with proposals for enhancing the management of fixed site ride safety.

Fixed Site Amusement Rides: Who Regulates Safety?

By Ronald J. Cereola and Reginald Foucar-Szocki

There is currently no national regulation of fixed site (ex. roller coaster) amusement ride safety. The current regulatory system is highly fragmented and consists of many disparate efforts by State and local agencies, judicial intervention in the form of tort litigation and industry self regulatory compliance. The Federal government has no authority over fixed site ride safety. The authors review the state of fixed site ride regulation and the merits of both centralized and de-centralized regulation, including a proposed Federal statute conferring jurisdiction of the matter upon the Consumer Products Safety Commission. They conclude with proposals for enhancing the management of fixed site ride safety.

Introduction

The purpose of this article is to survey the regulatory environment for fixed site amusement rides. It begins with the ad hoc regulation that has developed through case law and proceeds to a review of the two predominant approaches for measuring the duty of care owed to patrons of amusement park rides. The article then examines State regulatory efforts aimed at operators of fixed amusement rides as well as legislation generally referred to as either “Rider Safety” or “Rider Responsibility” laws that target responsible rider-ship activities by consumers. Next, the article looks at proposed legislation that would entail Federal regulation, by empowering the Consumer Products Safety Commission (CPSC) with the jurisdiction to regulate fixed amusement rides. The article also reviews various modes or models for regulation for fixed site rides that may be suitable at the Federal or State level, including a proposed model Uniform State Act. The discussion concludes with the implications for hospitality educators and the managers of fixed site amusement rides. The article does not address the issue of proximate causation: i.e. whether excessive G-forces and other physical extremes associated with modern amusement rides in and of themselves, can to a reasonable degree of medical certainty, cause brain injury, cardiac failure or other traumatic injuries.

Recent Incidents

- * In April of 2006 a 49-year-old man suffered a stroke linked to high blood pressure after riding the attraction Mission: Space at Epcot Center in Lake Buena Vista, Florida
- * On June 29, 2006, a 12-year-old boy was pronounced dead after he rode a roller coaster at Disney-MGM Studios in Orlando, Florida. Disney’s Web site boasts that the roller coaster zooms from 0 to 60 mph with the force of a Super-sonic F-14, taking high-speed loops and turns. A subsequent autopsy revealed the boy may have had a congenital heart abnormality.
- * On July 25, 2006, a 52-year-old man died less than two hours after riding the Gwazi roller coaster at the Busch Gardens theme park in Tampa Bay, Florida. He complained about feeling sick after the ride, and later lost consciousness. He was taken to a hospital and within two hours was pronounced dead.
- * On July 29, 2006, a 45-year-old woman fell out of the Twist 'n' Shout roller coaster at the Magic Springs amusement park in Hot Springs, Arkansas. Investigators believe that the ride's centrifugal force pushed her out of her car as it rounded a curve. She was hospitalized in stable condition. Inspectors found no mechanical problems with the ride.

The foregoing illustrations are but a few of the many incidents reported each year in the general news media involving the death or injury to patrons of theme and amusement park rides. According to a Consumer Products Safety Commission (CPSC) Report in September 2005, there were 67 documented fatalities for the years 2003 and 2004: 46 from fixed-site rides, 13 from mobile rides, and 8 from unknown-site rides. Data for 2005 was not available at the time of the report. The CPSC defines fixed – site rides as those permanently affixed to a site, such as are found in amusement parks as opposed to mobile rides, which are moved from site to site and typified by rides found at fairs and carnivals. It should be noted that the CPSC has jurisdiction over mobile rides but not over fixed site rides. The so called “Roller Coaster Loophole” of the Consumer Products Safety Commission Act of 1981 exempted fixed site rides from CPSC jurisdiction. Among all the products exempted from CPSC regulation, fixed site amusement rides were the sole product exemption not regulated by any other Federal agency. Regulatory jurisdiction was then and still is specifically left to the individual states. According to the CPSC July 2006 Directory of Amusement Park Safety Officials, 39 States utilize state, local and private inspectors, 3 states rely solely on private inspections and 9 states have either no regulatory scheme or no required inspections.

There is currently no national reporting requirement or repository for collecting ride fatality or injury information. The CPSC statistics are derived indirectly since it has no direct access to amusement

park fixed ride fatality and injury data. Reports to the CPSC of fixed ride incidents are not required nor is the CPSC permitted to investigate such incidents. It must compile that information through the National Electronic Injury Surveillance System (NEISS), which gathers information from a statistical sampling of hospital emergency rooms and then estimates national numbers. Additionally, according to Safer Parks, a consumer organization advocating Federal regulation of fixed site amusement rides, the CPSC has decided to no longer publish reports on amusement park deaths and fatalities in the United States.

Regulating Safety via the Judicial System

The role of the judiciary in the regulation of fixed site amusement rides is expressed through the application of tort law. A private citizen seeking to recover damages for an injury while interacting with a fixed site ride generally must show that the ride operator was negligent in the operation or maintenance of the ride. As with all negligence actions, in order for a plaintiff to prevail he or she must prove four elements:

1. The defendant owed plaintiff a legal duty of care
2. The defendant breached the duty of care
3. The injury did occur to the plaintiff
4. The defendant's breach was the proximate cause of the plaintiff's injury

The question of whether or not a duty of care is owed may be resolved by asking whether the plaintiff is someone whom the defendant could have reasonably foreseen would be injured by said defendant's actions. Whether or not the defendant's actions did actually breach the duty owed to the plaintiff is determined by examining the care the defendant undertook in performing the activities in question. The crux of the issue thus becomes the degree of care exercised by the defendant. While the law seems to be fairly well settled that amusement parks owe a duty of care to patrons, State courts have taken differing approaches as the degree or level of care required to be exercised by ride operators of amusement park rides. The two prevailing approaches regarding the degree of care or duty owed patrons may be broadly categorized as follows:

1. A common law negligence standard of liability otherwise known as the reasonably prudent person standard of care; and
2. A Common carrier liability standard imposing a heightened degree of care, either by statutorily imposing common carrier status upon ride operators who meet a statutory definition, or by imposing common carrier status as a result of case law; or a "like common carrier" heightened standard of care, which does not find the ride operator to actually be a common carrier according to state law.

Ordinary Negligence vs. Common Carrier Liability: What's the Difference?

Ordinary Negligence Liability

Using the common law ordinary negligence standard, the defendant is required to exercise the degree of care of a reasonable person of ordinary prudence under similar circumstances. The "under similar circumstances requirement" is significant as it requires an "apples to apples" comparison, rather than an "apples to oranges" review of the defendant's conduct. In the case of amusement ride operators, the 'reasonable person of ordinary prudence' would be industry peers. Applying a peer standard might require different levels of care, depending on the ride in question. As noted by the court, in *US Fidelity & Guaranty Co v. Brian*, "Indeed the distinction between common carrier and those who are not may be illusory since the special duty of care may be nothing more than the recognition of the special circumstances surrounding the operation of a carrier's facilities and the greater the danger the greater the responsibility required of the reasonable man of ordinary prudence". (Emphasis added)

When examining the defendant's conduct, the status of the plaintiff may impact the nature of the duties owed by the defendant, for instance, when the plaintiff is an invitee (such as a patron at a theme park), reasonable care requires inspection for and elimination of known or reasonably discoverable dangerous conditions as well as providing warnings to the invitee of actual and potential hazards. This standard of care may be contrasted with the duty of care owed a trespasser, (a person on the premises without the express or implied permission of the proprietor), which is generally to not willfully or randomly injure that trespasser. Also off importance to ride operators when considering the degree of care owed is the age of the patron. Children usually avail themselves of the same ride facilities as adults. A

plaintiff's young age is a factor that may heighten the degree of care required of the defendant. Adults can be expected to employ discretion and care that cannot reasonably be expected of a child, and as a result, a proprietor is required to exercise a relatively higher degree of care for the safety of young children than for adults. Another factor that impacts the "breach of duty" requirement is the existence of a statute designed to protect the safety of the public while at the same time making the plaintiff a member of a protected class. Under the negligence per se doctrine, a violation of the statute is treated as proof of the breach of the duty of care owed to such a plaintiff. However the plaintiff must still establish that the violation of the statute was the proximate cause of the injury.

Common Carrier Liability

A common carrier is generally defined as one who offers to the public at large the carriage of goods or persons over a fixed or designated route for reward or compensation. Common carriers owe their patrons a greater duty of care than that proscribed by general negligence principles. Common carriers share that special duty of care with other enterprisers such as innkeepers. The applicable rule of care is derived from the English common law and founded upon principles of bailment. Under principles of bailment, the carrier is absolutely responsible for property voluntarily accepted for carriage. This rule was extended to the carriage of persons in American law in the early 18th century. The American rule however, was modified so as not to require the carrier to "warrant the safety of passengers at all events", but still does require the carrier to act "with utmost prudence and caution". Common carriers are not insurers of passenger safety, but rather are bound to use extra ordinary diligence regarding passenger safety. In some States (see Table B), the operator of a fixed site ride, such as a roller coaster, are considered to be common carriers of persons over a fixed or designated routes for reward or compensation, thus subject to a heightened duty of care with respect to the safety of the ride patrons.

The Difference: Ordinary Negligence Standard or Common Carrier Standard of Care.

While the common law negligence rule requires the exercise of ordinary care or that care which would be exercised by a reasonable person under similar circumstances; the duty owed by a common carrier is comparable to that which is owed or expected of an expert. The expert, in having superior knowledge, skills and the ability to appreciate risks not readily apparent to an ordinary person, is thereby required to exercise the utmost prudence and caution in protecting from harm the subject of carriage, whether that subject is property or a person. The heightened standards are justified by the reliance of the patron upon the surrender to the exclusive control of the "expert," as when one boards an airplane, train, bus, or in some jurisdictions even an amusement park ride. As pointed out earlier, the difference between the two standards may be illusory. The special duty of care imposed upon a common carrier may be nothing more than the recognition of the special circumstances surrounding the operation of a carrier's facilities. Therefore, the greater the danger, the greater the responsibility required of the reasonable man of ordinary prudence which is the measuring stick of common law ordinary negligence standard. If so, then there should be no difference in the standard of care, in jurisdictions applying common carrier liability versus those that utilize an ordinary negligence standard. However, from a practical perspective, in a common carrier jurisdiction, a charge by the Court to the jury, directing a heightened standard of care, may very well sway the jury in favor of the plaintiff whenever the evidence is susceptible to a favorable interpretation for either side.

Tables A & B are representative of jurisdictions that follow either the ordinary negligence rule; or the common carrier rule regarding the standard of care required of fixed site amusement ride operators. They are not an exhaustive listing of jurisdictions but a representative sample that presents the prevailing rationale for choice of law.

Table A: States with Common Law Negligence Liability

Florida: *Sergermeister v. Recreation Corporation of America, Inc.* 314 So.2nd 626 (1975)

The court declined to impose common carrier liability distinguishing between those who place themselves in the hands of carriers voluntarily, such as for entertainment purposes, versus those who must use ordinary transportation and are practically compelled to do so for other business or personal purposes.

Georgia: *Harlan v. Six Flags* 250 Ga 352; 297 S.E. 2nd 468 (1982)

A ride is not a public conveyance. Passengers intend to be conveyed thrillingly; seek sensation of speed and movement for the sake of entertainment; this is a dissimilar expectation than persons using buses or elevators and therefore common carrier liability is not applicable.

- Iowa: *Wright v. Midwest Old Settlers and Threshers Association* 556 N.W. 2d 808 (1996)
The distinctive characteristic of a common carrier is that it holds itself out as ready to engage in transportation of goods or persons for hire, as public employment, and not as a casual occupation. Note the court indicated that the Association was only casually involved in the transporting of persons via its ride; however it further went on to say that providing transportation for amusement and comfort were considerations in NOT designating the Association as a common carrier, declining to impose the heightened standard of care.
- Louisiana: *Waguespack v. Playland Corp.* 195 So. 368 (1940)
A proprietor of a place of amusement is not an insurer of the safety of his patrons but owes only what under the circumstances is ordinary or reasonable care; nor is the undertaking so similar to that of a common carrier as to call for the application of the same rule of responsibility.
- Maryland: *Hawk v. Wil-Mar, Inc* 210 Md. 364; 123 A.2d 328 (1956)
A proprietor of a place of public amusement is under an obligation to use ordinary care and diligence ... discharges his obligation if he maintains his facilities in a reasonably safe condition.
- Oregon: *Eliason v. United Amusement Company* 264 Ore.114; 504 P.2d 94 (1972)
An Oregon statute specifically excludes amusement rides operators from common carrier status ORS 460.310 (1) & (2)
- Utah: *Lamb v. B&B Amusements Corp* 869 P. 926 (1993)
An amusement park operator of a roller coaster was not a common carrier because patrons expected entertainment and did not have the expectation of being transported safely and securely
- Virginia: *Bregel v. Busch Entertainment Corp* 248 Va. 175; 444 S.E.2d 718 (1994)
A common carrier is defined as one whom by virtue of his calling and as a regular business undertakes for hire to transport persons ... from place to place. Busch Entertainment is not a common carrier because transportation is not its regular business as an amusement park ride is for entertainment purposes.

TABLE B: States with Common Carrier or “Like” Common Carrier Liability

- California: *Gomez v. The Walt Disney Company* 35 Cal4th 1125 (2005)
Is an extensive review by both the majority and dissent of the case law around the country on the issue of ride operators' liability. The Court in determining whether Disney's operation of the Indiana Jones attraction created common carrier status was interpreting California's Civil Code Section 2100 ("Everyone who offers to the public to carry persons, property... is a common carrier.") & 2101 ("A carrier of persons for reward is bound to provide vehicles safe and fit for the purpose to which they are put, and is not excused for default in this respect by any degree of care".) The language of the statute is particularly broad and the court could find no exceptions or limitations in the legislative history or other California law.
- Oklahoma: *Sand Springs Park v. Schrader* 82 Okla. 244; 198 P. 983 (1921)
The operator of a scenic railway is bound to use the highest degree of care and caution for the safety of his patrons, and do all that human care and foresight can reasonably do. We are not seeking to draw an analogy with common carriers for hire ... fact that a passenger seeking pleasure would not make his any status different from that of riding a passenger train on a pleasure trip.
- Tennessee: *Lyons v. Wagers* 55 Tenn. App. 667; 404 S.W. 2d 270 (1966)
Operator of an amusement ride owes the same degree of care owed by a common carrier to its passengers, which is the "highest degree of care – in the design, construction, maintenance, inspection and repair of vehicles".
- Minnesota: *Bibeau v. Fred Pearce Corporation* 173 Minn. 331; 217 N.W. 374 (1928)
The rule is quite settled the proprietor of a roller coaster must exercise the highest degree of care. Such is the rule of common carriers.
- Colorado: *Lewis v. Bucksin Joe's Inc* 156 Colo.46; 396 P.2d 933 (1964)
It is not important whether serving as a carrier or for amusement. The important factors are the plaintiffs surrendered themselves to the care and custody of the defendant; given up freedom of movement and there was nothing they could do to cause or prevent the accident. Defendants had exclusive possession and control and they should be held to the highest degree of care.
- Texas: *Elmer v. Speed Boat leasing, Inc and Paradise Gulf cruises, Inc* 89 S.W. 3d 633; (2002). (Texas)
Colorado standard of *Lewis v Bucksin Joe's Inc* (above)
- Illinois: *O'Callaghan v. Dellwood Park Co.* 242 Ill. 336; 89 N.E. 1005 (1909)
- Alabama: *Best Par & Amusement Co. v. Rollins* 192 Ala 534; 68 So. 417 (1915)
- North Carolina: *Beavers v. Fed. Ins. Co.* 113 NCX App. 254, 437 S.E. 2d 881 (1984)

Connecticut: Firszt v. Capitol Park realty Co., 98 Conn. 627, 120 A. 300 (1923)
Massachusetts: Brennan v. Ocean View Amusement Co. 289 Mass 587, 194 N.E. 911 (1935)

The States that utilize the ordinary negligence standard of care focus on the purpose of the passenger's use of the vehicle, distinguishing whether the purpose is for true transport or for entertainment, amusement or pleasure. Since an amusement park ride does not serve the traditional common carrier purpose of transportation from point to point, these courts have refused to impose the traditional common carrier liability standard.

The States that imposed common carrier or "like" liability disregarded the passenger's purpose for travel and focus on the similarities between a ride carrier and a traditional common carrier with respect to control, technical expertise and the passenger's reliance thereon. Both the ride operator and a traditional common carrier have exclusive control of the vehicle and the passenger, in both instances, passenger relies on their expertise, skill and knowledge to ensure the passenger's safety. In these jurisdictions, the purpose of the transport becomes incidental. The Oklahoma Court in the Sands Spring Park case makes an interesting observation in rejecting the purpose of the rider as the criterion for determining the standard of care, pointing out "the fact that a passenger is seeking pleasure would not make his status any different from that of (one) riding a passenger train on a pleasure trip".

Regulation via the judiciary in and of itself is not an effective regulatory approach with respect to safety as it is an "after the fact" examination with an emphasis on enforcement via monetary damages rather than prevention. Judicial regulation does not address the inspection or training functions that enhance safety. In addition, the standards for care articulated by the courts are of a general nature and offer little, if any, guidance with respect to measures which might have been implemented to enhance safety. Furthermore, court opinions generally do not contain technical specifications, recommendations or assistance regarding safety issues and are not widely disseminated among industry operators.

State Regulatory Efforts

Regardless of whether a state uses the common law negligence rule or a heightened common carrier standard, state laws and regulations constitute the floor or minimum standard of conduct for determining the duty of care owed patrons. It is well settled tort law that compliance with governmental laws and regulations does not automatically equate to the level of care required of a "reasonably prudent person" that would satisfy the duty owed amusement park patrons. However, failure to comply with any such laws and regulations would most certainly be strong evidence of negligence.

The present system for regulation of fixed site amusement rides consists of decentralized regulation by the 50 States under the auspices of various State agencies. The regulation ranges from intense to little or no regulation in some jurisdictions. The regulatory authority is supplemented by "ad hoc" regulation in the form of duties imposed upon operators to operate rides in a reasonably safe manner and "enforced" through individual action in tort litigation. According to data maintained by SaferParks.org, as of September 1, 2006, forty-three states have regulations covering fixed site rides. Nevada, Alabama, Arizona, Mississippi, Montana, Utah and Wyoming do not have such regulations. Only 34 states require the reporting of severe injuries. Investigation by government authorities is mandated in just 27 states. Governmental shutdown authority exists in 34 states. The database contains a wide array of information on the extent and nature of regulation by the States. More detailed information regarding any particular State's regulatory scheme can be discovered by consulting The Council for Amusement and Recreation Safety (CARES) website. CARES is a voluntary organization of government officials who are responsible for the enforcement of amusement ride regulations within their jurisdictions. Currently 24 States have officials as CARES members. The CARES web site provides state- by- state information regarding amusement regulation including the responsible agency, contact information, devices regulated, inspection requirements, accident reporting, and investigation procedures and requirements, as well as the applicability of Rider Responsibility Rules. The information is accessible from a drop down menu. With just a little effort and time spent examining several states, one can appreciate the variances in the type and degree of regulation that exists from state to state. It is the diverse and fragmented nature of State regulation, and sometimes the lack thereof, that proponents of Federal regulation cite in favor of a Federal statute that would grant jurisdiction over fixed site amusement rides to the Consumer Products Safety Commission.

Many States mandate that amusement park rides comply with an industry accepted standard for safety. The Safer Parks database indicates that 23 states require compliance with the American Society for

Testing of Materials (ASTM) safety standards for amusement park rides. “ASTM is a not-for-profit organization that provides a forum for the development and publication of voluntary consensus standards for materials, products, systems, and services. ASTM’s members, representing producers, users, consumers, government (8 states have ASTM membership), and academia from over 100 countries, develop technical documents that are a basis for manufacturing, management, procurement, codes, and regulations”. The ASTM F-24 industry standards committee is responsible for developing minimum standards of safety for design, manufacturing, operation, maintenance, and inspection of amusement rides and devices. States that mandate ASTM Committee F24 standards do so, either in whole or in part, within their respective regulatory schemes. The ASTM standards may also become mandatory thru various contractual arrangements when government agencies are parties. Compliance with ASTM standards by the amusement industry is otherwise at this point voluntary.

Eighteen States have Rider Responsibility Statutes. Rider Responsibility laws are directed at consumer behavior when waiting for, getting on, use of, and exiting amusement rides. The ASTM F-24 industry standards committee has developed several paragraphs presenting model Rider Responsibility language (from ASTM F770, section 5). ASTM proposes the following language be included in Rider Responsibility legislation:

- * There are inherent risks in the participation in or on any amusement ride, device, or attraction. Patrons of an amusement ride, device, or attraction, by participation, accept the risks inherent in such participation of which the ordinary prudent person is or should be aware. Patrons have a duty to exercise good judgment and act in a responsible manner while using the amusement ride, device, or attraction and to obey all oral or written warnings, or both, prior to or during participation, or both.
- * Patrons have a duty to not participate in or on any amusement ride, device, or attraction when under the influence of drugs or alcohol.
- * Patrons have a duty to properly use all ride or device safety equipment provided

While this language forms the basis of many State Rider Responsibility laws, some states, such as South Carolina and Nevada, go well beyond the model language and provide for criminal penalties and fines for violations by both operators and consumers alike. Proponents of Federal regulation point to state statutes, such as South Carolina’s, as evidence that the industry has unduly influenced state regulators because the laws disproportionately allocate responsibility for safety to the rider.

In response to the assertions that a decentralized State regulatory scheme is too diverse in the nature, intensity and degree of enforcement of safety regulations, there have been efforts toward creating a Uniform Model Act governing the regulation of fixed site rides. Such an act with respect to safety regulation could be adopted by each state and would create greater consistency among jurisdictions with respect to safety requirements, inspection, investigation and reporting of accidents, and enforcement standards. While a Uniform Model Act approach would be a step forward in creating consistency from jurisdiction to jurisdiction, there would be no requirement that a State adopt the act as written or any part thereof. The discretionary nature of the adoption decision may not result in any more uniformity than now exists unless full adoption is supported by industry groups such as the IAAPA, ASTM and the local regulatory authorities.

Proposed Federal Regulation

The lack of uniformity of state regulations, the visibility and publicity for ride injuries in the media, as well as the perceived undue influence of the amusement industry has led some consumer organizations to seek Federal regulation of fixed site amusement rides. Organizations, including the American Academy of Pediatrics, Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, the National SAFE KIDS Campaign, Safer Parks.org, as well as many state and local consumer groups support Federal regulation. On May 19, 2005, Representative Edward Markey of Massachusetts introduced as a bill The National Amusement Park Safety Act of 2005. The bill has thirteen co-sponsors. If passed, the act would restore jurisdiction over fixed site amusement rides to the CPSC, thus ending the “roller coaster” exemption. It would also provide an annual budget of \$500,000 for the purpose of regulating fixed site rides. Accordingly, the CPSC would have the authority to investigate accidents, develop and enforce action plans to correct defects, require reports to the CPSC whenever a substantial hazard is identified, and act as a national clearinghouse for accident and defect data .

Proponents of Federal legislation argue that the states have been slow to adopt meaningful safety and enforcement standards. Consumer groups, such as Safer Parks, point to the California experience where the California Permanent Amusement Ride Safety Act was passed in 2000. Yet, as of March 2006, The Division of Occupational Health and Safety (DOSHS) the agency charged with enforcement had yet to promulgate penalty regulations. (It should be noted however that DOSHS did put forth Administrative Rules in 2001 and Technical Rules in 2003). Proponents of federal legislation also claim that major theme park operators have been given preferential treatment; in particular, they single out a “Memorandum of Understanding” between the Florida Department of Agriculture and Disney, Busch Entertainment, and Universal Studios, which purports to grant exemptions from safety inspections and accident reporting requirements that are otherwise required of smaller ride operators under Florida law. They also argue that the lack of a national centralized accident reporting system with uniform accident reporting standards obstructs the implementation of safety measures that might otherwise be useful in preventing injuries at similar sites and rides. Finally, the proponents of federal regulation also claim that the interstate origin of the industry’s consumers justifies Federal involvement to provide the consumer with uniform safety expectations from state to state.

Safer Parks.org has proposed various regulatory concepts that an independent central agency might utilize either individually or in conjunction with each other in carrying out a regulatory mandate. The models are based upon existing regulatory schemes of other Federal agencies and include:

- NTSB (National Transportation Safety Board) Go-Team Model: A Government assembled investigatory team to include industry representatives and relevant substantive experts chaired by a neutral federal employee. Parties with exclusively financial interests in the outcome are excluded from the investigative process. Accident scenes would be preserved by the investigation team until all relevant data was gathered. Public dissemination of safety alerts, data, and findings would occur.
- FAA (Federal Aviation Administration) Pet (animal) Injury Reporting System Model: This would address the need for a comprehensive centralized database of accidents or incidents. It would require monthly reports on incidents, including such information as the facility operator and specific amusement ride involved, date and time of an incident, the person or persons involved, description of the incident, cause if known, corrective action if any was required, and contact information for the person responsible for the reporting.
- A Machinery Registration System: Modeled on Car Licensing & Aircraft Registry: This concept would entail registering or licensing amusement rides similar to vehicles. Data on the numbers of rides, age, speed, acceleration factors and other physical properties would be maintained. Sales and transfer history would be maintained as well as ride safety history, including information regarding the cessation of manufacturer support for the product

Industry Self Regulation

Current industry self-regulation consists primarily of The International Association of Amusement Parks and Attractions (IAAPA), in partnership with ASTM in developing industry-wide safety standards and promoting voluntary compliance among members. This self-regulation also includes industry and State agencies that work together in the inspection of facilities and the investigation and reporting of accidents as well as the dissemination of relevant information. The IAAPA was founded in 1918. It is a nonprofit association that works to help amusement parks run smoothly and profitably. The IAAPA represents permanently situated amusement facilities worldwide, including most amusement parks and attractions in the United States. Member facilities include amusement/theme parks, water parks, attractions, family entertainment centers, arcades, zoos, aquariums, museums, and miniature golf venues. The IAAPA opposes the proposed National Amusement Park Safety Act and cites its efforts and the expertise of ASTM as indicators that these two organizations are better equipped and better funded than the annual \$500,000 that would be allocated to CPSC for the purpose of fixed site ride oversight and regulation. A 2004 article in the Seaton Hall Legislative Journal, (and citing a letter from then Chairman of the CPSC to Senator Markey), indicates the CPSC conceded it would need at least \$5 million to accomplish its mandate under the proposed law, \$4.5 million short of the appropriation provided in the National Amusement Park Safety Act of 2005 .

In response to critics' assertions that there is currently no national, centralized accident reporting system, the IAAPA has, since 2003, maintained an annual nationwide voluntary incident reporting system for U.S. facilities that operate fixed-site rides. The system is independently operated by the National Safety Council (NSC). In support of its ongoing efforts to promote ride safety, the Association conducts regularly scheduled safety seminars, supported by the manufacturers of equipment and ASTM. These seminars disseminate data and information from members with relevant expertise to users of such information through discussion of the latest advances, standards, and techniques in ride operation and safety.

The IAAPA also cites the industry's exemplary safety record as evidence that the current regulatory scheme, which includes self-regulation, is effective, and the safety issue of fixed site rides is overblown. According to 2004 data compiled by the NSC on behalf of IAAPA, the number of patrons who experienced an incident while on a ride was miniscule – essentially one one-thousandth of one percent, or 0.00001 annually . The IAAPA argues the existing State and local regulation and the cooperation between IAAPA and those governmental organizations has been highly effective and that the IAAPA and the States in conjunction with industry professionals have developed a much higher expertise than the CPSC. They cite the fact that the CPSC has not regulated a fixed site since 1980; the nature of such rides has changed dramatically since then and the existing State and industry partnership has already in place and an effective regulatory mechanism which includes the requisite inspectors that would necessarily be required to administer any proposed CPSC regulatory system. The IAAPA also asserts the duplication of any such system by the CPSC would require expenditures far above that allocated by the proposed Federal legislation, including the expenditure of considerable time and the attendant delay, in putting in place a new, effective regulatory scheme.

Implications for Educators and Managers

It is clear that absent a central regulatory authority, that safety enforcement across the States will continue to vary in intensity from jurisdiction to jurisdiction. Given that any such regulations merely define the minimum duty of care required of operators and that the courts at best, provide only general guidance regarding the nature of the duty owed to ride patrons, it is incumbent upon managers to create an environment designed to minimize the risk of litigation and maximize the probability of success in the unfortunate event that litigation does result. The efforts to provide the industry with capable managers begins with educators who inspire them to value a culture of cooperation with all stakeholders that places a primacy on consumer safety. The issue of safety and enforcement with respect to fixed site rides presents opportunities in the classroom to critically examine multiple issues of significant importance to the hospitality & tourism industry that are applicable across a wide spectrum of industry activities extending far beyond that of ride safety. These issues include the impact of government regulation and intervention on both the federal and state level; the role of the judiciary in regulating business activities, the benefits and perceived shortcomings of industry self regulation, as well as the effect of consumer advocacy groups such as SaferParks.org on consumer perceptions and industry practices. The subject matter also raises discussion opportunities that focus on the extent of the industry's legal and ethical obligations to protect consumers. In this respect discourse may be centered upon the management activities required to enhance safety and the dissemination of information to consumers that allows for a more informed and responsible consumer decision making process in the selection of goods and services. The advent of Rider Responsibility legislation is indicative of the general legislative response to the increasing tendency of the judiciary to insert itself into the regulatory scheme, as well as the public effort to hold consumers more accountable for their actions and risks voluntarily assumed. Ride safety regulation also provides classroom fodder for discussing the benefits of industry partnering with local regulatory agencies as well as industry associations such as the IAAPA and other supporting organizations such as ASTM.

With respect to specific management policies and behaviors that may be presented which would collectively provide evidence of acting as a "reasonable person of ordinary prudence", and potentially forestall Federal regulation, which the industry opposes, the following suggestions should strengthen the safety efforts of operators, engender closer ties and cooperation with regulatory authorities, as well educating consumers about the risks associated with certain rides. Each of the suggestions represents a starting point for management when examining their operations and should be further tailored to unique operating environments and ride characteristics.

Rigorous maintenance & safety standards

**At a minimum all rides should be comply with ASTM safety standards appropriate to a particular type of ride, the standard utilized should be documented as well as the frequency and extent of inspections and maintenance. Maintenance logs should be maintained that not only document the compliance with the standards but those instances wherein the inspections revealed a shortfall and the actions taken to bring the ride in compliance with the ASTM Standards.

** All maintenance personnel should be required to attend IAAPA/ ASTM educational programs. Ride operators may also be provided support for attendance where such would enhance the safety of the ride's operation. At a minimum maintenance personnel upon returning from educational programs should be formally engaged in disseminating safety information to employees through the organization

**Incentives should be offered maintenance employees for formal & informal technical certifications that may be available to them.

**Fostering closer relationships with State & local regulatory agencies and personnel, exchanging safety information and engaging in joint educational opportunities.

**A designated competent individual or committee charged with monitoring current medical literature regarding hazards & injuries potentially associated with "extreme" rides; the ongoing review of the adequacy of ride warnings; the revision of ride warnings, and the physical characteristics and forces related to extreme rides.

**Extensive documenting of educational efforts; maintenance and safety routines; ride history and all efforts described above.

Ongoing Training & Enforcement of Ride Personnel

**Written policies and procedures for both the training of ride personnel and for enforcement of those policies. Consideration should be given to a "zero tolerance" policy for violations of the ride's boarding or operating conditions.

**Formal training of ride personnel and regularly scheduled retraining, including competency assessments with emphasis on specific ride assignments.

**Cross training employees to provide the ability to operate rides with fully competent personnel during periods of unanticipated absences.

**Routine documentation of ride personnel's compliance and non-compliance with standards and practices in the operation of rides; remedial action involved in instances of non-compliance and enforcement or disciplinary consequences resulting from failure to comply with any standards.

Adequate / Detailed / Explicit & Multiple Warnings

Ride operators owe a duty to amusement ride patrons to warn of actual as well as potential risks associated with the ride in question.

** Warnings should be designed to be seen; that is conspicuous and in multiple locations.

** Ride personnel should be routinely cautioned not to minimize the warnings in their communication with potential riders and to error on the side of caution by encouraging hesitate or unsure patrons not to ride. In addition, ride personnel should not deviate or expand upon the warnings as posted, nor should they inject their personal experience with the ride when engaging patrons. Training and retraining efforts should emphasize the potential serious consequences this may have to the rider as well as the liability of the amusement park, should an "at risk" patron rely on the ride personnel's experience or interjection and decide to board the ride.

** Warnings form the basis of an Assumption of Risk defense in those jurisdictions that permit. When a plaintiff knowingly engages in conduct that presents a risk of injury, fully understanding the risk, and yet voluntarily choosing to engage in such conduct the defendant's liability may be mitigated either in whole or in part.

** In States with Rider Responsibility laws, operators should conspicuously post the citation and the pertinent provisions regarding rider conduct. In States without Rider Responsibility laws, rider responsible practices should be formulated and posted.

** Consideration should be given to developing a "warning class" system (similar to how movies are classified) that categorizes rides according to suitability based upon age, health, physical characteristics of the rider, "thrill"/excitement quotient and other relevant criteria that will allow riders and decision makers the ability to make a better informed choice to ride or not.

Responsible Marketing, Advertising & Public Relations

- **Operators should consider offering differing versions of a ride experience whenever practicable such as Disney's Mission Space "Lite".
- **Consideration should be given to providing the ride's warnings in marketing literature to assist in the managing of consumer expectations, particularly with respect to younger children. Doing so would allow the consumer to make decisions well in advance of the "day off" in a less "excited" environment.
- ** Park operators should avoid over selling by selecting and appealing to appropriate target audiences. Advertising to young children who may not be appropriate for a ride that they can have the experience of an astronaut may be viewed by a jury as being irresponsible.
- **Encourage responsible riding by posting appropriate rider responsibility rules and enforcement of the rules.
- ** Active participation with federal, state & local law makers regarding optimum mechanism for promoting a safer industry

Incident & Emergency Response Plans

- **Fully document all ride incidents whether injury results or not.
- **Formulate ride specific emergency response plans and procedures that are tailored to the hazards presented by "high risk" patrons who ride.
- **Maintain staff of appropriately trained personnel who can provide first responder care to injured patrons.
- ** Coordinate and cooperate with public first responders.
- **Engage in voluntary reporting of incidents to appropriate State and local authorities.
- **Implement a control function whereby any incidents of injury and response are followed up with a "hygienic" inquiry that examines the emergency response and assesses its effectiveness; implement changes as may be required to improve effectiveness of response.

References

- "April 12, 2006: Second Death in One Year for Mission Space at Epcot"
http://www.thedisneyblog.com/tdb/disney_world/index.html, (n.d) Retrieved 11/26/06
- ASTM International. A new world Standard for Amusement Rides, http://www.astm.org/cgi-bin/SoftCart.exe/SNEWS/AUGUST_2003/hudson_aug03.html?L+mystore+jwxd0752, (n.d) Retrieved 11/26/06
- Basdow, Jurgen, Common Carriers Continuity and Disintegration in U.S. Transportation Law, 1983, 13 Transportation Law Journal 2, citing *Gisboun v. Hurst*, 91 Eng rep 220 (1710) & *Niagra v. Cordes*, 62 US (21 How) 7, 22 (1858)
- Bennet v. Dutton* 10 NH 481 (1839) see also *Stokes v. Saltonstall* 28 U.S. 181 (1839) 3 Harper & James, *The Law of Torts, The Nature of Negligence* Sec 16.14, p507, cited in *Gomez v. The Walt Disney Company et al.* 35, CAL4th 1125 92005)
- CARES, About CARES, http://www.uscancares.org/about_cares.php, http://www.uscancares.org/about_cares.php
- Charles Bray, pres. IAAPA, 12 Annual AALARA Conference May 2006, Presidential Remarks, <http://www.iaapa.org/mediainfo1.asp#presidentremarks>, (n.d) Retrieved 11/26/06
- CNN.com - Boy, 12, dies after Disney coaster ride - Jun 29, 2006
<http://www.cnn.com/2006/US/06/29/coaster.death/index.html>, (n.d) Retrieved 11/26/06
- Congressman Edward Markey, November : June 14, 2005,
http://markey.house.gov/index.php?option=com_content&task=view&id=404&Itemid=50 , "This information needs to be gathered, recorded, and assessed in a systematic way no matter where the accident occurs, so that prevention measures can be recommended or required on a national, not a local, basis", (n.d) Retrieved 11/26/06
- Consumer Products Safety Act 15 USC 2052
- Cournoyer, N. G., Marshall, A.G. & Morris, K. L. (2004). *Hotel, Restaurant and Travel Law* (6th ed.). New York: Thompson,
- Emerson, Chad D., *The Continuing Showdown Over Who Should Regulate Amusement Attraction Safety: A Critical Analysis of Why Fixed-Site Amusement Attraction Safety Should Remain State Governed*, *Seton Hall Legislation Journal* Vol. 28:1 ,
<http://www.faulkner.edu/o/admin/websites/cemerson/documents/finalarticlepdffile.pdf> , Electronic version Retrieved 11/26/06
- IAAP. <http://www.iaapa.org/modules/News/index.cfm?fuseaction=Details&mtid=3&iid=1046> Safety in the Amusement Industry: Serious Business in the United States, (n.d) Retrieved 10/14/06
- Library of Congress THOMAS HB 2500 Co-Sponsors, <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR02500:@@P>, (n.d) Retrieved 11/26/06

Ride Accidents.com <http://www.rideaccidents.com/> (n.d.) Retrieved 09/26/06

SaferParks.org, Rider responsibility, http://www.saferparks.org/regulation/rider_responsibility.php, (n.d.) Retrieved 11/26/06

Sand Springs Park v. Schrader 82 Okla. 244: 198 P. 983 (1921)

Seton Hall Legislation Journal Vol. 28:1 , The Continuing Showdown Over Who Should Regulate Amusement Attraction Safety: A Critical Analysis of Why Fixed-Site Amusement Attraction Safety Should Remain State Governed, Emerson, Chad D., p 83, Electronic version Retrieved 11/26/06
<http://www.faulkner.edu/o/admin/websites/cemerson/documents/finalarticlepdffile.pdf>

Sheffield v. Lovering, 51 Ga. App. 353, 180 S.E. 523 1935)

South Carolina General Assembly, http://www.scstatehouse.net/sess116_2005-2006/bills/7.htm. also at <http://www.scstatehouse.net/code/t41c018.htm#41-18-360>, (n.d.) Retrieved 11/26/06

'South Carolina Rider Safety Act': Section 41-18-360. A person who willfully violates this article is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than two months or both."

State of California Code of Regulations Title 8, http://www.dir.ca.gov/Title8/sub6_2.html, (n.d.) Retrieved 11/26/06

State of California Regulations, http://www.saferparks.org/regulation/state/california_regs.php, (n.d.) Retrieved 11/26/06

State of California. CAL/OSHA, http://www.dir.ca.gov/title8/ch3_2sb2a6.html, (n.d.) Retrieved 11/26/06

State of California. LABOR CODE SECTION 7920-7932, <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=07001-08000&file=7920-7932>, (n.d.) Retrieved 11/26/06

Stokes v. Saltonstall 28 U.S. 181, 191 (1839)

United States Consumer Products Safety Act 15 USC 2052 SEC. 3

United States Consumer Products Safety Commission. Amusement Ride-Related Injuries and Deaths in the United States: 2005 Update, September 7, 2005, p.7, <http://www.cpsc.gov/library/amus2005.pdf>, (n.d.) Retrieved 11/26/06

United States Consumer Products Safety Commission. Amusement Ride-Related Injuries and Deaths in the United States: 2005 Update, September 7, 2005, p.2,

United States Consumer Products Safety Commission. CPSC Does Not Have Jurisdiction Over All Products, <http://www.cpsc.gov/BUSINFO/notcpsc.html>, (n.d.) Retrieved 11/26/06

United States Consumer Products Safety Commission. Directory of Amusement Park Safety Officials, CPSC, July 2006 <http://www.cpsc.gov/cpsc/pub/pubs/amuse.pdf>, (n.d.) Retrieved 11/26/06

United States NTSB. The Investigative process, http://www.nts.gov/Abt_NTSB/invest.htm, (n.d.) Retrieved 11/26/06

US Fidelity & Guaranty Co v. Brian 337 F.2nd 881 1964

US National Amusement Park Ride Safety Act of 2005 (Introduced in House), <http://thomas.loc.gov/cgi-bin/query/z?c109:H.R.2500>, (n.d.) Retrieved 11/26/06

Waugh v. Duke, 248 FSupp.626 (N.C. 1966)

Wendell H. Ford Aviation Investment and Reform Act for the 21st Century Section 710; 14CFR234.13

About the Authors: Ronald J. Cereola is an Assistant Professor and Reginald Foucar-Szocki is a Professor at James Madison University, Harrisonburg, VA.