

When an outing to an amusement park or fairground ends in tragedy, it's essential to conduct early and thorough investigation of the ride and parties involved in its manufacture and maintenance.

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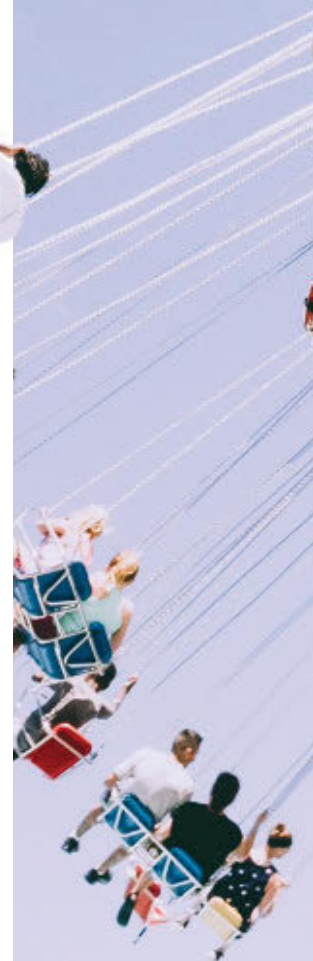
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DANGER

at the Amusement Park

In 2017, the Fire Ball ride at the Ohio State Fair catastrophically failed, killing our 18-year-old client Tyler Jarrell and injuring others.¹ “Described as an ‘aggressive thrill’ ride, the Fire Ball swings riders from side to side like a pendulum, reaching 40 feet above the ground while spinning riders at 13 revolutions per minute.”² Tyler was thrown 60 feet into the air and died on impact with the cement ground. An extensive investigation found that the catastrophic failure was caused by excessive corrosion, leading one of the pendulum ride’s gondolas (the cart that carries the ride’s passengers in a row of seats, which was fixed at the end of a metal arm) to break loose.³

People who visit amusement parks or fairgrounds buy tickets believing that the rides are designed, assembled, and maintained properly; that they’ve been thoroughly inspected; that the operators are well trained; and that safety is primary. However, the amusement park industry was deregulated in 1981, resulting in no national safety standards for fixed and permanent attractions, known as the so-called “roller-coaster loophole.”⁴ Today, the rules and inspections vary by state.⁵ Further, the U.S. Consumer Product Safety Commission (CPSC) has no serious oversight of the industry.⁶ As a result, national data on safety risks is incomplete.





However a study found that from 1990–2010, approximately 92,885 injuries to people under 18 from amusement rides were reported nationally, with approximately 33 percent arising from large, fixed rides at permanent amusement parks such as Universal Studios or Disneyland.⁷ The same study found that mobile rides that are assembled and disassembled to migrate among seasonal fairs and carnivals caused 29 percent of injuries.⁸ When a client is injured on one of these rides, here are common steps to follow early when gathering critical evidence and evaluating potential claims.

Causes of Action and Defendants

Before you start looking into potential legal claims and defendants, keep a few things in mind: Most amusement ride cases that involve serious injuries settle, and very few proceed to trial. Typically, settlements are confidential, which can make case evaluation and ongoing negotiations more difficult.⁹ In addition, some states also cap damages in wrongful death and personal injury cases, and it is often difficult to obtain punitive damages.¹⁰

Potential legal claims may be grounded in premises liability; products liability; and general negligence,¹¹ among others. But these claims depend on the specific facts of your case and the laws of your jurisdiction. Potential defendants may include the owners and operators of the amusement park or fairground; manufacturers or designers of the ride; inspectors of the ride; and distributors, suppliers, and retailers of the ride's parts.

Premises liability. People who sustain injuries could pursue a claim against the owners or operators, or both.¹² Owners have a general duty to invitees “to exercise ordinary care to keep the premises in a reasonably safe condition and to warn invitees of dangers that are latent, unknown, or

obvious.”¹³ Premises liability claims may arise from injuries resulting from a dangerous ride or attraction; trip and falls due to hazards on the ground, walkways, or stairs; food poisoning or other illnesses from consuming items at the park's or fairground's restaurants or concession stands; and dangers caused by the park's or fairground's failure to comply with applicable fire and building codes. For example, if a large pothole in the middle of the park's go-kart track caused someone to crash, the injured party could potentially bring a premises liability claim against the owner or operator of the go-kart track or amusement park who failed to repair the pothole.

Products liability. If your clients are injured because the amusement ride is defective, possible products liability claims include failure to warn, manufacturing defects, and design defects. For example, an injured rider could allege a failure-to-warn claim against the amusement park owners and ride operators who failed to post safety rules and signs; failed to adequately communicate ride restrictions based on age, height and weight, pregnancy, or health conditions; or failed to provide adequate instructions on using the safety equipment and precautions before riding.

In the Fire Ball case, ride manufacturer KMG's product manager stated that after an inspection of the 18-year-old ride, “it was determined that ‘excessive corrosion on the interior of the gondola support beam dangerously reduced the beam's wall thickness over the years’ and ‘led to the catastrophic failure of the ride during operation.’”¹⁴ Other defects to look for include a loose lap bar or inadequate safety belts.¹⁵

Unfortunately, statutes of repose seriously limit manufacturer liability in products cases. For example, Ohio has a 10-year statute of repose that bars a products liability claim if the product was delivered to its first purchaser or

first lessee more than 10 years preceding the injury or harm.¹⁶ Georgia has a similar law.¹⁷

Negligence. Consumers also may bring general negligence claims. In amusement ride cases, negligence is one of the broader and most common causes of action, and it depends on the specific facts of your case. “Negligence is defined generally as the failure to exercise ‘that degree of care for the safety of others, which a person of ordinary prudence would exercise under similar circumstances.’”¹⁸

Negligent hiring, retention, training, and supervision. An amusement park may be held liable under respondeat superior for the negligent acts or omissions of its employees who are operating and maintaining the rides. This could include an amusement park employee who fails to tighten and secure a ride's lap restraint mechanism, causing riders to be thrown about—or worse, ejected from—the cart. The injured plaintiffs could allege, in part, that the amusement park hired and retained personnel who were incompetent, reckless, or unqualified for their positions, as well as failure to provide oversight and the proper and necessary training to its employees to ensure the park's rides would be safely operated and maintained.

Essential Evidence

Ride failures occur for many reasons, including unsafe practices and operation, lack of training, defective design, careless maintenance and assembly, and metal fatigue and corrosion, to list a few. Not surprisingly, a ride's creation, assembly, and ongoing inspection for safe operation require high levels of expertise and knowledge.

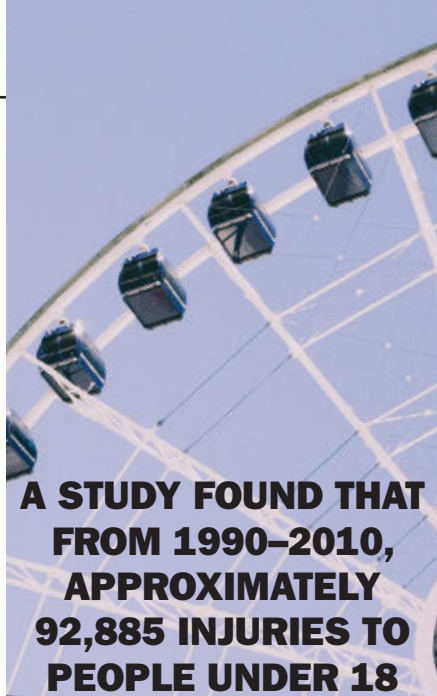
Determine the manufacturer and its assets, discover the ride's age and maintenance history, recreate the ride's lineage and dates of ownership, and uncover other similar incidents. Collect

this evidence swiftly, and follow a protocol to track it down. Our suggested rubric, which may be applied to cases involving any of the aforementioned causes of action, includes

- immediately preserving the scene and social media evidence
- obtaining witness statements from visitors (who often do not live locally)
- ordering all related state and local inspections, including police and relevant investigatory reports
- obtaining other documents such as certified weather reports for the date in question and the ride's operational history over at least the previous five to 10 years
- conducting national and international research on its history
- determining the manufacturer and the various owners
- uncovering liability insurance for any and all potential defendants
- discovering any companies that have recently conducted inspections and certified the ride
- retaining the appropriate experts.

Obtain video and photographic evidence and witness statements. Many incidents and injuries are caught on camera, providing important firsthand photographic and video evidence. Because many amusement park attendees are out-of-town visitors or itinerant amusement ride operators and employees, contemplate using both the press and social media as investigatory tools to draw appropriate attention to the incident. This can lead to witnesses coming forward with videos or their firsthand accounts.

Often, such evidence is compelling and helps prove liability. For instance, in the Fire Ball case, a visitor captured the incident on video, and millions posted it on YouTube. Social media and press interviews provided us with many witnesses, as well as evidence that we



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would not have otherwise obtained and was not in the formal state investigation reports. But keep in mind that this type of evidence can be traumatic for your clients, who lived through the horror captured on video.

Hire an investigator and obtain relevant reports. We recommend immediately hiring a seasoned, qualified investigator who will obtain statements from the injured people—if possible—and other witnesses, such as amusement park or fairground employees, other guests, and bystanders. An investigator with experience and training in engineering, amusement ride safety and inspections, or law enforcement is useful.

The investigator may also liaise with emergency personnel, local police, and state officials who are conducting the investigation. This collaborative effort will ensure that the evidence is preserved and that the incident is fully

examined and explained. This includes obtaining photographic evidence of the ride and surrounding areas. Using the earlier example, if your client was injured while riding a go-kart that hit a large pothole, acquiring photographs and measurements of the hazardous condition, the resulting destruction (such as the demolished go-kart), and the rider's injuries, as well as securing video footage from security cameras, will be crucial. Also, immediately order the official police, fire, and emergency medical services reports. These are typically public records requests governed by your state's public records laws.¹⁹

While engaging in these actions, hand-deliver letters of representation and preservation of evidence to the appropriate parties. Indicate that in the near term you want to conduct an urgent, nondestructive inspection of the ride with your experts.

Research the ride's inspections and malfunctions history. You must know whether prior, similar incidents involving the ride have occurred. According to Saferparks.org, state regulatory agencies and the CPSC provide public records of incidents involving amusement rides and devices regulated under their jurisdiction. Many rides are manufactured overseas or have duplicates or similar iterations operating around the world. The Fire Ball, for example, was manufactured in the Netherlands by KMG. It is KMG's most popular ride, and depending on the venue, it is also known as the Afterburner, Eagle's Claw, or Vortex.

Also look into whether the company has notified other vendors or distributors of any issues with the equipment. Contact various distributors of the ride to determine whether they have been put on notice of a product recall or a defect germane to the case at hand and what the outcome was.

Depending on the jurisdiction,

state officials or third-party corporations tasked with inspecting amusement park rides on behalf of the state have a legal duty to document certain information before the ride can operate. This may include the ride’s maintenance and safety records, its conformance to manufacturer’s specifications, whether there is an appropriate assembly of migrating rides, and whether the owner purchased the appropriate liability coverage. For example, South Carolina requires its Office of Elevators and Amusement Rides to perform annual inspections of amusement devices, and amusement ride owners must perform daily inspections.²⁰

In Florida, the Department of Agriculture and Consumer Services inspects all amusement rides located in the state, with the exception of amusement parks with more than 1,000 employees—those parks have full-time inspectors.²¹ Temporary amusement rides like the Fire Ball are inspected on relocation, and permanent amusement rides are inspected on a semi-annual basis.²² Traveling carnival rides “are constantly being set up and broken down then moved to another location, perhaps even another state without adequate and proper inspection,” which unfortunately “makes it more difficult to monitor the safety of these rides.”²³ In California, the Department of Industrial Relations Division of Occupational Safety and Health’s Amusement Ride Section provides a “Portable Ride Owner Inspection Guide,” which is “meant to serve as a general guide to understanding the regulations and inspection process.”²⁴

Some states, such as South Carolina, require significant amounts of basic information on a ride, such as all relevant manufacturer and owner records including ride instructions, inspection history, and operation manuals. Material evidence that is formally filed with the state includes cataloging the names

of and any information on all inspectors and inspection companies, verifying prior inspection and safety seals after inspection, and liability insurance coverage.²⁵

Last, but critically, review all state laws relevant to your case. For instance, check laws regarding inspection requirements, insurance coverage, reporting requirements, and the consequences of potential malfunctions of amusement rides. Notably, South Carolina’s standards should be used as a “model” for a national inspection and safety checklist when investigating your case.²⁶

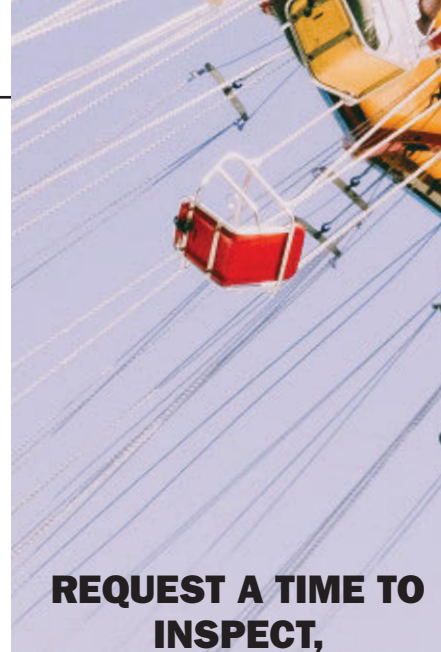
Compile industry standards.

Determine the generally accepted engineering standards for the ride. The American National Standards Institute (ANSI)’s standard for aerial passenger/tramway-type rides and ASTM International provide important and sometimes statutorily adopted mandatory guidelines for final seals of operational approval.

The ASTM International Technical Committee F24 on Amusement Rides and Devices, for instance, is an international forum of nearly 1,000 experts from 26 countries who share best practices and develop industry standards.²⁷ This includes design and manufacture, testing, operation, maintenance, inspection, quality assurance, and terminology. ASTM International has also developed standard practices for the quality, manufacture, and construction of amusement rides and devices, including the minimum requirements for a quality assurance program.²⁸ These often become built-in liability standards.

Also, the International Association of Amusement Parks and Attractions, the largest international trade association for permanently situated amusement facilities worldwide, is an excellent resource regarding amusement park safety around the world.²⁹

Finally, pull from the CPSC relevant information on standards and safety that



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support your liability claim.³⁰ Under the Consumer Product Safety Act, a ride manufacturer or owner and operator must notify the CPSC if it obtains information that a portable amusement ride creates an unreasonable risk of serious injury or death.³¹ Establishing that a manufacturer had knowledge about a defect but then breached its duty by failing to notify the CPSC about the defect could help support a negligence claim against that manufacturer. While the CPSC has limited investigation or enforcement authority, assiduously reviewing standards it has compiled is paramount for establishing liability.

Retain experts. Seek out and retain the appropriate experts early on. In addition to selecting experienced engineers (structural, electrical, mechanical) and certified mechanics, there are “amusement park ride inspectors.” The National Association of Amusement Ride Safety

Officials certifies these inspectors at three levels: basic, advanced, and senior.³² For example, these experts can testify to relevant engineering standards and safety regulations and the ways in which the ride failed to comply with them. These experts can also accurately identify the ride's specific manufacturing or design defects and speak to how those defects caused your client's injuries—and about how to improve the ride's safety.

All inspection experts should be professional engineers and licensed as such in their respective states. At a minimum, they should receive specific training in corrosion and corrosion prevention, although it is most beneficial if your professional engineer specializes in corrosion. It is ideal for your inspection expert to successfully complete continuing education requirements.

Request a time to inspect, photograph, and video the ride and its parts with your retained experts. Then, soon thereafter, plan and coordinate a date with all concerned to engage in nondestructive testing. The parts still can be used when the inspection or test is completed.³³

By following these action points, you will better prepare your client's case for successful resolution and protect other similarly situated consumers. 



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NOTES

1. Janet DiGiacomo, *Deadly Accident at Ohio State Fair Caused by Corrosion, Says Ride Maker*, CNN (Aug. 7, 2017), www.cnn.com/2017/08/06/us/ohio-state-fair-ride-collapse/index.html.
2. John Futty, *Ohio Law May Shield Fire Ball*

Manufacturer in Fatal Fair Accident, Columbus Dispatch, <https://tinyurl.com/y6u2ovff>.

3. Ohio State Highway Patrol, Incident No. 17-103001-0080.
4. Daniel Engber, *Who Regulates Our Nation's Amusement Parks?*, Slate (May 17, 2005), <https://slate.com/news-and-politics/2005/05/who-regulates-our-nation-s-roller-coasters.html>.
5. Saferparks, a nonprofit founded to help prevent amusement ride incidents through research, information sharing, and effective public safety policy is a helpful resource: <https://saferparks.org>. It contains information about each state, including which government entity is in charge of amusement ride safety.
6. U.S. Consumer Prod. Safety Comm'n, <https://cpsc.gov/>.
7. Nationwide Children's Hosp., Press Release, *New Study Finds 20 Children a Day During the Summer Are Treated in U.S. Emergency Departments for Amusement Ride-Related Injuries* (May 1, 2013), <https://tinyurl.com/y7l56ht6>.
8. *Id.*
9. Bruce Kaufman, *Quiet Settlements Close Out Many Theme Park Ride Cases*, Bloomberg Law (Oct. 13, 2016), <https://www.bna.com/quiet-settlements-close-n57982078610/>.
10. Currently, 11 states cap noneconomic damages in such cases—Alaska, Colorado, Hawaii, Idaho, Kansas, Maryland, Mississippi, Ohio, Oklahoma, Oregon, and Tennessee. Dani Alexis Ryskamp, *The Current State of State Damage Caps*, The Expert Institute (Dec. 7, 2017), <https://theexpertinstitute.com/state-state-damage-caps/>; see, e.g., Ohio Rev. Code 2315.18(B)(2) (2005).
11. Amusement ride injury and death cases typically are a hybrid of negligence, products liability, and contract claims. In this article, we will focus on the first two aspects and not on assumption of risk, ticket contract language defenses, or damages.
12. *West v. KKI, LLC*, 300 S.W.3d 184 (Ky. Ct. App. 2008) (plaintiff filed premises liability, products liability, and failure-to-warn claims after she sustained a mild vestibular lesion after riding a stand-up roller coaster at Six Flags Kentucky Kingdom).
13. *Id.* (internal citations omitted).
14. Lindsey Bever & Alex Horton, *'Catastrophic' Fire Ball Incident at Ohio State Fair Caused by Corrosion, Ridemaker Says*, Wash. Post (Aug. 7, 2017), <https://tinyurl.com/y6vuvrgf>.
15. Julia Jacobo, *Dad Grabs Son After Seat Belt Malfunctions Mid-Ride on Texas Roller Coaster*, ABC News (Apr. 28, 2016), <https://abcnews.go.com/US/dad-grabs-son-seat-belt-malfunctions-mid-ride/story?id=38705341>.
16. Ohio Rev. Code 2305.10(C)(1) (2006).
17. Ga. Code Ann. §51-1-11(b)(2) (2017).
18. *Steinberg v. Sahara Sam's Oasis, LLC*, N.J., 142 A.3d 742, 745 (N.J. 2016) (plaintiff was injured after falling from a ride called the FlowRider and sued the owner and operator of the indoor water park).
19. See, e.g., Ohio Rev. Code ch. 149 (2013).
20. S.C. Dep't of Labor, Licensing & Regulation, *Frequently Asked Questions About Amusement Rides*, <https://llr.sc.gov/elevators/index.asp?file=amuseridefaq.htm>; see also S.C. Code, §§41-18-10 et seq. (2005).
21. Fla. Stat. §616.242 (2018).
22. Fla. Dep't of Agriculture & Consumer Servs., *Fair Rides Inspection*, <https://freshfromflorida.com/Business-Services/Fairs/Fair-Rides-Inspection>.
23. The Nat'l Law Rev., *Amusement Park Liability—What You Need to Know* (July 16, 2018), <https://natlawreview.com/article/amusement-park-liability-what-you-need-to-know>.
24. State of Cal., Dep't of Indus. Relations, Div. of Occupational Safety & Health Amusement Ride Section, *Portable Ride Owner Inspection Guide* (2016), https://www.dir.ca.gov/dosh/AmusementRides/2016_Portable_Amusement_Ride_Owner_Inspection_Guide.pdf.
25. S.C. Code, §§41-18-10 et seq.
26. See, e.g., S.C. Code §§41-18-10 et seq.
27. ASTM International, *Technical Committee F24 on Amusement Rides and Devices*, https://www.astm.org/COMMIT/F24_Fact_Sheet_2016.pdf.
28. ASTM International, *Committee F24 on Amusement Rides and Devices*, <https://www.astm.org/COMMITTEE/F24.htm>.
29. Int'l Ass'n of Amusement Parks & Attractions, www.iaapa.org/.
30. U.S. Consumer Product Safety Comm'n, <https://cpsc.gov>.
31. 15 U.S.C. §§2051 et seq. (1972).
32. Nat'l Ass'n of Amusement Ride Safety Officials, <https://www.naarso.com/>.
33. Nondestructive testing is "the process of inspecting, testing, or evaluating materials, components or assemblies for discontinuities, or differences in characteristics without destroying the serviceability of the part or system." The Am. Soc. for Nondestructive Testing, *Introduction to Nondestructive Testing*, <https://asnt.org/MinorSiteSections/AboutASNT/Intro-to-NDT.aspx>; see also Fla. Stat. §616.242.