

## Insurance is Fundamental to Your Playground

This commentary considers third party liability insurances only; legal liability for personal injury having been occasioned to third parties.

The underwriters at insurance companies whose job it is to assess the potential liability inherent in any product or activity which they may be requested to insure consider that their exposure to financial loss for having insured against the legal liability arising from the spec writing, design, manufacturing, installation, maintenance, or supervision of playground equipment, supplies, surfacings and the activities for which they were designed, is much greater than most risks which they prefer to write in their portfolio. Apart from the risks associated with the inherent inability of young children to assess danger coupled with immaturity of coordinative capacity, underwriters are mindful of the fact that there is no defense at law for injury sustained by a minor occasioned by his/her engagement with an allure-ment.

Statistics show that insurers cannot make a profit by charging premiums to insure exposed parties from liabilities occasioned by a child's injury arising out of its attraction to an allurement.

There is insufficient spread of risk and insufficient premium generation to off-set probability of frequency and severity of loss augmented by the changing social attitudes which create higher jury awards. Insurers would rather use their reserves to post as security against more actuarially predictable exposures. Child care and child recreation is a sensitive and expensive aspect of our culture; people are protective and people are litigious.

The very reason that insurers would rather place their resources elsewhere is the reason that every practitioner associated with the existence of the functioning playground and its equipment should carry ample limits of third party liability insurance to protect their partnership, corporation and/or themselves against third party actions for their having allegedly been negligent in having contributed to the personal injury of a child, arising out of the child's use of a playground facility.

### Best Practices for Playground Surfacing A method to reduce the risk

Protective surfacing is the most important and least understood component in any playground. An impact absorbing surface can prevent or reduce the severity of an injury or better yet save a life. The problem is how you determine that you have taken the appropriate and reasonable steps that can achieve this goal.

The play structure can be designed with the intent of preventing, but not eliminating falls. The definition of the protective barrier is that a child cannot pass through it and that it prevents climbing. Certain aspects of the play structure such as climbers etc. are designed to challenge the child and expand their abilities. A play structure has very little value if it does not provide a challenge. A fall can be the result of not yet being able to master the challenge or adventurous play with friends.

See page 4

#### Inside this issue:

*Sample Insurance Certificate* 3

*Thanks for assistance* 2

*Website* 3



## Insurance you need from page 1

The consultant, architect, designer, and inspectors requires to carry indemnity insurance against his/her exposure to a professional negligence suit arising out of alleged faulty specification, advice, design, supervision.

The manufacturer, handler, installer, maintenance contractor must insure against its corporate and personal exposure to suit arising from faulty product, faulty workmanship, inadequate maintenance, having caused or contributed to third party injury or death. Supervisory systems and supervising individuals are exposed to claims for alleged negligence in not having maintained a sufficiently high level of care to have precluded or avoided the injury which befell the plaintiff's child.

Everyone associated with the product at all stages, engaged in the provision of any service, connected with the conception, manufacture, installation and operation of a playground facility has a greater duty to take care than does the average citizen because they are dealing with equipment which is designed to be an allurements to children. If you're an institutional or facility owner of playground equipment, or a body responsible for such an installation you will want to make certain that all involved parties carry insurance and post a certificate with you as proof of their cover, because courts look to deep pockets and courts will not see children suffer unduly. If insurance placements are inadequate, courts will look to the deepest pocket to make up the necessary remedial limits.

### Consideration of Adequacy of Third Party Liability Cover

There are two distinct classifications of third party liability cover:

- 1) **Professional Indemnity for Professional Consultants** (Architects, Spec Writers, Designers)
- 2) **Third Party Legal Liability for all other parties** (Manufacturers, Contractors, Supervisors)

Professional Indemnity Contracts are issued on a "claims made" basis meaning that the claim must be made during the term of the policy for that policy to respond. Third Party legal liability policies are written on an "occurrence" basis meaning that the cover which responds is the one in force during the time that the incident which gave rise to the claim occurred, and the liability lasts, in the case of minors, forever unless a particular jurisdiction's statute of limitations applies.

Occurrence policies provide two essential categories of coverage:

**Operations and Products** for Manufacturers, or **Operations and Completed Operations** for Contractors

**Operations** relate to the functions of manufacturing, installing, repairing, etc.

**Products and Completed Operations** refer to the existence of the products and the installed functional products, after the products have been manufactured and after the contractors have left the work site.

Limit of Liability in the aggregate annual should be at least \$2,000,000 CDN.

When new installations are contemplated (dependent upon their size and complexity) the authority responsible for the supervision of the installation and its subsequent use should require that a Certificate of Insurance similar to the sample Certificate provided as "EXHIBIT ONE" accompanying this text be posted with it by each party involved:

- i.e. Consultant Designer
- Architect
- Project Manager
- General Contractor
- Major Subcontractor

This obligation, together with the specifications of coverages required should be specified in the General Contract.



# Sample insurance certificate

, 2003

## CERTIFICATE OF INSURANCE

TO

FAX:

ATTN:

*This certificate of insurance neither affirmatively or negatively amends, extends or alters the coverage afforded by the policies scheduled herein. It is furnished as a matter of information only, confers no rights upon the holder and is issued with the understanding that the rights and liability of the parties will be governed by the original policy or policies as they may be lawfully amended by endorsement from time to time.*

**NAME & ADDRESS OF INSURED: \_**

**DESCRIPTION OF OPERATIONS: \_**

**POLICY WORDING:**

	YES	NO
COMMERCIAL GENERAL LIABILITY <input type="checkbox"/>		<input type="checkbox"/>
PROFESSIONAL INDEMNITY "CLAIMS MADE" WORDING <input type="checkbox"/>		<input type="checkbox"/>
BLANKET CONTRACTUAL COVER <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PRODUCTS AND COMPLETED OPERATIONS <input type="checkbox"/>		<input type="checkbox"/>
BROAD FROM PERSONAL INJURY COVERAGE <input type="checkbox"/>		<input type="checkbox"/>
BROAD FORM PROPERTY DAMAGE OCCURRENCE WORDING <input type="checkbox"/>		<input type="checkbox"/>
VOLUNTARY MEDICAL PAYMENTS <input type="checkbox"/>		<input type="checkbox"/>
NON-OWNED AUTOMOBILE COVERAGE <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**INSURER:**

**POLICY NO.:**

**EFFECTIVE DATE:**

**EXPIRY DATE:**

**LIMITS:**

Inclusive Bodily Injury & Property Damage: \$2,000,000.00

**ADDITIONAL INSURED:**

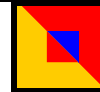
(NAME OF AUTHORITY WHICH OWNS/MANAGES PLAYGROUND COMPLEX)  
 but only with respect to Liability arising out of the operations of the Named Insured, under "Description of Operations" and pertaining only to the property noted. The policy limits are not increased by the addition of such Additional Insured and remain as stated in this Certificate.

**CANCELLATION:** *Should any of the above described policies be cancelled before the expiration date thereof, the Insurer(s) will endeavour to mail 30 days written notice to the Certificate Holder, but failure to mail such notice shall impose no obligation or liability of any kind upon either the Insurer(s) or*

# Thanks for your help

EVERPLAY International would like to thank Mr. Joe Wray of Canadian Insurance Brokers for the information on insurance that has appeared in this newsletter. We are provided with a clear understanding of why we need insurance and why it is so difficult to get for those working in the area of children's playgrounds.

As suppliers, manufacturers, designers, consultants, inspectors, contractors, owners and operators of playgrounds, we all have an interest in the managing of risk. Insurance is an often misunderstood aspect of this risk management. We should all be better off.



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State of the Art is not a limit, but a Point  
of Departure



**Everplay  
International  
Inc.**



## **Best Practices means doing better than the Standard** from page 1

The standards for playgrounds in Canada and the United States make the assumption that children will use the play structure only as it is designed and never find more challenging uses. If this were the case there would be no injuries and the definition of a barrier would be that a child cannot climb. As a result there will be falls from heights not allowed for in the Standards or by the structure manufacturer. The surfacing installer typically builds to the minimal fall heights of the Standards and perpetuates the fall and liability problem for the owner/operator and the child. As a result the actual height from which a child might fall is 30 – 100% higher than the height that the surface was designed for.

Standards such as the CSA Z614, CPSC document 325 and ASTM F1292 set the maximum acceptable impact performance at the threshold above which a life threatening head injury could be expected. The ASTM F1292 Standard, which is the procedure and instrumentation used to test the impact performance of the surface, requires that the owner/operator must stipulate the drop height for testing. The owner/operator, using due diligence, will set the drop height to the height from where they expect children to fall.

Every playground that has a child fall from a height above the minimum fall heights to a surface that yields the maximum allowable impact at that height is a life threatening injury waiting to happen. This is insanity.

The professionals in the playground, the owner/operator, their consultants, designers, surface suppliers, installers, inspectors and regulators have the obligation to determine the maximum height from which a child can fall and minimize the impact performance allowed. Roofs are designed to eliminate climbing and therefore are not considered in setting drop height.

A recommended strategy is to specify the drop height to be from the top of all horizontal components and that the Gmax shall be less than 150 and the HIC shall be less than 900 when tested from this specified height at the time of installation. There should also be a warranty that the maintained surface does not exceed the impact requirements of the ASTM F1292 from the same drop heights at the end of the warranty period.