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PERSONAL INJURY LAW

BY LARY I. ZUCKER

Timely Notice Required for Carnival Suit

Injured rider must notify amusement park operator within 90 days of incident

Riders injured in a New Jersey amusement park, water park or carnival are required by law to provide written notice of their claim within 90 days of the accident date as a condition to filing a lawsuit against the operator. In *Doerflein v. Six Flags*, the New Jersey Superior Court Appellate Division upheld the law and affirmed the dismissal of a complaint that had been filed without timely prior written notice. This article will answer questions about the *Doerflein* decision and the law it upheld.

Q. When was this law enacted and where can it be found?

A. In 1992, the New Jersey Legislature amended the New Jersey Carnival-Amusement Ride Safety Act (CARSA) to require injured riders to provide an amusement ride operator with written notice of an accident within 90 days of the date the accident occurred. The statute is N.J.S.A. 5:3-55 to 59. There are also two regulations that provide additional requirements: N.J.A.C. 5:14A-4.11 (Rider Accident Reporting Requirement) and N.J.A.C. 5:14A-4.12 (Required Notices of Rider

Responsibility).

Q. Why did the Legislature require prompt notice of amusement park accidents?

A. The amusement industry in New Jersey operates between Memorial Day and Labor Day. Many ride operators and supervisors are seasonal employees and leave the area after Labor Day. Therefore, amusement ride operators need prompt notice of rider accidents to investigate these claims by locating and interviewing witnesses and conducting inspections. When former Gov. James Florio signed this bill into law in 1992, he recognized the seasonal nature of the amusement business in New Jersey and the need to require prompt accident reporting as a matter of fairness.

Q. What remedy does an amusement ride operator have if an injured rider files a lawsuit without any prior written notice of the accident?

A. Under CARSA, timely written notice of the claim within 90 days of the incident is a precondition to bringing suit against the amusement ride operator. If an injured rider files a lawsuit without first providing notice of the claim, the ride operator may move for summary judgment dismissing the plaintiff's complaint. That is exactly what happened in the *Doerflein* case. In *Doerflein*, the plaintiff filed suit against the amusement park ten months after the incident without first giving written notice of the accident. The trial court granted our motion for summary judgment on behalf of Six Flags, and the Appellate Court affirmed the trial

court and dismissed the plaintiff's complaint.

Q. How is a "rider" defined in CARSA?

A. A "rider" is broadly defined to include anyone in an amusement park who sustains an injury in any manner. Under N.J.S.A. 5:3-55, a "rider" is defined as a person attending an amusement park or utilizing an amusement ride. "Rider" also includes any person who is an invitee, whether or not that person pays consideration. Thus, any person who is injured in an amusement park where an amusement ride is located must comply with this 90-day notice requirement.

Q. Does this notice requirement apply in all types of amusement facilities, including water parks and carnivals?

A. Under N.J.S.A. 5:3-55, "amusement park operator" is defined as any person, firm or corporation that owns, leases, manages or operates an amusement park or amusement ride. Under this broad definition, amusement rides include "any device within the meaning of CARSA including any water-based recreational amusement, including all water slides, wave pools and water parks." This definition would also include carnivals with portable amusement rides.

Q. When an injured rider seeks treatment in the first aid office, is that sufficient notice under CARSA?

A. This situation is not specifically covered in CARSA, but, as a practical matter, when an injured rider reports an

Zucker is a shareholder with Marshall, Dennehey, Warner, Coleman & Goggin of Cherry Hill.

accident to the first aid office or to guest relations, and a written report is prepared, the rider will not have to supply an additional written report. In addition, N.J.S.A. 5:3-59 provides that when a ride operator files a report of an accident with the NJDCA within 90 days of the accident, that written report is sufficient notice under CARSA.

Q. When the amusement operator's first notice of an accident is a lawyer's letter of representation, is that sufficient notice under CARSA?

A. Yes, if the lawyer's letter is received within 90 days of the accident. A lawyer's letter is not specifically referred to in CARSA, but experience teaches that receipt of a lawyer's letter will generally be considered sufficient written notice of an accident. Please note that if a lawyer's letter is not specific enough to begin an investigation, a response should be sent to the lawyer asking for a written notice that complies with the requirements of CARSA.

Q. What information does the 90-day written notice have to include?

A. Name and address of the accident victim, a brief description of the incident location, the alleged cause of the accident, the name and address of the ride operator, others involved and witnesses, if any.

Q. Can the 90-day notice period be extended by the rider?

A. Yes. A rider who fails to give a report within 90 days from the time of the accident may be permitted to give the report at any time within one year after the accident at the discretion of a trial judge in the Superior Court. Application to the court for permission to give a late report shall be made upon a motion based on an affidavit showing sufficient reason for the rider's failure to give the report within 90 days from the time of the accident.

Q. Are there any other factors that a judge will consider on the motion for leave to file a late written report?

A. Yes. If a judge finds that a rider had a sufficient reason for failing to give the report within 90 days, the judge must also find that the amusement ride operator will not be substantially prejudiced by the late report. CARSA provides that the inability of the amusement ride operator to locate and bring within the jurisdiction of the court witnesses for its defense shall be considered by the court in determining whether the operator has been substantially prejudiced by the delay.

Q. Does CARSA define the terms "sufficient reason" or "substantial prejudice"? If not, how have those terms been interpreted?

A. CARSA does not define "sufficient reason" or "substantial prejudice," and there are no court decisions that define those terms. Usually, these decisions are made on a case-by-case basis. The judge generally looks at how the accident occurred, when the rider knew, or should have known, that his or her injuries were related to an incident that occurred at an amusement park, and whether the amusement ride operator has been able to conduct an effective investigation.

Q. If a rider files a lawsuit within one year of the accident, is the lawsuit itself considered sufficient notice of the claim?

A. No. In the absence of timely notice of the accident, or a motion in Superior Court, a rider may not simply file a lawsuit against the amusement ride operator within one year. In *Doerflein v. Six Flags*, the Appellate Court ruled that by failing to report the accident or file a motion as required by CARSA, the plaintiff effectively deprived the judge of the opportunity to exercise the discretion granted by CARSA to evaluate whether the ride operator had suffered prejudice. The court ruled that filing a complaint against an operator was not the functional equivalent of compliance with CARSA.

Q. Does CARSA require an amusement ride operator to facilitate reporting of accidents or injuries?

A. Yes. To facilitate reporting of accidents or injuries, every amusement park operator is required to designate an office or location as a site for reporting accidents and injuries. The designated office site shall be open and staffed during regular business hours and shall be clearly designated in writing. The operator shall designate and identify more than one such office or location if necessary within the amusement park so that no area containing amusement park rides is further than reasonable walking distance from an office or location.

Q. Does the amusement park operator have a duty to post notices of the reporting requirement?

A. Yes. CARSA provides that the operator must conspicuously post notice of the reporting requirements in English and one other language deemed appropriate by the amusement park operator. This notice must be placed in at least five dif-

ferent locations on the premises, including each entrance and exit, each place designated for receiving reports of accidents and injuries during business hours, and each place designated as a first aid station.

Q. Does CARSA define what it means by "conspicuously" posted?

A. No. In the *Doerflein* case, the plaintiff argued that the required signs posted in the park must not have been conspicuous because he did not see them on the day of the accident. The court declined to adopt a subjective standard for conspicuousness and ruled that compliance with the number and location of signs was sufficient compliance with the statute.

Q. Is there any uniform language for these notice signs?

A. Yes. Although the wording of the notice is not specified in CARSA, the New Jersey Amusement Association has created signs with the required notice in English and in Spanish. The notice reads: New Jersey law (N.J.S.A. 5:3-57-58) requires that a person injured in an amusement park must provide a written notice of the accident or injury to the amusement park within 90 days of the date of the incident giving rise to the injury. This is a precondition to bringing a personal injury suit in connection with the injury against an amusement park operator. Failure to provide the required notice within 90 days may result in the dismissal of your claim. Accidents may be reported at these locations..."

Q. Does the amusement ride operator have to post the required notice signs in order to enforce the 90-day reporting requirement?

A. Yes. Signage is required by N.J.A.C. 5:14A-4.12(a), and inspectors from the NJDCA will check to make sure that signs have been posted. In addition, under N.J.S.A. 5:3-57C, amusement ride operators must prove that they posted the signage in order to enforce the 90-day reporting requirement.

Q. Is this statute constitutional?

A. There have been two Appellate Division decisions interpreting the notice requirement in CARSA. In both cases, the Appellate Court was able to reach the contested issue without deciding on the constitutionality of the statute. However, we do not believe that there is any constitutional infirmity in this notice requirement. ■