Fitness Professionals Alert: Attention to Details Can Avoid Suit

written by David Herbert | August 10, 2017

Avoiding Liability Bulletin – August 2017

Two relatively recent court decisions point out the need for health and fitness facilities and fitness professionals to not only adopt basic risk management policies for their operations but also to comply with them at all times. Compliance with these policies can not only reduce the risks of client injury but can also either eliminate or reduce the risks of claim and suit.

In the first of these cases,[1] an Ohio court had to determine if a fitness facility was liable for a client's injuries when the client tripped and fell while walking to a treadmill on a rubber floor with "ripples" which she alleged caused her to fall after losing her balance. The court noted that she "suffered a fractured left elbow and right wrist, both of which required surgery to repair."

The client subsequently file a negligence suit and alleged that the facility "breached its duty to maintain and operate its premises in a safe manner when it failed to properly repair and maintain the workout mats which caused her to trip and fall." The fitness facility in turn filed a third-party complaint against the personal trainer seeking indemnification and contribution.[2] The facility answered the allegations of the client's complaint and alleged that any defects in the rubber floor about which the client complained were "an open and obvious condition" which the client should have observed and therefor protected herself from injury.

The facility moved for summary judgment based upon the open and obvious defense. The trial court agreed with the motion and granted judgment in favor of the facility which also resulted in a dismissal of the third-party complaint against the personal trainer. The client appealed.

On appeal, the court noted that an invitee like the client was owed "a duty of ordinary care in maintaining the premises in a reasonably safe condition and . . . [had] the duty to warn its invitees of latent or hidden dangers." The court noted in this regard that "the open and obvious nature of the hazard itself serves as a warning" thus averting any duty to warn.

The appeals court reviewed the testimony which the trial court used to make its summary judgment decision and noted that the client was not looking down as she walked and that had she done so, she could have seen the ripple in the rubber floor which she alleged caused her fall. The appeals court affirmed the trial court's decision and determined that there was no duty owed to the client since "the hazard was an open and obvious condition."

In a second case from New Jersey,[3] a health and fitness facility member "tripped over a weight belt on

her way to meet a trainer, which [belt] another member had left on the floor for an unknown amount of time." Apparently, "the trainer had known of the existence of the weight belt on the floor, but did not remove it despite the fitness center's policy to keep the place 'hospital clean' by picking up items that members leave on the fitness club's floor." The trip and fall caused the client to suffer what the court described as "a substantial injury requiring hip surgery" which the court noted "was unrelated to using physical fitness equipment or engaging in strenuous exercises involving inherent risk of injury."

As part of her membership agreement for the health and fitness facility, the plaintiff had agreed to a waiver and release which provided:

[y]ou . . . agree that if you engage in any physical exercise or activity, or use any club amenity on the premises or off premises, including any sponsored club event, you do so entirely at your own risk[.] You agree that you are voluntarily participating in these activities and use of these facilities and premises and assume all risks of injury, illness or death[.]

This waiver and release of liability includes, without limitation, all injuries which may occur as a result of . . . (a) your use of all amenities and equipment in the facility[;] (b) your participation in any activity, including, but not limited to, classes, programs, personal training sessions or instruction[;] and (c) the sudden and unforeseen malfunctioning of any equipment. [(Emphasis added).]

After her fall and injury, the member filed a negligence lawsuit wherein she claimed the facility was liable for her fall and injury. The trial court granted the defendant facility summary judgment on the basis of the waiver and release which the member had signed. On appeal, the court concluded that the exculpatory agreement was not enforceable and that the injury did not occur as a result of exercise activity per se.

As noted, the decisions in these cases were different but both were reached after considerable time and expense in the defense of these cases. Both cases may have been avoided had fitness professionals and other facility personnel removed trip and fall hazards from the floors of their facilities. Simple steps and attention to such details by all fitness personnel can to a long way toward reducing untoward events and lawsuits like those exemplified in these two cases. Facility personnel should be vigilant in removing hazards from facility floors when observed and conduct regular inspections of their fitness floors as they go about their daily shift duties.

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not engaged in rendering legal, medical or other professional services by reason of the authorship or publication of this work. If legal, medical or other expert assistance is required, the services of such competent professional persons should be sought. Moreover, in the field of personal fitness training, the services of such competent professionals must be obtained.

Adapted from a Declaration of Principles of the American Bar Association and Committee of Publishers and Associations

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[1] Darah v Coaching by Kurt, LLC v Yuschak, 2016-Ohio-7523, Court of Appeals, Sixth District, Lucas County, October 28, 2016.

[2] The exact grounds for the suit against the personal trainer were not specified in the decision.

[3] Crossing-Lyons v Towns Sports International, Inc. dba New York Sports Club, No. A-3908-15T3, Superior Court of New Jersey, Appellate Division, July 11, 2017.