Proper Placement of Exercise Equipment is Important for Client Safety and to Avoid Suit

written by David Herbert | June 15, 2016

A June 2015 case from California should remind all fitness professionals to comply with equipment manufacturers' instructions when assembling, placing and maintaining equipment for client use. In this case, Jimenez, et al. v. 24 Hour Fitness USA, Inc., 237 Cal.App. 4th 546 (2015):

Plaintiffs [Etelvina and Pedro Jimenez] filed a complaint against 24 Hour stating causes of action for premises liability, general negligence, and loss of consortium. The action arose out of injuries Etelvina sustained on January 16, 2011, while exercising at a 24 Hour facility in Sacramento, California. Etelvina's expert opined that she fell backwards off of a moving treadmill and sustained severe head injuries when she hit her head on the exposed steel foot of a leg exercise machine that 24 Hour placed approximately three feet ten inches behind the treadmill.

The plaintiffs also "asserted that 24 Hour was grossly negligent in setting up the treadmill in a manner that violated the manufacturer's safety instructions."

In response to these claims, 24 Hour filed an answer of general denial and asserted several affirmative defenses, including a liability release executed by the Plaintiff. Based upon the release, 24 Hour moved for summary judgment. The trial court granted judgment and the plaintiffs appealed.

On appeal the court noted the following:

At the time of her injuries, Etelvina was a member of 24 Hour. She joined 24 Hour approximately two years before the day she sustained her injury, and thereafter, she used the facilities regularly several times per week. On the day she joined, she was directed to the Membership Manager, Justin Wilbourn. She was then required to sign a membership agreement. However, Etelvina could not read or speak English, and Wilbourn did not speak Spanish. Wilbourn knew Etelvina did not read or speak English. Nevertheless, he did not call a Spanish-speaking employee to help him translate. Instead, he pointed to his computer screen to a figure, $24.99, indicating the membership fee, and made pumping motions with his arms like he was exercising. Etelvina understood the numbers, which are identical in Spanish, and she understood Wilbourn's physical gestures to mean that if she paid that amount, she could use the facility. She could not read anything else. Wilbourn then pointed to the lines in the agreement for Etelvina to sign.

The release of liability provided as follows:

"Using the 24 Hour USA, Inc. (24 Hour) facilities involves the risk of injury to you or your guest, whether

you or someone else causes it. Specific risks vary from one activity to another and the risks range from minor injuries to major injuries, such as catastrophic injuries including death. **In consideration of your participation in the activities offered by 24 Hour, *you understand and voluntarily accept this risk and agree that 24 Hour*, its officers, directors, employees, volunteers, agents and independent contractors *will not be liable for any injury,* including, without limitation, personal, bodily, or mental injury, economic loss or any damage to you,** 4 **your spouse, guests, unborn child, or relatives resulting from the negligence of 24 Hour or anyone on 24 Hour's behalf or anyone using the facilities *whether* related to exercise or not**. . . . By signing below, you acknowledge and agree that you have read the foregoing and know of the nature of the activities at 24 Hour and you agree to all the terms on pages *1 through 4* of this agreement and acknowledge that you have received a copy of it and the membership policies."

While there were a number of issues related to the execution and validity of the release in this case, the case points out the need to install equipment in accordance with manufacturers' recommendations/instructions as well as industry standards. It also has implications as to the need to assemble and maintain equipment in accordance with these same recommendations and standards.

The owner's manual from the treadmill manufacturer included a section entitled "Treadmill Safety Features." The section stated:

"[I]t is important to keep the area around the treadmill open and free from encumbrances such as other equipment. The minimum space requirement needed for user safety and proper maintenance is three feet wide by six feet deep . . . directly behind the running belt." (Italics added.)

The manufacturer's assembly guide for the treadmill also included a provision instructing installers to provide a minimum six-foot clearance behind the treadmill for "user safety" and maintenance.

One of the plaintiffs' experts, an expert in civil engineering and accident reconstruction, investigated the incident and determined in the area where the plaintiff fell, "the distance directly behind the running belt of the treadmill to the closest piece of equipment was 3 feet 10 inches. . . [This expert] determined that other treadmills in the gym were placed with an even shorter distance between the running belts and other gym equipment, approximately three feet.

This expert concluded that "that 24 Hour's act of placing other exercise equipment within the six-foot safety zone increased the risk of injury to persons using the treadmills."

A medical expert determined that the plaintiff fell backward while using the treadmill and struck her head. He noted "that while the gym floor is covered with shock-absorbing material, there was a leg exercise machine with an exposed steel foot that was approximately three feet ten inches behind the treadmill's moving belt."

A certified personal trainer also provided an opinion "that it is foreseeable that treadmill-users occasionally trip, stumble, or fall off treadmills. [This expert] . . . declared that '[f]or the safety of the

users and in order to minimize injury, it is important that a safety zone behind the treadmill be kept clear of other machines and obstacles so that users falling off or pushed off the rear of the treadmill do not strike such objects.' Accordingly, [the personal trainer] opined that 24 Hour's act of placing exercise equipment inside the safety zone 'greatly increased the risk of injury to [Etelvina].'"

On consideration of the appeal, the appeals court determined that the evidence created a question of fact which caused it to return the case to the trial court. Moreover, it determined that a jury could find that gross negligence applied in this case:

In reaching our conclusion, we also reject 24 Hour's argument, as adopted by the trial court, that "the provision of three to four feet of space as opposed to the recommended six feet cannot, as a matter of law, constitute gross negligence as it does not reflect 'an extreme departure from the ordinary standard of conduct.' " The misdirected focus on the two to three foot difference between 24 Hour's spacing and the recommended *minimum* spacing impliedly suggests that such difference was negligible and not "an extreme departure." However, when one thinks of the minimum safety zone recommended by the treadmill manufacturer in terms of the height of adult human beings and the high likelihood of a person falling off a treadmill impacting nearby equipment as close as three feet, it seems clear that the reduced zone established by 24 Hour here can hardly be considered a "safety" zone at all. Accordingly, it strikes us that a departure of two to three feet from the recommended minimum six- foot safety zone makes a great difference under these circumstances. Without any expert testimony indicating otherwise and in light of plaintiffs' expert's declaration corroborating the manufacturer's directions and the financial motivation that can be inferred from the evidence, we cannot agree that as a matter of law, the spacing of the machines demonstrates at least scant care and is not an extreme departure from the ordinary standard of conduct.

The appeals court also noted that a prospectively granted liability waiver like that given in this case "cannot absolve a party from liability for gross negligence" even if the fraud/misrepresentation issue dealing with the execution of the release would ultimately be decided in the defendant's favor.

As a consequence of all of the foregoing, absent a further appeal and ruling, the case will be returned to the trial court for determination.

Fitness professionals should note the following important points from this case:

1. Equipment needs to be assembled, installed, placed and maintained in accordance with manufacturer recommendations and industry standards;
2. While substantial weight was put on the manufacturers' instructions in this case, industry standards also exist as to equipment placement and should be referenced as well;
3. Injuries associated with treadmill use are the most frequent injury occurrence in the fitness industry; and,
4. Failures to follow manufacturer recommendations and/or industry standards can lead to claims of gross negligence which cannot be prospectively released by a waiver of liability and which can

lead to substantial claims for damage.

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