

Daily Inspection of Exercise Band Helps Win Defendant's Verdict - Upheld on Appeal

Avoiding Liability Bulletin - March 2017

While we have examined personal trainer duties and responsibilities in reference to the provision of exercise equipment to clients, a recent decision from Illinois should remind exercise professionals of their duties and responsibilities in reference to exercise equipment. In this case, [i] the plaintiff YMCA member was injured “when an exercise band he was using broke, snapped back and struck him in the eye.” He alleged two theories of liability – negligence in providing the equipment and breach of an implied warranty of suitability as to the band.

The plaintiff alleged that the YMCA had “a duty to exercise ordinary care in the furnishing of exercise equipment” which he contended they breached by failing to “inspect the elastic band; warn plaintiff of the elastic band's defective condition; perform tests on the elastic band to assure its proper operation; provide elastic bands with safety covers; and provide eye-protection equipment for its members.”

The testimony at the trial court level indicated that the plaintiff had experience using the bands not only at the Y but when he had undergone previous therapy. While no one showed him the particulars – archery type exercises he was doing when he was injured – he made up his own exercise routine with the band. There was some testimony that no facility instructor was present when the injury occurred but that someone was usually in the area. Further staff testimony indicated that the plaintiff’s use of the band for the exercise in question was not appropriate.

Further testimony indicated that all staff members were responsible for inspecting exercise equipment on a “daily basis, to make sure it was working and clean.” The trial court found “that there was no evidence of industry standards of care, nor evidence of any duty to inspect, warn, provide safety coverings, or provide eye protection.”

Based upon the trial court's record, the defendant facility moved for summary judgment which the trial court granted. The plaintiff appealed.

On appeal, the appellate court ruled:

Further, there was no testimony, expert or lay, that the bands were commonly used for this type of archery-style exercise near the face. There was also no evidence that the manufacturer recommended the band for an archery-style exercise near the face or that there was an industry standard to warn against this type of use for the exercise band at issue. Finally, there was no evidence of any defect in the band that could have or would have been detected upon proper inspection. The defendant's employees testified that the bands were inspected on a daily basis.

The plaintiff testified that the band he used on the day of the accident looked newer than other bands he had used and that he did not notice any nicks, cuts, or frays. Accordingly, while the defendant owed the plaintiff a duty of care, the trial court properly granted summary judgment on the plaintiff's claim for negligence because there was no evidence that the defendant breached that duty.

In affirming the trial court ruling, the appellate court also held:

. . . there was no evidence in this case of a negligent performance. The evidence indicated that the exercise bands were inspected on a daily basis and there was no evidence that the exercise band that broke was not inspected on the day of the plaintiff's injury. Further, the plaintiff testified that he looked at the band before using it, that it looked new, and that he did not notice any nicks, cuts, or frays. Additionally, there was no evidence that the inspection was performed negligently or that a defect could have been identified.

Exercise professionals should remember even though the plaintiff apparently did not produce any evidence on the issue, that there are industry standards dealing with equipment inspection, maintenance and repair. ASTM,^[ii] ACSM^[iii] and other similar industry sources^[iv] have all created standards dealing with the provision, inspection and maintenance of exercise equipment. Regular, daily or other periodic inspections of equipment as well as the preparation and retention of written or electronic records of inspection, maintenance and repair of exercise equipment as well as the creation of a record of any untoward events associated with that equipment can go a long way to defend or even in some cases to prevent claims and lawsuits from ever being asserted.

The bottom line for exercise professionals:

- regularly inspect and maintain exercise equipment,
- keep records of these activities, and,
- remove equipment which cannot be maintained or readily repaired from consumer use.

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

[i] Odom v YMCA of Belvedere, 2016 Il App (2d) 151274-U (Court of Appeals, IL, Second District, August 29, 2016)

[ii] ASTM, Standard Specification for Fitness Equipment F2276 (2015).

[iii] ACSM's Health/Fitness Facility Standards and Guidelines (Fourth Edition, 2012).

[iv] NSF International Standard for Health/Fitness Facilities, adopted in 2012 but withdrawn as an American Standard on August 8, 2014.

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