

# What height are your playground wood chips?

By Gordy Van

One of our cities opened a new playground, which included a nine-foot-high slide containing a curve. The playground opening was met with great excitement by the public and immediately began to see a great deal of use. Two months after the park was opened, a four-year old child fell from the slide, sustaining serious injuries. The City was not informed this accident had occurred until a claim was made a year and a half later. An expert for the injured child provided a report asserting that warning signs should have been posted that the slide was to be used by children over the age of five. The expert also claimed that the wood chips under the slide were of insufficient height and were compacted and rotting. Following an investigation, the claim was denied and a lawsuit was filed.

WCIA claimed a defense under [RCW 4.24.210](#), Recreational Use Immunity, which basically states if a landowner opens land to recreational users without charging a fee for the use, they are not liable for unintentional injuries to users. The exception is if there is a known dangerous artificial latent (hidden) condition for which warning signs have not been conspicuously posted. The plaintiff claimed that the height of the wood chips was a latent condition. The case of *Swinehart v. City of Spokane* 145 Wn.APP.836 (Div. III 2008) ruled otherwise, finding that the depth of wood chips was not a latent condition as a party could check the depth of the wood chips themselves. We were also able to counter claims of insufficient wood chip height and compaction through proof that the height was adequate at the time of the playground opening just two months prior to the accident and regular inspections had been conducted. We also argued that plaintiff's expert examined the height of the wood chips well over a year after the accident occurred and could not accurately represent the height of the chips at the time of the accident. After being confronted with the evidence and our legal defenses, the plaintiff voluntarily dismissed the lawsuit. While there is solid case law for the argument wood chip height is not a latent condition, we caution that we have had another case where the judge ruled that latency of wood chip height is a question of fact and denied a summary judgment motion.

Keeping good maintenance records and maintaining an adequate level of cushioning material is very important in not just providing a safe environment for children to play in, but also for defending future claims and lawsuits. Measurements should be taken of the height of wood chips and the chips should be turned periodically to prevent compaction and provide a safe landing spot for children using equipment. Care should also be taken to comply with manufacturer safety recommendations as well as American Society for Testing Materials (ASTM) standards and Consumer Product Safety Commission (CPSC) guidelines.