When afternoon fun takes a tumble

By Drew Brien

Our members offer a wide variety of parks and playgrounds for use by their community members—ranging from nature-oriented parks with trails to ball fields for large sporting events and everything in between. One member has a park with a playground that is specifically 'toddler-friendly' (designed with young children in mind). For example, the toys and jungle gym are very low to the ground and the padding is extra soft to help prevent injuries, etc.

In one incident at this park, a nearby resident brought her three children to the park for an afternoon of fun. The youngest child, an adventurous 18-month-old, wandered away from his mom and the playground, and was walking along the fence surrounding the perimeter of the park. At this park there happened to be a large irrigation vault along the fence line, and the child walked directly on top of it. Unfortunately, the hinges on the cover had unknowingly rusted out and when the child stepped on the cover, it gave way and he fell in.

Within an hour of receiving notice of the incident, the member responded and coned off the area, and the hinges were replaced the following day. Not long after that, WCIA received a claim with a demand from the family's attorney to settle for the injuries the child sustained due to falling into the irrigation vault. After careful review of the records, it became evident that the parent was not watching the youngest child and only later became aware of the accident when hearing the child crying after falling into the irrigation vault. (It's worth noting this incident took place in the furthest corner of the park away from the playground.)

It might seem easy to assign fault to the parent given his/her lack of supervision of the child. WA State Supreme Court has held that a parent cannot be liable for a child's injuries based on a theory of negligent supervision, thus no fault to be apportioned to the parent under WA comparative negligence laws, *Smelser v. Paul*, 188 Wn.2d 648, 398 P.3d 1086 (2017).

WCIA's next steps involved determining if Recreational Immunity would provide a defense to the claim under RCW 4.24.210, as there was no fee to use this park and playground. To defeat Recreational Immunity, the injured party would have to prove that the injury was caused by a known artificial latent condition. As the member in this instance did not know the hinges on the vault cover had rusted out, it is questionable whether this would be considered a known condition.

In the end, we resolved the case with the family's attorney for less than it would have cost to pursue defending the claim under Recreational Immunity through litigation, which itself isn't always a sure bet. WCIA handles each claim on its own merits, and, in this case, we were able to achieve a comfortable resolution on both sides.