



August 2016

Pokémon Go Liability

by BHS

In a matter of days Pokémon Go gained the attention of teenagers, kids and adults leading them to experience new places in their quest to find their favorite Pokémon characters. The news media has reported people stepping off a cliff, walking into oncoming traffic, jumping over a fence onto private property and entering abandoned warehouses in an attempt to capture the little monsters.

One of the first encounters with Pokémon Go at a public garden occurred at Frederik Meijer Gardens & Sculpture Park in Grand Rapids, MI when at 4:30 am, Security observed “visitors” climbing a fence to access a popular sculpture in the Garden - on a quest to capture a character. While these early morning visitors were escorted out of the Garden without injury or incident, they were assured that they would be welcome during normal business hours. The staff is observing a regular flow of guests who are focused on their phones while finding their way to the aforementioned sculpture. While these guests may not be enjoying the Garden in the traditional way, they are a new audience that is being introduced to the Garden in a unique way! The hope is that they will discover the Garden is a great destination for appreciating art and nature without the distraction of Pokémon Go!

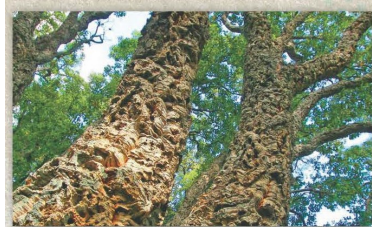
Some gardens are capitalizing on the ability to reach new audiences. For example the Oregon Botanic Garden launched an event to invite players to participate with the price of admission: <http://bit.ly/2aK33dr>

Others have offered new special events and discounted pricing dates for Pokemon Goers: <http://bit.ly/2aP8i9J>

We have received questions and concerns from public gardens regarding their liability, should a guest be injured while playing Pokémon Go. What is the Garden’s exposure due to these game playing guests and who is responsible for injuries?

What risks do you have?

A number of factors can impact the risk and liability of a Garden associated with Pokémon. First and foremost, Gardens are created to have guests explore and learn about the natural environment. Consequently, the standard of care that is defined in tort law requires the



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Garden to provide a safe environment for guests to use the space accordingly. When guests use the space for gaming purposes and there are resulting injuries and claims, they are potentially defendable. If you invite Pokémon Go gamers into your space you may be held to a higher degree of care.

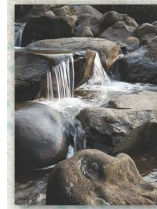
What can be done to keep players safe and prevent injury?

- Educate your staff about the game and to recognize the Pokémon players in the Garden. Observing and alerting the guests could prevent injury; remind players to stay on pathways and to be aware of their surroundings.
- It is noteworthy that each time a player starts playing there is a safety warning message that appears. (This was added after several injuries occurred.) Be aware that you can report an issue with a Pokestop and request to have it removed or perhaps moved: <http://bit.ly/2aeIM0K>
- Security should have a plan to deal with this unique group of trespassers, directing players to admissions or inviting them to come back during open hours.
- When completing the Accident Investigation Report, First Responders need to document whether the guest was playing Pokémon when they were injured. A detailed Accident Investigation Report is critical documentation to defend a charge or suit. We recommend a 24 hour follow up call to the injured guest, as it is good public relations and helps understand the guests' intent regarding the incident.

How does insurance respond should an incident occur?

The General Liability Policy in place for a public garden provides insurance protection for bodily injury and property damaged due to day to day operations. If a guest is not paying attention and walks directly into a tree, do we pay for related injuries? If we are not negligent then we should not be responsible, however we do want to have our insurance carrier support us in our defense of the claim or suit. Our insurance carrier will use your Accident Investigation Report and complete a further investigation to defend the Garden in an effort to dismiss the allegation and avoid payment.

The General Liability Policy includes Medical Payments Coverage, which can be used to pay the first \$5,000 to \$10,000 of medical bills regardless of fault or negligence. This facilitates a goodwill response on behalf of the Garden, with the intent of avoiding a suit based on allegations of negligence.



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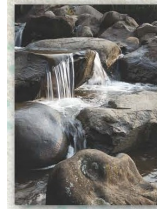
If Pokémon Go is bringing new guests to your space, we hope they experience the passion and mission of your institution and become future ambassadors and members for your public garden.

Sharon & Kim

Recently posted articles & stories related to the Pokémon Go Risk & Liability:

[Hunting Pokémon raises liability issues when incident happen](#)

[Risk managers must scramble to catch all Pokémon Go liabilities](#)



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