

Piñata stick slips from hands, strikes eye of 12-year-old girl

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The stick being used in a piñata game slipped from an 8-year-old boy's hands and flew 15 to 20 feet across a yard before striking a 12-year-old girl in her eye and causing permanent blindness in that eye.

The adults controlling the piñata game were uninsured, so a negligence suit was brought against the landowner host who had purchased the piñata. Although the testimony was that this defendant was not directly involved in running the piñata game, the party was held at her home, and the stick, rope and blindfold had been obtained from her household.

Attorney Donald S. Culkin identified older case law suggesting that an individual who owns the instrumentalities of a tort-related injury has the right to control their use. In response to many serious injuries resulting from swinging a stick at a piñata, the industry developed a safer alternative that is now sold all over the country. The piñata used in this game had the improved design feature of several strings fastened to its bottom, only one of which is attached to the plug in the piñata. If a child selects the correct string, a tug removes the plug, thereby releasing the candy. The liability theory was that the hostess had ready the instructions about how to use this piñata and should have stopped the game from proceeding in that traditional way where club-wielding, disoriented children swing blindly at the suspended piñata hoping to break it open. However, the instructions also stated the piñata could be used in the traditional way.

Our firm was concerned about an argument persuading a jury to return a defense verdict given the attenuated liability theory. We were also concerned about a demurrer being sustained on a third court-ordered bill of particulars based on the judge's comments at two prior hearings. Policy limits were \$300,000, and we settled the case for \$140,000 because we felt we had less than 50 percent chance of surviving pretrial motions, persuading a jury to return a verdict and surviving an appeal.