

## Case Study

# General Liability Claim

## Fall From A Third Floor Balcony

### The Problem

A young woman was attending a party on the third-floor of an apartment complex that was built in 1991 under the Uniform Building Code. She was drinking on the balcony with friends, sitting atop the guardrail when she fell to the ground and broke her pelvis. Thankfully she recovered but the insurance company, in an abundance of caution, wanted to better understand their exposure to risks associated with the guardrails at the project.

### The Solution

PFCS inspected the guardrail at the location of the fall, and many other guardrail locations on the property. We took detailed measurements and documented our professional (forensic) investigation with detailed field notes, diagrams and many photographs. We then collected project information and analyzed the building code requirements at the time of construction.

The top of the guard rail was 36 ¼-inches above the deck. The applicable building code was 1988. The project is classified Group R (residential), Division 1 (multi-family). The 1988 code Section 1711 calls for a 42-inch minimum height. Section 1711 has a list of "Exceptions: (including) 1. The top of guardrails for Group R, Division 3 and Group M, Division 1 Occupancies and interior guardrails within individual units and guest rooms of Group R, Division 1 Occupancies may be 36-inches in height." The current code exception applied only to locations "...whose top rail also serves as a handrail..." And although the language of the applicable (older) code section is ambiguous, we were able to find numerous references at the time which indicated the prevailing interpretation at the time did apply to this condition.

Therefore, although the guardrail would not meet the minimum requirements of the current code, it was obvious that the building official interpreted the 36-inch guardrail height exception to apply to this condition, and so it met the code requirements at the time of construction. In addition, there was no information to indicate an event had occurred since the time of construction that would have triggered a code upgrade requirement. Our client was able to use this information to avoid litigation altogether.

