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Route To: ___/___/___/___

SPORTS FACILITIES

How the law affects the sports facilities industry and the LAW

Baseball Spectator Takes Another Swing, and Misses, at The Baseball Rule

By Carla Varriale, of Havkins Rosenfeld Ritzert & Varriale

New York's Appellate Division, First Department unanimously affirmed the summary judgment decision in Zlotnick v. New York Yankees Partnership and Major League Baseball that dismissed the personal injury action against defendants New York Yankees Partnership's ("NY Yankees") and Officer of the Commissioner of Baseball d/b/a Major League Baseball ("MLB").

The media seized upon Zlotnick because it involved questions of whether the "Baseball Rule" was outmoded. The Baseball Rule was crafted by New York's Court of Appeals in 1981 and it has been a bedrock specialized duty of care that requires owners and operators of baseball stadiums to screen the area behind home plate. The question of whether the protective screening should be extended beyond home plate became a national debate, particularly after several spectators sustained horrific injuries (including Mr. Zlotnick) because they were struck by an errant baseball while watching the game from an unprotected area. Indeed, Mr. Zlotnick (an attorney) became an advocate for extending the netting in order to protect spectators, notwithstanding the Baseball

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FOUL BALL UPDATES

Injured Fan Seeks to Overcome 'Baseball Rule' and Illinois Law In Foul Ball Lawsuit

By Scott A. Andresen, Esq.

"Major League Baseball prides itself on providing fans in our ballparks with unparalleled proximity and access to our players and the game taking place on the field. At the same time, it is important that fans have the option to sit behind protective netting or in other areas of the ballpark where foul balls and bats are less likely to enter." Rob Manfred, Commissioner, Major League Baseball (December 9, 2015)

August 29, 2017 was just another day at historic Wrigley Field in Chicago. John Loos and his son had secured great seats to watch the first place Chicago Cubs take on the Pittsburgh Pirates. Pitchers Jake Arrieta and Chad Kuhl were locked in a 0-0 pitchers duel as the game entered the fifth inning, but that is where things took a decidedly bad turn for Koos. Kuhl (now a batter) fouled off Arrieta's 77th delivery of the game into the first base stands, striking Loos in the face. Months after the fateful incident, Loos still has no vision in his left eye and is facing the possibility of a prosthetic eye.

As a result of injuries sustained, Loos filed a lawsuit in the Circuit Court of Cook County, Illinois against the Chicago Cubs and Major League Baseball alleging negligence against MLB and 'willful and

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London Stadium Fallout

The Mayor of London, Sadiq Khan, published an independent review in November 2017 into the scale of the mismanagement for the London Stadium by the former Mayor. The report revealed a litany of errors that led to the stadium's transformation costs soaring millions and a bungled decision that left taxpayer with an annual loss of around £20 million. On the heels of such problems the Mayor decided to take control over the stadium.

Forensic accountants, Moore Stephens, reported how decisions made by Boris Johnson (London's former Mayor) led to the taxpayer shouldering the cost/risk , rather than West Ham United, in transforming the stadium from Olympic use to primarily a soccer facility. The decisions to transform the stadium, and to accept West Ham's second bid to be the anchor tenants, were made based on incorrect financial estimates. The initial, and really unrealistic estimate of £190m to transform the stadium fell significantly short of the final £323m cost of transforming the stadium. The former mayor did not, according to the report, properly scrutinize the numbers and rushed to have the stadium host Rugby World Cup games in 2015, which added extra delays, disruption and costs to the construction process.

The Mayor of London, Sadiq Khan, said: "I ordered the review into the finances of the London Stadium to understand how key decisions were made about its transformation and why costs were allowed to spiral out of control. What has been presented is simply staggering. Not for the first time, it reveals a bungled decision-making process that has the previous Mayor's fingerprints all over it."

The 169- page Moore Stephens report focuses on five key decisions made once London won the 2012 Olympic Games bid:

1. Cost and timescale pressures were given far more importance in decision-making than Olympic legacy, leading to an unsatisfactory post-Games plan.
2. Insufficient attention was paid to possible operating models and the associated legal/State Aid implications after the Games ended.
3. The first bid process, won by a joint bid from West Ham and Newham Council to run and own the Stadium, was cancelled by Mayor Johnson in 2011 which resulted in subsequent legal action threatening London's bid for the 2017 World Athletics Championships. This resulted in a decision to pursue a 'Public Sector Model' where taxpayers would own, transform, and operate the stadium.

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SPORTS FACILITIES and the LAW

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Appeals Court Favors Giants in Security Guard Wage Dispute

A California state appeals court has reversed a trial court and found that a group of security guard employees who brought wage and hour claims against the San Francisco Giants must pursue their claim through the arbitration process.

While the alleged statutory violation did not come within the scope of the contractual arbitration provision of the collective bargaining agreement (CBA) between the employer and the employees' union, the appeals court found that federal preemption applied under § 301 of the federal Labor Management Relations Act, meant the dispute had to be resolved pursuant to the grievance procedure and arbitration under the CBA.

By way of background, the Giants play at AT&T Park in San Francisco, where the Giants play baseball games, and concerts and other events are staged during the off-season. Lead plaintiff George Melendez has been employed by the Giants as a security guard at AT&T Park since March 2005. As required by the terms of the CBA, he has at all times been a member of the union and the terms of his employment are governed by the provisions of the CBA.

The CBA confirms that the union is the sole collective bargaining agency for security personnel employed by the Giants at AT&T Park. The agreement defines several classifications of employees. "Regular" employees are the 13 employees who in 2012 worked the most total hours and who continue to work at least 1700 hours in succeeding years. These employees have priority in scheduling over other classifications of employees and receive benefits not provided to other employees. Any vacancy in these 13 positions "shall be filled by the person who worked the most hours in the previous year from among those employees not classified as 'regular employees.'" All other employees (other than "supervisory" employees and "probationary" employees) are labelled "seasonal" employees. The CBA also defines "senior seasonal" employees (seasonal employees who have worked a minimum of 300 hours each year for the last five years) and "super senior seasonal" employees (seasonal employees who have worked a minimum of 300 hours each year for the last 10 years), who receive increased hourly wages.

All security personnel are required to meet specified employment qualifications. These qualifications include obtaining a valid California Guard Card, which requires "enrolling in and completing necessary coursework and training, passing the required examination, passing the required background check" and meeting any other applicable requirements. The CBA also provides that "All new applicants for employment as security personnel shall be subject to pre-hire drug screening and background investigation." The Giants "have the right to discipline or discharge any regular, senior seasonal or seasonal employee for cause." The term of the CBA is from January 1, 2013, through December 31, 2017, and from year-to-year thereafter unless either party requests modification 60 days prior to the anniversary date.

The CBA contains a schedule of hourly wages for all classifications of employees. The agreement provides that the Giants "retain the right to establish what shall constitute a normal workday and to schedule employees at its discretion." All non-probationary employees "shall be entitled to overtime pay for Martin Luther King Jr. Day, President's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, Christmas & New Year's Day."

According to the Giants' Senior Director of Security, "security guards do not turn in their uniforms or badges at the end of each homestand or baseball season." They "do not reapply for work or submit new hire paperwork at the beginning of each homestand or baseball season. Nor do they have to undergo security background checks at the beginning of each homestand or baseball season. The Giants do not terminate their security guards at the end of each homestand or baseball season. On the contrary, security guards remain on the Giants' payroll between homestands and baseball seasons, unless their employment otherwise ends (by resignation or pursuant to the CBA)." Many Giants' security guards "regularly work between baseball seasons or year-round. ... Based on review of his payroll records, [Melendez] himself regularly worked between baseball seasons. In fact, he worked every pay period in 2015 and each and every pay period in 2016 to date, often working almost as many hours in the 'off-season' as those during the baseball seasons."

Without having invoked the grievance procedures specified in the CBA, the plaintiffs filed their complaints with common allegations. Melendez alleged that he and other security guards are hired by the Giants "intermittently during the baseball season and throughout the rest of the calendar year" and that the Giants fail to comply with Labor Code section 201 "in no less than three (3) ways. (1) At the end of the baseball season defendants do not pay intermittingly employed persons on the last day they work during the season. (2) During the baseball season, defendants do not immediately pay intermittently employed employees on the last day they work during a home-stand. (3) Between baseball seasons, when intermittently employed persons are employed for events such as concerts, college football games, theatrical performances, fan appreciation days, a run of Cirque du Soleil shows, etc., defendants do not immediately pay intermittently employed employees at the end of their work at these events."

The Giants sought arbitration, pursuant to the CBA and section 301 of the LMRA. Then trial court denied the request and the Giants appealed.

The Court of Appeal reversed the order.

While it agreed with the trial court that the dispute did not come within the arbitration provisions of the CBA, the fact that it was based on an alleged violation of Lab. Code, § 201 implicated § 301 of the LMRA.

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London Stadium Fallout

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Mayor Johnson publicly conveyed that he would "effectively rent it [the Stadium] to a football club, almost certainly West Ham." This change meant that the taxpayers, not West Ham, would be responsible for transforming the stadium after the Olympic Games. This decision was made without a full understanding of all the construction related costs and put the city in a very weak bargaining position with the team. The report indicated that officials never considered the option of not entering into a deal, which could have changed bargaining positions and future costs.

4. Contracts were signed with West Ham United before the transformation costs were finalized- resulting in a cost £133m higher than forecasted.
5. The report says: "In our opinion, the decision to transform the Stadium and to contract with WHU was made on incorrect financial estimates and an insufficient appreciation of the critical commercial and financial risks. It is our opinion that the financial estimates were incorrect not because they were estimates, but because there were errors in their calculation, compilation and presentation."

Given the public costs, Mayor Sadiq committed to bringing transparency to the stadium's finances through:

1. Publication of the E20 annual accounts
2. Confirming the cost of moving the stadium seating in 2017 was £11.8m.

https://www.london.gov.uk/press-releases/mayoral/stadium-forecast-to-lose-24-million-in-2017-18

Key takeaways

Not all of these public/private stadium deals are cooked behind closed doors without any transparency. In my experience the details are always worked out through whatever process applies to the local governmental agency and the private sector. Usually once a deal has been hammered out it is fully disclosed and voted on publicly before it becomes final. I don't know if that was the case in London with Boris Johnson and West Ham. Denis Braham of Winstead PC

Study Highlights Health Risks of Playing on Synthetic Turf

By Christopher Calnan

A Connecticut public health advocacy group is urging localities to spend money on athletic fields of real grass instead of synthetic turf until high quality studies can be completed.

The Environment and Human Health Inc. is reporting that 22 studies cited by the synthetic turf industry are scientifically inconsistent yet reveal that playing on the fields embedded with shredded tires increase exposure to toxic chemicals and metals.

"Although industry admits that many studies find numerous toxic compounds, they claim that the levels are too low to be dangerous to human health," the report indicates. "Yet the National Institute of Environmental Health Sciences reports that even when there is low-level exposure to an individual chemical that might not cause cancer, when many low-level chemicals act together they can indeed cause cancer."

Maryland-based Synthetic Turf Council Inc. President and CEO Dan Bond, said the EHHI has a history of "cherry-picking half-truths" that mislead the public.

"The fact is EHHI completely ignores multiple recent research reports and statements from Washington State, the European Chemicals Agency, the Dutch National Institute for Public Health and the Environment, and FIFA that support the safety of synthetic turf fields," he said in a news release. "This is in addition to the more than 90 peer-reviewed academic studies, third-party reports and federal and state government analyses that have not found public health concerns from playing on synthetic turf fields with recycled rubber infill."

About 12,000 athletic fields in the United States are using synthetic turf, according to published reports.

The EHHI, which was founded in 1997, reported receipts of about $213,000 during fiscal 2016. The Synthetic Turf Council, founded in 2002, represents more than 200 companies. It reported receipts of about $587,000 during fiscal 2015, according to filings with the Internal Revenue Service.

Last January, Sports Litigation Alert reported that the Environmental Protection Agency disclosed that it's still evaluating the safety of recycled crumb rubber used in athletic fields and playgrounds — stating that more research needed to be done.

It's studying the issue from four perspectives: literature review, tire crumb characterization, exposure characterization and playground study. In August, the Office of Management and Budget approved the information collection request for the continuation of the tire crumb exposure characterization study, according to the EPA's website.

EPA researchers finished collecting samples at the end of October. They're now analyzing and expect to release a report in 2018, EPA officials told Sports Litigation Alert.

In June, The Hill news organization reported in an opinion piece written by Bond that results will take at least two more years.

EHHI President Nancy Alderman told Sports Litigation Alert she didn't know when the EPA's report is expected, but said the EPA has previously advocated for the shredding of tires as a solution to the environmental waste problem they present. That puts the agency in an awkward position if toxicity findings eventually prove to harmful to children, Alderman said.

"Whatever answer they come up with it's going to be very, very difficult," she said. "The cost has been huge."

The EHHI's 112-page report, called Synthetic Turf: Industry's Claims Versus the Science, was released Nov. 7. It reported that lead was found in every study that looked for it. One study found lead in one field to be 500 to 1,000 times the lead concentration of the other fields tested. Benzothiazole, an eye, skin and respiratory irritant, "was found to be emitted in nearly all the air samples tested and was also found leaching from crumb rubber samples," the EHHI report shows.

It also found that none of the 22 studies it reviewed looked into the synergy of being exposed to many chemicals at the same time and its affect on those playing on the fields. An indoor field that was tested found high levels of toxins in the air above the field. However, the field was only tested for 25 minutes, the EHHI found.

In 2014, California Sen. Jerry Hill introduced a bill banning new fields of synthetic turf and recycled tires as the state studied the alleged link to cancer. However, the bill failed to gain approval amid heavy industry lobbying efforts. In 2016, he re-introduced another version of the proposed legislation to no avail.

Opposition by labor unions such as the International Union of Painters and Allied Trades the State Building and Construction Trades Council reportedly played a role in the bill's defeat. California health officials are scheduled to complete a study of potential health risks caused by synthetic turf by mid-2018, according to the non-profit CalMatters organization.

Key takeaways- The battle over artificial turf is unfortunately far from over. There are folks on either side claiming research supports their position. What is needed is independent research (some has already been done) that everyone can stand behind. As a researcher, I can say that such a scenario is very unlikely because every researcher has potential bias and can try to manipulate findings to support their hypothesis. The best research is often when a hypothesis is pursued, and then proven wrong or when there is no initial hypothesis- but rather just an attempt to collect critical data.

Appeals Court Gives Cheerleader Another Chance, Reversing Trial Court in Case Involving Dangerous Surface

A California state appeals has revered a trial court and found that the assumption of risk doctrine should not have barred the claim of a high school cheerleader, who suffered a concussion when she was asked to perform a complicated acrobatic stunt on an allegedly dangerous surface.

The plaintiff in the case was Heather Arnzen, a senior and experienced varsity cheerleader at Temecula Valley High School. During the school's homecoming football game on September 28, 2012, Arnzen was asked to serve as a "base" for a stunt called the "liberty extension." The stunt was performed on a dirt track next to the football field. Arnzen fell during the stunt and suffered a concussion.

She ultimately sued the Temecula Valley Unified School District, and her cheer coach, Revan Jebrail, a District employee. Arnzen alleged causes of action against each defendant for negligence and premises liability.

In her negligence claim, Arnzen alleged that the defendants increased the risk of injury inherent in performing the stunt by, among other things, directing the cheerleaders to perform the stunt on the "slick dirt track" and without safety mats. In her premises liability claim, Arnzen alleged the watering of the dirt track to prevent excessive dust during the homecoming activities created a dangerous condition, which posed an unreasonable risk of harm to Arnzen and the other cheerleaders.

The defendants successfully moved for summary judgment. Significantly, the trial court concluded that the negligence claim was barred by the assumption of risk doctrine. The plaintiff appealed.

On appeal, the court focused on Knight v. Jewett (1992) 3 Cal.4th 296, 315, 11 Cal. Rptr. 2d 2, 834 P.2d 696 (Knight); see Civ. Code, § 1714 as determinative case law concerning the school district.

"Knight broadly defined the scope of the duty of care owed by a defendant with some role in or relationship to a sport or to a participant in the sport: 'Although defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport.' (Knight, supra, 3 Cal.4th at pp. 315-318 [discussing scope of liability of sports facilities owners and operators, such as ballparks and ski resorts].)

"Knight discussed two examples of what would and would not increase the risks of harm inherent in a sport: '[A]lthough a ski resort has no duty to remove moguls from a ski run, it clearly does have a duty to use due care to maintain its towropes in a safe, working condition so as not to expose skiers to an increased risk of harm. The cases establish that the latter type of risk, posed by a ski resort's negligence, clearly is not a risk (inherent in the sport) that is assumed by a participant.' (Id. at p. 316.)"

Turning to the instructor or coach, the court found similarly applicable case law.

"Instructors, like commercial operators of recreational activities, 'have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport. . . .'" (Fortier v. Los Rios Community College Dist. (1996) 45 Cal. App.4th 430, 435, 52 Cal. Rptr. 2d 812; Knight, supra, 3 Cal.4th at p. 316.)

Arnzen claimed the defendants did not meet their initial burden of showing that the assumption of risk doctrine barred her negligence claim. Specifically, she charged that the defendants had a duty to show that "Jebrail's directive" to Arnzen and the other cheerleaders "to perform complicated acrobatic stunts on the slippery and hard track surface, without mats or other safety precautions" did not increase the risk of injury inherent in performing the liberty extension stunt.

She further argued that even if the defendants had met their initial burden, she had raised triable issues sufficient to preclude summary judgment, and that the court erroneously excluded critical evidence submitted in opposition to the motion. This includes evidence that Jebrail violated TVHS's policy, which was adopted during the previous year. That policy required that such stunts be performed on safety mats.

The appeals court agreed.

Heather Arnzen v. Temecula Valley Unified School District et al.; Ct. App.Calif., 4th App. Dist., Div two; E064589, 2017 Cal. App. Unpub. LEXIS 7575; 10/31/17

Attorneys of Record: (for plaintiff) Williams Iagmin and Jon R. Williams. (for defendants) Carpenter, Rothans & Dumont, Justin Reade Sarno and Louis R. Dumont.

Key Takeaways

It is important to examine where various events are being held. Just because a location works or is convenient should not be the deciding factor. Always examine a location based on what is the worst thing that can happen at that location based on various factors such as activity, location, weather, surrounding events, etc… If there is a risk that is either likely or potentially severe, than other options need to be explored.

Appeals Court Sides with Cheerleaders in Kountze Litigation

A Texas state appeals court has affirmed a trial court's determination that the religious speech contained in banners displayed by cheerleaders at football games was, in fact, protected speech. Thus, the court properly denied the school district's argument that it was state-sponsored speech and the school district had a right and obligation to prevent it.

Even though the appeals court had previously deemed the case moot, the Texas Supreme Court had taken up the case, concluding that the school district's conduct might reasonably be expected to recur. It then remanded it back to the Court of Appeals for further proceedings on the merits.

By way of background, the Kountze litigation was prompted by an order by school administrators prohibiting the Kountze high school cheerleaders from displaying religiously-themed messages on banners that the football players broke through as they ran onto the football field. The administrative decision was prompted by a letter from the Freedom from Religion Foundation which claimed that the practice was a violation of the Establishment Clause. The ban on religiously-themed banners prompted the parents of the cheerleaders to file a lawsuit claiming a violation of First Amendment free speech and free exercise rights, as well as a violation of Equal Protection. The cheerleaders won a motion for a temporary injunction prohibiting the ban; concurrently the Kountze school district Board of Trustees adopted Resolution and Order No. 3, which states that "school personnel are not required to prohibit messages on school banners, including run-through banners, that display fleeting expressions of community sentiment solely because the source or origin of such messages is religious."

The Kountze school district filed a plea based on governmental immunity and lack of standing, then amended the plea asserting mootness because Resolution and Order No. 3 had been adopted. The trial court denied the appeal and the school district filed an interlocutory appeal. The Texas Court of Appeals held that all of the cheerleaders' claims (except for attorney's fees) were moot (Kountze Independent Schools District v. Matthews, 2014 Tex. App. LEXIS 4951). The cheerleaders then petitioned the Texas Supreme Court for review.

The Texas Supreme Court provided de novo review on the application of the mootness doctrine. It is apparent that a justiciable controversy existed at the time the case arose, as the cheerleaders complained about the original decision of school administrators to prohibit religiously-themed messages on their game banners. That school district decision was rescinded, eliminating a justiciable controversy at present, but the Texas Supreme Court determined that the school district could just as easily reinstate its previous policy. Without an action from the school district that made "absolutely clear that the [challenged conduct] could not reasonably be expected to recur." Throughout the litigation, the school district has maintained that its prohibition of religious messages was constitutionally permissible and currently maintains authority to restrict the content of messages on banners displayed in schools. Because of this, the Texas Supreme Court held that the controversy is not moot, reversed the Texas Court of Appeals decision, and remanded the case back to that court.

Throughout these proceedings, the cheerleaders have tried to reframe the controversy by claiming that the banners are not "government" speech and should not be regulated. Although it seems apparent to most outside observers that cheerleaders do, in fact, represent their school — regardless of whether the school provides funding or not — this adds another twist to the substantive issues in the case which may finally be litigated by the Texas Court of Appeals upon remand. This will be an interesting case to watch if the substantive questions raised by the cheerleaders (free speech, free exercise and equal protection) and the district (establishment clause, sovereign immunity) are actually argued in court.

In the most recent ruling, the appeals court concluded that "where the parents of cheerleaders sued the school district after the superintendent prohibited the cheerleaders from including religious messages on banners, the trial court properly denied the school district's plea to the jurisdiction because the cheerleaders' speech on the banners was private speech protected by the First Amendment; Governmental immunity has been waived for private free speech claims; The school district failed to establish the level of control necessary to equate the cheerleaders' speech with government speech; The cheerleaders' speech on the pregame banners was not properly characterized as school-sponsored speech; Because each minor cheerleader alleged a breach of her constitutional right to freedom of speech, each minor had standing to bring suit based on a justiciable interest in the controversy."

Kountze Independent School District v. Coti Matthews, on Behalf of Her Minor Child Macy Matthews, et al.; Ct. App. Tex., 9th Dist.; NO. 09-13-00251-CV, 2017 Tex. App. LEXIS 9165; 9/28/17

Attorneys of Record: (for appellant) Thomas P. Brandt, Joshua A. Skinner, John D. Husted, Fanning, Harper, Martinson, Brandt and Kutchin, PC, Dallas. (for appellee) James C. Ho, Prerak Shah, Gibson, Dunn and Crutcher, LLP, Dallas; David W. Starnes, Beaumont; Kelly J. Shackelford, Jeffrey C. Mateer, Hiram S. Sasser III, Liberty Institute, Plano.

Key Takeaways

While many are accustomed to "John 3:16" banners at stadiums, the politically charged environment will result in more disputes associated with separation of church and state. The key is having a consistent policy related to posters/banners, enforcing that policy, and communicating that policy in advance to spectators.

Appeals Court Upholds Rationale for Firing Facilities Manager Who Advocated Better Padding Behind Basketball Goals

A Washington state appeals court has affirmed a trial court's ruling that Gonzaga University "possessed an overriding justification to terminate" the employment of its assistant director of the Rudolf Fitness Center (RFC), who had claimed he was fired because he advocated for protective padding on the wall behind the baskets in the basketball field house.

In a majority decision, the panel of judges noted plaintiff David Martin's insubordination and other actions he took that ran counter to the reasonable expectations of his employer.

By way of background, the RFC was opened in 2003 for use by students, faculty, and staff. The university's Athletics Department oversees the fitness center. In the early years, university students sustained injuries when playing basketball and striking bare concrete walls behind the baskets in the RFC, including concussions, head trauma, broken bones, dislocated shoulders, and lacerations.

In 2004, Senior Associate Athletics Director Chris Standiford instructed Assistant Athletics Director Jose Hernandez to hire a risk management consultant to assess the need for pads along the walls of the basketball courts. The Athletics Department later declined to follow the consultant's recommendation to install pads. The university then estimated the cost of the padding as $30,000.

In 2007, Hernandez again engaged a consultant to assess the need for safeguarding pads and the costs of the pads. After the second assessment, Hernandez recommended to his supervisor, Assistant Athletics Director Joel Morgan, that Gonzaga University install the pads. The Athletics Department again declined to install the recommended pads.

Gonzaga University hired plaintiff David Martin on January 2, 2008, to work as an assistant director of the RFC. In addition to his wages, Martin received other benefits, including health insurance and free tuition. Martin utilized his tuition benefit and enrolled in Gonzaga's master's degree program for sports administration. Martin reported to Hernandez, who reported to Morgan. Morgan reported to Standiford, who reported to Mike Roth, the AD.

After Martin's hire, Gonzaga University students continued to sustain injuries while playing basketball in the RFC and striking concrete walls while running full speed. Martin "requested that Gonzaga University install protective padding on the field house walls behind the basketball hoops, although we lack evidence as to the number of times and the dates of the requests," according to the court.

"Martin deemed that Gonzaga University held a legal obligation to maintain a safe environment for students and employees. He worried that blood and other bodily fluids spilled during accidents could create pathogen hazards. In response to Martin's expression of concern, Hernandez informed Martin that requests for protective padding could be made only once a year at the budget meeting. In a deposition, Hernandez confirmed that Martin spoke to him about installing pads. According to Hernandez, Martin repeatedly and passionately spoke about the need for wall padding."

Martin claimed that before he raised this safety concern to Hernandez, he received a raise for good work performance. That changed in 2011 when he was labeled as being "inconsistent." No supervisor signed the April 2011 performance review.

Martin's performance continued to decline, just as he continued to push for protective padding.

As part of his thesis project for his master's program, he wrote a proposal to continue use of the RFC pool and use funds raised from enjoyment of the pool to purchase protective wall padding for the basketball courts. Martin submitted his pool and padding proposal to Hernandez and asked if he could submit the proposal to Standiford. Dissatisfied with Hernandez' effort, Martin, on February 29, 2012, sent his proposal Standiford.

According to Martin, Standiford directed him to forward the thesis proposal to Hernandez for Hernandez to make the presentation. Martin believed this was designed "to kill the proposal through administrative inaction. Hernandez lacked the knowledge and ability to make the presentation."

The relationship between Martin and Hernandez soured, leading to Martin being fired on March 8, 2012. Oddly, the day before, a student sustained a serious head injury from running into the wall at the RFC basketball court. An ambulance rushed the student to the hospital. The student suffered a concussion and required stitches.

Further exacerbating matters was the fact that Martin allegedly leaked information to the Gonzaga Bulletin, a Gonzaga University student publication, which was entitled "Gym safety questioned as employee fired."

The article can be seen here: http://www.gonzagabulletin.com/article_d042daa9-de8b-5dbf-ae34-a0d1bc3b6424.html

Following Martin's termination in 2012, the Athletics Department requested a third assessment of the need for protective padding on the basketball court walls. Pads were installed at a cost of $18,000.

Martin ultimately sued, alleging that the university terminated his employment in violation of public policy for raising concerns about the lack of wall padding for the basketball court.

The appeals court was unmoved.

"The undisputed facts establish that David Martin persistently and self-interestedly promoted himself and his thesis, which sought to keep open a pool in the RFC," it wrote. "The saving of the pool did not advance any public policy. While promoting

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FAA Approval for CNN to Fly Drones Over Crowds Sets an Important Milestone for the Industry, Says Expert

The unprecedented waiver granted by the Federal Aviation Administration (FAA) to allow CNN to fly a small unmanned aircraft system (UAS) over crowds represents an important milestone for the future use of commercial drones.

The waiver applies to the provision of the federal regulations for commercial operations of small UAS, known as Part 107, that prohibits operators from flying the aircraft over people.

DRONE ISSUES

"This is a first. There have only been a few waivers granted for flights over people, and most of them were very narrow in scope. A waiver that allows flights over large crowds is unique in the industry—in addition to obviously being very beneficial for aerial journalism at CNN," says Mark Blanks, director of the Virginia Tech Mid-Atlantic Aviation Partnership.

Blanks explains that before the FAA would grant a waiver like this, they would need to see a compelling safety case, backed up by evidence that demonstrated convincingly that the aircraft they're using wouldn't cause serious injuries if it impacted someone.

He added that "the ability to fly over people is critical to the viability of many commercial applications for unmanned aircraft. For CNN to be granted a waiver like this means that it's possible to demonstrate that these operations can be done safely, under certain circumstances. This is a great leap forward for the industry."

This milestone occurred after several drone related events over the past couple months including a tennis match at the US Open was interrupted when a drone buzzing over Louis Armstrong Stadium in New York City crashed near some empty seats. Several days later an unmanned aircraft flew over the crowd at the University of Kentucky's Commonwealth Stadium and then crashed right before the Wildcats' home football opener. Then in November a drone was flown over Levis Stadium and it dropped pamphlets onto the crowd. It is interesting to note that there were actually more drone/football game related incidents back in 2014, but the threat of a terrorist attack using a drone has increased scrutiny over these incidents and more laws have been passed since then to limit how, when, and where people can fly drones near stadiums, arenas, and other crowd related events.

Appeals Court Upholds Rationale for Firing Facilities Manager

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this pool, he repeatedly disobeyed directives from his superiors to follow a chain of command. He heatedly left a meeting and then abandoned his duties to close the center. While on leave, he disobeyed a directive not to contact employees of Gonzaga University other than the employees in the Human Resource office and Jose Hernandez. He telephoned and e-mailed the Gonzaga University president, through the president's assistant. Martin's earlier job performance evaluations showed him to lack interpersonal and professional communication skills with coworkers, issue abrasive and insensitive written communications, and neglect job responsibilities. Martin resented supervision. Martin presents no testimony that counters these facts. Martin's own written communications establish these facts.

"We hold that insubordination is a qualifying justification for purposes of element four of the tort of wrongful discharge in violation of public policy. We also conclude that the undisputed facts establish insubordination by Martin."

David Martin v. Gonzaga University; CT. App. Wash., Div. 3; No. 34103-8-III, 2017 Wash. App. LEXIS 2094; 9/7/17

Attorneys of Record: (for appellant) Julie C. Watts (of The Law Office of Julie C. Watts PLLC). (for respondent) Michael B. Love (of Michael Love Law PLLC).

Key Takeaways

Employees should be encouraged to report any potential concerns. An open door and open communication process is critical. Similarly, having the right channels and following those channels are important. All too often, a poor employee will use an excuse to justify their termination. That is why it is so important to document specific conduct and complaints from and about an employee to help prove the case for termination or demotion.

Football Coach Resigns and Files Lawsuit Over School Board's Alleged Inaction Over Mold in Fieldhouse

By Jordan Azcue

After many attempts to bring attention to harmful Fieldhouse conditions Guy Lecompte, Mandeville high school athletic director and head football coach, stepped down from his position and filed a lawsuit August 15 against St. Tammany Parish School Board in Louisiana (STPSB).

Lecompte's lawsuit details medical issues he and other students and staff endured as well as the school board's actions and lack thereof.

"Plaintiffs and other similarity situated have complained of, including but not limited to, water leaks, roof leaks, wet floors, paint peeling from walls, the presence of unknown toxic substances and safety hazards, directing complaints to their respective employers and STPSB agents and owners," according to the complaint.

The Fieldhouse was not only in poor condition cosmetically, but created dangerous conditions for all those who entered, let alone the young athletes who spent a decent amount of time in the facility.

"During his occupancy of the Fieldhouse, named plaintiff suffered excessive illness, including but not limited to, Optical Hemorrhage, Tremors, Neuropathy in his Extremities, Constant Headaches, Nose Bleeds, Feelings of Constant Fatigue, Weight Loss, Skin Rashes, Neurological & Nervous Disorders, Pain in the Joints and Muscles," according to the complaint.

St. Tammany Parish School Board, STPSB, not only ignored Fieldhouse inhibitors' health complaints, but allegedly led people to believe the building was in safe condition.

STPSB informed Lecompte of a report stating the Fieldhouse contained high levels of Stachybotrys mold from August 17, 2016.

"STPSB ordered plaintiff to remain outside of the Fieldhouse; however, STPSB further ordered plaintiff to allow students and co-workers to enter the building and instructed plaintiff not to mention the presence of the Stachybotys mold in the Fieldhouse," according to the complaint.

Although Lecompte was giving information about the harmful nature of the building, he allegedly was not permitted to share this information with students and other staff members.

STPSB's lack of action to improve the conditions of the Fieldhouse went against its duty to maintain a healthy work environment for it's employees and further proved its carelessness toward those who entered the Fieldhouse.

"Defendants' actions, at all times hereto, were intentional or grossly negligent, and further, plaintiff's respective employers acted with deliberate indifference or intentional disregard toward the welfare of the plaintiff's and all other similarly situated."

STPSB's failure to eliminate unsafe factors with medical evidence plainly illustrates its disconcert for their employees and students within their district.

"Upon information and belief, defendants have been aware of the existence of toxic black mold and the conditions of the Fieldhouse in excess of five years and have done nothing to cure the defects and/ or warn those individuals entering the Fieldhouse."

There has been knowledge of toxic conditions within the Fieldhouse for over five years, and not only had no one made an effort to fix the issue, but the school board allegedly tried to keep it a secret.

"Upon information and belief, the Fieldhouse has suffered with toxic mold infestation since 2011, or earlier, and that hundreds of students and employees have been affected by the poisons emanating this sick building," according to the complaint.

Due to the similarities in health complications and sicknesses between the people who entered the Fieldhouse, the plaintiff argued that it is apparent that STPSB is directly responsible for staff and student's toxic environment induced health issues for over five years.

He claimed that STPSB failed to fulfill their duty to maintain a safe environment for students and staff by neglecting Lecompte's complaints multiple times as well as hiding knowledge of toxic mold within the Fieldhouse at Mandeville High School.

Key Takeaways

This past semester one of my students raised this as an issue that arose in a gym back in his hometown. New testing techniques can help make identifying potential hazards a bit easier. Whenever there is a leak, foul odors, or other potential triggers a facility manager needs to monitor the situation. On a yearly or bi-yearly basis it might be worthwhile bringing in an independent third party air tester to provide an overview of potential airborne concerns-especially after nay major renovations or other issues.

Prison for Former Stadium developer

James C. Duckett Jr., a former developer for Dillon Stadium was sentenced to three years in prison for his role in a fraud scheme involving a $12 million redevelopment of the Hartford (CT) stadium.

Duckett Jr. was found guilty of defrauding the city of more than $1 as part of a plan with a colleague (who pleaded guilty to fraud and is awaiting sentencing) to renovate the old stadium and bring a pro soccer team to the city. A jury found Duckett Jr. guilty of conspiracy, fraud and money laundering.

The duo started directing funds in 2015 from the city to their own coffers. Duckett's co-conspirator, Mitchell Anderson pleaded guilty to one count of conspiracy to commit mail fraud and wire fraud, and one count of conducting illegal monetary transactions. Anderson also agreed to make restitution in the amount of $1,134,595.37 to the city of Hartford and two subcontractors.

Opinion: NCAA Needs to Ban Sideline Cameramen to Protect the Players and Prevent Possible Legal Consequences

By Joshua D. Winneker, JD and Assistant Professor, Misericordia University, and Sam C. Ehrlich, JD and Doctoral Candidate, Florida State University

In November, during one of college football's biggest annual rivalries, Ohio State University quarterback J.T. Barrett left the game injured in the third quarter against the University of Michigan. Barrett did not return to the game and his departure concerned many fans that his season may be over.

Initially, it appeared that he was injured during the game after colliding with someone on the sideline. But after the game, both he and his coach, Urban Meyer, revealed that his injury actually occurred prior to the game and was simply re-aggravated in the third quarter. Apparently, in the pre-game warmups, one of the sideline cameramen tried to "squeeze by" Barrett and aggravated an already existing injury.

While Barrett's injury was fortunately not season-ending, this incident demonstrates why cameramen simply should be banned from the sidelines. In the current NCAA-sanctioned, live-game atmosphere, the potential for injury to the student-athletes exists every time a player runs into the sideline. The health and safety of the players certainly should be a priority to the NCAA over the possibility of a great picture.

Beyond this, there are several legal consequences that could emerge from an injury caused by a sideline cameraman. First, assuming the injury was not caused intentionally, the sideline cameraman could face a civil lawsuit based on negligence. If the cameraman's actions or placement/location are considered unreasonable because of the players' chances of running into them, then the injured players would have a strong case for negligence. The injured players could also sue the cameraman's employer under the theory of respondeat superior, which holds the employer vicariously liable for the harm caused by their employees during the course of their employment.

Finally, the rules allowing for sideline cameramen and their placement at the games are mandated by the school and the NCAA itself, thus opening up both entities to potential liability. In the case of Barrett, while Michigan's athletic department has rules and guidelines for credentialed sideline media members at Michigan Stadium, none of these rules specifically states that these media members cannot touch the players. The 2017 NCAA Football Rules and Interpretations also give explicit instructions for limit lines that are "not less than six feet" from the sidelines and team areas, but once again there are no explicit instructions to prevent contact with the players.

While it now seems that the sideline cameraman's actions involving Barrett were unintentional, if it can be proven that a cameraman intentionally tried to harm a player, then the player would also have potential civil claims against the cameraman for intentional torts as well. These claims could include battery, the harmful bodily contact caused by the cameraman and assault, the impending fear of the bodily contact by the cameraman.

The cameraman's intentional actions could also result in a criminal prosecution against the cameraman. These potential civil and criminal penalties all stem solely from the NCAA and media's need to have a better picture—a ludicrous justification under the circumstances given that the cameramen could simply be moved back from the sideline.

The prospect of intentional injuries by these cameramen also opens up the possibility of cameramen intentionally injuring players based on motivations outside of their line of work. For instance, while there is no evidence to suggest that this happened in the present situation, it is certainly conceivable that a cameraman in the future could be paid off by gambling interests to intentionally injure a player, now that an example of a similar accidental injury has come to light. The benefits of granting such close access to cameramen is simply not worth the risk of harm to players.

Sideline cameramen injuring players certainly is not a novel concept nor is it limited to just college football. Many players in the NBA have been injured when colliding with courtside cameramen. For example, in the 2015 NBA Finals LeBron James was famously injured when he fell into a courtside camera. The game was stopped for a while, and James received a nasty cut that required stitches. Following his injury, many players spoke out against courtside and sideline cameramen, including Aaron Rodgers of the Green Bay Packers who called the cameramen "unnecessary," and Chris Long of the St. Louis Rams who did not want to risk the health of the players over a "good shot."

These injuries and potential injuries are even more egregious with college student-athletes, as these players are not overly paid employees covered under workers' compensation statutes. The NCAA is charged with protecting its college athletes and eliminating sideline cameramen falls in-line with this charge.

DIGEST

School District Files Breach of Contract Lawsuit over Replacement of Gym Floor

Worcester Public Schools (Mass.) has filed a breach of contract lawsuit against an architect and contractor for their alleged failure to properly remove and replace the gym floor at one of its schools. Named as defendants were Berlin, Connecticut-based Jacunski Humes Architects LLC (JHA), and CRIS Contractors of Fryeburg, Maine. The school district, which is seeking $90,000, claimed that within two to three months after the work was completed in 2013, the flooring started to bubble in two spots. A month later, it maintains that 11 such locations were identified. Over the next couple years, a consultant was hired which found that that CRIS failed to monitor the workmanship, properly apply the moisture mitigation system, failed to properly prepare surface for epoxy application, substituted one type of epoxy for another without approval, and improperly used chemicals to remove the existing flooring, according to the lawsuit. The consultant also determined that JHA "failed to monitor CRIS throughout the project, which substantially contributed to the failures."

Massage Envy and Sexual Harrassment

Massage Envy is the largest chain of massage franchises in the country. They have nearly 1,200 spas, more than 20,000 massage therapists, and generate $1.3 billion dollars in annual sales from more than 1.6 million members nationwide. In 2017 they faced a major media and customer backlash after a report was aired that more than 180 women were sexually assaulted at their facilities. While all the facts have yet to come out, this raises a major issue for any sport facility with personal trainers, athletic trainers, and masseuses. Even if those affiliated with a facility are independent contractor (rather than employees), it is imperative to undertake background checks with anyone who will be touching customers in a sensitive manner. Besides background checks other strategies to consider include:

- Appropriate policies and procedures communicated to all personnel and all customers/clientele.
- Posting appropriate signage as to what are acceptable practices.
- Having a secure complaint process with appropriate follow-up with employees/independent contractors and customers/clientele.

https://www.yahoo.com/gma/women-speak-sexual-assault-massage-envy-spas-day-165210386—abc-news-topstories.html

24 Hour Fitness to Pay $1.5 Million Settlement in Membership Rates Lawsuit

24 Hour Fitness agreed to settle a case (for $1.5 million) in which members alleged that staff had verbally promised members their rates would remain fixed even though the company had adopted a policy that annually raised rates. In 2006, 24 Hour Fitness adopted an annual rate-increase policy in its membership contract. However, some employees allegedly promised members that their rates would remained fixed, according to a Nov. 1 settlement filed in California federal court. The settlement affect 255,000 members who have six months to file for restitution. Any former members can reinstate their memberships at a decreased rate. Current members can receive a three-year membership cap and a 10 percent refund on any fees that were pre-paid at higher rates.

Every sport facility needs to make sure their employees are properly trained and evaluated based on what they say and do. One strategy is to utilize a secret shopper program to see what employees are saying and whether sales tactics are pressured and/or consistent with what the contract requires/provides.

http://www.clubindustry.com/news/24-hour-fitness-pay-15-million-settlement-membership-rates-lawsuit?NL=FBP-03&Issue=FBP-03_20171108_FBP-03_440&sfvc4enews=42&cl=article_1&utm_rid=CNHNM000000234383&utm_campaign=23656&utm_medium=email

Securing Sports and Entertainment Venues, RFID and Engaging Millennials in the Spotlight at INTIX Conference

Securing sports and entertainment venues from the increasing threats of gun violence and terrorism will be in the spotlight as hundreds of entertainment and ticketing professionals from around the world gather for the 39th Annual INTIX Conference & Exhibition from January 23-25, 2018 in Baltimore, Maryland. With a positive and safe visitor experience paramount to the success of all events, opening keynote speaker Melanie Pearlman, Executive Director of the Counterterrorism Education Learning Lab (CELL), will discuss the importance of being aware of and prepared for the unfortunate realities and threats we face in today's world. The CELL's keynote presentation will educate INTIX attendees on providing a first-rate guest experience while increasing security at events and venues of all sizes and types. Ms. Pearlman will cover critical warning signs to look for before, during and after live entertainment events, how improved information sharing can enhance safety, and how to empower employees and vendors in security efforts. Her keynote will also reveal how venues should partner with the community and local law enforcement to help ensure events are both safe and successful.

Spectator Takes Another Swing, and Misses, at The Baseball Rule

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Rule. He also argued that the presence of umbrellas (permitted by the Yankees if there was inclement weather) during baseball gams obstructed his view of errant baseballs and enhanced the risks presented to him

The Appellate Division, First Department was not persuaded by either argument. Although the Court observed that the Court was "painfully aware" of recent cases involving spectator injuries during the argument of the appeal, the panel noted that it was constrained by New York's precedent to apply the Baseball Rule to the facts of the case. Plaintiff would have to appeal to the Court of Appeals and request that it revisit the Baseball Rule.

The decision affirming summary judgment on behalf of the NY Yankees and MLB mirrored the Appellate Division's comments and questions during the argument of Mr. Zlotnick's appeal. There was no dispute that the NY Yankees provided the requisite netting and complied with the Baseball Rule; Mr. Zlotnick simply contended it was not sufficient to protect spectators who were vulnerable to injury. Mr. Zlotnick's argument that he did not assume the risk of injury under the circumstances were similarly unavailing. Aside from his admitted awareness of the risk of watching a baseball game from an unprotected area, warnings were provided on back of his ticket, the back of his seats and made over the public-address system. Mr. Zlotnick did not request to change his seats or express any concerns about his safety to stadium personnel prior to the accident. These undisputed facts were fatal to his negligence action.

Mr. Zlotnick intends to seek leave to appeal to the Court of Appeals in order to take another swing at the Baseball Rule. In order to prevail, must first persuade the Court of Appeals that it should revisit the Baseball Rule and that the issue is one of public importance. He does not have the right to appeal to the Court of Appeals under New York's procedural rules. He will undoubtedly try to persuade the Court of Appeals to hear his case, as he has in his advocacy to extend the netting at stadiums, because the Baseball Rule is outmoded and places vulnerable spectators such as children at risk of injury. If the Court of Appeals agrees to hear his case and then agrees to upend the stalwart Baseball Rule, that would be a stunning legal double play.

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Injured Fan Seeks to Overcome 'Baseball Rule' In Foul Ball Lawsuit

Continued From Page 1

wanton' Conduct against the Chicago Cubs.[i] In particular, Loos alleged that MLB and the Cubs:

a. Failed to mandate/install spectator netting of a height, type, and in a manner that would prevent patrons like Loos from being injured;
b. Failed to assess/re-assess spectator netting to determine if it was of a height, type and in a manner than would prevent patrons like Loos from being injured in light of multiple incidents of injuries to patrons caused by baseballs being hit into the stands;
c. Failed to properly warn patrons like Loos of the risks of serious injury or death posed by baseballs being hit into the stands; and
d. Failed to take steps to protect patrons like Loos from the risks of serious injury or death posed by baseballs being hit into the stands.

Despite the dramatic nature of Loos' injury, he faces long odds of winning in court. Not only have judges across the country thrown out such lawsuits due to the "Baseball Rule" discussed below, but Illinois is one of four states where the Baseball Rule has been codified into statutory law.

The Baseball Rule

The first appellate court decision addressing the liability of a professional baseball club to a patron injured by a foul ball was rendered in 1913 by the Missouri Court of Appeals in the matter of Crane v. Kansas City Baseball & Exhibition Co.[ii] The Crane court upheld a lower court dismissal of a lawsuit filed by a patron injured by a foul ball during a minor league baseball game, while simultaneously setting forth the general framework for deciding similar cases for the next century.

The "Baseball Rule" currently upheld in most states is generally recognized as having its origins a year later in Edling v. Kansas City Baseball & Exhibition Co.[iii] [iv] The Edling court opined:

> One of the natural risks encountered by spectators of a professional baseball game is that of being struck by a fouled ball, and it goes without saying that defendant was not required by law, and did not undertake, to insure the patrons of the screened—in portions of its grand stand immunity against injury from such source, but, being in the business of providing a public entertainment for profit, defendant was bound to exercise reasonable care to protect its patrons against such injuries.
>
> Defendant recognized this duty by screening that part of the grand stand most exposed to the battery of foul balls, and impliedly assured spectators who paid for admission to the grand stand that seats behind the screen were reasonably protected.

FOUL BALL UPDATES

The Baseball Rule can succinctly be said to absolve stadium owners of liability so long as an adequate number of seats, namely in the area around home plate, are behind properly-maintained protective netting. Fans who sit elsewhere are presumed to have willingly assumed the risk of being hit by a ball or bat.

Illinois' Baseball Facility Liability Act

Likely in response to two court cases decided against the Chicago Cubs and Chicago White Sox six months earlier[v], the Illinois state General Assembly became the first legislative body to codify the common law Baseball Rule in 1993 with the implementation of its Baseball Facility Liability Act.[vi] The Act states, in relevant part:

> The owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person being hit by a ball or bat unless: (1) the person is situated behind a screen, backstop, or similar device at a baseball facility and the screen, backstop, or similar device is defective (in a manner other than in width or height) because of the negligence of the owner or operator of the baseball facility; or (2) the injury is caused by willful and wanton conduct, in connection with the game of baseball, of the owner or operator or any baseball player, coach or manager employed by the owner or operator.

Under Illinois law, willful and wanton conduct is viewed as an aggravated form of negligence. Thus, in addition to pleading and proving the basic elements of a negligence claim, namely, that (i) defendant owed a duty to the plaintiff, (ii) defendant breached the duty, and (iii) the breach was the proximate cause of the plaintiff's injury, a plaintiff must also allege (iv) either a deliberate intention to harm or an utter indifference to, or a conscious disregard for, the welfare of the plaintiff.

In the present matter, the plaintiff will have a very difficult time proving "willful and wanton" conduct on the part of the Cubs as the Cubs adhered to Major League Baseball's December 2015 recommendation to extend protective netting to the inner edge of the dugouts at Wrigley Field.[vii] The Cubs have also announced plans to move their dugouts further down the baselines prior to the 2018 season, thus further extending the protective netting that extends to the inner edges of those dugouts.[viii]

Settlement Likely

Despite the long odds faced by Loos, there are "business reasons" for the Cubs and MLB to resolve this matter prior to a determination by the court. First and foremost, there is a batting American League pitcher's chance that Loos could prevail on the merits against one or both defendants. Legal counsel for Loos has carefully crafted his lawsuit to allege a cause of action outside of the protection afforded by the Illinois Baseball Facility

See Injured Fan on Page 15

Injured Fan Seeks to Overcome 'Baseball Rule' In Foul Ball Lawsuit

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Liability Act. Namely, counsel has alleged "willful and wonton" conduct on the part of the Cubs. The presumption is that counsel will argue that the Cubs were aware of prior serious injuries at Wrigley Field and around Major League Baseball from batted foul balls and still failed or refused to extend their protective netting beyond its then-current configuration. Further, counsel has stated that he will attempt to convince the presiding judge that Major League Baseball is not covered by the protection afforded by the Baseball Facility Liability Act.[ix] Counsel could also argue that MLB was negligent in not making its 2015 recommendations regarding safety netting (discussed below) mandatory. Second, there is a public relations reason for the Cubs (and MLB) to resolve this matter as the financial costs of providing some level of compensatory remuneration would pale in comparison to the negative PR that would accrue to the team and MLB should they decide to take a "hard line" in this matter.

Outside the Courtroom

In December 2015, Major League Baseball issued a recommendation to its clubs to add netting, or some sort of protective barrier, to shield fans from balls and bats in all field-level seats between the near ends of both dugouts and within 70 feet of home plate.[x] To date, only about one-third of MLB teams have implemented this recommendation.[xi]

Never shy to weigh in on issues involving America's Pastime, one U.S. Senator also recently took notice of this issue. The Senate's second-ranking Democrat (and Cubs fan), Illinois' Dick Durbin, sent a communication to MLB Commissioner Rob Manfred demanding that "For the good of the sport and the safety of your fans: extend the nets." Durbin concluded his communication with a fist in a velvet glove statement that he is "eager to discuss the steps being taken to encourage common sense safety measures at ballparks."[xii]

Conclusion

While it would appear that the Chicago Cubs and Major League Baseball would ultimately prevail in the current litigation initiated by John Loos, there are a number of reasons for the Cubs and MLB to resolve this matter prior to a judicial determination. It would also be advisable for MLB to re-address its prior studies on the issue of protective netting and issue a mandate (rather than a recommendation) that all clubs install additional netting as may be determined necessary and appropriate to the extent that they have not already done so.

i. John "Jay" Loos v. Major League Baseball and Chicago Cubs Baseball Club, LLC, Case No. 2017-L-010195 (Cir. Ct. Cook County, October 6, 2017).
ii. Crane, 153 S.W. at 1078.
iii. 168 S.W. 908 (Mo.Ct.App. 1914).
iv. Two earlier cases involved injuries resulting from baseballs, but neither occurred in connection with attendance at a professional baseball game. Williams v. Dean, 111 N.W. 931 (Iowa 1907) (patron injured watching horse a race held simultaneously with a baseball game); Blakeley v. White Star Line, 118 N.W. 482 (Mich. 1908) (patron injured at a dance by baseball thrown by practicing baseball players).
v. See Coronel v. Chicago White Sox, Ltd., 230 Ill.App.3d 734, 171 Ill.Dec. 917, 595 N.E.2d 45 (1992), and Yates v. Chicago National League Ball Club, Inc., 230 Ill.App.3d 472, 172 Ill.Dec. 209, 595 N.E.2d 570 (1992).
vi. 745 ILCS 38/
vii. See http://www.chicagobusiness.com/article/20151209/BLOGS04/151209770/more-safety-netting-coming-to-cubs-sox-games
viii. See https://ballparkdigest.com/2017/09/26/tigers-cubs-extending-ballpark-netting-for-2018/
ix. See http://www.chicagotribune.com/news/local/breaking/ct-met-lawsuits-injuries-ballparks-20171010-story.html
x. See http://m.mlb.com/news/article/159233076/mlb-issues-recommendations-on-netting/
xi. See https://www.10tv.com/article/teams-vow-put-netting-after-girl-hit-foul-ball-yankees-game
xii. See https://www.bloomberg.com/news/articles/2017-09-21/after-yankees-fan-hit-a-senator-goes-to-bat-for-protective-nets

Appeals Court Favors Giants in Wage Dispute

Continued From Page 3

"The underlying legal issue was whether the employees were discharged within the meaning of Lab. Code, § 201," according to the appeals court. "The duration of the employment relationship had to be derived from what was implicit in the CBA, and there were numerous provisions from which inferences as to the intended term of employment could logically be drawn. Thus, because application of Lab. Code, § 201, necessarily required the interpretation of the CBA and substantially depended upon analysis of its terms, federal preemption applied, and the dispute had to be resolved pursuant to the grievance procedure and arbitration under the CBA."

George Melendez et al. v. San Francisco Baseball Associates LLC; Ct. App. Calif., 1st App. Dist.; A149482, 2017 Cal. App. LEXIS 899; 10/17/17

Attorneys of Record: (for plaintiff and respondent) Dennis F. Moss, Sahag Majarian II. (for defendant and appellant) Nancy Pritikin, Babak Yousefzadeh, Brian S. Fong of SHEPPARD, MULLIN, RICHTER & HAMPTON LLP.

Key takeaways

Having a contract (including a CBA) that covers the widest area of potential issues is the ideal approach, but every contract should attempt to include a catch-all clause in case anything slips through the cracks- especially to help keep a relationship strong and to expedite any dispute resolution.

