July-August 2020 • Volume 5, Issue 1

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SPORTS FACILITIES

How the law affects the sports facilities industry and the LAW

Fair or Foul: Chicago Court Has To Decide If Fans Can Sue MLB For Injuries From Baseballs Entering The Stands

By Nathan J. Law and Nathaniel D. French

On August 27, 2018, spectator Laiah Zuniga ("Ms. Zuniga") attended a baseball game between the Chicago Cubs ("Cubs") and New York Mets at Chicago's historic Wrigley Field. She purchased a ticket for a seat in the "Club Box – Outfield" in the second row. In the fifth inning of the game, Ms. Zuniga was struck in the face by a foul ball off the bat of a Mets player and allegedly suffered significant injuries including facial fractures and nerve damage. On April 28, 2020, Ms. Zuniga filed a lawsuit in the Circuit Court of Cook County, IL against Major League Baseball ("MLB"), claiming the sports league was negligent in its failure to mandate member teams, such as the Chicago Cubs, to provide netting to protect her and other fans and failing to properly warn of the dangers posed by batted balls leaving the field of play. Additionally, Ms. Zuniga alleges that MLB owed her a duty of reasonable care to protect her from the known risk of serious injury or death posed by baseballs being hit into the stands, and that MLB voluntarily undertook this duty.

In addition to her claims against MLB, Ms. Zuniga has named the Cubs as respondent in discovery in her complaint. The Illinois respondent in discovery statute, presently codified as 735 ILCS 5/2 402, provides that as long as a person or entity is named as a respondent in discovery within the statute of limitations period, a plaintiff then has an additional six months to obtain information which may indicate that the named person or entity should be converted to a defendant. Ms. Zuniga will have until late October to decide whether to make the Cubs a defendant in her present case.

To make a successful case against the Cubs, Ms. Zuniga will have to navigate around the Baseball Facility Liability Act. The Act, codified at 745 ILCS 38/49, limits liability for the owners and operators of baseball facilities in Illinois. The Act provides:

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,

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Decision in Cycling Race Accident Case Highlights Need to Delineate Duties

By Gil Fried

On Aug. 25, 2014, Plaintiff was injured when he hit a road barrier with his bicycle. Plaintiff was "pre-riding" the designated course for the 2014 USA Cycling Masters Road Championship. There was no signage or marking of the road barrier on the course map given to riders. The Plaintiff sued USA Cycling, Inc. ("USAC"), Breakaway Promotions, LLC ("Breakaway"), and Visit Ogden for negligence. Visit Ogden moved for summary judgment arguing that as a matter of law it did not owe Plaintiff a duty of care.

Plaintiff alleged that by entering into a contract with USCA ("the Contract") to assist with the race, Visit Ogden owed him a duty to provide a safe course; that it breached that duty by failing to warn him of the barrier that was on the course prior to race day; that its failure to warn caused him to crash into that barrier; and that he suffered injuries as a result of the crash. Visit Ogden argued that Plaintiff's claim fails

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Decision in Cycling Race Accident Highlights Need to Delineate Duties

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as a matter of law because it did not owe him a duty of care, as it did not enter into a contract with USAC until after Plaintiff was injured and that under the contract, it did not undertake a duty, let alone one owed to Plaintiff, to maintain a safe course or warn racers of potential dangers.

When analyzing the contract issue, the court concluded that there was not relevant because it was only entered into eight days after Plaintiff was injured. The court went on to provide that even if the contract had been effective when Plaintiff was injured, no genuine dispute existed as to whether the obligations that Visit Ogden undertook thereunder created a duty of care owed to Plaintiff. The facts showed that Visit Ogden was not called upon to assist or consult with USAC on the design of the course, as those actions were undertaken exclusively by Breakaway. While Visit Ogden initially proposed a possible course, the actual creation and design of the course was developed exclusively by Breakaway. As such, there was no genuine dispute of fact as to whether a duty arose as a result of Visit Ogden's creation or design of the course.

The court also held for Visit Ogden in terms of a duty to warn Plaintiff about the barrier. The contract provided no obligation on Visit Ogden to warn participants, especially during a pre-ride of the course. In fact, the contract contained no provisions, and established no requirement, that Visit Ogden was supposed to communicate with riders.

The court also held that Visit Ogden did not engage in any affirmative act that would trigger a duty of care. The court concluded Visit Ogden did not "launch a force or instrument of potential harm" and Visit Ogden neither placed the barrier in the road nor produced the map and information that failed to tell of its existence. Rather, the court held Visit Ogden simply failed to take "positive steps to . . . protect [Plaintiff] from harm not created by any wrongful act." As this is a classic example of an act of omission, a duty could only be found if Plaintiff showed that a special legal relationship existed between Visit Ogden and himself. The court concluded the Plaintiff failed to make such a showing.

The take away from this case is that when organizations are sponsoring or helping to run events, they need to clearly identify what their duties might entail and if they are not assuming any duty of care to participants, such an affirmative provision should be included in any contract. ●

Gerald Finken v. USA Cycling, Inc., et al.; D. Utah; No. 1:17-cv-79; 1/3/20

SPORTS FACILITIES and the LAW

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Hackney Publications

Monument's Mark Grossman and Zach Morgan Discuss How the Pandemic Reshaped the Insurance Industry

For more than two decades, Monument Sports Group has serviced the sports industry like few others, providing risk management services that have enabled facilities, teams, and other sports-related entities the peace of mind and, of course, the insurance necessary to fulfill their respective missions.

So, when a pandemic swept across the United States and the rest of the world, it did not phase Monument and its leadership team, which stepped up to the plate and provided solutions.

That dedication drew us to Monument and an interview with President Mark Grossman and Claims & Risk Management Coordinator Zach Morgan, which follows below.

Question: *How has the pandemic changed the needs of your customers?*

Answer: It has changed sports, recreation, and entertainment businesses in every conceivable way; from immediate premium reductions, payment deferrals, changes to waiver language, cleaning protocols, and trying to anticipate revenue loss by line item. These are just some of the challenges we have helped our clients face.

Q: *What has been your response to their needs?*

A: We immediately reached out to the insurance carriers to react to all of the issues mentioned above. To their credit, most carriers showed a lot of humanity, and helped in every way possible. Of course, it is somewhat self-serving as they want to keep clients from cancelling coverage. But still they really went above and beyond to help. We continue to have regular meetings with the carriers as the pandemic has played out.

Q: *Can you give us a specific example?*

A: Sure, we had every one of our clients file a claim for loss of income, aka business interruption even though we were aware that the claims would be denied due to virus type exclusions on almost all policies. Our theory in doing this is that if the government were to offer some type of financial back stop to the insurance industry in a second phase of PPP or other bill, then it would be good to already have a claim filed. So, we tried to respond to every immediate need while thinking it forward.

Mark Grossman

Zach Morgan

Q: *What is the lasting lesson(s) that sports facilities can take from this pandemic?*

A: Consider purchasing coverage for a pandemic if it ever becomes available even, though the cost is likely to be extremely high.

Q: *What changes do you anticipate at Monument with regard to your offerings in 2021 and why?*

A: We will continue to scour the market and push our carriers to offer some type of coverage that might help in situations such as this going forward. As far as Monument Sports is concerned as a business it probably behooves us to look for a larger client base in sports and recreation that is not so prone to Armageddon! We are not sure that there are that many potential insureds who meet that definition.

Q: *Tell us about the relationship with the Climbing Wall Association and how it came about?*

A: We were introduced to the CWA by a friend and client in the sports consulting business in 2013. The CWA's insurance program was cancelled, and the CWA and members found themselves in a real jam. We were able to take advantage of a great relationship with a friend and years of a working relationship to convince them to take a chance on the CWA. He had faith in Monument as a company due to our emphasis on rolling up our sleeves and doing a lot in the area of risk management, claims analysis, and very thorough underwriting practices. It also helped that Chris Fox, our business partner, and Will Jorgensen from our company are both veteran climbers. That first-hand knowledge helped us gain trust with the CWA, and with the gyms. We helped a lot of gyms out of some awfully bad spots, and seven years later we have created a program built for the long haul. Our insurance partner the Specialty Insurance Group underwriting for The Everest Insurance Company have been great partners, and they have really stepped up in all of the necessary areas.

Q: *What is the best thing about working in the sports and recreation industry?*

A: As sports people it is really great to work with sports that you love, and with clients who are dedicated to it. Premiums are always foremost on people's minds, but we feel that the knowledge that we provide to the CWA, to our indoor sports facility program, and to our professional sports clients is equally important to them. We have also owned an indoor soccer and multi-sport facility in Richmond (Virginia) for 13 years, so not only do we really understand what our clients are dealing with, but they trust us even more as we're in the game with them. It is simply a great environment to work in, with a lot of loyalty on both sides of the table. ●

Ruling Hinges on Time for Candy Apple to Fuse to Concrete

By James H. Moss, JD

A federal judge in the Middle District of Georgia has ruled for a venue in a case in which it was sued by an elderly woman who tripped and fell over a candy apple.

In the opinion (https://law.justia.com/cases/federal/district-courts/georgia/gamdce/7:2018cv00067/105337/30/), the court found that the plaintiff "could not produce sufficient evidence that the defendant breached its duty of care in its maintenance of the venue."

In this premises liability case, a family had spent the day at a theme park, and that evening went to the theme park's concert venue. The venue held approximately 2,000 seats and additional seating in a grassy area in front. The plaintiff testified the venue had a few hundred people in it while the venue representative stated it was full. After the concert, the family members went down front to get autographs while the grandmother walked to the exit. She walked up the aisle and then traversed another row, not the one she was sitting in, and fell down. She did not see anything before her fall, but afterwards saw a candy apple stuck to the ground, stick in the air.

She sued claiming the defendant breached its duty of ordinary care in maintaining its premises. The defendant filed a motion for summary judgment arguing Georgia's law does not require the removal of trash or cleaning of the area while the guests exit the venue.

The Federal District Court hearing the case first looked at the definition of negligence under Georgia's law: "*duty, breach of the duty, proximate cause, and damages.*" Under Georgia's law, a land owner owes a duty to its invitees to exercise ordinary care in keeping its premises safe. That duty requires landowners to protect invitees from unreasonable risk of harm of which the land owner has superior knowledge and a duty to inspect the premises to discover possible conditions which the landowner may not have any knowledge.

The plaintiff would have to prove that the landowner has actual or constructive knowledge of the candy apple, while the plaintiff exercising ordinary care lacked knowledge of the candy apple due to conditions within the landowner's control. Meaning the plaintiff argued the venue through its cleaning and inspection procedures should have discovered and removed the candy apple. By failing to either have the proper procedures to discover the candy apple or to remove it, the venue is liable.

The plaintiff argued the venue should have had constructive knowledge of the candy apple. Constructive knowledge may be inferred when there is evidence that the owner lacked an inspection procedure. The burden to prove that inspection procedure rests with the landowner. Once the landowner shows there is an inspection proce-

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Risk Management Plans Important for All Size Facilities, Events

By Dr. Susan Brown Foster

Most event and facility managers have a basic understanding of risk management. However, a comprehensive risk management plan that is written, practiced, and enforced is a key element for maintaining patron safety and in preventing lawsuits. However, it is the responsibility of the facility owner event manager, or the appointed risk manager to ensure every staff member or volunteer understands their role. Use of the Ten-Step Risk Management Model© can assist facility managers in planning for optimum safety and preventing many injuries and illnesses.

Since 9-11, there has been increased targeting of major sporting events and facilities. This has caused facility and event managers to intensify vigilance and step up security far beyond the typical safety protocols created to prevent problems and injuries and keep patrons safe. Increased vigilance and planning must be utilized for terrorism, active shooters, and pandemics. Creating partnerships with local emergency personnel is crucial and these agencies should have copies of your Ten-Step Plan. Coordinating all ten steps of the Ten-Step Risk Management Model© will prevent many problems and injuries from happening and assist all staff members in being prepared for the unexpected.

Step 1 - A comprehensive plan begins with the identification of every event taking place in a facility and includes **identification of controllable and uncontrollable factors**. Examples of controllable factors would include making sure all equipment to be used is in excellent shape and all aspects of a facility including lighting, flooring, ingress and egress patterns and areas, spectator seating, and ancillary areas be free of hazards. Making sure appropriate participation areas and equipment are clean would also fall under this category. Examples of uncontrollable factors include weather, patron behavior, medical emergencies and injuries, fire, active shooter, and chlorine leaks. A final component of this step is to obtain or create a comprehensive list of all staff and volunteer positions for the facility or event, who holds those positions and their business contact information, and any company contracted out to fulfill certain roles such as a security firm. This is an important aspect of this step because anyone in charge of creating the comprehensive plan will need this information in future steps.

Step 2 – This step is one which most facility mangers understand and use regularly and that is a **facility audit**. However, an audit must be conducted in minute detail. Going over every inch of every room, area, piece of equipment, walls, and exteriors is one key element. In an audit, every problem found needs to be noted and documented. One audit is not enough. The first audit should be when the facility is entirely empty and subsequent audits when areas of the facility are at maximum use by teams, players, and spectators or other users. An additional example of a separate audit would be when a sport facility is being used for an atypical event such as graduation or a concert. Facilities can be used in various ways and different crowds and users can result in different ways facilities are being used. All rules being used by the facility must also be noted during this step. A copy of any employee or facility manual should be obtained. Discussions with staff members who use each area may also be necessary to uncover problems they may have observed in usage of their assigned areas. Audits conducted when a facility is being used is often missed by insurance companies hired to conduct the audit.

Step 3 – This step is the creation of a comprehensive **safety improvement plan**. All problems found with facilities, areas, equipment, and usage must now be addressed. Part of this step may require multiple forms to be created to fit every room or participation area and possibly pieces of equipment. A weight room is a good example to use whereby a general form for the layout of the floor and each equipment location. Forms for each piece of weight or exercise equipment is also important. Exercise equipment has multiple moving parts and a trained individual should regularly check all equipment. It is possible to skip this tedious step if an employee of the manufacturer is hired to conduct this particularly important task. Sometimes, this can be arranged as part of a contract when purchasing equipment. Once a comprehensive safety plan is written and implemented and forms created, a process is established for regular audits where supervisors roam the facility hourly, daily, or weekly using the created forms. Staff training is covered in a future step, but supervisors must be taught what to look for and how to properly complete forms. Another important part of the process is for facility managers to establish who reviews the forms immediately after each shift/audit so any observation that needs addressing immediately is handled or the piece of equipment or room be ruled off limits until the problem is adequately address.

Besides creation of the above forms, additional attention is crucial to the cleaning of equipment and areas to prevent the spread of germs. COVID-19 has created increased awareness for attention to cleanliness, but other illnesses have been highlighted in the past such as the problems experienced with community associated MRSA, which can be spread through skin-to-skin contact, or staph infections. Thus, additional forms should be created to ensure regular cleaning of areas and equipment is performed.

Other parts of this step would include reviewing existing rules to ensure they adequately cover all activities and are enforced at all events and by all staff. If the facility owns or contracts out for vehicles to transport patrons for events, is there a comprehensive maintenance plan for each vehicle and a process for checking and cleaning vehicles upon their return? Are qualified drivers hired after a full review of their background and driving records? These are just examples of rules or processes that need careful attention.

Step 4 – Transferring risk takes place

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in this step. Does the facility have waivers, and do they align with state/federal laws? Have appropriate lease agreements been created transferring liability from the facility to external event managers/users? Are the appropriate accident and incident forms available and are they written in a manner that would capture all problems and properly document all injuries? Are they written in a manner whereby they would be easily completed? What about insurance? Many forms of insurance are available to protect the facility and its employees from financial loss?

Step 5 – This is the **planning stage** and is broken down into three different components.

Part 1 -This includes the **creation of an emergency action plan (EAP)** for each type of uncontrollable event identified in step 1. While some aspects of an EAP can be used for different emergencies, some steps may be different. For example, what a staff member is expected to do for a gas or chlorine problem would be totally different in a medical emergency. This is a comprehensive part of a plan and often must be created by consulting with specialists such as fire, medical, poison control, or hazardous waste professionals.

Part 2 – For serious emergencies or for events where recovery may be prolonged as with fire or hurricane damage or loss of life, it will be necessary to have a comprehensive communication/media plan. This plan begins with documentation of phone numbers for each department within an organization or for contacting emergency personnel. Additional components include having a communication tree. After appropriate emergency personnel are contacted, high ranking personnel within an organization are usually contacted first. Other staff members may need to be called if off duty. Often, members of the media may be calling or will need to be contacted. The organization should have a plan in place regarding who is appointed to talk to the media and what they may be allowed to say. A public relations department may be involved in this part of the plan and can craft written statements to the media possibly after consulting top managers or staff members present at the time the incident occurred or what the organization may be doing in subsequent days or weeks to mitigate the injuries or damages. Careful attention is needed to what is said especially in public statements as inappropriately worded information could be used against an organization if a lawsuit were to be initiated against the facility.

Part 3 – All emergencies will need some type of **equipment and supplies**. Whether that be communication equipment such as walkie-talkies, emergency medical including first aid kits, or pool related equipment, or even as basic as flashlights. Hurricane Katrina

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Court Compels Arbitration in Indoor Trampoline Park Action

By Carla Varriale-Barker

A New Jersey Appellate Court recently enforced an arbitration clause in two participant injury cases involving Sky Zone and other defendants. In doing so, the court highlighted sound contract drafting principles. Both cases involved accidents at Sky Zone's premises in New Jersey and subsequent personal injury lawsuits. Plaintiffs claimed Sky Zone's negligence and intentional conduct in the design and operation of Sky Zone's premises caused the accidents. Plaintiffs also complained about the Participant Agreement (the "Agreement") they admittedly signed and alleged that "misrepresentations" in the Agreement constituted an unconscionable commercial practice. Plaintiffs conceded the Agreement included an "arbitration of disputes" clause, discussed in greater detail below. The appeals followed the dismissal of the two personal injury lawsuits and court orders that compelled the parties to proceed to arbitration.

Sky Zone is a popular "fun fitness" recreational facility designed for "workouts" which include "bouncing, flipping, and landing in a pit with 10,000 foam cubes." Plaintiffs purchased admission and executed a comprehensive agreement that allowed them to use the trampoline and other activities at Sky Zone's premises. The Agreement contained release and assumption of risk language and it must be signed by all patrons (including these plaintiffs) to gain admission to Sky Zone. The Agreement includes an "arbitration of disputes" provision and plaintiffs acknowledged the same with a checkmark, indicating they understood that they were "waiving [their] right, and the right(s) of…minor child(ren) to maintain a lawsuit against [Sky Zone]… for any and all claims covered by th[e a]greement." Importantly, the Agreement also contained a severability clause. This pivotal clause stated the Agreement constituted the entire agreement between Sky Zone and plaintiffs: if any term or provision should be held illegal, unenforceable, or in conflict with any law governing the Agreement, the remaining portions of the Agreement would not be affected.

The Agreement further referred plaintiffs to a website that contained the "JAMS Arbitration Rules." However, the New Jersey Advisory Committee on Professional Ethics had previously determined JAMS's operating procedure was not compliant with New Jersey law and JAMS could not operate in New Jersey. Plaintiffs argued that meant JAMS was not available to arbitrate the dispute and this fact vitiated the agreement to arbitrate. In other words, they could sue Sky Zone for damages in court. However, defendants successfully parsed the terms and structure of the Agreement and correctly noted that the Agreement did not specify JAMs was the exclusive forum for arbitration. Instead, the provision for arbitration

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Court Compels Arbitration in Indoor Trampoline Park Action

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was contained in a separate sentence from the provision selecting JAMS as a forum for arbitration. Moreover, the Agreement contained a severability clause allowed the "remaining portions" of the Agreement to remain unaffected if any part of the Agreement was unenforceable.

The appellate court agreed and cited a preference to enforce arbitration agreements under federal and state law. Significantly, the Agreement did not name JAMS as the parties' exclusive forum for arbitration. In fact, under the Agreement, the court could appoint a substitute arbitrator. The court further noted that the agreement to arbitrate and the selection of JAMS as the arbitrator appeared in separate sentences, so the provisions were severable if one of them failed (as the designation of JAMS as an arbitrator failed because it could not provide such services in New Jersey). The Agreement also specified arbitration was governed by the Federal Arbitration Act. Therefore, the court upheld the arbitration clause, also determined that the lower court made a mistake because it should have stayed plaintiffs' respective personal injury lawsuits pending the arbitrations and not dismissed the cases.

This decision is unpublished and states it is binding on the parties only. However, it provides guidance to the owners and operators of a sports or recreational facility (and those who advise them) to review and update their participant agreements. Important factors here included whether the clauses are clear, distinct from each other, and whether there is a severability clause that can "save" the agreement to arbitrate should other parts of the agreement be deemed unenforceable. The structure of the Agreement emerged as something just as important as the words of the Agreement.

For example, the Agreement designated an arbitral forum (even though New Jersey did not permit JAMS to arbitrate the case) and contained a process with reference to applicable rules for governing the arbitrating proceedings. This highlighted the fact that the agreement to arbitrate was integral to the parties and it was not an ancillary or boilerplate provision. The Agreement was successful because it contained an unambiguous expression of parties' intention to arbitrate their disputes, including a contingency in the event the designated arbitral forum was not available. The Agreement was also successful because if what it did not say: the Agreement did not state that the parties did not intend to arbitrate if JAMS was unavailable. A successful agreement, therefore, should support a finding that the parties reached a meeting of the minds as to what rights replaced the important right to a jury trial. This Agreement did ■

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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.

In Jasper v. Chicago Nat'l League Ball Club, Plaintiff James Jasper sued the owner of Wrigley Field and the Cubs after he was struck by a foul ball while attending a baseball game. Mr. Jasper included in his complaint a count seeking declaration that the Baseball Facility Liability Act was unconstitutional. The Circuit Court granted the owner's motion to dismiss count seeking declaration of unconstitutionality, and denied other parts of complaint to the extent they were based on negligence. Mr. Jasper appealed, to which the appellate court held that provisions of the Baseball Facility Liability Act, which protect the owner or operator of a baseball facility from liability from injuries sustained as a result of being hit by a foul ball, do not violate equal protection clauses of Federal and State Constitutions.

An interesting difference in this case opposed to other similar cases is that Ms. Zuniga is going after MLB and not the owner of the facility at which the incident occurred. Arguably, because the MLB does not own Wrigley Field, the Baseball Facility Liability Act will not apply. Ms. Zuniga will likely have to prove that the MLB owed her a duty and that there was a breach of this duty. Based on her complaint, Ms. Zuniga will likely rely on studies commissioned by MLB on the benefits of extending protective netting at various MLB ballparks around the country to demonstrate MLB knew of the potential hazards to fans and chose not to issue warnings or protect the fans. MLB can be expected to argue it owed no duty to Ms. Zuniga since it neither owns nor controls Wrigley Field, and therefore is under no duty to warn spectators at any individual ballpark. Additionally, MLB can point to the numerous warning signs posted at every ballpark and the audio announcements made warning fans to be aware of bats and balls entering the stands. This should be a case worth watching as it proceeds through discovery. ●

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dure the burden shifts to the plaintiff to prove the hazard existed long enough that the landowners should have discovered it. The failure by the landowner to discover the hazard after that length of time is a breach of duty of ordinary care. The actual length of time is not stated in minutes or hours, but in the process.

The plaintiff argued that length of time had occurred. The landowner should have inspected the venue after the concert ended and before the plaintiff traversed the row. However, the court found *Daniels v. Atlanta National League Baseball Club, Inc.*, 240 Ga. App. 751 (1999), held there was no duty to examine a venue immediately after the event. The Georgia Appellate court found *Id.* it would be unduly burdensome to keep Atlanta Braves fans in their seats while the stadium was cleaned after a game. Nor could the inspection be accomplished while the fans were exciting the stadium. The Georgia Appellate court also ruled that fans of a baseball game should expect to find trash in the aisles after a game.

[A] fan should reasonably expect and assume that trash will be dropped on the premises by the thousands of other fans exiting the stadium at the end of a game. The risk of a cup sitting on the aisle steps is not an 'unreasonable risk of harm' for one exiting a baseball stadium at the end of a game. Id

Georgia does not require a landowner to warrant the safety of all persons from all things. Only to exercise diligence in making the premises safe in a way, that business customers are used to. Requiring a venue to clean or just to inspect before the fans moved from their seats exceeded the bounds of ordinary care.

The defendant argued that during an event, they empty trash containers when they become full and clean the aisles leading to the rows. They have a policy of keeping the general areas free of debris and trash. However, they did not have a policy of cleaning the rows with people in their seats because it would not be possible. (Cue Seinfeld episode leaving a theater from the middle seat, "excuse me excuse me excuse me," then add a broom or at least the patron's response of "sit down I can't see!")

Finding that the burden of inspection after an event has ended was excessive, the burden shifted to the plaintiff to prove how long the candy apple had been on the floor prior to the performance starting.

No food was sold inside the venue by the defendant. However, people were free to bring food into the venue from the outside. Candy apples were sold by the defendant at their food court area. The plaintiff admitted that the plaintiff, and her family shared refreshments during the concert which they had brought into the venue and observed numerous people eating and drinking. The plaintiff was therefore, on notice that food could be found on the rows, aisles and floor of the venue.

The plaintiff argued the candy apple had been on the ground a long time because it had "fused" to the concrete. Removing the candy apple required an employee to pry it up with a spoon (makes you salivate in anticipation of your next candy apple; you can feel your teeth getting stuck now!). People responding to the scene to assist, who saw the apple, said it appeared to be intact, and not trashed, indicating it was not on the concrete in the hot Georgia weather for long. The concert venue doors opened at 7 pm, and the concert ended at 10 pm. From 5 pm to when the venue opened at 7 pm the venue was cleaned and washed by the defendant.

How long the candy apple had been on the floor was subject to speculation and as such, that estimate could not be used by the court. Since the plaintiff could not prove the candy apple had been on the floor earlier than when the venue opened, speculation was not going to be introduced into the court.

The court held for the defendant finding the plaintiff could not produce sufficient evidence that the defendant breached its duty of care in its maintenance of the venue. ■

Moss specializes in the legal issues of outdoor recreation, adventure travel, race and event companies and manufacturers of outdoor recreation equipment.

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taught everyone that satellite phones were necessary when cell towers are damaged or destroyed. Taking inventory of what is already on hand and what needs to be purchased for the multitude of possible emergencies will assist managers in having everything needed. The University of Virginia's (UVA) Intramural-Recreational Sport Department utilizes zoned backpacks, and each is loaded with specific types of emergency supplies common to different types of situations or areas. Contents of these packs could include generic items one would need in an emergency such as a first aid kit or flashlights. A sample of items UVA uses includes safety vests, caution tape, EAP written plans, a cell phone directory, and more. Backpacks are then assigned to specific zone wardens who have been trained to use their contents. Packs such as

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these could also be used by staff members or volunteers stationed at different intervals for major road or bicycle races.

Step 6 – Like step 5, this is a major step in that all staff training is planned and carried out at this point. Perhaps an employee manual needs to be written which would possibly be handled by a committee of experienced staff members. Included would be the staff directory assembled in step 1. Establishing training protocol for every staff member or volunteer is the major task. For example, if there is a packed basketball arena and a tornado hits much like what was experienced at the 2008 Southeastern Conference men's basketball tourney in Atlanta, would everyone know exactly what to do? In this situation, one specific person would be designated to be in charge with back up staff members assuming a similar role should the top designee not be at work. Home team coaches who are familiar with the facility would be trained on what to do and where to take athletes. Of course, the training would be for general situations because each different emergency event can have a different protocol dependent upon the situation at hand. Training must include all staff members with role playing in advance. Most people are familiar with fire drills; the local news often reports on active shooter drills conducted at local schools. This is the type of role playing in which all staff members should participate. Waiting for an emergency to happen is not the time for employees to try and figure out what they are supposed to do or how to protect their patrons.

If a particular event or facility utilizes volunteers which is the case for many larger sporting events, it is equally important to train volunteers in advance. College campuses have lots of student workers and should be included in all training exercises. Some facilities do not allow anyone to work an event unless they have gone through all training.

Step 7 - At this point all training has been completed and the bulk of the risk management plan has been completed. Hopefully, the plan won't have to be used for a long time. However, in sport related facilities, accidents are going to happen, and medical emergencies may be the most common event to handle. Depending on the facility, patron behavior may be a close second. So, now you have an event. If everyone has been trained and all the above six steps are complete, handling an emergency will be less stressful if everyone performs their role like clockwork. So, what is next? Step 7 is **implementation** of the plan. Staff members step into action, alerts are issued, emergency personnel notified, and equipment/supplies are picked up from a common storage or backpacks picked up by involved staff members. In this step, accident or incident report forms are completed.

Step 8 – Now everyone is in the **recovery** phase. Injured individuals have been treated or transported to emergency facilities. Damaged facilities are secured as much as possible.

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Risk Management Plans Important for All Size Facilities, Events

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If the event was at a large outdoor facility, perhaps staff will be gathering equipment in a different manner than if they were simply closing down and securing everything in a planned fashion at the completion of the event. Perhaps traffic cones were scattered over several miles due to a weather event.

If individuals were severely injured at your event, certain staff should be appointed that will follow-up with these individuals or their families to determine what else the sponsoring organization can do. This should be a significant component of the recovery phase. Long-term planning on how to fix damaged facilities or build anew would be part of extended recovery.

Step 9 – Now is the time to **evaluate your plan**. Any staff member or volunteer who was working during the emergency or was present when it happened should be considered for involvement at this time. Observations will have been made by most regarding if the plan worked. Was all equipment available that was needed? Did everyone perform as trained? This step may be rather small for a simple emergency but still should be conducted. For larger events, committees may be formed to determine what parts of the entire plan worked. At this time, it is important to document everything and recommendations made for improvement.

Step 10 - For this step, all recommendations for improvements are forwarded to anyone assigned to **rewrite** certain components of the plan. This may be assigned to the organization's risk manager, but most likely many individuals should be assigned to discuss how best to improve the plan and implement each one of the recommendations. Emergency personnel may be included to participate in this step, especially if they were not involved at the beginning. The plan is improved, or parts rewritten, and the process starts all over. Perhaps step 1 did not include the event or emergency that was just experienced. The rest of the plan will then need to be reviewed to make sure all changes necessary for what was missing is included in each step.

Writing a comprehensive risk management plan is a daunting task, but one that is necessary. A risk manager experienced in facility/event management safety should be tapped to head up the process, but management of safety and security requires the involvement of all. Risk management is an ongoing process and needs daily attention! ●

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