

SPORTS FACILITIES

How the law affects the sports facilities industry

and the

LAW

Who's At Fault When 21 Ultramarathoners Die in a Race?

By Jon Heshka, Associate Professor at Thompson Rivers University

On May 22, 2021, 21 ultramarathoners died in the world's single largest mass casualty incident during a race. It occurred in the Yellow River Stone Forest Park near Baiyin, a city in China's Gansu province.

An ultramarathon is any race longer than a marathon which is 26.2 miles. The Baiyin ultramarathon was 62 miles in length.

Like marathons and triathlons which used to be on the lunatic fringe but are now mainstream, ultramarathons have exploded in popularity. More than 600,000 people participated in an ultramarathon in 2018, an increase of nearly 350 percent during the past decade, and nearly 1,700 percent from the 1990s.

Incidents and injuries are not uncommon in ultramarathons. Fifty-one runners

died running and racing mountains in Western Europe between 2008 and 2019. No aggregate figures are available for the United States. It is fair to claim though that participants who compete in these events are aware of the hazards and consent to the inherent risks ordinarily associated with such events.

For example, the Barkley Marathon, which has been immortalized in a Netflix documentary titled "The Race That Eats Its Young" is a 100-mile ultramarathon trail race with 60,000 feet of elevation gain in the Cumberland Mountains within Frozen Head State Park in Tennessee and has no aid stations except water at two points along the route. Its \$1.60 registration fee is a sign of what to expect for support and safety.

The toll taken on the bodies of ultramarathoners is sometimes brutal. Feet can

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Quadriplegia and Fatality Risk from Inadequate Basketball Court Buffer Zones: The Time to Act is Now

By Joseph J. Wadland

On March 14, 1970, Richard Atkinson, a sophomore at Bates College in Lewiston ME, lost his footing during an intramural basketball game and slammed into an unpadded brick wall. He died the next day from head injuries.¹ Bryant Gumbel, the then sports editor of the student newspaper

wrote: "[y]et to sit back and say that he smashed into an exposed brick wall less than fifteen feet away, and accept it simply for that, is senseless. As anyone who has been in the Bates gym realizes, the west wall in the gym is brick; it is bare; and it is only about fifteen feet away from the edge of the court. As anyone who has been in any other gym realizes, any walls that close to the court are in almost all cases covered with relatively inexpensive wrestling mats."

Bryant Gumbel urged that "steps be taken in the immediate future... to rid the gym of the danger of an exposed brick wall... [so] that the next time any accident involving that wall occurs, the writer, whoever he may be, will also be able to say that the athletic department cannot rightfully bear the blame. There are some who will say that Rich was probably the only person to hit that wall in the last fifty

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¹ Bates College, "The Bates Student- volume 96 number 20- March 21, 1970," at p. 1. (1970). *The Bates Student*. 1593.

SFL Editor Gil Fried Joins Faculty at University of West Florida

The University of West Florida (UWF, Pensacola, FL) has announced that Gil Fried has joined the faculty in the College of Education and Professional Studies (CEPS), starting in the fall 2021 semester. Professor Fried will not just teach sport management courses, but will also Chair the Administration & Law Department, which includes sport management, construction management, public administration, and legal studies.

Professor Fried Joins UWF after spending 22 years at the University of New Haven (UNH). While at UNH, Professor Fried became a major national figure in the sports safety area working on topics such as foul ball safety, crowd management best practices, and buffer zone safety in various sports. He has taught thousands of students in classes such as sport law, sport facility management, sport finance, and event management. Professor Fried is

also prolific author. He has written over 12 textbooks on topics such as sport law, sport facility management, sport finance, sport analytics, and even Esport business management. His textbooks are currently used at over 140 universities throughout the United States as well as being translated into various language such as Chinese, Korean, Russian, and Spanish.

While Professor Fried has had a strong academic focus, he is often best known for his work outside the classroom. He has served on various boards both with for profit corporations and nonprofit organizations. For example, he is on the Executive Board of the National Council of Youth Sports (NCYS) where he helps lead over 60 million young Americans who participate in youth sports. He also has worked on some of the most important sport law cases over the last 30 years ranging from deaths at stadiums to nationally regarded

cases involving assaults and injuries at both major and minor sports, entertainment, and recreation venues.

“I am so happy to be part of a team where I can leverage not just my sport management background, but also my legal background with UWF’s nationally ranked legal studies program, my facility management background with our construction management program, and my experience working with cities/counties for UWF’s public administration degree,” said Professor Fried.

CEPS Dean, Dr. William Crawley said, “[W]e are excited to have someone with Professor Fried’s knowledge, experience, and background joining us. He can leverage our existing resources and faculty, and help grow stakeholder engagement and partnership opportunities to help our students and the programs thrive.” ●

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and the **LAW**

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The Impact of Governmental Immunity on Injuries Sustained on School Grounds

By John E. Tyrrell and Vikas Bowry, of Ricci Tyrrell Johnson & Grey

On June 10, 2021, the Court of Appeals of Michigan, in a *per curiam* decision, affirmed summary disposition in favor of Lamphere Schools and middle-school track and field coach, Stephen Murray. *Nagy v. Murphy*, 2021 Mich. App. LEXIS 3600. The basis for the trial court's decision was rooted in the governmental immunity provision of Michigan Court Rule 2.116(C)(7).

By way of a brief background, on April 11, 2019, Defendant-Appellee, Stephen Murphy, was conducting an outdoor track and field practice at the Page Middle School, which is part of the Lamphere School District. A sudden change in weather conditions prompted Murphy to move the practice into one of the school's hallways. Murphy obtained approval from both the school's principal as well as the athletic director prior to doing so. While participating in a relay sprint exercise facilitated by Murphy, Plaintiff-Appellant Jayse Nagy struck and broke a wire-mesh window with his hand. The Page Middle School was constructed in 1957 and contained wire-mesh interior windows, the glass of which remained original at the time of the subject incident. Nagy alleged that while participating in the relay, he tripped over a bag and attempted to stop himself with his left hand. As a result, his left hand went through the doorway window. Murphy stated that he ensured that the pathways of the hallway were clear in-between every relay race. His precautions included walking up and down the hallways on numerous occasions, ensuring that bags and students were against the wall, and positioning students at intersections to monitor for others.

Following the incident, Murphy used his sweatshirt to fashion a tourniquet and proceeded to take Nagy to the lobby of the school to await the arrival of an ambulance. Murphy acknowledged that a first aid kit

consisting of bandages, gauze, athletic tape, scissors, petroleum jelly, extra mouth guards, and a small toolkit was available, but was on the other side of the hallway at the time that the incident occurred.

Approximately two months after the incident, Nagy filed suit alleging that Murphy committed gross negligence. Additionally, Nagy filed suit against Lamphere Schools based on a cause of action sounding in premises liability. Specifically, Nagy alleged that the school's failure to replace the wire-mesh glass from 1957 constituted to a failure to repair and maintain a public building. In response, defendants moved for summary disposition on the basis that Murphy's actions did not rise to the level of gross negligence. With respect to the school's failure to replace the wire-mesh glass, defendants argued that Nagy had set forth a design defect claim and that the claim was meritless. Although defendants did not frame their summary disposition arguments under a specific sub-rule, the trial court interpreted their arguments as falling within the ambit of governmental immunity. As a result, summary disposition was granted in favor of defendants and Nagy subsequently appealed.

On appeal, the Court first analyzed Nagy's argument regarding Murphy's gross negligence. The Michigan Governmental Immunity Act affords governmental employees protection from tort liability. However, the shield is lowered in situations in which the employees conduct "amount[s] to gross negligence that is the proximate cause of the injury or damage." MCL 691.1407(2)(c). Gross negligence is further defined as "conduct so reckless as to demonstrate a substantial concern for whether an injury results." MCL 691.1407(8)(a). The Court elaborated on this further and characterized gross negligence as being "as though, if an objective observer watched the actor, he could conclude, reasonably, that the actor simply did not care about the safety and

welfare of those in his charge."

The Court distilled Nagy's allegations regarding Murphy's gross negligence into the following: Murphy failing to ensure that the running lanes were clear, failing to ensure sufficient maneuvering space for the students, failing to station an additional adult at the other end of the relay, and failing to keep a first-aid kit reasonably accessible. The Court acknowledged that by resolving all factual disputes in plaintiff's favor there could be a genuine question of fact as to whether Murphy was negligent. However, the Court unequivocally stated that "ordinary negligence does not establish a question of fact regarding gross negligence." Following an analysis of the aforementioned allegations set forth by plaintiff, the Court concluded that Murphy's actions simply did not rise to the level needed to constitute gross negligence. In the eyes of the Court, Murphy took steps to ensure that the track and field practice was safe and did not demonstrate a "substantial lack of concern" for the safety of the students.

As mentioned above, Nagy also filed suit against Lamphere Schools based on a cause of action sounding in premises liability. Plaintiff's claim was based on the "public building" exception to the absolute immunity from suit that governmental entities are afforded. MCL 691.1406 provides the following, in relevant part:

Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take an action reasonably necessary to protect the public against the condition.

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Impact of Governmental Immunity on Injuries Sustained on School Grounds

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Nagy argued that the subject window was a dangerous or defective condition of the public building as it should not have shattered when he made contact with it. Additionally, Nagy asserted that defendant had actual or constructive notice of the defect and that it did not remedy the defect after a reasonable period of time. In response, defendant argued that Nagy had in essence set forth a design defect claim and that such a claim would be barred by governmental immunity. Defendant also asserted that the public building exception would not be applicable to such a claim.

In analyzing Nagy's claim, the Court began by acknowledging that defendant had established that the subject window was part of the original construction of the school. Moreover, the Court stated that there was no record evidence that the wire-mesh windows were unsafe in schools. The

Court then turned to the Supreme Court's interpretation of the "public building" exception. In doing so, the Court highlighted the fact that liability is imposed under the exception where the dangerous or defective condition of a building was the result of a failure by the governmental agency to repair and maintain that building. The Court also noted that the Supreme Court has defined "repair" as restoration to a prior condition following damage and "maintain" as preserving a prior condition.

Based on the attendant facts and circumstances of the matter, the Court concluded that the public building exception does not generally apply where the alleged defect existed as part of the original building. Here, the subject window was original and had not been improperly repaired or maintained. Plaintiff's claim was therefore considered to be a design defect claim as opposed to a claim based on a failure to

repair or maintain. The Court thus held that plaintiff's claim did not fall under the umbrella of the public building exception to governmental immunity. As a result, summary judgment was affirmed in favor of defendants.

Nagy underscores the impact under Michigan law of governmental immunity with respect to injuries that are sustained on school grounds. It is apparent from the Court's fact-intensive analysis that plaintiffs must clear substantial hurdles before piercing the immunity that governmental entities are afforded. ●

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Where We Stand – or Sit – on Foul Ball Liability

By Gil Fried, Esq., of University of West Florida

The parents of a toddler who was hit by a foul ball during a May 29, 2019 Houston Astros game, fracturing her skull, have recently reached a settlement with the team. The child, who was two years-old at the time, was hit by a ball off the bat of Cubs center fielder Albert Almora Jr. The child suffered a fractured skull and has, according to the family attorney, a permanent brain injury. At the time of the game in 2019, Minute Maid Park's netting reached from the end of one dugout to the other. Unfortunately, the child was sitting farther down the left-field line. Several months after the incident, the team extended its netting farther down the baselines.

In January 2020, MLB announced that every team would have extended netting for the upcoming season, following reports of fans getting injured and even killed by foul balls. Linda Goldbloom, died after attending a Padres-Dodgers game at Dodger Stadium on Aug. 25, 2018. During the game, a foul ball went over the protective netting and struck her in the head.

Teams have been able to avoid liability in many jurisdictions by using the Baseball Rule as a strategy to avoid liability. The Baseball Rule was started back around 1911 where a team/venue was not held liable for fan injuries that could be expected and for which a team/venue has taken some reasonable precautions. The Baseball Rule basically says that fans assume the risk of injury from projectiles entering the stands if the team/stadium protect the most dangerous parts of the ballpark. The Rule has survived for over 100 years, even though of late a number of state supreme courts have struck down the Rule. While I expect the number of suits to go down as MLB is now protecting a broader swatch of seats in "the most dangerous" parts of the stadium. The most dangerous parts of stadiums are often down the first and third base lines before and after the dugout. This has been

an evolving area as fans are sitting closer to the action, and balls/players are faster than in years gone by.

One element that has not been considered by the courts is legislation enacted back in the "good ole days" codifying the Baseball Rule. The Baseball Rule has been interpreted by many state courts as a common law doctrine. However, after several losses in state courts and the great lobbying efforts of teams to require new laws for a team to move to a given state, four states have codified the Baseball Rule in statutes. Arizona and Colorado were the two states where new teams lobbied to get the law to change before playing their first games at their new ballparks. In Illinois and New Jersey, the state legislatures codified the Baseball Rule after the Baseball Rule had been rejected (wholly or in part) by the courts. These statutes can be found as follows: ARIZ. REV. STAT. ANN. § 12-554 (2021); Colorado Baseball Spectator Safety Act of 1993, COLO. REV. STAT. ANN. § 13-21-120 (2021); Baseball Facility Liability Act, 745 ILL. COMP. STAT. ANN. 38/10 (2021); New Jersey Baseball Spectator Safety Act of 2006, N.J. STAT. ANN. §§ 2A:53A-43-48 (2021).

For example under Arizona's statute:

"A. An owner is not liable for injuries to spectators who are struck by baseballs, baseball bats or other equipment used by players during a baseball game unless the owner 'does not provide protective seating that is reasonably sufficient to satisfy expected requests.'"

Thus, the predicate is what fans want, compared to what is the safest area.

The statute goes on to define the intended area of protection as follows:

3. "Protective seating" means either:

(a) An area in which a screen to prevent a ball or bat from entering the seating area exists between the

spectator and the playing field.

(b) An area that is reasonably safe for the avoidance of injuries from baseballs, baseball bats or other equipment used by players during a baseball game.

Based on this definition, even having a 20-foot-wide screen would technically meet the requirements of the law without exploring where injuries actually occur and what is the real dangerous area. It would be akin to a law protecting a ship if there is an accident as long as there was a little lifeboat-even if it could only help a small percentage of those on the ship.

The Colorado law specifies that the team/stadium could be sued if they "fail to make a reasonable and prudent effort to design, alter, and maintain the premises of the stadium in a reasonably safe condition relative to the nature of the game of baseball." This vague language makes it unclear what constitutes a reasonably safe condition- especially as it relates to the nature of the game of baseball. Even though the language is unclear, the legislature in Colorado took pains to insert a clause that the law was designed to:

SECTION 3. Safety clause.

The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Who cares if a good number of people were seriously injured, the legislature had it in their mind to protect the "people"- not the owners/operators of ballparks in the state.

The Illinois law removes all question that a team/venue cannot be sued even if they had a 10-foot-wide screen and there were numerous concerns on either side of the small screen. The statute provides:

"Sec. 10. Liability limited. The

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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.” (emphasis added by author)

Thus, in Illinois, a team could have a ten-foot-high and ten-foot-wide screen that only blocked five percent of all foul balls- and they would still receive immunity protection.

New Jersey provided the same basic insulation from liability to teams so long as they have installed netting protecting

the most dangerous area of their stadium (specifically identified by statute as being that behind home). The New Jersey law, expands the traditional scope of foul ball liability protection to cover anywhere one might be hit by a foul ball anywhere “on the premises” which could be interpreted to mean even those hit by foul balls in concession lines or even outside the stadium at a minor league park.

The interesting part of the New Jersey law is how the legislature concluded that the most dangerous part of the ballpark is right behind home plate. The specific statutory language is as follows:

“Nothing in section 4 of this act shall prevent or limit the liability of an owner who fails to provide protection for spectators in the most dangerous sections of the stands. This limited duty may be satisfied by having a net behind home plate.”

How did law makers who might have played ball as kids, or even up to college baseball know that the area behind home plate was the only area that needed protection? Of course, they didn’t. They took the common knowledge that ballparks have screens behind home plate, so home plate obviously is the most dangerous area. As everyone knows- common knowledge is rarely correct and can be disproven with unbiased research.

These laws help demonstrate how the law sometimes does not keep up with reality. MLB baseball realized that there was an issue with netting and that the most dangerous part of the ballpark might not just be the area behind home plate. Yet, law makers have not revisited these laws to make sure reality is followed. It might just be a matter of time that some injured fans might challenge these laws as out of date or

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Football Without the Fans: Effect of Empty Stadiums During Pandemic

Playing professional football games in empty stadiums had a hugely negative effect on the success of home teams, with home advantage almost halved, new research shows.

Home advantage describes the benefit a sports team playing at their own venue is said to enjoy over the visiting team. This could be attributed to the effect of fans on the players or referee; playing in familiar surroundings and the effects of travel on the visiting team.

The new study, by the University of Leeds and Northumbria University, used the unique opportunity presented by the COVID-19 pandemic to test whether home advantage applies when fans are not present in the stands.

Researchers used data from Football-Data.co.uk and the FiveThirtyEight online database to assess at 4,844 games across 11 countries, including the England Premier League and Championship, Germany Bundesliga 1 and 2, Spanish La Liga 1 and 2, Italian Serie A and B, Portuguese Primeira Liga, Greek Super League, Turkish Super Lig, Austrian Bundesliga, Danish Superligaen, Russian Premier League and Swiss Super League.

They found that home teams accrued significantly fewer points and scored fewer goals when crowds were absent.

The researchers found, on average:

- With fans present, teams won 0.39 points more per game at home than away
- With fans absent, the advantage was almost halved when teams won only 0.22 points more at home than away
- With fans present, home teams scored 0.29 goals more per game than away teams
- With fans absent, home teams scored just 0.15 goals more than the visitors.

Furthermore, the lack of crowds affected how referees judged fouls against home and away sides.

The data showed:

- Referees gave more fouls against the home team in empty stadiums
- Referees gave a similar number of fouls against the away team in empty stadiums
- Referees gave far fewer yellow cards against away teams in empty stadiums
- Referees gave similar numbers of yellow cards against the home team in empty stadiums — even though they fouled more

Red cards followed a similar pattern which was less pronounced, yet still significant.

Lead author Dane McCarrick, from the University of Leeds' School of Psychology, said: "COVID-19 forced football at all levels to an unexpected halt just a quarter of the way through the 2019/2020 season.

"When it returned, the remainder of the games took place behind closed doors with no fans present. This provided an unintentional, and unique, opportunity to examine one of the most talked about and empirically studied phenomena in professional team sport: the home advantage.

"This new knowledge reveals that in the most basic sense, fans attendance matters."

Dominant Play

Previous studies into home advantage have considered how goals scored and points awarded at home games compared with performance at away matches.

This study is the first to consider whether home advantage affects a team's dominance over a game.

The researchers measured dominance by the number of corners, shots and shots on target they had in any given match.

The study showed home teams were



less dominant without their supportive fans, with an average per game of 0.7 fewer corners won, 1.3 fewer shot attempts and 0.4 fewer shots on target.

But the findings suggested that the lack of crowds made very little difference to away teams' attacking hold on games, with only 0.10 more corners, 0.17 more shots, and 0.20 more shots on target.

And the researchers discovered that teams' dominance had a much greater influence over referees' decisions than the presence of home fans.

Mr McCarrick said: "When a team's dominance over the game was included in the analysis, the associations were much weakened for fouls and yellow cards and, remarkably, become non-significant for red cards. This shows, for the first time, that the influence of home fans on referees mostly disappears when the style of play is taken into account."

Dr Sandy Wolfson, a sport and exercise psychologist from Northumbria University's Department of Psychology, worked with Dane on this study. Dr Wolfson has undertaken extensive research exploring the psychological aspects of football for players, referees and fans, working with Premier League clubs and the Football Association. She said: "This is a really important investigation that contributes to the long-standing debate on the main reasons for the home advantage in sport — a worldwide phenomenon affecting team sports at all levels, from recreational to elite." ●

NASCAR, Penn National Gaming Expand Strategic Alliance

NASCAR® and Penn Interactive, a subsidiary of Penn National Gaming, Inc. have announced a new multiyear market access partnership in the state of Arizona. As part of the agreement, Penn National's Barstool Sportsbook will become the exclusive Sportsbook of Phoenix Raceway and is expected to gain access to the Arizona sports betting market.

"Phoenix Raceway is a state-of-the-art entertainment destination that prides itself on delivering a best-in-class fan experience," said Phoenix Raceway President Julie Giese. "Our partnership with Penn National Gaming and Barstool Sportsbook takes this to another level. It will help us continue our mission of redefining the way we engage fans and connect with new audiences."

Penn National is the nation's largest regional gaming operator, with 42 properties in 20 states. Penn Interactive operates retail and online sports wagering and iCasino for the Company, including

the online Barstool Sportsbook, which is currently live in Illinois, Indiana, Michigan and Pennsylvania. The partnership with Phoenix Raceway reflects Penn National's strategy to continue evolving into the leading omni-channel gaming provider as the only operator with a fully integrated sports media and entertainment partner.

"Barstool Sportsbook has proven itself to be a market leader in the jurisdictions where it has launched due to a combination of unique offers and a leading mobile experience," said Jon Kaplowitz, Senior Vice President of Penn Interactive. "This new partnership will allow us to engage a passionate sports fan base in Arizona while having access to a best-in-class sports entertainment facility in Phoenix Raceway."

As the exclusive sportsbook of Phoenix Raceway, Barstool Sportsbook is expected to take an active role in promoting NASCAR odds across its properties and sports betting app. Barstool Sportsbook will feature

unique promotions and odds boosts for fans betting in Arizona and will be prominently featured with at-track signage and via NASCAR's social and digital channels.

"As our first authorized gaming operator, Penn National has been invested in engaging NASCAR fans since we began building our position in the sports betting space," said Tim Clark, Chief Digital Officer, NASCAR. "We couldn't be more excited to provide our partners with access to our passionate fan base in the greater Phoenix market."

In 2020, Penn National became NASCAR's first authorized gaming operator, marking its first partnership with a professional sports league. Additionally, the Company extended its race title sponsorship with Kansas Speedway, where it operates Hollywood Casino on Turn 2 of the race track, through 2026. ●



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OKC Thunder Announce 15-Year Arena Naming Rights Deal

The Oklahoma City Thunder and Paycom (NYSE: PAYC) have jointly announced an exclusive, 15-year naming rights partnership that will transform the downtown home of the Thunder into Paycom Center.

The name change takes effect immediately, with exterior signage to be completed in time for the start of the 2021-22 Thunder season. For the new season, the Thunder plans to reopen the building and bring fans back to enjoy the complete Thunder game experience.

“We are honored and excited to expand our partnership with Paycom to include a centerpiece, 15-year naming rights commitment for our arena,” said Clayton I. Bennett, chairman of the Oklahoma City Thunder. “We are especially proud to enhance our alignment with this innovative and visionary Oklahoma company that is not only a top job creator, but a nationally recognized tech-

nology leader. The Thunder shares Paycom’s always-onward vision, grit and relentless pursuit of excellence, combined with a passion for impacting our community. Together, we are committed to working hand in hand to create the best for our fans and city.

The naming rights agreement consists of several marquee Paycom Center signage locations, including the building’s exterior and roof, game floor, scoreboard and more. Paycom will retain its branded on-court signage in front of the player benches and will continue actively engaging the community that is so important to Paycom and the Thunder. Financial terms of the agreement were not disclosed.

The building is scheduled to be fully transformed into Paycom Center for the expected return of fans to Thunder games for the upcoming season. The Thunder is working with the City of Oklahoma City to develop and complete the full exterior

signage and lighting plan.

In addition to Thunder games, Paycom Center will host numerous concerts, sporting events and other world-class attractions, welcoming more than 1 million guests per year. Opened in 2002, the building is managed by ASM Global and owned by the City of Oklahoma City.

“At ASM Global, we are thrilled with the potential this partnership between the Thunder and Paycom offers for future success of the arena,” said Chris Semrau, general manager of Paycom Center. “We work diligently to offer first-class amenities and services for fans, entertainers, guests and crew as we schedule events and shows throughout the year, all within a very competitive environment. Adding a technology and community leader like Paycom to the name of the arena only enhances our ability to help position the facility as modern, vital and built for the future.” ●

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Who's At Fault When 21 Ultramarathoners Die in a Race?

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swell and blister, body parts chafe, heat and cold lead to heat stroke and hypothermia, dehydration, hyponatremia and hallucinations are all possible parts of the experience. It's not for the faint of heart and pushes the bounds of not only what the body is capable of doing but of what any reasonable person would consider doing.

It is generally understood by ultramarathoners that injuries are normal and that they are responsible for mitigating against such injury and dealing with it should it occur. To a degree, it is also expected that event organizers, in anticipation of such ordinarily occurring injuries, have systems in place to deal with them. They include qualification requirements to weed out inexperienced runners, mandatory kits that runners must carry, checking of the kits to ensure they are complete, checkpoints, aid stations, and medical stations. Some races place a greater emphasis on self-reliance while others have aid stations and safety and support systems commensurate with what established marathons do.

The culture of ultramarathoning blends the mainstream expectations of marathons with its certified courses and aid stations stocked with the extreme sport ethos of self-reliance and risk tolerance. In the old days of marathons, Ironman triathlons and ultras, they were low-key and local events where many participants knew one another, they truly understood what they were getting themselves into, and the event organizers ran the races on shoestring budgets. Now, races such as the New York City Marathon (which had 127 participants in its first race in 1970) and Chicago Marathon each have more than 50,000 runners, sponsors like TCS and the Bank of America, and have risk management professionals to protect participants from unnecessary risks.

While some parts of the ultramarathon sector are established and have robust risk management systems in place, others are still in the wild wild west where almost

anything goes. Established ultras like the Western States 100, Leadville 100 and Badwater 135 (all distances are in miles) have been around for decades whereas the Baiyin ultramarathon was only five years old.

It is important to note that even the biggest and the best marathons and triathlons backed by major sponsors and run by professional organizers can be sideswiped by weather and are not immune from participants being injured or dying. For example, in 2007, about 315 runners in the LaSalle Bank Chicago Marathon were picked up by ambulances, 49 were hospitalized, and one man died after record-setting temperatures soared into the upper 80s and aid stations ran out of water and electrolytes. The race was shut down after about 3 ½ hours with only 24,993 runners finishing out of 35,867 who started it.

Aware that the weather forecast called for high temperatures, organizers undertook measures to prevent, control and mitigate against the anticipated heat. A heat advisory was e-mailed to running clubs and participants a week before and the day before the race. Online advisories were posted warning that high temperatures would demand extra hydration and caution and these warnings were verbally reiterating at the race expo. The week before the race, organizers met with the Chicago Fire Department to secure additional resources including a ventilation van, a giant misting machine, bike-patrol teams, 22 open fire hydrants for spraying, and 28 ambulances. Five air-conditioned city buses were commandeered to cool off overheated runners and the number of drink servings was increased from 1.6 million to 1.8 million. In the end, these precautions would not turn out to be enough though.

Similarly, a participant competing in the Utah Ironman Triathlon drowned in 2002. The race is comprised of a 2.4-mile swim, 112-mile bike ride and 26.2-mile run. The participant drowned within 10 minutes of the race starting and the swimming leg was

cancelled 20 minutes into the race after 50 mile per hour gusts kicked up three-foot waves in the water.

While it is true that weather played a role in the Chicago marathon, Utah Ironman and the Gansu ultramarathon, the similarities end there. Anticipating the heat, Chicago organizers undertook comprehensive risk management planning, increased resources to mitigate heat-related illnesses and to respond to medical emergencies, messaged runners about the risks of running in the heat, and cancelled the race when it became obvious the risks were too great. Utah Ironman organizers proceeded with the race in the face of dangerous winds, cancelled the swim leg but allowed an abbreviated race to continue.

Organizers of the Baiyin ultramarathon appear to have had very limited experience running races (the company running the race for the past four years had no background doing so before winning the government contract), had designed a route that had many dead zones where communication was impossible and that had checkpoints inaccessible by road, suggested rather than required participants to carry appropriate clothing, and had been unaware of or ignored weather forecasts of rain, hail, freezing temperatures and heavy winds. Many runners set off on the course in little more than a T-shirt and shorts before freezing conditions arrived.

It is easy to blame the organizers of the Baiyin ultramarathon for what happened. Indeed, 21 participants dying in a race suggests not merely simple negligence but gross negligence and criminal negligence of race organizers. Not to be overlooked though are the roles that runner self-reliance and self-sufficiency play in ultramarathoning. These are races where runners go in with eyes wide-open of the risks and are aware – or should be aware – that they and they alone are responsible for getting themselves out of most

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any situation they get themselves into during the race. That fierce spirit of independence and pushing the limits of what is possible is what helped found ultramarathoning.

It is not yet known if participants were aware of and agreed to the limited support provided or signed an equivalent to a waiver releasing the race organizers from any liability for any loss suffered in the race. Such waivers are ubiquitous in the adventure and extreme sport industry to such an extent that athletes participating in the Tokyo 2020 Olympics are required to sign a waiver agreeing to participate at their "own risk and own responsibility", that the risks include serious bodily injury or death caused by COVID-19 and that they irrevocably release the Games organizers from any liability for any loss or injury incurred.

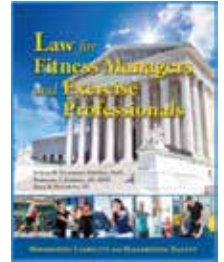
What happened in Baiyin is a brutal lesson in personal preparedness and event-organizer responsibility. Racers should be

prepared for the forces of nature, and race organizers should, at the very least, respect weather forecasts.

A Chinese government investigation identified 27 people as being responsible for the deaths of the 21 ultramarathoners. The report stated that "the emergency plan and safety guarantee measures for the event were not formulated in accordance with the prescribed standards, and the emergency rescue force was seriously underprepared." The report also cited "lax industry regulation" and "weak government oversight" by the Baiyin municipal government. Zhang Xiaoyan, the owner of Gansu Shengjing Sports Co, the company that organized the race, has been detained and faces criminal charges. Twenty-six people, including the mayor of Baiyin and the Baiyin Communist Party of China secretary, have been disciplined. One official died in an apparent suicide. ●

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Fitness Law Academy, LLC has announced the availability of *Law for Fitness Managers and Exercise Professionals*, by JoAnn M. Eickhoff-Shemek, PhD, Barbara J. Zabawa, JD, MPH, and Paul R. Fenaroli, JD. The publisher describes the textbook is **the** "go to" resource for fitness managers and exercise professionals. Written specifically for a "lay" audience, it includes descriptions of over 100 legal cases and numerous risk management strategies.



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Quadriplegia and Fatality Risk from Inadequate Court Buffer Zones

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years. Maybe so. Whether he was the only one in the last fifty years; or whether he'll be the only one until that gym crumbles to the ground is unimportant. What is there to lose by gambling some money [on safety improvements] on the chance that one day the money spent may save a life?"²

Bryant Gumbel had it right more than fifty (50) years ago. Just ask Matt Wetherbee and Joel Gonzalez. In the span of a mere seven (7) months in 2016-17, at two gyms less than ten (10) miles apart in greater Boston, routine drives to the basket for these two young men in adult recreational basketball leagues turned into life altering plays. Today, Matt and Joel are quadriplegics. Both collided with a padded wall under the basket. In Matt's case, as he drove to the basket, a defender stepped in, their legs tangled, and he fell headfirst into the wall under the basket. Joel was laying

² Id., p. 10.

the ball up following a drive from the top of the key. He was fouled as he went up and landed off-balance, and he too struck the wall under the basket headfirst. Both men were young (28 and 31 respectively), fit, athletic and seasoned, skilled basketball players. Neither player had sufficient time or distance to avoid or brace for their collision with the wall.

Imagine an NBA game where there is a padded concrete wall, at the point where spectators and media sit in the out-of-bounds area of arenas throughout the country, often no more than 3 or 4 feet from the out-of-bounds line. No owner would permit play to happen, and no player would play and risk his career under such circumstances.³ Yet this is what happens in

³ YouTube is replete with videos of NBA players going out-of-bounds and colliding with fans, chairs and other obstructions. For example, LeBron James chased a loose ball out-of-bounds

thousands of gyms, rec centers and basketball courts throughout the country daily. When a facility has an inadequate buffer zone it creates an unreasonable risk of harm.

Regardless of whether anyone is familiar with the term "buffer zone," the underlying concept is clear. Basketball actions, plays and player deceleration frequently occur in the out-of-bounds area of the court, whether it is a player attempting to save a loose ball from going out-of-bounds, a player running full speed for a lay-up where his momentum

and collided with golfer Jason Day's seated wife in 2015, injuring her. The YouTube video as well as Sports Illustrated still shots, show LeBron going headfirst when he struck her. Compare this with the video footage of Joel Gonzalez's injury, *infra* – showing his head-first position immediately before striking the wall. The two are very similar. Now imagine a concrete wall rather than Mrs. Day at the point of impact for LeBron.

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carries him out-of-bounds, or a player who is tripped or fouled near the out-of-bounds line and who loses his balance, forcing him out-of-bounds. In each of these instances, a player requires a safe distance between the out-of-bounds line and the nearest wall or obstruction to prevent against injury. It is important to remember that unlike boards in hockey and outfield walls in baseball, walls in the buffer zone of basketball courts are not part of the sport or in the field of play. They constitute a risk which is not inherent to the game itself.

Matt Wetherbee's and Joel Gonzalez's spinal cord injuries were predictable and avoidable. There was no buffer zone under the basket in Matt's case; the wall was the out-of-bounds marker. In Joel's case, the wall he struck was approximately 4 feet from the baseline.

Several basketball and sport governing bodies have promulgated standards, guidelines, recommendations and best practices respecting buffer zones. The American Alliance for Health, Physical Education, Recreation and Dance ("AAHPERD") and the National Intramural-Recreational Sports Association ("NIRSA") both specify a preferred buffer zone of ten (10) feet and a minimum of six (6) feet. The National Collegiate Athletic Association (NCAA) specifies a preferred buffer zone of ten (10) feet and a minimum of six (6) feet under the baskets and three (3) feet on the sides. The Amateur Athletic Union (AAU) specifies a preferred buffer zone of ten (10) feet and a minimum of three (3) feet. The AAU rule book specifies that the National Federation of State High School (NFHS) rules apply to AAU events (Amateur Athletic Union, 2016). The NFHS also specifies a preferred buffer zone of ten (10) feet and a minimum of three (3) feet.

What is clear from these governing bodies is that the *preferred* buffer zone distance is ten (10) feet. Even insurers have taken



Still images from the surveillance video, showing Mr. Gonzalez: A) Doing a layup; B) Stumbling near the baseline; C) Going into the padded wall headfirst with his arms out in front of him, and a zoomed-in view demonstrating that his left elbow was bent (circled in red); D) Falling to the floor post-impact; and E) Landing on the right side of his body. Note that the view of Mr. Gonzalez's body at impact with the padded wall is partially obstructed by the padded I-beam located to the left of his body at impact.

this position publicly.⁴ However, many facility owners and operators take the legal position that as long as there is a three (3) foot minimum, they have complied with the standard of care. Alternatively, or in addition, facility owners and operators customarily assert that the risk of danger is open and obvious, players assume the risk of injury and/or are contributorily negligent. They also often will rely on written waivers as a risk management tool, arguing that a player who has signed one has waived his right to bring claim for his injury.⁵

⁴ See "Basketball Court Tech Sheet," *Employers Mutual Casualty Company* (2011), stating that "basketball courts should have a minimum clearance of 3 feet around the perimeter of the playing court, but 10 feet is highly recommended."

⁵ Sports facilities owners/ operators and risk managers often use waivers or releases as a means of limiting their liability and exposure. But a waiver/release should not be the first line of risk management for an unsafe facility. In Massachusetts for example, its version of the model Health Club Services Contract Act (Mass. Gen. Laws Chapter 93, Section 78, et. seq.) outlaws use of waivers or releases by a health club or

There is no indication by any of the above-referenced organizations or in any of their publications as to how each arrived at its buffer zone requirement/recommendation. A review of the literature turned up no professional article advocating for a three (3) foot buffer zone. According to experts in the field, the three (3) foot minimum incorporated into some of the above-referenced literature is outdated guidance that has been rejected as inadequate by virtually all professionals in the field "for at least the last 50 years."⁶

fitness facility and constitutes a violation of the Massachusetts Consumer Protection Act. Insurers of health clubs in Massachusetts who require their insureds to use waiver language in their contracts with consumers expose themselves and their insureds to treble damages and an award of attorney's fees. Several other states have their own iterations of the model Health Club Services Contract Act.

⁶ See, e.g., "Injuries in the Buffer Zone: A Serious Risk Management Problem." *Journal of Physical Education, Recreation & Dance*, Vol. 78 No.2 (Neil Dougherty and Todd Seidler).

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Quadriplegia and Fatality Risk from Inadequate Court Buffer Zones

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The only publication to this author’s knowledge which takes into consideration human biomechanics in establishing buffer zone distance requirements under a basket is an architectural design reference source book entitled “Human Dimension & Interior Space: A Source Book of Design Reference Standards” (1979). It recommends 7.5 to 9.6 feet of buffer zone from the end line under a basket to any obstruction, and as it notes “[i]n sports where the action is more intense, such as basketball, the lack of adequate safety zone clearances may cause injuries to the players and may even prove fatal (p. 257). Another architectural design reference, Architectural Graphic Standards (12th Ed.), also known as the architect’s bible, recommends a ten-foot minimum buffer zone.

A study conducted by Gil Fried and other researchers at the University of New Haven using player measurements, surveys

and physics attempted to identify what is an appropriate basketball court buffer zone. Based on the results of physics modeling in the study, the average distance necessary for players to stop their movement safely was reported to be 7.74 feet. The researchers then conducted a simulated game, and the players left the court under the baskets 19 times, traveling on average 5.18 feet. According to the researchers, the physics model theoretically provides the minimum safe buffer zone distance and provides a conservative measurement to provide safer basketball courts. The study concluded that the outdated three-foot minimum buffer zone is not only an arbitrary number but is also unsupported by any scientific research. The researchers concluded that by adopting preferably an 8-foot buffer zone (physics modeling) and at least a 5.2-foot buffer zone (simulated game), facilities can provide a safer distance for players. The

study did not try to establish a minimum or uniform standard of care nor purport to be statistically valid.⁷

Joel Gonzalez’s injury was captured on surveillance camera video footage. The link to it is: <https://youtu.be/FM2BURDo-P8>. A frame-by-frame analysis performed by Wilson C. Hayes, Ph.D. and Erik D. Power, P.E. of Hayes & Associates of Corvallis, OR is included below. While it may be disturbing to watch the video, sport facilities owners/operators, risk managers, athletic directors and others who have responsibility for the safety of sports facilities need to see it, as do insurers and officers of the above-referenced sport governing bodies.

All new facilities should be designed

7 “Buffer Zone: Policies, Procedures, and Reality.” *Journal of Legal Aspects of Sport*, 2019, 29, 86-101 (Ceyda Mumcu, Gil Fried and Dan Liu)

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Quadriplegia and Fatality Risk from Inadequate Court Buffer Zones

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with at least a ten-foot buffer zone. Many existing gyms and courts with less than the preferred ten-foot distance can almost always adjust their baskets and move them in, i.e., shorten the court a few feet on each end with a new baseline, and have a significantly larger and safer buffer zone at least under the baskets.⁸ While shortening an already small court may be less than ideal, is not changing it worth avoiding a spinal cord injury or fatality? Further, going forward, juries are unlikely to buy either the ostrich defense (“a freak accident”), accept the 3-foot minimum as an acceptable standard of care or be willing to find a player assumed the risk. Players and consumers generally are unaware of standards or about the potential for such devastating injuries. Juries are more likely today than ever to hold owners/operators accountable for unsafe buffer zones.

It is important to recognize that for there to be real and effective change across the country in the thousands of gyms with unsafe buffer zones, it must come from the

⁸ According to Hayes & Associates, another approximately 18 inches of buffer zone space likely would have avoided Joel Gonzalez’s spinal cord injury.

liability insurers and sport governing bodies. So long as a sport governing body such as the NCAA or the NFHS allows games to be played on courts with 3-foot buffer zones and insurers are willing to insure the risk, there will continue to be unnecessary fatalities and spinal cord injuries.

Putting aside the law and insurance, as a sports facility owner/operator, do you want to be the one with a spinal cord injury or fatality on your watch? Stated otherwise, would you prefer to have a reasonably safe facility or rely on the legal doctrines of assumption of risk, comparative fault and/or waiver to try to insulate yourself from liability for an unsafe facility? Which is the responsible approach?

Matt Wetherbee and Joel Gonzalez want you to know that as life-long basketball players, it never occurred to them that they could suffer such a devastating injury playing basketball. They want to prevent what happened to them from occurring in the future. They are the motivation for this article. They refuse to let their quadriplegia define their lives. They both are active in raising awareness about spinal cord injuries, research and promising, yet still unsuccessful, treatments. Matt Wetherbee has

started the MW Fund, a non-profit which awards scholarships to spinal cord injured patients to assist in their rehabilitation. To read more about Matt and his story, go to www.mwfund.org.

Matt’s and Joel’s accidents were the subject of litigation which is beyond the scope of this article. The Massachusetts Trial Court maintains a website for electronic case access, deemed to be public information: www.masscourts.org/eservices/home.page.2. The civil action caption and docket number for each case is: *Gonzalez, Joel vs. Morton, James O’S., et al*, Suffolk Superior Court Civil Action No. 1884CV00690 and *Wetherbee, Matthew H., vs. Cambridge Racquetball, Inc., et al.*, Middlesex Superior Court Civil Action No. 1681CV02072. The author of this article represented both Mr. Gonzalez and Mr. Wetherbee. ●

Joseph J. Wadland of the Massachusetts firm, Wadland & Ackerman, is a trial attorney with over 35 years’ experience. He represents both plaintiffs and defendants as well as insurance carriers. For more information, see www.wadlandackerman.com.

Where We Stand – or Sit – on Foul Ball Liability

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inaccurate. While courts will probably rely on legislative intent, the question becomes based on what did these state legislatures create and craft these laws? If teams were the primary lobbyist for such legal protections, and then they changed what the teams in fact do, should the law be changed or will courts keep applying these laws knowing that teams/venues have expanded the area covered by netting. It might turn out that the court of public opinion will be the driving force with team settling these cases to avoid the lightning storm caused by a child being wheeled away on a stretcher uploaded

and viewed by millions on social media.

My hope is that with the expanded netting fewer people would be seriously hurt and teams will be able to show with hard data that they are protecting the most dangerous parts of the stadium, regardless of where they might be (remember all stadiums are different so the risks will vary in every stadium). If this is what teams do then they should receive protection from fans who should assume some of the risks with going to a game. State laws codifying legal protections should be revisited to make sure they are consistent with reality and do

not provide unreasonable protection that can harm baseball fans. ●

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