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SPORTS FACILITIES

How the law affects the sports facilities industry and the LAW

The Chicago Cubs Sued for Alleged ADA Violations

By Jeff Birren, Senior Writer

The Chicago Cubs play home games in Wrigley Field. It is an old stadium that has undergone significant changes over time. The last project began after the 2014 season. But according to the Chicago United States Attorney's office, those renovations violate the American with Disabilities Act ("ADA") in multiple ways. On July 14, 2022, it sued the Cubs and related entities, seeking damages, penalties, and a declaration that the renovation project violates the ADA, United States of America v. Chicago Baseball Holdings, LLC, Wrigley Field Holdings, LLC, WF Master Tenant, LLC and Chicago Cubs Baseball Club, LLC, Case No. 22 C 3639, U.S.D.C. N.D. Ill, Eastern Division, (7-14-22)).

Background

Wrigley Field is on Chicago's north side. It was built in 1914 and is the country's second oldest Major League Baseball stadium, after Boston's Fenway Park. It was originally named Weeghman Park, after its owner, Charles H. Weeghman, who also owned the Federal League team that played there. When the Federal League folded, Weeghman purchased the Cubs and moved the team to his stadium. The Cubs played its first game at Weeghman Park in 1916.

In 1920 the Wrigley family purchased the team and renamed the stadium Wrigley Field in 1926. In 1937 the team began a series of improvements to the stadium, and that has continued

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INSIDE THIS ISSUE

The Litigation Surrounding Dunkin' Donuts Park Goes into Extra-Innings; Connecticut Supreme Court Remands Case for a New Trial

By Robert J Romano, JD, LLM, St. John's University – Rome Campus, Senior Writer

Dunkin' Donuts Park, the home of the minor league baseball team the Hartford Yard Goats, was again named the best Double-A Ballpark in America by Ballpark Digest in 2021, previously winning the award in 2017 and 2018. However, the legal battle between the city of Hartford and Centerplan Construction Co., one of the original developers of the park, has been anything but award winning.

By way of background, in early 2015 the city of Hartford, then under the leadership of Mayor Pedro Segarra, hired Connecticut based Centerplan and DoNo Hartford LLC, both of which were controlled by developer Robert Landino, to build the 6,120-seat ballpark. The building of this stadium was to be a key part of the planned economic revitalization of the city. Within a year, however, the project was millions over budget and months behind schedule. The developers got a small extension, but by the spring of 2016, it was evident that the park would not be completed in time for the beginning of the upcoming baseball season. In June of 2016, the city, frustrated with the lack of progress, terminated the contract with Centerplan, with a new contractor being hired by Arch Insurance, the company holding the performance bond for the project.

Arch Insurance subsequently filed suit against Centerplan, which prompted

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Ski Resort's Defense against a Party Injured during Transportation by Ski Patrolman

By Kwangho Park, Assistant Professor at Viterbo University

In Heavenly Valley Ski Resort, plaintiff Teresa Martine (Martine) injured her knee while skiing, and a ski patrolman Gustav Horn (Horn) helped her down the mountain. However, the rescue toboggan in which she was riding lost control, and Martine sustained a head injury. She ended up accusing Heavenly Valley Limited Partnership (Heavenly) of negligence and damages which caused her additional head injury.

Heavenly moved for summary judgment, and the trial court granted the motion based on Heavenly's argument that Martine had no evidence for the following arguments: (1) Horn had been negligent in the transportation of Martine; (2) his negligence caused an incident which resulted in Martine's additional injuries. Furthermore, the doctrine of primary assumption of risk barred Martine's complaint. Accordingly, the trial court entered judgment and Martine appealed. However, the trial court dismissed Martine's arguments on appeal. Later, Martine made a new motion, but again it was denied by the Court of Appeal of the State of California, Third Appellate District. The case was closed on September 26th, 2018.

The incident happened on the Powder Bowl slope at Heavenly Mountain Resort on March 23, 2009. Because of Martine's kneecap injury, she requested ski patrol assistance. After Horn arrived at the scene, he provided proper first-aid to Martine by applying a quick splint to her wounded left leg. He then loaded her onto a rescue toboggan (i.e., a rescue sled). He placed her ski equipment next to her in the toboggan, on her non-injured side, and began to transport her to the bottom of the mountain. During the transportation, the toboggan rolled over, and Martine's head was consequently injured. Heavenly contends that "the rollover by external force (i.e., snowboarders emerged from the woods and obstructed the way of the sled) caused some of Martine's equipment in the toboggan to hit her head." However, Martine asserts that the sled tumbled due to Horn's negligent and out of control transportation, causing the toboggan to hit a tree, which resulted in her head injury.

Martine sued Heavenly in March 2011 and alleged that the "ski patrol

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negligently failed to maintain control of the sled, causing it to slide down the mountain and into a tree," leading to her second injury. On November 21, 2012, Heavenly moved for summary judgment to dismiss the plaintiff's complaint by using the doctrine of primary assumption of risk and stating a lack of evidence related to Martine's injuries. Martine opposed the summary judgment and argued that (1) the transportation of injured skiers by a ski patrolman cannot be applied to the doctrine of primary assumption of risk; and (2) the transportation of injured skiers by a ski patrolman "engaged in a common carrier activity charged with the duty of utmost care" cannot be applied to the doctrine of primary assumption of risk. After the trial court's decision granting Heavenly's motion, Martine's arguments on appeal are that: "(1) there is evidence on the motion to support the plaintiff's claim that the ski patrolman, Horn was negligent; (2) the plaintiff's action is not barred by the doctrine of primary assumption of risk; (3) the trial court erred in not allowing the plaintiff to amend her complaint to allege negligence and damages arising from a second injury the plaintiff incurred the same day while being taken off the mountain; and (4) the trial court erred in not granting her motion for a new trial." The court of appeal accepted her arguments and approved a new trial.

Regarding the first argument of Martine, the court of appeal concludes that the doctrine of the primary assumption of risk becomes a defense against Martine's claim for Heavenly's negligence in causing Martine's injuries. For Martine's second argument, which is related to the doctrine of the primary assumption of risk, the trial court used various appellate court decisions: Lackner v. North, 135 Cal. App. 4th 1188, 1202 (2006); Kane v. National Ski Patrol System, Inc. 88 Cal. App. 4th 204, 214 (2001). The previous decisions that the trial court used have the same point that the activity of skiing includes certain inherent risks. Based on these cases, the trial court found that Martine voluntarily participated in the activity of skiing and voluntarily received first-aid treatment and transportation services knowing that Martine and Horn were at risk of collision with other snowboarders or skiers while they descended the mountain.

Additionally, Martine argued that since Horn acted as a common carrier during the transportation of the injured plaintiff, the primary assumption of risk cannot apply. According to Squaw Valley Ski Corp v. Superior Court, 2 Cal. App. 4th 1499, 1506 (1992), a common carrier is "everyone who offers to the public to carry persons, property, or messages, excepting only telegraphic messages" and should "do all that human care, vigilance, and foresight reasonably can do under the circumstances" (Squaw Valley v. Superior Court at p. 1507) to avoid injuries. To decide if Heavenly is a common carrier, there are three conditions for

a court to consider: whether (1) the defendant has a place of business for transportation; (2) the defendant uses advertisements of their service toward the public; (3) the defendant collects the charges for their service. These conditions, however, are not related to the transportation controlled by Horn because a ski patroller's transportation is discretionary in nature, and there is not any compensation for the transportation of an injured party to the bottom of the mountain, unlike the ski lifts. Also, on the basis of Regents of the University California v. Superior Court, 4 Cal. 5th 607 (2018) (Regents v. SC), Martine argues that "Heavenly was liable because either it acted as a common carrier by providing the ski patrol service or it had a special relationship with Martine like a common carrier has with its passengers," but the Regents v. SC case does not concern the duty of common carriers and is not related to the assumption of risk. For these reasons, the court of appeal concluded that the trial court appropriately ruled that Martine's claim for negligence is barred by the doctrine of primary assumption of risk, and because of that, the court need not address Martine's argument that "the trial court erred in excluding evidence intended to show that Martine's rescuer's conduct was merely negligent under either principle of ordinary negligence or application of the law of common carriers."

Thirdly, Martine argues that "the trial court erred in not allowing her to amend her complaint to allege negligence and damages arising from a second injury she incurred the same day while being taken off the mountain." However, the court of appeal notes that Martine had never filed a motion to amend the complaint, which is that she sustained an additional injury when she was dropped while being loaded onto the tram. However, the original allegations of the complaint are related only the incident on the ski run. For these reasons, the court of appeal rejects Martine's attempt to expand her allegations beyond her previous complaint.

In terms of the last argument on appeals, Martine argues "the trial court erred in denying Martine's new trial motion." Her arguments for a new trial indicates "(1) those waived because they were not raised in the trial court and (2) those forfeited because Martine has failed to provide cogent facts and legal analysis demonstrating trial court error." However, the court of appeal does not consider Martine's irregular claims because she had the obligation in the trial court to "raise any issue or infirmity that might subject the ensuing judgment to attack…" (Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn, 163 Cal. App. 4th 550, 564 (2008)). Accordingly, Heavenly was awarded its costs on appeal.

Teresa Martine v. Heavenly Valley Limited Partnership (C076998), Filed 09/04/18.

Appeals Court: Basketball-Playing Plaintiff Assumed the Risk of Injury

A New York state appeals court has affirmed the ruling of a trial court, which found that a plaintiff assumed the risk of injury when he slipped on an indoor court while playing basketball. Central to the ruling was the fact that the plaintiff had played more than 50 times on the court prior to suffering the injury.

Plaintiff Michael Lungen was injured while playing basketball when he slipped on condensation that had accumulated on the floor of an indoor gymnasium. The plaintiff thereafter commenced the instant action to recover damages for personal injuries against the defendants Harbors Haverstraw Homeowners Association, Inc., and FirstService Residential Midatlantic, LLC (hereinafter together the defendants), among others. He alleged that the accident was caused by the defendants' negligence, inter alia, in maintaining the gymnasium.

Following discovery, the defendants moved for summary judgment in on the grounds that the plaintiff assumed the risk of his injuries. In an order dated January 14, 2020, the Supreme Court granted the defendants' motion.

The plaintiff moved for leave to reargue his opposition to the defendants' motion for summary judgment. In an order dated March 9, 2020, the court, upon reargument, adhered to the original determination in the January 14, 2020 order granting the defendants' motion, leading to the plaintiff's appeal.

The appeals court noted that the doctrine of primary assumption of risk provides that "by engaging in a sport or recreational activity, a participant consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation." (Asprou v Hellenic Orthodox Community of Astoria, 185 AD3d 641, 642, 127 N.Y.S.3d 584, quoting Morgan v State of New York, 90 NY2d 471, 484, 685 N.E.2d 202, 662 N.Y.S.2d 421; see Custodi v Town of Amherst, 20 NY3d 83, 88, 980 N.E.2d 933, 957 N.Y.S.2d 268). "Risks inherent in a sporting activity are those which are known, apparent, natural, or reasonably foreseeable consequences of the participation" (Mamati v City of N.Y. Parks & Recreation, 123 AD3d 671, 672, 997 N.Y.S.2d 731). "The primary assumption of risk doctrine also encompasses risks involving less than optimal conditions" (Bukowski v Clarkson Univ., 19 NY3d 353, 356, 971 N.E.2d 849, 948 N.Y.S.2d 568; see Sykes v County of Erie, 94 NY2d 912, 913, 728 N.E.2d 973, 707 N.Y.S.2d 374).

"Assumption of risk is not an absolute defense but a measure of the defendant's duty of care" (Maharaj v City of New York, 200 AD3d 769, 769, 157 N.Y.S.3d 534, quoting Asprou v Hellenic Orthodox Community of Astoria, 185 AD3d at 642). The doctrine "does not exculpate a landowner from liability for ordinary negligence in maintaining a premises" (Sykes v County of Erie, 94 NY2d at 913; see O'Brien v Asphalt Green, Inc., 193 AD3d 1061, 1063, 147 N.Y.S.3d 114). "Participants are not deemed to have assumed risks that are concealed or unreasonably increased over and above the usual dangers that are inherent in the sport" (M.P. v Mineola Union Free Sch. Dist., 166 AD3d 953, 954, 88 N.Y.S.3d 479; see Custodi v Town of Amherst, 20 NY3d at 88). However, "[i]f the risks are known by or perfectly obvious to the player, he or she has consented to them and the property owner has discharged its [*4] duty of care by making the conditions as safe as they appear to be" (Brown v City of New York, 69 AD3d 893, 893, 895 N.Y.S.2d 442; see Bukowski v Clarkson Univ., 19 NY3d at 357; Berrin v Incorporated Vil. of Babylon, 186 AD3d 1598, 1599, 129 N.Y.S.3d 841). "It is not necessary to the application of assumption of risk that the injured plaintiff have foreseen the exact manner in which his or her injury occurred, so long as he or she is aware of the potential for injury of the mechanism from which the injury results" (Maddox v City of New York, 66 NY2d 270, 278, 487 N.E.2d 553, 496 N.Y.S.2d 726).

The appeals court held that the defendants established, prima facie, that the plaintiff "was aware of and had assumed the risk that the floor of the basketball court would be slippery from condensation that had formed due to humid conditions in the gymnasium. The defendants' submissions, including the plaintiff's own deposition testimony, demonstrated that the plaintiff had played basketball in the gymnasium on more than 50 occasions prior to the day of the accident, knew that the gymnasium air was 'humid' and had dry-mopped the gymnasium floor while playing basketball in the past when it was 'getting wet' from '[c]ondensation,' and nevertheless continued playing basketball in the gymnasium on multiple occasions up until the date of the accident despite his awareness of this condition. Under these circumstances, the plaintiff assumed the risk of injury inherent in playing basketball on an indoor court which he knew to become slippery due to humid conditions in the gymnasium (see id. at 278; Levinson v Incorporated Vil. of Bayville, 250 AD2d 819, 820, 673 N.Y.S.2d 469; Capello v Village of Suffern, 232 AD2d 599, 599-600, 648 N.Y.S.2d 699).

"In opposition to the defendants' prima facie showing, the plaintiff failed to raise a triable issue of fact (see Alvarez v Prospect Hosp., 68 NY2d 320, 501 N.E.2d 572, 508 N.Y.S.2d 923). Accordingly, upon reargument, the Supreme Court properly adhered to the determination in the January 14, 2020

order granting the defendants' motion for summary judgment dismissing the complaint insofar as asserted against them."

Michael Lungen v. Harbors Haverstraw Homeowners Association, Inc., et al.; Supreme Court of New York, Appellate Division, Second Department; 2020-00545, 2020-03093, (Index No. 31175/18); 6/8/22

Attorneys of Record: Neimark & Neimark LLP, New City, NY (Ira H. Lapp of counsel), for appellant.

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Transgender Restroom Rule Blocked - Two Simple Alternatives

Require "Reasonable Accommodation" or Multi-User All-Gender Restrooms

Federal judge Charles Atchley Jr. has blocked a Biden administrative directive which would have permitted boys "who identify as girls" to use restrooms reserved for girls. But there are at least two simple alternatives which should satisfy the needs of both sides in this long-simmering debate, says George Washington University public interest law professor John Banzhaf.

"Many of their parents, as well as the female students themselves, argue forcefully that permitting anatomical males to use their restrooms is a serious invasion of their privacy - a separation of the sexes for purposes of elimination which has been established for more than 100 years - and makes it easier for boys to sexually molest them," said Banzhaf.

"In stark contrast, LGBTU+ advocates argue that, because it is wrong to force boys who identify as girls to use a restroom which contradicts their sexual identity, they should be permitted to use any female restroom they desire."

But Banzhaf suggested that there are at least two ways to accommodate the needs of both without being forced to reject the needs of either side.

"The first solution is to require that - as with persons with disabilities and those with strongly held religious beliefs, only a 'reasonable accommodation' must be made to protect their rights," he said.

"The second solution - already in use and universally accepted at his law school - is to convert multi-user restrooms (e.g., GWU's has three urinals and an enclosed toilet stall) previously reserved for male students into a multi-user all-gender restroom open to all students regardless of anatomy or gender identity."

Examining Railing Safety for Sport/Concert Venues

By Drs. Gil Fried, Salih Kocak, and Aneurin Grant- University of West Florida

Imagine going to the ballpark to watch your favorite team or attending a concert at a large arena to dance to your favorite band. Most fans would not think twice about their safety when they are in the nosebleed seat. The view from high up can be great. Even with a few beers in your system, you feel safe. Nothing can go wrong up there.

The reality is significantly different. There have been too many examples of people being seriously injured or dying when falling over a railing, falling down ramps, jumping onto handrails and falling off, and other similar injuries venue designers, builders, and operators need to consider. Even if a venue meets the minimum building code requirements, is that enough or appropriate with the knowledge we have concerning how a building is used and how people might need to be protected from their own possible actions or the actions of others?

This article examines some of the more serious injury/death examples over the past twenty years. Various building codes will be discussed. Then, specific guidance is given to those who are designing, building, and operating stadiums and arenas to help create as safe an environment as possible.

History of Railing Dangers

Often, the only thing between fans in the upper deck and the action below is a railing, steel tubing sometimes at 26 inches high. A fan can stand up to cheer, similar to everyone else, the excitement and jostling by others can cause the person to lose their balance. The next thing everyone knows the fan has fallen over the railing seriously injuring herself.

From 1969 to 2011, there were 22 fall-related fatalities at major league ballparks, according to the "Death at the Ballpark" blog compiled by authors David Weeks and Robert Gorman, who published a book by the same name in 2012. Those numbers include all types of fatalities, including suicides and fans who were intoxicated or engaged in risky behavior.

Three deaths over the past 15 years were reported in an ESPN story. One death at Coors Field in Denver happened in May 2011, one at Turner Field in Atlanta in May 2008, and one at Shea Stadium in New York in April 2008. Each of these cases entailed men falling while trying to slide down a staircase or escalator railings. Shockingly enough (note the sarcasm) alcohol was often a factor in these types of incidents.

On the first day, the Texas Rangers' stadium (called "The Ballpark in Arlington" until the Rangers moved to Globe Life Park in Arlington in 2019) was opened in 1994, Hollye Minter fell backward over a 30-inch railing while posing for a picture. Hollye Minter fell approximately

35' onto an empty row of chairs below. Minter suffered two fractured vertebrae, two broken ribs, six broken teeth, and other injuries. Shortly after Minter's fall, the Rangers raised the railings in the section where she fell to 46 inches.

One of the most publicized railing death cases happened the following year in the same ballpark, in Arlington. On July 7, 2011, thirty-nine-year-old Shannon Stone fell to his death over a 33-inch rail. The Rangers determined after that incident that their existing rail heights were inadequate, so they raised the railing height to 46 inches all over the park in preparation for the next season at a cost of $1.1 million.

There have been more injuries and deaths since the Stone tragedy. In 2014, a toddler was hospitalized after tumbling over a railing at the American Airlines Center in Dallas during a performance by the Ringling Brothers Barnum and Bailey Circus.

In 2016, a man was injured after falling over a railing at Oracle Arena following a 2016 NBA Finals game between the Golden State Warriors and the Cleveland Cavaliers. According to the police, the fan was involved in an altercation with another person before the fall.

In 2021 there were several major incidents with the most publicized incident being a mother and toddler who died when they fell over a railing in a picnic bench area at Petco Park in San Diego. Prior to the fall, the mother had a close call while jumping on a picnic table bench, with her young son, near the ledge of an upper concourse. For some reason, the mother and child started jumping on the table a second time, and that is when they fell to their deaths.

Bleacher and grandstand injuries are not unique. The United States Consumer Products Safety Commission (CPSC) issued Guidelines for Retrofitting Bleachers in 2000. The guide highlighted that there was an annual average of 19,100 bleacher-associated injuries treated in emergency rooms (ER). Data from 1999 alone showed 22,100 bleacher-associated injuries treated in hospitals. Approximately 6,100 of these injuries were a result of the person falling from, or through, bleachers, onto the surface below. One recommendation from the CPSC was that the top surface of a bleacher's guardrail should be at least 42 inches above the leading edge of the footboard, seatboard, or aisle, whichever is adjacent to the guardrail. The CPSC's 42-inch rail height recommendation was intended to prevent inadvertent falls over the railings by all but the tallest 1% of adults. It further reflected a consensus from different organizations that advocated for a 42-inch-high guardrail such as:

- 2000 National Fire Protection Association (NFPA) 101 Life Safety Code
- 2000 International Building Code (IBC) of the International Code Council (ICC)
- 1999 National Building Code (NBC) of the Building Officials and Code Administrators (BOCA)
- 1997 Uniform Building Code (UBC) of the International Conference of Building Officials (ICBO)
- 1997 Standard Building Code (SBC) of the Southern Building Code Congress International (SBCCI).

Besides falling over or in between railing, railings can collapse. One such example happened at a Major League Soccer match at RFK Stadium in Washington, DC. Amid the post victory championship celebration, about 50 fans were injured when railings on the stadium's north side collapsed. A similar incident happened in 2022, when a section of railing gave way as Philadelphia Eagles quarterback Jalen Hurts was leaving the field. Luckily no fans were seriously injured in the designated ADA seating area when fans pressed against the railing to contact the quarterback.

These various incidents raise the prospect of liability as injured fans can sue claiming the railing was ineffective or insufficient. Besides possible notice concerning the railing, every college and professional sports team knows that fans reach for foul balls, stand up to go to the concession stand, cheer their team, yell at the other team, stand as a result of prompts during the game, get up to do the "wave," stand for the national anthem, stand for the 7th inning stretch, and now are constantly being distracted by mascots or Wi-Fi obsessed behavior. Further, it is well known that fans come in all different conditions, with possible medical, psychological, or other conditions or they might be having fun or are intoxicated which could impact their balance and decision making. This begs the questions: why are the requirements for guardrails not more stringent? Should guardrails be higher at ballparks and concert venues where fans regularly engage in "atypical" behaviors and movements? Should guardrails be stronger to accommodate the weight of multiple fans leaning over at the same time? These questions move railing issues from liability issues to focusing on building codes and construction strategies.

Why 26-inches?

The 26-inch minimum height for front-row railings dates to 1929 when it was included in the National Fire Protection Association Building Exits Code. The guide set building safety standards for numerous building types and was a one size fits all approach. The code was not developed specifically for sport or entertainment venues. The code was developed specifically in response to fire hazards rather than spectator crowd issues. The code was created in response to the Triangle Shirtwaist Factory fire which killed 146 people during a 1911 fire in New York City. Over the years, the code has grown to cover numerous issues and concerns associated with a wide range of venues.

It is assumed that the original code developers likely set the standard at a height where railings would not impede someone's view, and that it was designed mainly for theaters and symphony halls – rather than ballparks and arenas. While 26 inches meets what the code requires, some feel that height is too low, especially attorneys representing injured individuals.

Even with some anecdotal information and opinions, MLB stadiums' average railing heights around 2010 were closer to 26 inches. The ESPN show "Outside the Lines" contacted officials with all 30 Major League Baseball ballparks in 2011 to examine the heights of their front-row railings at these stadiums. Only 10 teams responded with actual measurements and the measurements ranged from 26 to 36 inches. As previously mentioned, the 26-inch height is the minimum allowed by the IBC and some local building codes.

In the Texas Ranger stadium fall involving Mr. Stone, he measured 6 feet, 3 inches tall, and fell over a 33-inch railing. The railing came up to just below Stone's belt buckle. A 42-inch railing would have rested just above Stone's hips. For most people, a 42-inch railing would reach around one's stomach and would be even higher for shorter people.

The Science of Railing Height

One of the methods to help make the calculation more appropriate is through science. In terms of railing height, that analysis can focus on two key elements. One is the center of gravity, and the other is how people interact with the railing and other venue elements.

The center of gravity represents when and how someone might fall over a railing. Taller people have a higher center of gravity which means that a low railing is more dangerous for a tall person compared with a shorter person whose center of gravity is closer to the 26-inch railing height. Thus, a shorter person is less likely to fall over a 26-inch railing. As stated by Richard Brauer in Safety and Health for Engineers 3rd Edition (2016): "Therefore, if 99% of the population is less than 6 ft 6 in. tall, a 42 in. high top rail will prevent rotation over the rail for all but very few people. Using this estimating method, a 45 in. railing would protect people who are 7 feet tall (p. 128).

According to the International Building Code (IBC 2021), which is used as the basis of most State Building Codes nationwide, guardrail requirements are dependent on the building's occupancy. Since this article is focused on sport and concert venues, the requirements for guardrails are dependent on several types of Assembly occupancy, as follows:

- Group A-1 – Theaters
- Group A-3 – Exhibition halls
- Group A-4 – Arenas
- Group A-5 – Bleachers, grandstands, and stadiums

The IBC states that guardrail systems are required "along open-sided walking surfaces, including mezzanines, equipment platforms, aisles, stairs, ramps, and landings that are located more than 30 inches (762 mm) measured vertically to the floor or grade below at any point within 36 inches 914 mm) horizontally to the edge of the open side." (IBC 2021). Further, "required guards shall not be less than 42 inches (1067 mm) high. (IBC 2021).

However, the IBC provides exceptions to the 42" minimum height requirements for "sightline-constrained guard heights", and reads as follows:

Unless subject to the requirements of Section 1030.17.4, a fascia or railing system in accordance with the guard requirements of Section 1015 and having a minimum height of 26 inches (660 mm) shall be provided where the floor or foot-board elevation is more than 30 inches (762 mm) above the floor or grade below and the fascia or railing would otherwise interfere with the sightlines of immediately adjacent seating.

The 26-inch railing height exemption is unique to the United States. The Sports Ground Safety Authority (SGSA), based in the United Kingdom, publishes the Guide to Safety at Sports Grounds, which is informally referred to as the Green Guide. The standard requires a minimum guard height of 31.5" (800 mm) for sightline-constrained guard heights.

The IBC also discuss how much weight/pressure railings need to withstand to keep people safe, i.e. a "linear load of 50 pounds per linear foot (plf) (0.73kN/m), and a concentrated load of 200 pounds (0.89 kN) (IBC 2021). As with all Building Codes, these are minimum standards.

Provided that the structural requirements for linear and concentrated loads are met, engineers have a fair amount of discretion as to the ultimate design, including the specified materials, size of components, and the manner in which the guardrail is anchored to the structure. In the interests of maintenance and durability, steel and concrete are obvious choices.

The All-Important Top Rail

The usefulness of the guardrails to prevent falling over is directly related to the height of the top rail. The height of guardrails is based on the center of gravity of human beings. Gravity can simply be defined as the downward force that the earth exerts while the center of gravity of the body is the location where the mass of a body is concentrated. The center of gravity of humans is typically located in front of the sacrum which is situated between the two hipbones of the pelvis. According to this explanation, the center of gravity of a body (CGB) is a hypothetical point and it is approximately 3 inches above someone's mid-height. When this is applied to the 99th percentile of population height in the United States based on data provided by the National Center for Health Statistics (2016), a person who is 6.5 feet (78 inches) tall will have CGB at 3 inches above the mid-height which is (78/2) +3 = 42 inches, equal to the height of the top rail in the guardrails. This implies that people shorter than 6.5 ft tall will have CGB below the guardrail

and possibly would rotate under the top rail, whereas people taller than that will rotate over the top rail by falling against the rail and probably tumbling. Figure 1 demonstrates a 6.5 feet tall person behind 42 inches tall guardrail.

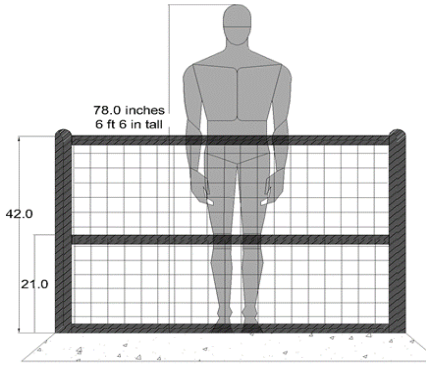

Figure 1: Drawing of a 6.5 feet tall person behind 42 inches tall guardrail

According to National Health Statistics Reports (2018), the average height of American men and women over 20 years old between the years 1999 to 2016 was 5 feet 9 inches (69 inches). Based on the second quartile height data of the US population, the approximate height of the guardrails should not be less than 36 inches. Both of these cases are scaled and visualized in Figure 2 compared to a 6.5 feet tall person. It is obvious that neither of the cases is safe from falling over them. If the CGB concept is applied to 26-inch guardrails, it yields that it can only protect people of approximately 3.83 feet tall, which would be considered a statistical outlier according to U.S Census Bureau, Statistical Abstract of the United States (2011).

Thus, architects and engineers of sports and concert venues are often given the extremely challenging, and sometimes contradictory design directive of maximizing the number of spectators, optimizing the spectator views, and managing the safety of the whole experience. Upper levels and decks in stadiums are often viewed as a necessary design solution, as they seem to reconcile maximizing the number of spectators, while still maintaining some level of proximity to the action. Larger arenas are often built with tiered seating, and multiple levels, well above the 30" elevation difference specified in the IBC. Hence, guardrails are an integral part of stadium and arena design.

Railing Materials and Guardrail Design Considerations

Because fans can use and abuse rails, it is important to build them from the very beginning to withstand the wear and tear of inappropriate but expected fan behavior. Railing systems can be fabricated using steel, anodized aluminum, cable/wire, glass, concrete, iron, brass, copper, chrome, wood, composite materials, and even PVC and vinyl. Regardless of the type of material used and certain benefits they provide, the primary purpose of most railing is safety.

In a broader classification, there are two primary railing types, which are handrails and guardrails. While handrails are constructed to be grasped and provide a reliable handhold as people travel along their length, guardrails are designed to protect human beings from a wide range of dangers, such as falling over an elevated surface.

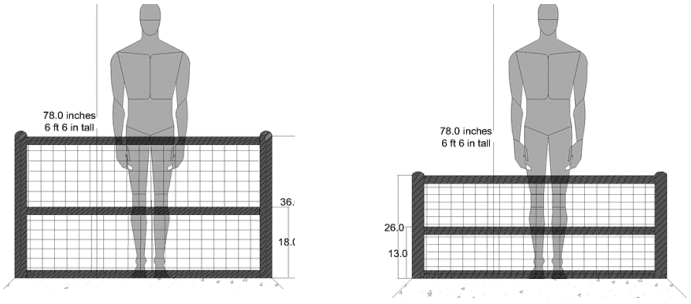

Figure 2: Drawings of 36 inches and 26 inches height guardrails with 6.5 feet person behind.

Guardrails can be technically described as the barriers having vertical supports spaced at a certain distance, horizontal parts, namely bottom/toe board, mid-rail, and top rail, and infills between these parts. Even though there are many different types and plans of guardrails, Figure 3 demonstrates an example of a standard guardrail plan.

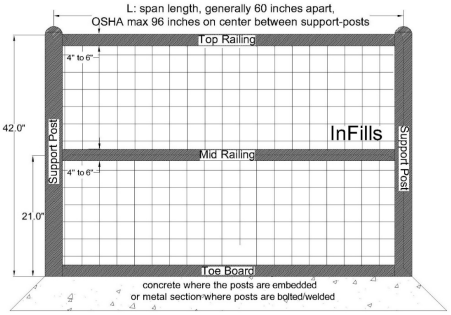

Figure 3: Standard guardrail example

Guardrails mainly consist of 4 main components, which are

1. Support posts- vertical load-bearing flexural elements
2. Horizontal rails- bottom/toe board, mid and top rails
3. Infill/baluster- material filling the space between support posts and horizontal rails
4. Connections- embedded/anchored into concrete, bolted/welded into steel frames, or screwed/bolted into wood members

The complete design of guardrail systems includes the design of every single guardrail component properly against loading (structural), height, spacing, and deflection requirements to meet applicable code requirements. Each guardrail system is designed to resist a certain load at a specific height and uniform post spacing without showing excessive deformations. This means that all the component parts of the railing system need to function properly together in order to protect fans from the pressure they can exert on the rails when many fans are leaning against the rail.

Both IBC and most of the local codes refer to the American Society of Civil Engineers (ASCE) Minimum Design Loads and Associated Criteria for Buildings and Other Structures- ASCE7 section 4.5.1 for the load requirements on the guards, which states that the guards shall be designed to resist a linear load of 50 pounds per linear foot (plf) applied horizontally to the top rail or a single concentrated load of 200 lb. applied in any direction at any point on the top rail and to transfer the load through the supports to produce the maximum load impact on the element being considered (ASCE, 2016). These loads are representing either the force applied by a tightly gathered group of people leaning on a railing system in case of uniform loading or a single person pressing against or an object pushing the rail in case of concentrated loading. Figure 4 illustrates the scenarios and loading conditions for both concentrated and uniformly distributed load conditions. It is important to note that the most critical loading happens when the top rail is loaded horizontally, which results in the maximum bending moment on the posts.

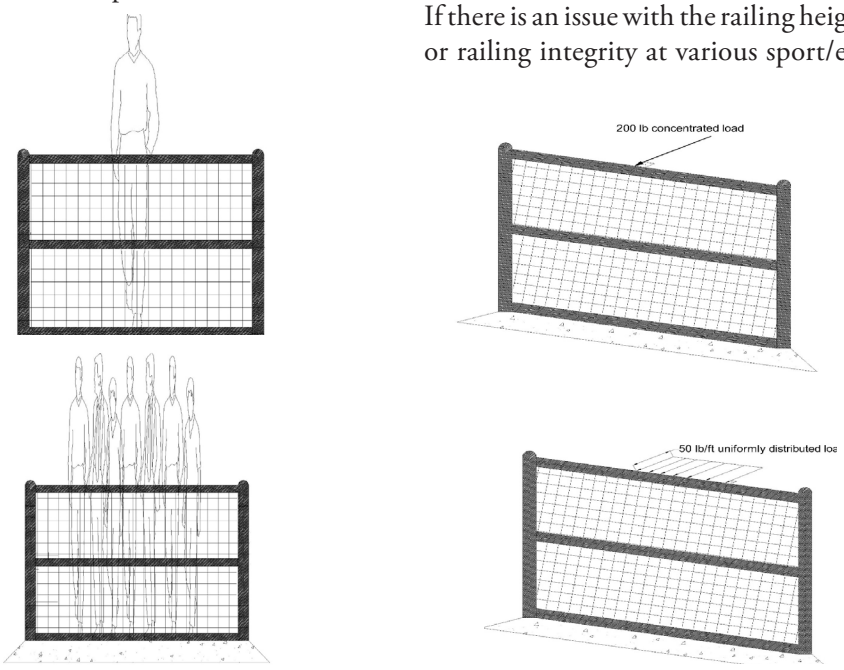

Figure 4: Concentrated and uniformly distributed loading cases

Structural design of guardrails does not only include the design of guardrail members for the strength requirements, but it also covers their serviceability requirements. In order to satisfy the serviceability requirements, guardrail members should not deflect or deform excessively under the applied loads. This means that if twenty people are leaning against the rail, as an example, the rail would not move or change shape. There will always be deflection, but it just should be within the limits.

The discussion so far might seem complicated and outside the purview of most venue executives. However, a stadium/arena manager needs to know railing height, condition, attachment points, and related variables to make sure the railing system can do its job- protect fans. Stadium/arena managers should have a rough idea and visually monitor railing components. If there appears anything unusual, such as rust or crumbling cement, professionals should be contacted to ensure the railing system is not compromised.

Risk Management Strategies

If there is an issue with the railing height or railing integrity at various sport/entertainment venues, then there needs to be possible solutions to consider. With input from local code officials, design professionals, and industry representatives, the International Code Council updates the International Building Code, and reviews any proposed design changes on a 3-year cycle. Through this process, the IBC could mandate stricter requirements for guardrails. This would entail a concentrated educational campaign to educate those working with the IBC about the serious injuries and deaths and that the 26-inch line of sight exception should be changed. The American Society of Theater Consultants (ASTC) suggested in 2016 that there are fundamental differences between the behaviors of sporting event audiences, and those of the theatre, such that they should have separate Building Code requirements.

Another option is for architects and builders to work with teams or venue owners to examine the proposed/existing design and develop designs that will hopefully make venues safer. In the United Kingdom, the Sports Ground Safety Authority relies on the collective and collaborative knowledge of engineers and architects, police, emergency planners and facilities maintenance professionals (SGSA 2021), advocates a railing height of 31.5" (800mm) for sight constrained guards. Further accommodations could be made by modifying the pitch of stairs, or tiered seating installations in public venues, such that the seating areas are further removed from elevation drops where guard areas become necessary. This can be accomplished by adding horizontal walking surface between the seating and the guardrails or providing an access aisle behind the first row of seating.

Other suggestions include: a risk management strategy to help make lower railing safer through using glass or clear plastic above the railing height to help preserve the sight line, but also to provide some added protection or utilizing safety netting. Netting is utilized at TopGolf

venues to protect fans from injury after falling over an elevated driving platform. While there is no rail, there are nets used to protect people from falling.

There is no one correct solution but having a hard target railing height based on science and how people interact with the venue will be a significant step forward. On the other hand, while changes might be considered, it is important to identify strategies to help make railings less dangerous. Venues could provide additional warnings to fans sitting near the front rows and those directly underneath railing sections that there are potential risks. Railings can be painted a distinct color so they stand out. Signs can be posted discouraging people from dancing, selfies, leaning over, and other possibly dangerous behavior near the railing. This is especially important when many people can congregate near or against railing and such a mass of bodies can cause railing or its anchoring system to fail under pressure.

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The Chicago Cubs Sued

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over the decades. Changes were made in 1981-1982, 1984 and 1990, though those were just for the organization and players. Lights were added in 1988 and that year saw Wrigley Field's first night game. Luxury suites were first added in 1989, and an elevator arrived in 1996.

Following the 2005 season the Cubs expanded the bleachers. Subsequent years saw the addition of a better drainage system for the playing field, a new playing surface, and a new scoreboard. The restrooms were remodeled, indoor batting cages were added for fans as were more suites, and in 2012 the "Budweiser bleachers" were spruced up with addition of a new patio and a large LED board in right field. Then came the project that led to this litigation.

The "1060 Project"

The Project began after the 2014 season. Hundreds of millions of dollars were spent to increase revenues "to ensure the

viability of the ballpark for future generations of Cubs fans" (Id. at 4). The Cubs demolished the left and right field bleachers, added porches and group seating areas in both the left and right field bleachers, and four new club areas. They "also tore most of the lower grandstand down to the dirt before rebuilding that area of the stadium" (Id. at 6). The project may have worked for many, but it "reduced accessibility at the stadium" for wheelchair seating and other "non-seating elements" for individuals with disabilities.

The Bleachers

Wrigley Field has wheelchair seating in three general areas, including the bleachers. Allegedly, many "of these wheelchair seats are located in the last row of the bleachers" and this "was not the case before the 1060 Project" (Id. at 7). Although there is wheelchair seating in the Budweiser Patio, that can only be used by members the group that rented the space for a specific game. There are only three wheelchair seats in "Sec. 501 in the corner of left field, and 16 seats" in center field. However, Sec. 501 is sometimes used for television cameras rather than wheelchair seating, and the Batter's Eye area "is covered by a mesh tarp, has tinted glass, is segregated from other bleacher fans, often gets abnormally hot in the summer and has been the subject of numerous complaints from wheelchair users" (Id. at 8). Fans in front of the wheelchair section often stand to watch the game, and "block wheelchair users' ability to see the game." One one of the newly constructed group seating areas does not have wheelchair seats or an accessible wheelchair route to the area, while another new area lacks a wheelchair "accessible route" (Id. at 9).

Lower Grandstand

This section has no wheelchair seating located below the cross-aisle. The Cubs added the 1914 Club, the Makers' Mark Barrel Room, and the W Club below the cross-aisle, but wheelchair users do not have access to these new areas. "Ambulatory" Club members can watch the game "from club seating located directly behind home plate, as well as front row seats down the first and third base lines, but Club members using wheelchairs "do not have access to any of this seating" (Id. at 10). Their only option "is located far behind the club seating available to ambulatory members of these clubs."

Over "half of the total wheelchair seating" in the lower grandstand is "located behind the very last row of the terrace area… in other words, the last row of the entire lower deck." These seats "have obstructed views due to beams supporting the upper deck and are the worst seats in the entire grandstand." "Fly balls disappear from view from this vantage point and the outfield scoreboard is often obscured." Finally, the 63 wheelchair seats "located on the cross-aisle between the 100 and 200 levels do not have adequate sightlines over standing patrons" (Id. at 11).

Upper Deck

The sightlines in the upper deck "are better than in the lower grandstand" "but are still not comparable to the views enjoyed by ambulatory fans." This "is in stark contrast to the wheelchair seating options in the upper deck prior to the 1060 Project." There had been 19 general admission wheelchair seats under the press box but those were eliminated to make room for a Club and these seats were moved down the baselines.

There are other alleged violations, including the claim that "counter surfaces are too high for wheelchair users, including ticket windows, concession stands and condiment stations" (Id. at 12). The stadium "has protruding objects along circulation paths that impede individuals who are blind or have low vision" as well as restrooms with paper towel dispensers that are out of reach for wheelchair users. One parking lot has gaps, loose surfaces, and excessive cross slopes and certain drop off points are "obstructed by curbs and jersey barriers, impeding wheelchair users' ability to exit shuttles and safely enter the stadium."

ADA

Congress passed the ADA, 42 U.S.C. 12101 et seq, in 1990. It was intended to provide "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and to provide "strong, consistent, [and] enforceable standards addressing" discrimination. For public facilities, this includes a failure to make or design the facilities, or a failure to make alterations to make such facilities "readily accessible" (Id. at 13).

The "Standards of Accessible Design" were modified in 2010, and Wrigley Field's alterations came later, the 2010 Standards apply. It required the stadium "to have 201 general admission wheelchair seats" and those "must be dispersed vertically and horizontally throughout the stadium."

Wrigley Field "is also required to have additional wheelchair seating for luxury boxes, club boxes, and suites," spread across the new seating areas. All wheelchair seats must have "compliant lines of sight to the field" and be "integrated into the seating plan so that wheelchair users are not isolated from other spectators, let alone their family and friends." Furthermore, "the ADA prohibits an alteration that has the effect of decreasing the accessibility of a facility below the requirements for new construction at the time of the alteration." Even for non-altered sections, the "ADA nevertheless requires an existing facility to remove architectural barriers 'where such removal is readily achievable.'" This is defined as accomplished "without much difficulty or expense."

The Lawsuit

The Complaint asserts that "there are ADA violations at Wrigley Field relating both to wheelchair seating and non-seating elements." As to the wheelchair

seating in the bleachers, "none" of those seats "currently designated by the Cubs in that area comply with the ADA." Almost "all of those seats are located on the porches, (at the rear of the bleachers) or in the segregated, unsuitable Batter's Eye area" and this "violates the ADA's vertical dispersion and integration mandates" (Id. at 14). Prior to the changes, general admission wheelchair seating had been available in the right field bleachers, but that was converted to group seating for the Budweiser Patio (Id. at 15). The remaining wheelchair seats are "noncompliant" because they do not provide "lines of sight over standing spectators."

In the Clubs and group seating areas, several areas "have no accessible route to the group seating area." One section lacks "any wheelchair seating" while yet another "is noncompliant" due to inadequate sightlines.

The Grandstands

The lower grandstands "violate dispersion and integration requirement and/or because they do not have adequate sightlines over standing spectators." Moreover, the grandstand "contains no wheelchair seats or accessible routes closer to the field than the cross-aisle" between the first and second levels, and therefore "over half of the total wheelchair seats in the lower grandstand [are] located behind the very last row of the grandstand with obstructed views" and lack "adequate sightlines over standing spectators" (Id. at 16).

These sections lack "sufficient ADA-required aisle seats with folding or retractable armrests." The Complaint alleges that Wrigley Field "is required to have 187 proportionally distributed aisle seats to assist individuals who may not require a wheelchair" but "there are only 44 compliant aisle seats in the grandstand."

In the upper deck, "most (if not all) of the existing or planned wheelchair seats lack adequate sightlines over standing spectators." These sections also lack "proportional wheelchair seating options near the press box, which violates horizontal dispersion requirement" due to the removal of 19 general admission wheelchair seats to make room for the Catalina Club, and it does not have enough wheelchair seats (Id. at 17). The Complaint further states that the press box is required to have four wheelchair seats but has just two. In the suites, the procedure used for accommodating a wheelchair "is time consuming and subject wheelchair users to the risk of unwanted attention and embarrassment."

The Complaint asserts that the lower grandstand Clubs "have inaccessible routes from the main concourse to the Clubs, including noncompliant running slopes, landings, and handrail extensions" on the way to the W Club, "and no unescorted, independently usable route directly into the Maker's Mark Barrel Room." These Clubs lack sightlines to see into the batting cages, "because the viewing panels are too high," unlike for standing patrons, (Id. at 18). Wheelchair users in the Catalina Club and" Fannie May Bleacher Sweet" also have "obstructed views."

The Claim for Relief

The Complaint requests a jury trial, seeks a declaration that the defendants have violated the ADA; an injunction "requiring the defendants to remedy the deficiencies described above; "compensatory damages; "civil penalties commensurate with the violations described above;" and "other relief as the court deems appropriate" (Id. At 19). The Complaint has four exhibits: three stadium maps and one three-page list of "Inaccessible Counters, Dining Surfaces, Toilet Rooms, Circulation Paths, and Parking and Shuttle Surfaces" (Id., Ex A-D

Conclusion

The defendants will soon respond to the Complaint, and undoubtedly the Court will order settlement discussions. The Cubs' initial response was to release a statement that the team was "disappointed" that it had been sued, but aren't all defendants "disappointed" to be sued?

If only half of the Complaint's allegations are true, the defendants could be facing expensive problems, and one can only wonder what the architects and engineers were thinking when they began such a large project that potentially violated the ADA. The actual cost of the 1060 Project may soon be vastly higher, and insurance policies will be closely examined. For those planning to build or renovate stadiums or arenas, this case should serve as a reminder of the importance of ADA-compliance.

Dunkin' Donuts Park

Continued from page 1

Centerplan to file suit against the city of Hartford, setting up a legal battle that continued through the 2019 baseball season. The jury, after a multi-week trial, found Centerplan liable for the cost overruns and delays, and awarded the city of Hartford $335,000 in damages. Centerplan, not satisfied with these findings, petitioned to have the jury's verdict set aside, while also filing an appeal wherein it raised the following issues:

Did the trial court err in deciding as a matter of law that, under the parties' agreements, the city did not breach its agreements with the plaintiffs by terminating Centerplan without affording it an opportunity to cure?

Did the trial court err in refusing to instruct the jury that, if it found that there was concurrent delay by virtue of the city's acts or omissions, Centerplan would be entitled to an extension of time and DoNo could not be in default?

Did the trial court err by directing the jury to award liquidated damages to the city without allowing it to consider offsetting the benefit conferred by the plaintiffs on the city?

Did the trial court err in discharging the lis pendens filed by DoNo and its counterclaim defendant affiliates, the leaseholders, on the parcels surrounding the ballpark?

Fast-forward to May 2022, the Connecticut Supreme Court, in a unanimous 5-0 decision, overturned the trial court's ruling and remanded the case for a new trial. The Supreme Court found that "because the trial court did not properly construe the agreements and did not present this issue to the jury, the parties, particularly Centerplan, were prevented from developing the record regarding, and the jury was prevented from deciding, not only whether proper notice and an opportunity to cure were provided, but also whether honoring the termination requirements would be futile or whether Centerplan's breach was incurable."

The Supreme Court noting that in cases like these, "whether a contract has been breached is a question of fact . . . and that courts lack the authority to make findings of facts or draw conclusions from primary facts found." The Court went on to state that "in the present case, the trial court determined, before trial and as a matter of law, that the city could not have breached its contract with Centerplan . . ." But, as the Supreme Court patently stated, "we cannot make these determinations as a matter of law." Therefore, because these questions must be determined by the jury, the Supreme Court had no option but to remand for a new trial.

Interestingly, however, in April of 2021, after years of costly litigation, city of Hartford officials said that they "stood by their decision to fire Centerplan" and that they "did exactly the right thing to protect the taxpayers of Hartford from an irresponsible contractor." The question remains, however, who is protecting the taxpayers of Hartford from irresponsible politicians?