



By Brian R. Socolow

## Protecting Fans at Sporting Events

Just how far must you go to **keep attendees safe**?

One of the most important, though often overlooked, aspects of every professional sporting event is ensuring that the ballpark, arena or stadium is a safe part of the fan experience. As athletes get bigger and faster, and sporting events increasingly serve as family entertainment, the legal rules governing fan safety and the fan experience are undergoing a major shift that team owners and stadium operators should be aware of as their fans try to protect themselves from foul balls, errant pucks and even their own actions.

### The Duty of Care and the "Baseball Rule"

Fans who attend professional sporting events are legally considered invited guests on another's property and the arenas, stadiums and ballparks that fans flock to are subject to many of the same laws governing guests as other commercial enterprises. In general, a commercial enterprise that invites the public onto its property has a duty of care towards those who are invited. This means that a property owner must make sure that the property is reasonably safe and free from dangerous elements that the owner knows about, or should know about. If a property owner fails to provide a safe environment, someone

who is injured on the property can sue for negligence.

But courts have long recognized that sporting events are not like most commercial enterprises because sporting events involve potentially dangerous activity and equipment. As early as 1913, courts adopted a specialized negligence standard for baseball parks called the "limited duty rule." Courts reasoned that fans who attend baseball games are aware of the inherent dangers of attending a baseball game, such as being hit by a foul ball or a thrown bat, and that the fans assume the risk of being injured. Courts in many states have adopted this rule, and some courts have expanded it to apply to other sports. Some states, including Illinois and Colorado, have even passed legislation that essentially provides the same limited duty for baseball stadium owners.

This duty has been interpreted to require stadiums to provide some protected seating, and it reduces a stadium owner's liability when fans who choose to sit in unprotected areas are injured.

### Ticket Warnings and Disclaimers

In addition to taking advantage of the baseball rule, stadium owners try to limit their liability through printed warnings on

tickets and disclaimers of liability that remind ticket buyers of the inherent dangers of the event they are planning on attending, such as flying pucks or batted balls.

There is well-developed case law involving ski resorts and the travel industry regarding warnings about dangers and disclaimers of liability printed on tickets. Courts have held that such disclaimers are enforceable if they are “reasonably communicated” to the ticket buyer. This usually means that text in very small type would not be considered reasonably communicated, unless the ticket buyer had been given notice of the language on the ticket (for example, if a sign near the ticket-buying window contained the same language and/or told the ticket buyer to read the warnings and disclaimers on the ticket).

### Evolving Standards of Liability

As baseball, hockey and other sports have evolved over the years, with bigger, faster players and stadiums offering more in-game entertainment, courts have refined the limited duty rule in several important ways. Courts have held that where the inherent dangers of a sport are not known, fans have not assumed the risk involved in attending a game and can sue a stadium owner for an injury. For example, more than 50 years ago, one Ohio court held that the risks of hockey were not common knowledge, so an injured spectator did not assume the risk of injury. This argument usually does not succeed anymore, as most sports have become well known through television.

The fan experience has also changed. Not long ago, the only excitement at the arena was the game being played. Now, with professional sports geared toward creating a family entertainment experience, the action on the court, ice or field isn’t the only activity at the game. Fan-friendly activities during time-outs, innings or periods are now commonplace, not to mention the explosion of dining and beverage options designed to give fans something to do other than follow the game action. The physical layout of arenas has also changed, with many providing seating closer to the field of play, and even wider, more open concourses behind seating areas.

All of these changes have created new legal issues in fan safety. For example, courts have had to address how mascots affect fan safety. In one case, a court found that a baseball league whose team mascot distracted a fan, who was then hit by a fly ball, could be sued for negligence.

More recently, the limited duty rule has been modified by creating a two-tier level of care owed by stadium owners. In a case decided in 2005, a New Jersey court held that the limited duty of care applies to seats in the stands, but liability for injuries that occur in all other areas of the stadium should be governed by traditional rules of negligence. The case involved a fan who was injured while buying a hot dog from a vendor on the mezzanine of the stadium. The court reasoned that a fan knows that being in the stands, close to the action on the playing field, involves a certain amount of risk, but that a fan would not consider buying a hot dog, far from the activity on the playing field, to be a dangerous activity.



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### Searches at Sporting Events

An issue related to fan safety is security at sporting events. Stadium owners must walk the fine line between protecting fans and players and not angering fans with unreasonable security measures. When the Tampa Sports Authority, the owner of the stadium where the Tampa Bay Buccaneers play, began requiring pat-downs of everyone attending Buccaneers games, a season-ticket holder filed a lawsuit against the stadium owner. The Tampa Sports Authority implemented the pat-downs after the NFL and the Buccaneers demanded them because of concerns of terrorist attacks at large gatherings such as football games.

Both state and federal court judges held that “mass suspicionless pat-downs” violated the Florida and U.S. Constitutions. The federal court judge had concluded that the Tampa Sports Authority was acting on behalf of the state and that the Fourth Amendment to the U.S. Constitution prohibits suspicionless searches. A similar case was brought involving pat-downs at Chicago Bears games. The issues raised by mass pat-downs and other stadium security measures will likely continue to be the subject of lawsuits over the next few years.

## Dram Shop Laws and Alcohol Liability

For a segment of the fan population, part of the fan experience involves beer purchases at the stadium. One of the thornier problems for stadium owners is who is responsible for preventing fans from getting drunk and getting injured, or injuring others. About 40 states have “dram shop laws,” which can subject a property owner to liability in some situations if an individual gets drunk and injures himself or someone else.

In some states, these laws are very narrow — for example, holding a tavern owner liable for serving alcohol to someone who is under age. In other states, the laws are very broad, allowing a plaintiff (either the person who was intoxicated or the person who was injured) to sue a property owner for injuries stemming from someone’s intoxication. Usually, a plaintiff must be able to show that serving alcohol was a proximate cause of the injury and that the injury was a reasonably foreseeable consequence of serving alcohol.

A tragic case involved a fan attending a Giants football game who consumed large quantities of beer at the game and at two bars after leaving the stadium, and then caused a car accident that paralyzed a child. The parents of the child sued the owner of the stadium as well as the Giants, the NFL, the tavern owners, the car manufacturer, and the beer concessionaire at Giants Stadium.

The plaintiffs settled with the Giants, the NFL and the NJ

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Sports and Exposition Authority, but the concessionaire went to trial, and a jury handed down a \$135 million verdict against the driver and the stadium owner. However, the following year, a New Jersey appeals court overturned the jury amount, reinstated the NFL and the Giants as defendants, and ordered a new trial. The plaintiffs have asked the state supreme court to review the appellate court’s decision.

## Parting Thoughts

Fans are an integral part of every sporting event, and players, team owners and stadium owners work hard to make sure that fans have an enjoyable and memorable experience at every sporting event. As part of this process, team and stadium owners need to continue to think about fan safety, especially in light of bigger stadiums, interactive half-time events and the changing security needs of popular events. **fm**

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