March-April 2019 ● Volume 3, Issue 5

Route To: ___/___/___/___

SPORTS FACILITIES

How the law affects the sports facilities industry and the LAW

Just Get Out of the Way — a Lesson in Crowd Control

By Dr. Robert Ammon

The plaintiff David Bueno was injured during a football in 2013 between the University of Southern California (USC) and Stanford University that took place at the LA Memorial Coliseum (Coliseum). Bueno was working as a security guard for an international crowd management company, Contemporary Services Corporation (CSC). CSC was working as a subcontractor who provided crowd management services for USC football games. At the end of the game the plaintiff was injured when a large number of fans rushed onto the field to celebrate USC's last-minute victory.

Facts

USC had a contract with CSC to provide security guards for USC's home football games at the Coliseum. USC and Stanford are rivals and this game had a lot of media attention due to Stanford's national ranking. The security plans for the game called for 50 uniformed USC campus police officers, 180-200 uniformed on-duty LAPD officers, 69 uniformed off-duty LAPD officers and 754 uniformed CSC staff. Bueno was part of the CSC staff who worked the game.

Even though USC fans had not stormed the field since 1999 USC had created and practiced a "contingency plan" in case the crowd might attempt to do so. If it appeared likely such an incident could occur the plan called for PA announcements to be made asking fans to stay off the field, campus police officers roaming the student section, and CSC staff to be redeployed to the lower levels of the Coliseum monitoring stairways and the entrances to the field. If the fans were to make a move towards the field of play the plan called for the security to "fall back" and let the crowd go.

On the day of the game the plaintiff received all of his instructions from CSC supervisors. He did not speak to, or receive

See Just Get Out on Page 10

THIS ISSUE

Addressing Risk of New Class of Plaintiff: The Bush Case

By: John E. Tyrrell, Patrick J. McStravick, and Alexander M. Shaen of Ricci Tyrrell Johnson & Grey

On June 12, 2018, a St. Louis jury found the St. Louis Rams liable for Reggie Bush's 2015 knee injury and awarded him $4.95 million in compensatory damages and $7.5 million in punitive damages, for a total award of $12.5 million. While the verdict signaled the end of the "St. Louis" iteration of the now Los Angeles Rams, it gave rise to a new liability risk for stadium operators and professional teams, while also creating a new class of plaintiffs: professional athletes injured by a stadium condition.

On November 1, 2015, the San Francisco 49ers played against the St. Louis Rams at what was then known as the Edward Jones Dome. Reggie Bush was a player for the San Francisco 49ers. During the first quarter of the game, Reggie Bush was pushed out-of-bounds and his momentum took him beyond the bench area and onto a section of concrete that ringed the perimeter of the stadium playing field. Reggie Bush slipped and fell backwards on the concrete surface, resulting in a torn ACL in his left knee. This knee injury effectively ended Reggie Bush's playing career.

In 2016, Reggie Bush filed a lawsuit

See Addressing on Page 12

Researchers Show 'Buffer Zone' Needed for Basketball Courts

There have been a number of catastrophic injuries over the years where basketball players have run into walls or other obstructions around basketball courts. These injuries have included paraplegia and quadriplegia injuries. These injuries have happened in youth sports to recreational basketball leagues. The mechanics for each injury might be different, but an often-seen issue is whether there was enough room outside of the out-of-bounds line (end lines) to protect players whose movement might take them outside the court's boundaries.

Players can leave the boundaries because they are making a basketball-oriented move, cannot stop, dive for a ball, or might get fouled. Whatever the cause, players can have accidents. The key is, can steps be taken to minimize the risk of injuries? The answer is yes. Basketball courts can have padding as a strategy to possibly reduce injuries. Basketball courts also need to have a minimum amount of space around the court that is called a "buffer zone." Various playing rules mandate a minimum of three feet with a preferable ten feet of buffer space (in some court diagrams/rule books). Where did this measurement come from and is it accurate? That was the question three researchers (Dr. Ceyda Mumcu, Prof. Gil Fried, and Dr. Dan Liu) wanted to determine with science as there is no evidence that three feet was determined by anything other than a guess.

Three research studies were undertaken. The first examined a number of gyms to determine average and typical buffer zones. The second study asked coaches how players left a court to determine mechanics of leaving the court. Lastly, a major study was undertaken using a real basketball game, speed guns, force plates, and other physics tools to measure what players actually do during a game, how they travel, and how long it takes to stop.

The study did not examine the impact of being fouled, padding issues, and other issues. This study strictly examined the amount of space needed for players to slow down based on traditional basketball movements. The study concluded "[B]y adopting at least a 5.2-foot buffer zone (and preferably an eight-foot buffer zone), most facilities can provide a safer distance for players, but this distance should be tempered based on variables highlighted in the paper such as the player's age, size, experience, and the facility's player injury history."

This conclusion can have major ramifications for gyms all over the world. Facility managers should examine their basketball courts to see if they are indeed safe. While distance alone does not make a court safe, those designing and building new courts should strive as much as possible to expand the buffer zone to provide the safest environment possible.

SPORTS FACILITIES and the LAW

Michigan State Appeals Court Reverses Lower Court, Concludes Firearms Policy Is Not Contrary to State Law

By Daigo Yazawa

A Michigan State Court of Appeals has reversed a trial court's decision on Nov. 27, 2018, siding with the defendants who regulate the carry of firearms to sports and entertainment venues.

The plaintiffs, Michigan Open Carry Inc. and Michigan Gun Owners Inc., alleged that the Grand Rapids-Kent County Convention Arena Authority's (CAA) firearms policy violated MCL 123.1102[1], the statute which prohibits a local unit of government from regulating firearms. The defendants, the CAA and SMG Holdings Inc., who is employed by the CAA to manage the CAA's facilities at DeVos Place, DeVos Performance Hall, and Van Andel Arena, ban the concealed carry of firearms at all three venues. The plaintiffs filed a lawsuit on July 1, 2016 in Kent County Circuit Court, after exhibitors at the West Michigan Women's Expo at DeVos Place were told to disarm or leave.[2] The plaintiffs argued that the CAA's firearms policy violated the statute that prohibits a local unit of government from regulating firearms. The plaintiffs also alleged that the state statutory scheme regulating firearms preempted the CAA's attempt to regulate firearms. The plaintiffs sought a declaratory judgment to that effect. The defendants, on the other hand, argued that their firearms policy was consistent with state law.

On the dispute regarding the validity of the firearms policy, the trial court denied defendants' motion and granted the plaintiffs' motion. First, the trial court agreed with the plaintiffs that the state law preempted the CAA's attempt to regulate firearms. Second, the trial court disagreed with the defendants who argued that they could ban the concealed carry of firearms at DeVos Place and DeVos Performance Hall because they were not locations where the concealed carry of firearms was prohibited by state law. Third, the trial court determined that the defendants should not enforce firearms ban to a lessee and a lessee could decide whether to ban weapons at an event. The trial court declared the CAA's current firearms policy was unenforceable because it was contrary to state law.

The defendants appealed. First, the defendants argue that a prohibition on the concealed carry of firearms at DeVos Place, which contains DeVos Performance Hall, is permissible because it is an entertainment facility that can seat more than 2,500 people. State law prohibits concealed pistol licensees from carrying a concealed pistol at several specified locations, including a sports arena or stadium such as Van Andel Arena, and an entertainment facility with a seating capacity of 2,500 or more individuals.

Entertainment is defined as something amusing, diverting, or engaging, such as a public performance, whereas facility is defined as a building established to serve a particular purpose. DeVos Place, and DeVos Performance Hall as an extension, were built for performances that qualify as entertainment. Therefore, "DeVos Place, which houses DeVos Performance Hall, is an entertainment facility."

In terms of the capacity, the trial court concluded that the CAA could not ban the concealed carry of firearms at DeVos Place and DeVos Performance Hall because they do not fall within the locations listed in the statue. However, the appeals court concludes that "the trial court erred when it ruled that the concealed carry of firearms was not prohibited by statute at DeVos Place because the trial court did not make a finding about seating capacity." Thus, the appeals court remand to the trial court to make findings regarding the seating capacity and to determine whether DeVos Place falls within the ban on the concealed carry of firearms. If DeVos Place, which also contains DeVos Performance Hall, is considered as an entertainment facility with a seating capacity of 2,500 or more, "then concealed pistol licensees are prohibited from carrying concealed pistols on the premises under state law, and the CAA's policy banning concealed weapons is not contrary to state law."

Second, the defendants contend that the trial court erred by determining that the defendants, as local units of government, could not enforce a private lessee's ban on firearms at an event. Regarding this dispute, the appeals court concludes that "MCL 123.1102[1] does not bar the CAA from enforcing a private lessee's firearms policy" and states that "it [MCL 123.1102[1]] would not affect the ability of local units of government to enforce private rights to restrict firearms when the statute treats regulation and enforcement as independent actions."

Lastly, the parties dispute the significance of the CAA's statement in the frequently asked questions (FAQs) on each venue's websites. According to the FAQs, the open carry of firearms is "rarely" permitted at the three venues,

See Appeals Court on Page 6

1 MCL 123.1102: A local unit of government shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms, except as otherwise provided by federal law or a law of this state.

2 John Agar, *Exhibitors Had Right to Carry Firearms at DeVos Place Convention, Lawsuit Says*, Grand Rapids News (July 2, 2016), https://www.mlive.com/news/grand-rapids/index.ssf/2016/07/exhibitors_had_right_to_carry.html

Court Allows a Release to Stop a Gross Negligence Claim

By James Moss

If you have a clause in your release that says, "except gross negligence," or something like that, get rid of it. Why teach the plaintiff's how to beat you, besides? You may win, which is what happened in this case.

Summary

Plaintiff injured her back attempting to do a back flip on a trampoline at the defendant's facility rendering her a paraplegic. She sued for her injuries claiming negligence and gross negligence. The court found the release stopped the plaintiff's claims for negligence and gross negligence.

Facts

On November 29, 2014, Quiroz and her sixteen-year-old son went to Jumpstreet. Prior to using the facility, Quiroz was given a pre-injury release form that was titled "Jumpstreet, LLC Release and Parent/Guardian Waiver of Liability and Assumption of Risk." The Release recited the following statements under the title: "PLEASE READ THIS DOCUMENT CAREFULLY. BY SIGNING IT, YOU ARE GIVING UP LEGAL RIGHTS." After signing the Release, Quiroz and her son jumped on a trampoline. When Quiroz attempted to do a flip, she injured her neck. Quiroz is now paralyzed from the waist down. Quiroz brought suit, individually, against Jumpstreet for negligence and gross negligence and as next friend of two minor children for their loss of parental consortium and their bystander claims for mental anguish. Robert Sullivan (Quiroz's spouse) joined the suit for loss of consortium and as next friend of a third minor child for loss of parental consortium and a bystander claim for mental anguish.

Jumpstreet filed a "Traditional Motion for Summary Judgment" alleging summary judgment was proper because Quiroz had signed a Release. In the motion, Jumpstreet stated that because Quiroz alleged negligence and gross negligence claims against Jumpstreet arising from her utilizing a Jumpstreet facility, the Release signed by Quiroz expressly released any negligence and gross negligence claims. Jumpstreet asserted the Release was valid and enforceable because it specifically named the party to be released, it met the fair notice requirements of conspicuousness and the express negligence rule, and it met the contractual elements of mutual intent and valid consideration.

Quiroz filed a response to Jumpstreet's motion for summary judgment and a cross-motion for partial summary judgment that alleged summary judgment for Jumpstreet was improper because there was an issue of material fact regarding the Release. Quiroz alleged she was entitled to a partial summary judgment because the Release was "void, voidable and unenforceable" because the named entity did not exist at the time of her injury, the Release was ambiguous, a parent could not waive claims of minors, and the Release could not waive gross negligence claims because it would be against public policy to do so. The trial court granted Jumpstreet's traditional motion for summary judgment and denied Quiroz's cross-motion for partial summary judgment. Quiroz timely filed this appeal.

The trial court granted the defendant's motion for summary judgment based on the release and denied the plaintiff's cross motion for summary judgment. The plaintiff appealed.

Analysis: making sense of the law based on these facts.

The issue for the appellate court was whether or not the motion for summary judgment granted for the defendant, and the cross motion for the plaintiff that was denied were done so correctly. Should a release bar a claim for negligence and gross negligence under Texas law.

Release law in Texas appears to be quite specific.

The Release signed by Quiroz was a prospective release of future claims, including claims based on Jumpstreet's own negligence. A release is an absolute bar to the released matter and extinguishes a claim or cause of action.

To win Jumpstreet only had to show the fair notice requirement of the law was met.

Jumpstreet had to show that the Release's language met the fair notice requirement of conspicuousness and the express negligence rule. See id. "Conspicuous" means the terms must be presented in a manner that a reasonable person against whom it is to operate ought to have notice.

The fair notice requirement under Texas law requires the release language to be clear, unambiguous and within the four corners of the contract.

The express negligence rule is not an affirmative defense, but it is a rule of contract interpretation. This rule states that if a party intends to be released from its own future negligence, it must express that intent in clear, unambiguous terms within the four corners of the contract.

The issue the court focused on was the claim the plaintiff originally made that the defendant identified in the release was not the defendant who owned and operated the facility where she was injured. The original defendant was an LLC and had been dissolved, and a new LLC had taken its' place. The release was not updated to show these changes.

The court found the defendants were owned and run by the same brothers and were the same for the purposes of this lawsuit. The new LLC replaced the old LLC and was covered by the release.

The court then looked at the release and pointed out the reasons why the release was going to be supported.

As noted above, the waiver and release language is in capital lettering immediately above the signature line where Quiroz printed her name, date of birth, age, address, and telephone number. Further, on page one in

See Court Allows on Page 5

Court Allows a Release to Stop a Gross Negligence Claim

Continued From Page 4

the assumption of risk paragraphs, the person signing the Release acknowledges the "potentially hazardous activity," and the Release lists possible injuries, including "but not limited to" sprains, heart attack, and even death. Although paralysis is not specifically named as an injury, it is certainly less than death and thus would be included within the "but not limited to" language. Furthermore, the release of liability paragraph above Quiroz's signature expressly lists the types of claims and causes of action she is waiving, including "negligence claims, gross negligence claims, personal injury claims, and mental anguish claims.

The plaintiff then argued the release was void because a release under Texas law cannot waive the claims of a minor when signed by a parent. The court agreed. However, since the child was not the injured plaintiff, it did not matter.

The court did look at the issue of whether or not a parent could sign away a minor's right to sue. The court held the minor could still sue; however, a release signed by the parent would bar all the derivative claims based on the claims of the minor child. That means all claims by the parents, loss of consortium, etc., would be barred by the release. Only the claims of the minor child would survive.

The court then looked at whether a release could stop a claim for gross negligence. The court found that the decision had not been reviewed by the Texas Supreme Court and there was a mix of decisions in Texas regarding that issue.

The Texas courts that have allowed a release to top a gross negligence claim have held there is no difference between negligence and gross negligence under Texas law. The court went on to read the release and found the release in question had language that prevented claims for negligence and gross negligence. Therefore, the gross negligence claim was waived.

The Release met both the fair notice requirement for conspicuousness and the express negligence rule. It was, thus, enforceable. As a result, Jumpstreet met its burden of establishing it was entitled to summary judgment as a matter of law.

The defendant one because they had a well-written release that was easy to see and understand and said you can't sue the defendant for negligence or gross negligence.

So Now What?

This is a first. A release was used to stop a gross negligence claim that was not based on a failure of the plaintiff to allege facts that were gross negligence. The release said it was effective against claims for negligence and gross negligence, and the court agreed.

Unless your state has specific statements were putting gross negligence in a release

See Court Allows on Page 6

Appeals Court Concludes Firearms Policy Is Not Contrary to State Law

Continued From Page 3

but the trial court found that the concealed carry and open carry of firearms was "normally" permitted at DeVos Place and DeVos Performance Hall. On this dispute, the defendants maintained the purpose of the FAQs was to inform the public about common answers to common questions, and that there is no blanket ban on firearms because the firearms policy at an event depends on the private lessee's request. The appeals court concludes that "the FAQ section reflects the possibility that a private lessee may ban firearms, but providing this information to the public does not show that [the] defendants have a policy of banning firearms."

This case is important because safety is a priority concern for venue and event managers, yet the validity of firearms policy at venues/events is argued in relation to state law.

Daigo Yazawa is a doctoral student in the Department of Sport Management at Florida State University, Tallahassee, FL.

Court Allows a Release to Stop Claim

Continued From Page 5

may void your release, or your supreme Court has specifically said a release cannot protect against gross negligence claims, you may want to add that phrase to your release.

No matter what, GET RID of clauses in your release that state the release is valid against all claims EXCEPT gross negligence. It is just stupid to put that in a release unless you have a legal system that requires it.

Putting that information into your release just tells the plaintiff and/or their attorney how to beat you. Don't help the person trying to sue you!

Second, you never know; it may work. It did in this case in Texas.

Citation: Quiroz v. Jumpstreet8, Inc., et. al., 2018 Tex. App. LEXIS 5107
State: Texas: Court of Appeals of Texas, Fifth District, Dallas
Plaintiff: Graciela Quiroz, individually, A/N/F of XXXX ("JOHN DOE 1") and XXXX ("JOHN DOE 2"), Minors, and Robert Sullivan, Individually
Defendant: Jumpstreet8, Inc., Jumpstreet, Inc. and Jumpstreet Construction, Inc.

James Moss is a Colorado-based attorney and founder of https://recreation-law.com/

California Supreme Court: No Anti-SLAPP Motion Where Protected Activity Tangential in Stadium Construction Case

By MetNews

The state Supreme Court yesterday declared that an action against the city of Carson can proceed after being dismissed as a SLAPP because the plaintiff's allegations that the city breached an exclusive agency contract for negotiating the construction of an NFL stadium did not arise from protected activity.

Justice Mariano-Florentino Cuéllar wrote the opinion, which stresses that the anti-SLAPP statute, Code of Civil Procedure §425.16, does not apply where conduct giving rise to a lawsuit only tangentially implicates protected activity.

The opinion affirms, in part, a 2016 decision by Div. One of this district's Court of Appeal, reversing Los Angeles Superior Court Judge Michael L. Stern's dismissal of five of the six causes of action brought by Rand Resources, LLC and related parties. Rand sued Carson and a rival company which the city enlisted to negotiate with the NFL after entering the exclusive agency agreement ("EAA") with Rand.

Rand's rival, U.S. Capital, LLC, and its owner Leonard Bloom allegedly used their connections with Carson's former mayor, James Dear, to fraudulently take over the negotiation duties promised to Rand. They created an entity with the same name as Rand to impersonate the plaintiff in their communications with the NFL, the plaintiffs alleged.

Cuéllar agreed with Stern that the two causes of action against Bloom and his company for intentional interference with contract and intentional interference with economic advantage arose from speech concerning a public matter and one under consideration by a legislative body.

Fraud, Tortious Breach

As to Rand's claims that the city had engaged in tortious breach of contract and that both the city and the Bloom defendants had engaged in fraud, Cuéllar largely agreed with then-Div. One Justice Elwood Lui (now presiding justice of Div. Two), who authored the 2016 opinion in the case.

In that opinion, Lui said:

"The alleged wrongful conduct in plaintiffs' tortious breach of contract cause of action is the City's violation of the terms of the EAA by allowing someone other than Rand Resources to act as its agent with respect to efforts to bring an NFL franchise to the City....The mere fact that some speech occurred in the course of the asserted breach does not mean that the cause of action arises out of protected free speech. To hold otherwise would place the vast majority, if not all, civil complaints alleging business disputes and a large portion of tort litigation within the scope of section 425.16."

He went on to say:

"The gravamen of the fourth cause of action with respect to the City is...the City's violation of the terms of the EAA by allowing someone other than Rand Resources to act as its agent with respect to efforts to bring an NFL franchise to the City and the manner in which the City conducted itself in relation to the business transaction between it and Rand Resources, not the City's exercise of free speech or petitioning activity. Moreover, the identity of the person representing the City in its efforts to lure an NFL team to the City is not a matter of public interest.

"As to Dear, his statement that he did not know Bloom was not a matter of public interest and did not constitute free speech or petitioning activity protected by section 425.16."

City Attorney's Promise

Cuéllar noted that the third cause of action for promissory fraud was based on a statement by then-Carson City Attorney Bill Wynder of Aselshire & Wynder LLP (currently the city attorney for Gardena), who allegedly told Rand that the EAA would be renewed if it "showed reasonable progress with respect to bringing an NFL franchise to Carson."

The jurist said:

"Wynder's statement, unlike Mayor Dear's, did relate to the EAA renewal issue before the City Council.

"Yet Wynder's statement was made in 2012, about two years before the renewal issue even came before the City Council. Section 425.16, subdivision (e)(2) protects only those 'written or oral statement[s] or writing[s] made in connection with an issue under consideration or review.'...

"What our appellate courts have declined to do is presume speech meets the requirements of section 425.16, subdivision (e)(2) when no official proceeding was pending at the time of the speech....We agree."

He also noted that certain statements by Wynder to Rand days before the city council's denial of the EAA extension showed evidence of its bad faith, those statements were not the basis for liability for the promissory fraud claim.

Turning to the claims brought solely against Bloom and his company, Cuéllar said:

"The Bloom defendants' communications with the NFL served only as evidence of plaintiffs' fraud-based claims. Yet the very same communications constitute the conduct by which plaintiffs claim to have been injured in their intentional interference claims....Similarly, although Bloom's secret communications with the City served as evidence of, or context for, claims based in fraud, those very communications are the interference now complained of in claims five and six.

"Moreover, the Bloom defendants' acts giving rise to plaintiffs' intentional interference claims were 'in connection

See No Anti-SLAPP on Page 15

Court: Yoga Facility Could Be Liable or Patron's Concussion

A magistrate judge from the District of Massachusetts has ruled that while a plaintiff who suffered a concussion at a yoga facility is entitled to sue the facility for negligence, the facility qualifies for charitable immunity, which would limit damages.

Plaintiff Rachel Kurtz alleged that she was injured on August 5, 2014 when an employee of the Kripalu Center for Yoga & Health, Inc. took a chair from her as she carried it above her head at the end of a class. She sued the facility to recover damages for a concussion, which she allegedly suffered due to the negligence of the facility and its employee.

By way of background, the court noted that Kripalu Center for Yoga and Health is a Pennsylvania nonprofit charitable organization that was incorporated in 1966 as the Yoga Society of Pennsylvania. In 1967, the Internal Revenue Service (IRS) determined that the Yoga Society of Pennsylvania was "exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code." The facility has been licensed and authorized to do business in the Commonwealth of Massachusetts since July 8, 1981. The defendant moved its physical presence from Pennsylvania to Massachusetts in 1983. In 2007, it changed its name from the Yoga Society of Pennsylvania to the Kripalu Center for Yoga and Health.

On July 27, 2014, before the plaintiff participated in the training program for which she had registered, she signed Kripalu's Guest Participation Agreement and Release. In pertinent part, the Release stated:

"Guest Activities and Need to Self-Monitor

. . . As a guest, I have the opportunity to take part in a range of activities designed to enhance my health and well-being. This includes activities specific to the program I am taking, as well as general activities outside my program, offered to all Kripalu guests.

These general activities include yoga and dance classes; exercise and conditioning classes; strength training; massage and bodywork; share circles and other personal growth experiences; relaxation and meditation instruction; lectures on various topics that often include a participatory component; outdoor recreation and fitness pursuits, such as bicycling, hiking, kayaking, and winter sports; and other activities not mentioned here.

Whether specific or general, I recognize that activities of this nature involve an element of physical, emotional, and psychological risk. I understand each person's level of physical and psychological fitness is different, and that some activities may not be appropriate for me given my individual capacities. I accept the need to monitor my own participation, knowing that each activity, and each exercise within any given activity, is optional. It is fine for me to sit an

See Court: Yoga on Page 9

Court: Yoga Facility Could Be Liable or Patron's Concussion

Continued From Page 8

activity or exercise out, or let my instructor know that I am choosing not to participate, or otherwise ask for help. . . .

Release of Liability

After being informed of the above risks and responsibilities, I generally release Kripalu Center for Yoga & Health, together with its instructors and other representatives, from all claims, causes of action, medical expenses, and other costs related to my guest participation, whether they arise at Kripalu, or from my later use of information or instruction at home. . . ."

The court noted that the defendant's motion for summary judgment posed three questions: "The first is whether the facts, when viewed in the light most favorable to the Plaintiff, require a determination that Defendant was not negligent as a matter of law. The next inquiry addresses whether Plaintiff waived a negligence claim against Defendant by signing the Release. The final question relates to whether the Massachusetts charitable immunity statute limits Defendant's liability, if any, to $20,000. Each of these queries will be addressed in turn."

"In the instant case, the plaintiff was a guest at Kripalu," wrote the court. "The chair that she was carrying above her head was a bulky object with sharp edges. Mr. Cook, the defendant's employee, was legally obligated to be careful when he took the chair from the plaintiff ... . Therefore, the defendant owed the plaintiff a duty to exercise reasonable care as a matter of law." The plaintiff's allegation of common law negligence, however, cannot be resolved on a summary judgment motion, according to the court. Thus, it denied that portion the defendant's motion.

The plaintiff also alleged that the defendant was negligent in failing to train, educate, and instruct its employees "in the safe removal or rearrangement of chairs, tables and any other items in its classrooms."

"According to the defendant, by analogy, it was relieved of its duty to train its employees to be careful when taking chairs from guests because it did not have notice that the activity posed a risk to guests and because an employee of ordinary intelligence should have recognized the obvious danger in suddenly grabbing a chair a guest was holding above her head," the judge wrote. "However, the defendant cites no authority for its position. Instead, the authorities upon which it relies involve landowners and employers who are relieved from their duties to warn visitors of obvious dangers on their property."

The judge added that "there are significant distinctions between the facts of the instant case and those of the authorities upon which the defendant relies. First, the defendant's argument appears to equate Mr. Cook with the plaintiffs in the 'open and obvious' danger cases. According to the defendant, it had no duty to instruct Mr. Cook who, like the plaintiffs in the cited cases, should have recognized the danger in grabbing the chair from the plaintiff. However, this case does not concern the defendant's duty to Mr. Cook, but addresses whether the defendant owed a duty of reasonable care to the plaintiff, who was a guest at the defendant's facility.

"A further distinction is the fact that the plaintiff does not allege that she was injured by an evidently dangerous condition on the property or an obvious risk in the activity in which she was engaged. Rather, she alleges that her injury was caused by the defendant's failure to instruct its employees on the proper manner of rearranging furniture after an event. The facts, therefore, do not support the conclusion that the defendant did not have a legal duty to train its employees.

"Whether Defendant breached its duty to Plaintiff by failing to adequately train its employees and whether the breach caused Plaintiff's injury present genuine questions of material fact."

Like the plaintiff's common law negligence claim, the negligent training claim should not be decided while considering a summary judgment motion, according to the court.

The court then turned to the release, which the defendants claimed represents an affirmative defense. It found that the "question (is) whether the Release, as limited, extends to discharge the defendant's liability for the plaintiff's negligence claims. Given that the plaintiff was injured while she was putting away a chair after her morning yoga session had concluded, it is unclear whether the activity in which she was engaged when she was injured was 'related to' her 'guest participation' as contemplated by the terms of the Release."

furthermore, "the Release's ambiguity creates a genuine issue of material fact as to its scope and the defendant is not entitled to summary judgment based on the affirmative defense of release."

Finally, in addressing whether the defendant is entitled to charitable immunity, the court wrote that "because the alleged tort occurred during the plaintiff's enrollment in one of Kripalu's School of Yoga's educational programs and the program was an activity that directly accomplished the defendant's stated charitable mission, the charitable immunity statute limits the amount of damages the plaintiff can recover.

"The court finds, therefore, that defendant qualifies for charitable immunity and liability on the negligence claim will be limited to $20,000 exclusive of interest and costs pursuant to Mass. Gen. Laws c. 231, § 85K."

Kurtz v. Kripalu Ctr. for Yoga & Health; D. Mass.; 2019 U.S. Dist. LEXIS 18481, Case No. 3:17-cv-30109-KAR; 2/5/19

Attorneys of Record: (For Plaintiff) Ryan M Finn, LEAD ATTORNEY, PRO HAC VICE, E. Stewart Jones Hacker Murphy, LLP, Troy, NY; Thomas J. Higgs, E. Stewart Jones Hacker Murphy LLP, Troy, NY. (For Defendant) Matthew H. McNamara, Thorn Gerson Tyman and Bonanni, LLP, Albany, NY

Just Get Out of the Way — a Lesson in Crowd Control

Continued From Page 1

directions from, any USC employee. Bueno was initially deployed at a Coliseum gate where he inspected bags for weapons and alcohol. Later, the plaintiff was redeployed to a lower level stairway where he was instructed not to let anyone past him without the correct credentials. Bueno was also told by a CSC supervisor that if the fans stormed the field to "just get out of the way". USC kicked a game winning field goal with only seconds remaining in the 4th quarter and "a wave of 5-10 thousand people stormed the field". Bueno attempted to escape the onslaught by running to the field but he was tripped and trampled by the out of control fans. He suffered bruises and contusions to his torso, but did not sustain any broken bones.

Plaintiff Arguments

The plaintiff sued USC on several counts including negligence, premises liability, negligent hiring, retention and supervision and negligent infliction of emotional distress. The plaintiff mentioned these occurred as a result of USC's failure to provide adequate security. Bueno further alleged that the existence of the "contingency plan" demonstrated that injuries, such as those he sustained, were foreseeable. He also argued that "being trampled by a delirious crowd improperly managed" was not an inherent risk for individuals working in the capacity as a security guard.

Defendant Arguments

USC moved for summary judgment based on five beliefs.

It had been 14 years since any spectators had rushed onto the field of play and as a result limited foreseeability existed. Therefore, USC had no duty to protect the plaintiff from this type of incident.

Even if it could be demonstrated that USC did owe a duty the contingency plan was properly designed and implemented. USC's actions did not cause the plaintiff's injuries.

The plaintiff's premises liability claim was not applicable because the plaintiff could not establish that USC failed to disclose any hidden hazard.

The plaintiff had been employed, supervised and instructed by CSC employees while working the game in question therefore his negligent hiring, retention and supervision assertion was flawed because he presented no evidence that USC hired, supervised or retained anyone who caused the plaintiff's injuries.

The plaintiff's claims were barred by the assumption of risk defense because injuries sustained while managing crowds were inherent to the plaintiff's job.

Holdings of the Court

An interesting twist to the case took place

See Just Get Out on Page 11

Just Get Out of the Way — a Lesson in Crowd Control

Continued From Page 10

after the Superior Court of Los Angeles County denied USC's motion for summary judgment. USC filed a petition with the Second Appellate District challenging the lower court's decision. The appellate court directed the district court to vacate the order denying summary judgment and enter a new order granting the motion. Otherwise the trial court had to show cause why the Second Appellate District court should not issue a directive ordering the trial court to do so. The trial court vacated their initial order and entered a new order granting summary judgment to USC. After the trial court granted summary judgment the plaintiff appeal.

The Second Appellate District court held that since Bueno was an employee of CSC, a USC independent contractor, USC owed no duty to the plaintiff to prevent fans from rushing the field. They based this decision on *SeaBright Ins Co. v US Airways, Inc.* (2011) 52 Cal.4th 590, 596 (*SeaBright*). In *SeaBright* the California Supreme Court found that, as a general rule, "when employees of independent contractors are injured in the workplace, they cannot sue the party that hired the contractor to do the work" (*SeaBright, supra,* 52 Cal.4th at p. 594 citing *Privette v Superior Court*(1993) 5 Cal.4th 689). The Second Appellate District court also cited *Hooker v Department of Transportation* (2002) 27 Cal.4th 198, 202 (*Hooker*) stating that the "rule" established in *Privette* was appropriate unless "the hirer's exercise of retained control *affirmatively contributed* to the employee's injuries." The "affirmative" conduct requirement means a hirer will not be held liable based merely on evidence it was "aware of an unsafe practice and failed to exercise the authority [it} retained to correct it." (*Id.* at p. 215)

The Second Appellate District court found that the "rule" set forth in *Hooker* pertained to the plaintiff's premises liability claim as well (*Sheeler v Greystone Homes, Inc.* (2003) 113 Cal.App.4th 90-8, 921-922). USC had created a contingency plan that instructed employees to "fall back" if the fans stormed the field. The plaintiff admits he was a CSC employee and that his supervisor told him to "just get out of the way" if the fans rushed the field. Bueno was injured when a spectator tripped over his foot as the plaintiff ran for the shelter of the field, but the plaintiff was not able to demonstrate that USC affirmatively contributed to his injury.

The Second Appellate District court found that the plaintiffs claim for negligent hiring, retention and supervision were also meritless. The plaintiff failed to identify anyone who presented an "undue risk of harm" in carrying out the contingency plan. The plaintiff's assertion that USC was negligent in hiring CSC was barred by the courts decision in *Camarjo v Tjaardo Dairy* (2001) 11 Cal.App.5th 565, 580-581. In that case the court held that an employee of an independent contractor is barred from suing the hirer of the contractor on the grounds that the hirer was negligent in retaining the contractor (*Id.* at p. 1238).

The Second Appellate District court found no claim of emotional distress in the plaintiff's brief. They determined he had abandoned the claim.

The Second Appellate District court affirmed the trail court's decision to grant summary judgment to USC.

Lessons Learned

Third party contractors such as Contemporary Services Corporation provide crowd management services (among others). Crowd control and crowd management are discordant terms. It is virtually impossible to "control" crowds but with properly trained staff crowds can be "managed". Individuals hired to work for these outsourced agencies will perform a number of duties including, but limited to, screening spectators for prohibited items such as alcohol or weapons. Some will be trained to check the credentials of individuals entering various parts of the venue (field/court, locker rooms, VIP areas, back of house etc.) and others to monitor sections of the crowd identifying incidents involving intoxicated or combative spectators. The staff will also assist with customer service-related tasks such as dealing with lost children, and answering fan questions. The common denominator for each of these duties is the "crowd". Since crowds can't be "controlled" they, at times, will move in undesirable directions such as toward the field or court. Thus, an inherent risk of dealing with crowds include injuries resulting from the actions of these crowds. Being shoved, pushed, heckled, spit on and struck are all foreseeable actions from working in crowd management. A large number of these undesirable actions are resultant form copious amounts of alcohol that the crowds imbibe as well as their emotional state reflecting the actions on the field or court.

Adequate training of these crowd management personnel becomes vital to the overall safety of themselves and the crowd they are dealing with. It is highly presumptuous to believe that every one of the 754 uniformed CSC guards had worked for CSC previously to the USC-Stanford game on November 16, 2013. Therefore ensuring that these individuals knew and understood their roles becomes a huge responsibility for the CSC supervisors. However, as previously stated, crowds are at times disputative and go where they want. If enough of those individuals go where they please you end up in a situation as described by the plaintiff when "not even 100 guards would have been able to stop the onslaught". At that point the best training is to make sure the staff member knows to "just get out of the way".

David P Bueno, Plaintiff and Appellant, v University of Southern California, Defendant and Respondent. 2018 Cal.App. Unpub. LEXIS 8362

Dr. Ammon graduated with an EdD in Sport Administration from the University of Northern Colorado.

Addressing The Risk of a New Class of Plaintiff: The Reggie Bush Case

Continued From Page 1

against the St. Louis Regional Convention and Sports Complex Authority ("RSA"), the St. Louis Convention & Visitors Commission ("CVC"), and the St. Louis Rams. RSA and CVC were later dismissed from the lawsuit. At the time of the injury, the Rams were in charge of operations of Edward Jones Dome on gamedays. The Plaintiff, therefore, asserted a premises liability and negligence cause of action against the Rams.

The Plaintiff argued that sports facilities owe a duty to invited guests, including players, coaches, referees, and journalists to remove or warn of any dangerous conditions and to maintain the playing surface so that it is reasonably safe. To further this argument, Plaintiff characterized the concrete perimeter as a "concrete ring of death" and relied upon the Rams' awareness of the threat of danger that the concrete ring posed, based on a previous injury. Approximately one week before the Plaintiff's injury, the Cleveland Browns played the St. Louis Rams at the Edward Jones Dome, and the Browns quarterback Josh McCown injured his shoulder after slipping on the concrete ring. Furthermore, two weeks after the Plaintiff's injury, the Rams covered over the concrete ring with rubber padding. The Rams' awareness of the dangers associated with the concrete ring, coupled with the Plaintiff's argument that these dangers were neither obvious nor avoidable to a player running at full speed who might not be able to stop before reaching the concrete area, persuaded the jury.

The jury was not swayed by either of the Rams two main fact-based arguments (the Court had earlier ruled against the Rams on various legal arguments, including preemption of the tort suit by the Collective Bargaining Agreement). First, the Rams argued that it was not foreseeable that an athlete would slip on the concrete ring based on the twenty-plus years where no one had been injured. Second, the Rams argued that the Plaintiff was susceptible to the type of injury he sustained based on his long history of knee injuries. The jury rejected these arguments and returned a $12.5 million verdict for the Plaintiff.

Despite a questionable future in the National Football League and an unclear future earning potential, the jury was persuaded by Plaintiff's closing arguments that Reggie Bush "lost his ability to do what he loved" and that playing football carries with it an inherent risk of injury that need not be enhanced by a concrete ring. In his successful argument for punitive damages, the Plaintiff convinced the jury that the Rams showed complete indifference and conscious disregard for his safety by failing to fix a known dangerous surface. Possibly also factoring into the jury's decision was

See Addressing the Risk on Page 13

Addressing The Risk of a New Class of Plaintiff: The Reggie Bush Case

Continued From Page 12

the Rams recent relocation to Los Angeles and the $3 billion valuation of the franchise at the time of trial.

While the floodgates for this type of lawsuit have not necessarily opened, there are presently two similar lawsuits pending. Another former professional football player, DeMeco Ryans, tore his Achilles in a game at the Houston Texans' NRG Stadium after his foot landed in one of the seams of the turf. Ryans filed suit against the stadium operator and owner alleging in part that they were aware of previous injuries associated with the seams of the field.[1] The action is currently pending in Harris County District Court in Texas. Another lawsuit stemming from a stadium condition involved Dustin Fowler, a former New York Yankees outfielder and current Oakland Athletic, who was injured in his first Major League Baseball game for the Yankees against the Chicago White Sox at the White Sox's Guaranteed Rate Field. Fowler attempted to catch a fly ball, but his knee collided with an unpadded electrical box along the fence. The resulting collision caused Fowler to tear the patellar tendon in his right knee. Fowler brought suit against the Guaranteed Rate Field stadium operator based in negligence for failing to secure the unpadded electrical box. The action is currently pending in Cook County Circuit Court in Illinois.

Reggie Bush's successful lawsuit presents a significant development in risk management and generates a potential new class of plaintiffs for stadium operators and professional sports teams to consider: the athletes themselves. Preventing tort liability for stadium conditions has generally focused on safeguarding against spectator injuries. The Reggie Bush verdict has opened the possibility of a professional athlete successfully suing a professional sports team or stadium operator for failing to warn about or remove dangerous conditions existing both in the stadium and on the playing surface.

Given that this type of lawsuit is still uncommon at this point, the following questions should be considered based on Reggie Bush's successful jury verdict:

- What steps can a stadium operator or professional sports team take to address and prevent certain stadium conditions that present a risk to athletes?
- Will complying with the changing state of the art be more difficult when addressing risks in the playing area as opposed to spectator areas?

See Addressing the Risk on Page 14

1 Brett Hartmann, a former punter for the Houston Texans, injured his knee after his foot became stuck in a seam at NRG Stadium (then known as Reliant Stadium) and sued the stadium operator and owner. The case settled for an undisclosed amount.

Addressing The Risk of a New Class of Plaintiff: The Reggie Bush Case

Continued From Page 13

- How does the relative wealth and future earning potential of the likely plaintiff factor into the outcome of a potential lawsuit?
- How often would a plaintiff or stadium operator receive a fair trial given a jury pool's animosity toward certain players and/or teams?
- What added costs would a stadium operator or professional sports team incur to address the increasing possibility of a lawsuit by an athlete stemming from a stadium condition?
- What other risk assessment or professional/legal expertise are necessary to evaluate these issues?
- Should this relatively new risk cause stadium operators to reexamine their insurance coverage and levels?
- What type of liability and economic expert witnesses will be required to successfully defend against a suit by an injured player?
- Are operators prepared to respond effectively to the publicity generated by this type of lawsuit?

John E. Tyrrell is a founding Member of Ricci Tyrrell Johnson & Grey. He has decades of experience in representation of operators and managers of stadiums, arenas, entertainment venues and recreational facilities, including professional and collegiate sports teams, concert promoters, golf courses, ice rinks, gymnastics facilities, rowing associations, and paintball facilities. jtyrrell@rtjglaw.com

Patrick J. McStravick is a Member at Ricci Tyrrell Johnson & Grey who specializes in defending lawsuits alleging liability associated with the operation of sports and entertainment venues and recreational facilities. pmcstravick@rtjglaw.com

Alexander M. Shaen is an Associate at Ricci Tyrrell Johnson & Grey who works within the Sports, Event and Recreational Liability practice group. ashaen@rtjglaw.com

INDUSTRY NEWS

International Ticketing News

An Australian Federal Court concluded in April that ticket reseller Viagogo AG mislead consumers when reselling music, entertainment and live sport event tickets. Justice Stephen Burley indicated that the Swiss-based company broke several consumer laws when falsely claiming tickets were about to sell out and masquerading itself as an official ticket seller. The Australian Competition and Consumer Commission initiated the action against Viagogo in 2017 after it had received 3,500 complaints. The Court also concluded that Viagogo in 2017 failed to sufficiently disclose additional fees, which included a 27.6 percent booking fee. The court will determine at a later date the penalties and any court orders.

In additional ticketing news …

A Texas family has been charged with federal crimes for using stolen identities to obtain Masters golf tournament tickets, and reselling them for a profit.

According to court records, between 2013 and 2017 the family used stolen IDs in an attempt to cheat the Masters' ticketing lottery system, as well as evade Augusta National Golf Club's rules permitting one application per person.

The defendant, Stephen Michael Freeman, was also charged with conspiracy to commit mail and wire fraud as well as aggravated identity theft. His parents and a sister were also charged with conspiracy. The scheme utilized material gleamed from mailing lists, false driver licenses (and other fake documents), and email accounts controlled by the accused.

The office of U.S. Attorney Bobby Christine said in a news release that the charges carry potential penalties of up to 20 years in prison and substantial fines.

https://www.theticketingbusiness.com/2019/04/24/family-charged-masters-resale-scheme/?utm_source=TTB+-+TheTicketingBusiness+NEWS&utm_campaign=0e8e6f1c2d-EMAIL_CAMPAIGN_2017_01_04_COPY_01&utm_medium=email&utm_term=0_fc47d2bf36-0e8e6f1c2d-24322577&mc_cid=0e8e6f1c2d&mc_eid=ba2c1cbe31

Transgender Locker Room Issue Heats up in Michigan

As previously highlighted in a prior SFL Issue, the issue of transgender locker rooms has returned to Michigan. Former Planet Fitness member Yvette Cormier sued over a February 2015 incident in which she claimed her privacy and well-being were endangered after she encountered a person who she thought was a man in the women's locker room of her Midland, Michigan club. Planet Fitness allows transgender members to use the locker room of their choice. Cormier's membership was terminated in March 2015 after she went against management wishes and repeatedly warned other women of the club's policy. Cormier's initial lawsuit was dismissed, but she appealed. In 2017, the State of Michigan Court of Appeals dismissed Cormier's claims that Planet Fitness' transgender-inclusive locker room policies violated her membership rights. Cormier appealed to the Michigan Supreme Court, which in an April 2018 ruling decided the appeals court erred in not considering Cormier's complaint that her rights under the Michigan Consumer Protection Act (MCPA) had been violated. In an April 2019 confirmation of the decision, the Supreme Court has sent the case back for trial.

Cormier claims that Planet Fitness failed to disclose its unwritten locker room policy and is seeking $25,000 in damages due to her terminated membership and the gym's alleged violations of the MCPA, the Elliott-Larsen Civil Rights Act (protecting Michigan residents from discrimination), and breach of contract.

No Anti-SLAPP Motion Where Protected Activity Tangential

Continued From Page 7

with a public issue,' as defined in subdivision (e)(2) and (e)(4) of the anti-SLAPP statute. In contrast to Wynder's 2012 promise, the Bloom defendants lobbied Mayor Dear and a councilmember in 2014, '[a]fter Rand provided the City with its extension request but before the City voted on the extension.' The Bloom defendants' communications—designed to influence the City's renewal decision while the renewal application was pending—are reasonably considered communications 'in connection with an issue under consideration or review by a legislative…body' within the meaning of subdivision (e)(2)."

The high court remanded the case for determination of whether the plaintiffs established a probability of success on their intentional interference claims.

The case is Rand Resources, LLC v. City of Carson, 2019 S.O.S. 617.

Joseph J. Ybarra of Huang Ybarra Gelberg & May LLP in Los Angeles argued for the plaintiffs. Anthony R. Taylor of Aleshire & Wynder's Irvine office represented Carson; and John V. Tamborelli of Tamborelli Law Group in Woodland Hills was counsel for the Bloom defendants.

MLB Teams, Like the Dodgers, Should Be More Proactive When Tragedy Strikes

By Jordan Kobritz

Fortunately, a death at the ballpark from a foul ball is an extremely rare occurrence. Only three times in over a century and a half of professional baseball have spectators been killed by a batted ball. One happened at Washington's Griffith Stadium in 1943 and the second at Dodger Stadium in 1970. The third occurred last August when Linda Goldbloom died on August 29, four days after she was struck by a foul ball at Dodger Stadium.

The 79-year old Goldbloom was sitting in the Loge Level along the first-base side of home plate when a ball flew over the protective netting and struck her. She was rushed to the hospital where she later died. Yet neither the Dodgers nor MLB reported the incident, which was discovered five months later from an examination of medical records.

When contacted by ESPN's Outside the Lines, the Dodgers issued a statement which stated in part, "We were deeply saddened by this tragic accident and the passing of Mrs. Goldbloom. The matter has been resolved between the Dodgers and the Goldbloom family. We cannot comment further on this matter." Translation: The Dodgers and Goldbloom's family entered into a settlement and confidentiality agreement, which prohibits them from commenting on the case.

Prior to the execution of the confidentiality agreement, the Dodgers could have reported the seriousness of Goldbloom's injuries and her death, but chose not to. Should they have? I would argue "yes," even though they had no legal duty to do so. Here's why.

Presumably, the Dodgers didn't divulge Goldbloom's injuries and death for public relations purposes. After all, no team wants to inform its fans of the potentially serious dangers that lurk at the ballpark, at least, not prior to their arrival. Yet they all do it–in multiple forms–at the ballpark. Check the exculpatory language on your ticket back. Listen to the PA announcements before and during the game. Read the signage located around the ballpark. All are methods teams use to alert their fans to the dangers of flying bats and balls. Yet not all fans take those messages seriously, even though they should. What better way to drive home the point than to publicly acknowledge the gravity of Mrs. Goldbloom's injuries?

The other side of the argument is Goldbloom was sitting behind the protective netting, where most fans would understandably feel safe. Despite that protection, she was injured by a ball that flew over the netting. That's not a good look for the team. It could be argued the incident was foreseeable, evidence the Dodgers should have done more to safeguard their fans — e.g., raised the netting or installed a protective covering in that area of the ballpark to protect against foul balls that make it over the netting. MLB teams could also adopt practices found in other countries. In Japan, netting exists from foul pole to foul pole and in Korea, employees use whistles to alert fans to incoming foul balls.

Any discussion of what the Dodgers should have done needs to be coached in the context of the Baseball Rule, a legal doctrine first applied in 1913 and since adopted in most states. The Baseball Rule simply states that if fans are given the option to sit behind a protective screen, and stadium operators provide reasonable warnings to be alert for flying projectiles, fans are deemed to have "assumed the risks" inherent in attending a ball game. Courts almost unanimously dismiss lawsuits brought by injured plaintiffs. One recent exception to the rule was a 2013 decision handed down by the Supreme Court of Idaho, where a plaintiff lost his eye from the impact of a foul ball. The court rejected the Baseball Rule, while acknowledging its decision was an outlier.

The Baseball Rule has come under increased scrutiny in recent years, due to the rise in the number of spectator injuries each year at MLB games, approximately 1,750. The increase can be attributed to a number of factors, including the design of new stadiums, where fans sit 20% closer to the action; the increased speed of balls off the bat, resulting in less reaction time for fans; expanded ballpark entertainment, leading to fan inattention; and the greater frequency of shattered bats, due to player preference for maple over ash and thinner bat handles.

MLB has made efforts to quell the criticism by adopting additional netting requirements in 2015 — to the home plate side of each dugout–and again last year — to the outfield side of the dugouts. Those changes failed to protect Mrs. Goldbloom, as the ball that struck her flew over the netting she was sitting behind. Should MLB also impose height standards for protective netting? The league maintains there are challenges to adopting a fixed standard, given the vagaries in ballpark construction.

One thing is certain: The course of action chosen by the Dodgers, the ostrich approach — bury your head in the sand and ignore the incident in hopes it never sees the light of day — was doomed to failure. It would have been better to act proactively and exhibit concern rather than appear to be secretive and insensitive later.

Jordan Kobritz is a non-practicing attorney and CPA, former Minor League Baseball team owner and current investor in MiLB teams. He is a Professor in the Sport Management Department at SUNY Cortland and maintains the blog: http://sportsbeyondthelines.com The opinions contained in this column are the author's. Kobritz can be reached at: jordan.kobritz@cortland.edu.

