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Take me out to the ballgame

SPORTS-VENUE LIABILITY FOR SPECTATOR INJURIES – FROM LACROSSE TO BASEBALL TO TRACK AND FIELD

As the growth of the sport of lacrosse has increased exponentially, so has the risk of spectator injuries. The game is played between two teams of 10 players each. The high-school field customarily is 110 yards long and 60 yards wide. The key piece of a player's equipment is the stick, which is used to catch, carry and toss the lacrosse ball. The ball itself is rock-hard, nearly the size of a baseball, and very resilient. The ball can be carried or passed. The object is to toss it into the six-foot tall by six-foot wide goal located 15 yards back from the end line of the opposing players' team and which is guarded by the goalie.

Varsity high school students can toss the ball at speeds of 80-90 mph or even more. Accordingly, players are required to wear protective gear, which customarily includes: a helmet; face mask; tooth and mouth protector; and appropriate gloves, arm pads and shoulder pads. Despite these precautions, the game itself risks severe injuries and even an occasional death.

Accordingly, lacrosse organizations customarily require players (or their parents) to execute a liability waiver, acknowledging the significant risks the sport presents and agreeing to assume the risk of such injuries, thus precluding most litigation.

However, this article is about liability for spectator injuries. Generally, visitors do not sign a waiver in order to attend. As one of our experts opined, the lacrosse field is far more dangerous than it looks. Severe injuries can occur when a fan is struck by a waywardly tossed lacrosse ball that leaves an inadequately protected playing field.

End lines of the field

Customarily, the sport is conducted on a designated field that installs a 10-foot tall, or even higher, netting or fencing at the end lines to protect visitors from injury from balls that are inadvertently tossed over the six-foot goals.

Failure to provide adequate height netting or fencing can result in lacrosse balls flying unprotected over the end lines, creating a great risk for spectator injuries. Appropriate height protective structures are available for rental or purchase. Failure to provide adequate height end line protection can result in serious injury, for which the organizer of the event may be liable.

Moreover, in individual field setups, the number one "Safety and Responsibility" requirement of the U. S. Lacrosse National governing organization specifically provides as follows: "No spectators are allowed behind the end line except in permanent stadium seating positioned behind the protective netting or fencing." To further protect spectators, the US Lacrosse association also provides that "... fencing ... should be located at least five yards from all...end lines."

Furthermore, the US Lacrosse Field Tournament Standards require in part, as follows: "Allocations for Safety: the use of safety barriers and cautionary signage: "Use of signage required on all fields at or near the end line." "Signage examples for end lines include the following: 'No walking behind Goals;' 'Proceed with Caution: Ball in Play at all Times.'"

The sidelines

In contrast, the sidelines of the fields customarily are not protected by any

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netting or fencing. However, specific guidelines such as Rule 1-11b issued by the Southern California Lacrosse Officials Association provides, "Spectators need to be at least six yards away from the field of play." Lines drawn on the ground adjacent to the field provide such boundaries.

In a recent case our office handled, the lacrosse sponsoring organization created a tournament at a new location that did not have a setup for lacrosse. Accordingly, the Defendant sought to rent fences to cover the end lines. However, rather than post adequate height netting or fencing at the vulnerable end lines, the company installed six-foot fences, the same height as the goals located in front of the end lines. At first blush this would appear to be suitable protection; but upon analysis, it clearly is not.

The explanation is simple: Any ball tossed high enough and hard enough to go over the goal, in all likelihood would also leave the playing field and enter the designated pedestrian walkway adjacent to the field.

Anyone over six feet in height was immediately at risk of injury, and as the ball followed its downward trajectory towards the ground, it endangered a person of any height, even a small child or infant in a stroller. Indeed, our client was only five foot, four inches tall and was struck in the face, with the lacrosse ball fracturing her jaw and causing other painful and permanent facial and dental injuries.

Our plaintiff was on the designated walkway, the only available pathway to the restroom, and there was no appropriate signage nor guards to assist her to safely traverse the area; we concluded that it was a clear case of liability. This evaluation was confirmed by our experts but strongly contested by the defendants.

In reviewing our matter further, it occurred to us that as we contended that the setup was inherently dangerous, there must have been other instances wherein spectators were injured or nearly so. Accordingly, we acquired videotapes of each of the multiple contests. They disclosed over 75 similar instances wherein the lacrosse ball flew over the low-level end line fencing, striking or nearly hitting other spectators on the walkway or adjacent playing fields!

Following our investigation and legal research, we filed suit. On demurrer and motions to strike, Defendants raised the familiar baseball issue of primary assumption of the risk.

Primary assumption of the risk

Illustratively, in *Knight v. Jewett* (1992) 3 Cal.4th 296, our Supreme Court established the doctrine of primary assumption of the risk barring recovery by a players' participation in a touch football game that had a known risk of injury that could be anticipated and secondary assumption of the risk, where the defendant owes a duty of care to the plaintiff that merges comparative fault principles.

The decision made it clear that an owner-operator only had a duty to take those steps that minimize the risks inherent in the game *that do not alter the nature of the sport*.

However, in our lacrosse case, we were not dealing with a participant in the sport, but with a fan, who has a reasonable expectation of safety when traveling upon the designated premises.

Thus, in *Ratcliff v. San Diego Baseball Club* (1938) 27 Cal.App.2d 733, a baseball spectator was injured when hit by an accidently thrown bat while walking in the stands between home plate and first base during a game. She filed an action against both the player who threw the bat and the stadium owner. The jury returned a verdict for the player, but against the stadium owner. The court affirmed, finding that the stadium owner failed to provide the patron protection from flying bats in an area where the greatest danger existed, and such an occurrence could reasonably be expected.

Further support for liability is set forth in *Morgan v. Fuji Country USA Inc.* (1995) 34 Cal.App.4th 127, 134. That case held that "the owner of a golf course has an obligation to design a golf course to minimize the risk that players will be hit by golf balls, e.g., ...by the way the various tees, fairways and greens are aligned or separated."

Even more specifically, in *Summer J. v United States Baseball Federation* (2020) 45 Cal.App.5th 270-274, the Court of Appeal concluded the primary assumption of risk doctrine did not bar a spectator from asserting negligence and premises liability claims against the organizer of a baseball game with control over Blair Field stadium based on inadequate netting to protect spectators in the bleachers from being hit by foul balls.

The Court in *Summer* rejected reliance on the "baseball rule" that for over a century, courts throughout the United States had "consistently held that professional baseball teams (and stadium owners) are not liable for injuries sustained by fans hit by bats or balls leaving the field of play so long as the teams (and owners) have taken minimal precautions to protect their spectators from harm."

As the court explained, "[A]s the entity responsible for operating Blair Field on that date, US Baseball had a duty not only to use due care not to increase the risks to spectators inherent in the game but also to take reasonable measures that would increase safety and minimalize those risks without altering the nature of the game."

Baseball liability: recent case of *Mayes v. la Sierra*

As our case was moving towards trial, the case of *Monica Mayes* v. *la Sierra University,* E076374 was decided and filed on 1/7/22, regarding an appeal from the Superior Court of Riverside County.

In that matter, the plaintiff was struck in the face by a foul ball while attending an intercollegiate baseball game between two private universities. The plaintiff suffered skull fractures and brain damage, among other injuries. The area where the plaintiff was located was a

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grassy area along the third-base line, behind the dugout, which extended eight feet above the ground. There was no protective netting above the dugout.

The plaintiff alleged that the defendant was negligent for multiple reasons, including: (1) failure to install protective netting over the dugouts; (2) failure to provide a sufficient number of screened seats for spectators; (3) failure to warn spectators that the only available screened seats were in the area behind home plate; and (4) failure to exercise crowd control in order to remove distractions in the area along the third-base line that diverted spectators' attention from the playing field."

The trial court agreed with the defendants' motion for summary judgment and dismissed the case. On appeal, the appellate court reversed and set forth its conclusion that there were triable issues of material fact as the plaintiff had alleged. (1) There should have been protective netting all along and including over the dugout on the first- and third-base lines; (2) Signs should have warned that there was no protective netting; (3) There should have been a sufficient number of screened or protective seats; (4) Defendant failed to exercise crowd control resulting in multiple distractions.

Plaintiff's expert averred that the National Collegiate Athletics Association (NCAA) required a 60-foot unobstructed space between the playing field and the spectator stands.

The appellate court pointed out that while the primary assumption of the risk doctrine does not require conduct that would have a chilling effect on vigorous participation inherent in the sport or activity, owners and operators of recreational activities have an additional duty to protect their customers or spectators' safety – if they can do so without altering the nature of the sport or the activity. Multiple cases are cited in the opinion that provide examples.

Likewise, *Mayes* distinguished *Neinstein*, *Lowe* and *Nemarik* as inapposite because they did not address the duties of sports venue owners and operators to take reasonable steps to mitigate the risks of injuries to spectators.

Applicability to discus-injury case

As mentioned above, liability has been imposed more recently in a large range of cases involving multiple sports. In another matter that our offices handled, we were able to secure recovery wherein a waywardly tossed discus went outside of the designated playing field, into an unprotected viewing area, causing severe injury to a spectator.

Give careful thought to spectator injuries

The waning of the Baseball Rule of no liability has opened up new avenues for injured visitors to sporting events to secure recovery for injuries caused by inadequately protected venues. It is hoped that this review of an active case along with the changing nature of the appellate authority will encourage you to examine other sports injury matters in greater detail before deciding whether or not to undertake them.

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