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Route To: ___/___/___/___

SPORTS FACILITIES and the LAW

How the law affects the sports facilities industry

The Lasting Legacy of Art Modell Felt As Columbus Crew Seeks To Set Sail for Austin

By Scott Andresen, of Andresen & Associates, P.C.

The Move.

While that phrase may have very little import throughout the sporting world generally, it has had a lasting impact in state of Ohio that is still being felt 23 years later. The Move refers to the decision by team owner Art Modell to move his Cleveland Browns team to Baltimore during the 1995 NFL season. Subsequent litigation seeking to prevent The Move (see City of Cleveland v. Cleveland Browns, et al., Cuyahoga County Court of Common Pleas Case No. CV-95-297833) was ultimately settled via a compromise that kept the Browns name, colors, history, records and the like in Cleveland, while allowing Modell to take his talents to the city of Baltimore.

Not wishing to relive the Modell Experience, the Ohio state legislature enacted Ohio Revised Code §9.6 a year later on June 20, 1996. Officially titled Restrictions on owner of professional sports team that uses a tax-supported facility, the law is less-than-affectionately known as the "Art Modell Law." The law states as follows:

No owner of a professional sports team that uses a tax-supported facility for most of its home games and receives financial assistance from the state or a political subdivision thereof shall cease playing most of its home games at the facility and begin playing most of its home games elsewhere unless the owner either:

(A) Enters into an agreement with the political subdivision permitting the team to play most of its home games elsewhere;

(B) Gives the political subdivision in which the facility is located not less than

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NCAA Fallout from NC Bathroom Bill Taints College Sports Landscape

By Tim Hipps

Texas was perhaps the biggest winner and North Carolina the biggest loser in NCAA fallout from the Tar Heel State's public facilities privacy and security act, according to a study presented in March at the 2018 Sport & Recreation Law Association Conference in San Antonio.

Professor Lauren McCoy of Western Kentucky University and associate professor Kerri Cebula of Kutztown University studied North Carolina's House Bill 2 (HB2), better known as the "bathroom bill," and presented "The Impact of 'Bathroom Bills' on Sport Events: Policy and Planning for the Future" at SRLA's annual meeting.

A bathroom bill is legislation that defines access to public facilities, especially bathrooms, for transgender individuals. Access under this legislation is determined by an individual's assigned gender at birth, the sex on a person's birth certificate, or sex determined by gender identity. School settings were the initial focus of these bills,

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THIS ISSUE

Re-examining Steep Spectator Seating

By Gil Fried

A recent article by Matt Rossetti published in April 2018 of Athletic Business was entitled: Can Spectator Seating Be Both Steep and Safe?

The article examined The Bell Centre in Montreal mainly due to a large lower bowl and steep upper-bowl seating. Some teams like such a venue as it might feel like all the fans are "on top of you." Such fan friendly facilities might have great sight lines, which is critical with attendance numbers declining at some facilities. But the article focused on the risk associated with steep seating areas. It highlighted the 19,000-seat Barclays Center in Brooklyn, N.Y., where at least four lawsuits resulted from fans tripping and falling in the arena's steep upper bowl. While falls can happen almost anywhere in an arena, other fans have also complained of vertigo. To address safety concerns some facilities, such as Detroit's Little Caesars Arena, which opened last September, features clear Plexiglas barriers in the front row to keep fans secure, with waist-high drink rails performing the same function for fans in the back row.

The article highlighted the growth in the inverted bowl design which has been developed and tested over the past seven years. "The inverted bowl design solves the steep-upper-deck dilemma by doing something unexpected: it doesn't back away, it leans in — with revolutionary balcony seating that catapults viewers closer to the action. The result is broadcast-quality views that are up to 50 percent closer. The inverted bowl doesn't just preserve fan safety — it prioritizes it. Larger landings and less crowding minimizes the chances of accidents and keeps fans away from edges — all without compromising viewing positions."

Typical inverted bowl design features four tiers, with each tier seating roughly 2,000 spectators in three rows of seating. With only three rows, it greatly reduces the vertigo experienced in a steep upper bowl.

The article continued: "A stationary seat with a swing mechanism secures patrons in their seats, and instead of walking in front of other fans to access a seat, individuals walk safely behind the swivel chairs, keeping passersby safely behind tall chair backs. This is achieved by designing each row to be 25 percent deeper than that of the typical upper bowl, adding an additional 12 inches of space for spectators to circulate comfortably. There has never been a bowl designed where fans step behind the seats — a solution that keeps both seated viewers and passersby safe and comfortable." This article originally appeared in the April 2018 issue of Athletic Business with the title "Do steep arena bowls compromise spectator safety?"

TAKEAWAY: Tragic falls involving fans appear to be on the rise. Facility managers should track the reason and location of falls and then implement strategies to prevent them. This might entail developing new strategies or changing codes to protect them. This concern is especially critical in balconies or upper decks.

SPORTS FACILITIES and the LAW

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Winning the Gold: Why Venue Owners Need to Consider the Importance of Flexibility in Sponsorship Agreements

By Jon Freedman and David Sunkin, of Sheppard Mullin

Sponsorship rights are a critical component of the revenue stream for almost every major venue in the United States. Long-term sponsorship deals not only provide much of the funding for new venues to be built, but they also support the refurbishments that allow existing venues to retain tenants and attract short-term residents, such as concerts, sporting events and tournaments. Sponsorship spending in North America alone came to a staggering $23.1 billion in 2017, an increase from the 2016 figure of $22.3 billion. Most of this sponsorship cash flows to and from venues in major cities. One example out of many is Los Angeles, which is home to a multitude of venues supported by an even wider array of long-term sponsors. Los Angeles recently hosted the 2018 NBA All-Star Game and the 2018 NCAA Men's Basketball Western Regional Semifinals. The city is now gearing up for additional high profile events, such as the 2020 MLB All-Star Game, Super Bowl LVI and the 2028 Summer Olympics, along with related ancillary events. The Los Angeles market is currently undergoing a period of intense growth, as indicated by the construction of new, state of the art venues, such as the Ram's stadium at Hollywood Park, the Banc of California Stadium for the LAFC, and (potentially) a new stadium for the Clippers. The abundance of venues both new and old is a clear sign that even more high-profile events will be coming to LA in the years to come. These popular events – both those already scheduled and those yet-to-be-planned – present venue owners with additional hosting opportunities, making it essential to have flexibility in existing long-term sponsorship agreements.

When high-profile special events roll into town, they bring with them massive crowds – and significant business opportunities for venues big and small. Frequently, event organizers and their partners will seek to contract with venue owners for the use of their facilities. These uses include not only the main events themselves, but also related "spillover" functions. However, these special opportunities can conflict with a venue's existing sponsor relationships. Sponsorship agreements are generally multi-year contracts which often contain highly restrictive exclusivity provisions. Such contracts offer substantial benefits for both parties, as the venue owner gets economic stability and the sponsor gets exclusive access to a valuable demographic. Without careful drafting and built-in flexibility, however, these long-term contracts can severely limit a venue's ability to host special events. One factor that makes the coexistence of long-term sponsors and special events particularly difficult is the "clean venue" policy that many special events insist upon. Many of the highest-profile special events have some version of this policy, which restricts (or eliminates altogether) a venue's existing advertising for the duration of the special event. The Olympic Games, the All-Star Game, March Madness and the Super Bowl are just a few of the events that come with heavy restrictions on existing advertising. Frequently, organizers of special events have agreed to complete industry exclusivity for their own sponsors, and these requirements are passed along to participating venues. Exclusive sponsorship deals between special events and companies in the automotive, beverage and financial services industries are amongst the most prominent examples. Unless a venue's existing sponsorship agreements provide for explicit carve-outs that allow a venue to host special events, a venue's existing sponsors are unlikely to support the removal and/or covering of the graphics and displays for which they bargained, at least absent additional costly consideration. This friction increases even more when long-term sponsors will be replaced, albeit temporarily, by their own prime competitors.

So, then, the question is this: how does a venue put itself in play to take advantage of the opportunities created by special events without poisoning its relationships with long-term sponsors? The keys to negotiating sponsorship agreements that allow for this balance include foresight, careful planning and explicit setting of mutual expectations. Venue owners in any town or city that will become host to special events need to think ahead and negotiate explicit carve-outs with future opportunities in mind. This may seem daunting, but the interests of venues and sponsors can be more closely aligned than would initially appear to be the case. In fact, carve-outs for special events can be mutually beneficial for both venues and sponsors. Often, the additional revenue generated by hosting special events is used to improve the host venue, thereby creating value for all parties involved. In sum, the process of negotiating and drafting sponsorship agreements should incorporate the flexibility needed to allow a venue to take part in major events without permanently undermining the key, long-term relationships that provide steady revenue.

This article originally appeared in Sheppard Mullin's Covering Your Ads® Blog.

TAKEAWAY: I remember hosting a traveling Gymnastic event at The Ohio State University and the fast food sponsor for the tour was different than the venue fast food sponsor. Since it was a nationally televised event we needed to cover all the venue sponsor signs or risk losing the sold-out event. The key is in the contractual language.

Trial Featuring Modern-Day David v. Goliath Looming

A legal battle between a sports industry executive and the monolithic Kroenke Sports & Entertainment, LLC (KSE) and other corporate defendants appears headed to trial next winter, where a court will decide the breach of contract and other claims.

The dispute between plaintiff Nic Salomon and the defendants arises from Salomon's failed attempt to purchase SkyCam, LLC and CableCam, LLC, two wholly-owned subsidiaries of co-defendant Outdoor Channel Holdings, Inc. (Outdoor), which are engaged in the aerial camera business (collectively, the Camera Business).

The plaintiff sued on February 27, 2015, alleging that Outdoor had agreed to sell the Camera Business to him and his investor partner, co-defendant Pacific Northern Capital LLC (PNC). As part of their negotiations for the purchase and sale of the Camera Business, the plaintiff, PNC, and Outdoor executed a "Term Sheet," dated February 27, 2013, allegedly containing promises by Outdoor (a) to deal exclusively with the plaintiff and PNC regarding the purchase of the Camera Business; (b) not to entertain any competing offers to purchase the Camera Business; and (c) not to disclose to any third-party efforts by the plaintiff and PNC to purchase the Camera Business.

Salomon alleged that Outdoor breached these promises (collectively, the Exclusivity Provision) when it negotiated a merger with co-defendant KSE, which resulted in KSE acquiring Outdoor and all its subsidiaries, including the Camera Business. The plaintiff further alleged that KSE "interfered with Salomon's efforts to purchase the Camera Business and usurped the opportunity for itself. The plaintiff further alleged that PNC breached its fiduciary duties to him by agreeing to amend the Term Sheet to give KSE the right to veto the sale of the Camera Business to the plaintiff and PNC. Based on this alleged conduct, Salomon sued the defendants, asserting claims for (1) breach of contract against Outdoor; (2) tortious interference with an existing contract and prospective relationships against KSE; (3) breach of fiduciary duty against PNC; and (4) unjust enrichment against Outdoor, KSE, and PNC."

Salomon told Sports Litigation Alert that the litigation involves "an executive who had a legally binding contract, but has limited resources, and is up against powerful corporate interests. Diplomacy is the goal, but that's not entirely in my control. From the beginning, we have been open to the idea of a settlement. But the other side has not been interested in a resolution."

KSE is one of the world's leading ownership, entertainment and management groups. Among its major properties are the Pepsi Center, the Paramount Theatre, Dick's Sporting Goods Park, the Colorado Avalanche (NHL), Denver Nuggets (NBA), Colorado Mammoth (NLL) and Colorado Rapids (MLS).

Asked about what the optimum solution would be, Salomon said he would like to see "a meeting with Mr. Kroenke. I'm sure we could resolve this."

Concealed Carry Realities Test Event Managers' Perceptions

By Tim Hipps

Mass shootings at soft-target entertainment venues in Las Vegas and Orlando served notice that intercollegiate athletic event managers must be aware of the potential of similar incidents occurring at sports events.

Football games are especially vulnerable targets, according to "Concealed Carry Weapons at Intercollegiate Sport Events: Perceptions of Division I Event Sport Managers," presented at the 2018 Sport and Recreation Law Association's annual conference by the Troy University duo of Dr. John Miller and Jeffery Curto, alongside Dr. Todd Seidler of the University of New Mexico.

The study assessed Division I event and operations athletic directors' perceptions of the potential of concealed guns being carried into athletic contests or being present at nearby tailgate activities before, during, and after games.

In 2016, three Washington state senators proposed a bill that would have allowed fans to bring guns into stadiums, such as CenturyLink Field and Safeco Field. Despite opposition by the NFL and Major League Baseball, the bill would prevent stadiums from banning fans who carry a licensed concealed weapon into their facilities.

In 2017, the Tennessee Senate Judiciary committee passed a bill that allows off-duty police officers and sheriff deputies to carry guns at sporting events at such venues as Bridgestone Arena, Nissan Stadium, and Neyland Stadium. Law enforcement personnel are to notify venues that they plan to carry a firearm at an event.

Georgia House Bill 280, effective July 1, 2017, permits anyone with a concealed carry license to carry firearms on campus, but prohibits them in buildings used for athletic events. Although GA HB 280 does not allow weapons in sports stadiums, it does not ban carrying concealed guns into tailgating areas before home football games.

"What's the thinking behind some of these?" Miller rhetorically asked. "Or is there a lack of thinking, and really understanding the setting?"

In April 2017, the Kansas Board of Regents approved plans to prohibit the concealed carry of guns in college stadiums and arenas during athletic events with 5,000 or more people.

In March 2017, Arkansas passed a law allowing concealed guns to be brought into sporting venues, including college football games. The bill was amended, making college sporting events exempt. Act 562, which took effect Sept. 1, allows people to take guns onto public college campuses and into bars, churches, and most public buildings, including the state capitol.

Associate and assistant athletic directors for events and operations at 65 Power Five conference Division I universities were contacted via email as a pre-notification regarding their participation in the study. Eighteen (28 percent) responded to the questionnaire.

The results revealed that 65 percent allowed concealed guns onto their campus. Seventy-one percent disagreed that signs existed on the college campus forbidding carrying concealed weapons such as guns. Fifty-three percent disagreed that signs existed inside and outside of sport stadiums, arenas, or fields that forbid spectators from carrying concealed guns.

Eighty-six percent agreed that intercollegiate football games provide an emotional and potentially volatile environment.

Forty-seven percent agreed that concealed weapons have become a primary safety concern;

47 percent disagreed.

Forty percent used multiple methods of checking spectators entering the stadium, such as pat-down, visual inspections, metal detectors (wands), bomb-sniffing dogs, etc. Thirty-three percent used only pat-downs. Twenty-seven percent used only visual inspections of large bags or purses.

None of the respondents' schools allowed concealed guns to be carried into their stadiums/arenas during an intercollegiate sport contest.

Seventy-five percent believed it is possible that a fan would shoot off a gun during a college football game.

"None of them allowed concealed weapons into the stadium, but seventy-five percent said they wouldn't put it past any of their patrons to get a concealed weapon into the stadium and actually shoot it off," Miller said. "Three quarters of them said it wouldn't surprise me if that happened."

Seventy-five percent revealed that spectators had been detected carrying a concealed gun into a home football game.

Seventy-one percent allowed concealed guns to be carried in the tailgating area prior to and after an intercollegiate football game at their university.

"While they didn't allow concealed weapons into the stadium, seventy-one percent allow concealed weapons into the tailgating area," Miller reiterated. "And when is the tailgating period? Sometimes it starts on Friday afternoon and goes until Sunday."

Miller, Seidler, and Curto somewhat lightened the sometimes-dark subject of concealed guns support by inserting a slide into their SRLA presentation:

"While previous studies have indicated that university students, faculty, and presidents are not generally supportive of any type of concealed weapons on college campuses, some other people are: 'Hell, I'd pay extra tuition to send my kid to a school where you not only can binge drink, you can binge drink with a concealed weapon. That's the kind of thing that prepares them for adulthood in Arkansas. Especially if my kid were a girl, because I'm ready for grandchildren and a drunk frat boy with a pistol makes a persuasive case for fatherhood.' That slide also featured a bumper sticker that read "GUNS DON'T KILL

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Summary Judgment Granted in Bowling Alley Trip-and-Fall

Ellen Rogers claimed that on November 4, 2014 that Herrill Lanes, which operated a bowling alley of the same name, negligently allowed a bowling ball bag — belonging to and set down by fellow patron and defendant Everett Freed — to remain on the concourse.

Rogers tripped on the bag en route to the restroom, and as a result, she claimed to have fractured her clavicle, pelvis and multiple ribs.

At her deposition, Rogers acknowledged that Freed placed the bag on the concourse and that she had no idea how long the bag had sat on the floor. Notably, she agreed that an incident report narrative, prepared just after the fall, was accurate; the document stated that the plaintiff tripped over the bag and ball. Rogers also admitted that she was looking up while she was walking and had no trouble seeing where she was going. Meanwhile, Herrill's general manager — who walked the alley floor 20 to 40 times per day — was in the area just 10 minutes prior to the plaintiff's fall and saw no bag on the concourse.

HRRV moved for summary judgment on Herrill's behalf, on the grounds that it did not breach any duty owed to the plaintiff; the record confirmed that Herrill did not cause or contribute to the plaintiff's fall or have actual or constructive notice of the condition that did. In fact, there was no record of similar prior incidents, no reason to supplement Herrill's already-sufficient maintenance procedures and no indication that Herrill staff knew of the bag until after the plaintiff fell.

In a fact intensive decision, Justice Karen Murphy, sitting in Supreme Court, Nassau County, granted Herrill summary judgment on all claims. Because written discovery and depositions revealed no remaining material issues of fact, the case was ripe for judgment on the merits, and the court found that Herrill did not cause, create or have notice of the condition that caused the plaintiff's injuries. The testimony from Herrill's general manager was particularly instrumental in helping Herrill establish that it did not have notice, meeting its burden on summary judgment. Interestingly — and despite the plaintiff's acknowledgment that she tripped over a bowling ball bag — the court further found certain ambiguities in the plaintiff's testimony, and concluded that the plaintiff, in sum, did not actually know what caused her to fall. As a result, the court dismissed all of the plaintiff's claims.

Rogers v. Herrill Bowling Corp; Supreme Court, Nassau County; Index No. 604589/2015; October 23, 2017. HRRV's (www.hrrvlaw.com) Steven H. Rosenfeld and Andrew J. Curtin represented Herrill Bowling Corp.

On Appeal, Patch of Mud Deemed Open and Obvious and Not Inherently Dangerous, Dismissing Baseball Spectator's Claim

By Carla Varriale and Shawn Schatzle, of Havkins Rosenfeld Ritzert & Varriale

Plaintiff Marian Sirianni was allegedly injured on June 12, 2011 while watching her grandson play youth baseball at Picken Field in Massapequa, New York. She had been standing in a spectator area behind one of the dugouts and began walking toward the field to say good-bye to her grandson. While doing so, she slipped in a patch of mud in the spectator area, sustaining injuries.

Sirianni thereafter commenced suit against the Town of Oyster Bay, which owned the public park in which the baseball field was located, and Plainedge Youth Baseball League (PYBL), the organizer of the baseball game. She alleged, among other things, that both defendants were negligent in their maintenance of the grounds surrounding the field, such that they should be held liable for negligence.

HRRV, on behalf of PYBL, moved for summary judgment on the basis that the patch of mud in question was open and obvious and not inherently dangerous as a matter of law. Similarly, in addition to other contentions, HRRV argued that the condition was a naturally occurring topographic condition that was not actionable as a matter of law. On these points, the deposition testimony of Sirianni's ex-husband was submitted, who testified that he consciously avoided mud throughout the spectator area of the field. Certified weather

reports were also submitted, among other evidence, establishing that it had rained on the day of the accident, and on each of the three days leading up to it. The Town of Oyster Bay cross-moved with similar arguments.

Sirianni's counsel opposed the motion, largely on the basis of the opinion of an expert, who opined that various structural deficiencies in the park somehow caused the patch of mud in question. HRRV argued that the expert's opinions should be given no weight, as they were speculative, conclusory and without any independent factual basis.

HRRV's motion on behalf of PYBL was initially denied by Judge Angela Iannacci of Supreme Court, Nassau County. In a brief decision, the judge held that both PYBL and the Town of Oyster Bay had failed to meet their entitlement to judgment as a matter of law and that, in any event, Sirianni raised a triable issue of fact.

However, on appeal, the Appellate Division, Second Department reversed, dismissing Sirianni's negligence action in its entirety. The appellate court determined that the evidence established that "the mud condition of the field, caused by rain, was an open and obvious condition readily observable by those employing the reasonable use of their senses, and not inherently dangerous." As it relates to the plaintiff's opposition, the Appellate Division, Second Department similarly agreed with HRRV, holding that the opinions of the expert in question were "conclusory and speculative and with no independent factual basis."

Sirianni v. Town of Oyster Bay Appellate Division, Second Department Index No. 6666/2012 A.D. Docket No. 2016-03782 December 13, 2017

Varriale and Schatzle represented Plainedge Youth Baseball League. Varriale can be reached at 646-747-5115 or carla.varriale@hrrvlaw.com. Schatzle can be reached at 646-747-5124 or shawn.schatzle@hrrvlaw.com.

Organizer Wins Summary Judgment in Golf Cart Accident

The Oyster Festival is an annual event held in Oyster Bay, New York, featuring an oyster eating contest, a handcrafts tent, live music, various food vendors and other attractions. It is organized by the Oyster Bay Charitable Fund. On October 19, 2013, plaintiff Margaret Scaley-Schaefer attended the festival with multiple family members. She was involved in an accident and eventually filed suit.

While standing near a food vendor, Scaley-Schaefer's foot was run over by a golf cart driven by Robert Brusca, who was affiliated with two nonprofit organizations that were serving as food vendors. Brusca had just delivered food obtained from a nearby restaurant to the tent of one of the vendors, and was in the process of returning the cart to its parking location. He was not employed by or otherwise affiliated with the Oyster Bay Fund.

Scaley-Schafer and her husband — asserting a derivative claim — filed suit against the Oyster Bay Fund, Brusca and the two nonprofit organizations that he was affiliated with. They asserted that all of the named defendants were negligent for allowing her accident to occur. Specifically as to the Oyster Bay Fund, they asserted that inadequate protocols were in place to avoid the occurrence of accidents like the one in question.

HRRV, on behalf of the Oyster Bay Fund, moved for summary judgment, arguing that it was not affiliated with Brusca and therefore could not be held liable for the accident as a matter of law. More specifically, and in addition to other arguments, HRRV asserted that any alleged action or inaction on the part of the Oyster Bay Fund was not the proximate cause of the accident, as any fault for the

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Professor: It Is Time to Abolish 'Baseball Rule' Protecting MLB From Liability When Fans Are Injured

With the Major League Baseball season well under way, new research from Indiana University's Kelley School of Business suggests that the risk of fans being hit by a foul ball or errant bat at games has increased in recent years.

The research, accepted for publication by William & Mary Law Review, also argues that it is time to abolish the so-called "Baseball Rule," a legal doctrine established in 1913 to immunize baseball teams from liability.

"The professional baseball industry is radically different today than it was a century ago," wrote Nathaniel Grow, an associate professor of business law and ethics at Kelley. "Nevertheless, courts continue to rely on 100-year-old legal doctrine when determining whether to hold teams liable for spectator injuries resulting from errant balls or bats."

About 1,750 fans are hurt each year by foul balls at MLB games. That's about two injuries for every three games, and that's more common than a batter being hit by a pitch, according to a Bloomberg report. This estimate does not include injuries sustained among the more than 40 million fans who attend minor league games.

Further analysis by Grow and Zachary Flagel, a student at the Terry College of Business at the University of Georgia, found that fans' risk of being hit by a flying object at MLB games has increased with the construction of nearly two dozen stadiums since 1992.

"Fans today frequently sit more than 20 percent closer to home plate than was the case throughout most of the 20th century," Grow said. "When you combine that with an increase in the speed with which baseballs are being hit into the stands, fans have less time to avoid errant balls or bats heading in their direction."

Today, the typical foul ball enters the stands at speeds between 100 and 110 miles per hour, according to the school. At that rate, a fan seated 60 feet from home plate has four-tenths of a second to react, if they are paying close attention to the action.

The "Baseball Rule" has come under increased scrutiny after a series of high-profile fan injuries in recent seasons. Despite criticism from academic and media commentators, courts have almost uniformly continued to apply the Baseball Rule to spectator-injury lawsuits. Grow believes that the Baseball Rule should no longer be applied in these cases.

"Although MLB has taken steps to increase the levels of fan protection in recent years, the time has come for courts to dispense with the Baseball Rule, and instead hold professional teams strictly liable for their fans' injuries, forcing teams to fully internalize the cost of the accidents their games produce," he said.

"Many foul-ball-related injuries could easily be avoided through the installation of additional safety netting at little cost to the team," the authors conclude. "Considering that MLB is a $10 billion per year organization, such a cost is a drop in the bucket for major-league teams, one that would almost immediately be recouped once the expanded screen prevented even just a single serious injury."

Organizer Wins Summary Judgment in Golf Cart Accident

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happening of the accident was attributable to Brusca's failure to exercise

due care. It was noted that Brusca's actions, or inaction, constituted an independent, intervening act, severing the nexus between any claimed negligence attributed to the Oyster Bay Fund.

In opposition, counsel for Scaley-Schaefer and her husband as well as counsel for some of the co-defendants, argued that the Oyster Bay Fund should have set up lanes of travel for golf carts throughout the Oyster Festival, so as to ensure that they were not used in pedestrian areas. HRRV argued that there was no factual, expert or legal basis to indicate that the Oyster Bay Fund was under any obligation to do so.

HRRV's summary judgment motion on behalf of the Oyster Bay Fund was granted by Judge James P. McCormack of Supreme Court, Nassau County. The judge noted that the Oyster Bay Fund met its burden as a matter of law on the issue of proximate cause, holding that Brusca's "actions in the manner in which he drove the cart [were] an intervening, [superseding] cause." In opposition, Judge McCormack noted that the other parties did not address the issue of proximate cause and, in any event, offered "no evidence or legal argument" to establish that the Oyster Bay Fund "should have arranged for specific cordoned-off lanes in which the golf carts could travel." He therefore granted summary judgment to the Oyster Bay Fund.

Scaley-Schaefer v. Brusca; Supreme Court, Nassau County Index No. 10064/2015 January 16, 2018

Attorneys of Record: (for defendant) Carla Varriale and Shawn Schatzle, of HRRV.

NCAA Fallout from NC Bathroom Bill Taints College Sports Landscape

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according to the study.

An anti-discrimination provision that required potential host cities of NCAA Championship events to provide an environment that is safe, healthy, and free of discrimination was adopted at the NCAA Board of Governor's meeting in April of 2016.

HB2 reversed Charlotte's anti-LGBT ordinance and any other local ordinances that expanded LGBT protections in a one-day specially convened session and set a statewide definition of protected classes against discrimination. Therefore, use of restrooms/changing facilities in government buildings were based on an individual's sex designation on their birth certificate, which in North Carolina, could only be changed after sex reassignment surgery.

"The NCAA has a very broad policy allowing for transgender individuals to participate, and when you put them in this situation, now you have individuals on a women's team who are going to have to find a men's locker room at the event and it's going to create logistical nightmares," McCoy said.

North Carolina remains the only state to pass the legislation but it has been considered by others. The study revealed that 16 states considered restricting bathroom access to the gender assigned at birth, or biological sex. Six states considered legislation pre-empting municipal or county-level anti-discrimination ordinances, and 14 considered legislation limiting transgender student rights at school.

"With North Carolina being challenged consistently on a legal basis, because of that, there's a lot of fear to do the same thing," McCoy explained.

"The economic impact is really also what is hitting them," Cebula added. "They see that North Carolina had a $400-million impact, and that's not including PayPal deciding not to place their headquarters in North Carolina."

Sports organizations were quick to support unfavorable public response to North Carolina's bathroom bill. The NCAA moved seven championship events from North Carolina in 2016. The Atlantic Coast Conference, despite being headquartered in Greensboro, North Carolina, [delete] pulled the 2016 ACC football championship game from Charlotte. Ditto for the 2017 NBA All-Star Game, which the league moved from Charlotte to New Orleans.

Six states — California, Connecticut, Minnesota, New York, Vermont and Washington–imposed travel bans forbidding their schools to compete in North Carolina or any other state that passes a bathroom bill.

"California right now bans travel to Alabama, Kansas, Kentucky, Mississippi, North Carolina, South Dakota, Tennessee and Texas," Cebula said. "They do have exceptions for contractual obligations that were signed before Jan. 1, 2017, so Fresno State played at Alabama [last] year and San Jose State played at Texas."

Going forward, however, the bans could become more troublesome.

"What really is affected, especially for California schools, is of course a push for the football championship and then the teams in the championship need to have a stronger strength of schedule," Cebula said. "But in California a school cannot play in seven states which have very strong football teams, it's going to hurt their chances of getting to the college football playoff and the national championship game and they could potentially lose a lot of money without being able to participate in those events."

The Texas Association of Business opposed the Lone Star State's version of a bathroom bill, citing a $400-million loss of business in North Carolina, according to the study.

"The Texas Association of Business that looked into the bill before they passed it, knowing how much North Carolina lost, they said: 'Wait a minute, it's not about a specific quality, it's about how much money is it going to effectively cost the state? It's just not worth it,'" McCoy said.

When the Texas bill was in consideration, the NCAA threatened to remove the men's basketball championship 2018 Final Four from San Antonio, and the NFL noted that Texas would not receive any more Super Bowls if the bill became law, the study revealed.

"The threats have been there [to pass another bathroom bill]," Cebula said. "In Texas, when the NFL told Jerry Jones 'We're not putting a Super Bowl in your stadium if y'all pass this legislation,' so much for that.

"The teams are not doing direct lobbying. They're saying it publically, or they're saying it to the owners, and then the owners are going to the state and saying, 'Hey, we're going to lose all this money for not having the NBA All-Star Game, or for not having the Super Bowl. You need to think about that before you pass this legislation."

"The Texas business association that looked into the bill before they passed it, knowing how much North Carolina lost, it's a GOP-run association, and they said: 'Wait a minute, it's not about the specific quality, it's about how much money [it is] going to effectively cost the state? It's just not worth it because it's something that you really can't enforce,'" McCoy said. "You'd basically be doing actual genital checks to make sure."

The Dallas Stars, scheduled to host the 2018 NHL Draft, also went on record to protest the legislation with a public statement.

Meanwhile, North Carolina faces a dilemma like no other.

"The money that is running our Republican party in North Carolina is insane," said Barbara Osborne, J.D., a professor

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Lasting Legacy of Art Modell Felt As Columbus Crew Seeks To Set Sail

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six months' advance notice of the owner's intention to cease playing most of its home games at the facility and, during the six months after such notice, gives the political subdivision or any individual or group of individuals who reside in the area the opportunity to purchase the team.

Essentially, if a team owner receives assistance from local taxpayers, that team owner has to provide at least six months' notice prior to moving his or her team to another locale so as to provide local parties the opportunity to purchase the team and keep it in its current location.

This, then, brings us to the ongoing explorations for new horizons currently taking place in Columbus. Last October, the owner of the Columbus Crew Major League Soccer team, Anthony Precourt, announced a desire to move the Crew from Columbus to Austin, Texas. Despite playing in the first soccer-specific stadium built for any MLS team, Precourt is unhappy with the lack of support to build a replacement for his 19 year old facility. Precourt's desire to relocate has, as one would suspect, been met with a level of unpopularity by fans and elected officials alike. These feelings are further exasperated on a local and state level as the city and state have provided considerable benefits to the Crew in the nature of approximately $5 million in state taxpayer-funded improvements to team parking facilities, a state property tax exemption for the land on which the team's stadium sits, a land lease from the state at a below-market rate, more than $300,000 in city taxpayer-funded reimbursements of team costs in moving portions of a storm sewer and constructing a water line, and a Tax Increment Financing and Economic Development Agreement with the city of Columbus to increase access to the team's stadium currently costing the $1.3 million in tax revenue.

As a result of Precourt's ongoing efforts to relocate to Austin, the state of Ohio and the city of Columbus filed suit on March 5, 2018 (subsequently amended) seeking to enforce the provisions of the Art Modell Law against Precourt Sports Ventures, Team Columbus Soccer and Major League Soccer. The lawsuit filed in the Court of Common Pleas for Franklin County, Ohio seeks a declaratory judgment that the defendants are bound by the provisions of the law, injunctive relief preventing the defendants from moving the team from Columbus to Austin absent compliance with the law, and continuing oversight of the court to ensure that the defendants negotiate in good faith with the city of Columbus and/or any third-party locals desiring to purchase the Crew.

The defendants responded with a motion to dismiss on April 19, stating that the court "should decline Plaintiffs' invitation to weaponize" the Ohio law. As a preliminary matter, the defendants argued that the law applies only to a team "owner" that meets both of two, separate, criteria. First, the owner's team must play in a "tax-supported facility." Second, the owner must "receive[] financial assistance" from the state or a political subdivision. The defendants allege that Major League Soccer is the only defendant that could possibly be subject to the law as it is the "owner" of the Crew—but that MLS is not subject to the law as there was no allegation by the plaintiffs that MLS currently receives the financial support necessary to trigger a strict reading of the exact language of the statute.

Defendants' motion to dismiss goes on state that the law "is also blatantly unconstitutional" in that it violates the dormant Commerce Clause of the United States Constitution (as it both discriminates against out-of-state residents and impermissibly interferes with Defendants' abilities to conduct their business operations in interstate commerce) and the Privileges and Immunities Clause of the United States Constitution (as it limits potential prospective purchasers to Ohio citizens at the expense of the citizens of every other state). Defendants further state that the law is void for vagueness, violates the Ohio Constitution and Ohio law to the extent Plaintiffs seek the authorization of the unconstitutional taking of intangible property, and would violate the Contracts Clause of the United States Constitution and its Ohio counterpart by attempting to interfere with the ownership structure of MLS (a Delaware limited liability company).

Though the office of Ohio Attorney General Mike DeWine released a statement in response to the defendants' motion to dismiss stating that "[the plaintiffs] will strongly oppose this motion to dismiss and respond further in court," this lawsuit presents a number of issues that could see it settled well before a final judicial determination on the merits. Foremost among these issues is that the lawsuit is a case of first impression in that the law has not previously been subject to judicial scrutiny and tested as to its validity. As such, there is a considerable level of uncertainty- and risk- on both sides. Further, there would seem to be a business solution that would work for the benefit of all involved parties. For purposes here, it will be assumed that Austin would prove to be a viable location for a MLS team, and that there would be a party willing and able to pay the approximately $125-150 million that the Crew is currently valued at. Precourt is currently in a situation where, should he lose the current litigation, he would be forced to field a team in a city (at least for another season) that he tried to abandon- meaning that fan support would be dwindling, if an outright hostile environment wasn't present. To that end, it would be worthwhile for Precourt to secure a purchaser for the Crew, and then relocate to Austin as an expansion team. This way, Columbus would keep its team under ownership that wants to be in the city, Austin would get a MLS

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NCAA Fallout from NC Bathroom Bill Taints College Sports Landscape

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and coordinator for the graduate program in the sport administration specialization at the University of North Carolina at Chapel Hill. "The only thing we can hope to do is to elect them out of office, but because of the gerrymandering that was nearly impossible. So we now have two Supreme Court decisions that have said that you can't racially gerrymander and you can't politically gerrymander, but for our next election, all of those precincts are still in there gerrymandered state. ... They're just stupid."

TAKEAWAY: The polarization of political opinions might forever affect all sport venues. Whether the ability to carry guns or if a venue hosts a political or religious event, the political fallout can last for years regardless of the position taken. Stakeholders need to be aware that a venue is constantly walking a tight rope of public opinion and in our quick-to-judge culture, a venue might not have time to defend its actions before irreparable harm is done.

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team on a timeline that would allow for the creation of a proper facility, Precourt would not be biding time in Columbus until a move to Austin was possible, MLS would add another team, the state of Ohio would have the ongoing threat of a valid statutory provision, and the litigation would be resolved in a manner controlled by the parties rather than a court.

While a negotiated settlement of the current lawsuit would seem to be in the best interests of all involved parties, this will be a fascinating case to watch should it voyage through increasingly-higher courts on its way to a final determination.

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Concealed Carry Realities Test Event Managers' Perceptions

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PEOPLE" atop a sketch of a handgun and "DADS WITH PRETTY DAUGHTERS DO" encircling the bottom.

Having an understanding of the perceptions of major university sport event managers regarding having concealed carry weapons in intercollegiate stadiums, arenas, or fields will help similarly positioned individuals at other intercollegiate and interscholastic programs, as well as state legislators, the study concluded.

CURRENT ISSUES

Police Arrest Six Accused of Planning Berlin Half Marathon Stabbing Rampage

German authorities, tipped off by a foreign intelligence agency, arrested six conspirators and foiled an alleged plot intended to inflict horror, according to a report in the Washington Post. The arrested men had planned to wade through dense crowds of runners and spectators at the Berlin Half Marathon, using knives to slash at anyone in reach, authorities said. More than 36,000 people participated in the event, setting an attendance record, according to BBC. The race was guarded by more than 630 police officers and went off undisturbed.

https://www.washingtonpost.com/news/worldviews/wp/2018/04/08/police-arrest-6-accused-of-planning-stabbing-rampage-during-berlin-marathon/?utm_campaign=08acef4f52-EMAIL_CAMPAIGN_2018_01_18&utm_medium=email&utm_source=Main%20Mailing%20List&utm_term=.4ab141297249

TAKEAWAYS: Sporting events are still a prime target and vigilance needs to be exercised from various threats. Besides metal-based concerns, such as guns or knives, new concerns are arising about the potential harm of non-metallic items. As often as we develop policies and procedures to address possible concerns, others are finding new techniques to cause potential harm.

A Fake Wrestling, Concert Promoter Was Sentenced to 57 Months in Prison

Gabriel Reed has been promising investors for years that he can bring in a given act to town- whether a major concert or a World Wrestling Entertainment events. Those fake promises have now landed him in jail for 57 months. The Texas-based Reed had been operating as Gabe Reed Productions and will serve time on federal wire fraud charges after he used the funds he raised for personal expenses, like rent and travel.

Reed had become so infamous in promoting circles, that one defrauded investor started a Stop Gabe Reed twitter account. Reed had faced a number of lawsuits dating back to 2011 and bilked one investor out of $350,000 when he promised the mother he would book her daughter as an opening act for a major concert. This and other judgements were never repaid.

According to the affidavit in support of the criminal complaint, Reed bilked investors for various fake concerts by touting his alleged longstanding relationships with famous musicians, parading props from alleged tours, and even creating fake financial records from other purported music events.

https://blogs.findlaw.com/tarnished_twenty/2018/04/fake-wrestling-concert-promoter-sentenced-to-57-months-in-prison.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+TarnishedTwenty+%28Tarnished+Twenty%29&DCMP=NWL-cons_sportslaw

TAKEAWAY

While there are numerous great people in the facility management field, there are a number of charlatans and we have to do a better job of warning people when someone has proven to be a fraud. That is why it is critical to prove the validity of claims raised by unproven promoters.

Man Shot and Killed While Exercising at Michigan Health Club

A man who was exercising at The Rock Fitness Center in May was shot and killed, according to a Flint Police Department official. The victim was killed by two men who entered the club claiming to be repairmen.

http://www.clubindustry.com/news/man-shot-and-killed-while-exercising-michigan-health-club?NL=FBP-03&Issue=FBP-03_20180503_FBP-03_926&sfvc4enews=42&cl=article_1&utm_rid=CNHNM000000234383&utm_campaign=25658&utm_medium=email

TAKEAWAYS: While this is not a common occurrence, the number of people killed at clubs has increased over the years. In fact, behind vehicular related deaths, workplace violence was the number two causes of deaths for sport industry employees. Steps should be taken to secure entryways and develop protocols for front office employees when faced with a potential workplace violence situation. Some venues have a code word or phrase used when a suspicious person enters a facility, such as "Mr. Black for the General Manager."

Workplace Training Study Results Released

Axonify recently released a study on the state of workplace training. Some of the shocking results include: almost a third of surveyed employees do not receive any formal workplace training, employees have acknowledged that on-the-job training is effective, effective training helps employees feel more engaged, and that the training delivery method is critical for it to be effective. The results help show that while training is critical, it is often not done, ineffective, or delivered in a manner that is not as beneficial.

TAKEAWAY: A key issue I have examined for years is how to provide more effective training and education. Having safety training for one day before a season is a good start, but, to make training as effective as possible, such training should be reinforced with more information. For example, regular briefings, additional training, and anything else that could help reinforce basic safety practices.

