

# SPORTS FACILITIES

How the law affects the sports facilities industry

and the

**LAW**

## Implications of Increased Drone Operation Around Stadiums

By John E. Tyrrell; Patrick J. Mc-Stravick and Kelly J. Woy, of Ricci Tyrrell Johnson & Grey

Over the last five years, there has been a considerable amount of growth in the operation of drones—referred to as unmanned aircraft systems (UAS)—in both the United States and abroad. While the use of drones may provide benefits and opportunities—from commercial to artistic to recreational—it also comes with complications and concerns, such as those related to privacy and security. One of the concerns related to the increase in drone use is the disruption and potential threats posed by drones flying in or near stadiums.

According to data collected by the Federal Aviation Administration (FAA), which regulates the operation of UAS in

the United States, as of September 2018, more than 900,000 recreational/hobby UAS owners had been registered with the FAA since registration began in 2015, and monthly owner registration averaged around 8,000-9,000 during January to December 2018, with some peaks during the holiday season and summer. The FAA predicted, based on the number of recreational/hobby drone operators registered as of December 31, 2018, there are around 1.25 million drones being operated as model aircraft.

Unlike the rules for recreational/hobby drone operator registration, rules for commercial/non-hobby registration require owners to register each UAS. According to the FAA, for the calendar year 2018, more than 175,000 commercial/non-

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## Dismissal of Claim That City Was Liable in Slip and Fall Affirmed

A Minnesota state appeals court has affirmed the ruling of a lower court, dismissing a patron’s claim that the City of Edina (COE) was negligent when the patron slipped and fell on ice while approaching a sports facility.

In sum, the court affirmed that the condition that caused the fall was not created or maintained by the COE.

In this appeal from a district court’s grant of summary judgment dismissing appellant’s claim that respondent’s negligence caused her to slip and fall, appellant argues that the district court erred in applying recreational-use immunity under

Minn. Stat. § 466.03, subs. 1, 6e, 23 (2018) and the “mere slipperiness” rule. We affirm.

The incident occurred on Jan. 31, 2015, when plaintiff Lynn Baker Handelman-Seigel was on her way to the Edina Community Center (ECC) to attend a youth basketball tournament. A few feet from the entrance, she slipped and fell on a patch of black ice that she described as approximately two basketballs long and one basketball wide. Handelman-Seigel first thought that she only sprained her ankle and attended the basketball tournament as planned. She

later discovered that she had a broken ankle and suffered what she describes as a “serious knee injury.” To address her injuries, Handelman-Seigel claims that she underwent one surgery and will need “additional surgery.”

In May 2017, she sued the COE’s Independent School District #273 (ISD #273), which owns and operates the ECC, alleging negligence. In June 2018, the district court granted summary judgment to the defendant, finding that both the “mere slipperiness” rule and statutory

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## Passion for Sports Drives Insurance Agency, Monument Sports

The number of insurance agencies in the sports industry is a modest few, influenced by the increasingly litigious nature of participants, parents, and others as well as other factors.

Most agencies are moving away from the industry.

But not Monument Sports (<http://www.monumentsports.com/>), an agency that embraces its mission “to address the specific needs of professional and amateur sports organizations, businesses, and individuals.”

The company is all in, as evidenced by the following passage on its web site: “sports related exposures and risks differ significantly from the risks involved in the general insurance marketplace. Monument Sports recognizes these differences and is committed to delivering tailor-made programs and services. As sports insurance specialists, we help our clients identify,



**Mark Grossman**



**Zack Morgan**

understand, and manage their risks. We assist our clients in placing: Commercial General Liability, Workers Compensation, Property, Participant, Accident/Supplemental Medical, Business Auto, Umbrella and other coverages.”

To learn more, we interviewed Monument Sports President Mark Grossman and Zack Morgan about the company’s place in the industry.

**Question:** *How and when did Monument Sports get its start?*

*Answer: Monument Sports was formed*

*and began operating Aug 1, 2000. Our president Mark Grossman had been in the insurance business for 18 years at that point, and had developed a specialty in professional and amateur sports. He realized that there were no insurance agencies dedicated to this level of sport, and formed the company accordingly.*

**Q:** *What percentage of your business is in the sports industry?*

**A:** 100 percent. We only focus on sports and recreation insurance.

**Q:** *How is your customer base in the sports industry divided, and what services do you sell in those segments?*

**A:** I would say our customer base is divided based on sport and level of competition. We have several “programs” that focus on a specific exposure or sport, and in addition to that, we work with profes-

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## SPORTS FACILITIES and the LAW

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## From Usher at Dodger Stadium to Head of one of the Sports Industry's Top Facilities, Gutierrez Earned His Way to the Top

**R**aul Gutierrez never assumed success. In fact, he never assumes anything, which he discusses in the following interview. But he has certainly planned for it. Early on in his career, he adopted a strategy of embracing every opportunity he was given, whether it was a new job or a new skill. And it certainly paid off.

Gutierrez recently left his post as the Executive Director of Arena Operations at T-Mobile Arena in Las Vegas to pilot the NFL's hottest new stadium, Allegiant Stadium, which is also in Vegas. While it won't open for another 50 weeks, Gutierrez' steady hand should ensure a smooth launch.

While at T-Mobile Arena, he was responsible for all front of house operations including Guest Services, Security, Safety & Emergency Services, Parking & Transit, Box Office, IT, Facility Presentation, Production and Venue Operations. The Arena, which has been named Venue of the Year by Pollstar, Billboard and numerous industry and trade outlets, is the fourth venue Gutierrez has opened.

Prior to leading the team at T-Mobile Arena, Gutierrez served as the Assistant General Manager of Barclays Center in Brooklyn, New York, directly overseeing operations for Security, Traffic, Guest Services, Box Office and Events departments along with managing city and transportation agency relationships. He began his tenure at Barclays as the Vice President of Events and Security as part of the venue's opening staff in 2012.

Prior to Barclays Center, Gutierrez was the Senior Manager of Guest Services and Security for BBVA Compass Stadium in Houston, a soccer-specific venue and AEG Facility which opened in May 2012.

A native of Los Angeles, he began his career with the L.A. Dodgers and spent more than 20 years working in a variety of roles, including Assistant Manager of Security and Guest Services. In addition, Gutierrez opened Nokia Theater (now Microsoft Theater) in Los Angeles and worked at Staples Center

as well as Home Depot Center (now StubHub Center) in Carson, California.

His experience and successful approach made him a great candidate for the following interview.



**Raul Gutierrez**

**Question:** *Twenty-four years is a long time at one place. What led to your decision to leave the Dodgers organization?*

**Answer:** It really came down to the fact that I saw an opportunity to grow. I was very fortunate when I took the position at Home Depot Center as a Guest Services Manager, while still working for the Dodgers. I got to learn a lot of the nuances of how the industry works, whether it involved marketing, ticketing, security, operations, conversion, et cetera. Ultimately, I realized I hit my ceiling there, and that there was only one way to grow. I got a chance to become a Senior Manager of Security and Guest Services in Houston for Reliant Stadium. That opportunity to put my skill set to use is why I needed to leave the Dodgers organization.

**Q:** *Guest services has been part of your title or job description for a very long time. How has the meaning of that term changed through the years?*

**A:** It's actually gotten a little more complicated. I say that because fans have an expectation of a certain dollar value. We know that not everybody can afford to come to a game or an event. I'm asking my Guest Services staff, who rely on their jobs, for the most part, as a secondary income, to deliver quality customer service. It's a challenge.

**Q:** *What role has technology played with the Guest Services staff?*

**A:** I'm teaching folks who have been established in a part-time gig for several years how to use ticketing scanners, how to use mobile ticketing devices, etc. They're using

a printer at their hip now. They have to wait for the beep or the X to show up, and then push a button for the tickets to come out. Teaching folks how to use technology, when they're not used to it or comfortable around it, has been a challenge. It's not just our staff, either. It's the fan, who is being encouraged to use new technology. So we're learning together. The way we've navigated the gap of how to use technology is a big part of the business right now.

**Q:** *What is the secret to minimizing conflict between security personnel and fans?*

**A:** I would say it comes down to communication. There's going to be individuals who will listen, and those that won't. Honestly, 10 percent of the fans are troublesome. They'll come into your venue, maybe having a bad week at work and going to blow off some steam with the boys, or they're going to just have too much to drink and let loose here. This is especially true in Las Vegas. Everybody comes here to get away from their worries. Especially, now with hockey. With the NHL team, the Golden Knights, this is a destination trip they circle on the calendar and plan. They're going to enjoy themselves. Some people take it to the extreme. But if we communicate what the policies are, what the expectation is, then we are fine. That starts at the venue website, then when we interact with the guests when they are walking into the venue about things like prohibited items or codes of conduct.

It's about how we message it out, how to make it visible. We use some of the local talent in Las Vegas to promote good behavior. That goes a long way because people will pay attention to a celebrity spokesperson. They think: "Hey, why are they talking to me." It's getting that message out.

**Q:** *And how do you deal with conflict?*

**A:** Conflict comes from confusion. Folks are not informed. Folks may be misled or misinformed. So the challenge from an op-

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## Gutierrez Earned His Way to the Top

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erations perspective is how do you provide consistent and accurate information. And that comes, in part, from everybody on my team being on the same page.

It's also about meeting with our tenants and our promoters, on what their expectations there are. There's some tours out there that have clear bag policies. But not every venue has that. That's a challenge in getting those communication pieces out to the market. Before, you used to just put it on the ticket, or a flyer, "Only clear bags," where now it's social media. It's on your website. It's how do you get that message out to everybody.

**Q:** *What new and emerging developments worry you the most when it comes to protecting fans and participants right now?*

**A:** Technology, quite honestly. In these outdoor spaces you have drones, and all their capabilities. Drones can be great for gathering information. But they can also be used to drop a device into a crowd. Or

they could be used to gather information to plan an attack. You just don't know what the purpose is.

Social media is another one. We've seen fans use social media to bully other fans sitting on their area, or even performers. There's both good and bad with social media.

**Q:** *What advice would you give someone who's just starting out in the business if they want to be successful?*

**A:** Honestly, it is about taking advantage of your opportunity. I've been told "No" so many times. "No, you're not qualified for this job. You don't have enough experience." You're only going to gain experiences by doing it. A great example of this is standing at a gate for an event. This will make you a better manager when you have to manage that person in that situation. You're empathetic to their environment.

I started out as an usher at Dodger Stadium. I did every position that I would

ultimately manage. I worked my way up through the ranks in a blue-collar manner. You just have to take advantage of all opportunities. And when you volunteer to do a job that nobody else wants to do, guess what, I'm going to remember you.

Second, don't assume anything. Don't assume the information was communicated. Don't assume your area was inspected. I live that. My team lives that every day. That's what made me successful. I just double check. I'm not micromanaging, I'm just saying I'm inspecting my work. I'm inspecting my area. That's what I do, I don't assume.

**Q:** *Were you an usher when Kirk Gibson hit his famous home run in the World Series?*

**A:** Absolutely, I was an usher. I was on top of the Dodger dugout when he hit it. And to this day, in my 30 some odd years, that is the loudest I've ever heard a crowd in a venue, whether indoor or outdoor. I think, in some ways, that sensation, that rush kept me in the business because it was absolutely a once lifetime experience. I have never had the chance to replace that feeling. It was amazing,

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## Sports Venues and the Americans with Disabilities Act

By Ryan C. Chapoteau and Gregg E. Clifton, of Jackson Lewis

Throughout the country, sports teams and their venues have been hit with an uptick of public accommodation lawsuits under Title III of the Americans with Disabilities Act (ADA), along with its state and local counterparts. The ability to obtain attorney's fees makes these cases attractive to plaintiffs' firms.

Plaintiffs include fans, who team up with firms to travel around facilities or sign onto websites to "test" ADA compliance, and others who felt aggrieved after attending an event.

The claims range from not removing physical barriers to access, restricting fans with dietary restrictions from bringing outside food, forbidding service animals to enter, as well as operating websites that are inaccessible to those who are visually impaired or blind.

Title III of the ADA was passed in 1990. It provides that "[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,

advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). The law has required sports teams to make reasonable modifications to policies, practices, and procedures to make their goods and services available to people with disabilities. Plaintiffs argue that this applies to physical locations as well as commerce-driven websites despite differing court rulings.

While some companies opt to settle claims early to avoid the cost of litigation, others are taking a hard stance and defending their ADA compliance in court. For example, this past June, in *Nevarez v. Forty Niners Football Co. LLC*, No. 5:16-cv-07013 (N.D. Cal.), the San Francisco 49ers moved for the court to deny the plaintiffs' claims and declare that the team's stadium complies with all federal and state public accommodation laws. The plaintiffs include a class of wheelchair-bound fans and their family members who assist them. They allege the property does not comply with accessibility standards for wheelchair use in and around the stadium.

The lawsuit seeks to correct hundreds of supposed claims including, for example, barriers between satellite parking lots and the stadium, a lack of accessible seating at all price levels, restrictions to disabled and non-disabled groups purchasing tickets together, and physical obstacles within the stadium. Along with requesting the defendants to make repairs, the plaintiffs are seeking statutory damages and attorneys' fees.

The defendants argue that certain parking lot accessibility issues have already been corrected and the remaining allegations do not violate disability laws.

If the case proceeds to trial, it will be interesting to see how a jury rules, as the court has already decided that it will review only a sampling of barriers to determine whether the stadium met accessibility standards.

This case is only one recent reminder of the ongoing Title III disability-related litigation, generally occurring in California, Florida, and New York. There does not appear to be an end of these claims in sight. Sports leagues, teams, and stadium operators should consider reviewing their policies and websites with counsel before being hit with litigation.

## MLB Ballparks Will Soon be Safer for Fans

By Jordan Kobritz

In 2014, Bloomberg News estimated 1,750 fans per year are injured by batted balls at Major League ballparks. Hundreds more are injured at Minor League ballparks. While deaths are rare — only three have been recorded in 170 years of professional baseball, two of them at Dodger Stadium — some injuries are serious.

Most foul balls occur in the area directly behind home plate. Until recently, that was the only area of the ballpark protected by netting. In 2015, MLB encouraged teams to extend netting from home plate to the near ends of both dugouts. Due in part to

a spate of serious injuries and the urging of the players, by 2018 all 30 stadiums had exceeded that recommendation, having installed netting to the far ends of the dugouts.

Yet injuries persist. This year, a two-year old girl was seriously injured by a 106-mph line drive in Houston's Minute Maid Park. Less than two weeks later, a woman sitting past the third-base dugout at Guaranteed Rate Field, home of the Chicago White Sox, was struck in the face. Following that incident, a hard line drive landed on the head of a fan sitting beyond the netting on the first-base line in Dodger Stadium. Those incidents prompted the website

FiveThirtyEight to ask the question: Which areas of the ballpark are the most dangerous for fans?

There's no central database of the location of foul balls in MLB ballparks so the website turned to Baseball Savant, a website operated by MLB Advanced Media, for information. A search of their batted-ball data identified the 10 highest foul ball totals at a single game played in 10 different stadiums prior to June 5 this year. Stadiums ranged from old — Dodger Stadium, the third oldest ballpark in MLB — to new — Sun Trust Park in Atlanta, MLB's newest ballpark. The ballparks varied in architecture, altitude and

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## MLB Ballparks Will Soon be Safer for Fans

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seating arrangements. The total number of foul balls examined was 906.

An analysis of the data revealed that the unprotected areas between the far end of the dugouts and the foul poles received almost as many foul balls as the area from home plate to the ends of the dugouts. More importantly, the foul balls hit in the unprotected areas had a higher exit velocity. Of the fly balls with recorded exit velocities of 90 mph or higher, 71.8 percent landed in unprotected areas, meaning fans had less time to take protective action even when they were aware of imminent danger. Those were the types of foul balls that injured the toddler in Houston this year and blinded a man in one eye at Wrigley Field in Chicago in 2017.

Even Congress has weighed in on the netting debate. At the end of June, Illinois Senators Tammy Duckworth and Dick Durbin sent a letter to MLB Commis-

sioner Rob Manfred asking that every MLB team extend the protective netting at their ballparks to prevent fans from being struck by foul balls.

The age-old argument against expanding the netting was based on the belief that most fans wouldn't accept watching a game through a net. Today's netting is barely visible, thanks to advances in technology that have led to a knot-less product that offers a higher degree of transparency than traditional netting.

After the incident at Guaranteed Rate Field, the White Sox became the first MLB team to extend the netting from foul pole to foul pole. Other teams quickly followed the White Sox' lead. Currently, eight MLB teams have either extended their netting or announced they would do so before Opening Day next year. Almost as many MiLB teams have taken similar action, including a team I have an equity interest in. The

ballpark for the relocating New Orleans Baby Cakes, who will play in a new stadium currently under construction in Wichita, will have protective netting from foul pole to foul pole.

Fans should be aware that the additional netting is no guarantee of protection from foul balls. The fan killed in Dodger Stadium last year was sitting in a protected area when a foul ball went up and over the net. Nonetheless, expanding the netting will protect additional fans and is something that is long overdue.

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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.

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## The District Gives Final Approval to the Class Action Settlement in the St. Louis/St. Louis Rams PSL Litigation

By Jeff Birren, Senior Writer

When the then Los Angeles Rams moved from Orange County, California to St. Louis in 1995, personal seat licenses (PSLs) were sold to fans in St. Louis for the right to annually purchase season tickets. Originally, the PSLs were sold by an entity called FANS, Inc. though somewhat later the Rams took over those sales. After the Rams announced that they were moving to back to Southern California, litigation naturally followed. St. Louis PSL holders who had paid hundreds if not thousands of dollars for the right to purchase season tickets in St. Louis filed much of the litigation.

These pages ran a three-part series that looked at the St. Louis PSL litigation. In the last installment, the United States District Court for the Eastern District of Missouri, Eastern Division, had just given preliminary approval to the proposed settlement (*Sports Litigation Alert*, Volume 16, Issue #3, “Rams Settle Some of the St. Louis Litigation, Part 3,” February 14, 2019). That came on January 24, 2019. Recently the same court granted final approval to the settlement.

Specifically, five months to the day later, Judge Stephen N. Limbaugh, Jr. signed the Final Order and Judgment and Findings of Fact, Conclusions of Law and Order pertaining to Attorneys’ Fees, Expenses and Incentive Awards in *Ronald McAllister, et al., v. The St. Louis Rams, LLC*, United States District Court for the Eastern District of Missouri, Eastern Division, No. 1:16-CV-00172-SNLJ; 4:16-CV-00262; 4:16-CV-00297, Consolidated (“*McAllister*”), (“Final Order” Doc. #405; “Findings of Fact” Doc. #404), 6-24-19).

The Final Order turns the proposed settlement into a judgment. “Class members and the Rams shall be bound by the Settlement Agreement and releases contained therein, and this Order and Final Judgment, and Class Members do not have any further

opportunity to out of this litigation” (*Id.* ¶ 6, at 2). Class members that did not file timely objections are «deemed to have waived any such objection,» but in fact, no «timely objections have been filed and the only untimely objection received has no merit and is thus denied» (*Id.* ¶ 7, at 3). An objection that is both untimely and without merit is unlikely to get relief on appeal, so this settlement is likely now final.

Consequently, all claims but one by a Richard Hellmer “who validly and timely requested exclusion from the Class” and the claims for indemnity by the Rams against the St. Louis Regional Convention and Visitors Commission (“CVC”) were “dismissed with prejudice” (*Id.* ¶ 8, at 3). The dispute between the Rams and the CVC over the responsibility for some of the required payments had previously been sent to arbitration, where it remains. The court kept “jurisdiction over implementation of the Settlement Agreement and all parties” (*Id.* ¶ 12, at 4).

The Findings of Fact spells out the payouts to class counsel and class representatives. The class counsel in the “FANS Class” and the “Rams Class” cases will each receive \$3.6M. The FANS Class counsel will also receive \$64,695.81 for expenses. Rams Class counsel will receive \$135,304.19 for expenses. Plaintiffs Ronald McAllister and

Richard Arnold will each receive \$20,000; plaintiff R. McNeely Cochran will receive \$7,000; and plaintiff Brad Pearlman will receive \$3,000. These payments will come directly from the Rams “and will not come out of the funds to be received by Class Members” (*Id.* ¶ 1, at 1.) Not included in either the Final Order or the the Findings of Fact, but contained in the proposed settlement previously filed with the Court, is that the Rams will pay \$12M each to the FANS Class and Rams Class (*McAllister*, Motion for Approval at 22).

The Court also determined that the Settlement Agreement sets forth reasonable procedures and deadlines for payment” (*Id.* ¶ 2, at 1); that the request for attorney fees was «fair and reasonable» and that both the fees and incentive awards to class members were all authorized by federal law, (*Id.* at ¶ 3, 4, 5, at 2). The Court concluded by stating that the payments were to be made «pursuant to the procedures and deadlines set forth in the Settlement Agreement» (*Id.* #4, at 3). 2019 is going to be a very good year for some in St. Louis.

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Birren is an adjunct professor at Southwestern University School of Law and former general counsel of the Oakland Raiders.

## Case Examines What Is a Buffer Zone?

By Gil Fried

What is the definition of a buffer zone? It is an area that provides buffer between area and items to provide a safe area. While some facility managers might not be as familiar with the term, they are normally very familiar with the concept. There needs to be enough room at a sport facility to make sure participants and spectators are safe from possible harm. It is not enough that facility managers need to understand and have an appropriate

buffer zone, but attorneys also need to understand the concept.

This concern was brought to the forefront in a recent case, *Krzenski v. Southampton Union Free School Dist.* (2019 N.Y. App. Div. Lexis 4421 and 2019 WL 2363616). The plaintiff in that case was injured while playing floor hockey in the defendant’s gym. The plaintiff was allegedly hit in the back by an opposing player, pushing her into an unpadded metal

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## Case Examines What Is a Buffer Zone?

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railing of the bleachers. The bleachers had been extended and were being used as the sideline boundaries for the game. The plaintiff had played in the gym before with the same configuration.

The defendant moved for summary judgment based on primary assumption of risk. As the court highlighted, the risks inherent in sporting events are those that are known, natural, and reasonably foreseeable consequences of participation. This includes risks associated with the construction of the playing surface and any associated open and obvious conditions of the playing surface. Furthermore, the court concluded that participants do not assume risks that are concealed or unreasonably increased over and beyond the usually inherent dangers of the sport.

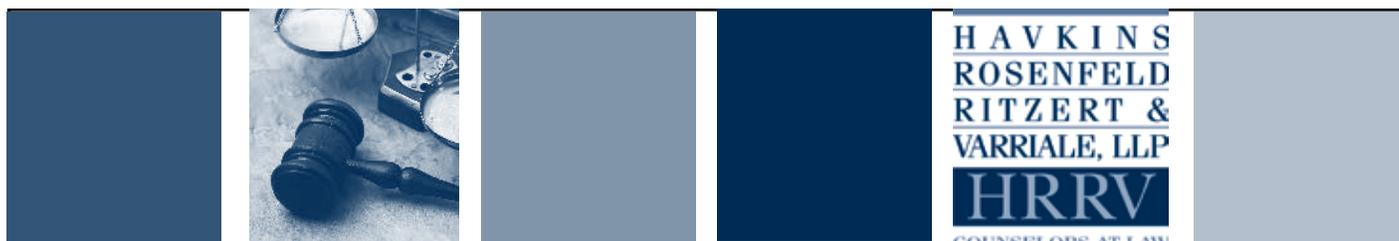
What drew my attention was the fact that the plaintiff failed to raise a triable issue of fact as to whether the failure to pad the

metal railing on the bleacher stairs or to use a buffer zone between the bleachers and the playing area created a risk beyond the risks inherent in floor hockey. In particular, the court noted, the plaintiff's expert failed to accurately identify a violation of any specific safety standards which was applicable to floor hockey.

This raises an important concept for any attorney litigating a buffer zone related case. When retaining an expert they need to make sure they can identify the exact court dimensions and how much room is needed to safely play a sport. While there are some well-established ideas of buffer zones, not all purported buffer zones have been tested. I published a peer reviewed paper with several colleagues earlier this year on basketball buffer zones. There are numerous other sports where there might not be a tested or codified buffer zone. In that case, a reasonable buffer zone might

need to be used as a frame of reference. In one volleyball case I worked on that went to trial, the question of how much space was needed beyond the boundaries was needed for volleyball. Volleyball differs from many sports in that a player can run 20 feet outside the court lines and return a ball and it would have been in play the entire time. In my case, the plaintiff slipped on netting (used to separate activity in the building) that was 15 feet behind the court's endline. The case went to a jury who concluded that 15 feet was a reasonable distance and we were able to receive a defense verdict.

Gil Fried is an internationally recognized expert on stadium safety and risk management, sport finance, and sport analytics. He is also a sports law professor and chair of the sports management department at the University of New Haven.



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## Implications of Increased Drone Operation Around Stadiums

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hobby owners/operators registered their equipment, and the pace of monthly registration, almost 15,000, is nearly 3-times higher than the pace at which commercial aircraft owners registered their craft during the same time last year. By the end of 2018, there were more than 277,000 commercial/non-hobby aircraft registered since registration opened.<sup>1</sup>

The increase in number of drone registrants has led to an increase in concerns and issues related to unauthorized drone operation.

### Federal Regulation of Drones

The FAA defines a UAS as “an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft”. A small unmanned aircraft system (sUAS) is an unmanned aircraft weighing less than 55 pounds at takeoff. 14 CFR part 107.3. The FAA regulates the operation of UAS under 14 CFR part 107, which sets forth requirements for certification, registration and operation of UAS. The FAA Reauthorization Act of 2018 (Pub. L. 115-254) provides limited conditions to operation of recreational UAS without requirements for FAA certification or operating authority. Both recreational and commercial operators of sUAS are required to register with the FAA, and the assigned FAA identification number must be placed on the exterior of the drone for identification purposes. There are also state specific laws related to drone use.

As necessary, the FAA promulgates Airspace Restrictions that apply to the operation of UAS across the board, regardless of the category or size of the UAS. One of the Airspace Restrictions set forth by the FAA is related to stadiums and sporting events. Per the restriction, drone operators are prohibited from flying drones in and around stadiums

starting one hour before and ending one hour after the scheduled time of a Major League Baseball game, a National Football League game, a NCAA Division One Football game, and/or a NASCAR Sprint Cup, Indy Car, and Champ Series race.<sup>2</sup> UAS operations are prohibited within a radius of “three nautical miles” of the stadium or venue during the designated time period.

### Drone Disruption of Sporting Events

The FAA restriction to UAS operation during certain sporting events has not stopped reported disturbances caused by drones being flown over stadiums during college and professional games, both domestically and abroad.

The following is a non-exhaustive list of drone disturbances that have taken place over the last five years in the United States:

As early as August 2014, a drone with a camera attached to it flew over Bank of America Stadium in Charlotte, North Carolina during an exhibition game between the Carolina Panthers and Kansas City Chiefs.<sup>3</sup>

In September 2014, a University of Texas student was detained after flying his drone over Darrell K. Royal-Texas Memorial Stadium during the home opener for the Texas Longhorns football team.<sup>4</sup>

In June 2015, a man was caught flying a drone during a Phillies game at Citizens Bank Park in South Philadelphia.<sup>5</sup>

In October 2017, a drone was spotted flying over CU Boulder’s Folsom Field during a football game against Arizona.<sup>6</sup>

In February 2017, a drone was grounded near the stadium at Rice University, where the Atlanta Falcons were practicing for Super Bowl LI.<sup>7</sup>

In November 2017, a male drone operator flew over Levi’s Stadium in San Francisco during a football game between the San Francisco 49ers and Se-

attle Seahawks. While over the stadium, anti-media propaganda was dropped from the drone, but the flyers were blown out of the stadium and did not disrupt the game. Subsequently, the same man flew the drone over a Oakland Raiders versus Denver Broncos game.<sup>8</sup>

In April of this year, a drone flew over Fenway Park in Boston during a Red Sox versus Blue Jays baseball game for almost an hour, not going unnoticed by players, according to Red Sox first baseman Mitch Moreland.<sup>9</sup>

Drone sightings and disturbances have also taken place at sporting events abroad. In January of last year, a drone that was being flown over Huish Park Stadium in Yeovil, Somerset, England caused an eleven-minute delay during a Sky Bet League Two soccer match between Crawley Town and Yeovil Town. Upon sighting the drone, per protocol, the referee took the teams off of the field for safety reasons in the 80th minute. Once the game resumed after ten minutes in the locker room, Crawley scored the winning goal in the 87th minute. The Crawley manager, Harry Kewell, was quoted saying that the drone delay probably worked to the team’s advantage, to give his players a break and allow him to talk to the team.<sup>10</sup>

There have also been drone incidents at stadiums that have had the potential to lead to injuries to players or patrons. For example, in June 2014, a drone crashed into the roof of AT&T Stadium in Arlington, Texas. The operator was fined \$1,000 by the FAA for violating several of its Regulations.<sup>11</sup>

Additionally, in September 2015, a drone crashed into a seating area at Louis Armstrong Stadium during a U.S. Open tennis match. The match paused briefly, but no one was hurt. One of the players on the court at the time, Flavia Pennetta

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## Implications of Increased Drone Operation Around Stadiums

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of Italy (who was playing against Monica Niculescu of Romania) was quoted saying that she heard the drone fly by, and was scared by it, thinking it might be a bomb. The drone operator was arrested on charges of reckless endangerment, reckless operation of a drone, and operating a drone in a New York City public park outside of prescribed area, according to the NYPD. Queens District Attorney Richard A. Brown was quoted saying that the incident “clearly illustrates that drones cannot simply be considered children’s toys,” and that “[t]hose who engage in conduct of this nature will be held legally accountable for their actions . . . They will not be treated as children — or as innocent hobbyists.”<sup>12</sup>

Later that same week, a University of Kentucky student’s drone crashed into the university’s Commonwealth Stadium prior to the Wildcats’ game against Lou-

isiana-Lafayette in the season opener.<sup>13</sup> In May 2017, an illegal GoPro Karma drone flew over the San Diego Padres versus Arizona Diamondbacks game at Petco Park in San Diego, California. The Karma drone narrowly missed hitting a few fans in the seventh inning before crashing into the back railing of Petco Park’s upper deck.<sup>14</sup>

Abroad, in February 2018, a drone crashed into the turf and broke into several pieces midway through the second half of a soccer game between Zenit St. Petersburg and Spartak Moscow in St. Petersburg Stadium, fortunately not hitting any players.<sup>15</sup>

### Future Considerations

Under federal law, it is illegal to sabotage a drone in flight, due to their classification as aircraft, 18 U.S.C. § 32(a);

Technology is being researched and

developed which is designed to detect the presence of a UAS;

The FAA may become more active with additional regulations to address the security and safety concerns created by unauthorized drones around stadiums;

The Department of Homeland Security could eventually get involved to address these issues; and

Increased state and local regulation is likely, as is continued prosecution of state and local law.

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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,

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## Implications of Increased Drone Operation Around Stadiums

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## Dismissal of Claim That City Was Liable in Slip and Fall Affirmed

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recreational-use immunity, Minn. Stat. § 466.03, subs. 1, 6e, 23, shielded the defendant from liability against Handelman-Seigel's claims. She then appealed.

"Negligence is the failure to exercise the care that persons of ordinary prudence would exercise under similar circumstances," wrote the court, citing Domagala v. Rolland, 805 N.W.2d 14, 22 (Minn. 2011). Further, "the essential elements of a negligence claim are: (1) the existence of a duty of care; (2) a breach of that duty; (3) an injury was sustained; and (4) breach of the duty was the proximate cause of the injury." Lubbers v. Anderson, 539 N.W.2d 398, 401 (Minn. 1995).

In Minnesota, the legislature has carved out special exceptions where municipal organizations are granted immunity from specific tort claims, two of which are rel-

evant here. Under Minn. Stat. § 466.03, subd. 6e, municipal organizations are immune from:

"Any claim based upon the construction, operation, or maintenance of any property owned or leased by the municipality that is intended or permitted to be used as a park, as an open area for recreational purposes, or for the provision of recreational services, or from any claim based on the clearing of land, removal of refuse, and creation of trails or paths without artificial surfaces, if the claim arises from a loss incurred by a user of park and recreation property or services. Nothing in this subdivision limits the liability of a municipality for conduct that would entitle a trespasser to damages against a private person, except as provided in subdivision 23.

"While Minn. Stat. § 466.03, subd. 23(a), provides immunity against, 'Any claim for a loss or injury arising from the use of school property or a school facility made available for public recreational activity.' But Minn. Stat. § 466.03, subd. 23(b) carves out the exception that, 'Nothing in this subdivision: (1) limits the liability of a school district for conduct that would entitle a trespasser to damages against a private person.'"

The plaintiff did not dispute that the statutes apply to the instant facts. However, she argued, "the exceptions found in subdivisions 6e and 23(b)(1), which allows liability when a trespasser would be able to recover from a landowner, applies to defeat this immunity."

To that point, under Minnesota law:

See Dismissal on Page 13

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“A possessor of land who knows, or from facts within his knowledge should know, that trespassers constantly intrude upon a limited area of the land, is subject to liability for bodily harm caused to them by an artificial condition on the land, if the condition is one which the possessor has created or maintains and is, to his knowledge, likely to cause death or serious bodily harm to such trespassers and is of such a nature that he has reason to believe that such trespassers will not discover it, and the possessor has failed to exercise reasonable care to warn such trespassers of the condition and the risk involved.

*Johnson v. Washington Cty.*, 518 N.W.2d 594, 599 (Minn. 1994) (quoting Restatement (Second) of Torts § 335).”

The appeals court found no evidence that COE “created the ice, or that (it) had either actual or constructive notice

of the ice such that a fact-finder could possibly conclude that (it) ‘maintained’ the condition.

“In contrast, the school custodian submitted an affidavit declaring that custodial and maintenance staff walk the ECC sidewalks and entryways every day and are trained to treat any accumulation of snow or ice with ‘ice melt.’ This same affidavit also declared that the closest ‘Snow and Ice Event’ that occurred before *Handelman-Seigel’s* fall happened two days before, and the custodial staff laid down 110 pounds of ‘ice melt’ around the ECC to address any accumulation. This un rebutted evidence can only support the conclusion that, even if the ice was caused by some spectator spilling a water bottle the day of the plaintiff’s fall (as she alleged), the defendant did not have actual or constructive notice of the accumulation.”

Thus, she “cannot meet the requirement in § 335(a)(i) that the artificial condition be one that respondent created or maintained, and therefore cannot show that an exception to statutory recreational-use immunity could apply.”

*Handelman-Seigel v. City of Edina*;  
Court of Appeals of Minnesota;  
2019 Minn. App. Unpub. LEXIS  
448; May 20, 2019,

Attorneys of Record: (For Appellant) Thomas F. DeVincke, Malkerson Gunn Martin LLP, Minneapolis, Minnesota. (For Respondent) Mark R. Azman, Shamus P. O’Meara, O’Meara, Leer, Wagner & Kohl, P.A., Minneapolis, Minnesota.

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## NEWS BRIEFS

**NSLI Celebrates 30 years with Publication of Sports Facility Reports**

In the midst of celebrating its 30th anniversary this year, the National Sports Law Institute at Marquette University Law School announced today that it has published the 20th volume of their online newsletter Sports Facility Reports. The 2019 issue can be found online at <https://law.marquette.edu/national-sports-law-institute/sports-facility-reports-volume-20-2019>.

**Politics Stink**

In the politically charged environment in which we live, it is imperative to manage the inevitable backlash arising from guilt by association. This was put on full display in August when it was revealed that Stephen Ross founder and chairman The Related Companies (which owns Equinox Holdings Co. with its brands Equinox, SoulCycle, Blink and Pure Yoga) hosting an Aug. 9 fundraiser for Donald Trump. Social media exploded with people threatening to cancel their membership. The first issue is that crisis management/communication is a critical component of any risk management plan. Reputational injuries can happen very quickly, and a facility needs to know how to respond, knowing that regardless of what is said someone will be upset. Second, is the fact that people can threaten all sorts of things on social media. It is unclear how many of the people who threatened to leave were actual members or those venting. Lastly, if some members attempted to cancel their contract there could be a significant breach of contract

issue. While most fitness club contracts allow someone to cancel the contract early if they move a certain distance, being upset with an owner's perceived political point of view would not be viewed by any court as a legitimate reason to cancel a contract. With that said, almost all wealthier business owners give money to both parties so these boycott efforts can actually come back to hurt others and become polarizing. For example, Equinox partnered with the House Ballroom community (an organization for LGBTQ people of color), SoulCycle hosted Pride Rides, and Blink Fitness celebrated Pride Month earlier this summer by asking members to share their Pride stories on Instagram. <https://www.clubindustry.com/news/equinox-soulcycle-face-boycott-calls-over-owner-s-trump-support>

**Working in the Heat**

A worker at a Tokyo Olympics construction site died on in early August after being found unconscious while working outside. Heatstroke was suspected as the culprit as the Japanese capital sweltered through a deadly heatwave. The heat intensified in August to an average daily high average of 34.8 Celsius (94 Fahrenheit). This also represents a concern for the next Olympic Games. This should serve as a serious reminder for developers employing outdoor workers and the need to protect them from the elements. Providing enough shade and hydration is critical. Employees need to be emboldened to raise concerns with managers when they feel concerned about their safety and health. <https://www.theguardian.com/sport/2019/aug/09/tokyo-olympics-construction-worker-dies-from-suspected-heatstroke>

**Passion for Sports Drives Insurance Agency, Monument Sports**

Continued From Page 2

sional sports teams and leagues as well.

**Q:** *Do any of your products tie into concussion risk? If so, how are those products changing?*

**A:** We take pride in our risk management services. With regard to the concussion risk, we offer specific concussion related training material for employees, coaches, parents and participants. These products and solutions are in high demand because of insurance carrier requirements, of course, but also because it is in everyone's best interest to try to prevent and control

concussions in sports.

**Q:** *What kind of services do you provide to sports facilities?*

**A:** Going back to risk management, we are available for facility visits and/or risk management conference calls. We will review the waiver collection process, address potential claim scenarios, discuss a formal incident reporting program, etc. We also ensure the facility has the correct and most appropriate coverage. Unfortunately, some facilities do not carry the right coverage for athletic participation.

**Q:** *What kinds of products are in high demand when it comes to facilities and why is that?*

**A:** I would say the products being offered (general liability, property, workers compensation, among others) may seem like standard lines of coverage but this industry comes with different risks and exposures than your standard business. We make sure your exposures are aligned with the right insurance product.