


FACILITY LIABILITY AND LAWSUIT PREVENTION

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Disclaimer



The Real Disclaimer: This presentation contains information about liability and insurance law matters for informational purposes only. It is NOT legal advice. Contact a qualified attorney for specific advice on any legal matter.

Road Map

- What is Liability
- Facility Assessments
- Creating a Plan to Address Safety and Liability
- Insurance!



Liability

- "The state of being responsible for something, especially by law."
- Synonyms: Accountability, Responsibility, Legal Responsibility, Answerability, Blame, Guilt, Culpability, Fault



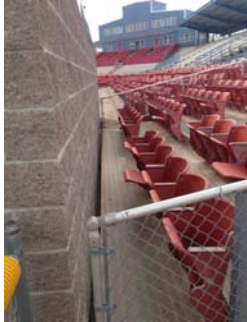
The Requirements

- Duty
- Breach of Duty
- Causation
- Harm



Duty

- The responsibility to provide a certain standard of care to an individual
- Applies to both participants and attendees

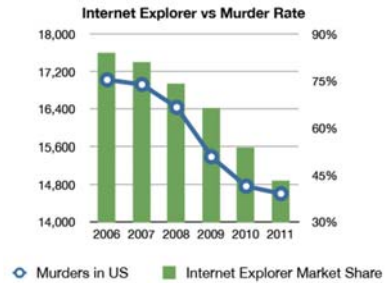


Breach of Duty

- An act or failure to act which caused an unsafe condition.
- Not meeting expectations



Causation



- The Breach of Duty is what caused the injury
- Often relates to foreseeability

Harm/Damage/Injury



- There must be some harm or injury in order to proceed with a claim.
- Bodily Injury
- Damage to Property

McCormick v. Warren Cty. Board of Ed.

- While attending granddaughter's graduation, woman crossed school football field, stepped into knee-deep hole in grass, and fractured ankle. The woman alleged that facility owner breached its duty of care to her as an invitee by failing to reasonably inspect premises.
- Court found that since field was mowed 1-3 times/week, hole was wide and deep, facility had superior knowledge of premises, and had duty to invitees to inspect and maintain premises in reasonably safe condition.

Aftermath

- Man who fell 'banned from stadium' in the future.
- What safety mechanisms were in place?




Facility Assessment

- Create a Plan/Process
- Initial Assessments
- Ongoing Assessments
- Safety Checklists




Two Major Concerns

- Athlete/Team Concerns
- Spectator Concerns




Athlete Concerns

- Certain Risks 'assumed'
- Many are not.
- What conditions are reasonably expected?




Concussions

- Media Coverage gives everyone 'notice'
- Address factors which contribute to concussions
- Rocks, compacted soils, other structures
- Add padding wherever possible
- Bring issues to administrations attention



Other User Issues

- Risks to non participating team members
- Coaches
- Facility Staff




Coaching Injuries

- Visiting coach attempted to protect football players from colliding with cement curb surrounding field by standing between players and curb. Coach was struck by another athlete and sustained injuries from impact.
- Court found that coach new of the risk and assumed the risk of injury by placing himself in that location.

Camp/Clinics, Etc.

- A Unique type of athlete and facility user.
- Insurance will want waivers.
- Get waivers from all participants and parents if they are minors



Camps/Clinics

- What expectations do parents have?
- What expectations do participants have?



Camps/Clinics/Groups

- Parents are entrusting your facility with the care of their children
- Triple Check insurance and waivers



Consider All Facilities

- Consider more than just the main stadium
- Practice areas can be an even bigger concern
- Concerns between facilities?



Attendee Concerns

- Greater liability to ticket purchasers.
- Sometimes it is hard to protect people from themselves.



Attendee vs. Facility

- Liability can be created by problems with the Attendees interaction with the facility.
- Slip & Fall
- Broken/Unrepaired facilities



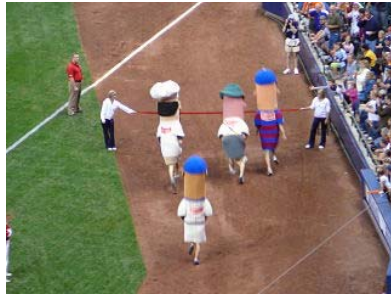
Attendee vs. Attendee

- Fights among opposing fans
- Often Alcohol induced
- Duty to prevent and/or provide some sort of security
- Text reporting
- What is foreseeable?



Attendee vs. Themselves

- May be alcohol induced
- May be excitement induced
- Common sense is not common!



It's All About Expectations

- What do fans expect:
- Seats that work
- Food that is (mostly) edible
- General safety protections
- Special knowledge creates a duty



Create Standards

- Have a list of criteria which must be in place for facility use to take place.
- Check for Industry Standards
- Use sport specific standards if possible.



Train Employees on the Standards

- Train employees to use checklists
- Be clear about what steps should take place to repair problems
- If repair isn't possible, what steps should take place?



Document Actions

- Document the consistent use of checklists and standards
- Save documentation!
- Write it all down even when there are no issues found.



Repairing Problems

- Moving forward despite detected problems is asking for trouble.
- Incentivize Problem Spotting and Reporting



Communication

- Effective Communication of Hazards is Important
- Safety messages should be conveyed in a reasonable and effective manner.
- Keep the message recipient in mind.
- Empower Employees to address safety issues they witness.



Accidents Happen

- No 100% accident prevention is possible.
- Work toward fewer incidents.
- Keep safety a priority.
- The possibility of litigation should be at the back of your minds always.



Insurance

- Lots of kinds and types.
- Know your coverage.
- Review it on a regular basis



Other People's Insurance

- Other groups that use the facility should have insurance too.
- Anyone who leases the facility
- Leagues (get waivers too)
- Organizers of Camps/Clinics
- Unaffiliated Vendors



Your Insurance

- Start with a General Liability Policy and customize by adding additional coverage
- Policy limits depend on the specifics of the facility
- Occurrence based policy is better than claims made policy



Basic Policy Inclusions

- Each Occurrence:
- General Aggregate
- Products/Completed Operations Aggregate
- Personal/Advertising Injury
- Damage To Premises Of Others
- Premises Medical Expense Payments



Exclusions

- Exclusions are events specifically excluded from coverage by a policy.
- Frequently Exclusions can lower rates because they expose the insurance co. to less liability.



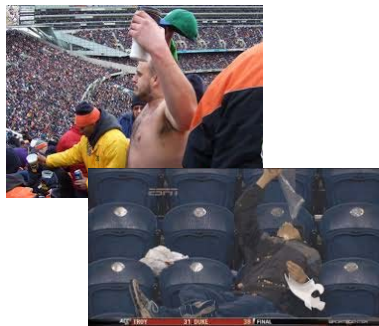
Exclusions to be Aware of

- Athletic Participant Exclusion
- Player v. Player Exclusion
- Abuse & Molestation Exclusion
- Punitive Damages Exclusion



Policy Add Ons

- Liquor Liability!
- Non-Owned-Hired Auto Liability
- Buy Back Programs
- Employee Benefits Liability



Don't Assume

- Read and Understand your policy.
- Talk to an Attorney or underwriter
- Never take the salesman's word for it.
- Work with administration



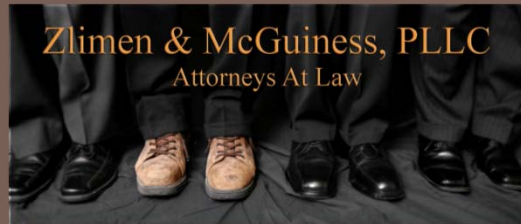
Lessons Learned?

- Know your duty
- Correct problems
- Write it all down
- Know your insurance coverage
- Lobby for improvements



QUESTIONS?

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