

Managing Your Exposure To Liability on the Playing Field

By Neil J. Dougherty

During the last decade we have witnessed a tremendous increase both in the number of sports-related lawsuits and in the size of settlements and the jury awards achieved. It should not be surprising that this trend has been reflected in rising insurance costs, decreased insurance availability and, all too often, curtailment of sports programs. While litigation involving playing fields constitutes only a relatively small portion of the total liability picture, it is both important and, to a degree, controllable.

A recently completed survey of approximately 450 sport-related lawsuits brought in the New York/New Jersey metropolitan area, revealed that ten percent of the cases alleged that the injury in question was caused primarily by improper field conditions. Sixty percent of these (six percent of the total) alleged that the field in question was inadequately maintained. The remainder focused on field layout and/or the nature and selection of field-related equipment such as fences or bases.

Since the civil laws of our country permit virtually anyone to sue anyone else at anytime for any reason, there is little that can be done to insure the elimination of lawsuits as long as there remains a possibility of injury. The contention that many sports by their nature present some risk of injury is no longer a reliable defense. Sports facility managers must begin to reduce their exposure to legal action by giving special consideration to all possible areas where negligence could be alleged.

It is possible to minimize the potential for injury and to maximize the likelihood of winning any lawsuit based on alleged acts of negligence. This is best done with a careful program of risk management and a thorough understanding of the principles of legal liability.

In order to prevail in a lawsuit the plaintiff, or injured party, must establish several elements through a greater weight of evidence. First of all, the plaintiff must prove the defendant has a duty to provide for the safety and welfare of the plaintiff. He must prove that the defendant breached that duty by failing to provide the appropriate standard of care. The defendant, either by omission or commission, must be proven guilty of an act of negligence.

Furthermore, the plaintiff must have sustained damages or suffered an actual loss to his person, property or interest. The potential for these damages (injuries) should have been foreseeable or predictable under the specific circumstances in question. Finally the plaintiff must prove that the alleged negligence of the defendant caused or ag-

gravated the specific injury or loss in question. This last concept is referred to as *proximate cause*.

The relative safety of the playing field is a function of design, construction, maintenance, and a variety of judgemental issues involved in daily operations. All fields, for instance, should meet or exceed appropriate design and safety standards where they exist. Particular attention should be paid to the necessity for a smooth, level and unobstructed surface, as well as to the daily effects that weather may have on the relative safety of that surface.

Costly litigation regarding playing fields often can be linked to common design and/or construction faults. The most obvious fault is an uneven surface. Abrupt changes in grade or holes caused by poor grading, ero-

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sion during construction and settling make even new fields potentially hazardous. These problems can be further complicated by rocks not removed from the topsoil, improperly installed sprinkler heads and poorly located drainage grates.

Another common design error is a lack of adequate "buffer space" around the playing field. When this space is reduced by seating, track and field structures or even trees and buildings, the chance of injury increases. The increased demand for football and soccer fields has caused some parks and schools to dangerously reduce the amount of space between adjoining fields in order to provide more fields in a given area.

Some types of sports equipment, such as fixed pedestal bases, can be hazardous when used by relatively low skilled softball leagues which allow stealing and sliding. While these bases may be appropriate for skilled baseball players, their unyielding characteristics make them particularly hazardous when used with an unskilled group. In all sports, the selection and use

of equipment must be appropriate to the level of skill or knowledge of the participant.

Improperly placed or inadequately protected spectator areas can create an unknown and unnecessary danger for individuals wishing to watch a game or practice. Moreover, the benches and bleachers themselves become a hazard to the players if not sufficiently removed from the playing field.

While fencing can be critical to controlling the use of athletic areas, attention must be paid to the type and height. Most sports have clear specifications regarding the nature and height of appropriate fencing. In addition to the selection of the materials, care is required in determining the placement of posts (usually on the outside of the field) and guide rails. Skinned dirt tracks inside fences add an important safety dimension to fencing.

Even the best designed and constructed facilities can become unsafe if they are not subject to regular maintenance procedures and sound supervisory judgement with regard to daily use. Increased use necessitates increased maintenance. The center of football fields, the goal mouths of soccer fields and the skinned areas of baseball and soccer fields must be maintained according to the amount of use they receive. If increased maintenance cannot be provided, field use must be curtailed to reduce the risk of a lawsuit. The cost of increased maintenance is relatively minor when compared to the cost of litigation brought about by a needless injury.

Judgement is also required in balancing field use with weather conditions. Extremely wet or dry conditions increase the wear of the sport on the field. Increasing use during periods of drought or excess rainfall requires superior irrigation and drainage. The cost for these items is also easily determined. If wet or dry weather conditions are common in a particular area, field use will need to be curtailed or an investment will need to be made in drainage and irrigation.

To protect itself from future litigation, the sports turf industry needs to develop and follow general guidelines to avoid unnecessary injuries. The following guidelines, while by no means all-inclusive, may help reduce exposure to negligence related lawsuits.

1. Make certain that all new fields and facilities meet or exceed all current safety standards. Be particularly attentive to matters relating to surfaces, lighting, buffer zones and the presence of obstacles in the play area. The safety of both natural and artificial surfaces has been improved in the past five years. Be sure the architect design-

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ing your sports facility is incorporating these recent improvements in his plan.

2. Develop and implement procedures for the routine inspection and upkeep of all fields and surrounding facilities. Maintain comprehensive inspection and repair records. Assign inspection and corrective responsibilities to knowledgeable individuals. Utilize these individuals to establish written procedures for preventing and correcting deficiencies. Review records frequently to assure that all procedures are being followed.

3. Establish an appropriate schedule for cleaning, mowing, irrigating, marking, in-

field preparation, fertilization, aerification and weed control. Make appropriate modifications in the schedule as dictated by weather conditions and use levels. Do not use caustic materials to line or mark fields.

4. Require coaches and recreational supervisors to inspect fields before use. This double check system greatly reduces the possibility of negligence-related injuries. Develop a simple checklist for this purpose and utilize their feedback as part of a simple and efficient mechanism for initiating corrective actions. Develop an orientation session on field safety for coaches and recreational supervisors. Use this as an opportunity to open up lines of communication with key field users and to explain their role in field maintenance.

5. Post signs with care and use rules by each field. Include a telephone number for notification in the event of user-noted maintenance problems. These rules also should be included on all field reservation forms. Encourage participation of all users in a "Field Safety Program."

6. When hazardous areas are revealed during inspections or reported by users, make appropriate modifications to keep participants away from them until repairs can be completed. Move activity away from the hazard whenever possible. Install barriers and post warnings when the areas cannot be kept free of activity.

7. Provide adequate space around each field for a buffer zone. There should be room for waiting players (substitutions) to warm up and for the spectators as they come and go. Overcrowded conditions are a frequent cause of injuries.

In addition to the critical issue of accident prevention, there are several legal arguments and professional procedures which can assist greatly in the formulation of a defense in the event of a lawsuit. Principal among these is good recordkeeping. Inspection and maintenance checklists, repair records and other similar documentation provide hard evidence of the nature and frequency of managerial efforts to guarantee a safe facility. The absence of such records,

on the other hand, can help to persuade a jury that a given field was carelessly and/or improperly maintained.

In the event of a lawsuit, the plaintiff's attorney will almost certainly ask a number of questions which can greatly affect the outcome of the case and which can be simply and convincingly answered if appropriate records have been maintained. While written documentation is not, in and of itself, a requirement, it is important to realize that the legal process tends to be rather slow, especially in civil cases, and most of the questioning will occur several years after the incident. It is, therefore, absolutely foolhardy to expect to provide the type of accurate factual response that will best impress a jury entirely on the strength of your memory.

If pressed to provide a single word which would summarize the issues of accident prevention and the avoidance of negligence, one could only choose *professionalism*. Well-trained professionals with a sincere concern for the quality of their work tend to maintain safer facilities. They are concerned for the welfare of the individuals who depend on them and, as a result, they plan thoroughly, document their work and supervise carefully.

There is little question that those responsible for a park, university, school or other sports facility can reduce the incidence of injuries and the potential for lawsuits by employing a professional sports turf manager. Even in situations where injuries do occur, the likelihood of a successful lawsuit based upon negligence is minimized when the field is maintained by someone who is considered a professional by his peers, maintains complete records and understands the relationship between field use and maintenance.

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