

RISK MANAGEMENT

Limiting liability for your sports facility

There are a lot of reasons to love a great stadium—your favorite team plays there, the seats have great views, it's the home of fond memories. Maybe it just has the best sushi in town. But when you run a sports venue, it's the less glamorous issues that keep you up at night: like how to limit the facility's liability. Because if you don't keep your facility safe and your liability limited, the results can be catastrophic.

WAIT, WHAT'S LIABILITY?

Put simply, liability is the risk that your organization will be sued for injuries (or property damage) that occur at your facility. You can never entirely eliminate liability, because some disasters simply aren't foreseeable. But if you make your facility as safe as possible, obtain waivers, and purchase liability insurance, you can dramatically reduce your risk.

SAFETY

Operating a safe sporting facility is the first step in limiting your liability. The primary reason why prioritizing safety will limit liability is that in order for players or visitors to win a lawsuit against the facility, they must first show that they or their property were harmed. If there's no injury, there's no basis for a lawsuit.

Even if something goes wrong and someone is injured, facilities that have done everything in their power to ensure that visitors are safe will be exposed to less liability. That's because venues can generally be held liable for injuries that result from situations that they knew or should have known were dangerous. If you know something is dangerous, you are obligated to mitigate that risk.

ON THE FIELD

Take, for example, a football field. If you place a wall too close to the end zone, it's reasonable to expect that a player may accidentally run in to it and injure himself. When the wall is already in place, it can be tempting to ignore the potential risk. But if a player does get hurt, he will have a strong claim that you were negligent because you should have anticipated how dangerous the wall was. It's far better to be cautious and attempt to mitigate the risk by padding (or even removing) the wall.

Another common source of injuries in facilities that cater to children, students, and community athletes are unanchored soccer goals. Weighting the bases of goals may be enough to keep them in place during most games. But when the game is over, and people are using the field for everything from Frisbee games to tailgates, unsecured goals can become hazardous. Over the last 50 years, close 100 people have been killed or seriously injured as a result of soccer goals falling on them. Many of those people may have been reckless—maybe they were hanging from the goal or attempting to climb it. But as a facility manager, you are expected to anticipate that people will do risky things, and you're expected to take precautions to limit the possibility that they will be injured.

Finally, it's important to remember that you need to be just as conscientious about maintaining safe practice facilities as you are about the primary field or court. Injuries that happen during practices (and the resulting suits) can be just as catastrophic as those that happen during the big game.

AND OFF THE FIELD

Facilities also need to minimize the risk to spectators. Visitors often sue for injuries wholly unrelated to the main sporting event, from slip-and-fall

cases, to injuries they sustain from other fans. Here, again, the best way to avoid a lawsuit is by preventing people from getting injured. That can mean trying to keep the floors dry (many venues sale all their drinks in oversize cups or cans to limit spilling). But it can also mean making sure you have adequate security to prevent spectators from getting into fights.

Put simply, if you run your facility well and take reasonable precautions to ensure that patrons are safe, you will not only minimize injuries but also limit your liability in the event that someone is injured.

EXCEPTIONS TO THE RULE

While facilities can be found liable for a wide range of injuries, they are generally not liable for injuries that are a direct result of the game. Essentially, the thinking goes that by playing sports at all, athletes assume certain risks. The facility is generally not liable for those injuries, unless its negligence helped cause the injury. For example, a football player who sustains a knee injury when he's tackled would be unlikely to win a case against the stadium, because that's a regular part of playing the game. However, if the same player sustains an injury because of the poor condition of the field, he may well have a claim against the stadium.

The same principal usually applies to spectators. For example, courts have found that by going to a baseball game, fans assume the risk of being hit by balls and broken bats that fly into the stands. As a result, they are unlikely to win a suit against the facility for their injuries. If the facility's negligence contributed to the injury, however, it may still be held liable.

As a manager, you need to think defensively in order to limit liability. Try to anticipate what could go wrong at your facility, and then think about what you can do to limit the risk. If you notice a potential hazard, take care of it as soon as possible.

TRAINING WORKERS

Good employees are essential to maintaining a safe and well run facility. As a facility manager, you should make sure that your workers understand that safety is a high priority for your organization. Establish clear policies so that workers who spot something that could be dangerous know what to do and who to take their concerns to. Find the areas where poor maintenance might lead to safety concerns and do routine checks to make sure everything is in order. Train employees to use checklists so they don't miss safety steps. And when you're hiring new workers, try to assess whether they will be safety conscious and committed to making sure the facility is as safe as possible. If you take safety seriously, your staff will too.

WAIVERS

No matter how cautious you are injuries will happen. In order to limit liability, it is essential for you to require athletes to sign waivers that limit suits against the facility. If the athletes are minors, the waivers must also be signed by their parents.

Waivers typically reiterate that the activity is inherently risky, and the participant waives claims against the facility for any injuries sustained. While waivers are essential for limiting liability (and often required by insurance carriers), they do not eliminate the possibility of being sued.

LIABILITY INSURANCE

So you've limited your liability by running a safe facility. You've trained your workers, and you've obtained liability waivers from athletes. But

something totally unexpected happened, and someone got hurt. Let's say, a light fixture fell from the ceiling. This is exactly the type of disaster liability insurance was made for—the unexpected, but potentially very costly disaster. No matter what other precautions you take, you must obtain adequate liability insurance.

Don't skimp on your insurance policy. You want to avoid the bitter pill of regularly paying premiums only to find that when something does go wrong, it isn't covered because of the fine print. When you're selecting a new policy, you should consult with an expert on fine print, like an agent or attorney, about what coverage your organization needs, and what options exists.

CLAIMS MADE V. OCCURRENCE POLICIES

Policies typically only cover incidents that happen while they are in effect. But "claims made" policies are even more restrictive. They only cover incidents if the claims themselves are made while you have that policy. So if you switch insurance after the incident, but before a claim is made, *you will not have any coverage for that claim*. This is particularly problematic for facilities that deal with children, because there is usually an exception to the statute of limitations that allows minors to wait till they become adults to make claims.

In contrast, "occurrence" policies cover incidents that happen while they are in effect regardless of when the claim is made. If you switch insurance down the line, the policy will still cover incidents that happened while you had the old policy.

ATHLETIC PARTICIPATION EXCLUSION

Some policies exclude coverage for athletic participants (typically everyone from players to coaches). This is an unacceptable exclusion for sports facilities. After all, the majority of your claims are almost certain to come from athletes and team staff. No matter how tempting the price tag, these policies are not appropriate for sporting facilities.

RIDERS AND OTHER COVERAGE

In addition to a general liability insurance policy, your facility should consider riders that offer other types of liability coverage. Depending on how your facility operates, there are some common riders you should consider. If your facility serves alcohol, you should be sure to purchase liquor liability coverage. You should also consider some form of business auto liability coverage (i.e., a policy that covers any accidents employees get into while driving their personal vehicle for work purposes). Finally, if you have a large staff, you may wish to purchase employee benefits liability coverage, which will protect you from claims of negligence in the administration of employee benefit programs.

You can't eliminate liability or the possibility of an accident at your facility. But by taking careful precautions and obtaining adequate insurance, you can make your facility's liability manageable. ■

This article provides general information on facility liability matters and should not be relied upon as legal advice. A qualified attorney must analyze all relevant facts and apply the applicable law to any matter before legal advice can be given. Patrick McGuiness is a partner at Zlimen & McGuiness, PLLC. His law practice focuses on assisting green industry businesses and organizations with a wide range of legal issues. He can be reached at pmcguiness@zmattorneys.com.