If you have questions or would like further information regarding Sporting Activities, please contact:

David J. Flynn
312-540-7662
dflynn@querrey.com

Querrey & Harrow
Result Oriented. Success Driven.
www.querrey.com®

ILLINOIS LAW MANUAL

CHAPTER VI
OTHER CAUSES OF ACTION

D. SPORTING ACTIVITIES

The majority of Illinois law regarding liability arising from sporting activities is derived from the common law. However, Illinois law regarding the liability of baseball facility owners or operators for injuries caused to spectators by balls or bats entering the seating area is governed by the Baseball Facility Liability Act, 745 ILCS 38/10, and the liability of hockey facility owners or operators for injuries caused to spectators by hockey pucks or sticks entering the seating area is governed by the Hockey Facility Liability Act, 745 ILCS 52/5. Liability arising from sporting activities can be divided into two subtopics: 1) injuries to sport participants, and 2) injuries to spectators or bystanders.

1. Participants

The duty a sports participant owes to another participant depends upon whether they are participating in a contact sport or a non-contact sport.

a. Contact Sports

i. Basic Law

A participant in a contact sport may recover damages from another participant if he or she can prove that the defendant's conduct was willful and wanton. Nabozny v. Barnhill, 31 Ill. App. 3d 212, 215 (1975).

ii. Analysis

In determining whether an activity is a contact sport, the primary consideration is whether physical contact between the participants is "inherently, inevitably, or customarily" part of the activity. Zurla v. Hydel, 289 Ill. App. 3d 215, 221 (1997). Courts will also consider whether the participants voluntarily submitted to the bodily contact. Novak v. Virene, 224 Ill. App. 3d 317, 321 (1991).

Illinois courts have ruled that the following are contact sports:

1) organized soccer (Nabozny v. Barnhill, 31 Ill. App. 3d 212 (1975)),

2) organized softball (Stewart v. D & R Welding Supply Co., 51 Ill. App. 3d 597 (1977));

3) unorganized softball (Landrum v. Gonzalez, 257 Ill. App. 3d 942 (1994));

4) unorganized basketball (Oswald v. Township High School District No. 214, 84 Ill. App. 3d 723 (1980)); and

5) unorganized floor hockey (Keller v. Mols, 156 Ill. App. 3d 235 (1987)).

Moreover, other games or activities may be considered contact sports if they involve inherent, inevitable, or customary physical contact. For example, in Ramos v. City of Countryside, 137 Ill. App. 3d 1028 (1985), a game called "bombardment" was

deemed to be a contact sport, and in Azzono v. Catholic Bishops of Chicago, 304 Ill. App. 3d 713 (1999), a game called “killer ball” was deemed to be a contact sport.

Once it is determined that the participants were participating in a contact sport, the plaintiff must prove that the defendant's conduct was willful and wanton. Nabozny, 31 Ill. App. 3d at 215. Participants in contact sports may be held liable for injuries to co-participants caused by willful and wanton misconduct, but not for injuries caused by ordinary negligence. Pfister v. Shusta, 167 Ill. 2d 417 (1995). Willful and wanton conduct is conduct which is intentional or with reckless disregard for the safety of others. Keller, 156 Ill. App. 3d at 235.

b. Non-Contact Sports

i. Basic Law

A participant in a non-contact sport may recover damages from another participant if he can prove that the defendant was ordinarily negligent. Novak, 224 Ill. App. 3d at 321. Ordinary negligence is the failure to do something that a reasonably careful person would do, or the doing of something that a reasonably careful person would not do, under similar circumstances. I.P.I. Civil No. 10.01. To prove negligence, a participant in a non-contact sport must establish duty, breach, causation, and damages. Corgan v. Muehling, 143 Ill. 2d 296, 306 (1991).

ii. Analysis

The determination of whether an activity is a non-contact sport is simply the corollary of whether an activity is a contact sport, and the focus is whether physical contact is an inherent, inevitable, or customary part of the activity, and whether the

participants voluntarily submit to physical contact. Novak v. Virene, 224 Ill. App. 3d 317, 321 (1991).

In Novak, the court held that downhill skiing is not a contact sport and that a participant's conduct should be governed by standards of ordinary negligence. Novak, 224 Ill. App. 3d at 321. In so holding, the court reasoned that downhill skiing is an individual sport, and although there is a possibility of contact in downhill skiing, downhill skiers do not voluntarily submit to contact, and any such contact is not inevitable. Novak, 224 Ill. App. 3d at 321. The court also indicated that running or jogging and bicycling are not contact sports. Novak, 224 Ill. App. 3d at 321. In Zurla v. Hydel, 289 Ill. App. 3d 215 (1st Dist. 1997), the court held that golf was not a contact sport, even though being hit by a golf ball was a possibility.

Once a participant has established that he or she was participating in a non-contact sport, four elements must be proved to recover damages. First, a participant in a non-contact sport must prove that the defendant owed him a duty of care. Second, the defendant breached the duty of care. Third, the defendant's negligence was a proximate cause of the injury. Finally, a participant in a non-contact sport must prove that he suffered damages as a proximate result of the breach. (See Chapter II, Section A).

2. Spectators or Bystanders

a. Liability of Participants

i. Basic Law

A spectator or bystander at a sporting activity may recover damages from a defendant/participant if he can prove that the defendant was negligent. Osborne v. Sprowls, 84 Ill. 2d 390, 395-96 (1980).

ii. Analysis

In determining whether a plaintiff is a spectator or bystander at a sporting activity, courts will focus on whether the plaintiff was a participant or whether the plaintiff was located within an area where a sporting activity was in progress. Osborne, 84 Ill. 2d at 395-96. If the plaintiff was outside of both the boundary and the area naturally encompassed by the sporting activity, he is considered a spectator or bystander. Osborne, 84 Ill. 2d at 395-96.

Once a plaintiff has established that he was a spectator or bystander at a sporting activity, there are four elements, which he must prove before he can recover damages. First, a spectator or a bystander must prove that the defendant owed him a duty of care. Second, the defendant breached the duty of care. Third, the defendant's negligence was a proximate cause of the injury. Finally, a spectator or bystander must prove that he suffered damages. (See Chapter II, Section A.)

b. Liability of Owners or Operators of Baseball Facilities

A spectator or bystander at a baseball facility who is struck with a ball or a bat may recover damages from the baseball facility owner or operator only if:

1) the spectator or bystander is seated behind a screen, backstop, or similar device, and the screen, backstop, or similar device is defective in a manner other than width or height because of the owner/operator's negligence; or

2) the injury is caused by the willful or wanton conduct of the owner/operator, or a manager, coach, or player employed by the owner or operator in connection with the game of baseball.

745 ILCS 38/10.

In Jasper v. Chicago Nat. League Ball Club, Inc., 309 Ill. App. 3d 124 (1999), the plaintiff filed suit against the defendant after he was struck in the eye with a foul ball

while attending a Chicago Cubs baseball game at Wrigley Field. The plaintiff asked the court to declare that the Baseball Facility Liability Act was unconstitutional because it violated the Equal Protection Clause of the U.S. and Illinois Constitutions and the Special Legislation Clause of the Illinois Constitution. The Illinois Appellate Court upheld the constitutionality of the Baseball Facility Liability Act, ruling that the Act did not violate the equal protection clauses and was not special legislation.

The Baseball Facility Liability Act seems to apply anywhere baseball or softball is played or practiced. Section 5 of the Act defines "baseball facility" as:

> any field, park, stadium, or other facility that is used for the play of baseball (regardless of whether it is also used for other purposes) and that is owned or operated by any individual, partnership, corporation, unincorporated association, the State or any of its agencies, officers, instrumentalities, elementary or secondary schools, colleges or universities, unit of local government, school district, park district, or other body politic and corporation.

745 ILCS 38/5.

"Baseball" is defined as "the game of baseball or softball, including practice, regardless of whether it is played on a professional or amateur basis and regardless of whether it is played under an organized league structure or outside of any such structure." 745 ILCS 38/5.

c. Liability of Owners or Operators of Hockey Facilities

A spectator or bystander at a hockey facility who is struck with a stick or puck may recover damages from the hockey facility owner or operator only if:

1) the spectator or bystander is seated behind a screen, protective glass, or similar device and the screen, protective glass, or similar device is defective in a manner other than width or height because of the owner/operator's negligence; or

> 2) the injury is caused by the willful or wanton conduct of the owner/operator, or any hockey player or coach employed by the owner or operator.

745 ILCS 52/10.

Like the Baseball Facility Liability Act, the Hockey Facility Liability Act applies most anywhere the game of ice hockey is played or practiced. Section 5 of the Act defines "hockey facility" as:

> Any rink, stadium, or other facility that is used for the play of ice hockey (regardless of whether it is also used for other purposes) and that is owned or operated by any individual, partnership, corporation, unincorporated association, the State or any of its agencies, officers, instrumentalities, elementary or secondary schools, colleges or universities, unit of local government, school district, park district, or other body politic and corporation.

745 ILCS 52/5

"Hockey" is defined as "the game of ice hockey, including practice, regardless of whether it is played on a professional or amateur basis and regardless of whether it is played under an organized league structure or outside of any such structure." 745 ILCS 52/5. Forms of hockey not played on ice, such as field hockey and roller hockey, are specifically excluded from the protections of the Act.