

An Analysis of Risk Management Policies for Tailgating Activities at Selected NCAA Division I Football Games

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Tailgating has become one of the most influential phenomena in today's sport industry. Fans of all sports, from Little League Baseball to NASCAR, can be found gathering in adjacent parking lots and open fields socializing before sporting events. Although tailgating is apparent at a variety of sporting contests, it may be most prominent at collegiate football games. Every Saturday, millions of fans descend on the location of their favorite football stadium to share in the revelry that surrounds college football. The results of a national survey asking students about their perceptions of and behavior relating to tailgating revealed that the majority celebrated in safe and responsible ways (NCAA, 2004). Thus, tailgating can be a major part of a positive "whole day" experience for students, alumni, and supporters.

Despite the seemingly harmless atmosphere, severe injuries, including deaths resulting from tailgating activities have attracted national attention (Lowe, 2000; Mason & Calloway, 2004; Romig, 2004). This notoriety has also attracted attention from the legal system. For example, in *State of Maryland v. Reck* the court stated that people were not only getting hurt, many are also dying in some cases due to the lack of safety protocols at tailgate activities (Silkworth, 2003, p. 307). Thus, an activity that has previously been viewed as relatively innocuous has morphed into one that has potentially life-changing consequences.

Despite such information, universities seem to be reluctant to impose safety measures on tailgate parties. As a result liability issues regarding tailgating events have only recently been considered. The next section of this paper will investigate the basic liabilities of the organization sponsoring

tailgating activities and how risk management strategies may assist in creating and maintaining a safe environment for patrons attending athletic contests.

LEGAL ISSUES FRAMEWORK

Knowledgeable individuals of well-run organizations should try to manage potential event risks or they may be controlled by the risk (Frame, 2003). By acknowledging that injuries may occur and lead to litigation, the sport event manager may gain a greater comprehension and appreciation for the need to develop and implement a risk management plan specific to tailgating activities. This awareness may be considered the first step in managing risks at sport events.

Sport event managers who desire their organizations to efficiently manage risks must recognize the value of foreseeability, their legal status regarding premises liability, duty to invitees and duty to manage the actions of third parties. In the following sections, these four areas will be briefly discussed as they pertain to managing tailgating risks. The content of the liabilities and duties to be discussed briefly are not meant to be all encompassing or be taken as legal counsel but rather to give a "snapshot" of the essential legal responsibilities of an organization or individual sponsoring tailgating activities. This information may aid sport event managers in understanding the importance for the development and implementation of a risk management plan.

Foreseeability

Foreseeability may be regarded as the most significant consideration in determining the extent to which a person is owed a duty of reasonable care (*Rodriguez v. Sabatino*, 1997). Foreseeability is considered to be the degree to which the university knew, or should have known, that an invitee may be exposed to the probability of injury. Foreseeable danger provides a basis by which the risk of injury to another person and the existence of the duty to exercise care for a person injured on a premise is determined (*American Jurisprudence*, 2004).

In *Mintz v. State* (1975) the theory of foreseeability was utilized to determine the proximate cause of the injuries instead of delineating the extent of the duty owed. If a harmful situation on a premise was foreseeable and an individual was harmed, the lack of safety may be the reason or proximate cause of the damage rather than the particular mechanism of the injury (*Turpin v. Granieri*, 1999).

The concept of foreseeability in tailgating activities at intercollegiate athletic events was addressed in *Bearman v. University of Notre Dame* (1983). In *Bearman* an intoxicated person who had been at a tailgate party injured the plaintiff. The court stated that it was reasonable for the university to have foreseen that some people become inebriated at tailgate activities and thereby may pose a broad danger to the safety of others (*Bearman*, p. 3). However, the university chose not to implement measures to provide a reasonably safe environment. Thus, the lack of safety precautions to protect against such a broad, foreseeable danger may be viewed as the primary mechanism causing *Bearman's* injury.

Premises Liability

Although a land possessor is not an absolute insurer of a visitor's safety, premises liability holds landowners and/or possessors of a property liable for injuries occurring on their property including land areas and facilities (Sharp, 2003). Traditionally, courts have held that there was no duty to protect individuals from criminal activity on the premises. However, litigation has grown regarding this issue in recent years, with an increasing trend against land possessors (Bates & Bates, 2005).

The duty of the owner varies depending on the status of the party on the premises (Wong, 2002). Generally, there are three types of entrants: trespassers, licensees, and invitees, and, with each classification, the owner owes a different standard of care to each individual. A broad definition of a trespasser would include any individual who entered a property without the landowner's express or implied consent (Dobbs, 2000). Although a trespasser is owed no duty of reasonable care, a duty exists in which the landowner cannot "...cause intentional injury, to set a trap, or cause wanton injury" (Dobbs, p. 592).

Licensees are individuals who have the express or implied consent of the owner to be on the premises (Dobbs, 2000). When a landowner gives permission or extends an invitation to a guest, no assurances are given that the premises are entirely safe (Dobbs). As such a licensee is owed only an ordinary standard duty of care (Wong, 2002). This standard of ordinary care for a licensee involves reasonable care regarding only when the possessor is aware or possesses a reason to know of concealed conditions (ALI, 1979, §330). Licensees do not rise to the same status level of an invitee "... because they are not on land open to the public generally and not present for any potential economic transaction with or benefit to the landowner" (Dobbs, p. 596).

As the name insinuates, an invitation is crucial for a person to achieve invitee status. An invitation can be in the form of the premises being held open to the public, such as at a public park. An invitee who enters the premises is different from a licensee in that there is an implied assurance to the invitee that the area has been prepared and is in reasonably safe condition while the person is there (ALI, 1979, §332). Invitees are generally regarded as those individuals who are users, participants or spectators of sport activities (Maloy, 2001).

The invitee status of entrants may be divided into two classifications: public invitee and business invitee. Whereas the public invitee is one who gains access to the area as a member of the general public, the business invitee is invited to enter the area due to some business relationship, though not necessarily monetary in nature, with the land possessor (Dobbs, 2000). A distinction may be made between a public and business invitee by determining why the person is on the premises. For example, people who enter a store but do not buy anything have been considered public invitees (Dobbs). A business invitee, as applied to athletic contests, may be any fan attending an intercollegiate contest conducted on university/college owned premises (Mallen, 2001). To assist intercollegiate event managers to understand, the duty to protect business invitees will be addressed in the next section.

Duty to Protect Invitees

Tort law specifies that before a person or organization can be held liable for unlawful activity, that entity must breach an affirmative duty (Dobbs, 2000). The *Restatement of Law (Second), Torts* (ALI, 1979, §342) recognized the general duty owed by landowners to their invitees to provide reasonable protection from foreseeable criminal assaults. The courts have recognized that an invitee is owed the duty to use reasonable care in keeping up the property in a reasonably safe condition as well as the duty to warn of dangers of which the owner has or should have known, dangers which are not known to the invitee, as well as dangers of which the invitee would be able to ascertain from reasonable care (*Wolford v. Ostenbridge*, 2003). Although in some circumstances a warning to an invitee may fulfill the duty, for other occasions the duty may involve the active inspection of the premises to make it safe (Dobbs, 2000). When conducting athletic contests an organization or director has a duty to use reasonable care for the safety and protection of their business patrons and to employ such care that a prudently reasonable individual would use in the same position under similar circumstances (Wong, 2002). Thus, to provide a reasonably safe environment a director of intercollegiate athletic

events should provide either a warning to their patrons or actively supervise the area where potential harm may occur.

Duty to Control Third Party Acts

Since fans who go onto property owned by a university/college and pay to watch a football game or any other athletic event are business invitees, a land owner has a greater level of duty to protect patrons attending sport events from negligent behavior (Mallen, 2001). This is especially true as an athletic organization has been recognized as having a "special relationship" or duty to protect patrons at sporting events and is required if it was reasonably foreseeable that a third party could inflict harm on another person (*Hills v. Bridgeview Little League Association*, 2000). In a majority of states, when conducting an event such as an athletic contest an organization possess a duty to use reasonable care for the safety and protection of their business patrons and to employ such care that a prudently reasonable individual would use in the same position under similar circumstances (*Pierce v. Murnick*, 1965).

If past experience is such that reasonably careless or criminal conduct on the part of third persons may be anticipated, the landholder may be under a duty to take precautions against it, and provide a reasonably sufficient number of personnel to afford a reasonable protection (Dobbs, 2000). Since patrons entering an institution's property for the purpose of watching a football game or any other sporting event are considered business invitees, the institution has a duty to take reasonable safety measures to warn or protect the invitees from foreseeable harmful or criminal acts of a third party (Mallen, 2001).

In summary, thousands of fans attend intercollegiate football games in the fall on a weekly basis. In addition to viewing the action on the field, attending these games provides an opportunity for these fans to take part in tailgating activities. Although most fans participating in tailgating activities do not act in an unruly fashion, there are potential legal implications for intercollegiate athletic administrators (Wong, 2002). To guard against legal consequences intercollegiate athletic event directors, as well as the universities/college venues where the contests are conducted, must be very aware of their duties for patron safety as they apply to any intercollegiate athletic venue. A comprehension of the duties as land possessors to create and maintain a reasonably safe environment and to protect their patrons from the criminal acts of third parties is essential. Finally, they must be cognizant of the laws and regulations regarding alcohol liability since tailgate parties are strongly associated with alcohol consumption. With this understanding event directors will be in a better position to provide spectators with a reasonably safe

environment. Specifically, they will be able to better foresee potentially harmful situations and take appropriate measures to manage these risks. This information may aid sport event managers in understanding the importance of the development and implementation of a risk management plan.

NEED FOR RISK MANAGEMENT STRATEGIES

To minimize the likelihood potentially injurious behaviors and actions will take place, appropriate risk management strategies should be considered. Burke (1999) defined risk as a possible future problem that inhibits the achievement of the primary objectives an organization has outlined. The amount of risk is produced by its impact (e.g., low, medium, high) and the likelihood of occurrence (e.g. never, sometime, often). In the event that the risk producing harmful incidents is considered unlikely, it may be perceived that the management of risks would be relatively unimportant. However, if the risk were perceived as producing events that could significantly and negatively impact the organization, the management of such a risk would be important. Risk management policies should never be thought of as prophetic in nature, however, they can uncover the sources of potential risks making them visible to key decision makers in the organization. Since risk management has generally been involved in risk avoidance as well as risk reduction, it can assist an organization in deciding what risks may be so great that they should be avoided or in making provisions to decrease the risks while still conducting an activity.

An effective tailgating risk management plan can create a proactive approach for improving the protection of not only the organization as a whole but also for any individual participating in or attending an event. Understanding the risks involved in tailgating can assist institutions in managing the risk game. Effective development, implementation, and enforcement of a risk management plan creates opportunities for an organization and its' employees to take a conscious, systematic approach to dealing with identifiable risks. These opportunities permit the organization to advance from the domain of the accidental to the domain of the proactive.

In contrast, poorly organized and unsupervised tailgating activities can potentially have negative effects on the perception of the university and athletic department. Frequently, media reports of incidences occurring at athletic events, suggest administrative negligence (whether actual or alleged) leading to undesirable media coverage and public scrutiny. An actual lawsuit, or the threat of one, against an athletic organization can cause undesirable attention resulting in possible decreased spectator attendance. In today's

litigious society serious injuries can generate lawsuits, which are not only financial burdens but also can be costly in terms of time, energy and reputation. From an organizational perspective, risk management can protect the financial resources and reputation of an organization. To assist in protecting an organization from potentially litigious situations, the creation and execution of detailed, preferably written, risk management plans should be strongly considered (Miller & Veltri, 2001; Seidler, 2003).

PURPOSE OF THE STUDY

Although previous investigations have addressed tailgating issues (Gillentine & Miller, 2006; James, Breezeel, & Ross, 2001; Trail, Anderson, & Fink, 2000; Wechsler, Kelley, Weitzman, San Giovanni, & Seibring, 2000) detailed research findings regarding the tailgating risk management strategies of NCAA Division I affiliated universities are non-existent. To identify the efforts of university athletic departments to reduce potential injurious and/or disruptive incidents from occurring, an analysis of existing tailgating risk management policies at institutions sponsoring NCAA Division I football was conducted. Specifically, this investigation attempted to determine university/college premises status, risk areas of most concern for tailgating activities, and the number of institutions that possessed risk management policies that particularly addressed those risk areas.

METHOD

The population for this study included 118 university/college athletic departments from 11 conferences designated as NCAA Division I. Six of the conferences were affiliated with the intercollegiate football Bowl Championship Series (BCS), while the other five conferences were not affiliated with the BCS. The official websites for each of the university/college athletic departments were accessed to determine whether a risk management policy was available. All of the official athletic websites the investigators accessed had been updated within the previous 4 months of contact.

In instances in which tailgating risk management policies did not appear on the official athletic department website, an email was sent to the athletic department representative who was identified from the institution's website as being responsible for football game event management. These individuals were contacted by email to ascertain whether they were responsible for intercollegiate football game event management and if they could provide the location of tailgating risk management policies. If no response had been received after one week, a follow-up email was sent. If no response was

received from the follow-up email after a two-week period, telephone calls were made to those institutions.

A modified coding sheet (Griffith & Palmer, 1999; Ju-Pak, 1999) was developed to reflect the website contents or email responses for this study. Specifically, the coding sheet correlated a number to a responding institution and only the investigators had access to this information. The coding of the website content or email responses provided complete confidentiality as the names of respondents or their institutions could not be associated with identified risk management policies for tailgating activities to anyone other than the investigators. Items that were studied included whether the football stadium was located on the university/college premises, primary areas addressed for tailgating and the number of risk management strategies used by an institution specific to tailgating activities.

Twenty of the 118 institutions either chose not to participate or failed to respond to requests for information. In such instances, the person identified as the individual responsible for intercollegiate football game event management at these twenty institutions was contacted again to supply the risk management policies for tailgating activities. This individual was contacted two times by email over a two-week period. All of the inquiries were denied. As a result a total of 98 NCAA Division I university/college athletic departments were represented for analysis of risk management policies for tailgating activities, for a total response rate of 83%. The policies were analyzed using descriptive statistics to identify football stadium location, and areas of primary concern, as well as the number of risk management strategies for tailgating activities that were implemented to promote a reasonably safe environment.

RESULTS

Tailgating Risk Management Policies

Of the 98 university/college athletic departments represented, 96 (98%) indicated that the intercollegiate football stadium was located on university/college property. Fifty-two (53%) of the tailgating risk management policies were available through the university and/or athletic department web site, while 16 (16%) policies were supplied by the university via email, fax or through a specific web address supplied by the university personnel that was not readily available to the general public (e.g. PDF documents). Thus, a total of 68 (69%) of the 98 institutions were found to possess risk management strategies for tailgating activities.

The 30 institutions from the 98 athletic departments that did not respond were contacted again to ensure that tailgating risk management policies were unavailable. Two email inquiries over a two-week period were sent to the person identified as being responsible for football game event management. Twenty-four (24%) responded that risk management policies were available (e.g. crowd control inside the stadium) but specific tailgating activities did not exist, and six (6%) never answered. Since none of the 30 departments possessed risk management policies that dealt specifically with tailgating, they were not included in the results.

The results from the 68 institutions indicated that four areas emerged as being specific to tailgating risk management. These issues, to be addressed in the following sections, were:

1. Tailgate parking,
2. Alcohol consumption,
3. Charcoal grill, glass container, and trash, and
4. Stadium re-entry.

Tailgate Parking Issues

Results of this investigation indicated that 35 (52%) assigned tailgating areas to certain parking lots and 23 (34%) possessed policies regarding the number of available parking spots for tailgating purposes existed. In regards to the times the parking lots were open or closed for tailgating, 42 (62%) revealed that the athletic department's risk management plan did not specify open hours for parking lot tailgate parties prior to a contest and 56 (82%) did not identify hours that the tailgating area would be closed. Another tailgating parking area concern that emerged dealt with parking recreational vehicles (RV) and the placement of tents. Results revealed that 59 (87%) did not possess policies regulating where or how RV's could be parked while 56 (82%) did not reveal policies about where tents could be place in designated tailgating areas.

Alcohol Consumption Issues

Forty-six (68%) respondents indicated that alcohol consumption-related tailgating policies existed. Sixty-three (92%) of the institutions studied either permitted or at least did not discourage alcohol consumption in designated tailgating areas. All of the respondents indicated penalties existed for underage drinkers as well as for over-imbibing. Twenty-three (34%) restricted the type of alcohol (e.g. no hard liquor, beer only), however, 24 (36%) indicated a limit

to the amount of alcohol a person or group could bring into the designated tailgating areas. Sixty-six (97%) indicated that security policies were part of the risk management plan for tailgating areas, however, forty (59%) of the 68 institutions made reference to monitoring such areas by trained personnel. Sixty-four (94%) revealed that alcohol was not permitted in the stadium.

Charcoal Grill, Glass Container and Trash Issues

Results indicated that 31 (46%) possessed strategies regarding charcoal grills. Particular attention was made to the amounts of water to put out flames, limiting the size of the grills, and providing areas for the drop of hot or used charcoal as well as the size of an open flame.

Regarding glass container policies, 27 (40%) of the schools had policies prohibiting their use. Glass containers can break leaving sharp shards on which individuals may fall and injure themselves. The results indicated that 23 (34%) of the institutions possessed a risk management policy that dealt with glass container usage. This leads to a final related risk area of trash disposal. Thirty (44%) indicated policies were present for trash disposal. Trash may create hazardous situations for people walking or driving and things such as glass pose serious risk management threats.

Stadium Re-Entry Issues

Risk management strategies regarding patron re-entry into the stadium appeared in 32 (47%) of the institutions. Because drinking alcohol at tailgate parties may be an acceptable part of the culture, a danger may exist in which a patron may leave the stadium to get a drink at a tailgate party and return to the contest in an impaired condition. Without a policy, fans can go back to the parking lots and continue tailgating. This means there may be increased alcohol consumption and allowing re-entry to stadiums may encourage behavior that could detrimental to others.

DISCUSSION

The results revealed that all but one of the respondents conducted football games in stadiums located on university/college property, as such the university/college may be perceived as the landowner. Supporters who enter a university's property for the purpose of watching a football game or any other sporting event are considered business invitees (Mallen, 2001). As a result, a university/college conducting a sport activity has a duty to take reasonable

safety measures to warn or protect the invitees from foreseeable harmful or criminal acts of a third party (Dobbs, 2000; Maloy, 2001).

An important component in preventing an incident from happening is the landowner (e.g. university/college) being able to foresee possible tailgating activities and take reasonable precautions to protect the invitee from potential foreseeable dangers. Several states, such as Alabama, Colorado, Georgia, and Wisconsin, have developed legislation to increase the safety of individuals attending public events including sporting events (Montgomery & Nahrstadt, 2004). Although some states have a specific premises liability act (Illinois) or a safe place statute (Wisconsin), the courts will look to see if the landowner of the premises used reasonable care to create a reasonably safe environment to individuals invited onto the property (Montgomery & Nahrstadt).

To create a reasonably safe environment universities/colleges should develop the capacity to understand their legal duties to make rational decisions in protecting football fans (invitees) attending games from unreasonable risk of harm. Honore' (1999) stated:

Before imposing sanctions or attaching blame, law and morality requires something more than that the person concerned is responsible for what they have done. One further requirement, common to both . . . is that in the circumstances the agent had the capacity to reach a rational decision about what to do. When this capacity is present, blame for bad behavior is appropriate and criminal liability may, depending on the state of law, be imposed (p. 138).

This capacity to understand the risks may also be related to how the organization perceives the likelihood and impact of the risk. For example, small skirmishes may not be an unusual occurrence in designated tailgating areas, whereas severe injuries or fatal shootings may be. However, previous reports have indicated that harmful, even catastrophic events or injuries have occurred as a result of tailgating activities (*Bearman v. University of Notre Dame*, 1983; Lowe, 2000; Mason & Calloway, 2004; Romig, 2004). The publicity these occasions have generated should increase the capacity of athletic event directors to understand the likelihood of potential injuries that may occur as a result of tailgating. It is through this increased capacity that the athletic event director may make rational decisions in providing a reasonably safe environment for spectators.

Previous investigations have indicated that drinking alcohol can increase an individual's violent tendencies, especially when placed in an emotionally charged atmosphere (Harford, Wechsler, & Muthen, 2003; Leonard, Quigley, & Collins, 2002; Wechsler, Moeykens, Davenport, Castillo, & Hansen, 1995).

Since drinking alcoholic beverages is a recognized element of tailgating (Cahn, 2003; Gillentine & Miller, 2006), and tailgating may be considered part of the emotionally charged atmosphere often found attending intercollegiate football games, it would be reasonable for the landowner (i.e. university/college) to anticipate that intoxicated actions of some of tailgaters may endanger others (*Bearman v. University of Notre Dame*, 1983). To that end, several other studies have indicated that veterans of tailgating parties often begin drinking as early as breakfast to "get ready" for the big game in university/college property designated for tailgating (Gillentine, 2003; Gillentine & Miller; Jackson, Polite, & Barber, 2003). These studies also reported that tailgate parking lots were opened 3-4 hours before the contests, sometimes even the night prior to the contest. Yet, the results of this investigation indicated that 38% possessed risk management policies relating to tailgate parking hours of operation. If there are no restrictions concerning when a tailgating area is open, then it is quite possible that a patron may be well-intoxicated before, during, and after a contest. Without specified hours of availability during which tailgating can occur, it may be very difficult to provide appropriate parking lot risk management measures.

According to the *Restatement of Law (Second), Torts* (ALI, 1979, § 344), the landowner has the duty to monitor the premises. Monitoring under these circumstances is not meant to create an atmosphere in which tailgaters cannot enjoy themselves, instead it creates an environment in which the game attendee is not exposed to unnecessary harm. Previous research has indicated that monitoring areas in which alcohol drinking occurred was the only variable that decreased excessive alcohol drinking (Knight, Harris, Sherritt, Kelley, Van Hook, & Wechsler, 2003). However, 28 institutions indicated that tailgate areas were not monitored. Not monitoring these designated areas begs the question about the risk management strategy effectiveness as it appears for a number of institutions in the investigation.

Another element that emerged related to parking was the risk management policies for recreational vehicles and tents in designated tailgating areas. Recreational vehicles and tents that are often present in tailgating areas may create certain risks due to a visual obstruction. However, over 75% of the institutions did not possess risk management strategies that regulated the size, placement or way a recreational vehicle or tent may be parked or placed. Because of the sheer size of an RV or tent, a potentially risky situation may become present, such as a person darting out from between two RV's and getting hit by a vehicle.

Other foreseeable items that have been overlooked that could create potentially unsafe conditions were charcoal grills, glass containers, and trash

in the designated tailgating areas. Because of its combustible components, attention should be paid to grilling in tailgating areas. Although in a minority, the institutions that addressed this paid particular attention to the amounts of water needed to put out flames, limiting the size of the grills and the size of an open flame, and providing areas for the drop off of hot or used charcoal.

Risk management policies related to glass containers in designated tailgate areas were also disregarded. Glass containers can break and individuals may fall and injure themselves on the broken shards. However, less than 25% of the population indicated that risk management strategies existed for this area of concern. Perhaps this may be due to the unlikely event that stepping on a piece of broken glass may result in a significant injury. In this case it is the impact that is being addressed and not the primary reason for a risk management plan, which is to provide the most reasonably safe environment possible.

Policies regarding trash disposal in a designated tailgating area were found in less than half of the population. While it would seem to be somewhat ludicrous that an institution would have to inform a largely adult-aged group to dispose of their trash, one only needs to stay after a sporting contest to view the likelihood that attendees will not pick up after themselves. The institutions that designated certain areas in parking lots where trash could have been dropped off also passed out trash bags to tailgaters. Addressing this area within a risk management policy can assist in keeping the parking lots reasonably safe and clean.

A final area that emerged was policies dealing with patron re-entry into the stadium. The results indicated that slightly less than half of the population possessed policies regarding patron re-entry. It may be a foreseeable circumstance that a patron may leave the stadium, go to a tailgating area, have several alcoholic drinks, and return to the contest in an impaired state. Without appropriate checking, intoxicated individuals may enter the stadium and pose harm to themselves and others.

To provide a reasonably safe environment a written risk management plan should be developed for all foreseeable areas in which a person may be exposed to unnecessary harm. A well-constructed risk management plan should systematically identify the risk, examine the impact and the likelihood of the risk occurring, develop strategies to address the risk, and actively administer those strategies. Within the results of this study, a quarter of the respondents did not possess any risk management strategies specifically for tailgating activities, while an additional 6% did not respond potentially inferring that they did not possess specific tailgating risk management plans. While this information may be considered rather negative it may also exhibit

the lack of understanding or capacity that some institutions have in neglecting their duties to individuals attending extracurricular events on university premises.

Research Limitations

As in any research study, limitations exist. First, the subjects that could reflect a measure of bias on behalf of the institution and/or event director base the results of the study upon self-reported information. Further it can only be assumed that the universities studied responded in a truthful and honest fashion. Additionally, these findings may not be generalized to a greater population in that not all Division I intercollegiate athletic football event directors participated. For example, some Division I intercollegiate football conferences, such as the Ivy League, have previously instituted bans on tailgating activities (Lebowitz, 2005; Wieberg, 2005). Lastly, the athletic departments that did not participate in the study may have in fact possessed a risk management plan regarding tailgating activities but simply choose not to disclose it.

Future Research

Future investigations could include the liability of professional sport teams regarding risk management practices for tailgating activities. Secondly, an investigation could be undertaken concerning the perception of safety in tailgating activities at intercollegiate football contests from the patron's point of view. Finally, an investigation dealing with the university/college athletic department representatives understanding of potential defenses for the potential harmful acts incurred at tailgate activities could be explored.

CONCLUSION

As society becomes more injury conscious, people are looking to civil courts to supply remedies and compensation for incurred injuries. The subject of these suits often is not the party that committed the harmful act but the landholder of the premises on which the act occurred. According to Burling (1992) the *Bearman* ruling effectively expanded game and risk management legal issues from the stadium to the parking lot (Burling, 1992) as he stated that the case would ". . . create an unmanageable burden for institutions with large spectator events, and if followed, the case could dramatically expand the scope of potential liability for athletic-related activities" (p. 512). As improbable as the occurrence of severe injuries is to tailgaters, it does not

excuse a university or its athletic department from recognizing their duty to provide a safe environment. If the university knows that heavy drinking accompanies tailgating, and heavy drinking by patrons creates an unsafe atmosphere for others, the university, as a landowner, should provide appropriate measures of protection for the patron.

This investigation was not conducted to propose the elimination of the practice of tailgating parties at intercollegiate contests. Rather the overt message was that universities and colleges who support tailgating at athletic contests must understand the need to provide a reasonably safe environment for their patrons on their premises. The *Bearman v. Notre Dame* (1983) ruling may serve as an example for the development and inclusion of specific tailgating risk management policies at intercollegiate contests.

It is important for universities or colleges that conduct extracurricular activities, such as sports, to understand that even if they do not sponsor or encourage tailgating activities they are not absolved from potential litigation. Safer environments are best accomplished when proper risk management becomes a significant part of the daily culture of the organization. Although risk management resides at the very essence of providing the safest possible environment, it does not occur overnight. If an organization does not foresee potentially risky situations or simply ignores the need for safeguards, it remains a matter of time until an incident happens (Frame, 2003). Because some type of risk is usually present during the conduct of sports events, the effective management of risk must be continuous and dynamic to decrease its' potential severity (Turner & Gelles, 2003). A well-organized and implemented risk management strategy can create a manageable way for a university to provide a reasonably safe environment for patrons attending their events.

Organizations must put patron safety into perspective to make rational decisions about where and when the risk management plan can assist in meeting the objectives of the organization. In order to provide a safer tailgating environment, the authors recommend that intercollegiate athletic organizations develop, implement, and enforce risk management strategies specific to tailgating for any potentially foreseeable situations that may harm a patron. Specific strategies may include instituting alcohol-related policies, eliminating tailgating activities during the contest, identifying hours that individuals can participate in tailgating activities while on university premises, creating sanctions against anyone attempting to re-enter a contest with an alcoholic beverage, implementing of guidelines for vehicle placement and grill size; and requiring all soft and alcohol beverages to be in cans or plastic bottles. In addition, although the use of security supervisors was not

highlighted by the respondents, reports have indicated that a lack of security supervision was a primary reason for the severe injuries and fatalities incurred at tailgating activities (Lowe, 2000; Mason & Calloway, 2004; Romig, 2004). Since the lack of any enforcement basically renders any plan inert, the authors emphatically advocate for intercollegiate athletic organizations to provide appropriately trained security supervisors to enforce the risk management tailgating strategies previously mentioned.

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