Sports Litigation Alert Archives

Return to Archives Home Page | Account Management | Sports Litigation Alert Home Page

February 05, 2016

Injured Fan Claims NASCAR Does Not Adequately Protect Spectators, Sues for Damages Relating to Traumatic Brain Injury

By Shawn Schatzle, Esq. of Havkins, Rosenfeld, Ritzert & Varriale, LLP

There are certain risks of injury associated with all sports. These risks often extend to spectators, such as the risk of being struck by a foul ball while seated in the outfield bleachers during a baseball game, or the risk of being struck by a golf ball due to a player's offline shot. Due to the very nature of the sport, and in contrast to traditional stick-and-ball sports, the potential risk to spectators is especially obvious in auto racing, where fans come for the excitement of watching top of the line motor vehicles travel at breakneck speeds for hours on end. This risk would also seem to require race organizers to impose increased safety measures. One spectator, however, asserts that the measures commonly in place are not always sufficient.

On February 23, 2013, Allen Davis was a spectator at the Daytona International Speedway in Daytona Beach, Florida NASCAR Nationwide Series auto race. He attended the race with his brother and was seated in the upper level of the stands. During the final lap, a multicar crash sent driver Kyle Larson's car flying into a fence near the finish line, sending parts of the car flying in an area where numerous spectators were located. Twelve vehicles were involved in the crash, which allegedly injured twenty-eight spectators.

As a result of the crash, Mr. Davis claims to have sustained a traumatic brain injury. He recently commenced a personal injury action in the

United States District Court, Middle District of Florida against NASCAR and the International Speedway Corp., the operator of the Daytona International Speedway. He asserts numerous causes of action against each defendant, although his complaint primarily sounds in negligence. Mr. Davis seeks damages for pain and suffering, medical expenses and loss of income, among other items.

Notably, Mr. Davis asserts that NASCAR's usage of restrictor plates, which serve to reduce a racecar's horsepower and speed, has resulted in equalized performance of racecars. He claims that this has subsequently resulted in "pack racing" — or closely packed groups of vehicles — during NASCAR races. He asserts that contact between the vehicles is simply inevitable in "pack racing," often resulting in a chain reaction of unpredictable collisions. Such collisions increase the likelihood of racecars becoming airborne, according to Mr. Davis, as well as the likelihood of racecars or debris flying into spectator areas. His complaint sets forth a list of NASCAR collisions over the past few decades which have resulted in spectator injuries.

Mr. Davis also asserts that the risks inherent to "pack racing" are further increased due to the design and layout of the Daytona International Speedway. He claims that the speedway includes steep banks which make the racecars easier to handle, but which also makes it easier for drivers to reach maximum speeds and increases packing. He also claims that the installation of crossover gates at the speedway has decreased the structural integrity of the protective "catch fence" thereby increasing the risk of spectator injury.

In order to prevail on a theory of common law negligence under Florida law, a plaintiff must prove that (1) the defendant owed the plaintiff a duty; (2) the defendant breached that duty; (3) such breach caused the injury in question; and (4) the plaintiff incurred actual loss or damage. See Limones v. Sch. Dist., 161 So. 3d 384 (Fla. Sup. Ct. 2015).

The defendants will likely defend Mr. Davis's claims under the assumption of risk doctrine. Under Florida law, implied assumption of risk does not bar a plaintiff's recovery in a negligence action, but merely serves as evidence of a plaintiff's comparative fault. See Acosta v. United Rentals North Am., Inc., 2013 U.S. Dist. LEXIS 31392 (M.D. Fla. 2013). Express assumption of the risk, on the other hand, may serve as a complete bar to a plaintiff's recovery, but is generally limited to contractually assumed risks and participation in contact sports. See Ashcroft v. Calder Race Course, Inc., 492 So. 2d 1309 (Fla. Sup. Ct. 1986). Notably, the risks assumed are only those inherent to the nature of the sport or activity. See Ashcroft, supra.

The ticket Mr. Davis purchased to attend the event may have included

some type of waiver of liability or exculpatory clause. Although exculpatory clauses are disfavored under Florida law, they are generally enforceable under Florida law if the intention to limit liability is clearly and unequivocally expressed. See Deboer v. Fla. Offroaders Driver's Ass'n, 622 So. 2d 1134 (Fla. 5th DCA 1993). Notably, Florida has enacted a statute allowing liability releases for non-spectators at racetracks. See Fla. Stat. § 549.09. The statute does not, however, specifically invalidate spectator liability waivers or exculpatory clauses.

Here, the merits of Mr. Davis' claims could potentially turn on the language of the waiver or exculpatory clause located on the tickets sold to spectators on the date of the accident, assuming such a clause existed. If the clause is found to be enforceable, Mr. Davis' claims will likely fail. On the other hand, if the exculpatory clause does not bar Mr. Davis' claims, he may be able to argue that that the doctrine of implied, and not express, assumption of risk applies, as he was not a participant in a contact sport but was instead merely a spectator.

The defendants may rely upon application of the doctrine of express assumption of risk by arguing that racecar collisions are common and a risk that spectators of autoracing, as well as drivers, expressly assume. They may point to the list of collisions set forth in plaintiff's own complaint as evidence that the risks of collisions are well known. The defendants may also seek to establish that the various claims asserted by plaintiff regarding the increased risks relating to "pack racing," the speedway's banks and the integrity of the "catch fence" were not, in fact, increased risks. If plaintiff is able to establish otherwise, it could potentially defeat any otherwise viable assumption of risk argument that the defendants have.

This case is primarily notable for its analysis of whether the practice of "pack racing" and the conditions of the speedway constitute hidden risks which a normal spectator cannot reasonably be anticipated to assume, or if they otherwise constitute enhanced risks over and above those normally associated with autoracing. The outcome of the case could very well depend on how the court answers these questions.