



7-1-2015

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Recommended Citation

Bridget Fitzpatrick, *Broken Bats and Broken Bones: Holding Stadium Owners Accountable for Alcohol-Fueled Fan-on-Fan Violence*, 22 Jeffrey S. Moorad Sports L.J. 663 (2015).

Available at: <http://digitalcommons.law.villanova.edu/mslj/vol22/iss2/7>

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BROKEN BATS AND BROKEN BONES: HOLDING STADIUM OWNERS ACCOUNTABLE FOR ALCOHOL-FUELED FAN-ON-FAN VIOLENCE

I. INTRODUCTION

Most baseball fans would never expect to attend a game and leave permanently brain damaged and wheelchair-bound. Fans entering a baseball stadium to watch their team play on a sunny afternoon reasonably expect certain happenings: there will be at least nine innings of play, there are twenty-three men on each team's roster, they will overpay for food and drinks, and they can cheer for whomever they please from the safety of their seats.¹ However, recent incidents of violence at professional sports stadiums have severely altered what a fan can expect from a day at the ballpark.² Fan violence has increased in recent years, which is scaring away fans, who unfortunately experience fear and alcohol-fueled physical altercations, not just harmless heckling.³

1. See generally MLB, OFFICIAL BASEBALL RULES (2014 ed.), available at http://mlb.mlb.com/mlb/downloads/y2014/official_baseball_rules.pdf (discussing general rules of professional baseball).

2. See *Drinking Linked to Problems in Major League Ballpark Stands*, USA TODAY (May 24, 2011, 5:10 PM) [hereinafter *Drinking Linked to Problems*], http://usatoday30.usetoday.com/sports/baseball/2011-05-24-drinking-stadiums_N.htm (finding direct link between violence at professional sporting events and alcohol consumption in and out of stadium).

3. See *id.* (discussing individuals who previously enjoyed attending sporting events but no longer attend because of safety concerns). For example, a 2011 preseason National Football League ("NFL") preseason game at Candlestick Park between the Oakland Raiders and San Francisco 49ers ended with one Oakland Raiders fan shot for wearing a "F— the Niners" t-shirt. See Terry Collins, *San Francisco 49ers Shooting: 2 Shot After Preseason Game*, HUFFINGTON POST (Oct. 10, 2011, 5:12 AM EDT), http://www.huffingtonpost.com/2011/08/21/san-francisco-49ers-shooting_n_932355.html. Another Raiders fan was shot in a separate incident after this game along with one man who was knocked unconscious in a stadium bathroom during the game. See *id.* In November 2011, a man was stabbed in the abdomen during an altercation outside of Qualcomm Stadium during an NFL game between the San Diego Chargers and the Oakland Raiders. See Susan Shroder, *Stabbing in Qualcomm Lot During Chargers Game*, U-T SAN DIEGO (Nov. 10, 2011, 9:26 PM), <http://www.utsandiego.com/news/2011/nov/10/stabbing-in-qualcomm-lot-during-chargers-game/>. In this case, the cause of the violence was never discovered because the victim did not cooperate with police. See *id.* Following a Denver Broncos loss to the San Diego Chargers in 2013, at least three men were stabbed during a fight in a parking lot. See *Recent Sports Stadium-Related Violence in the U.S.*, DENVER POST (Dec. 13, 2013, 1:55 PM), http://www.denverpost.com/news/ci_24718357/recent-sports-stadium-related-violence-u-s. Not all of the stadium violence is necessarily associated with fan disagreements, but the violence occurs during or after the game, nonetheless, endangering all those in attendance.

Few of these recent incidents of fan violence have captured the nation's attention like the brutal beating of Giants fan Bryan Stow outside of Dodgers Stadium on Opening Day in 2011.⁴ As infamous rivals, any Giants fan could have reasonably expected to be heckled in Dodgers Stadium that day, but only one man was beaten to within an inch of his life.⁵ Although he engaged in some back-and-forth talk with Dodgers fans in the stadium, Stow made known to his family via text message that he feared for his safety due to the escalating behavior of many in the stadium.⁶ After the Dodgers victory, Stow and his friends walked to a dimly-lit taxi stand in the parking lot, enduring taunting from other intoxicated fans until Dodgers fan Louie Sanchez delivered a haymaker to the side of Stow's head, causing him to fall and slam his head on the ground.⁷ Sanchez and his accomplice Marvin Norwood proceeded to kick Stow in the head multiple times and eventually fled the scene.⁸ Se-

See id. Again in 2013, a Dallas Cowboys fan was beaten unconscious by an Oakland Raiders fan outside of AT&T Stadium in Arlington, Texas. *See id.* Although the focus of this Comment is a beating after a baseball game, football games are notorious for more fan violence than any other professional sport. *See Drinking Linked to Problems*, *supra* note 2 (explaining how violence has affected all professional sports).

4. *See* Allen, Flatt, Ballidis & Leslie, *How Could Bryan Stow Case Impact Future Personal Injury Claims Involving Spectator Violence?*, S. CAL. INJURY L. BLOG (June 21, 2012), http://www.californiainjurylawyerblog.com/2012/06/how_could_bryan_stow_case_impact.html (discussing how Stow's attorneys sought \$50 million for life-long care he will require to treat his injuries). This is potentially due to the amount of money being solicited at civil trial from both the Dodgers Corporation and owner, Frank McCourt, himself, in order to pay for Stow's medical care, lost wages, and emotional trauma. *See id.*

5. *See* DODGERS-GIANTS: BASEBALL'S GREATEST RIVALRY, <http://www.dodgers-giants.com/> (last visited Sept. 5, 2014) (discussing history and development of Dodgers-Giants rivalry from their time in New York City to their move to California).

6. *See* Steven J. Swenson, *Unsportsmanlike Conduct: The Duty Placed on Stadium Owners to Protect Against Fan Violence*, 23 MARQ. SPORTS L. REV. 135, 140 (2012) (citing Lee Jenkins, *The Day that Damned the Dodgers*, SPORTS ILLUSTRATED, Aug. 29, 2011, at 50, 53) (recounting that Stow engaged in "minor trash talk" during game); Richard Winton, *Giants Fan Had Feared for Safety*, L.A. TIMES (Apr. 6, 2011), <http://articles.latimes.com/2011/apr/06/local/la-me-dodgers-beating-20110406> (reporting that Stow sent text message stating he was "scared inside the stadium"). Dodgers officials were "surprisingly pleased" that only 72 fans were arrested that evening, compared to the 132 arrests made on Opening Day in 2010. Swenson, *supra* this note.

7. *See* Swenson, *supra* note 6, at 140 (describing initiation of physical confrontation resulting in Stow's permanent injuries). Sanchez originally pushed Stow and one of Stow's friends before pursuing them further through the parking lot and delivering the near-fatal blow. *See id.*

8. *See id.* (describing how Stow's beating continued without interruption from security). Sanchez and Norwood were identified and arrested by police in July, 2011. *See* Dan Schreiber, *Update: Two Men Charged in Beating of Giants Fan Bryan Snow*, S.F. EXAM'R (July 22, 2011), <http://www.sfoxaminer.com/sanfrancisco/update-two-men-charged-in-beating-of-giants-fan-bryan-stow/Content?oid=2178577>.

curity arrived ten to fifteen minutes after the assault and Stow was later placed in a medically induced coma to treat his severe brain trauma.⁹

In May 2011, Stow filed a claim against the Dodgers Corporation (including its numerous associated entities), owner Frank McCourt, and the two assailants asserting claims of negligence; premises liability; negligent hiring, retention, and supervision; and negligent infliction of emotional distress.¹⁰ According to California common law at the time the suit was filed, Stow was unlikely to prevail in his claims against the Dodgers.¹¹ However, on July 9, 2014, the jury rendered a verdict in favor of Stow against the Dodgers Corporation and the two assailants involved and awarded Stow a total of \$18 million dollars.¹² The Dodgers organization was found 25% liable, amounting to a \$13.9 million dollar award for Stow's injuries, medical bills, and lost wages.¹³

They pleaded guilty to assault, with Sanchez receiving 8 years and Norwood receiving 4 years imprisonment. See Linda Deutsch, *Louie Sanchez, Marvin Norwood Admit Guilt in Dodger Stadium Fan Beating*, HUFFINGTON POST (Feb. 20, 2014, 3:59 PM EST), http://www.huffingtonpost.com/2014/02/20/louie-sanchez-marvin-norwood-guilty_n_4825484.html.

9. See Michael Campbell, Note, *Ballpark Beat-Downs: A New Framework to Protect Fans*, 22 S. CAL. INTERDISC. L.J. 109, 110 (2012) (citing *Beaten Giants Fan Bryan Stow Speaks on Camera for First Time*, S.F. EXAM'R (Dec. 12, 2011, 4:21 PM), <http://www.sfexaminer.com/local/2011/12/beaten-giants-fan-bryan-stow-speaks-camera-first-time>)).

10. See Complaint, *Stow v. L.A. Dodgers, LLC*, No. BC462127 (Cal. Super. Ct., L.A. Cnty. May 24, 2011) [hereinafter Plaintiffs' Complaint]. The plaintiffs in the case included Stow and his two children. See *id.* The Defendants included eight Dodgers Organizations and five McCourt Organizations including McCourt himself and his son. See *id.* In addition to the claims listed in the accompanying text, plaintiffs also claimed loss of consortium, assault, battery, false imprisonment, and intentional infliction of emotional distress against his aggressors. See *id.*

11. See generally *Noble v. L.A. Dodgers, Inc.*, 214 Cal. Rptr. 395 (Cal. Ct. App. 1985) (holding L.A. Dodgers not negligent in absence of evidence proving defendant could have acted to prevent plaintiff's injury in beating outside of stadium); *Sample v. Eaton*, 302 P.2d 431 (Cal. Ct. App. 1956) (holding negligence proven with evidence that management knew of specific dangerous behavior and in not acting, caused plaintiff's injury). For further discussion of relevant case law in this context, see *infra* notes 21-48 and accompanying text.

12. See Meghan Price, *Dodgers' Security Fails, Liability Ensues*, MOORAD SPORTS L.J. BLOG (July 27, 2014), <http://lawweb2009.law.villanova.edu/sportslaw/?p=2628> (discussing Stow's jury verdict and award along with assignment of joint and several liability). Shockingly, Dodgers owner Frank McCourt was found 0% liable despite the plaintiff's efforts to pin the lack of security on his expensive divorce and lavish lifestyle. See Plaintiffs' Complaint, *supra* note 10.

13. See Martha Neil, *Jury Say Dodgers Must Pay 13.9M in Giants Fan's Beating Case*, ABA JOURNAL (July 10, 2014), http://www.abajournal.com/news/article/jury_says_dodgers_must_pay_13.9m_in_giant_fans_beating_case/ (explaining that each assailant was found 37.5% liable in Stow's attack).

This Comment will explore generally the future of negligence litigation against stadium owners in light of Stow's jury verdict, the key role that alcohol plays in creating danger at stadiums, and possibilities for reforming negligence law in this area to provide adequate protection for both stadium owners and fans.¹⁴ Section II examines the current common law negligence standards in California, where Stow's suit took place, as well as the legal precedents set out by these standards, which influenced the jury's decision and may affect any future appeal.¹⁵ Section III-A will analyze the role of stadium owners in enabling alcohol-fueled violence.¹⁶ Section III-B describes attempts by stadiums to curb violent behavior fueled by alcohol and rivalry.¹⁷ Section III-C suggests alternative legal solutions available to victims of third party violence that provides a more equal playing field for both parties.¹⁸

II. BACKGROUND

A. Common Law Negligence Liability of Stadium Owners

To establish a negligence claim in common law jurisdictions such as California, a plaintiff must demonstrate: "a duty of care was owed to him by the other party, a breach of that duty occurred, a proximate cause exists between the breach and the plaintiff's injury, and damages occurred as a result of the breach."¹⁹ Stow's claim is one of common law negligence, which many believed would fail due to Stow's inability to prove the foreseeability of the assault or the requisite proximate causation.²⁰

1. *Duty Owed by a Landowner to Victims of Third Party Violence*

Under common law negligence, the judge must decide whether the business or landowner had a duty of care to the injured.²¹ Section 344 of the *Restatement (Second) of Torts* describes the duty of care for business owners, and explains that they are gener-

14. See *infra* notes 19-207 and accompanying text.

15. See *infra* notes 19-101 and accompanying text.

16. See *infra* notes 102-120 and accompanying text.

17. See *infra* notes 121-167 and accompanying text.

18. See *infra* notes 168-199 and accompanying text.

19. Swenson, *supra* note 6, at 141-42 (citing WALTER T. CHAMPION, JR., SPORTS LAW IN A NUTSHELL 110 (4th ed. 2009)).

20. See, e.g., *id.* at 136 (arguing Stow unlikely to succeed in jury trial due to prior similar case law and lack of protective statute to impose higher duty on stadium owners to protect invitees from third party criminal conduct).

21. See *id.* at 142. Steven J. Swenson argues that other jurisdictions such as Wisconsin provide superior protection to fans because there is a higher duty imposed on stadium owners to prevent reasonably foreseeable injuries. See *id.* at 148.

ally liable for any harmful actions by third parties.²² Comment (f) of section 344 also explains the key role of foreseeability in determining whether a business owner owes a duty of care to his patrons with respect to third party violence.²³ Although a business owner does not have to guarantee the safety of his patrons, he must exercise reasonable care to prevent foreseeable harmful conduct.²⁴

A judge may utilize one of four tests to determine whether the harm in question was reasonably foreseeable and, therefore, whether the business owner owed a duty of care to the injured party.²⁵ While not applied by most courts, the specific harm test contends “a landowner owes no duty to an invitee unless the owner

22. RESTATEMENT (SECOND) OF TORTS § 344 (1965). The restatement explains this duty of the landowner:

A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons . . . and by the failure of the possessor to exercise reasonable care to

- (a) discover that such acts are being done, or
- (b) give warning adequate to enable the visitors to avoid the harm or otherwise to protect them against it.

Id.

23. *See id.* at cmt. f. Comment (f) indicates the duty of the landowner to prevent foreseeable harm from third parties to their invitees:

Since the possessor is not an insurer of the visitor’s safety, he is ordinarily under no duty to exercise any care until *he knows or has reason to know that the acts of the third person are occurring or about to occur*. He may, however, know or have reason to know from *past experience*, that there is a likelihood of conduct on the part of third persons in generally which is likely to endanger the safety of the visitor, even though he has no reason to expect it on the part of any particular individual. If the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct [by] third persons . . . he may be under a duty to take precautions against it, and to prove a *reasonably sufficient number of servants* to afford a reasonable protection.

Id. (emphasis added).

24. *See* Joshua E. Kastenberg, *A Three Dimensional Model of Stadium Owner Liability in Spectator Injury Cases*, 7 MARQ. SPORTS L.J. 187, 190-91 (1996) (discussing duty owed by stadium owners to protect spectators from projectiles by having appropriate safety screens).

25. *See* C. Barry Montgomery & Bradley C. Nahrstadt, *A Primer for the Entertainment Community: Legal and Practical Issues About Venue Safety – What You Should Know*, 3 VA. SPORTS & ENT. L.J. 257, 269 (2004) (citing Katherine J. Donahue, Note, *MacDonald v. PKT, Inc.: Who is Responsible for Your Protection?: The Michigan Supreme Court Limits a Merchant’s Duty*, 80 U. DET. MERCY L. REV. 127 (2002)). The first possible test is the specific harm test holding a landowner has no duty to an invitee unless they were aware of a current potential threat of harm. *See id.* The second test, the prior similar incidents rule, held a landowner had a duty to exercise only reasonable care in the event of prior similar incident indicating potential foreseeable harm. *See id.* The third test, the balancing test, balances the foreseeability of potential harm and the corresponding burden of the landowner to prevent that harm. *See id.* at 270. The fourth test, used in California, is the totality of the circumstances test. *See id.* at 269. It is the most widely applied test and it takes into

knew or should have known that the specific harm was occurring or was about to occur.”²⁶ Under this test, no consideration is made by the court other than what the business owner was aware of at the time of the incident.²⁷ Application of this test has the effect of creating poor policy because the invitees are rarely protected and the business owners are far too insulated from liability.²⁸

The prior similar incidents rule, which was applied for many years in California, argues that a business owner owes a duty of reasonable care when there is some showing of prior similar incidents of that specific harm on or near their property, which would make such harm reasonably foreseeable.²⁹ In this sense, the first victim of any incident would never be able to recover.³⁰ States that applied this test took into consideration certain “special facts” that impose a duty on the owner beyond mere prior similar incidents.³¹ However, most courts eventually rejected this test because it failed to incentivize business owners to provide preemptive security measures and it protected them from liability.³²

The balancing test weighs the “degree of foreseeability of harm against the burden of the duty to be imposed” to determine whether a duty of reasonable care exists.³³ Courts may consider a

account all relevant characteristics of an event that may have made harm foreseeable. *See id.*

26. Stefan A. Mallen, Note, *Touchdown! A Victory for Injured Fans at Sporting Events?*, 66 MO. L. REV. 487, 493-94 (2001) (discussing vagueness of specific harm test).

27. *See id.* (discussing reasons why courts have generally rejected specific harm test).

28. *See id.* at 494 (discussing difficulty of proving stadium owners’ duty to take reasonable care in specific harm test jurisdiction).

29. *See id.* (stating that harm in question under prior similar incidents test must have been sufficiently similar to prior acts of harm to be considered reasonably foreseeable).

30. *See id.* (discussing downfalls of applying prior similar incidents test). Other factors such as the geographic location or the time of day would not be considered under this test, leaving the plaintiff to fight an uphill battle. *See id.*

31. *See id.* (explaining two specific examples where business owner can still be liable despite absence of prior similar incidents). Missouri, which still applies this test, finds certain facts like the relationships between the violent actor and the victim impart a duty on the business owner despite a lack of prior similar incidents. *See id.* Also, if a person is known to be violent and dangerous, or if the assailant is unknown, but prior incidents make the violence foreseeable nonetheless, then the business owner is liable to prevent those injuries. *See id.*

32. *See id.* (explaining how prior similar incidents test inadequately focuses on nature of crime rather than foreseeability of harm).

33. *Id.* at 495 (quoting *Delta Tau Delta, Beta Alpha Chapter v. Johnson*, 712 N.E.2d 968, 972 (Ind. 1999)). One court has described: “As the foreseeability and degree of potential harm increase, so too, does the duty to prevent it”. *Id.* (quoting *Delta Tau Delta*, 712 N.E.2d at 972).

number of additional factors in performing this balancing test.³⁴ This test has been rejected by most common law negligence jurisdictions because it is similar to the test for breach of duty, which requires a determination reserved for the jury.³⁵

Courts in California currently employ the totality of the circumstances test, the most widely adopted approach for determining the duty of a business owner.³⁶ When applying this approach, “a court considers all of the circumstances surrounding an event, including the nature, condition and location of the land, as well as the prior similar incidents, to determine whether a criminal act was foreseeable.”³⁷ This test is broader than others and places a lesser evidentiary burden on plaintiffs seeking to prove foreseeability of harm in negligence claims against land or business owners.³⁸

2. *Determining Duty in California*

In *Sharon P. v. Arman, Ltd.*,³⁹ the court explained California’s transition from a jurisdiction applying the prior similar incidents test to a jurisdiction applying the totality of the circumstances test

34. See *Montgomery & Nahrstadt*, *supra* note 25 (listing factors considered under balancing test). Factors to be considered by courts applying the balancing test include:

the foreseeable probability of the harm or injury occurring; the possible magnitude of the potential harm or injury; the importance or social value of the activity engaged in by the defendant; the usefulness of the conduct to the defendant; the feasibility of alternative, safer conduct and the relative costs and burdens associated with that conduct; the relative usefulness of the safer conduct, and the relative safety of the alternative conduct.

Id.

35. See *Mallen*, *supra* note 26, at 495 (explaining why this test has been largely rejected). The Indiana Supreme Court rejected this test specifically because it focused too heavily on whether the defendant took reasonable steps to prevent injury, which is the province of the jury. See *id.*

36. See *id.* (explaining totality of circumstances test for duty). For further discussion of the totality of the circumstances test as applied in California, see *infra* notes 39-48.

37. *Id.* (quoting *Delta Tau Delta*, 712 N.E.2d at 972) (stating Indiana Supreme Court adopted this approach because of broad analysis beyond prior similar incidents); see also *Montgomery & Nahrstadt*, *supra* note 25, at 269 (“[T]he totality of the circumstances test requires the court to review all the circumstances surrounding the situation, such as the existence of security, previous crimes on the property, crime in the surrounding community, and the design of any structures.”).

38. See *Mallen*, *supra* note 26, at 495 (explaining advantage of totality of circumstances test for injured party). Conversely, the broad nature of this test is also concerning because it is difficult to predict the result of a jury’s analysis of the totality of the circumstances. See *id.*

39. 989 P.2d 121 (Cal. 1999) (holding that prior robberies in parking garage were not sufficiently similar to sexual assault under prior similar incidents test of foreseeability)

based on the factors outlined in *Isaacs v. Huntington Memorial Hospital*,⁴⁰ to determine the foreseeability of harm and the corresponding duty of care imposed on landowners.⁴¹ Despite concerns articulated by lower courts regarding the adoption of the totality of the circumstances test, it is now the standard for which all business owners are held accountable in negligence actions from third party harm in California.⁴² Application of the prior similar incidents test resulted in many negligence claims failing to reach a jury based on a lack of duty.⁴³ California adopted the totality of the circumstances test and the corresponding factors listed in *Rowland* so plaintiffs in California could recover for third party violence occurring on a business owner's property.⁴⁴

When a property owner is put on notice that potential criminal activity is afoot, that owner "has a duty to take further minimally burdensome measures to protect patrons."⁴⁵ Considering these factors in *Sharon P.*, the court held that the prior reported robberies in the defendant's parking garage were not "sufficiently similar to the sexual assault inflicted upon plaintiff to establish a high degree of foreseeability that would justify the imposition of such an obligation."⁴⁶ The court also rejected the plaintiff's argument that all

40. 695 P.2d 653 (Cal. 1985) (finding totality of circumstances test most appropriate to determine duty based on foreseeability of harm). The *Isaacs* court considered the factors outlined in *Rowland v. Christian*, 443 P.2d 561 (Cal. 1969). See *Isaacs*, 443 P.2d at 658-61; see also *Rowland*, 443 P.2d at 564 (listing factors to be considered in determining duty of landowner to protect invitees from third party harm).

41. See *Sharon P. v. Arman, Ltd.*, 989 P.2d 121, 126 (Cal. 1999) (adopting *Isaacs* and employing *Rowland* factors).

42. See Campbell, *supra* note 9, at 119-20 (discussing *Ann M. v. Pacific Plaza Shopping Center*, 863 P.2d 207 (Cal. 1993)).

43. See Campbell, *supra* note 9, at 116-18 (discussing how court's rejection of prior similar incidents test was fueled by poor public policy considerations and concern for infringement on jury's duty to determine whether acts of business owner were reasonable).

44. *Sharon P.*, 989 P.2d at 126 n.2 (quoting *Rowland*, 443 P.2d at 564). The following factors were considered in *Rowland* and applied by the *Sharon P.* court: [T]he degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Id.

45. See Campbell, *supra* note 9, at 121 (citing *Delgado v. Trax Bar & Grill*, 113 P.3d 1159, 1172 (Cal. 2005)).

46. *Sharon P.*, 989 P.2d at 127 (holding parking garages cannot be considered per se dangerous).

parking garages are inherently dangerous based on the lack of light and the ease of criminal activity within the structure.⁴⁷ In finding for the defendant, the court acknowledged the unfortunate fact that “all businesses attract crime to some extent [and can] all be characterized as ‘inherently dangerous.’”⁴⁸

Given the recent rise in criminal activity in and around professional sports stadiums, a reasonable person may now consider those stadiums inherently dangerous when deciding whether to attend a game.⁴⁹ As such, there would be a presumptive duty to take reasonable steps to prevent foreseeable criminal behavior of which the stadium owner has become aware.⁵⁰ However, such an imposition based on the totality of the circumstances is nearly impossible when considering the potential number of attendees at any given period of time.⁵¹ Such burdens on the stadium owners to address and attempt to prevent criminal activity would be in vain unless each invitee had a personal bodyguard.⁵²

Absent this possible presumption of duty based on the inherent danger of a sports stadium, an assault on Opening Day against the team’s greatest rival and in the presence of an intoxicated sell-

47. *Id.* (citing *Ann M. v. Pacific Plaza Shopping Ctr.*, 863 P.2d 207, 216 (Cal. 1993) (rejecting imposition of burden on parking garage owners of hiring extra security when above ground buildings are just as susceptible to sexual crime at issue). Prior similar incidents are a factor under the totality of the circumstances test but the absence of such evidence does not absolutely absolve the defendant of a duty in their absence.

48. *Id.* at 129 (quoting Uri Kaufman, *When Crime Pays: Business Landlords’ Duty to Protect Customers From Criminal Acts Committed on the Premises*, 31 S. TEX. L. REV. 90, 112 (1990)) (addressing unfortunate fact that these kind of crimes are common and not surprising in modern times, and as such, there is some degree of foreseeability present in every business owner liability situation).

49. For further discussion of recent violent crimes committed inside and outside of professional sports stadiums, see *supra* note 3. However, an “inherently dangerous” classification would never be legally imposed. See *Sharon P.*, 989 P.2d at 127 (refusing to hold that parking garages are inherently dangerous).

50. See *Sharon P.*, 989 P.2d at 127 (discussing burden placed on owners of inherently dangerous property); see also *Drinking Linked to Problems*, *supra* note 2 (explaining new fear of violent behavior in stadiums preventing fans from attending).

51. See *Noble v. L.A. Dodgers, Inc.*, 214 Cal. Rptr. 395, 398 (Cal. Ct. App. 1985) (describing attendance and parking at Dodgers Stadium). In 1985, the court in *Noble* cited the crowd as 52,000 with all 250 acres of parking (around 20,000 cars) full. See *id.*

52. See *id.* at 398-99 (explaining high number of Los Angeles Police Department (LAPD) officers at Dodgers Stadium on night of Noble’s beating). The court in *Noble* further explained that there were more police per person at the Dodgers stadium than in the city itself. See *id.* Consequently, the court concluded, “even a significant increase in police personnel will [never] prevent all crime or any particular crime.” *Id.* at 399.

out crowd was reasonably foreseeable by the Dodgers.⁵³ Therefore, whether the court applied the prior similar incidents test or the totality of the circumstances test, the Dodgers had a duty of reasonable care to prevent foreseeable harm such as that suffered by Stow.⁵⁴ However, the question of proximate causation determined by the jury is not as clear and may form the basis for an appeal by the Dodgers.⁵⁵

3. *Abstract Negligence and Proximate Causation: Could Stow's Jury Verdict Survive Appeal?*

In Stow's case, the violent assault that occurred in the Dodgers' parking lot leaving him permanently disabled was reasonably foreseeable due to the team rivalry of that game, the severe intoxication of many fans, and the Dodgers' increase in security, not just the dim lighting of the taxi stand.⁵⁶ The question that may negate the liability of the Dodgers, however, is whether the lack of security in the area at the time and the dim lighting proximately caused injury to Stow.⁵⁷ To recover on a negligence claim against a business owner, the plaintiff must show that the alleged negligent conduct of the business owner is a "substantial factor" in bringing about the harm.⁵⁸ As an issue of fact, the jury may use personal experiences to determine whether there has been a break in causation that would free the business owner from any liability.⁵⁹

53. See generally Plaintiffs' Complaint, *supra* note 10 (alleging based on certain facts and circumstances that Dodgers could reasonably foresee specific injury to Stow).

54. See generally *id.* (arguing that duty existed because Dodgers knew Stow's assailants were causing trouble inside stadium and refused to act, and they hired less security to save money).

55. See *Noble*, 214 Cal. Rptr. at 399 (discussing difficulty of determining proximate causation in abstract negligence cases); see also Corina Knoll & Victoria Kim, *Dodgers Likely to Pay About \$13.9 Million in Bryan Stow Verdict*, L.A. TIMES (June 9, 2014, 4:25 PM), <http://www.latimes.com/local/lanow/la-me-ln-dodgers-partly-liable-in-attack-on-giants-fan-bryan-stow-20140709-story.html> (explaining Dodgers unsure of appeal).

56. See Shirley Jahad, *Bryan Stow Trial: Jury Decides Against Dodgers, Awards \$18M in Damages*, KPCC (July 9, 2014), <http://www.scpr.org/news/2014/07/09/45015/bryan-stow-trial-verdict-reached-to-be-announced-w/> (reporting that Dodgers claimed they hired more security for 2011 Opening Day than any other Opening Day in team's history); Plaintiffs' Complaint, *supra* note 10 (alleging that lack of lighting in area along with lack of security contributed to Stow's injuries).

57. See *Noble*, 214 Cal. Rptr. at 399 (explaining difficulty of determining proximate causation in similar abstract negligence case).

58. See *Campbell*, *supra* note 9, at 124 (quoting RESTATEMENT (SECOND) OF TORTS § 430) (noting importance of negligent conduct).

59. See *id.* (discussing how courts will rarely rule on issues of causation, which are traditionally reserved for juries).

In California, as more business owners were found liable under the totality of the circumstances test, abstract negligence claims became more prevalent in an attempt to avoid newly imposed and expansive duties to take reasonable care.⁶⁰ This abstract negligence is best illustrated in a case similar to Stow's, *Noble v. Los Angeles Dodgers*.⁶¹ In *Noble*, a California appeals court found the Dodgers had a duty "to take reasonable steps to protect invitees from *foreseeable* injury even to the extent of controlling the conduct of third parties."⁶² Before Noble's injury, there had been five fights in the Dodgers' past 66 home games.⁶³ However, the key to the court's finding in favor of the Dodgers was that Noble failed to present any reasonable means by which the Dodgers organization could have prevented his injuries.⁶⁴

In turn, the court noted it was the duty of the jury to decide whether security was adequate, and if so, whether any action by the defendant could have prevented the injury.⁶⁵ According to the court, based on the foreseeability of the incident, the jury may infer "a sufficiently 'close[] connection between the defendant[']s conduct and the injury suffered.'"⁶⁶ This abstract negligence is insufficient, however, to fulfill the causation requirement in a negligence claim.⁶⁷ Most importantly, the court reasoned that there are no

60. *See id.* at 125 (stating that abstract negligence depends on "the mere possibility that the defendant's actions, or lack thereof, caused the plaintiff's injuries and relies on the jury to fill in the gaps").

61. 214 Cal. Rptr. 395 (Cal. Ct. App. 1985); *see id.* at 399 (discussing theory of abstract negligence where plaintiff was assaulted in parking lot outside Dodgers stadium).

62. *Id.* at 397 (citing RESTATEMENT (SECOND) OF TORTS § 344; *Taylor v. Centennial Bowl, Inc.*, 416 P.2d 793 (Cal. 1966)) (reasoning that although duty existed in that context, such duty does not automatically invoke liability for crimes occurring on business owner's property).

63. *See id.* (noting that most of these fights took place inside stadium). Noble's injuries, much like Stow's, were inflicted in the parking lot after the game. *See id.* at 396.

64. *See id.* (holding foreseeability of plaintiff's injury and defendant's duty to take reasonable steps to prevent injury were not in question).

65. *See id.* at 397-98 (explaining jury's responsibility to determine any reasonable steps which could have been taken to prevent injury). Conversely, the jury may find a causal connection where defendant's inaction caused the injury in some way. *Id.* at 397.

66. *Id.* at 397 (first alteration in original) (quoting *Rowland v. Christian*, 443 P.2d 561, 564 (Cal. 1968)). *Noble* held that abstract negligence focuses too closely on considering foreseeability rather than determining causation, which is equally necessary to prove negligence. *See id.* at 397-98.

67. *See id.* at 397 (finding defendant not negligent for lack of evidence supporting causation and overturning jury award for plaintiff). The Court also noted that when the defendant has notice of "specific conduct of third parties" with sufficient time to take steps to prevent the injury, then "the causal connection between

known cases of a plaintiff succeeding in a negligence claim against a business owner “solely on the basis of a failure to provide an adequate deterrence to criminal conduct in general.”⁶⁸ Finding the plaintiff failed to articulate reasonable steps by the Dodgers that would have prevented his injuries, the court did not hold the Dodgers liable for negligence.⁶⁹

In contrast to *Noble*, Stow may have effectively solved the problem of abstract negligence in his specific arguments regarding foreseeability and causation.⁷⁰ Unlike *Noble*, Stow presented several reasonable steps that could have been taken to prevent his injuries.⁷¹ Stow presented the following reasonable steps the Dodgers could have taken given their awareness of the rivalry and specific taunting directed toward him: (1) uniformed security in the parking lots, (2) security near the taxi area where he was attacked, (3) better lighting in the lots, (4) denying known criminals access to the property, (5) advocating safe alcohol consumption, and (6) ejecting disorderly and violent fans.⁷² Like the jury in *Noble* who found that the foreseeability of the criminal activity sufficiently established a causal connection, the jury in Stow’s case found the Dodgers could have reasonably foreseen Stow’s specific assault and that the Dodgers could have taken reasonable steps to prevent his injuries.⁷³

failure to act and the injury is patent.” *Id.* (citing *Pfeifer v. Standard Gateway Theatre*, 48 N.W.2d 505 (Wis. 1951) (additional citations omitted)).

68. *Id.* at 398 (holding plaintiff’s argument failed to make requisite causal connection). The Plaintiffs’ argument was that the “Dodgers were negligent in failing to effectively *deter* any and everyone from acting [criminally].” *See id.*

69. *See id.* at 399 (holding evidence presented did not support jury verdict in favor of plaintiff). The court cited in its causation analysis that there was one security person for every 900 customers in the parking lot alone after the game, and that when the plaintiff was injured, half the customers had already left the lots. *See id.* at 398-99. In addition, the court found that the jury’s finding that the plaintiff had been “the primary cause of his own injury, further weakens plaintiff’s theory of liability.” *Id.* at 399.

70. *See generally* Plaintiffs’ Complaint, *supra* note 10 (listing specific areas where Dodgers failed to prevent foreseeable injury).

71. *See Noble*, 214 Cal. Rptr. 3d at 397 (describing that plaintiffs failed to offer any evidence of reasonable steps Dodgers could have taken to prevent, or how Dodgers’ inaction, caused plaintiffs’ injuries). The *Noble* court indicated that the result might have been different for the Dodgers if the plaintiff had asserted certain steps that could have been taken to prevent his injury and therefore more clearly proven causation. *See id.*

72. *See* Plaintiffs’ Complaint, *supra* note 10 (noting specifically that after Stow’s injury, Dodgers canceled all succeeding “half-off” beer promotions).

73. For further discussion of the jury’s findings and the court’s holding on appeal in *Noble*, see *supra* notes 61-69. *See also* Price, *supra* note 12 (discussing jury’s specific finding that Dodgers’ security was insufficient on night of Stow’s attack).

Although *Noble* seems extremely favorable to the Dodgers should the verdict in Stow's case be appealed, there are several key distinctions that may support the jury's finding of a sufficient causal connection in *Stow*.⁷⁴ First, unlike the plaintiff in *Noble*, Stow presented a specific list of reasonable security measures the Dodgers could have employed that may have prevented his injuries.⁷⁵ Stow alleged that the dimly lit taxi stand was negligent under premises liability, but it is unlikely the lighting itself, as a failure to act by the Dodgers, was the cause of the violent assault on Stow.⁷⁶ In addition, Stow's general call for the promotion of responsible alcohol consumption would have likely been ineffective in preventing Stow's injuries, despite the blood alcohol levels in Stow and both attackers.⁷⁷ In the same way, asking an organization to screen thousands of fans entering the stadium for a criminal record seems extremely unreasonable without explicit action from the legislature.⁷⁸ The Dodgers already had a policy of ejecting unruly fans, which, unfortunately, was not enforced with respect to Stow's attackers who were being disruptive in the stadium.⁷⁹

74. See Swenson, *supra* note 6, at 144-45 (discussing Stow's uphill battle of proving negligence due to *Noble*'s precedent).

75. See Plaintiffs' Complaint, *supra* note 10 (discussing list as conclusive in determining that Dodgers caused plaintiff's injury).

76. For further discussion of the events and surroundings leading up to Stow's assault, see *supra* notes 4-9; see also Sharon P. v. Arman, Ltd., 989 P.2d 121, 131 (Cal. 1999) ("[A] number of courts have criticized the view that 'adequate lighting' is a simple and well-defined security measure that is effective in preventing crime-related injuries." (citations omitted)).

77. For further discussion of the MLB's paradoxical difficulty monitoring alcohol consumption and selling excessive amounts at sporting events and their efforts to confront this issue, see *infra* notes 105-120.

78. See generally Paul Levigne, *Bill Would Ban Violent Fans From Stadiums*, ESPN (Mar. 23, 2012, 9:11 AM), http://espn.go.com/espn/otl/blog/_/name/assael_shaun/id/7726918/california-bill-ban-problem-fans-stadiums?src=mobile (describing California's legislative response to Stow's beating). After Stow's injury and other violent incidents at stadiums, the California State Assembly introduced the Improving Personal Safety at Stadiums Act, which would prohibit violent felons from attending professional sporting events. See *id.* This act would create a list of the banned persons, including their mug shots, which would be posted online and used at the stadium to monitor who enters the stadium. See *id.* Ironically, in Stow's case, this legislation would not have prevented his injuries because neither attacker had a criminal history. See *id.* The bill failed to pass in front of the Assembly Public Safety Committee. See KSamoun, *A Proposed California Bill Banning Violent Fans From Sporting Events, Fails to Pass*, FANS AGAINST VIOLENCE (Apr. 18, 2012), <http://www.fansagainstviolence.org/fan-safety/a-proposed-california-bill-banning-violent-fans-from-sporting-events-fails-to-pass/> (discussing aspects of bill and its failure).

79. See Swenson, *supra* note 6, at 140 (stating Stow's attackers had harassed other Giants fans in Dodger Stadium without reprimand from Dodgers security).

However, Stow's call for additional security is a sound argument.⁸⁰ Because it took security almost fifteen minutes to reach Stow, by which time his attackers had already fled, the Dodgers' failure to have security in closer proximity may prove the requisite causal connection that *Noble* lacked.⁸¹ It seems that the Dodgers could have possibly prevented the assault as a whole, and could more easily have prevented the exacerbation of Stow's injuries from repeated kicks to the head, if security had controlled the violence with the throwing of the first punch.⁸² This suggested step appears to be what the jury relied on to find the Dodgers partially liable for Stow's injuries.⁸³ Stow's other suggested steps seem too far removed from his actual injury, or unreasonable given the circumstances that evening to provide a sufficient causal connection.⁸⁴

Though the Dodgers could not have *ensured* his safety, and had no duty to do so, Stow's assault was reasonably foreseeable given the circumstances of the game and the behavior of the attackers in the park.⁸⁵ Based on this foreseeability, the Dodgers had a duty to take reasonable steps to prevent third party criminal activity.⁸⁶ Stow convinced the jury of the Dodgers' negligence primarily due to the lack of security near the dimly lit scene of the crime, establishing the requisite causal connection.⁸⁷ Stow's attorneys seemingly learned from *Noble's* mistakes, citing specific actions not taken by the Dodgers to ensure that a jury could reasonably conclude the Dodgers

80. See Plaintiffs' Complaint, *supra* note 10 (claiming additional mounted and ground security were needed after game in parking areas); see also Price, *supra* note 12 (discussing deadlocked jury finding in favor of Stow after finding Dodgers' security plan "broke").

81. See Plaintiffs' Complaint, *supra* note 10 (listing specific instances of Dodgers failing to prevent foreseeable injury); see also *Family of Beaten Giants Fan Blames Dodgers, Owner: Stow v. L.A. Dodgers*, 23 No. 5 WJENT 1 (2011) (discussing plaintiff's complaint and Dodgers' response).

82. See generally Plaintiffs' Complaint, *supra* note 10 (arguing security at closer designated location would have enabled assailants to be accosted at scene of crime).

83. See Price, *supra* note 12 (discussing how deadlocked jury finally found in Stow's favor after hearing about Dodgers' security and Stow's need for life-long medical care).

84. See *Noble v. L.A. Dodgers, Inc.*, 214 Cal. Rptr. 395, 398-99 (holding no causal connection established in absence of specific ways Dodgers could have prevented foreseeable injury).

85. For discussion on foreseeability of the Stow assault, see *supra* notes 70-73.

86. For further discussion of a business owner's duty to invitees in preventing third party violence, see *supra* notes 21-24 and accompanying text.

87. See generally Plaintiffs' Complaint, *supra* note 10 (listing specific ways Dodgers could have prevented Stow's injury, including increased security); see also Price, *supra* note 12 (stating jury decision in Stow's favor hinged on lack of security).

had inadequate security and, therefore, proximately caused Stow's injuries.⁸⁸

B. Dodgers on the Defense: Why Stow's Intoxication Should Have Factored into the Jury's Assignment of Liability

In addition to finding the Dodgers partially liable for Stow's injuries, the jury determined that Stow's intoxication did not warrant assigning him a percentage of liability.⁸⁹ Accessing their only viable defense, the Dodgers failed to convince the jury that Stow's intoxication indicated some degree of comparative fault.⁹⁰

California is a pure comparative negligence state, meaning the judge or jury designates a certain percentage of liability to each party and distributes damages according to those percentages.⁹¹ For example, if a plaintiff asks for \$100,000 in damages, and is found 20% liable for his injury, he can only recover \$80,000.⁹² This rule allows the jury to consider all relevant facts in determining liability.⁹³

The Dodgers' attorney attempted to invoke this defense by showing Stow's drunkenness and belligerence partially caused the near-deadly assault.⁹⁴ She stated, "There were three parties responsible – Sanchez, Norwood and, unfortunately, Stow himself You don't get yourself this drunk and then say it's not your fault."⁹⁵ Stow had a blood alcohol level of 0.18%, which is twice the legal limit in California.⁹⁶ Although a jury would normally be receptive

88. See *Noble*, 214 Cal. Rptr. at 398 (discussing jury question of causation as whether defendant's security was inadequate to fulfill causation).

89. See *Price*, *supra* note 12 (discussing how jury apportioned 25% liability to Dodgers, but declined to apportion comparative negligence to Stowe).

90. See *id.* (discussing jury's rejection of argument that Stow's blood alcohol level was partially to blame for incident).

91. See John A. Gebaur, Rachel M. Kane, & Sonja Larsen, *Defense Doctrines and Comparative Negligence*, 46 CAL. JUR. 3D NEGLIGENCE § 130 (2014) (discussing California's pure comparative fault structure). This differs from the process in contributory negligence jurisdictions, where plaintiffs found partially liable in negligence actions are barred from recovery. See *id.* (discussing California's move from contributory negligence to pure comparative fault in *Li v. Yellow Cab Co.*, 532 P.2d 1226 (Cal. 1975)).

92. See *id.* (discussing proportionality of damages to apportionment of fault).

93. See *id.* (noting flexibility of rule and jury's ease in applying it).

94. See Jimmy Golen, *5 Things Learned From Giants Fan Beating Verdict*, ASSOCIATED PRESS (July 10, 2014, 6:26 PM), <http://bigstory.ap.org/article/5-things-learned-giants-fan-beating-verdict> (discussing defense attorney's arguments regarding Stow's drunkenness and its role in his injuries).

95. *Id.* (internal quotation marks omitted) (quoting Dodgers' defense attorney Dana Fox).

96. See *id.* (stating both attackers were also intoxicated).

to evidence of a plaintiff's intoxication in a case like Stow's, the only evidence present in the case was that Stow wore a Giants jersey, yelled, and raised his hands in the air.⁹⁷ This argument by the Dodgers was deemed by some media as ignorant of the fact that Stow was assaulted for merely being a Giants fan.⁹⁸ Essentially, accepting the Dodgers' argument would imply that any fan, sober or not, cheering for their team could be targeted, assaulted, and still found partially liable for their injuries.⁹⁹

Under these circumstances, the jury appropriately determined that Stow should not be liable to any extent, because "[a] drunken man is as much entitled to a safe street as a sober one."¹⁰⁰ Although the Dodgers argued that Stow's potential comparative fault hinged on his intoxication, they failed to acknowledge *their* role in that intoxication as purveyors of excessive amounts of beer to fans who enter the stadium already intoxicated from tailgating.¹⁰¹

III. PREVENTING ANOTHER STOW: ADDRESSING MLB ALCOHOL POLICIES, PRACTICAL SOLUTIONS, AND LEGAL REMEDIES FOR FANS

Not every violent assault at a stadium will result in life threatening injuries warranting a million dollar lawsuit.¹⁰² In such an event, however, there must be a higher duty assigned to stadium owners to take certain preventative steps against third party violence, especially when that violence is fueled by alcohol.¹⁰³ In addition, fans

97. See *id.* (discussing Dodgers' only evidence that Stow may have in fact provoked fight). In the absence of evidence of inadequate security, it is possible the jury would have been more open to accepting the Dodgers' arguments of comparative fault. See Price, *supra* note 12 (discussing how hung jury eventually decided in Stow's favor based on showing of inadequate security).

98. See, e.g., Howard Wasserman, *It wasn't the alcohol, stupid*, SPORTS L. BLOG (July 12, 2014, 7:00 AM), <http://sports-law.blogspot.com/2014/07/it-wasnt-alcohol-stupid.html> (denouncing Dodgers' argument that this fight would not have happened if Stow was sober).

99. See *id.* (arguing that Dodgers' argument is distraction, and slippery slope that would insulate stadium owners from liability). This argument, if accepted, would also likely deter fans from fully participating in the spectator experience for lack of protection and fear of being assaulted.

100. See Golen, *supra* note 94 (quoting Robinson v. Pioche, 5 Cal. 460, 461 (Cal. 1855) (Murray, C.J., concurring)).

101. For further information regarding this contradiction rampant throughout the MLB, see *infra* notes 105-120.

102. For further discussion of past violence at sports stadiums not yet resulting in lawsuits or settlements, see *supra* note 3.

103. See generally Swenson, *supra* note 6, at 147-52 (discussing higher duty owed by stadium owners under safe place statutes); see also Kastenberg, *supra* note 24 at 202 (explaining higher liability on stadium owners under safe place statutes by demanding they "maintain a reasonably safe place for their frequenters").

should be legally empowered to confront stadium owners whose failure to act results in violence and negligence.¹⁰⁴

A. Alcohol: Friend or Foe?

Alcohol and sports go together like peanuts and Cracker Jacks, but one would hope that after Stow's brutal beating, the MLB has finally realized the dangers of enabling behavior.¹⁰⁵ By cancelling the six half-price beer nights scheduled for the remaining 2011 season after Stow's assault, the Dodgers implicitly acknowledged their role in supplying exorbitant amounts of alcohol to both Stow and his attackers.¹⁰⁶ This reaction exemplifies the problem that is confronting the MLB and other professional sports organizations: finding a balance between profiting from alcohol sales and providing a safe environment for players, fans, and employees.¹⁰⁷ Although some altercations occur strictly based on team rivalry, most incidents are fueled by the over-consumption of alcohol.¹⁰⁸ Although some teams are attempting to provide a safer environment by providing designated driver programs, there is still a major issue regarding staff training in preventing over-serving.¹⁰⁹

Addressing the need for further training, all thirty MLB teams joined Techniques for Effective Alcohol Management Coalition (TEAM), which is a non-profit organization providing training and guidelines on selling alcohol at sports stadiums.¹¹⁰ Other than membership in TEAM, each ball club is responsible for determin-

104. For further discussion of these legal options, see *infra* notes 164-199; see also Campbell, *supra* note 9, at 148-54 (discussing alternative framework for stadium owner liability in instances of third party violence).

105. See *Drinking Linked to Problems*, *supra* note 2 (discussing how intertwined alcohol and America's pastime have become in recent decades).

106. See *id.* (discussing Dodgers' attempt to establish safer environment after Stow's beating).

107. See *generally id.* (outlining steps being taken by MLB and individual organizations to strike balance between profits and safety).

108. See *id.* (discussing experiences of long-time usher for Colorado Rockies). A 2005 study from the University of Minnesota found that alcohol guidelines and laws are poorly enforced at sports stadiums. See *id.* (describing research stemming from increased news reports of violence and other dangerous behavior at sports stadiums).

109. See *Drinking Linked to Problems*, *supra* note 2 (referring to St. Louis Cardinals' designated driver program). These kinds of programs promote safe alcohol consumption. See *id.*

110. See *id.* (explaining efforts to address need for proactive alcohol policies in professional sports stadiums); see also *TEAM Coalition Recommendations For Venue Alcohol Policies*, TEAM COALITION, <http://www.teamcoalition.org/about/policies.asp> (last visited Aug. 24, 2014) [hereinafter *TEAM Coalition Recommendations*] (listing specific guidelines for alcohol sales in several professional sports organizations).

ing and promulgating its respective alcohol policies.¹¹¹ For example, most stadiums have a number fans can text if they witness any problems such as overly intoxicated and belligerent attendees.¹¹² Also, in accordance with TEAM recommendations, most MLB teams stop serving alcohol near the end of the seventh inning.¹¹³ Similarly, whether ball clubs are motivated by profits, security reasons, or control of alcohol consumption, no MLB fans are allowed to bring alcoholic beverages into the stadiums.¹¹⁴

Despite the overwhelming reports and concerns about fan intoxication and subsequent violence, the MLB and beer companies continue to rely on each other as sponsors and profiteers.¹¹⁵ For example, Coors paid \$15 million for naming rights at the Colorado Rockies stadium in Denver.¹¹⁶ Not one to miss an opportunity to increase profits, the MLB has even adopted Anheuser-Busch as the official beer sponsor of the League.¹¹⁷ Many believe this strong relationship between the alcohol industry and professional sports must be disposed of immediately.¹¹⁸ Despite any promotions encouraging family attendance at professional sporting events, the

111. See *Drinking Linked to Problems*, *supra* note 2 (discussing TEAM's advisory role in determining alcohol policies at stadiums). Although TEAM provides guidelines that are mostly adhered to in professional sports stadiums, the actual policy "is a club-by-club decision." *Id.* (quoting Rob Manfred, MLB Executive Vice President of Labor Relations).

112. See *id.* (explaining effectiveness of text alert system as illustrated by quick security response times to problematic fans). Having this text message hotline preserves the identity of the individual who reports other fans, preventing fans from taking policies into their own hands and creating dangerous altercations in the seats.

113. See *TEAM Coalition Recommendations*, *supra* note 110 (suggesting specific times to cut-off alcohol sales for MLB, NFL, NBA, and NHL). TEAM also recommends requesting identification from any person who looks less than thirty years old. See *id.*

114. See *id.* (explaining methods to deter underage drinking and excessive consumption). TEAM recommends that purchasers buy a maximum number of 2 beers and the maximum serving of beer be twenty ounces. See *id.*

115. See *Drinking Linked to Problems*, *supra* note 2 (discussing many beer sponsorships throughout MLB, including Anheuser-Busch, official beer of MLB).

116. See *id.* (explaining desire of baseball stadium owners to continue relationships with beer companies to increase profits). Miller Brewing Company also has a deal with the Milwaukee Brewers that averages about two million dollars per year. See *id.*

117. See *id.* (discussing Anheuser-Busch's long established relationship with St. Louis Cardinals and professional baseball in general). Captain Morgan is also an official sponsor of MLB.com. See *id.*

118. See, e.g., *Drinking Linked to Problems*, *supra* note 2 (quoting Bruce Livingston of Marin Institute) ("Alcohol doesn't mesh at [sports stadiums]. But they get sponsorships and money from the alcohol companies and once you take the money, you have to be very friendly toward serving the product. The cause is money. It's not about a need for people to be inebriated.").

overwhelming sponsorship of alcohol has created a direct connection between watching sports and drinking alcohol.¹¹⁹ Although a sports stadium without alcohol may be a practical impossibility, the relationship between alcohol and safe family friendly sports stadiums must be moderated.¹²⁰

B. Practical Remedies for Stadiums: Promoting Safety without Ruining the Experience

To balance these competing interests, the MLB and other professional sports teams have attempted to change the culture of alcohol consumption both inside and outside of the stadium.¹²¹ The first steps must be taken outside of the stadium, where people tailgate and drink before stepping into the stadium.¹²² For example, the week after a stabbing at Candlestick Park in San Francisco, the 49ers organization took several steps to prevent any further violence by clearing out all parking lots after kick-off.¹²³ The Anaheim Angels have banned consumption of alcohol in all parking lots and keep those parking lots open to tailgating closed until two and a half hours before start of the game.¹²⁴ The Angels also close the parking lots one hour after each game to prevent any potentially dangerous loitering.¹²⁵ The Angels' policies may seem strict, but since the Stow incident, the Dodgers have completely banned tailgating altogether, enraging long time fans, and enticing people to remain home.¹²⁶ Their general policy had always been to prohibit

119. *See id.* (discussing need for less reliance between professional sports and alcohol industries).

120. *See id.* (discussing difficulty in balancing alcohol profits with fan safety and enjoyment).

121. For further discussion of how the MLB has developed alcohol sale policies in the stadiums using TEAM guidelines, see *supra* notes 110-114.

122. *See Drinking Linked to Problems*, *supra* note 2 (discussing culture of fan intoxication in parking lots before games).

123. *See 49ers To Ban Tailgating After Kickoff*, ESPN (Aug. 23, 2011, 11:53 AM), http://espn.go.com/nfl/story/_/id/6884942/san-francisco-49ers-curb-tailgating-seek-indefinite-end-oakland-raiders-series (discussing efforts of 49ers to avoid violence during rivalry games). The 49ers also asked the NFL to abolish the pre-season meeting with its archrival, the Oakland Raiders, in hopes of further avoiding violent outburst by intoxicated fans. *See id.*

124. *See Tailgate Policy*, ANGELS.COM, http://losangeles.angels.mlb.com/ana/ballpark/tailgate_policy.jsp (last visited Sept. 23, 2014) (listing all relevant tailgating policies for Angel Stadium parking lots).

125. *See id.* (explaining extensive limitations on parking in Angels stadium parking lots).

126. *See* Carla Hall, *The Party's Over For Tailgaters at Dodger Stadium*, L.A. TIMES (Apr. 14, 2010), <http://articles.latimes.com/2010/apr/14/local/la-me-ballpark14-2010apr14> (finding many Dodgers fans upset by overwhelming presence of police preventing them from tailgating in Dodgers Stadium parking lots).

tailgating, but that policy was rarely enforced.¹²⁷ For Opening Day 2014, the Dodgers hired Los Angeles police officers to rigorously enforce this previously ignored prohibition on tailgating.¹²⁸

However, tailgating is not deserving of total or even substantial abolition.¹²⁹ Although MLB stadium owners may feel they are creating a safer environment by completely banning alcohol from stadium parking lots, many fans believe this has more to do with maintaining their strong relationship with alcohol vendors inside stadiums, especially because once fans enter a stadium, they likely see and hear beer vendors everywhere.¹³⁰ Such strict policies force fans to pay for a ticket, parking, and overpriced beer inside the park, leaving many fans feeling scorned and cheated.¹³¹

So where can professional sports teams draw the line between securing fan safety and forcing fans to overpay for alcohol in a sport driven by beer sponsors?¹³² The answer lies within the solitary and consistent enforcement of alcohol policies in the parking lots *and* the stadiums.¹³³ Banning alcohol in or out of the stadium is not necessary to ensure that each fan has a safe and worthwhile experience.¹³⁴ Teams have attempted to ban the sale of alcohol in professional sports stadiums in pursuit of securing fan safety in the past,

127. See *id.* (describing overwhelming presence of police officers and stadium security at Dodgers Stadium on Opening Day 2014).

128. See Hall, *supra* note 126 (reporting constant approaches by police officers while fans attempted to tailgate on Opening Day 2014). One die-hard Dodgers fan Terry Romero has been to every opening day since the stadium opened. See *id.* On Opening Day 2014, she set up a tailgate from the back of her car in a Dodgers Stadium parking lot like she does each year, but this time was repeatedly approached by officers encouraging her to clean up and head inside. See *id.* Some officers allowed them to continue eating after inquiring about alcohol, while others directed them to enter the stadium immediately. See *id.*

129. See John Nelson, *TIMEOUT: Beer Ban Irking Some MLB Tailgaters*, MOJAVE DESERT NEWS (Cal. City, Cal.) (May 10, 2013), http://www.desertnews.com/opinion/article_7faba4be-b983-11e2-94b2-001a4bcf887a.html (discussing New York Mets' recent enforcement of long time ban of beer during tailgating and ticketing of drinkers).

130. See *id.* (speculating that recent increases in drinking citations before Mets games is more about profit than law enforcement).

131. See *id.* (arguing Mets' recent calls for enforcement of alcohol ban in parking lots is based solely on desire to increase profits inside stadium).

132. For further discussion of the complicated answer to this paradoxical question, see *infra* notes 133-153 and accompanying text.

133. See Jim Steeg, *Nurturing and Enforcing Good Fan Behavior*, STREET & SMITH'S SPORTS BUS. J. (Nov. 21, 2011), <http://www.sportsbusinessdaily.com/Journal/Issues/2011/11/21/In-Depth/Steeg.aspx> (discussing necessary steps to enforce overall good fan behavior).

134. See *id.* (articulating plan that involves punishing over-intoxication and obnoxious behavior, not just alcohol consumption).

but such policies have not remained.¹³⁵ For example, in 1989, New Jersey officials mandated that alcohol no longer be sold at night games in Giants Stadium, and imposed a three-hour limitation on tailgating.¹³⁶ However, like many alcohol policies abrogated by professional sports stadium owners, the ban was inconsistently enforced.¹³⁷ Despite these valiant efforts to protect fans from alcohol-driven violence, the profit losses meant that such policies were unsustainable.¹³⁸ Far-reaching policies like absolute bans do not ensure safety; rather, they merely guarantee dissatisfaction for fans, because the culture of professional sporting events is unequivocally centered on alcohol consumption, excessive or not.¹³⁹ Contrary to the belief of many sports stadium owners who institute bans on tailgating or alcohol sales, most fans are capable of consuming alcohol without incident.¹⁴⁰

In light of the fan response to these policies, stadium owners seem to be left only with the option of increasing security to protect the fans from each other, and to protect themselves from potential liability.¹⁴¹ One expert recommends staffing security command posts in parking lots during tailgating and after games to generally keep the peace.¹⁴² That expert also suggests that in the lots and the

135. See Anthony DePalma, *Beer Rule Throws Football Fans for Loss*, N.Y. TIMES, July 17, 1989, <http://www.nytimes.com/1989/07/17/nyregion/beer-rule-throws-football-fans-for-loss.html> (explaining 1989 New Jersey alcohol policy in sports stadiums); see also *Alcohol Sales Banned for Jets-Patriots MNF*, ESPN (Dec. 20, 2005, 1:45 AM), <http://sports.espn.go.com/nfl/news/story?id=2265908> (discussing efforts to quell rowdy fans by banning alcohol sales at Monday Night Football game). Officials decided to ban alcohol sales at Giants stadium for the Jets-Patriots game after a series of violent altercations at prior Jets games. See *id.* At the beginning of 2005, Aramark, Giants Stadium beer vendor, and a New York Giants fan were found liable for \$135 million in damages when vendors over-served a fan who drove home, causing a 7-year-old to become paralyzed. See *id.*

136. See *id.* (describing resulting unrest of implementing new alcohol policy).

137. See *id.* (explaining how some fans in luxury boxes were permitted to drink beer and champagne).

138. See DePalma, *supra* note 135 (stating New York Giants vendors would lose up to \$150,000 for every night game during the ban). For further discussion of how professional sports teams have become increasingly reliant upon alcohol vendors and corporations, see *supra* notes 105-114.

139. See *id.* (quoting fans who feel drinking should not be taken away because of some irresponsible people).

140. See *id.* (discussing potential decrease in fan attendance due to restrictive alcohol policies).

141. See Steeg, *supra* note 133 (discussing need for heightened security in parking lots before and after games to prevent any possible violent acts). Steeg was Executive Vice President and Chief Operating Officer of the San Diego Chargers, and played a key role in developing their program, "Game Day, The Right Way." See *id.* He now serves as director of the Pac-12 Football Championship Game. See *id.*

142. See *id.* (suggesting possible solutions to increase safety in tailgating). Steeg also suggests pre-selling parking lot spots, and increasing the cost to

stadium, screens should be used to advertise fan-conduct policies to promote “a positive, fan-friendly tone.”¹⁴³ In addition, TEAM recommendations should be enforced within the stadium by monitoring overly intoxicated fans and potential confrontations.¹⁴⁴ Most importantly, stadium owners must empower fans to be vigilant and protect themselves by avoiding potentially harmful situations and keeping staff informed of any concerns.¹⁴⁵ Many accomplish this fan empowerment by using anonymous texting systems to report the use of profanity.¹⁴⁶ Additionally, fans must also be conscious about the gear they choose to wear and how they choose to cheer for their team in light of any escalating circumstances, such as a deeply rooted rivalry.¹⁴⁷ Professional sports teams are faced with the difficult goal of providing enough security to protect fans, while not encroaching on the overall experience.¹⁴⁸ Whatever the answer to this difficult balancing question, stadium owners must come together to enforce universal policies and standardize safety at all venues.¹⁴⁹

Like Frank McCourt, many owners will try to increase their security in pursuit of creating a safe environment for fans and avoiding potential liability.¹⁵⁰ Unfortunately, for stadium owners, only when a jury is confronted with the question of whether security was adequate enough, will owners understand what their true responsibility is to their fans.¹⁵¹ One thing is clear: there must be a change in both the alcohol-centric culture of professional sports and the execution of consistent security practices in stadiums across the

purchase parking on game-day to keep lots organized and prevent over-crowding. *See id.*

143. *Id.* (encouraging use of electronics, players, and staff to promote safer environment, and promulgating codes of stadium conduct).

144. *See Steeg, supra* note 133 (recommending that sports stadium staff observe general sales and congestion to avoid potential violence). Steeg also suggests the use of DUI checkpoints or saturation patrols when possible. *See id.*

145. *See id.* (discussing role of fans as “the eyes and ears of [their] security force[s]”).

146. *See id.* (explaining methods of empowering fans to protect themselves).

147. *See id.* (explaining how expert fans know when to sport Boston Red Sox gear in New York Yankee territory).

148. For further discussion of how excessive security enforcement has enraged long-time fans, see *supra* notes 128-140.

149. *See Steeg, supra* note 133 (“One final step is that all venues in a region need to come together and adopt universal policies, an easy cross-venue and team texting code and, for violators, a ban from all venues.”).

150. *See Price, supra* note 12 (discussing jury’s finding in Stow’s favor based on inadequate security despite arguments of increased security on Opening Day 2011).

151. *See id.* (explaining difficulty in defining precise amount of security required to defeat negligence claim).

country.¹⁵² Stadium owners must begin by taking small steps, such as designated driver programs and better staff training, to address issues of over-serving and over-imbibing.¹⁵³

Similarly, the simple step of ejecting Stow's attackers from the stadium in response to numerous complaints about their belligerent behavior may have prevented his injury altogether.¹⁵⁴ However, even if they had ejected the assailants, this no-tolerance policy would have been effective only if security was present in the parking lot to ensure that those ejected were successfully removed from the premises.¹⁵⁵ The MLB's investigation and assessment of Dodgers' security that fateful day can shed some light on how much security stadium owners need in order to protect themselves from potential liability.¹⁵⁶

Despite spending \$66,604 on private security for Opening Day 2011, the Dodgers' efforts to provide more security were watered down by "'a culture of apathy and indifference' among . . . game-day staffers."¹⁵⁷ There was also a significant decrease in the quality of sportsmanship among fans due to a decreased presence of uniformed police officers in the stadium.¹⁵⁸ The MLB found the Dodgers were relying more on private security in polo shirts than uniformed LAPD officers, which created a fan environment that rejected staff authority.¹⁵⁹ Specifically, several witnesses during the

152. See generally Steeg, *supra* note 133 (discussing general plan to control drunken crowds at stadiums).

153. See *TEAM Coalition and MLB Responsibility Has Its Rewards Promotion*, TEAM, available at http://www.rhir.org/rhir_contest/baseball.asp (last visited Sept. 26, 2014) (explaining 2014 rewards for designated drivers at stadiums nationwide); see also generally Kathleen M. Lenk et al., *Alcohol Control Policies and Practices at Professional Sports Stadiums*, 125 PUB. HEALTH REPORTS 665 (2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2925002/pdf/phr125000665.pdf> (discussing research findings with regard to training stadium staff and required refresher courses on alcohol policies).

154. See Price, *supra* note 12 (discussing argument by Stow's attorney that Dodgers should have addressed harassment by Stow's attackers during game).

155. See Corina Knoll, *MLB Found Stadium Security Inadequate, Former Dodgers Executive Says*, L.A. TIMES (June 20, 2014, 8:30 PM), <http://www.latimes.com/local/la-me-0621-bryan-stow-trial-20140621-story.html> (reporting MLB evaluation found Dodgers' security on Opening Day 2011 inadequate despite being most money spent on security for Opening Day in Dodgers Stadium history).

156. See *id.* (finding security was inadequate and citing specific examples of needed improvement). This written evaluation was not presented as evidence in the civil trial. See *id.*

157. See *id.* (quoting MLB report on Dodgers' security).

158. See *id.* (finding Dodgers spent money on non-uniformed security forces that lacked respect from fans).

159. See Knoll, *supra* note 155 (holding fans unable to be controlled by existing staff). The Dodgers defense team called a paid sports facility and event management consultant who testified that there was no industry standard as to the

civil trial testified that there were no ushers or security guards around to witness Stow's attackers harassing other Giants fans in the stadium, which is evidence as to why they were not ejected.¹⁶⁰ Additionally, there should have been security guards in the lot where Stow was assaulted who could have responded faster.¹⁶¹ However, the Dodgers argued that even with increased visible security that night, it was unlikely Stow's attacks could have been stopped given the actors' severe intoxication and "retaliation-fueled anger."¹⁶² Experts for the Dodgers contended that Stow's attackers were responding to taunting in the parking lot, and thereby referred to the attackers as a "ticking time bomb" and stated that "the only thing that's going to extinguish the fuse is vengeance."¹⁶³

Here lies the Hobson's choice of all stadium owners: ban all alcohol and suffer severe profit losses, or continue to serve alcohol and spend exorbitant amounts of money on extra security.¹⁶⁴ This MLB report shed some light on what the league would prefer stadium owners do: hire more security and keep the beer sponsors happy.¹⁶⁵ With this as the preference, it follows that fans need protection from third party violence.¹⁶⁶ Beyond serving as one's own bodyguard, fans need legal assurance that they will not be left without redress because a jury finds there was adequate stadium security.¹⁶⁷

requisite number of security guards at a stadium. *See id.* This expert also held that Dodgers' Stadium practices regarding their ban on tailgating and sale of alcohol in the stands was better than any other stadium in the country. *See id.*

160. *See id.* (describing witness testimony during Stow trial). These witnesses also speculated that the assailants likely still would have encountered Stow in the parking lot even if he had been ejected during the game. *See id.*

161. *See* Knoll, *supra* note 155 (finding security inadequate despite assignment of security officers to specific locations).

162. *See id.* (internal quotations omitted) (quoting criminologist's testimony from Stow trial).

163. *Id.* (internal quotation marks omitted) (arguing Stow was irritated by Dodgers fans taunting him).

164. *See generally* Plaintiffs' Complaint, *supra* note 10 (arguing lack of security caused by owner McCourt's recent divorce and money struggles)

165. *See* Knoll, *supra* note 155. (describing how MLB report found only that stadium security was inadequate and made no determination of whether Stow's assailants were also over-served).

166. For further discussion of how fans can protect themselves legally, see *infra* notes 168-199.

167. *See* Noble v. L.A. Dodgers, Inc., 214 Cal. Rptr. 395, 399 (Cal. Ct. App. 1985) (holding Dodgers not liable due to lack of causation, plaintiff's role in altercation, and intoxication).

C. Legal Remedies for Victims

Some states have attempted to address this issue by implementing safe place statutes, which impose a higher duty of care on stadium owners.¹⁶⁸ For example, Wisconsin's safe place statute requires business owners to adopt preventative safety processes that would reasonably protect the safety of its invitees.¹⁶⁹ Although on its face, this statute suggests protection primarily for employees, this statute also places a high duty of care to protect people who frequently inhabit those structures including fans at sports stadiums.¹⁷⁰ Like California Common Law, this statute does not require that business owners ensure the safety of their invitees, but there is a higher duty to keep the premises "as free from danger as the nature of the place will reasonably permit."¹⁷¹ In *Gould v. Allstar Ins. Co.*,¹⁷² an experienced swimmer dove off a pier, which was unmarked for shallow water, and fractured several vertebrae on impact.¹⁷³ Under the Wisconsin safe place statute, although the diver was partially negligent in diving into unknown waters, a jury found the pier owner 85% negligent for failing to post a warning sign or failing to keep the pier safe.¹⁷⁴

Although this statute seems to impose a higher duty on business owners, it does not impose the burden of keeping the premises completely danger-free.¹⁷⁵ One jury in Wisconsin found a defendant store owner had made his parking lot as safe as possible by salting and shoveling snow, despite plaintiff's permanent injury

168. See Swenson, *supra* note 6, at 147-49 (citing Wis. Stat. § 101.11(1) (2009-10)) (discussing Wisconsin safe place statute).

169. See *id.* (discussing Wisconsin safe place statute). Wisconsin's safe place statute reads as follows:

Every employer . . . shall furnish a place of employment which shall be safe for employees therein and for frequenters thereof and shall furnish and use safety devices and safeguards, and shall adopt and use methods and processes reasonably adequate to render such . . . places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees.

Id. (quoting Wis. Stat. § 101.11(1) (2009-10))

170. See *id.* (discussing reach of Wisconsin safe place statute).

171. See *id.* at 148 (quoting *Gould v. Allstar Ins. Co.*, 208 N.W.2d 388, 391 (Wis. 1973)).

172. 208 N.W.2d 388 (Wis. 1973).

173. See Swenson, *supra* note 6, at 148 (discussing *Gould*, 208 N.W.2d at 389-90).

174. See *id.* (discussing jury applying Wisconsin safe place statute).

175. See *id.* at 147 (discussing standard of duty imposed by Wisconsin safe place statute).

when she slipped in that parking lot.¹⁷⁶ Under the Wisconsin safe place statute, a defendant must have exercised “more than ordinary care” to escape liability.¹⁷⁷ For a plaintiff to succeed under this statute, the plaintiff must show an unsafe condition on the premises, that the condition caused his injury, and that the business owner has actual or constructive notice of that dangerous condition before the harm occurred.¹⁷⁸

Several justifications are present for the adoption of safe place statutes in more jurisdictions to protect fans from potential third party harm driven by alcohol.¹⁷⁹ First, because stadium owners charge so much for fans to even attend the game, fans should reasonably expect that the stadium is as safe as possible.¹⁸⁰ Second, smaller stadiums exempt by recreational immunity statutes will not be included under the safe place statute.¹⁸¹ Third, under a safe place statute, stadium owners could not shirk off liability with exculpatory clauses on their tickets.¹⁸² Most importantly, safe place statutes democratically impose this heightened duty on particular entities, allowing for efficient adjustments when necessary through amendments.¹⁸³ Although Stow’s claim succeeded under common law negligence, safe place statutes would provide more certainty in recovery for victims of severe third party violence on stadium property.¹⁸⁴ In addition to this high standard of care for stadium owners, safe place statutes attach liability when an owner knowingly allows invitees or employees to be exposed to a potentially dangerous area.¹⁸⁵ Also, under these statutes, an assumption of risk de-

176. *See id.* at 149 (discussing *Zernia v. Capitol Court Corp.*, 124 N.W.2d 86, 87-88 (Wis. 1963)).

177. *Id.* (quoting *Zernia*, 124 N.W.2d at 89).

178. *See id.* (citing *Gould*, 208 N.W.2d at 394) (providing hypothetical application of safe place statute to Stow case prior to June 2014 jury verdict).

179. *See id.* at 151 (discussing four reasons why safe place statutes should be adopted in other states to protect sports fans).

180. *See id.* (explaining how fans should get what they pay for with respect to security in sports stadiums).

181. *See id.* (rejecting imposition of higher duty on small sports venue owners who make little profit from entrance fees).

182. *See id.* (explaining need to hold stadium owners accountable as much as possible).

183. *See id.* at 152 (discussing importance of democratic process in enforcing higher duty on stadium owners).

184. *See id.* (arguing prior to June 2014 jury verdict that Stow’s claim was unlikely to succeed under California common law).

185. *See Kastenberg, supra* note 24, at 202-03 (explaining protections for fans under safe place statutes).

fense is impermissible, which further enables fans to achieve successful negligence claims.¹⁸⁶

After the attack on Stow, California attempted to address the presence of felons with legislation targeting felons' admission to stadiums.¹⁸⁷ The Improving Personal Safety at Stadiums Act would have created a list of convicted felons who would be prohibited from entering stadiums on game day.¹⁸⁸ Despite strong support for any methods to make professional sports stadiums more family-friendly, this legislation failed in the Assembly Public Safety Committee in April 2012.¹⁸⁹ Although the bill is not categorically unusable, the committee had several practical, social, and constitutional concerns that must be addressed if the legislature chooses to proceed with similar legislation.¹⁹⁰ In addition to this ban list, which has been rejected by the legislature, the bill also included a provision requiring sports stadiums and other venues to make security information and anonymous text messaging clearly visible, along with frequent announcements about the location of this information throughout games.¹⁹¹ Singling out individuals under the bill, as it stood, would no doubt create additional opportunities for confrontation, especially in the parking lots, further endangering the lives of all fans in attendance.¹⁹²

Apart from these statutory attempts to provide additional safety for all in attendance, and legal remedies for injured fans, the courts may also attempt to address the specific elements of negligence in these specific circumstances.¹⁹³ Some argue that a categorical duty

186. *See id.* (explaining legal protection for fans under safe place statutes).

187. *See* LeVigne, *supra* note 78 (discussing California legislature's response to several incidents of violence at stadiums).

188. *See id.* (discussing reach of proposed legislation to all eighteen professional sports teams in California).

189. *See* KSamoun, *supra* note 78 (discussing failure of California bill banning convicted felons from sports stadiums).

190. *See id.* (explaining reasons committee rejected initial bill). The Committee had major concerns regarding this bill as an unconstitutional sentencing enhancement, a potential cause of violence in response releasing a list of convicted felons to the public, and major budget concerns about implementing an expansive new program. *See id.*

191. *See id.* (listing suggested times for stadiums to announce security information). The statute called for verbal announcement of security information and locations to be made once per quarter in football, four times per game in baseball, once per period of hockey, and at least three times for any other professional sport. *See id.*

192. *See id.* (discussing dangers of vengeful actions by felons denied entry to stadiums).

193. *See generally* Campbell, *supra* note 9, at 145-54 (explaining potential legislative remedies regarding duty and causation elements of negligence cause of action).

to protect patrons from third party violence should be imposed on all stadium owners because of their enablement of troublesome fan behavior.¹⁹⁴ This solution would insulate the jury from the judge's pre-determination of an existence of duty and an implicit conclusion of breach due to the actual harm that resulted, preventing juror bias.¹⁹⁵ In addition, some suggest that causation should also be presumed when a third party injures a fan in a stadium.¹⁹⁶ Because the question of causation is such a difficult one for the jury, this presumption of causation may be fairer, because if harm is foreseeable, then lack of action likely caused the harm.¹⁹⁷ Therefore, under these potential specific adjustments for negligence claims involving third party violence in sports stadiums, the burden would be shifted to the stadiums to disprove these rebuttable presumptions.¹⁹⁸ Although specifically addressing the issue, this solution would tend to be unfair and overly burdensome to stadium owners.¹⁹⁹

IV. CONCLUSION

Stow's jury verdict has the potential to affect future litigation in similar cases all over the country, not just in California.²⁰⁰ Although the Dodgers have not yet decided if they will appeal, should they decide to challenge the jury verdict, *Noble* will not likely guarantee a victory, because Stow outlined reasonable steps which the Dodgers could have taken to prevent or minimize his injury.²⁰¹ Despite the jury finding that a lack of security caused Stow's injuries,

194. See, e.g., *id.* at 154 (arguing because stadium owners enable violence, they should take responsibility for that violence categorically).

195. See *id.* at 149 (arguing if duty is imposed by judge on case-by-case basis, jury is likely to be swayed in determining breach).

196. See, e.g., *id.* at 151 (finding some lack of security will always be likely proximate cause of victim's injuries in negligence claims against stadium owners arising from third party violence).

197. See *id.* (finding implicit causation connection to lack of security when third parties harm fan).

198. See *id.* at 153 (discussing need for stadiums to disprove elements of presumptive duty and causation to avoid liability while leaving issue of breach to jury).

199. See *id.* at 153-54 (exploring possibility of burden shifting from plaintiffs to stadium owners in negligence claims involving third party violence). This possibility seems promising as on its face it is fairer to plaintiffs; however, this formula could entice fans to pursue unnecessary negligence claims.

200. For further discussion on situations which may also result in future similar litigation, see *supra* note 3.

201. See *Noble v. Los Angeles Dodgers, Inc.*, 214 Cal. Rptr. 395, 398 (Cal. Ct. App. 1985) (discussing requirement that jury find specific instances of defendant's failure to act to form requisite causal connection). For further discussion of how Stow's case can be distinguished from *Noble*, see *supra* notes 70-88 and accompanying text.

additional consideration must be given to reflect the role of alcohol in Stow's beating.²⁰² The MLB has created a paradoxical culture that revolves around the advertisement and consumption of alcohol, while the MLB simultaneously attempts to prevent the effects of consumption: violence and general rowdiness.²⁰³

Despite efforts to curb this toxic relationship with alcohol by limiting tailgating and joining the TEAM coalition for standardized guidelines, the MLB has not gone far enough to protect fans and preserve the family setting of America's pastime.²⁰⁴ Therefore, fans must be legally enabled to recover if an overly intoxicated fan permanently disables another on stadium property.²⁰⁵ Some solutions suggest presumptions of duty and causation; however, these strategies, although potentially easier for plaintiffs, are unfairly burdensome to stadium owners.²⁰⁶ The goal should not be to punish stadium owners, but to create a safe environment that encourages responsible alcohol consumption, thereby lessening the need of future negligence litigation and bringing families back to the ballpark.²⁰⁷

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202. For further discussion of the role of alcohol in Stow's beating, see *supra* notes 89-101 and accompanying text.

203. For further discussion of the MLB's challenge to combat the effects of excessive alcohol consumption while also benefitting financially from additional sales, see *supra* notes 105-120 and accompanying text.

204. For further discussion of these efforts and their inability to effectively curb alcohol-related violence, see *supra* notes 121-167 and accompanying text.

205. For further discussion regarding the need for a fair legal structure to protect victims of alcohol-related violence at sports stadiums, see *supra* notes 168-199 and accompanying text.

206. For further discussion of the need to protect fans, but also prevent stadium owners from being taken advantage of, see *supra* notes 168-199 and accompanying text.

207. For further discussion effect of stadium violence on fans, see *supra* notes 105-148 and accompanying text.

* J.D. Candidate, May 2016, Villanova University School of Law; B.S. Politics, Saint Vincent College, 2013. I dedicate this Comment to my always supportive and loving family. Special thanks to my parents, Mary Linn and Brian, and to my brother Brendan, all of whom have stayed by my side through the most difficult and best times of my life.