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NCAA Committee Considers Mandatory Placement of AED's at Division I Sporting Venues

The NCAA Committee on Competitive Safeguards and Medical Aspects of Sports is currently considering a proposal that would mandate the placement of at least one automatic external defibrillator (AED) at all Division I sporting venues.

The Committee has recently completed a survey of head athletic trainers at all 326 Division I NCAA universities. Surveys were completed and returned by 244 institutions. There were 35 cases of AED use for sudden cardiac arrest with 77% (27/35) occurring in older non-students, 14% (5/35) in intercollegiate athletes, and 3% (1/35) in a non-intercollegiate athletes. The immediate resuscitation rate was 54% (19/35). A shock was delivered in 21 cases with a resuscitation rate of 71% (15/21). None of the intercollegiate athletes were successfully resuscitated. The average cost per AED was $2460. In a ten-year model (the expected useful life of an AED), the cost per life immediately resuscitated was $52,400, and the estimated cost per life-year gained ranged from $10,500 to $22,500.

Every year hundreds of thousands of Americans die from cardiac incidents. Medical experts indicate that the key to survival is the timely administration of first aid including cardiopulmonary resuscitation (CPR) and, if necessary, the restoration of an effective heart rhythm using a medical device called an automatic external defibrillator (AED).

An AED is used to deliver an electrical shock to the heart of a victim of sudden cardiac arrest (SCA). SCA is not a heart attack (medically referred to as a myocardial infarction). A heart attack occurs when a blockage in a blood vessel interrupts the flow of oxygen-rich blood to the heart, causing the heart muscle to die. However, SCA, also referred to as sudden cardiac death (SCD), occurs when the heart's electrical system malfunctions resulting in electrical impulses of the heart suddenly becoming chaotic, causing the heart to abruptly stop pumping blood effectively to the rest of the body. The victim becomes unresponsive, loses consciousness, has no pulse and stops breathing. The only accepted treatment to restore an effective heart rhythm is defibrillation. Cardiopulmonary resuscitation (CPR) alone is not effective in treating SCA.

Defibrillation is the technique involving the administration of an electric shock that can restore the heart's normal rhythm. While this procedure historically has been available only from paramedics or in hospital settings, the development of a portable computer (AED) that can analyze a person's heart rhythm has enabled lay people, coaches and sports-medicine staff members to be trained to perform this procedure. These portable devices, about the size of a lightweight laptop computer, are increasingly more practical to have available.

SCA is responsible for approximately one-half of all heart disease deaths. Every day in the United States nearly 1,000 individuals suffer a cardiac arrest, and only about 50 will survive. In many instances, death results merely because lifesaving defibrillation does not reach the victim in time. Paramedic life-saving attempts in cases of cardiac arrest are rarely successful. The time it takes for the emergency squad to respond to an emergency call is usually greater than ten minutes. Those precious minutes are the critical difference between life and death. Statistics indicate that the success rate of restoring normal heart rhythm through CPR techniques is less than 5 percent. Combining CPR with defibrillation within the first minute after arrest increases the success rate to 95 percent. However, each minute of delay in administering lifesaving defibrillation decreases an SCA victim's chance of survival by 10 percent. After a delay of ten minutes, more than 90 percent of SCA victims will die if their heart has not been defibrillated. Communities that have initiated

Public Access Defibrillator programs that place AEDs in ambulances, police cars, and other public locations are experiencing SCA survival as high as 43 percent, compared with large cities with no such programs where the survival rate is as low as 1 percent.

Although the value of having AED's readily available appears obvious, concerns regarding liability, rapid availability of emergency personnel, training, cardiac risk of the population and maintenance of the defibrillators are concerns that have been raised regarding the need for having AEDs at athletic venues.

Although the cost of AED's is declining, most still range between $2,000 and $4,000, the statistics speak for themselves and the cost of saving one life arguably justifies the purchase price of a unit.

Article Appearing in the Community Newspaper

HOMETOWN TRIBUNE/ October 31, 2008

ASSEMBLY CONSIDERS REQUIRING AEDS AT HEALTH CLUBS

Hometown, Gould. Last week, the Gould Legislative Assembly met to consider legislation that would require all health clubs and spas in the state to have an automatic external defibrillator (AED) on their premises. Sudden cardiac arrest is the cause of death in more than 250,000 people in the United States each year. More than 90 percent of the victims die when defibrillation is not prompt. It is estimated that as many as 50 percent of cardiac arrest victims could be saved if they were defibrillated within seven minutes or less. However, medical experts caution that any such rescue must be swift if the victim is to survive neurologically intact.

Evidence of the effectiveness of AEDs is seen from the results of placing 49 AEDs in the two international airports located in metropolitan Hometown. During the first 12 months after the 49 AED's were placed in the two airports, 14 cardiac arrests occurred (12 going into ventricular fibrillation). Nine of the victims were revived with an AED with no neurological damage. Further, in nine of the incidents, airport travelers – not staff personnel- successfully operated the devices.

How likely is it for a member of a health club to suffer cardiac arrest in the health club facility? The answer to this question is not precisely known. However, in one database of more than 2.9 million commercial health club members, 71 deaths were reported in a two-year period or about 1 death per 2.6 million workout sessions.

In a survey of 65 randomly selected Gould health clubs, 17 percent reported a club member having a sudden cardiac death or heart attack during a five-year period. It is important to note that the demographics of health club membership are rapidly changing. More than half of all fitness centers now have a membership base of people 35 years and older. In addition, the fastest growing membership segment is in the 55 and older age group.

FERN A. FOGEL, Appellee-Plaintiff, vs. GET 'N GO MARKETS, INC., Appellant-Defendant

COURT OF APPEALS OF GOULD, FIRST DISTRICT

70 Gou.App.3d 1048, 23 P.3d 1480

July 4, 2006, Decided

PRIOR HISTORY: APPEAL FROM THE VANDENBURGH SUPERIOR COURT. The Honorable Minerva McGonagal, Judge.

DISPOSITION: Affirmed.

JUDGES: RAVENCLAW, Judge. HUFFLEPUFF, J., and SLYTHERIN, J., concur.

OPINION BY: RAVENCLAW

OPINION:

Get 'n Go Markets, Inc. appeals the trial court judge's denial of its motion for a directed verdict and motion for judgment n.o.v. We affirm.

Issues

The dispositive issue to our review of this appeal is whether Get 'n Go Markets, Inc. owed a duty to Fogel and if so, whether that duty was breached.

Facts

On the morning of April 1, 2000, Fern A. Fogel received extensive lacerations as the result of walking into and through a large glass panel which formed the front of the building in which Get 'n Go Markets, Inc., operated a supermarket. Fogel sued Get 'n Go Markets for damages in the Gould state court where the cause was tried and a jury verdict rendered in favor of plaintiff. Defendant filed a motion for a directed verdict at the close of all the evidence, and also filed a motion for judgment n.o.v

At this point and before proceeding to the consideration of the issues presented by this appeal, we indulge in a resume of the pertinent facts. Get 'n Go Market is a self-service grocery store in Johnson County, Gould. The building faces east, and the front or east portion thereof is constructed of four transparent plate glass panels, each about ten feet square. The two center panels were in fact sliding doors but were no different in appearance from the two stationary panels. The

sliding doors were closed on the morning in question. The only other front entrance to the store was through a door located in the north portion of the front of the building. This door was perpendicular to the glass front and was behind a brick wall which ran parallel to the front of the store and extended out in front of the door approximately one foot. A soft drink vending machine was also in front of the north door, and the wall and vending machine caused the north door to be hidden from the view of a person approaching the front of the building until the person was approximately six feet from the glass front. There were no signs or markings of any kind on the glass panels on the morning of the litigated occurrence and the glass was spotlessly clean.

Plaintiff stopped her automobile with the front facing the vending machine. She got out of the automobile eighteen or twenty feet from the front of the store and proceeded toward the building intending to enter the store not to make a purchase but to use its restroom facilities. From the testimony, the jury was warranted in finding that as plaintiff approached the store she was walking at a normal gait and with her head up; that although she was looking ahead, she did not see the glass or its bordering metal frame and saw no reflections from lights or identifying marks of any kind on the glass. She did not realize until she crashed through the glass, that what she thought was the entrance to the store was in fact a solid plate glass panel.

Defendant asserts that the plaintiff failed to make a submissible case and that the court erred in failing to grant its motion for a directed verdict and motion for judgment n.o.v.

I. NEGLIGENCE

In order to prevail in a claim for negligence, the plaintiff must establish several points, referred to in the law as a prima facie case. The prima facie case for negligence requires that the plaintiff prove: (1) that a duty was owed to the plaintiff; (2) that defendant breached that duty; (3) that the breach actually (in fact) and legally (proximately) caused; (4) plaintiff to suffer damage.

Defendant contends that under all of the evidence favorable to plaintiff and giving to plaintiff the benefit of all reasonable inferences, it conclusively appears that defendant did not owe a duty to plaintiff since the evidence is clear that the plaintiff was merely on the premises for the sole purpose of using the defendant's restroom facilities and not to purchase any item(s) from the store. In addition, defendant contends that a sign was posted on the door of both the men's and women's restroom conspicuously stating "RESTROOM FACILITIES RESTRICTED TO USE BY PATRONS ONLY." The defendant further contends that if a duty was owed, defendant did not breach that duty; that defendant was not guilty of any actionable negligence, and the issue of liability should not have been presented to the jury.

A. DUTY

We first address the argument that no duty was owed to the plaintiff. In our state, the question of the existence of a duty is one for the court to determine. In making that determination Gould courts analyze three factors in determining whether to impose a duty at common law: (1) the relationship between the parties, (2) the reasonable foreseeability of harm to the person injured, and (3) public policy concerns. Northern Gould Public Service Co. v. Patil, 1 Gou.3d 462, 466 (Gou. 2000). We consider each of these factors in turn.

1. THE RELATIONSHIP BETWEEN THE PLAINTIFF AND DEFENDANT

The defendant contends that there was no relationship between it and the plaintiff in as much as the plaintiff was not a customer nor prospective customer but was a trespasser. The evidence is undisputed that the sole purpose for plaintiff's intent to enter upon defendant's premises was to use the restroom facilities.

A duty of reasonable care is "not, of course, owed to the world at large," but generally arises out of a relationship between the parties." Seamus v. Lavender, 104 Gou.2d 929, 931 (Gou. 1991). Fogel was not a customer of Get 'n Go and there is no direct contractual relationship between Fogel and Get 'n Go. However, the absence of a direct contractual relationship does not mean that no duty exists.

2. THE REASONABLE FORESEEABILITY OF HARM TO THE PLAINTIFF

The most important of these considerations in establishing duty is foreseeability of harm to the plaintiff. As a general principal, a "defendant owes a duty of care to all persons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous." (citation omitted). In the instant case patrons of the store are clearly foreseeable. In addition, defendants posting of the sign on the restroom doors restricting use to "PATRONS ONLY" clearly demonstrates that plaintiff's presence on the property was foreseeable. OtherKramer, what purpose of the defendant is to be served by the posting of such a notice?

The designation of an individual as a business "invitee" or "licensee" or "trespasser" was abolished by our Supreme Court in the case of Rowling v. Christianson, 120 Gou. 2d 180 (1998). Thus, the existence or non-existence of the duty imposed on the proprietor of a business establishment toward individuals who may come upon his premises is not contingent on whether the individual is classified as an invitee, licensee or trespasser. Following *Rowling*, a business proprietor is under a duty to use due care to keep in a reasonably safe condition the premises where individuals may be expected to come and go; if there is a dangerous place on the premises, the business owner must safeguard those who come thereon by warning them of the condition and risk involved. "The true ground of liability is the proprietor's superior knowledge of the dangerous condition over individuals who may come upon the property and his failure to give warning of the risk." Id. at 187.

3. PUBLIC POLICY CONCERNS

There are numerous points that are considered in the area of public policy concerns. Among the points are: the moral blame attached to the defendant's conduct; 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, the policy of preventing future harm; and the availability, cost and prevalence of insurance for the risk involved.

Although a business owner is not an insurer against all accidents which may befall him upon the premises, in the instant case we believe that the burden placed upon the defendant by imposing a duty to exercise care is slight. In addition, we believe that the policy of preventing future harm and the availability of insurance to cover the risk involved in this case require a finding that Get 'n Go owed a duty to Fogel. The trial court was not in error in instructing the jury as to that point.

B. Breach of Duty

Defendant argues that even if this court were to find that defendant owed a duty to Fogel it nevertheless is not liable for Fogel's injuries because it did not breach that duty.

Courts approach the question of breach of duty in several ways. However, these various approaches generally attempt to measure three things: (1) the probability of the accident's occurring; (2) the magnitude or gravity of the injury suffered by the plaintiff if an accident occurs; and (3) the burden placed on the defendant to take adequate precautions to avert the accident.

Judge Learned Hand, in the case of United States v. Carroll Towing Co., 159 F.2d 169 (Second Circuit, 1947), attempted to give content to a relatively simple concept of determining whether a defendant had breached a duty - failed to exercise ordinary care- owed to the plaintiff. Hand's attempt to explain the notion of ordinary care using these three criteria was stated "in algebraic terms: if the probability be called P; the injury, L; and the burden, B; liability depends upon whether B is less than L multiplied by P:

i.e., whether B < PL."

In economic terms multiplying the cost of an accident if it occurs by the probability of its occurrence provides a measure of the benefit than can be anticipated from incurring the costs necessary to prevent the accident (the benefit of not having to pay out tort damages outweigh the costs incurred to prevent the accident from occurring). The cost of prevention is what Hand meant by the "burden of adequate precautions" against the accident. It may be the cost of making the activity safer, or the benefit forgone by curtailing or eliminating the activity. If the cost of safety measures or curtailment - whichever cost is lower - exceeds the benefit in accident avoidance to be gained by incurring that cost, an enterprise would be better off, in economic terms, to forgo accident prevention. A rule making the enterprise liable for the accidents that occur in such cases cannot be justified on the ground that it will induce the enterprise to increase the safety of its operations. When the cost of accidents is less than the cost of prevention, a rational profit-maximizing enterprise will pay tort judgments to the accident victims rather than incur the larger cost of avoiding liability. If, on the other hand, the benefits in accident avoidance exceed the costs of prevention, the enterprise is better off if those costs are incurred and the accident averted, and thus the enterprise is made liable, in the expectation that self-interest will lead it to adopt the precautions in order to avoid a greater cost in tort judgments.

It is important to note that Hand's evaluation of the breach of duty in algebraic terms was not intended to convey the notion that the three factors are easily quantifiable and produce precise results. What can be said about the process is this: as the probability for injury and or the severity of the injury increases, the burden imposed or the cost that must be incurred by the defendant, to avoid being deemed as having breached a duty owed to the plaintiff, also increases.

1. PROBABILITY OF THE ACCIDENT OCCURRING

Apparently, the Gould Supreme Court has not had occasion to deal with a plate glass case, but other jurisdictions have. Cases where plaintiff recovered for injuries resulting from contact with plate glass walls or doors are numerous (citations omitted). In addition, the question of liability for injuries resulting from contact with plate glass walls or doors is the subject of an Annotation in the American Law Reports (citation omitted).

Here, plaintiff, a citizen of our neighboring state of Grace returning home from a vacation, was a complete stranger to the defendant's premises and had never seen the market before. The invisibility of transparent glass, by its very nature, is likely to deceive the most prudent person, particularly where, as here, the construction was designed to give the market an open front appearance. Furthermore, as noted the north entrance door was obscured from view by the wall and vending machine and was not readily discernible until one approaching the glass front was within six feet thereof. The jury was not required to speculate as to the dangerous and unsafe condition created by the glass front. There was evidence to that effect. A former employee of defendant testified that during a period of eight months he observed four or five persons come in contact with the glass front and 'bounce off'. A safety engineer testified it was a hazardous arrangement, and detailed the methods that could have been employed to correct the lack of visibility of the glass.

2. THE MAGNITUDE OF INJURY

There is little doubt that one may suffer injury from accidental contact with a plate glass wall or door. The extent of that injury may certainly vary in range from no injury at all to slight to moderate to severe life threatening injury and even death. Our prior reference to cases where plaintiff recovered for injuries resulting from contact with plate glass walls or doors cases or recovery and the American Law Reports on the subject confirm this belief.

3. THE BURDEN OF ADEQUATE PRECAUTIONS

To be sure, transparent plate glass is recognized as a suitable and safe material for use in construction of buildings, indeed, it is common knowledge that such glass is used rather extensively in commercial buildings. However, it seems to us that the number of reported cases, some of which are cited infra, involving personal injuries from bodily contact with transparent glass doors and walls is some indication that with the advantages that may be derived from such construction are concomitant risks which the proprietor must assume. However, in the present case, the danger incident to the use of

transparent plate glass may be significantly lessened by the placement of a sticker on the glass that would alert individuals to the presence of the glass. Interference with the architectural aesthetics of construction using transparent plate glass is so slight that it is outweighed by the danger to be anticipated from a failure to use it.

Thus, given the relatively high probability of injury and the significant severity of that injury when compared to the nominal cost to the defendant of adequate precautions to prevent the injury, we find no error in the jury's conclusion that Get 'n Go breached the duty it owed to Fogel.

Without further discussion, we conclude and hold that there was substantial evidence from which the jury could find: (1) that the glass front constituted a dangerous and unsafe condition; (2) that plaintiff was exercising ordinary care for his own safety; (3) that there was a duty on the part of defendant to warn its patrons of the condition and (4) that defendant breached its duty.

The judgment is affirmed.

Gould Health & Safety Code

Division 301 - Disease Prevention & Health Promotion
Part 1 - Chronic Disease
Chapter 12 - Cardiovascular Disease

§ 204. Each year, sudden cardiac arrest, also known as sudden cardiac death, is responsible for the death of more than 250,000 residents of the United States. Medical research indicates that the key to survival of sudden cardiac arrest is the timely implementation of a “chain of survival” including cardiopulmonary resuscitation (CPR) and the restoration of an effective heart rhythm by defibrillation. Recent technological breakthroughs have resulted in the availability of a portable lifesaving devise called an “automated external defibrillator” or “AED.” In order to promote the health and safety of its citizens the following statutes are enacted.

§ 205

(a) Commencing one year after the enactment of this section:

(1) Every health studio, as defined in subdivision (h) shall acquire an automated external defibrillator (AED).

(2) Every health studio, as defined in subdivision (h), shall maintain, and train personnel in the use of an automated external defibrillator acquired pursuant to this section, and shall not be liable for civil damages resulting from the use or attempted use of an automatic external defibrillator as provided in this section.

(b) An employee of a health studio who renders emergency care or treatment is not liable for civil damages resulting from the use or attempted use of an automatic external defibrillator, except in the case of personal injury or wrongful death that results from gross negligence or willful or wanton misconduct on the part of the person who uses, attempts to use an automatic external defibrillator to render emergency care or treatment.

(c) When an employee uses or attempts to use, an automatic external defibrillator consistent with the requirements of this section to render emergency care or treatment, the members of the board of directors of the facility shall not be liable for civil damages resulting from any act or omission in rendering the emergency care or treatment, including the use or attempted use of an automatic external defibrillator.

(d) When an employee of a health studio renders emergency care or treatment using an automatic external defibrillator, the owners, managers, employees, or otherKramer responsible authorities of the facility shall not be liable for civil damages resulting from any act or omission in the course of rendering that emergency care or treatment.

(h) For purposes of this section, "health studio" means any facility permitting the use of its facilities and equipment or access to its facilities and equipment, to individuals or groups for physical exercise, body building, reducing, figure development, fitness training, or any other similar purpose, on a membership basis. "Health studio" does not include any hotel or similar business that offers fitness facilities to its registered guests for a fee or as part of the hotel charges.

Gould Evidence Code

Division 10. Burden of Proof; Burden of Producing Evidence; Presumptions and Inferences
Chapter 6. Presumptions and Inferences
Article 8. Presumptions Affecting the Burden of Proof

§ 966. Failure to exercise due care

(a) The failure of a person to exercise due care is presumed if:

(1) The person violated a statute, ordinance, or regulation of a public entity;

(2) The violation resulted in death or injury to person or property;

(3) The death or injury to person or property resulted from an occurrence of the nature which the statute, ordinance, or regulation was designed to prevent, and

(4) The person suffering the death or the injury to his or her person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.