

LAW AND LIABILITY UP CLOSE

Though much time was spent charting the legal ramifications concerning concussions at the "Law and Liability" breakout session at the Louisville Summit this past summer, the closing topic of whether officials are employees or independent contractors ended up being the major focus.

"There are ... dozens, maybe hundreds of statutes and regulations around the country that apply to employers that do not apply to folks who engage independent contractors," said sports law expert Alan Goldberger. "So, this is a loaded grenade without question. I think that's where the big exposure is in terms of associations."

The issue has been on a low-simmering boil for years, but got the heat turned up to high this summer when in a split decision, a three-person panel of the National Labor Relations Board (NLRB) ruled that a 140-person group of lacrosse officials in the Pittsburgh area were employees of the Pennsylvania Interscholastic Athletic Association and not independent contractors.

Appeals are ongoing, but Goldberger said the potential ramifications for state and local associations, school districts, rec leagues, etc., are huge.

"I know of one organization where you're looking at a high six-figure annual (income) going into the association and being paid out to the officials for officiating," Goldberger said. "Anytime you do that you are throwing up the white flag to the tax man and to a whole host of federal, state and local agencies (saying), 'Yes, we have employees, yes, all the officials are employees.'"

"And then what happens, you become liable ... because you are misclassifying your employees as independent contractors."

Among the other ramifications for associations if the decision holds up is liability for injuries to players and liability for injuries to officials should they be attacked by unhappy fans, players or coaches.

"... It's not going to be a pretty sight," said Goldberger.

Also on the panel for the session were moderator Drew Smith, president of American Specialty, the insurance provider for NASO and its membership; Don Collins, commissioner of the San Francisco Section of the CIF, and Chad Collins, general counsel

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of the Kentucky High School Athletic Association.

They painted a harrowing picture where officials and associations have to be legally adept to avoid potential troubles. Sexism, racism, concussions, game control, what to do in cases of assault, and video rights are all potential land mines.

Chad Collins pointed out that groups and officials need to clearly know their "duties," their legal obligations in any given situation because failing to do so can lead to charges of negligence.

"And so, what do we look at to find out if we have a duty?" he said. "Well, the easiest are our playing rules. Regardless of the sport, we have playing rules that we have to look at to tell us what we have to do."

Concussions and related health issues are examples.

"We're primarily focused ... on keeping the competitors safe," said Chad Collins, "and with the onslaught of litigation and legislation telling us how we have to deal with this, we've learned so much about concussions and how to handle them over the last 10 years.

"With concussions we've seen every legislature in the United States now stepping in and saying we want you to handle student-athletes or athletes that are showing signs and symptoms of concussion in the following way. Well, that statute has now created a duty for our officials."

Information is key, said Goldberger.

"That's why we tell people, we tell officials, (that they) have to make sure you know who the healthcare professional is (on site)," he said. "Make sure you understand that that player, that student-athlete has been evaluated."

Just below the surface and always needing awareness are issues of racism, sexism and the rights to videos. Officials also need to know what to do in case of verbal or physical attack or if a game gets out of control.

One, they should know the site administrator because that person is the first line of defense; two, they should be brave and always make the call as they see it; and three, they should always write the report clearly so people know exactly what happened.

Finally, keeping insurance up to date is always a good thing.

"I think the most important thing if I'm an official I need to be aware of what I have," said Smith. "What insurance do I have and what does it cover?" □