Without Oral Argument

APL-2015-00073
Oneida County Clerk's Index No. CA2008-000423

Court of Appeals of the State of New York

RAYMOND and MICHELLE PINK,

Respondents,

- against -

MATTHEW RICCI,

Respondent,

MARK WILBUR, CHRISTIN WILBUR, DIANN WILLIAMS, ROME YOUTH HOCKEY ASSOCIATION, INC., WHITESTOWN YOUTH HOCKEY ASSOCIATION, INC. and CITY OF ROME,

Defendants-Appellants.

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT-APPELLANT ROME YOUTH HOCKEY ASSOCIATION

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PRELIMINARY STATEMENT

Raymond Pink was a spectator at a youth hockey game, an innocent bystander injured when a fight broke out among other spectators in the stands after the game. Matthew Ricci was the spectator who assaulted Pink, an action for which Ricci was held criminally liable. *Pink v. Ricci*, 125 A.D.3d 1376, 3 N.Y.S.3d 823 (2015). Pink and his wife sued several individuals and associations, but this appeal involves only the Rome Youth Hockey Association (RYHA), which leased the arena for the home team. A majority of the Appellate Division of the New York Supreme Court denied RYHA's cross-motion for summary judgment, holding that "given the hostile environment in the arena before the fight, there is an issue of fact whether RYHA knew or should have known of the likelihood of the fight." *Id.* at 1377. Judge Lindley dissented, arguing that RYHA owed no duty to Pink. Among other things, the dissent points out that there was no evidence of any prior fights among the spectators at RYHA youth hockey games, nor was it foreseeable prior to the game that a fight would break out in the stands. Moreover, there was no representative from RYHA at the game who could have put the association on notice of the escalating tensions by which time, in any event, it was too late to hire security personnel. *Id.* at 1377-79. Amicus PLF argues below that the dissenting judge was correct: a property owner's or operator's duty to provide safe premises does not extend to the third-party criminal act in this case. The decision below should be reversed.

INTEREST OF AMICUS CURIAE

Founded in 1973, PLF is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. PLF engages in research and litigation over a broad spectrum of public interest issues at all levels of state and federal courts, representing the views of thousands of supporters nationwide who believe in limited government, individual rights, and free enterprise. PLF's Free Enterprise Project engages in litigation, including the submission of amicus briefs, in cases affecting America's economic vitality, and in particular in cases involving the abuse of tort law in ways that harm businesses, burden entrepreneurialism, and stifle job creation.

Pursuant to this Project, PLF has participated as amicus in New York courts in cases involving the reach and scope of civil liability systems. *See, e.g.*, *In re NYC Asbestos Litigation* (docket no. APL-2014-00209, pending); *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 944 N.Y.S.2d 452, 967 N.E.2d 675 (2012); *Jamarillo v. Weyerhaeuser*, 12 N.Y.3d 181, 878 N.Y.S.2d 659, 906 N.E.2d 387 (2009). PLF also filed amicus briefs in other state high courts on the premises liability issues presented in this case. *See, e.g.*, *Rodriguez v. Del Sol Shopping Center Associates, L.P.*, 326 P.3d 465 (N.M. 2014); *Bass v. Gopal, Inc.*, 395 S.C. 129, 716 S.E.2d 910 (2011); *Del Lago Partners, Inc. v. Smith*, 307 S.W.3d 762 (Tex. 2010); *Giggers v. Memphis Housing Authority*, 277 S.W.3d 359 (Tenn. 2009). In addition, PLF attorneys have published law review articles on the impact of tort liability in general,

and premises liability specifically. *See, e.g.*, Deborah J. La Fetra, *A Moving Target: Property Owners' Duty to Prevent Criminal Acts on the Premises*, 28 Whittier L. Rev. 409 (2006); Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 Ind. L. Rev. 645 (2003).

ARGUMENT

I

PREMISES OWNERS OWE A VERY LIMITED DUTY TO PREVENT THIRD-PARTY CRIMINAL ACTS

Premises liability is predicated on the landowner's control over the premises. *Daly v. City of New York*, 227 A.D.2d 432, 433, 642 N.Y.S.2d 907 (1996). There is some risk of criminal activity on the premises of any institution or any establishment, at any time, at any place. Knowing this fact of modern life, however, is not the same as reasonably foreseeing the manner and place of a particular crime. Yet it is only this latter, more specific foreseeability that is legally significant, *Buckeridge v. Broadie*, 5 A.D.3d 298, 300, 774 N.Y.S.2d 132, 133-34 (2004). Only that type of foreseeability prompts a property owner to take the specific measures that arguably could have prevented the incident that ultimately occurred. *Leyva v. Riverbay Corp.*, 206 A.D.2d 150, 153, 620 N.Y.S.2d 333, 336 (1994).

The common law establishes limitations on a property owner's duty because, in addition to identifying the party that caused the harm, courts must consider public

policy to determine who should bear the cost of the harm. *Waters v. New York City Housing Authority*, 69 N.Y.2d 225, 230, 513 N.Y.S.2d 356, 505 N.E.2d 922 (1987). Every act has a potentially infinite number of consequences, so that if a property owner were required to pay for every potential wrong resulting from an action, economic enterprise simply could not go on. *See Maheshwari v. City of New York*, 2 N.Y.3d 288, 294, 778 N.Y.S.2d 442, 810 N.E.2d 894 (2004) (landowners "are not the insurers of a visitor's safety"). "At some point," therefore, "it is generally agreed that the defendant's act cannot fairly be singled out from the multitude of other events that combine to cause loss." Harvey S. Perlman, *Interference with Contract and Other Economic Expectancies: A Clash of Tort and Contract Doctrine*, 49 U. Chi. L. Rev. 61, 70 (1982). Thus, courts require proof of prior similar *criminal* incidents before making landowners responsible for preventing further criminal acts on the property. *Milton v. I.B.P.O.E. of the World Forest City Lodge, No. 180*, 121 A.D.3d 1391, 1392, 995 N.Y.S.2d 360 (2014); *Cutrone v. Monarch Holding Corp.*, 299 A.D.2d 388, 389, 749 N.Y.S.2d 280, 282 (2002) ("the owner of a public establishment has no duty to protect patrons against unforeseeable and unexpected assaults").

A. RYHA Had No Duty To Prevent the Spectator-on-Spectator Crime in This Case

Based on the practical concerns about the possibility of limitless liability and the unfairness of imposing liability for another's wrongful acts, courts are reluctant to extend liability to defendants for their failure to control the conduct of others. *See Hamilton v. Beretta U.S.A. Corp.*, 96 N.Y.2d 222, 232-33, 727 N.Y.S.2d 7, 750 N.E.2d 1055 (2001). As a general rule, there is no duty to control the actions of third parties so as to prevent them from harming others. *D'Amico v. Christie*, 71 N.Y.2d 76, 524 N.Y.S.2d 1, 518 N.E.2d 896 (1987).

Sporting events have provided many opportunities for courts to apply these principles. For example, aggressive, rowdy behavior at wrestling matches has led to spectator-on-spectator violence, leading to lawsuits. In both *Whitfield v. Cox*, 189 Va. 219, 221, 52 S.E.2d 72 (1949), and *Reynolds v. Deep South Sports, Inc.*, 211 So. 2d 37 (Fla. App. 1968), spectators at wrestling matches were injured by bottles thrown by other spectators. In *Whitfield*, the Virginia Supreme Court described the crowd as profane, which did not strike the plaintiff as unusual, 189 Va. at 222 ("[I]t always went on."), and boisterous, and she made no complaints about the crowd becoming "tense and threatening." *Id.* at 224. As in this case, the plaintiff knew that the sporting events "are not quiet and dignified affairs" and "the usual behavior of the spectators . . . was not always gentle, nor their speech always refined." *Id.* at 227.

The *Whitfield* court rejected the plaintiff's claim, holding that it would not establish a duty that would require the sponsor of the match to search each patron for potentially dangerous items, or to have enough employees to watch each patron. *Id.* at 224, 227. *Reynolds* relied on *Whitfield* to come to the same conclusion under a similar fact pattern. 211 So. 2d at 38-39. *See also Johnson v. Mid-South Sports, Inc.*, 806 P.2d 1107, 1109-10 (Okla. 1991) (refusing to impose liability against sponsor of wrestling match where "rowdy fans" and a beer-slicked ramp combined to injure a spectator after the match).

Courts have similarly acknowledged the rambunctious crowds present at other sporting events. In *Shayne v. Coliseum Bldg. Corp*., 270 Ill. App. 547, 551-52 (1933), the court noted:

> We find in this record evidence of laughing, yelling, bantering, talking and noise, which are the usual concomitants of prize fights or boxing matches. Rather than being unusual and extraordinary these are the natural, ordinary incidents of boxing matches. Such incidents surely cannot be held to be notice to the management that those thus engaged are likely to resort to acts which would cause a panic or stampede and it is under no duty nor has it the right to eject patrons on account of such conduct.

The court held that the owner of the arena would, under these circumstances, have no reason to anticipate injuries to a spectator caused by the crowd suddenly veering out of control. *Id.* at 552. *See also Klish v. Alaskan Amusement Co.*, 153 Kan. 93, 109 P.2d 75, 76 (1941) (no liability for a proprietor of a place of public amusement for

injuries to a spectator at an ice-hockey game resulting when a third person lost his balance because of the crowded condition and fell against her); *Shtekla v. Topping*, 23 A.D.2d 750, 751, 258 N.Y.S.2d 982 (1965), *appeal dismissed*, 18 N.Y.2d 961, 277 N.Y.S.2d 694 (1967) (no liability where plaintiff was injured by a fight that broke out among spectators at Yankee Stadium).

As demonstrated in the cases above, spectator rowdiness and rudeness at sporting events has a long history. While the incursion of such misbehavior into youth sports is of more recent vintage, *see generally* Jenni Spies, *"Only Orphans Should be Allowed to Play Little League": How Parents Are Ruining Organized Youth Sports for Their Children and What Can Be Done About It*, 13 Sports Law. J. 275 (2006), it has been a known problem for decades, drawing the attention of sports organizations and some state legislatures. *See, e.g.*, N.J. Stat. Ann. § 2C:12-1 ("A person who commits a simple assault . . . in the presence of a child under 16 years of age at a school or community sponsored youth sport event is guilty of a crime of the fourth degree."); Dianna K. Fiore, Comment, *Parental Rage and Violence in Youth Sports: How Can We Prevent "Soccer Moms" and "Hockey Dads" from Interfering in Youth Sports and Causing Games to End in Fistfights Rather than Handshakes?*, 10 Vill. Sports & Ent. L.J. 103, 123-24 (2003) (discussing state legislation intended to curtail violence in youth sports). The USA Hockey umbrella organization

developed sportsmanship policies (the Zero Tolerance Policy) to counter aggressive and rude spectator behavior.[1]

In any event, a landowner's duty to protect against the criminal acts of third parties must exist *prior* to the particular criminal assault that is the subject of a lawsuit. *Leone v. City of Utica*, 66 A.D.2d 463, 471, 414 N.Y.S.2d 412 (1979). Foreseeability of the unreasonable risk of crime cannot be assessed in hindsight, because foreseeability is, by its very definition, "[t]he quality of being reasonably anticipatable." Black's Law Dictionary Tenth Edition (2014); *Gross v. Empire State Bldg. Associates*, 4 A.D.3d 45, 47, 773 N.Y.S.2d 354 (2004), *judgment entered* 2004 WL 376959 (although "with the benefit of 20-20 hindsight, everything is foreseeable[;]" building was not liable for preventing a deranged man from opening fire on the Empire State Building observation deck); *see also Romero v. Superior Court*, 89 Cal. App. 4th 1068, 1089, 1094, 107 Cal. Rptr. 2d 801 (2001) ("[I]t is not enough to assert that it is *conceivable*" that harm could befall a guest on the landowner's premises, and courts will not require premises owners to engage in "continuous supervision" of those invited onto their property.).

[1] *Available at* http://www.usahockeyrulebook.com/page/show/1015130-zero-tolerance-policy (last visited June 11, 2015).

B. Rude or Rowdy Behavior Is Not a Predictor of Criminal Behavior

A property owner's duty to take reasonable measures to protect its invitees against the unreasonable risk of crime cannot exist without sufficient notice—foreseeability—that such an unreasonable risk exists and the opportunity to take the necessary steps. The scope of the landowner's duty to have security measures already in place to combat the risk of crime necessarily cannot be imposed as a crime occurs, and obviously cannot be imposed after the crime occurs. *See Caprara v. Chrysler Corp.*, 52 N.Y.2d 114, 122, 436 N.Y.S.2d 251, 417 N.E.2d 545 (1981) ("[A]t the heart of such an action is either affirmative conduct in creating a dangerous condition or a failure to perceive a foreseeable risk and take reasonable steps to avert its consequences, proof that goes to hindsight rather than foresight most often is entirely irrelevant and, at best, of low probative value."); *Erickson v. Curtis Inv. Co.*, 447 N.W.2d 165, 169 (Minn. 1989) ("[A] duty to protect against the devious, sociopathic, and unpredictable conduct of criminals does not lend itself easily to an ascertainable standard of care uncorrupted by hindsight nor to a determination of causation that avoids speculation.").

Rudeness, alas, is not restricted to sporting events, but pervades much of modern life. Were rudeness, and the tensions it creates, sufficient to establish a tort duty, the realm of tort law would expand to encompass virtually every situation. *Cf.*

Stauber v. New York City Tr. Auth., 10 A.D.3d 280, 281, 781 N.Y.S.2d 26, 27 (2004) (a bus driver's rudeness and profanity did "not meet the extreme and outrageous conduct standard for the imposition of liability for infliction of emotional distress, whether intentionally . . . or negligently") (citations and quotation marks omitted).

Nor can rudeness serve as an indicator of likely criminal conduct. In *Brown v. Brown*, 478 Mich. 545, 547-48, 739 N.W.2d 313 (2007), for example, the Michigan Supreme Court held that an employee's "crude, sexually explicit comments" to his co-worker gave the employer insufficient notice that the employee was likely to rape the co-worker, where the employee had no prior criminal record or history of violent behavior indicating a propensity to rape. The court noted, "Comments of a sexual nature do not inexorably lead to criminal sexual conduct any more than an exasperated, angry comment inexorably results in a violent criminal assault." *Id.* at 555. In a later case, the same court explained that an employer's liability for the criminal acts of its employees must be limited because employers do not assume their employees will commit criminal acts. *Hamed v. Wayne County*, 490 Mich. 1, 13, 803 N.W.2d 237 (2011). Moreover, because of the "inherently arbitrary and highly unpredictable" nature of criminal conduct, even highly trained law enforcement agencies "cannot predict the occurrence of criminal acts." *Id.* at 14 (citing *Brown*, 478 Mich. at 554).

In *Maysonet v. KFC, Nat. Management Co.*, 906 F.2d 929, 932 (2d Cir. 1990), the Second Circuit applied New York law to hold that a panhandler's harassment of customers, crazy laughing, and requests for money did not put the restaurant on notice that he was likely to stab one of the customers. As with rowdy hockey fans, the panhandler's actions were "bothersome and annoying," but "simply too common an occurrence to alert a property owner that such person may commit a violent act." *Id.* In *People v. Behren*, the New York Supreme Court dismissed criminal charges against a rude father who made vague threats against the school principal who suspended his son. 21 Misc. 3d 338, 343, 863 N.Y.S.2d 362, 366-67 (2008) ("A school principal, like many other public servants, is required to accept a certain amount of rudeness from the public, without turning her displeasure into a criminal case."). Other courts are in accord. In *De Leon v. Creely*, 972 S.W.2d 808, 813 (Tex. App. 1998), the court held that annoying but nonviolent misconduct does not show a propensity to commit a violent crime. *See also Davis v. Gomez*, 207 Cal. App. 3d 1401, 1404, 255 Cal. Rptr. 743 (1989) (aggressive neighbor who "cast spells" was a common nuisance; but it was not foreseeable that she would fatally shoot another tenant). Finally, as the Florida Supreme Court held in *Heps v. Burdine's*, 69 So. 2d 340, 342 (Fla. 1954), when it refused to hold a department store liable for injuries resulting from "crude manners, rude conduct, and total disregard of the feelings of others": "The mere fact that one is injured in a public place is not enough to fix responsibility for a cause of

action. The person injured must point out and bring his action against the one who caused the injury."

II

PUBLIC POLICY WEIGHS AGAINST EXPANDING TORT DUTIES TO ADVERSELY IMPACT NONPROFIT, VOLUNTEER ORGANIZATIONS

Participation in recreational sports programs benefits young people in a variety of ways, from teaching the values of hard work and cooperation, to keeping kids off the streets and out of trouble. Successful programs rely primarily on the volunteers who serve as team managers, coaches, and referees, as well as parent participation. *See* Daniela D'Amico, Note, *Torts-Negligence in the Protection of Third Parties During Youth Sports Programs*, 12 Seton Hall J. Sport L. 107, 107 (2002); *Lasseigne v. American Legion, Nicholson Post No. 38*, 558 So. 2d 614, 617 (La. App. 1990) (finding no duty for little league baseball-related injury based in part on public policy that "value[s] the services of volunteers in a youth sports program to the community in which they participate"); *Samuel v. Frohnmayer*, 82 Or. App. 375, 380, 728 P.2d 97, *rev. den.* 303 Or. 261, 735 P.2d 1224 (1987) ("The state receives an invaluable service from persons who are willing to volunteer their time and energy to the community.").

The creation of a duty in this case would extend well beyond the Kennedy hockey arena to fields and arenas maintained by cities, parks departments,

universities, and other private property owners who make their space available to the public for sporting events. Douglas E. Abrams, *Player Safety in Youth Sports: Sportsmanship and Respect as an Injury-Prevention Strategy*, 22 Seton Hall J. Sports & Ent. L. 1, 4 (2012) (Youth sports include those "conducted by public and private schools, private organizations, and public agencies such as parks and recreation departments."). And "the most obvious effect [of potential tort liability] has been to discourage many volunteers from undertaking or continuing volunteer services." Michael Mayer, *Stepping In to Step Out of Liability: The Proper Standard of Liability for Referees in Foreseeable Judgment-Call Situations*, 3 DePaul J. Sports L. & Contemp. Probs. 54, 99 (2005) (citing Kenneth W. Biedzynski, Comment, *Sports Officials Should Only Be Liable for Acts of Gross Negligence: Is That the Right Call?*, 11 U. Miami Ent. & Sports L. Rev. 375, 415 (1994)). Moreover, the uncertainty of outcomes in the tort system creates greater financial risk for nonprofit organizations and higher rates for liability insurance for the organizations themselves, their directors and officers, and their volunteers. Joseph H. King, Jr., *Exculpatory Agreements for Volunteers in Youth Activities—The Alternative to "Nerf®" Tiddlywinks*, 53 Ohio St. L.J. 683, 689-90 (1992).

As other state courts have recognized in the context of upholding pre-injury tort waivers for recreational sports, when youth sports organizations are at risk of incurring tort liability, these valuable community organizations find fewer volunteers

willing to run the programs, to the great detriment of the youth they aim to serve. *See Kirton v. Fields*, 997 So. 2d 349, 357 (Fla. 2008) ("[V]olunteers . . . faced with the threat of lawsuits and the potential for substantial damage awards, . . . could . . . decide that the risk is not worth the effort."); *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St. 3d 367, 372, 696 N.E.2d 201, 205 (1998) (same); *Walker v. Virgin Islands Waste Management Auth.*, CIVIL NO. SX-11-CV-353, 2015 WL 404007 (Sup. Ct. V.I. Jan. 26, 2015) (surveying jurisdictions and upholding waiver while noting the importance of the taxpayer-funded community "educational and character-building program" that could not afford to carry liability insurance, making the volunteers targets for lawsuits).

The ruling in this case will affect government-sponsored community activities as well as private organizations. *Miller v. State of New York*, 62 N.Y.2d 506, 511, 478 N.Y.S.2d 829, 467 N.E.2d 493 (1984) (when "a governmental entity such as defendant acts in a proprietary capacity as a landlord, it may be held liable in tort to the same extent as is a private landlord"); *Waters v. New York City Housing Auth.*, 69 N.Y.2d 225, 228, 513 N.Y.S.2d 356, 505 N.E.2d 922 (1987) ("a landlord, private or public, may have a duty to take reasonable precautionary measures to secure the premises if it has notice of a likelihood of criminal intrusions posing a threat to safety") (citation omitted). New York cities and other local government entities offer numerous sports activities on fields and in arenas that they own and operate. *See, e.g.*,

Gilchrist v. City of Troy, 67 N.Y.2d 1034, 1035, 503 N.Y.S.2d 717, 494 N.E.2d 1382 (1986) (city-owned hockey rink not liable for spectator injured by flying puck); *Akins v. Glens Falls City School District*, 53 N.Y.2d 325, 331-32, 441 N.Y.S.2d 644 (1981) (school district not liable to spectator struck by a foul ball at high school baseball game); *Lynch v. Bd. of Ed. for Oceanside Sch. Dist.*, 225 A.D.2d 741, 742, 640 N.Y.S.2d 142 (1996) (same); *Koenig v. Town of Huntington*, 10 A.D.3d 632, 633, 782 N.Y.S.2d 92 (2004) (town not liable for injured spectator at youth baseball game on adjacent town-owned field); *Benjamin v. State of New York*, 115 Misc. 2d 71, 73, 453 N.Y.S.2d 329 (1982) (state liable for spectator struck by hockey puck at state university hockey rink). *See also* CNY Hockey, *High School Hockey Teams: New York State, available at* http://www.cnyhockey.com/highschool.htm (last visited June 11, 2015) (comprehensive listing of both public-school and private-school hockey teams).

Other courts have used caution when considering the effects of expanded tort liability on activities regarded as a positive public good. For example, a Tennessee court considered the sheer economic burden of requiring a homeless shelter to hire security guards to prevent one guest from criminally assaulting another. In *Henry v. Bi District Bd. of Urban Ministry, Inc.*, 54 S.W.3d 287, 290 (Tenn. Ct. App. 2001), the court declined to find that a homeless shelter owed a duty to a guest to prevent the assault upon him by another guest. Because "the court must consider whether

imposing a duty to take reasonable measures to protect patrons from the consequences of criminal acts of third persons would place an onerous burden—economic or otherwise—upon [the] defendants," *id.* (citing *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891, 904 (Tenn. 1996)), the court found no duty where the defendant "had no money within its budget to provide security at the shelter and that the requirement to add security would have an effect on the shelter's operations." *Id.*

In sum, broad standards of liability harm consumers of both products and services—in this case the young hockey players and their families, as well as participants in other sports affected by this Court's ruling. "Contrary to the common perception that the costs of new legal rules fall on faceless corporations and 'big business,' those costs are ultimately borne by individuals through higher prices for goods and services, reduced wages, and decreased investment returns." Council of Economic Advisers, *Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System* (Apr. 2002).[2]

Imposing an affirmative duty may cause landowners to prohibit youth sports organizations from using their facilities. In addition to causing field shortages, it could also cause landowners to defray potential litigation costs by spreading fees among sport participants, fans, and advertisers. Because crime is a problem that

[2] *Available at* https://www.heartland.org/sites/all/modules/custom/heartland_migration/files/pdfs/13266.pdf (last visited June 11, 2015).

discriminates against the poor, the costs of increased liability fall on those least able to bear it. Uri Kaufman, *When Crime Pays: Business Landlords' Duty to Protect Customers from Criminal Acts Committed on the Premises*, 31 S. Tex. L. Rev. 89, 107 (1990). Ultimately, many youth activities would be unable to continue, at least if required to obtain liability insurance at a level that provided meaningful protection for its volunteers. In essence, youth activities would become available only to the affluent, an unacceptable outcome. King, *supra*, at 743.

CONCLUSION

The New Jersey Supreme Court recently wrote:

> [T]he function of the law, and in particular the common law governing tort recoveries, cannot be driven by sympathy or overshadowed by the effects of tragedy. Rather, the function of tort law is deterrence and compensation, and absent circumstances in which the definition of the duty can be applied both generally and justly, this Court should stay its hand. In the end, although creating a cause of action to suit these facts might serve the ends of these particular plaintiffs, we cannot say that it would advance the public interest or lead to a rule that would sensibly, predictably, and fairly govern future conduct.

Estate of Desir ex rel. Estiverne v. Vertus, 214 N.J. 303, 329-30, 69 A.3d 1247 (2013). The duty sought to be established in this case will apply to recreational sports fields and arenas of all types, both publicly and privately owned. The costs of extending tort liability to the very attenuated defendant RYHA far exceed the possible justifications.

The decision below should be *reversed.*

DATED: June 19, 2015.

Respectfully submitted,

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By _____
THEODORE HADZI-ANTICH

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DECLARATION OF SERVICE

I Suzanne M. MacDonald, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 930 G Street, Sacramento, California 95814.

On June 19, 2015, true copies of the BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT-APPELLANT ROME YOUTH HOCKEY ASSOCIATION were placed in envelopes addressed to:

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I declare under penalty of perjury tha the foregoing is true and correct and that this declaration was executed this 19th day of June, 2015, at Sacramento, California.

_____

SUZANNE M. MACDONALD