

# PLANNING FOR DISASTER AND BAD RESULTS IN COURT

*By J. Shelby Sharpe<sup>1</sup>*

Too often those who have responsibility for the planning of a meet fail to appreciate the liability exposure created at this stage. The liability is not just organizational liability, but **personal** liability of the planners some of which may not be covered by insurance. If avoiding this liability is the desire of those who have these planning responsibilities, then this paper will be of great assistance.

The recommendations made in this paper will not compromise the efficiency of a meet, but make it safer by complying with what the law requires. They are applicable to meets ranging from a dual meet to championship meets, including Olympic Trials. Furthermore, these recommendations are designed to help avoid the preventable injury or death with the consequences that often grow out of it.

The language in this paper has been selected for persons who are not legally trained. There are questions at the end of each section of the paper to illustrate how an attorney for an injured or deceased person would seek to establish liability for failure to do what the law requires.

---

<sup>1</sup> Mr. Sharpe is an attorney who has specialized in insurance defense for over thirty years and has been officiating track and field events since 1963, including international, national and conference championships as well as other major track and field competitions and is general counsel for the United States Track Meet Directors Association, and has served as general counsel for the United States Track & Field and Cross Country Coaches Association.

## **I. Legal Standard for Liability**

When an injury or death occurs, if the cause is the failure to act as an ordinary, reasonable person in planning the meet, liability for the injury or death can occur. If the planner is acting on behalf of an organization, which is almost always the case, the organization will be liable for the planner's conduct. In the event the planner has deliberately ignored a known danger, then the liability can be for punitive damages.

## **II. The Competition Venues**

Those planning a meet **MUST** know the venues thoroughly. A court will hold the planners and the organization liable for any hazard that a reasonably prudent person could have discovered by an inspection of the venues, if not corrected before the meet occurs. Example of such hazards are:

metal gratings around a long jump/triple jump pit that are broken, or

lights positioned for throwing field events conducted at night where an implement can be lost in the lights and not seen by those marking and measuring in the sector.

Then, there is the hazard that is not correctable. The most common example of this is overlapping venues where an implement can reach from one venue to another venue. This hazard can **ONLY** be addressed in the scheduling of competition in the adjacent venues so that there is not activity in the overlapped

venues including during warm-ups. An overlapping venue may be the track and not another field event venue. For example, at the 2000 Olympic Trials in Sacramento, California, the discus cage was set so that not only would a left-handed thrower's implement be able to reach the track, but also reach the people sitting in the grandstand. Having discovered this by pre-meet inspection, the night before the competition began the cage was completely repositioned.

Questions that could be expected to be asked to establish liability are:

(1) Did you or someone on your behalf inspect the competition venues, before you began planning this meet?

(2) Would a reasonable inspection of the venues prior to planning the meet reveal the hazard you could have avoided by scheduling?

(3) Did you create the schedule to avoid an uncorrectable hazard?

### **III. Meet Personnel**

In planning a meet, the almost exclusive focus is on the number of officials to staff each competition venue adequately. However, planners often overlook those officials who are dedicated to safety for each event. At larger meets, due to their size, it is imperative that there be adequate officials focused solely on safety

assigned to every event, including the warm up times and practice sessions before a meet or during a time when the meet is not in progress.

A very common mistake in planning is the lack of attention to when a venue will become active for warm up or a practice session. Those responsible for safety must arrive at each venue before the officials working the venue and the competitors arrive for warm up or a practice session. If meet management is using the start time to have officials report for an event or a practice session, there are two potential problems that may be encountered. First, those who are dedicated to safety for that venue must be free from their obligation of a previous venue so that they may be able to arrive in time for the warm up or a practice session. The second is that if the event is an implement event capable of that implement reaching another venue where activity is underway, the risk of injury or death is very high unless close attention is paid to the action in joining venues. Meet management must remember that safety officials move from one venue to another for the whole meet. They don't just work a venue such as long jump, shot put, pole vault, etc.

Another common mistake of meet planning is having insufficient safety personnel for each venue or individuals working the venue who do not have proper training for safety for the venue. Simply having a good knowledge of how to officiate a particular event is not synonymous with knowing how to protect those in

the event from harm. While safety officials are cognizant of the operation of an event, their focus for protection is on completely different things than those who are officiating the event. Many times I have observed a “good” weight throw official, having been assigned to marshal the weight throw, get caught up in the competition and forget the safety aspect he/she has been assigned to protect because of lack of safety training.

Questions that could be expected to be asked to establish liability are:

(1) In numbering the personnel for each event, did you take into account the number needed to keep the event and those around it safe?

(2) Did you determine the training and experience needed for those having safety responsibilities to have to discharge their safety responsibilities?

(3) What did you do to determine the training and experience of the officials who would be assigned to keep an event safe?

(4) Did you establish throwing protocols to keep those events safe and assign someone to see that they were followed?

#### **IV. Understanding the Use of Marshals or Event Officials Required to Discharge Marshal Responsibilities**

For every meet planner who understands the proper use of marshals, there will be ninety-nine (99) who do not. These ninety-nine (99) are not intentionally failing to understand the role of the marshals, it is their flawed understanding of what marshals do.

The best place to begin is with the flawed thinking of the ninety-nine (99) who don't know the proper role of marshals. Many think they are to keep people from entering the track. This is an event staff duty, not a marshal's duty. They do not have the responsibility for toilet duty, either. That is an escort's responsibility. They are not a part of the officiating crew for that particular event, either. They do not run errands for other officials. This too is an escort's responsibility.

Lastly, marshals are assigned to their positions by the Head Marshal. They are accountable to the Head Marshal and ultimately Meet Management. Each marshal has a designated focus for safety. The Head Marshal has the responsibility to see that all areas of the competition and warm-ups are covered by the watchful eyes of the marshals. The Head Marshal also has the responsibility prior to competition commencing even in warm-ups to visually examine every venue for a discoverable hazard to see that any discovered hazard is corrected before anyone

arrives in the venue for warm-ups. Discoverable hazards are to be reported to the Head Marshal who in turn reports to Meet Management.

Therefore, in planning a meet the planner must be sure there are enough marshals for every event or officials within the event who have sufficient experience and training assigned to safety responsibilities. Uncovered events are those where there are an insufficient number of marshals or officials designated with safety responsibilities. An injury or death in such a circumstance will almost surely result in liability for those who planned the meet or had responsibility for its planning.

Questions that could be expected to be asked to establish liability are:

(1) Did you determine the number of marshals or officials with marshal responsibility for every event, including warm-up?

(2) What did you do to determine the experience and training of the marshals or those given marshal responsibilities for each event?

(3) Did you leave any event without marshals or persons designated to discharge marshal responsibilities?

(4) Why did you do this?

(5) Could you have adjusted the meet schedule so that there were no uncovered events?

## **V. Access to Venue Prior to the Meet**

Meet planners who will have in their plans access to the venues for a practice session prior to a meet beginning must look at those occasions the same as the meet. Liability or death and injuries during these times is the same as if the meet were under way. Accordingly, reasonable planning for safety of these activities is essential. The number of injuries and deaths during this time is almost equal to or more likely than during the meet itself. Thus, the same precautions for a meet must be followed for these pre-meet times.

Questions to be anticipated to establish liability for a pre-meet injury or death are:

(1) How many events did you permit to have a practice time before the meet?

(2) Did you determine the number of officials needed to keep everyone safe during this time?

(3) Did you take steps to be sure these officials would be present prior to the time the athletes arrived?

(4) What did you do to be satisfied those officials had experience and training in safety for their assigned responsibilities?

(5) What supervision was given to be sure these officials were properly positioned?

## **VI. Scope of Liability**

As mentioned at the beginning of the paper, a meet planner has personal liability the same as the organization for whom the meet planner is performing services. Often times and with some justification a meet planner may consider that the exposure is minimized because of the organization for whom the meet planner works. But, a meet planner may have exposure beyond that of the organization and their exposure not be covered by liability insurance.

The primary example of this is when a meet planner engages in what the courts call gross negligence. The general definition for gross negligence is an intentional failure to perform a manifest duty in reckless disregard for gross negligence is an intentional failure to perform a manifest duty in reckless disregard of the consequence affecting another or another's property. Situations that might be found to meet this definition would be:

(1) giving access to facilities prior to a meet where implements are being thrown and no precautions are taken for safety,

(2) knowingly scheduling events with over-lapping venues where implements can reach activities in an adjacent venue,

(3) conducting a long or triple jump where the metal grating around the pit is broken prior to any activity ever beginning at the meet, and

(4) having an implement cage positioned in such a fashion that an implement can fly out of the cage and reach persons out of the venue – including spectators sitting in the stands.

The significant point about gross negligence is that almost every liability insurance policy excludes it from coverage. In other words, the insured planner places the insurance planner's assets at risk no matter how big the policy limits may be. For example, a judgment against an individual where the damages are \$500,000.00 for negligence and the gross negligence are for two million, a policy with limits of \$5,000,000.00 would only cover the \$500,000.00 in negligence damages. The insured planner is responsible for the gross negligence damage.

## **VII. Conclusion**

The forgoing content of this paper illustrates that the liability exposure for planners of a meet is significant and beyond what is probably thought. Every meet planner should follow the guidelines of this paper. If this is done, it will eliminate this liability exposed because the planning of a meet will meet the legal requirement of reasonableness that a court requires.