Body Blow: Boxer Chases Ambulance and Wins Judgment

Adam Epstein, Central Michigan University
While trial lawyers have been characterized by the general public as "ambulance chasers" for decades, the concept of ambulance chasing took new meaning in late 2003 when a Missouri appellate case upheld a trial court decision as a professional boxer was awarded $13.7 million in compensatory damages for a hotel's failure to provide an ambulance on site after the match was over even though it had subcontracted responsibility for the event with a promoter. *Maldonado v. Gateway Hotel Holdings, L.L.C.*<1>

Though a contact sport such as boxing certainly does require adequate medical care and monitoring during the event itself, the Missouri Court of Appeals held that such care extends for a time beyond the contest as well, upholding a circuit court jury decision in St. Louis. Though the boxer was injured during the match as well and assumed the risk of being injured by a punch, the court held that he did not assume the risk of being injured by the promoter's failure to provide medical monitoring or an on-site ambulance.

**The facts**

Fernando Ibarra Maldonado, 23 at the time, took part in a boxing match on Jan. 29, 1999 at the Regal Riverfront Hotel in St. Louis. The match was the result of a sports contract between Gateway Hotel Holdings, L.L.C. (Gateway) -- the owner of the Regal Riverfront Hotel -- and Doug Hartmann Productions, L.L.C. (Hartmann). As is customary in such agreements, the contract outlined the physical area to be used, the catering and beverage responsibilities, a nonrefundable deposit and payment for room rentals. Additionally, a $5 million indemnity insurance policy was provided in addition to the doctor at ringside and an ambulance on stand-by.

During the match, Maldonado was knocked out and revived in the ring. He then left the ring, walked to his dressing room and then lost consciousness while in the dressing room. At that time, there was no ambulance on site in violation of the contractual arrangement, so an ambulance was called and Maldonado was taken to a hospital. He suffered brain damage.
Maldonado sued Gateway claiming that Gateway and Hartmann owed him a duty of care to provide an ambulance on the premises and to monitor his condition after the fight. As a result of its alleged breach of duty, Maldonado claimed that Gateway (and the joint owner of the hotel, Richfield Hotel Management Inc.) should compensate him for his subsequent brain injury.

After a trial, a jury awarded him $13.7 million in compensatory and $27.4 million in punitive damages. The trial court dismissed the punitive damages award, but upheld the compensatory damages. The same court also dismissed Gateway's motion for judgment NOV, motion for a new trial and motion for remittitur. On appeal, the Missouri Court of Appeals (authored by William H. Crandall) upheld the ruling in a split decision.

The analysis

Key to understanding the court of appeals' decision is analyzing the discussion of the "inherently dangerous activity" doctrine. This phrase is defined as an activity that necessarily presents a substantial risk of harm unless adequate precautions are taken. The court noted that this doctrine relates directly to the rules of premises liability in which a landowner who hires an independent contractor to perform an inherently dangerous activity has a nondelegable duty to take precautions to prevent injury from this type of activity.

If a landowner contracts with an independent contractor and another is harmed during this type of nondelegable activity, liability will be imposed to the landowner even if the landowner is not negligent in any respect. However, if the negligence of the independent contractor is characterized as "collateral," then the landowner will not be held liable and the independent contractor will be legally responsible.

Though Gateway on appeal claimed that the inherently dangerous activity doctrine should not apply because Hartmann was allegedly not an independent contractor, the court disagreed. Gateway also unsuccessfully claimed that Hartmann was the one who initiated the relationship, that Gateway did not request Hartmann's services, that no services were performed for the benefit of Gateway and Gateway only rented space to stage a boxing match.

The court discussed the independent contractor definition and liability concerns over several paragraphs. While it noted that the state of Missouri had yet to specifically define the term independent contractor in the context of the inherently dangerous activity doctrine, it did quote several cases that defined this phrase. Though lawyers and judges debate the degree of control in determining whether or not there is a contractor-independent contractor relationship (as opposed to an employer-employee relationship), the court believed that the consideration of the extent of control was insufficient here and had been "overemphasized in judicial reasoning."

Having held that the contractor-independent-contractor relationship did not apply here, the court presented evidence in support of its holding. First, the court discussed whether or not the hotel benefited from the relationship. The answer was clearly in the affirmative as the court noted that the hotel received profits from the room, rentals, food and beverage sales. Having been promoted nationally on television as "Ringside at the Regal," and having been paid a non-refundable deposit, the court was not persuaded that because Hartmann initiated the production that Gateway should not be still characterized as a contractor.

Next, Gateway claimed that Maldonado failed to prove that Gateway should be liable under the inherently dangerous activity doctrine because Maldonado assumed the inherent physical risks in the sport of boxing. The court somewhat agreed but went further by noting that Maldonado did not assume the risks that were created by the defendant (as opposed to the sport) such as the failure to provide medical monitoring or an ambulance on site. The court noted that under the inherently dangerous activity exception to landowner liability, a landowner will not be considered liable if the negligence of the independent contractor is "collateral" meaning unusual, abnormal and "foreign to the normal or contemplated risks of doing the work."

The court found that the failure of Hartmann to provide medical monitoring and an ambulance at the hotel for the
boxing match was *not* collateral negligence, but was Gateway's failure to take precautions that a contractor should have contemplated at the time of the contract. This was especially true because of the fact that boxing is a sport in which potential injury is obvious and would not be foreign to any landowner or employer or contractor in terms of potential risk.

Disturbingly, the court noted that there was in fact a specific provision in the contract between the hotel and Hartmann that required the promoter to provide a doctor at ringside and to have an ambulance on stand-by at the hotel during the boxing match that night. While the court noted that Hartmann failed to provide the doctor and ambulance that night, the court reaffirmed that this was not an example of collateral negligence and therefore Gateway should still be responsible under direct negligence analysis.

Finally, the court did not find an example of trial court error in terms of the high damages award to Maldonado. Though recognizing that a verdict based on a jury's passion and prejudice might necessitate a new trial, the court gave great deference to the trial court discretion in awarding damages. The court found no reason to disturb the jury decision particularly since Maldonado was severely and permanently damaged as a result of the match. His injuries included various combinations of poor speech, vision and motor control.

**Dissent**

Judge Clifford H. Ahrens concurred in part and dissented in part by writing a separate opinion. Ahrens' dissent focused on a procedural issue in the case, namely the jury instruction given at the trial court level. Gateway had argued on appeal that the trial court erred by only giving part of a jury instruction on the issue of "inherently dangerous activity" rather than all of MAI instruction 16.08: "The term "inherently dangerous activity" as used in this [these] instructions means an activity that necessarily presents a substantial risk of harm unless adequate precautions are taken..."

The part that was left out at the trial level, however, was "but does not include a risk of harm that is not inherent in or a normal part of the work to be performed and that is negligently created solely as a result of the improper manner in which the work under the contract is performed."

Ahrens noted that according to the Notes on Use for 16.08, the phrase that was left out should be added if it is supported by the law and the evidence. [*14] Ahrens felt that the phrase in the jury instruction should not have been left out, particularly since Dr. David Schreiber, Maldonado's own neurology expert, testified that Maldonado's brain damage did not result from the knockout punch, but was caused as a result of bleeding, pressure and a lack of oxygen for a period of time after the match.

Ahrens also noted that the match referee, Marvin Elam, testified that a risk of injury "goes with the sport," but Elam was unable to definitively state that any risk of injury from the failure to have an ambulance at the event was inherent in the sport. Ahrens finally and emphatically noted that Tim Leuckenhoff, the chief investigator for the central investigative unit of the division of professional registration and administrator for the Missouri office of athletics, testified that out of the approximately 12,000 fights he had witnessed, only four required additional care or transportation in an ambulance.

To the judge, the failure to provide an ambulance by Hartmann, in violation of the contract itself and the failure to include the jury instruction was reversible error, misstated the law and limited both Gateway and the jury in its determination of the merits of the action.

**Impressions**

From the beginning of the opinion, it was apparent that someone was going to be held liable for the failure to maintain proper medical care and an ambulance after the fight in St. Louis. Simply put, either Gateway or Hartmann or
both would be held responsible for the injuries suffered by Maldonado based on the jury's decision. If one subscribed to
the belief that Gateway should have contemplated the issue of whether an ambulance should have been present on that
night, one necessarily believed that there was not collateral negligence.

This is, in fact, where the court sided. On the other hand, if one maintains that Hartmann should have been solely
responsible for the failure to provide the ambulance, then one supports the dissenting opinion that it was collateral
negligence and the hotel should not have been responsible.

Clearly, both parties contemplated the need for medical care in the fight contract. Clearly, the proper post-fight
medical care and ambulance were not available. While other juries might differ as to the extent of liability and [*15]
damages, this court seemed to focus its opinion more on the subtleties and differences between "collateral negligence"
and "inherently dangerous activities" rather than fundamental contract law and employment law issues.

Some might ask why the court of appeals focused more on tort law than contract and employment law. Readers are
left somewhat empty for guidance as to what degree must a location like this hotel exercise control over the conduct of
the special event itself. This is likely because the court said that the issue of control and liability in contracts has been
"overemphasized."

Conclusion

Boxing is a dangerous sport. It is very unfortunate that an ambulance was not available after the event and it should
have been -- both contractually, legally and ethically.

After reading the opinion in this case, however, one wonders whether the difference between employer-employee
and contractor-independent contractor matters at all in inherently dangerous sporting events in Missouri. The court
seemed more concerned over the hotel's capitalistic motivation for the event rather than whether or not a well-executed
contractor and independent contractor relationship was created by the lawyers who had the fundamental foresight to see
that medical care and having an ambulance on-site was necessary and shifted responsibility accordingly.

Unless this case is successfully appealed and decided differently by the Supreme Court of Missouri<4> and
analyzed differently, lawyers for venues and promoters in Missouri who draft contracts related to inherently dangerous
activities had better be sure that insurance policies are in place in the event that a court finds the independent contractor
relationship of little importance and one side of the contract fails to live up to its end of the bargain. At the very least,
venues and promoters should be prepared and have an ambulance available at the main event so that one does not have
to be chased later.

Endnotes


   House Beautiful*, 793 S.W.2d 869, 871 (Mo.App. 1990).

3. *Maldonado* at *7*.

4. *Transferred to the Supreme Court of Missouri* 2004 Mo. LEXIS 15.