INJURED SOFTBALL PLAYER ALLEGES ANCHORED BASE IS UNREASONABLY DANGEROUS

James C. Kozlowski, J.D., Ph.D.
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Over the years, I have had several inquiries about the liability potential associated with ballfield bases which are anchored into the ground. To the best of my knowledge, the Shipley decision described below is the most recent case study in which a court considered the reasonableness of anchored bases versus other alternatives available at the time of the injury. In recent years, however, anchored bases, like the one involved in this case, have added a breakaway feature which reduces the risk of leg injuries to baserunners sliding into such bases. Specifically, when the baserunner slides into these newer bases with sufficient force to cause injury, the base will breakaway from the base anchor. While these newer bases may be safer, the Shipley decision would seem to indicate that a properly installed and maintained base which is anchored into the ground does not necessarily present an unreasonable risk of injury to baserunners.

This report of the Shipley decision appeared in Volume 7, number 2, of the Recreation and Parks Law Reporter (RPLR). RPLR is a quarterly publication which describes recently reported state and federal court decisions which address issues of recreational injury liability. For further information regarding a subscription to RPLR, please consult the advertisement which accompanies this column or contact NRPA.

Maintain Base Flush to Ground

In the case of Shipley v. Recreation & Park Commission Parish of East Baton Rouge, 558 So. 2d 1279 (La.App. 1 Cir. 1990), plaintiff Cecil Shipley was injured while playing on a softball field owned by defendant Baton Rouge Recreation and Parks Commission (BREC) on an anchored base manufactured by defendant Bolco Athletic Company. The facts of the case were as follows:

On the night of July 24, 1980, Shipley was playing a game of fast pitch softball on a field owned and maintained by BREC. The field was located at Forest Park on Harrell's ferry Road. The game was conducted under the auspices of the Baton Rouge Amateur Softball Association (BRASA), of which Shipley was a member. BRASA is an organization independent of BREC, with its own officers and board of directors. BRASA paid BREC a nominal fee for the use of BREC softball fields during the regular softball season, and also paid the umpires and scorekeepers for all league games. BREC officials testified that the fees paid by BRASA covered the utilities and that BREC made no profit from the fees. BREC employees maintained the fields on a daily basis during the regular season, working until 3:30 p.m. After that time the fields were turned over to BRASA officials who were conducting the games. The officials made the final decision as to whether the field was playable or whether it needed to be reworked. BREC supplied BRASA officials with access to equipment and fresh dirt with which to repair the field before or during a game.

On the night of July 24, 1980, two league games were played on field number three at Forest Park. During the second game, which began at approximately 9:30 p.m.,
Shipley suffered a dislocated ankle while sliding into second base. Shipley claims that his right foot, which was extended during the slide, got caught under the base, causing his injury. Shipley testified that the base was elevated and that he saw this condition when he rounded first base.

Shipley alleged that BREC was negligent because it "failed to properly and safely install the Bolco base, and that it failed to maintain its ball field in a safe and reasonable condition." In addition, Shipley alleged that "the Bolco base, which was installed at second base, was defective in design; that Bolco failed to adequately warn anticipated users or consumers of improper installation and, that the base was unreasonably dangerous per se." The trial court dismissed Shipley's claims against defendants BREC and BRASA. Shipley appealed.

The first issue considered on appeal was "whether BREC was negligent in its maintenance of the softball field or its installation of the Bolco base." Since the trial court found that "the base was not level with the ground when he slid into second base," Shipley contended that the trial court had erred in not finding that "BREC negligently installed the Bolco base and negligently maintained the field." However, in the opinion of the appeals court, the trial court had not erred in finding that Shipley "failed to prove that the condition of the field the night of his injury was due to any negligence on the part of BREC in maintaining the field."

BREC owed a duty to maintain its softball parks in a fashion commensurate with ordinary and reasonable care under the circumstances. But it is not the insurer of the safety of those making use of the facilities; it is not required to eliminate every source or possibility of danger. Although the gap between the ground and second base constituted a clear hazard, Shipley failed to prove that BREC's duty to maintain the field extended to the time when Shipley was injured...

It is not disputed that the field surrounding second base should be maintained level, free of holes and depressions. However, it is also undisputed that during the course of a game depressions can occur from normal use, which includes sliding. Thus a field can be ruled playable at the beginning of a game and thereafter become hazardous.

The evidence establishes that at the time the first game began the field was ruled playable and sometime thereafter a depression developed around second base. Mr. Barry Lee Browning worked for BREC in 1980 as the head of the ball field maintenance crew for Forest Park. Mr. Browning testified that on July 24, 1980, he and his crew worked all three ball fields at Forest Park. Each base was removed and the underlying dirt was scraped away, leaving the base flush with the ground. Mr. Browning testified that there was no procedure for maintenance by BREC employees between regular season games. Mr. Steve Whitfield, an umpire for BRASA, testified that he was the home plate umpire for both games played on field number three for July 24, 1980. He recalled that prior to the first game the softball team members had to rework the field because of rain; Mr. Whitfield could not recall if the field was reworked before the second game. He further testified that the players and management generally assisted in determining whether the field was playable. From all indications the game could have been stopped to repair a problem, such as a gap under a base; however, the testimony of the umpire, Shipley, the team manager, and another team player reveals that no one complained about the field prior to Shipley's being injured.
The appeals court also found that sufficient evidence existed to support "the trial court's finding that BREC was not negligent in its installation of the Bolco base."

Several BREC employees testified concerning the installation of the Bolco bases at their ball parks. Mr. Jesse Townsend, the maintenance foreman for BREC in 1980, testified that he installed the Bolco bases and that he gave instructions to the ball field crews not to leave gaps under the bases. According to his testimony the bases on field number three should have been flush when the first game started on July 24, 1980. Mr. Willard Landry, the BREC Junior Sports Director in 1980, testified that he checked all the fields at the beginning of the season to make sure that the bases were correctly installed, flush with the ground. The only evidence Shipley presented concerning his contention of improper installation of the base was the fact that on the night of July 24, 1980, after at least one game had been played on the field, second base was elevated. Because base elevation can occur from normal use during a game, we find no error in the trial court's findings.

Not Designed as Shock Absorber

The appeals court also considered Shipley's product liability allegations against Bolco. Specifically, Shipley contended that "the Bolco base is unreasonably dangerous per se [i.e. in and of itself], unreasonably dangerous in design and unreasonably dangerous for normal use because of Bolco's failure to adequately warn of the product's dangers." In support of these allegations, Shipley offered expert witness testimony indicating "the Amateur Softball Association's guidelines require softball bases at first, second and third bases to be firmly affixed to the ground and not thicker than five inches." As noted by the appeals court, "the Bolco base conforms to these standards and is dimensionally the same as the canvas strap-down base" advocated by Shipley's expert witness, Joseph Brownlee.

The 15-inch by 15-inch Bolco base is three inches thick and has an anchoring system which secures the base firmly to the ground. The base serves the purpose of a point of reference on the softball field and outlines the dimensions of the field. The base is not for the purpose of stopping forward motion. Brownlee's primary complaint concerning the Bolco base was the fact that the base is, as he described it, extremely hard and non-resilient. In his opinion the canvas strap-down base, which was available at the time of Shipley's injury, performs the same function as the Bolco base with less risk of severe injury. Although Brownlee admitted that the canvas strap-down base also presents risks to a ball player, he described the injuries as less severe than those caused by a Bolco base. He explained that because the canvas strap-down base was softer and more resilient, players were more likely to suffer sprains and strains than leg fractures.

In Brownlee's opinion "all bases with permanent anchoring devices are dangerous and that either a throw-down base (one which is not secured to the ground), or bases similar to home plate (i.e., not above ground level) should be used." Brownlee, however, admitted that "if these types of bases [unsecured or level to the ground] were used it would require a change in existing softball rules to accommodate base movement and instances where the players would slide over the bases." While acknowledging that "these suggestions for alternative bases would perhaps make the sport of softball safer," the appeals court refused to consider them within the context of this case. "We can only examine the Bolco base within the context of the rules of the actual game and not an imaginary game which does not exist."
Brownlee had also testified that "according to a Consumer Product Safety Commission report, 479,000 baseball and softball injuries requiring hospital attention were reported in 1981, and 442,090 injuries were reported in 1980." Given such statistics, the appeals court found "sliding toward a base is an inherent part of the game of softball and is a dangerous maneuver."

Brownlee had further testified that "a 1987 report of the Consumer Product Safety Commission, found the [following] instructions for Bolco bases inadequate because the instructions failed to inform the user of proper maintenance and the associated hazards of improper maintenance":

WARNING

The Bolco Athletic Co. advises that sliding into a baseball base represents a clear and present danger. Injury may occur.

Bolco bases are designed to be a reference point on a ball diamond. They are not designed to stop forward momentum or be used as a shock absorber. Anyone sliding into a baseball base risks serious injury.

Despite Bolco's alleged failure to warn the user of proper maintenance procedures, the appeals court noted that "each employee of BREC testified that he understood the proper maintenance procedures for the Bolco bases and that he knew that the hazards of improper maintenance included the possibility that a player would trip on the base or get his foot caught underneath the base." Since the employees already possessed the knowledge which would have been communicated by an adequate warning, Bolco's alleged failure to warn the user of proper maintenance procedures did not increase the risk of injury in this particular instance. As a result, the alleged failure to warn was not a legal cause of Shipley's injury.

Applying the following principles to the facts of the case, the appeals court further found "no error in the trial court's conclusion that the Bolco base is not unreasonably dangerous per se."

In order to recover from a manufacturer, the plaintiff must prove that the harm resulted from the condition of the product, that the condition made the product unreasonably dangerous to normal use, and that the condition existed at the time the product left the manufacturer's control.

A product is unreasonably dangerous per se if a reasonable person would conclude that the danger-in-fact of the product, whether foreseeable or not, outweighs the utility of the product. Under this theory, liability may be imposed solely on the basis of the intrinsic characteristics of the product irrespective of the manufacturer's intent, knowledge or conduct.

Based upon the following testimony, the appeals court apparently found that the utility of the Bolco base outweighed any danger associated with the product when compared with the traditional canvas strap-down base. Consequently, the base was not unreasonably dangerous per se.

Mr. Louis Clinton Orsatti, vice president of Bolco, testified that his father designed the Bolco base with recessed straps and stronger material in order to remedy the problems inherent in the traditional canvas strap-down base. The problems associated with strap-
down bases are that the straps loosen causing tripping, cleats tear the canvas and get caught in the canvas, and the base does not lie flat, causing tripping.

As described by the appeals court, the following legal principles would be applied in determining whether the design of the Bolco base was unreasonably dangerous.

[A] product may be unreasonably dangerous because of its design for any one of the following reasons: (1) A reasonable person would conclude that the danger-in-fact, whether foreseeable or not, outweighs the utility for the product, (2) Although balancing under the risk-utility test leads to the conclusion that the product is not unreasonably dangerous per se, alternative products were available to serve the same needs or desires with less risk of harm, (3) Although the utility of the product outweighs its danger-in-fact, there was a feasible way to design the product with less harmful consequences.

Applying these principles to the facts of the case, the appeals court found "no error in the trial court's conclusion that the Bolco base was not unreasonably dangerous in design."

Shipley attempted to prove that less harmful alternative base designs existed at the time he was injured; however, this proof fell short of the necessary preponderance [i.e., greater weight] of the evidence. Many of the alternative bases which Shipley's expert discussed were unavailable at the time of this accident. Furthermore, Shipley's evidence that the canvas strap-down base was an alternative base which would serve the same needs as the Bolco base with less risk of harm was not sufficient to establish that the Bolco base was unreasonably dangerous in design. The best Shipley could offer with this alternative design was a trade-off of the types of injuries suffered. Although Shipley's expert testified that the injuries associated with the canvas strap-down base are less severe, he offered no factual basis for this opinion. Nor was evidence presented on the number of injuries associated with the canvas strap-down base versus the Bolco base.

Finally, the appeals court considered Shipley's allegation that Bolco had failed to warn users of the consequences of not maintaining the base flush with ground. As described by the appeals court, "a product may also be unreasonably dangerous when the manufacturer fails to warn the consumer of dangers inherent in the normal use of its product which is not within the knowledge of or obvious to the ordinary user." Under the facts of this case, the appeals court found "no reasonable relationship between Bolco's failure to warn and Shipley's injury."

An essential element of a cause of action based on failure to adequately warn of a product's danger is that there must be a reasonable relationship between the omission of the manufacturer and the injury. In the present case Bolco instructed consumers on how to properly install the Bolco base and that if there were any gaps under the base, it was incorrectly installed. Bolco did not warn its consumers regarding the risks of injury if the base was not maintained level at all times, nor did it warn of what risks were involved when a base was incorrectly installed. Mr. Orsatti testified that he considered these risks obvious to the consumer and therefore not necessary. Furthermore, as stated above, every employee of BREC involved in field maintenance testified that he understood the risk of injury involved when a gap was left under the base, and that all maintenance crew employees were instructed to keep the bases flush. We can only
conclude that Bolco's failure to warn of the consequences of not maintaining the base flush with the ground was an obvious hazard and one which was known by the persons responsible for maintaining the bases.

The appeals court, therefore, affirmed the judgment of the trial court dismissing Shipley's claims against BREC and Bolco.

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Dr. Kozlowski is the associate director of the George Mason University Center for Recreation Resources Policy, Fairfax, Virginia. He is also the author of the *Recreation and Parks Law Reporter* and *Legal Issues in Recreation Administration.*