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Boom! Lightning Liability at University Athletic Events

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University Risk Management and Insurance Association

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Climate is what we expect. Weather is what we get.

—Mark Twain (1835-1910),

American Author and Humorist

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| *Jon Cross, Marshall Dennehey Warner Coleman & Goggin*

Introduction

The occasional thunderstorm is rarely seen as a personal danger at sporting events. Lightning, however, is the second leading cause of weather-related deaths, taking an average of 70 lives per year and injuring 2.5 times as many.[1] While the chances of being struck by lightning are roughly 1 in 500,000[2], it is important to understand that the odds increase significantly when a thunderstorm is in the area and safety precautions have failed to be met.

The higher education risk management community needs to recognize that lightning strikes during athletic activities may result in personal injury lawsuits against the university as well as its administrators, coaches, and referees.[3] At those universities where sporting events are televised, broadcast companies may also be held liable if the decision to play the game for the sake of money and TV exposure gets in the way of safety. Colleges have responsibility for the safety of student athletes and the spectators at a sporting event. A failure to have preventative measures in place and a failure to follow such measures and safety precautions may lead to an injury associated with lightning and lawsuits against the university.

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College Football Lightning Cancellation

It is rare for college football games to be delayed or cancelled due to weather conditions, but it does happen. On August 30, 2014, fans gathered at the University of Florida expecting to see a 7:00 p.m. football game against Idaho.[4] However, mother nature had a different idea. Half an hour before kickoff, a lightning strike turned the skyline into a dangerous laser show. Fans, players, and staff scrambled for cover. Then it got worse. Massive storms moved in pushing the start of the game to 9:48 p.m. During the delay, teams retreated to the locker rooms and fans were properly encouraged to go next door to the O'Connell Center to escape the danger.[5]

The Southeastern Conference has a policy that requires at least a 44-minute delay if lightning is detected within eight miles of the stadium.[6] This 44-minute period allows for a 30-minute break clear of local lightning strikes, a 10-minute warm-up for the players, and a 4-minute television pre-game show. At the Florida game, each subsequent lightning bolt resulted in the kick-off being delayed another 44 minutes. The extreme weather delayed the start of the game by 2 hours and 48 minutes.

Once the game finally started, Florida's Valdez Showers (irony noted) returned the opening kickoff for 64 yards. More lightning was then detected close to the stadium. Again, the teams and fans retreated to safety. At 10:40 p.m. the game was officially called off for unsafe field conditions.

Metal Bleachers Are Prime Targets

According to the National Weather Service, in 2014 there were 26 lightning fatalities in the United States. Six deaths occurred in Florida, three in Wisconsin, two each in Arizona, Arkansas, Colorado, Georgia, and Massachusetts, and one in Pennsylvania, among a few other states.[7] While deaths from lightning strikes in the U.S. are low compared with other natural disasters, 45 percent of such deaths occur in open areas such as sports fields, making stadiums with metal bleachers prime targets.[8]

Duty to Warn, Supervise, and Detect

Those who get struck by lightning or family members of an individual who dies due to a lightning strike may seek to file a lawsuit to assign blame and recover damages. College coaches, administrators, and referees have a duty to protect the student athletes and spectators. The duty is to act reasonably under the circumstances while understanding that not every act can prevent all unfortunate events

and acts of God.

Claims for negligence may allege serious injuries from a lightning strike due to the college's failure to (1) adequately inform of the hazards of lightning; (2) detect lightning in the area; (3) use available lightning detection equipment; (4) warn of the presence of lightning; (5) have an effective evacuation plan; (6) instruct and supervise the evacuation; (7) provide a safe shelter at convenient locations; (8) provide proper post-injury treatment.

Lightning Lawsuits and Settlements

There have been a number of lightning-related lawsuits inherent to athletic events that are played outside on open fields. In New Jersey a lawsuit was brought by a golfer who was struck by lightning on a golf course.[9] In response to the lawsuit, the Superior Court opined that a golf club owes a duty of reasonable care to implement its safety precautions properly. The court did not go so far as to hold that clubs have an absolute duty to protect their patrons from lightning strikes, as it recognized the defense that sometimes a lightning strike can be an act of God. However, the court made clear that clubs have a duty to post signage that details what, if any, safety procedures are being utilized to protect its patrons from lightning. If a particular club uses no safety precautions, its signage must inform golfers that they "play at their own risk" and that no safety procedures are being utilized to protect golfers from lightning strikes.

Claims for negligence may allege serious injuries from a lightning strike due to a college's failure to inform, detect, warn, evacuate, and provide shelter and medical care.

The New Jersey court further recognized that existing technologies are available to detect and warn of lightning. It refrained from finding that the use of the latest technology is required because this greater duty may be cost prohibitive. The court did find, however, that if a club chooses to utilize a particular safety feature, it owes a duty of reasonable care to its patrons to utilize it correctly. This latter standard means, for example, that if a club builds shelters, it must build lightning-proof shelters; if the club has an evacuation plan, the plan must be reasonable and must be publicly posted; if a club uses a siren or horn system, the golfers must be able to hear it and must know what the signals mean; and if the club uses a weather forecasting system, it must use one that is reasonable under the circumstances.

In a separate New Jersey lawsuit, a school board was sued after a high school baseball player was struck by lightning while playing center field.[10] The player remained in a vegetative state. A lawsuit was brought against the school district and umpire alleging they had breached their duty to supervise and control the game, which included making decisions regarding the postponement or termination of the game due to imminent electrical storms. The New Jersey Board of Education settled the claim for $2.6 million.[11]

In Texas on August 26, 2014, a youth soccer player was struck by lightning in the stomach during soccer practice.[12] He suffered brain damage and cannot speak, hear or move his legs. A lawsuit was filed alleging that the league did not follow proper weather procedures, including failing to appoint a weather monitor, failing to supply or use a lightning detection system, and failing to get the players off the field. The pending lawsuit seeks $10 million in damages.[13]

Duty to Provide a Safe Shelter

In addition to detecting liability and stopping the game, proper risk management includes having a plan to evacuate and enforce the plan. Many times, games and practices are stopped, but the players simply stand around waiting out the storm. There is a duty to get both the players and spectators to a safe area.

For example on August 6, 2013, the Georgia Southern University football team moved practice up an hour to avoid incoming bad weather, but practice was properly stopped when lightning was detected in the area.[14] Georgia Southern does not have an indoor practice facility, so the team moved toward a nearby pavilion to wait out the storm. However, one player standing near the edge of the structure was injured when lightning struck a nearby tree. He was taken to a local medical center where he was

evaluated and, fortunately, released to campus later that day – a very close call.

Duty to Administer Medical Care

In the event that a person is struck by lightning, a coach or athletic trainer should not hesitate to assist them. A failure to properly administer medical care could result in added liability. Unlike victims of electrical incidents, a lightning strike does not carry a charge so the individual may be safely handled.[15] Colleges should ensure that coaches, athletic trainers, doctors, and additional pertinent staff are professionally trained in life-saving first aid measures and can properly perform mouth-to-mouth resuscitation, CPR, and administer an automated external defibrillator (AED).[16]

Lightning Personal Injury Claims

People who get struck by lightning primarily suffer an injury to the nervous system, often with brain injury and nerve injury.[17] Serious burns can also occur.

There are a variety of personal injury claims which may arise due to a lightning strike. Individuals who do not suffer cardiac arrest at the time of the incident may experience lesser symptoms such as muscle soreness, headache, nausea, stomach upset, and other post-concussion types of symptoms including mild confusion, memory slowness or mental clouding, dizziness, and balance problems. However, many victims face longer-term problems which may include issues coding new information and accessing old information, problems multi-tasking, personality changes, inattentiveness or forgetfulness, headaches, chronic pain from nerve injury, ringing in the ears, dizziness or balance problems, and irregularities in sleep patterns.[18]

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Lightning Risk Management Policy

To reduce the liabilities associated with lightning strikes, colleges should have a written athletic department lightning policy. Elements of such a plan may include the following:

1. Signage

Provide warnings about thunder and lightning and explain the devices being used on campus. Also, promote National Weather Service lightning safety slogans such as "No Place Outside is Safe When Thunderstorms are in the Area" or "Half an Hour Since Thunder Roars, Now it's Safe to Go Outdoors."

2. Establish a Chain of Command

Identify the person who makes the decision to suspend a practice, pre-game activities, or a game. Also, the policy should establish who is to disseminate lightning information.

3. Weather Watcher

Designate a "weather watcher" who will monitor the National Weather Service about the local weather and may consult with available meteorologists. Also, consider who will be responsible for any detection system utilized on campus and to report the information.

4. Suspension of Activity

The average distance from one lightning strike to the next is approximately 2 to 3 miles yet can be as much as 10 miles. Therefore, while a storm may be several miles from your location, the very next strike could be on top of you. If lightning strikes within 10 miles of a stadium, recent National Collegiate Athletic Association policy requires a public announcement advising fans to evacuate. Based on recent NCAA guidelines, if lightning hits within 6 miles, players and officials are required to leave the field, and the game is delayed. The game must be delayed 30 minutes after the last strike of lightning has been detected within that 6-mile radius.[19]

5. Safe Shelter

Identify safe locations from lightning hazards in advance of events such as any building normally used by people, for example an enclosed and grounded building with plumbing and electrical wiring. In absence of a sturdy, frequently inhabited building, any vehicle with a hard metal roof (not a convertible or golf cart) and rolled up windows will provide a safe shelter. Know how long it will take to evacuate the premises and get people to the safe venues. Direct spectators to the nearest

safe place and ensure a safe and orderly evacuation.

6. Unsafe Areas

Know what areas players and spectators should avoid such as metal bleachers, metal fences, open areas, water/swimming pools, tall trees, towers, golf carts, and mowers, and avoid being the tallest object in the area.

7. Emergency Medical Plan

Have a plan for rescuers and emergency personnel who are properly trained in mouth-to-mouth resuscitation, CPR, use of the AED, first aid, and other emergency measures.

8. Education

Review the lightning policy annually with all administrators, coaches, and game personnel. Also, review the policy with student athletes at the start of the season. Ensure there is an awareness of the dangers of lightning and that coaches and staff are committed to following the guidelines.

Lightning Detection Technology

Before recent technology became available, the traditional tech-free way of assessing lightning risk was the 30/30 rule or the flash-to-bang rule.[20] This was the easiest and most convenient method to determine the distance from the last lightning strike, but this method cannot predict where the next strike will occur. Begin a count that is equivalent to one second at the time you see a flash of lightning, and continue counting until you hear the thunder. Divide that number by 5 to determine the distance in miles that the strike was from you. For example, if you count 30 seconds between lightning and thunder, this indicates the strike was approximately 6 miles away. However, a reasonable coach or administrator should not be counting when they see lightning; rather, they should get the athletes off of the field and spectators out of the stadium. Quite frankly, if it is heard or seen, it is close enough to pose a threat.

University risk managers may want to consider new technology that is available in the form of lightning detection equipment and lightning prediction equipment.[21] The former tracks actual lightning strikes within a set parameter around a facility, and the latter identifies electrostatic energy conditions conducive to lightning activity. With the lightning prediction system, a horn sounds and flashing lights are emitted when lightning is detected within a 10-mile radius, and live electronic alerts are sent to designated cell phones and email addresses. In considering such technology, colleges should seek professional advice regarding purchasing the desired equipment. Also, for individuals there now exist many cell phone applications that can identify the distance of lightning.

Before recent technology became available, the traditional tech-free way of assessing lightning risk was the 30/30 rule or the flash-to-bang rule.

The use of technology can help take the guesswork out of when to cancel or postpone a practice or game and keep individuals safe. Coaches, referees, game officials, and TV stations do not like to postpone or cancel games. For that reason, the use of a lightning system will remove the human decision-making factor, which in turn may save a life and reduce the potential of liability.

Common Sense Must Prevail

Even if the college invests in providing the utmost care, such as purchasing a lightning detection and prediction equipment system, common sense must still prevail. The warning signs from the technology must be taken seriously. The coaches and game officials must stop the contest and make sure the players and spectators do in fact seek proper indoor shelter.

Risk managers should be aware that if an injury does occur on campus and the college is blamed, economic and business factors may warrant consideration of a settlement either before a lawsuit is filed or during the litigation process. The cost of litigation could be significant and the amount of damages could be substantial if the injured party has suffered some of the most severe lightning strike symptoms. However, if the college believes it was not negligent because appropriate risk management policies and procedures were followed, settlement may not be in its best interest as it may encourage other types of lawsuits for claims relating to a failure to supervise, warn, instruct,

or protect.

The unpredictability of lightning presents significant challenges for university risk management professionals. Athletic departments must be proactive in planning and follow procedures to reduce danger to individuals and associated liabilities due to lightning. In this ball game, it's not three strikes, but just one lightning strike, and you must get out!

About the Author

Jon Cross is an attorney at Marshall Dennehey Warner Coleman & Goggin and a former camp owner, Division I college baseball coach, and high school baseball coach. He is a member of the law firm's amusement, sports, and recreation department and practices law in the Philadelphia, Pennsylvania, office. The law firm has offices in New York, New Jersey, Pennsylvania, Ohio, Delaware, and Florida. He may be reached at jecross@mdwcg.com.

Endnotes

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