

ARE YOU LIABLE?

The courts are taking a broader view of liability, so conscientious athletic field managers should be taking daily walks around fields.

by Heide Aungst, associate editor

The game: Texas Christian University at Alabama.

The date: October 26, 1974.

The play: TCU's tailback carries the ball on an end sweep. An Alabama player pushes the tailback out of bounds from the front. Another chops his legs from behind. The tackle flips the tailback.

End of play.

Former TCU tailback Kent Waldrep watches that play over and over again. Not on videotape, but in his mind.

That play left him paralyzed from the neck down.

"I'll remember that moment the rest of my life," Waldrep says. "I can think and visualize exactly what happened and what I felt like it was yesterday."

What he felt the moment his head hit the artificial turf was nothing. Nothing.

Then, within minutes, the tremendous pain started.

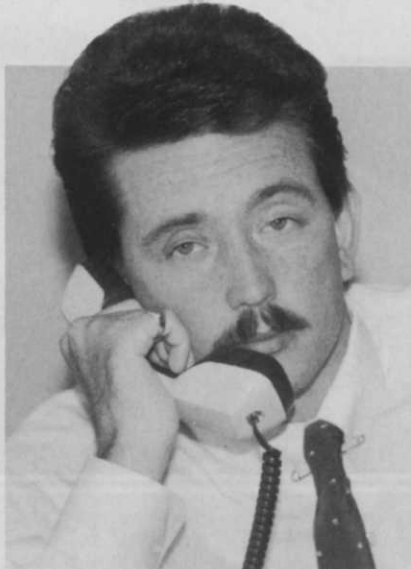
He spent a month in an Alabama hospital, then went to an acute spinal cord injury center in Houston for three months. He even became one of the few Americans permitted to receive experimental treatments in the Soviet Union.

Through all the physical pain, Waldrep had to endure the emotional trauma of starting life over in a wheelchair.

And, there were more frustrations. Less than a year after the accident, TCU officials stated they would no longer be responsible for his medical bills. An attorney advised him not to sue TCU.

But Waldrep did file suit in 1976 against the manufacturer of the artificial turf in Alabama's stadium.

The case was settled out of court in 1984, and, as is common in settlements, he can't talk about the case, even to mention the company he sued. But *Sports Illustrated* reported the suit was against American Biltrite, the manufacturer of Poly-Turf and the contractors who put it down.



Kent Waldrep: Paralyzed on artificial turf.

Although most law suits involving athletic fields focus on artificial turf fields, suits on natural fields may not be far off.

Going to court

Jim Leatzow, senior vice president of Financial Guardian Insurance, says field managers need to be aware that cases involving playgrounds and parks also affect athletic fields.

"The courts are taking a broader view of responsibility," Leatzow warns. "They hold a degree of liability and responsibility if someone is hurt because something is not properly maintained. The courts will ask, 'Is there something that could have been done to prevent the injury?'"

Leatzow cites a case involving a swing set which was set in concrete. The soft cover around the swing set had worn away because no one had maintained it. A child, misusing it, slid down the end support pipe and broke his leg. His parents sued and won a sizeable amount.

Leatzow says it didn't matter if the child was misusing the equipment. The court only looked at the fact that

the child was hurt because the covering had not been properly maintained.

The same type of suit could happen because of holes, ruts, and bare spots on a field from improper maintenance.

Leatzow says the No. 1 precaution for field managers is common sense.

"By that I mean look for the foreseen problem, like equipment which is not up to snuff," he explains. "Make sure the field is properly lighted, no lights are burned out."

Besides the mechanics of a field, the actual field condition is important. Eliminating hard bare spots, holes, and rocks in the field should be a primary concern. Poor drainage is also a major problem. If someone were to sink into a spot, twist and break a leg, a field manager could become the center of a lawsuit.

"All you have to do is walk around," Leatzow says. "You should be making daily inspections of all athletic facilities."

Critics say the responsibility for an injury on a natural turf field would be too difficult to prove. But Leatzow points to the *Deep-Pocket Theory*.

The theory, more formally known as *The Doctrine of Joint and Several Liability*, allows an injured party to collect regardless of whom is at fault.

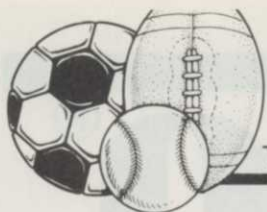
An example of this occurred in California when a drunk driver, racing to cross railroad tracks before a train, ran off the road and into a gas station. The station exploded, injuring a man in a nearby phone booth.

The man sued. He collected from the phone company.

Profit motivated

In the case of artificial turf, it may take an actual court case to get standards or improvements, but even out-of-court settlements impact on liability insurance.

"The vast majority of cases never get to court," Leatzow says. "The insurance industry is profit motivated. For that reason, it's more expedient at



Insurance expert Jim Leatzow says athletic turf managers are liable for injuries on natural turf.

times to settle out of court, rather than fighting the case on principle."

In the Halbrook case, college baseball player Scott Halbrook hit his head on Monsanto's AstroTurf (see accompanying story), allegedly causing his death. Monsanto assistant general counsel Frank Vible says the company offered a settlement in September, 1985, for purely economic reasons.

"It was not an admission of guilt," Vible says. "We felt that the economics indicated that it would be a lengthy trial and there would be a lot of sympathy for the plaintiff."

Dan Holland, attorney for the Halbrook family, says they decided to accept the settlement because Monsanto offered enough money.

"None of us will ever know if we made the right decision," adds Alan Halbrook, Scott's father. "But I got the information I went after."

Opponents of artificial turf say it will take a well-publicized case which actually goes to court before

anything will be done about the problems with artificial turf. Most of the cases are settled out of court with a non-disclosure clause.

No choice but to settle

Waldrep feels he had no choice but to settle. When TCU cut off its financial

support, Waldrep was left without medical insurance. The bills had to be paid.

"I couldn't afford to go to court and lose," he says of his decision to settle. "I wish it could have been me. It was an extremely hard decision...almost like giving up, and I've never given up on anything in my life."

Although Waldrep's and Halbrook's cases were serious, a vast number of lawsuits today aren't. Leatzow feels there should be an incentive not to sue frivolously. In Europe, if someone sues and loses the case, the loser is then responsible for the other party's attorney's fees.

Without such incentives, athletic field managers need to be extra cautious about properly maintaining an athletic field.

Rash lawsuits could make it difficult for schools to get liability insurance. Not having insurance could put some sports programs in jeopardy.

As the old adage goes, "An ounce of prevention..." **WT&T**

One wheelchair is too many

by Dr. Kent Kurtz

"Why is it that people wait until someone gets hurt to fix a playing field?"

Jeff Wishard, 26, speaks from his wheelchair:

"Neither the doctors, coaches nor my teammates are really sure how my accident happened. One theory is that, on impact, my head may have been forced down into the ground.

"The practice field was in real poor condition. That particular field was used for many activities other than football, and was extremely hard. The only maintenance to the field was a weekly mowing.

"When the field was wet, it was muddy. During the hot, dry weather in the fall, the surface was hard and traction was very poor. It was comparable to the farmer's field adjacent

Jeff Wishard: "Neither the doctors, coaches nor my teammates are really sure how the accident happened. One theory is that, on impact, my head may have been forced down into the ground."

to the school."

Some people are beginning to question whether the satisfaction of making a desperation tackle or scoring a touchdown is really worth the risk of becoming a paraplegic or quadriplegic.

The incidence of catastrophic injuries (those that result in permanent spinal cord disability) is not large when based upon player populations of 100,000. Data indicate that, in 1984, 1.575 million football young men played college and high school football, but only 0.38 percent were injured severely. Most spinal injuries occur during regular games to defensive players, and the majority are associated with blocking and tackling.

Such is the case of young Wishard, who suffered through a football field injury which has left him a quadriplegic.

Wishard lives in Davis, Ill. (pop. 550). Parents Ron and Sandy own an automotive body shop and gasoline

Dr. Kent Kurtz, executive secretary of STMA, is a WT&T advisor.

