

FIREWORKS, FAN CAMS, AND LAWSUITS: A GUIDE TO STADIUM SCOREBOARDS

*Robert M. Jarvis**

*Phyllis Coleman***

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I. INTRODUCTION

Although scoreboards of varying shapes and sizes now adorn ballparks throughout the country,¹ for many years games were played without them.²

* Professor of Law, Nova Southeastern University (jarvisb@nsu.law.nova.edu). B.A., Northwestern University; J.D., University of Pennsylvania; LL.M., New York University.

** Professor of Law, Nova Southeastern University (colemanp@nsu.law.nova.edu). B.S., M.Ed., J.D., University of Florida.

The research for this article closed on May 31, 2003. Subsequently, the authors became aware of VINCE STATEN, WHY IS THE FOUL POLE FAIR? (OR, ANSWERS TO THE BASEBALL QUESTIONS YOUR DAD HOPED YOU'D NEVER ASK) (2003). It contains a brief discussion of baseball scoreboards, *see id.* at 239-44, including some of the same information that appears in Part II of this article.

I. JOSH LEVENTHAL, TAKE ME OUT TO THE BALLPARK: AN ILLUSTRATED TOUR OF BASEBALL PARKS PAST AND PRESENT 104 (2000) ("They come in all types and sizes, from massive full-color video displays with dozens of technicians to manually operated fixtures with a lone

The first permanent scoreboard did not appear until 1895,³ and it was not until the 1930s that electric scoreboards began replacing hand-operated ones.⁴ Message boards (1959) and instant replay boards (1976) would arrive even later.⁵

The realization that scoreboards could do more than simply keep score and tell time was not fully appreciated until 1960, when Bill Veeck

employee managing the boards.”). Another observer has written:

Anyone who has recently attended a sporting event, especially on the collegiate and professional levels, has surely noticed that the game has been joined by another source of entertainment.

High-tech scoreboards and video displays systems are in vogue in stadiums and arenas across the country, providing not only the score, but up-to-the-minute statistics, video animations, text messaging, graphics, logos, even advertising.

Kevin Newell, *What's the Score?*, COACH & ATHLETIC DIRECTOR, Dec. 1, 2002.

Although we now tend to think of scoreboards as being exclusively inside stadia, this was not always the case. See JAMES BUCKLEY, JR., *THE VISUAL DICTIONARY OF BASEBALL* 36 (2001) (explaining that at one time plays would be transmitted by “telegraph to huge scoreboards in places such as New York’s Times Square. Crowds would gather to ‘watch’ the game unfold. . . .”). For a further discussion, see *Harmon v. Mich. United Traction Co.*, 168 N.W. 521 (Mich. 1918) (suit for late delivery of such a scoreboard); *Shaw’s Jewelry Shop, Inc. v. N.Y. Herald Co.*, 156 N.Y.S. 651 (App. Div. 1915) (nuisance action against newspaper that placed temporary scoreboard on the side of its building during the World Series); JONATHAN FRASER LIGHT, *THE CULTURAL ENCYCLOPEDIA OF BASEBALL* 652 (1997) (providing additional examples throughout history).

2. See *infra* note 22.

3. See *infra* note 16 and accompanying text.

4. LEVENTHAL, *supra* note 1, at 104. For an interesting case in which the plaintiffs accused the defendants of, inter alia, cutting off the electricity to their dragway’s scoreboard, see *Phoenix Racing, Ltd. v. Lebanon Valley Auto Racing Corp.*, 53 F. Supp. 2d 199, 206 (N.D.N.Y. 1999).

Ironically, in 1986 the Oakland A’s turned their electronic scoreboard back into a hand-run one. DAVID NEMEC, *GREAT BASEBALL FEATS, FACTS & FIRSTS* 186 (rev. ed. 2003). Since then, a number of other ballparks have followed suit. LEVENTHAL, *supra* note 1, at 104 (“In addition to Fenway and Wrigley, whose scoreboards date back to the 1930s, several of the new retro-parks, including Coors Field, Safeco Field and the Ballpark in Arlington, have incorporated hand-operated boards in an effort to revive the old-fashioned look of an earlier era.”) For a step-by-step look at how Wrigley Field’s manual scoreboard functions, see STEPHEN GREEN & MARK JACOB, *WRIGLEY FIELD: A CELEBRATION OF THE FRIENDLY CONFINES* 43-51 (2002). Its workings also are showcased in the 2002 movie *Bleacher Bums*, which features Maury Chaykin and Charles Durning as two veteran scoreboard operators. Phil Rosenthal, *Major League Letdown*, CHI. SUN-TIMES, Apr. 4, 2002, at 41.

Interestingly, Bowie Kuhn, who served as baseball’s commissioner from 1969 to 1984, got his start in the sport in 1940, when he was 13 years old, by running the manual scoreboard at Griffith Stadium (then the home of the Washington Senators). Mike Mulhern, *Kuhn Still Enjoys Talking Baseball*, BATON ROUGE STATE TIMES, Dec. 19, 1990, at 5E. In his autobiography, Kuhn recalled the experience with great fondness:

I have had only a few jobs in my life, but the best was scoreboard boy at Griffith Stadium. I managed to “inherit” the job from friends during my high school days. Though the old scoreboard in the right-center-field wall could be a brutal sweatbox on humid summer days and we were paid only a dollar a game, I never spent an unhappy day there. It was ecstasy.

BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* 15 (1987).

5. LIGHT, *supra* note 1, at 653.

installed an “exploding” scoreboard that shot off firecrackers each time a Chicago White Sox player hit a home run.⁶ Today, of course, scoreboards are technical marvels that can cost millions of dollars,⁷ offer lucrative advertising opportunities,⁸ and provide a steady stream of entertainment

6. The circumstances leading up to this innovation have been described as follows:

Bill Veeck purchased the Chicago White Sox from Charles Comiskey and his sister Dorothy Rigney in 1959 after prolonged negotiations. He promised South Side fans a cracking good time, and he delivered.

The club won the American League pennant in Veeck’s first year of ownership. He followed the exciting year with the unveiling of his *piece de resistance*, the exploding scoreboard. He got the idea from watching a pinball machine. He wanted to adapt the exploding, light-flashing, flag-waving graphics of a winning jackpot to baseball.

Veeck built the Comiskey scoreboard with 10 mortars bristling from the top for firing Roman candles. The fireworks crew, behind the scoreboard, exploded off bombs, rockets and firecrackers. They shot off fireworks for every home run that the White Sox hit. Veeck claimed that [the] exploding scoreboard was the best idea he ever had. Cleveland was offered the idea before he purchased the White Sox, but refused it, for the better in Chicago.

LLOYD JOHNSON, *BASEBALL’S BOOK OF FIRSTS* 96 (rev. ed. 1999). See also BILL VEECK & ED LINN, *VEECK AS IN WRECK: THE AUTOBIOGRAPHY OF BILL VEECK* 343-45 (U. Chi. Press 2001) (1962) (explaining the scoreboard cost \$350,000, was paid for by 1964 out of advertising revenues, and was built by Charlie Gibbs of the Spencer Advertising Company, who went on to sell similar ones to ballparks around the country for a minimum price of \$200,000 each), and ROBERT VON GOEBEN, *BALLPARKS* 28 (2001) (describing the barrage as lasting 32 seconds and being accompanied by the *William Tell* overture).

Although fans immediately took to Veeck’s invention, opponents were less than enthusiastic. LEVENTHAL, *supra* note 1, at 104 (“With its elaborate displays of fireworks, aerial bombs and sound effects, the board was not appreciated by visiting teams. The first time the Yankees played at Comiskey with the new scoreboard, the team held up sparklers in the dugout in mock celebration of Mickey Mantle’s homer.”). Similarly, some purists have criticized exploding scoreboards as drowning out the natural sounds and sights of a baseball game. See, e.g., RON SMITH & KEVIN BELFORD, *THE BALLPARK BOOK: A JOURNEY THROUGH THE FIELDS OF BASEBALL MAGIC* 19 (rev. ed. 2003) (complaining that “scoreboards go into pyrotechnic convulsions” and “cartoon characters and advertisements bombard our senses on huge video boards”).

7. See, e.g., *Apani Southwest, Inc. v. Coca-Cola Enters., Inc.*, 300 F.3d 620, 623-24 (5th Cir. 2002) (finding that the defendant’s agreement to donate \$1 million for scoreboards at the Lubbock Municipal Coliseum in exchange for city’s beverage business did not violate competitor’s rights); *In the Matter of Gen. Indicator Corp.*, No. 68-B-536, 1969 U.S. Dist. LEXIS 13357 at *3 (E.D. Wis. May 13, 1969) (describing how manufacturer regularly sold scoreboards to municipalities on credit, agreeing to be paid out of advertising revenues); *In re Appeal of Chase Manhattan Leasing Corp.*, 626 So. 2d 433 (La. Ct. App. 1993) (recounting the complicated arrangements entered into when the Louisiana Superdome needed a new scoreboard for the 1986 Super Bowl but lacked the funds to pay for it). See also *Alabama Coca-Cola Bottling Co. v. Commissioner*, 28 T.C.M. (CCH) 635 (1969) (discussing taxation of scoreboards provided free of charge to generate good will).

8. See, e.g., *Chi. Blackhawk Hockey Team v. Madsen*, No. 90 C 5833, 1991 WL 18411, at *3 (N.D. Ill. Feb. 13, 1991) (club used arena scoreboards to promote its fan hotline); *Anheuser-Busch, Inc. v. Miller*, 99 B.R. 137, 138 (D. Mass. 1989) (beer brewer paid \$3 million for advertising rights inside Sullivan Stadium, including scoreboard messages); *Metro. Sports Facilities Comm’n v. Gen. Mills, Inc.*, 470 N.W.2d 118, 122 (Minn. 1991) (noting that in return for agreeing to buy Minnesota Vikings football tickets, defendant received free scoreboard advertising). Of course, not all scoreboard advertising is desirable:

The San Francisco Giants asked a federal bankruptcy judge Friday to force Enron Corp. to

and information,⁹ particularly late in the season, when “scoreboard watching” is at its peak.¹⁰ The same is quickly becoming true of high school and college scoreboards.¹¹

remove a scoreboard sign featuring the bankrupt energy company’s tilted “E” logo from the baseball team’s Pacific Bell Park. The team said “Enron’s negative reputation alone” gives the franchise the right to cancel the 1998 sponsorship deal. The Giants are “experiencing negative reaction from fans and the media due to the continued presence” of the 17-foot-by-33-foot main centerfield scoreboard sign, the team said.

Logo Unwelcome in Another Ballpark, HOUS. CHRON., Aug. 31, 2002, at 2 (Sports). Eventually, the sign did come down:

One of the preparations for yesterday’s [World Series] Game 3 at Pacific Bell Park was the removal of an Enron sign on the centre-field scoreboard. It was replaced by Carl’s Jr., a yellow star with a smiley face that’s the signature for the fast-food chain. A bankruptcy judge ruled Thursday the Giants could remove Enron’s sign.

Selig Apologizes for Late Game, TORONTO STAR, Oct. 6, 2002, at E3.

9. See, e.g., *Indep. Living Res. v. Oregon Arena Corp.*, 982 F. Supp. 698, 732 (D. Or. 1997) (“During many sporting events, such as basketball and hockey, spectators routinely stand . . . during the most important moments in the game. At the Rose Garden, this behavior is actively encouraged by messages on the scoreboard that urge spectators to show their support for the home team by standing.”); *Gunther v. Charlotte Baseball, Inc.*, 854 F. Supp. 424, 429-30 (D.S.C. 1994) (“[B]aseball games, like other sporting events, routinely involve distractions. For example, soft drink and peanut vendors, giant team mascots, raffles for prizes, and high-tech scoreboards all compete for the attention of patrons who attend athletic events. Fans who attend games expect, and apparently enjoy, these distractions.”); *Cleveland v. Swiecicki*, 775 N.E.2d 899, 902 (Ohio Ct. App. 2002) (“In Jacobs Field, the fans are in fact invited to yell and cheer via scoreboard prompting and even with the famous drumbeat of John Adams.”); *Moulas v. PBC Prods. Inc.*, 570 N.W.2d 739, 743 (Wis. Ct. App. 1997), *aff’d*, 576 N.W.2d 929 (Wis. 1998) (“The excerpts from Dieckelman’s deposition corroborate other affiants’ statements that spectators were warned about errant pucks by announcements at the games, a message on the video scoreboard and disclaimer language on the back of tickets.”). See also GLENN DICKEY, *THE JOCK EMPIRE: ITS RISE AND DESERVED FALL* 130 (1974) (describing the constant onslaught of fan prompts and cues as “message board hypnosis”).

10. In explaining this phenomenon, one player has commented:

The out-of-town scoreboards are in the corners of the rink, so it’s not hard to see what’s going on. I don’t think it becomes a priority, but you always look to see the scores. You’re always looking to see who’s winning, who’s losing, who’s helping their cause and who’s not helping their cause. It’s always interesting to watch the way things unfold, as long as you’re not one of those teams scraping for your life.

Keith Primeau, *Scoreboard Watching*, SPORTING NEWS, Mar. 17, 2003, at 45. See also CARLO DEVITO, *THE ULTIMATE DICTIONARY OF SPORTS QUOTATIONS* 226 (2001) (reporting that Hockey Hall of Famer Wayne Gretzky once described playing in the Stanley Cup finals by saying: “You know you’ve come a long way when you look at the out-of-town scoreboards and there are no scores.”).

11. The importance of scoreboards at the high school level was made clear in a Title IX lawsuit brought by two members of a girls’ softball team:

It is undisputed that the boys’ baseball field has an electronic scoreboard, and that the girls’ field has no scoreboard at all. At the preliminary injunction hearing, Defendant’s counsel argued that a scoreboard is inessential to varsity softball play. The Court disagrees. A scoreboard is of obvious benefit to players who must keep track of the score, the innings, and the numbers of outs, balls and strikes at any given moment. The prestige factor of a scoreboard is also obvious. As with all the differences the Court addresses in this Order, the fact that the boys have a scoreboard and the girls do not sends a clear message to players,

Despite their increasing sophistication and significance, little has been written about the evolution of scoreboards and almost nothing has appeared in print about the disputes they can ignite. Accordingly, this article will begin with a history of scoreboards and then survey the pertinent case law.

II. HISTORY

No one really knows when or where the first scoreboard appeared, although by 1826 the term had found its way into the English language.¹²

fellow students, teachers and the community at large, that girls' varsity softball is not as worthy as boys' varsity baseball.

Daniels v. Sch. Bd. of Brevard County, 985 F. Supp. 1458, 1460-61 (M.D. Fla. 1997). *See also* *Munson v. State Superintendent of Pub. Instruction*, No. 97-145097-1450, 1998 WL 61018, at *2 (Wis. Ct. App. Feb. 17, 1998) (Native American mother sued to have Indian logo and slogan changed, complaining that they were offensive yet appeared throughout her children's high school, including "on scoreboards located in the gym and on the football field."), and John Kelso, *That's Not a Stadium; It's a Theater*, AUSTIN AM.-STATESMAN, Sept. 8, 2002, at B1 (upbraiding a local high school for spending \$400,000 on a football scoreboard).

On a more humorous note, viewers of the longtime television program *Married... with Children* will recall that in Episode 219, entitled "Dud Bowl II," James K. Polk High School named its new scoreboard after Al Bundy. Sadly, however, Al, thinking the honor was going to be given to Terry Bradshaw (who made a guest appearance on that week's show), arranged to have the scoreboard blown up just as it was unveiled. *See Hypertext Program Guide "Dud Bowl II" (1009)*, at www.bundyology.com/hpg/1009.html (last visited May 15, 2003).

12. *Scoreboard*, in MERRIAM-WEBSTER ONLINE, at <http://www.m-w.com/cgi-bin/dictionary> (last visited May 7, 2003). Today, of course, popular expressions include "go by the boards," "light up the scoreboard," and "put points on the scoreboard." *See, e.g.*, Terry Douglass, *Lopers Set for RMAC Battle*, GRAND ISLAND INDEP., Feb. 4, 1998, available at http://www.theindependent.com/Archive/020498/stories/020498/spt_lopers04.html (last visited May 13, 2003) ("The previously unbeaten Nebraska-Kearney women saw their 15-game winning streak go by the boards in a 66-65 loss. . . . The Fort Hays women can also light up the scoreboard, ranking second in the RMAC in scoring. . . ."), and Gene Collier, *The Trite Trophy: The Worst Sports Cliches of 2001*, PITT. POST-GAZETTE, Dec. 30, 2001, at D3 (decrying the overuse of the phrase "put points on the scoreboard").

Perhaps not surprisingly, the word "scoreboard" has been appropriated by numerous ancillary sports businesses. *See, e.g.*, *United States v. D'Ambrosia*, 313 F.3d 987, 988 (7th Cir. 2002) (sports betting service known as "The Scoreboard, Inc."); *Williams v. Puckett*, 283 F.3d 272, 275 (5th Cir.), cert. denied, 123 S. Ct. 504 (2002) (sports bar known as the "Scoreboard Lounge"); *Dallas Cowboys Cheerleaders, Inc. v. Scoreboard Posters, Inc.*, 600 F.2d 1184, 1185 (5th Cir. 1979) (sports distributor known as Scoreboard Posters, Inc.); *Executive Arts Studio, Inc. v. City of Grand Rapids*, 227 F. Supp. 2d 731, 752 (W.D. Mich. 2002) (sports bar known as the "Scoreboard Saloon"); *Upper Deck Authenticated, Ltd. v. CPG Direct*, 971 F. Supp. 1337, 1339 (S.D. Cal. 1997) (sports memorabilia dealer known as "The ScoreBoard, Inc."); *Nat'l Football League v. Governor of the State of Del.*, 435 F. Supp. 1372, 1376 (D. Del. 1977) (sports lottery game known as "Scoreboard"); *State v. DeAngelo*, No. 9903023368, 2000 WL 305332 (Del. Super. Ct. Mar. 21, 2000) (sports bar known as "Scoreboard").

The word also has resonated with judges, who have used it in a variety of settings. *See, e.g.*, *Senza-Gel Corp. v. Seiffhart*, 803 F.2d 661, 664 n.2 (Fed. Cir. 1986) ("Senza-Gel inappropriately makes the same arguments on appeal, in a second effort to wipe the scoreboard clean

Lord's Cricket Field in London dates its scoreboard from 1846,¹³ while the Melbourne Cricket Ground in Australia began using scoreboards in 1882.¹⁴ In the United States, Harvard University tested a scoreboard during an 1893 football game against the University of Pennsylvania.¹⁵ Two years later, its Ivy League rival went it one better by unveiling the first permanent scoreboard.¹⁶ The first reported case involving a scoreboard is *Philadelphia Ball Club v. City of Philadelphia*,¹⁷ an 1897 decision in which the Philadelphia Phillies sued to recover damages to their ballpark—including \$100 for scoreboard repairs—after the city regraded the surrounding streets.¹⁸ In 1898, the *New York Tribune* became the first newspaper to use the word scoreboard while writing about a baseball game.¹⁹

Also lost in the fog of history is the identity of the inventor of scoreboards, although much of the credit undoubtedly belongs to Arthur Irwin, who designed the Harvard scoreboard.²⁰ Other early pioneers

and play the game over.”); *Thurmond v. Compaq Computer Corp.*, No. 1:99CV0711 (TH), 2000 WL 33795086, at *3 (E.D. Tex. Mar. 10, 2000) (“When we check the scoreboard? No abstention-5, abstention-0.”); *Miller v. LeSea Broad., Inc.*, 914 F. Supp. 290, 296 (E.D. Wis.), *rev'd*, 87 F.3d 224 (7th Cir. 1996) (“In balancing the putative acts of error or mischief on the part of the plaintiff and the defendant, the scoreboard looks like this. . . .”); *Nat'l Football League Players Ass'n v. Pro-Football, Inc.*, 857 F. Supp. 71, 74 (D.D.C. 1994), *vacated*, 56 F.3d 1525 (D.C. Cir. 1995) (“The defendants start out in the position of a football team that is behind on the scoreboard and buried in its own territory with less than a minute to play.”).

13. See Thrasy Petropoulos, *Lord's Celebrates Test Ton*, BBC NEWS, June 28, 2000, at www.Lords.org/history/milestones.asp (noting the installation of the first telegraph scoreboard) (last visited May 8, 2003).

14. *Melbourne Cricket Ground*, at <http://www.sfo.com/~csupes/Soccer/Australia/index.htm?Melbourne/index.htm> (last visited May 8, 2003) (“1882: A scoreboard, showing the batsman's name and how he was dismissed, was erected, the first of its type in the world.”).

15. *Harvard Stadium*, at <http://www.sfo.com/~csupes/NCAA/Ivyindex.htm?Harvard/index.htm> (last visited May 8, 2003) (“November 30, 1893—The first football scoreboard is used. The Harvard Athletic Association unveils this invention of Arthur Irwin, a Bostonian and professional baseball player and manager, in the Crimson's 26-4 win over Pennsylvania.”).

16. *Franklin Field*, at <http://pennathletics.ocsn.com/school-bio/penn-franklin-field.html> (last visited May 8, 2003) (explaining that in 1895 Franklin Field became the site of the first scoreboard in the nation).

17. 38 A. 357 (Pa. 1897).

18. *Id.* at 368. Following the convention of the day, the case spells “scoreboard” as “score board.” *Id.*

19. PAUL DICKSON, *THE NEW DICKSON BASEBALL DICTIONARY: A CYCLOPEDIA REFERENCE TO MORE THAN 7,000 WORDS, NAMES, PHRASES, AND SLANG EXPRESSIONS THAT DEFINE THE GAME, ITS HERITAGE, CULTURE, AND VARIATIONS* 432 (rev. ed. 1999) (giving credit to the June 28, 1898 edition of the *New York Tribune*).

20. While now largely forgotten, Irwin once cut a prominent figure as a player, manager and inventor. In addition to the scoreboard, he also developed the first infielder's glove. For a further description of his life and death (possibly self-inflicted, so as to avoid being prosecuted for bigamy), see *Arthur Irwin*, at http://www.providencegrays.org/Old_Grays/Arthur_Irwin/arthur_irwin.html

include John W. Heisman, the longtime (1892-1927) college football coach, who came up with the idea of having scoreboards display downs, distance, and time;²¹ Tom Rice, a reporter with the *Brooklyn Eagle*, who in 1902 began “campaigning for scoreboards and other fan conveniences”;²² George A. Baird, a Chicago inventor, who in 1908 developed the first electronic scoreboard;²³ and Mathias C. Schwab, a baseball groundskeeper, who in 1912 built the first scoreboard at Redland Field (at the time the home of the Cincinnati Reds).²⁴

Over the years, scoreboard manufacturing has become a highly-competitive business.²⁵ While many entities make and sell scoreboards, better-known suppliers include All American Scoreboards,²⁶ Colorado

(last visited May 8, 2003).

21. *John William Heisman*, at http://www.pigskinpost.com/no_36_-_john_heisman.htm (last visited May 8, 2003).

22. NEMEC, *supra* note 4, at 59. The value of scoreboard advocates like Rice cannot be overstated:

Before there were scoreboards, fans were forced to keep score on their own. They did this with the use of scorecards that could be purchased inside the ballpark. Besides just keeping the fans informed of what the score was, scorecards also gave them a way of staying active with the game. This was a huge hit among spectators. Despite the hit of scorecards, in the early 1900's, hand-operated scoreboard[s] began to appear. This sparked controversy at first as clubs argued that the use of a scoreboard would cut into scorecard sales. People in favor of scoreboards argued that they would not keep any fans from using their own scorecards, they would just g[i]ve them something else to look at and compare their scorecards to. Over the years, this has proved to be true as many spectators still continue to use their own personal scorecards today.

Evan Kearns, “Evolution of Scoreboards,” in *Baseball Stadium Technologies*, at <http://www.colby.edu/~edkearns/basestadium/History.htm> (last visited May 7, 2003).

23. LEVENTHAL, *supra* note 1, at 104.

24. *Mathias 'Matty' C. Schwab*, at <http://www.foertmeyer.com/examples/schwab.html> (last visited May 8, 2003) (“Matty was more than a groundskeeper. He was an innovator. He designed the first scoreboard at Redland Field in 1912, which remained until it was extensively remodeled in 1934. He also designed scoreboards for many other ballparks in the major leagues.”).

25. *See, e.g.*, *Stewart-Warner Corp. v. City of Pontiac*, 767 F.2d 1563 (Fed. Cir. 1985) (plaintiff-patentee, which had designed state-of-the-art scoreboard for Kansas City's Arrowhead Stadium, sued competitor under patent law for installing a similar scoreboard in the Silverdome); *SSIH Equip. S.A. v. United States Int'l Trade Comm'n*, 718 F.2d 365 (Fed. Cir. 1983) (manufacturer hired by the Milwaukee Brewers sued government agency that ruled its scoreboard violated rival's patent); *Dubinsky v. United States*, 44 Fed. Cl. 509 (1999) (plaintiff accused United States Air Force Academy of rigging process to ensure that football scoreboard contract would go to different bidder); *Omega Elec., S.A. v. Stewart-Warner Corp.*, No. 86 C 8186, 1988 U.S. Dist. LEXIS 13788 (N.D. Ill. Dec. 2, 1988) (action to determine whether defendant improperly tried to block importation of plaintiff's scoreboards); *Cullen Elec. Co. v. Cullen*, 578 N.E.2d 1058 (Ill. App. Ct. 1991) (dispute based in part over which of two companies would receive contract to do the electrical work on the Chicago White Sox's new scoreboard). *See also* Shelly S. Childerson, *Scoreboards Timing Sports Events for More Than 65 Years*, SCH. PLAN. & MGMT., Oct. 1, 2000, at AF4 (exhorting scoreboard buyers to choose carefully when picking a manufacturer).

26. Located in Pardeeville, Wisconsin, All American Scoreboards now is a division of Everbrite, LLC. *See All American Scoreboards*, at <http://www.allamericanscoreboards.com> (last

Time Systems, LLC,²⁷ Fair-Play Scoreboards,²⁸ Nevco Scoreboard Company,²⁹ and Sportable Scoreboards, Inc.³⁰ By far, however, the industry's leader is Daktronics Inc., whose first scoreboard (named "Matside") was designed for wrestling matches.³¹

Started in 1968 by Aelred Kurtenbach and Duane Sander, two electrical engineering professors at South Dakota State University, Daktronics now is a publicly-traded company with some 1,200 employees and annual revenues of nearly \$150 million.³² Its scoreboards can be found in more than 70 countries at all levels of competition.³³ Among the venues currently using Daktronics scoreboards are Arco Arena in Sacramento, Bank One Ballpark in Phoenix, Delta Center in Salt Lake

visited May 8, 2003). See also Mick Koehler, *Who Are We?*, IBEW LOCAL 965 NEWSL., Apr. 1997, available at http://www.ibew965.com/News/april_1997 (last visited May 8, 2003) (tracing the company's evolution).

27. Founded in 1972 and headquartered in Loveland, Colorado, CTS currently has 14,000 customers. See *Colorado Time Systems*, at <http://www.coloradotime.com> (last visited May 8, 2003). Although it manufactures scoreboards for nearly every sport, it is best known for its aquatic timing and scoring systems, and currently controls 80% of the domestic market. See *USA Diving: Sponsors*, at http://www.usdiving.org/USD_03redesign/sponsors/sponsors.htm (last visited May 8, 2003).

28. Based in Des Moines, Iowa, Fair-Play bills itself as "America's Scorekeeper" and boasts that it has installed more than 100,000 scoreboards worldwide. See *Fair-Play*, at <http://www.fair-play.com> (last visited May 8, 2003). Befitting its name, the company actually got its start because of a disputed game in 1934 in rural Iowa when company founder Elmer Foster, as school superintendent, was called upon to decide a local high school basketball game. *Id.*

After the game, he went home and designed his very first electronic time clock, complete with dial and horn. His new timer was installed at the Dallas Center High School gym and immediately generated interest from coaches and officials on visiting teams. Many of them asked how they could acquire a clock for their own schools. The following summer, manufacturing began in Mr. Foster's attic and basement.

Id.

29. Headquartered in Greenville, Illinois, Nevco Scoreboards remains a family-owned and operated business, although its fabrication processes have changed greatly since it began manufacturing scoreboards in 1934. See <http://www.nevcoscoreboards.com/history.html> (last visited May 8, 2003), and Steve Horrell, *Greenville Firm was Spurred by Anger Over Referee's Indiscretion*, ST. LOUIS POST-DISPATCH, Nov. 8, 1999, at 8.

30. Founded in San Diego in 1986 and now based in Murray, Kentucky, Sportable has been responsible for a number of technological breakthroughs, including wireless remote controls and solar power for scoreboards. See <http://www.sportablescoreboards.com> (last visited May 8, 2003). For a further look at the company, see Joe Walker, *Relocation of Sports Timing Maker Scores Victory for Murray, Ky., Family*, PADUCAH (KY) SUN, Sept. 5, 2001 (stating that the company has grown from three employees to 80 and offers customers 192 different models).

31. See *Company History*, at http://www.daktronics.com/dak_company_info.cfm?page=history (last visited May 9, 2003) [hereinafter *Daktronics Company History*].

32. *Id.*; *DAKT 2002 Summary Annual Report*, at <http://www.daktronics.com/pdf/sl5142.pdf> (last visited May 9, 2003).

33. *Daktronics Company History*, supra note 31.

City, First Union Center in Philadelphia, Giants Stadium in East Rutherford, INVESCO Field in Denver, Minute Maid Park in Houston, The Palace in Auburn Hills, Raymond James Stadium in Tampa, Staples Center in Los Angeles, Turner Field in Atlanta, and Xcel Energy Center in St. Paul.³⁴

Although their primary purpose always has been to keep fans informed of a game's progress,³⁵ many scoreboards now possess state-of-the-art video technology.³⁶ As a result, they are able to track the action on the field while displaying cartoons,³⁷ coordinating in-stand contests,³⁸

34. *Professional Baseball*, at http://www.daktronics.com/sports_apps/dak_sports_apps.cfm?section=professional&category=Pro_baseball (last visited May 9, 2003); *Professional Basketball*, at http://www.daktronics.com/sports_apps/dak_sports_apps.cfm?section=professional&category=Pro_basketball (last visited May 9, 2003); *Professional Football*, at http://www.daktronics.com/sports_apps/dak_sports_apps.cfm?section=professional&category=Pro_football (last visited May 9, 2003); *Professional Hockey*, at http://www.daktronics.com/sports_apps/dak_sports_apps.cfm?section=professional&category=Pro_hockey (last visited May 9, 2003).

35. Scoreboards also help players and coaches by "allow[ing] them to keep better track of the game and various situations." Kearns, *supra* note 22. Unfortunately, this has not always been a good thing:

After a win against Northwestern University in 1999 in which fans of the Northwestern University team chanted, "Who's your daddy?" at Mr. Knight, he pointed to the scoreboard and yelled, "Who's your daddy now? You guys are [expletive] losers!" Mr. Knight and Northwestern University men's basketball coach Kevin O'Neill then got into a physical confrontation.

Felling v. Knight, No. IP01-0571-C-T/K, 2001 U.S. Dist. LEXIS 22827 at *4 (S.D. Ind. Dec. 21, 2001) (bolding and underlining in original omitted).

36. Of course, the addition of such technology occasionally has led to problems:

Tom Catlin knew he was in trouble Monday when the switchboard inside his command post lit up brighter than the scoreboards his 18-man team operates. "What a train wreck," the director of Padres Productions said yesterday as he reflected on the Great Scoreboards Crash of Opening Day 2003. By game time last night, the main scoreboard and the six auxiliary scoreboards around Qualcomm Stadium were working flawlessly. But at times Monday afternoon, nothing was working as it was designed. Catlin's staff yesterday morning traced the problem to a new computer and a piece of software upgrade the NFL installed at the stadium for the Super Bowl.

...

Said Stieren: "One thing we learned on Monday is how many people missed the scoreboards. People were calling us on cell phones from inside the stadium asking us, 'Did you know your scoreboards are out?'"

Bill Center, *Opener's Scoreboard Snafu Traced to NFL Computer 'Upgrade'*, SAN DIEGO UNION-TRIB., Apr. 2, 2003, at D5.

37. Shannon Russell, *Lights, Camera and the Scores*, CINC. ENQUIRER, Mar. 22, 2003, at 16E (describing the various ways in which the scoreboards at Cincinnati's new Great American Ball Park are able to keep fans amused). For an interesting copyright infringement case arising from the use of an entertainment sequence that had been created for use on the scoreboards of the United Center during basketball games, but later was used without the creators' permission in television commercials and in a feature film, see *Animation Station, Ltd. v. Chicago Bulls, LP*, 992 F. Supp. 382 (S.D.N.Y. 1998).

38. Ray Fittipaldo, *Let's Go to the Big Board: Game-Day Entertainment Built Around NFL's*

scanning the crowd with their “fan cams,”³⁹ and, of course, relaying such messages as “Will You Marry Me?”⁴⁰ Leading the way in these developments have been Mitsubishi, which introduced “Diamond Vision” in 1980, and Sony, which in 1985 unveiled the “JumboTron.”⁴¹ More

Biggest Scoreboard, PITT. POST-GAZETTE, Aug. 24, 2001, at A18 (Spec.). One of the most popular scoreboard games involves juggling three images at high speeds while fans try to stay focused on a specific one:

It is noted that fans at Yankee Stadium are entertained between innings by an electronic version of the shell game projected on the stadium scoreboard. The fans attempt to follow the image of a baseball over which is superimposed one of three Yankee baseball caps shuffled at increasing speed. Although no prizes are awarded (at least officially), the “winners” are those fans who are able to identify the Yankee cap under which the image of the ball is concealed.

People v. Mohammed, 724 N.Y.S.2d 803, 806 (N.Y.C. Crim. Ct. 2001).

39. “Fan cams” project fans’ faces onto the video display boards, often in amusing positions. See, e.g., Jarrett Bell, *Pats Thankful for Ugly 20-12 Win Vs. Lions; Interceptions Stifle Harrington*, USA TODAY, Nov. 29, 2002, at 8C (“And the man caught sleeping as the ‘fan cam’ scanned the Ford Field crowd drew hearty applause.”). Despite the potential for embarrassment, fans find it thrilling to see themselves on a massive scoreboard:

We enjoyed the Fan Cam. The Fan Cam was manned by a couple of moonlighting TV news guys, who roamed through the crowd sending live video feed to the big screen whenever the players weren’t doing anything. Attendance was middling enough that I think every spectator in the park ended up on the Fan Cam at least once, which is a nice little perk. Our group made it up there twice. Until you’ve seen yourself on a jumbo screen in full view of thousands of your fellow citizens, you don’t really know what a bad haircut you have.

David Moll, *It’s All Good, Except for the Baseball*, PEORIA (IL) J. STAR, May 30, 2002, at C1. Indeed, the desire to be picked out of the crowd by the fan cam led to an unusual claim during the 2002 WNBA season:

Frustrated with what they consider the “ongoing homophobia” of the New York Liberty organization and Madison Square Garden management, a group of the team’s fans called Lesbians for Liberty is planning a protest and a “timeout kiss-in” during the Liberty game against the Miami Sol at the Garden tonight at 7. “The Liberty management has systematically not acknowledged the lesbians in the audience,” protest organizer Ady Ben-Israel said. . . . Ben-Israel says lesbians are excluded from “fan cam” shots on the Garden’s video screens, an allegation a Liberty official called “ridiculous.”

Jason Butler, *Lesbians: Give Us More Liberty*, NEWSDAY, Aug. 2, 2002, at A12.

40. Mary Beth Faller, *Pop Goes the Question*, STAMFORD (CT) ADVOCATE, Feb. 13, 2003, at C1 (stating that at a typical game at Yankee Stadium, two marriage proposals will appear on the screen). See also Michael Precker, *Pitching Woo: Marriage Proposals Are a Big Hit on the Texas Rangers Scoreboard*, DALLAS MORNING NEWS, Apr. 24, 1992, at 1C (claiming that Arlington Stadium was the first major league baseball park to carry such messages).

41. The historical importance of Diamond Vision and the JumboTron has been summed up as follows:

The real revolution in scoreboard technology arrived with the introduction of video-display boards, such as Mitsubishi’s Diamond Vision and Sony’s JumboTron. The Diamond Vision was first introduced at Dodger Stadium for the 1980 All-Star Game, and it has since become a staple at parks around the League. Particularly in today’s massive stadiums and domes, these large video-display boards make it possible for everyone—even fans seated in the top row of the farthest corner of the upper deck—to see the on-field action up close. Between innings, the screen is a star—it’s a television showing highlights and bloopers, an entertaining source of statistics, and a bulletin board announcing birthdays and the occasional marriage proposal. The electronic and video scoreboards are usually operated from control stations within or next

recently, however, scoreboard manufacturers have been switching to light-emitting diode (“LED”) systems, which last longer, use less power, and provide sharper images.⁴²

As scoreboards have grown in sophistication, they also have grown in expense.⁴³ When the Kansas City A’s relocated to California in 1968, the price of outfitting the Oakland-Alameda County Coliseum with a multi-sport scoreboard and message board was \$985,400.⁴⁴ In 2003, the Green Bay Packers spent \$7 million to add two new end zone scoreboards to Lambeau Field.⁴⁵

In 1965, the Houston Astrodome awed fans with a 474-foot-long scoreboard, which remained in use until 1989.⁴⁶ Today, the largest baseball scoreboard is the one in left field at Comerica Park (home of the Detroit Tigers), which measures 147’ x 202’ and features a 42’ x 24’ video screen, 42’ x 24’ color matrix board, 64’ x 34’ black-and-white matrix

to the press box, where the operator sits alongside the PA announcer and the sound engineer to coordinate the video display with the music and announcements.

LEVENTHAL, *supra* note 1, at 104. Despite their enormous head starts, during the 1990s Mitsubishi and Sony were both eclipsed by Daktronics. Chris Lawrence, *Company Rides National Wave*, ARGUS (SD) LEADER, May 2, 2002, at 6C (reporting that Daktronics now has 27% of the large-screen market, as compared to 10% for Mitsubishi and 4.5% for Sony).

42. In a recent article, the advantages of LED scoreboards were made clear:

LED technology replaced archaic incandescent bulbs in the late 90s. The results have been like night and day. Not only are the lights brighter and colors more vivid, the products are now maintenance free while being energy and cost efficient.

For instance, according to Eversan, Inc., based on its electromagnetic technology—bright yellow light reflective digits that eliminate the wash out effect otherwise experienced with light bulbs—a typical light bulb scoreboard that may cost \$425 to run for the afternoon will run about \$1 with a comparable Eversan scoreboard.

Newell, *supra* note 1.

43. In addition to the initial acquisition costs, money must be set aside each year for such things as insurance, maintenance, repairs, staff, and upgrades. See generally *Brower v. Sorenson-Christian Indus., Inc.*, 300 S.E.2d 561 (N.C. Ct. App. 1983) (dispute over price to be paid for back-up scoreboard console); Dennis Cavagnaro, *My Brother, the Scorekeeper*, S.F. EXAMINER, June 9, 2000, at CT1 (pointing out that while only one person was needed to run the Giants’ scoreboard at Seals Stadium in 1958-59, the team’s current model at Pacific Bell Park requires a crew of 15); *Injury-Plagued Krupalija Keeps His Sense of Humor*, (SPRINGFIELD, IL) STATE J.-REG., Feb. 12, 2002, at 26 (reporting that the University of Illinois’s new basketball and football scoreboards cost more than \$10,000 per game to operate).

44. Charles O. Finley & Co., Inc. v. Commissioner, 44 T.C.M. (CCH) 225, 232 (1982). Thirteen years earlier, when the team moved from Philadelphia to Kansas City, owner Arnold Johnson had been able to purchase a used scoreboard from Braves Field in Boston for just \$100,000. LIGHT, *supra* note 1, at 652.

45. Karen Rauhen, *Lambeau to Get New \$7M Scoreboards*, GREEN BAY (WI) PRESS-GAZETTE, Dec. 19, 2002, at 1A.

46. *Harris County Domed Stadium*, at <http://www.baseball-statistics.com/Ballparks/Hou/Astrodome.htm> (last visited May 9, 2003).

board, and twin 40' x 27' tigers.⁴⁷ The largest football scoreboard is at Reliant Stadium (home of the Houston Texans), where each end zone boasts a 360-foot-long scoreboard (the field also has eight smaller auxiliary scoreboards).⁴⁸

Unlike baseball and football scoreboards, which tend to have distinct personalities,⁴⁹ basketball and hockey scoreboards are fairly prosaic.⁵⁰ Typically, they are octagonal-shaped, hang over the center of the court (or ice) during play, and disappear into the rafters when not in use.⁵¹ The largest such scoreboard—weighing 80,000 pounds—is at the American Airlines Center (home of the Dallas Mavericks and Stars).⁵²

47. CURT SMITH, *STORIED STADIUMS: BASEBALL'S HISTORY THROUGH ITS BALLPARKS* 514 (2001); *Comerica Park*, at <http://www.q1zprod.com/02Site/Detroit02/HTML/ComericaPark.htm> (last visited May 9, 2003); see also *Comerica Park*, at <http://www.usatoday.com/sports/baseball/tigers/stadium.htm> (last visited May 9, 2003); *First Impression*, at <http://www.sportingnews.com/baseball/ballparks/comerica.html> (last visited May 9, 2003).

48. Joseph Duarte, *Reliant Stadium: Screen Gems: Video, Audio Systems Take Game Day Experience to a New Level*, HOUS. CHRON., Aug. 18, 2002, at 11 (Spec).

49. For example, Camden Yards' scoreboard is topped with two Oriole weathervanes; Fenway Park's scoreboard displays the initials of former Red Sox owners Thomas A. and Jean R. Yawkey in morse code; Kauffman Stadium's scoreboard is crown-shaped in honor of the hometown Royals; and Shea Stadium's scoreboard includes a "Big Apple" that pops out of a top hat whenever the Mets hit a home run. LEVENTHAL, *supra* note 1, at 18, 29, 39, 86. See also Tom Barnes, *Heinz Field's Giant Bottles to Spur Fans' Anticipation*, PITT. POST-GAZETTE, Oct. 20, 2001, at A1 (explaining that whenever the Panthers or Steelers are driving for a touchdown, two large ketchup bottles atop the Heinz Field scoreboard tilt downward, their caps flip up, and a stream of red lights make it appear that ketchup is flowing into the JumboTron).

50. This fact has not kept some from becoming collector items. When the Boston Garden was replaced by the Fleet Center, for example, shopping mall magnet Steve Karp outbid everyone else for its scoreboard. *Karp Revealed as Mystery Buyer Who Paid \$40,000 for Garden Scoreboard*, B. GLOBE, Sept. 29, 1996, at C3. However, when a pair of brothers purchased Chicago Stadium's scoreboard after the Blackhawks and Bulls decamped to the United Center, they found no one willing to pay their asking price of \$450,000. *Ellen Warren & Terry Armour, Jordan's Old Timepiece Up for Sale*, CHI. TRIB., Feb. 17, 2000, at 2.

51. A notable exception is the scoreboard at the American Airlines Arena in South Florida, which debuted in January 2000:

The Miami Heat is spending \$5 million on a 50,000-pound ball that dangles from the ceiling, has nearly 150 tentacles and shoots fire and smoke. The Heat's new scoreboard—"spheresphere" would be a more fitting description—in the American Airlines Arena, where the team's scheduled to play its first game Jan. 2, is meant not only to inform but to entertain as well. "This is unlike any other scoreboard in North America," says Cameron Curtis, senior director of design and construction at Basketball Properties Ltd., a Heat affiliate. "It is designed to look like a ball of fire." While most boards are a static box, this one is made to explode. Massachusetts-based artist Christopher Janney designed it with aluminum "rays" protruding 12 feet in all directions across an outer and inner sphere. Special scoreboard effects include pyrotechnics, made up of small firecrackers and star bursts. Foggers and lights add to the display.

Wendy Doscher, *Disco Arena*, MIAMI DAILY BUS. REV., Sept. 10, 1999, at 3.

52. Sean Wood, *Dallas Builds Texas-Sized Sports Arena*, KNIGHT-RIDDER TRIB. BUS. NEWS, July 22, 2001.

Before closing, it should be pointed out that other sports also use scoreboards,⁵³ although they sometimes go by a different name. Thus, for example, golf enthusiasts follow the “leaderboard,”⁵⁴ while horse racing fans consult the “tote board” when placing their bets.⁵⁵

III. CASE LAW

A. Sales

Lawsuits over scoreboard prices are almost as old as scoreboards themselves. In *Credit Alliance Corp. v. Centenary College of Louisiana*,⁵⁶ for example, Centenary College (“CC”) purchased a football scoreboard from the Grid Graph Company (“GGC”) for \$1,350, payable as follows: \$300 on December 1, 1924, \$500 on December 1, 1925, and \$550 on

Fans and players who are unnerved by the sight of these massive scoreboards, which often appear to be supported by just a few spindly strands of steel, will not be comforted to learn that there have been some mishaps. In August 1988, the Charlotte Coliseum’s brand new, \$1.2 million, 34,000-pound scoreboard was obliterated when it fell on the morning of a Carolina Invitational exhibition basketball game. Bud Shaw, *Charlotte’s New Scoreboard Crashes to Floor*, ATLANTA J. & CONST., Aug. 13, 1988, at C1. In December 1992, a two-ton scoreboard collapsed at the Providence Civic Center, delaying the start of a basketball game between Robert Morris College and Providence College. *Scoreboard Crash Creates a Delay; No One is Injured*, ORANGE COUNTY (CA) REG., Dec. 4, 1992. In January 1993, during a time out in a Detroit Pistons-Los Angeles Clippers game, a four-foot-long piece of metal siding landed point-first at center court. Dave Strege, *Nobody Hurt When Piece of Scoreboard Falls*, ORANGE COUNTY (CA) REG., Jan. 7, 1993, at D4. In November 1996, the Marine Midland Arena’s five-week-old, 20-ton scoreboard, which had cost \$4.5 million, was destroyed before a Boston Bruins-Buffalo Sabres game. Susan Schulman & Dan Herbeck, *Jumble-Tron: Scoreboard Crashes to Ice at Arena*, BUFF. NEWS, Nov. 17, 1996, at A1. And in November 1997, the five-ton scoreboard at the North Charleston Coliseum fell 60 feet during preparations for the World Finals Rodeo, killing a 67-year-old worker named Billie Wayne Garrett. *Coliseum Gets Flashier Board*, CHARLESTON (SC) POST & COURIER, Oct. 14, 1999, at B1 (reporting that Garrett’s family accepted a \$3.5 million settlement from the arena and the four companies responsible for building, maintaining, inspecting, and operating the scoreboard).

53. Examples of such scoreboards can be found in JEAN-CLAUDE CORBEIL & ARIANE ARCHAMBAULT, *THE FIREFLY VISUAL DICTIONARY* 790 (track and field), 822 (tennis), 824-25 (gymnastics), 831 (swimming), 839 (rowing and sculling), 844 (judo), 846 (kung fu), and 918 (darts) (2002).

54. See *Morris Communications Corp. v. PGA Tour, Inc.*, 235 F. Supp. 2d 1269, 1273 (M.D. Fla. 2002) (explaining that the “leaderboards do not simultaneously show the real time scores of all participating golfers. Rather, they typically show only the top ten or fifteen scores.”). See also David Newton, *Even Scoring Process a Tradition at The Masters*, COLUMBIA (SC) STATE, Apr. 12, 2003 (discussing the refusal of The Masters golf tournament to replace its 1947 leaderboard with the “high tech scoreboards used on the PGA Tour”).

55. For a detailed description of how tote boards work, see *United States v. United Tote, Inc.*, 768 F. Supp. 1064, 1065-67 (D. Del. 1991).

56. 136 So. 130 (La. Ct. App. 1931).

December 1, 1926.⁵⁷ As part of the contract, GGC agreed to take back the scoreboard at the end of the first year if CC was not fully satisfied, in which event only the first \$300 would be due.⁵⁸

The scoreboard was used twice, the initial installment was paid, but after the 1924 season CC decided to return the scoreboard.⁵⁹ In the meantime, GGC had gone bankrupt and the promissory notes which CC had given for the second and third installments had been sold.⁶⁰ Eventually, a collection agency known as Credit Alliance Corporation ("CAC") sued CC to enforce the notes.⁶¹ When the trial court dismissed the action, CAC filed an appeal.⁶²

Although the notes had been signed by its bursar, CC took the position that they were invalid because they had not been executed by an officer or director. In finding this contention to be meritorious, the appeals court wrote:

When plaintiff examined these notes and observed that they were signed by the bursar for the college, whose duties, it is well and generally known, are not executive, but clerical, they were put on guard with respect to the extent of the powers of the bursar and were required to investigate such powers to the end that they might not acquire commercial paper, issued without due authority.⁶³

A similar problem arose in *Kutztown State College v. Degler-Whiting, Inc.*⁶⁴ In May 1976, the Kutztown State College Alumni Association ("KSCAA") ordered, at a cost of \$4,175, a football scoreboard from Degler-Whiting, Inc. ("DW").⁶⁵ In June 1976, DW sent a bill to KSCAA, which was not paid; in November 1976, KSCAA filed for bankruptcy.⁶⁶ In May 1977, DW sued Kutztown State College ("KSC") in the Court of

57. *Id.* at 130.

58. *Id.*

59. *Id.* Although the college gave no reason for why it was returning the scoreboard, the appeals court was willing to hazard a guess:

The record does not disclose who paid the \$300 on the scoreboard, nor how it was paid. Dr. Sexton [the college's president] states that the board was used by the students and others interested in it. This board was purchased at a time when football spirit and enthusiasm at Centenary College ran high. It is probable the move to purchase the board originated with the student body and the athletic directors, but the evidence does not affirmatively disclose such to be true.

Id. at 133.

60. *Credit Alliance Corp.*, 136 So. at 131.

61. *Id.*

62. *Id.*

63. *Id.* at 132.

64. 463 A.2d 1206 (Pa. Commw. Ct. 1983).

65. *Id.* at 1206-07.

66. *Id.* at 1207.

Common Pleas.⁶⁷ During the next five years, the suit was transferred to the Commonwealth Court, then to the Board of Claims, and then to the Board's Fiscal Code Division, which in June 1982 awarded DW the full price of the scoreboard plus interest.⁶⁸

In appealing the award, KSC argued that DW's claim was time-barred, inasmuch as the statute of limitations for actions against government entities was six months.⁶⁹ In KSC's view, DW only had until December 1976 to sue because its claim arose in June 1976, when it first billed KSCAA.⁷⁰

For its part, DW insisted the statute of limitations had been tolled from November 1976 (when KSCAA sought bankruptcy) until August 1977 (when the bankruptcy court ruled KSCAA had no legal right to the scoreboard).⁷¹ Not surprisingly, the Commonwealth Court rejected this argument and ordered the award vacated because the "bankrupt in this case was the alumni association, not the college."⁷² As such, DW's claim against KSC was never tolled and lapsed in December 1976.

In *Federal Sign v. Texas Southern University*,⁷³ yet another scoreboard manufacturer learned a hard lesson about contracting with colleges. In late 1988, Texas Southern University ("TSU") began making plans to purchase basketball scoreboards for its new gym; in early 1989, it accepted a bid from Federal Sign ("FS").⁷⁴ In September 1989, however, TSU informed FS that its bid was unacceptable.⁷⁵ Subsequently, TSU entered into a contract with Spectrum Scoreboards.⁷⁶

In early 1990, FS sued TSU for \$67,481 in lost profits and \$22,840 in expenses.⁷⁷ TSU asserted sovereign immunity and the trial court stayed the action to give FS time to obtain the legislature's consent to sue.⁷⁸ When FS took the position that permission was unnecessary, the trial court allowed the suit to go forward, resulting in a jury verdict in FS's favor.⁷⁹

The appeals court reversed and ordered the case dismissed after

67. *Id.*

68. *Kutztown State Coll.*, 463 A.2d at 1207.

69. *Id.*

70. *Id.*

71. *Id.* at 1208.

72. *Kutztown State Coll.*, 463 A.2d at 1209.

73. 951 S.W.2d 401 (Tex. 1997).

74. *Id.* at 403.

75. *Id.*

76. *Id.*

77. *Federal Sign*, 951 S.W.2d at 403.

78. *Id.* at 403-04.

79. *Id.* at 404.

concluding that consent had been required.⁸⁰ On a further appeal to the Texas Supreme Court, this determination was forcefully affirmed:

We hold that applying sovereign immunity from suit to contract claims against the State does not violate either the Open Courts Provision or the Due Course of Law Provision of the Texas Constitution. We hold that it is the Legislature's province to modify, if at all, the sovereign immunity doctrine.⁸¹

B. Advertising

As previously mentioned, many scoreboards use advertising to maximize revenues and defray costs. This fact has led to a number of interesting lawsuits.

In *Bazell v. City of Cincinnati*,⁸² a taxpayer sought to prevent government funds from being used to build Riverfront Stadium (later Cinergy Field), contending that the project lacked a "public purpose."⁸³ The plaintiff also objected to the city's plan to sell advertising space on the scoreboards.⁸⁴ The Ohio Supreme Court brushed aside both objections:

We conclude that a charter municipality may construct a stadium which is designed to accommodate large crowds at athletic and other exhibitions and may rent that stadium to private persons who will provide such exhibitions; that the municipality may do so even though such private persons will derive profits from providing those exhibitions; that, in connection with the construction and operation of such a stadium, a municipality may acquire land and devote it to automobile parking and derive a profit from doing so; and that, as an incident to the construction and operation of such stadium, a municipality may construct and maintain a scoreboard and derive revenue from the sale of advertising space thereon.⁸⁵

80. *Id.*

81. *Federal Sign*, 951 S.W.2d at 412. Although of no help to FS, the Texas Legislature subsequently accepted the court's invitation and enacted an administrative mechanism to handle certain breach of contract claims. *General Servs. Comm'n v. Little-Tex Insulation Co.*, 39 S.W.3d 591, 593 (Tex. 2001).

82. 233 N.E.2d 864 (Ohio 1968).

83. *Id.* at 868.

84. *Id.*

85. *Id.* at 870. Two years after the Ohio Supreme Court's ruling, the stadium opened at a cost of \$48 million. LEVENTHAL, *supra* note 1, at 63. Ironically, both the scoreboards and their advertising revenues became sources of friction between the Bengals and Reds. *See Cinc. Bengals, Inc. v. City of Cinc.*, Nos. C-810483, C-810493, 1982 Ohio App. LEXIS 12816 (Ohio Ct. App. Feb. 24, 1982) (denying, on a motion for summary judgment, the Bengals' request to be awarded exclusive control of the stadium's scoreboard), and *Cinc. Bengals, Inc. v. City of Cinc.*, 567 N.E.2d 284 (Ohio Ct. App. 1989) (ordering the removal of auxiliary scoreboards installed by the Reds because they blocked the views of Bengals fans). For a further look at the tempestuous relationship between the Bengals and the Reds during their 30 years of joint tenancy, *see Phillip M. Sparkes, Cincinnati*, 34 URB. LAW. 345 (2002) (explaining that the Bengals moved into Paul Brown Stadium

In *Hubbard Broadcasting, Inc. v. Metropolitan Sports Facilities Commission*,⁸⁶ the plaintiff (“HBI”), a radio and television broadcaster, sued after being refused advertising space on the scoreboard of the municipally-owned Hubert H. Humphrey Metrodome.⁸⁷ At the time, the stadium was selling such advertising on an exclusive, first come-first served basis, and a competitor (Midwest Radio and Television, Inc.) had beaten HBI to the punch.⁸⁸

In its complaint, HBI claimed the stadium’s policy violated the First and Fourteenth Amendments.⁸⁹ The trial court disagreed and dismissed the lawsuit; on appeal, the Eighth Circuit affirmed.⁹⁰ It held that the Metrodome was not a public forum, and thus was not constitutionally required to provide HBI with an opportunity to speak:

Under these circumstances, we find that the city did not intend to designate a public forum by selling advertising space on the scoreboard. Hubbard’s claim, taken to its logical extreme, would allow anyone who desired to advertise his product on the scoreboard a first amendment right to do so. No doubt the principal function of the Metrodome would be disrupted by the

in 2000 while the Reds opened Great American Ballpark in 2003).

86. 797 F.2d 552 (8th Cir. 1986).

87. *Id.* at 553.

88. *Id.* at 554. The decision to offer exclusive contracts was driven by a series of financial considerations because although the Commission authorized the construction of the Metrodome, it failed to provide funding for the scoreboard system:

The Commission learned that several cities with similar sports facilities had financed the construction of a scoreboard system through advertising contracts. Thus, the Commission decided to explore the possibility of obtaining a scoreboard system for the Metrodome at little or no cost to the city by selling advertising space.

American Sign and Indicator Corporation (ASI) manufactures scoreboard systems and markets display advertising on scoreboard panels for stadiums and sports arenas throughout the country. Twin City Federal Savings and Loan Association (TCF) formed a joint venture with ASI (ASI/TCF) in an effort to obtain the exclusive right to market advertising in the Metrodome.

In January of 1981, the Commission entered into a Scoreboard System Agreement with ASI/TCF to finance the construction of a scoreboard system at the Metrodome. Under its terms, the Commission granted ASI/TCF the exclusive right to sell all advertising space on the scoreboard for ten years, and ASI/TCF agreed to provide the scoreboard system. The Commission further agreed not to allow any advertising within the Metrodome that would directly compete with the scoreboard advertising. The Commission and ASI/TCF were to share in the revenue generated from the advertising contracts, and title to the scoreboard passes automatically to the Commission after the fifteenth year.

In order to generate the maximum amount of revenue from the limited advertising space available on the scoreboard, ASI/TCF established product categories and sold exclusive advertising contracts to one advertiser within each product category for a ten-year period. The advertising contracts were sold on a first-come/first-served basis.

Id. at 553-54.

89. *Id.* at 553.

90. *Hubbard Broadcasting, Inc.*, 797 F.2d at 553.

volume of the expressive activity alone. When, as here, the city, acting in a proprietary capacity, has allowed a small number of commercial advertisers access to a limited amount of advertising space on government property in order to generate revenue, the city has not created a public forum.⁹¹

The court next decided the policy had been applied fairly:

Furthermore, we conclude that the policy is content-neutral. Here, no effort was made to suppress a particular point of view. Hubbard was not denied access to the advertising space because of the content of its advertisements. Rather, Hubbard was rejected simply because it failed to bid for the advertising space before Midwest.⁹²

The court finished up by rejecting the equal protection claim:

Here, although Hubbard and Midwest are similarly situated, the first-come/first-served policy under the exclusive advertising concept does not discriminate against either broadcaster. . . .

Although Hubbard complains that it was denied an opportunity to make its bid for the advertising contract before Midwest's bid was accepted, this fact alone does not change our analysis. [The Commission] adhered to its policy of granting the exclusive advertising contracts on a first-come/first-served basis. Under these circumstances, we can find no equal protection violation.⁹³

In *Philip Morris Inc. v. Pittsburgh Penguins, Inc.*⁹⁴ the court faced a very different set of facts. In 1977, the plaintiff tobacco company ("PM") had entered into a 10-year agreement with the Penguins for various types of in-arena advertising, including panels on the scoreboard, at an annual cost of \$13,500.⁹⁵ Needing a new scoreboard, the Penguins in 1983 tried to raise the yearly payment to \$100,000.⁹⁶ When PM pointed out that there were still four years left on the original contract, the Penguins claimed otherwise.⁹⁷

The club had negotiated with PM pursuant to a clause in a separate contract with the arena's owner—the Public Auditorium Authority of Pittsburgh and Allegheny County—which expired in 1978.⁹⁸ Thus, according to the Penguins, PM's contract also expired in 1978.⁹⁹

91. *Id.* at 556.

92. *Id.*

93. *Id.* at 556-57.

94. 589 F. Supp. 912 (W.D. Pa. 1983), *aff'd mem.*, 738 F.2d 424 (3d Cir. 1984).

95. *Id.* at 915.

96. *Id.* at 916.

97. *Id.*

98. *Philip Morris Inc.*, 589 F. Supp. at 914.

99. *Id.* at 915.

PM did not agree and filed a breach of contract action.¹⁰⁰ In finding in PM's favor (a ruling summarily affirmed on appeal), the district court wrote:

There is no issue in the case at bar as to whether the Penguins had authority *after* May 31, 1978 to enter into contracts. It is clear that they did not. We are not concerned with the Authority-Penguins Agreement and whether it continued after the termination date and thus became terminable at will. This Agreement is not the one which the plaintiff seeks to enforce. What is at issue here is a separate, distinct, independent contract which was entered into by the Penguins *prior* to the May, 1978 expiration of the Penguins' authority. Therefore, whether or not the Authority-Penguins Agreement to sell advertising space continued beyond this date does not have any effect on this case.

Since the Penguins had the power under the 1977 Agreement to enter into contracts which would continue past May 31, 1978, the Philip Morris-Penguins advertisement contract is valid and enforceable until its termination in 1987.¹⁰¹

In *Pilot Air Freight Corp. v. City of Buffalo*,¹⁰² the issue of scoreboard advertising took yet another turn. The plaintiff ("PAFC"), a transportation logistics company, had signed a 20-year naming rights agreement for the new baseball stadium of the minor league Buffalo Bisons.¹⁰³ Under the deal, the facility was to be called "Pilot Field" and various steps were to be taken to ensure that PAFC's name was mentioned prominently in all stadium-related advertising and promotional materials.¹⁰⁴

The agreement was signed in 1986; by 1991, PAFC, believing that the city was not living up to its end of the bargain, filed suit.¹⁰⁵ The team was also named as a defendant.¹⁰⁶

In its complaint PAFC listed a number of grievances, including that the team's logo, rather than PAFC's name, appeared on the back of the stadium's scoreboard.¹⁰⁷ In rejecting this claim, the court wrote (with just a trace of exasperation):

However, this Court is of the further opinion that, even if Pilot succeeds in proving that the strictures of the Naming Rights Agreement are applicable to Bison, the depiction of "Buster Bison" along with the word "Bisons" on the

100. *Id.* at 913.

101. *Id.* at 918.

102. No. CIV-91-308E, 1991 U.S. Dist. LEXIS 18600 (W.D.N.Y. Dec. 16, 1991).

103. *Id.* at *1.

104. *Id.*

105. *Id.*

106. *Pilot Air Freight*, 1991 U.S. Dist. LEXIS 18600, at *1.

107. *Id.* at *2.

back of the scoreboard does not constitute a violation thereof. The Naming Rights Agreement sets forth specifically Pilot's rights to have its name displayed within and without the stadium. Such provisions of the Naming Rights Agreement have been fully complied with and this Court finds as a matter of law that a claim has not been stated against the defendants in this regard.¹⁰⁸

Lastly, there is *In re Beychok*.¹⁰⁹ Sheldon D. Beychok was a member of the Board of Supervisors of Louisiana State University ("LSU"), as well as the president, chief executive officer, and majority stockholder of Wolf Baking Company, Inc. ("WBC"), a bread manufacturer.¹¹⁰

When the LSU athletic department was unable to locate a party interested in advertising on its end zone countdown clocks, Beychok had WBC pay \$6,500 for the space.¹¹¹ Subsequently, the state Commission on Ethics for Public Employees sanctioned Beychok for violating LSA-R.S. 42:1111 C(2)(d).¹¹² Although somewhat obtuse in its wording, as a practical matter "LSA-R.S. 42:1111 C(2)(d) prohibits a person from drawing a salary for his services to a company, if that company is doing business with the public servant's agency."¹¹³ It was undisputed that Beychok drew a salary from WBC and that WBC regularly supplied bread to LSU.¹¹⁴

Beychok appealed the decision, pointing out that if WBC had not stepped in, the advertising would have gone unsold, a point confirmed by the school's athletic director.¹¹⁵ While the court of appeals was sympathetic, it concluded the statute had been violated:

[E]ven though the Board of Supervisors had nothing to do with the awarding of the contract for advertising space on the end zone countdown clocks and had no direct jurisdiction or supervision thereof, this negotiated contract constituted a violation of LSA-R.S. 42:1111 C(2)(d). Even though the contracts with Beychok resulted in substantial benefit to LSU, which may not have been received had the contract not been entered into, and even though there was no undue influence or improper action on the part of Beychok, there was a violation of LSA-R.S. 42:1111 C(2)(d). We, therefore, affirm the Commission's finding of a violation.¹¹⁶

108. *Id.* at *4.

109. 484 So. 2d 912 (La. Ct. App.), *rev'd on other grounds*, 495 So. 2d 1278 (La. 1986).

110. *Id.* at 914.

111. *Id.* at 915.

112. *Id.* at 914.

113. *In re Beychok*, 484 So. 2d at 918.

114. *Id.* at 914.

115. *Id.* at 919-20.

116. *Id.* at 920-21.

C. Injuries

1. Players

Player suits generally arise because of the way that a scoreboard has been installed. In *Landau v. University High School*,¹¹⁷ for example, the plaintiff was knocked unconscious when he ran into a steel scoreboard pole while trying to catch a fly ball.¹¹⁸ Following the accident, he sued the Los Angeles Unified School District (“LAUSD”), alleging it had:

... (1) Failed to provide a safe playing field for invited users such as Plaintiff by placing the scoreboard and a cement walkway within the field in an unsafe location, creating a safety hazard of inadvertent contact with the scoreboard pole; (2) Failed to place some type of padding around the subject scoreboard poles; (3) Failed to fence off the subject scoreboard poles; (4) Failed to relocate the pole and scoreboard; (5) Violated SA/USA Standards; and (6) Failed to use a rubberized walk surface in lieu of the cement walkway.¹¹⁹

In response, the LAUSD asserted that Plaintiff “[1] assumed the risk of injury and has played on the field for more than 10 years; (2) No prior incidents had occurred; (3) Design immunity applied; (4) The plaintiff was negligent for not watching the scoreboard area while attempting to catch the ball.”¹²⁰ Nevertheless, it settled the case for \$840,000.¹²¹

Reported decisions are similar. In *Jopes v. Salt Lake County*,¹²² a golfer sued after he stumbled over a cement abutment in the clubhouse’s hallway.¹²³ Although normally visible, a temporary tournament scoreboard blocked out the light needed to see the abutment.¹²⁴ The trial court entered a directed verdict for the defendants, but the Utah Supreme Court reversed and remanded so that a jury could consider the relative negligence of the plaintiff and the tournament manager.¹²⁵

In *Coutermash v. City of Norwalk*,¹²⁶ another golfer sued after falling off the five-inch high slab she had climbed to reach the pro shop’s scoreboard.¹²⁷ The defendants moved for summary judgment, arguing the

117. No. SC063560 (Cal. Super. Ct., settled Sept. 24, 2002).

118. *\$840,000 Settlement in Suit Arising From Injury on Baseball Field*, 22 VERDICTS, SETTLEMENTS & TACTICS 503, 503 (2002).

119. *Id.*

120. *Id.*

121. *Id.*

122. 343 P.2d 728 (Utah 1959).

123. *Id.* at 729.

124. *Id.*

125. *Id.* at 731.

126. No. CV 94313492, 1995 Conn. Super. LEXIS 3276 (Conn. Super. Ct. Nov. 22, 1995).

127. *Id.* at *1.

plaintiff's suit was barred by the state's "Recreational Use" and "Defective Highway" statutes.¹²⁸ In denying the motion, the court found the former inapplicable and, given the circumstances, the latter raised a question of fact for the jury.¹²⁹

Lastly, in *Cabbage Patch Settlement House v. Wheatly*,¹³⁰ a participant in a charity basketball game broke two ribs and sustained a punctured lung when he ran into a galvanized steel pipe while chasing a loose ball out of bounds.¹³¹ According to the plaintiff, he had not seen the pipe because of a plywood scoreboard the defendants had erected.¹³²

Relying on a general release the plaintiff had signed prior to the tournament, the trial court granted summary judgment to the defendants, but the appeals court reversed.¹³³ The Kentucky Supreme Court, however, reinstated the trial court's decision.¹³⁴

The release absolved the defendants from "ordinary negligence"; thus, the plaintiff should have framed his complaint in "gross negligence."¹³⁵ After being non-suited, the plaintiff made the correct argument to the appeals court, which "concluded that a jury question was presented as to whether the placement of the scoreboard so as to obscure the pipe from view constituted willful or wanton negligence on the part of [the] event organizers."¹³⁶

The Kentucky Supreme Court was much less forgiving: it chided the Court of Appeals for "'review[ing] issues not raised in or decided by the trial court'"¹³⁷ and explained that "'[i]n view of the qualitative differences between negligence and recklessness, the former consisting of a failure to exercise ordinary care and the latter consisting of conscious indifference, we doubt that an allegation of simple negligence gives notice that recklessness is charged[.]'"¹³⁸

128. *Id.* at *2.

129. *Id.* at *2-*4.

130. 987 S.W.2d 784 (Ky. 1999).

131. *Id.* at 785.

132. *Id.*

133. *Id.* at 784.

134. 987 S.W.2d 784, 786.

135. *Id.* at 785-86.

136. *Id.* at 786.

137. *Id.* (quoting *Reg'l Jail Auth. v. Tackett*, 770 S.W.2d 225, 228 (Ky. 1989)).

138. *Cabbage Patch Settlement House*, 987 S.W.2d at 786 (quoting *Hoke v. Cullinan*, 914 S.W.2d 335, 339 (Ky. 1995)).

2. Spectators

Like player suits, spectator actions turn on ordinary tort principles. In *Miles v. Ozark Bowl, Inc.*,¹³⁹ a visitor to a just-opened bowling alley fell over a set of steps while examining a scoreboard showing league and individual bowler statistics.¹⁴⁰ A jury awarded her \$5,000, and the defendant bowling alley appealed.¹⁴¹

Due to the lobby's design, the steps down to the lanes began before the scoreboard ended; in other words, the steps were under the scoreboard.¹⁴² Because of this quirk, the appeals court reversed and remanded for a new trial, finding that the jury should have been instructed to consider whether the bowling alley knew or should have known that the steps were "of such a character that appellant should have reasonably anticipated them to be dangerous under the circumstances attending this case."¹⁴³

To the dissenter, the failure to so instruct the jury constituted harmless error because the liability of the bowling alley was clear:

It is conceded, or at least established by the evidence, that an unguarded protrusion of several feet by the scoreboard, extending several feet beyond a lower level, created a dangerous situation for one absorbed in studying such scoreboard, and unfamiliar with its position. Injury to such a person by stepping off of the level of the lobby was not only possible, but probable. Defendant had known of such dangerous condition created by the extension of such scoreboard beyond the level of the lobby, from the very time of the construction of such scoreboard. In this case, the jury was required to find that defendant was thereby negligent.¹⁴⁴

In *Wallace v. Boca Raton Properties, Inc.*,¹⁴⁵ the question of knowledge was of even greater concern. While attending a golf tournament at a hotel, a sports writer for a local newspaper was injured when a temporary scoreboard was blown down by the wind.¹⁴⁶ The trial court entered summary judgment for the defendant, and the plaintiff appealed.¹⁴⁷

The defendant argued the judgment should be sustained because the plaintiff, being an experienced golf reporter, knew that tournament

139. 250 S.W.2d 849 (Mo. Ct. App. 1952).

140. *Id.* at 851.

141. *Id.* at 850.

142. *Id.* at 851.

143. *Miles*, 250 S.W.2d at 856.

144. *Id.* at 858 (Blair, J., dissenting).

145. 99 So. 2d 637 (Fla. Dist. Ct. App. 1958).

146. *Id.* at 638-39.

147. *Id.* at 639.

scoreboards sometimes succumbed to the elements.¹⁴⁸ Although admitting his general experience with scoreboards, the plaintiff contended this “could not establish that he should know that this scoreboard under these conditions would not be safe[.]”¹⁴⁹

After considering the foregoing, the appeals court decided that reversal was required so that a jury could give its opinion:

These opposing arguments on the facts, as well as the record on appeal, show that there were genuine issues of fact on the questions of negligence of the defendant and contributory negligence of the plaintiff. . . .

Therefore, we conclude that the court was in error in holding that no genuine issue as to any material fact existed and that the moving party was entitled to judgment as a matter of law.¹⁵⁰

3. Technicians

Scoreboard technicians injured in the course of their work normally are limited to workers’ compensation benefits.¹⁵¹ If their injuries were caused by a third party, however, plaintiffs pursue negligence actions against those persons or entities.¹⁵²

In *Braun v. Board of Education of Red Bud Community Unit School District #132*,¹⁵³ the injured “technician” was the 15-year-old freshman manager of the high school basketball team.¹⁵⁴ He was hurt after being ordered by his physical education teacher to post the names of those scheduled to play on the gym’s scoreboard.¹⁵⁵

Although a scaffold was available, the teacher instructed the plaintiff to use an aluminum extension ladder.¹⁵⁶ While doing so, the plaintiff, who

148. *Id.* at 640.

149. *Wallace*, 99 So. 2d at 640.

150. *Id.*

151. *Burrow v. Caldwell Treasure Valley Rodeo*, 931 P.2d 1193 (Idaho 1997) (welder injured while installing a scoreboard could recover only worker’s compensation benefits from his employer).

152. *See, e.g., McGlothlin v. Municipality of Anchorage*, 991 P.2d 1273 (Alaska 1999) (worker who injured his back while trying to load a 400-pound scoreboard into a van sued arena’s owner and operator); *Six Flags Over Georgia v. Kull*, 576 S.E.2d 880 (Ga. 2003) (worker shocked while changing a light bulb sued scoreboard owner); *Chumbley v. Dreis & Krump Mfg. Co.*, 521 N.W.2d 192 (Iowa Ct. App. 1993) (worker who severed his fingers while constructing a scoreboard sued manufacturer of press brake); *Santagate v. Town of Yorktown*, 641 N.Y.S.2d 339 (App. Div. 1996) (worker who fell while changing a light bulb sued scoreboard owner).

153. 502 N.E.2d 1076 (Ill. App. Ct. 1986).

154. *Id.* at 1078.

155. *Id.*

156. *Id.*

suffered from epilepsy, blacked out and fell to the ground.¹⁵⁷ A jury awarded \$470,000 (reduced to \$395,000 because of the plaintiff's comparative negligence) and ordered the school board to pay, but the court entered judgment in the board's favor.¹⁵⁸

On appeal, the trial judge's decision was affirmed because a scaffold had been "available" on the day of the accident.¹⁵⁹ The dissent, however, took issue with this characterization:

Evidence admitted at trial established that: (1) it was necessary to climb approximately 15 feet in order to install letters on the scoreboard; (2) the letters were individually installed on the scoreboard and were ordinarily carried up to the scoreboard in the pockets of the person installing them; (3) although the school possessed a portable scaffold with a platform and an upper rail, the scaffold was inconveniently located in a storage shed; and (4) plaintiff had a history of epilepsy of which the school district was aware. Since a jury properly could have found that the administrators of the school knew or should have known of the possible danger of installing individual letters on a lofty scoreboard while on a ladder, the jury properly could have found that the school board was guilty of a breach of its duty of ordinary care by failing to direct that the scaffold be placed in an accessible location. This is particularly true in view of plaintiff's known history of epilepsy.¹⁶⁰

4. Scoreboards

Finally, there are instances in which a scoreboard has been the recipient—rather than the cause—of injuries. In June 1997, for example, the cruise ship M/Y SPIRIT OF NEW YORK was approaching its berth in New York Harbor when its engine suddenly gave out, causing the vessel to first slam into a scoreboard at an adjacent roller rink and then plow into a building.¹⁶¹ The owner of the scoreboard sued the owner of the vessel, who promptly settled the matter by paying to have the scoreboard fixed.¹⁶²

More recently, in *People v. Feagin*,¹⁶³ the defendant was given a 10-

157. *Braun*, 502 N.E.2d at 1078.

158. *Id.*

159. *Id.* at 1080.

160. *Id.* at 1081-82 (Kasserman, J., dissenting).

161. *Cruise Ship Rams Sports Pier; 8 Are Hurt*, N.Y. TIMES, June 28, 1997, § 1, at 25.

162. Telephone Interview with John G. Ingram, Esq., Partner, Healy & Baillie, LLP, attorneys for SPIRIT OF NEW YORK (May 15, 2003). A settlement also was later reached regarding the building. Telephone Interview with Cornelius A. Mahoney, Esq., Partner, Mahoney & Keane, LLP, attorneys for Basketball City, Inc. (May 14, 2003). In February 2000, a federal court determined the ship's crew, rather than any problem with the engine, was to blame for the accident. *Basketball City, Inc. v. Yacht Spirit of New York*, No. 97 Civ. 7996 (RPP), 2000 WL 194842 (S.D.N.Y. Feb. 18, 2000).

163. No. B159828, 2003 Cal. App. Unpub. LEXIS 5057 (Cal. Ct. App. May 22, 2003), *rvw denied* (Cal. Sup. Ct. July 30, 2003).

year prison sentence after he intentionally destroyed a city gymnasium scoreboard during a basketball game. Although the scoreboard was worth only between \$1,200 and \$1,500, the harsh sentence was upheld on appeal because the defendant was an active gang member with a prior criminal record.¹⁶⁴

IV. CONCLUSION

Even with all that has been said in this article, there is one more scoreboard tale that should be told. In 1964, the University of Maryland Terps football team featured a Chilean place kicker named Bernardo Bramson, who was better known as the "Human Scoreboard."¹⁶⁵ Bramson earned his unusual moniker because he began the season wearing a zero, but received a new jersey after each game reflecting his updated point total.¹⁶⁶ By the end of the year, his number was 44.¹⁶⁷

164. *Id.* at *1.

165. *Coach Hugh Wyatt's Football Coaching*, at <http://www.coachwyatt.com/nov01.html> (last visited May 8, 2003).

166. *Id.*

167. *Id.*