The National Football League and Its "Culture of Intoxication:" A Negligent Marketing Analysis of *Verni v. Lanzaro*

RICHARD M. SOUTHALL
The University of Memphis

&

LINDA A. SHARP
The University of Northern Colorado

A frequent autumnal experience across the United States is attendance at National Football League (NFL) games. Fans' NFL game-day experiences include not only cheering on one's favorite team, but also often being immersed in a "culture of intoxication" prevalent at such contests. Whether it is ritualistic tailgating or consumption of numerous alcoholic beverages during the game itself, the inextricable ties between spectators and alcohol consumption are easily identified.

This article focuses on the relationship between the culture of intoxication condoned and fostered by the NFL, and the possibility of league and franchise liability when an inebriated patron injures an innocent bystander after a game. Using the *Verni v. Lanzaro* case, this article presents the legal theory of negligent marketing as a possible recourse against the NFL in such future circumstances.

In constructing a rationale for a negligent-marketing cause of action, the authors discuss the case and its procedural history. The next section contains an analysis of the evolution of the cause of action known as negligent marketing, emphasizing pertinent case law. The following section analyzes various elements of the NFL's alcohol culture, including tailgating; alcohol management at games; marketing, promoting and advertising the alcohol culture; and the social costs of excessive drinking. The article concludes with an application of the legal theory of negligent marketing to the facts of the NFL's engagement with alcohol and argues that this cause of action is a viable legal approach to foster social responsibility by the NFL.

PART I: INTRODUCTION

On October 24, 1999 the parking lots at Giants Stadium, which opened four hours before kickoff, witnessed a Sunday game-day ritual played out at professional football stadiums across the United States, ". . .pre-game and post-game tailgate parties at which persons consume alcoholic beverages" (Sixth amended complaint, *Verni v. Lanzaro*, 2003, pg. 7). As the afternoon turned to early evening, the New York Giants had easily beaten the New Orleans Saints 31 -3, to run their record to 4-3 on the season (NFL 1999 Season Archives, n.d.). Celebratory Giants fans, among them 30-year-old Daniel R. Lanzaro of Cresskill, New Jersey, poured out of Giants Stadium to begin their journey home or to continue their celebrations at one of the local bars, such as Shakers or The Gallery, in the borough of Hasbrouck Heights in Bergen County (Sixth amended complaint).

Returning home from a family outing to pick up pumpkins for Halloween, Ronald Verni, accompanied by his wife Fazila and their two-year-old daughter Antonia, passed through Hasbrouck Heights, about five minutes from Giants Stadium, via Terrace Avenue (Crusade against DWI, 2002; Cable News Network, 2003). After purchasing and consuming at least 14 beers and an undisclosed amount of marijuana (Sixth amended complaint, 2003) while participating in pre-game tailgating and viewing the day's game at Giants Stadium, Lanzaro lost control of his 1994 Ford pickup, hit one vehicle and then collided, head-on, with the Verni family's 1999 Toyota (Coffey, 2005).

The results of the accident were horrific. Antonia, who was resuscitated by Hasbrouck Heights EMTs (emergency medical technicians), suffered a broken neck and spent the next 11 months in the hospital and in rehabilitation. The accident left the child ". . .a quadriplegic in need of round-the-clock care.[1] Her mother went into a coma, needed reconstructive surgery on her face and had a rod inserted into her leg" (Coffey, 2005, para. 6). Antonia's father, Ronald, was unhurt.

According to a newspaper report Hasbrouck Heights police officer Corey Lange found Lanzaro and a passenger sitting on the curb near the accident site. Both Lanzaro and the passenger had trouble standing up. When asked how much he had been drinking Lanzaro replied, "Too much" (Gaudiano, 2002, para. 2). A security guard at the hospital reported finding a marijuana "joint" in Lanzaro's pocket (Gaudiano). Lange later said that Lanzaro admitted to

1. It should be noted that Antonia Verni (age 2) was wearing a seatbelt, but was not in a car seat at the time of the accident (Dvorchak, 2005).

drinking before and during the game, and to also smoking some "pot" (Gaudiano). According to police, Lanzaro's blood alcohol level was ". . .0.266, 2 ½ times the legal limit of 0.10" (Gaudiano, para. 2). In August 2003, Lanzaro pled guilty to vehicular assault and was sentenced to five years in Riverfront State Prison (Coffey, 2005).

In all likelihood, this tragic occurrence would have remained just another tragedy in just another newspaper, on just another weekend, and would have soon been forgotten by the general public if the Vernis had simply chosen to sue Mr. Lanzaro. However, the Vernis chose to include several other parties in their complaint, including the New Jersey Sports and Exposition Authority, the New York Giants, Giants Stadium, Aramark, two local bars [Shakers, The Gallery], the National Football League (NFL), and NFL commissioner Paul Tagliabue (Sixth amended complaint, *Verni v. Lanzaro*, 2003, p. 1)[2]. Suddenly, this tragic accident became much more than an isolated incident. It evolved into a lawsuit with major implications for arena/stadium concessions management policies and procedures.

PART II: PROCEDURAL HISTORY OF *VERNI V. LANZARO*

Daniel Lanzaro and several other defendants, including the NFL, the New York Giants, and Aramark were named in the Vernis' complaint. In regard to defendants Aramark and Lanzaro, on January 20, 2005, a jury verdict was rendered against these defendants in the amount of $135 million in damages - $60 million in compensatory damages split between Lanzaro and Aramark and $75 million in punitive damages against Aramark (*Verni v. Lanzaro and Stevens*, 2005).[3] The punitive damages award was assessed based on the jury's belief that Aramark had sold beer at Giants' Stadium to a visibly drunken Lanzaro (Gottlieb, 2005).

The New York Giants and the NFL settled out of court for a reported $700,000 (Dvorchak, 2005). However, certain elements of the court's order and opinion on the Giants' and the NFL's motion to dismiss are relevant to a discussion regarding the efficacy of a future negligent marketing cause of action against the team and/or the league. As Rosemarie Arnold, one of the Vernis' attorneys, noted, ". . .I cannot discuss the merits of this case, nor can I speculate on why the NFL chose to settle, but the judge's opinions denying

2. Since Lanzaro's insurance policy had a $200,000.00 liability limit, the list of defendants was consistent with a complaint based on allegations that the Giants' and the NFL's had the authority and ability to exercise control over Aramark as the concessionaire at Giants Stadium.

3. In New Jersey, jury verdicts are not published. The jury verdict was announced on January 20, 2005. The verdict is currently under appeal (Gottlieb, 2005).

several of the NFL's motions make for interesting reading" (Personal communication, September 13, 2004).

The plaintiffs' complaints contained elements of negligent marketing theory in portraying the atmosphere at Giants Stadium as one in which drunken patrons are largely ignored and where such behavior is actively promoted by the team and the league. Arnold contended the league and the team encouraged excessive alcohol consumption at games. "What they do is promote the concept that people can't have fun at a football game unless you're drunk" ("Parents Suit. . .," 2003, para. 9). In Counts 18 and 19 of the complaint the Vernis claimed the NFL, as ". . .'franchisors' of thirty two professional football teams. . . targeted as fans certain persons that the NFL Defendants knew, or should know, are likely to consume excessive amounts of alcohol while attending NFL football games, and then operate motor vehicles" (Sixth amended complaint, 2003, p. 22). The Vernis alleged the Giants and the NFL knew the risks associated with the behavior they promoted by adopting rules governing the sale of alcoholic beverages in the stadium and specifically barring the sale of beer after the third quarter of a game (Opinion, *Verni v. Lanzaro*). The plaintiffs also pointed out the NFL's close involvement with security procedures in Giants Stadium's parking lots (Opinion).

The Vernis never claimed the NFL actually provided or served alcohol to Lanzaro; they alleged the NFL and the Giants had the authority to control the actions of others (including concessionaires) in the marketing and distribution of alcohol at Giants Stadium. In encouraging and promoting such behavior, and then failing to adequately enforce their own regulations designed to control the results, the plaintiffs alleged the Giants and the NFL recklessly disregarded the safety of the plaintiffs and that these reckless actions caused injuries to the plaintiffs (Opinion).

In dismissing the NFL's motion, the court found the NFL had a duty to the Vernis to exercise reasonable care in regulating the sale and the consumption of alcoholic beverages at Giants Stadium (Opinion, *Verni v. Lanzaro*). In addition, the court contended the NFL could foresee that fans at Giants' games might consume excessive amounts of alcohol at tailgate parties (both in the stadium and in the parking lots), and then get into their cars and drive (Opinion). The court finally noted that it was foreseeable that as a result of such alcohol abuse by fans, a person, such as Antonia Verni, could be injured (Opinion).

While the Verni court noted that, in general, ". . .when a person engages another to perform a contract, the person retaining the contractor is not liable for the negligent actions of the contractor" (Opinion, p. 16), it cited *Mavrikidis v. Petullo*, (1998), in which certain exceptions to this principle were outlined:

"(a) where the principal retains control of the manner and means of the work; (b) where the principal engages an incompetent contractor; or (c) where the activity contracted for constitutes a nuisance *per se*" (*Mavrikidis v. Petullo*, p. 5).

Based on the NFL's involvement in league-wide alcohol policies and stadium parking-lot security, the court, the court found merit in the Vernis' allegations that the NFL had "negligently failed to exercise their authority to control the consumption of alcohol and the use of illicit drugs at Giants Stadium and in the stadium parking lots" (Opinion, 2004, p. 18).

Interestingly, the cited public nuisance case (*James v. Arms Technology, Inc.*, 2003) was one in which the City of Newark, New Jersey sued 28 gun manufacturers for negligent distribution, one element of many negligent marketing lawsuits. In affirming the city's public nuisance claim, the *James* court found gun manufacturers "knew or should have known that by distributing firearms without adequate supervision and regulation they were creating, maintaining, or supplying the unlawful market in firearms" (*James*, p. 10). The court found such actions resulted in increased crime, injury, and death, in Newark and therefore the gun manufacturers' actions were a public nuisance.

As can be seen in the preceding section, the plaintiffs utilized elements of negligent marketing in at least two of their claims against the NFL and the Giants. Since the NFL defendants settled out of court before the case went to trial it will never be known what decision a jury would have rendered on the Vernis' allegations. However, it should not be forgotten that NFL Commissioner, Paul Tagliabue (a named defendant), has a law degree from New York University and spent 20 years as Pete Rozelle's (Tagliabue's predecessor as NFL Commissioner) legal adviser (Greenfeld, 2006). Just like Rosemarie Arnold, Tagliabue may have found the judge's opinion to be "interesting reading." The NFL's $750,000.00 settlement turned out to be a bargain and forestalled any possible negligent marketing lawsuit.

PART III: THEORY OF NEGLIGENT MARKETING

The remainder of this article discusses a negligent marketing cause of action and the viability of its future application to the NFL. If future courts agree with the *Verni* court's opinions that suggest merit to future claims the NFL and the Giants have the authority and ability to exercise control over all facets of an NFL game, this would allow possible inclusion of the NFL and individual franchises as defendants in future lawsuits claiming negligence in

the marketing of NFL games or game-day concession management at NFL stadiums (Opinion, *Verni v. Lanzaro*, 2004).

In New York such inclusion would be consistent with state common law. Ordinarily there is no duty to control the conduct of third persons to prevent them from causing injury to others. However, as outlined in *Purdy v. Public Admin.* (1988), liability for the negligent acts of third parties generally arises when the defendant has authority to control the actions of a third party:

> There exist special circumstances in which there is sufficient authority and ability to control the conduct of third persons that we have identified a duty to do so. Thus, we have imposed a duty to control the conduct of others where there is a special relationship: a relationship between defendant and a third person whose actions expose plaintiff to harm such as would require the defendant to attempt to control the third person's conduct; or a relationship between the defendant and plaintiff requiring defendant to protect the plaintiff from the conduct of others (p. 8).

The Verni court's opinion, consistent with a *Purdy* analysis, stated, "There is a relationship between the NFL and the Giants under which the NFL retains control over the manner and means by which the Giants operate the franchise" (Opinion, *Verni v. Lanzaro*, 2004, p. 17). The Verni court left unresolved the extent to which the NFL retained control over Aramark in its performance of its concession operations, finding that ". . .dismissal of the claim on the pleadings would be inappropriate" (Opinion, p. 17).

As is the case with many elements of the law, there are competing views about the role and function of tort law in our society. The proposed tort of negligent marketing is a case in point. One view is that tort law is often used inappropriately to attack industries, such as the tobacco industry or gun manufacturers, in order to accomplish regulatory ends that should be the prerogative of legislatures (Phillips, 2000). The opposite point of view is that tort law may be properly used to "assign responsibility and create appropriate incentives for safety when there is protracted legislative inaction in response to a continuing serious personal injury toll" (Rabin, 1999, p. 436).

In characterizing this latter, more expansive view of tort law, Rabin (1999) discussed the concept of the *enabling tort*. In Rabin's view, the enabling tort concept signified that negligence theory was moving toward a broader notion of proximate cause, opening the door more widely to liability even if an injury actually resulted from the intervening acts of a third party. The "erosion of the proximate cause limitation for intervening acts can be regarded as a temporal shift in moral sensibilities from a more individualistic era to one in which tort

law. . .increasingly reflects more expansive notions of responsibility for the conduct of others" (Rabin, pp. 441-442). This "wider lens of risk facilitation" (Rabin, p. 439) allows courts to assign responsibility to address not just the aberrant acts of an individual actor but "to force an industry - through the medium of tort liability - to live up to its social responsibilities" (Rabin, p. 436).

The tort of *negligent entrustment* is indicative of this notion of expansiveness. Negligent entrustment allows an injured third party to recover from the party who "entrusts" goods to a user, if the user injured the third party through inexperience or incompetence in using the goods (American Law Institute, 2000). For example, the negligent entrustment theory has been used against sellers of gunpowder, fireworks, air-guns, rifles, and automobiles when these goods have been "entrusted" to immature or incompetent individuals who then injured third parties (Howard, 1988).

Dram shop liability is another example of the enabling tort typology that targets the commercial sellers of alcohol if they have either served alcohol to a visibly intoxicated individual or to a minor (Howard, 1988). Dram shop legislation abolished the common law concept that a party injured because of alcohol-related behavior could look no farther than the inebriated perpetrator since the injury was directly caused only by the acts of the inebriate (Howard). The expansiveness of dram shop liability is a societal response forcing those who sell alcohol to take more responsibility for their business conduct.

Howard's (1988) article, which foreshadowed Rabin's discussion of the enabling tort, discussed what he perceived to be the essence of the tort of *negligent commercial transactions*. This tort arises:

> when (1) a merchant negligently sells or leases a product (2) to a youthful, incompetent, or inexperienced user (3) who the merchant knows or should know is incompetent or inexperienced in the product's use, and (4) the sold or leased product proximately causes injury to the customer's innocent employees or other third persons" (Howard, pp. 755-756).

In Howard's view an expansive interpretation of the negligent entrustment doctrine is illustrative of the negligent commercial transaction, since there may be recovery absent any product defect and absent any violation of a statutory duty in the transaction.

More recently, whether characterized as an enabling tort, or as a negligent commercial transaction, the theory of negligent marketing reflects a "wider lens of risk facilitation" (Rabin, 1999, p. 439) that holds industries more broadly accountable to consumers. Negligent marketing made its first

appearances in cases in the mid-1980s. "The principle of negligent marketing assumes that product sellers should not engage in marketing strategies that increase the risk that the products will be purchased by unsuitable users-persons who are more likely than ordinary consumers to injure either themselves or others" (Ausness, 2002, p. 908).

Ausness (2002) outlined three types of negligent marketing claims: a) those predicated upon the assertion that some design feature in the product enhances its attractiveness to an unsuitable population, usually criminals; b) claims based upon the advertising and promotional efforts of sellers who target vulnerable or dangerous consumers; and c) claims based on sellers' alleged inadequate supervision of retail sellers, i.e., negligent distribution practices. It is the latter two aspects that are the focus of possible negligent marketing claims against the NFL and the New York Giants.

Early Negligent Marketing Cases

The genesis of the negligent marketing concept is best explored by looking at a few decisions against gun manufacturers. Even though several of these claims failed, these cases are presented to provide an understanding of the theory of negligence marketing. While the specific term "negligent marketing" has not always been utilized by the courts in discussions involving the marketing, sale and distribution of firearms, the expansive term, as defined in the previous paragraph, applies to marketing, sales and distribution activities in the various cases discussed.

One of the earliest cases involving a plaintiff's allegation of negligent distribution of a firearm was *Linton v. Smith & Wesson* (1984), in which the plaintiff was shot in a tavern brawl and argued that the defendant gun manufacturer had "a duty to use reasonable means to prevent the sale of its handguns to persons who are likely to cause harm to the public" (p. 678). Noting that, "No Illinois decision has imposed a duty upon the manufacturer of a non-defective firearm to control the distribution of that product to the general public. . ." (*Linton,* pp. 678-679), the Illinois appeals court found that there was no duty of care by the gun manufacturer in controlling the distribution of its products for retail sale. While the court determined that the defendant owed no duty to the plaintiff based upon plaintiff's claim of negligent distribution, the concept of negligent marketing or distribution has been utilized in succeeding cases in an attempt to have courts revisit the issue of negligence in the marketing, sale, and distribution of firearms.

An illustrative case (*Riordan v. International Armament Corp.*, 1985), in which plaintiff's allegations of negligent marketing were raised, reflects

appellate courts' rationale for overturning jury verdicts based upon the judgment that manufacturers lack a duty to the plaintiffs. In that case, several shooting victims claimed the defendant manufacturers and distributors of "Saturday Night Specials" had a duty to oversee the retailers of the guns so that the guns would not fall into the hands of users who posed a danger to the general public. The Illinois appeals court disagreed with the plaintiffs as it referred to *Linton v. Smith & Wesson* (1984) and held that there was no duty of care.

Throughout the 1980s and most of the 1990s, additional negligent marketing cases brought against gun or ammunition manufacturers were unsuccessful due to the courts' unanimity in finding that manufacturers who had no special relationship with a plaintiff victim had no duty to those plaintiffs to refrain from placing legal products into the stream of commerce.

In *McCarthy v. Sturm, Ruger & Co.* (1996), victims of a shooting spree on the Long Island Railroad sued Olin Corporation, the manufacturer of "Black Talon" hollow-point bullets used by the shooter. Hollow-point bullets are designed to enhance the ammunition's deadliness. The plaintiffs argued that because of Black Talon bullets' deadliness this product should not have been marketed to the general public, but only to law enforcement agencies. However, the United States Court of Appeals for the Second Circuit held that the manufacturer had no duty even if it was foreseeable that misuse by criminals could occur (*McCarthy v. Olin Corp.*, 1997, p. 7). In interpreting New York law, the court noted that foreseeability only defined the scope of an existing duty; it cannot be the foundation of the duty (*McCarthy v. Olin Corp.*, p. 6). Therefore, the court affirmed the district court's dismissal of the claims against Olin Corporation (*McCarthy*, p. 1).

However, the *McCarthy v. Olin* (1997) case is noteworthy to legal scholars investigating possible causes of action in other industries or cases with different sets of fact, because of Judge Guido Calabresi's well-articulated dissent in which he discussed the elements of a traditional negligence claim and applied them to the case. If such a connection can be made between the NFL, the Giants and Aramark, and between the actions of a *tortfeasor* (Lanzaro), the elements of authority and control articulated in *Majestic Realty Associates, Inc. v. Toti Contracting Co.* (1959), *Mavrikidis v. Petullo* (1998), and *Purdy v. Pub. Admin.* (1988) are applicable and the likelihood of the NFL and an individual franchise being found liable for the actions of fans cultivated by the NFL and its corporate sponsors and advertisers is greatly increased.

In regard to the first element of negligence - duty - Judge Calabresi agreed with the majority that foreseeability of harm is not the sole basis of duty, but that considerations of public policy must also be entertained (*McCarthy v.*

Olin, 1997). To this point, Calabresi noted that courts had long held manufacturers responsible for protecting others against the risk of their products:

> New York law recognizes that a defendant can be held liable for negligently marketing a product. . . .And there is no reason why that principle should not allow recovery against a manufacturer who introduces a harmful product into general circulation, where the social utility of marketing that product to the public is outweighed by its social utility (*McCarthy,* p.162).

Calabresi noted that marketing Black Talon ammunition to the general public could be a breach of duty when one looked at the value of the product to the community versus the immense destructive force of the ammunition. He said selling Black Talon ammunition to the general public was analogous to other unreasonable behaviors by manufacturers, such as "selling fireworks to children or supplying liquor to intoxicated adults" (*McCarthy,* 1997, p.163). Calabresi found the requisite causation in fact and proximate cause in Black Talon sales (*McCarthy*, 1997). The shooter's criminal conduct should not be treated as an unforeseeable superseding cause since the likelihood of such criminal activity was the very risk that made the manufacturer's conduct unreasonable. Accordingly, he believed that the gun industry needed to be held accountable for this relationship to criminal conduct.

Calabresi's analysis, which focused on industry accountability and called for widening the parameters of proximate causation, is indicative of what Rabin (1999) characterized as the enabling tort. The fundamental premise of holding an industry accountable for the reasonably likely and intended effects of its product(s) on society is the crux of the theory of negligent marketing and was the basis for the jury award in *Hamilton v. Accu-Tek* (1999), which was the first case in which a jury awarded damages against twenty-five gun manufacturers.

In *Hamilton v. Accu-Tek* (1999), the relatives of six people killed by handguns, and one injured survivor of a shooting incident, sued the gun manufacturers alleging they oversupplied states that had "weak" gun laws and some of those guns found their way to states with stricter gun laws through an underground market. Essentially, the plaintiffs argued the defendants' "indiscriminate marketing and distribution practices generated an underground market in the handguns providing youths and violent criminals like the shooters in these cases with easy access to the instruments they have used with lethal effect" (*Hamilton*, p. 808). District Court Judge Jack Weinstein found that there should be a duty of care extending to bystanders in the case of the

marketing and distributing of non-defective products since "changing dangers and relationships in the real world create the need for the law continually to redefine the parameters of duty" (*Hamilton*, p.824). The jury found fifteen of the twenty-five manufacturers, including Berreta U.S.A. Corp. negligent (*Hamilton*).

On appeal, the Second Circuit Court of Appeals rejected the plaintiffs' arguments that a duty existed, ". . .vacated the judgment of the district court and remanded the case with instructions to it to enter judgment dismissing plaintiffs' complaint" (*Hamilton v. Berreta U.S.A. Corp.*, 2001, p. 2). The court was reluctant to find a "general duty to society" and stated that a specific duty must be owed to a plaintiff. The court also found it untenable to hold a manufacturer responsible for the conduct of a third-party (a criminal) over whom the manufacturer had no control (*Hamilton*, 2001).

The *Hamilton v. Accutek* (1999) district court decision remains significant because it is the first case in which a jury found liability on the basis of a plaintiff's claim of negligent marketing: "The first four causes of action seek to hold defendants liable for negligence on the theory that defendants all market handguns in a manner that fostered the growth of a substantial underground market in handguns" (p. 9). In addition, it is important to note the Court of Appeals decision to vacate and remand was predicated on ". . .the evidence presented here," which ". . .did not place the defendants in the best position to protect against the risk of harm, 'given the. . .' 'remote' connection between defendants" (*Hamilton v. Berreta*, 2001, p. 6). The court did not preclude that "such a duty of care might arise in certain [other] instances" (*Hamilton*, p. 7) where a special relationship between defendants and the immediate tortfeasor exists. Since the NFL and the New York Giants reached a pre-trial settlement with the Vernis, the extent to which the NFL and the New York Giants have such a special relationship with Aramark, and exercise control over Aramark's actions, or those of a subsequent tortfeasor (Lanzaro) has not been determined.

Merrill v. Navegar, Inc. and California Law

Since California is often viewed by legal scholars as being in the "vanguard" of developing legal theory, it is important to look at how California courts have assessed this particular cause of action. In 1999, the California Court of Appeals recognized a negligent marketing claim in *Merrill v. Navegar, Inc.* Eight people were killed, and six others wounded, before Gian Ferri killed himself. Ferri used semi-automatic weapons to commit these crimes and the suit was brought against the manufacturers of these semiautomatic weapons. Although Ferri purchased the guns legally, he

transported them to California, where they were not legal. The plaintiffs argued that the manufacturers were negligent both in the way that these weapons were designed and in the manner they were marketed. The weapons were designed to accept fifty-round magazines and they had "barrel shrouds" which allowed the user to spray fire. The trigger system also allowed a faster firing rate than other semiautomatic weapons. Therefore, the modified weapon was not suitable for "legitimate" uses such as hunting, sport shooting or self-defense. Further, the weapons were advertised in magazines that catered to militarists and survivalists.

The trial court granted the defendant's motion for summary judgment and the intermediate court of appeals reversed (*Merrill v. Navegar*, 1999). Although in 2001 the California Supreme Court eventually agreed with the trial court that there was no duty, the California high court did not treat the case as one based on negligent marketing; it treated the case as one based on products liability. In California, products liability actions against gun manufacturers were barred by the then-existing statute (California Civil Code §1714.4).

However, the Court of Appeals used the seminal California case of *Rowland v. Christian* (1968) to ascertain whether a duty should exist under negligence theory. According to the court, the major factors to be analyzed are: 1) the foreseeability of harm to the plaintiff; 2) the degree of certainty that the plaintiff suffered injury; 3) the closeness of the connection between the defendant's conduct and the injury suffered; 4) the moral blame attached to the defendant's conduct; 5) the policy of preventing future harm; 6) the extent of the burden to the defendant; the consequences to the community of imposing a duty to exercise case with resulting liability for breach; and 7) the availability, cost and prevalence of insurance for the risk involved (*Merrill v. Navegar*, 1999 p.518).

In addressing the *Rowland* factors, the appellate court noted first that the injuries were foreseeable (*Merrill v. Navegar*, 1999). The criminal use of these weapons was foreseeable because data regarding these weapons showed that the characteristics of these weapons made them the "weapon of choice" of certain criminal types (*Merrill*, p.528). Not only did the weapon have a high "criminal" use but there was no "conventional" use by the general public. The court then focused on three other *Rowland* factors: (a) morally blameworthy conduct, (b) policy of preventing future harm, and (c) the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach (*Merrill v. Navegar*).

First, in regard to morally blameworthiness, the court stated that the evidence showed the weapon was target-marketed to "violent persons likely to

use it for a criminal purpose" (*Merrill v. Navegar*, 1999, p. 532) illustrating a moral indifference to the consequences. Second, noting the high social cost incurred by injuries and deaths due to firearms, and based on the tangible and intangible costs of gun violence, the court recognized a strong need for policies to prevent such occurrences (*Merrill v. Navegar*). Finally, the court noted that since the making of this weapon had little or no social utility, it is appropriate to impose liability (*Merrill*). The court concluded that the gun manufacturer had a duty of care and that this duty is one to "use due care to minimize risks which *exceed* those necessarily presented by such commercial activities. . ." (*Merrill*, p. 524). It is a breach of the duty of care to increase the risk beyond that "inherent in the presence of firearms in our society" (p. 524).

The use of the *Rowland* factors by the California Court of Appeals in the *Merrill* decision displayed a concern for social responsibility, a cornerstone of the "enabling torts" concept. Weighing the social utility of an industry's actions against the social costs of the consequences of those actions is fundamental to making a case based on negligent marketing.

Thereafter in 2003, the Ninth Circuit, applying California law, held that plaintiffs could bring a negligent marketing cause of action against gun manufacturers and distributors in the case of *Ileto v. Glock, Inc.* (2003). In *Ileto,* some children were wounded and a postal worker was killed at a Jewish Community Center. Under federal law, the shooter, a former felon and psychiatric patient, was forbidden from purchasing a gun. However, the shooter obtained the gun at a gun show from a "gun collector," bypassing the need for a background check.

The plaintiffs alleged that the defendants "knowingly participate in and facilitate the secondary market where persons who are illegal purchasers and have injurious intent obtain their firearms" (*Ileto v. Glock*, 2003, p.1197). The plaintiffs also alleged the defendant manufacturers and distributors "select and develop distribution channels they know regularly provide guns to criminals and underage end users" (*Ileto*, 2003, p. 1197).

The district court dismissed the claims of negligence and public nuisance against the defendants. Noting ". . .the plaintiffs have stated a cognizable claim under California tort law for negligence and public nuisance against the manufacturers and distributor of the guns used in the shootings" (*Ileto v. Glock*, 2003, p. 1195), the Ninth Circuit reversed the district court's decision, and remanded for further proceedings regarding the negligence and public nuisance claims.

The Ninth Circuit opined that it did not believe the California Supreme Court had foreclosed negligent marketing claims, because the *Merrill v. Navegar* (1999) holding was predicated upon the belief the plaintiffs' case was

based upon product liability (*Ileto v. Glock*, 2003, p. 1205). Therefore, using in part the factors found in *Rowland v. Christian* (1968) to assess duty, the court held that the plaintiffs sufficiently alleged that there was reasonable foreseeability between the defendant's negligent behavior and the harm suffered (*Ileto*, 2003, p. 1205). The court allowed the negligent marketing claims to go forward based on the reasoning that "it is reasonably foreseeable that this negligent behavior and distribution strategy will result in guns getting into the hands of people like Furrow [the shooter] who are forbidden by federal and state law from purchasing a weapon" (*Ileto*, p. 1205). After previously having been remanded (2003), the Ninth Circuit denied the petition for rehearing as well as the petition for rehearing en banc (*Ileto*, 2004).

PART IV: THE NFL'S ALCOHOL CULTURE

The Vernis are not the first individuals to contend that an alcohol culture exists at NFL stadiums. However, this case was the first time the NFL had been subjected to such claims in a negligence lawsuit. Efforts to substantiate or disprove these allegations must involve scrutinizing the "NFL experience" of today's professional football fan.

Such an analysis might begin with asking, "When can an NFL fan, intent on drinking at a game, begin consuming alcohol at an NFL stadium?" Most NFL stadium parking lots open a minimum of four hours before kickoff, with several, including Giants Stadium, opening even earlier (Personal communication, David Freeman, April 12, 2005). According to www.tailgating.com (a website devoted to tailgating at sports events), the New York Giants open their lots at 9:00 a.m. on game days (River of Dreams, 2005a). Teams' parking lots open early so fans can start tailgating early. An unscientific survey of "3000 tailgaters across America" revealed that 51% of respondents began tailgating between 3-4 hours prior to the start of the contest and that 39% actually began setting up more than 5 hours before the game (River of Dreams, 2005b). In addition, 41% of surveyed tailgaters reportedly spent over $500 annually on tailgating (River of Dreams).

For many fans consumption of alcohol is an integral part of their game-day experience. Alcohol consumption is often mentioned as one reason the NFL is such a popular spectator sport. A recent internet *blog* exemplifies this contention:

> I am understanding [sic] more and more why the NFL is so popular in the USA. Everything about the gameday [sic] experience is grandiose: day-long tailgates, mass alcohol consumption, big stadiums, thousands of people, gun salutes after every home score, big hits, GNR and

> AC/DC during stoppages in play, and twins. Credit the NFL marketing geniuses for fostering the culture of a larger-than-life game experience. It has paid off in a major way for both the league and its fans, including this one (Reemer.com, 2004).

This blogger's description of the marketing, promotion, and staging of NFL games was visually represented in the 2003-2004 Coors Light commercial in which "Kid Rock" – a rock-music performer noted for his hard-drinking and partying behavior – purchased beer for everyone in his section from a Coors Light vendor (a violation of policy in all NFL stadiums).

Tailgating is a "social" setting that encourages additional consumption of a primary tangible sporting-event product – alcohol (Jensen, 2003; Steinbach, 2004). Tailgating sets the stage for a stadium's party atmosphere as newly-arriving fans pass through the tailgating lots. But alcohol consumption opportunities are not limited to the pre-game tailgating parking lots. As fans transition into the stadium itself, the availability of roving alcohol vendors, in-seat service, and easily accessible concession locations allows fans to imbibe at will. One consequence of the ease with which patrons can purchase alcoholic drinks at numerous locations throughout a venue, is the decreased likelihood of a single vendor repeatedly selling alcohol to the same fan (and consequently tracking that fan's alcohol consumption) during the course of a game (Ammon, Southall, & Blair, 2004).

While critics who assert that the NFL is fostering an alcohol culture point to the above-described scenario as setting the stage for fans abusing alcohol and vendors being unlikely to identify such abuse, NFL and team officials, as well as some industry experts, contend that only a small percentage of fans who attend NFL games drink inappropriately (Coffey, 2005; Steinbach, 2004). Jill Pepper, Executive Director of TEAM (Techniques for Effective Alcohol Management) ". . .estimates that rarely do more than 100 people drink inappropriately (meaning they cause a reported alcohol-related incident) in a crowd as large as 80,000" (Steinbach). Tom Olson, a general manager for Sport Services, Inc., the concessionaire for Milwaukee's Miller Park, contends that coming to a ballpark to get drunk is deterred by high prices for beer at stadiums, "If you're coming to a ballpark to get drunk, you're coming to the wrong place. . .It ain't cheap coming here" (Steinbach). It should be noted that other experts have identified the high cost of alcohol inside sports stadiums and arenas as one factor resulting in binge drinking in tailgating lots (Jensen, 2003).

Even if there are few fans that drink inappropriately at NFL games, in an apparent effort to address such possible abuse, concession managers have traditionally enacted, or participated in, alcohol-management training

programs such as the Techniques for Effective Alcohol Management (TEAM) Coalition that provides education to assist vendors in identifying patron-impairment signs (Ammon, Southall, & Blair, 2004). According to Training for Intervention Procedures (TIPS), ". . .every server is trained to understand how to detect signs of intoxication, prevent the misuse of alcohol and intervene when someone has had too much to drink" (Health Communications, Inc., 2005).

However, a team or stadium's participation in alcohol management training does not necessarily translate into an "effective" alcohol management program. A 2003 *Inside Edition* investigation of four NFL stadiums found "stadium rules limiting alcohol sales being violated by vendors" and "[a]t each stadium. . .the alcohol policies were not being followed" King World Productions, 2003, para. 13-14). The investigation also revealed that 98% (n = 45) of police departments that have jurisdiction for roads:

> in and around NFL stadiums say they have not conducted sobriety checkpoints in conjunction with an NFL game. This despite that [sic] that 33 percent of the police agencies surveyed admitted they have a problem with football fans driving under the influence (King World Productions, para. 11).

While concession managers contend that few fans in attendance at NFL games drink inappropriately, research suggests that in addition to encouraging binge drinking, the general sports culture increases the incidence of drunken driving and public intoxication among fans (Jensen, 2003). Such a tradition was typified by Daniel Lanzaro's activities as a Giants fan on October 24, 1999. Lanzaro testified that he purchased and consumed at least 14 beers and an undisclosed amount of marijuana while participating in pre-game tailgating and watching the Giants' game (Sixth amended complaint, *Verni v. Lanzaro*, 2003).

Giants Vice-President, John Mara, adamantly rejected the characterization that the Giants fostered a culture of intoxication at their games. He commented, "When you have 80,000 people in a stadium are there going to be some people who get intoxicated? Yes. Does that mean we have a culture of intoxication? No" (Coffey, 2005, para 30). However, after the *Verni* case, the Giants did promise to scrutinize Aramark's policies and procedures "before another down of football is played at the Meadowlands" (Coffey, para. 26). Mara also contended that the New Jersey Sports and Exposition Authority (NJSEA) – which was part of the settlement and so was not analyzed in the case - ". . .'needs to do a better job' in training its security and office personnel about alcohol-related matters" (Coffey, para. 27). Mara stated that as of

January 29, 2005, "Giants Stadium has 'the most restrictive alcohol environment' in the NFL. . .It bans circulating beer vendors, and cuts off beer sales at the start of the third quarter" (Coffey, para. 29).

By his remarks, Mara seemed to suggest that restricting alcohol sales to insure public safety is a top priority of the Giants. His statements were a clear sign that the Giants recognized it was important to minimize the public and/or media outcry surrounding the *Verni* decision.

However, while the NFL, individual franchises, stadiums, and broadcast partners are all TEAM Coalition members, they are also all for-profit businesses - well aware of the correlation between beer and alcohol sales and their bottom lines. The business of professional sports is a complex situation, in which all parties involved strive to maximize available revenue streams including alcohol sales, while being members of an ". . .alliance of professional and collegiate sports, entertainment facilities, concessionaires, the beer industry, broadcasters, governmental traffic safety experts, and others working together to promote responsible drinking and positive fan behavior at sports and entertainment facilities" (TEAM Coalition, 2004). Professional sport is a business; a business ultimately concerned with filling stadiums, including parking lots, with consumers (fans). And, as any sport manager can attest, simply drafting new policies and procedures will most likely be ineffective if such policies fly in the face of marketing, promotions, and advertising campaigns designed to encourage mass consumption of a product and do not have the support of an entire organizational culture.

Marketing, Promoting and Advertising the Alcohol Culture

In order to fill their tailgating lots with tailgating consumers, NFL franchises, the NFL, and the "Big-Three" brewing companies (Anheuser-Busch Cos., Miller Brewing Co., and Coors Brewing Co.), all among the NFL's largest corporate accounts, undertake coordinated advertising, marketing, and promotional campaigns designed to sustain or increase annual beer sales (Kaplan, 2004). The NFL recognizes that its fan-base primarily consists of fans who do not attend an NFL game every week, but must instead "get by" watching a televised game. However, these viewers still want to be part of the NFL culture, and the brewing companies still want them to consume their products.

Beer companies target sports fans through sport-related advertising, marketing and promotional campaigns. The amount of money fans spend on tailgating supplies pales in comparison to the money spent by brewing companies on sport-advertising buys. For the first nine months in 2004

(January-September) the Big-Three U.S. beer companies spent $367,867,646.00 (approximately 74% of their total advertising budgets) on sports-ad buys ("Adding it up. . .," 2004). In 1999 alone, the Big-Three paid out $13.3 million in sponsorship agreements (Conrad, 1999). By 2004, in order to have Coors Light designated the "NFL's official beer," the Coors Brewing Company signed an exclusive five-year deal worth around $300 million dollars (Kaplan, 2004). In 2002, Anheuser-Busch, parent company of Budweiser, then the NFL's "official beer," aired more spots (10) than any other advertiser and secured from the NFL and/or Fox the right to be the sole recreational-drug sponsor during that year's Super Bowl (Hans, 2002).

If advertisers or sponsors do not find a correlation between ad placement or event-sponsorship and consumption of their products, they will cease such activities. That is self evident. The NFL and its brewing company partners recognize that such a correlation exists. The NFL delivers prospective consumers in large numbers, both in stadiums and on television, because it has tremendous leverage in garnering unprecedented broadcasting rights' fees and sponsorship packages with beer companies (Spectra Marketing. . ., 2005). Television networks also know that such a link exists; advertising revenue associated with NFL broadcasts attests to this.

For the last three Super Bowls for which data has been gathered (2002-2004), Anheuser-Busch has been the top advertiser with an average of 320 seconds of exposure per Super Bowl broadcast at an average cost of $2.23M per 30 second spot (Spectra Marketing. . ., 2005). It may or may not be a coincidence that with this amount of advertising directed at football fans, ". . .Super Bowl viewers ages 21+ are 23 percent more likely than the national average to have had a beer during the past month, [but] . . . only two percent of Super Bowl viewers 21+ consumed non-alcoholic beer during the past 30 days" (Spectra Marketing. . .). Beer commercials are part of the seamless, televised representation of the "sport-alcohol culture" as an integral part of football. All season long, the first commercial in almost any NFL television broadcast is a beer commercial, NFL teams' programs contain numerous alcohol ads, and any NFL stadium's on-site beer signage would make *Homer Simpson* feel right at home (Sharp & Southall, 2004).

To put it succinctly, beer is big business. It has been estimated that alcohol sales represent between 60 and 75% of all stadium revenue at sporting events (Steinbach, 2004). While some skeptics may quibble with Steinbach's revenue calculations, sport-industry executives, such as Major League Baseball's (MLB) Kevin Hallinan – Senior Vice President for Security and Facilities – admit that beer sales at games are ". . .a very important revenue stream" (Steinbach, p. 62). When the Alcohol and Gaming Commission of Ontario,

Canada, suspended Toronto's Air Canada Centre's liquor license for one NHL game in December 2003, for "permitting drunken patrons to be in the licensed premises," the Mapleleafs saw no decrease in attendance, but lost an estimated $150,000 in alcohol revenue alone (Steinbach, p. 62).

In today's profit-maximization, sports-entertainment atmosphere, an NFL football game, held once a week for only 10-11 weeks represents a finite revenue generation opportunity. In order to maximize product consumption, which in turn maximizes profit generation, it makes eminent sense to develop marketing and promotion campaigns that encourage fans to arrive well in advance of kickoff. The importance of developing and sustaining atmospherics at a sports event has long been recognized by sports promoters (Irwin, Sutton, & McCarthy, 2002). Developing and sustaining atmospherics involves "all efforts to design the place of purchase or consumption so as to create specific cognitive and/or emotional effects in. . .consumers" (Irwin, et al., p.13). Irwin also notes that among the most important factors in a sports team's ability to develop a dedicated fan-base is the creation in fans of a desire to be part of the game-day atmosphere. With the importance of atmospherics in mind, the longer fans are in attendance at an event, and the longer promoters can "manage" the event's atmospherics, the more sports-entertainment product consumption can occur. The development of NFL game atmospherics not only occurs at each stadium, but also is supported by every NFL-related commercial advertisement.

As good corporate citizens, the NFL and beer companies recognize the potential for alcohol abuse by their fans/consumers. A 30-60 second beer commercial contains, at a minimum, 3-5 seconds of audio or visual images urging consumers to "drink responsibly." In addition, TEAM Coalition and other responsible drinking and alcohol-management programs air commercials during many sporting events. However, as Jill Pepper, TEAM Coalition Executive Director noted, "Our spots are donated, so our ads don't air in peak times" (Personal communication, January 13, 2005).

PART IV: THE SOCIAL COSTS OF EXCESSIVE ALCOHOL CONSUMPTION

Even though alcohol consumption has a long social history and is ingrained in the United States' social fabric, the social costs associated with excessive alcohol consumption have long been recognized by social scientists and policy developers. According to the International Center for Alcohol Policies (2004) "In the US, 500,000 people [are] injured and 17,000 killed each year in alcohol-related traffic incidences; and almost 40% of youth traffic

fatalities were directly related to alcohol consumption" (para. 1). In addition to the direct and indirect costs associated with excessive alcohol consumption, the combination of drinking and driving ". . . is a major contributor to the social costs of alcohol misuse. Estimates and methods of calculation differ, but impaired driving is a major contributor to high social costs in developed countries in the form of property damage, lost worker hours and performance, and loss of life. In the US alone, an estimated $50 billion in economic losses is incurred each year" (International Center for Alcohol Policies).

In addition to the social costs associated with "excessive" alcohol consumption, in 2001, the World Health Organization Regional Office for Europe reported that, on average worldwide, the social costs of "socially-acceptable" alcohol consumption are also significant, estimated at between 1% and 3% of a country's gross domestic product (GDP) (Klingemann, 2001). The Bureau of Economic Analysis (BEA) estimated the United States' 2004 annual GDP was 11,735.0 billion dollars.

Shute (1997) reported approximately 40 million problem drinkers in the United States (A problem drinker is an individual who has had problems, in the form of a DUI arrest, job and/or marital issues, because of drinking.). Shute presented evidence that these problem drinkers':

> [m]isuse of alcohol costs the nation dearly - $100 billion a year in quantifiable costs, in addition to untold emotional pain. Yet the bulk of these [associated] costs. . . [are the result of the actions of] problem drinkers, who are four times more numerous than alcoholics, are more active in society, and usually reject abstinence as a solution (para. 8).

The costs associated with problem drinkers include approximately 41% of traffic crash fatalities, 50% of homicides, 30% of suicides, and 30% of accidental deaths in which alcohol is a factor (Shute). An important element in the discussion of the social costs of drinking is that 75% of "heavy drinkers" do not become alcoholics (Shute). The majority of heavy and/or binge drinkers do so in social settings (at college parties, at after-work happy hours, or during Sunday afternoon NFL football games) and eventually "mature out" of such behavior (Shute). However, while they are maturing-out, they are among the NFL's identified target market segments.

The social costs associated with alcohol consumption are relevant to an analysis of whether the NFL and individual NFL franchises have the authority and means to control or restrict the marketing, advertising, and sales of beer in NFL stadiums. If so, such associated social costs give support for a negligent marketing analysis of the NFL's and an individual NFL franchise's marketing and advertising plans.

PART VI: NEGLIGENT MARKETING AND THE NFL

Part III of this article dealt with the evolution of the legal theory of negligent marketing and how that concept has been applied in case law. To date, the cases applying this cause of action have been confined to plaintiffs suing gun manufacturers and/or distributors who have allegedly been negligent in the methods used to market or distribute firearms, thus causing unreasonable harm to innocent third parties.

Part IV described the NFL's alcohol culture, discussing the various methods by which the NFL influences and encourages the consumption of alcohol as an integral part of the spectator experience at NFL contests. Part V, briefly outlined the social costs of alcohol consumption and drunk-driving. In this part, the authors argue that, based on the legal theory presented in Part III and the right set of facts, a negligent marketing case could be made against the NFL for its promotion of a culture of alcohol consumption and intoxication.

First, echoing the discussion of the California Court of Appeals in *Merrill v. Navegar, Inc.* (1999) and the Ninth Circuit in *Ileto v. Glock, Inc.* (2003), the elements of a negligent marketing claim will be applied to the NFL. Both courts focused on the factors found in *Rowland v. Christian* (1968) to ascertain whether a duty should exist. The major factors are: a) the foreseeability of harm to the plaintiff, b) the policy of preventing future harm, and c) the extent of the burden to the defendant and the consequences to the community of imposing a duty to exercise care with resulting liability for breach (Merrill, 1999, p. 518).

Using such an analysis and applying it to the facts alleged in *Verni v. Lanzaro* (2004), or a situation that occurs at any NFL stadium, injuries to a third party from the actions of an inebriated NFL fan are foreseeable. The NFL markets its games in a way to foster a culture of alcohol and intoxication. Tailgating is encouraged and condoned. Alcohol management policies at the games are often ignored (King World Productions, 2003). The financial nexus between the brewing companies and the NFL is at the foundation of the push to sell this product in large quantities at NFL games. In short, alcohol consumption, often to excess, is an integral part of the NFL-fan experience. When these inebriates leave the contest and drive on public highways, injuries to innocent third parties are, not only foreseeable, but, likely, to occur.

To return to another of the *Rowland* factors, would it further public policy of preventing future harm to hold the NFL accountable for negligent marketing? There are huge social costs associated with drunk driving and alcohol over-consumption in our society. Based on the tangible and intangible

costs of alcohol overindulgence, there is a strong basis for finding liability and instituting policies which prevent future harm.

Finally, using *Rowland*, it is important to address the social utility of the conduct of the defendant (which equates to assessing the burden to the defendant and the consequences to the community of imposing a duty to exercise care). Although there may be social benefits to the provision of NFL games, both in terms of the financial benefits to the community and the psychic involvement of a community in the fortunes of its favorite team, it is difficult to see the social utility of the culture of alcohol surrounding the event. Surely it benefits teams economically to have a large financial windfall due to alcohol concessions, but what is the benefit to society generally? Fueling thousands of fans with alcoholic beverages for hours - or at least up until the end of the 3rd quarter - only to disgorge them upon public thoroughfares certainly calls into question the social utility of such actions. To echo the reflections of the court in *Merrill*, the NFL should have a duty to minimize the risks which exceed those presented by the activity itself, i.e., the NFL game.

The above analysis is consistent with Rabin's concern for social responsibility using the concept of the enabling tort (1999). The gist of this type of analysis is weighing the social utility of an industry's actions against the social costs of the consequences of those actions. In this case, the nonexistent social utility of fostering a culture of intoxication surrounding the NFL experience is compared to the devastating social costs related to the furtherance of drunken driving and binge drinking through this sports experience. This balance clearly weighs in favor of imposing a duty of care upon the enabler of such socially irresponsible behavior.

One of tort law's central aims is the deterrence of conduct that imposes an unreasonable risk on others. (Eggen & Culhane, 2002) Tort law has evolved to permit accountability for the actions of a third party when those actions are foreseeable. As Rabin (1999) noted, the underlying premise of the expansion of proximate cause and tort liability in the modern era is that ". . . blameworthiness is not so readily confined as was the case in times past. Beyond the immediate perpetrator of harm, the victim perceives the individual, or more often, the enterprise, that set the stage for the suffering that unfolded. . ." (pp. 437-438) as the enabler. This broader notion of expansion of liability is, therefore, consistent with holding an entity liable because it "enabled" the actual perpetrator of the act to cause foreseeable harm.

In the *Verni* case, the NFL and the New York Giants, through Aramark (the concessionaire at Giants Stadium), "enabled" the tragedy that unfolded. They failed to properly control the culture of intoxication they encouraged and fostered and set the stage for the inebriation of Daniel Lanzaro and the

subsequent suffering inflicted upon the Verni family. Both legal theory and public policy may support the imposition of liability against the NFL and the Giants based on negligent marketing.

CONCLUSION

Aramark is appealing the decision in the *Verni* case, and the NFL and the New York Giants settled out of court; however, the ripple effects of *Verni v. Lanzaro* continue to be felt in alcohol management policy development. In the case's aftermath, several tighter restrictions have been instituted at sports events, with several NFL teams mandating fewer beers per purchase, earlier cutoff times, additional undercover police surveillance, and increased alcohol training programs. These policy adjustments reflect the sports industry's response to the public glare generated not only by the civil litigation, but also to the tragic face attached to the trail - Antonia Verni – a young child paralyzed for life. In response to the public outcry and the media scrutiny, the New Jersey Sports and Exhibition Authority and the New York Giants announced, "We have redoubled our efforts. . . The purchase of a ticket does not allow you to act stupid or get bent-over, sloppy drunk. If you want to get trashed, stay home and watch on your couch" (Dvorchak, 2005).

But time will be the final arbitrator of the case's true effect on the NFL's alcohol culture. Will changes in policies and procedures translate into substantive changes when those who profit from beer sales are the ones in charge of curbing them? As George Hacker, director of alcohol policies at the Center for Science in the Public Interest noted:

> These are limits without any real meaning. . . These kinds of changes seem to be focused on one thing – to minimize the liability of the stadium, team, and league if people get into their cars and drive drunk. I don't think that gets to the point. That's a narrow perspective. I have nothing against responsible sale and use of alcohol at a sporting event. Where it does become a problem is when drinking becomes the event (Dvorchak, 2005, para. 20).

The NFL and the Giants, by agreeing to an out-of-court settlement, avoided Aramark's fate in this case. However, this fact does not minimize the challenge facing sport managers of finding an ethical and legal policy balance that addresses the needs of the various sport-industry stakeholders: concession companies, beer company sponsors, fans, leagues, advertisers, and broadcast companies, while still providing for the public's safety.

ABOUT THE AUTHORS

RICHARD M. SOUTHALL, EdD, is an Assistant Professor in the Department of Health and Sport Sciences at The University of Memphis, and the Associate Director of The Bureau of Sport & Leisure Commerce. His research interests are legal issues in sport, intercollegiate athletics, sport marketing, and ethical issues in sport

LINDA A. SHARP, J.D., is an associate professor in the Sport Administration program at the University of Northern Colorado. She is a past-president of SRLA (SSLASPA) and is the co-author of a sport law textbook entitled *Sport Law:A Managerial Perspective*. Her research interests focus on legal issues in collegiate sport and educational settings and public policy concerns.

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