



## ***Backyard Softball Anyone?***

### ***Know Your Premises Liability Responsibilities***

By: Michael J. Rossi, Esq.

Picture a splendid New England summer afternoon, and your family and friends have gathered for a bar-b-que in your backyard. As you grill your favorites, one of your guests shouts “who wants to play softball!” while handing out gloves, a ball and a bat that were stored in your garage. Several guests join the game, which is quite informal. There are no teams and no base running, just a couple of kids taking turns at bat. Given the close quarters, they don’t take full swings.

Meanwhile, on the porch, other guests are seated around a table, some with their backs to the game. At one point, a batted ball flies in the direction of the house and lands on the porch roof. A short time later, another batted ball sails in the same direction, but strikes one of your guests in the back of the head, seriously injuring her. There could be legal ramifications.

A scenario much like this one was the subject of a lawsuit here in Massachusetts. The injured guest sued the homeowners, hosts of a backyard gathering, claiming that they should have stopped a softball game once it became clear that the game posed a risk to others. The Massachusetts Appeals Court recently decided that, indeed, the homeowners could be held legally responsible for allowing the game to continue and failing to protect guests from possible harm. Keep this in mind when you host an event at your home.

Generally, the legal responsibilities of a property owner in Massachusetts are confined to preexisting conditions on one's property, such as broken railing or icy steps, and do not extend to the acts of third parties, such as guests. For example, Massachusetts courts have decided that, absent a special relationship, a host is not liable to a guest injured by fireworks set by someone else, or even the criminal acts of another guest.

The softball case is a reminder, however, that property owners are not completely off the hook when it comes to the conduct of their guests. In this case, the court was persuaded by the fact that the hosts not only owned the property where the game took place, but owned the bats and balls used to conduct it. Because the hosts were present and aware that their equipment was being used, the court concluded that they were in enough of a position of control that they could be held legally responsible to their injured guest for failing to end the game. If these facts aren't enough to put a damper on your next backyard gathering, the court also found that an adult participant in the softball game, one who pitched the ball resulting in the injury, could also be subject to a lawsuit because he was in a position to direct the conduct of the game's participants, mostly children.

Property owners are always wise to be cautious about the conduct of their guests when it comes to dangerous behavior – the use of fireworks, firearms, or the excessive consumption of alcohol, for example. Now, something as innocuous as a softball game can expose a homeowner to a lawsuit.

It is important to keep in mind that the court's decision in this case did not impose any penalty on the homeowner – that is the job of a jury. The court's role is simply to determine whether a legal responsibility (a "duty of care") exists. This case is presently scheduled for trial in the fall, and a jury might still find that, under the circumstances, the homeowners acted with reasonable care, or even that the unlucky guest was responsible for her own injuries by choosing to sit on the porch during the game. Nonetheless, the court's decision is consistent with a number of other recent Massachusetts court decisions that heighten the legal responsibilities of property owners and make them more susceptible to lawsuits.

As you plan your first BBQ of the summer, check to be sure that your homeowner's insurance policy is up to date, and consider purchasing a Wiffle ball.

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*The information presented in this article reflects the personal views of the author and should neither be construed as formal legal advice nor the creation of an attorney-client relationship.*

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