UIC Law Review

Volume 47 | Issue 1 Article 3

Spring 2013

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Recommended Citation

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INTENTIONAL GROUNDING: FIELD QUALITY IN THE NFL AND THE LEGAL RAMIFICATIONS FOR CHOICE OF PLAYING SURFACES

JENNIFER SIMILE*

I. INTRODUCTION

Week thirteen of the 2011 National Football League (NFL) season played host to some highly anticipated matchups.[1] With the 8-3 Houston Texans and the 7-4 Atlanta Falcons both vying for a playoff spot, the matchup between the two teams was one of the week's marquee games.[2] The Texans came away as the victors on the field with a 17-10 win, and while many predicted a big win to take place at Reliant Stadium, few could have foreseen that a Texan would fall victim to the field itself.[3]

Former Houston Texans punter Brett Hartmann suffered a career-ending injury on December 4, 2011 when Hartmann's foot got caught in a seam between two pieces of sod at Reliant

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1. *See 2011 NFL Power Rankings: Week 13*, ESPN, Nov. 29, 2011, http://espn.go.com/blog/nflnation/tag/_/name/2011-week-13-nfl-power-rankings (last visited Jan. 25, 2013) (providing weekly rankings of all thirty-two NFL teams from ESPN's NFL reporters and noting several games during week thirteen between highly ranked teams).

2. *See* Robert Ferringo, *2011 NFL Power Rankings for Week 13*, BLEACHER REPORT, Nov. 30, 2011, http://bleacherreport.com/articles/962278-2011-nfl-power-rankings-week-13 (last visited Jan. 25, 2013) (ranking NFL teams based upon their performance during games in previous weeks).

3. *See* Anna-Megan Raley, *Texans Players Say Field Not Up To Par*, CBS HOUSTON, Dec. 4, 2011, http://houston.cbslocal.com/2011/12/04/texans-players-say-field-not-up-to-par/ (last visited Nov. 26, 2012) (describing how a field defect caused Brett Hartmann to sustain several injuries); Jake Westrich, *2011 NFL Week 13 Picks: Falcons-Texans a Virtual Coin Toss*, BLEACHER REPORT, Nov. 29, 2011, http://bleacherreport.com/articles/961511-2011-nfl-week-13-picks-falcons-texans-a-virtual-coin-toss (last visited Oct. 20, 2013)(predicting that the Texans would win); Alfie Crow, *NFL Picks And Predictions Week 13: Falcons Vs. Texans*, SB NATION, Dec. 2, 2011, http://www.sbnation.com/2011/12/2/2604537/texans-vs-falcons-2011-nfl-picks-predictions-week-13 (last visited Oct. 20, 2013)(providing game predictions).

Stadium.[4] Knee injuries, though not uncommon for professional football players, are extremely rare for punters, and even rarer during plays where no physical contact is made.[5] Hartmann is suing the Harris County Convention & Sports Corporation (HCCSC), as the owner of Reliant Stadium, as well as SMG, the venue management company responsible for operating and managing the stadium.[6]

The defendants, as owners and possessors of Reliant Stadium, have a duty to prevent unreasonable risk of harm to players and to provide them with reasonably safe playing surfaces.[7] Hartmann's unfortunate injury illuminates the issue of unsafe playing conditions.[8] Injuries such as these are a central consideration in the evaluation of each NFL season and are a hot-button issue for the long-term future and viability of the National Football League as a whole.[9] Specifically, the number of injuries football players sustain due to poor playing surfaces has been on the rise.[10] For example, New England Patriots Coach Bill Belichick blamed horrible turf for knocking star wide receiver Wes Welker out of the 2010 season after he tore multiple ligaments in his knee during a

4. *See Ex-Texans Punter Sues Stadium Tenant*, FOX SPORTS, Nov. 15, 2012, http://msn.foxsports.com/nfl/story/brett-hartmann-former-houston-texans-punter-sues-stadium-tenant-unsafe-turf-knee-injury-111512 (last visited Nov. 25, 2012) [hereinafter *Ex-Texans Punter Sues*] (describing the manner in which workers piece the field together using over a thousand interconnected palettes).

5. *See* Plaintiff's Original Petition and Request for Disclosures at 3, Brett Hartmann v. SMG and Harris Cnty. Convention & Sports Corp., No. 2012-67930 (Tex. Dist. Nov. 15, 2012), 2012 WL 5662899 [hereinafter Hartmann](alleging that Hartmann's injury arose from atypical circumstances); State Dep't of Highways & Pub. Transp. v. Payne, 838 S.W.2d 235, 237 (Tex.1992) (citing TEX. CIV. PRAC. & REM.CODE ANN. § 101.022(b)) ("That duty requires an owner to use ordinary care to reduce or eliminate an unreasonable risk of harm created by a premises condition of which the owner is or reasonably should be aware.").

6. *Id.*

7. *See id.* (asserting that defendants were in control of and maintained the football field at Reliant Stadium).

8. *See* Raley, *supra* note 3 (illustrating that Hartmann was injured because of poor field quality at Reliant Stadium).

9. *See* Scott Kacsmar, *Are NFL Player Injuries Up, or Has Reporting Just Improved?*, BLEACHER REPORT, Aug. 14, 2012, http://bleacherreport.com/articles/1296733-are-nfl-player-injuries-up-or-has-reporting-just-improved (last visited Jan. 30, 2013) (disclosing that injuries have decisive impacts on how each NFL team's season unfolds).

10. *See id.* (detailing different types of injuries and finding that the total injuries reported from the 2010 season to the 2011 season increased); Michael Lombardi, *Washington Redskins Must Improve FedEx Field Playing Surface*, NFL, Jan. 8, 2013, http://www.nfl.com/news/story/0ap1000000123832/article/washingtow-redskins-must-improve-fedex-field-playing-surface (last visited Jan. 29, 2013) (opining that poor field quality led to Robert Griffin III's knee injury).

game at Reliant Stadium.[11] Additionally, many blame the poor field quality at FedEx Field for the severe knee damage superstar quarterback Robert Griffin III (RGIII) sustained during his 2012 rookie season, which simultaneously ended both his season and the Washington Redskins' playoff hopes.[12] Due to increasing awareness of these injury trends and knowledge of the dangers which may be caused by poor field quality, the NFL's choice of playing surfaces could have significant legal ramifications.[13]

The NFL is an unincorporated association that includes thirty-two separately owned football teams, each with its own name, logo, colors, and mascot.[14] Despite being separately owned, the teams have integrated their operations, cooperate for a common purpose, and work toward common interests.[15] The NFL's revenue for the 2011-12 season was approximately $9.5 billion.[16] The NFL has tripled its revenue over the past seventeen years and aims to reach $25 billion in revenue by 2027.[17] As such, the NFL is

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11. *See* Mike Florio, *Belichick Blames Welker Injury on Reliant Stadium Turf*, NBC SPORTS, Jan. 4, 2010, http://profootballtalk.nbcsports.com/2010/01/04/belichick-blames-welker-injury-on-reliant-stadium-turf/ (last visited Jan. 29, 2013) (providing statements Belichick made to a radio station claiming Reliant Stadium is one of the worst playing surfaces in the NFL); Ryan Christopher DeVault, *Wes Welker Injury Update: Season Over for New England Patriots Receiver*, YAHOO, Jan. 4, 2010, http://voices.yahoo.com/wes-welker-injury-update-season-over-england-5201733.html (last visited Oct. 20, 2013)(stating Welker's 2010 season ended due to a knee injury).

12. *See* Lombardi, *supra* note 10 (detailing the deplorable conditions at FedEx Field when RGIII was injured); Gary Davenport, *A Complete Timeline of RG3's Injury: What Went Wrong for Redskins QB?,* BLEACHER REPORT, Jan. 6, 2013, http://bleacherreport.com/articles/1473246-a-complete-timeline-of-rg3s-injury-what-went-wrong-for-redskins-qb (arguing that on the play in which RGIII's knee buckled, the Redskins' season ended for all intents and purposes).

13. *See* Suneal Bedi, *From Pigskin to Bacon: The Legal Issues Surrounding the NFL's Concussion Litigation*, FORBES, May 8, 2012, http://www.forbes.com/sites/realspin/2012/05/08/from-pigskin-to-bacon-the-legal-issues-surrounding-the-nfls-concussion-litigation (last visited Jan, 25, 2013)(explaining that once dangers are known to the NFL, an affirmative duty to protect football players may develop).

14. *See* Am. Needle, Inc. v. NFL, 130 S. Ct. 2201, 2207 (2010) (discussing the independent business of the thirty-two teams of the NFL and the corporate entity formed to manage the intellectual property for all the teams).

15. *See* Am. Needle, Inc. v. New Orleans La. Saints, 496 F. Supp. 2d 941, 943 (N.D. Ill. 2007) (illustrating that all thirty-two NFL teams collectively licensed their intellectual property).

16. *See* Cork Gaines, *Sports Chart of the Day: NFL Revenue is Nearly 25% More Than MLB*, BUSINESS INSIDER, Oct. 9, 2012, http://www.businessinsider.com/sports-chart-of-the-day-nfl-revenue-still-dwarfs-other-major-sports-2012-10 (last visited Jan. 25, 2013)(providing charts comparing the amount of revenue the most popular professional sports brought in during the 2012 season).

17. *See* Daniel Kaplan, *Goodell Sets Revenue Goal of $ 25B by 2027 for NFL*, SPORTSBUSINESS JOURNAL, Apr. 5, 2010,

a very profitable business; however, premises liability lawsuits could significantly drain its finances.[18]

This Comment analyzes whether the NFL could be held liable for injuries players sustain as a result of poor field quality and unsafe working conditions. Part II provides a brief history of Brett Hartmann's football career and discusses the playing surface at Reliant Stadium. This section also provides a background of the legal provisions relevant to sports-related injuries. Part III analyzes the applicability of relevant laws, including safe place statutes and the open and obvious doctrine. Additionally, Part III considers whether the NFL's Collective Bargaining Agreement would prevent lawsuits based upon field quality. Part IV provides recommendations for how the NFL, teams, and players should handle field quality issues. Part IV asserts that based upon concussion litigation, the NFL must take affirmative steps to protect the safety of players now that the dangers of playing surfaces are known. Additionally, Part IV warns that studies have found artificial turf to be dangerous for players, and recommends that grass should be preferred over turf to make the game safer. Part V concludes that the NFL should mandate full-field grass as the safest playing surface.

II. REVIEWING THE TAPES: THE END OF A FOOTBALL CAREER, UNSAFE TURK AND EXISTING DOCTRINE

A. The Story of Brett Hartmann

Brett Hartmann, a former Houston Texans punter, has sued the operators of Reliant Stadium in Houston, Texas, blaming "unsafe turf" for the knee injury that likely ended his football career. On December 4, 2011, Hartmann tore his left anterior cruciate ligament (ACL) and fractured a bone during Houston's game against Atlanta.[19] Hartmann was punting in the fourth

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http://www.sportsbusinessdaily.com/Journal/Issues/2010/04/20100405/This-Weeks-News/Goodell-Sets-Revenue-Goal-Of-$25B-By-2027-For-NFL.aspx (last visited Jan. 25, 2013) (claiming that to reach the goal of $25 billion in revenue by 2027, the NFL would need to add nearly $1 billion in new revenue on average each year until then).

18. *See* Lawyers for Civil Justice et al., *Litigation Cost Survey of Major Companies*, 2010, http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Duke%20Materials/Library/Litigation%20Cost%20Survey%20of%20Major%20Companies.pdf [hereinafter *Litigation Cost Survey]*. *But see* Ken Belson, *Concussion Liability Costs May Rise, and Not Just for NFL*, N.Y. TIMES, Dec. 10, 2012 http://www.nytimes.com/2012/12/11/sports/football/insurance-liability-in-nfl-concussion-suits-may-have-costly-consequences.html?pagewanted=all (last visited Feb. 23, 2013) (showing that legal expenses are extremely costly and have a huge effect on insurance, but that the NFL may be equipped to handle these legal challenges).

19. *See id.* (asserting that Brett Hartmann was injured when he caught his left foot in a seam between trays of grass at Reliant Stadium).

quarter when his left foot caught in one of the seams between the squares of grass that make up the playing surface, causing him to tumble to the turf.[20] Video of the injury shows quite conclusively that Hartmann's foot got caught on the playing turf and that Hartman made no physical contact with any other player.[21]

Rather than letting the grass grow on the field in one "piece" as it does at most other NFL stadiums which utilize grass, the playing surface at Reliant Stadium is transported into the stadium in 8-by-8 foot pieces known as "trays."[22] Workers at the stadium piece together more than 1,200 8-by-8 foot palettes of real grass with forklifts, leading to innumerable seams and uneven partitions.[23] Although the turf is inspected by stadium officials and NFL referees before every Texans game, the system is not perfect, as evidenced by Hartmann's foot getting caught in a seam between two squares of sod, causing extensive damage to his knee.[24] Hartmann has required multiple surgeries and will likely need more, rendering his career effectively over.[25]

On November 15, 2012, Hartmann filed a lawsuit in Harris County District Court, naming stadium owner HCCSC and venue-management company SMG as defendants.[26] Hartmann alleges that the Defendants knew that the use of "trays" causes continuity problems such as gaps, seams, indentations, and lifted areas, creating hazards to players.[27] Additionally, Hartmann alleges that several other players suffered serious injuries attributable solely to the field.[28] The NFL is not currently a defendant in this

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20. *See* Barry Petchesky, *Former Texans Punter Suing Reliant Stadium Owners For Being Injured By Its Crappy Field*, DEADSPIN, Nov. 15, 2012, http://deadspin.com/brett-hartmann/ (last visited Nov. 26, 2012) (recounting Brett Hartmann's injury and revealing that doctors discovered a fractured fibula and completely torn ACL).

21. *See* Raley, *supra* note 3 (clarifying that punter Brett Hartmann was injured without being touched); *see also*, Plaintiff's Original Petition and Request for Disclosures, *supra* note 5, at 3 (asserting that video of the injury Hartmann sustained shows conclusively that his foot got caught in a seam of the sod).

22. *See* Petchesky, *supra* note 20 (describing the procedure utilized at Reliant Stadium to construct the playing surface out of grass trays).

23. *See Ex-Texans Punter Sues*, *supra* note 4 (explaining the method Reliant Stadium workers use to construct the playing surface).

24. *See id.* (remarking that Brett Hartmann's knee injury was so extensive that it likely ended his career).

25. *See* Petchesky, *supra* note 20 (detailing the extent of Brett Hartmann's knee injury, how he was placed on the injured reserve, and eventually cut by the Texans).

26. Plaintiff's Original Petition and Request for Disclosures, *supra* note 5, at 1.

27. *See id.* at 4 (contending that the surface at Reliant Stadium is unsafe and unsuitable in that it has innumerable seams and uneven partitions).

28. *See id.* at 5 (announcing that other players such as New England Patriots wide receiver Wes Welker suffered serious knee injuries at Reliant Stadium).

lawsuit.[29] However, when conflicts arise between the players and the NFL, they are governed by a collective bargaining agreement.[30]

B. Collective Bargaining Agreement

The NFL and the NFL Players Association (NFLPA) reached a collective bargaining agreement (CBA) on August 4, 2011.[31] The current CBA is controlling until 2020.[32] The agreement covers topics such as lockouts, lawsuits, player contracts, and various other subjects.[33] Representing the complete understanding of the parties on all subjects covered therein, the CBA cannot be changed without mutual consent.[34]

Article 44 covers injury grievances. Injury grievances are claims or complaints that, at the time a player's NFL Player Contract was terminated by a Club, "the player was physically unable to perform the services required of him by that contract because an injury incurred in the performance of his services under that contract."[35] These grievances are to be heard before a panel of arbitrators.[36] Alternatively, Article 45 covers injury protection, which is a benefit for which the player must first qualify.[37]

Article 3, which covers lawsuits, states:

> The NFLPA agrees that neither it nor any of its members, nor agents acting on its behalf, nor any member of its bargaining unit, will sue, or support financially or administratively, or voluntarily provide testimony or affidavit in, any suit against the NFL or any Club with respect to any claim relating to any conduct permitted by

29. *See id.* at 1 (indicating that the NFL is not listed as a defendant in the lawsuit).

30. *See generally* NFL & NFL Players Ass'n, *NFL Collective Bargaining Agreement 2011-2020*, *available at* http://nfllabor.files.wordpress.com/2010/01/collective-bargaining-agreement-2011-2020.pdf [hereinafter *NFL Collective Bargaining Agreement*] (providing the contract between the NFL and the NFLPA which covers a wide range of topics).

31. *See id.* at xiv (providing the time frame when the contract became binding).

32. *See id.* at art. 1 (establishing that the agreement is binding for ten seasons).

33. *See generally id.* (providing a range of topics upon which the NFL and NFLPA agreed).

34. *See id.* at art. 2, § 4 (clarifying that both the NFL and the NFLPA must agree upon any modifications and that they waive all rights to bargain with one another concerning any subject for the agreement's duration).

35. *Id.* at art. 44, § 1.

36. *See id.* at art. 44, §§ 6-7 (advising that injury grievances are to be handled through arbitration instead of the court system).

37. *See id.* at art. 45, § 1 (defining injury protection and explaining how a professional football player can meet the requirements necessary to qualify for this benefit).

this Agreement, or any term of this Agreement.[38]

Case law suggests that for issues where the CBA is silent, a litigant's recovery is not limited by the agreement.[39] For example, claims of fraud and negligent misrepresentation often associated with staph infections are not explicitly delineated in the CBA.[40] In *Bentley v. Cleveland Browns*, the Court of Appeals of Ohio considered whether LeCharles Bentley's claims of negligent misrepresentation arising from a staph infection were governed by the CBA, and ultimately concluded that Bentley's claims did not implicate or contravene the CBA.[41] Similarly, in *Jurevicius v. Cleveland Browns*, the United States District Court for the Northern District of Ohio held that Jurevicius' claims that he contracted a staph infection through fraud and negligent misrepresentation neither arose from nor required the interpretation of the CBA to determine their outcomes.[42]

The CBA was made in accordance with the provisions of the National Labor Relations Act.[43] Under this Act, the National Labor Relations Board carries out its functions under the Labor Management Relations Act.[44] The Labor Management Relations Act aims to promote commerce by prescribing the proper relations between employees and employers.[45] The Act seeks to safeguard the rights of individual employees and the public at large to promote general welfare in connection with labor organizations, labor management, and labor disputes which affect commerce.[46]

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38. *Id.* at art. 3, § 2.

39. *See* Bentley v. Cleveland Browns Football Co., 958 N.E.2d 585, 588 (Ohio Ct. App. 2011) (holding that state law would be applied where issues were not agreed upon in the CBA); Jurevicius v. Cleveland Browns Football Co. LLC, 2010 U.S. Dist. LEXIS 144096, *48 (N.D. Ohio Mar. 31, 2010) (reasoning that issues not outlined in the CBA are not preempted by the LMRA).

40. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (lacking terms pertaining to negligent misrepresentation).

41. *See Bentley*, 958 N.E.2d at 588 (holding that negligent misrepresentation was not agreed to in the CBA).

42. *See Jurevicius*, 2010 U.S. Dist. LEXIS 144096, at *48 (finding the CBA was not implicated).

43. *See* 29 U.S.C. § 151 (2011) (declaring it to be the policy of the U.S. to eliminate certain obstructions to the free flow of commerce and to mitigate and eliminate these obstacles by encouraging collective bargaining and by protecting workers' ability to negotiate the terms and conditions of their employment).

44. *See* 29 U.S.C. § 141 (2011) (asserting that conflicts which interfere with the normal flow of commerce and with the full production of articles and commodities can be avoided or substantially minimized if employers, employees, and unions each recognize under law one another's legitimate rights in their relations with each other).

45. *See id.* (claiming that conflicts which interfere with commerce can be avoided or substantially minimized if all parties recognize and adhere to the law).

46. *Id.*

C. Field Regulations and Grass Alternatives

The NFL Game Operations Manual has certain guidelines pertaining to playing surfaces.[47] Within seventy-two hours of each home game, clubs must certify that their fields are in compliance with the guidelines.[48] Fields must pass an impact hardness test, synthetic infill depth and evenness test, and a visual inspection.[49] These regulations are designed to help keep players safe.

Many clubs prefer to have artificial playing surfaces rather than natural grass.[50] According to scientific studies, artificial turf can cause more injuries to players than natural grass.[51] Given the dangers of artificial turf, an NFL team may be held negligent for choosing this playing surface.[52]

There are various playing surfaces a stadium could install.[53] Studies have shown that certain serious knee and ankle injuries happen more often in games played on artificial turf than on natural grass.[54] A report examining the 2002-08 NFL seasons compared games played on grass to those played on FieldTurf, the most popular brand of artificial turf.[55] It found that the rate of ACL injuries was 88 percent higher in FieldTurf games.[56] The risk of injury associated with different playing surfaces is a significant consideration in choosing a field because player safety is extremely

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47. *See* Jarrett Bell, *NFLPA wants FedEx Field's playing surface improved*, USA TODAY, Jan. 10, 2013, http://www.usatoday.com/story/sports/nfl/redskins/2013/01/09/nflnf-fedex-field-conditions/1821311 (last visited Jan. 29, 2013) (summarizing portions of the NFL Game Operations Manual which outline tests to ensure playing surfaces are safe).

48. *See id.* (describing how all clubs must be in compliance with the Recommended Practices for the Maintenance of Infill and Natural Surfaces for NFL Games).

49. *See id.* (explaining that failure to comply with the tests is considered both a competitive and player safety issue and will be subject to disciplinary action by the Commissioner's office).

50. *See* Dave Richard, *The Significance of Field Surface*, CBS SPORTS, June 25, 2009, http://fantasynews.cbssports.com/fantasyfootball/story/11892841 (last visited Feb. 22, 2013) (demonstrating that fourteen teams use artificial turf).

51. *See Panel: Knee, Ankle Injury Higher on Turf*, ESPN, Mar. 12, 2010, sports.espn.go.com/nfl/news/story?id=4988136 (last visited Nov. 25, 2012) [hereinafter *Panel*] (describing how certain serious knee and ankle injuries happen more often on the most popular brand of artificial turf than on grass).

52. *See* Bedi, *supra* note 13 (suggesting that once dangers are known, a duty to protect players may develop and that ignoring this duty could be negligent).

53. *See* Richard, *supra* note 50 (listing several types of both natural and artificial playing surfaces).

54. *See Panel*, *supra* note 51 (denoting that serious knee and ankle injuries happen more often on FieldTurf).

55. *See id.* (asserting that most stadiums utilizing artificial surfaces use FieldTurf, a next-generation turf).

56. *See id.* (studying the rate of certain serious ankle and knee injuries sustained by professional football players in the NFL).

important.[57]

D. Safe Place Statutes

There are many state safe place statutes which require that employers provide a safe workplace for employees.[58] Nearly all jurisdictions utilize safe place statutes which are quite similar in that they place a higher threshold of liability on property owners.[59] Wisconsin and Ohio are illustrative of the safe place statutes.[60]

Wisconsin's safe place statute dictates that employers must provide "methods and processes reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters."[61] In interpreting this statute, courts have held that it applies to both places of employment and public buildings.[62] A place of employment is any profit-making enterprise.[63]

For example, in *Ruppa v. American States Insurance*, the Wisconsin Supreme Court held that an arena hosting a horse show was under the ambit of the safe place statute such that when a horse tripped over a defect in the arena flooring, the injured rider was entitled to sue the arena for violating the statute.[64] However, the Wisconsin Supreme Court in *Hoepner v. City of Eau Claire* held that a municipal softball field was neither a place of employment nor a public building and was therefore not covered by the safe place statute, and thus the municipality could not be liable when a softball player tripped over a defect in the field and fractured his leg.[65] The court reasoned that bringing in soil as a fill to provide for the softball field did not constitute a "structure"

57. *See* Richard, *supra* note 50 (describing the different injuries commonly associated with different varieties of natural and artificial playing surfaces).

58. *See generally* WIS. STAT. § 101.11 (2011); OHIO REV. CODE ANN. § 4101.12 (2012) (dictating that employers must provide a safe work environment to employees).

59. *See* Joshua E. Kastenberg, *A Three Dimensional Model Of Stadium Owner Liability In Spectator Injury Cases*, 7 MARQ. SPORTS L.J. 187, 201 (1996) (analyzing Wisconsin's safe place statute as it applies to sports and entertainment).

60. *See id.* (explaining that most jurisdictions have very similar safe place statutes).

61. WIS. STAT. § 101.11 (2011).

62. *See* Ruppa v. American States Ins. Co., 91 Wis.2d 628, 639 (Wis. 1979) (holding that both places of employment and public buildings are subject to the requirements of the safe place statute).

63. *See id.* (reasoning that any enterprise that makes a profit is a place of employment and must comply with the safe place statute).

64. *See id.* at 628 (holding that the horse arena was a public place covered by the safe place statute).

65. *See generally* Hoepner v. Eau Claire, 264 Wis. 608 (Wis. 1953) (finding that the municipality did not profit from making the field available to the public and that it was against public policy to hold it liable for injury).

within the meaning of the term "public building."[66]

Ohio's statute is slightly different in that it places a stricter burden on the employer by stating that "[n]o employer shall require, permit, or suffer any employee to go or be in any employment or place of employment which is not safe."[67] By phrasing the statue in this fashion, Ohio is saying not only that employers cannot *require* employees to work in unsafe conditions, but that employers many not even *allow* employees to work in unsafe conditions without violating the statute.[68] The statute goes on to dictate that "no such employer shall fail to furnish, provide, and use safety devices and safeguards, or fail to obey and follow orders or to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe."[69] This language goes beyond prohibited actions and makes it such that an employer would be liable for any omissions or failures to act as well.[70] Finally, the statute ends with the statement, "[n]o employer shall fail to do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees or frequenters. No such employer or other person shall construct, occupy, or maintain any place of employment that is not safe."[71]

Despite the range of protections that safe place statutes provide, an employer's liability will be abrogated under certain circumstances.[72] Case law implies that Ohio's safe place statute empowers the judiciary to analyze each circumstance anew when determining statutory compliance.[73] The court in *Vayto v. River Terminal & Railway Company* stated that the safe place statute was "general and declaratory, for the question as to what is a safe place or safe employment remains for judicial determination."[74] Additionally, the judiciary will determine the "kind and character of safety devices and safeguards to be used and the methods and processes to be employed."[75] This gives the court broad discretion when evaluating a possible violation of the safe place statute.[76]

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66. *See id.* at 614 (limiting the definition of "public building" to premises where materials are utilized to form a structure).

67. OHIO REV. CODE ANN. § 4101.12 (2012).

68. *See id.* (mandating that employers must take affirmative steps to ensure that employees are not working in unsafe conditions).

69. *Id.*

70. *See id.* (ensuring that employers actively protect employees).

71. *Id.*

72. *See* RESTATEMENT (SECOND) OF TORTS, § 343A (1965) (explaining that known or obvious dangers abrogate a possessor of land's liability).

73. *See* Vayto v. River T. & R. Co., 28 Ohio Dec. 401, 438 (Ohio C.P. 1915) (determining that each situation and particular circumstances will be analyzed independently).

74. *Id.*

75. *Id.*

76. *See id.* (holding that whether the statute was followed is circumstantial).

E. The Open and Obvious Doctrine

When a plaintiff voluntarily confronts an open and obvious danger, his negligence is greater than the defendant's.[77] Where a hazard is not open or obvious, the property owner or operator has a duty to foresee the hazard and protect against it.[78] For example, the Supreme Court of New York in *Patterson v. Troyer Potato Products* held that the bottom shelf in an aisle of a store was not an open and obvious danger.[79] The Louisiana Court of Appeals in *Wallace v. Howell* held that the wet floor in the laundry room of an apartment was also not an open and obvious danger.[80] In both situations, the property owner or operator had a duty to protect against the hazard because the danger was not open and obvious.[81]

In regards to invitees, property owners have a duty to maintain premises in a reasonably safe condition and to warn invitees of the dangerous conditions of any hidden dangers.[82] In analyzing the duty of care required, the common law dictates that property owners owe invitees ordinary or reasonable care.[83] Reasonable care is defined as the degree of caution and concern for safety that an ordinarily prudent and rational person would use in the circumstances.[84]

F. Concussion Litigation May Shed Light on the Issue

Merril Hoge is one of the few former players who has succeeded in an individual claim against the NFL for the concussions he has sustained.[85] While playing for the Bears, Hoge

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77. RESTATEMENT (SECOND) OF TORTS, § 343A.

78. *See id.* (defining the duties associated with the open and obvious doctrine).

79. *See* Patterson v. Troyer Potato Prods., 273 A.D.2d 865, 865 (N.Y. App. Div. 4th Dep't 2000) (reasoning that the shelf was near the floor level and was not easily seen).

80. *See* Wallace v. Howell, 30 So. 3d 217, 218-19 (4th Cir. 2010) (asserting that because the tenant had no reason to know that the laundry room flooded when it stormed, the water was not open and obvious).

81. *See id.* (finding that the flooding was sudden and unexpected); *Patterson*, 273 A.D.2d at 865 (concluding that hazards hidden near ground level are not open and obvious).

82. RESTATEMENT (SECOND) OF TORTS, § 343A.

83. *See id.* (discussing the open and obvious doctrine's requirement that possessors of land exercise reasonable care).

84. *See id.* (providing illustrations of the reasonable care standard necessary for the open and obvious doctrine); *Symposium On Negligence In The Courts: The Actual Practice: Appendix Bibliography Of State Jury Instructions For Negligence*, 77 CHI.-KENT L. REV. 625 (2002) (listing the reasonable care definition used in Alaska, California, Colorado, Connecticut, Florida, Minnesota, Mississippi, New Hampshire, New York, Oregon, and Utah).

85. *See* Jeremy P. Gove, *Three and Out: The NFL's Concussion Liability and How Players Can Tackle the Problem*, 14 VAND. J. ENT. & TECH. L. 649, 675 (2012) (discussing the evolution of concussion litigation).

suffered a concussion in a preseason game against the Chiefs.[86] He played the next week after being cleared by a team doctor even though he had trouble recalling plays.[87] Six weeks after his first concussion, Hoge suffered a second blow to the head, causing him to retire from professional football.[88] Following his retirement, Hoge sued the Bears' team physician for allowing Hoge to return to the field without warning him of the dangers of returning too soon. Ultimately, Hoge recovered a jury verdict for $1.55 million.[89] Hoge also recovered an additional $1 million in a workman's compensation suit against the Bears and from an NFL injury separation agreement, making his case the only successful lawsuit by a former NFL player against the League for its mismanagement of concussions.[90]

On August 14, 2007, in response to the attention football concussions received, the NFL held a League-wide concussion summit and disseminated new concussion guidelines.[91] Knowing the dangers associated with concussions, the League eventually changed regulations to improve working conditions for its players.[92] In an attempt to make football safer for its players, the League announced stricter guidelines for when a player may return to the field following a concussion.[93] In 2009, the NFL enacted a concussion guideline supplement after an "embarrassing" hearing before the House Judiciary Committee on the issue of player safety.[94] During the hearing, NFL Commissioner Roger Goodell refused to say whether he thought

86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *See id.* (acknowledging Hoge's judgment); Rummana Hussain, *Hoge Wins Lawsuit Against Doctor*, CHICAGO TRIBUNE, July 22, 2002, http://articles.chicagotribune.com/2000-07-22/sports/0007220191_1_hoge-concussions-braindamage (detailing Hoge's lawsuit and recovery).
91. *See* Complaint at 135, Maxwell v. NFL, No. BC465842 (Cal. Super. Ct. July 19, 2011) (claiming that the League recognized the danger and took action to rectify the problem).
92. *See League Announces Stricter Concussion Guidelines*, NFL, Dec. 2, 2009, http://blogs.nfl.com/2009/12/02/league-announces-stricter-concussion-guidelines (last visited Nov. 25, 2012) [hereinafter *League*] (releasing new return-to-play rules developed by the NFL's medical committee on concussions in conjunction with team doctors, outside medical experts, and the NFL Players Association in order to provide more specificity in making return-to-play decisions).
93. *See id.* (expanding the rules to state that those who suffer a concussion should not return to play or practice on the same day if the player shows any signs or symptoms of a concussion).
94. *See* Alan Schwarz, *NFL to Shift in Its Handling of Concussions*, N.Y. TIMES, Nov. 22, 2009, http://www.nytimes.com/2009/11/23/sports/football/23concussion.html (last visited Jan. 25, 2013) (explaining that Roger Goodell was very vague during the congressional hearing).

the cognitive decline observed in retired players was linked with their time in the NFL.[95] Also, committee members, former players, and even a former team executive criticized the Commissioner for the League's negligence in handling brain injuries in active and former players.[96]

The League is facing a class-action lawsuit including over 3,000 current and former players for the NFL's mismanagement of concussions.[97] The Master Complaint filed by these players states that the NFL had a "duty to provide players with rules and information to protect the players as much as possible from short-term and long-term health risks."[98] On August 29, 2013, the parties reached a settlement agreement which would require the NFL to contribute $765 million to cover injury compensation for retired players, fund medical and safety research, and pay litigation expenses; however, the judge overseeing the proceedings has yet to approve the proposed settlement.[99]

The history of concussions in the NFL demonstrates that when player safety is compromised, the NFL has attempted to remedy the issue.[100] However, despite its promulgation of new rules and regulations to make the game safer, the NFL has nonetheless been criticized for knowingly putting players' health at risk and for not acting quickly enough to protect players' safety.[101]

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95. *See* Alan Schwarz, *NFL Scolded Over Injuries to Its Players*, N.Y. TIMES, (Jan. 25, 2013), http://www.nytimes.com/2009/10/29/sports/football/29hearing.html?scp=2&sq=&st=nyt [hereinafter *NFL Scolded*] (quoting Goodell's vague responses to questioning).

96. *See id.* (listing the people who criticized the NFL at the hearing).

97. *See* Darren Heitner, *NFL Concussion Litigation: Breaking Down the NFL's Persuasive Motion To Dismiss The Amended Master Complaint*, FORBES, Sept. 2, 2012, http://www.forbes.com/sites/darrenheitner/2012/09/02/nfl-concussion-litigation-breaking-down-the-nfls-persuasive-motion-to-dismiss-the-amended-master-complaint (last visited Dec. 13, 2012) (explaining the arguments made in the motion).

98. *Id.*

99. *See* Darren Heitner, *Chicago Startup In Position To Revolutionize NFL Players' Concussion Detection And Analysis*, FORBES, Nov. 17, 2013, http://www.forbes.com/sites/darrenheitner/2013/11/17/chicago-startup-in-position-to-revolutionize-nfl-players-concussion-detection-and-analysis/.

100. *See generally* Complaint, *supra* note 91 (stating that the NFL created the Mild Traumatic Brain Injury Committee in response to the number of concussions players sustained and explaining the evolution of how the NFL has handled the concussions).

101. *See* Schwarz, *supra* note 94 (contending that after an embarrassing hearing on the issue of player safety before the House Judiciary Committee, the NFL seems to have begun to embrace the value of outside opinion).

III. BEWARE OF THE BLITZ: EXISTING DOCTRINE PROTECTS PLAYERS BUT THE CBA MAY BLOCK LAWSUITS

A. The CBA Should Not Block Litigation

The current CBA covers a range of topics including player injuries and represents the full understanding between the NFL and the players.[102] Section 44 of the CBA, which covers injury grievances, may govern in Brett Hartmann's case.[103] Under the CBA, Hartmann could have filed for a grievance within twenty-five days of the injury and the NFL would have handled his legal claims through arbitration.[104] A court may determine that his injury should have been reviewed by the NFL arbitration panel as required by the CBA.[105] However, because the injury was caused by a field defect, not a "typical" football injury, the court may decide that the issue may be reviewed by a court in lieu of the arbitration panel.[106]

Section 301 of the Labor Management Relations Act (LMRA) may govern all CBAs affecting interstate commerce, thus preempting any and all state-law claims.[107] Section 301(a) of the LMRA provides that when contracts between an employer and a union in an industry affecting commerce are violated, an action may be brought in the district court having jurisdiction of the parties, without regard to the amount in controversy or the citizenship of the parties.[108]

The purpose behind the preemption rule as it relates to the LMRA is two-fold.[109] First, the rule is applied to ensure that the

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102. See generally *NFL Collective Bargaining Agreement*, *supra* note 30.

103. *See id.* (explaining what an injury grievance is and how a professional football player qualifies for it).

104. *See id.* (discussing the procedure and requirements for filing am injury grievance with the NFL).

105. *See id.* at art. 44, § 7 (explaining that an injury grievance must be heard by an arbitration panel rather than a court).

106. *See id.* (remarking that when an injury is not a typical football injury as outlined by the collective bargaining agreement a football player may not be required to submit his injury grievance to the arbitration panel as his sole remedy).

107. *See* 29 U.S.C. § 141 (2012) (asserting that conflicts which interfere with commerce can be avoided or substantially minimized if employers, employees, and unions each recognize one another's legitimate legal rights).

108. *See* 29 U.S.C. § 185(a) (2012) (stating which jurisdictions suits for violations of contracts between labor organizations representing employees in an industry affecting commerce may be brought); Samples v. Ryder Truck Lines, Inc., 755 F.2d 881, 884 (11th Cir. 1985) (naming the specifications for lawsuits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the LMRA).

109. *See* Livadas v. Bradshaw, 512 U.S. 107, 123 (1994) (providing a detailed explanation of the preemption rule of the LMRA).

purposes of Section 301 will not be frustrated by state laws attempting to determine questions related to the provisions of a labor agreement.[110] Second, the rule is applied to ensure that parties do not attempt to escape their arbitration agreements by disguising actions alleging breaches of duties assumed in CBAs as tort suits.[111] A preemption finding under Section 301 of the LMRA is not mandated simply by the contention that employees' state law claims "necessarily implicate" the CBA.[112] Additionally, the mere fact that the court had to look at the CBA in order to determine that it was silent on any issue relevant to employees' state claims does not mean that the court had interpreted the CBA in such a way as to trigger the preemption rule.[113] When the subject of the dispute is not the definition of contract terms, the fact that a CBA will be consulted during state-law litigation does not require the claim to be extinguished.[114]

If disputes fall under the existing CBA, the clauses within the agreement should control.[115] Injuries and the process for handling injury claims are outlined extensively in the CBA.[116] However, field quality issues are nowhere explicitly delineated in the CBA and because of this silence on the issue of field quality, the courtroom is the proper venue for field quality litigation.[117]

Another issue not explicitly delineated in the CBA is negligent misrepresentation.[118] In *Bentley v. Cleveland Browns*, the Court of Appeals of Ohio addressed whether LeCharles Bentley's claims were governed by the NFL's CBA.[119] In his complaint, Bentley alleged fraud and negligent misrepresentation, asserting that he contracted a staph infection from the Browns rehabilitation facility after it was represented as a world class facility.[120] The court noted that while the parties agreed to

110. *See id.* (describing the first step of the preemption rule).

111. *See id.* (explaining the second step of the preemption rule).

112. *See* Kline v. Sec. Guards, Inc. 386 F.3d 246, 256 (3rd Cir. 2004) (reasoning that merely referring to the CBA does not preempt a claim).

113. *See id.* (stating that analyzing a CBA for silence on an issue does not equate to interpretation).

114. *See Livadas*, 512 U.S. at 123 (explaining that merely consulting the CBA does not preempt a claim).

115. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (dictating a wide variety of topics upon which the NFL and the NFLPA agreed including injuries, lockouts, and lawsuits).

116. *See id.* at art. 44, § 7 (listing injuries covered by the agreement and the procedure that professional football players must use in order to have their injury grievances heard before the NFL arbitration panel).

117. *See generally id.* (lacking any terms or clauses pertaining to field quality).

118. *See generally id.* (containing no terms or clauses pertaining to negligent misrepresentation).

119. *See Bentley*, 958 N.E.2d at 588 (explaining that Bentley had to sign the CBA as a condition of his employment with the Cleveland Browns).

120. *See id.* at 587 (asserting that the rehabilitation center was known to be an unsterile environment).

arbitrate disagreements within the scope of the CBA, parties cannot be compelled to arbitrate a dispute that falls outside the scope of the agreement.[121] The court determined that the claims for fraud and negligent misrepresentation did not implicate the CBA, and therefore state law was applied.[122] Hartmann's case is similar to *Bentley* in that field quality issues are nowhere implicated by the CBA. Therefore, Hartmann should not be limited where field quality is not outlined in the agreement.[123] As in *Bentley*, where the CBA was not governing authority, state law will be controlling, and thus safe place statutes will likely be applied.[124]

Similarly, in *Jurevicius v. Cleveland Browns*, the United States District Court for the Northern District of Ohio held that Jurevicius' claims of fraud and negligent misrepresentation neither arose from nor required the interpretation of the CBA.[125] The court noted that there is no need to interpret the CBA to determine the outcome of the claims because no provision of the CBA covers these types of allegations.[126] Hartmann's case is akin to *Jurevicius* because, like negligent misrepresentation, field quality issues are not implicated by the CBA, and therefore Hartmann should not be limited by the agreement.[127] As in *Jurevicius*, state law should be applied in Hartmann's case where issues are not outlined in the CBA.[128]

B. Safe Place Statutes Promise Safe Working Conditions for Employees

Courts will likely find that the NFL, as an employer, must furnish a place of employment which is safe for employees in order to comply with safe place statutes.[129] With over 1,200 squares of

121. *See id.* at 589 (claiming that negligent misrepresentation was not an issue that players agreed to submit to arbitration).

122. *See id.* (holding that state law would govern and that arbitration could not be compelled).

123. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (lacking any terms or clauses in the agreement which dictate standards for field quality or mandated playing surfaces).

124. *See Bentley*, 958 N.E.2d at 589 (expressing that state law applies where the CBA does not govern).

125. *See Jurevicius*, 2010 U.S. Dist. LEXIS 144096, at *48 (holding that Jurevicius' claims did not require interpretation of the CBA and were not preempted by Section 301 of the LMRA).

126. *See id.* at *38 (finding that no language in the CBA implicates negligent misrepresentation or fraud).

127. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (lacking any terms in the agreement which dictate standards for field quality).

128. *See Jurevicius,* 2010 U.S. Dist. LEXIS 144096, at *48 (remanding claims to state court as the proper venue for issues not agreed upon in the CBA).

129. *See* OHIO REV. CODE ANN. § 4101.12 (2012) (mandating that employers must furnish safe places of employment to employees); WIS. STAT. § 101.11

grass installed in the field at Reliant Stadium, there are many potential hazards a player could face.[130] The question then becomes, how safe must a playing field be to comply with statutory law? Because nearly all jurisdictions utilize very similar safe place statutes, Wisconsin and Ohio will be analyzed in an effort to answer this question.[131]

Wisconsin's statute dictates that an employer must do everything reasonably necessary to protect the life, health, safety, and welfare of employees.[132] This includes providing methods and processes which render both employment and places of employment safe.[133] Because an employer must do everything within reason for the safety of the employees and there are safer ways to maintain a field, needlessly creating hazardous seams would be in violation of this statute.[134]

Case law implies that under Wisconsin's safe place statute, Hartmann would likely have a successful case.[135] In *Ruppa v. American States Insurance*, the plaintiff was severely injured when his horse slipped and fell during an arena show,[136] much like how Hartmann fell during a game at Reliant Stadium.[137] The plaintiff, Dr. Ruppa, claimed the injury was caused by the defendants' negligence in their failure to provide and maintain a safe and suitable place for the horse show, which constituted a breach of their duties under the Wisconsin safe-place statute.[138] Similar to how the poor surface of the arena caused the horse to slip and injure the plaintiff in *Ruppa*, the poor playing surface at Reliant Stadium caused Brett Hartmann to catch his foot and tear

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(2011) (mandating that employers must furnish safe places of employment to employees).

130. *See Ex-Texans Punter Sues*, *supra* note 4 (illustrating how workers at Reliant Stadium piece together trays of grass and commenting that the method has been known to cause unevenness and lifted edges).

131. *See* Kastenberg, *supra* note 59, at 201 (stating that most jurisdictions have similar safe place statutes).

132. *See* WIS. STAT. § 101.11 (listing employee safety requirements).

133. *See id.* (requiring that facilities must be kept safe for employees).

134. *See Panel*, *supra* note 51 (describing how certain serious injuries occur more often on artificial turf than on grass).

135. *See Ruppa*, 91 Wis.2d at 640 (finding that where the safe place statute is applicable, owners of a facility are liable "only for injury resulting from structural defects and unsafe conditions associated with structure"). Alternatively, under common law, the court found that an owner of land "owes one lawfully on the premises a duty or ordinary care", and it is possible that a defective condition on the arena floor "may have constituted a breach of [the owner's] common law duty." *Id.* at 643-44.

136. *See id.* at 633 (detailing how Doctor Ruppa was injured when he was thrown from his horse).

137. *See* Raley, *supra* note 3 (explaining how punter Brett Hartmann was injured after his foot got caught in a defect in the field surface of Reliant Stadium).

138. *See Ruppa*, 91 Wis.2d at 639 (the safe place statute dictates that employers furnish safe places of employment to employees).

ligaments in his knee.[139] The court in *Ruppa* held that the plaintiff's factual allegations stated a safe-place cause of action; therefore, one would expect that Hartmann's case states a valid cause of action as well.[140]

In contrast, Hartmann's case is dissimilar from *Hoepner v. City of Eau Claire*, in which the court determined that the municipal softball field was not covered by the safe place statute.[141] The court in *Hoepner* found that the field was neither a business nor a place of employment because the city did not generate any revenue from the operation of the field.[142] Unlike the field in *Hoepner*, Reliant Stadium and the NFL profit from professional football games. Therefore, Reliant Stadium would fall under the provisions of the safe place statute.[143]

Ohio's statute dictates that no employer shall fail to use safeguards, or fail to adopt and use methods and processes reasonably adequate to render a place of employment safe.[144] Utilizing strong language, Ohio's safe place statute goes on to state that "no employer shall fail to do every other thing reasonably necessary to protect the life, health, safety and welfare of such employees or frequenters."[145] There is a compelling argument to be made that Reliant Stadium has failed to do "every other thing reasonably necessary" to safely maintain field quality.[146]

The Ohio court in *Vayto v. River Terminal & Railway Company* stated that the safe place statute was general and declaratory, leaving to judicial determination the question of what is a safe place or safe employment.[147] The court went on to explain that determining if employment was safe would "depend upon the circumstances of each particular case and situation. A workshop, factory, mine or other place of employment can, in the nature of

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139. *See Ex-Texans Punter Sues*, *supra* note 4 (indicating that Hartmann tore his ACL at Reliant Stadium on December 4, 2011 during a game against the Atlanta Falcons).

140. *See Ruppa*, 91 Wis. 2d at 640 (reasoning that the field was not a profit-making enterprise).

141. *See Hoepner*, 264 Wis. at 613 (holding that the municipal field was a public building).

142. *See id.* at 611 (reasoning that the softball field was not a place of employment because the city, in operating the field, was not engaged in any industry, trade, or business, and its employees maintaining the field were not employed for direct or indirect gain or profit).

143. *See Ruppa*, 91 Wis.2d at 639 (revealing that a place of employment as defined by the safe place statute is any profit-making enterprise).

144. *See* OHIO REV. CODE ANN. § 4101.12 (2012) (listing the requirements of the Ohio safe place statue).

145. *Id.*

146. *See Panel*, *supra* note 51 (describing how grass may be a safer alternative because certain serious injuries occur more often on artificial turf than on grass).

147. *Vayto*, 28 Ohio Dec. at 438.

things, be made no safer than is reasonably consistent with the practical operation of the business being there conducted."[148]

Applying the reasoning of *Vayto*, Reliant Stadium could be made safer while being "reasonably consistent with the practical operation of the business."[149] Defendants SMG and HCCSC, in operating their business, utilize grass trays at Reliant Stadium.[150] Although Defendants had enough grass trays on hand to fill three football fields, they failed to make the playing field safe on the day Brett Hartmann was injured.[151] Accounts of the condition of the field on the day Hartmann was injured reveal that the surface had even more indentations and lifted areas than usual.[152] Some argue that the surface was in a dismal condition because the field had been used by high school football teams earlier in the week.[153] Because the extra grass trays Reliant Stadium had on-hand were not utilized, the dictates of *Vayto* were not followed because the field at Reliant Stadium could have been made safer even while keeping with their standard operating procedures.[154]

The safe place statutes clearly dictate that employers must furnish safe employment.[155] There is a strong argument to be made that Reliant Stadium, as a place of employment, is in violation of the statutes because its playing surface, which is constructed from over 1,200 trays of sod, is unsafe for the player-employees.[156] Choosing artificial turf as an alternative to trays of sod may not comply with the safe places statutes either because studies suggest that artificial turf can be dangerous as well.[157] In

148. *Id.*

149. *See* Plaintiff's Original Petition and Request for Disclosures, *supra* note 5, at 4 (detailing that Reliant Stadium keeps a large number of extra grass trays on hand in case trays become worn and need to be replaced).

150. *See Ex-Texans Punter Sues*, *supra* note 4 (describing how Reliant Stadium piece together trays of grass to construct a playing surface for football games).

151. *See* Plaintiff's Original Petition and Request for Disclosures, *supra* note 5, at 4 (questioning why the extra grass trays on hand were not utilized to replace pieces of sod which had been torn up due to activities earlier in the week).

152. *See* Raley, *supra* note 3 (providing first-hand accounts that the Reliant Stadium field surface was uneven).

153. *See id.* (giving players' opinions that the Reliant Stadium field got chopped up due to its use by high school teams earlier in the week).

154. *See Vayto*, 28 Ohio Dec. at 438 (reasoning that if a safety measure is not unreasonable in light of a business's standard operating procedure, then it should be required under the safe place statute).

155. *See* WIS. STAT. § 101.11 (2011); OHIO REV. CODE ANN. § 4101.12 (2012) (directing employers to furnish safe places of employment to employees).

156. *See* Raley, *supra* note 3 (establishing that the field surface at Reliant Stadium is composed of many squares of sod, or grass trays, which are dangerous for players due to gaps and continuity problems).

157. *See Panel*, *supra* note 51 (studying serious knee and ankle injuries in professional football players occurring on various playing surfaces including natural grass and artificial playing surfaces).

fact, studies indicate that certain serious knee and ankle injuries happen more often in games played on artificial turf than on grass.[158] Choosing natural grass would be safer than artificial turf and is not unreasonable in light of the NFL's business operations in that many other stadiums have natural grass fields.[159]

Reliant Stadium's current method of utilizing 1,200 trays of sod is clearly unsafe and fails to comply with safe place statutes. Having so many individual trays of sod creates innumerable seams between pieces of sod and many potential hazards for players.[160] Compliance with the safe place statutes may be achieved through installing a full-field piece of sod or natural grass.[161] By using a full-field piece of sod or natural grass, seams would be avoided and players would face fewer hazards, thereby creating a safer employment environment for professional football players.

C. Open and Obvious Doctrine Will Not Abrogate Statutory Duties

A court will likely find that hazardous seams between pieces of sod are not an open, unconcealed, or obvious hazard. The seams are very different from swimming pools, steps, or ditches, which courts have widely deemed open and obvious dangers.[162] Seams are more analogous to situations in which case law suggests a defect is not an open and obvious danger.[163] Seams are more akin to the store shelf in *Patterson v. Troyer Potato Products* which was protruding 3 or 4 inches near floor level where neither plaintiff nor

158. *See id.* (suggesting that FieldTurf, the most popular artificial playing surface, had a higher rate of injury than natural grass surfaces).

159. *See Vayto*, 28 Ohio Dec. at 438 (reasoning that if a procedure is not unreasonable in light of a business's standard operations, then it should be required under the safe place statute).

160. *See* Plaintiff's Original Petition and Request for Disclosures, *supra* note 5, at 4 (detailing the method Reliant Stadium employs to create the playing surface and asserting that this method creates an unsafe, uneven, and unsuitable football field).

161. *See* Raley, *supra* note 3 (revealing that the surface at Reliant Stadium is composed of trays of grass which are pieced together much like a puzzle, often resulting in visible unevenness).

162. *See generally Ex parte* Industrial Distribution Services Warehouse, Inc., 709 So.2d 16 (Ala. 1997) (stating that a premises owner is not liable for injuries resulting from danger that was known to invitees or that invitees should have observed through exercise of reasonable care); Prince v. Wal-Mart Stores, Inc., 804 So.2d 1102 (Ala. Civ. App. 2001) (contending that no liability can attach to an owner if the invitee possesses knowledge of the dangerous condition); Ethyl Corp. v. Johnson, 345 Ark. 476, 49 S.W.3d 644 (2001) (discussing the duty to maintain premises in a reasonably safe condition and to warn invitees of hidden dangers and the like); Wolford v. Ostenbridge, 861 So.2d 455 (Fla. Dist. Ct. App. 2d Dist. 2003) (examining a property owner's duties to invitees).

163. *See Patterson*, 273 A.D.2d at 865 (holding that a defect near ground level was not an open and obvious danger).

anyone else noticed the shelf before it injured someone.[164] In *Patterson*, the Supreme Court of New York determined the shelf was not open and obvious. Uneven seams are similar to the shelf because they are neither on eye-level nor easily seen.[165] Similarities can also be drawn between seams and a wet floor in the laundry room of an apartment complex on a rainy day, which resulted in the tenant injuring her knee.[166] The Louisiana Court of Appeals in *Wallace v. Howell* determined that the water on the floor of the laundry room was not open and obvious.[167] Uneven seams are similar to the wet floor of the laundry room because both are ground defects of which the victims did not have notice.[168]

If a court did find that the seams between grass trays at Reliant Stadium are open and obvious, the open and obvious doctrine would be a defense for the NFL, and the League could not be held liable for Hartmann's injury because a person assumes the risk of injury from open and obvious dangers.[169] "[K]nowledge of the condition removes the sting of unreasonableness from any danger" surrounding it, "and obviousness may be relied on to supply knowledge [of the dangerous condition]."[170] Hence the obvious character of the condition is incompatible with negligence in maintaining it.[171] A plaintiff is barred from recovery when injured by a dangerous condition if there is no negligence on the part of the defendant.[172] Therefore, the duty to keep premises in a

164. *See id.* (finding that neither of the employees present noticed the shelf).

165. *See id.* (reasoning that the store shelf was not an open and obvious danger because it was nearly level with the ground and was not even noticed by store employees).

166. *See Wallace*, 30 So.3d at 217 (finding that the accumulation of water in the laundry room occurred on the floor and was not open and obvious).

167. *See id.* at 219 (reasoning that the apartment tenant had notice neither that the laundry room leaked after heavy rain nor that the washing appliances leaked).

168. *See id.* (explaining that the landlord of the apartment did not give the apartment tenant any notice that water often accumulated on the floor of the laundry room after heavy rain storms).

169. *See generally* Ernest H. Schopler, *Modern status of the rule absolving a possessor of land of liability to those coming thereon for harm caused by dangerous physical conditions of which the injured party knew and realized the risk*, 35 A.L.R.3d 230 (discussing the modern status of the rule absolving a possessor of land of liability for harm caused by dangerous conditions); James L. Isham, *Liability of local government entity for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area*, 73 A.L.R.4th 496 (explaining liability for injury resulting from use of outdoor playground equipment at municipally owned park or recreation area).

170. *See* HARPER & JAMES, LAW OF TORTS 1491 (1st ed. 1956) (illustrating how one can prove obviousness in the absence of proof that the plaintiff knew of the danger).

171. *See id.* (contending it is unfair to hold a premises owner liable where his negligence is less than the plaintiff's negligence).

172. *See id.* (asserting that even if the plaintiff was careful, so long as the danger was open and obvious, liability should not attach to the premises owner).

reasonably safe condition is abrogated where a dangerous condition is open and obvious.[173]

Ultimately, the NFL has a duty to foresee and guard against hazards and to protect the players under statutory law.[174] While a finding that the dangerous seams are an open and obvious danger could abrogate this duty, a court is more likely to find that the hazard was concealed because seams between pieces of sod are unlike open and obvious dangers such as swimming pools, steps, and ditches in that they are not large, noticeable hazards.[175]

D. Impact on NFL

The NFL could continue to face litigation due to poor field quality. Field quality is not something that is explicitly outlined in the CBA.[176] Article 3 of the CBA bars lawsuits for conduct which is permitted by the agreement.[177] Because neither field quality nor field maintenance is discussed in the CBA, players may sue for injuries resulting from field quality issues.[178] Litigation can be very costly for a business.[179] For this reason, the NFL may be interested in negotiating a solution to avoid litigation over field quality.[180]

Additionally, because field quality is not explicitly discussed in the CBA, the NFL may wish to add provisions to the CBA so as to limit future lawsuits.[181] In order to change the terms and

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173. *See* Sidle v. Humphrey, 13 Ohio St. 2d 45, 48 (Ohio 1968) (reasoning that no liability should attach to the owner of the premises where a danger is open and obvious).

174. *See* WIS. STAT. § 101.11 (2011); OHIO REV. CODE ANN. § 4101.12 (2012) (mandating that employers furnish safe places of employment to all of their employees).

175. *See generally Ex parte* Industrial Distribution Services Warehouse, Inc., 709 So.2d 16 (holding that a premises owner is not liable for injuries resulting from an open and obvious danger), *Prince*, 804 So.2d 1102 (asserting that no liability can attach to an owner where the danger known), *Ethyl Corp.*, 345 Ark. 476 (discussing the duty to maintain premises in a reasonably safe condition and to warn invitees of hidden dangers and the like).

176. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (lacking any terms or clauses in the agreement which dictate standards for field quality or mandated playing surfaces).

177. *See id.* at art. 3, § 2 (detailing the types of lawsuits which the NFL and the NFLPA have agreed not to lodge against one another).

178. *See generally id*. (lacking any provisions regarding field quality or field maintenance).

179. *See Litigation Cost Survey*, *supra* note 18(attesting that litigation constitutes a significant economic cost of doing business); Belson, *supra* note 18 (expressing that the legal bills the NFL is facing are draining the insurance companies who wrote polices for the NFL).

180. *See Litigation Cost Survey*, *supra* note 18 (explaining that litigation can be very costly); Belson, *supra* note 18 (stating that the expense of the legal ramifications of concussion litigation may be more than the NFL's insurers are equipped to absorb).

181. *See id.* (contending insurers may start raising premiums or excluding

conditions of the CBA, the NFL and NFLPA must mutually assent to those changes.[182] However, the current CBA is controlling until 2020, and absent other incentives, players' representatives may have little motivation to renegotiate the terms of the CBA prematurely because doing so could limit players' potential recovery for injuries sustained due to poor field quality.[183]

Field quality litigation and concerns surrounding playing surfaces could lead to possible rule changes.[184] The NFL Game Operations Manual currently lists certain guidelines that clubs must follow pertaining to field quality.[185] Clubs must certify that fields are in compliance with the guidelines and have passed an impact hardness test, synthetic infill depth and evenness test, and a visual inspection.[186] An impact hardness test is used to assess the safety and playability of a playing surface.[187] The synthetic infill test is designed to ensure that turf is not too short or too long so as to impede game play. Finally, the visual inspection is meant to ensure that the playing surface is free of any defects or foreign objects.[188]

The manual states that for home games, clubs are responsible for having staff maintain the field and respond to any playing surface issues, but a single sentence in a guideline book is unlikely to absolve the NFL of all responsibility for injuries players sustain due to poor field quality.[189] While it is laudable for the NFL to

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concussions and other injuries from the policies they write for the NFL).

182. *See NFL Collective Bargaining Agreement*, *supra* note 30, at 5, art. 2, § 4 (expressing that the agreement cannot be modified unless both the NFL and the NFLPA both agree to the modifications).

183. *See id.* at xiv (displaying the timeframe during which the agreement is binding upon the NFL and the NFLPA).

184. *See League*, *supra* note 92 (remarking that the NFL released a new and expanded statement on return-to-play rules for professional football players who sustain a concussion in response to criticism for the way the League handled players' head injuries and rehabilitation schedules).

185. *See* Bell, *supra* note 47 (listing tests which field managers or staff of each individual football club are required to conduct to be in compliance with the Recommended Practices for the Maintenance of Infill and Natural Surfaces for NFL Games).

186. *See id.* (mandating that individual football clubs are responsible for addressing any playing surface issue and remedying the issue before any gameplay ensues).

187. *See G-max Testing - An Overview*, SPORTS TURF SOLUTIONS, http://www.turftest.com/gmax-overview.html (last visited on Jan. 29, 2013) (calculating a ratio comparing the maximum acceleration experienced during an impact, to the normal rate of acceleration due to gravity where the higher the value, the poorer the performance of the surface); Bell, *supra* note 47 (listing the requirements of the impact hardness test which dictates that the g-max must be less than one hundred g).

188. *See id.* (detailing the requirements of the synthetic infill test and visual inspection which individual football clubs are responsible for conducting before games).

189. *See id.* (explaining that the individual football clubs are responsible for having their field managers or staff address any playing surface issues and

have taken the first steps to regulate playing surfaces for the safety of its players, the guidelines set out in the NFL Game Operations Manual do not go far enough.[190] The NFL might consider making playing surface guidelines stricter in response to concerns over poor field quality.

Similarly, the NFL changed certain rules surrounding game play in response to concerns over concussions.[191] Unlike the rule changes surrounding concussions which focus on making individual plays safer, rule changes surrounding field quality could take the form of a playing surface mandate.[192] Currently, studies indicate that the safest playing surface to mandate would be full-field sod, or natural grass like the stadium in Glendale, Arizona.[193] Such a rule change would have significant ramifications in the NFL because modeling playing surfaces after the Arizona stadium could prove to be economically challenging for some franchises.[194] Nevertheless, many clubs could harness the power of their desirable location to draw other tenants to a well-maintained multi-use facility.[195]

In the long-run, making game play safer for professional football players could prove profitable for the NFL.[196] By making the game safer, players would sustain fewer injuries, which would amount to fewer potential lawsuits for the NFL to defend.[197] From the start of training camp through the Super Bowl game, there was an increase of 1,302 total injuries reported during the 2011 season, bringing the 2010 total of 3,191 up to 4,493.[198] Fewer

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remedying such issues before gameplay).

190. *See id.* (providing only three tests for a playing surface and largely making clubs responsible for their implementation).

191. *See League*, *supra* note 92 (publishing a new and expanded statement on return-to-play rules for players who sustain a concussion after the NFL received wide criticism for how the League handled concussions and player safety issues).

192. *See* Kacsmar, *supra* note 9 (illustrating how the kickoff rule change, which moved the kickoff up five yards from the thirty-yard line to the thirty-five-yard line, led to fewer collisions and fewer concussions).

193. *See Statistics*, UNIVERSITY OF PHOENIX STADIUM, http://www.universityofphoenixstadium.com/stadium/statistics (last visited Jan. 27, 2013) (explaining that the stadium uses full-field grass).

194. *See id.* (denoting the number and amount of investments that were necessary to construct the University of Phoenix Stadium in Glendale, Arizona).

195. *See id.* (listing the various events that can be hosted by the University of Phoenix Stadium in Glendale, Arizona).

196. *See* Kacsmar, *supra* note 9 (asserting that keeping the number of injuries professional football players sustain to a minimum is imperative for the long-term future and viability of the NFL).

197. *See id.* (describing how certain injuries, such as head trauma and permanent brain damage, have led some professional football players to file actions against both the NFL and individual teams to recover medical expenses, rehabilitation expenses, and lost future wages).

198. *See id.* (providing a detailed breakdown of the total number of injuries

injuries could mean fewer costly medical tests, surgeries, and rehabilitations. Overall, the League could save money from having fewer legal and medical expenses by making game play safer through improved field quality.[199]

IV. MAKING THE PLAYBOOK: CONCUSSION LITIGATION IMPLIES THE NFL MUST PROTECT PLAYERS FROM UNSAFE TURF

A. Implications from Concussion Litigation

Much like how concussion litigation led to expanded regulations, field quality litigation could very well lead to the League announcing new regulations to keep players safe.[200] The concussion litigation revolves around the idea that once the NFL became aware of how dangerous concussions could be to players, the NFL should have warned players of the long-term health effects of concussions and taken affirmative steps to protect them.[201] The NFL eventually adopted new rules and regulations to mitigate the danger of concussions by trying to make every play safer.[202] However, the League was widely criticized for not taking action sooner to protect professional football players.[203] Some even insinuated that the NFL tried to minimize or hide the true dangers of concussions.[204] The Complaint filed on behalf of over 3,000 current and former players who sustained concussions alleges that the NFL misled the plaintiffs and "willfully and intentionally concealed from them the heightened risk or neurodegenerative disorders and concealed from then-current NFL players and former NFL players the risks of head injuries in NFL games and practices, including the risks associated with returning

sustained by professional football players by season and severity).

199. *See* Belson, *supra* note 18 (showing that the NFL's legal expenses are extremely costly and have had a huge effect on insurance companies who wrote policies for the NFL, forcing some insurance companies into mergers or bankruptcy).

200. *See League*, *supra* note 92 (disclosing how the danger associated with repeated concussions led the NFL to change certain rules, such as return-to-play rules).

201. *See* Bedi, *supra* note 13 (explaining that once the NFL became aware of the dangers of concussions through research conducted by the Mild Traumatic Brain Injury Committee, an affirmative duty developed such that required the NFL to warn the players of the long-term effects of repeated concussions).

202. *See League*, *supra* note 92. *See also*, Heitner, *supra* note 97 (discussing the current concussion litigation the NFL is facing as a result of how the NFL handled players' recovery from head trauma).

203. *See NFL Scolded*, *supra* note 95 (expressing how the House Judiciary Committee, with lawmakers, former players, and former team executives accused the NFL of neglect in its treatment of active and retired players with brain injuries).

204. *See id.* (quoting Representative Linda T. Sánchez, Democrat of California as drawing similarities between the NFL and the tobacco industry).

to physical activity too soon after sustaining a sub-concussive or concussive injury."[205]

Field quality litigation could mirror concussion litigation. Now that the NFL is aware that field surfaces can be very dangerous for football players, they must act to make conditions safe for their employees.[206] Seams between pieces of sod have proven to be dangerous because players' feet can get caught, causing extensive knee and ankle injuries.[207] There is also evidence that artificial turf can increase the number of knee and ankle injuries among football players.[208] The NFL should now take proactive steps to remedy dangerous playing surfaces because if the NFL does not do something in an effort to protect players, the League could again be criticized for denying that a problem exists or trying to minimize the issue.[209] The chosen remedy may be less important than the act itself, for it would seem that the worst action for the NFL to take is no action at all.

Based upon how the NFL handled concussion litigation, the League may deny that field quality is an issue and downplay the dangers of certain playing surfaces.[210] In an effort to avoid mandating a playing surface, the NFL may argue that the disputes surrounding field quality fall under the existing collective bargaining agreement covering injury grievances, and therefore, the clauses within the CBA should control.[211] The NFL may cite to Section 301 of the Labor Management Relations Act which governs all CBA's affecting interstate commerce and argue that all state-law claims are preempted.[212] Field quality litigation would have to maneuver around the existing CBA to be successful.[213] Because

205. Heitner, *supra* note 97.

206. *See Ex-Texans Punter Sues*, *supra* note 4 (explaining that former Texans punter Brett Hartmann fractured his bone and tore his ACL after his foot got caught in a seam in the playing surface at Reliant Stadium).

207. *See* Raley, *supra* note 3 (stating that punter Brett Hartmann was injured when his foot was caught between the seams of two pieces of sod).

208. *See Panel*, *supra* note 51 (suggesting that certain serious knee and ankle injuries happen more often in games played on FieldTurf, the most popular brand of artificial turf, than on grass).

209. *See NFL Scolded*, *supra* note 95 (providing criticism from the House Judiciary Committee, lawmakers, former players, and former team executive accusing the League of neglect in its handling of active and retired players with brain injuries).

210. *See id.* (demonstrating that the NFL provided vague answers when questioned by Congress).

211. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (representing the agreement between the NFL and the NFLPA on a wide variety of topics such as injuries, lawsuits, and grievances).

212. *See* 29 U.S.C. § 151 (declaring it to be the U.S. policy to eliminate certain obstructions to the free flow of commerce and to mitigate these obstacles by encouraging collective bargaining).

213. *See* Bedi, *supra* note 13 (observing that in the course of the current concussion litigation the NFL has attempted to argue that negligence actions should be dismissed because the CBA is a binding contract which should

field quality is not explicitly outlined in the collective bargaining agreement, a court should find that the CBA does not block field quality litigation.[214]

The NFL should avoid downplaying the dangers of playing surfaces and attempting to thwart field quality litigation with the Labor Relations Management Act. "Punting" the issue in this fashion could be viewed as attempting to conceal hazards faced by professional football players.[215] Public opinion of the NFL has declined as of late due to various circumstances, including the League's treatment of concussions and the veteran referee lockout.[216] Another hit to the NFL's image could cause irreparable damage at a time when the League is attempting to expand into new markets, both domestically and internationally.[217]

B. Say No to Artificial Turf and Yes to the Arizona Model

Because studies have found artificial turf to be more dangerous than natural grass, stadiums should avoid using it so that game play can be made safer.[218] According to player surveys, nearly ninety percent of players believe artificial turf causes more soreness and fatigue and is more likely to shorten their careers.[219] Nearly eighty-two percent of players believe that artificial turf is more likely to contribute to injuries than grass.[220] Players have strong opinions on field quality and field performance, and because they must play on fields day in and day out as a condition of their

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control).

214. *See generally NFL Collective Bargaining Agreement*, *supra* note 30 (lacking any terms or clauses which relate to a standard for playing surfaces or any procedure for remedying poor field quality).

215. *See NFL Scolded*, *supra* note 95 (describing how the NFL minimized the dangers players faced from repeated concussions).

216. *See* Jason Maloni, *How the NFL Was Forced into Fourth and Long*, LEVICK, Sept. 27, 2012, http://levick.com/blog/2012/09/27/how-nfl-was-forced-fourth-and-long#.UQXRBL_hqNI (last visited Jan. 27, 2013) (opining that certain actions and communications missteps, such as the veteran referee lockout, caused public opinion to turn against the League because the NFL remained silent on the issue).

217. *See* Kaplan, *supra* note 17 (acknowledging that the NFL aims to reach $25 billion in revenue by 2027 and commenting that while the domestic market is quite saturated by the NFL, the international market holds yet-untapped potential growth).

218. *See Panel*, *supra* note 51 (finding that serious knee and ankle injuries happen more often in games played on artificial turf, specifically the most popular brand FieldTurf, than on natural grass surfaces).

219. *See Player Survey Reveals Arizona, Indy Have Best Fields in NFL*, NFL, Feb. 3, 2011, http://www.nfl.com/superbowl/story/09000d5d81e1a8d0/article/plapla-survey-reveals-arizona-indy-have-best-fields-in-nfl (last visited Jan. 25, 2013) [hereinafter *Player Survey*] (providing viewpoints of current players on their favorite and least favorite playing surfaces).

220. *See id.* (providing professional football players' viewpoints on both grass and artificial playing surfaces).

employment, their viewpoints should be held in high regard.

Surveys conducted by the players' union show that players overwhelmingly prefer grass fields, and they have repeatedly named Arizona's grass field as the best in the League.[221] According to these same player surveys, a vast majority of players believe there should be a League-wide standard for all playing fields.[222] New England Patriot's Coach Bill Belichick has similarly called for the League to ensure that every stadium has safe playing surfaces.[223] During a radio interview, Belichick stated,

> [F]or the level of play we have in the National Football League, I think consistency on the field would be priority number one. We talk about players' safety, about hits and all that and that's certainly an area that should always be addressed. There's nothing more important than player safety. To me, player safety starts on the surface that we play on.[224]

The NFL should listen to what the players and coaches want and give them a League-wide standard because by acquiescing to the needs of the players, game play could be made safer through improved field quality.[225]

The Arizona Cardinals' stadium in Glendale, Arizona may serve as a viable model for other clubs.[226] The Cardinals play at the University of Phoenix Stadium, which is a multipurpose facility unlike any other in America.[227] The primary tenants in the stadium include the NFL's Arizona Cardinals and the Annual Tostitos Fiesta Bowl of the college football Bowl Championship Series (BCS).[228] The stadium has the ability to host football, basketball, soccer, concerts, consumer shows, motorsports, rodeos, and corporate events, providing the facility management group

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221. *See id.* (naming the University of Phoenix Stadium as the best field in the NFL).

222. *See id.* (stating that players are calling for League-wide mandated playing surface).

223. *See* Florio, *supra* note 11 (providing New England Patriots' head coach Bill Belichick's statements that the League needs to demand safe playing surfaces in every stadium).

224. *Id.*

225. *See id.* (quoting New England Patriots' head coach Bill Belichick calling for improved field surfaces to protect the safety of players); Bell, *supra* note 47 (explaining that the NFLPA monitors field quality issues and calls for upgrades when a playing surface becomes a safety hazard to players, such as the problematic playing surface at Washington Redskins' FedEx Field).

226. *See Statistics*, *supra* note 193 (showing how various investments made the University of Phoenix Stadium possible).

227. *See Stadium History*, UNIVERSITY OF PHOENIX STADIUM, http://www.universityofphoenixstadium.com/stadium (last visited Jan. 27, 2013) (explaining how the University of Phoenix Stadium is capable of hosting a wide variety of events).

228. *See id.* (naming the primary clients and other events the University of Phoenix Stadium hosts).

ample opportunity to profit.[229] By diversifying the client base, the facility has many avenues from which to raise revenue, and accordingly many ways to fund maintenance of the facility.[230]

The field surface at University of Phoenix Stadium is the first of its kind in North America in that the grass field rolls out of the stadium on an 18.9 million pound tray, residing outside of the stadium except for football and soccer events when it is drawn back into the stadium.[231] By remaining outside, the grass playing surface gets the maximum amount of sunshine and nourishment, eliminating humidity problems inside the stadium and providing unrestricted access to the stadium floor for events and staging.[232] By having a retractable field, fewer problems result from using the facility for multiple purposes because the field sustains less wear and tear, which player surveys have indicated is important, citing the multi-use of a facility as the largest contributor to poor field quality.[233]

Additionally, building a multi-use facility like the University of Phoenix Stadium allows a management group to solicit funding from a wider audience when seeking to build a stadium and to raise revenue from a wider array of events.[234] When and if at all possible, clubs should strive to model their franchise after the Arizona model.

If clubs are unable to follow the Arizona model, they should, at a minimum, ensure that the playing surface is as safe as possible. Studies show that artificial turf can be very dangerous.[235] The best option as far as player safety is concerned would be to mandate that all fields must have full-field grass playing surfaces.[236] While this mandate may seem economically challenging for some franchises because of expenses associated with installing and maintaining grass fields, the long-term

229. *See Statistics*, *supra* note 193 (listing a variety of events the University of Phoenix Stadium is capable of hosting).

230. *See id.* (discussing the investment and client base which helped fund the University of Phoenix Stadium and made its construction possible).

231. *See id.* (summarizing how the playing surface at the University of Phoenix Stadium is transported in and out of the stadium as needed).

232. *See id.* (illustrating the ease with which the grass playing surface can be maintained when it is transported outside of the University of Phoenix Stadium).

233. *See id.* (indicating that the only events to use the grass playing surface at the University of Phoenix Stadium are professional football and professor soccer); *Player Survey*, *supra* note 219 (providing player viewpoints that multi-use facilities are often not maintained properly and have poor field quality)

234. *See Statistics*, *supra* note 193 (indicating that the University of Phoenix Stadium is capable of hosting a wide variety of events).

235. *See Panel*, *supra* note 51 (detailing studies suggesting that certain serious knee and ankle injuries occur more often on artificial turf than on natural grass).

236. *See id.* (stating that artificial turf causes players to sustain more injuries than natural grass).

benefits, such as the decrease in injuries players sustain, could end up saving clubs a great deal of money.[237] At the very least, efforts should be made to keep natural grass in stadiums and to increase safety through regulations such as banning grass trays like those used in Reliant Stadium. Banning grass trays would stop errant seams from ending a player's career and would be one small step on the path to improving player safety.

V. CONCLUSION

Injuries will unfortunately always be a part of professional football, but the NFL has a duty to do what they can to provide safe working conditions. Statutory law protects professional football players, ensuring that employers furnish safe working environments to employees. Neither the open and obvious doctrine nor the NFL's Collective Bargaining Agreement block field quality litigation. While injuries and the process for handling injury claims are outlined extensively in the CBA, field quality issues are nowhere explicitly delineated in the agreement. Because of this silence on the issue of field quality, the courtroom is a proper venue for field quality litigation.

While the NFL has guidelines in place to promote safe playing surfaces, current regulations do not go far enough to ensure player safety. If the NFL does not take action now to protect players from hazards caused by poor field quality, the League could face legal challenges and waning public opinion. Knowing the dangers associated with various playing surfaces, the NFL should mandate full-field sod or natural grass as the required playing surface.

237. *See Statistics*, *supra* note 193 (estimating the amount of the investments that were necessary to construct the University of Phoenix Stadium); *Litigation Cost Survey*, *supra* note 18 (explaining that litigation constitutes a significant economic cost of doing business); Belson, *supra* note 18 (stating the legal bills the NFL incurs from player injuries are very costly).