

SPORTS LITIGATION ALERT

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Is It Time to Put Animal Mascots Out to Pasture? Recent Texas Longhorn Lawsuit Points in That Direction

By **Carla Varriale-Barker**

At a sporting event, mascots can be as controversial as they are popular. Some teams have been criticized for promoting racist and anti-indigenous tropes (such as the Atlanta Braves, the Cleveland Indians, the Washington Redskins, and the Kansas City Chiefs). Other teams have landed in the crosshairs of organizations, such as People for the Ethical Treatment of Animals for their use of live animal mascots. The use of live animals such as bulldogs, or even exotic animals like tigers and buffalo, at a sporting event implicates a gaggle of liability considerations for the teams, the venue, the owners of the animals, and the handlers of those animals.

The liability issues presented can be addressed within familiar tort law framework. However, there is a “deeper dilemma” of whether to recognize an animal solely as a “thing” or property. There is a developing body of law, described as animal law, that challenges the legal status of animals and advocates that they deserve to be treated as something other than property¹

Notwithstanding these concerns, the presence of live animal mascots proliferates, often as a marketing tool.

However, a recent lawsuit illustrates the potential liability issues and risk considerations when a live animal mascot appears at a sports event. In a perfect storm of facts, a beloved longhorn steer mascot for the University of Texas gored a photojournalist, Nicholas Wagner, at the Sugar Bowl game in Louisiana. Wagner was on the field taking photographs of the University of Georgia bulldog mascot, Uga. As Wagner was on one knee photographing Uga, he was gored by Bevo XV, the University of Texas longhorn steer mascot. The steer appeared to lunge in the direction of the bulldog (and patrons), taking his handlers with him and toppling barriers set up on the field. He then

struck Wagner. Bevo XV rammed his long horns into Wagner’s back twice, allegedly causing permanent injuries to Wagner’s neck and back. The interaction was captured on video and went viral.

Bevo XV is a longhorn steer and a fixture at the University of Texas. At the time of the attack, he weighed more than 1800 pounds and had a formidable set of horns that spanned approximately six feet from tip to tip. Bevo XV has his own Twitter handle, @TexasMascot, and more than 27,000 followers. He is used in an array of marketing appearances (and has appeared in a Christmas special on the Longhorn Network). He is well known for his “hook ‘em” horns, which underscores the fact that Wagner was injured in a goring incident.

Wagner later served a petition and request for disclosure against the Silver Spurs Alumni Association (“Silver Spurs”) and John Baker and Betty Baker. Wagner seeks to recover damages for personal injuries he allegedly sustained when Bevo XV’s handlers could not control him as he lunged at the bulldog mascot. In his petition, Wagner claims that the Silver Spurs handlers



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¹ See <https://www.nonhumanrights.org>

led Bevo XV to the field, untied him, and prodded him to turn toward Uga in what would have been a photo opportunity between the mismatched mascots. However, the faceoff never happened. As Wagner was on one knee taking photographs of the bulldog, Bevo XV charged through the portable barriers in the direction of the bulldog mascot, striking Wagner.

In the petition and request for disclosure, Wagner alleges several causes of action against Silver Spurs and the Bakers, which are discussed below. According to Wagner's attorney, John "Mickey" Johnson of The Powell Law Firm, discovery is in the early stages and he anticipates that depositions will proceed in the Spring of 2021. Presumably, discovery will focus on whether the Silver Spurs were negligent in their handling of Bevo XV and whether this negligence can be imputed to the Bakers, as the owners of Bevo XV. Discovery will also focus on whether Silver Spurs or the Bakers were on notice of Bevo XV's propensities and whether the attack was foreseeable or could have been prevented through the exercise of reasonable care under the circumstances.

A more philosophical question exists whether live animal mascots (particularly an 1,800-pound longhorn steer with questionable manners) should have been on the field at the Sugar Bowl game in the first place, along with spectators and venue employees.

Employee/Agency, *Respondeat Superior* and Vicarious Liability Against Defendants

Initially, Wagner asserted causes of action alleging employee agency, *respondeat superior*, and claims for vicarious liability against the Defendants. He contends

all of the agents or employees of the Defendants were acting within the course and scope of their authority at all times relevant to his accident. He invoked "the doctrine of employee (sic)", agency, *respondeat superior*, vicarious liability, direct liability "and all other related theories of liability based on the employer-employee and or principal/agent relationship" of the defendants and their employees and/or agents.

This will require proof of the relationship among the Defendants and a discussion about whether the Bakers hired, supervised, retained, and controlled the Silver Spurs handlers.

Negligence

Wagner asserted a distinct cause of action for negligence against the Defendants. The petition states that he will show that at the time of the alleged accident, the Defendants were "guilty" of various acts of negligence "vicariously and directly" and each of the acts of negligence were a direct and proximate cause of this incident, damages and serious personal injuries sustained by the Plaintiff.

Wagner set forth a non-exhaustive list of the claimed negligence by the Defendants:

- failure to take proper safety precautions;
- use of faulty equipment;
- use of faulty tack;
- failure to conspicuously post warning of danger;
- a wanton and willful disregard of the effect of exposing Bevo XV to the UGA mascot knowing it would "spook" him;
- allowing the photographer, and other non-participants to participate in the meeting of the mascots when the person is not a participant to the farm animal activity complained of;
- failure to make reasonably prudent efforts to determine the ability of the Silver Spurs personnel to handle Bevo XV at the game; and
- committing an act in wanton and willful disregard for the safety of the participants.

Wagner contends this negligence was the direct and proximate cause of serious injuries to his neck and back and that these injuries have permanently impaired his abilities.

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These liability issues will require evidence of the precautions and warnings, if any, that were in place at the time of the incident. Likewise, discovery and depositions will likely focus on whether there were prior instances of interactions between Bevo XV and Uga (or any other mascot) that would provide notice that Bevo XV would react the way that he did. The training and equipment provided to the Silver Spurs will also be scrutinized, particularly since the video indicates that the tack seemed insufficient when Bevo XV charged at Uga.

Gross Negligence

Similarly, Wagner asserted a cause of action for “gross negligence” against all the Defendants. Wagner posits that the on-field activities with Bevo XV involved an extreme degree of risk considering the probability, and the magnitude, of harm to the Plaintiff, when the Defendants had actual, subjective awareness of the risk yet still proceeded with a “conscious indifference” to the rights, safety, and welfare of Wagner.

Negligent Training and Supervision

Wagner asserted a cause of action for negligent training and supervision against the Silver Spurs and alleged that the Defendants John and Betty Baker negligently trained and supervised their employees and agents, including Silver Spurs, and knew they were not fit or competent but still allowed them to handle Bevo XV and then subsequently failed to supervise them. Wagner claims that their negligent supervision, training, and retention of Silver Spurs directly and proximately caused Wagner’s injuries.

It is unclear if the Silver Spurs were, in fact, employees of the Bakers. But that is an important predicate for affixing liability based on the allegations set forth in the petition.

Negligent Entrustment

Lastly, Wagner asserted a cause of action for negligent entrustment against the Defendants John Baker and

Betty Baker for “entrusting” their longhorn steer to the Silver Spurs handlers when they knew or should have known that the Silver Spurs handlers were “incompetent and reckless” and that their negligence caused the Plaintiff’s injuries.

Wagner seeks monetary relief of more than \$200,000 but not more than \$1,000,000, including past medical care, lost earning capacity, and mental anguish. Exemplary damages are also sought because the severe injuries suffered by Wagner were caused by the willful acts, omissions, and gross negligence of the Defendants, so Wagner seeks exemplary as well as actual damages from Defendants.

Conclusion: More Than Liability Considerations

“Does an intelligent nonhuman animal who thinks and plans and appreciates life as human beings do have the right to protection of the law against arbitrary cruelties and enforced detention? This is not merely a definitional question, but a deep dilemma of ethics and policy that deserves our attention.” -New York Court of Appeals Justice Eugene M. Fahey

The *Wagner* case illustrates numerous tort or liability reasons why the use of live animal mascots is ill-advised, even if marketable. The case is worth watching for that reason alone. However, there may be changing perceptions of the roles of animals and whether they should be used for entertainment or as mascots at all. Not unlike any other offensive mascot motif, the use of live animal mascots seems outmoded and exploitative. There are obvious concerns about the animals’ well-being, particularly when they are exposed to lights, noise, crowds, and distractions that are not present in their normal habitat. There are also concerns, voiced by animal rights advocates, that it is simply wrong to use an animal for profit or entertainment at a sporting event. Whether based on tort law or the less traditional animal law considerations, it may simply be time to put live animal mascots out to pasture.