



And The Defense Wins

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DRI member [Matthew J. Larkin](#), a partner in the Syracuse, New York office of **Hiscock & Barclay, LLP**, recently prevailed in an appeal to the New York State Appellate Division, Third Department, of a summary judgment order that he obtained from the New York State Supreme Court, Albany County, which dismissed all claims against Syracuse University in a case arising from a fight at a Syracuse University venue following a hockey game.

The plaintiff, a spectator at the game, intervened in a physical altercation between a player and another spectator that occurred while the players were leaving the ice. The plaintiff sued Syracuse University and both combatants. Although the lower court dismissed all claims against all defendants, only Hiscock & Barclay's client, Syracuse University, prevailed on appeal. The claims against the other defendants were reinstated for trial.

Following the game, the plaintiff, who is the father of a Syracuse University player, was talking to some of the players from the opposing team as they exited the ice. A player from the opposing team and a Syracuse University student who had attended the game became involved in a verbal and then physical altercation. The plaintiff tried to stop the fight by grabbing the Syracuse University student to prevent him from being pulled across a portable barrier into a group of hockey players who had exited the ice. The altercation was soon quelled by Syracuse University personnel, but the plaintiff had already suffered a fractured leg.

The lower court granted the summary judgment motions of all defendants, finding that the plaintiff had assumed the risk of his own actions and that the doctrine of danger invites rescue did not apply because there was no life-threatening peril. The lower court also found that Syracuse University met its duty to maintain safe conditions at the hockey game and, therefore, did not breach any duty to the plaintiff. The Appellate Division affirmed the lower court order to the extent it granted Syracuse University's summary judgment motion finding that it had met its duty to keep the venue reasonably safe during the event. However, it reversed the portion of the order granting the two combatants' summary judgment motions, finding a question of fact as to whether danger invites rescue applied against those defendants.

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