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SPORTING EVENTS:

Ticket to a Lawsuit?

**HOW THE LAW TREATS
SPECTATOR INJURIES
AT SPORTING EVENTS**

I. SPECTATOR LIABILITY

A. The Danger of the Flying Souvenir

The one time I forgot my glove at a baseball game as a child, a family member got tattooed by a line-drive foul ball. Naturally, the whole family pointed the finger at me, the sure-handed kid who always brought his trusty glove to the ball game. I looked back at my family and under immense pressure, said the first thing that came to mind: “I didn’t hit the ball.” Why was it my fault, or my family member’s fault? Why don’t we blame the guy who couldn’t get his bat around quick enough? Better yet, why don’t we blame the stadium owner? Doesn’t the stadium owner have an obligation to protect us from foul balls? Why not? Why is it okay for the screened area to cover only the area right behind the plate between the two dugouts?

What if someone is hit by a ball when they are distracted by something else at the game, like the San Diego Chicken pestering an umpire? Modern sporting events are often more about the extracurricular activities and distractions than the game itself. The JumboTron displays bloopers, couples kissing, interesting facts about your favorite players, and highlights from other games. Between innings, T-shirts are launched into the stands and fans do their best impression of “Y-M-C-A” or sing “Take Me Out to the Ball Game.” The beer guy paces the stands, the cotton candy guy is obstructing your view, somebody starts the wave, or you are distracted by reading the game’s program. For a variety of reasons, your eyes are not always glued to the field of play. Given the wide range of distractions inherent at every contemporary sporting event, what happens when a spectator is injured?

Attending a sporting event carries the inherent risk that one might be injured by objects flying into the stands. As a

tragic example of the potential risks involved, a Texas Rangers fan died on July 7, 2011, after reaching over the outfield railing to catch an incoming ball and falling 20 feet onto the concrete below.

B. Duties Owed To Spectators

A spectator seriously injured at a sporting event may intuitively seek recovery from the facility owner. After all, facility owners, as any other property owner, owe spectators a duty to provide reasonably safe premises. However, many states completely bar recovery, or substantially limit recovery for injured spectators.

Although spectators are considered *invitees*, and are thus owed a duty of reasonable care by the facility owner, this duty cannot expand to cover every injury sustained when a ball or other object goes into the stands. Otherwise, the risk and cost of liability would be too great, and stadium owners would likely require each spectator to sign a liability waiver when purchasing a ticket. Courts are therefore left to grapple with striking a balance between safety and unlimited liability to facility owners.

1. The Limited Duty Rule

Most jurisdictions follow the “limited duty rule”: a facility or stadium owner must provide adequate screening for spectators subject to the highest risk of being hit by an object from the playing field. The various rationales for the rule are simple: (1) stadium owners generally cannot foresee every possible situation where an object may travel into the stands, (2) contributory negligence should be considered when a spectator’s injury is due to his own failure to pay attention, and (3) spectators assume the risk of being injured when they sit in unprotected areas. The primary justification for the limited duty rule is that the risk of being injured by

an object is an **obvious risk inherent in the sport**.

In 1929, the famous Supreme Court Justice Benjamin Cardozo summarized the way the law views spectator injuries: “*The timorous may stay at home.*”¹ Justice Cardozo echoed the prevalent attitude about sports injuries which continues today; i.e., we all understand the possibility of being injured while at a sporting event; if you are risk averse, watch the game on TV.

The limited duty rule provides that a sports facility owner has no legal duty to eliminate risks *inherent in the sport itself*. For instance, the risk of getting hit by a foul ball on the third base line at a baseball game is inherent in the game. Likewise, the risk of a flying puck at a hockey match is inherent if you are seated in the lower section. Those injured at a sporting event are not, however, without recourse. Courts have set forth various legal standards in determining whether an injured spectator is entitled to recovery from the facility owner.

a. Liability to Spectators at Baseball Games

Most courts use a two-part test to determine the extent to which an owner must protect spectators at a baseball event under the limited liability rule: (1) What is the most dangerous area of the ballpark? (2) How many protected seats (i.e., how much screening) must be provided to reasonably fulfill requests from spectators on an ordinary sporting occasion? A facility owner must provide adequate screening to avoid liability – but what is “adequate screening?” One New York court has held that the facility owner must prevent injury to those who watch the game, but is not required to screen the entire field of play.² The court held that the facility owner’s duty is limited to screening the most dangerous section of

the field (i.e., behind home plate), and to provide sufficient screening for spectators that might reasonably desire protected seats. The court did not require the facility owner to provide screened seating on the first base line.

The limited duty of stadium owners is perhaps attributed to the fact that baseball is our national pastime and is therefore afforded greater protection by courts and the risk of being hit by a foul ball are well known to the public. Indeed, one of the exciting parts of attending a baseball game is the prospect of catching a foul ball. The lesson to spectators: bring your glove or sit behind the screen.

b. Limited Duty in Other Sports?

Hockey. The limited duty rule has been applied in hockey cases as well. In one New York case, a court dismissed a lawsuit where a child was hit by a hockey puck in the face, reasoning that the owner had fulfilled its limited duty by installing a Plexiglas shield behind the hockey goals.³ Like the limited duty rule in baseball, hockey facility owners satisfy their limited duty to spectators by: (1) providing a sufficient number of protected seats for spectators who may be reasonably anticipated to desire protected seats; and (2) providing screening for spectators in the most dangerous areas of the arena. This court held that the hockey facility owner satisfied its duty by providing screening behind the goals.

A spectator at a hockey match has a different experience than a baseball fan. As opposed to catching a foul ball at a baseball game, no one in their right mind wants to catch a hockey puck going 100 mph into the stands. Thus, while baseball attendees have developed a sport within a sport of chasing after foul balls, hockey fans

have not embraced a similar tradition with the flying puck. Despite this, most courts have adopted a limited duty rule for hockey-related injuries and deny relief to an injured spectator where the facility owner provides protective seating in the most dangerous areas of the arena. The most likely explanation for the application of the limited duty rule in hockey injury cases is that most of these injuries have occurred in northern states where hockey is part of the culture and the public understands and appreciates the risk of being hit with a puck.

Basketball. Basketball spectators do not face the same risk of injury that hockey and baseball spectators face. A basketball flying into the stands is generally less harmful than a baseball or puck. As a result, there is not a wide body of case law addressing the right of recovery for injured basketball spectators.

In one case from New Mexico, a spectator was injured at a Harlem Globetrotters game when a player threw a ball into the stands, striking the spectator in the face.⁴ The court held that the spectator could recover because he did not assume the risk of being struck by a basketball. The court appeared to reject the limited duty rule in the context of a flying basketball, reasoning that it is outside the inherent risks of a basketball game.

Basketball has grown in popularity over the last 30 years. Seats at basketball games are placed very close to the court, sometimes within arm's length of the players. One can easily recall the verbal exchanges between Reggie Miller of the Indiana Pacers and Knicks fan/film producer and director Spike Lee in the 1994 Eastern Conference Finals, which demonstrated how close spectators can be to the action at a basketball game.

While the limited duty rule has not been widely accepted in the context of basketball-related injuries, it seems likely that some courts may apply the limited duty rule for basketball spectators, and allow recovery only if the facility owner did not provide adequate protective seating.

2. How Safe are the Stands?

What are the civil liability implications when players cause injuries to spectators? There are countless instances of spectators and players getting involved in altercations. It seems like every season, whether in baseball, basketball or hockey, spectators and players are caught mixing it up. When the dust settles from these melees, you can bet the lawsuits will fly.

One of the more publicized baseball melees involved players and fans at a 2004 Oakland A's game against the Texas Rangers. During the 9th inning of the game, the Rangers' bench and bullpen cleared after an argument erupted between the Rangers' bullpen and Oakland fans. The Texas Rangers' reliever (Frank Francisco) was in the bullpen on the first-base line, picked up a chair being used by a bat-boy, and threw it into the stands. The chair hit a woman in the face and broke her nose. Francisco was arrested the following morning, and pleaded no contest to assault charges. The injured fan sued Francisco in civil court and the case was settled in 2007.

In another case, a minor-league pitcher in the Chicago Cubs organization, Julio Castillo, was convicted of felony assault when he threw a baseball during an on-field melee in 2008, seriously injuring a fan. Castillo testified that he threw the ball toward the opposing team's dugout and not at any person in particular. The prosecutor argued that even though he missed his intended target (players on the opposing team),

he should not get a free pass. In August 2009, Castillo was convicted of felonious assault causing serious physical injury and was sentenced to 30 days in jail and three years of probation.⁵ In April 2010 a judge released Castillo from probation “on the condition that he leave the United States and not return for a minimum of three years.”⁶

One of the most memorable sporting-events brawls between players and fans occurred on November 19, 2004 during a Detroit Pistons-Indiana Pacers basketball game. With less than one minute left in the game, Ron Artest of the Pacers and Ben Wallace of the Pistons became involved in a minor altercation. During the argument, Artest laid down on the scorer’s table when a spectator threw a cup of beer at Artest. Artest ran into the stands and punched the spectator he believed to be the culprit. Other fights broke out between Pacers players and spectators. At the end of the melee, nine spectators were injured. Several fans and players were charged with assault and battery.

In the aftermath, several lawsuits were filed by spectators against some of the players. In one case, a spectator who walked down to the floor to confront Pacers’ players was punched in the face and injured by Pacers’ center, Jermaine O’Neal. The spectator sued O’Neal, but the lawsuit was dismissed in 2006 because the District Court held the punch was justified to protect O’Neal’s teammates. In another case, two spectators sued the players, both teams and the facility owner, Palace Sports & Entertainment, Inc., for injuries sustained during the melee. The lawsuit was settled in 2008 for an undisclosed amount.

C. Liability for Injuries to Spectators Caused by Distractions

Modern-day sporting events contain many distractions and side-shows

throughout the game. The more common distractions include beer vendors, games or trivia being displayed on the big screen, or a team mascot starting “the wave.” This has arguably increased the appeal of attending sporting events as ticket sales are at an all-time high. However, the legal effect of such distractions could be very significant for spectators and facility owners alike.

The Distraction Theory. Under the Distraction Theory, a facility owner may be liable if it creates the distraction which causes an injury and the distraction is not self-induced by the spectator’s inattention to obvious risks. In one California case, a mascot bumped a spectator several times with its tail, causing the spectator to be distracted from the game.⁷ During the distraction, the plaintiff was hit in the face with a foul baseball. The stadium owner argued that it had satisfied its limited duty by providing adequate protective screening, which the plaintiff failed to use. The court held that while foul balls are an inherent risk at a baseball game (and indeed essential to the enjoyment of the game), the presence of a mascot distracting participants is not an inherent risk – nor essential to the game. Because the mascot’s antics were not essential to the game, the spectator could take his case to the jury.

In these cases, the question will likely come down to whether the distraction at issue is inherent or incidental to the event itself (or merely a marketing tool by the facility owner). Given the fact that a spectator does not assume the risk of a distraction in the same way they assume the risk of a foul ball or errant puck, spectators injured during a non-event related distraction are more likely to have their cases heard by a jury.

II. CONCLUSION

Spectators attending sporting events

generally assume risks inherent in the game. Facility owners are generally immune from liability for spectator injuries if they provide adequate protective screening in the most dangerous areas of the facility. Spectators may seek recovery for injuries that are not inherent in the sport. For example, if a player goes into the stands and assaults a spectator, the player (and perhaps his team) may be liable for injuries sustained by the spectator. Also, liability may be imposed on a facility owner where a spectator’s injuries are caused by a distraction that is not inherent to the game itself.

Like all areas of the law, courts must balance the need to foster athletic competition while reasonably protecting participants and spectators in their enjoyment of the sport. 

The authors dedicate this article to veteran Texas firefighter Shannon Stone who recently lost his life during a Texas Rangers game.

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Endnotes

1. *Murphy v. Steeplechase Amusement Co.*, 250 N.Y. 479, 166 N.E. 173 (1929).
2. *Akins v. Glens Falls City Sch. Dist.*, 53 N.Y.2d 325, 424 N.E.2d 531, 441 N.Y.S.2d 644 (1981).
3. *Gilchrist v. City of Troy*, 113 A.D.2d 271, 495 N.Y.S.2d 781 (1985).
4. *McFatrige v. Harlem Globe Trotters*, 69 N.M. 271, 365 P.2d 918 (1961).
5. Associated Press, *Castillo gets jail, probation* (Aug. 6, 2009), available at <http://sports.espn.go.com/minorlbb/news/story?id=4381593>.
6. USA Today, *No jail time for minor league pitcher in brawl* (Apr. 14, 2010), available at http://www.usatoday.com/sports/baseball/2010-04-14-minor-league-brawl_N.htm.
7. *Lowe v. California League of Prof. Baseball*, 56 Cal. App. 4th 112, 65 Cal. Rptr. 2d 105 (1997).