

- 1 Sports Spectator Liability

- 2 Spectators Assume Obvious Risks in Unprotected Areas of Ballfield

- 3 General Rule
Protection in the
Zone of Danger

- 4 AKINS
v.
GLEN FALLS CITY SCHOOL DISTRICT

- 5 Only provide screening for the area of the field behind home plate

where the danger of being struck by a ball is greatest.

- 6 Must be of sufficient extent to provide adequate protection

for as many spectators as may reasonably be expected to desire such
seating for ordinary game.

- 7 What amount of screening must be provided?

- 8 Once provided, no liability
for failing to provide additional screening

along baselines,
where risk is considerably less

- 9 Lawson v.
Salt Lake Trappers, Inc.
Utah Supreme Court, 1995
- 10 Policy & Rationale
for
Majority Rule
- 11 Insures those desiring protection from foul balls accommodated

safe seats in most dangerous area of stadium
- 12 Also recognizes baseball tradition and spectator preference

by not requiring owners to screen entire stadium
- 13 *Thurmond v.*
Prince William Baseball Club, INC.,

Virginia Supreme Court
1/10/2003)
- 14 whether a spectator at a minor
league baseball game

assumed the risk of being struck by a batted foul ball.
- 15 whether or not to adopt majority rule in Virginia,
16 i.e., limited duty rule, screen area behind home plate, sufficient for

those expecting protected seating in ordinary game.

17 Sat high in bleachers third base side,

struck by foul ball

18 Cannons: assumption of risk

19 Thurmond: issue whether voluntarily exposed herself to know risk,

20 field dimensions did not meet MLB standards

spectator assumes the normal risks of watching baseball game

21 includes the danger of being hit by a ball batted

into an unscreened
spectator area.”

22 risk of being struck by a foul ball was one which is likely to be
understood by the ordinary
spectator at a baseball game

23 Thurmond had indeed assumed the risk of being hit by a ball batted
into an unscreened seating area of the stadium.

24 Field dimensions & lighting not material because Thurmond admitted
seeing ball.

25 CORTWRIGHT v. BREWERTON INTERNATIONAL SPEEDWAY

SPECTATOR INJURED BY FLYING DEBRIS

26 JUSSILA v. UNITED STATES SNOWMOBILE ASSOCIATION

SNOWMOBILE RACE SPECTATOR ASSUMES RISK

27 Bellezzo v.
State of Arizona
Ariz.App. 1993

Open & Obvious Risk?

28 Bellezzo
struck in head
by foul ball

attending son's college baseball game

29 told to sit in any seat

then told to sit in assigned unscreened seats

30 ASU backstop
85'w x 32'h
protects 1800 seats

31 stadium seats 7800, seldom requests for seats solely for protection,

number available sufficient to fill expected requests

32 day of injury, 201 available,
156 empty

- 33 Backstop in area
where vast majority
of foul balls hit
during game
- 34 held as matter of law ASU complied with duty

to protect spectators from unreasonable risk of being injured by a foul
ball
- 35 SWAGGER v.
CITY OF CRYSTAL
Minn.App. 1985

Unusual Crowd Not Accommodated
- 36 P struck in face by wild throw at D's softball game

6' behind 1st, 30' from line
- 37 Bleachers behind backstop
50-70 limit full
crowd 600-1000.
- 38 The owner need NOT provide screened seats for all who want them.

They need NOT provide such seats for an unusual crowd.
- 39 SPRUNGER v.

EAST NOBLE SCHOOL DIST.

Ind.App. 1986

Scope of Risk,

Includes

Equipment?

40 P spectator struck by practice weight "donut"

from on-deck circle flew from end of D's bat.

41 D doing what was expected warming up

entitled to be there, using authorized bat & swing weight.

No willful/wanton injury to bystanders.

42 Spectators assume risk from balls, bats, masks, helmets, other equipment

may occasionally accidentally or negligently enter spectator area.

43 CLARK v. GOSHEN SUNDAY MORNING SOFTBALL
N.Y. App. 1985

Scope of the Game

Includes Warm-Up

44 P struck in eye by warm-up ball
leaning over 3rd base fence.

- 45 Spectator at baseball game assumes risk from balls

necessarily inherent to game
including warm-ups on the field pregame.
- 46 Avoid imposition of burdensome requirement

of complete fencing for every sports area
instead reasonable protection.
- 47 Avoid possibility every spectator injured by foul ball
no matter where seated or standing in ball park

would have right to go to jury on every negligence claim.
- 48 Ballplayers had right to warm-up
injury foreseeable

but not unreasonable
- 49 adequate screening
existed behind home plate

P did not avail self,
inattentive.
- 50 CITY OF MILTON v. BROXSON
Fla.App. 1987

Distraction Theory Exception

- 51 P, age 18, struck by an errantly thrown warm-up ball while watching softball game in park.
- 52 Common practice for players to warm-up adjacent to bleachers spectators had been struck before.
- 53 Landowner NOT liable to invitees for physical harm caused to them
- 54 by any activity or condition on the land whose danger is known or obvious to them
- 55 UNLESS the possessor should anticipate the harm despite such knowledge or obviousness.
- 56 DISTRACTION THEORY
not self-induced.
- 57 Can not do two things at once
eyes in the back of your head, unreasonable.
- 58 City should have anticipated hazardous activity

and taken precautions despite P's knowledge of danger.
- 59 Gunther v.

Charlotte Baseball Club, Inc.
(S.C. Dist. 1994)

Foreseeable Distraction -
Part of Game?

60 Immediately before, foul ball struck press box, shattering glass

61 P's attention momentarily diverted
struck in eye while turning attention back to game

62 Press box glass shattered on 3 or 4 prior occasions

P: incidents served notice that facility defectively designed

63 foreseeable fans distracted by shattering glass

vulnerable to foul balls

64 Memo to architect
instructed to look into possibility of shatter-proof glass

65 Screen behind home highest in league, dugout to dugout

possible to extend further
but, some fans prefer unobstructed view

66 Issue: Whether patron at baseball game assumes risk of injury
incurred by being struck by batted ball

67 Baseball games, like other sporting events, routinely involve distractions
distractions are enjoyed & foreseeable by spectators

68 To apply "distraction" doctrine in rigid fashion to factual situations
exception to assumption of risk doctrine

would soon swallow up rule

69 TEAM MASCOT ANTICS NOT ASSUMED SPECTATOR RISK

LOWE v. CALIFORNIA PROFESSIONAL BASEBALL
Cal.App. 1997

70 Lowe did not request a protected seat. Epicenter did have protected seats...

Epicenter stadium has approximately 2500 seats which are protected by screens.

71 Where a spectator at a ball game has chosen not to sit in a screened area,

that person assumes the risk of being hit by a foul ball."

72 "a defendant generally has no duty to eliminate, or protect a plaintiff from risks inherent to the sport itself,

but has only a duty not to increase those risks."

- 73 The rule is no different in instances involving spectators.
- 74 CLPB "had a duty not to increase the inherent risks to which spectators at professional baseball games are regularly exposed and which they assume."
- 75 specific issue was whether mascot's antics and their resulting distraction of Lowe
- increased inherent risks assumed by a spectator at a baseball game.
- 76 key inquiry here is whether the risk which led to Lowe's injury involved some feature or aspect of the game
- which is inevitable or unavoidable in the actual playing of the game.
- 77 appeals court: antics of the mascot was not integral to the sport of baseball, like foul balls.
- 78 Tremor's antics in hitting Lowe with its tail distracted Lowe
- prevented Lowe from being able to protect himself from any batted ball
- 79 foreseeably increased the risk to Lowe over and above those inherent in the sport.
- 80 *Maisonave v. Newark Bears*,
185 N.J. 70; 881 A.2d 700; 2005

81 foul ball struck him in
the eye as he stood on the mezzanine at Riverfront Stadium,

82 walking area exposed on one side to the baseball field.

Vendors sell food and
beverages on that level, and restrooms are located there.

83 whether the limited duty rule should apply to the entire stadium or be
limited to the
stands.

84 unfair to hold owners and operators
liable for injuries to spectators in the stands when potential danger of
fly balls is an inherent,
expected, and even desired part of the baseball fan's experience."

85 "multi-purpose areas, such as concourses and
playground areas,

are outside the scope of the rule."

86 injury to a patron in area of stadium outside stands"

"factually distinct issue "
than that addressed by the limited duty rule
for sport spectators.

87 Once the fan has disengaged from activity on the field

and has left the stands,

88 individual is no longer trying to
catch foul balls or even necessarily watching the game

89 areas outside of
the stands like those concourses and mezzanines in a commercial
sports facility

90 injury occurred are “no different than any other commercial
establishment.

duty to exercise
reasonable care

91 to protect them during such times of heightened vulnerability

92 "times of heightened vulnerability

include all
situations in which a patron is no longer in the stands.”

93 Hockey Spectators

generally assume open and obvious risk of being struck by an errant
puck.

94 *Moulas v. PBC Productions, INC.*, Wis.App. 1997

designed for and comply with the National and International Hockey

League rules

95 risks associated with hockey should be known to the reasonable person attending a game

96 *Pestalozzi v. Philadelphia Flyers LTD.*,
576 A.2d 72 (Pa. 1990),

97 risk of a spectator being struck by an errant puck,

even for an individual sitting behind plexiglass, is common and reasonably foreseeable."

98 *Fisher v. Metropolitan Government of Nashville*,
Tenn.App. 1997

99 plexiglass shield did not cover the area in front of the players,

as well as another twenty foot gap created by an adjacent aisle way

100 whether the defendant should have foreseen that persons in the area at ice level

101 unprotected by the plexiglass shield were in danger of harm and that some action was required to prevent it."

102 20 foot gap with no plexiglass between the players boxes

not consistent with the standard existing in most all professional hockey arenas.

103 *Sawyer v. State of New York*,
485 N.Y.S.2d 695 (Ct.Cl. 1985).

104 defendant failed to warn spectators of the increased risk associated with this change in conditions

105 precautions that were formerly taken are some evidence that the State was aware that more was required

106 Due to changed conditions, i.e. lowering protective barrier one foot,

State duty to warn spectators protection previously afforded had been reduced.

107 SCARROTTA v.
GLOBAL SPECTRUM
SUPREME COURT OF NEW JERSEY
April 10, 2008

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