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ADEQUACY OF SPECTATOR PROTECTION IN DANGER ZONE A JURY ISSUE

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In 1981, the New York state supreme court, in *Akins v. Glen Falls City School District*,, 53 N.Y.2d 325, 424 N.E.2d 531, enunciated the general rule of law applied in most jurisdictions to determine the amount of protective screening required for spectators at sporting events. In this case, plaintiff was standing along the third base line behind a three foot high fence when she was struck in the eye by a foul ball. Defendant had provided protective screening in the form of a 24 ft. by 50 ft. backstop directly behind homeplate. Plaintiff, however, alleged that defendant was negligent in failing to provide additional protective screening along the base line. The jury in this case found defendant 65% responsible for plaintiff's damages totalling $100,000. The jury, therefore, returned a verdict for $65,000 (65% of $100,000).

On appeal to the state supreme court, the issue was whether the proprietor of a baseball field is liable to a spectator struck by a foul ball when the spectator was standing in an unscreened section of the field. As noted by the court, the owner of a baseball field does not insure the safety of spectators (i.e. assume liability for any spectator injury). On the contrary, the owner only owes a duty of reasonable care to prevent spectator injury. Further, the court acknowledged that spectators accept the inherent dangers in a sporting event and assume the risk of injury insofar as such risks are obvious and necessary.

In the opinion of the court, the perils inherent in the game of baseball were not so imminent to require the entire playing field be screened. The court also found ballfield operators had a legitimate interest in providing unobstructed seats for those who desire unscreened seats. The specific issue was, therefore, what amount of protective screening must be provided.

According to the court, owners and operators of ballfields must only provide screening for the area of the field behind home plate where the danger of being struck by a ball is greatest. In addition, such screening must be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game. Since the defendant had fulfilled this duty, the state supreme court found there was no negligence liability under the facts of this case. Consequently, the state supreme court reversed the judgment of the trial court and dismissed plaintiff's case.

On an initial reading, the *Coronel* decision described herein would appear to reject the *Akins* rule regarding limited landowner liability for spectator injuries. However, under the circumstances of this case, it was not readily apparent whether or not the protective screening was indeed "of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game." The appeals court in *Coronel*, therefore, correctly determined that the trial court should have allowed the jury to determine whether the defendant

landowner had provided adequate protection to spectators in this particular "zone of danger" behind home plate at this particular professional baseball game.

The issue of Sports Spectator Liability, including a discussion of the *Akins* rule, is addressed in the "Sports Liability Video Lecture Series." This video series includes approximately six hours of my lectures on sports liability at George Mason University (GMU). These videos are co-sponsored by NRPA and GMU Center for Recreation Resources Policy. In addition to sports spectator liability, the lectures address: sports coach liability, sports participants liability, sports grounds & facilities liability, and waiver & release of liability forms in sports. To obtain further information regarding the "Sports Liability Video Lecture Series" and the availability of other law-related video lectures, please contact the NRPA Resource Development Division (703) 820-4940.

Taken Out at the Ballgame

In the case of *Coronel v. Chicago White Sox, Ltd.*, 230 Ill.App.3d 734, 171 Ill.Dec. 917, 595 N.E.2d 45 (1992), plaintiff Blanca Coronel brought suit against defendants Chicago White Sox, Ltd and Comiskey Park Corporation (collectively "the Sox") for alleged negligent failure "to provide adequate protection from batted balls for those spectators seated in the area of the stadium most vulnerable to stray foul balls." The facts of the case were as follows:

> On August 16, 1986, Coronel, attended her first Chicago White Sox baseball game at Comiskey Park, and sat in the first base "Golden Box Seats," specifically, Box Section 32, Row E, Seat 2, behind home plate, facing first base, approximately three seats away from the edge of a protective screen. During the sixth inning, when plaintiff looked down into her lap to pick up some popcorn, she was struck on the right side of her face by a line-drive, foul-tipped ball, and suffered a broken jaw.

In her complaint, Coronel alleged that had negligently failed "to provide an adequate number of seats in areas screened off from the playing field." In addition, Coronel maintained the Sox had failed "to warn her of the likelihood that batted balls would be projected towards her and those spectators seated near her." The trial court granted summary judgment to the Sox. Coronel appealed.

On appeal, Coronel argued that the trial court had erred in effectively dismissing her case on a motion for summary judgment without having the jury consider the facts of the case. Specifically, Coronel claimed the jury should have determined whether "the Sox failed to adequately protect her from, and to warn her of, foul balls which they knew would be hit into the unprotected area in which she was seated."

The appeals court acknowledged that "[t]he existence of a duty is a question of law, to be determined by the court." In this particular instance, the court noted that "[a] land owner or occupier of land owes a duty of reasonable care to business invitees located on his premises." Further, the court found "no exception in favor of sports facilities from this requirement" to exercise reasonable care under the circumstances.

> Indeed, that the owner of a baseball park owes a duty to protect spectators from injury caused by foul balls was legally recognized a full quarter century ago by our court... where it was held that such duty does not require a complete fencing of the spectators present at a baseball game to protect them from stray baseballs, but rather, requires a screen for the most dangerous part of the grandstand. The most dangerous part of a ball park is universally recognized as the area behind home plate...

While the court defines the legal duty of care to be applied by the jury, the appeals court found it is ordinarily the responsibility of the jury to determine "[w]hether or not there is a breach of a duty" in a particular situation. Specifically, the issue of "whether the sports facility adequately screened the most dangerous area is a question of fact for the jury."

> [W]hat precaution the ordinarily prudent person, furnishing a public amusement of this kind, should take to warn and protect the spectators from the attendant danger of which they may be ignorant, we think is a question for the jury... [W]e do not attempt to prescribe precisely what, as a matter of law, are the required dimensions of a baseball field backstop. Nor do we suggest that where the adequacy of the screening in terms of protecting the area behind home plate properly is put in issue, the case should not be submitted to the jury... [Having found that] the defendant owed a duty of "ordinary and reasonable care" to the plaintiff, whether the standard of care required in a given case has been exercised is ordinarily a question of fact for the jury.

As a result, the appeals court rejected "the suggestion advanced by the Sox that it should be they and not the jury who should determine the adequacy of the protection afforded its fans at a baseball game." Under the circumstances of this particular case, specifically "the location of Coronel's seat and the comparatively small width of the screen," the appeals court found that "a question of fact exists as to whether there was violation of the duty owed by the Sox to spectators seated in the most dangerous part of the ballpark."

> Here the Sox's director of purchasing, construction and maintenance testified in his deposition that the protective screen behind home plate was 21 feet high and 39.7 feet wide, one of the smallest in major league baseball. In discussing the significance of evidence used to compare the screening utilized in one park to that which is commonly employed in others, cases cited by the Sox themselves state that "while customary methods do not furnish a conclusive or controlling test of negligence or justify a practice obviously laden with danger, they are nevertheless to be considered as factors of measurement of due care." Accordingly, we hold that plaintiff has met the requisite burden for her case to proceed to a jury.

On appeal, the Sox had maintained that "they did not owe Coronel a duty to warn her of the risk of being injured by foul balls because as a matter of law a land owner owes no duty to warn of an 'open and obvious' danger." Specifically, the Sox contended that "no duty to warn exists," because "the presence of an open and obvious danger will automatically relieve a land owner from his duty of

reasonable care owed to an invitee."

The appeals court rejected this argument. While acknowledging that "case law in other jurisdictions supports this principle," the appeals court noted that "such is not the law in Illinois."

> [B]esides being relevant to whether the injured party was exercising a reasonable degree of care for his own safety, the "obviousness of a condition is also relevant to the existence of a duty on the part of defendant. Merely because a danger is deemed "open and obvious," a land owner's duty to warn is not necessarily negated, as the Sox contend here.
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> [T]hat an owner or occupier of land has no duty under any circumstances to protect entrants from conditions on his land of which the entrant knows and realizes the risk or which are obvious, has fallen under harsh criticism... We conclude that to the extent that the rule may have held that the duty of reasonable care owed by an owner or occupier to those lawfully on his premises does not under any circumstances extend to conditions which are known or obvious to such entrants, that rule is not the law in this state...
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> It does not necessarily follow, however, that once an owner of a ballpark has provided an adequate fenced-in area for the most dangerous part of the grandstand he has thereafter exculpated himself from further liability as defendant contends. To the contrary Restatement of the Law of Torts, 2d, 344 (1964) states:
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> > A possessor of land who holds it open to the public for entry for his business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent, or intentionally harmful acts of third persons and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.

According to the appeals court, "[t]he landowner's or occupier's duty toward his invitees is always that of reasonable care."

> Attempting to dispose of litigation by merely invoking such relative and imprecise characterizations as "known" or "obvious" is certainly no adequate substitute for assessing the scope of the defendant's duty under the circumstances... The only sound explanation for the "open and obvious" rule must be either that the defendant in the exercise of reasonable care would not anticipate that the plaintiff would fail to notice the condition, appreciate the risk, and avoid it, or perhaps that reasonable care under the circumstances would not remove the risk of injury in spite of foreseeable consequences

> to the plaintiff. But neither of these explanations justifies a *per se* rule [i.e., in and of itself] that under no circumstances does the defendant's duty of reasonable care extend to conditions which may be labeled "open and obvious" or of which the plaintiff is in some general sense "aware."
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> The "obviousness" of a condition or the fact that the injured party may have been in some sense "aware" of it may not always serve as adequate warning of the condition and of the consequences of encountering it In any case where the occupier as a reasonable person should anticipate an unreasonable risk of harm to the invitee notwithstanding his knowledge, warning, or the obvious nature of the condition, something more in the way of precautions may be required. This is true, for example, where there is reason to expect that the invitee's attention will be distracted, as by goods on display, or that after a lapse of time he may forget the existence of the condition, even though he has discovered it or been warned
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> Landowners cannot totally disclaim a duty owed to those rightfully on their premises merely because a danger is "open and obvious." Rather, the inquiry is whether the defendant should reasonably anticipate injury to those entrants on his premises who are generally exercising reasonable care for their own safety, but who may reasonably be expected to be distracted, or forgetful of the condition after having momentarily encountered it. If in fact the entrant was also guilty of negligence contributing to his injury, then that is a proper consideration under comparative negligence principles.
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> Concern for invitees whose attention might be distracted, or who may, after a lapse of time, forget the existence of the condition, is especially pertinent here, for it is common knowledge that at major league baseball games the attention of the spectators is frequently diverted, for example, by large numbers of vendors who purvey a variety of food and drink which the fans consume on the premises while the game is in progress, as plaintiff was doing in the instant case. It is to be expected, then, that in the process of purchasing and consuming such items, the fans' distraction from the game is bound to occur.

Applying these principles to the facts of the case, the appeals court, therefore, concluded that "it would be reasonable to conclude that the Sox were under a duty to warn Coronel of the possible dangers of being struck by a foul-tipped ball."

Assuming a legal duty to warn under the circumstances of this case, the Sox claimed that they that "they warned plaintiff on three separate occasions of the dangers inherent in watching a major league baseball game." In addition to a "flashing a warning on the screen" of the stadium scoreboard, the Sox alleged that the following warning message was announced over the stadium's public address system:

> Also, the White Sox ask that all fans be alert and aware of thrown or batted balls. And bats that may leave the field of play and enter the seating area. The risk of injury to a

> spectator is greatly increased by those who do not pay attention to the play in progress. Thank you!!

Further, the Sox maintained that Coronel had been warned through the following "caveat printed on the back of the ticket stub, even though the part with the warning imprinted on it was taken at the admission gate."

> The holder assumes all risk and danger incidental to the game of baseball, whether occurring prior to, during, or subsequent to the actual playing of the game, including specifically (but not exclusively) the danger of being injured by any object, including, without limiting the generality of the foregoing, thrown bats, and thrown or batted balls, and agrees that the participating clubs or their agents or their players, are not liable for injuries resulting from such cases."

However, in the opinion of the appeals court, "[w]hether or not these warnings were adequate compliance with the Sox's duty" of reasonable care were issues for the jury to consider. As a result, the appeals court found that the trial court had erred in granting summary judgment to the Sox, rather than allowing the jury to consider Coronel's negligence claims. The appeals court, therefore, reversed the summary judgment in favor of the Sox and sent this case back to the trial court for consideration by a jury.