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# IN THE COURT OF APPEALS FOR THE STATE OF GEORGIA

ATLANTA NATIONAL LEAGUE BASEBALL CLUB,

Appellant,

F.F., individually, and F.F., as next Friend and Natural Guardian of M.F., a minor,

Appellee.

Case No. A14A0398

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CLERK, COURT OF APPEALS OF GEORGIA

## Amicus Brief of the Office of the Commissioner of Baseball Supporting Appellant

The Office of the Commissioner of Baseball ("Office of the Commissioner") urges this Court to adopt the "Baseball Rule" or "limited duty rule," as the liability standard for baseball field and stadium owners, lessors, lessees, and operators in Georgia. The Baseball Rule — simple in its articulation, straightforward in its application, and nearly universal in its adoption — provides that a baseball stadium operator has no liability for ordinary risks inherent in baseball, specifically injuries caused by balls and bats that enter the stands. Instead, a stadium operator fulfills its duty (and accordingly is not liable) when it provides screening behind home plate (unquestionably the most dangerous section of the stands) and seats sufficient for spectators who wish to sit behind screening.

#### **Identity and Interest of Amicus Curiae**

The Office of the Commissioner is an unincorporated association doing business as Major League Baseball ("MLB") and has as its members the 30 MLB teams throughout the United States and Canada. The Office of the Commissioner oversees the administration, organization, and competition of MLB, the All-Star Game, and the postseason championship tournament of MLB teams. The Office of the Commissioner has a strong and enduring interest in the duties owed by premises owners and operators of sporting stadiums, specifically baseball stadiums, in Georgia, where 81 regular season MLB games are played each year.

## **Statement of Material Facts**

The Office of the Commissioner adopts the statement of facts set forth in the opening brief of Appellant Atlanta National League Baseball Club, Inc. ("Atlanta Braves").

#### **Question Presented**

Should Georgia adopt the Baseball Rule as the standard of care that the operator of a baseball stadium owes to spectators attending a baseball game?

#### **Argument and Citation of Authority**

### I. Georgia Should Adopt the Baseball Rule.

The Baseball Rule clearly defines a stadium operator's duty to protect spectators: "the owner must screen the most dangerous section of the field — the area behind home plate — and the screening that is provided must be sufficient for those spectators who may be reasonably

anticipated to desire protected seats on an ordinary occasion." And the Baseball Rule is easy for courts to apply: once a stadium operator satisfies these two requirements (as the Atlanta Braves did in this case as a matter of law), the inquiry is over because no spectator who desires to sit behind screening is required to sit elsewhere. Moreover, adopting the Baseball Rule will put Georgia in good company — the vast majority of states have already adopted it — and there are great benefits to consistency and uniformity.

<sup>&</sup>lt;sup>1</sup> See Akins v. Glens Falls City Sch. Dist., 424 N.E.2d 531, 533 (N.Y. 1981) ("The perils of the game of baseball... are not so imminent that due care on the part of the owner requires that the entire playing field be screened."). See also Lawson By & Through Lawson v. Salt Lake Trappers, Inc., 901 P.2d 1013, 1015 (Utah 1995) ("The area behind home plate is generally conceded to be the most dangerous area of a ball park."); Teixiera v. New Britain Baseball Club, Inc., HHBCV054004214S, 2006 WL 2413839, at \*2 (Conn. Super. Ct. July 18, 2006).

<sup>&</sup>lt;sup>2</sup> See, e.g., Knebel v. Jones, 266 S.W.2d 470, 476 (Tex. 1954) (stadium operator met standard of care by providing a reasonable number of screened seats); Anderson v. Kansas City Baseball Club, 231 S.W.2d 170, 173 (Mo. 1950) (due care to provide a reasonable number of screened seats does not include a duty to warn about perils of unscreened seats); see also City of Atlanta v. Merritt, 172 Ga. App. 470, 471, 323 S.E.2d 680, 682 (1984) (stadium operator not entitled to summary judgment when it failed to produce evidence "that there is sufficient screen-protected seating available for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game").

<sup>&</sup>lt;sup>3</sup> Benejam v. Detroit Tigers, Inc., 635 N.W.2d 219, 221 (Mich. App. 2001). See also Swagger v. City of Crystal, 379 N.W.2d 183, 185 (Minn. Ct. App. 1985) (recognizing Minnesota follows limited duty rule); Moulas v. PBC Prods. Inc., 213 Wis. 2d 406, 418-19, 570 N.W.2d 739, 744 (Ct. App. 1997) aff'd, 217 Wis. 2d 449, 576 N.W.2d 929 (1998) ("We agree with the trial court that the 'baseball rule' applies here."); Neinstein v. Los Angeles Dodgers, Inc., 185 Cal. App. 3d 176, 182, 229 Cal. Rptr. 612, 615 (Cal. Ct. App. 1986) (commenting that if court were "deciding this issue without the precedent of Quinn v. Recreation Park Ass'n . . . we would not be persuaded that there is a need to impose a duty to provide any screened seats"); Leek v. Tacoma Baseball Club, 38 Wash. 2d 362, 364-65, 229 P.2d 329, 330 (1951); Anderson, 231 S.W.2d at 173; Friedman v. Houston Sports Ass'n, 731 S.W.2d 572, 575 (Tex. App. 1987); Quinn v. Recreation Park Ass'n, 3 Cal. 2d 725, 729, 46 P.2d 144, 146 (1935) (holding stadium owner or operator's duty is met when "screened seats are provided for as many as may be reasonably expected to call for them on any ordinary occasion"). Illinois also adopted a statutory

But beyond clarity, ease of application, and national consistency, the Baseball Rule takes account of two facts inherent about baseball, facts known to every person who watches a game. *First*, the sport carries with it ordinary risks for spectators, including being injured by balls and bats that enter the stands. *Second*, far from being an unwelcome hazard that accompanies an otherwise pleasurable activity, stray balls are part of the very fabric of the game. Indeed, few have watched an MLB game without *hoping* that they would catch a home run or foul ball, and many fans prefer not to look through a net. Courts have acknowledged these facts.<sup>4</sup>

#### A. The Baseball Rule Provides Sufficient Protection.

If, as the plaintiffs here have requested, stadium owners in Georgia must have their liability decided by juries whenever a spectator (minor or adult) is injured, regardless of where they chose to sit, regardless of whether there was screening behind home plate, and regardless of whether there were a sufficient number of screened seats provided to meet the desire of spectators for those seats, then two things will be true. *First*, stadium owners will be forced to screen more and more of the field, for any plaintiff injured in an unscreened area — anywhere in the ballpark — will contend that her or his injury could have been prevented if the stadium

embodiment of the Baseball Rule. See Jasper v. Chicago Nat'l League Ball Club, Inc., 309 III. App. 3d 124, 127-28, 722 N.E.2d 731, 735 (III. App. Ct. 1999); 745 ILCS 38/10 ("The owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person being hit by a ball or bat...").

<sup>&</sup>lt;sup>4</sup> See Akins, 424 N.E.2d at 533 ("many spectators prefer to sit where their view of the game is unobstructed by fences or protective netting and the proprietor of a ballpark has a legitimate interest in catering to these desires"); Neinstein, 185 Cal. App. 3d at 181 ("The quality of a spectator's experience in witnessing a baseball game depends on his or her proximity to the field of play and the clarity of the view[.]").

owner had only screened those seats, and that a jury should decide liability. *Second*, the experience of fans, all of whom understand there is a risk of being struck by an errant ball or bat, the vast majority of whom wish to observe the game without screening, and most of whom harbor the hope of actually catching a foul ball, home run, or other ball that goes into the stands, will be materially diminished.

American spectators do not need to be reminded of risks that are obvious to average citizens. The Court might be faced with a different inquiry if the stadium owner sponsored a sport or entertainment activity unfamiliar to most Americans. But we are talking here about baseball and fans *know* that balls travel to unscreened areas; indeed, that is why many of them sit in unscreened seats.

Justice Cardozo long ago recognized that the timorous may always choose to stay at home.<sup>5</sup> The Baseball Rule provides that those who choose to attend, but who are timorous about the risk of balls or bats entering the stands, may sit behind screening, for the rule obliges stadium owners both to screen the most dangerous area and to provide sufficient seats in that area to meet anticipated demand. A spectator may also sit far away from the field of play in the upper deck or bleacher seats that are modestly priced and present minuscule risks of being struck by an errant ball. Those who choose to sit in unscreened areas close to the action when screened areas are available and provided have no claim for the open and obvious risks inherent in the game, regardless of their age or the severity of their injury. A short time viewing any game, live or on

<sup>&</sup>lt;sup>5</sup> Murphy v. Steeplechase Amusement Co., 1663 N.E. 73, 74 (NY 1929).

television, demonstrates that balls, bats, and even players may enter the stands and cause injury, and MLB teams, like the Atlanta Braves, post warnings throughout their stadiums.

The Court should not reverse engineer liability for stadium owners ex post through the fortuity of a rare, though serious, injury. That, though, is precisely the rule the plaintiffs propose. On their theory, there is no such thing as a risk inherent in baseball. But this rule is no rule at all. Letting lay juries decide whether a stadium operator provided sufficient protection ex post would improperly make stadium operators the insurers of all spectators. And, of course, that "insurance" would not be cost-free. Stadium operators would be placed in the Hobson's choice of either screening the entire field (thereby losing fans who either want the opportunity to catch a foul ball, want to watch the game without obstruction, or both) or continuing to provide unscreened areas (thereby passing the cost of liability judgments stemming from this open and obvious risk on to fans in the form of increased ticket prices). The Baseball Rule, in contrast, is a fair, predictable, and efficient ex ante rule, one that recognizes that stadium owners under Georgia law have no duty to remove or eliminate open and obvious risks, and one that acknowledges the desire of spectators to catch foul balls and observe the action without obstruction.

<sup>&</sup>lt;sup>6</sup> Daniels v. Atlanta Nat'l League Baseball Club, Inc., 240 Ga. App. 751, 752, 524 S.E.2d 801, 803 (1999); see also Akins, 424 N.E.2d at 533.

<sup>&</sup>lt;sup>7</sup> See City of Winder v. Girone, 265 Ga. 723, 462 S.E.2d 704, 705 (1995) (duty to eliminate a danger is obviated by the open and obvious nature of the danger); see also Corpus Juris Secundum, "Defect or Danger," 65A C.J.S. Negligence § 527 (Dec. 2013).

#### B. The Baseball Rule Recognizes the Game's Inherent Risks and Thrills.

The only way to protect any given fan from the rare chance of a severe injury from a foul ball is to screen every seat. That would materially, fundamentally, and unreasonably change the experience of watching an MLB game.

One source reports that at each MLB game, players hit approximately 30 foul balls into the spectators' seating area. This in turn means that there are, on average, more than 2,400 foul balls hit into the stands during the 81 regular season games in Atlanta and nearly 73,000 foul balls during the regular season throughout MLB. On the plaintiffs' logic, every one of those balls presents a preventable risk of serious injury. To baseball fans, those balls present an opportunity that is part of the game, inherently risky as being struck by a foul ball can be.

Of course, baseball spectators want to interact with the game. "[M]ost spectators . . . prefer to be as 'close to the play' as possible, without an insulating and obstructive screen between them and the action. In contrast, a smaller number of spectators prefer the protection offered by screening." Indeed, there is an "inherent value in having most seats unprotected by a screen because baseball patrons generally want to be involved with the game in an intimate

<sup>&</sup>lt;sup>8</sup> See "Odds," Foulballz.com, http://foulballz.com/oddz-ballz/ (last visited January 8, 2014); see also "Calculating Foul Ball Odds: More Considerations," Foulballz.com, http://foulballz.com/uncategorized/calculating-foul-ball-odds-more-considerations/ (last visited January 8, 2014).

<sup>&</sup>lt;sup>9</sup> In fact, where a foul ball lands is random and unpredictable. In 2013, according to a website devoted to foul ball hunting, the odds of a ball landing at a random spectator's seat at an Atlanta Braves home game at Turner Field were 1,047.78 to 1 or 0.095 percent. *See* "Odds," Foulballz.com, http://foulballz.com/oddz-ballz/ (last visited January 8, 2014).

<sup>&</sup>lt;sup>10</sup> Benejam, 635 N.W.2d at 223.

way and are even hoping that they will come in contact with some projectile from the field (in the form of a souvenir baseball)." MLB spectators get to *keep* out-of-play balls batted, thrown, or flipped to them. Fans take advantage of the unscreened seating available at baseball games; in fact, there is an entire culture built around catching foul balls. Spectators immediately stand and celebrate their capture of foul balls and homerun balls, and popular sports television shows and stadium jumbotrons capture the fans' jubilant reactions – this type of interaction is part of the game. The Baseball Rule takes account of the game's inherent risks, and its inherent thrills, properly balancing both. Again, fans who want to see the game live, but who do not wish to have the opportunity (and accompanying risk) of encountering a foul ball, may sit in screened areas or sit in seats farther away from the field. And so long as the stadium operator screens the

<sup>&</sup>lt;sup>11</sup> See Teixiera, 2006 WL 2413839, at \*4 ("one of the great lures of the game that still remains to bring spectators to the park, young and old alike, is the anticipation and hope that by the end of the game they will leave with a souvenir in the form of a ball that has come off the field of play"); see also Benejam, 635 N.W.2d at 222 ("the chance to apprehend a misdirected baseball is as much a part of the game as the seventh inning stretch or peanuts and Cracker Jack").

<sup>12</sup> Few have not attended a baseball game, as a child or adult, without bringing a baseball glove to keep ready when the foul ball is hit towards their seat. There are countless websites dedicated to spectators "beating the odds" of catching a foul ball. See "Welcome to Foul Ballz," Foulballz.com, http://foulballz.com/blog/ (last visited January 8, 2014); Zach Hample.com: The place to learn about baseball – and how to snag one at a MLB game, http://zachhample.com (last visited January 8, 2014); The Baseball Collector, http://zachhample.mlbblogs.com (last visited January 8, 2014). There are even mobile phone applications tracking these statistics. See, e.g., "Welcome to Foul Ballz," Foulballz.com, http://foulballz.com/ (last visited January 8, 2014) (Foul Ballz produces an iPhone and an Android phone application that uses "crowd sourcing" to collect data from spectators on fly balls that identifies trends in foul ball direction and angle); see also IdealSeat: All About the Baseball Fan, http://www.idealseatmlb.com/ (last visited January 8, 2014).

most dangerous area (behind home plate) and provides a sufficient number of screened seats to meet anticipated demand, there is no liability.

### **CONCLUSION**

For the foregoing reasons, *Amicus Curiae*, the Office of the Commissioner, respectfully requests that this Court recognize the Baseball Rule in Georgia.

This 27th day of January 2014.

THE OFFICE OF THE COMMISSIONER OF BASEBALL

Thomas J. Ostertag/

Senior Vice President and General Counsel

## **CERTIFICATE OF SERVICE**

I certify that I have served counsel with a copy of the <u>Amicus Brief of the Office of the Commissioner of Baseball Supporting Appellant</u> by U.S. Mail ensuring proper delivery and addressed to the following on January 27, 2014:

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