



Report Information from ProQuest

January 23 2015 14:01

Table of contents

1. Foul Balls and Assumption of Risk.....	1
Bibliography.....	5

Foul Balls and Assumption of Risk

Author: Pittman, Andrew T

[ProQuest document link](#)

Abstract: Some courts have applied one of two rules: (1) the no-duty rule, which essentially states that facility owners or operators owe no duty beyond that of reasonable care, or (2) the limited-duty rule, which states that protective screening needs to be provided only in the most dangerous areas of the ballparks, typically around the home plate area and down the first- and third-base lines. Louis Maisonave was purchasing a beverage from a mobile vending cart on the concourse of Riverfront Stadium, home of the Newark Bears, a minor league baseball team. Since Pakett produced no evidence that the screening in that area was insufficient in comparison with other baseball stadiums, the court stated that the baseball team was not required to use additional care in the design of the protective screening.

Links: [Obtain full text from Shapiro Library](#)

Full text: Reider v. State

Court of Appeal of Louisiana, Third Circuit

897 So.2d 893

March 9, 2005

Pakett v. The Phillies

Commonwealth Court of Pennsylvania

871 A.2d 304

March 29, 2005

Maisonave v. Newark Bears

Supreme Court of New Jersey

881 A.2d 700

September 13, 2005

Taylor v. Baseball Club of Seattle

Court of Appeals of Washington, Division 1

130 P.3d 835

February 27, 2006

For almost 100 years, federal and state courts have ruled that baseball spectators assume the risk of injury if struck by foul or fair balls. Some courts have applied one of two rules: (1) the no-duty rule, which essentially states that facility owners or operators owe no duty beyond that of reasonable care, or (2) the limited-duty rule, which states that protective screening needs to be provided only in the most dangerous areas of the ballparks, typically around the home plate area and down the first- and third-base lines. Other courts have ruled that spectators should assume the risks that are inherent to the activity. The outcomes of four recent cases, however, indicate that these concepts may be further scrutinized by the courts.

Facts of the Cases

As Heather Reider was approaching the ticket booth along the third-base line at McNeese State University's baseball field, she was struck in the right eye by a foul ball. She was not yet inside the baseball park. The impact severely and permanently damaged her right eye.

Neil Pakett was struck in the right eye by a foul ball while attending a Phillies game. The injury resulted in a partial loss of vision. He was sitting about 80 feet from home plate on the third-base side. His seat was just to the left of a plexiglass shield which had been installed several years before this incident. Pakett had occupied

that seat several times for many years and understood the danger posed by baseballs coming into the stands. He was also aware that four or five foul balls per game were hit in the immediate vicinity of that seat. Delinda Taylor and her family arrived more than an hour early at a Seattle Mariners game and proceeded to the right field foul-line area to observe the players warming up. This area was not protected by a screen. As she stood in front of her seat, a ball thrown from the field struck her in the face, causing serious injuries. She had attended many of her son's baseball games and had watched Mariners' games both at the Kingdome and on television, so she had opportunities to become aware of the risks.

Louis Maisonave was purchasing a beverage from a mobile vending cart on the concourse of Riverfront Stadium, home of the Newark Bears, a minor league baseball team. Netting protected the seating area behind home plate and extended some distance down both base lines, but the beverage cart he patronized was beyond the protection of the net down the first-base line. The batted ball struck him in the right eye, causing numerous fractures, persistent numbness, drooping of the eye, problems with his sinuses, and scarring.

Court Decisions

In Reider's case the court applied two Louisiana laws in deciding for the plaintiff: Louisiana Civil Code Article 2317 and Louisiana Revised Statutes 9:2800. In essence Article 2317 indicates that the state is responsible not only for their own actions, but also for the actions of persons under their authority and for the things under their custody. The statutes provide that a public entity is responsible under Article 2317 for damages caused by the condition of buildings under its care and custody. The statutes modified Article 2317 by requiring that the public entity have actual or constructive notice of the vice or defect that caused the damage prior to the occurrence of an accident. There was no dispute that the baseball park was under state care and, since the plaintiff could prove that the design of the ballpark created an unreasonable risk of harm, was the proximate cause of her injury. Because the defendant had knowledge of this defect, the court held that the baseball park presented an unreasonably dangerous condition to patrons.

The Pakett court applied the no-duty rule in deciding that the Phillies did not owe a duty to the injured plaintiff. Pakett was well aware that foul balls, several times during the course of a game, entered the area where he was seated. In fact, when the foul ball came toward Pakett, he did not try to avoid it but attempted to catch it. Since Pakett produced no evidence that the screening in that area was insufficient in comparison with other baseball stadiums, the court stated that the baseball team was not required to use additional care in the design of the protective screening.

The Taylor court applied the primary-assumption-of-risk defense in finding for the defendant baseball team. Under this defense, the defendant must show that the plaintiff had full subjective understanding of the specific risk and that he or she voluntarily chose to encounter it. In this case one of the key questions was whether the warm-up activities were considered part of the risks inherent in baseball. In finding for the defendant, the court ruled that the warm-up was an inherent part of the game and that the plaintiff should have been aware of the dangers due to the many balls flying through the air. The manner in which the warm-up was conducted did not deviate from the practices commonly followed at all levels of baseball.

The Maisonave court reached a different conclusion. That court applied the limited-duty rule in finding for the injured plaintiff. Under this rule, facility owners and operators have a duty to provide protective screening in the most dangerous areas of the ball park and to provide a sufficient number of seats for those who desire to sit in those locations. However, the validity of the limited-duty rule diminishes in the context of injuries that occur in stadium areas other than the stands. In those areas, fans are not typically focused on the game.

Risk Management Implications

It is incumbent that facility managers and owners employ a variety of measures to communicate the risks of objects flying at spectators in the stands. These measures could include the following:

- * Printing warnings on the back of ticket stubs.
- * Placing signs outside and inside the facility alerting spectators to those risks. In some states, state law

mandates the manner in which these risks must be communicated.

- * Making periodic announcements over a loudspeaker system to alert spectators to the risks.
- * Placing protective screening in the most dangerous areas of the facility.
- * Properly maintaining protective screening and replacing inadequate screening.
- * Designing and placing spectator support areas, such as concession and restroom areas and ticket booths, away from any danger zones or, if moving them is not possible, installing protective screening around them and placing warning signs.

Conclusion

The decisions in the *Maisonave* and *Reider* cases may represent a change in the application of no-duty or limited-duty rules and the assumption-of-risk doctrine, at least in those jurisdictions affected by those decisions. These decisions indicate that if the actions resulting in injury are actions that are common to baseball, courts will continue to apply no-duty and limited-duty rules and the assumption-of-risk doctrine. However, being hit by a foul ball while purchasing concessions or tickets is not an inherent risk of the game of baseball. In the future, these ancillary service areas may have to be considered a part of the danger zone similar to the home plate area and the stadium area down the first- and third-base lines (Wolohan, 2006). Facility owners and operators should provide protective seating in their facilities, which may be mandated by state law. If there is no such requirement, then any lack of protective seating should be effectively communicated to those desiring to enter the facility. The protective seating provided should not deviate from common practices in the industry, and it must be maintained in good condition. Any defective screening should be replaced or repaired. If a spectator is injured, the appropriate form must be completed and legitimate concern for their health and welfare should be demonstrated.

Sidebar

Disclaimer

The comments regarding the case presented here are generalized thoughts and not hard law. The cases in *Law Review* are illustrative of situations that can happen and how the courts have responded to the circumstances. The generalized thoughts may not apply or be proper in all states and jurisdictions and under all circumstances. Finally, it is important to understand that the tips provided may not apply in your state or jurisdiction.

Sidebar

Submissions Welcome!

To submit, send an email to Andy Pittman (Andy_Pittman@baylor.edu).

References

References

- Louisiana Civil Code, Annotated article 2317: Acts of others and things of custody.
- Louisiana Revised Statutes, Annotated section 2800: Limitation of liability for public bodies.
- Wolohan, J.T. (2006, January). *Sportslaw*. *Athletic Business*, pp. 24, 26, 28-29.

AuthorAffiliation

Andrew T. Pittman (Andy_Pittman@baylor.edu) is a professor in the Health, Human Performance, and Recreation Department at Baylor University in Waco, Texas 76798-7313.

Subject: Professional baseball; Litigation; State court decisions; Risk; Injuries; State laws; Sports fans; Stadiums;

Publication title: *Journal of Physical Education, Recreation & Dance*

Volume: 78

Issue: 1

Pages: 8-9

Number of pages: 2

Publication year: 2007

Publication date: Jan 2007

Year: 2007

Section: Law Review

Publisher: Taylor & Francis Ltd.

Place of publication: Reston

Country of publication: United Kingdom

Publication subject: Sports And Games, Physical Fitness And Hygiene, Education--Teaching Methods And Curriculum, Public Health And Safety

ISSN: 07303084

Source type: Scholarly Journals

Language of publication: English

Document type: Feature

Document feature: References

ProQuest document ID: 215762444

Document URL:

<http://ezproxy.snhu.edu/login?url=http://search.proquest.com/docview/215762444?accountid=3783>

Copyright: Copyright American Alliance for Health, Physical Education and Recreation Jan 2007

Last updated: 2013-10-01

Database: ProQuest Central

Bibliography

Citation style: APA 6th - American Psychological Association, 6th Edition

Andrew, T. P. (2007). Foul balls and assumption of risk. *Journal of Physical Education, Recreation & Dance*, 78(1), 8-9. Retrieved from

<http://ezproxy.snhu.edu/login?url=http://search.proquest.com/docview/215762444?accountid=3783>

Contact ProQuest

Copyright © 2015 ProQuest LLC. All rights reserved. - **Terms and Conditions**