

## SPECTATOR INJURY OUTSIDE THE STANDS

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Under the traditional rule of law, baseball stadium owners or operators owe spectators a "limited duty" of care, i.e., screen the area behind home plate and to offer a sufficient amount of seating for spectators who reasonably may be anticipated to request protected seats in the course of an ordinary game. Once the landowner provides such limited protection, no further duty is owed and a baseball spectator who chooses not to sit in a screened area generally assumes the risk of being hit by a foul ball. In *Maisonave*, however, the state supreme court considered whether an injured spectator necessarily assumed the risk of being struck by a foul ball outside the stands while waiting in line to purchase a beverage.

### HEIGHTENED VULNERABILITY

In the case of *Maisonave v. Newark Bears*, 185 N.J. 70; 881 A.2d 700; 2005 N.J. LEXIS 1108, plaintiff Louis Maisonave was attending a baseball game at a minor league stadium when he was injured by a foul ball. The facts of the case were as follows:

Plaintiff Louis Maisonave suffered a facial injury when a foul ball struck him in the eye as he stood on the mezzanine at Riverfront Stadium, home field of a minor league baseball team, the Newark Bears. The mezzanine is an open walking area exposed on one side to the baseball field. Vendors sell food and beverages on that level, and restrooms are located there. At the time of the incident, the stadium used movable vending carts for the sale of beverages because construction of the stadium had not yet been completed, and the built-in concession stands were not operational. The carts dotted the mezzanine along both the first and third base lines on the field-side of the mezzanine. The vendors stood with their backs to the diamond while the patrons faced it.

Plaintiff, who had watched the action at a railing on the first base side of the field, walked about 100 feet to the closest vending cart. Netting protects the seating area behind home plate and extends for some distance down both base lines. The beverage cart that plaintiff patronized was on the first base line, but beyond the protection of the net.

In a written statement, Maisonave described the moments before the incident as follows:

I wasn't consciously aware of where the netting was or where it ended. From the time I reached the vending cart, I had not actually watched the field; I was aware the game was being played by the crowd reaction, but I wasn't able to see the field . . . Standing at the beverage cart before I was hit I was not thinking about the possibility of a foul ball coming at me. I didn't think anything could happen to me there.

The batted ball struck plaintiff in the right eye, causing numerous fractures and persistent numbness in the area of the eye, drooping of the eye, problems with his sinuses, and scarring. Plaintiff brought negligence claims against the Newark Bears which leased the stadium from the county improvement authority and the dining services which provided food and beverage services at the stadium.

The trial court found the stadium owners and operators had not breached the applicable “two-pronged duty of care for stadium owners and operators”:

First, the operator must provide protected seating "sufficient for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion," and second, the operator must provide protection for spectators in "the most dangerous section" of the stands. The second component of this limited duty ordinarily may be satisfied by the operator providing screened seats behind home plate in baseball and behind the goals in hockey.

In the opinion of the trial court, the defendants had satisfied this “limited duty” of care owed to plaintiff because plaintiff could have utilized “at least two vending carts close to home plate and behind the screening.” As a result, the trial court concluded that defendants “were not liable to plaintiff as a matter of law” and granted summary judgment in favor of the stadium owners and operators. Maisonave appealed.

According to the appeals court, the trial court had erred in finding “defendants had not violated their duty of care as a matter of law.” The appeals court, therefore, reversed the trial court’s judgment in favor of defendants and remanded (i.e., sent back) the case to the trial court for further proceedings. In so doing, the appeals court acknowledged that “the operators of a commercial sports facility owe a limited duty to spectators.” On the other hand, the appeals court held the limited duty rule was not necessarily limited to providing “screened seats behind home plate in baseball and behind the goals in hockey.” On the contrary, in the opinion of the appeals court, the identification of these particular locations simply provided an example to measure the legal duty of “due care under all the circumstances.” The state supreme court granted the defendants’ petitions to review this determination by the appeals court.

#### LIMITED NO DUTY RULE

As noted by the state supreme court, a landowner generally “owes a duty of reasonable care to guard against any dangerous conditions on his or her property that the owner either knows about or should have discovered.” Similarly, “the operator of a commercial recreational facility, like the operator of any other business, has a general duty to exercise reasonable care for the safety of its patrons.” According to the court, [t]his is the standard of care generally applied to business enterprises and is the default governing standard unless a more specific rule applies.” In the case of baseball, the state supreme court found that a more specific rule did apply, i.e., a “limited duty rule... a specialized negligence standard that has protected stadium owners and operators since the early days of modern baseball.”

Since the early twentieth century, courts have held that one of the natural risks assumed by spectators attending professional games is that of being struck by batted or thrown balls... [S]tadium operators must offer protected seating areas...[T]he duty imposed by law is performed when screened seats are provided for as many as may be reasonably expected to call for them on any ordinary occasion... [T]he rule establishes a fact-specific standard of care for injuries caused by errant balls at baseball stadiums by accounting for the open and obvious nature of the risk that batted balls pose to fans...

The limited duty rule insures that those spectators desiring protection from foul balls will be accommodated and that seats in the most dangerous area of the stadium will be safe. At the same time, it recognizes baseball tradition and spectator preference by not requiring owners to screen the entire stadium.

In addition, the state supreme court noted further that stadium operators must "provide protection for spectators in the most dangerous section of the stands." Accordingly, the issue before the court was whether the limited duty rule should apply to the entire stadium or be limited to the stands.

In the opinion of the state supreme court, "[i]t would be unfair to hold owners and operators liable for injuries to spectators in the stands when the potential danger of fly balls is an inherent, expected, and even desired part of the baseball fan's experience."

[W]hile watching the game, either seated or standing in an unprotected area, spectators reasonably may be expected to pay attention and to look out for their own safety. It is the well-understood nature of the game that batted or thrown baseballs can land in the stands. Indeed, most spectators prefer to sit where they can have an unobstructed view of the game and are willing to expose themselves to the risks posed by flying balls to obtain that view.

Moreover, professional baseball is a unique sport because fans actively engage in the game by trying to catch foul balls. Fans often greet out-of-play baseballs with cheers as they dive over walls and rows of seats, risking life and limb, for the thrill of triumphantly claiming the errant ball.

Further, the state supreme court found that "owners and operators would face undue hardship if forced to guarantee protection for all fans in the stands from every fly ball." Under such circumstances, the court concluded that "the limited duty rule fairly balances the practical and economic interests of owners and operators with the safety and entertainment interests of the fans."

[O]wners and operators must offer sufficient protected seating to those who would seek it on an ordinary basis and to provide screening in the most dangerous sections of the stands... [T]he term "stands" includes the stairs that fans ascend and descend to access their seats in the stands. Similarly, areas immediately

adjacent to the stands designated as "standing room only," and dedicated solely to viewing the game, fall within the purview of the limited duty rule.

## MULTI-PURPOSE AREAS

In contrast, the state supreme court found "multi-purpose areas, such as concourses and playground areas, are outside the scope of the rule." In these areas, the court found "the measure of the operator's duty is due care under all the circumstances." Moreover, in determining the scope and applicability of the limited duty rule, the state supreme court would require owners and operators to "reassess whether there is a sufficient amount of protected seating available in the most dangerous locations for those that might reasonably expect to obtain such seats." In so doing, the court found the most dangerous locations might extend beyond the screened home plate area.

We expect owners and operators -- who are in the best position to determine which areas of the stadium are indeed the most dangerous -- to identify those areas and take preventive steps to ensure fan safety to a reasonable extent.

For example, concerns arise in many areas of the stadium because baseballs hit into the unscreened seats are actually faster than those balls hit directly behind the screened home plate area. . . . Traditionally, balls hit straight back are hit with the bat coming underneath the ball, which takes off some of the speed. In contrast, line drive fouls (most frequently right down the foul lines) are normally hit flush, and send the ball at a higher velocity down the line and into the stands.

In particular, the state supreme court questioned "whether the limited duty rule should apply to areas other than the stands." Specifically, the court had to determine "whether plaintiff's case is governed by the no duty' rule applicable to common, frequent and expected risks of baseball or by the ordinary rules applicable to all other risks which may be present in a baseball stadium." As noted by the state supreme court, some jurisdictions "have applied common law principles, rather than the limited duty rule, to resolve litigation between fans injured in the stands and stadium owners and operators."

In the opinion of the state supreme court, "an injury to a patron in an area of the stadium other than the stands" presented a "factually distinct issue" than that addressed by the limited duty rule for sport spectators. As a result, in the interest of "harmonizing the interests of fans and owners" and considering "the nature of risks" involved, the court acknowledged that "a different standard of care may be appropriate for areas of the stadium outside of the stands."

[W]e recognize that, since the birth of the baseball rule, both sports and tort law have undergone massive transformations. While the baseball "event" has been evolving, tort [i.e. personal injury liability] law has shifted from a caveat emptor [buyer beware] approach to one that generally requires defendants to assume more responsibility. As a consequence, there is a pragmatic difficulty in applying an old rule to a sport that has changed tremendously in the last seventy years... [S]ports viewership has significantly changed over the years, but most courts have

yet to embrace this change. Because the beauty of common law is the ability to adapt to the times, we now consider whether our rule requires refinement.

In the opinion of the state supreme court, “[t]ransformations in tort law and the game of baseball,” in particular “new training techniques and technologies [that] have made play faster and players stronger,” would “suggest boundaries to the limited duty rule.” Specifically, the court found “[t]he limited duty rule does not accommodate all of the activities that are part of today’s game, nor does it take into account that players can hit baseballs harder and farther.” In particular, the state supreme court noted that “[t]he validity of the baseball rule diminishes in the context of injuries that occur in stadium areas other than the stands.”

Fans foreseeably and understandably let down their guard when they are in other areas of the stadium. Once the fan has disengaged him- or herself from the activity on the field and has left the stands, that individual is no longer trying to catch foul balls or even necessarily watching the game... The fact that children and seniors are an important part of minor league games, underscores our concern.

As a result, outside of the stands, the court found “[n]othing about the game of baseball distinguishes it from other businesses in a way that justifies preferential treatment for stadium owners and operators for injuries” to business invitees. Rather, the court found areas outside of the stands like those concourses and mezzanines in a commercial sports facility where plaintiff’s injury occurred are “no different than any other commercial establishment.” In such situations, as in all other personal injury situations in commercial enterprises, the state supreme court stated it would apply “general negligence principles,” i.e., the business invitee rule.

[T]he defendants are engaged in a commercial venture which by its nature induces spectators to let down their guard. They have a concomitant duty to exercise reasonable care to protect them during such times of heightened vulnerability. The imposition of a duty under these circumstances . . . is not only fair but reasonable.

As characterized by the state supreme court, such “times of heightened vulnerability include all situations in which a patron is no longer in the stands.” As a result, the court would not “expand the scope of the baseball rule past its logical and appropriate borders, that is, the stands.”

To apply the baseball rule to the entire stadium would convert reasonable protection for owners to immunity by virtually eliminating their liability for foreseeable, preventable injuries to their patrons even when the fans are no longer engaged with the game... We simply apply traditional tort principles and conclude that the proper standard of care for all other areas of the stadium [outside of the stands] is the business invitee rule, which provides that a landowner owes a duty of reasonable care to guard against any dangerous conditions on his or her property that the owner either knows about or should have discovered.

In reaching this determination, the state supreme court reiterated the traditional limited duty rule would still “apply to injuries occurring in the stands.” However, in all other areas of the stadium where injuries occur, “traditional rules of negligence, specifically the business invitee rule, will govern owner and operator liability.”

After considering “which of the parties is best able to bear the burden of foreseeable harm within the stadium,” the state supreme court concluded that “adjustment of the ground rules is a fair and appropriate accommodation of the competing interests.” As a result, the state supreme court affirmed the judgment of the appeals court in favor of plaintiff with modifications. In reaching this determination, the state supreme court remanded (i.e., sent back) this case to the trial court “for application of the standard we have set forth in this opinion.” On remand, the trial court would conduct further proceedings which applied the business invitee rule, rather than the limited duty rule, in determining whether the Newark Bears would be liable for Maisonave’s injuries.