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BASEBALL DUTY TO PROVIDE PROTECTIVE SCREENING FOR SPECTATORS

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Awhile back, I received an inquiry from an attorney representing a city in a lawsuit brought by a spectator injured at a softball game on a municipal ballfield. Apparently, the spectator was struck by an errantly thrown ball during warmup prior to the game. The injured spectator had been standing outside the unscreened baselines of the playing field. The issue under consideration was, therefore, the duty of care owed by the dry landowner to spectators under the circumstances.

The question of landowner liability for spectator injuries at sporting events has been a recurrent theme in the Recreation and Parks Law Reporter (RPLR). To date, at least four recently reported court decisions in RPLR have addressed the legal duty owed by the landowner to provide protective screening for spectators at a sporting event: Report #86-19, Municipal Arena Liability for Hockey Spectator Injury; Report #86-5, Spectator Sues City for Injury at Soft-ball Game; Report #85-43, Softball Spectator Struck by Ball During Warmup Sues League; Report #85-15, State Liability for Inadequate Protection for Hockey Spectator. The reasoning in these RPLR reports is consistent with the *Akins* decision described herein. This 1981 decision from the New York state supreme court is usually referred to when courts are asked to consider the issue of adequate protective screening for sport spectators.

THE TIMOROUS MAY STAY AT HOME

In the case of *Akins v. Glen Falls City School District*, 53 N.Y.2d 325, 424 N.E.2d 531 (1981), the New York state supreme court was asked to "define the scope of the duty owed by a proprietor of a baseball field to the spectators attended the game." As described by the court, the specific issue was "whether such an owner, having provided protective screening for the area behind home plate, is liable in negligence for the injuries sustained by a spectator as a result of being struck by a foul ball while standing in an unscreened section of the field." The facts of the case were as follows:

In the early afternoon of April 14, 1976, plaintiff Robin Akins attending a high school baseball game that was being played on a field owned and maintained by defendant Glen Falls City School District. The field was equipped with a backstop 24 feet high and 50 feet wide. This backstop was located 60 feet behind home plate and was positioned in front of bleachers that could seat approximately 120 adults. There was additional standing room behind the backstop as well. Two chain link fences, three feet in height, ran from each end of the backstop along the base lines to a distance approximately 60 feet behind first and third base.

Akins arrived while the game was in progress and elected to view the contest from a position behind the three-foot fence along the third base line, approximately 10 to 15 feet from the end of the back-stop and 60 feet from home plate. As there were no

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seating facilities for spectators along the base lines, Akins had to stand in order to watch the game. At the time, other spectators were also standing along the base lines behind the three-foot fence. There was, however, no proof that the screened bleachers behind home plate were filled or that Akins was prevented from watching the game from behind the backstop. Approximately 10 minutes after arriving at the baseball field, Akins was struck in the eye by a sharply hit foul ball, causing her serious permanent eye injury.

Akins alleged that "the school district was negligent in failing to provide safe and proper screening devices along the base lines of its field." A jury agreed and returned a verdict in Akins' favor. Damages were assessed at \$100,000.

Applying the state comparative negligence statute, the jury apportioned fault at 65% for the school district and 35% for Akins. Consequently, judgment was entered for Akins in the amount of \$65,000, i.e., the amount of damages (\$100,000) reduced by the percentage of victim fault (35%). The school district appealed. The intermediate appellate court affirmed the judgment of the trial court in Akins' favor, prompting this appeal to the state supreme court.

As noted by the court, spectators traditionally assumed the risk of being struck by misguided baseballs. "The spectator at a sporting event, no less than the participant, accepts the danger that inhere in it so far as they are obvious and necessary, just as the fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance contact with the ball. The timorous may stay at home." Therefore, where applicable, assumption of risk "served as a complete bar to a plaintiff's cause of action without regard to the degree of care exercised by the owner of the ball park." Assumption of risk involves a voluntary encounter with a known or obvious danger.

In New York and a majority of other jurisdictions, assumption of risk will no longer bar plaintiff's recovery for voluntarily encountering a known or obvious danger. Instead, under the terms of the comparative negligence statute, plaintiff's recovery is simply reduced by that percentage of victim fault attributable to encountering an obvious danger. Under the circumstances of this case, the jury found Akins 35% at fault for facing the obvious danger associated with being struck by a foul ball at this particular baseball game.

Since assumption of risk no longer barred plaintiff's recovery under the state comparative negligence statute, the state supreme court found it necessary to define the duty of care owed by the proprietor of a baseball field to its spectators. As noted by the court, "an owner of a baseball field is not an insurer of the safety of its spectators." On the contrary, the court found that these individuals "like any other owner or occupier of land... is only under a duty to exercise reasonable care under the circumstances to prevent injury to those who come to watch games played on its field." Further, reasonable care did not require the ballfield landowner to provide protective screening for every spectator.

The perils of the game of baseball, however, are not so imminent that due care on the part of the owner requires that the entire playing field be screened. Indeed, many spectators prefer to sit where their view of the game is unobstructed by fences or protective netting and the proprietor of a ball park has a legitimate interest in catering to these desires. Thus, the critical question becomes what amount of screening must be

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provided by an owner of a baseball field before it will be found to have discharged its duty of care to its spectators.

In addressing this question, the state supreme court looked to the case law from other jurisdictions and found "various standards in defining the duty of a ball park to protect spectators from stray balls."

Some courts have held that an owner merely has a duty to screen such seats as are adequate to provide its spectators with an opportunity to sit in a protected area if they so desire. Other courts have stated that a proprietor of a baseball field need only screen as many seats as may reasonably be expected to be applied for on an ordinary occasion by those desiring such protection. Most courts, however, have adopted a two-prong standard in defining the scope of an owner's duty to provide protective screening for its patrons. Under the majority rule, the owner must screen the most dangerous section of the field in the area behind the 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.

The New York state supreme court found this majority rule to be the "better rule" and adopted it. In adopting this majority rule, the court defined "the duty owed by an owner of a baseball field to provide protective screening for its spectators" in the following terms:

We hold that, in the exercise of reasonable care, the proprietor of a ball park need only provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest. Moreover, 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. In so holding, we merely recognize the practical realities of this sporting event. As mentioned earlier, many spectators attending such exhibitions desire to watch the contest taking place on the field without having their view obstructed or obscured by a fence of protective net. In ministering to these desires, while at the same time providing adequate protection in the most dangerous area of the field for those spectators who wish to avail themselves of it, a proprietor fulfills its duty of reasonable care under such circumstances.

This is not to say that by adequately screening the area of the field where the incidence of foul balls is the greatest, the risks inherent in viewing the game are completely eliminated. Rather, even after the exercise of reasonable care, some risk of being struck by a ball will continue to exist . . . We merely hold that where a proprietor of a ball park furnishes screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest and that screening is 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 proprietor fulfills the duty of care imposed by law and therefore, cannot be liable in negligence.

Applying this rule to the facts of the case, the state supreme court found that the school district had fulfilled its duty of reasonable care to Akins.

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In this case, it is undisputed that the school district equipped its field with a backstop which was 24 feet high and 50 feet wide. Akins presented no evidence that this backstop was inadequate in terms of providing protection for the area behind home plate where there was a substantial likelihood of spectators being struck by misguided balls or that there was an insufficient number of screened seats for those who might reasonably be expected to desire such protection. Under these circumstances, having provided adequate protection for those spectators seated, or standing, in the area behind home plate, liability may not be imposed on the school district for failing to provide additional screening along the base-lines of its field where the risk of being struck by a stray ball was considerably less.

As noted by the state supreme court, "only in those cases where there arises a real question as to the landowner's negligence should the jury be permitted to proceed." Since the undisputed facts in this particular case indicated that the school district had fulfilled the duty described above, the court found "no question of negligence remained for the jury's consideration." The trial court, therefore, had erred in submitting the case to the jury. Consequently, the state supreme court reversed the judgment of the lower courts and dismissed Akins' complaint against the defendant school district.