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The Price of Admission: Liability in Professional Baseball and Hockey For Spectator Injuries Sustained During the Course of the Game

Christopher T. Yamaguchi

THE PRICE OF ADMISSION: LIABILIITY IN PROFESSIONAL BASEBALL AND HOCKEY FOR SPECTATOR INJURIES SUSTAINED DURING THE COURSE OF THE GAME

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INTRODUCTION

Sports are an integral and pervasive part of American culture. Competition and the unpredictable nature of the game excite fan passion. Individuals flock to games to enjoy and take part in the heroics and the failings, the cheers and the boos. Fans enjoy becoming emotionally vested in the contest and find relatability in knowing that grown men can still cry and play their sport with the exuberance of a child. Irrespective of the reason for attending an athletic event, though, it is clear that millions of individuals crowd stadiums and arenas every year to briefly escape reality and to be subsumed in the spectacle of competition.

A part of the game that captivates fan attention, and that frightens owners, is the fact that all sports carry some level of inherent risk and, at times, even expectation of injury. Injury to a star player can derail a team, send fan morale plummeting and, most importantly, have lasting effects on the individual athlete involved. But it is not just the athletes that are exposed to the dangers of the contest. Injuries sustained by fans from projectiles leaving the field of play are, perhaps unexpectedly, commonplace.[1] One study found that more than 35 injuries to spectators at Major League Baseball ("MLB") games from foul balls occur for every one million spectator visits.[2] A similar study conducted by the American College of Emergency Physicians ("ACEP") in 2000, revealed that injuries to spectators at National Hockey League ("NHL") games were also surprisingly common.[3] The ACEP findings revealed that out of the 127 contests held at the

MCI Center in Washington, D.C., 122 fans required first aid for injuries resulting from pucks entering the stands, and nearly half of that number required a visit to an emergency room.[4] When contrasted with the incidence of injuries sustained in the course of flying, an activity that is generally perceived by the masses as dangerous, the risk associated with attending a sporting event is comparatively much higher. Date compiled by the National Transit Safety Board shows that there were only ten serious injuries to airline passengers out of the 711 million passenger enplanements in 2009.[5] This figure is double the previous five-year average,[6] which further evinces that there is a comparatively greater risk of injury associated with attending a sporting event.

Leagues are aware of their respective sports' inherent dangers and have taken action in the form of various game play safety regulations, specifically the mandatory wearing of helmets, to reduce the risk of injuries to players.[7] But what duty exists to provide protection to the fans whose money and support act as the lifeline to the survival of the sport as a business? It seems reasonable that if players and leagues are concerned about the safety of those playing, then owners and arenas should, at least, provide protection to fans. This reasoning carries with it, though, an inherent dilemma – fans who are eager and willing to pay higher ticket prices are, at the same time, signaling a preference for seats that provide an unobstructed view of the game. In most instances this equates to fans being closer to the action, leaving many uninsulated from contact with the game and, therefore, susceptible to a higher risk of injury during the course of the contest.

Teams have taken certain measures to protect fans but, in effect, may only be giving the unsuspecting observer an unwarranted expectation of safety. Does a team have a duty to protect its fans and, if so, is it applied uniformly to all observers? Does it matter if an individual is

unfamiliar with certain nuances of a sport and, therefore, cannot fully understand the nature and extent of the dangers that can be present during a game? This paper will focus on the level and type of protection that is owed to spectators at sporting events, specifically evaluating the duties owed to baseball and hockey spectators and addressing whether similar liability frameworks can be applied to other sports.

This paper will proceed by introducing the 'Baseball Rule' and explaining the reason why claims for injuries from projectiles leaving the field of play during a baseball game are, essentially, barred. Part Two will address the duty of care owed by arena owners in hockey and discuss the trend toward not finding stadiums liable, absent negligence. Part Three will discuss the differences between baseball and hockey and reveal how cultural influences have helped to shape the legal frameworks in both sports. Part Four will discuss the extent to which the liability constructs from baseball and hockey can be applied to other sports where projectiles can injure fans, specifically basketball and golf.

PART I. THE BASEBALL RULE

Baseball is deeply rooted in society and a cherished part of American culture. It is the exalted platform that baseball has historically stood on, compared to other sports, that has influenced the law as it pertains to our National Pastime. The game may have changed since its inception – no longer are speed and finesse coveted over power, and no longer do fans attend games dressed in their Sunday best – but the game still boils down to the same essential battle of wills between the pitcher and the batter. In that respect the game is timeless; so too is the law's stance with regard to the duty of care owed to spectators at baseball games.

Crane v. Kansas City Baseball & Exhibition Co., was one of the earliest cases to address the standard of care that a MLB stadium owner owes to fans.[8] In Crane, the stadium did not have reserved seats an the plaintiff, a "fan," or at least a regular attendant to baseball games, elected to sit in the unprotected part of the stadium instead of the area behind home plate, which was shielded by protective netting.[9] The plaintiff was injured by a foul ball and tried to claim that the stadium was negligent for not providing protective screening to the entire grandstand.[10] The court noted that nothing prevented the fan from choosing to sit in one of the protective seats. The court held that since the fan had voluntarily chosen the unprotected seat and because he had full knowledge of the hazards of the game, recovery was unavailable. The Court reasoned that,

> *It is knowledge common to all that in these games hard balls are thrown and batted with great swiftness; that they are liable to be muffed or batted or thrown outside the lines of the diamond and visitors standing in position that may be reached by such balls have voluntarily placed themselves there with knowledge of the situation and may be held to assume the risk.*[11]

The court went on to say that a baseball owner is engaged in the "business of providing entertainment for profit" and, therefore, only needs to exercise reasonable care.[12] Crane thus established that the duty of care owed to an individual paying admission to a baseball game, absent special circumstances or negligence on the part of the defendant, is the equivalent of the duty owed by a proprietor to a regular business invitee.

The notion from Crane that the game of baseball and its inherent risks were "knowledge common to all"[13] was the driving force behind the creation of the 'baseball rule' in Quinn v. Recreation Park Ass'n. In Quinn, a fourteen-year-old girl was struck by a foul ball while seated in an unscreened portion of the stadium.[14] The court reasoned that injuries caused by foul balls were to be expected and, thus, the stadium owner could undertake fewer safety precautions as might otherwise be acceptable.[15] The Court explained that the stadium, "...is not required to

provide screened seats for all who may apply for them. The 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."[16] The court opened up the possibility that had Joan Quinn and her family even sought and had subsequently been denied screened seats due to unavailability, the fact that minimal safety precautions were taken was enough for the stadium to escape liability because the fans assume any risks inherent in the game. [17] This was the situation that arose in Wells v. Minneapolis Baseball & Athletic Ass'n. In Wells, women were given free admission to a ball game as part of a 'ladies day' promotion.[18] Due to the increased number in attendance, the plaintiff could not obtain a seat in the protected part of the grandstand where she wished to sit and, instead, was forced to sit in temporary seating erected down the third baseline. The court recognized that on occasions of important games there are more prospective customers than there are available protected seats; nevertheless, the court held that the ballpark fully performed its duty to protect spectators from the hazards of observing a ballgame when it provided screened seats and gave patrons the opportunity to occupy one of those seats.[19]

The 'baseball rule' from Quinn proffers that because baseball is so well known by the general public, any risks associated with the game are also known. An individual's attendance at a game is, thus, treated as an implied assumption of those risks. This rule has been applied regardless of an individual's experience with the game. The prevailing thought is that the spectator impliedly assumed the risk of coming into contact with a foul ball, a risk that is common knowledge, simply by being present at the game.

In Keys v. Alamo City Baseball Co., the spectator, a 42-year-old mother, attended a game with her son and was injured by a foul ball.[20] The mother argued that she lacked experience with the game, that the stadium had not provided adequate warning of the dangers,

and that she was not contributorily negligent because she was facing away from the field of play when struck by the foul ball.[21] The record further showed that the mother had attended just one other game in her life.[22] The Keys Court remained unpersuaded by the mother's theories for attaching liability to the stadium and instead reasoned that, as a mother, she should have the requisite knowledge imputed to her through her 14-year-old son. The court stated that it can be inferred that her child, "was a baseball 'fan' as is nearly every normal American boy."[23] It was further noted that the mother had sat through "five or six innings"[24] and had seen other balls batted into the grandstands.[25] Thus, the court found that the mother, though relatively inexperienced with live game play prior to her attendance, should have known about the risks both as a prudent mother and as a reasonable attendant at the contest.[26]

The temporal aspect of how long an individual is actually present at a game also seems inconsequential to the outcome. In Brown v. San Francisco Ball Club, Inc., Brown elected to view the game from an unobstructed view down the line even though many of the 5,000-screened seats behind home plate were vacant.[27] The ballpark maintained that it had honored its duty to the spectator by providing enough protected seats as might reasonably be demanded at a normal game and, therefore, that the claim should be barred under the 'baseball rule'.[28] Brown attempted to refute this argument by claiming that she was "ignorant of the game of baseball and unfamiliar with the attendant risks, hence cannot be said to have knowingly assumed the risk."[29] The record showed that plaintiff had seen one baseball game 17 years prior and that her experience at that game was different: the game was played on a big field instead of in a ballpark, plaintiff watched the game from her automobile, and plaintiff did not see any balls thrown or knocked into the crowd.[30] The court stated that, regardless, the injury in the instant matter did not occur due to any failure to perform on the part of the ballpark and that there was

no reason that the 'baseball rule' should not apply.[31] The court noted that Brown was a mature individual with a job and capable cognitive abilities and, therefore, that was no reason for special treatment, which could act as grounds for lowering the standard.[32] The court found the fact that Brown was unfamiliar with the game irrelevant because the ballpark had fulfilled its legal duty[33] and stated that, "[S]he was in attendance for about an hour before the accident, which should have apprised her of the risk of being struck by a ball."[34]

The baseball rule is so firmly entrenched that never having seen the sport played live is still not excusable ignorance in the courts' eyes. In Schentzel v. Philadelphia National League Club, a female spectator was hit while attending her first baseball game.[35] Similar to the plaintiff in Brown, the woman tried to claim that she did not know the game of baseball, that the ballpark had a legal duty to extend the screen to protect all women patrons because many were ignorant of the game and lured there by special invitations, and that she did not expressly consent to the foul ball injury.[36] The court looked to Brown, since at the time this was a case of first impression in Pennsylvania. The court noted that the woman was a wife and a mother, that she did not live a cloistered life. The court was reminded that the television in plaintiff's house was frequently tuned to games and so posited that, "...she must be presumed to have been cognizant of the 'neighborhood knowledge' with which individuals living in organized society are normally equipped."[37] Therefore, the court looked to the activities of her family and those around her, and found that the plaintiff was imbibed with sufficient knowledge of the game. The Schentzel Court stated, "[I]t strains our collective imagination to visualize the situation of the wife of a man obviously interested in the game, whose children view the games on the home television set, and who lives in a metropolitan community, so far removed from that knowledge as not to be chargeable with it."[38]

Using an equally draconian interpretation of the 'baseball rule,' courts do not give any respite to those who may be too young to alone appreciate the dangers associated with the game. In Lawson v. Salt Lake Trappers, Inc., a parent brought suit on behalf of her child who sustained injuries after being stuck in the head by a foul ball at a baseball game.[39] In Lawson, the family was seated behind the first base dugout about halfway from the top of the stands.[40] The family had gone to the game primarily so that their six-year-old daughter would be able to see the fireworks display following the game.[41] Citing to the 'baseball rule' from Quinn, the Lawson Court noted that being stuck by a foul ball is, "one of the natural risks assumed by spectators attending professional games."[42] The court further reasoned that summary judgment in favor of the ballpark was appropriate because the Lawson family voluntarily chose to sit in unprotected seats to accommodate their group size and that, since no facts were offered that would indicate negligence on behalf of the ballpark, plaintiff assumed the risks by attending the game.[43]

Other cases, which are not as straightforward, still show the legal system's reluctance to find liability on the part of stadium owners, absent a showing of negligence. The 'inherent risks' as described in the aforementioned cases address situations where projectiles in the form of balls are batted out of play during the normal course of game play. Pira v. Sterling Equities, Inc., presents a scenario where the spectator, who was seated approximately five rows back at Shea Stadium, was struck by a baseball that had been tossed into the stands by New York Mets Pitcher, Dennis Cook.[44] Cook had just completed his pregame throwing routine and casually tossed the ball he was warming-up with into the stands as an intended souvenir.[45] The court ruled in favor of the ballpark stating that it is not unusual for players to toss balls into the stands[46] and, therefore, injury from such a projectile is a risk that is impliedly assumed by attendance at the game.[47]

Similarly, in Harting v. Dayton Dragons Prof'l Baseball Club, the court was not persuaded by the possibility that an employee of the ballpark distracted a spectator.[48] In that case, Harting was seated behind the dugout upon which the 'San Diego Chicken,' a contracted mascot for the game, was entertaining the crowd.[49] Harting claimed that the antics of the costumed mascot during the game barred the application of the assumption of the risk doctrine under the 'baseball rule.' Harting argued that a dancing chicken was a distraction and, therefore, that she should not be found to have consented to any of the game's inherent risks that were augmented because of the chicken.[50] The court essentially ignored the claim that the dancing chicken was a distraction, noting that mascots are "a common phenomena" and, in many instances, "more popular than the team itself," thereby being an expected risk associated with the game.[51] Thus, the court barred Harting's claim, citing to the old standard in Cincinnati Baseball Club Co. v. Eno, which reiterated the proposition from Crane, *supra*,[52] that "it is common knowledge that in baseball games hard balls are thrown and batted with great swiftness... *and that spectators in positions which may be reached by such balls assume the risk thereof.*"[53]

It does appear, however, that the physical location of the spectator may have some bearing, albeit minimal, on his or her ability to recover. The vast majority of cases review situations where a projectile struck a fan, located at his or her seat, during the regular course of the game. Jones v. Three Rivers Management Corporation, addressed whether a patron, who was injured when she was hit by a batting practice foul ball while standing in the interior walkway of the stadium concourse, had any legal recourse.[54] That court held that an individual cannot reasonably be expected to anticipate as an inherent risk being struck while properly using an interior walkway.[55] Aside from this one instance though, the overwhelming weight of authority still falls on the side of the ballpark.[56] For example, in Larking v. United States of

America, a spectator was struck while returning from the restroom. The court held that foul balls entering the stands were a known risk that the fan assumed and that it was reasonable to foresee having to use the restroom during the course of the game. [57] Similarly, in Procopio v. Town of Saugerties, the court found that a spectator waiting at a concession stand, who was injured by a wild throw from a pitcher warming in the bullpen, assumed the risk of being struck by the baseball.[58] The court reasoned that the spectator should have been aware of his location and alert to the fact that an errant throw could leave the bullpen and cause injury. [59]

The inherent risks found in the game of baseball attach to all present at the game, including stadium employees, whose attention may be diverted elsewhere. In Cohen v. Sterling Mets, L.P., a concession vender was injured by an over-zealous fan attempting to recover a tee-shirt launched into the stands as part of a promotional event.[60] The court used the assumption of the risk doctrine and stated, "While the t-shirt launch was not part of the official game of baseball, it was a regular and customary part of the experience of attending a game at the stadium."[61] Thus, the vendor assumed the risk, inherent in the *experience of the game* at that location. This reasoning opens the interesting proposition that game presentation – entertainment occurring during breaks in play such as mascot races and other promotional contests – are a part of the game experience and not an event distinct from the game.

In John Coomer v. Kansas City Royals Baseball Corporation, the court took the opposing stance that game play and game presentation are distinct.[62] In Coomer, a spectator's eye was injured when the team's mascot, Sluggerrr, lost control of a behind-the-back wiener toss.[63] The plaintiff stated that Sluggerrr was standing only a few feet away from him and that plaintiff was not given the option of sitting in a Sluggerrr-free section.[64] Plaintiff put forward that being struck in the eye by a wiener at a baseball game was not the sort of risk a fan assumes when

purchasing a game ticket and that the Royals failed to properly instruct Sluggerrr on hotdog tossing technique.[65] Nevertheless, the court ruled in favor of the ballpark, finding that Sluggerrr's throw of the foil-wrapped frank was part of the game and an unfortunate incident.[66]

PART II. HOCKEY'S LIMITED DUTY OF CARE

A. Evolution Away From Premises Liability

Throughout the early part of the twentieth century in the United States, courts typically ruled in favor of the injured spectator for injuries that occurred during the course of a hockey game. Unlike baseball, hockey was a relatively unknown sport with a strikingly fewer number of followers. Case law addressing liability to spectators injured while in attendance at hockey games adhered to the concepts of premises liability, whereby the owner of the arena was viewed as owing a duty of reasonable care to his invitees.

In Shanney v. Boston Madison Square Garden Corp., Josephine Shanney's sister purchased a second-row ticket, near center ice, to attend the game at the Boston Garden.[67] Ms. Shanney was escorted to her seat by an usher and later injured when the puck struck her after suddenly leaving the playing surface of the ice.[68] The defendant argued that Ms. Shanney had adequate notice of the risk of injury and that any persons attending the game must be, "presumed to know where they are going, and that the risk is in effect an obvious one which the patron must be held to have assumed."[69] Defendant's argument relied on the notion that the puck leaving the playing surface was a known danger. The court found for Ms. Shanney, however, reasoning that since this was her first hockey game and because she was not alerted to potential dangers by the usher, it was reasonable for her to believe that the three-foot fence encircling the ice was

sufficient to protect her from injury and that, "if more was needed the defendant would have provided screening as it had done at the ends of the rink."[70]

Soon thereafter, the court in Thurman v. Ice Palace, made a determination that a spectator at a hockey game does not assume the risk of being struck by a puck entering the stands.[71] In that case, the plaintiff and his daughter, the individual actually struck by the puck, voluntarily chose seating on the edge of the rink which was not behind one of the protective screens. The court again ruled in favor of the spectator reasoning that an assumption of the risk theory was "...inapplicable to ice hockey games...[because] the average person does not have the same knowledge respecting ice hockey or the risk of being hit by a flying puck while observing such a game."[72] The Thurman Court came to this conclusion even after finding that hockey had been played regularly in California for at least the prior twelve years.[73]

A fan's lack of knowledge concerning the known dangers of hockey was an important factor considered by the courts in both Shanney and Thurman. In Lemoine v. Springfield Hockey Ass'n, the court decided, however, that an individual's knowledge of the game and its inherent risks was not determinative of his or her ability to recover.[74] In that case, plaintiff, an experienced hockey fan, was struck in the face while walking along the promenade on his way to the restroom.[75] Unlike the plaintiffs in Shanney and Thurman, the spectator in this case had an appreciation that pucks could leave the rink surface, enter the stands, and cause serious injury.[76] The defendant relied on general premises liability doctrine for the proposition that: "no warning is required to be given to one who already has become apprized of the danger or where the situation is so obvious that a person of ordinary intelligence would readily sense the likelihood of impending harm and would take active measures to avert it."[77] The court determined that the plaintiff's knowledge of hockey was not detrimental to his position, reasoning that a jury was

free to find that the frequency of pucks entering the stands created a known condition, whereby it would be reasonable for a spectator to rely on the protections given by the arena.[78]

In Schwilm v. Pennsylvania Sports, a husband and wife attending a hockey game had seats located in the fifth row, directly behind a goal at one end of the rink.[79] Approximately two months before the game in question, the hockey arena elected to construct a wooden platform and step up the seats behind the goals; the height of the protective glass was not altered.[80] During the game, Ms. Schwilm was hit in the head by an errant puck. The court ruled that the defendant had assumed a duty of protection and that it breached its duty of care by not adequately screening the areas behind the nets.[81] Interestingly, the court found that the arena's duty of care was not breached with respect to the husband who had a greater knowledge of the game, and that the outcome would have been different if the two had been seated on the sides of the rink.[82]

B. Protecting the Business

As the NHL gained national exposure and the league generated increased profits, the legal landscape surrounding hockey began to shift toward protection of venue owners and operators. During the 1960-61 hockey season approximately 2.3 million fans attended games.[83] This number ballooned to just under 21 million fans attending games during the 2009-2010 NHL regular season.[84] The NHL also increased its exposure through television broadcasts. The first televised hockey game occurred 71 years ago in 1940, and was only broadcast to a few local receivers.[85] Hockey now reaches millions of viewers with over 78 regular season games aired on *Versus* and *NBC*.[86] The evolution of the law as it pertains to hockey illustrates the willingness of

the judiciary to accept the proposition that the general understanding of a sport and its inherent risks can change as society changes.

The notion that fans are now familiar with the inherent dangers of attending a hockey game was made evident in Moulas v. PBC Prod., Inc., where the court applied logic reminiscent of the "baseball rule," despite the abolition by Wisconsin of assumption of the risk as an absolute defense.[87] In Moulas, a woman was seated in the second row behind an eight-foot Plexiglas shield when she was knocked unconscious as the result of a puck entering the stands.[88] The court reasoned that assumption of risk was applicable because there is a general understanding amongst those individuals attending a hockey game that pucks enter the stands during the regular course of play and can cause serious injury.[89]

In Petrongola v. Comcast-Spectacor, L.P. the court similarly held that the owner of a hockey facility does not have a duty to protect fans from an errant puck entering the seating area of the arena since this was a "common, frequent and expected occurrence at a hockey game."[90] In other words, pucks entering the stands are an inherent risk associated with the game and liability should not fall on the owners for such incidents. The court made it clear that liability could be incurred, however, if a facility's design or operations deviate from established custom so as to increase the risk to spectators.[91] The court thus revealed that there is a limited duty by stadium owners to maintain their premises in a way that will not augment the inherent risks already presented by the game.

This line of reasoning was followed in Nemarnik v. L.A. Kings Hockey Club, where the court found that certain inherent risks exist simply by being a spectator at a game.[92] Holly Ann Nemarnik was seated in the fourth row and stipulated that a crowd of fans standing around talking obstructed her view of the rink during pre-game warm-ups.[93] She was subsequently

injured when a puck from warm-ups struck her after ricocheting into the stands. The court concluded that the arena owed no duty to eliminate the inherent risk of injury from flying pucks, and further opined that fan movements are unpredictable and an unavoidable hazard that the arena is not responsible for controlling.[94]

The hockey cases, as indicated above, generally subscribe to a limited duty rule. Under this rule, the arena is not liable for any of the sports' inherent risks but does have a duty to use reasonable care so as not to increase any of those risks. [95] The limited duty rule is important for determining the standard of care that is required of the club. Certain conditions or conduct that might be viewed as dangerous in hockey can be an integral part to the sport. Understanding the nature of the sport is, therefore, relevant in defining the duty of care. A duty of reasonable care is imposed on hockey arenas whereby the team is charged with either eliminating or warning of hazards or conditions that would be non-obvious to fans. A facility operator's limited duty of care is subject to two components: "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."[96] These components were satisfied in Schneider v. Am. Hockey and Ice Skating Center, a case were a mother was attending her child's hockey game and was struck between the eyes with a puck while seated in the bleachers.[97] The court concluded that the facility had upheld its limited duty of care by installing a plexiglass shield and by providing an enclosed room for those who did not wish to be exposed to the risk of injury from a flying puck.[98]

The limited-duty standard is applied regardless of what phase the game is in, or the positioning in the stands of the individual spectator. In Sciarrotta v. Global Spectrum, the court

made this clear when it reasoned that if the arena satisfied its steps for providing adequate protection and notice during the game, then it also satisfied its duty of care for pre-game warm-ups.[99] The Sciarotta Court clarified that there is no temporal restriction on the limited duty owed to spectators but indirectly added the caveat that the injury must occur *in the stands* in order for the restriction on the tort liability of owners to apply.[100] The court went on to state that, "public policy and fairness require application of traditional negligence principles in all other areas of the stadium, including, but not limited to, concourses and mezzanine areas."[101]

PART III. DIFFERENCES BETWEEN BASEBALL AND HOCKEY

The early pro-plaintiff outcomes in hockey can be justified based on the differences between baseball and hockey with regard to the style of play and culture of the game. The Thurman Court aptly noted this observation in stating,

> *[I]t is not common knowledge that pucks used in ice hockey games are liable to be batted into the section occupied by the spectators. Indeed, the puck is ordinarily batted along the surface of the ice, but in a baseball game the ball is ordinarily batted into the air rather than along the surface of the playing field.*[102]

Furthermore, the speed and action of the game is different. Hockey is in constant motion, whereas in a baseball game the action is predictable, temporally and spatially, based on when the pitcher begins his motion. Furthermore, in baseball the batter's objective is to hit the ball into fair territory while in hockey there is a constant back and forth with quick changes in offensive possession that can be difficult for an untrained eye to follow.

The fact that a hazard occurs frequently during the course of an activity does not change the fact that it may cause injury. In fact, there are tragic instances in the history of both sports that makes questioning the current state of the law appropriate. In Hobby v. City of Durham, for example, a spectator suffered permanent brain damage that resulted from being struck in the

head by a foul ball.[103] In 2002, the seriousness of risk and the need for increased safety measures were brought to the forefront when thirteen-year-old Brittanie Cecil lost her life while at an NHL game. Brittanie and her father were watching the Columbus Blue Jackets play the Calgary Flames at the Nationwide Arena and were seated in Row S of Section 121, more than 100 feet from the ice.[104] With 12:18 remaining in the second period, Espen Knutsen's shot was deflected by Derek Morris into the stands.[105] The puck struck Brittanie, fracturing her skull, bruising her brain, damaging a vertebral artery, and, ultimately, causing her death.[106] Yet, the law has remained relatively the same despite these emotional events.

It also seems strange that the law does not consider the changes in the style of the game play, the preparation of athletes, and advances in equipment as more relevant. In today's sports world, it is irrefutable that the athletes, in general, are bigger, stronger, and faster, than in previous generations. Today, there are more sophisticated methods of training and players have the luxury of being an athlete as a full-time job, which increases the amount of time they can allocate to training. In the NHL players skate on ice, which means they are moving faster and with greater force than a player in baseball running. The sticks today are made of carbon fiber, which translates into faster shots as was evidences by the new record shot of 105.9 MPH registered by Zdeno Chara of the Boston Bruins at this year's All-Star Game.[107] Further, the puck, which is made of vulcanized rubber, and already weighs between five and one-half ounces and six ounces, is frozen before the game so that it will slide better along the ice surface.[108] In MLB, the equipment has also advanced to give players an edge. The handles on modern baseball bats are more tapered and the barrels are larger than their earlier predecessors. This allows for increased bat speed but also makes the bats more susceptible to breaking.[109] Additionally, many MLB players now use maple bats, which are stronger than ash bats but still lighter than the

traditional hickory used in the early part of the twentieth century. Maple bats tend to shatter when they break, causing large chunks of wood to fly in all directions, resulting in a greater chance of injury.[110] Toward the conclusion of the 2010 season, Tyler Colvin's rookie campaign ended abruptly when he was impaled by a shard from a broken baseball bat while running down the third base line.[111] Today it is common to see pitchers throwing the baseball in excess of 90 MPH and to see batters with swing speeds in the 80mph range. The result is that the baseball's exit speed, the speed at which it leaves the bat, can easily be in excess of 100 MPH[112], making the projectiles entering the stands even more dangerous.

Before, and during the game, the stadium will make an announcement warning fans to remain alert. A typical warning for baseball is as follows:

> *During all batting practices, fielding practices, warm-ups and the course of the game experience, hard hit baseballs and bats and fragments thereof may be thrown or hit into the stands, concourses and concessions areas. For everyone's safety, please stay alert and be aware of your surroundings. Any guest who is concerned with his or her seat location should contact any guest services representative for an alternate seat location.*[113]

The NHL plays a similar warning before its games. But is the constant attention urged by the warning too onerous a burden on a consumer who is not part of the action? Even the players, who should be paying the most attention to the game, cannot escape injuries either because of how fast a play develops or because of a lapse in focus.

The number of foul balls varies per baseball game, but on average about 40 to 50 foul balls will enter the seating area.[114] There are 30 MLB teams with each playing a 162 game regular season schedule.[115] That equates to over 4,000 projectiles leaving the field of play on foul balls alone. Even a coach, the closest comparison to a fan, in terms of distance from the action and attention diverted to other things, can be too slow to react. This year in spring training Braves Coach Luis Salazar nearly died after suffering severe injuries to his face, including the

loss of an eye, after being hit by a foul ball while in the dugout.[116] Salazar who played in the MLB, undoubtedly qualifying him as an expert in understanding the game and its risks, was not quick enough to react. If the ball was only a few feet higher the line drive right would have been directly over the top of the dugout at a fan, maybe a small child, who, unlike Salazar, may not have been paying attention at that moment. The sheer number of projectiles leaving a baseball game would make it unreasonable to deviate from the baseball rule because stadiums would be left open to a multitude of lawsuits. Unlike a hockey arena, each baseball ballpark has unique dimensions, has aspects which give it a distinct feel, has its own stadium layout. The effect is that a fan could be seated down the line at one stadium and be closer to the field of play despite sitting in that same seat at another stadium. An enormous burden would be placed on the judicial system if it had to determine whether any of those factors made a ball batted into the stands more dangerous at one stadium than another stadium.

The culture of baseball reveals why fans are willing to expose themselves to more risks. Baseball is America's national pastime. Since the enshrinement in Cooperstown of the inaugural class,[117] fans and historians alike have celebrated the game's best players and have cherished the thought of being witness and even a part of their historic careers. As the Quinn Court noted, fans do not mind the trade-off between safety and the ability to obtain an unobstructed view that is closer to the action.[118] In fact, fans prize going to the game for the opportunity of catching a batting practice ball, a foul ball, a home run, or a ball flipped into the stands from a favorite player and, depending on the player or moment, such an object could be worth considerable money. This is a stark difference to the culture in the NHL, where fans do not attend games in the hopes that a puck will be rifled directly at them. In fact, the culture of hockey appears to appreciate the dangerous nature of the game. The *Cursed Hockey Fan vs. Steve Sullivan*, though

not a legal decision, recounts a 2001 game between the Chicago Blackhawks and Colorado Avalanche in which a player was, to the chagrin of most fans, injured by a high stick.[119] One fan took pleasure and aggressively taunted the hurt Chicago player, Steve Sullivan, as he was bleeding from the nose. The incident is often revisited for the satisfaction delivered later in the game by karma, as the fan, who was sitting in the first row against the glass, was hit in the forehead by a puck flipped out of the stands by the goalie, Patrick Roy, and left bleeding himself.[120]

The prospect of using comparative fault as the measure for liability in each sport has been considered but as the Nemarnik court aptly reasoned, "[C]omparative fault does not apply to a spectator hit by a foul ball or hockey puck, because plaintiff's conduct does not constitute "fault" and thus cannot be 'compared' to anything."[121] The Neinstein court noted the predicament that finding for injured fans could result in:

> *...baseball stadium owners [would be forced] to do one of two things: place all spectator areas behind a protective screen thereby reducing the quality of everyone's view, and since players are often able to reach into the spectator area to catch foul balls, changing the very nature of the game itself; or continue the status quo and increase the price of tickets to cover the cost of compensating injured persons with the attendant result that persons of meager means might be 'priced out' of enjoying the great American pastime. To us, neither alternative is acceptable. In our opinion it is not the role of the courts to effect a wholesale remodeling of a revered American institution through application of the tort law.*[122]

The majority rule found in baseball, which bars a finding for a spectator injured from a projectile, absent a showing of negligence on the part of the stadium owner, ensures that the most dangerous areas of the stadium will be provided with adequate protection. The rule also gives credence to the tradition of baseball and recognizes that fans prefer unobstructed views of the game.[123] The same can be said of hockey in that fans prefer unobstructed views and finding an increased duty to protect would hurt all everybody at the ticket window.

PART IV. APPLICATION OF BASEBALL AND HOCKEY'S LIABILITY CONSTRUCTS TO BASKETBALL AND GOLF

A. Basketball

The availability of drawing on case law from baseball and hockey in the basketball context is limited. Quite simply, the regular course of game play in basketball does not include projectiles entering the seating area. Basketball has a defined court of play and the objective is to shoot a live ball from the playing area through the net.[124] Several factors are supportive of the general proposition that rarely will a game ball leave the playing area with force sufficient to cause an impact injury to a spectator: all hoops have a backboard measuring 6 feet by 3.5 feet,[125] the ball is shot in an arching fashion instead of thrown, and there are ten men on the court[126] jostling for loose balls and rebounds.

In a basketball game it is not unimaginable that a projectile could enter the stands in the form of a desperation full court shot that sails wide, an errant pass, a player who dives into the stands after a ball, or a hard foul that causes a player to fall into the stands.[127] Nevertheless, the chance of a fan being injured by a ball during a basketball game is minute as compared to baseball and hockey. Unlike the latter two sports, though, it is more likely for a player to be the projectile. Regardless, in all situations, it is clear that there are fewer people that could possibly be affected by the projectile, as only those fans seated courtside would be in the impact zone.

In McFatridge v. Harlem Globe Trotters, the Supreme Court of New Mexico held that baseball rule's assumption of the risk doctrine should not apply to basketball.[128] In McFatridge, a spectator was injured when a ball was thrown into the stands by one of the players on the Harlem Globe Trotters.[129] The court noted that there was a lack of "proof to establish that there is any real danger of injury to spectators at a basketball game from balls entering the spectator section in the usual and ordinary course of a game."[130] The court found that a ball entering the stands

was not a risk that a spectator at a basketball game assumes[131] and, therefore, implied that the owner of a basketball arena could avoid liability only by raising a defense of secondary assumption of risk based on an injured spectator's actual knowledge.[132]

It should be noted, though, that a Harlem Globe Trotters' game is more of a staged performance than an actual basketball game. Therefore, McFatridge may not be as dispositive for basketball cases across the board. The more recent case, Bereswill v. NBA, Inc., though not directly on point, is more demonstrative of how courts might handle an injury arising from a projectile, in this case a player, leaving the court.[133] In that case, a courtside photographer was injured by a New York Knicks player who was diving after a loose ball.[134] The court found that the photographer, "had taken photos at 400 to 500 basketball games at [Madison Square] Garden prior to the game during which he was hurt" and that, therefore, it could be implied that he was actually aware, as a result of his prior experience, that players can leave the court and cause injury.[135] The court found for the stadium because of the individual's knowledge of the risks and because the "[D]efendants did not enhance existing risks or create risks not inherent to the sport of professional basketball."[136]

Based on Bereswill, it appears that plaintiff's will be barred under assumption of the risk theories only if they have actual knowledge of the game. Plaintiffs are likely to find more success then in bringing projectile claims associated with the game experience – e.g. throwing tee-shirts or other halftime acts. In those instances, basketball can draw on the abundant case law associated with baseball and hockey insofar as it pertains to those aspects associated with game presentation. Such claims should, at minimum, reach a jury to first determine if the complained of conduct is a regular act within the sport or individual team and, second, to evaluate plaintiff's level of exposure to the extracurricular event.

B. Golf

As anyone who is not a professional golfer can attest, hitting a golf ball toward the intended target can be, at times, uncannily difficult. It is not surprising that the majority of case law surrounding golf pertains to situations where amateur golf participants are injured by each others errant swings or shots.[137] Litigation concerning injuries to spectators at a golf course is, on the other hand, rare because professional golfers tend to be able to do what the average Joe cannot – consistently hit golf shots. Grisim v. TapeMark Charity Pro-Am Golf Tournament, provides one example where the court found in favor of the golf course.[138] In Grisim, a fan watched from underneath a tree near the eighteenth green because the bleachers were far away and overcrowded, and was injured when a professional golfer hooked his shot into the trees.[139] The court determined that the golf course owed its spectators "...a reasonable opportunity to view... from a safe area."[140] Since grandstands had been constructed and designated viewing areas had been roped off, the course was found to have met its burden to avoid liability.[141]

The rule found in golf mirrors the baseball rule insofar as liability will not attach if the venue operator provides spectators with enough protected seating. In certain respects, golf is inherently different from all of the other sports addressed thus far. In baseball, hockey, and basketball, the action of the game is dependent on the interplay of several different events and individuals. Golf is an individual sport. Yet, applying a strict assumption of the risk rule still makes sense because golf spectators are not removed from the golf course - individuals stand alongside the golfers, line the fairways, walk in large galleries, and are free to follow any player on the course or remain on a single hole. Consequently, golf fans have more of an opportunity to let their guard down than individuals viewing other sports because of their mobility during the game and because of the elongated interim between golf shots. Golf spectators know or should

know that many shots go astray from the intended line of flight. Thus, they must be deemed to have assumed the risk of injury from the golfer if they are viewing from a non-protected area out on the course.

CONCLUSION

The more established a sport is, the more likely it is that claims, which are based on injuries from projectiles leaving the game, will be barred under assumption of the risk. Spectators will have better success bringing claim related to the entertainment because, in those situations, the subjective understanding of the plaintiff will be taken into account. The biggest issue effecting a stadium's liability is thus whether courts decide to view games as one event – from the moment the fan enters the stadium or arena to the moment he or she leaves – or as two distinct events, the game play and the extracurricular game presentation. If the former is the controlling belief than it is more likely fans will be able to argue unfamiliarity based on distinctions between venues and lack of personal experience. The cultural atmosphere surrounding each sport will dictate whether bifurcation of an athletic contest into game and entertainment is appropriate.

Every sport is a business and so fan sentiment will continue to act as the invisible hand, dictating both how the game is played and the precautions each sport must take to protect its fans. Assuming individuals continue to be willing to pay top dollar to get closer to game action it is unlikely and unnecessary, however, to impose a heightened standard of care on stadium operators. While the varying levels of assumption of the risk might not be fair in every instance, the current state of the law strikes the best balance between sacrificing fan safety for better fan

experience and avoiding frivolous claims that would make owners the insurers of their spectators which would ultimately drive up prices.

Anyone who does not wish to accept the proposition that he or she assume the risk of injury when they purchase a ticket to an athletic event, despite knowing the game and being provided with adequate warnings, can watch on television or purchase the cheaper ticket, farther away from the action.

[1] James E. Winslow and Adam O. Goldstein, *Spectator Risks at Sporting Events*, THE INTERNET JOURNAL OF LAW HEALTHCARE AND ETHICS, 2007, Vol. 4, No. 1., Available at http://www.ispub.com/ostia/index.php?xmlFilePath=journals/ijlhe/vol4n2/sport.xml (last visited Oct. 24, 2008).

[2] Id., (citing A.M. Milstein et al., *Variables Influencing Medical Usage Rates, Injury Patterns, and Levels of Care for Mass Gatherings*, PREHOSPITAL DISASTER MED., 2003.).

[3] David Horton, Note, *Rethinking Assumption of Risk and Sports Spectators*, 51 UCLA L. REV. 339, 342., (citing D. Milzman, *The Puck Stops Here: Spectator Injuries, A Real Risk Watching Hockey Games*, ANNALS OF EMERGENCY MEDICINE, Oct. 2000.).

[4] Id.

[5] See., National Transportation Safety Board. AVIATION ACCIDENT STATISTICS (1991-2010). Available at http://www.ntsb.gov/aviation/Table3.htm (2011).

[6] Id.

[7] *See.*, Major League Baseball. Official Rules (2011). Available at, http://mlb.mlb.com/mlb/official_info/official_rules/objectives_1.jsp; See also., National Hockey League, Official Rules (2011). Available at, http://www.nhl.com/ice/page.htm?id=26285

[8] Crane v. Kansas City Baseball & Exhibition Co., 168 Mo. App. 301 (1913).

[9] Crane, 168 Mo. App. at 301.

[10] Id. at 301.

[11] Id. at 304-305.

[12] Id. at 304.

[13] Id. at 301.

[14] Quinn v. Recreation Park Ass'n., 3 Cal. 2d 725 (1935).

[15] Quinn, 3 Cal. 2d. at 728.

[16] Id. at 729.

[17] Id.

[18] Wells v. Minneapolis Baseball & Athletic Ass'n, 122 Minn. 327 (1913).

[19] Wells, 122 Minn. at 331.

[20] Keys v. Alamo City Baseball Co. 150 S.W.2d 368 (Tex. Ct. App. 1941).

[21] Keys, 150 S.W.2d at 369–70.

[22] Id. at 369.

[23] Id. at 371.

[24] Id.

[25] Id.

[26] Keys, 150 S.W.2d at 371.

[27] Brown v. San Francisco Ball Club, Inc., 222 P.2d 19 (1950).

[28] Brown, 222 P.2d. at 21.

[29] Id.

[30] Id.

[31] Id. at 22.

[32] Brown, 222 P.2d. at 22.

[33] Id.

[34] Id. at 22.

[35] Schentzel v. Phil Nat'l League Club, 173 Pa. Super. 179 (1953).

[36] Schentzel, 173 Pa. Super. at 186.

[37] Id. at 188.

[38] Id.

[39] Lawson v. Salt Lake Trappers, Inc., 901 P.2d 1013 (Utah 1995).

[40] Lawson, 901 P.2d at 1014.

[41] Id.

[42] Id. at 1015.

[43] Id. at 1015-1016.

[44] Pira v. Sterling Equities, Inc., 16 A.D.3d 396 (N.Y. App. Div. 2d Dep't 2005).

[45] Pira, 16 A.D.3d. at 396.

[46] Id. at 396-397.

[47] See., Loughran v. The Phillies, 2005 Pa.Super. 396, 888 A.2d 872 (2005) (finding that a spectator at a Phillies game being hit by a ball thrown into the stands is a regular occurrence and an inherent risk of the game); See also., Dalton v. Jones, 260 Ga. App. 791 (2003) (finding that being struck by a baseball is an inherent risk and that waiting in line at a concession stand does not diminish the likelihood of wild balls being thrown and landing in the grandstand or other unprotected areas.).

[48] Harting v. Dayton Dragons Prof'l Baseball Club, 171 Ohio App. 3d 319 (2007).

[49] Harting, 171 Ohio App. 3d at 320.

[50] Id. at 320-321.

[51] Id. at 324.

[52] Cincinnati Baseball Club Co. v. Eno,112 Ohio St. 175 (Ohio 1925).

[53] Harting. 171 Ohio App. 3d at 322 (emphasis added).

[54] Jones v. Three Rivers Management Corporation, 394 A.2d 546 (1978).

[55] Jones, 394 A.2d at 552.

[56] See. e.g., Lorino v. New Orleans Baseball & Amusement Co., 16 La. App. 95 (1931) (finding that plaintiff was negligent for not paying better attention while walking around in the outfield bleachers after being struck by a batted ball during batting practice.); Larking v. United States of America, 2002 WL 31553993 (E.D.La. 2002) (finding that plaintiff assumed the risk of being struck by a baseball while leaving the restroom.); Procopio v. Town of Saugerties, 20 A.D.3d 860 (2005) (where the court concluded that the fan assumed the risk of being struck by a baseball while waiting in line at concessions stand.); Rosenfeld v Hudson Val. Stadium Corp., 885 N.Y.S.2d 338 (2009) (finding that plaintiff assumed the risk of being struck by a baseball while seated in the picnic area of a minor league stadium.); Roberts v. Boys & Girls Republic, Inc., 51 A.D.3d 246 (2008) (finding that a woman who was walking by an off-field designated practice area and was struck by a player's bat assumed the risk of injury.).

[57] Larking v. United States of America, 2002 WL 31553993 (E.D.La. 2002).

[58] Procopio v. Town of Saugerties, 20 A.D.3d 860 (2005).

[59] Procopio, 20 A.D.3d at 861.

[60] Cohen v. Sterling Mets, L.P., 840 N.Y.S.2d 527, 528 (2007).

[61] Cohen, 840 N.Y.S.2d at 529.

[62] John Coomer v. Kansas City Royals Baseball Corporation, 1016-CV4073, Circuit Ct, Jackson City, Feb. 9, 2011.

[63] Id.

[64] Carla Varriale. Frank Repercussions in Hotdog Toss Lawsuit. ATHLETIC BUSINESS NEWSWIRE. Available at http://athleticbusiness.com/editors/blog/default.aspx?id=418 (last visited Tuesday, Feb. 15, 2011).

[65] Id.

[66] Jury Rules For Royals In Hurled Hot Dog Lawsuit. CBS ST. LOUIS. http://stlouis.cbslocal.com/2011/03/09/jury-rules-for-royals-in-hurled-hot-dog-lawsuit/ (last visited Mar. 9, 2011).

[67] Shanney v. Boston Madison Square Garden Corp., 5 N.E.2d 1 (Mass. 1936).

[68] Shanney, 5 N.E.2d. at 2.

[69] Id. at 3.

[70] Id. at 5.

[71] Thurman v. Ice Palace, 97 P.2d 999 (Cal. App. 1939).

[72] Thurman, 97 P.2d at 1001.

[73] Id.

[74] Lemoine v. Springfield Hockey Ass'n., 29 N.E.2d 716, 717 (Mass. 1940).

[75] Lemoine, 29 N.E.2d at 717.

[76] Id. at 718

[77] Id.

[78] Id.

[79] Schwilm v. Pennsylvania Sports, 84 Pa. D. & C. 603 (1952).

[80] Schwilm, 84 Pa. D. & C. at 604.

[81] Id. at 605.

[82] Id.

[83] Attendance by League, HOCKEY ZONE PLUS. Available at http://www.hockeyzoneplus.com/attend_e-mustBEFIXED.htm (last visited Jan. 29, 2008).

[84] NHL Attendance Report – 2009-10. ESPN. Available at http://espn.go.com/nhl/attendance/_/year/2010/sort/homeTotal (2011).

[85] Bill Gorman. *First Televised Hockey Game, 70 Years Ago Today*, TV SPORTS RATING & NEWS. Available at http://tvbythenumbers.zap2it.com/2010/02/25/first-televised-hockey-game-70-years-ago-today/43007 (last visited Feb. 25, 2010).

[86] Travis Hughes. *More Televised Hockey*. http://www.sbnation.com/2010/8/25/1650226/more-televised-hockey-nhl-unveils (last visited Apr. 7, 2011) (Showing that the number is thirteen more games than the previous season).

[87] Moulas v. PBC Prod., Inc., 570 N.W.2d 739, 744 (Wis. Ct. App. 1997).

[88] Moulas, 570 N.W.2d at 744.

[89] Id. at 745.

[90] Petrongola v. Comcast-Spectacor, L.P., 789 A.2d 204, 207 (Pa. Super. 2001).

[91] Petrongola, 789 A.2d. at 210.

[92] Nemarnik v. L.A. Kings Hockey Club, 103 Cal. App. 631, 633 (2002).

[93] Nemarnik, 103 Cal. App. at 633.

[94] Id. at 634.

[95] Yancey v. Super. Ct., 28 Cal. App. 4th 558, 561–63 (1994).

[96] Schneider v. Am. Hockey and Ice Skating Center, Inc., 777 A.2d 380, 385 (N.J. Super. App. Div. 2001).

[97] Schneider, 777 A.2d at 381.

[98] Id. at 382.

[99] Sciarrotta v. Global Spectrum, 194 N.J. 345 (2008).

[100] Sciarrotta, 194 N.J. at 350 (emphasis added).

[101] Id. at 354.

[102] Thurman, 36 Cal. App. 2d at 368.

[103] Hobby v. City of Durham, 569 S.E.2d 1 (2002).

[104] Phil Taylor, Death of a Fan. SPORTS ILLUSTRATED, Available at http://sportsillustrated.cnn.com/vault/article/magazine/MAG1025415/index.htm (last visited Apr. 1, 2002).

[105] Id.

[106] Michael Farber. *Put Up The Net.* SPORTS ILLUSTRATED, Available at http://sportsillustrated.cnn.com/vault/article/magazine/MAG1025417/1/index.htm (last visited Apr. 1, 2002).

[107] Fluto Shinzawa. *Chara Wins Hardest Shot Competition.* BRUINS BLOG. Available at http://www.boston.com/sports/hockey/bruins/extras/bruins_blog/2011/01/chara_wins_hard.html (last visited Jan. 9, 2011).

[108] Rule 24(a). NHL RULEBOOK, available at http://www.nhl.com/ice/page.htm?id=27011 (2011)

[109] Cynthia Myers. *The History of Ash Wooden Bats.* Available at http://www.livestrong.com/article/346490-the-history-of-ash-wooden-baseball-bats/ (last visited Dec. 31, 2010).

[110] Andrea Thompson. *The Science Behind Breaking Baseball Bats*, LIVE SCIENCE, Available at http://www.livescience.com/strangenews/080715-baseball-bat.html (last visited July 15, 2008).

[111] Chris Perry. *Tyler Colvin Impaled by Broken Bat.* Available at http://cubs.gearupforsports.com/blog/2010/09/tyler-colvin-impaled-by-broken-bat/ (last visited Sept. 20, 2010).

[112] *Batted Ball Speed (Exit Speed) - 2009 MLB Players Hitting Home Runs - Wood Bats.* Available at http://www.efastball.com/hitting/average-bat-speed-exit-speed-by-age-group/

[113] New York Yankees. *Safety Warning*. YANKEE STADIUM INFORMATION, Available at http://newyork.yankees.mlb.com/nyy/ballpark/information/index.jsp?content=guide (2011).

[114] *Average Number of Foul Balls per Game*, FAN GRAPHS BASEBALL STATISTICS. Available at http://www.fangraphs.com/forums/topic.php?id=3302 (2010).

[115] *Official Rules*. MAJOR LEAGUE BASEBALL. Available at http://mlb.mlb.com/mlb/official_info/official_rules/objectives_1.jsp (2011).

[116] *See, Mark Bowman. Salazar Has Eye Removed, Still Plans to Manage.* Available at http://atlanta.braves.mlb.com/news/article.jsp?ymd=20110316&content_id=16976144&vkey=news_atl&c_id=atl (last visited Mar. 16, 2011); *See also*, Doug Glanville. *Baseball Teams Really Are Big Families*, Available at http://sports.espn.go.com/mlb/columns/story?columnist=glanville_doug&id=6212127 (last visited March 13, 2011).

[117] *National Baseball Hall of Fame Members*. NATIONAL BASEBALL HALL OF FAME. Available at http://baseballhall.org/ (2011) (Inaugural class members: of Ty Cobbs, Walter Johnson, Christy Mathewson, Babe Ruth, and Honus Wagner).

[118] Quinn, 3 Cal. 2d at 729.

[119] Interview with Steve Sullivan. "The Cursed Hockey Fan vs. Steve Sullivan." Available at http://www.youtube.com/watch?v=odmGrCXZWso

[120] Id.

[121] Nemarnik, 103 Cal. App. at 631.

[122] Neinstein v. Los Angeles Dodgers, Inc., 185 Cal.App.3d 176 (1986).

[123] Lawson, 901 P.2d at 1015.

[124] *Official Rules Of The National Basketball Association*. NATIONAL BASKETBALL ASSOCIATION. http://www.nba.com/analysis/rules_index.html (September 8, 2004).

[125] Id.

[126] Id.

[127] George D. Turner. Note: Allocating the Risk Of Spectator Injuries Between Basketball Fans and Facility Owners. University of Virginia School of Law. VIRGINIA SPORTS & ENTERTAINMENT LAW JOURNAL, Fall, 2006, 6 Va. Sports & Ent. L.J. 156.

[128] McFatridge v. Harlem Globe Trotters, 69 N.M. 271 (N.M. 1961).

[129] McFatridge, 69 N.M. at 272.

[130] Id. at 276-277.

[131] Id. at 277.

[132] Id.

[133] Bereswill v. NBA, Inc., 719 N.Y.S.2d 231 (N.Y. App. Div. 1st Dep't 2001).

[134] Bereswill, 719 N.Y.S.2d at 232.

[135] Id.

[136] Id.

[137] See, e.g., Cavin v. Kasser, 820 S.W.2d 647 (Mo. Ct. App. 1991) (finding that plaintiff who was struck by an errant drive from an adjacent hole while waiting to tee off had no legal recourse); Bartlett v. Chebuhar, 479 N.W.2d 321 (Iowa 1992) (finding that plaintiff and his wife were were not liable where plaintiff shanked his shot and the ball ricocheted off an embankment, striking a golfer on another hole); Thompson v. McNeill, 53 Ohio St. 3d 102 (1990) (finding that defendant who injured struck plaintiff with his golf ball could not be held liable for his negligent golf shot).

[138] Grisim v. TapeMark Charity Pro-Am Golf Tournament, 415 N.W.2d 874 (Minn. 1987).

[139] Grisim, 415 N.W.2d at 875.

[140] Id. at 875.

[141] Id.