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Flying Baseballs, Injured Fans, Uncertain Liability: *Why Legislative Action Is Needed in the Sunshine State*

by Robert M. Jarvis

In January 2018, the Tampa Bay Rays announced plans to extend the protective netting at Tropicana Field.¹ Two months later, every team in Major League Baseball (MLB) opened the 2018 season with expanded netting.² Although MLB had been examining the issue since at least 2008,³ three high-profile developments finally caused its owners to act: 1) a widely publicized 2014 study that found 1,750 MLB fans were being hit by baseballs each season;⁴ 2) *Payne v. Office of the Commissioner of Baseball*, 2016 WL 6778673 (N.D. Cal. 2016), *aff'd*, 705 F. App'x 654 (9th Cir. 2017), an unsuccessful class-action lawsuit against MLB that brought widespread attention to the subject; and, 3) a September 2017 Todd Frazier line drive at Yankee Stadium that left a one-year-old girl with gruesome injuries, including a fractured skull.⁵

Despite the fact that all MLB stadiums now have expanded netting, fans continue to risk being hit by baseballs, as well as shattered bats and other objects, when they go to baseball games. This is particularly true at minor league, college, high school, and youth games, which (due to cost concerns) have been slow to adopt MLB's enhanced netting standards.⁶

When a fan is injured by a projectile and decides to sue, he or she is likely to be confronted with a judicially created defense known as "the baseball rule." First recognized more than a century ago in *Crane v. Kansas City Baseball & Exhibition Co.*, 153 S.W. 1076 (Mo. Ct. App. 1913), it protects teams from liability as long as they provide at least some screened seats. Over the years, a majority of states have adopted the baseball rule⁷ and several have extended it to hockey due to the risks posed by flying pucks.⁸ A few jurisdictions have rejected the rule.⁹ Still others have opted

for a middle approach, making it available in some cases but not others.¹⁰

Curiously, although Florida is a baseball hotbed,¹¹ our state courts have never said whether the baseball rule, in any form, is available as a defense. Given this reticence, the time has come for legislative action.

The Baseball Rule Generally

As noted above, the baseball rule traces its roots to the *Crane* case. While watching a Kansas City Blues game, a spectator named S.J. Crane was injured by a foul ball. When he sued the team and its owner, the trial court granted summary judgment for the defendants.¹² The Kansas City Court of Appeals affirmed for three reasons: 1) foul balls are a fundamental part of baseball; 2) being struck by a foul ball is a well-known risk of attending baseball games; and, 3) Crane voluntarily chose to sit in an unprotected part of the stadium.¹³

Over time, *Crane's* holding evolved into what now is known as the baseball rule, a defense that immunizes teams for injuries to spectators caused by flying objects that leave the playing field.¹⁴ To take advantage of the baseball rule, a team must provide a reasonable number of screened seats, so that fans who do not want to risk being hit can still go to the game.¹⁵ While the exact number of seats that must be screened remains unsettled, in *Martinez v. Houston McLane Co.*, 414 S.W.3d 219 (Tex. Ct. App. 2013), a lawsuit against the Houston Astros, the Texas Court of Appeals found it sufficient that 5,000 of Minute Maid Park's 41,000 seats were screened.¹⁶

Despite its seeming simplicity, the baseball rule leaves open many questions. In *Coomer v. Kansas City Royals*

Baseball Corp., 437 S.W.3d 184 (Mo. 2014) (en banc), for example, the Missouri Supreme Court held that the baseball rule did not bar a lawsuit brought by a spectator named John Coomer, who was hit in the eye by a hot dog thrown by the team's mascot. Although acknowledging that such antics now take place regularly at ballparks and are used to keep fans entertained during stoppages of play, the court concluded: "[T]he risk of being injured by Sluggerrr's hotdog toss is not one of the inherent risks of watching a Royals home game."¹⁷

In ruling as it did, the *Coomer* court did not abolish the baseball rule. Instead, it merely held that it did not apply unless the flying object came directly from the field of play and was an inherent, and, therefore, unavoidable, part of the sport.¹⁸ Other courts, however, have flatly rejected the baseball rule. In *Rountree v. Boise Baseball, LLC*, 296 P.3d 373 (Idaho 2013), the Idaho Supreme Court explained that there was simply "no compelling public policy" for granting baseball teams an exemption from standard business invitee liability.¹⁹

While the baseball rule is a judicial creation, four states have made it a part of their statutory law. Arizona Revised Statutes Annotated §12-554 (2016) specifies, "[a]n owner is not liable for injuries to spectators who are struck by baseballs, baseball bats, or other equipment used by players during a baseball game."²⁰ Colorado Revised Statutes Annotated §13-21-120 (2016) directs, "[s]pectators of professional baseball games are presumed to have knowledge of and to assume the inherent risks of observing professional baseball games, insofar as those risks are obvious and necessary. These risks include, but are not limited to, injuries which result from being struck by a baseball or a baseball bat."²¹ 745 Illinois Compiled Statutes Annotated 38/10 (2017) instructs, "[t]he owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person being hit by a ball or bat."²² And New Jersey Statutes Annotated §2A:53A-46 (2017) stipulates, "[s]pectators of professional baseball games

are presumed to have knowledge of and to assume the inherent risks of observing professional baseball games. These risks are defined as injuries which result from being struck by a baseball or a baseball bat anywhere on the premises during a professional baseball game."²³

The Baseball Rule in Florida

No reported court decision in Florida squarely addresses the baseball rule. Nevertheless, there are cases in which a spectator has been injured, either directly or indirectly, by a baseball, or a bat, and has sued.

In *Woodford v. City of St. Petersburg*, 84 So. 2d 25 (Fla. 1955) (Div. A), for example, a homeowner named Nelson F. Woodford was injured when a baseball from Huggins Field, the spring training home of the New York Yankees,²⁴ landed in his backyard. In their effort to retrieve the ball, a group of boys knocked Woodford over and fractured his lower back.

To recover for his injuries, Woodford sued the City of St. Petersburg, the owner of Huggins Field. In his complaint, he alleged the city had known for weeks that "flying squadrons" of young men and boys had been chasing balls "hit or thrown beyond Huggins Field onto adjoining lands" and had done nothing to stop them.²⁵

The circuit court dismissed Woodford's suit because:

even admitting the existence of the alleged nuisance, any effort on the part of the [c]ity to have abated the nuisance and prevent the trespass to appellant's property would have involved an exercise of the police power calling into action the municipal police force and that under the established law of this state, a municipality cannot be held liable for the negligence of its police department whether for acts of commission or omission.²⁶

On appeal, the Florida Supreme Court reversed. Although it agreed that a suit for police negligence was barred,²⁷ it held the city could be held liable for "operating or maintaining public parks in such a manner as to increase the hazard to persons on adjoining streets or premises of being hit by batted or thrown baseballs."²⁸

In remanding the case to the circuit court, the Florida Supreme Court explained that Woodford would have to prove that the city had alterna-

tives that did not involve its cops. It then suggested that Woodford might be able to show that "the construction of a protective fence around the playing-field...could have prevented the formation and ensuing activities of the gangs of baseball retrievers."²⁹

In *Buck v. McLean*, 115 So. 2d 764 (Fla. 1st DCA 1959), Terryss Buck was struck in the eye by a baseball while attending a high school game at Apalachicola Memorial Stadium. Together with her husband, Lamb, Terryss sued the Franklin County school board, asserting that a wire screen meant to protect spectators had a hole in it.

The circuit court granted the school board's motion for summary judgment based on sovereign immunity. Although the First District Court of Appeal agreed that sovereign immunity prevented the Bucks from recovering, it expressed sympathy for their plight: "It is a harsh doctrine indeed which leaves one without remedy for wrong suffered by him through the negligence of a state agent or employee committed while performing a proprietary function, but under similar circumstances imposes liability on everyone else engaged in the performance of similar functions."³⁰

In *Chambers v. Cline*, 161 So. 2d 224 (Fla. 2d DCA 1964), a teenager named Peggy Jean Cline went with a friend (E.W. Ellis, Jr.) to a commercial batting cage in Tampa called "Bat-A-Ball." After Cline had swung at 17 balls, Ellis asked to take the last pitch. Cline agreed, and was seriously injured when Ellis accidentally hit her in the face with his bat.

Cline sued Marcellus Chambers, Bat-A-Ball's owner, for \$125,000. In her complaint, she claimed that Chambers should have posted signs warning patrons that it was dangerous for two people to be in the cage at the same time. Cline also believed that Chambers had been negligent in not carefully supervising the cage and in not stopping Ellis from entering it while she was still inside.

At trial, the jury sided with Cline and awarded her \$4,385.³¹ The Second District Court of Appeal reversed, holding that there was no evidence from which the jury could have in-

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ferred that Chambers breached any duty he might have owed to Cline.³²

In *Jackson v. Atlanta Braves, Inc.*, 227 So. 2d 63 (Fla. 4th DCA 1969), cert. dismissed, 237 So. 2d 540 (Fla. 1970), C. Paul Jackson attended a spring training game between the Braves and the Los Angeles Dodgers at West Palm Beach Municipal Stadium.³³ While seated behind home plate, he “was struck by a foul ball which was tipped over the vertical backstop[.]”³⁴ As a result of the accident, Jackson permanently lost the sight in his right eye.³⁵

Jackson sued both the Braves and the City of West Palm Beach (which owned the stadium) for inadequate netting.³⁶ The circuit court granted summary judgment to the defendants. In a remarkably cryptic one-page per curiam decision, the Fourth District Court of Appeal reversed:

We have thoroughly reviewed the briefs of the parties and the record on appeal. While there does not appear to be substantial conflict in the evidentiary facts, it appears to us that various conclusions reasonably might be drawn as to the ultimate factual issues of negligence, contributory negligence, and assumption of risk.³⁷

In referring to “assumption of risk,” it is possible the panel had the baseball rule in mind. Unfortunately, there is no way to tell. A later newspaper report indicates that on remand, Jackson lost his lawsuit.³⁸

In *City of Milton v. Broxson*, 514 So. 2d 1116 (Fla. 1st DCA 1987), rev. dismissed, 537 So. 2d 568 (Fla. 1988), Charles A. Broxson was attending a softball game in Sanders Park when he decided to leave the bleachers and walk over to an area behind the third-base dugout. On his way back to his seat, he was seriously injured when he was hit in the head by a softball thrown by a player who was warming up for the next game.

In his lawsuit against the city, Broxson argued the park was unreasonably dangerous. In particular, he alleged that it should have included a separate warm-up area, as well as signs warning spectators to watch out for flying softballs. He also alleged the city had known for years that fans were being injured by players warming up near them. At trial, the jury found the city 70 percent liable and

awarded Broxson \$500,000.³⁹

On appeal, the verdict was upheld. After deciding that the suit was not barred by sovereign immunity, the First District Court of Appeal ruled that the city had no duty to post warning signs because its “knowledge of [the] dangers [of spectators being hit by flying softballs] was no greater than [Broxson’s] knowledge.”⁴⁰ However, it found there was sufficient evidence to support the jury’s conclusion that the park was unreasonably dangerous due to its lack of a separate warm-up area:

We believe that it can fairly be said that the hazardous activity which the appellant allowed to continue without taking appropriate steps for the safety of the spectators was of such a nature that the appellant should have reasonably anticipated that such hazardous activity would cause spectator injury notwithstanding the spectators’ knowledge of the danger.⁴¹

Judge Thompson dissented, arguing that Broxson was 100 percent at fault because he had been injured in an area that was off-limits to spectators: As an implied invitee spectator, and not a player, Broxson’s implied invitation was only to use the bleachers furnished for spectators, the restroom and concession facilities afforded for his comfort, and their necessary access areas. This invitation did not extend to the playing field, warm-up area or other parts of the park facility, and he was not an invitee to these areas. He went down into the warm-up area to talk to friends and acquaintances for his own convenience and benefit, and was at most a licensee at the time of the accident....The [c]ity’s motion for directed verdict should have been granted.⁴²

In *City of Coral Springs v. Rippe*, 743 So. 2d 61 (Fla. 4th DCA 1999), rev. dismissed, 751 So. 2d 1250 (Fla. 2000), Helene and Herbert Rippe were watching their son play in a Little League baseball game at Mullins Park. To get a better view, Helene moved from the bleachers to a spot in front of the players’ bench. While there, she was hit by a foul ball and knocked unconscious.

To protect spectators, the city had installed an eight-foot fence around most of the field. Where Helene had been standing, however, the fence was only four feet high. Based on this fact, “[t]he jury concluded that Helene was 60 [percent] at fault and the City was 40 [percent] at fault. A final judgment of \$130,000 was

entered in favor of the Rippes.”⁴³

Upon review, the Fourth District Court of Appeal sided with the Rippes: Both parties rely upon *City of Milton v. Broxson*....Although there is no evidence of prior similar incidents in the present case, the jury could have inferred the [c]ity had knowledge that the height of the fence created a dangerous condition based upon the park recreation manager’s testimony that the bleachers were provided in a safe area behind the eight foot fence. In addition, based upon this testimony, the jury could have concluded that the [c]ity should have and did expect that parents would choose to stand in front of the four foot fence rather than sit on the bleachers in a safer area.⁴⁴

Most recently, in *Giordano v. Babe Ruth League, Inc.*, 2013 WL 6911496 (Fla. Cir. Ct. St. Johns Cnty. 2013), a girl was injured prior to the start of a baseball game at Mills Field, a park owned by St. Johns County. According to her complaint:

On or about October 13, 2007, two baseball players in the outfield...engaged in pre-game warm-ups...rather than in a designated warm-up area. One of the players overthrew the baseball at a high rate of speed.... The baseball passed over a fence and/or through a gap in a fence... meant to protect spectators/business invitees, and the baseball struck [the plaintiff] in the head...causing her serious bodily injury....⁴⁵

To recover for her injuries, the girl, acting through her parents, sued St. Johns County and the five leagues that had sanctioned the game. Following discovery, the St. Johns Circuit Court granted summary judgment in favor of one of the leagues.⁴⁶ Shortly thereafter, the other parties settled.⁴⁷

The Need for Legislative Action

Given the foregoing lack of judicial clarity, the time has come for the Florida Legislature to decide whether the baseball rule applies in Florida. If the answer is “no,” a simple law saying so will do the trick.⁴⁸ If the answer is “yes,” however, a more detailed one will be needed. In drafting it, our lawmakers should pay close attention to the four states that already have such a statute.

As explained above, Colorado and New Jersey limit their laws to professional baseball games. In contrast, Arizona and Illinois apply their laws to all baseball games. And while Illinois and New Jersey’s laws are

restricted to injuries caused by baseballs or bats, Arizona's law includes any equipment used by players.⁴⁹ Colorado's law is even broader — it immunizes defendants from any risk that naturally arises from watching a baseball game.

In addition to deciding whether to include all baseball games or only some baseball games, and all types of equipment or only some types of equipment, and all participants or only some participants, Florida's lawmakers should consider a number of other matters, such as whether the baseball rule applies only to baseball or also extends to hockey.⁵⁰

Likewise, as will be recalled, in *Coomer* the Missouri Supreme Court held that being hit by a hot dog thrown by the team's mascot is not covered by the baseball rule, even though such entertainment now is a standard part of the fan experience at many ballparks. Along similar lines, in 2013 Beth Fedornak was injured at a Miami Marlins baseball game when "Bob the Shark," one of the team's racing mascots, jumped into the stands and pretended to swallow her head. Claiming that Bob's act had caused her lasting neck injuries, she sued,⁵¹ but settled before trial.⁵²

Conclusion

Although a day at the ballpark normally results in nothing more serious than a sunburn, on occasion fans do get hurt. When such an injury occurs in Florida, the issue of liability must be litigated because Florida courts have never defined the duties that exist in such situations.

Given the foregoing, the Florida Legislature should consider adopting a comprehensive liability regime. To be successful, such legislation will have to do three things: 1) encourage prudent behavior by players, teams, stadiums, and fans; 2) provide redress to injured spectators that is appropriate under the circumstances; and, 3) ensure that the cost of liability insurance remains reasonable for professional, amateur, and public entities. □

¹ See Marc Topkin, *Rays Extend Trop Nets for Safety*, TAMPA BAY TIMES, Feb. 1, 2018, at 1 (Sports). The Rays made

their announcement at the same time as the Arizona Diamondbacks, the last two teams to do so. See Maury Brown, *With D-Backs and Rays Announcements, MLB is Set for League-Wide Expanded Netting in 2018*, FORBES, Jan. 31, 2018, available at <https://www.forbes.com/sites/maury-brown/2018/01/31/with-dbacks-and-rays-announcing-mlb-will-have-league-wide-expanded-netting-for-2018/>.

² See Maury Brown, *Expanded Safety Netting in MLB Gets Its Full Test on Opening Day*, FORBES, Mar. 30, 2018, available at <https://www.forbes.com/sites/maurybrown/2018/03/30/expanded-safety-netting-in-mlb-gets-its-full-test-on-opening-day/>. In describing the new netting at Tropicana Field, the Ray's official blog informed readers: "The Rays have extended the netting to the ends of both dugouts to improve the safety of fans attending games...the green, knotless net provides enhanced visibility for fans seated behind it, replacing the traditional black, knotted nets that previously extended to the home plate end of each dugout[.]" *Here's What's Happening on Opening Day 2018*, The Ray Tank Blog (Mar. 23, 2018), <https://raytank.mlblogs.com/heres-what-s-happening-on-opening-day-2018-4e12bb8ad4dd>.

³ MLB became concerned after two Winthrop University researchers discovered that between 1862 and 2007, more than 75 fans had died from flying baseballs. See Dave Anderson, *When Foul Balls Become Lethal Projectiles, Fans are Mostly Unprotected*, N.Y. TIMES, Apr. 20, 2008, available at <https://www.nytimes.com/2008/04/20/sports/20iht-BASE.1.12164014.html> (discussing ROBERT M. GORMAN & DAVID WEEKS, DEATH AT THE BALLPARK: A COMPREHENSIVE STUDY OF GAME-RELATED FATALITIES OF PLAYERS, OTHER PERSONNEL AND SPECTATORS IN AMATEUR AND PROFESSIONAL BASEBALL, 1862-2007 (2008)).

⁴ See David Glovin, *Baseball Caught Looking as Fouls Injure 1,750 Fans a Year*, BLOOMBERG NEWS, Sept. 9, 2014, available at www.bloomberg.com/news/2014-09-09/baseball-caught-looking-as-fouls-injure-1-750-fans-a-year.html.

⁵ See Wallace Mathews, *Line Drive Strikes Young Girl in the Face at Yankee Stadium*, N.Y. TIMES, Sept. 21, 2017, at B10. See also William Weinbaum, *How One Fan's Story Contributed to a Conversation About MLB's Safety Netting*, ESPN (Mar. 31, 2018), http://www.espn.com/mlb/story/_/id/22955279/how-baseball-reached-tipping-point-fan-protection.

⁶ In May 2018, Cloey Heckendorn, a fan at a minor league baseball game in California, was hit in the head by a bat and had to be taken to the hospital. Had the stadium had MLB-style netting, the accident would have been avoided. See Shane Newell, *Fan Hit by Flying Bat at Rancho Cucamonga Quakes Game Raises Baseball Safety Question*, RIVERSIDE PRESS-ENTERP. (Cal.), May 26, 2018, available at <https://www.pe.com/2018/05/26/fan-hit-by-flying-bat-at-rancho-cucamonga-quakes-game-raises-baseball-safety-question/>.

In 2017, 49 million people went to minor league games. See David P. Kronheim, *Minor League Baseball 2017 Attendance Analysis 14* (2018), available at <http://numbertamer.com/files/2017MinorLeagueAnalysis.pdf>. According to the National Collegiate Athletic Association (NCAA), more than 8 million people went to college baseball games. See NCAA, *Baseball Attendance Records—2017 Attendance Records* (2018), available at http://fs.ncaa.org/Docs/stats/baseball_RB/2018/attend.pdf. Although attendance figures for high school and youth games are not kept on a systematic basis, the 2017 Little League World Series tournament alone drew nearly 300,000 spectators. See John Beale, *The Wonder of Williamsport*, ESPN (Aug. 28, 2017), http://www.espn.com/espn/feature/story/_/id/20477258/how-williamsport-becomes-center-baseball-universe.

⁷ See, e.g., Jay M. Zitter, Annotation, *Liability to Spectator at Baseball Game Who is Hit by Ball or Injured as Result of Other Hazards of Game—Failure to Provide or Maintain Sufficient Screening*, 82 A.L.R.6th 417 (2013 & 2018 Supp.); James L. Rigelhaupt, Jr., Annotation, *Liability to Spectator at Baseball Game Who is Hit by Ball or Injured as Result of Other Hazards of Game*, 91 A.L.R.3d 24 (1979 & 2018 Supp.).

⁸ See, e.g., *Sciarrotta v. Global Spectrum*, 944 A.2d 630 (N.J. 2008); *Morris v. Cleveland Hockey Club*, 105 N.E.2d 419 (Ohio 1952); *Moulas v. PBC Prods. Inc.*, 570 N.W.2d 739 (Wis. Ct. App. 1998); *Stern v. Madison Square Garden*, 641 N.Y.S.2d 41 (App. Div. 1996); *Lukacko v. Connecticut Islanders*, 2015 WL 1588417 (Conn. Super. Ct. 2015); *Pestalozzi v. Philadelphia Flyers*, 576 A.2d 72 (Pa. Super. Ct. 1990). See also Christopher T. Yamaguchi, *The Price of Admission: Liability in Professional Baseball and Hockey for Spectator Injuries Sustained During the Course of the Game* (2013), available at http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1400&context=student_scholarship.

⁹ See note 7.

¹⁰ *Id.*

¹¹ See Louis H. Schiff & Robert M. Jarvis, *A Survey of Florida Baseball Cases*, 40 NOVA L. REV. 49, 50 (2015) (explaining that "the state is home to two...MLB...teams, [14] minor league teams, [15] spring training sites, both of the schools that train future big league umpires, and numerous amateur and youth teams.").

¹² *Crane*, 153 S.W. at 1076-77.

¹³ *Id.* at 1077-78. See also *A "Fan" Loses Damage Suit*, K.C. STAR, Feb. 17, 1913, at 1. Crane spent 50 cents for a seat in the grandstand, which had both screened and unscreened seating. After entering the stadium, he decided to sit in one of the unscreened seats to be able to see the game better. *Crane*, 153 S.W. at 1078. For a further look at the case, see J. Gordon Hylton, *A Foul Ball in the Courtroom: The Baseball Spectator Injury as a Case of First Impression*, 38 TULSA L. REV. 485 (2003).

¹⁴ See Wallace Mathews, *Netting Im-*

proved Fan Safety, but in Court, It's Teams that are Protected, N.Y. TIMES, Mar. 29, 2018, at B15.

¹⁵ Most fans, however, prefer unscreened seats because they provide a better view and offer the possibility of catching a ball. See *Benjamin v. Detroit Tigers, Inc.*, 635 N.W. 219, 222 (Mich. Ct. App. 2001), appeal denied, 645 N.W.2d 664 (Mich. 2002) (“[T]here is inherent value in having most seats unprotected by a screen because baseball patrons generally want to be involved with the game in an intimate way and are even hoping that they will come in contact with some projectile from the field.”).

¹⁶ *Martinez*, 414 S.W.3d at 229.

¹⁷ *Coomer*, 437 S.W.3d at 188. In an almost-identical incident in June 2018, a fan named Kathy McVay was hit in the eye by a hot dog at a Philadelphia Phillies game. See David Moye, *Phillie Phanatic Shoots Baseball Fan in the Eye with Hot Dog*, HUFFPOST, June 21, 2018, available at https://www.huffingtonpost.com/entry/kathy-mcvay-hot-dog-cannon-phillies-phanatic_us_5b2c1e25e4b00295f15ac439.

¹⁸ For another such case, see *Lowe v. California League of Prof'l Baseball*, 65 Cal. Rptr. 2d 105 (Ct. App. 1997) (fan hit by a foul ball when his attention was diverted by minor league team's mascot allowed to sue).

¹⁹ *Rountree*, 296 P.3d at 378. One year later, the Indiana Supreme Court, relying on *Rountree*, came to the same conclusion. See *South Shore Baseball, LLC v. DeJesus*, 11 N.E.3d 903 (Ind. 2014).

²⁰ This statute was passed two months after the expansion Arizona Diamondbacks began play. See 1998 Ariz. Legis. Serv. Ch. 152 (S.B. 1399) (West).

²¹ This statute was passed two months after the expansion Colorado Rockies began play. See 1993 Colo. Legis. Serv. S.B. 93-231 (West).

²² This statute was passed three months after *Yates v. Chicago Nat'l League Ball Club, Inc.*, 595 N.E.2d 570 (Ill. App. Ct. 1992), which upheld an injured fan's suit for inadequate netting. The statute was declared constitutional in *Jasper v. Chicago Nat'l League Ball Club, Inc.*, 722 N.E.2d 731 (Ill. App. Ct. 1999).

²³ This statute was passed four months after *Maisonave v. Newark Bears Prof'l Baseball Club, Inc.*, 881 A.2d 700 (N.J. 2005), which limited the baseball rule to injuries occurring in the stands. See N.J. STAT. ANN. §2A:53A-43 (2017) (under “Senate Judiciary Committee Statement”).

²⁴ The Yankees trained in St. Petersburg for nearly 40 years (1925-42, 1946-50, and 1952-61). See JOSH PAHIGIAN, SPRING TRAINING HANDBOOK: A COMPREHENSIVE GUIDE TO THE GRAPEFRUIT AND CACTUS LEAGUE BALLPARKS 11 (2d ed. 2013). Since 1996, they have held camp in Tampa. *Id.* at 10-11.

²⁵ *Woodford*, 84 So. 2d at 26.

²⁶ *Id.*

²⁷ The court lifted the ban on such suits two years later. See *Hargrove v. Town of Cocoa Beach*, 96 So. 2d 130 (Fla. 1957).

²⁸ *Woodford*, 84 So. 2d at 26-27 (citing

Salevan v. Wilmington Park, Inc., 72 A.2d 239 (Del. Super. Ct. 1950), and Annotation, *Liability of Owner or Operator of Park or Other Premises on Which Baseball or Other Game is Played, for Injuries by Ball to Person on Nearby Street, Sidewalk, or Premises*, 16 A.L.R.2d 1458 (1951)).

²⁹ *Woodford*, 84 So. 2d at 27. See also *St. Pete Man Wins Right to Sue*, TAMPA TRIB., Dec. 16, 1955, at 32A. Because no further mention of the lawsuit appears in either case reporters or newspapers, it is assumed the parties settled on remand.

³⁰ *Buck*, 115 So. 2d at 768.

³¹ See *Woman Hit with Ball Bat Wins \$4,385 Judgment*, TAMPA TRIB., Dec. 6, 1962, at 8D. The case's facts are taken largely from this article.

³² *Chambers*, 161 So. 2d at 225.

³³ The Braves played at Municipal Stadium from 1963 to 1997. In 1998, they moved to Cracker Jack Stadium in Lake Buena Vista. See PAHIGIAN, SPRING TRAINING HANDBOOK at 118.

³⁴ *Jackson*, 227 So. 2d at 63.

³⁵ See *Baseball Fan Sues for Eye*, PALM BEACH POST, June 30, 1966, at A8.

³⁶ *Id.* (“Jackson...was hit in the right eye by a foul ball hit by the Dodgers' Wes Parker. Jackson...claims the teams, and the city of West Palm Beach, should have known that hazards existed in the area where he sat. He claims there was no adequate protection afforded by a wire screen located behind home plate. As a result of this, he was exposed to possible danger from a batted ball.”).

³⁷ *Jackson*, 227 So. 2d at 63-64.

³⁸ See *News of Record — Final Civil Judgments*, PALM BEACH POST-TIMES, Mar. 21, 1970, at B9 (“66-L-760F — *C. Paul Jackson vs. Atlanta Braves Inc. and City of West Palm Beach*. Judgement for defendants.”).

³⁹ See *Kathy Beasley, Milton Questions Liability of Parks*, PENSACOLA NEWS J., Nov. 14, 1985, at 5B (“A jury awarded Charles Anthony Broxson \$500,000 in September after finding the city 70 percent negligent and Broxson 30 percent negligent. Broxson sued the city in 1983 for injuries he received when hit in the head by a softball at Sanders Park in June 1980. He was left 30 percent disabled.”).

⁴⁰ *Broxson*, 514 So. 2d at 1118.

⁴¹ *Id.* at 1119.

⁴² *Id.* at 1120.

⁴³ *Rippe*, 743 So. 2d at 62.

⁴⁴ *Id.* at 64-65. Following the court's ruling, the city paid the Rippes the \$100,000 statutory maximum. When the couple sought to collect the rest through a private relief bill, a special master recommended an additional \$15,000. See *Upping the Ante When Government is to Blame*, PALM BEACH POST, Mar. 5, 2001, at 14A. Although the bill (S.B. 54) passed the Senate 35-2, it died in the House of Representatives. See FLORIDA LEGISLATURE — REGULAR SESSION — 2001 SESSION: HISTORY OF SENATE BILLS 33-34, available at <http://www.leg.state.fl.us/data/session/2001/citator/Final/senhist.pdf>.

⁴⁵ *Giordano v. Babe Ruth League, Inc.*, 2011 WL 11544183, at ¶16 (Fla. Cir. Ct. St. Johns Cnty. 2011) (second amended

complaint dated Oct. 11, 2011).

⁴⁶ *Giordano*, 2013 WL 6911496, at *1. Although the court did not explain its decision, it is clear from the complaint that the dismissed league had the least amount of knowledge and control.

⁴⁷ See *Giordano, Michele v. Jacksonville Beach Babe Ruth Baseball Assoc., Inc.*, CA11-1352 (2014) (indicating that an agreed settlement order was filed on April 16, 2014, and the case was closed on July 22, 2014).

⁴⁸ For two recent articles arguing that the baseball rule should be abolished, see Nathaniel Grow & Zachary Flagel, *The Faulty Law and Economics of the “Baseball Rule,”* 60 WM. & MARY L. REV. 59 (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3143732; Chris Breton, *The Seventh-Inning Stretch[er]?: Analyzing the Antiquated “Baseball Rule” and How It Governs Fan Injuries at Major League Baseball Games*, 21 U. DEN. SPORTS & ENT. L.J. 209 (2018).

⁴⁹ Given that the statute mentions only players, a suit against a team's manager or coach presumably would not be barred. In 2013, long-time Eastern Connecticut State University baseball coach Bill Holowaty lost his job after “throwing a helmet into the bleachers during a 6-1 loss to Suffolk on March 25 at Eastern Stadium.” Mike Anthony, *Eastern's Holowaty Retires; Coach Was Suspended Earlier in the Week*, HARTFORD COURANT, Apr. 27, 2013, at A1. Luckily, no one was hurt. See Jeff Jacobs, *It's Time for Holowaty to Call It a Career*, HARTFORD COURANT, Apr. 24, 2013, at C1 (“By itself, it's a stupid act. If the helmet hit somebody, he could have landed in court.”).

⁵⁰ Florida currently has two National Hockey League teams (the Florida Panthers and the Tampa Bay Lightning) as well as numerous minor league, college, high school, and youth hockey clubs. For a further look at hockey in Florida, see, e.g., *Florida Hockey Life* magazine, <http://floridahockeylife.com/>.

⁵¹ See *Fedornak v. Miami Marlins, LP*, 2015 WL 4086445 (Fla. Cir. Ct. Miami-Dade Cnty.) (complaint dated June 12, 2015). See also Jose Lambiet, *Victim of ‘Shark’ Bite at Marlins Park Seeks Damages*, MIAMI HERALD, Jan. 11, 2017, available at <http://www.miamiherald.com/entertainment/ent-columns-blogs/jose-lambiet/article125955379.html>.

⁵² See *Fedornak*, 2015 WL 4086445 (order of dismissal dated Aug. 30, 2017).

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