

MLB

Yankees Incident Revives an Old Question: How Responsible Are Teams for Foul Ball Injuries?

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- After a child fan was struck by a foul ball at Yankee Stadium, the question of whether the Yankees or MLB are legally responsible has resurfaced.

By MICHAEL MCCANN September 21, 2017

A young girl hit in the face by a line drive off the bat of New York Yankees pitcher Jacob deGrom during Wednesday's Yankees-Minnesota Twins game has sparked reconsideration of a longstanding legal controversy: to what extent should teams be legally responsible for foul ball injuries?

The traditional answer to this question is one that many find dissatisfying or inadequate. Perhaps the time is ripe to change that answer.

A primer on the "Baseball Rule"

Courts have long recognized the so-called "Baseball Rule," which imposes a limited duty on the part of teams to protect fans from foul ball injuries. Although courts have not always described the duty in consistent ways, the general takeaway is that teams must provide protective screening to fans seated in a "zone of danger." This zone includes seats behind and near home plate. The underlying logic is that fans seated in this zone face a clear risk of unavoidable danger. A ball can leave the bat of a player at over 100 miles per hour. A fan behind home plate wouldn't have enough time to react if a foul ball comes at them. Therefore, courts have reasoned, teams must place adequate netting or screening to protect these fans.

Fans seated outside the zone, however, are usually viewed as assuming the risk of foul ball injuries. These fans, so the logic goes, should be on notice that foul balls could approach them. They are also seated in seats that provide more reaction time than if they were seated right behind home

plate. Fans seated behind first base and third base, then, are often considered to have assumed the risk of foul ball injuries. If they don't want to accept such a risk, they could—at least theoretically and assuming they can afford it—buy seats that are behind a net or a screen.

In addition to assumption of risk, teams also stress that fans contractually relinquish the right to sue over a foul ball injury as a condition of entering the ballpark. On the back of every big league ticket is language that expresses the ticket holder “assumes all risk and danger incidental to the game.” This includes “danger of being injured by equipment, objects or persons entering spectator areas.” Likewise, ballpark announcers usually alert fans to pay attention to their surroundings, and many ballparks have signs with the same purpose in mind. These measures make courts less likely to impose liability for foul ball injuries.

Some courts have also advocated that Baseball Rule is an efficient and cost-sensitive approach to addressing injuries. For instance, in 2008, the Nevada Supreme Court refused to allow a fan whom a foul ball caused catastrophic facial injuries to recover against the ballpark. The court reasoned that once the stadium has met its limited duty under the Baseball Rule, “the stadium owner or operator simply has no remaining duty to protect spectators from foul balls, which are a known, obvious, and unavoidable part of all baseball games.” Further, the court noted, the limited duty, “serves the important purpose of limiting expensive and protracted litigation that ‘might signal the demise or substantial alteration of the game of baseball as a spectator sport.’” In other words, according to this logic, if fans could sue easily over foul ball injuries, they would tie up courts with lawsuits and teams would need to raise ticket prices to account for the higher risk of liability.

This legal framework has been in place for nearly 100 years. To be sure, there have been exceptions along the way—particularly when a fan is injured in a seat with a view obstructed by construction or renovations—but the history of litigation against teams and ballparks over foul ball injuries is one that decidedly favors the defendants.

The problem of the Baseball Rule in the modern day baseball experience

Attending an MLB game in 2017 is a very different experience from attending one 20 years ago. Now-a-days, many, if not most, fans routinely check their phones and go on the Internet while the game is taking place—especially given that some ballparks offer complimentary Wi-Fi. They also take photos of one another and post them on their social media accounts. Technologically advanced scoreboards, as well as various promotional activities that occur in between innings, also entertain fans.

It's no surprise that Baseball has reimagined the game experience to reflect modern day conveniences and consumer preferences. Baseball is concerned that the game's slow pace often doesn't attract younger fans. These fans have grown up using social media and partaking in other "instant" experiences. To then sit in a slow game with long pauses—according to the *Wall Street Journal*, only about 18 minutes of a typical three hour MLB game consists of actual action—can test anyone's attention span.

While it makes business sense for baseball to adopt a faster, more contemporary experience for fans, the accompanying danger is that fans at ballparks are increasingly distracted by their surroundings. Fans are thus less likely to pay attention to the game and are less likely to sufficiently react—if that is even possible—to an approaching foul ball. The fact that alcohol is served at games probably only worsens these dynamics.

The solution, of course, is not to block the Internet in ballparks. A move to stop serving beer probably wouldn't go over well, either. But from a legal vantage point, a core assumption of the Baseball Rule—that fans seated outside the zone of danger should be able to react in time to an incoming foul ball—is undermined by the current fan experience and all of its distractions.

This seems particularly true of ticketholders who are children, who are much less likely to appreciate the "risk" of a foul ball injury. Indeed, it's difficult to logically argue that the young girl hit in Yankee Stadium on Wednesday assumed the risk of her injury. Although her age has not been revealed, we know that she is a child. She may not have even had a choice to attend the game. Even if it was her choice, it's well known that children are not as adept at evaluating risks as are adults.

And yet, children in similar instances have lost lawsuits over foul balls. For example, in the 1995 case *Lawson v. Salt Lake Trappers*, a trial court and then the Supreme Court of Utah ruled against a six-year old boy who was hit by a foul ball while sitting behind first base and 143 feet from home plate. There was no protecting screening in that part of the ballpark and, as the court noted, the boy and his family did not request tickets to sit behind such screening. The team was found to have met its duty since it provided screening behind home plate and the boy wasn't seated in the zone of danger.

Other cases, however, suggest the Baseball Rule will not always immunize the team and ballpark from liability. In 2010, a six-year-old girl with the initials M.F. was sitting with her dad behind the visitors' dugout at an Atlanta Braves game when a foul ball hit her in the head, causing a skull fracture and brain injuries. A lawsuit ensued and the Braves argued they had satisfied the Baseball Rule by providing netting behind home plate. Georgia courts declined to dismiss the case on grounds of the Baseball Rule, instead reasoning that whether the Braves are liable ought to be reviewed through the litigation process. The Braves later settled with M.F. and her family.

Next steps in terms of law

In a detailed column, SI's Gabriel Baumgaertner describes recent examples of young fans at MLB ballparks injured by foul balls. In doing so, he explains that MLB recently recommended—though not mandated—that teams expand their netting to the steps of each dugout. As Gabriel stresses, only a third of teams have followed the recommendation. One additional team, the Cincinnati Reds, announced on Thursday they will join this group by Opening Day in 2018. The Yankees, however, aren't (yet) planning to do so.

The fact that MLB has recommended that ballparks enhance safety could take on legal significance. A fan injured in a seat where MLB recommends netting could logically argue that he or she was exposed to an unreasonable risk of a foul ball injury. After all, if MLB believes such netting is appropriate, why wasn't it there? Whether the young girl sues the Yankees remains to be seen. She was hospitalized though her father says she is

“doing all right.” Let’s hope she is okay. If she does sue, however, you can expect that her attorney would contend the scope of the “baseball rule” should be linked to MLB’s own recommendations.

Current litigation could also impact the viability of the Baseball Rule as applied in Yankee Stadium. While attending a Yankees game in 2011 during which rain fell, New York real estate developer Andrew Zlotnick’s view of foul balls from his seat near first base was obstructed by umbrellas. He thus never saw a line drive foul ball off the bat of Hideki Matsui. The ball hit Zlotnick in the left eye, causing him extensive and permanent injury to his vision and other injuries. Zlotnick has sued the Yankees, arguing that the Baseball Rule should not apply given that his injury occurred on a rainy day and, he contends, the Yankees umbrella policy was both inadequate and dangerous. An appellate court will review Zlotnick’s case on October 4.

Legislation could also play a factor in making the game safer, at least at Yankee Stadium. As Maury Brown of *Forbes* discusses, New York City Councilman Rafael L. Espinal Jr. recently introduced a bill that would require netting in ballparks that seat at least 5,000 people from foul pole to foul pole.

SI.com will keep you updated on developments.

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