

*From the field to the court*

# Spectators only owed reasonable protection

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B&S Guest Writer

*(Editor's Note: This is the last of a three-part series examining the liability of fellow players (June issue) and other parties (last month) for such injuries. This month's article assesses responsibilities for injuries to spectators.)*

The first two articles in this series examined the ability of an injured softball player to hold a fellow player or third party liable for injuries sustained in a game or practice. This month we will review the options open to a spectator injured as a result of the conduct of a game or practice.

Concepts such as breach of the duty of care and governmental immunity, and defenses such as assumption of the risk, consent, and contributory negligence discussed earlier may apply in this context as well.

Many cases on this topic involve spectators injured by batted or thrown balls or flying bats. Generally speaking, most of these attempts to hold liable the owner, operator, or promoter of the field or game (referred to here as the "owner/operator") have been unsuccessful.

The standard of liability owed by an owner/operator to a paying spectator is like that owed to a player on a team that has contracted

for use of the field. The patrons are "invitees" to whom the owner/operator owes the duty of using reasonable care to protect them from harm. Thus, liability for injury arising from the hazards of the game can only be established where the evidence indicates that the owner/operator has violated such duty.

Several cases involve allegations that an owner/operator negligently failed to screen the stands to protect the spectators from flying objects. While the courts have generally

games.

Other cases focus on the doctrine of contributory negligence. Thus, a spectator who voluntarily and with full knowledge of the risks chooses to sit in the unprotected portion of the stands and is injured there by a hazard incident to the game may be barred in whole or part from recovery.

Disclaimers of liability by owner/operators printed on tickets or posted on signs serve, if read, as evidence of the spectator's awareness of risks. They are, however, not necessarily a guarantee of the outcome of the case.

The few cases that have allowed recovery have generally involved peculiar factual situations. In a New York case, the court pointed to the failure to provide sufficient lighting at a night game to follow a ball's flight. An Illinois court pointed to

the fact that a bullpen was negligently located and maintained in a dangerous location, from which a ball was thrown striking a spectator.

The owner/operator may in certain circumstances also be held responsible for failing to supervise the players, the owner/operator's employees, or the crowd. If such individuals have acted negligently (or worse), they may also be individually liable to the injured party.

(The author is a lawyer in New York City. This column provides general information and is not intended as a substitute for consulting an attorney.) ■

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concluded that an owner/operator need not screen all seats, there may be a duty to provide a certain number of screened seats. This obligation usually relates to the most dangerous section of the ball park, which is generally the area behind home plate.

The courts have generally concluded that the owner/operator of a ballfield has no duty to warn spectators of dangers involved such as balls coming into the stands.

Invoking the doctrine of assumption of risk, many courts have ruled that a spectator cannot recover for injuries that result from hazards or perils inherent in viewing softball

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