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PLAYING HARDBALL: AN ANALYSIS OF COURT DECISIONS INVOLVING THE LIMITED DUTY (BASEBALL) RULE

R. Douglas Manning

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**PLAYING HARDBALL:
AN ANALYSIS OF COURT DECISIONS INVOLVING
THE LIMITED DUTY (BASEBALL) RULE**

by

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B.S. Social Science Education, Florida State University, 2002
M.S. Sport Administration, Florida State University, 2003

DISSERTATION

Submitted in Partial Fulfillment of the
Requirements for the Degree of

**Doctor of Philosophy
Physical Education, Sports, & Exercise Science**

The University of New Mexico
Albuquerque, New Mexico

July, 2013

DEDICATION

Mi Amor.

私の妻

My best friend and the mother of our daughter.

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To *The Franchise Nation*: for your friendship, humor, and for keeping me grounded.

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by

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ABSTRACT

Baseball is said to be ingrained in American culture, a national pastime with which everyone is familiar, and of the utmost importance to our society. Its simplicity from the 1800s has been replaced with modern stadia, technological advancements and entertainment options within the ballparks, potential distractions, as well as bigger, faster, and more powerful participants. Fans are no longer only concerned with the wins/losses of their favorite club, but proximity to favorite players and the overall entertainment experience at the major and minor league levels. Projectiles leaving the field of play at baseball games present a concern for both fanatical and casual spectators, especially when deciding at which price level seat one should sit. Although historical case law has referenced the elements of negligence, assumption of risk, as well as risk inherent in the game (and of common knowledge), the limited duty (baseball) rule defines the duty of care owed to spectators at

baseball games. Beyond the traditional tort legal theories of negligence and intentional tort case law, sport has intensified its own set of legal theories.

As it further relates to sport, certain courts have fashioned a legal theory of defining the duty requiring stadiums to protect spectators from projectiles leaving the field of play. The legal theory is referred to as the limited duty rule (or baseball rule). The purpose of this study was to examine the evolution of the limited duty (baseball) rule, the characteristics of injured parties in legal cases involving projectiles leaving the field of play, as well as the relationship between which factors contributed to a winning or losing decision in a court of law utilizing qualitative (document analysis) and quantitative (logistic regression analysis) methods. Results describe case characteristics, victim demographics, and present log odds regarding liability cases involving injuries to spectators caused by projectiles leaving the field of play at baseball games.

Following the elimination of nine remanded cases, the sub-sample ($n = 92$) was analyzed utilizing *crosstabs* and regression analysis. Seventy-seven adults (83.70%) are involved in litigation, yet only win 10.4% of the time compared to the rate of 46.7% of their 15 minor counterparts (16.30%). Males are represented by a frequency of 38, while 54 females make up 58.70% of the sub-sample. Similarly, the outcome was in favor of males and females eight and seven times, respectively, at comparable rates of 18.4% and 14.8%.

The highest number of favorable outcomes for the plaintiff, seven out of 15 winning cases (46.7%), are included in the category, 1950-1999. The overall percentage of cases won in that era was 7 out of 38 cases (18.4%). When the limited duty (baseball) rule was not explicitly referenced, outcomes were in the plaintiff's favor 18.2% of the time, as compared to 6.7% when the legal theory was mentioned. Incidents occurring at MiLB/Independent

Professional baseball games only found in favor of the plaintiff on two of 37 occasions (5.4%), whereas plaintiffs injured at MLB games were victorious in seven of 27 instances (25.9%). Similar rates of success for in-game vs. pre-game incidents, at 16.7% versus 18.2% respectively, were reported. Individuals sitting in unprotected seating bring forth the most lawsuits (59), but were only successful three times (5.1%). However, protected/contested seating incidents found in favor of the plaintiff on 5 of 11 occasions (45.5%), and individuals injured on the concourse/concession/entertainment areas were victorious four of 14 times (28.6%).

Injuries caused by “other” projectiles and/or events (possibly risks not inherent in the game of baseball) had a better chance of winning; three of seven cases were in favor of the plaintiff (42.9%). This particular winning percentage was greater compared to the 75 lawsuits involving injuries suffered by batted balls (14.7%) or thrown baseballs (10%). Distractions, or blocked sightlines, were only referenced on eight occasions and were successful in only one case (12.5%). Injuries were most likely to occur to the victim’s head/face/neck region (57) and to be serious in nature (61). The outcome was in the plaintiff’s favor in 14 of 57 instances (24.6%) when head/face/neck injuries were involved and in 13 of 61 when involving an injury categorized as serious. In only one instance, was the outcome in favor of the plaintiff for an injury classified as minor/unknown. In the sole case involving a fatality, when the minor boy died due to injuries sustained at the ballpark (injury classified as critical), the outcome was returned in favor of the victim. Theory referenced ($p = .031$), 1950-1999 - injury date ($p = .031$), MLB - level of play ($p = .045$), protected - seat location ($p = .006$), and concourse - seat location ($p = .005$) were found to be statistically significant related to the outcome of court decisions (won or lost).

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Chapter I

Introduction

Professional baseball is enjoyed by fans and spectators in contemporary baseball stadiums that include incredible architecture, modern conveniences, and an unmatched intimacy with the players and the game itself. Individuals who wish the opportunity to obtain their favorite player's autograph or attempt to catch a foul ball are allowed an incomparable closeness to the athletes as well as the action on the field. Often called "America's Pastime" in our sporting culture, it is also, "Commonly referred to as Hardball, The Show, or even the Hot Stove League in the off-season winter months..." (Manning, 2012c, p. 9). Baseball, which pervades our everyday lives, is being played in modern-day amusement parks which include hot-tubs and rock walls in the outfield, sections of seats that jut-out into the field of play, and innumerable special sections that correlate with marketing sponsorships. Furthermore, "Mascots, marketing/promotional diversions, multimedia displays, entertainment zones, blimps, t-shirt guns, and areas where sightlines are blocked (concourses and concession stands) all present concerns for fan safety" (Manning, 2012b, p. 9). Professional baseball stadiums allow for unparalleled access for the diehard or casual fan as the game is more than just about wins and losses, but about the overall entertainment experience for every spectator in attendance. The business of baseball no longer relies solely on the on-field product to induce fans to return game-after-game; the athletic contest is a fun-filled celebration and entertainment experience for the entire family.

Fans' fondness of the game was epitomized in the combination of Jack Northworth's words and Albert Von Tilzer's waltz in the 1908 timeless classic, "Take Me Out to the Ball

Game” (Weber, 2011, p. 1). The lyrics display the fans’ affection towards baseball, its players, and their desire to be well-connected to the action on the field.

*“Take me out to the ball game,
Take me out with the crowd.
Buy me some peanuts and Cracker Jack,
I don’t care if I never get back,
Let me root, root, root for the home team,
If they don’t win it’s a shame.
For it’s one, two, three strikes, you’re out,
At the old ball game”*(Hill, 2008, p. 1)

Since the time when “Take Me Out to the Ballgame” was written, spectators’ passionate fandom and those seeking unadulterated views and proximity to their favorite team/players has not wavered. Modern-day ballparks cater to fans’ desire to be close to the action, take home a souvenir (i.e., foul ball), and/or have an unobstructed view of their favorite player; however, the speed of the game has increased immensely, making current ballparks much more treacherous for fans than baseball stadiums of years past (Cohen, 2008). Balancing access with safety is an issue faced by professional baseball, stadium operators, and the fans themselves when choosing where to sit. Foul balls leaving the field of play are a common occurrence at baseball games, yet fans do not always appreciate the danger or are unable to avoid projectiles leaving the field of play. However, experts and observers have surmised that even the most casual fan understands the risk posed by flying projectiles (Thornton, 2012). A seat in the lower level of professional baseball stadiums, which are commonly the most expensive, “...gives a baseball fan the opportunity to see a ballplayer sweat, hear what little infield chatter remains in the game and dodge potentially lethal projectiles whizzing at more than 100 mph” (Verducci, 2002, p. 64). Seats down the foul lines and behind the dugout, which are commonly just outside of the protective netting,

pose an increased risk for our most vulnerable populations due to inattentiveness and poor reaction time; they include parents with small children, youth, and the elderly (Verducci, 2002). Fans in these areas, regardless of age, health, or attention-span, are in a danger zone as they have less than half a second to react to foul balls entering the stands in excess of 100 miles per hour (Pittman, 2004).

In addition to the actual game itself, fans are barraged with a multitude of distractions which range from beer vendors to technologically advanced scoreboards (Verducci, 2002). Professional baseball at the major and minor league levels has changed, as it focuses on the entire fan experience; spectators are enticed with food/beverages and attention is diverted by promotions and other distractions (Wolohan, & Rawn, 2006). This does not include personal conversations, reviewing one's game program or keeping score, technological advances in smart phones, Internet searches, and/or social media updates. In fact, Travis Decker, a baseball fan visiting the San Diego Padres' Petco Park, was hit in the shoulder by a foul ball and didn't see it screaming his way as he was 'checking-in' on Facebook (Matyszczyk, 2012). According to Wolohan and Rawn (2006, p. 24), regarding the *Maisonave v. Newark Bears Professional Baseball Club, Inc., et al.* (2005) case ruling in New Jersey, "Errant balls are a stadium owner's responsibility if fans are presented with too many distractions." Yet, the issue of fan safety is not as black-and-white as it may seem. It was common knowledge that spectators assumed the risk of injury upon entering the ballpark and were responsible for their own personal safety in the early 1900s; this has been reinforced in present-day judicial rulings as baseball stadium owners/operators only owe a limited duty of care (Khare, 2010).

Baseball attendance brings with it inherent risks to the spectators who choose to view the game in the open air and not behind protective netting found near the home plate area,

commonly referred to as the backstop. “Projectiles, which may include batted and/or thrown balls, as well as bats leaving the field at baseball games are a foreseeable event” (Manning, 2012b, p. 8), for both stadium operators as well as spectators. Baseball fans are expected to understand and appreciate the risk at which they are placing themselves and their family, as the courts have ruled that ordinary spectators understand the risk foul balls pose to one’s personal safety (Kozlowski, 2003). Should spectators not seek to sit in a protected area, they assume the risk posed by projectiles leaving the field of play since this phenomena is a common occurrence of which spectators should be aware (Fried, 2002). Evaluation of the limited duty (baseball) rule and how to best balance the duty of care owed to spectators is often discussed (Manning, 2012a).

Generally, ballparks post warning signs which alert spectators that objects have the potential to leave the field of play (Verducci, 2002); however these cautions are often overlooked, disregarded, or ignored. If a spectator chooses of his/her own free will to sit in an unscreened area, he/she assumes the risks inherent in the game of baseball, including the foreseeable risk of batted balls or other projectiles leaving the field of play and moving into the unprotected portions of the spectator areas (Hackney, 2009; Hirshfeld, 2002; Kozlowski, 2003; Varriale, 2006).

Conventional wisdom, as defined by Levitt and Dubner (2005, p. 90), “...must be simple, convenient, and comforting – though not necessarily true.” As it relates to professional baseball, the conventional wisdom is that baseball is a fan friendly environment and safe for families; this belief is indeed simple, convenient, and comforting, though not necessarily true for fans in all sections. Professional baseball offers a controlled environment in which spectators are entertained by the on-field product, between inning contests, and

technological enhancements, yet fan safety is still a concern due to projectiles leaving the field of play. These foul balls, baseball bats, and additional projectiles are not a new danger though, and concern has been ever increasing since baseball's inception (Fried, Pittman, Milsten, Abell, & Mills, 2012). According to Chuck Domino, former general manager of the minor league baseball's Reading Phillies, "Foul balls striking spectators is the most common injury to fans... [an] average [of] one per game" (Bloss, 2002, p. 2). However, it is his belief and understanding of the legal system that purchasing a ticket brings with it an implied risk for the spectator (C. Domino, personal communication, November 6, 2012).

Justification for Research

Beyond the traditional tort legal theory of negligence, sport has intensified its own set of legal theories. In regards to co-participants, cases such as *Knight v. Jewett* (1992) and *Shin v. Ahn* (2007), have defined the duty of care owed to associates in contact (football) and non-contact (golf) sport respectively. *Knight* established a no-duty rule as it related to co-participants in sport for reckless actions not common to the activity, whereas *Shin's* focus on assumption of risk and the limited duty owed could only be breached in events of reckless misconduct and/or intentional infliction of harm. Participants have been expected to assume the risks inherent in the sport merely through their involvement. As it further relates to sport, certain courts have fashioned a legal theory of defining the duty requiring stadiums to protect spectators from projectiles leaving the field of play. The legal theory is referred to as the limited duty rule (or baseball rule).

While projectiles leaving the field of play at sporting events remains a foreseeable issue for stadium owners/operators as well as spectators in attendance, a gap in the literature exists; no uncovered investigation has focused on court decisions regarding liability specific

to fan injuries. No discovered study has examined the evolution of the limited duty (baseball) rule, characteristics of injured parties in legal cases involving projectiles leaving the field of play, nor the relationship between which factors contributed to a winning or losing decision in a court of law.

Purpose of the Study

The purpose of the study was to examine the relationship between the outcome in court decisions (for or against the plaintiff) relating to the limited duty (baseball) rule and the identified independent variables. Results described case characteristics, victim demographics, and present log odds regarding liability cases involving injuries to spectators caused by projectiles leaving the field of play at baseball games. The dependant (binary) variable was the court's decision whether or not to hold the defendant responsible for the injuries sustained by the plaintiff and was categorical in nature. Utilizing qualitative and quantitative methods, this investigation was able to bring attention to the safety precautions already in place, as well as to highlight successful defenses of liability claims as they related to projectiles leaving the field of play. An understanding of historical legal decisions and present case law allows for spectators, stadium operators, and the legal field to appreciate the implications of the limited duty (baseball) rule.

Research Questions

- RQ1. What was the evolution of the limited duty (baseball) rule in court decisions?
- RQ2. Who were the injured parties in legal cases involving projectiles leaving the field of play at baseball games, and what were the circumstances surrounding their injuries?
- RQ3. What factors contributed to a winning decision in a court of law?
- RQ4. What factors contributed to a losing decision in a court of law?

In order to further explain the results, answering the following sub-questions was beneficial to the analysis:

1. Did a relationship exist between the jurisdiction in which the injury occurred (state) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
2. Did a relationship exist between the date of the final court decision (year) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
3. Did a relationship exist between the referenced legal theory (limited duty rule NOT referenced, limited duty rule referenced) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
4. Did a relationship exist between the victim's age (adult, minor) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
5. Did a relationship exist between the victim's gender (male, female) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
6. Did a relationship exist between the date of the injury (year) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
7. Did a relationship exist between the level of play (MiLB/Independent, MLB, amateur, other/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
8. Did a relationship exist between the status of the game (in-game, pre-game, other) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
9. Did a relationship exist between the location where the victim was injured (unprotected seat, protected seat/contested, concourse/concession/entertainment area, other/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?

10. Did a relationship exist between the type of projectile (*batted ball, thrown ball, other*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
11. Did a relationship exist between spectator distractions (*none referenced, distraction referenced*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
12. Did a relationship exist between the location of the victim's injuries (*head/face/neck, torso/trunk, extremities, other/unknown*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
13. Did a relationship exist between the extent of the victim's injuries (*critical, serious, minor/unknown*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?

Significance of the Study

Stadium owners/operators, as well as the spectators in their care, are affected by projectiles leaving the field of play at sporting events. Presently, gaps in knowledge exist regarding an understanding of judicial opinions in this realm. By examining relationships between independent variables found in court decisions and the dependent variable (court decision), the researcher had the ability to investigate existing associations, relationships, and connections. The major significance of this undertaking was in its ability to turn theory into practice, address risk management best practices, and to examine the factors which affected judicial opinions regarding claims of negligence. Through this investigation into case law, the study added to existing legal/risk management knowledge by providing a greater understanding of the implications of litigation involving the limited duty rule. Such research also makes for safer stadiums, minimizing claims of negligence, and enabling baseball stadiums to better refute claims of liability in the future.

Limitations

1. The scope of the study was limited to include only cases found in *Lexis-Nexis Academic Universe* involving the search queries, “Baseball Rule,” “Limited Duty Rule,” “Foul Ball & Negligence,” “Foul Ball & Baseball,” and “Foul Ball & Assumption of Risk.”
2. Not all state judicial systems have been asked to examine the limited duty rule; nor may it be inferred or generalized, as to how state case law may be interpreted by those entities that have not analyzed the question in the past.
3. Not all litigation concludes with a judicial verdict, as many cases are settled out of court and do not have the ability to be included in this examination of the issue.
4. As determined by the court, the limited duty (baseball) rule and/or defenses of negligence (duty, assumption of risk, etc.) may result in summary judgment.

Delimitations

1. The data for this study were obtained from primary sources as applicable court decisions indentified through *Lexis-Nexis Academic Universe*.
2. The sample included all available legal cases relevant to the search terms and was not confined by date restrictions.
3. For the purpose of uniformity, control, and reliability, the researcher utilized two independent coders.

Assumptions

1. It was assumed that legal briefs contained accurate information regarding the victim, circumstances surrounding the incident, as well as the additional factual information regarding the case.
2. It was assumed that the investigator and his assistant correctly and unbiasedly, examined and coded the legal decisions included in the sample for this study.

Definition of Terms

The subsequent definitions are presented to guarantee consistency and standardization of each item, word, expression, or phrase throughout the study. Except where noted by reference, all comprehensive definitions were generated by the researcher.

- Professional Baseball (MLB/MiLB/Independent Professional) – Baseball at the Major League, Minor League (AAA, AA, A, or Rookie), or Independent Professional level which employs professional, non-amateur athletes.
- Baseball Stadium – The facility in which baseball games are played; encompasses the playing surface (field), spectator areas (stands), concourses, concession stands, and any area in which a spectator or spectators may congregate upon entrance into the facility.
- Owner/Operator – Describes the individual(s) responsible for the ownership and/or operations of the baseball stadium. As facilities may be publicly or privately held, owners and operators are not always the same individual or entity.
- Projectile leaving field of play – Any batted (fair or foul) ball, baseball bat (or fragment thereof) which enters the spectator area or fans' seats and which causes, or

- has the ability to cause, an injury to a suspecting or unsuspecting spectator or individual.
- Field of play – Including fair and foul territory, the baseball playing surface (diamond) on which a play may be made and/or an out may be recorded. The field of play ends at the point in which the spectator stands begin, but includes the area known as ‘foul territory.’
 - Liability – “The condition of being responsible either for damages resulting from an injurious act or for discharging an obligation or debt” (Wong, 2010, p. 840); “A legal responsibility, duty, or obligation” (Clement & Grady, 2012, p. 245).
 - Negligence – “A person acts negligently if the person does not exercise reasonable care under all the circumstances. Primary factors to consider in ascertaining whether the person’s conduct lacks reasonable care are the foreseeable likelihood that the person’s conduct will result in harm, and the foreseeable severity of any harm that may ensue, and the burden of precautions to eliminate or reduce the risk of harm” (*Restatement Third, Torts: Liability for Physical and Emotional Harm*, 2010, p. 29).
 - Foreseeability – “...often relates to practical considerations concerning the actor’s ability to anticipate future events or to understand dangerous conditions that already exist” (*Restatement Third, Torts: Liability for Physical and Emotional Harm*, 2010, p. 33).
 - Duty of care – “The service provider must owe a duty (created by a special relationship between the service provider and the participant) to protect the participant from unreasonable risk of harm” (Cotten & Wolohan, 2010, p. 41).

- Reasonable care – “...the conduct of the reasonably prudent person, requires attention to considerations or circumstances that supplement or somewhat subordinate the primary factors” (*Restatement Third, Torts: Liability for Physical and Emotional Harm*, 2010, p. 30).
- Limited Duty Rule – “The limited duty rule, holding that a baseball stadium owner that provides screening behind home plate sufficient to meet ordinary demand for protected seating, has fulfilled its duty with respect to screening and cannot be subjected to liability for injuries resulting to a spectator by an object leaving the playing field” (*Benejam v. Detroit Tigers, Inc.*, 2001).
- The Baseball Rule – Synonymous with the limited duty rule, the Baseball Rule is also referenced to, or in place of, the limited duty rule as it relates the duty of care owed to spectators by stadium owner/operators.
- Remand – “To send a case back from an appellate court to the lower court from which it was appealed, for further proceedings in accordance with the appellate court’s instructions” (Clapp, 2000, p. 369).

Chapter II

Literature Review

Spectator injuries at sporting events, particularly baseball games, have become an ever-present concern in our sport-loving society. Injuries are an issue due to the speed at which projectiles leave the field of play, their frequent occurrence, as well as the potential for serious injuries. The literature review of Chapter II examines the subject, ballpark defenses against claims of negligence, and the legal theory related to potential victim initiated litigation. In addition to an overview of the concern involving projectiles leaving the field of play, components include reviews of negligence, premise liability, defenses of negligence, assumption of risk, and the limited duty (baseball) rule. The chapter concludes with a summary of pertinent law review articles and significant case law examples.

It is common for thirty-five to forty foul balls to enter the stands during each Major League Baseball game, and a number of them are speeding line drives (Steinbach, 2008) with the potential for real damage to any spectator in its path. Injuries, which occur as a result of projectiles leaving the field of play, frequently involve facial or head trauma and include the common foul ball or less-common broken bat (Winslow & Goldstein, 2007). For every one million visitors at Major League games, thirty-five spectators are injured as a result of foul balls and, “About 300 people a year are hospitalized by foul balls at major and minor league parks.” (Thornton, 2012, p. 220). Fans sitting in sections down the first or third base lines are most susceptible to injury as a result of baseballs leaving the field of play at a high rate of speed (Winslow & Goldstein, 2007). Women and children are most susceptible to serious injury due to projectiles leaving the field of play as they are hurt 2.6 times more often than their male counterparts. The disproportionate injury rate is attributed to their unfamiliarity

with the actual dangers presented as well as their inattentiveness during games (Horton, 2003).

Although, “*Sports Illustrated* reported last year [2009] that foul balls have killed 52 spectators since 1887” (Parks, 2010, p. 1), conflicting numbers exist regarding fan injuries/deaths as a result of projectiles leaving the field of play in professional baseball. Baseball’s Hall of Fame, in Cooperstown, NY, reported that at least five fans died as a result of balls entering (batted foul or thrown) the spectator area (Brown, 2003), but it has been reported that Major League Baseball has also experienced one fan death as the result of a foul ball entering the stands (Verducci, 2002). The most comprehensive list regarding baseball fatalities at all levels of baseball comes from the book *Death at the Ballpark*, as well as its blog (<http://deathattheballpark.wordpress.com/>), and website (<http://deathattheballpark.com/overview.html>) of the same name. The continuous research chronicles baseball related deaths of participants, spectators, and other individuals throughout all levels of amateur and professional baseball due to projectiles, collisions, weather, health issues, violence, and other events causing baseball-related fatalities. The text revealed than 800 baseball-related deaths of participants, spectators, and personnel from 1862-2007, and the blog provides periodic updates following an unfortunate incident (Gorman, 2012; Gorman, 2011; Gorman & Weeks, 2009).

Fatalities and safety concerns for all stakeholders in baseball have become so commonplace that the *Death at the Ballpark Blog* was created and is not lacking new information or examples (Gorman & Weeks, 2009). Injured fans, due to projectiles leaving the field of play, are a common attribute of professional baseball games (Hylton, 2003). Confusion regarding the scope of fan injuries and baseball-related fatalities was not

surprising considering Major League Baseball's decision to not track foul ball injuries or statistics for projectiles leaving the field of play; catastrophic injuries are also innumerable as not even the CDC (Centers for Disease Control and Prevention) compiles such data (CDC Info, personal communication, November 8, 2012). It has been surmised by Gormin in Steinbach (2008, p. 22) that, "One of the reasons they may intentionally not keep the figures is if they kept them, and saw that it was a big problem, their liability would increase for not doing something about it."

Spectator safety concerns caused by foul balls are most common, but injuries also occur due to other projectiles leaving the field of play. Projectiles leaving the field of play are not solely batted balls, but also baseball bats, and/or broken, jagged shards of splintered bats (Winslow & Goldstein, 2007). Fans, especially those seated in sections not covered by protective screening, must be cognizant of the fact that inadvertently thrown baseball bats or sharp-edged debris tend to land in the stands throughout baseball games and that they need to remain vigilant (Verducci, 2002, p. 64). Of particular concern was professional baseball's transition from baseball bats made of ash to those constructed from maple. It has been reported that maple bats are currently preferred by 60 percent of Major League Baseball players and that they tend to shatter into sharp fragment as opposed to the splintering, or flaking, actions of the historically used ash bats (Cohen, 2008, p. 41). A number of factors, including collective bargaining, limited ash wood resources, and potential bat manufacturer lawsuits hinder Major League Baseball from adequately providing a safe baseball environment for players and spectators alike (Novosel, 2011).

On October 11, 2012, Joba Chamberlain, pitcher from the New York Yankees, was removed from an MLB game in the 12th inning after being struck on the elbow by a large

piece of Matt Wieters' (catcher from the Baltimore Orioles) broken bat (Hoffman, 2012). Chamberlain was only diagnosed with a bone bruise, but his failure to notice a sharp edged baseball bat flying his way could have been much more serious. Due to the fact that flying shards of baseball bats often threaten the safety of all stakeholders, this issue has caught the attention of Major League Baseball. Following each episode of a broken maple bat, the fragments are sent to a laboratory for examination and to study wood grain patterns with the hope of decreasing or eliminating the danger of flying bat shards in the future (Parks, 2010). Participants, such as Chamberlain, would be hard-pressed to prove claims of negligence without the absence of proven intentional harm. Pertinent to participants of both contact and non-contact sports, there is no duty of care owed to participant colleagues and the primary doctrine of assumption of risk is applicable (Hickman, 2008; Ursin & Carter, 2008; Wanat, 2001).

While, "There is no way to make baseball or any sport completely safe for participants or spectators" (Fried, Pittman, Milsten, Abell, & Mills, 2012, p. 18), stadium owners and operators owe a duty of care not to increase the risk to the invitees (spectators) in their care. Facilities must be designed to minimize the risk of an accident/injury (Inge, Jr., 2012), yet personal safety cannot be guaranteed as projectiles often leave the field of play. If stadiums were forced to guarantee the safety of every spectator, an undue hardship and impossible burden would be placed upon facility owners and operators (Wolohan & Rawn, 2006). The assurance of every individual's wellbeing is unattainable yet, "Adherence to such entrenched standards and customs in safety guidelines can help to limit the liability of owners..." (Khare, 2010, p. 107). In addition to developing a comprehensive emergency action plan and adhering to risk management best practices, organizations need to effectively

train, retrain, and practice with game-day staff members who deal with injuries as a result of projectiles leaving the field of play (Juliano, 2010). Professional baseball does not endorse or sanction best practices for its stadiums as it relates to projectiles leaving the field of play, but risk managers have identified that, “Several steps can be taken to demonstrate that the event manager has fulfilled his duty of care” (Anderson, 2002, p. 25). Baseball stadium risk management best practices include the following recommendations: spectators must be given the opportunity to purchase seats behind protective netting; they must be warned of possible injuries due to projectiles leaving the field of play; the most dangerous portion of the stands must be covered by protective netting; marketing, entertainment, and musical distractions should be limited while sporting action is occurring on the field of play; and sight lines on concourses and concession areas must not be blocked or face away from the field of play (Anderson, 2002).

A measure that could support fan safety in the stands would be to mandate a specific size (length, height, etc.) of protective netting at professional baseball stadiums. These extended screens would better guard against spectators being hit from projectiles leaving the field of play (Cohen, 2008). However, “There are no regulations governing fan screening at minor league games, and the netting practices vary greatly” (Winslow & Goldstein, 2007, p. 3) throughout all levels of organized baseball. The backstop, commonly referring to the area behind home plate, is usually screened and traditionally protects fans sitting in the grandstand. It is widely accepted that the backstop provides protection for the most vulnerable seating areas, but recent studies have shown the most hazardous areas of the ballpark to be the unscreened areas past the dugouts, down the first and third base lines. On average, Major League baseball stadiums extend netting 20-30 feet high up to the beginning

of each dugout and the parks average anywhere from 50 to 250 feet in length of safety netting (Fried, 2002). While O.co Coliseum in Oakland may only have forty-seven (47) feet of protective netting, other entities like Florida State University have taken it upon themselves to screen the entire grandstand by installing 275 feet of netting (Fried & Ammon, Jr., 2002).

According to Pat Courtney, Vice President of Public Relations for MLB, although fan safety is paramount, baseball has been reluctant to mandate mesh requirements due to the size and shape of its unique ballparks, and instead leaves the protective netting decision up to each baseball club (Kmitta, 2002). Protective netting directives have not been mandated by professional baseball; however, The American Society for Testing and Materials (ASTM) has created best-practice guidelines for ballparks to follow. These rules dictate fence height (minimum eight feet), backstop height and width (dependant on field dimensions/spectator areas), as well as spectator protective fence measurements (minimum of eight feet or high enough to protect spectators in bleachers) (Fried & Ammon, Jr., 2002). Until professional baseball mandates netting requirements, each franchise will continue to individually determine its own netting dimensions and weigh the safety options available (C. Domino, personal communication, November 6, 2012). Major League Baseball does not govern, assert, or oversee individual stadium risk management policies and procedures regarding how best to protect spectators from projectiles leaving the field of play. There are no league-wide rules regarding risk management practices as state laws affect each franchise's approach. Major League Baseball is played in twenty-six different cities and trying to come up with a singular approach would not be effective. Protective netting strategies require each ballclub to consider local ordinances, laws, and its individual ballpark design as it relates to

projectiles leaving the field of play. It is imperative a baseball franchise knows its market and that its management determines the most appropriate safety protections for its fans (P. Courtney, personal communication, November 9, 2012).

In Nippon Professional Baseball, comprehensive safety netting is more universal as, “Japanese baseball fans are accustomed to watching games from behind protective screening that extends to the foul poles” (Brown, 2003, p. 1). While spectators in Japan may be comfortable with such safety measures, professional baseball officials in the United States believe that spectators, particularly those who purchase costly field boxes or turf level seats, cherish access to the game and a closeness to their favorite players (Parks, 2010). The American view is that all-encompassing protective safety netting will take away from the ballpark environment, lessen the total fan experience, deny fans the chance to take home a cherished foul ball, and adversely affect the sightlines from the spectator vantage point behind the screen (Brown, 2003). Certain individuals, or vulnerable fans (i.e., minors, elderly, disabled patrons, etc.) may fear being struck by a foul ball, while others derive immense joy from the thought of being able to take home a memorable souvenir (Fried, Pittman, Milsten, Abell, & Mills, 2012). In fact, baseball executives often report that, “...the hardest ticket to sell is behind protective netting” (C. Domino, personal communication, November 6, 2012).

Major League Baseball does not track spectator injuries or foul ball trajectories to determine the most dangerous portion of the ballpark. It does not provide risk management best practices to its franchises as it relates to projectiles leaving the field of play; however the National Hockey League has taken an alternate approach. On March 13, 2002, thirteen year-old Brittanie Cecil was struck by a hockey puck at a Columbus Blue Jackets game.

Following two days of hospitalization due to a ruptured neck artery and internal bleeding, Brittanie succumbed to her injuries (Foltman, 2002). In response to this event, the National Hockey League (NHL), its Board of Governors, and Commissioner Gary Bettman announced that new safety measures would be required for the 2002-03 season; they did not expect the changes to affect fans' views, sight lines, or satisfaction levels (LaPointe, 2002). The safety measures implemented included eighteen (18) feet of safety netting which begin at the top of the glass and protect behind-the-goal seating from the red line to red line. The National Hockey League (NHL) acted swiftly to correct a risk management issue and created new protection measures for its fans through the enactment of safety netting behind each team's goal. Although the NHL's risk analysis confirmed that its hockey arenas adequately protected every fan, Commissioner Bettman announced the safety modifications as well as his expectation for each franchise to install the newly required safety netting (Foltman, 2002).

The double-edged sword of foreseeability dictates that sporting event spectators may owe themselves (and their family members) a duty of care. While baseball patrons may be expected to pay close attention to the action on the field, show concern for their own well-being, and guard against projectiles leaving the field of play (Kozlowski, 2008), the National Hockey League took a proactive approach to fan safety. Professional baseball has not chosen to underwrite or mandate, "...significant expenditures, [including protective netting], that might help mitigate the risks to employees and patrons, ultimately reducing insurance costs" (Bloss, 2002, p. 4). Fans must remain diligent, attentive, and aware of the risk foul balls leaving the field of play pose to their safety. In addition, "...they also must watch for bats flying into the stands and bats do not always arrive in one piece" (Thornton, 2012, p. 223).

The prospect of projectiles leaving the field of play poses a real, foreseeable, and probable risk to the health and wellbeing of spectators in attendance. The lack of mandated safety guidelines by professional baseball presents a dilemma for each stadium manager as to how he or she should adequately protect the spectators in his or her care. Certain incidents have been serious in nature because foul balls are not identical in nature nor do they occur in the same vicinity in each instance (Fried, Pittman, Milsten, Abell, & Mills, 2012).

The theoretical framework behind this research lies in the doctrine of assumption of risk, elements of negligence, as well as the limited duty rule (also known as the baseball rule). Historically, defenses of negligence by baseball teams, stadium owner/operators, and ball players were threefold. They focused on the spectators' assumption of risk involving injuries caused by projectiles leaving the field of play, the fans' understanding that the game of baseball included foreseeable risks and that foul balls leaving the diamond were inherent to baseball, as well as the stadium supplying backstop protection for spectators behind home plate. These defenses eventually evolved into the limited duty (baseball) rule, which declared that a duty to patrons had been met if the stadium provided a finite number of seats behind protective screening in the most dangerous area of the ballpark for as many individuals who may be reasonably expected to desire such safeguards.

Traditionally, both the limited duty (baseball) rule and the assumption of risk doctrine were established as the most conventional arguments utilized to counteract plaintiffs' claims of liability and a breach of the duty owed to spectators (Fried, 2002). Ultimately, the issue boils down to reasonable care and state courts have decided what actually constituted reasonable care. Certain state courts have examined the subject and established jurisdictional precedent regarding the limited duty rule. Matters relevant to the issue also include the risks

inherent to baseball, whether a duty to warn of projectiles leaving the field of play exists, what constitutes a ‘normal’ ballgame, if screening is expected around the entire ballpark, and whether or not safety can or needs to be guaranteed for all patrons. Relevant legal theory, including negligence, premise liability, assumption of risk, and the limited duty (baseball) rule, are further incorporated into the Review of Literature as courts have referenced these principles in past judicial opinions.

Negligence

Negligence is frequently defined in as, “Conduct falling below the standard of care required of a reasonable and prudent person in the protection of others” (Clement & Grady, 2012, p. 246). This unintentional tort may include reckless behavior and/or neglecting to take reasonable precautions to safeguard the well-being of others (*Restatement Third, Torts: Liability for Physical and Emotional Harm*, 2010). Negligence involves five components; all must exist with adequate proof to establish negligence on the part of the defendant. If any portion is not confirmed, negligence has not been found and the defendant cannot be held liable for injuries/damages to the plaintiff. The elements of negligence include whether a duty, or special relationship, existed; if there was a breach of the duty; if the breach was the cause of the injury (factual cause), the scope of the liability including foreseeability; and if substantial damages existed (Clement & Grady, 2012).

Premise Liability

At the heart of the issue involving injuries caused by projectiles leaving the field of play was the question as to whether stadiums or arenas owe a “duty of care” to ensure the safety of spectators/fans at sporting events. Premise liability defines the duty of care owed to

individuals injured at facilities or on property, and they are either classified as invitees, licensees, trespassers, or recreational users. As baseball fans purchase tickets and attend at the invitation of the team, they are considered business invitees and are owed the greatest level of care by the stadium owner/operator. Similar to other invitees, a special relationship exists between baseball spectators and the owners/operators of stadiums (Baker, Connaughton, Zhang, & Spengler, 2007). A duty of care is obligatory, but to what extent?

The duty of care owed depends on each state's adoption and/or interpretation of the baseball rule. Depending on the jurisdiction, state courts may or may not have examined the limited duty rule in the past as well as the issue of injuries caused by projectiles leaving the field of play at sporting events. Defenses utilized in cases which involved injuries sustained from projectiles leaving the field of play may differ. Certain jurisdictions have adopted a strict interpretation of the limited duty rule, while others have rejected it altogether. For example, New Mexico, a state governed by comparative negligence, determined that a symmetrical duty of care was owed by all stakeholders (*Edward C. v. Albuquerque Baseball Club, LLC, et al.*, 2010). There are, "...various iterations of the baseball rule and the New Mexico court sort of went half-way with it." (M. Browde, personal communication, November 16, 2011). Stadium owners/operators have a duty of care to protect the patrons in their care, but spectators also possess an equal duty to look out for their own well being. In addition to the protection provided by the management, patrons also have a responsibility to safeguard their person from the risk of injury (Tavella, 2009).

Defenses of Negligence.

When refuting claims of negligence, a number of defenses exist including contributory negligence, comparative negligence, primary assumption of risk, implied

primary assumption of risk, express assumption of risk, secondary assumption of risk, as well as immunity. However, defendants may assert that no duty was owed to the plaintiff, or that reasonable care was exercised, which effectively demonstrates a lack of negligence. Four states, Alabama, Maryland, North Carolina, Virginia, (as well as Washington DC), adhere to elements of contributory negligence and bar recovery by the plaintiff whose negligence was deemed to have been a factor of the proximate cause of the injury. If the plaintiff is partly to blame for his injuries, he is precluded from collecting under principles of contributory negligence (*Restatement Third, Torts: Liability for Physical and Emotional Harm*, 2010). The remaining forty-six states follow principles of comparative negligence in either a pure, modified, or joint and several liability system. Pure comparative negligence is a system in which the percentage of responsibility of plaintiffs and defendants is weighed in a formula, and the damages are apportioned accordingly between the parties. A modified version of comparative negligence precludes a plaintiff from collecting damages if he/she was 51% (or greater) responsible, whereas the joint and several liability system divides the damages awarded between defendants dependent upon their ability to compensate the victim (Clement & Grady, 2012). In order to determine damages under comparative negligence, fault is apportioned to either plaintiff or defendant and provides a formula for recovery based on each stakeholder's culpability (Wong, 2010).

Assumption of Risk

Historically, assumption of risk was a defense offered by stadium owners/operators and most often accepted by the courts. Judicial affirmations have frequently shown that basic assumption of risk expectations have been deemed as reasonable by the courts and preclude plaintiffs from collecting judgments regarding foul ball injuries (Swift, 2005). Fans

have been commonly expected to assume the inherent risk of projectiles leaving the field of play (Thornton, 2012), but stadium/arena owners and operators have also been shown to owe a duty not to increase the risks inherent to the sport being watched. In order for defendants to utilize primary assumption of risk as a viable defense, the doctrine dictates an individual must have voluntarily participated in the activity. Additionally, the danger must be inherent, reasonable, or normal to the sport, and the individual is aware, knowledgeable, appreciates the risk presented as a result of one's participation (Wong, 2010).

Implied primary assumption of risk has also been acknowledged as a viable and accepted defense in some jurisdictions. An adult of reasonable and ordinary intelligence is expected to understand that projectiles at baseball games have the ability to leave the field of play, an unprotected or inattentive individual has the chance of being struck and injured, and balls and bats made of solid materials often travel at high rates of speed and have the potential to cause injury. Not only have courts ruled that projectiles leaving the field of play are an open and obvious danger (Winslow & Goldstein, 2007), but that adult spectators are expected to be aware of and understand that these risks inherent to baseball, especially if they have attended games in the past (Kozlowski, 2003; Socolow, 2007; Swift, 2005; Winslow & Goldstein, 2007).

By watching only a few minutes of an inning of baseball, the foreseeable risk of projectiles leaving the field of play are implied as they are known, or should have been known, by spectators. In the event that foreseeable dangerous conduct was missed and/or ignored by the spectator, stadium owners/operators are not able to be held liable for injuries as fans had the opportunity to safeguard their own well-being (Anderson, 2002). As expressively stated in *Thurmond v. Prince William Professional Baseball Club, Inc., et al.*

(2003), a fan of average intelligence would be expected to understand that baseball players do not always have the ability to manipulate the trajectory of foul balls and that such projectiles have the capacity to produce serious injury. Express assumption of risk, a signed agreement (contract) outlining the risks involved in an activity, would attempt to mitigate the probability of a lawsuit, but it is not known to be utilized with sport spectatorship. However, baseball organizations have often claimed that the fine-print warning on the back of ticket stubs constitutes an express assumption of risk.

Secondary assumption of risk, "...occurs when a party voluntarily participates in a risky activity, has not consented to relieve the defendant of his/her duty of care, and the defendant breaches a duty of care owed the plaintiff" (Clement & Grady, 2012, p. 9). When a plaintiff is aware of another person's negligence but chooses to voluntarily participate anyway, they are not barred from recovery under secondary assumption of risk, though damages may be reduced under the principles of comparative negligence (Clement & Grady, 2012; Wong, 2010)

Limited Duty (Baseball) Rule

The limited duty rule was an evolution of the doctrine of assumption of risk. Also referred to as the baseball rule, it offers a two-pronged approach to fulfilling the duty of care owed by stadium owners/operators to the spectators in their care. In states which have accepted the limited duty (baseball) as law, a duty to fans has been satisfied by ballparks when a protective netting is made available for the most dangerous areas of the ballpark. In addition to providing safety for the most dangerous portion of the stands, it must also offer protection for as many spectators who may foreseeably request such safety measures.

Reaffirmed in *Benejam v. Detroit Tigers, Inc.* (2001) and reviewed in a magnitude of prior

case law, the limited duty rule provides that, "...the proprietor fulfills the duty of care imposed by law and, therefore, cannot be liable in negligence". In establishing parameters surrounding the professional duty owed, state courts have been able to limit the liability of stadium owners/operators (Juliano & Healey, 2010) and control the parameters of tort claims (Thornton, 2012) for all who install protective screening as specified in the two prong approach of the limited duty rule.

According to Thornton (2012), the limited duty rule was first documented by our judicial system in 1915, however, the limited duty rule is not the law in all jurisdictions. While the Supreme Court of Nevada asserted in *Turner v. Mandalay Bay Sports Entertainment, LLC* (2008), that at least twelve states had implemented the limited duty rule, not every state has examined this issue. Proponents would advocate that it is sensible and makes for a safer baseball environment (Juliano, 2010), yet their counterparts vehemently disagree. Opponents to the baseball rule claim that, "...no proof that has ever been presented identifying the most dangerous part of the ballpark. The area behind home plate has been sheer conjecture" (Fried, Pittman, Milsten, Abell, & Mills, 2012, p. 11).

Law Reviews

The institution of baseball has a unique relationship with the legal field. Baseball analogies, anecdotes, and references are utilized in both judicial opinions and alluded to by judges. The sport is also referred to in litigation, descriptions or explanations of legal theory, and in describing law found in case study examinations. Baseball's frequent presence, seen in legal writings and heard in lawmakers' jargon, is unparalleled in the world of legal aspects of sport (Davies, 2010). Textbooks, too, are filled with applicable examples found in baseball, and law reviews focus often on the sport as well. Topics have included arbitration,

anti-trust exemptions, collective bargaining contracts, miscellaneous crimes such as gambling (i.e., BlackSox Scandal, Pete Rose, etc.), as well as further issues relating to labor agreements (Abrams, 1998). As it related to the topics fan safety and the limited duty (baseball) rule, *Lexis-Nexis Academic Universe* returned law review articles relating to spectator protection beginning in 1940 and litigation from the early 1900s. Informed by literature, these resources guided the investigation as well as the research questions.

There are innumerable tort law cases relating to fan injuries resulting from spectatorship at baseball games (Waller, Cohen, & Finkelman, 1995). Each unique in its own way, distinctions between cases included dimensions of the playing field or special features of ballparks, spectator distractions and/or blocked sight lines, how the injury occurred, as well as a multitude of other circumstances surrounding the event of a projectile leaving the field of play. Historically, backstops (or protective screening) were preceded by wooden “catcher’s fences,” used only to contain wild pitches or passed balls. The first professional team to utilize protective netting as a safety measure was the Grays from Providence, RI, a member of the National League which installed screens on the grandstand in 1878. Additional ballparks followed suit in screening the area directly behind home plate known as the “slaughter pen” and protective netting was common to most ballparks by 1900 (Gorman & Weeks, 2009; Hylton, 2003). It was common knowledge that fans could potentially be injured while watching baseball games and that they assumed the risk of injury upon entering the ballpark regardless of their age or familiarity with the sport (Horton, 2003; Khare, 2010).

A dichotomy of symmetrical duty exists at baseball games between spectators and stadium owners (McNair, 2011). Individuals owe a duty of care to protect themselves from

dangers, yet management owes a duty to provide a reasonably safe environment for spectators; teams and stadium operators owe a duty of care as it relates to providing protective screening and not increasing the risk inherent to the sport (Perkins, 1951; Waller, Cohen, & Finkelman, 1995; Zollmann, 1940). Balancing the duty of care owed, while protecting our “America’s Pastime” and allowing for individuals of all economic classes to witness its beauty, is the challenge faced by the courts in each particular case (Novosel, 2011). It is said that forcing teams to guarantee the safety of all patrons in their care would place an undue hardship on stadium owner/operators and could result in increased ticket prices to cover the cost of liability insurance or screening in the entire ballpark; both of which are seen as implausible risk management options to keep fans safe. Increasing ticket prices, limiting proximity to the field as well as intimacy with the players, confines the overall fan experience/entertainment value (Turner, 2006). However, not all experts see the fallacy of needing to raise ticket prices to cover liability, or screening the entire ballpark, as the only options available. Ensuring a reasonable duty of care, as outlined by tort law, allows for fans to feel safe in a controlled environment (Horton, 2003). Without granting immunity to baseball stadium owner/operators, courts have been asked to balance spectator safety with the duty of care owed by the facility (Marrs & Milligan, 2011). The question remains as to how best balance the relationship between the fan experience and safety, while providing a protective netting for fans who desire such safeguards is seen as a compromise. However, should it be faulty and fail, defendants may be held liable as spectators had been lured into a false sense of security (Zollmann, 1940).

Requiring stadium owners/operators to guarantee the safety of spectators in their care is not only impossible due to the risks inherent in the game, but also unwarranted and

imbalanced under the symmetrical duty of care owed by all stakeholders (Wakamatsu, 2009). Many judicial opinions in the early 1900s established that the stadium owner/operator is not forced to assure the absolute protection of spectators at the ballpark (Fried & Ammon, Jr., 2002). Scores of legal challenges center on the duty of care owed along with the question of whether or not the duty had been breached (Turner, 2006). Injured plaintiffs often contend a lack of reasonable care or that the duty of care owed to spectators was breached by a lack of protective measures against inherent risks.

Asserting a failure to screen and/or warn of danger is also often used to attempt to establish negligent behavior by the defendant. Whereas, stadium owners maintain that limited protective screening behind home plate satisfies the duty owed to their business invitees as they have provided safeguards for the most dangerous area of the ballpark (Goplerud III & Terry, 2003; Minan & Cole, 2009; Perkins, 1951; Turner, 2006). By definition, a spectator is able to be classified as a business invitee as they purchased a ticket and are on the premises for the baseball team's economic benefit. However, free tickets, open houses, and/or promotions may not preclude individuals from being defined as business invitees. Business must not be conducted on the exact date as, "It is sufficient that the individual may become a customer sometime in the future" (Johnson, 2005, p. 169). A duty of care is owed to spectators in the teams' care, but an assurance of fan safety is never guaranteed (Turner, 2006).

Spectators' assumption of risk, particularly those risks inherent in the game of baseball (i.e., projectiles leaving the field of play), have often been emphasized by the defendants in court cases as well. Attendance at baseball games brings with it risks inherent in the game itself. Whereas, injuries caused by foul balls have been classified as common

knowledge, those injuries caused by risks not inherent to the sport are not generally assumed by the spectator and can often be challenging to defendants in legal disputes (Gilles, 2002; Novosel, 2011). The difficulty lies in what constitutes an open/obvious danger and continually forces courts to resolve characterization of risks (Khare, 2010). Specifically, non-baseball distractions created by teams, their technology, and/or promotional staff can be problematic as well. If a fan's injury is directly related, caused, or provoked by an external distraction, there is the potential that a baseball stadium owner/operator may be found liable (Marrs & Milligan, 2011). These distractions or secondary entertainment may include mascots or video displays which redirect fans' attention away from the action on the field (McNair, 2011). Under the distraction theory, courts have ruled that marketing activities and mascot actions are not an inherent part of the game of baseball, and questions regarding increased inherent risks cause by external distractions were questions for a jury to decide (Fried & Ammon, Jr., 2002). Furthermore, disagreements over what constitutes "the game itself," as well as areas in which protection should be provided, have been reviewed on occasion as well.

Historically, courts initially focused on a spectator's knowledge of the game of baseball as well as his/her experience playing and/or watching it. Defendants intended to establish that the injured party was familiar with the risks inherent to baseball and/or such hazards were common knowledge. Just by observing the action on the field, the defendant also asserted that the risks involved or the potential for dangerous conditions were easily ascertainable (Perkins, 1951). Since baseball is "America's Pastime," it has been implied that issues involving fan safety, and the possibility that projectiles may leave the field at a high rate of speed, are widely understood by even the most casual fan. Entrenched in

conventional wisdom are some individuals' beliefs that the common knowledge of baseball impacts the duty of care owed. Due to this alleged understanding a, "...fan who attends a game automatically assumes the risks or commonly recognized hazards of baseball and consents and permits the management to begin the game without any provision for the safety of the spectator" (Lucenko, 1997, p. 89). In fact, certain jurisdictions have concluded that spectators attending baseball games possess a fundamental understanding of the sport as well as the inherent risks involved (Novosel, 2011).

Die-hard fans, as well as casual spectators with little understanding or knowledge, are expected to assume the risks inherent in the game of baseball, yet those more inexperienced patrons may unknowingly expose themselves to greater risk based on their actions or seating choice (Wakamatsu, 2009). Unless stadium owners/operators breach the duty of care owed to spectators, or risks presented are not inherent in the game itself, spectators generally assume the risk involved with projectiles leaving the field of play (Augustine, 2008). Forty-five (45) to fifty (50) baseballs make their way into the stands each game and Major League Baseball utilizes over 900,000 baseballs annually, yet only a fraction are lost due to homeruns. It is safe to say that a majority of balls which leave the playing field are foul balls (Celedonia, 2008; Goplerud III & Terry, 2003). Although some injured fans claim to have been sitting in protected seats when struck, plaintiffs have insisted that projectiles have curved around the safety netting.

Collecting on behalf of an injured plaintiff who willingly and knowingly assumed the risks inherent in baseball becomes challenging under assumption of risk and contributory negligence as simple attendance at a baseball game implies the spectator's assumption of risk relating to projectiles leaving the field of play (Gilles, 2002; Wakamatsu, 2009). In fact,

contributory negligence barred a plaintiff from recovering if his/her own negligence contributed to the injury; however, some courts have now adopted the theory of comparative negligence, which allows plaintiff's to recover damages based on the percentage the defendant was found to be responsible for the tort (VerSteege, 2003). Originally intended to define the duty of care owed to spectators and protect stadium owner/operators from unlimited liability, the limited duty (baseball) rule has been coupled with the assumption of risk doctrine to define the spectator duty of care (Thorpe, 2010). Allowing fans to choose their preferred location (unprotected or protected) as it relates to unimpeded views and the ability to catch a souvenir baseball, stadium owners/operators cater to consumer preferences and allow spectators to choose how close they wish to be intimately connected to the action on the field of play (Davis, 2006; Turner, 2006). Although not every state has either adopted nor examined the limited duty (baseball) rule, the recent trend has been to apply it to cases involving baseball stadium owners/operators (Goplerud III & Terry, 2003).

While proponents of the limited duty (baseball) rule tout its practice of protecting stadium owners/operators from undue (and infinite) liability, opponents claim it is anachronistic, impractical, and provides facility managers no incentive for protecting the spectators in their care. They claim baseball stadiums should owe their fans a reasonable duty of care much like every other entity involved in a business invitee relationship. Granting immunity to stadiums which provide a safety netting behind home plate for as many spectators who may reasonably desire such safeguards [the limited duty (baseball) rule], allows them to fulfill a duty of care by following a single risk management practice. Challengers of the limited duty rule further assert that fans need to be better informed of the risks involved, safety measures should be modernized, data analyzed to determine the most

vulnerable areas of the ballpark, and that standardized risk safety measures should be implemented in all ballparks (Horton, 2003).

Case Law

One of the earliest cases, *Blakeley v. White Star Line* (1908), helped define the duty of care owed to spectators at baseball games. In this instance, the injured plaintiff was struck by an errant baseball thrown by individuals not participating in the on-field action. The victim was not watching the baseball game, but instead viewing dancers in a nearby pavilion. The court noted that individuals possess common knowledge relating to the game of baseball, its speed, and that they are (or should be) aware that voluntarily positioning oneself near the baseball diamond comes with assumed inherent risk. However, the court ruled that the defendant should have exhibited reasonable care and not allowed off-field baseball activities to take place in close proximity to other patrons without proper protection in place or warnings being issued. Although inapplicable in this instance, The *Blakeley* (1908) court established the original standard regarding the duty of care owed and was the precursor to the baseball rule.

In *Crane v. The Kansas City Baseball and Exhibition Company* (1913), the court established that the injured spectator voluntarily chose to sit in an unprotected area, not shielded from projectiles leaving the field of play by netting. It further ascertained that baseball, its rules, and its inherent risks are common knowledge to individuals within society. Although the spectator was struck and injured by a baseball, no complexities existed to make his claim of negligence unique in the eyes of the court. He possessed knowledge of the game, had attended in the past, chose his own seat, was not an individual at high risk, and was struck during the normal course of the game.

Featured in *Wells v. Minneapolis Baseball and Athletic Association* (1913), safety warnings as well as the size of the protective screen were disputed. On July 9, 1910, Ms. Echo L. Wells attended a baseball game in Minneapolis, MN, at which she was struck by a foul ball and broke her clavicle. Ms. Wells seated herself in the front row of the section considered to be the old grandstand. Although seats were available which would have provided protection via a screen from projectiles leaving the field of play, the Plaintiff's seat was just outside the reach of the screen. While Ms. Wells and her companion that day allege that she was indeed seated behind the screen and that the foul ball curved around it, witnesses at the park confirmed her seat was outside of the screened area. Through litigation, the injured party alleged she was unaware of the danger presented to her based on the size of the insufficient screen. Conversely, the ballpark countered that Ms. Wells, upon entering the ballpark, assumed the risk of foul balls and was injured as the result of her own disregard for her personal safety.

While Ms. Wells sued for \$5,275 in damages, she was initially awarded \$825 by the District Court of Hennepin County. However, the Supreme Court of Minnesota concluded that the ballpark's duty of care had been fulfilled based on its warning signs and provision of protective screen for spectators who may have wished to occupy those seats. Its decision further stated that baseball is not risk-free and spectators who are knowledgeable of the possibility for projectiles to leave the field of play cannot place blame on the stadium if screen seats are available as an alternative. In citing *Crane* (1913), the court held that baseball stadiums cannot guarantee fan safety, yet must exercise reasonable care to protect against injury. The District Court's ruling was reversed and the case was remanded back to the District Court for a new trial.

Should protective netting be faulty or fail, defendants may be held liable as spectators had been lured into a false sense of security as noted in *Edling v. Kansas City Baseball & Exhibition Company* (1914). At a Kansas City Blues baseball game, the plaintiff paid fifty-cents for a protected grandstand seat and entered the ballpark while the game was in progress. Sitting behind the chicken-wire netting, a foul struck the victim in the face, breaking his nose, due to a large hole in the screen. A judgment in the amount of \$3500 was found in favor of the plaintiff as the defendant's negligent actions (or inaction) allowed the protective netting to become substandard, damaged, and faulty

In *Brann v. The Village of Hudson Falls* (1915), a minor was watching an amateur baseball game at a public park while situated behind the catcher. After suffering a broken nose from being struck in the face by a baseball, the victim alleged that no suitable protective screen or similar safeguard was provided. Due to the fact that it was an amateur game, and not for profit, the court ruled that negligence was not shown.

Mr. Kavafian was injured after being struck by a foul ball on his knee and filed a lawsuit in *Kavafian v. Seattle Baseball Club Ass'n* (1919). On the day of his injury, he entered the ballpark during the second inning of play and chose his own seat as no usher was present to escort or assist him. The stadium in question was referred to as the new ballpark and although the plaintiff had attended numerous ballgames at the old stadium, he had only attended a few contests in the unfinished surroundings of the new park. The architectural plans called for a total of 120 feet of protective netting which would provide for 60 feet of coverage on each side of home plate.

The basis of the plaintiff's negligence claim hinged on the fact that the ballpark failed to provide a proper protective screen for his chosen seat. The trial court sided with the

injured party and awarded a judgment of \$1000 to Mr. Kavafian. On appeal, the judgment was affirmed as the court focused on the fact that only 30 feet of coverage was made available to either side of home plate. However, on rehearing, the trial court's judgment was ultimately reversed and the case dismissed. Supported by the precedent set in the *Blakeley* (1908), *Crane* (1913), and *Wells* (1913) cases, the court stated that baseball presented threats to the safety of spectators; the plaintiff voluntarily attended and chose his own seat outside the scope of the protective netting. Mr. Kavafian, being fully aware of the danger and possible injury, chose to assume the risk.

The Cincinnati Base Ball Club Co. v Eno (1925), offers an additional account in which the victim was injured during batting practice and brings up the question, “*What constitutes a normal risk at a baseball game?*” Ms. Victoria Eno, along with a companion, attended a double-header of professional baseball games in Cincinnati, OH, on July 30, 1921. While seated on the south side of the grandstand in reserved box number 151, Ms. Eno was struck by a batted ball hit by players only fifteen to twenty-five feet from her seat. During intermission between the two contests, players conducted batting practice which was said to be part of the day's festivities. Although a protective netting was in place to shield certain portions of the grandstand, the plaintiff had chosen to sit in an unprotected seating area. However, the game was not in play and the players' batting practice was conducted from the regular baseball diamond.

Although the Trial Court ordered a verdict to be entered in favor of the defendant, the Appellate Court reversed the judge's order. It was opined that the defendant could have been found negligent and that the jury should have been able to deliberate whether or not there was a breach of duty by allowing batting practice to take place between games. The

Supreme Court affirmed the Appellate Court's decision as the Trial Court erred in directing the jury to find in favor of the defendant; this particular question regarding negligence was a question for the jury to answer. Citing the precedent set in the *Crane* (1913), *Wells* (1913), and *Kavafian* (1919) cases, spectators assumed the risk of foul balls leaving the field during the course of a normal game based on their decision whether to choose a protected or unprotected seat. In this particular case however, Ms. Eno's injury did not occur during the course of a normal game and, as an invitee, she was owed a standard of reasonable care as management's duty was not to invite danger.

The issue becomes more complicated when the victim is not a spectator at the baseball game as seen in *Wills v. Wisconsin-Minnesota Light & Power Company* (1925). A minor child, between the ages of 12 and 13 years old, was struck in the face by a line-drive foul ball while in ninety-feet from a baseball field operated by the defendants. The girl, along with her mother, aunt, and additional younger children, had stopped at the park and planned to sit at tables provided by the owners on which patrons could enjoy their lunches. Located within the larger context of an amusement park, the ball field was part of supplementary offerings on the grounds provided by the owners to encourage the use of their street-car company; additional entertainment options included motion picture shows as well as a dancing pavilion.

The District Court found in favor of the injured party and awarded a judgment in the amount of \$2000. The plaintiff was not a spectator at the event and was unaware that the baseball game was in progress. Furthermore, the owners of the amusement park neglected to provide protection to the victim by failing to exercise ordinary care. Upon appeal, the Supreme Court of Wisconsin affirmed the judgment of the Circuit Court citing that the

defendants had failed to protect the victim against the foreseeable hazard of foul balls at the amusement park.

Curtis v. Portland Baseball Club (1929) examined an incident in which the foul ball was purported to curve around the protective screen. During a professional baseball game held on May 30, 1925, in Portland, OR, Mr. George Curtis was struck in the nose and injured by a foul ball while sitting in the stadium grandstand. Although the plaintiff alleged that he was seated behind the protective netting, he asserted that the ball in question curved around the screen prior to hitting him in the face. Mr. Curtis was shown to his second row seat along the third base line (sixty feet away from home plate) by an usher in attendance. His case hinged on his contention that he and his party was owed a duty of care and that the ball club failed to provide a safe seating area in which he could view the game.

The Trial Court jury found in favor of the plaintiff and awarded Mr. Curtis \$3000 based on his claims of negligence on the part of the ball club. However, the Supreme Court of Oregon found it implausible that a foul ball would curve around the protective screening provided for the safety of the patrons in attendance. The court reasoned that the *Curtis* case was not similar to the injury caused by a defective screen as seen in *Edling* (1914), nor was it analogous to *Eno* (1925), in which the spectator was clearly sitting outside of the screen in the bleachers. It was, however, comparable to *Wells* (1913) in which the plaintiff also contended that the ball curved around the protective netting. Due to the fact that the stadium had provided 150 feet of protective netting and the plaintiff unsuccessfully proved his claims of negligence, the Supreme Court reversed the initial judgment, remanded the case back to the Trial Court, and ordered a verdict of non-suit in favor of the defendant.

In *Brisson v. Minneapolis Baseball & Athletic Association* (1932), Mr. Nap Brisson was injured by a sixth inning foul ball while seated along the third base line in temporary seating provided by the defendant. He was struck in the head by a batted ball which first bounced off the ground in close proximity to him. Although a portion of the grandstand was protected with screening, the plaintiff contended that his screened seat was occupied and that he was forced to sit in the temporary section. Mr. Brisson had attended baseball games as both a child and an adult, but he claimed that he was not knowledgeable of the risks posed to spectators who sat in unprotected seating areas. The Trial Court's handed down a verdict in favor of the plaintiff in the amount of \$2000.

On appeal, the Supreme Court of Minnesota deliberated as to what constituted reasonable care and reviewed similar case law found in *Wells* (1913), *Kavafian* (1919), *Crane* (1913), *Eno* (1925), and *Blakely* (1908). The Court questioned whether baseball stadiums were required to provide shielded seats to every patron who may desire protective screening, but ultimately opined that this was not required to demonstrate a duty of care had been fulfilled. As Mr. Brisson was an adult possessing ordinary intellect, he was expected to comprehend the fact that foul balls are probable and that these projectiles leaving the field of play have the potential to cause injury. The Supreme Court of Minnesota reversed the decision of the Trial Court and directed judgment in favor of the defendant, as it concluded Mr. Brisson had assumed the risks involved in his spectatorship.

Circumstances in which team employees offer advice or assist patrons with seat selection have become a point of contention in the courts as well. In *Quinn v. Recreation Park Association and San Francisco Baseball Club, et al.* (1935), fourteen year-old Joan Quinn was injured as the result of a foul ball during a professional baseball game at

Recreation Park in San Francisco, CA. The ball was batted by Mr. Suhr of the Pittsburgh team while facing the San Francisco ball club, and each was named as a defendant in the case. Ms. Quinn, who attended the contest unaccompanied, testified in court that she had requested a seat behind the protective screening along the first base line, but was seated in an exposed area by an usher who maintained that no sheltered seats were available in her desired area. It was also established that she was familiar with the game of baseball, its rules, and the danger posed to spectators by foul balls leaving the field.

The District Court of Appeal, as well as the Supreme Court of California, affirmed the decision of the Trial Court in finding in favor of the defendants. Mentioning *Edling* (1914), *Wells* (1913), *Brisson* (1932), *Kavafian* (1919), and *Eno* (1925), The Supreme Court of California acknowledged that the duty of care had been fulfilled when screened seats had been provided for as many spectators who may reasonably desire them. Baseball does not guarantee spectatorship free of injury, Ms. Quinn was aware of the danger presented by foul balls, and had assumed the risk.

Spectator movement while a game is in progress has been a topic of interest as communicated in *Olds v. St. Louis National Baseball Club* (1937). During a St. Louis Cardinals game, a spectator was struck in the face by a foul ball while the individual was exiting the facility, but not protected by safety netting. The finding was that the duty of care owed by the ballpark to the fan extended to areas in which fans may enter or exit the facility (and in which their attention may not be on the on-field action).

Unique circumstances may also impact the interpretation of reasonable care and/or the duty owed to spectators. *Cates v. Cincinnati Exhibition Company and the City of Durham* (1939), provides an example of a nighttime contest in which negligence was alleged.

Mr. John Cates was struck in eye and injured by a foul ball while viewing a professional baseball game at El Toro Park, owned, operated, and leased by the city of Durham, NC. The nighttime September, 6, 1936, contest featured a match-up between two ball clubs from the Piedmont League. Mr. Cates' seat was in the bleachers along the left field line adjacent to third base. Although the cheaper bleacher seats (40 cents) did not possess any protective wire screening, it was confirmed that the more expensive grandstand accommodations (65 cents) included both a wire screen and an overhead roof. The plaintiff sought to recover damages as a result of the defendant's alleged negligent actions in failing to provide adequate protection.

The defendants cited Mr. Cates' familiarity with the game of baseball, his understanding that foul balls regularly left the field of play, and that he had voluntarily selected his position in the bleachers when protected grandstand seats were available. The defense's motion for dismissal was sustained and claims of negligence were rejected by the Trial Court. The Supreme Court of California affirmed the Trial Court's dismissal and further stated that the installed lights were at the proper height and had not contributed to the plaintiff's injury since they were not an exceptional hazard. Citing *Wells* (1913), *Brisson* (1932), *Crane* (1913), *Quinn* (1935), *Grimes* (1935), *Lorino* (1931), *Blackhall* (1936), and *Kavafian* (1919), the Court established that by providing screened viewing options and allowing patrons to choose their desired seats, the defendants had satisfied their duty to the plaintiff.

In *Hudson v. Kansas City Baseball Club, Inc.* (1942), Mr. Eugene Hudson was injured on July, 28, 1940, as the result of a foul ball striking him, while viewing a professional baseball game double-header hosted by the Kansas City Baseball Club. On the

date in question, Mr. Hudson asked for the best reserved seat available, paid the one dollar ticket price, was escorted to his seat by the usher in attendance, and assumed that he was protected by the wire netting in place. The plaintiff attended baseball games in the past at the stadium in question and was knowledgeable of the danger presented to spectators by foul balls.

The Supreme Court of Missouri reviewed the ruling of the Jackson (MO) Circuit Court, which found in favor of the defendant. In affirming the lower court's judgment, the opinion focused on extensive case law and reviewed a plethora of baseball cases involving knowledge and appreciation of potential danger, assumption of risk, and an individual's voluntary decision in choosing which ticket to purchase and/or seat to occupy. The Court established that dangers inherent in the game of baseball are open and obvious, the plaintiff was well aware of the risks posed by foul balls, and that he voluntarily chose to watch the game from an unscreened area. The decision centered on Mr. Hudson's knowledge of the threat posed by foul balls and his assumption of the aforementioned risk.

Hull v. Oklahoma City Baseball Co., et al. (1945) provides an example of a plaintiff who chose to sit in an unprotected section when protected seats were available. While she was sitting in an unprotected area of the grandstand within a baseball stadium, Ms. Luella Hull was struck and injured by a foul ball on August 14, 1941. She contended that the ballpark owner/operator owed her a duty of care and protection from injury while an invitee at the ballpark. Although the defendant provided screening for seats up to 135 feet on each side of home plate, as well as protection for certain box seats, the plaintiff's section was afforded no such safety measures. Following an objection of the defendants, based on the

evidence presented by the plaintiff, the District Court sustained the demurrer and the case was dismissed.

The Supreme Court of Oklahoma affirmed the lower court's decision and based its affirmation on the fact that protected seats were available to those spectators who so desired them. Derived from the ruling in *Hudson* (1942), negligence is not proven when threats to one's wellbeing are known and safer seating options are available. It was not established that the plaintiff's injury was the direct result of the defendant's action or inaction, nor was the duty of care owed to the plaintiff breached by the defendant.

Familiarity with the sport, as well as risks inherent in baseball, are reviewed in *Shaw v. Boston American League Baseball Company* (1950). Ms. Lillian Shaw was struck in the head and injured by a foul ball in the fifth or sixth inning while seated on the first base line, in box A-31, on April 26, 1942, in Boston's Fenway Park. The professional baseball game between the Boston Red Sox and New York Yankees was sold out and Ms. Shaw's A-box seat, which contained no protective screening, was the closest seating area to the field of play. While it emerged that the plaintiff had never viewed a game from the box seats in the past, it was established that she was familiar with the game of baseball and knowledgeable of the fact that foul balls often leave the field of play. On the date in question, Ms. Shaw witnessed the batter foul the ball and attempted to move out of its path prior to it striking her head. She blamed her restricted movement and her inability to get out of the way on the carelessness of the ballpark owner as the box was overcrowded with too many folding chairs.

The Trial Court found in favor of the defendant, yet Ms. Shaw presented exceptions on appeal. The Supreme Judicial Court of Massachusetts upheld the lower court ruling based on Ms. Shaw's familiarity with baseball, the fact that she was injured as the result of a

common foul ball, and that she voluntarily assumed the risk of injury through her attendance at the ballpark. Furthermore, the situation involving folding chairs in the plaintiff seating box did not directly cause her injuries. Although *Lemoine* (1940) established that owner/operators owe invitees a standard of reasonable care and have a duty to warn of present danger, *Shanney* (1936) dictated that there was no duty to warn of dangers already open and obvious to the patron. Specific to baseball, the Court referenced *Crane* (1913), *Kavafian* (1919), *Brisson* (1932), *Wells* (1913), *Edling* (1914), *Eno* (1925), and *Grimes* (1935), in establishing that the plaintiff assumed the risks inherent in baseball as she was familiar with the game of baseball.

Team employee assertions have also been exploited in a court of law, as was the case with *Anderson v. Kansas City Baseball Club, Corp.* (1950). On September 5, 1947, Ms. Betty Anderson was a baseball spectator who chose to sit behind a protective wire netting. However, this seat was reserved and she was directed by a stadium employee to an exposed unreserved seat. Upon questioning the usher regarding her new seat's security, it was alleged that the individual assured her of its safety. Ms. Anderson was struck by a sharply driven ball, sustained injuries, incurred medical expenses, and sued the Kansas City Baseball Club in the amount of \$10,000. It was alleged that the ballclub was negligent as its agent directed her to an unsafe seat and failed to sufficiently warn her of impending danger.

Upon examination of the evidence presented, the Trial Court granted the defense motion for dismissal. The plaintiff failed to establish negligent behavior on behalf of the ballclub; the case was appealed to the Supreme Court of Missouri, where the judgment was affirmed. In sustaining the *Hudson* (1942) decision, the Court maintained that a ballpark was not negligent when it decided not to provide protective screening for every seat in the

stadium. As established in *Hudson*, *Brummerhoff* (1941), *Crane* (1913), *Keys* (1941), and *Brisson* (1932), a ballpark had fulfilled its duty of care to its patrons when it screened the area of the stadium in which the greatest number of foul balls occur. Furthermore, *Grimes* (1935), *Keys* (1941), and *Hudson* (1942) dictated that only a reasonable number of screened seats must be provided and that spectators assume the risks inherent in baseball as dictate in *Hudson* (1942) and *Edling* (1914). An understanding of the game of baseball was not required and the alleged negligent actions of the defendant did not cause, nor result in, the plaintiff's injuries.

The plaintiff in *Leek v. Tacoma Baseball Club, Inc.* (1951) asserted that he had been injured due to extraneous circumstances. After purchasing a ticket on the night of August 4, 1949, 65 year-old William Leek attended a baseball game hosted by the Tacoma Baseball Club, Inc., for a contest between the Kansas City Monarchs and the House of David. Upon his late arrival at approximately 8:00 PM, Mr. Leek was directed by an usher to his seat to the left of home plate and four rows behind the vertical wire screen with dimensions of twenty-six feet high and thirty-four feet wide. Although it has been contended that the plaintiff assumed the presence of an overhead screen, no such protection existed. Shortly after assuming his seat in the grandstand, a foul ball was hit high into the air over the plaintiff's section. It was contended that Mr. Leek lost sight of the foul ball as the stadium lights were not yet turned on and the night sky was hazy. He was struck by the foul ball, knocked unconscious, and taken to the hospital for treatment.

Following the plaintiff's presentation of evidence during trial in the Superior Court of Washington, the defense motion for dismissal was granted. On appeal, the Supreme Court of Washington affirmed the lower court's judgment and stated that by providing a vertical

screen, the ballpark did not guarantee or ensure the safety of its invitees. Although Mr. Leek contended that no seats were properly screened, the lack of an overhead netting was obvious, and the vertical protection provided did not give a false sense of security; the absence of overhead protection did not create an unreasonable risk. The ruling focused on the fact that, although the ballpark was compelled to apply reasonable care [*Crane* (1913), *Curtis* (1929), *Ivory* (1939)], and the duty to its patrons required some screening [*Crane* (1913), *Eno* (1925), *Quinn* (1935), *Olds* (1937), *Ratcliff* (1938)], the duty to screen all seats did not exist [*Wells* (1913), *Eno* (1925), *Brisson* (1932), *Quinn* (1935), *Olds* (1937), *Ratcliff* (1938)]. Pop-fly foul balls simply fall at the rate of gravity and do not occur often enough or cause serious enough injuries to be considered an unreasonable risk. In further citing *Hudson* (1942), the danger was deemed to be open and obvious and *Kavafian* (1919) was briefly referenced as an additional relevant case in Washington.

The 1951 case, *Hamilton v. Salt Lake City Corp., et al.* (1951), further examined the issue of adequate protective netting at baseball games. A female plaintiff sued Salt Lake City for injuries sustained to her by a fourteenth inning foul ball which struck her spine after going over the top of the protective netting. The ballpark at which she was in attendance as a business invitee was constructed, owned, and operated by the municipality. The plaintiff contended that the screen in place, 32 feet high by 150 feet wide, inadequately protected spectators from projectiles leaving the field of play. Affirmed by the Supreme Court of Utah, the Trial Court dismissed the case following a pre-trial motion by the defense. As a matter of law, the ballpark was only required to create a sensibly safe environment using reasonable or ordinary care [*Hudson* (1942) & *Leek* (1951)] and spectators assumed the risks inherent in baseball as outlined in *Quinn* (1935).

Following the removal of the batting-practice cage, the victim in *McNiel v. Fort Worth Baseball Club* (1954) was struck in the head by a foul ball while sitting in an unprotected seat. The forty-eight (48) year-old man was familiar with the game of baseball and the court ruled in favor of the defendant. It stated that risks inherent in the game of baseball are also prevalent during batting practice and that similar rules apply to both instances.

Hunt v. Portland Baseball Club (1956), presents an interesting verdict regarding the issue of safety while entering or exiting the ballpark as well as the level of protection owed during the normal course of a baseball game. On August 8, 1952, the plaintiff, Mr. Hunt, was accompanied by his wife and another couple and attended a Pacific Coast League baseball game at the Vaughn Street baseball park. Although the ballpark possessed behind home plate screening which was 199 feet long, and covered 2,500 spectators of the 10,000 seat capacity stadium, the seats of the plaintiff's party were along the third base line and not protected by the screening. While Mr. Hunt was not injured while sitting in his seat, he and his party began their exit from the ballpark prior to the end of the ballgame. As he, his companions, and other spectators neared the exit and filed out, Mr. Hunt took his eyes off the game and was struck by a foul ball hit by Hank Art, only ninety-six (96) feet away. The injured plaintiff filed litigation alleging negligence on the part of the baseball club.

Although the jury in the Circuit Court had previously sided with the plaintiff, Mr. Hunt, the trial judge granted the defendant's motion for a judgment notwithstanding the verdict. On appeal, the Supreme Court of Oregon affirmed the decision of the Circuit Court of Multnomah County, stating that by attending the game, Mr. Hunt had assumed the risk of injury as he had thorough knowledge, understanding, and appreciation of the risk of foul

balls entering the spectator areas. Furthermore, Mr. Hunt's injuries were not a result of negligent or unreasonable conduct by the baseball club itself.

Lee v. National League Baseball Club of Milwaukee, Inc. (1958) involves a situation in which a spectator was injured by other fans seeking a souvenir foul ball. On May 15, 1955, Mrs. May Lee was on-hand at Milwaukee County Stadium for a double-header baseball game between the Milwaukee Braves and the Philadelphia Phillies. Mrs. Lee's ticket entitled her to sit in box 14 along the third base line, which possessed no protective screen in front of it. The attendance for that day was announced at 42, 351, which was close to the stadium's full capacity of 43,000 people. In the bottom-half of the eighth inning, a foul ball landed in box 14, two rows ahead of Mrs. Lee's seat. Ten to twelve individuals scrambled to reach the foul ball, as the individual lucky enough to possess the baseball would be allowed to keep it as a souvenir. In the commotion and race for the foul ball, Mrs. Lee was knocked to the ground, trampled, and sustained two broken ribs, as well as bruises and scraped to shoulder. Although an usher was positioned in box 14, he had recently left his post to begin preparing for post-game on-field duties.

The Supreme Court of Wisconsin was tasked with reviewing the decision of the Civil Court, which found in favor of the plaintiff, Mrs. Lee. Whereas the League had admitted that the crowd in attendance often scrambled for foul balls and that the usher was not at his proper post, the Supreme Court affirmed the decision of the Civil Court and found in favor of Mrs. Lee. Although spectators assume the risk of foul balls leaving the field of play as outlined by the cases *Brown* (1950), *Shaw* (1950), *Brisson* (1932), *Hunt* (1956), and *Schentzel* (1953), this particular case was dissimilar from normal foul ball cases involving spectators not protected by screening. The league should have reasonably anticipated

injuries as a result of the mob-like atmosphere following foul balls and the usher's absence directly contributed to Mrs. Lee's injuries. Furthermore, the plaintiff had no knowledge that injury could occur as a result of fans scrambling for foul balls, which was reinforced by the league's admission that no such harm had occurred in the past.

Powless v. Milwaukee County, et al. (1959) presents a case in which the size of the protective screen was discussed. During the fourth inning of a professional baseball game between the Milwaukee Braves and the New York Giants on June 9, 1954, Ms. Ramona Powless was struck in the head and injured by a foul ball. Her lower deck box seat in Milwaukee County Stadium, located twelve rows from the field along the third base line and 234 feet from home plate, was not one of the 2700 seats (out of 43,000) protected by the fifty-six foot wide protective backstop. Ms. Powless' testimony indicated that she heard the 'crack of the bat,' but was hit in the head by a foul ball while marking her score card that evening. Under the safe-place statute of Wisconsin, she sued Milwaukee County and the National League Baseball Club of Milwaukee County, Inc., claiming that the defendants failed to provide safe viewing areas for its fans.

Due to the fact that the basis of the litigation was the safe-place statute, the defendants were unable to establish their defense on the spectator's assumption of risk, and instead focused on Ms. Powless' contributory negligence. Although foul balls injured fifty spectators at Milwaukee County Stadium during the 1953 season and projectiles were known to enter the stands from the field of play, the Supreme Court established that the Milwaukee's protective screening was customary in size and confirmed that no other Major League Baseball stadium provided protective screening around the entire playing field. As recognized in *Lee* (1958), patrons who purchased a ticket and took their seats in unscreened

area understood that no protective netting existed and that foul balls entering the stands were likely. In affirming the Trial and Appellate Courts' decision on behalf of the defendants, The Supreme Court of Wisconsin referenced Ms. Powless' inattentiveness and scorekeeping activities; had she been paying attention to the game, she would have had sufficient time to evade the foul ball.

The plaintiff's lack of appreciation for the risk involved was a critical element missing in the defendant's assumption of risk defense in *Dean v. Martz* (1959). On June 7, 1956, Ms. Rosemary Dean, along with her husband and infant child, attended a company picnic at an amusement park and playground operated by the defendant, Mr. Jacob Martz. On the day in question, Ms. Dean was sitting in a shaded area of the grandstand when she was struck in the eye by an errant throw of a small, spongy rubber ball. A group of boys was playing baseball on the field with equipment bought or borrowed from the defendant. The wild pitch passed through the protective chicken wire screen and struck the plaintiff in the eye causing a retinal tear and additional permanent damage.

Although the Trial Court found in favor of the defendant and that Ms. Dean had assumed the risk upon entering the premises, the Court of Appeals of Kentucky reasoned that the plaintiff had no appreciation of the danger presented to her wellbeing. She was unaware that the ball was able to pass through the protective screen and ignorant of the fact it had the potential to cause such serious injury. In reversing the previous ruling, the Court cited a lack of negligent behavior by the plaintiff as well as her valid presumption of personal safety at the ballpark.

In *Jones v. Three Rivers Management Corporation* (1978), the Pennsylvania court ultimately rejected the application of its stringent "no-duty rule" and found in favor of the

plaintiff. In this example, the victim was struck in the eye while standing on the right-field concourse at a 1970, Pittsburgh Pirates game. The ball sailed through a large opening, where a spectator could view the action taking place on the field. The court stated that this was a risk not inherent in the game and the spectator could not reasonably expect such dangerous conditions.

Providing an example of comparative negligence, *Akins v. Glens Falls City School District* (1981) is the oft-cited example used to define the duty of care. Ms. Robin Akins was struck and injured by a foul ball on April 14, 1976, during an interscholastic contest between two high school baseball teams in the Glen Falls City School District. Following her late arrival, Ms. Akins took her viewing position along the third base line, just outside the scope of the protective backstop screening which was twenty-four feet high and fifty-four feet in width. The backstop was said to accommodate 120 seated adults with additional room available for standing spectators to be afforded protection. Her location was sixty feet from home plate and she was struck in the eye by a foul ball shortly after her arrival to the ball field. The plaintiff sued the Glen Falls City School District in the amount of \$250,000, based on her critical injuries and permanent damage. She asserted that the defendant was at fault for failing to make adequate protective screening available.

The jury in the trial court returned a verdict in favor of the plaintiff and awarded \$100,000 of damages, assigning fault to the school district and plaintiff at 65% and 35% respectively. The split Appellate Division upheld the Trial Court's decision, with the two dissenting justices focusing on the lack of negligent behavior on behalf of the school district. In reviewing established case law from other states, the Court of Appeals of New York referenced the application of the doctrine of assumption of risk to injuries sustained to

spectators at sporting events [*O'Bryan* (1977), *Dillard* (1977), *Kozera* (1972), *Barker* (1961), *Zeitz* (1941), and *Cadieux* (1966)]. Although the *Adonnino* (1939) and *Blackhall* (1935) lower court rulings in New York had examined the issue, no case law existed and the Court of Appeals sought to define the duty of care owed to spectators at baseball games.

While it was established that there was no duty to screen the entire ballpark, the Court scrutinized the amount of screening necessary to have fulfilled the duty of care. *Crane* (1913) and *McNiel* (1954) called for providing spectators the opportunity to sit behind protective netting, while *Quinn* (1935) and *Leek* (1951) required screening for as many patrons that may reasonably demand them on a normal occasion. *Maytnier* (1967), *Brisson* (1932), and *Erickson* (1951) extended the scope in calling for the most dangerous portion of the ballpark to be protected. Following the two-pronged approach, The Court of Appeals of New York concluded that only the most dangerous portion of the ballpark must be screened and only an adequate number of protected seats must be provided for as many spectators who many reasonably desire such safeguards. Due to the fact that the Glen Falls City School District provided a protective backstop for the most dangerous portion of the field, the school district was not negligent by not screening along the less dangerous base lines as cited in *Cates* (1939), *Curtis* (1929), and *Leek* (1951). Therefore, the Court of Appeals reversed the previously decision and dismissed the case.

The plaintiff in *Uzdavines v. Metropolitan Baseball Club, Inc.* (1982) alleged that while sitting behind home plate, she was struck in the head by a foul ball which passed through a hole in the screen. The court ruled that a duty to provide adequate protection to spectators existed, and Ms. Uzdavines would not have been injured without the negligent action of the team.

A reference to the limited duty of care owed to spectators is provided in *Davidoff v. Metropolitan Baseball Club, Inc., et al.* (1984). At Shea Stadium in Flushing Meadows, NY, fourteen year-old Jennifer Davidoff attended a professional baseball game hosted by the New York Mets. Viewing the game from a box seat near first base, she was not protected by the backstop screen and was only separated from the field of play by a three-foot partition. Ms. Davidoff was distracted from the action on the field and was struck in the eye by a foul ball; she subsequently lost vision in one eye due to her serious injuries. She, along with her father, became plaintiffs in a suit against the owners and lessees of Shea Stadium; the defendants included the city of New York (owner) as well as the Metropolitan Baseball Club, Inc. (lessee).

In the *Davidoff* (1984) case, the Trial Court denied the defense motion for summary judgment, yet was overturned by the Appellate Court's reversal and summary judgment in favor of the defense. Upon review by the Court of Appeals of New York, the opinion cited the duty of care owed to spectators established in *Akins* (1981). Shea Stadium's backstop netting was adequate in size, able to accommodate as many patrons who may be expected to desire such safeguards, and on the day in question, empty seats existed behind the screened area. Therefore, the Court of Appeals of New York affirmed the Appellate Court decision, dismissed the plaintiff's complaint, and saw no reason to modify the precedent set in *Akins* (1981).

The opportunity to choose seats behind protective netting became an issue of significance in *Vines v. The Birmingham Baseball Club, Inc., et al.* (1984). Mr. Gerald Vines was present at a professional baseball game hosted by the Birmingham Barons at Birmingham's Rickwood Field on August 6, 1982. Accompanied by his wife and another

couple, he sat along the first base line beyond the reach of the protective backstop provided by the stadium for the safety of its patrons. During the course of the ballgame, Mr. Vines was struck in the head by a foul ball off the bat of a Birmingham Baron, and endured severe facial injuries. Though the injured party brought suit against the Barons for allegedly breaching its duty of reasonable care and for failing to warn of dangers inherent to baseball, the defense countered that the plaintiff had assumed the risk of injury by a projectile leaving the field of play.

The Trial Court granted the defense motion for dismissal, and after a comprehensive evaluation of the issue, the Supreme Court of Alabama affirmed the lower court's decision. The foundation of the judgment was centered on the fact that warning signs were placed in conspicuous locations and that Mr. Vines had the option to chose seats behind the protective netting. The Court further cited *Anderson* (1950), *Keys* (1941), and *Edling* (1914), in establishing that the Birmingham ballclub had fulfilled its duty of care to its spectators by providing a screened area in the most dangerous portion of the park and for as many patrons who may reasonable desire such seats.

The claim in *Clapman v. City of New York, et al.* (1984) was threefold in nature; it was asserted that the protection was not extensive enough, a sufficient number of seats were not available behind the screen, and that vendors caused his injuries by obstructing his view to the field and the subsequent foul ball. Mr. David Clapman, seated in a box seat near the home team dugout in Yankee Stadium, was injured by a foul ball in July of 1977. The plaintiff filed a lawsuit alleging negligence on the part of the New York Yankees and its agents. Citing *Davidoff* (1984) and *Akins* (1981), The Court of Appeals of New York affirmed the Trial Court's summary judgment, stated that no breach of the duty of care owed

to spectators existed, and that the stadium did not owe a guarantee that its vendors would not potentially block patrons' lines of sight.

In *Simpson v. City of Muskogee and Muskogee Knothole Association* (1994), Mr. I.G. Simpson was struck in the eye by a baseball while in attendance at a baseball game. His grandson was a participant in the game being played at the city owned ballpark which was operated by the Muskogee Knothole Association. Both the city of Muskogee and the association were named as defendants in the lawsuit based on the claims of negligence by the plaintiff. Mr. Simpson asserted that the spectator seating area was not properly screened and that ballpark the owner/operator neglected to warn patrons of hazards.

The Trial Court granted a motion for summary judgment for the defense and declared that Mr. Simpson had indeed assumed the risk of being struck by baseballs while a spectator at the ballpark. In affirming the Trial Court's judgment, The Court of Appeals of Oklahoma focused on the fact that the plaintiff voluntarily attended the game and had been a frequent spectator over the past five years. Therefore, based on the primary assumption of risk doctrine outlined in *Thomas* (1988), Mr. Simpson assumed the open and obvious risks inherent in the game of baseball. The defendants were not required to warn or resolve issues involving open and obvious dangers as stated in *Hull* (1945). Similar to *Lang* (1974), it was inconsequential that the baseball in question did not come from the playing field but rather, from individuals warming up between ball fields; it was not established that the city or association was informed of obscure dangers involving players warming-up between fields.

Asserting negligence in *Lawson v. Salt Lake Trappers, Inc.* (1995), four year-old Brook Lawson, along with her parents, attended a Salt Lake City Trappers baseball game on July 4, 1991, at Derks Field. Ms. Lawson's party consisted of ten individuals; therefore,

general admission tickets were purchased so that their entire group would be able to sit together. The plaintiff's chosen seats were located 143 feet from home plate, above first base, and midway to the top of the stands. Although a backstop of protective netting was provided for the area directly behind home plate, no such safeguards were made available by the stadium for this particular section of spectator seats.

The plaintiff, along with her parents, filed litigation against the Salt Lake Trappers and Salt Lake City Corporation, alleging negligent action by the owner/operator of Derks Field. The claims included a failure to provide sufficient safety features and protect against known hazards, as well as an allegation of negligent infliction of emotional distress. Upon review by the Supreme Court of Utah, it was established that the Trial Court correctly granted summary judgment for the defendants on all contentions; only reasonable care and a reasonably safe environment was owed to the Lawsons as outlined in *Hamilton* (1951).

No duty of care existed to screen the entire ballpark, only the most dangerous portion and for as many patrons who may be reasonably expected to request such protective netting as affirmed in *Bellezzo* (1992), *Yates* (1992), and *Akins* (1981). Such determinations were referred to as the majority rule and consideration was given with respect to baseball tradition and patrons' seating preferences devoid of netting. As such, the ballpark furnished a protective screen for the most dangerous portion of the stands and the defendants' duty of care to the plaintiffs was fulfilled as discussed in *Bellezzo* (1992), *Coronel* (1992), *Akins* (1981). Furthermore, it was not established that an inadequate number of seats were available based on the precedent set in *Bellezzo* (1992), *Rudnick* (1984), and *Akins* (1981). Additionally, *Hamilton* (1951) and *Quinn* (1935) guided the court regarding assumption of risk; as foul balls are inherent in the game of baseball, such risks are implicit by spectators in

attendance. Regarding the plaintiff contention of emotional distress, the Court found that the parents did not witness the event, and due to speed at which the foul ball struck their daughter, there was no time for anxiety or distress.

Lowe v. California League of Professional Baseball et al. (1997) examined the issue of non-baseball, external distractions presented at baseball games. John Lowe attended a Rancho Cucamonga Quakes minor league baseball game (Class A) at the team's stadium, called the 'Epicenter,' on July 26, 1994. He was seated along the left field foul line in the Left Terrace Section. While the game was in-progress, the Quakes' mascot Tremor, was entertaining the crowd in close proximity to Mr. Lowe. After being bumped by Tremor's long tail, the spectator turned his attention to the dancing mascot and away from the action on the field. This distraction proved critical, because as he returned his attention to the ballgame, Mr. Lowe was struck in the face by a foul ball and received very serious injuries.

The Trial Court, relying on *Knight* (1992), granted summary judgment for the defendant based on the assumption of risk doctrine. In his appeal, the plaintiff contended that the Trial Court erred in its application of the doctrine of assumption of risk and should not have relied on *Clapman* (1984). In citing the distraction created by Tremor, The Appellate Court stated that the risk to Mr. Lowe had been increased. The Court referenced *Neinstein* (1986), a case with an unfavorable outcome for the plaintiff, yet clearly differentiated between the circumstances of the two cases. *Lowe* (1997) included a non-baseball distraction initiated by the team and the court found in his favor. It was determined that a duty of care was owed to Mr. Lowe to not increase the risk inherent in baseball and that this constituted an issue which should be heard by a jury. The Supreme Court of California then also denied the respondents' petition for review.

It was asserted in *Benejam v. Detroit Tigers, Inc.* (2001) that a broken bat curved around the protective screen and struck a minor female, crushing her fingers. In an explicit reference to the limited duty rule, the Michigan court relied on *Akins* (1981) and reaffirmed the precedent. It was emphasized that Michigan should adopt the limited duty (baseball) law as spectators are not guaranteed absolute safety at baseball games. Furthermore, the court indicated that reckless behavior was the standard at which proprietors of recreational activities should be held liable, and that the limited duty (baseball) rule protects the competing interests of the duty owed by both ballparks and spectators.

Thurmond v. Prince William Professional Baseball Club, Inc., et al. (2003) is related to the August, 1997, injury suffered by Ms. Donna Thurmond. Ms Thurmond attended a nighttime baseball game at G. Richard Pfitzner stadium hosted by the Prince William Professional Baseball Club, Inc. During the eighth inning of the baseball game featuring the Prince William Cannons, Class A minor affiliates of the St. Louis Cardinals, Ms. Thurmond was hit in the face by a line drive foul while seated high in the bleachers along the third base side. The plaintiff saw the ball approaching but contended that she was not able to elude the hard driven ball which caused facial fractures, eye socket destruction, and massive nerve damage. Although the stadium provided warnings of projectiles leaving the field of play on every ticket and warning signs conspicuously placed at each stadium entrance, Ms. Thurmond contended that, as a first-time invitee, the stadium was negligent in providing a safe environment. She claimed to be unaware of the ticket warning, ignorant of the fact that screened seats were retained for spectators who may so desire such safeguards, asserted that the defendants had failed to adequately warn of baseball dangers.

In awarding summary judgment to the defendants, the Trial Court found that Ms. Thurmond had assumed the risk of being injured as the result of projectiles leaving the field of play. On review, the Supreme Court of Virginia affirmed the Trial Court's judgment and adopted the limited duty ruled encapsulated in *Akins* (1981). The plaintiff, confirmed to be of average intelligence, would have been able to ascertain that players are not always able to control where foul balls go and that such projectiles have the ability to cause injury to spectators as determined by *Brisson* (1932). According to the rulings analyzed in *Quinn* (1935), *Hunt* (1956), *Shaw* (1950), *Anderson* (1950), *Hobby* (2002), *Simpson* (1994), *McNiel* (1954), and *Lawson* (1995), the plaintiff assumed the risk of injury as she was familiar with the game of baseball, understood risks involved, and voluntarily assumed her seat in an area unprotected by netting or screening.

A failure to provide a safe facility as well as adequately warn of imminent danger was presented in *Tucker v. Architectural Design Group, Inc., et al.* (2004). On April 17, 1998, Mr. and Mrs. Keith Tucker attended a professional baseball game in a luxury suite at Redhawks' Stadium in Oklahoma City, OK. Mr. Tucker was injured when a foul ball struck him in the eye area and he filed subsequent litigation. The Trial Court found in favor of the defendants as the spectators assume the normal risks in attending baseball games. In accordance with the ruling in *Hull* (1945), the Tucker proceedings were not dissimilar from the already established precedent in the state of Oklahoma. Foul balls and projectiles leaving the field of play are an open/obvious danger and present normal risk to spectators attending baseball games. The Supreme Court of Oklahoma denied the motion to overturn *Hull* (1945) and affirmed the judgment of the Trial Court.

The issue regarding what constitutes the friendly confines of a ballpark and in which areas fans should be offered protection was reviewed in *Maisonave v. Newark Bears Professional Baseball Club, Inc., et al.* (2005). Riverfront Stadium, home to minor league baseball's the Newark Bears, hosted Louis Maisonave as a business invitee for a professional baseball game. While waiting in line at a beverage cart on the mezzanine level, Mr. Maisonave was struck in the eye by a foul ball as he chatted with other patrons around him. The baseball struck him in his right eye and caused extensive injuries including facial fractures. The plaintiff brought litigation against The Newark Bears Professional Baseball Club, Inc., as well as the Gourmet Dining Services, which provided concessions services to the baseball club.

Summary judgment was granted for the defendants as the trial court cited *Schneider* (2001) in its decision. By providing a backstop netting behind the most dangerous area of the ballpark (home plate) for a reasonable number of spectators, the limited duty of care owed to Mr. Maisonave had been fulfilled. However, based on the Appellate Division's own interpretation of *Schneider* (2001), the limited duty provided to patrons through a protective netting of the most dangerous area was not meant to be absolute in the area behind plate; due care is expected.

Agreeing with the Appellate Division, the Supreme Court of New Jersey acknowledged that, although stadiums cannot assure every spectator's safety, adopting a limited duty rule for the whole ballpark would immunize stadium operators from liability as well as foreseeable/preventable injuries caused by negligent actions. It was held that the limited duty rule would apply to injuries sustained in the stands, whereas cases similar to that

of Mr. Maisonave would be governed under established negligence principles and the duty of care owed to business invitees.

In the case of *Loughran v. The Phillies and Marlon Byrd* (2006), a spectator was struck in the face and injured by a ball thrown into the stands by Phillies' outfielder Marlon Byrd following the last out of an inning. Such behavior is customary and provides a lucky fan with a memorable keepsake and valuable souvenir. Although the plaintiff argued that the player's action did not constitute a risk inherent in baseball, the court found that projectiles entering the stands are an inherent risk and a common occurrence. Regardless of how the ball entered the stands, the ballpark had no additional duty to protect the plaintiff in such events.

Distinct entertainment areas with an obstructed view was the point of contention in *Turner v. Mandalay Sports Entertainment, LLC* (2008). The Las Vegas 51s, a minor league baseball team owned by Mandalay Sports Entertainment, LLC, played its home games at Cashman Field in Las Vegas, NV, during the 2000-2002 seasons. Kathleen and Michael Turner, season ticket holders, attended a 51s ballgame on May 4, 2002, and left their reserved seats to enjoy the upper level beer garden. While Mr. Turner enjoyed his beer and the view of the ballgame from the beer garden railing, Mrs. Turner decided to eat her sandwich at one of the tables provided. Unable to view the action on the field, Mrs. Turner was struck in the face by an unexpected foul ball which knocked her unconscious and caused a broken nose as well as facial lacerations. The Turners took legal action and alleged that negligence on the part of the 51s caused Mrs. Turner's injuries. Additional claims included Mr. Turner's supposed loss of normal spousal relations (consortium) as well as negligent infliction of emotional distress.

The District Court granted the defendant's motion for summary judgment and stated that the duty of care owed to Mr. and Mrs. Turner was not breached; foul ball dangers exist at baseball games and such hazards are open and obvious. In reviewing the specifications of the limited duty rule, the Supreme Court of Nevada maintained that a minimum of twelve jurisdictions had implemented the baseball rule. By adopting the limited duty rule, the state of Nevada also established the minimum safety conditions and reasonable duty of care owed to spectators as discussed in *Benejam* (2001), *Schneider* (2001), and *Maisonave* (2005). Via the Court's application of the limited duty rule, the Turners' claims of negligence were refuted, and the Las Vegas 51s' protective screening behind home plate had satisfied the duty of care by protecting the most dangerous area of the ballpark. Therefore, the Supreme Court of Nevada affirmed the District Court's judgment on all three counts.

The symmetrical duty of care principle was recently observed in the ruling by the New Mexico Supreme Court in *Edward C. v. Albuquerque Baseball Club, LLC* (2010). Four-year-old Emilio Crespín, along with his family, attended a pre-game Little League picnic in the left field pavilion area at Isotopes Park on July 23, 2003. Prior to the minor league (AAA) baseball game between the Albuquerque Isotopes and the New Orleans Zephyrs, Los Angeles Dodgers and Houston Astros affiliates respectively, a batting practice homerun struck Emilio in the head causing a fractured skull and brain damage. It was alleged that the pavilion area seating arrangements included picnic tables which were perpendicular to, and not directly facing, the baseball field. The plaintiff further contended that batting practice began unannounced and without warning from Isotopes' staff members or through the public address system.

At the District level, a motion for summary judgment was granted to all defendants, which included the Albuquerque Isotopes (operator), City of Albuquerque (owner), the Houston Astros, and New Orleans Zephyrs' player Dave Matranga. Although the state of New Mexico had not examined a case pertinent to the limited duty rule, the District Court believed that it would be adopted based on current state law. Under the limited duty rule, a duty of care to Emilio had been fulfilled in the park's screening of the most dangerous portion of the ballpark for as many spectators who may reasonably desire such safeguards. While the Appellate Court dismissed Dave Matranga and the Astros ballclub as defendants by affirming summary judgment, the decision of the District Court was reversed; the Appellate Court rejected the application of the baseball rule. In its interpretation, the Court ruled that a reasonable duty of care should have been expected and such logical risk management provisions were not in place (i.e., a screen in left field and/or announcement that batting practice was about to commence).

The Supreme Court of New Mexico's comprehensive review of the limited duty rule created a historical analysis of the issue and reviewed a substantial amount of similar case law from other jurisdictions. In defining the limited duty rule and examining the options for the duty owed to spectators, the court evaluated and/or referenced *Benejam* (2001), *Crane* (1913), *Akins* (1981), *Wells* (1913), *Lowe* (1997), *Jones* (1978), *Maisonave* (2005), *Blakeley* (1908), *Eno* (1925), *Maytnier* (1967), *Brown* (1950), and *Knight* (1992). The Supreme Court of New Mexico reversed the Appellate Court's rejection of the limited duty rule and articulated its own interpretation. The Court expressed that owners, operators, and spectators owe a balanced duty of care. As projectiles leaving the field of play are inherent in the game of baseball, spectators must shield themselves and stadium owners/operators must not

intensify the danger posed to its patrons. Although the case was remanded to the District Court for trial on August 6, 2012, an out-of-court settlement was agreed upon prior to jury selection.

In a 2012 case, *Bryson v. Coastal Plain League, LLC* (2012), a college summer league game between the Gastonia Grizzlies and the Martinsville Mustangs was delayed by rain at Sims Legion Park. The plaintiff had purchased a general admission ticket and was standing next to the bullpen while a pitcher was warming up for the late starting contest. Struck in the side of the head by an errant pitch, the plaintiff's claims of negligence were refuted by the courts as the ballpark had met its duty of care. Seats were available in protected areas for those individuals whom may desire such safeguards and the injured party voluntary chose to position himself in an unprotected section.

Summary

Chapter II defined the theory behind the limited duty (baseball) rule, reviewed the elements of negligence, examined concept of duty of care, investigated premise liability, and outlined customary defenses of negligence. Historically rooted in assumption of risk, defenses of negligence have also broached the plaintiff's knowledge, appreciation, and understanding of the inherent risk involved through sport spectatorship (Pittman, 2004). As the issue evolved, the introduction of the limited duty rule clarified the duty of care owed to spectators and it has been often established that, "...liability does not attach to the team or club, as the players and spectators have assumed the risk inherent in the sport" (Manning, 2012c, p. 25).

However, certain jurisdictions have gradually acknowledged that distractions have the ability to divert spectators' attention, creating safety issues and questions of liability due to

the possibility of projectiles leaving the field of play (Khare, 2010). Court rulings, established precedent, and case law generally dictate jurisdictional approach; however, a few state legislatures have asserted their authority in enacting legislation regarding the duty of care owed to spectators at sporting events. Finally, the literature review analyzed the precedent set in important historical cases and provided insight into each jurisdiction's approach and interpretation of the limited duty (baseball) rule.

Chapter III

Methodology

The purpose of this study was to examine legal opinions regarding the limited duty (baseball) rule and assess whether a relationship existed between the independent variables [state, date of decision, referenced legal theory, age, gender, date of injury, level of play, when injury occurred, seat location, type of projectile, distraction referenced, injury location (where struck), and extent of injury] and whether or not the court's decision was in the plaintiff's favor (dependant variable). Chapter III summarized the procedures utilized by the investigator in order to analyze the log odds of a winning or losing decision in a court of law, as related to the established independent variables. Research objectives and court case details were the guiding principles in determining which statistical methods to utilize (Liao, Sun, Jones, & Pokharel, 2009). Results of this research are intended to highlight existing stadium risk management procedures, draw attention to spectator safety, and supply the baseball community with information regarding liability litigation as a result of projectiles leaving the field of play. Insight into the demographics of victims, the evolution of the limited duty (baseball) rule, as well as how state courts view tort law as it related to sport is also provided. In addition, "These findings provide a way by which industry professionals and litigators can better assess the plaintiff's odds of winning in a court of law" (Clement & Otto, 2007b, p. 119). While the limited duty rule was interpreted independently by each jurisdiction, this research examines the possible relationships between court decisions and common independent variables.

Chapter III presents (a) rationale to support document analysis utilized in empirical legal studies as well as the proposed study's (b) research design, (c) population, (d) instrumentation, (e) data collection, and (f) data analysis.

Rationale to Support Document Analysis

As identified by Hall and Wright (2008), 134 empirical studies on a variety of themes existed in the legal field in 2008 involving document analysis. Utilized often in the social sciences, document analysis methods in the legal field were first used to examine written judicial opinions as documented in 1957 by political scientist Fred Kort (Hall & Wright, 2008). Document analysis enables researchers to investigate meanings, add value to legal research, and, "...allows scholars to verify or refute the empirical claims about case law that are implicit or explicit in all branches of legal scholarship" (Hall & Wright, 2008, p. 77). It has the ability to transform legal research through relevant empirical application, and its many advantages have been reported by experts in the field.

In addition to being a perfect fit for longitudinal studies (Babbie, 2013), document analysis has also been described as being adept at identifying and describing themes and patterns (Hall & Wright, 2008). In fact, this methodology is able to examine legal trends as well as potential variations in legal theory (Fields & Young, 2010). Document analysis is able to identify patterns which may prove beneficial to be analyzed more closely (Hall & Wright, 2008). On a basic level, the methodological approach of analysis illustrates an empirical strategy for analyzing vast quantities of information, documents, or other communicative material (Schwartz & Petherbridge, 2011a).

In the legal realm, a plethora of opportunities exist to explore case law, relationships between variables, as well as descriptive statistics and themes found in judicial opinions.

Document analysis, which allows legal minds to verify, analyze, and assess empirical data, has been applied to legal issues through three distinct steps: selection, coding, and analyzing of relevant legal opinions (Schwartz & Petherbridge, 2011a; Schwartz & Petherbridge, 2011b). The examination of case law is important due to its establishment of legal theory.

Through document analysis methodology it is possible to establish logic, order, and a broader understanding of the issue as verifiable empirical claims about case law are available. Document analysis methods are well suited for empirical investigations into the judicial system as legal documents, court opinions, and statutes are comprised of written opinions and allow for a deeper understanding of the issue. In fact, certain legal experts have endorsed the transformative nature of this approach and its ability to establish a unique methodology and an inimitable approach to legal empirical studies (Hall & Wright, 2008).

Due to the fact that the field of Sport Administration encompasses both sport law and risk management, document analysis offers distinct opportunities to empirically study these unique genres in our field. Dr. Damon Andrew, Dean of the College of Health and Human Services at Troy University, inquired as to why there were so few sport and recreation law research articles that incorporate statistics into their design, in his 2009 presentation at the Sport, Recreation and Law Association annual conference. Through examples of their own, professionals in our discipline have encouraged the use of statistical analysis of databases of court decisions (Clement & Otto, 2007b), and the opportunity awaits for any researcher willing to undertake this endeavor.

Population

The sample, which included the entire population of applicable liability cases, was drawn from *Lexis-Nexis Academic Universe* and identified through specific search term queries. Date restrictions were not employed to include the entire historical group of related cases; however, the search terms “Baseball Rule,” “Limited Duty Rule,” “Foul Ball & Negligence,” “Foul Ball & Baseball,” and “Foul Ball & Assumption of Risk” were developed through an informed review of the literature, to assure relevant results. Following the example of Fields and Young (2010), only the most recent court’s decision in regards to each specific case was included, regardless of the number of past appeals. Although foul ball cases involving liability and assumption of risk number in the hundreds, if not thousands yearly, the scope of this search was designed to be limited based on the specified search queries mentioned above. For every case that goes to trial, there are countless more which settled out of court or were dismissed. Researchers utilizing document analysis should not pre-determine sample size; instead, investigators should attempt to reach saturation, or the time in which additional collected information will not yield novel or dissimilar results (Andrew, Pederson, and McEvoy, 2011).

Research Design

An exempt review was submitted via email to the Human Research Protections Office at the University of New Mexico on December 21, 2012. An assigned HRPO number (13-012) was returned on January 11, 2013, for the official pre-review, and an IRB exemption letter was received on January 28, 2013. Upon approval, document analysis was conducted and the sample was gathered from the online database, *Lexis-Nexis Academic Universe*, on January 29, 2013. Data for this study were collected utilizing qualitative methods (document

analysis), and then further assessed through quantitative means. Document analysis offered well established advantages in that qualitative and quantitative measures were applicable; it provided a historical analysis and a remarkable method of investigating interactions between dependant and independent variables (Ross, 2008). Of the five common qualitative methods (Narrative Research, Phenomenology, Grounded Theory, Ethnography, and Case Study), the application of a case study approach was most appropriate. Case study work utilized an in-depth understanding of multiple cases, involved examining data and the establishment of themes, as well as a comprehensive analysis of the broader issue (Creswell, 2007).

Following identification of the sample of pertinent liability cases, through a search of the *Lexis-Nexis Academic Universe*, the results were reviewed and summarized based on their individual characteristics (Liao, Sun, Jones, & Pokharel, 2009). Minimal reviews would not work with this particular methodology as an attention to detail and focus on consistency is required with document analysis. The collection of qualitative data was reviewed by the two trained coders (Liao, Sun, Jones, & Pokharel, 2009). In addition to reinforcing the objectivity and reliability, an established coding system also assisted with enforcing guiding principles of neutrality in research (Hall & Wright, 2008). It was imperative that research was consistent and unambiguous.

Coder Training

As with *a priori* coding, categories were pre-established and based on applicable theory (Ross, 2008, Stemler, 2001b). The independent variable categories were pre-established and based upon the literature review in Chapter II. Coding, which transformed raw data into accepted information in code form (Babbie, 2013), was simplified compared to other mediums (i.e., TV, movies, etc.) as judicial opinions were not under time constraints

nor required segmentation. Judicial opinions offered the ability to review the document as often as needed to obtain the maximum amount of accurate information possible. This type of document analysis also ensured that coding determinations were only made with the available information presented in the judicial opinion (Neuendorf, 2002).

The coding instructions (*Appendix A*), as well as the codebook, were amended as well. Initially, the researcher devised the prerequisite necessary in applicable cases, familiarized himself with the judicial opinions, articulated the coding instructions, and improved the instructions as warranted in collaboration with his second coder (Krippendorff, 1993). In the coding system, the main investigator and his assistant were trained simultaneously and a codebook was established to maintain consistency and reliability. The coding instructions, which possessed a complete description of the categorical variables, were paired with the codebook for the coders' use.

The codebook (*Appendix B*), or primary manual utilized during the coding procedures, listed descriptions, categories, and codes necessary to complete the process (Babbie, 2013). The analytical coding involved the examination of court decisions including the population based on indicators identified in the research question sub-section. Following the model set forth in Hall and Wright (2008), the categorical coding variables were specific, clearly defined and included a sizeable number of coding categories. The protocol and codebook required each coder to work independently, to log his work, and to classify himself with the predetermined identifier (either A or B). Each individual case was reviewed and the parties involved in the litigation were listed first, followed by examination of the independent variables.

Following the guidelines set forth in Neuendorf's *The Content Analysis Guidebook* (2002), the subsequent steps were followed in order to ensure a consistent process and reliable coding. The codebook was created, coders were trained and discussed potential issues, a practice coding session was completed, revisions were made to the independent variable categories, a second coder training was held, reliabilities were confirmed, final revisions were discussed, and ultimately, independent coding took place by Coder A and B. The actual training of coders was conducted by utilizing the established coding scheme as well as establishing clear definitions categories and codes. In order to ensure that the researcher and assistant coder had the same understanding, several cases were coded prior to the training/discussion sessions (both the original and the second coder training session). Following Coder B's independent coding, a comparison was made to examine consistency, which was consistent at 90%. Disagreements were discussed and the coding scheme/categories were clarified as needed (Babbie, 2013). This was one of the most essential steps needed to shape the process and to allow for both coders to be familiar with the idiosyncrasies of the coding procedures (Babbie, 2013; Krippendorf, 1993; Neuendorf, 2002).

Independent variable categories included the state in which the case was examined, date of decision, theory referenced, age, gender, date of injury, level of play, when injury occurred, type of projectile, seat location, distraction present, where struck/injured, and extent of victim's injuries. Derived from the justification for research as well as from factors found to be noteworthy in the Chapter II literature review, the categories with their respective codes were based on the theoretical framework while also allowing for the possibility of previously unidentified observations to emerge (Andrew, Pedersen, McEvoy, 2011).

Categories were well-developed in advance, discussed, and agreed upon by the coders to ensure that classification would be both exhaustive and mutually exclusive for each category (Babbie, 2013). Throughout the process, revisions and modifications were made when necessary, and data were reviewed to ensure accuracy in the coding, as well as the overall process. Revisions were instituted to ensure that the researcher and independent coder were content with the overall coding system (Neuendorf, 2002).

In addition to the clarification of the independent variables, categories therein were clarified, combined, revised, and/or eliminated. Following review, the final modifications were made: date of the court decision and the date of the injury were best coded into twenty-five (25) year segments; MiLB and Independent Professional Baseball combined as both are professional baseball not at the MLB level; age best categorized as a nominal variable (adult or minor), not ordinal; when struck by the projectile would be pre-game, in-game, or other; the protected seat location would incorporate contested as plaintiffs had claimed they were protected; areas outside the traditional (protected/unprotected) seating areas would be combined into concourse, concession, or entertainment area; projectiles would be categorized as baseball, baseball bat, other; upper/lower extremities combines; and extent of injury – minor – would include ambiguous language such as “struck by a baseball.”

Reliability

Also referred to as reproducibility or repeatability, reliability focuses on the consistency of the outcomes achieved (Andrew, Pedersen, & McEvoy, 2011). Document analysis lent itself to a high degree of reliability and is a positive attribute of such methods. This approach was, “...a systematic, replicable technique for compressing many words of text into fewer content categories based on explicit rules of coding” (Stemler, 2001a, p. 4).

Confirmed by intra-rater and inter-rater reliability, reliability depended on the abilities of the two coders and their aptitude in coding/re-coding in a similar and consistent manner. To this end, it was essential that rules regarding coding specifications and expectations were developed so that consistency of categorization was achieved (Ross, 2008). The key to solid document analysis methods was in the ability to establish reliability in coding (Hall & Wright, 2008). Reliability was essential to support valid conclusions and stability in research methods will strengthen the ability to achieve reliability (Andrew, Pedersen, McEvoy, 2011; Babbie, 2013).

Based on the training and attention to detail of the individual coders, inter-rater reliability was expected to be high (between 90-100% agreement). In the simplest of terms, coder reliability was the percentage of agreement between Coder A and Coder B, with the minimum level of 80% being the standard (Riffe, Lacy, & Fico, 2005). Formal assessment of inter-rater reliability required that two independent coders evaluate their findings statistically, with the most common assessment of simple percent agreement (Hall & Wright, 2008). If modifications or clarifications were required, these were identified following the pre-study assessment and implemented accordingly.

Utilizing the previously identified search terms, the independent coders collected their sample independently on January 29, 2013. Table 3.1 reflects the results returned, relevant number of coder, coder agreement regarding the number of selected relevant cases, and the number new (relevant) cases which made up the sample. The coder agreement percentage examined, "...whether or not the coders agree as to the precise values assigned to a variable across a set of units" (Neuendorf, 2002, p. 144).

Table 3.1: Inter-rater Reliability (case selection)

<u>Search Term</u>	<u>Results Returned</u>	<u>Relevant Cases</u>	<u>Coder Agreement</u>	<u>New Cases</u>
Baseball Rule	78	6	6/6 = 100%	6
Limited Duty Rule	39	12	11/12 = 92%	8
Foul Ball & Negligence	308	102	97/102 = 95%	90
Foul Ball & Baseball	327	110	108/110 = 98%	3
Foul Ball & Assumption of Risk	107	170	163/170 = 96%	0
<u>TOTALS</u>	859	400	385/400 = 96%	107

The sample of non-repeated, relevant cases numbered at 107. However, upon further review, the coders ultimately decided to eliminate six (6) cases in order to keep the scope narrowed on baseball spectatorship. These six cases removed focused on participant issues, hockey, softball, and even a legal question regarding a school permission slip. The cases eliminated were *Sweeney v. City of Bettendorf* (2009), *Sciarrotta v. Global Spectrum* (2008), *Wellner v. Beechwood Fire Dep't.* (1992), *Edwards v. Birmingham* (1984), *City of Milton v. Broxson* (1987), and *Swagger v. Crystal* (1986). Whereas $N = 101$, the total number relevant, non-repeated cases for the sample in the study was 101.

In order to further examine reliability, training agreements between coders, intra-rater reliability assessments, and inter-rater reliability evaluations were conducted (Stemler, 2001b). Although two coders were used in this study, both Coder A and Coder B independently examined his/her own stability in coding to test the reliability against himself on two separate occasions (Riffe, Lacy, & Fico, 2005). Utilizing a sub-sample of five (5) judicial opinions, each coder classified the dependent and independent variables. Results confirmed an intra-rater stability rate of 96% (67/70) and 93% (65/70) respectively for Coder A and Coder B. In addition to intra-rater reliability, inter-rater reliability was examined as well. Percentage agreement between coders was high as document analysis involved an

examination of factual issues, not inferential subjects. Any discrepancies in coding were further examined to ensure the correct categorization of each variable.

Table 3.2: Inter-rater Reliability (final coding)

<u>Categorical Variable</u>	<u>Coder Agreement</u>	<u>Percentage Agreement</u>
Case Outcome	96/101	95%
State	101/101	100%
Date of Decision	101/101	100%
Theory Referenced	94/101	93%
Age	101/101	100%
Gender	101/101	100%
Date of Injury	97/101	96%
Level of Play	91/101	90%
When Injured	93/101	92%
Type of Projectile	96/101	95%
Seat Location	92/101	91%
Distraction Referenced	99/101	98%
Where Struck/Injured	98/101	97%
Extent of Injury	89/101	88%
<u>TOTAL</u>	1348/1414	95%

Validity

Accurately studying what it purports to examine was the basis of the investigation's validity, whether or not a study reports what it claims to report. As it relates to document analysis, such research is valid if it accurately evaluates what the researcher desires to measure (Hall & Wright, 2008). In order to increase internal validity, methodical coding can remove components of researcher bias, present more comprehensive investigations, and improve precision (Hall & Wright, 2008). Validity, an essential component in document analysis research, is most commonly accepted in the form of direct or face validity. Rooted

in clear and logical assumptions, coding was expected to record exactly what was purported to be examined (Andrew, Pedersen, & McEvoy, 2011)

Data Analysis

Employing SPSS, version 17, logistic regression was used to evaluate the data. Following qualitative data collection, "...scholars can quantitatively tabulate information coded from opinions, enabling them to draw conclusions from the features that they find scattered throughout the cases" (Hall & Wright, 2008, p. 81). Accumulated case law data was analyzed and descriptive statistics were reported regarding information about each injured party, as well as the event in question. Further, binary logistic regression was utilized to analyze the possible relationships between the case-related sub-questions and the log odds of winning or losing courts decisions. A strength of regression analysis included the ability to find previously unknown patterns or associations in complex legal decisions (Hall & Wright, 2008).

As the dependant variable (court's decision) is categorical in nature and involves only two response choices (0 = losing, 1 = winning), binary logistic regression was the appropriate statistical analysis to be employed in such instances (Andrew, Pedersen, McEvoy, 2011). In addition to corresponding fit of the dichotomous dependant variable, "...the logistic regression model has advantages in interpretation of regression coefficients in terms of the *odds*, that is, the ratio of the probability that an individual is a case to the probability that the person is a noncase" (Cohen, Cohen, West, & Aiken, 2003, p. 486). Through regression analysis, relationships between variables were able to be examined utilizing the regression equation [$Y=f(x)$], where Y is a function of X . In addition to being able to reveal relationships

between Y and X , it was possible for values of Y to be explained in terms of differences in the X variable (Babbie, 2013).

Logistic regression was a good fit for the investigation as it did not require independent variables to be normally distributed, was able to analyze all types of independent variables, and had the ability to generate nonlinear models (Andrew, Pedersen, McEvoy, 2011). Furthermore, the bivariate analysis examined the relationships between variables and tested, "...whether one count differs significantly from another, or instead whether the difference might be due entirely to chance" (Hall & Wright, 2008, p. 118). The binary logistic regression reported the odds-ratio of winning or not winning court decisions in relation to each independent variable obtained from the qualitative review.

Independent variables, outlined in the research question sub-section, were proposed to examine the relationship each had with the dichotomous dependant variable (court decision). The independent variables were to be incorporated into the study based on their inclusion in Chapter II's review of literature, as well as their frequency in court decisions involving projectiles leaving the field of play. It was also hypothesized that such factors had a significant effect on the winning or not winning decision of the court. The level of significance, or alpha level, was, "...the degree of likelihood that an observed, empirical relationship could be attributed to sampling error" (Babbie, 2013, p. 474). Following traditional Sport Management measures, the researcher set the alpha level at .05 for the research (Andrew, Pedersen, McEvoy, 2011). The following research questions were examined as the researcher utilized qualitative methods, crosstabs assessment, and regression analysis.

- RQ1. What was the evolution of the limited duty (baseball) rule in court decisions?
- RQ2. Who were the injured parties in legal cases involving projectiles leaving the field of play at baseball games, and what were the circumstances surrounding their injuries?
- RQ3. What factors contributed to a winning decision in a court of law?
- RQ4. What factors contributed to a losing decision in a court of law?

In order to further explain the results, answering the following sub-questions was beneficial to the analysis:

1. Did a relationship exist between the jurisdiction in which the injury occurred (state) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
2. Did a relationship exist between the date of the final court decision (year) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
3. Did a relationship exist between the referenced legal theory (limited duty rule NOT referenced, limited duty rule referenced) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
4. Did a relationship exist between the victim's age (adult, minor) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
5. Did a relationship exist between the victim's gender (male, female) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
6. Did a relationship exist between the date of the injury (year) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
7. Did a relationship exist between the level of play (MiLB/Independent, MLB, amateur, other/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?

8. Did a relationship exist between the status of the game (*in-game, pre-game, other*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
9. Did a relationship exist between the location where the victim was injured (*unprotected seat, protected seat/contested, concourse/concession/entertainment area, other/unknown*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
10. Did a relationship exist between the type of projectile (*batted ball, thrown ball, other*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
11. Did a relationship exist between spectator distractions (*none referenced, distraction referenced*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
12. Did a relationship exist between the location of the victim's injuries (*head/face/neck, torso/trunk, extremities, other/unknown*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
13. Did a relationship exist between the extent of the victim's injuries (*critical, serious, minor/unknown*) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?

Summary

Qualitative document analysis, strengthened by logistic regression quantitative measurement, is supported by past legal research, the literature review, and examinations into the field of Sport Management. Such investigations remain a viable option for assessing judicial opinions. Through the examination of the relationships between the independent and dependant variables, the study may uncover new aspects of legal issues in our field, which can be explored further and through alternative methods (Hall & Wright, 2008).

Chapter IV

Results

The purpose of the study is to examine the relationship between the outcome in court decisions (for or against the plaintiff) relating to the limited duty (baseball) rule as well as the additional identified independent variables. Chapter IV reflects upon the four (4) research questions which guide this study. A historical analysis of court decisions involving the limited duty (baseball) rule, demographics of plaintiffs injured as spectators at baseball games, as well as the factors which contribute to a winning or losing decision in a court of law are examined. Results describe case characteristics, victim demographics, and present the odds ratio of likely chances of winning/losing a case involving injuries to spectators caused by projectiles leaving the field of play at baseball games. The dependant (binary) variable is the court's decision whether or not to hold the defendant as responsible for the injuries sustained by the plaintiff and is categorical in nature. Utilizing qualitative and quantitative methods, this investigation brings attention to the safety precautions already in place, as well as to highlight successful defenses of liability claims as they relate to projectiles leaving the field of play. An understanding of historical legal decisions and present case law allow for spectators, stadium operators, and the legal field to appreciate the implications of the limited duty (baseball) rule.

RQ1. What is the evolution of the limited duty (baseball) rule in court decisions?

The limited duty (baseball) rule is an evolution of the doctrine of assumption of risk, refers to inherent risk often, and is firmly rooted in the elements of contributory negligence (McNair, 2011). The adoption of a two-prong test, dictates that the stadium's duty of care to

spectators has been fulfilled if a protective netting has been provided to shelter the most dangerous portion of the ballpark for as many fans who may reasonably desire such protections (Fried & Ammon, Jr., 2002). Limited duty and primary assumption of risk are almost synonymous as they relate to spectator safety issues. They are often used interchangeably, have the similar effect, and yield the same result. This is due to the fact that if a stadium's duty is limited, the spectator assumes the risk, and vice versa; if the spectator assumes the risk, then the stadium's duty is limited in scope (Turner, 2006).

In the sample ($N = 101$), which included all relevant cases with outcomes of win, loss, or remand, the earliest returned cases originated in 1913 as both *Crane v. Kansas City Baseball & Exhibition Co.* (1913) and *Wells v. Minneapolis Baseball* (1913) were decided in that particular year. The most current litigation returned was a 2012 case from North Carolina, *Bryson v. Coastal Plain League, LLC* (2012). A majority of the sample, 84 of the 101 cases (83.17%), did not explicitly reference the limited duty (baseball) rule in the judicial opinion provided in the sample. This included 70 adults (83.3%), 14 minors (16.7%), 34 males (40.5%), and 50 females (59.5%). Of the 17 cases which explicitly referenced the Limited Duty Rule (16.83%), 15 cases involved adults (88.2%), two minors (11.8%), eight males (47.1%), and nine females (52.9%). As obtained from the sample of 101 judicial opinions, Pennsylvania's "no-duty rule," which defines the duty of care owed to spectators in that particular state was first explicitly referenced in *Jones v. Three Rivers Mgmt Corp* (1978), followed by another mention in *Ruth v. The Phillies, et al.* (2001). Although the no-duty rule was incorporated into the limited duty (baseball) rule coding category, the limited duty rule and the baseball rule were first explicitly referenced in *Benejam v. Detroit Tigers, Inc.* (2001). Prior to *Benejam* (2001), judicial opinions examined

in this study focused on the scope of the duty owed, elements of negligence, reasonable care, risks inherent in the game of baseball, assumption of risk, and immunity in one particular instance [*Richardson v. City of Columbia* (2000)].

Table 4.1: Theory – Limited Duty (Baseball) Rule

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Not Referenced	84	83.17%	70(82.4%)	14(87.5%)	34(81.0%)	50(84.7%)
Referenced	17	16.83%	15(17.6%)	2(12.5%)	8(19.0%)	9(15.3%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

RQ2. Who are the injured parties in legal cases involving projectiles leaving the field of play at baseball games, and what are the circumstances surrounding their injuries?

The demographics of the plaintiffs, as outlined in the following section, examined the injured parties in the litigation and provided descriptive statistics as well as demographic information ($N = 101$). Results displayed that the injured victims constituted 85 adults (84.16%), 16 minors (15.84%), 42 males (41.58%), and 59 females (58.42%). Of the 42 total males, 35 were classified as adults (83.3%) and seven were shown to be minors (16.7%). The 59 females were categorized into 50 female adults (84.7%) and nine were classified as minors (15.3%). Overall, the total 101 injured plaintiffs were made up of 35 adult males (34.7%), 50 adult females (49.5%), seven minor males (6.9%), and nine minor females (8.9%).

Table 4.2: Age vs. Gender

<u>AGE</u>	Frequency	Percentage	<u>GENDER</u>	
			Male (%)	Female (%)
Adult	85	84.16%	35(83.3%)	50(84.7%)
Minor	16	15.84%	7(16.7%)	9(15.3%)
TOTALS	101	100%	42(100%)	59(100%)

In regards to the case outcome, or whether or not the decision was in the plaintiff's favor, 77 cases were not in favor of the plaintiff (76.24%), 15 were determined to be in the plaintiff's favor (14.85%), and nine were remanded by the court (8.91%). The courts ruled against adult plaintiffs most often, in 69 instances (81.2%). Thirty-one males (40.3%) and 46 females (59.7%) made up the plaintiffs in the litigation in which the court ruled against the plaintiff. As it relates to the 15 cases in which the court ruled in favor of the plaintiff, adults (8), minors (7), males (7), and females (8) made up 53.3% and 46.7% of the cases respectively. Cases remanded for further proceedings (9), included eight adults (88.9%), one minor (11.1%), four males (44.4%), and five females (55.6%)

Table 4.3: Decision in Plaintiff's Favor

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
No	77	76.24%	69(81.2%)	8(50.0%)	31(73.8%)	46(78.0%)
Yes	15	14.85%	8(9.4%)	7(43.8%)	7(16.7%)	8(13.5%)
Remand	9	8.91%	8(9.4%)	1(6.2%)	4(9.5%)	5(8.5%)
TOTALS	101	100%	85 (100%)	16 (100%)	42 (100%)	59 (100%)

Information relating to the state in which the lawsuit was filed, displays that litigation from 30 states constituted the sample of 101 cases. Twenty states were not represented by a case in the sample and included AK, AR CO, DE, HI, ID, KS, ME, MD, MS, MT, NE, NH, ND, RI, SD, TN, VT, WV, and WY. Of the 30 states listed below, New York's 14 cases were the high frequency included. Additionally, 50 cases from only seven jurisdictions, including, NY (14), MO (7), PA (7), CA (6), TX (6), IL (5), and OH (5), comprised almost 50% of the sample (49.5%).

Table 4.4: State in Which Lawsuit Filed

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
AL	1	0.99%	1(1.2%)	0(0.0%)	1(2.4%)	0(0.0%)
AZ	1	0.99%	1(1.2%)	0(0.0%)	0(0.0%)	1(1.7%)
CA	6	5.94%	4(4.7%)	2(12.5%)	2(4.8%)	4(6.8%)
CT	4	3.96%	3(3.5%)	1(6.3%)	2(4.8%)	2(3.4%)
FL	3	2.97%	3(3.5%)	0(0.0%)	1(2.4%)	2(3.4%)
GA	2	1.98%	1(1.2%)	1(6.3%)	0(0.0%)	2(3.4%)
IL	5	4.95%	4(4.7%)	1(6.3%)	2(4.8%)	3(5.1%)
IN	1	0.99%	1(1.2%)	0(0.0%)	0(0.0%)	1(1.7%)
IA	1	0.99%	1(1.2%)	0(0.0%)	0(0.0%)	1(1.7%)
KY	2	1.98%	1(1.2%)	1(6.3%)	1(2.4%)	1(1.7%)
LA	3	2.97%	3(3.5%)	0(0.0%)	2(4.8%)	1(1.7%)
MA	4	3.96%	4(4.7%)	0(0.0%)	1(2.4%)	3(5.1%)
MI	2	1.98%	1(1.2%)	1(6.3%)	0(0.0%)	2(3.4%)
MN	3	2.97%	3(3.5%)	0(0.0%)	2(4.8%)	1(1.7%)
MO	7	6.93%	6(7.1%)	1(6.3%)	3(7.1%)	4(6.8%)
NV	1	0.99%	1(1.2%)	0(0.0%)	0(0.0%)	1(1.7%)
NJ	2	1.98%	2(2.3%)	0(0.0%)	2(4.8%)	0(0.0%)
NM	1	0.99%	0(0.0%)	1(6.3%)	1(2.4%)	0(0.0%)
NY	14	13.86%	11(12.9%)	3(18.8%)	5(11.9%)	9(15.3%)
NC	4	3.96%	4(4.7%)	0(0.0%)	3(7.1%)	1(1.7%)
OH	5	4.95%	5(5.9%)	0(0.0%)	1(2.4%)	4(6.8%)
OK	3	2.97%	3(3.5%)	0(0.0%)	2(4.8%)	1(1.7%)
OR	2	1.98%	2(2.4%)	0(0.0%)	2(4.8%)	0(0.0%)
PA	7	6.93%	7(8.2%)	0(0.0%)	2(4.8%)	5(8.5%)
SC	2	1.98%	2(2.4%)	0(0.0%)	1(2.4%)	1(1.7%)
TX	6	5.94%	5(5.9%)	1(6.3%)	1(2.4%)	5(8.5%)
UT	2	1.98%	1(1.2%)	1(6.3%)	0(0.0%)	2(3.4%)
VA	1	0.99%	1(1.2%)	0(0.0%)	0(0.0%)	1(1.7%)
WA	3	2.97%	2(2.4%)	1(6.3%)	3(7.1%)	0(0.0%)
WI	3	2.97%	2(2.4%)	1(6.3%)	0(0.0%)	3(5.1%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

The independent variable, date of decision, included 28 cases decided between 1900-1949 (27.72%), 42 cases between 1950-1999 (41.58%), and 31 cases between 2000-present

(30.69%). Of the 28 cases decided between 1900-1949, there were 22 adults (78.6%), six minors (21.4%), 14 males (50%), and 14 females (14%). Between 1950-1999, the 42 plaintiffs included 35 adults (83.3%), seven minors (16.7%), 15 males (35.7%), and 27 females (64.3%). In the most recent category involving 31 plaintiffs whose cases were decided 2000-present, there were 28 adults (90.3%), three minors (9.7%), 13 males (41.9%), and 18 females (58.1%).

Table 4.5: Date of Decision

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
1900-1949	28	27.72%	22(25.9%)	6(37.5%)	14(33.3%)	14(23.7%)
1950-1999	42	41.58%	35(41.2%)	7(43.8%)	15(35.7%)	27(45.8%)
2000-present	31	30.69%	28(32.9%)	3(18.8%)	13(31.0%)	18(30.5%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

The date of injury, as assessed by the information provided in the judicial opinion, illustrated that 24 incidents occurred from 1900-1949 (23.76%), 30 from 1950-1999 (29.70%), 16 from 2000-present (15.84%), and 31 were unable to be ascertained (unknown) from the information provided (30.69%).

Table 4.6: Date of Injury

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
1900-1949	24	23.76%	20(23.5%)	4(25.0%)	12(28.6%)	12(20.3%)
1950-1999	30	29.70%	25(29.4%)	5(31.3%)	9(21.4%)	21(35.6%)
2000-present	16	15.84%	14(16.5%)	2(12.5%)	8(19.0%)	8(13.6%)
Unknown	31	30.69%	26(30.6%)	5(31.3%)	13(31.0%)	18(30.5%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

Incidents at Major League Baseball (MLB) games occurred in 32 examples (31.68%), Minor League Baseball (MiLB) or Independent Professional games on 41 occasions (40.59%), amateur contests 19 times (18.81%), and Other/Unknown in nine instances (8.91%). From the sample, 23 females (71.9%) were represented more frequently than their nine male (28.1%) counterparts resulting from injuries sustained at MLB games. Regarding the 41 cases at the MiLB/Independent Professional level, there were 38 adults (92.7%) compared to the three minor (7.3%) plaintiffs.

Table 4.7: Level of Play

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
MLB	32	31.68%	26(30.6%)	6(17.5%)	9(21.4%)	23(39.0%)
MiLB/Independ.	41	40.59%	38(44.7%)	3(18.8%)	25(59.5%)	16(27.1%)
Amateur	19	18.81%	16(18.8%)	3(18.8%)	6(14.3%)	13(22.0%)
Other/Unknown	9	8.91%	5(5.9%)	4(25.0%)	2(4.8%)	7(11.9%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

Injuries occurred most often in-game at a count of 85 instances (84.16%), followed by 13 pre-game incidents (12.87%), and three which were classified as other (2.97%). Of the 85 in-game episodes, it was determined that 71 adults (83.5%), 14 minors (16.5%), 31 males (36.5%), and 54 females (63.5%) were involved.

Table 4.8: When Injury Occurred

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Pre-Game	13	12.87%	11(12.9%)	2 (12.5%)	10(23.8%)	3(5.1%)
In-Game	85	84.16%	71(83.5%)	14(87.5%)	31(73.8%)	54(91.5%)
Other	3	2.97%	3(3.5%)	0(0.0%)	1(2.4%)	2(3.4%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

The location at which the plaintiff was injured was most often an unprotected seat in 65 instances (64.36%). Victims were injured on the concourse/concession/entertainment areas in 16 occurrences (15.84%), 12 times in a protected seat (11.88%), and eight times in an area classified as other or unknown (7.92%).

Table 4.9: Seat Location

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Protected/Contested	12	11.88%	10(11.8%)	2(12.5%)	7(16.7%)	5(8.5%)
Unprotected	65	64.36%	56(65.9%)	9(56.3%)	23(54.8%)	42(71.2%)
Concourse area	16	15.84%	13(15.3%)	3(18.8%)	8(19.0%)	8(13.6%)
Other/Unknown	8	7.92%	6(7.1%)	2(12.5%)	4(9.5%)	4(6.8%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

Batted balls constituted 83 instances (82.16%), 10 thrown balls made up 9.90%, and other events or projectiles related to eight incidents (7.92%). Of the 16 minor plaintiffs, 14 were struck by a batted ball (87.5%) and two were injured in an “other” capacity. In the sample, no minors were injured by a thrown baseball, whereas 10 of the 85 adults were struck by a projectile in this manner (11.8%). Adult males (42) and adult females (59) were

also most likely to be struck by a batted ball at 81.0% and 83.1%, respectively (as compared to thrown ball or other, by gender).

Table 4.10: Projectile

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Batted Ball	83	82.18%	69(81.2%)	14(87.5%)	34(81.0%)	49(83.1%)
Thrown Ball	10	9.90%	10(11.8%)	0(0.0%)	6(14.3%)	4(6.8%)
Other	8	7.92%	6(7.1%)	2(12.5%)	2(4.8%)	6(10.2%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

Ninety-two cases did not involve the plaintiff referencing a distraction or blocked sightline (91.09%), while nine cases did refer to such an event (8.91%). Although adults were most likely to reference a distraction or blocked sightline, it only occurred eight times in cases involving adults at a rate of 9.4%.

Table 4.11: Distraction Referenced

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
No	92	91.09%	77(90.6%)	15(93.8%)	36(85.7%)	56(94.9%)
Yes	9	8.91%	8(9.4%)	1(6.2%)	6(14.3%)	3(5.1%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

Lawsuits involving injuries to the head/face/neck area were most common; of the 101 sample total, 63 involved injuries to this region at a rate of 62.38%. Injuries to the torso/trunk were referred to on nine occasions (8.91%) and damage to extremities (upper or

lower) was involved in three instances (2.97%). In 26 cases, the location of the injury was categorized as other/unknown (25.74%).

Table 4.12: Where Injured

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Head/Face/Neck	63	62.38%	49(57.6%)	14(87.5%)	26(61.9%)	37(62.7%)
Torso/Trunk	9	8.91%	9(10.6%)	0(0.0%)	3(7.1%)	6(10.2%)
Extremities	3	2.97%	2(2.4%)	1(6.3%)	2(4.8%)	1(1.7%)
Other/Unknown	26	25.74%	25(29.4%)	1(6.3%)	11(26.2%)	15(25.4%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

One case, *Fish v. Los Angeles Dodgers Baseball Club* (1976), involved death at the ballpark, further classified as a critical injury (0.99%). The majority of the sample, 69 cases, described a serious injury (68.32%), whereas, minor/unknown injuries were referred to on 31 occasions (30.69%). Of the 16 minor plaintiffs, 13 were found to have suffered a serious injury (81.3%), as compared to their 56 adult counterparts (65.9%). The 59 females suffered serious injuries at a rate of 72.9%, contrasted against the 62.9% rate of their 85 male counterparts.

Table 4.13: Extent of Injury

Categorized Variable	Frequency	Percentage	<u>AGE</u>		<u>SEX</u>	
			Adult (%)	Minor (%)	Male (%)	Female (%)
Critical	1	0.99%	0(0.0%)	1(6.3%)	1(2.4%)	0(0.0%)
Serious	69	68.32%	56(65.9%)	13(81.3%)	26(61.9%)	43(72.9%)
Minor/Unknown	31	30.69%	29(34.1%)	2(12.5%)	15(35.7%)	16(27.1%)
TOTALS	101	100%	85(100%)	16(100%)	42(100%)	59(100%)

In order to properly run a binary logistic regression model, the dependent variable must be dichotomous in nature. Due to the fact that nine cases were remanded for further proceedings in accordance with an Appellate or State Supreme Court's ruling, these lawsuits were removed from further consideration. The sub-sample total of 92 cases ($n = 92$) with a dependent variable (DV) of an outcome for or against the plaintiff are utilized in the regression analysis. The nine cases removed due to their remand status included incidents which occurred in eight different states as well as an injury/decision dates in all categories (1900-1949, 1950-1999, and 2000-present). In eight separate instances of remand (as related to the independent variables), the limited duty (baseball) rule was not referenced, the case involved an adult, a batted ball caused a serious injury, and a distraction was not referenced by the plaintiff. Injuries involved with remanded proceedings were most likely to occur in-game (77.8%) to males and females at either MLB or MiLB/Independent Professional proceedings. On six occasions, the victim was in an unprotected seat (66.7%) and victims were also most likely to be struck in the head/face/neck area.

RQ3. What factors contributed to a winning decision in a court of law?

RQ4. What factors contributed to a losing decision in a court of law?

Utilizing *crosstabs* to examine the raw data, and to ascertain whether a relationship between the independent and dependant variables existed, the following information was obtained as it relates to factors which contributed to a winning or losing decision in a court of law. As nine cases were removed due to their remand status, the sub-sample reflects, $n = 92$. Although independent variables and their respective coding categories remained the same, the assigned values within SPSS were changed to reflect the proper reference group for

further regression analysis. Seventy-seven adults (83.70%) were involved in litigation, yet only won 10.4% of the time compared to the rate of 46.7% of their 15 minor counterparts (16.30%). Males were represented by a frequency of 38 (41.30%), while 54 females made up 58.70% of the sub-sample. Similarly, the outcome was in favor of males and females eight and seven times, respectively, at comparable rates of 18.4% and 14.8%.

Table 4.14: Age and Gender

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	Lose (%)		
[0] Adult	77	83.70%	8(53.3%)	69(89.6%)	10.4%	89.6%
[1] Minor	15	16.30%	7(46.7%)	8(10.4%)	46.7%	53.3%
TOTALS	92	100%	15(100%)	77(100%)	X	X
[0] Female	54	58.70%	8(53.3%)	46(59.7%)	14.8%	85.2%
[1] Male	38	41.30%	7(46.7%)	31(40.3%)	18.4%	81.6%
TOTALS	92	100%	15(100%)	77(100%)	X	X

As it relates to the state in which the lawsuit was filed, New York again possessed the most number of cases at 14; however, litigants in that state were only successful in one instance (7.1%). States without a lawsuit now numbered 21 (compared to 20 previously), as New Mexico's only case, *Edward C. v. Albuquerque Baseball Club, LLC* (2010) was remanded to the District Court for further proceedings. Twenty-four states, a majority of the 31 listed (77.4%), did not include more than four separate instances of litigation. A successful outcome for the plaintiff did not occur in 17 states (AL, AZ, FL, IN, IA, MI, MN, NV, NJ, NC, OH, OK, OR, SC, TX, UT, VA), regardless of the number of lawsuits included from that jurisdiction. In the four states in which contributory negligence is followed, only

Alabama, North Carolina, and Virginia are referenced in the table (MD did not have a lawsuit filed). Six cases were filed in these jurisdictions, but plaintiffs were unsuccessful in all instances (0.0%).

Table 4.15: State in Which Lawsuit Filed

Categorized Variable	Frequency	Percentage	<u>COURT DECISIONS</u>		<u>%</u>	
			WIN(%)	LOSE(%)	Won	Lost
AL	1	1.09%	0(0.0%)	1(1.3%)	0%	100%
AZ	1	1.09%	0(0.0%)	1(1.3%)	0%	100%
CA	5	5.43%	1(6.7%)	4(5.2%)	20%	80%
CT	4	4.35%	1(6.7%)	3(3.9%)	25%	75%
FL	2	2.17%	0(0.0%)	2(2.6%)	0%	100%
GA	2	2.17%	1(6.7%)	1(1.3%)	50%	50%
IL	3	3.26%	1(6.7%)	2(2.6%)	33.3%	66.7%
IN	1	1.09%	0(0.0%)	1(1.3%)	0%	100%
IA	1	1.09%	0.0%	1(1.3%)	0%	100%
KY	2	2.17%	2(13.3%)	0(0.0%)	100%	0%
LA	3	3.26%	1(6.7%)	2(2.6%)	33.3%	66.7%
MA	4	4.35%	1(6.7%)	3(3.9%)	25%	75%
MI	2	2.17%	0(0.0%)	2(2.6%)	0%	100%
MN	2	2.17%	0(0.0%)	2(2.6%)	0%	100%
MO	6	6.52%	2(13.3%)	4(5.2%)	33.3%	66.7%
NV	1	1.09%	0(0.0%)	1(1.3%)	0%	100%
NJ	1	1.09%	0(0.0%)	1(1.3%)	0%	100%
NY	14	15.22%	1(6.7%)	13(16.9%)	7.1%	92.9%
NC	4	4.35%	0(0.0%)	4(5.2%)	0%	100%
OH	4	4.35%	0(0.0%)	4(5.2%)	0%	100%
OK	3	3.26%	0(0.0%)	3(3.9%)	0%	100%
OR	2	2.17%	0(0.0%)	2(2.6%)	0%	100%
PA	7	7.61%	1(6.7%)	6(7.8%)	14.3%	85.7%
SC	2	2.17%	0(0.0%)	2(2.6%)	0%	100%
TX	6	6.52%	0(0.0%)	6(7.8%)	0%	100%
UT	2	2.17%	0(0.0%)	2(2.6%)	0%	100%
VA	1	1.09%	0(0.0%)	1(1.3%)	0%	100%
WA	3	3.26%	1(6.7%)	2(2.6%)	33.3%	66.7%
WI	3	3.26%	2(13.3%)	1(1.3%)	66.7%	33.3%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Regarding the date of the court decision, verdicts in the plaintiff's favor occurred at rates of 20%, 18.4%, and 10.3%, involving the categories 1900-1949, 1950-1999, and 2000-present, respectively.

Table 4.16: Date of Decision

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] 1950-1999	38	41.30%	7(46.7%)	31(40.3)	18.4%	81.6%
[1] 2000-present	29	31.52%	3(20.0%)	26(33.8%)	10.3%	89.7%
[2] 1900-1949	25	27.17%	5(33.3%)	20(26.0%)	20%	80%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Information regarding the date of the plaintiff's injury was most frequently unknown and categorized as such in 28 of the cases (30.43%). Outcomes in a plaintiff's favor was a most frequent occurrence from 1950-1999; this happened in seven of 28 cases, or 25% of the time.

Table 4.17: Injury Date

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] Unknown	28	30.43%	2(13.3%)	26(33.8%)	7.1%	92.9%
[1] 2000-present	15	16.30%	2(13.3%)	13(16.9%)	13.3%	86.7%
[2] 1950-1999	28	30.43%	7(47.7%)	21(27.3%)	25%	75%
[3] 1900-1949	21	22.83%	4(26.7%)	17(22.1%)	19%	81%
TOTALS	92	100%	15(100%)	77(100%)	X	X

An outcome in the plaintiff's favor was more likely to occur when the limited duty (baseball) rule was not explicitly referenced and occurred at a rate of 18.2%, or on 14 of 77 occasions. Conversely, when the limited duty (baseball) rule was explicitly referenced, rulings in the plaintiff's favor only occurred in one out of 14 instances (6.7%)

Table 4.18: Theory – Limited Duty (Baseball) Rule

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] Not Referenced	77	83.70%	14(93.3%)	63(81.8%)	18.2%	81.8%
[1] Referenced	15	16.30%	1(6.7%)	14(18.2%)	6.7%	93.3%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Cases involving injuries at Major League Baseball (MLB) games numbered 27 and plaintiffs were victorious on seven occasions (25.9%). Although MiLB/Independent Professional incidents involved the greatest number of cases at 37, outcomes in the plaintiff's favor only occurred twice or 5.8% of the time. Amateur baseball games comprised 20.65% of the total number of cases, and similarly represented 20.0% of the outcomes in favor of the plaintiff.

Table 4.19: Level of Play

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] MiLB/Independ.	37	40.22%	2(13.3%)	35(44.2%)	5.4%	94.6%
[1] MLB	27	29.35%	7(46.7%)	20(26.0%)	25.9%	74.1%
[2] Amateur	19	20.65%	3(20.0%)	16(20.8%)	15.8%	84.2%
[3] Other/Unknown	9	9.78%	3(20.0%)	6(7.8%)	33.3%	66.7%
TOTALS	92	100%	15(100%)	77(100%)	X	X

The majority of the injuries occurred while the baseball game was in progress and accounted for 78 out of 92 instances (84.78%). Although 13 of the 15 cases (86.7%) won by the plaintiffs were as a result of in-game injuries, the percentage of success for plaintiffs injured at the in-game designation vs. the pre-game label were similar at 16.7% and 18.2%, respectively.

Table 4.20: When Injury Occurred

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] In-Game	78	84.78%	13(86.7%)	65(84.4%)	16.7%	83.3%
[1] Pre-Game	11	11.96%	2(13.3%)	9(11.7%)	18.2%	81.8%
[2] Other	3	3.26%	0(0.0%)	3(3.9%)	0%	100%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Plaintiffs in the sub-sample were most likely to bring suit after being injured while located in an unprotected seat, 59 out of 92 instances for a rate of 64.13%. However, victims injured while sitting in an unprotected area were only victorious on three occasions, or 5.1% of the time. Plaintiffs injured while in a protected/contested seating area filed litigation in 11 instances, but outcomes were in favor of the plaintiff in five of the 11 lawsuits. Likewise, patrons struck on the concourse, at the concession stand, or in an entertainment area (non-traditional baseball viewing seats), filed a modest number of lawsuits (14), but received verdicts in their favor in four instances, or 28.6% of the time.

Table 4.21: Seat Location

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		<u>%</u>	<u>%</u>
			WIN (%)	LOSE (%)	Won	Lost
[0] Unprotected Seat	59	64.13%	3(20.0%)	56(72.7%)	5.1%	94.9%
[1] Protected/Contested	11	11.96%	5(33.3%)	6(7.8%)	45.5%	54.5%
[2] Concourse area	14	15.22%	4(26.7%)	10(13.0%)	28.6%	71.4%
[3] Other/Unknown	8	8.70%	3(20.0%)	5(6.5%)	37.5%	62.5%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Injuries involving batted balls constituted 81.52% of the litigation in the sub-sample, or 75 out of 92 total cases. Thrown ball cases amounted to 10 lawsuits (10.87%), and other injury-causing incidents totaled seven or 7.61% of the sub-sample. Injuries caused by incidents categorized as *other* included baseball bats (or shards thereof) leaving the field of play, fans trampling fellow spectators, or an individual being struck by foul balls being thrown back onto the field. Although these occurrences happened the least frequently, verdicts in the plaintiff's favor were returned 42.9% of the time.

Table 4.22: Projectile

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		<u>%</u>	<u>%</u>
			WIN (%)	LOSE (%)	Won	Lost
[0] Batted Ball	75	81.52%	11(73.3%)	64(83.1%)	14.7%	85.3%
[1] Thrown Ball	10	10.87%	1(6.7%)	9(11.7%)	10%	90%
[2] Other	7	7.61%	3(20.0%)	4(5.2%)	42.9%	57.1%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Distractions (and/or blocked sight lines) were only referenced by the plaintiff in litigation in eight cases, or 8.70% of the time. Plaintiffs did not mention such claims in 84 of

the 92 cases (91.30%). When referenced in litigation, outcomes in favor of the plaintiff were returned on one of eight occasions (12.5%). When incidents did not allude to a distraction, plaintiffs were victorious on 14 of 84 occasions (16.7%).

Table 4.23: Distraction Referenced

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] No	84	91.30%	14(93.3%)	70(90.9%)	16.7%	83.3%
[1] Yes	8	8.70%	1(6.7%)	7(9.1%)	12.5%	87.5%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Plaintiffs in the sub-sample were most commonly struck by projectiles in the head, face, or neck area. Fifty-seven of the 92 case sub-sample (61.96%) included situations in which individuals were injured on or near the head. These cases were successful for the plaintiff on 14 occasions, or 24.6% of the time. Projectiles striking the torso/trunk region accounted for eight cases (8.70%), and the court returned verdicts in favor of the plaintiff one time (12.5%). Although injuries to an individual's extremities or other/unknown totaled 27 cases, plaintiffs were not successful in these instances.

Table 4.24: Where Injured

Categorized Variable	Frequency	Percentage	<u>COURT DECISION</u>		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] Head/Face/Neck	57	61.96%	14(93.3%)	43(55.8%)	24.6%	75.4%
[1] Torso/Trunk	8	8.70%	1(6.7%)	7(9.1%)	12.5%	87.5%
[2] Extremities	3	3.26%	0(0.0%)	3(3.9%)	0%	100%
[3] Other/Unknown	24	26.09%	0(0.0%)	24(31.2%)	0%	100%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Injuries categorized as serious made up 61 of the 92 total cases (66.30%). In these instances, plaintiffs were successful in 13 cases for a rate of 21.3%. In the sole case involving a critical injury, the court found in favor of the parents in the death of the minor male victim in *Fish v. Los Angeles Dodgers Baseball Club* (1976). Minor injuries, or those classified as unknown, were only successful in litigation on one of 30 court cases (3.3%).

Table 4.25: Extent of Injury

Categorized Variable	Frequency	Percentage	COURT DECISION		% Won	% Lost
			WIN (%)	LOSE (%)		
[0] Serious	61	66.30%	13(86.7%)	48(62.3%)	21.3%	78.7%
[1] Critical	1	1.09%	1(6.7%)	0(0.0%)	100%	0%
[2] Minor/Unknown	30	32.61%	1(6.7%)	29(37.7%)	3.3%	96.7%
TOTALS	92	100%	15(100%)	77(100%)	X	X

Following the examination of relationships between the independent and dependent variables examined in the *crosstabs* evaluation, the researcher logically turned his focus to regression analysis to determine which factors contributed to a winning or losing decision in a court of law. As *crosstabs* examines relationships, regression analysis scrutinizes predictability. As such, a minimum of 10 cases are recommended for each included independent variable. Binary logistic regression is appropriate for such analysis as the dichotomous dependent variable is categorical in nature, an outcome (for or against) the plaintiff in each case (Andrew, Pedersen, & McEvoy, 2011). Regression analysis investigates the function of the independent and dependent variables, or Y as a function of X [$Y=f(x)$], and allows researchers to examine possible nonlinear associations (Andrew, Pedersen, & McEvoy, 2011; Babbie, 2013). Logistic regression, "...requires no assumptions

about the distribution of the independent variables (e.g., independent variables do not have to be normally distributed or linearly related or have equal variances within each group)” (Andrew, Pedersen, & McEvoy, 2011, p. 252).

As mentioned in Chapter IV, categories within each independent variable were recoded with new values to establish a reference group. Reference groups, within each independent variable, were selected based on which category had the highest frequency. Such action is necessary to ensure that a stable statistical comparison may be made with the largest number of cases serving as the reference group in each independent variable. (Clement & Otto, 2007a). For the variables, the following reference groups were coded as “0” for the regression analysis: outcome, “lost;” decision date, “1950-1999;” theory, “not referenced;” age, “adult;” gender, “female;” injury date, “unknown;” level of play, “MiLB/Independent Professional;” and when injured, “in-game.” Furthermore, in order to control for the standard error, the independent variables were narrowed from twelve (12) to eight (8). In addition to the state (which was used for demographic purposes only), when injured (in-game, etc.), distraction referenced, the injury location (head/face/neck, etc.), and extent of injury (serious, etc.), were also removed. The standard error must be controlled as it is a function of the population as well as the sample size (Babbie, 2013), and “...represents the variability of the sampling distribution of a statistic” (Thomas, Nelson, & Silverman, 2011, p. 108).

Table 4.26: Frequency Table with Codings

Categorical Variables Codings

		Frequency	Parameter coding		
			(1)	(2)	(3)
SEATlocation	[0] Unprotected	59	.000	.000	.000
	[1] Protected/Contested	11	1.000	.000	.000
	[2] Concourse area	14	.000	1.000	.000
	[3] Other/Unknown	8	.000	.000	1.000
LEVELofPLAY	[0] MiLB/Independ.	37	.000	.000	.000
	[1] MLB	27	1.000	.000	.000
	[2] Amateur	19	.000	1.000	.000
	[3] Other/Unknown	9	.000	.000	1.000
INJURYdate	[0] Unknown	28	.000	.000	.000
	[1] 2000-present	15	1.000	.000	.000
	[2] 1950-1999	28	.000	1.000	.000
	[3] 1900-1949	21	.000	.000	1.000
Projectile	[0] Batted ball	75	.000	.000	
	[1] Thrown ball	10	1.000	.000	
	[2] Other	7	.000	1.000	
DECISIONdate	[0] 1950-1999	38	.000	.000	
	[1] 2000-present	29	1.000	.000	
	[2] 1900-1949	25	.000	1.000	
AGE	[0] Adult	77	.000		
	[1] Minor	15	1.000		
THEORY	[0] NOT referenced	77	.000		
	[1] Referenced	15	1.000		
GENDER	[0] Female	54	.000		
	[1] Male	38	1.000		

Eight (8) independent variables (IV) and their respective reference group.

Table 4.27 demonstrates that the entire sub-sample ($n = 92$) was included (100%) in the analysis and that zero cases are missing, whereas Table 4.28 displays the dichotomous nature of the dependent variable. A decision lost by the plaintiff was coded as “0” and occurred in 77 of 92 cases (83.7%). A favorable outcome, or win for the plaintiff, happened in 15 instances, 16.3% of the time.

Table 4.27: Sub-sample Summary

Case Processing Summary			
Unweighted Cases ^a		N	Percent
Selected Cases	Included in Analysis	92	100.0
	Missing Cases	0	.0
	Total	92	100.0
Unselected Cases		0	.0
Total		92	100.0

a. If weight is in effect, see classification table for the total number of cases.

Table 4.28: Dependent Variable

Dependent Variable Encoding

Original Value	Internal Value
plaintiff LOST	0
plaintiff WON	1

The chi-square (χ^2) test, written as $\chi^2 = \sum[(O-E)^2/E]$, tests the statistical significance between the observed and expected results as depicted by O and E , respectively in the

formula (Thomas, Nelson, & Silverman, 2011). Chi square tests the association between two nominal variables in a contingency table and is based on the notion that there is no relationship between variables (Babbie, 2013; Field, 2012). Results of the chi square test imply that the model is statistically significant, $\chi^2(16, n = 92) = 54.92, p = .00$. This lends itself to the conjecture that at least one independent variable (IV) should be statistically significant as related to the dependent variable (DV).

Table 4.29: χ^2 Analysis

Omnibus Tests of Model Coefficients				
		Chi-square	Df	Sig.
Step 1	Step	54.921	16	.000
	Block	54.921	16	.000
	Model	54.921	16	.000

In relation to *Cox & Snell R²* and *Nagelkerke R²*, the model accounts for between 45% and 76% of the variance in the dependant variable (win or lose). *Cox & Snell*, as well as *Nagelkerke*, both serve as separate versions of the coefficient of determination when utilizing logistic regression. Whereas, *Cox & Snell* is seen as problematic for not being able to reach its maximum value of one, *Nagelkerke* is designed to overcome this shortcoming (Field, 2012).

Table 4.30: *Cox & Snell R²; Nagelkerke R²*

Model Summary

Step	-2 Log likelihood	Cox & Snell R Square	Nagelkerke R Square
1	26.900 ^a	.450	.763

a. Estimation terminated at iteration number 9 because parameter estimates changed by less than .001.

The regression analysis in Table 4.31, displays the eight independent variables (IV) as they relate to the regression coefficient (*B*), standard error (*S.E.*), Wald statistic (Wald), degrees of freedom (*df*), level of significance (*Sig.*), and odds ratio [*Exp(B)*]. “The Wald statistic is usually used to ascertain whether a variable is a significant predictor of the outcome,” (Field, 2012, p. 270), and presents which independent variables were found to be statistically significant factors of winning or losing court decisions. In this regard, theory referenced ($p = .031$), 1950-1999 - injury date ($p = .031$), MLB - level of play ($p = .045$), protected - seat location ($p = .006$), and concourse - seat location ($p = .005$) were found to be statistically significant related to the dependent variable (outcome). Conversely, the other independent variables (IV) were shown not to have a statistically significant relationship with the outcome of court decisions (won or lost).

The regression coefficient (*B*), depending on its positive or negative value, is interpreted as being more or less likely to win a case in question. Additionally, the *odds ratio* is labeled as *Exp(B)* in the table and is utilized to articulate the relationship between independent and dependent variables by evaluating the odds the dependent variable, a won or lost court decision in this instance (Babbie, 2013). The odds ratio indicates the percent odds that the independent variable will be classified into the dichotomous dependent variable and

reveals the variation in odds subsequent to the change in the independent (IV) predictor variable in binary logistic regression (Andrew, Pedersen, & McEvoy, 2011; Field, 2012).

The limited duty (baseball) rule, when referenced in a judicial opinion, is less likely to result in a favorable outcome for the plaintiff as displayed in the regression coefficient (-5.063). The *odds ratio* indicates that plaintiffs are less likely to have a verdict returned in their favor when the limited duty (baseball) rule is explicitly mentioned as compared to the reference group. An injury occurring within the range of 1950-1999 is more likely to produce a verdict in favor of the plaintiff according to the injury date's regression coefficient (6.945). According to the *odds ratio*, a victim is more likely to win his/her case when the injury occurred from 1950-1999, as compared to the reference group.

The level of play is statistically significant related to the case outcome for baseball at the Major League Baseball (MLB) level. The regression coefficient (5.422) indicates that plaintiffs are more likely to win a case, and the *odds ratio* exhibit that plaintiffs are more likely to receive a favorable outcome as compared to the reference group. Two classifications of seat location, protected/contested as well as concourse/concession/entertainment area were found to be statistically significant as well. Returned regression coefficients of 7.035 and 7.971, respectively, indicate that these two seat locations are more likely to produce an outcome in the plaintiff's favor. According to the *odds ratio*, an individual injured in a protected/contested seat or an individual struck on the concourse/concession/entertainment area is more likely to succeed in court as compared to the reference group.

Table 4.31: Regression Analysis Table

		<i>B</i>	<i>S.E.</i>	Wald	<i>df</i>	<i>Sig.</i>	<i>Exp(B)</i>
Step 1 ^a	DECISIONdate			1.955	2	.376	
	DECISIONdate(1)	-.010	2.142	.000	1	.996	.990
	DECISIONdate(2)	5.855	4.311	1.844	1	.174	349.124
	THEORY(1)	-5.063	2.346	4.658	1	.031	.006
	AGE(1)	3.461	2.035	2.892	1	.089	31.838
	GENDER(1)	-1.337	1.669	.642	1	.423	.263
	INJURYdate			4.802	3	.187	
	INJURYdate(1)	5.978	3.593	2.768	1	.096	394.594
	INJURYdate(2)	6.945	3.211	4.676	1	.031	1037.475
	INJURYdate(3)	3.168	3.540	.801	1	.371	23.764
	LEVELofPLAY			4.708	3	.194	
	LEVELofPLAY(1)	5.422	2.703	4.025	1	.045	226.314
	LEVELofPLAY(2)	2.126	2.816	.570	1	.450	8.381
	LEVELofPLAY(3)	.467	3.330	.020	1	.889	1.595
	SEATlocation			9.495	3	.023	
	SEATlocation(1)	7.035	2.551	7.604	1	.006	1135.350
	SEATlocation(2)	7.971	2.815	8.015	1	.005	2895.623
	SEATlocation(3)	5.547	2.989	3.445	1	.063	256.534
	Projectile			2.821	2	.244	
	Projectile(1)	2.642	3.298	.642	1	.423	14.046
	Projectile(2)	3.344	2.011	2.765	1	.096	28.344
	Constant	-14.942	5.664	6.960	1	.008	.000

a. Variable(s) entered on step 1: DECISIONdate, THEORY, AGE, GENDER, INJURYdate, LEVELofPLAY, SEATlocation, Projectile.

Chapter V

Discussion

Chapter V presents an overview/summary of the study, conclusions discerned from the Chapter IV results section, a discussion of issues of significance, interest, and importance, as well as recommendations for future research.

Overview

Baseball is said to be ingrained in American culture, a national pastime with which everyone is familiar, and of the utmost importance to our society. Its simplicity from the 1800s has been replaced with modern stadia, technological advancements and entertainment options within the ballparks, potential distractions, as well as bigger, faster, and more powerful participants. Fans are no longer only concerned with the wins/losses of their favorite club, but proximity to favorite players and the overall entertainment experience at the major and minor league levels. Projectiles leaving the field of play at baseball games present a concern for both fanatical and casual spectators, especially when deciding at which price level seat one should sit. Although historical case law has referenced the elements of negligence, assumption of risk, as well as risk inherent in the game (and of common knowledge), the limited duty (baseball) rule defines the duty of care owed to spectators at baseball games.

The purpose of this study was to examine the evolution of the limited duty (baseball) rule, the characteristics of injured parties in legal cases involving projectiles leaving the field of play, as well as the relationship between which factors contributed to a winning or losing decision in a court of law. Results describe case characteristics, victim demographics, and

present log odds regarding liability cases involving injuries to spectators caused by projectiles leaving the field of play at baseball games.

- RQ1. What was the evolution of the limited duty (baseball) rule in court decisions?
- RQ2. Who were the injured parties in legal cases involving projectiles leaving the field of play at baseball games, and what were the circumstances surrounding their injuries?
- RQ3. What factors contributed to a winning decision in a court of law?
- RQ4. What factors contributed to a losing decision in a court of law?

To further examine the issue, analysis of the following sub-questions is beneficial:

1. Did a relationship exist between the jurisdiction in which the injury occurred (state) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
2. Did a relationship exist between the date of the final court decision (year) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
3. Did a relationship exist between the referenced legal theory (limited duty rule NOT referenced, limited duty rule referenced) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
4. Did a relationship exist between the victim's age (adult, minor) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
5. Did a relationship exist between the victim's gender (male, female) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?

6. Did a relationship exist between the date of the injury (year) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
7. Did a relationship exist between the level of play (MiLB/Independent, MLB, amateur, other/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
8. Did a relationship exist between the status of the game (in-game, pre-game, other) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
9. Did a relationship exist between the location where the victim was injured (unprotected seat, protected seat/contested, concourse/concession/entertainment area, other/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
10. Did a relationship exist between the type of projectile (batted ball, thrown ball, other) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
11. Did a relationship exist between spectator distractions (none referenced, distraction referenced) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
12. Did a relationship exist between the location of the victim's injuries (head/face/neck, torso/trunk, extremities, other/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?
13. Did a relationship exist between the extent of the victim's injuries (critical, serious, minor/unknown) and the court's verdict in liability cases involving injuries to spectators due to projectiles leaving the field of play at baseball games?

Conclusions

Utilizing a case study approach, the sample ($N = 101$) was obtained through a search of *Lexis-Nexis Academic Universe*. Developed from an informed review of the literature, the

searches for “Baseball Rule,” “Limited Duty Rule,” “Foul Ball & Negligence,” “Foul Ball & Baseball,” and “Foul Ball & Assumption of Risk” were conducted. Returning a total of 859 results, the researcher and coder determined that there were 101 relevant/unique cases. Data collected through document analysis by two independent coders provided an accurate, in-depth look into each judicial opinion. Coder training, retraining, practice coding, study introspection, final revisions, and adherence to coding instructions were of particular importance to maintain reliability and validity. SPSS, version 17, was used to investigate interactions between dependant and independent variables utilizing data gathered in the document analysis. An examination of demographics ($N = 101$), *crosstabs* ($n = 92$), and binary logistic regression analysis ($n = 92$) allowed the researcher to better understand the plaintiff in baseball litigation as well as appreciate the relationship between the independent variables (IV) and the dichotomous outcome.

RQ1. What is the evolution of the limited duty (baseball) rule in court decisions?

The earliest returned cases in the sample ($N = 101$) were decided by the courts in 1913 [*Crane v. Kansas City Baseball & Exhibition Co.* (1913) and *Wells v. Minneapolis Baseball* (1913)]. Litigation ranged from 1913 to 2012 and was categorized into three eras of classification; 1900-1949 (28 cases – 27.72%), 1950-1999 (42 cases – 41.58%), and 2000-present (31 cases – 30.69%). A majority of the sample, 84 of the 101 cases (83.17%), did not explicitly reference the limited duty (baseball) rule in the judicial opinion provided in the sample. Pennsylvania’s “no-duty rule,” which defines the duty of care owed to spectators, was first explicitly referenced in *Jones v. Three Rivers Mgmt Corp* (1978), followed by another mention in *Ruth v. The Phillies, et al.* (2001). Although the no-duty rule was

incorporated into the limited duty (baseball) rule coding category, the limited duty rule and the baseball rule were first explicitly referenced in *Benejam v. Detroit Tigers, Inc.* (2001). Prior to *Benejam* (2001), judicial opinions examined in this study focused on the scope of the duty owed, elements of negligence, reasonable care, risks inherent in the game of baseball, assumption of risk, as well as immunity in one particular instance [*Richardson v. City of Columbia* (2000)].

RQ2. Who are the injured parties in legal cases involving projectiles leaving the field of play at baseball games and what are the circumstances surrounding their injuries?

The plaintiffs in litigation ($N = 101$), injured as a result of their baseball game attendance, include 85 adults (84.16%) and 16 minors (15.84%). Males constitute 42 of the plaintiffs (41.58%), whereas there are 59 females (58.42%). The 101 injured plaintiffs are comprised of 35 adult males (34.7%), 50 adult females (49.5%), seven minor males (6.9%), and nine minor females (8.9%). Injuries most often occur at Minor League Baseball (MiLB) and Independent Professional baseball games. On 41 occasions, 41.59% of the time, plaintiffs incur an injury at the minor league level. In-game incidents are referenced on 85 occasions (84.16%) and females, as well as minors, were disproportionately likely to receive their injuries during the baseball game. Plaintiffs are most likely to be injured in an unprotected seat (64.36%), yet injuries did also occur 12 times in protected/contested (11.88%) as well as concourse/concession/entertainment areas on 16 occasions (15.84%). Batted balls are claimed to have caused the majority of the injuries (83) and thrown balls injured adults 10 times. A distraction or blocked sightline is only referenced in 8 cases

(9.4%). Injuries are most often suffered to the head/face/neck region (63) and include 69 serious (68.32%) and one critical injury (death).

RQ3. What factors contributed to a winning decision in a court of law?

RQ4. What factors contributed to a losing decision in a court of law?

Following the elimination of nine remanded cases, the sub-sample ($n = 92$) is analyzed utilizing *crosstabs* and regression analysis. Seventy-seven adults (83.70%) were involved in litigation, yet only won 10.4% of the time compared to the rate of 46.7% of their 15 minor counterparts (16.30%). Males are represented by a frequency of 38, while 54 females make up 58.70% of the sub-sample. Similarly, the outcome is in favor of males and females eight and seven times, respectively, at comparable rates of 18.4% and 14.8%.

The highest number of favorable outcomes for the plaintiff, seven out of 15 winning cases (46.7%), are included in the category, 1950-1999. The overall percentage of cases won in that era is 7 out of 38 cases (18.4%). When the limited duty (baseball) rule was not explicitly referenced, outcomes are in the plaintiff's favor 18.2% of the time, as compared to 6.7% when the legal theory is mentioned. Incidents occurring at MiLB/Independent Professional baseball games only found in favor of the plaintiff on two of 37 occasions (5.4%), whereas plaintiffs injured at MLB games were victorious in seven of 27 instances (25.9%). Similar rates of success for in-game vs. pre-game incidents, at 16.7% versus 18.2% respectively, are reported. Individuals sitting in unprotected seating bring forth the most lawsuits (59), but are only successful three times (5.1%). However, protected/contested seating incidents find in favor of the plaintiff on 5 of 11 occasions (45.5%), and individuals

injured on the concourse/concession/entertainment areas are victorious four of 14 times (28.6%).

Injuries caused by “other” projectiles and/or events (possibly risks not inherent in the game of baseball) have a better chance of winning; three of seven cases were in favor of the plaintiff (42.9%). This particular winning percentage is greater compared to the 75 lawsuits involving injuries suffered by batted balls (14.7%) or thrown baseballs (10%). Distractions, or blocked sightlines, are only referenced on eight occasions and successful in only one case (12.5%). Injuries are most likely to occur to the victim’s head/face/neck region (57) and to be serious in nature (61). The outcome is in the plaintiff’s favor in 14 of 57 instances (24.6%) when head/face/neck injuries are involved and in 13 of 61 when involving an injury categorized as serious. In only one instance, was the outcome in favor of the plaintiff for an injury classified as minor/unknown. In the sole case involving a fatality, when the minor boy died due to injuries sustained at the ballpark (injury classified as critical), the outcome was returned in favor of the victim.

In order to control for the standard error, the independent variables are narrowed from twelve (12) to eight (8). In addition to the state (which was used for demographic purposes only), when injured (in-game, etc.), distraction referenced, the injury location (head/face/neck, etc.), and extent of injury (serious, etc.), are also removed. The limited duty (baseball) rule, when referenced in a judicial opinion, is less likely to result in a favorable outcome for the plaintiff. The *odds ratio* indicates that plaintiffs are .006 times less likely to have a verdict returned in their favor when the limited duty (baseball) rule is referenced. An injury occurring within the range of 1950-1999 is more likely to produce a verdict in favor of the plaintiff according to the injury date’s regression coefficient (6.945). According to the

odds ratio, a victim is 1037 times more likely to win his/her case when the injury occurred from 1950-1999.

Theory referenced ($p = .031$), 1950-1999 - injury date ($p = .031$), MLB - level of play ($p = .045$), protected - seat location ($p = .006$), and concourse - seat location ($p = .005$) are found to be statistically significant related to the outcome of court decisions (won or lost). The *odds ratio* exhibit that plaintiffs are 226 times more likely to receive a favorable outcome in a case involving a MLB game. According to the *odds ratio*, an individual injured in a protected/contested seat is 1135 times more likely to win a court case, whereas an individual struck on the concourse/concession/entertainment area is 2896 times more likely to succeed in court.

Discussion

Although historical cases may have defined the scope of the duty owed to spectators in the care of baseball stadium owner/operators, and set the precedent for future litigation, the examination of the evolution of the limited duty (baseball) rule is problematic in this particular investigation. The aim is to be representative of, and include the entire population of liability cases involving spectator injury resulting from projectiles leaving the field of play. However, the investigation into the evolution of the baseball rule is impeded by cases which are settled prior to trial, incomplete judicial opinions, as well as outcomes which did do *explicitly* reference the limited duty rule. The limited duty rule has been referred to as an evolution of the doctrine of assumption of risk, yet historical cases on which it was based do not always explicitly reference the legal theory.

Of the 101 plaintiffs, 50 adult females make up 49.5% of the sample. Included are also 35 adult males (34.7%), as well as 7 minor males (6.9%), 9 minor females (8.9%). In-

game incidents occur 85 times (84.16%), at a disproportionate rate to females (91.5%) and minors (87.5%). Females and minors appear to be vulnerable populations, as it has been hypothesized they do not always pay attention during the course of the ballgame. Victims are most likely to be struck by a batted ball (64.36%) in an unprotected seat (82.16%). Serious injuries (68.32%) to the head/face/neck region (62.38%) are also most common. Incidents at the MiLB/Independent Professional level occurred on 41 occasions (41/59%).

In reviewing the regression analysis, the statistically significant independent variables theory referenced ($p = .031$), 1950-1999 - injury date ($p = .031$), MLB - level of play ($p = .045$), protected - seat location ($p = .006$), and concourse - seat location ($p = .005$) are of most importance. Reference to the limited duty (baseball) rule presents an odds ratio of being .006 times less likely to reach an outcome in favor of the plaintiff. Such a conclusion is logical as the limited duty (baseball) rule restricts the duty owed to spectators. It dictates that the duty of care owed to spectators has been fulfilled if protective netting is provided for the most dangerous area of the ballparks for as many individuals who may desire such safeguards. Discussions of reasonable care or appropriate risk management practices are moot as the limited duty (baseball) rule limits the duty of care owed.

An injury occurring within the range of 1950-1999 is more likely to produce a verdict in favor of the plaintiff as dictated by the injury date's regression coefficient (6.945). According to the *odds ratio*, a victim is 1037 times more likely to win his/her case when the injury occurred from 1950-1999. It has been theorized that such that the success of plaintiffs can be attributed to new approaches to negligence; a change from assumption of risk to comparative negligence (Fried & Ammon, Jr., 2002). However, injury dates classified in the most recent category, 2000-present, have not been as successful. Of the 15 cases for this

code, only two outcomes (13.3%) were for the plaintiff. This present trend may be attached to legislation passed in certain states (i.e., AZ, CO, IL, NJ, UT) and often referred to as “baseball spectator safety” or “baseball facility liability” acts. State statutes, which can immunize baseball teams/facilities, have been passed by legislators in states following high-profile cases. Such legislation may strictly define the limited duty of care owed to spectators and has the potential to restrict liability lawsuits. Limiting the duty owed to spectators by owners/operators of baseball stadium may also include discernments that no separate duty to warn of dangers exists, regardless of when they occur (pre-game, in-game, post-game, etc.).

The level of play is statistically significant related to the case outcome for baseball at the Major League Baseball (MLB) level. The regression coefficient (5.422) indicates that plaintiffs are more likely to win a case and the *odds ratio* exhibit that plaintiffs are 226 times more likely to receive a favorable outcome. Major League Baseball is played with the most capable professional athletes and the game is faster as well as more powerful than its minor league and amateur counterparts. MLB stadiums/teams may well be held more accountable due to the vulnerability of its fans and the potential for serious injuries. Higher priced tickets provide adequate financial resources and courts may hold MLB teams to higher standards of care. Whereas, Minor League Baseball is known for the entertainment value, Major League Baseball may be expected to provide adequate warnings and/or protection.

A protected/contested seat location is found to be statistically significant and returned a regression coefficient of 7.035. The *odds ratio* determines that an individual injured in a protected/contested seat is 1135 times more likely to win a court case. Spectators who purchase seats behind protective netting may reasonably expect such safeguards to adequately keep them safe. If sitting behind the backstop screen, one may pay less attention

to the on-field action and not anticipate a projectile to strike him through the protective screen. On the occasion that this were to occur, courts may examine the issue and decide that the duty of care was breached due to the faulty protective measures. This may result in a verdict being returned on behalf of the plaintiff.

The seat location consisting of the concourse/concession/entertainment area is found to be statistically significant as well. A regression coefficient of 7.971 indicates that the seat location is more likely to produce an outcome in the plaintiff's favor. An individual struck on the concourse/concession/entertainment area is 2896 times more likely to succeed in court. While spectators may be reasonably expected to pay attention to the action on the field while in their seat, plaintiffs may have a valid case when injured in a non-traditional seating area. When walking on the concourse, in line for food at the concession stand, or enjoying entertainment at the beer garden or playground, spectators may not always be watching out for their own safety. What constitutes a risk inherent in baseball, as well as the "normal course of the game," has the potential to be an important matter in question. Where fans should be reasonably expected to be well protected, as well as the duty of care a fan owes to himself, can be an issue of contention as well. Reasonable care and/or a limited duty owed by stadium owners/operators has the potential to become more complicated when including a distraction and/or blocked sight line as individuals on the concourse/concession/entertainment area may be unable to see the ball field or the potential threat heading their way.

A plaintiff, along with his/her personal injury attorney, would prefer the injury suffered at the ballpark to be serious in nature and have occurred (and decided by the court) between 1950-1999, in a state which would not be likely to reference the limited duty

(baseball) rule. Minors (either male or female) are most likely to experience a favorable outcome when injured in the head/face/neck region, by an occurrence other than a baseball leaving the field of play (a risk not inherent in the game). A referenced distraction or when the injury occurred (in-game vs. pre-game) does not appear to greatly impact the outcome. However, sitting in a protected seat or heading to the bathroom/concession stand at a Major League Baseball Game has the potential to positively impact the decision in the plaintiff's favor.

Recommendations for Future Research

Future research is encouraged to expand the scope of investigations into spectator injuries to include athletic activities in which projectiles leaving the field of play are *not* an inherent (or expected) risk to spectators. Serious incidents at the February 23, 2013, Nationwide Series Drive4COPD 300 (Daytona International Speedway), as well as the April 20, 2013, NHRA Four-Wide Nationals (Concord, NC, zMAX Dragway), demonstrate that spectators are not immune from injury (Associated Press, 2013a; Newton, 2013). There is a potential for projectiles and/or debris to enter the stands and cause harm. Hockey, golf, cricket, NASCAR, in addition to extreme sporting events (i.e., X Games, Red Bull events, etc.) are just a few of the events which should be examined. The duty of care owed to spectators, as well as the reasonable expectation of safety, should be further studied to understand the issue.

The challenge is to stay current regarding judicial opinions, legislation, recent developments, and the plethora of examples of sport spectator injuries. The Idaho Supreme Court recently ruled that a fan that was injured, and subsequently lost his eye, by a foul ball at a Boise Hawks minor league baseball game, has the right to have his case heard by a jury

(Boone, 2013). Conversely, The Indiana Court of Appeals denied a spectator the opportunity to sue the Gary SouthShore RailCats from an incident which occurred at their ballpark.

Although the woman suffered serious injuries from a foul ball striking her face, including fractured facial bones and blindness in her left eye, the court ruled foul balls enter the stands regularly and that the danger is well-known (Associated Press, 2013b). Compilation of a database to follow baseball spectator injury cases, each state's interpretation/adoption of the limited duty (baseball) rule, and legislation/statutes (i.e., baseball spectator liability acts) may be advantageous as well.

Future studies should include an investigation into spectator perceptions of safety at ballparks, who is most responsible for their well-being (duty of care owed by the individual and the stadium), and the most important factors fans consider when choosing seats (unobstructed views, access to players, chance of catching a foul ball, safety, proximity to amenities, etc.). Do fans, especially minors, have knowledge of, understand, or appreciate the risks associated with their seating choice, and what is their perception of the dangers they face at baseball games? An additional examination of fans' familiarity with the limited duty (baseball) rule, as well as when the duty of care begins/ends, may be beneficial as well. Further research may include spectators' understanding of implied and express assumption of risk, as it relates to ticket disclaimers, warning signs, and public address announcements. Would fans be willing to attend a baseball game in which the stadium owner/operator attempted to immunize his organization by utilizing written waivers and/or consent agreements under express assumption of risk?

An assessment of stadium operators' application of safety measures, as well as their attitudes and appreciation of risk management, may help shed light on and enhance shared

best practices for baseball stadiums. Establishing accepted industry standards (i.e., minimum dimensions of protective netting) may eliminate individual approaches and subjectivity, which could help reduce the number of spectator injuries annually. An examination into the creation or advancement of professional baseball stadium best practices, as it relates to projectiles leaving the field of play, "...has something IAVM [International Association of Venue Managers, Inc.] can discuss adapting into an industry best practice" (H. Hansen, personal communication, Sept. 10, 2012). Gaps in knowledge exist regarding how to best warn and protect invitees (fans) from the foreseeable dangers which exist at baseball stadiums. Due to the fact that baseball stadium managers have no uniform procedures to follow or directives from a central baseball organization, it may be more difficult to prove that a duty of care has been fulfilled.

Through its comprehensive investigation of attitudes, appreciations, and preparations, the study will add to existing risk management knowledge in the field and explore ways to more efficiently and effectively keep spectators safe from, and aware of, projectiles leaving the field of play. Examination of and compilation of comprehensive risk management preparations would allow baseball stadium managers to properly protect spectators in their care, appreciate the risks associated with bats and balls leaving the field of play, understand the legal implications of present litigation and legislation, and recognize proper risk management planning. Such research would also make for safer stadiums, minimize claims of negligence, and enable baseball stadiums to better refute claims of liability in the future.

APPENDICES

APPENDIX A

Coding Instructions, Clarifications, & Definitions

Coder Identification: Please list your pre-established Coder Identification (A or B)

Case: List the case name in full detail

- i.e., - Manning v. The Boston Red Sox, et al.

Dependent Variable

- I. Check the corresponding box regarding the outcome of the case
 - Verdict **FOR** injured party
 - Verdict **AGAINST** injured party
 - Case **REMANDED** for further proceedings

Independent Variables

- 1.) List the state in which the litigation was filed utilizing the official USPS abbreviation
 - a. <https://www.usps.com/send/official-abbreviations.htm>
- 2.) List the date on which the final court decision was published utilizing the following format (MO/DD/YEAR)
 - a. Utilize (XX/XX/XXXX) for any information not known; i.e., month/year available.
- 3.) List the referenced legal theory in the court's decision (***check all that apply***)
 - a. ***Explicitly referenced*** - Limited Duty (Baseball) Rule [include "no-duty rule"]
 - b. ***NOT referenced*** - Limited Duty (Baseball) Rule
- 4.) Check the corresponding box regarding the victim's age at the time of the injury
 - a. ***Adult*** – Victim at time of injury was 18 or older
 - b. ***Minor*** – Victim at time of injury was under the age of 18
 - c. ***Unknown*** – The victim's age at time of injury is unknown. This information is unable to be ascertained and/or categorized as based on the details provided in the legal decision.
- 5.) Check the corresponding box regarding the victim's gender
 - a. ***Male*** – Victim at time of injury was male
 - b. ***Female*** – Victim at time of injury was female
 - c. ***Unknown*** – The victim's gender at time of injury is unknown. This information is unable to be ascertained and/or categorized as based on the details provided in the legal decision.
- 6.) List the date on which the injury occurred in the following format (MO/DD/YEAR)
 - a. Utilize (XX/XX/XXXX) for any information not known; i.e., month/year available only.

- 7.) Check the corresponding box regarding the level of play involved when injury occurred
- MLB** – injury occurred involving contest between MLB teams
 - MiLB/Independent Professional** – Injury occurred at contest between professional team not at the MLB level (MiLB or unaffiliated Independent Professional Team)
 - Amateur** – injury occurred at contest between amateur/non-professional teams (i.e., Collegiate, Little League, Parks & Recreation, Intramurals, informal, etc.)
 - Other/unknown (please specify)** – Injury occurred at situation other than contest between MLB, MiLB/Independent Professional, or Amateur teams; or the level of play is not known.
- 8.) Check the corresponding box regarding the status of the game when the injury occurred.
- Pre-Game** – The victim’s injury occurred during the course of pre-game activities (including, but not limited to batting practice, warm-up, etc.)
 - In-Game** – The victim’s injury occurred while the game was in-play.
 - Other (please specify)** – The victim’s injury occurred at a time other than the categories listed above.
- 9.) Check the corresponding box regarding the seat location of the victim when injured
- Protected/Contested seat** – The victim was located in a protected seating area when injured and/or the plaintiff affirmed that he/she was located in a protected seat, which was contested by the defendant.
 - Unprotected seat** – The victim was located in unprotected seating area when injured
 - Concourse/Concession/Entertainment area** – The victim was located on a concourse, or in a concession, playground, or entertainment area when injured.
 - Other/unknown (please specify)** – The victim was located in an area other than the categories listed above or it is unknown where the victim was located when injured; or the seating area when injured is not known.
- 10.) Check the corresponding box regarding the projectile which caused the victim’s injury.
- Batted ball** – The victim was injured as the result of a batted ball or projectile leaving the field of play. Maybe also include hockey puck struck by stick or similar.
 - Thrown ball** – The victim was injured as the result of a thrown ball or projectile leaving the field of play.
 - Other (please specify)** – The victim was injured as the result of a projectile leaving the field of play, other than those categorized above.
- 11.) Check the corresponding box regarding the reference to a distraction or blocked sightline (as claimed by the victim in the case and referenced in the litigation).
- Yes** – The victim claimed his/her injury was the direct result of a distraction or a blocked sightline (i.e., mascot, vendor, etc.)
 - No** – The victim did not claim his/her injury was the direct result of a distraction or blocked sightline.

12.) Check the corresponding box regarding the location of the victim's injury (on his/her person).

➤ The following system was devised using the *Occupational Injury and Illness Classification System* as developed by the National Institute for Occupational Safety and Health

➤ <http://wwwn.cdc.gov/oiics/Trees/BodyPart.aspx>

- b. **Head/face/neck** – The victim was injured as the result of the projectile striking him/her in the head, face, and/or neck area.
- c. **Torso/Trunk** – The victim was injured as the result of the projectile striking him/her in the torso or trunk; below neck, but above waist and including chest, back, stomach.
- d. **Extremities** – The victim was injured as the result of the projectile striking him/her in the arms/hands and/or legs/feet; including upper arms, wrists, shoulders, forearms fingers, buttocks, thighs, calves, and toes.
- e. **Other/unknown** – The victim was injured as the result of the projectile striking him/her in area other than those categorized above or it is unknown as to where the projectile struck the victim causing the injury in question.

13.) Check the corresponding box regarding the extent of the victim's injury.

➤ Utilizing the definitions outlined by the *International Mission for Prognosis and Analysis of Clinical Trials in TBI*

➤ http://www.tbi-impact.org/cde/mod_templates/12_C_01_AIS_ISS.pdf

- a. **Critical** – The victim died, was paralyzed, or suffered permanent brain damage as a result of the injuries sustained by the projectile leaving the field of play;
- b. **Serious** – The victim sustained serious injuries as a result of the projectile leaving the field of play; medical attention is required and may include disability, broken bone(s), concussion, etc.
- c. **Minor/unknown** – The victim sustained minor injuries as a result of the projectile leaving the field of play; may require outpatient medical attention and include superficial injuries, scrapes, and/or bruises. Or, the categorization of the victim's injuries is unable to be ascertained and/or categorized as based on the ambiguous information provided in the legal decision.

APPENDIX B

Coder Identification (A or B): _____ Case: _____

Dependent Variable

	0	1	2
1. <u>Case Outcome</u> (check one)	Verdict FOR Injured Party	Verdict AGAINST Injured Party	Remand

Independent Variables

	0	1
1. <u>State</u> (abbreviation)		
2. <u>Date of Final Court Decision</u> (MO/DD/YEAR)		
3. <u>Referenced Legal Theory</u> Limited Duty (Baseball) Rule	Referenced	Not referenced

Victim Demographics

	0	1	2
4. <u>Age</u> (check one)	Adult	Minor	Unknown
5. <u>Gender</u> (check one)	Male	Female	Unknown

Injury Information

	0	1	2	3
6. <u>Date of Injury</u> (MO/DD/YEAR)				
7. <u>Level of Play</u> (check one)	MLB	MiLB/ Independ. Pro	Amateur	Other/Unkn. (specify)
8. <u>When injury occurred</u> (check one)	Pre-game	In-game	Other (specify)	
9. <u>Victim location when injured</u> (check one)	Protected/ Contested seat	Unprotected Seat	Concourse/ Concession/ Play/Ent. area	Other/Unkn. (specify)
10. <u>Type of Projectiles</u> (check one)	Batted ball	Thrown Ball	Other (specify)	
11. <u>Distraction Referenced</u> (check one)	Yes	No		
12. <u>Location of injury</u> (check one)	Head/ Face/ Neck	Torso/Trunk	Extremities	Other/Unkn. (specify)
13. <u>Extent of injury</u> (check one)	Critical	Serious	Minor/Unkn. (specify)	

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