

## **TORTS- “BASEBALL RULE”**

For a century or more, courts have followed the rule that insulated baseball clubs and their stadiums from tort liability to a spectator injured by a foul ball. Couched in terms of assumption of risk, the rule seems closer to a judicial immunity, much as baseball enjoys from the antitrust laws. Occasionally, courts will step aside from the prevailing rule, such as the Idaho Supreme Court in this recent case.

### **Bud Rountree v. Boise Baseball**

154 Idaho 167, 296 P.3d 373 (2013)

J. JONES, Justice.

The facts of this case are largely undisputed. Rountree has been a Boise Hawks season ticket holder for over 20 years. On August 13, 2008, he took his wife and two grandchildren to a Boise Hawks game at Memorial Stadium in Garden City. Rountree concedes the stadium has “exceptionally extensive [mesh] netting” to protect spectators from errant foul balls. Specifically, “most portions of the stadium are protected by vertical mesh netting approximately 30 feet high, and several areas are protected from above by horizontal netting.” Rountree's tickets were in the “Viper” section, which is protected by netting. The stadium also has an area known as the “Hawks Nest,” which is a dining area along the third base line covered by both vertical and horizontal netting. Adjacent to the Hawks Nest, at the “very end of the third base line,” is the “Executive Club.” The Executive Club, while covered by horizontal netting, “is one of the only areas in the whole stadium not covered by vertical netting.”

At some point during the game, Rountree and his family went to the Hawks Nest to eat. After eating, they went to the Executive Club. While in the Executive Club, Rountree started talking to someone and stopped paying attention to the game. Approximately ten minutes later, Rountree heard the roar of the crowd and turned his head back to the game. He was struck by a foul ball and, as a result, lost his eye.

The entrance to the Executive Club has no warning signs regarding the dangers of being hit by foul balls. However, the back of Rountree's ticket stated that, “THE HOLDER ASSUMES ALL RISK AND DANGERS INCIDENTAL TO THE GAME OF BASEBALL INCLUDING SPECIFICALLY (BUT NOT EXCLUSIVELY) THE DANGER OF BEING INJURED BY THROWN OR BATTED BALLS.” Rountree asserts he never read the back of his ticket prior to the injury.

On August 10, 2010, Rountree brought suit against approximately 17 Defendants. He alleged that their negligence caused the loss of his eye. On March 2, 2011, Boise Baseball moved for summary judgment, arguing that the district court should adopt the Baseball Rule, which limits the duty of stadium operators to spectators hit by foul balls, and find that Boise Baseball complied with it. Alternatively, Boise Baseball argued that Rountree impliedly “consented to the risk of being hit by a foul ball.” The district court denied the motion on both grounds. . . .

### III. DISCUSSION

#### **B. We decline to adopt the Baseball Rule.**

In its order on Boise Baseball motion for summary judgment, the district court considered whether the Baseball Rule, which limits the duty owed by stadium owners and operators to spectators hit by foul balls, applies in Idaho. After surveying Idaho's duty rules in general, the court noted that “all courts that have examined the issue [of foul-ball injuries] have come to the conclusion that owners of baseball stadiums owe a limited duty to patrons with respect to the risk of being hit by a foul ball.” . . .

The majority rule that has emerged from these various cases is that “an owner of a baseball stadium has a duty to screen the most dangerous part of the stadium and to provide screened seats to as many spectators as may reasonably be expected to request them on an ordinary occasion.” The court then detailed the Baseball Rule's benefits. Despite this, the district court concluded it was “unable” to adopt the rule. It found that the Legislature “knows how to define the scope of duties owed in the case of particular high risk businesses,” and that public policy decisions must be made by the Legislature, not the courts. Consequently, the district court reasoned that until the Legislature intervenes, “baseball stadium owners will be held to the standard applicable to all business owners [—]that being a general duty to exercise ordinary care to prevent unreasonable, foreseeable risks of harm to others.” Thus, though the district court found “there may be good reasons to adopt the baseball rule,” it declined to do so, and denied Boise Baseball’s motion for summary judgment on this point.

On appeal, Boise Baseball argues the district court erred in concluding that only the Legislature could adopt the Baseball Rule. It contends the district court's reading of case law is misguided because a “long line of cases” in Idaho have authorized courts to determine when a duty exists as a matter of law. Boise Baseball cites the majority of jurisdictions that have adopted the Baseball Rule, outlines the policy benefits of doing so, and requests that we adopt this similar formulation:

[T]hat owners and operators of baseball stadiums/fields in Idaho are not liable for injuries to spectators caused by foul balls at baseball games so long as (1) there is screening behind the home plate area; and (2) such screening is of a sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game.

The precise duty owed by stadium owners and operators to spectators struck by foul balls is a matter of first impression in Idaho. The majority of jurisdictions to consider the issue have limited this duty by adopting some variation of the Baseball Rule.

Though many variations exist, the most common formulation of the Baseball Rule is that stadium owners and operators must provide “screened seats [ ] for as many [spectators] as may be reasonably expected to call for them on any ordinary occasion.” The rationale behind this is put bluntly by the *Eno* Court: “it is common knowledge that in baseball games hard balls are

thrown and batted with great swiftness” and “they are liable to be thrown or batted outside the lines of the diamond.” The *Eno* Court therefore concluded that “due care on the part on the management does not require all of the spectators to be screened in; that the management performs its duty toward the spectators when it provides screened seats in the grand stand and gives spectators the opportunity of occupying them.”

Despite the district court's conclusion that only the Legislature could adopt the Baseball Rule, it is also within this Court's power to do so. The Court has established duties of care where none previously existed . . . However, even though the court may have the power to adopt a rule, such as the Baseball Rule, which limits the duty of a business owner, we decline to do so here. We find no compelling public policy requiring us to do so. As the Court noted in *Winn*, though a “nose count” of how many jurisdictions endorse a particular rule might be impressive, widespread acceptance alone will not compel this Court to act similarly. . . .

[The Court will adopt a special rule in situations involving a compelling public policy, but] we do not find that an equally compelling public policy exists here. In *Winn*, we noted the fundamental link between firefighters confronting danger and sustaining consequent injuries. No similar link between baseball and spectator injuries has been shown.

In fact, Boise Baseball admits that at least for “seven seasons[, Mr. Rountree's] accident is the only time a spectator has suffered a ‘major’ injury because of a foul ball” at Memorial Stadium. The rarity of these incidents weighs against crafting a special rule. There is no history of accidents that we can look to, and draw from, to sensibly create a rule. Furthermore, Boise Baseball has not provided any broader statistical evidence regarding the prevalence of foul ball injuries in general, and—assuming they are so prevalent—how varying stadium designs might prevent them. Without this information, drawing lines as to where a stadium owner's duty begins, where netting should be placed, and so on, becomes guesswork. These kinds of questions are appropriate for the Legislature because it “has the resources for the research, study and proper formulation of broad public policy.” Declining to adopt the Baseball Rule leaves policy formulation to the deliberative body that is better positioned to consider the pros and cons of the issue. . . .