

AMERICA'S PASTIME IN THE SUNSHINE STATE: BALANCING FAN SAFETY AND WATCHABILITY OF BASEBALL GAMES THROUGH A CALL FOR FLORIDA LAWMAKERS TO CODIFY THE BASEBALL RULE

Jason Slade Brown*

I. INTRODUCTION

“I saw him swing, I saw a flash, and I was like, ‘Oh, that’s the ball going somewhere else,’ . . . Then I felt the impact.”¹ From the beginning of baseball, one constant attraction that brought fans to baseball stadiums was the fact that a ball may end up in the stands. While a recent study conducted by ESPN confirms that the game of baseball continues to intrigue those watching,² fans inevitably attend “America’s Pastime” for reasons other than

* © 2024, All Rights Reserved. J.D. Candidate, Stetson University College of Law, 2024. B.A. History, minor in Business Law, Stetson University, 2020. Research Editor 2023–2024; Articles & Symposia Editor 2022–2023, *Stetson Law Review*; *Stetson Law Review* Spring 2023 Scholarship Luncheon Presenter. As a baseball fan my entire life and growing up in Florida, I have attended many games as a fan, played throughout high school, and coached high school baseball in many Spring Training, collegiate, and high school baseball stadiums throughout Florida. It was through this background and an introduction to the baseball rule as an undergraduate student in Professor Elizabeth Galloway’s Business Law class that this Article came to completion. I would like to sincerely thank the members and faculty advisors of *Stetson Law Review* for their hard work in editing this Article as well as my writing advisor, Professor Peter F. Lake, for his guidance. Finally, I would like to thank my parents, Jereme and Melissa, my brothers, Austin and Mason, as well as several other family members, church family, and friends who have always supported my endeavors and encouraged me in everything I did.

1. Jason Hahn, *Baseball Fans Hit by Balls at Major League Parks Ask for Safety Changes: ‘This Could Be a Non-Issue’*, PEOPLE (Apr. 14, 2021, 5:39 PM), <https://people.com/sports/people-hit-by-baseballs-in-ballparks/> (commented long-time Red Sox fan Stephanie Wapenski after attending a game where she was struck with a foul ball).

2. Sam Miller, *MLB Fan Survey Says . . . Baseball Actually ISN’T Boring and Your Team Is Really Awesome*, ESPN (Apr. 14, 2017, 7:30 AM), https://www.espn.com/mlb/story/_/id/19150094/mlb-fan-survey-says-baseball-boring-your-team-awesome.

watching the game of baseball, such as catching a foul ball.³ This Article seeks to examine the tort litigation defense, affectionately known as the “baseball rule,”⁴ through an analysis of Florida’s intricate relationship with Major League Baseball (“MLB”). The baseball rule, under the most modern construction, can be described as limiting liability of stadium owners for fans who are struck with foul balls so long as there is enough screened seating that gives the spectator the ability to choose between protected and unprotected seats.⁵ With a vast array of professional baseball games in Florida, the interests of litigators, stadium owners, and fans alike are best represented through a simple statutory framework that will avoid costly litigation in the event a fan is struck with a foul ball. As a result, this Article urges Florida’s legislature to adopt, by statute, the baseball rule by requiring stadium owners to adhere to a particular framework to be absolved from liability. In the age of increased media coverage of fan injuries from professional baseball games,⁶ adoption of the

3. See, e.g., Rodney J. Paul et al., *The Minor League Experience: What Drives Attendance at South Atlantic League Baseball Games?*, 8 COASTAL BUS. J. 70, 78–79 (2009) (highlighting that events such as concerts, free beer promotions, merchandise giveaways, and fireworks all had a positive impact upon fan attendance); Gary R. Scott & Cliff Fröhlich, *Where Spectators Sit to Catch Baseballs*, SOC’Y FOR AM. BASEBALL RSCH., <https://sabr.org/journal/article/where-spectators-sit-to-catch-baseballs/> (last visited Mar. 6, 2024) (suggesting that many American baseball fans attend games to get a baseball while analyzing the best place to sit to get a chance to have a foul ball).

4. The New York Court of Appeals developed the modern baseball rule as a two-prong test: “the owner must screen the most dangerous section of the field—the area behind home plate—and the screening that is provided must be sufficient for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion.” *Akins v. Glens Falls City Sch. Dist.*, 424 N.E.2d 531, 533 (1981); Chris Breton, *The Seventh-Inning Stretch(er)?: Analyzing the Antiquated “Baseball Rule” and How It Governs Fan Injuries at Major League Baseball Games*, 21 U. DENV. SPORTS & ENT. L.J. 209, 216–17 (2018).

5. Built on the assumption of the risk doctrine, the baseball rule essentially equates the buying of a ticket with the assumption of the risks involved in attending a game. Breton, *supra* note 4, at 216–17. Furthermore, stadiums have signs and messages on the back of the tickets stating that foul balls may enter the stands at any time. Travis Coverston, *Netting in Major League Parks: To Extend or Not to Extend*, BASEBALL J. (Oct. 9, 2017), <https://www.thebaseballjournal.com/general/netting-major-league-parks/>; Jonathan Bilyk, *MLB Can’t Use Fine Print on Ticket to Escape Lawsuit From Woman Hit in Face by Foul Ball at Wrigley: Appeals Panel*, COOK CNTY. REC. (Mar. 16, 2021), <https://cookcountyrecord.com/stories/579430753>.

6. Two Senators from Illinois, for example, wrote letters to current commissioner of MLB, Rob Manfred, requesting that he release more data on fan injuries in order that the public may adequately decide whether the voluntary safety measures are actually working. Billy Witz, *Senators Call on M.L.B. for More Transparency on Foul Ball Injuries*,

baseball rule will not only encourage stadium owners to adhere to professional safety standards but will further fan support for years to come.

In recent years, MLB has come under increasing scrutiny from fans due to the media highlighting significant injuries that have occurred in the stands.⁷ In one instance in 2019, Linda Goldbloom, who was celebrating her seventy-ninth birthday, was seated in section 106 at Dodger Stadium.⁸ During the top of the ninth inning, a batted ball entered the stands—just barely making it over the protective netting—where it struck Goldbloom in the head.⁹ After being rushed to the hospital, Goldbloom passed away from her injuries, the third such instance in which a foul ball injury resulted in death.¹⁰ Foul ball injuries have steadily been a problem, and the drastic impacts of these injuries increase with the speed at which the balls are hit into the stands.¹¹ According to a Bloomberg study in 2014, about 1,750 spectators had been injured by foul balls each year.¹² These batted ball injuries can span anywhere from minor bruising to concussions and more severe head traumas.¹³ As baseball fans continue to flock to stadiums throughout the country, it is

N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/2019/08/06/sports/baseball/duckworth-durbin-mlb-netting.html>.

7. Ben Bergman & Josh Axelrod, *After Numerous Foul Ball Fan Injuries, Baseball Reconsiders Protective Netting*, NPR (July 13, 2019, 7:42 AM), <https://www.npr.org/2019/07/13/739967250/after-numerous-foul-ball-fan-injuries-baseball-reconsiders-protective-netting> (“This season has seen a number of foul ball injuries, reigniting a debate about whether to extend protective netting at baseball stadiums.”).

8. William Weinbaum, *Coroner: Fan Struck in Head by Foul Ball During Dodgers Game Died of Blunt Force Injury*, ESPN (Feb. 4, 2019, 7:43 PM), https://www.espn.com/espn/otl/story/_/id/25926592.

9. This injury happened in the first season after MLB’s teams extended their protective netting to at least the far ends of the dugout. *Id.*

10. *Id.*

11. See Breton, *supra* note 4, at 216–17 (citing *Costa v. Bos. Red Sox Baseball Club*, 809 N.E.2d 1090, 1091 (Mass. App. Ct. 2004)) (explaining the severe and permanent injuries suffered by a man who was found to have had a “mere 1.07 seconds to react” to an incoming ninety mile-per-hour foul ball); *Id.* at 230–31 (citing Billy Witz, *Father of Girl Hit by Ball Recounts Ordeal, and the Yankees Promise Fixes*, N.Y. TIMES (Oct. 1, 2017), <https://www.nytimes.com/2017/10/01/sports/baseball/yankee-stadium-netting-foulball.html>) (describing the multiple facial fractures, swollen eyes, and an imprinted forehead suffered by a two-year-old girl who was hit by a 105 mile-per-hour foul ball).

12. David Glovin, *Baseball Caught Looking as Fouls Injure 1,750 Fans a Year*, BLOOMBERG BUS. (Sept. 9, 2014, 4:05 PM) <https://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1-750-fans-a-year>.

13. Vincent C. Lucchese, *Fair or Foul: The Baseball Rule’s Place in Modern Major League Baseball*, 24 SPORTS L.J. 95, 98–99 (2017).

apparent that such injuries have not had a major impact on dissuading individuals from attending games.¹⁴ While it is not the purpose of this Article, to argue that baseball is inherently dangerous, it is significant that baseball fan injuries continue to receive widespread media attention.

Due to Florida's intricate relationship with professional baseball, the national headlines regarding fan injuries are also felt right at home in Florida. On July 5, 2014, for example, a four-year-old baseball fan suffered a fractured skull and brain bleeding after being struck by a foul ball while attending a Jacksonville Suns game.¹⁵ Injuries sustained like these always have an impact on the players themselves and the game of baseball at large. In an example of the community that baseball develops, several players and the team's mascot came to visit the little boy while he was in the hospital.¹⁶ It is injuries like these across professional baseball games in Florida that this Article seeks to encourage stadium owners to do all they can to prevent. Adoption of the baseball rule, while abrogating stadium owners from liability, will encourage stadium owners to make their venues safer for the paying public, and make the game of baseball enjoyable for every spectator in the stands regardless of their familiarity with the game.

In Florida, a state with two MLB teams and several Spring Training facilities, there is a significant need to address the potential litigation problem. First and foremost, Florida is a hotbed for professional baseball in the country.¹⁷ In addition to two MLB teams (the Miami Marlins and Tampa Bay Rays), there are numerous minor league franchises, and over fifteen Spring

14. As a baseball fan my entire life and having been to countless professional baseball games, foul balls possibly ending up in the stands has never negatively swayed my decision to attend a game. In fact, one of the greatest things about MLB is the ability to interact closely, uninhibited by screened netting, with the players and the possibility that at any given moment a souvenir may come your way. It is that intricate line of protecting fans and stadium owners alike that this Article addresses.

15. Lydia Warren, *Ouch! Brave Baseball Fan, Four, Suffers Shattered Forehead After Being Hit by Foul Ball at Minor League Game but Refuses to Cry*, DAILYMAIL.COM (July 14, 2014, 10:11 AM), <https://www.dailymail.co.uk/news/article-2691556/Baseball-fan-4-suffers-shattered-forehead-hit-ball-minor-league-game.html>.

16. *Id.* (General Manager of the Jacksonville Suns, Chris Peters, stated, "Whenever he can and he's able, we are going to bring him out here and let him hang out with the players for a day[.]").

17. Louis H. Schiff & Robert M. Jarvis, *A Survey of Florida Baseball Cases*, 40 NOVA L. REV. 49, 50 (2015).

Training facilities where baseball is played in the months of February and March.¹⁸ Baseball is essential to the economic sustainability of Florida,¹⁹ and any adoption of the baseball rule must walk the fine line between fan safety and business interests. In fact, one factor to consider is the position of baseball fans who fear extended netting will take away from the authentic baseball experience.²⁰ For example, extending the nets in 2015 to behind the dugouts faced sharp criticism from many fans claiming to lose the personal connection to the players on the field.²¹ Increased protections at stadiums across the country may continue to dwindle the amount of fans who come to baseball games, especially in Florida.²² Another factor to consider is MLB's response to fan injuries. Before the 2020 season, MLB adopted a recommendation for all thirty teams to extend their netting down to the foul poles—Florida's Tampa Bay Rays being one of the last

18. Florida is also home to the only two schools that train future Major League umpires. *Id.*; see also *Major League Baseball: Florida Spring Training*, FLA. SPORTS FOUND., <https://playinflorida.com/spring-training/> (last visited Mar. 6, 2024).

19. *Major League Baseball: Florida Spring Training*, *supra* note 18 (“The 2018 Florida Grapefruit League season generated an economic impact of \$687.1 million for the State of Florida, according to a Florida Spring Training Economic Impact Study. . . .”); FLA. SPORTS FOUND., 2018 MLB SPRING TRAINING ECONOMIC IMPACT STUDY 5–7 (2018), <http://playinflorida.com/wp-content/uploads/2018/08/GFL-IS-Page-by-Page-Booklet-spread.pdf>.

20. Coverston, *supra* note 5 (“There is a much more personal feel without a net between fans and the field. . . . If you get to a game early enough to watch batting practice, dugout areas are filled with fans looking to get autographs, pictures, and souvenirs. Netting would eliminate this interaction and devalue the appreciation of seeing big leaguers up close.”).

21. Breton, *supra* note 4, at 222–23. In the very beginning of baseball, “[t]he reason stated for leaving most of the spectator stands unprotected was that ‘many field-level fans do not want screens or other protective devices in these areas because they feel their views will be degraded, foul ball catching opportunities will be decreased, or the intimate feeling derived from sitting close to the action will be reduced.’” Edward C. v. City of Albuquerque, 241 P.3d 1086, 1092 (N.M. 2010) (quoting ROBERT M. GORMAN & DAVID WEEKS, DEATH AT THE BALLPARK 132 (2008)), *overruled by* Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P., 326 P.3d 465 (N.M. 2014) (overruled on other grounds).

22. In the 2022 baseball season, attendance at MLB games was down to its lowest numbers since 1997. Maury Brown, *MLB Attendance For 2022 Down Nearly 6% From 2019, Last Year Before the Pandemic*, FORBES (Oct. 6, 2022, 9:05 PM), <https://www.forbes.com/sites/maurybrown/2022/10/06/mlb-attendance-for-2022-down-nearly-5-from-2019-last-year-before-the-pandemic/?sh=48618bf5109a>. Perennially two of the lowest attended franchises, Florida's own Tampa Bay Rays and Miami Marlins ranked twenty-eighth and twenty-ninth respectively on average fan attendance at games. Kevin Reichard, *2022 MLB Attendance by Average*, BALLPARK DIG. (Oct. 11, 2022), <https://ballparkdigest.com/2022/10/11/2022-mlb-attendance-by-average/>.

franchises to adhere.²³ While the recommendation has regressed the chance of injury, the chance will always exist that someone may be hit. Thus, a consistent legal framework—establishing goals for stadium owners—will better serve Florida.

While the baseball rule has been around for over a century, Florida has yet to adopt, either statutorily or through caselaw, the principles set forth in the rule. Under Florida's statutes, there is no law specifying the duty of stadium owners in the state.²⁴ Considering all the factors in Florida's professional baseball scene, it is interesting that the Florida legislature has statutorily authorized parents to waive their children's liability in "inherently dangerous" activities,²⁵ but has not statutorily authorized the baseball rule. Further necessitating the need for legislative action, Florida has never had a case or statute that has mentioned the baseball rule as a defense in tort litigation.²⁶ With the missing statutory definition or relevant caselaw, Florida's courts may get clogged up as baseball injuries continue to become more publicized in the media and the courts.

Most significantly to this Article, in 2023, Florida legislators passed House Bill 837 titled "Civil Remedies," which was a major tort reform bill changing Florida to a modified comparative fault jurisdiction, eliminating one way attorney's fees and fee multipliers, and modifying the bad faith framework.²⁷ Florida Speaker of the House, Paul Renner, touted the tort reform bill as "mak[ing] our economy more competitive and Florida more affordable for our citizens and businesses."²⁸ House Bill 837 shows that appropriate tort reform is encouraged by Florida's lawmakers and the baseball rule can be used to further tort

23. Andrew W. Lehen & Michelle Tak, *Every Major League Baseball Team Will Expand Netting to Protect Fans From Foul Balls*, NBC NEWS (Dec. 11, 2019, 10:06 PM), <https://www.nbcnews.com/news/sports/every-major-league-baseball-team-will-expand-netting-protect-fans-n1100296>.

24. Robert M. Jarvis, *Flying Baseballs, Injured Fans, Uncertain Liability: Why Legislative Action Is Needed in the Sunshine State*, 93 FLA. BAR J. 35, 36–38 (2019).

25. See FLA. STAT. § 744.301(3) (2022).

26. Jarvis, *supra* note 24, at 35.

27. H.B. 837, 2023 Legis., Reg. Sess. (Fla. 2023); *Governor Ron DeSantis Signs Comprehensive Legal Reforms into Law*, FLGOV (Mar. 24, 2023), <https://www.flgov.com/2023/03/24/governor-ron-desantis-signs-comprehensive-legal-reforms-into-law/> (stating that the tort reform bill will bring Florida in line with other states in the country).

28. *Governor Ron DeSantis Signs Comprehensive Legal Reforms into Law*, *supra* note 27.

reform in the state. Due to Florida's lack of addressing the baseball rule and the sheer number of professional baseball events in the state, it is important that the legislature proactively address the problem.

In fact, legal scholars in Florida have even suggested that the legislature address the baseball rule. In *Flying Baseballs, Injured Fans, Uncertain Liability*, Professor Robert M. Jarvis argued that Florida needs to take legislative action to decide whether the baseball rule should be a doctrine in Florida.²⁹ Specifically, Professor Jarvis concluded that "the Florida Legislature should consider adopting a comprehensive liability regime" that keeps liability insurance costs reasonable, promotes safe behaviors from fans and stadium owners, and provides a remedy for injured fans.³⁰ This Article both differs and expands upon Professor Jarvis' argument. First, this Article analyzes Florida's comparative fault scheme under the change from pure to modified comparative fault, which passed through House Bill 837 in 2023.³¹ Second, this Article argues that a simple codification of the baseball rule adequately meets the balance between fan safety and the watchability of baseball games without the need for a comprehensive liability scheme. Baseball has inherent risks and stadium owners cannot prevent every ball from ending up in the stands, nor would fans want such a result. A simple statutory codification of the baseball rule, requiring stadium owners to meet industry standards for protective netting to be absolved from liability, will adequately balance the protection of fans against the enjoyment of baseball games.

As this introduction highlights, baseball is in a precarious situation as more attention is focused on the injuries suffered from fans at stadiums and the potential litigation that may ensue. Couple that with the fact that Florida just passed significant tort reform, it is clear that the baseball rule has a place in Florida's statutes. After this introduction, Part II will address the historical context of the baseball rule from its introduction to its modern application and ending with an analysis of the relevant Florida law. Part III will provide various

29. Jarvis, *supra* note 24, at 38.

30. *Id.* at 39.

31. H.B. 837, 2023 Legis., Reg. Sess. (Fla. 2023).

ways in which Florida could address the problem. Part IV will provide the statutory framework that this Article suggests the legislature adopt. As a result of all the significant factors compelling the need for the Florida legislature to act, this Article urges the legislature to adopt the baseball rule.

Universally known as America's Pastime, baseball has, and will continue to be, intertwined with American society and the social structures of the country. As a result, this Article urges the Florida legislature to proactively adopt the baseball rule through a simple statutory construction.

II. HISTORICAL CONTEXT

In an in-depth analysis of the baseball rule, it is important to first understand the circumstances and historical context under which it developed. For one, the historical context of any matter indelibly impacts the ways in which the modern rule is developed and applied. With that in mind, this Part will begin with a brief analysis of the initial structures of professional baseball stadiums under which the baseball rule developed, then it will look to the history of the baseball rule by analyzing the essential cases, and finally it will analyze Florida's legal sphere compared to other comparative fault jurisdictions and any similar cases heard by Florida's courts.

A. Baseball's Humble Beginnings: From the Slaughter Pen to Modern Professional Stadiums

In the early beginnings of baseball, the game was played, watched, and enjoyed much differently than the modern professional sport that we know and expect today. The very first recorded game of baseball "was played in 1846 on Elysian Fields in Hoboken, New Jersey."³² Before 1880, pitchers were required to throw the ball underhanded to the plate without bending their elbow.³³ In the early going, therefore, there was little need for the baseball rule as fans were not threatened with high velocity

32. Kyle Tanzer, *The Prehistoric Baseball Rule: Outdated for Today's Game*, 16 DEPAUL J. SPORTS L. 147, 149 (2020) (citation omitted).

33. J. Gordon Hylton, *A Foul Ball in the Courtroom: The Baseball Spectator Injury as a Case of First Impression*, 38 TULSA L. REV. 485, 486-87 (2003).

batted balls.³⁴ As the game gradually evolved, pitchers after the 1880s were allowed to throw the ball overhand, catchers began to wear protective gear, and the area behind home plate became known as the “slaughter pen” because of the frequent injuries resulting from foul balls being hit behind home plate.³⁵ The game of baseball began to gradually evolve to higher speeds,³⁶ and the resulting chances for significant foul ball injuries began to take firmer shape.³⁷ As a result, the general public needed stadium owners to implement safety measures to ensure that games could be watched safely. Thus, the rise of modern stadiums with mesh-netting seen today was underway.

The first baseball stadiums were drastically different from the modern creations that are standard in professional baseball today. Baseball became widely popular in the late 1840s and continued to grow in popularity through the Civil War,³⁸ especially in New York City and the rest of the Northeast.³⁹ Before 1900, most MLB stadiums were hastily constructed wooden grandstands haphazardly placed around recreation fields.⁴⁰ The first true ballpark, for example, was established in 1862 after an outdoor ice rink owner transformed the rink into a

34. See ROBERT M. GORMAN & DAVID WEEKS, DEATH AT THE BALLPARK: A COMPREHENSIVE STUDY OF GAME-RELATED FATALITIES OF PLAYERS, OTHER PERSONNEL AND SPECTATORS IN AMATEUR AND PROFESSIONAL BASEBALL, 1862–2007 at 131 (2008).

35. Edward C. v. City of Albuquerque, 241 P.3d 1086, 1092 (N.M. 2010), *overruled by* Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P., 326 P.3d 465 (N.M. 2014) (overruled on other grounds).

36. Those worries beginning at the early stages of baseball are similar to the worries in the modern game especially when batted balls are now hit at and exceeding ninety miles an hour—a reality late nineteenth century baseball players surely never imagined. See Jake Singleton, *Exit Velocity and a Player's Offensive Value*, SPORTS ANALYTICS GRP. BERKLEY (Nov. 2, 2017), <https://sportsanalytics.berkeley.edu/articles/mlb-exit-velocity.html>.

37. See *Blakeley v. White Star Line*, 118 N.W. 482, 483 (Mich. 1908) (“It is knowledge common to all that in these games hard balls are thrown and batted with great swiftness; that they are liable to be muffed or batted or thrown outside the lines of the diamond. . .”).

38. In fact, baseball sustained some of its largest growth during the Civil War as soldiers played it to escape from the terrors that they encountered during the war. GEORGE B. KIRSCH, *BASEBALL IN BLUE AND GRAY: THE NATIONAL PASTIME DURING THE CIVIL WAR* 28 (2003) (“Thousands of players enlisted in regiments and competed in campgrounds on makeshift playing fields as they awaited combat on battlefields.”).

39. Ed Attanasio & Eric Gouldsberry, *The 1860s-1900s: Lumber and Crossed Fingers*, THIS GREAT GAME, <https://thisgreatgame.com/ballparks-eras-1860s-1900s/> (last visited Mar. 6, 2024).

40. RONALD M. SELTER, *BALLPARKS OF THE DEAD BALL ERA: A COMPREHENSIVE STUDY OF THEIR DIMENSIONS, CONFIGURATIONS AND EFFECTS ON BATTING, 1901-1919* at 8 (2008).

baseball field by enclosing it with a fence and adding bleachers after the ice melted.⁴¹ The players had little complaints outside of an immovable object at the center of the field.⁴² At the beginning of the twentieth century, more permanent wooden baseball stadiums were built with single deck grandstands; outfields that sloped, had trees, no fences, and dangerous debris; and rudimentary bleachers.⁴³ Since the stadiums were mostly constructed of wood, fire was one of the biggest threats to the early days of baseball,⁴⁴ which may have prevented the threat of foul balls from directly entering stadium owners' minds.

As the game of baseball continued to grow, so did the stadiums. The standard for baseball stadiums across the country began to turn to concrete with the construction of "Shibe Park and Forbes Field in 1909."⁴⁵ As baseball developed into America's Pastime, these ballparks symbolized baseball's prominence in American society and "represent[ed] the golden era in ballpark design."⁴⁶ Wooden baseball stadiums had been all but erased by 1919 with the National League's Robinson Field in St. Louis being the only wooden stadium left standing.⁴⁷ With the instability of the early game of baseball resulting from rudimentary stadiums,⁴⁸ it comes as no surprise that protective netting at stadiums had a slow beginning.

Protective netting, while largely necessary in some form, has always been received mixed reviews from its very inception. The concern for fan safety, or at least the thought that fans may stay away from stadiums, prompted the use of some version of protective netting, screens, or mesh to be developed in ballparks.⁴⁹ The Providence Grays, in 1879, became the first

41. Attanasio & Gouldsberry, *supra* note 39.

42. *Id.*

43. *Id.*; SELTER, *supra* note 40, at 8.

44. In 1894, the scariest moment concerning fire resulted in players having to use their bats to pry open fences separating fans from the field. Attanasio & Gouldsberry, *supra* note 39.

45. SELTER, *supra* note 40, at 8.

46. *Id.*

47. *Id.*

48. Attanasio & Gouldsberry, *supra* note 39.

49. Hylton, *supra* note 33, at 488.

professional baseball team to install netting behind home plate.⁵⁰ However, protective netting was not always well received. For example, a minor league baseball team in Milwaukee installed wired netting that was taken down a week after construction due to negative reviews from fans.⁵¹ Thus, stadium owners had to walk the fine line between protecting their paying customers and continuing to give them the true authentic feel for the game of baseball. As the 1880s approached, it became “commonplace for owners of baseball parks used by professional teams to screen the grandstand directly behind home plate, leaving the rest of the grandstand area and bleacher seats unscreened and unprotected.”⁵² With a broader unscreened section of the stands, it is surprising that there were not more lawsuits brought against stadium owners for injuries during this time. As J. Gordon Hylton describes, the reason for hardly any cases in that time period likely had some basis in the way the game was played (the speed of the game was much slower at this point leading to less serious injuries), and many fans may have been more reluctant to blame ballpark owners for their injuries in the age of “individualism and individual accountability.”⁵³ Whatever the reasoning may be, the early forms of netting that protected fans can be boiled down to two words: limited and controversial.

In the modern game of baseball, protective netting is a staple of the sport and regardless of a fan’s opinion on the matter, it is here to stay. Every MLB stadium, including Florida’s major league Spring Training and minor league sports facilities, has some version of protective netting in an attempt to prevent foul ball injuries.⁵⁴ While to a modern baseball fan the protective

50. *Edward C. v. City of Albuquerque*, 241 P.3d 1086, 1092 (N.M. 2010), *overruled by* *Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P.*, 326 P.3d 465 (N.M. 2014) (overruled on other grounds).

51. Tanzer, *supra* note 32, at 149–50.

52. The reasoning for the unprotected seating was to ensure that fans had an unobstructed view of the game. *Id.* at 150 (citation omitted).

53. Hylton, *supra* note 33, at 489 (citing G. EDWARD WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* 41 (1980)). In the modern game today, those feelings still permeate throughout the protective netting debate. Matt Martell, *Crying Foul Over Ballpark Injuries*, *SPORTS ILLUSTRATED* (Aug. 10, 2021), <https://www.si.com/mlb/2021/08/10/crying-foul-mlb-netting-daily-cover> (referring to a poll from October 2017 finding that 60% of fans agreed with requiring netting).

54. Lehren & Tak, *supra* note 23. Before Rob Manfred, Commissioner of MLB, issued a recommendation to extend netting, a case brought before the Ninth Circuit failed in its request to force extended netting for safety due to a lack of standing. *See Payne v. Off. of*

netting may seem like common sense, it is important to understand the historical background under which stadiums developed to fully grasp the reasoning behind the baseball rule. If the game of baseball was still played at a much slower speed as it was throughout its beginnings, then the baseball rule would be of little significance in the modern age. However, baseball, much like the stadiums where it is housed, continues to mature and develop over time.

B. An Entrenched Legal Doctrine: the Baseball Rule's Established History of Protecting Stadium Owners

Almost as old as the game of baseball itself, the baseball rule was developed through caselaw beginning in the late nineteenth to early twentieth centuries.⁵⁵ The doctrine continued to develop over time and throughout the country where it eventually became the rule that most states use today.⁵⁶ With such an established history of cases, it is surprising that Florida, a place known for professional baseball, has never explicitly mentioned the doctrine. In this Part, the Article tracks the history of the baseball rule to give a firm understanding of its historical roots.

It is important, first, to discuss the concept of liability for property owners for those who are invited on to the property, traditionally known as licensees. As paying customers, most baseball stadium goers are considered licensees.⁵⁷ The traditional notion of licensees was that property owners were not liable for the injuries sustained by their guests if the injuries resulted from known or obvious hazards.⁵⁸ Under this standard, recovery for injuries at a baseball game would have been limited if not impossible. As seen in *Blakeley v. White Star Line*, the court recognized that it was common knowledge that the playing fields and the surrounding areas would have baseballs flying around,

the Comm'r of Baseball, No. 15-cv-03229-YGR, 2016 WL 6778673, at *4–5 (N.D. Cal. Nov. 16, 2016), *aff'd*, 705 Fed. Appx. 654, 655 (9th Cir. 2017); Martell, *supra* note 53.

55. Mohit Khare, *Foul Ball! The Need to Alter Current Liability Standards for Spectator Injuries at Sporting Events*, 12 TEX. REV. ENT. & SPORTS L. 91, 92–93 (2010).

56. *Akins v. Glens Falls City Sch. Dist.*, 424 N.E.2d 531, 532 (N.Y. 1981).

57. Hylton, *supra* note 33, at 489.

58. *Id.* at 489–90.

potentially leading to fan injury.⁵⁹ Since it was common knowledge that the game of baseball could lead to injuries if the spectator was not paying attention, it was likely impossible and surely difficult for the spectator to recover when the threat of a baseball hitting someone was “common knowledge.”⁶⁰

However, the doctrine continued to develop requiring landowners to use ordinary care to ensure that the premises were safe.⁶¹ For example, if an owner built a building, or a stadium, as improvements to his property which changed the condition of the land, then he was bound to ensure that the improvements would not harm anyone as planned and was required to maintain the structures to prevent injury to those invited onto the land.⁶² That standard was at the forefront of what eventually would become known as the “business visitor rule.” Under the business visitor rule, “[t]he duties thus imposed on the owners of business houses apply with special force to proprietors of public exhibitions, public-houses, and other establishments to which the public are invited to resort in large numbers.”⁶³ While the business visitor rule may have suggested that there was greater liability to stadium owners, that interpretation was eliminated through the development of caselaw.⁶⁴ The doctrines of assumption of the risk and contributory negligence⁶⁵ were forces under which the baseball rule developed and prevented a lot of recoveries for fan injuries. With a basic understanding of the tort law surrounding the construction of the baseball rule, the cases that developed the doctrine can now be fully analyzed.

59. 118 N.W. 482, 483 (Mich. 1908); *see also* *Quinn v. Recreation Park Ass'n*, 46 P.2d 144, 146 (Cal. 1935) (citing *Cincinnati Baseball Club Co. v. Eno*, 147 N.E. 86, 87 (Ohio 1925)) (holding that “it is common knowledge that in baseball games hard balls are thrown and batted with such great swiftness they are liable to be thrown or batted outside the lines of the diamond, and spectators occupying positions which may be reached by such balls assume the risk of injury therefrom”).

60. *Quinn*, 46 P.2d at 146–47.

61. *Id.* at 146; *King v. Ringling*, 130 S.W. 482, 484 (Mo. Ct. App. 1910).

62. FRANCIS H. BOHLEN, *STUDIES IN THE LAW OF TORTS* 182 (1926). Generally, fans were classified as invitees and stadium owners owed a duty of reasonable care. *Allred v. Cap. Area Soccer League, Inc.*, 669 S.E.2d 777, 779 (N.C. Ct. App. 2008) (citing *Nelson v. Freeland*, 507 S.E.2d 882, 892 (N.C. 1998)).

63. Hylton, *supra* note 33, at 490 (quoting 1 SEYMOUR D. THOMPSON, *THE LAW OF NEGLIGENCE IN RELATIONS NOT RESTING IN CONTRACT* 307–11 (1886)).

64. *Id.* at 491.

65. G. EDWARD WHITE, *TORT LAW IN AMERICA: AN INTELLECTUAL HISTORY* 44–46 (1980).

Cases surrounding fan injuries at baseball stadiums have been litigated for over a century. One of the first cases analyzing a fan's injury, *Blakeley v. White Star Line*, held that it was common knowledge at baseball games that balls may end up in the stands and that spectators who had placed themselves there assumed the risk that they may be injured by a ball.⁶⁶ However, the court nuanced this approach in the jurisdiction, most notably because this event happened in an area outside where the field was marked off for baseball, and held that spectators may visit other areas of the park without assuming the risk of injury.⁶⁷ As seen through this case, the baseball rule developed gradually as the cases were brought up before different courts. As the first case to analyze baseball related injuries, the court in *Blakeley* laid the foundation for the baseball rule.⁶⁸

Perhaps the most influential case of the baseball rule, *Crane v. Kansas City Baseball & Exhibition Co.*, established the first judicial opinion directly on the issue of foul ball injuries.⁶⁹ In *Crane*, the plaintiff attended a game and paid for admission in the grandstands.⁷⁰ The grandstands were not reserved seating, so the plaintiff had the option of choosing a seat behind home plate where there was protective netting or down the baselines where there was no protective netting.⁷¹ The plaintiff chose to sit in an unprotected section of the stadium and was injured when a foul ball struck him at the game.⁷² The court articulated that the defendant-stadium owners were not insurers of the public's safety, but that they did owe a duty of reasonable care to protect their patrons from injury.⁷³ In holding that the plaintiff was contributorily negligent and barred from recovery, the court articulated the first version of the baseball rule stating:

One invited to a place, who is offered a choice of two positions, one of which is less safe than the other, cannot be said to be in the exercise of reasonable care if, with full knowledge of the

66. 118 N.W. 482, 483 (Mich. 1908).

67. *Id.* at 484.

68. Breton, *supra* note 4, at 215–16.

69. 153 S.W. 1076, 1077 (Mo. Ct. App. 1913).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

risks and dangers, he chooses the more dangerous place. That is a fundamental rule of the law of negligence.⁷⁴

As stated in *Crane*, stadium owners were absolved from liability so long as fans had the choice of sitting in a protected area of the stadium and chose to sit in an unprotected area.⁷⁵ After *Crane*, many other jurisdictions began dealing with fan injuries, which led to a more defined baseball rule.

As the twentieth century progressed, the baseball rule continually appeared in cases brought before several different courts. In one case, the spectator was barred from recovery even though they bought a reserved ticket under the assumption that meant they were behind protective netting.⁷⁶ Stadium owners had been widely protected under the baseball rule so long as they provided some form of netting that gave their fans a choice between protected and unprotected seating. Since the hazards of baseball games were known to most fans, there were only limited circumstances in which stadium owners were found liable. After years of litigation, a New York court in *Akins v. Glens Falls City School District* created the modern construction of the baseball rule.⁷⁷ In that case, the court stated the baseball rule as a two prong test: “[u]nder the majority rule, the owner must screen the most dangerous section of the field—the area behind home plate—and the screening that is provided must be sufficient for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion.”⁷⁸ The court refused to

74. *Id.* at 1078.

75. In Minnesota, the baseball rule was also upheld when there was a choice between protected and non-protected seats. *Wells v. Minneapolis Baseball & Athletic Ass’n*, 142 N.W. 706, 708 (Minn. 1913) (“We believe that as to all who, with full knowledge of the danger from thrown or batted balls, attend a baseball game the management cannot be held negligent when it provides a choice between a screened in and an open seat: the screen being reasonably sufficient as to extent and substance.”). Stadium owner liability was still a bit nuanced as they still owed a duty of reasonable care to those seated in the protected areas of the stadium. *Edling v. Kan. City Baseball & Exhibition Co.*, 168 S.W. 908, 909–10 (Mo. Ct. App. 1914) (holding that an injury sustained due to netting that was ripped and had a hole in it did not bar the spectator from recovering).

76. *Hudson v. Kan. City Baseball Club Inc.*, 164 S.W.2d 318, 324 (Mo. 1942).

77. *Breton*, *supra* note 4, at 216.

78. *Akins v. Glens Falls City Sch. Dist.*, 424 N.E.2d 531, 533 (N.Y. 1981) (holding that “the proprietor of a ball park need only provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest”). The *Akins* court adopted the baseball rule holding that the stadium owner adhered to his standard of care as a matter of law. Robert J. Thorpe, *Way Out in Left Field: Crespin v. Albuquerque*

develop a rule explicitly stating just how much of the backstop needed to be screened and just how far down the lines that it must extend—it was adequate for the court that there were at least some protected seats for those who desired it.⁷⁹

The baseball rule was well entrenched in jurisdictions that recognized the assumption of the risk and contributory negligence doctrines as full bars to litigation, but that did not always necessitate that the plaintiffs were barred from recovery. The Supreme Court of Idaho refused to follow the baseball rule in its jurisdiction,⁸⁰ and the Supreme Court of Pennsylvania acknowledged the no duty rule but declined to apply it to the particular facts.⁸¹ As a common law doctrine, the baseball rule did not have to be the law in every single jurisdiction. Furthermore, the baseball rule was also limited to events arising from the game of baseball itself. While not strictly a baseball rule case per se, the court in *Coomer v. Kansas City Royals Baseball Corporation* held that the assumption of the risk underlying the baseball rule did not apply to situations not inherent to the game of baseball (in this case, hotdog guns).⁸² Therefore, the baseball rule could be limited to the time in which the game was being played and applied to the limited circumstances of game related injuries. While some may argue that the baseball rule is not limited in any form by that holding, *Coomer*, decided in 2014, continues to show that the baseball rule still has a place in modern jurisprudence.

Further solidifying the baseball rule's presence in modern jurisprudence, several states have codified the baseball rule in their statutes. Although the baseball rule has its roots in the common law, Illinois and New Jersey codified it after the judiciary initially rejected it, while Arizona and Colorado's legislatures acted proactively in implementing the baseball rule.⁸³ In Colorado, the baseball rule is a complete bar to liability as long as the stadium is maintained in a reasonably safe manner, there

Baseball Club *Rejects Nearly One Hundred Years of American Jurisprudence by Declining to Adopt the Baseball Rule in New Mexico*, 17 SPORTS L.J. 267, 275–77 (2010).

79. *Akins*, 424 N.E.2d at 534.

80. *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 379 (Idaho 2013).

81. *Jones v. Three Rivers Mgmt. Corp.*, 394 A.2d 546, 551–52 (Pa. 1978).

82. *Coomer v. Kan. City Royals Baseball Corp.*, 437 S.W.3d 184, 201–03 (Mo. 2014).

83. Nathaniel Grow & Zachary Flagel, *The Faulty Law and Economics of the "Baseball Rule"*, 60 WM. & MARY L. REV. 59, 84 (2018).

is no intentional injuring of fans, and stadium owners post signs warning of the risks of being hit with a foul ball.⁸⁴ The bar to liability based on that statute is due to the common knowledge that foul balls may end up in the stands injuring fans and the economic stability that baseball brings to the state.⁸⁵ Furthermore, Illinois⁸⁶ and New Jersey⁸⁷ also have statutes protecting stadium owners from liability at baseball games. Interestingly, Arizona, which is another major state for baseball,⁸⁸ has also codified the baseball rule protecting stadium owners from injuries sustained so long as there is protective netting that prevents baseballs, bats, and other projectiles from getting into the stands.⁸⁹ One commonality among each of the statutes that have codified the baseball rule is that they cite to the economic impact the game of baseball has on the state and the family environment that baseball games promote.⁹⁰ These states acted to keep the game of baseball affordable to ensure that everyone has the ability to watch a baseball game. By proactively dealing with the problem, these states have created a framework whereby baseball stadium owners can adequately protect their fanbase, cater to the fans who still wish to have some unprotected seating, and continue to promote the economic development of baseball in their state.

With the introduction of comparative fault jurisdictions, some courts refuse to acknowledge the baseball rule as a full bar to litigation. In New Mexico, the state Supreme Court refused to adopt the baseball rule despite precedent acknowledging its wide

84. COLO. REV. STAT. § 13-21-120(4)–(5) (2022) (“[T]he assumption of risk set forth in this subsection (4) shall be a complete bar to suit and shall serve as a complete defense to a suit against an owner by a spectator for injuries resulting from the assumed risks. . .”).

85. *Id.* § 13-21-120(2).

86. 745 ILL. COMP. STAT. 38/10 (2022).

87. N.J. REV. STAT. § 2A:53A-46 (2022).

88. While half of MLB's teams train in Florida, the other half of MLB's teams enjoy Arizona as their Spring Training home. *About the Cactus League*, CACTUS LEAGUE, <https://cactusleague.com/about.php> (last updated July 2022). Furthermore, Arizona also hosts a major league franchise, the Arizona Diamondbacks. *Chase Field*, BALLPARKS BASEBALL, <https://www.ballparksofbaseball.com/ballparks/chase-field/> (last visited Mar. 6, 2024).

89. ARIZ. REV. STAT. ANN. § 12-554(A) (2022).

90. *See* COLO. REV. STAT. § 13-21-120(2) (2022) (“It is therefore the intent of the general assembly to encourage attendance at professional baseball games. Limiting the civil liability of those who own professional baseball teams and those who own stadiums where professional baseball games are played will help contain costs, keeping ticket prices more affordable.”).

acceptance across the country.⁹¹ In another case, the New Mexico Court of Appeals stated that “[t]he movement has been away from judicially declared immunity or protectionism, whether of a special class, group or activity.”⁹² In refusing to adopt the baseball rule, the court of appeals in the case reasoned that the baseball rule was inapplicable with the move away from contributory negligence into comparative negligence.⁹³ When the case was taken to the New Mexico Supreme Court, however, the court, while still rejecting the baseball rule, held that spectators must use reasonable care to protect themselves and stadium owners must not increase the chances of injury from a foul ball.⁹⁴ The conclusion of the New Mexico Supreme Court was not that conceptually different than the baseball rule. If stadium owners want to avoid liability in New Mexico, they must ensure that there is adequate protection and refrain from increasing the chance of injury.

With the forgoing in mind, the baseball rule is a rather complex doctrine developed over the past century that still has modern day application. Even with the move to more comparative fault jurisdictions, the baseball rule is still mentioned in cases and continues to be a defense for stadium owners.

C. The Legal Situation in Florida: Comparative Fault and Sports Related Cases

In the next Part of this Article, Florida’s laws will be briefly discussed as a background into the framework for which the baseball rule should be adopted. In the totality of professional baseball games in Florida, not once has the baseball rule been mentioned as a defense in any related cases,⁹⁵ nor can it be found in the statutes.⁹⁶ When considered with the vast amounts of cases

91. Thorpe, *supra* note 78, at 274. *See generally* Edward C. v. City of Albuquerque, 241 P.3d 1086 (N.M. 2010), *overruled by* Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P., 326 P.3d 465 (N.M. 2014) (overruled on other grounds).

92. Yount v. Johnson, 915 P.2d 341, 342 (N.M. Ct. App. 1996).

93. Thorpe, *supra* note 78, at 276.

94. *Edward C.*, 241 P.3d at 1098.

95. Jarvis, *supra* note 24, at 35.

96. *Id.* at 35–36; Search Results for “Baseball Rule”, ONLINE SUNSHINE, http://www.leg.state.fl.us/statutes/index.cfm?StatuteYear=2023&AppMode=Display_Results&Mode=Search%2520Statutes&Submenu=2&Tab=statutes&Search_String=%22basebal

that Florida's courts have heard regarding baseball-related disputes,⁹⁷ it is surprising that the baseball rule has never been adopted or rejected. In any case, a brief rundown of some important cases and statutes that make up Florida's law will inevitably provide the background necessary for understanding the courts' response to baseball related issues and the impact of Florida's comparative fault scheme.

Prior to 2023, Florida was a pure comparative fault jurisdiction where the allocation of damages for negligence was based on the percentage that someone was at fault for the injury-causing event.⁹⁸ After Governor DeSantis signed House Bill 837, Florida shifted to a modified comparative fault jurisdiction.⁹⁹ Under the new statute, a party's recovery is still diminished to the extent they were liable, but a plaintiff cannot recover if they are "greater than 50 percent at fault for his or her own harm."¹⁰⁰ Florida's new statutory standard is called modified comparative fault and bars recovery if the plaintiff or one claiming they were injured is some numerical (usually fifty or fifty-one) percentage at fault.¹⁰¹ With the change to modified comparative fault, the baseball rule more easily falls under Florida's existing statutory scheme. For one, it is common understanding that a batted ball may be hit into the stands at a baseball game. In fact, *Blakeley v. White Star Line* held that it is common knowledge that batted balls may end up in the stands and injure fans at baseball games.¹⁰² Based on that common knowledge, it is likely that a spectator getting hit by a foul ball is close to 50 percent at fault for their own injuries and failure to protect themselves, especially when a stadium owner has provided adequate netting and warned fans. Additionally, Arizona, a state with similar baseball

l+rule%22 (last visited Mar. 6, 2024) (inputting "Baseball Rule" into Online Sunshine's search function provides zero results).

97. See Schiff & Jarvis, *supra* note 17 (describing how Florida's courts have been engaged in baseball cases regarding contract disputes, antitrust law, criminal law, insurance law, gender discrimination, and virtually any part of the law concerning baseball outside negligence from foul balls).

98. FLA. STAT. § 768.81(2)–(3) (2022).

99. *Governor Ron DeSantis Signs Comprehensive Legal Reforms into Law*, *supra* note 27.

100. FLA. STAT. § 768.81(6) (2023).

101. David C. Sobelsohn, "Pure" vs. "Modified" Comparative Fault: Notes on the Debate, 34 EMORY L.J. 65, 68 (1985).

102. 118 N.W. 482, 483 (Mich. 1908).

interests and a more plaintiff-friendly pure comparative fault scheme,¹⁰³ has adopted the baseball rule by statute. With the move from pure comparative fault to modified comparative fault, the baseball rule is that much more in line with Florida's current negligence laws and lawmakers' desires to enact tort reform in the state.

Furthermore, Florida's legislators' protection of business owners' interests is nothing new in tort law. Under the Florida statutes for liability waivers, for example, legislators recently have granted parents the right to sign waivers for their children for inherently dangerous activities.¹⁰⁴ The statute was created in response to the 2008 case *Kirton v. Fields*. In that case, a boy's dad signed the liability waiver so that his son could ride his four-wheeler at the track.¹⁰⁵ As the boy was riding, he hit a jump and crashed breaking several bones.¹⁰⁶ The Florida Supreme Court, in analyzing whether parents can sign liability waivers for their children, held in the negative stating that parents are "not protecting the welfare of their children," but instead the "interests of the activity provider" when they sign "pre-injury releases."¹⁰⁷ After this case, the Florida legislature passed the general law that allowed parents to waive liability for their children and passed similar legislation relating to minor activities at "closed-course motorsport facilit[ies], other than [at] a motorsports event."¹⁰⁸ Such willingness to protect business owners of dangerous activities bodes well for the use of the baseball rule in Florida. While the concept of liability waivers is different in some respects than the baseball rule, the impact on businesses and the overall protection of business owners are similar to the goals underlying the baseball rule.

With the amount of professional baseball that is played in Florida, it is shocking that the baseball rule has yet to be mentioned in a Florida court's decision. In fact, Florida's courts have played a significant role in the development of America's

103. ARIZ. REV. STAT. ANN. § 12-2505 (2022) (stating that the damages shall be reduced by the percentage of fault of the claimant and stating that there is no right to comparative fault for intentional or willful conduct).

104. FLA. STAT. § 744.301(3) (2022).

105. *Kirton v. Fields*, 997 So. 2d 349, 351 (Fla. 2008).

106. *Id.*

107. *Id.* at 357–58.

108. FLA. STAT. § 549.09 (2022).

Pastime,¹⁰⁹ but not in the area of foul ball injuries.¹¹⁰ Florida's two earliest baseball cases involved a ban on playing professional baseball on Sundays in the state.¹¹¹ Furthermore, there have been some cases analyzing factual situations where someone was injured by a baseball bat or ball and has sued in Florida.¹¹² In perhaps the case closest to adopting the baseball rule, *Jackson v. Atlanta Braves, Inc.* involved a fan who was injured by a foul ball that was tipped over the vertical netting behind home plate.¹¹³ In the court's ruling, it stated that "it appears to us that various conclusions reasonably might be drawn as to the ultimate factual issues of negligence, contributory negligence, and assumption of risk."¹¹⁴ While this may have been language that the court was indicating the baseball rule, there was never any specific mention of the rule and therefore there was no adoption by the court.¹¹⁵ Some Florida courts—at least the Fourth District Court of Appeal—seem to be receptive to the idea of adopting the baseball rule. The vaguely worded language in *Jackson* hints at the idea, and the legislators could use that as a springboard to begin legislating the baseball rule.

The last of the factually similar cases have been decided on other statutory or common law grounds based on Florida law. In a case where a woman was struck in the eye with a foul ball at a high school baseball game in Florida, the court held that sovereign immunity barred the suit and ruled for the defendants.¹¹⁶ In a case where an elderly man was injured when a foul ball landed in his front yard and children ran into him chasing after the ball, the court decided that the issue in the case was whether the city was negligent in its maintenance and protection of the surrounding area.¹¹⁷ In any event, the one

109. Schiff & Jarvis, *supra* note 17, at 50–51.

110. Jarvis, *supra* note 24, at 35 (noting that there is no reported court decision in Florida which squarely addresses the baseball rule as a defense).

111. Schiff & Jarvis, *supra* note 17, at 54.

112. Jarvis, *supra* note 24, at 36.

113. *Jackson v. Atlanta Braves, Inc.*, 227 So. 2d 63, 63 (Fla. 4th Dist. Ct. App. 1969).

114. *Id.* at 63–64.

115. Jarvis, *supra* note 24, at 38.

116. *Buck v. McLean*, 115 So. 2d 764, 768 (Fla. 1st Dist. Ct. App. 1959). In analyzing a little league baseball injury when a spectator was hit by a foul ball down the baseline, the court upheld a jury's allocation of sixty percent fault to the spectator and forty percent to the city. *City of Coral Springs v. Rippe*, 743 So. 2d 61, 62, 65 (Fla. 4th Dist. Ct. App. 1999).

117. *See Woodford v. City of St. Petersburg*, 84 So. 2d 25, 25–27 (Fla. 1955).

commonality behind each of these cases is that there has been no case specifically adopting the baseball rule. As far as Florida law is concerned, there is no resolution of whether the baseball rule should apply in the state. Since the state of Florida is a hotbed for baseball activities,¹¹⁸ it seems only logical for the legislative branch to investigate and implement the baseball rule.

With a look through some relevant Florida law, one thing becomes clear: Florida, either statutorily or through the common law, has not adopted the baseball rule in any variation or form.¹¹⁹ While some areas of Florida law have hinted at the baseball rule and other laws have come close to legislating based on the same idea, Florida remains stagnated behind other states who have addressed the issue. Florida would best be served by continuing to develop America's Pastime through a simple statutory adoption of the baseball rule. Adoption of such a rule may sway teams to keep their Spring Training facilities in the state and will encourage the Major League clubs to stay in the state as well.¹²⁰

III. FLORIDA'S POTENTIAL SOLUTIONS

This Part will analyze the potential actions that the Florida legislature could take in implementing or refusing to implement the baseball rule. As a result, this Part will propose several different ways in which the Florida legislature can respond to the issue of stadium owner liability and the limitations associated with choosing that method of resolution. Prospectively, the legislature could do one of the following: (1) refuse to adopt the rule and await a court's decision; (2) take on a reasonable standard of care for fans attending professional sporting events; (3) adhere to a requirement that these cases be dealt with through arbitration and mediation; (4) adopt the unified theory

118. Schiff & Jarvis, *supra* note 17, at 50.

119. Jarvis, *supra* note 24, at 35.

120. Ultimately rejected by MLB commissioner Rob Manfred, Florida's Tampa Bay Rays highly considered moving their professional ball club out of Florida for half the season to play in Montreal. Associated Press, *Rays Say Split-Season Plan with Montreal Rejected by MLB*, U.S. NEWS (Jan. 20, 2022, 1:34 PM), <https://www.usnews.com/news/sports/articles/2022-01-20/rays-say-split-season-plan-with-montreal-rejected-by-mlb>.

on sports injury cases; or (5) implement a strict liability regime.¹²¹

A. Remain Stagnant: Florida's Ability to Await the Proper Case and Facts to Discuss Any Adoption of the Baseball Rule

Succinctly put, the first option available to Florida lawmakers is to simply do nothing. Florida has had a long, drawn-out history of hearing baseball cases,¹²² and any invocation of the baseball rule would have certainly been formulated long ago. The legislature could decide to be reactive, like the situation in *Kirton v. Fields*,¹²³ by waiting for a court to decide whether the baseball rule should be adopted and create a statute after the results of that case. However, waiting on the proper case could take years, prove to be costly in litigation, may clog up the courts, and therefore is not the way to address the issue. Since the baseball rule has been discussed for over a century, remaining stagnant would not be the proper way to resolve fan injuries.

First and foremost, the baseball rule is likely not the first issue on the minds of legislators as more pressing issues come to the forefront. The fact of the matter is that there are several other pieces of legislation helping to run the state that are more important in the minds of legislators and the voting electorate who got them there. In 1845, Florida became the twenty-seventh state of the United States of America.¹²⁴ The state of Florida was born before there was any widespread playing or knowledge of the game of baseball.¹²⁵ Since the state is older than the game of

121. See Grow & Fligel, *supra* note 83 for an argument that the economics societally are better served by implementing strict liability for fan injuries to stadium owners and rejecting the baseball rule altogether.

122. See generally Schiff & Jarvis, *supra* note 17 (discussing Florida's history of baseball court cases).

123. The court in *Kirton* found that public policy supported the decision that parents could not waive liability for their children and the legislature stepped in to change the law. CIV. JUST. & CT.S POL'Y COMM., HOUSE OF REPRESENTATIVES STAFF ANALYSIS, CS/HB 363 1 (2009), https://www.flsenate.gov/Session/Bill/2009/363/Analyses/20090363HCJCP_h0363d.CJCP.pdf ("When the Florida Supreme Court proclaims new law solely on the basis of its own subjective assessment of 'good' public policy, with no constitutional or statutory source of authority, it does so in violation of the separation of powers provision of the Florida Constitution.").

124. *Statehood*, FLA. DEP'T OF ST., <https://dos.myflorida.com/florida-facts/florida-history/a-brief-history/statehood/> (last visited Mar. 6, 2024).

125. See discussion *supra* pt. II.A.

baseball and has not heard a case regarding fan injuries acknowledging the baseball rule, some people may fairly assume that it is not an issue that needs to be resolved in the state. However, the breadth of cities in which professional baseball is played in Florida makes it all the more likely that there will be a case on the baseball rule coming in the near future. Florida's courts have heard several cases involving baseball in the state¹²⁶ on almost every issue imaginable. It is only that much more likely that a case implicating the baseball rule and a discussion therewith will eventually come to the courts.

A potential explanation for why Florida has not developed the baseball rule statutorily is because it is a century-old theory that has never been adopted, let alone expressly discussed, in Florida's courts.¹²⁷ Based on that knowledge, it may be inferred that the baseball rule may not be a pressing issue in the state of Florida. However, spectator injuries from foul balls have started to receive vast media attention.¹²⁸ With the continued growth of the athletes, baseballs will continue to be hit at higher velocities making any injuries sustained that much worse and newsworthy. Without a developed baseball rule, Florida may finally see litigation directly on the issue with a need to develop the rule. If the baseball rule was already developed, however, then judges would have a uniform standard for analyzing baseball fan injury cases.

Furthermore, Florida's comparative fault scheme may be the resolution for cases involving fan injuries. In such a case, the comparative fault scheme would allow juries to decide whether fans are at fault for the injuries or whether the stadium owner provided enough adequate seating and adjust percentages of fault accordingly. In fact, under the modified comparative fault scheme now implemented, foul ball injury plaintiffs may face an uphill battle in proving that they were less than fifty percent at fault for their injuries. Thus, the new modified comparative fault standard may allow for any baseball injury cases to be decided on summary judgment. However, this would not curtail the already high litigation costs in the state and would still be a burden on

126. See generally Schiff & Jarvis, *supra* note 17 (discussing Florida's history of baseball court cases).

127. See discussion *supra* pt. II.B, C.

128. See, e.g., Hahn, *supra* note 1; Warren, *supra* note 15; Weinbaum, *supra* note 8.

Florida's courts who have to decide issues that may not be factually developed. On the other hand, several factors may lead to juries favoring the plaintiff-injured party versus the stadium owners who fans assume have the money to pay for the injuries. There are also other issues at play including the significance of media attention to fan injuries, limited knowledge of baseball to suffice knowing whether it is common knowledge that baseballs may end up in the stands, and sporting events seen as more of a social function than a place where you need to actively pay attention. Resolution of baseball injury cases would be fraught with inconsistencies from case to case, and stadium owners would always be worried about any possibility of fan injuries.

In any event, the legislature should take a proactive approach to the baseball rule and implement the standard in a statute to protect the business of baseball and the fans through the encouragement of further protective netting. If the legislature were to wait for a case to be decided, then there would be unnecessary legal fees and wasted time on something that could be addressed now. The legislators have at their disposal a century of scholarship on the issue and can decide whether the statutory scheme for the baseball rule should be adopted.

B. Reasonable Standard of Care for Stadium Owners to all Fans

In some current articles, there has been a call for the baseball rule to be completely abrogated or wrapped into a reasonable care standard for stadium owners. Under that standard, ballpark owners would be required to use reasonable care to ensure that their fans are safe from injuries while attending the game.¹²⁹ The reasonable care standard would align with the idea that fans are invitees and thus are owed a standard of reasonable care including to be warned of any known and obvious hazards. While the reasonable care standard, when it comes to fan injuries, has gained momentum in recent years,¹³⁰ that standard would have to be continuously litigated for anyone to fully understand what is required to avoid liability. Thus,

129. Khare, *supra* note 55, at 102.

130. *Id.*

adoption of the reasonable care standard invites litigation and Florida's courts may become increasingly busier.

Under Florida's premises owner liability statute, property owners are only liable when they fail to keep the property in a "reasonably safe" manner and do not warn visitors of the possible dangers of the property.¹³¹ The standard for property owner liability in Florida seems to invite the idea that the reasonable care standard for the baseball rule has at least some cohesiveness with Florida statutes. Furthermore, other caselaw on the baseball rule supports the idea, although in a limited jurisdiction, that the reasonable care standard should prevail based on stadium owners being entertainment hosts. In *Coronel v. Chicago White Sox*, an early appellate court held that distractions presented at a baseball game may be the reason that stadium owners need to exercise a greater level of care than the no duty rule.¹³² Florida legislators could thus find that a reasonable standard of protection applies due to the distractions found at baseball games. In any given stadium or baseball game, there are countless things that could distract a fan, even temporarily, which may result in an injury. Thus, holding stadium owners to a reasonable standard of care would allow spectators to be best protected because the stadiums would have the most up-to-date protective netting and safety precautions.

If a jurisdiction were to adopt the reasonable standard of care, however, it would be fraught with expensive litigation costs. As a result, states have codified the baseball rule. In a legislative response to *Coronel*, the legislature of Illinois codified the baseball rule, holding that the rule barred recovery from a fan injured by a baseball.¹³³ The reasonable care standard did not apply in Illinois for much longer than seven years likely due to the fact that the baseball rule simplifies the litigation process by holding stadium owners to certain protective standards.¹³⁴ Furthermore, litigation costs would also be higher if the

131. FLA. STAT. § 112.182(2) (2022) (stating the duty of care owed by property owners to invitees).

132. *Coronel v. Chi. White Sox, Ltd.*, 595 N.E.2d 45, 50 (Ill. App. Ct. 1992).

133. *Jasper v. Chi. Nat'l League Ball Club, Inc.*, 722 N.E.2d 731, 734 (Ill. App. Ct. 1999).

134. New Jersey, a state that also passed a baseball rule statute in response to the judiciary rejecting it, claims that the bar on recovery for fan injuries will help keep costs down. N.J. REV. STAT. § 2A:53A-44 (2022).

reasonable care standard was applied throughout the state of Florida. In one study on the collection of attorney's fees for the state, the average costs for litigating a particular issue can range from tens of thousands to hundreds of thousands of dollars.¹³⁵ When a standard is up for as many interpretations and is factually determinable as reasonable care, it would be difficult to resolve in any summary judgment or other procedural motion. However, that is not to say that the term "reasonable" should not be used in the statute. Instead, it is a reiteration that litigation based solely on the issue of reasonableness with no clearly defined limited liability would be costly in the end.

Though, in another light, a uniform reasonable care standard may provide standardized safety guidelines across professional baseball stadiums in Florida. When negligence cases analyze the reasonable care standard, they often take customs into account.¹³⁶ The consideration of custom would allow for the courts to analyze the situation in other venues across the state to determine if the owner was providing enough reasonable protective areas of the field. However, analysis of these customs does not prevent the litigation game from continuing and any speedy resolution to baseball injury cases would still be unlikely. While the reasonable care standard may allow for more flexibility and potentially allow more fans to recover, the length and costs of litigation would outweigh any reason for passing the statute in the first place.

Altogether, the reasonable care standard may standardize Florida's ballparks to be safer across the state. However, use of a sole reasonable care standard provides little guidance to courts and litigators on what exactly is reasonable protection of fans. If the courts or the legislature were to adopt such a rule, it would not be much different than the current state of the law in Florida. The only difference would be that the standard of care that is generally felt in any negligence cases would now be codified or common law in the baseball situation. Such a resolution would do little, if anything, to proactively deal with the problem of fan injuries at baseball games.

135. See PAULA HANNAFORD-AGOR, MEASURING THE COST OF CIVIL LITIGATION, VOIR DIRE 26 (2013), https://www.ncsc.org/_data/assets/pdf_file/0035/27989/measuring-cost-civil-litigation.pdf.

136. Khare, *supra* note 55, at 107.

C. Unified Theory of Liability for Sports Injuries at Baseball Stadiums

As stated in previous Parts of this Article, it is common knowledge that there is some inherent risk in attending any sporting event.¹³⁷ These risks are heightened more in the game of baseball where there is a higher probability that foul balls will end up in the stands. While every fan may assume the risks associated with being a spectator while engaged in their seats watching the game, baseball stadiums today offer many distractions and areas for people to socialize.¹³⁸ Therefore, the unified theory of sports injuries attempts to solve the dilemma of fans being injured in their seats versus when they are injured walking about the stadium or buying food and beverages. In this theory, the argument is that while the fans are engaged in activities away from the field of play and their seats, the regular negligence standard should apply and when they are in their seats, the owners should have a limited duty to provide protection to those fans who desire it.¹³⁹

Under the unified theory for sports injuries, the status of what standard is owed to the fan is dependent upon where the fan is at the time of the injury. In the case that the spectator left their seat and is in a part of the ballpark that is farther away from the action, it is argued that the general negligence theory should apply.¹⁴⁰ Activities resulting in the change to the general negligence standard would be things such as buying food, socializing outside the spectator seating area, and would possibly even include petting stingrays.¹⁴¹ The argument for the general negligence standard follows the approach that some jurisdictions

137. See discussion *supra* pt. II.B; *Blakeley v. White Star Line*, 118 N.W. 482, 483 (Mich. 1908).

138. For example, the Tampa Bay Rays have a thirty-five-foot, 10,000-gallon tank where fans can go to pet the sting rays. *Rays Touch Experience*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/rays/ballpark/information/touch-tank> (last visited Mar. 6, 2024). LoanDepot Park, Home of the Marlins, is surrounded with food options with some close to the field. *Ballpark Bites*, MAJOR LEAGUE BASEBALL, <https://www.mlb.com/marlins/ballpark/food> (last visited Mar. 6, 2024).

139. David F. Tavella, *Duty of Care to Spectators at Sporting Events: A Unified Theory*, 5 FLA. A & M U. L. REV. 181, 194–96 (2010).

140. *Id.* at 193–94.

141. *Id.* at 194.

adhere to what is called the distraction theory.¹⁴² This theory suggests that the baseball rule fails to take into account various promotional stunts where spectators would be more inclined to pay attention to other things going on around them.¹⁴³ In that respect, there would be situations in which the stadium owner could owe vastly different standards of care for the spectator. Furthermore, the unified theory also does away with the full bar to litigation and decides that it is a question of law for the court to decide whether the stadium owner had adhered to reasonably protecting the fan's safety.¹⁴⁴ Essentially, it combines the courts who use assumption of the risk analysis with those who apply the limited duty rule to analyze whether fans reasonably should have expected to be faced with a danger in the prospective sitting area.¹⁴⁵ On paper, this theory is certainly a standard that would seem fairer to all fans, but the practicable application of the theory would be very hard to apply especially in vastly different factual scenarios.

Before analyzing the unified theory more closely, some cases have similar rationales under their adoption of the baseball rule or its non-applicability in a given situation. The most pertinent example of when the general negligence standard applied or when the court, even those using the baseball rule, refused to apply the baseball rule as a defense is when the injury occurs from a distraction or something not involving the game of baseball. In the case of non-baseball related injuries, the Missouri Supreme Court held the baseball rule inapplicable when a fan was shot in the eye with a hotdog gun by the team mascot stating that such an injury is not an inherent risk to the game of baseball.¹⁴⁶ The baseball rule thus has limitations to its application and would even seem to invite the general negligence standard for activities not inherent to baseball.

Furthermore, the distraction theory cases also have some support for a general negligence theory. In a case from Florida's First District Court of Appeal, an eighteen-year-old plaintiff was

142. Khare, *supra* note 55, at 101–02.

143. *Id.*

144. Tavella, *supra* note 139, at 194.

145. *Id.*

146. *Coomer v. Kan. City Royals Baseball Corp.*, 437 S.W.3d 184, 202 (Mo. 2014) (en banc).

injured at a softball game by an errant throw from another team warming up outside the field while they waited for the other game to be done.¹⁴⁷ The court in that case analyzed the standard of care owed to invitees and held that a jury should decide whether the reasonable standard of care had been violated.¹⁴⁸ Another case, *Lowe v. California League of Professional Baseball*, held that a mascot performing antics in front of the fans provided enough of a distraction to bar summary judgment.¹⁴⁹ In any event, these cases do not implicate the baseball rule because they are outside the scope of foul ball injuries directly related to watching the game. While these cases help further establish the argument that a general negligence standard should be used, the baseball rule already acknowledges the general negligence standard for events outside the game of baseball.

The unified theory of sports injuries, while it may “balance the protection to spectators,”¹⁵⁰ will lead to further confusion on the issue and an almost unworkable framework in its practical application. First and foremost, determining the standard of care for a fan dependent on where they are at in the stadium is a framework with serious challenges. Throughout the game, fans move around the stadium from areas that would likely not be protected under the limited duty rule and participate in activities that may not fall under the general negligence standard. Even assuming, *arguendo*, that you could determine where a fan was and the activities they were doing at the time of injury, there is still a legal problem underlying the unified theory. There are several ways for courts to err when applying two distinct frameworks to analyze the standard of care, and adoption of the rule does not resolve any problem these injuries may present. Instead, lawyers would have the ability to fight over every stage of the analysis such as: whether the general or limited duty rule applies to a particular fan, whether the stadium was reasonably safe considering the known hazards, and whether there were any intentional distractions leading to the fan’s injury. Such a generalized and factual theory will only leave room for endless

147. *City of Milton v. Broxson*, 514 So. 2d 1116, 1117 (Fla. 1st Dist. Ct. App. 1987).

148. *Id.* at 1119.

149. *Lowe v. Cal. League Pro. Baseball*, 65 Cal. Rptr. 2d 105, 123 (Cal. 4th Dist. Ct. App. 1997).

150. Tavella, *supra* note 139, at 195.

debate and argument. Thus, the unified theory for sports injuries, while a worthy public policy goal of balancing the protection to fans, ultimately would not survive practical application in stadiums across Florida.

The unified theory of sports injuries attempts to make it fairer for fans engaged in the litigation process over their injuries but would fail in its practical application. Since the unified theory is dependent upon the given factual circumstances to determine which standard of care applies, the theory does not proactively curb the litigation problem that may result from foul ball injuries. The Florida legislature should proactively adopt a statutory framework that bars liability from fans injured in the ordinary course of the baseball game due to its easy application and eventual protection of the fans through increased safety measures.

IV. FLORIDA'S SUGGESTED PATH: PROACTIVELY ADDRESSING BASEBALL'S FOUL BALL INJURIES

The baseball rule is a legal theory almost as old as the state of Florida itself. Such a tried-and-true legal theory, being the law in most jurisdictions, contains plenty of scholarship detailing the benefits and drawbacks of the rule. One constant across almost every case heard about the baseball rule is the fact that it is common knowledge among those who watch baseball games that foul balls may end up in the stands and injure fans.¹⁵¹ While fans should be protected from such injuries, stadium owners can never fully ensure the entire safety of every guest at every game in Florida. Since there is this fine line between balancing the need to protect fans from foul balls and the economic stability of baseball franchises in Florida, the Florida legislature would best be served by proactively codifying the baseball rule.

Florida has a unique relationship with professional sports, particularly baseball, as the economic impact from professional sporting events brings in a large part of the revenue throughout the state. For example, a study found that over the last two years, the sports industry itself has generated \$146.5 billion in

151. See *Blakeley v. White Star Line*, 118 N.W. 482, 483 (Mich. 1908); *Quinn v. Recreation Park Ass'n*, 46 P.2d 144, 146 (Cal. 1935); *Crane v. Kan. City Baseball & Exhibition Co.*, 153 S.W. 1076, 1077 (Mo. Ct. App. 1913).

revenue for Florida.¹⁵² For baseball, a 2018 study found that Spring Training alone brought in over \$687 million dollars in revenue to the state of Florida.¹⁵³ From Florida's very beginning, baseball has been a strong force in the economy and has supplied thousands of jobs across multiple different industries. Spring Training in particular, not including the regular season for the two MLB teams, creates 10,000 jobs for Floridians when 1.6 million fans show up yearly.¹⁵⁴ On top of the Major League level teams' economic impact, the minor league franchises in Florida also have a huge impact on the economy as teams are spread throughout the state.¹⁵⁵ It is rather surprising that such a vital economic industry of Florida does not enjoy more protection throughout the games that are played. With the high number of tourists and economic stability the game of baseball brings to Florida, the baseball rule is in the unique position to ensure that these economic benefits continue throughout the state for years to come.

As the economic impact has shown baseball's large market in Florida, the codification of the baseball rule in other states protects stadium owners from liability in part because of economic reasons. In the legislative purpose outlined in the New Jersey statute, the legislature pointed directly to the economic benefit that the state gains from professional baseball games.¹⁵⁶ In Colorado, the baseball rule statute also includes language about economics in the beginning of the statute stating: "The general assembly further finds that the state will derive economic benefit from spectators attending professional baseball games."¹⁵⁷ With baseball being more essential to the economy in Florida,

152. Peter Schorsch, *Sports Generated \$146.5B in Florida Economic Impact Over the Past Two Years*, FLA. POL. (Dec. 20, 2022), <https://floridapolitics.com/archives/577532-sports-generated-146-5b-in-florida-economic-impact-over-the-past-two-years/>.

153. Owen Poindexter, *Spring Training Delay Threatens \$1.3B Economic Impact*, FRONT OFF. SPORTS (Mar. 7, 2022, 4:09 PM), <https://frontofficesports.com/spring-training-delay-threatens-1-3b-economic-impact/> (stating that the delay in Spring Training is due to a failure to agree on a new CBA threatened \$1.3 billion across Arizona and Florida).

154. FLA. SPORTS FOUND., *THE ECONOMIC IMPACT OF THE FLORIDA SPORTS INDUSTRY: 2017 FACTBOOK 22* (2017), <https://playinflorida.com/wp-content/uploads/2017/01/2017-Economic-Impact-of-Sports.pdf>.

155. *Id.* at 23.

156. N.J. REV. STAT. § 2A:53A-44 (2022) ("Moreover, the State derives economic benefit from spectators attending professional baseball games. Therefore, it is the intent of the Legislature to encourage attendance at professional baseball games.").

157. COLO. REV. STAT. § 13-21-120(2) (2022).

legislating the baseball rule with an eye towards promoting the industry would fall exactly in line with the other states that have codified the rule. The intent of the legislatures in those two previously mentioned states relate the baseball rule to decreased ticket prices from the lowered costs whether litigated or not.¹⁵⁸ Florida should encourage fans to attend MLB games throughout the state to stimulate the economy and make the state a place where families can enjoy America's Pastime. Legislating the baseball rule in Florida would not only put the state at the forefront of the issue, but it would continue to invite more professional baseball owners to look at expanding into the state. A codification of the baseball rule would help Florida in both the short term and for the foreseeable future.

Furthermore, analysis must be given to the language used by the states who have codified the baseball rule. Florida would best be served by using these other states as a model in developing their own version of the statute. In Arizona, the baseball rule statute states that:

- A. An owner is not liable for injuries to spectators who are struck by baseballs, baseball bats or other equipment used by players during a baseball game unless the owner either:
 - 1. Does not provide protective seating that is reasonably sufficient to satisfy expected requests.
 - 2. Intentionally injures a spectator.¹⁵⁹

The statutory section in Arizona thus limits the baseball rule to injuries from certain baseball equipment and offers a full bar to litigation unless either of the two factors are present.¹⁶⁰ While differing slightly from the baseball rule, the idea is the same. Stadium owners are protected unless they do not provide adequate safety netting to their fans. In Colorado's baseball rule statute, spectators are legislatively assumed to have knowledge that baseballs may end up in the stands,¹⁶¹ and thus the statute acts as a full bar to litigation unless the stadium owner:

158. *Id.*

159. ARIZ. REV. STAT. ANN. § 12-554(A) (2022).

160. *Id.*

161. COLO. REV. STAT. § 13-21-120(4)(a) (2022).

- (a) Fails to make a reasonable and prudent effort to design, alter, and maintain the premises of the stadium in reasonably safe condition relative to the nature of the game of baseball;
- (b) Intentionally injures a spectator; or
- (c) Fails to post and maintain the warning signs.¹⁶²

The Colorado statute provides for more areas of protection to fans and ensures that they are warned by signs. This adoption of the baseball rule most thoroughly addresses the issue and provides stadium owners with some direction as to their liability.¹⁶³ Finally, the Illinois baseball rule statute provides that there is no liability for stadium owners for injuries unless: (1) a person seated behind protective netting gets hit from ineffective safety equipment due to the general negligence of the stadium owner; or (2) “the injury is caused by willful and wanton conduct, in connection with the game of baseball, of the owner or operator or any baseball player, coach or manager employed by the owner or operator.”¹⁶⁴ Generally speaking, the statutes regulating the baseball rule create a framework that courts can consistently apply and provides stadium owners with greater knowledge of their duty to protect their guests. It is rather surprising that states with less baseball activity, outside Arizona, have developed a rule protecting the game of baseball in their states before Florida.

With all the foregoing information and history, Florida would best be served by statutorily adopting the baseball rule. Instead of being reactionary to any court’s decision in the state on the matter, Florida’s legislators should work to proactively protect the institution of baseball. With that in mind, the following, based on the history of the baseball rule and other state statutes, is the rule Florida should adopt when it comes to fan injuries at baseball stadiums:

162. *Id.* § 13-21-120(5).

163. New Jersey’s statute is very similar to Colorado’s adoption of the baseball rule and is known as the “New Jersey Baseball Spectator Safety Act of 2006.” *See* N.J. REV. STAT. § 2A:53A-43 (2022).

164. 745 ILL. COMP. STAT. 38/10 (2022).

Civil Limited Liability – Professional Baseball Facilities¹⁶⁵

(1) Short title.—This chapter may be cited to and known as the “Florida Spectator Safety Act of 2023.”¹⁶⁶

(2) Definitions¹⁶⁷

(a) “Stadium Owner” – means a natural person, corporation, partnership, limited liability company or some equivalent thereof who lawfully possesses and controls a professional baseball team’s stadium in the state of Florida.¹⁶⁸

(b) “Professional baseball game” – means any baseball game, whether exhibition or competition, where both teams compete in a professional baseball league, either in the major leagues, minor leagues, Spring Training, or independent professional baseball league, whose players are paid for playing the game of baseball.¹⁶⁹

(c) “Spectator” – means any person who attends a professional baseball game for the purpose of watching the game regardless of the price paid for admission.¹⁷⁰

(3) It is the recognition of the Florida Legislature that those who attend professional baseball games in the state of Florida may be injured as a result of attending the game.¹⁷¹ The legislature also finds that the risk of injury presented at a Major League Baseball game is common knowledge among the general public and that professional baseball teams need to provide protective seating for those who wish to have it.¹⁷²

165. This model statute serves as a collection of the four states who have statutes dealing with the baseball rule and seeks to unify them into one singular approach for the state of Florida. Thus, the statutory framework that follows is a model under which the Florida legislature could base their own baseball rule statute.

166. See N.J. REV. STAT. § 2A:53A–43 (2022); COLO. REV. STAT. § 13-21-120(1) (2022); 745 ILL. COMP. STAT. 38/1 (2022) (“This Act may be cited as the Baseball Facility Liability Act.”).

167. In this section of the model statute, the definition section is modeled after Colorado and New Jersey’s statutes. See N.J. REV. STAT. § 2A:53A–45 (2022); COLO. REV. STAT. § 13-21-120(3) (2022).

168. See ARIZ. REV. STAT. ANN. § 12–554(F)(2) (2022).

169. See N.J. REV. STAT. § 2A:53A–45(b) (2022).

170. See *id.* § 2A:53A–45(c); COLO. REV. STAT. § 13-21-120(3)(c) (2022).

171. See N.J. REV. STAT. § 2A:53A–44 (2022).

172. See *id.*; COLO. REV. STAT. § 13-21-120(2) (2022).

With various cities throughout the state engaged in the display of professional baseball, Florida's economy is significantly impacted by the game of baseball.¹⁷³ Baseball provides a wholesome experience for Florida's residents and families which should be encouraged across the state.¹⁷⁴ Therefore, it is the intent of this legislative body to protect the game of baseball throughout the state, by encouraging fan attendance, through the adoption of the baseball rule which limits liability to stadium owners.¹⁷⁵ This limitation on the liability of stadium owners will further encourage the development of Florida's economy, lead to a uniform standard across Florida's jurisdictions, and promote the steady efficiency of the judicial system.¹⁷⁶

(4) Stadium owners shall not be liable for baseball related fan injuries that result from attendance at a professional baseball game.¹⁷⁷ Spectators are presumed to have assumed the risk of injury inherent in any given professional baseball game. These injuries include, but are not limited to, injuries from baseballs, bats, and other baseball related equipment from its use in a professional baseball game.¹⁷⁸ Unless otherwise provided for under this Act, the legislature finds that the baseball rule, in this state, shall serve as a complete bar to suit and shall serve as a complete defense to a suit against a stadium owner for injuries relating to the assumed risks of baseball including foul balls, flying bats, and other baseball related injuries notwithstanding the provisions of Section (5) of this act.¹⁷⁹

(5) The baseball rule and protections of this Act shall not apply if:

173. See N.J. REV. STAT. § 2A:53A-44 (2022); COLO. REV. STAT. § 13-21-120(2) (2022).

174. See COLO. REV. STAT. § 13-21-120(2) (2022) (“[T]he general assembly also finds that attendance at such professional baseball games provides a wholesome and healthy family activity which should be encouraged. The general assembly further finds that the state will derive economic benefit from spectators attending professional baseball games.”).

175. See *id.* (“It is therefore the intent of the general assembly to encourage attendance at professional baseball games.”).

176. See *id.* (“Limiting the civil liability of those who own professional baseball teams and those who own stadiums where professional baseball games are played will help contain costs, keeping ticket prices more affordable.”).

177. See ARIZ. REV. STAT. ANN. § 12-554(A) (2022).

178. See *id.* § 12-554(D).

179. See N.J. REV. STAT. § 2A:53A-44 (2022); COLO. REV. STAT. § 13-21-120(4)(b) (2022); 745 ILL. COMP. STAT. 38/10 (2022).

(a) A Spectator's injury results from the intentional, knowing conduct of a player, manager, other spectator, or stadium personnel.¹⁸⁰

(b) The stadium owner fails to provide adequate protective netting, measured by the industry standard, to protect spectators by giving them a choice between sitting in protected or unprotected seats and displaying signs according to the provisions of Section (6) of this act warning of the inherent dangers and risks of foul balls across the stadium.¹⁸¹

(6) It shall be required across all professional baseball stadiums in the state of Florida to post signage with the following to put fans on notice of the inherent dangers of baseball:¹⁸²

WARNING

UNDER FLORIDA LAW, A SPECTATOR OF PROFESSIONAL BASEBALL ASSUMES THE RISK OF ANY INJURY TO PERSON OR PROPERTY RESULTING FROM ANY OF THE INHERENT DANGERS AND RISKS OF SUCH ACTIVITY AND MAY NOT RECOVER FROM AN OWNER OF A BASEBALL TEAM OR AN OWNER OF A STADIUM WHERE PROFESSIONAL BASEBALL IS PLAYED FOR INJURY RESULTING FROM THE INHERENT DANGERS AND RISKS OF OBSERVING PROFESSIONAL BASEBALL, INCLUDING BEING STRUCK BY A BASEBALL OR A BASEBALL BAT ANYWHERE ON THE PREMISES DURING A PROFESSIONAL BASEBALL GAME.¹⁸³

A Florida statute modeled on the framework above would serve to proactively protect the game of baseball in Florida. In the framework provided above, the baseball rule would be a complete

180. See 745 ILL. COMP. STAT. 38/10 (2022); ARIZ. REV. STAT. ANN. § 12-554(A) (2022).

181. See 745 ILL. COMP. STAT. 38/10 (2022); COLO. REV. STAT. § 13-21-120(4)(b) (2022) (“[E]xcept as provided in subsection (5) of this section, no spectator nor spectator’s representative shall make any claim against, maintain an action against, or recover from an owner for injury, loss, or damage to the spectator resulting from any of the inherent risks of attending a professional baseball game.”)

182. See N.J. REV. STAT. § 2A:53A-48 (2022).

183. Modified from the New Jersey Statute requiring signs be posted throughout the stadium. *Id.*; see also COLO. REV. STAT. § 13-21-120(6) (2022).

bar to litigation throughout the state subject to only a few delineated exceptions. Florida's development of the baseball rule can preemptively provide a uniform approach to dealing with baseball injury cases that would curb the possibility that several different courts would come to wildly different conclusions. As America's Pastime and an economic staple in Florida, baseball is here to stay—just how much is up to the legislature.

In a state that has so much professional baseball, it makes the most sense for Florida to work proactively to deal with any potential litigation problems that may arise because of baseball fan injuries. While the baseball rule suggested above may seem unnecessary with Florida's modified comparative fault system,¹⁸⁴ it serves its purpose by allocating the fault to the fans who arguably do not want the protective netting in the first place.¹⁸⁵ Furthermore, many of the states adopting the baseball rule (such as Arizona,¹⁸⁶ New Jersey,¹⁸⁷ and Colorado¹⁸⁸) are comparative fault jurisdictions. Thus, the baseball rule has a place in modern comparative fault jurisdictions through the analysis of whether each party adhered to their standard of care.

In legislating that the baseball rule is a complete bar to litigation, courts will not become overburdened with the potential influx of cases over fan injuries as such events gain even more publicity. This will allow the courts to focus on their preexisting dockets and mass amounts of new cases that Florida's courts see every year.¹⁸⁹ The time is now for Florida's legislature to act and commit to a statute that protects the institution of baseball throughout the state not just for the stadium owners, but for the spectators as well.

184. See FLA. STAT. § 768.81(6) (2023).

185. See discussion *supra* pt. I. for a reminder that every time protective netting has been recommended, some fans have made known their disagreement with the decision.

186. ARIZ. REV. STAT. ANN. § 12-2505 (2022).

187. N.J. REV. STAT. § 2A:15-5.1 (2022).

188. COLO. REV. STAT. § 13-21-111 (2022).

189. See *Appellate Dashboard*, FLA. CTS., <https://www.flcourts.gov/Appellate-Dashboard> (last visited Mar. 6, 2024) for statistics on each of Florida's courts of appeal. On the federal side, the United States Bankruptcy Court for the Middle District of Florida is the third busiest court in the United States. *District Fact and Statistics*, U.S. BANKR. CT. MIDDLE DIST. FLA., <http://www.flmb.uscourts.gov/statistics/> (last visited Mar. 6, 2024).

V. CONCLUSION

Former President Herbert Hoover once stated: “Next to religion, baseball has furnished a greater impact on American life than any other institution.”¹⁹⁰ Based on the vast economic impact baseball has in Florida, the legislature should take a proactive role in protecting the institution of baseball. In fact, the intertwined nature of baseball and the legal field has been ongoing for over a century. For one, the first commissioner of baseball, Kennesaw Mountain Landis, was a federal judge before and for two years during his time as the commissioner.¹⁹¹ On another note, MLB also has an antitrust exemption that has been recognized by the Supreme Court of the United States.¹⁹² Under the historical understanding of baseball’s relationship with the legal sphere, Florida’s legislators are aptly equipped to protect the institution of baseball in Florida.

Major League Baseball has received increased criticism from fans, players, and the media alike over injuries that fans have sustained at baseball games.¹⁹³ With the delicate line of fan experience and protection, adopting the baseball rule statutorily will encourage stadium owners to adhere to specific safety precautions while still giving fans the opportunity to watch the game unobstructed if they so desire.¹⁹⁴ As professional baseball’s biggest home, Florida is in a delicate position without the baseball rule. Florida’s legislators should take a proactive approach to dealing with fan injuries and adopt the baseball rule. Such action will encourage the continued development of professional baseball in the state and will ensure that a consistent framework can be applied in every case. Instead of

190. *Herbert Hoover Joins Nationals’ Racing Presidents*, ESPN (Apr. 10, 2016, 12:53 PM), https://www.espn.com/mlb/story/_/id/15176145/herbert-hoover-joins-racing-presidents-washington-nationals-games.

191. *About Kennesaw Mountain Landis*, NAT’L BASEBALL HALL FAME, <https://baseballhall.org/hall-of-famers/landis-kenesaw> (last visited Mar. 6, 2024).

192. Samuel A. Alito Jr., *Alito: The Origin of the Baseball Antitrust Exemption*, SOC’Y FOR AM. BASEBALL RSCH., <https://sabr.org/journal/article/alito-the-origin-of-the-baseball-antitrust-exemption/> (last visited Mar. 6, 2024).

193. Joshua W. Praw, *Nothing But Net: Is the “Baseball Rule” About to Change*, U.S. L. 2, 3, http://www.murchisonlaw.com/files/uslaw_2019.pdf.

194. In Japan, where baseball is the most popular sport, whistles and horns sound when a ball leaves the field of play. *Id.* Furthermore, stadiums there have “excited seats” where the field of play is unobstructed, and fans are provided with a helmet and a glove to protect themselves. *Id.*

waiting for there to be a problem, the time is now for Florida's legislators to protect baseball in the state, and the most practicable solution is—adopting the baseball rule.