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Route To: ___/___/___/___


# SPORTS FACILITIES and the LAW

How the law affects the sports facilities industry


## Iowa Supreme Court: Carrying a Firearm in the Parking Lot of an Athletic Complex Is the Same as a Classroom

In a split decision, the Supreme Court of Iowa has affirmed the ruling of a lower court, upholding the conviction of a man who possessed a firearm in the parking lot of an athletic complex, which while owned by the school district was not contiguous to an actual school.

In so ruling, the majority found that students participating in athletic activities are just as entitled to be free of gun violence as students sitting in a classroom. And that to rule otherwise would be "absurd."

The incident leading to the decision occurred on Sept. 22, 2017 when the Davenport North High School football team was playing Davenport Central at Brady Athletic Complex. The venue is more than a mile from the school, yet still owned by the school district.

Outside the facility, in the parking lot, there are multiple signs that read: "Davenport Community Schools." During the contest, Davenport Police Captain Jamie Brown patrolled the parking lot in an off-duty capacity.

Around 9 p.m., Brown spotted a man putting flyers on parked cars and quizzed him about his activities. The man, James Mathias, responded: "Freedom of speech," according to the opinion. Feeling that Mathias was "kind of agitated or annoyed," Brown asked him to show an ID. At that point, he noticed Mathias was also carrying a gun. The man showed the officer his carry permit. Because Brown was unsure about whether the parking lot constituted school grounds and he was concerned about

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## MiLB Contraction and Its Legal Implications

*By Gil Fried, Professor/Chair Sport Management Department, University of New Haven*

On November 19, 2019 a group of 104 US Congressmen and Congresswomen co-signed a letter sent to Major League Baseball (MLB) urging the league to reconsider their "radical proposal" to overhaul their minor league network. The letter seemed to threaten an erosion of congress' historical legislative support for baseball.

The letter was sent to MLB Commissioner Rob Manfred and called the league's bid to eliminate 42 clubs an "abandonment" that "would devastate our communities, their bond purchasers, and other stakeholders," The letter went on to explore some of the potential implications such as impacting employment opportunities and harming charitable involvement by local teams.

MLB is examining overhauling its minor league system (through downsizing predominantly lower tier teams) in part to improve the overall quality of facilities, as well as a geographic realignment to reduce team travel. The proposed downsizing would allow those eliminated teams the option to join a future "lower-quality dream league." Since these smaller clubs often operate at a loss (estimated on average costing the MLB teams around $600,000 annually), they might not have the funds to keep stadiums compliant with MLB stadium requirements. The proposed plan would also create a franchise limit of 150 players in a minor league system and shorten the MLB draft to 20 rounds.

The letter did not address any spe-

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## Carrying a Firearm in the Parking Lot Is the Same as a Classroom

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Mathias' "demeanor," he did not arrest him on the spot.

Instead, a few months later, he consulted with the Scott County Attorney's Office, which confirmed Mathias should be charged with carrying a firearm on school grounds, a class D felony. A jury would later convict Mathias.

Mathias appealed, citing the proximity of the athletic complex as the reason his conviction should be overturned. At issue is whether the parking lot constituted school property.

In the majority's opinion, it noted "there are practical problems if we hold such complexes are not grounds of a school. First, such a holding draws an irrational line between schools that are and schools that are not able to build athletic complexes in the same location as the classroom building. But we do not find a meaningful distinction between an athletic complex built next to the classroom, and one built several blocks away. Similarly, we find no meaningful distinction between an athletic facility, such as a swimming pool, that is on land contiguous to the classroom building and another athletic facility, such as a football stadium, that is not on land contiguous to that same classroom building, We are doubtful the legislature concluded students involved in school events at the stadium are less worthy of protection than those engaged in school events at the pool."

Writing for the majority, acting chief justice David Wiggins added: "Education is not limited to only that which occurs in the traditional classroom setting. Many schools offer classes that are not in such a setting but still take place on school-owned property—e.g., marching band, weightlifting and conditioning, and shop."

Justice Edward Mansfield, in a dissenting opinion, argued that the criminal statute didn't give fair notice of the illegality of Mathias' actions, adding that neither he nor the officer were sure Mathias was breaking the law at the moment. He wrote: "If my distinguished colleagues cannot agree on the meaning of 'grounds of a school,' how is a citizen who wants to comply with the law supposed to know what the term means?"

The full opinion can be viewed here: https://www.iowacourts.gov/courtcases/7676/embed/SupremeCourtOpinion ●

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# Is It Fair to Extend Liability to The Foul Poles?

## *The Baseball Rule and the Effects of Increasing Protective Netting*

*By Matthew A. Nanninga and Alisha A. Dickie, of Drew Eckl Farnham*

On May 29, 2019, the Cubs played the Astros at Minute Maid Park.[1] During the game, a two year old girl was struck by a foul ball and sustained a fractured skull, a seizure, subdural bleeding, brain contusions, and brain edema.[2] Last year, on August 25, 2018, Linda Goldbloom, 79 years old, was struck by a 93 mph foul ball at Dodger Stadium.[3] She died four days later.[4] On September 20, 2017, a young girl was struck in the face by a 106 mph foul ball at Yankee Stadium that resulted in multiple facial fractures, brain bleeds, and the imprint of the ball's stitching on her forehead.[5]

Unfortunately, these stories appear to be happening with greater frequency, and have created headlines. The impact on those injured, the players who caused and witnessed the incident, and the spectators at large has been palpable. Both spectators and players alike have encouraged baseball clubs to increase netting to better protect spectators from the inherent risks of the game.[6] Many point to the standards adhered to in Japan as the solution.[7] Japanese stadiums require netting to extend to the foul pole at the end of the field and any approaching foul balls are announced via whistles and warnings from ushers in that area.[8] For the seats that are unprotected, each spectator is provided a helmet and ball glove as they enter their section.[9] Not all want the extra netting, however. Some spectators prefer to wtch the game with an unobstructed view and oppose significant alterations to the protective netting.[10]

Since the inception of baseball, clubs and stadium owners have tried to balance spectator preference and experience with safety. Courts as far back as 1913 have acknowledged that "[b]aseball is not free from danger to those witnessing the game," but, despite the risks associated with public attendance, "a large part of those who attend prefer to sit where no screen obscures the view."[11] In fact, courts historically scoffed at the idea of screening in the entire stadium to virtually eliminate spectator injury, acknowledging that "the perils of the game are not so great as to require such extreme precaution."[12] The Baseball Rule emerged to balance club liability with spectators' desire for an unimpeded view.

The Baseball Rule limits the liability of premises operators for injuries sustained by spectators that occur as a result of risks inherent to the game of baseball. As the Rule originally stood, clubs "were not insurers of the safety of spectators; but, being engaged in the business of providing a public entertainment for profit, they were bound to exercise reasonable care, i.e., care commensurate to the circumstances of the situation to protect the patron against injury."[13] In essence, the Baseball Rule mirrored many states' black letter premises liability law or rationale. Thus, the duty of clubs under the Baseball Rule was to "provid[e] seats protected by screening from wildly thrown or foul balls, for the use of patrons who desired such protections."[14] Because it is common knowledge that foul balls occur, spectators that elected a seat outside of such protective netting "voluntarily placed themselves there with knowledge of the situation, and may be held to assume the risk."[15] "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 risks and dangers, he chooses the more dangerous place."[16]

The Baseball Rule, as applied in recent cases, provides that "a ballpark operator that provides screening behind home

1 *2-Year-Old Girl Hit by Albert Almora Jr.'s Foul Ball in Houston Suffered a Skull Fracture, According to Family Attorney*, Mark Gonzales and Tim Bannon, Jun. 26, 2019, Chicago Tribune, https://www.chicagotribune.com/sports/cubs/ct-cubs-albert-almora-girl-hit-20190626-uexh4vmrhrhptky7patv2kbwse-story.html

2 *2-Year-Old Girl Hit by Foul Ball at Astros Game Suffered Skull Fracture, Attorney Says*, Jake Russell, Jun. 26, 2019, The Washington Post, https://www.washingtonpost.com/sports/2019/06/27/year-old-girl-hit-by-foul-ball-astros-game-suffered-skull-fracture-attorney-says/

3 *A Baseball Killed a Woman at Dodger Stadium, MLB's First Foul-Ball Death in Nearly 50 Years*, Tim Elfrink, Feb. 5, 2019, The Washington Post, https://www.washingtonpost.com/nation/2019/02/05/make-nets-higher-woman-killed-by-foul-ball-dodger-stadium-family-says/

4 *A Baseball Killed a Woman at Dodger Stadium, MLB's First Foul-Ball Death in Nearly 50 Years*, Tim Elfrink, Feb. 5, 2019, The Washington Post, https://www.washingtonpost.com/nation/2019/02/05/make-nets-higher-woman-killed-by-foul-ball-dodger-stadium-family-says/

5 *Father of Girl Hit by Ball Recounts Ordeal, and the Yankees Promise Fixes*, Billy Witz, Oct. 1, 2017, The New York Times, https://www.nytimes.com/2017/10/01/sports/baseball/yankee-stadium-netting-foul-ball.html

6 *After Numerous Foul Ball Fan Injuries, Baseball Reconsiders Protective Netting*, Ben Bergman and Josh Axelrod, Jul. 13, 2019, NPR, https://www.npr.org/2019/07/13/739967250/after-numerous-foul-ball-fan-injuries-baseball-reconsiders-protective-netting, hereafter "Baseball Reconsiders".

7 *Does Japanese Baseball Have the Answer for MLB's Dangerous Foul Ball Problem, Allen St. John*, Sep. 30, 2017, Forbes, https://www.forbes.com/sites/allenstjohn/2017/09/30/does-japanese-baseball-have-the-answer-for-baseballs-dangerous-foul-ball-problem/#3364e7ca829c, herein after "Japanese Baseball".

8 Japanese Baseball, n. 6 *supra*.

9 Japanese Baseball, n. 6 *supra*.

10 Baseball Reconsiders, n. 5 *supra*.

11 *Wells v. Minneapolis Baseball & Athletic Ass'n.*, 122 Minn. 327, 331 (1913).

12 *Grimes v. American League Baseball Co.*, 78 S.W.2d 520, 523 (Ill. App. Ct. 1935).

13 *Crane v. Kansas City Baseball & Exhibition Co.*, 168 Mo. App. 301, 301 (1913).

14 *Id.*

15 *Id.*

16 *Id.*

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plate sufficient to meet ordinary demand for protected seating has fulfilled its duty with respect to screening and cannot be subjected to liability for injuries resulting to a spectator by an object leaving the playing field."[17] The modern day Baseball Rule is therefore often referred to as a "no duty" rule — so long as due care has been exercised to provide a reasonable number of screened seats, spectators who select seats outside of the screened area assume the risk of injury, any injury resulting to spectators is not caused by the negligence of the baseball club, and the risk itself is not considered an unreasonable risk, eliminating the duty to warn.[18]

However, a number of courts have held that the Baseball Rule "extends only to those risks that the home team is powerless to alleviate without fundamentally altering the game of spectator's enjoyment of it."[19] Therefore, for the club to avail themselves of the Baseball Rule and absolve themselves of liability for a spectator's injury, the risk itself must be inherent to the game.[20] Any distractions caused by the club or stadium owner that take a spectator's attention away from the game or that causes an injury that the home team could have reasonably avoided without altering the game will open the club or stadium owner to liability for the spectator's injury. For example, in *Coomer*, a spectator was hit in the eye by a hotdog thrown by the Kansas City Royal's mascot.[21] The Coomer Court found that there was nothing inherent to the game about the mascot's ritual hotdog toss, and the club could be held liable for Coomer's injuries.[22] A court in California reached a similar decision where a mascot distracted a spectator by jostling and bumping the spectator from behind.[23] Though the spectator was injured by a foul ball which would ordinarily be an inherent risk of the game, the *Lowe Court* found that the club had a duty not to increase inherent risks, and the mascot's behavior did just that by distracting the spectator attention from the game.[24]

Though the seats are ever closer, the balls ever faster, and the players ever stronger, the netting requirements at stadiums and the legal shield protecting clubs from liability

17 *South Shore baseball, LLC v. DeJesus*, 11 N.E.3d 903, 907 (Ind. 2014).
18 *See* Coomer *v. Kasas City Royals Basebal Corp.*, 437 S.W.3d 184, 197 (Mo. 2014).
19 *Coomer*, 437 S.W.3d at 197.
20 *Id.* at 201.
21 *Id.* at 189.
22 *Id.* at 202.
23 *Lowe v. California League of Prof. Baseball*, 56 Cal. App.4th 112 (1997).
24 *Id.* at 123.

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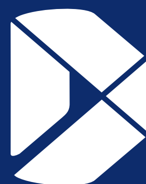

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# Mets and Others Prevail In Spectator Accident Involving "Yellow Jacket" Cable Cover

*By Carla Varriale, Esq.*

A New York state court granted summary judgment to a group of defendants, including the owners of New York Mets, in a negligence action brought by a spectator who tripped and fell over what is commonly referred to as a "yellow jacket" or a cable cover. The cable cover was used in connection with the broadcast of the 2015 Championship Playoff games at Citi Field (the "Stadium"). The cable cover was placed over wires that were located in the parking lot near the entrance to the stadium.

Plaintiff sued the New York City Department of Parks and Recreation, The City of New York, Queens Ballpark Company, L.L.C., Sterling Mets L.P., and Metrovision Production Group, LLC. The defendants were represented by Havkins, Rosenfeld, Ritzert & Varriale. Plaintiff alleged, among other things, that defendants were negligent in their maintenance of the premises. He claimed that they created a "dangerous condition," and that the cable cover constituted a tripping hazard. He also claimed the parking lot lacked sufficient lighting and lacked sufficient crowd control and that he was not able to observe the cable cover before the accident.

Defendants New York City Department of Parks and Recreation, The City of New York, Queens Ballpark Company, L.L.C., and Sterling Mets L.P.(the owners and operators of the Stadium) moved for summary judgment because the cable cover, which was described by plaintiff as a seven-inch high, nine-inch wide, and a 25-foot long object, was not actionable as a matter of law. Defendants successfully argued that, based on plaintiff's own description, the cable cover was open and obvious and not inherently dangerous. In addition, they argued that plaintiff's actions were the sole proximate cause of accident because he failed to make reasonable use of his sense before he tripped over the cable cover. Although plaintiff alleged there were lighting issues and crowd control issues that prevented him from seeing the cable cover, defendants established that he previously admitted that he was looking straight ahead while he was walking into the stadium and further admitted he had no trouble observing his friend who was a few feet in front of him. His friend had no problems traversing the same area moments before plaintiff and had no issues with the alleged "condition." There were no other spectators in proximity to plaintiff before he fell, and no one jostled or pushed him. Defendant Metrovision Production Group, LLC (the owner and operator of the broadcast truck on the premises) moved on similar grounds.

Plaintiff opposed the motion and argued that that the photographs annexed to the defendants' motions did not reflect the actual lighting conditions that existed at the time of the accident. Moreover, plaintiff's counsel argued that the cable cover was black and unmarked, which negated any argument that the cable cover was readily observable. In his opposition, he submitted his own self-serving affidavit that contradicted his prior sworn testimony.

In reply, defendants countered that they had met their burden as the movants for summary judgment and that all plaintiff had provided in his opposition was an attorney's hearsay affirmation and a feigned issue of fact affidavit that should be disregarded. Defendants reiterated that the cable cover constituted an open and obvious condition based on plaintiff's own description of its dimensions and placement, as matter of law, and the photographs demonstrated that even a half hour after the accident, there was sufficient lighting around the area of the alleged accident. Plaintiff had an opportunity to observe the cable cover, had he paid attention to where he was walking, according to defendants. There were no overcrowding or lighting issues, per plaintiff's own testimony.

Defendants' motion was granted by Justice Alan Weiss of Supreme Court, Queens County. The judge noted that the height, dimensions and position of the cable cover rendered it an open and obvious condition that was not inherently dangerous as a matter of law. There is not a duty to protect or to warn of an open and obvious area because the "condition" itself served as a warning to a person making reasonable use of his or her senses. Moreover, the court held that plaintiff's own affidavit was an effort to feign a question of fact requiring a trial and the court disregarded it and held that it was insufficient to raise a triable issue of fact. •

Carla Varriale, Esq. and Maria Scalici, Esq. represented the New York City Department of Parks and Recreation, The City of New York, Queens Ballpark Company, L.L.C., Sterling Mets L.P.

## Hackney Welcomes Skadden as *eSports and the Law* Sponsor

Hackney Publications has announced that Skadden, Arps, Slate, Meagher & Flom LLP (Skadden) will be the sponsor of eSports and the Law, a quarterly electronic newsletter, which will be complimentary to industry participants.

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Additional original content will be provided by Hackney Publications and eSports and the Law's Editor in Chief, Ellen M. Zavian, a Professorial Lecturer in Law at the George Washington University Law School and nationally recognized eSports industry expert.

# Mariners Fans Win Some Battles in ADA Suit, While Vast Portion of Claims Must be Decided at Trial

A federal judge from the Western District of Washington has granted, in part, a summary judgement motion filed by a group of disabled patrons of T-Mobile Field, home of Major League Baseball's Seattle Mariners. Specifically, the court approved three of the nine outstanding grievances submitted by the plaintiffs, who are all confined to wheelchairs.

The plaintiffs had sought (1) declaratory relief that T-Mobile Field does not comply with the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., and its subsequently promulgated regulations and standards, and (2) injunctive relief ordering that T-Mobile Field be brought into compliance.

The defendants in the lawsuit included Washington State Major League Baseball Stadium Public Facilities District, Baseball of Seattle, Inc., Mariners Baseball, LLC, and The Baseball Club of Seattle, LLLP, all of which own or operate the stadium in some capacity.

Construction of T-Mobile Field began on March 8, 1997. Wheelchair accessible seating is provided throughout the facility. The Mariners have conducted some remedial measures since the initiation of the lawsuit, on October 15, 2018.

"As best the court can ascertain," the following is a list of the plaintiffs' outstanding grievances:

**"Seating Dimensions:** Plaintiffs claim that the accessible seating in the 300 Level fails to meet the minimum depth requirements set by the ADA. Because the seat depth is insufficient, Plaintiffs claim their wheelchairs 'unacceptably spill into the accessible route behind the chairs' causing other spectators to bump into Plaintiffs while the they attempt to pass behind the seats.

**Edgar's Cantina Elevator/Lift:** Plaintiffs complain about the elevator or lift leading to Edgar's Cantina,4 which is 'a bar and restaurant along the outfield at the playing field level' is not ADA-compliant. The Court is unclear as Plaintiffs' exact concern with the elevator/lift. In Plaintiffs' complaint they claim the lift is noncompliant because it requires a key to operate and is not automatic. While, in their motion for summary judgment, the complaint appears to be that it is too dangerous because there is a vertical gap which may cause wheelchair users to flip over backwards while attempting to mount the lift.

**Bullpen and Dugout Access:** Plaintiffs allege that during stadium tours or when the Field is open for public events, the

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# Mariners Fans Win Some Battles in ADA Suit; Trial to Decide Other Claims

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Mariners allow guests to tour the bullpen and dugout. According to Plaintiffs, these areas are only accessible by stairs preventing Plaintiffs from visiting the areas.

**Gaps, Cracks, and Expansion Joints:** Plaintiffs allege that there are hundreds, if not thousands, of bumps, cracks, slopes, and changes in level along paths of travel and walking surfaces around the stadium that present hazards for wheelchair users. Some of these obstacles result from maintenance issues where adjacent sections of concrete or brick meet or from expansion joint covers with excessive rises in elevation. These excessive cracks cause wheelchair users to become stuck or excessively jostled while attempting to traverse causing 'pedestrians to crash into wheelchairs from the rear, spilling food or drinks on themselves' or 'nearly fall[ing] to the ground due to the unexpected bump.'

**Eating and Drinking Surfaces:** Plaintiffs claim there are numerous eating and drinking surfaces around the park that do not comply with ADA standards. For example, Plaintiffs list the following: (1) drink rails that are too high on the 200 Level; and excessively tall dining tables and counters in (2) Edgar's Cantina; (3) 'The Pen'; (4) Edgar's Cantina Home Run Porch; and (5) Lookout Landing.

**Concession Counters:** In addition to noncompliant eating and drinking surfaces, Plaintiffs claim that several of the sales counters at concession stands around T-Mobile Field are also noncompliant. For example, Plaintiffs list the following: counters in The Pen, including (1) Jack Daniels Bar; (2) Silver Bullet Bar; (3) most of the 'Shortstop Beer' stands; (4) the 'Hop Box' beer stand; and (5) the bar at Edgar's Cantina.

**Concession Lines:** Plaintiffs claim that many of the lines leading up to concession counters also fail to meet the ADA's width requirements preventing wheelchair users from navigating to sales counters.

Distribution- Plaintiffs charge Defendants with failing to provide sufficient distribution of ADA-compliant seating throughout T-Mobile Field. This includes the allegation that the current arrangement fails to provide both sufficient choice of admission prices and locations throughout the Field.

**Sightlines:** Plaintiffs allege that guests seated in ADA-compliant seats on the 100 Level do not have comparable sightlines to both the field of play and scoreboards. This failure is exacerbated when fans seated in front of wheelchair accessible seats stand up in excitement during particularly exhilarating moments in the game."

The court noted at the outset that the ADA prohibits discrimination against individuals, like the plaintiffs, who are disabled. It added that Title III addresses "Public Accommodations and Services Operated by Private Entities" and provides that "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). "Both parties agree that the Mariners are private entities and that T-Mobile Field is a public accommodation regulated under Title III," wrote the court.

The court zeroed in on Miller v. California Speedway Corp., 536 F.3d 1020, 1024 (9th Cir. 2008) as a relevant case. "Congress mandated that the Attorney General's regulations must 'be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board,' 42 U.S.C. § 12186(c), which is 'commonly referred to as the Access Board.' Miller, 536 F.3d at 1024.10 Thus, the Access Board establishes the 'minimum guidelines' for Title III, but the DOJ promulgates its own regulations, which must be consistent with—but not necessarily identical to—the Board's guidelines.' Id. at 1025."

Of relevance to the standards for several of the plaintiffs' grievances, the Access Board published its first ADA Accessibility Guidelines in January 1991. See Access Board, ADA Standards for Accessible Design (1994), https://www.ada.gov/1991standards/adastd94-archive.pdf (1991 ADAAG). The court went on to identify many other documents and guidelines that are relevant to the instant action including Department of Justice, Accessible Stadiums (1994), https://www.ada.gov/stadium.pdf, which the defendants relied heavily upon, and the ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities (1993), https://www.ada.gov/taman3.html (TAM). In sum, "the minimum standard that T-Mobile must meet is established by the ADAAG. But more stringent requirements may be applicable where provided for by the TAM or 1994 Supplement to the TAM. The Ninth Circuit, however, has not spoken to Accessible Stadiums."

In its analysis, the court found the first three of the plaintiffs' claims "have sufficient merit to justify summary judgment, while a genuine dispute of material facts exists over most of the others." It wrote that it would turn to the "heavy hitters" of distribution and sightline at the end.

With regard to the first three, the Mariners "concede noncompliance. First, ... seating dimensions, the defendants respond that 'the plaintiffs are correct that some of the accessible seats on the 300 Level are short [of the applicable] front-to-back dimension by approximately 3-4 inches.' Second, regarding Edgar's Cantina elevator/lift, the defendants respond that 'the Mariners agree that the lift requires

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improvement and they will do so.' Finally, as to bullpen and dugout access, the defendants respond that '[t]here is presently no accessible route into the player dugouts,' but that 'the Mariners will provide for an accessible lift into one or more of the dugouts, or preclude general public access to these player areas.' Thus, the court finds there is no genuine dispute of material facts as to these grievances and will grant summary judgment as it pertains to them."

In general, regarding the contested claims, the court denied summary judgement, concluding that they would be better resolved at a trial on the facts.

"Both of the plaintiffs' final two grievances involve a question of whether T-Mobile Field's placement of accessible seating complies with the ADAAG, as adopted by the DOJ.

"ADAAG Section 4.44.3 provides:

Placement of Wheelchair Locations. Wheelchair areas shall be an integral part of any fixed seating plan and shall be provided so as to provide people with physical disabilities a choice of admission prices and lines of sight comparable to those for members of the general public. . . . When the seating capacity exceeds 300, wheelchair spaces shall be provided in more than one location. EXCEPTION: Accessible viewing positions may be clustered for bleachers, balconies, and other areas having sight lines that require slopes of greater than 5 percent. Equivalent accessible viewing positions may be located on levels having accessible egress.

1991 ADAAG at § 4.33.3.15

"Based on this provision, Plaintiffs assert two grievances, including that T-Mobile Field does not provide adequate (1) distribution of accessible seating, both as it relates to admissions pricing or locations around the stadium, and (2) lines of sight comparable to the general public."

The court went on to highlight the competing authorities, cited by both parties, and its unwillingness to delineate between them, at this stage. ●

Landis v. Wash. State Major League Baseball Stadium Pub. Facilities Dist. Et al.; W.D. Wash.; CASE NO. 2:18-cv-01512-BJR; 8/19/19

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## MiLB Contraction and Its Legal Implications

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cific regulatory efforts that might be taken against MLB. However, there could be congressional examination of baseball's long standing judicial antitrust exemption. Since the Federal Baseball case (Federal Baseball Club v. National League, 259 U.S. 200 (1922)) there have been attacks on MLB's antitrust exemption. In the Toolson case, the Supreme Court concluded they made a mistake giving MLB the antitrust exemption, but it would be up to congress to remove the exemption (Toolson v. New York Yankees, Inc., 346 U.S. 356 (1953)). There have been numerous attempts over the years to remove the exemption, but they have all failed. With over 100 signees, this might be the best opportunity for congress to leverage its power and threaten MLB with revoking the antitrust exemption if the teams are shuttered.

Baseball has one of the oldest fan bases in all professional sport. The long games (around three hours) are pushing baseball to find ways to speed up the games in order to attract younger fans. Yes, MLB is making money, but there are possible problems on the horizon and MLB need to rein in costs and ensure a quality experience for its fans. It should also be noted that an appeals court ruled earlier this year that Minor League Baseball players could move forward with a class-action lawsuit in an effort to obtain higher wages.

Outside of the passionate debate about the role of minor league teams in the fabric of America, there are numerous legal issues that could be explored. The first deals with contract law. These contracts often focus on agreements between minor league teams and local municipalities who own the stadiums. Contractual language needs to be explored to see whether MLB teams have the right to move a franchise or cancel a contract without breaching the lease terms. Careful analysis would need to be undertaken to see if eliminating a team is a legitimate reason for a team not complying with the lease terms. Furthermore, a team being "demoted" to a lower level league might result in a breached contract if the team is no longer affiliated with MLB or does not produce a certain quality/caliber of games.

Another issue could be bond covenant breaches by the stadium owners. If the stadium's primary tenant leaves and money is still owed on the bonds, what does that do for the public or private entities that underwrote the bonds? For example, there could be certain taxes (such as a ticket surcharge/tax) based on attendance at the stadium and if a team is no longer playing at the stadium those revenues would end. Ending such revenue streams could be an explicit breach of bond requirements. If a municipality breaches their bond covenants, what would happen to the debt, the municipalities' bond rating, and to the stadium?

In addition, several communities that were considering stadium projects, have since put those discussions on hold (or scrapped them) for fear MLB will use contraction as leverage when the Professional Baseball Agreement expires. There could be claims raised by various entities for breach of contract or other claims if they undertook work on these stadiums and now have lost on business opportunities (possible third-party interference with contracts claims).

Other legal issues can revolve around employment law. There could be several union contracts which could be upended if employees are not needed for running/maintaining a facility. There could also be a number of claims by third party vendors who might now have a worthless contract. For example, a concessionaire might have a long-term contract with a stadium and if the team leaves it might render that contract worthless.

These represent just some legal issues that might arise. These issues should encourage a detailed analysis by all parties of the significant legal challenges that might arise from dropping these teams. ●

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## Is It Fair to Extend Liability to The Foul Poles?

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have remained relatively constant.[25] Prior to the 2016 season, Major League Baseball (the "MLB") recommended that the protective netting be extended by all clubs.[26] However, it was not until February 2018 that all 30 clubs agreed to extend their protective netting to the end of the dug outs.[27] The Major League Baseball Players Association has called for netting from foul pole to foul pole twice: once in 2007 and again in 2012.[28] However, the MLB states that it would be difficult to implement the foul pole netting requirement universally given the different designs and specifications of each club's stadium, and therefore, also the clubs to determine the appropriate amount of safety netting.[29] At this time, initiated by the Chicago White Sox, at least eleven (11) teams have announced that each will extend protective netting to or near the outfield foul poles: the Atlanta Braves, Baltimore Orioles, Chicago White Sox, Houston Astros, Kansas City Royals, Los Angeles Dodgers, Miami Marlins, Pittsburgh Pirates, Texas Rangers, Toronto Blue Jays, and Washington Nationals.[30] News articles have also announced foul pole to foul pole netting creeping into Minor League Teams in the Class AAA Pacific Coast League, Low A Midwest League, Low A South Atlantic League, and American Association of Independent Professional Baseball.[31]

A consequence of the extension of the protective netting to the foul poles, however, will necessarily be the altered spectator experience. With netting extended to the foul poles, spectators will no longer be able to interact with the players as they had before. Foul balls will no longer be tossed

25 Baseball Reconsiders, n. 5 *supra*.

26 *All 30 MLB Teams Will Extend Protective Netting this Season*, Tom Schad, Feb. 1, 2018, USA Today, https://www.usatoday.com/story/sports/mlb/injuries/2018/02/01/mlb-teams-extend-protective-netting-season/1086019001/, herein after "Protective Netting".

27 Baseball Reconsiders, n. 5 *supra*.

28 [28] *Here's a Look at the 30 MLB Ballparks and their Safety Netting for Dangerous Foul Balls*, Scott Gleeson and Tom Schad, May 30, 2019, updated Jul. 15, 2019, USA Today, https://www.usatoday.com/story/sports/mlb/2019/05/30/mlb-safety-nets-stadium/1284310001/

29 Protective Netting, n. 25 *supra*.

30 *White Sox Host 1st MLB Game with Foul Pole-to-Pole Netting*, Scott King, July 22, 2019, Associated Press, https://apnews.com/4cda494a0c29463dbbb9b777586aae32; *Braves will Extend Protective Netting at SunTrust Park*, Tim Tucker, August 19, 2019, the Atlanta Journal-Constitution, https://www.ajc.com/sports/baseball/braves-will-extend-protective-netting-foul-poles-suntrust-park/KcDzQ8wPWyyNuXQWArOkdJ/

31 *Expect Extended Netting Conversations to Continue*, Zach Speddon, July 22, 2019, Ball Park Digest, *https://ballparkdigest.com/2019/07/22/expect-extended-netting-conversation-to-continue//*;

See Is It Fair on Page 11

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## Is It Fair to Extend Liability to The Foul Poles?

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from players to the eager young fan at the dugouts. Pregame autographed souvenirs will be more difficult to obtain. Selfies will be nearly impossible as the protective netting will interfere with the camera focal point. Derek Jeter's diving catch into the stands will be the last highlight of its kind. While spectators will be safer, the experience will inherently be different.

While the Baseball Rule is still very much in play, the changes to the protective netting requirements implemented by the MLB and by the clubs individually may impact the Court's application and interpretation of the Rule moving forward. Ultimately, these voluntary extensions could catch far more than foul balls. Whether a club has exercised due diligence and reasonable care in the amount of proffered protective netting and protected seats has been and remains a crucial part of the analysis when applying the Baseball Rule.[32] As it stands, the Baseball Rule still hinges on the safety of the seating immediately behind home plate.[33] However, as clubs continue to voluntarily extend the netting further and further toward the foul pole, the Baseball Rule may become a thing of the past. If the legal standards of "due diligence" and "reasonable care" are commiserate with the modern-day netting standards, new duties and standards of care may be created. For example, the MLB cannot impose uniform netting standards for all clubs due to the individual configuration of each stadium, begging the question of whether the courts will take into consideration cost, budget, and feasibility when determining liability for individual clubs. Moreover, it is unclear how the court will apply newer standards to minor league clubs with smaller budgets, college stadiums or even recreational leagues and ball parks.

The courts have not reexamined the core principles of the Baseball Rule since its inception. As more and more injured spectators sue, the courts are provided with more opportunities to revisit the rule and reevaluate what amount of protective seating and netting is reasonable. As the courts examine what is and isn't due diligence or a reasonable number of protected seats, inherently, the courts will also reanalyze the liability of the clubs for spectator injuries, potentially extending liability as far as the netting.

In short, though the Baseball Rule still serves to protect clubs so long as protected seating is proffered behind Homeplate. However as the clubs increase the length of their protective netting, we can expect the courts to alter the Baseball Rule in due time to reapportion liability to match. •

32 *Coomer*, 437 S.W.3d at 197.
33 *South Shore baseball, LLC*, 11 N.E.3d at 907.

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# California Judge Sides With Clippers in Challenge to New Arena; Plaintiffs Promise Appeal

A Los Angeles Superior Court judge has ruled for the Los Angeles Clippers and the City of Inglewood, rebuffing the Uplift Inglewood Coalition, which had argued that the defendants violated the state's Surplus Land Act when they moved forward with plans to build a new arena. Weeks later, the plaintiffs promised an appeal.

The Coalition filed the claim in June 2018, alleging that the Act was violated when Inglewood officials entered into a 36-month exclusive negotiating agreement (ENA) with Clippers-controlled entity Murphy's Bowl, LLC in the summer of 2017 over an arena project on a city-owned site.

The Act stipulates that public bodies must first grant priority to potential affordable housing development projects before selling public land to private entities. Specifically, the Coalition was seeking to have a judge void the contract between the city and the Clippers, and institute a 60-day bidding period for other parties to bid on the land.

"Even if the ENA leads to an offer from Murphy's Bowl to acquire the Property, Petitioner cites no evidence or contractual terms that would prevent City from complying with the [Act] prior to entering a final sale agreement with Murphy's Bowl," wrote the judge. "While Petitioner argues that [Act] negotiations by City at that point would not be in good faith, the court is not persuaded that the evidence supports that conclusion."

The court was receptive to the defendants' argument that the land could not be used for housing because of its proximity to Los Angeles International Airport flight paths and opposition from the Federal Aviation Administration because of aircraft noise.

"The Uplift claim had no legal merit," Skip Miller of Miller Barondess, LLC, counsel for the City of Inglewood, said in a press release. "Their sole purpose was to block economic development in Inglewood, and the Court saw through what they were doing and made the correct legal decision."

The Coalition disagreed.

"While we were disappointed in the ruling, we are not deterred," according to a press release. "Uplift Inglewood filed the claim last year because the City and Clippers did not follow State laws that require cities to give first priority to affordable housing development when selling public land, but instead prioritized building a 'home' for billionaire developer Steve Ballmer. We continue to argue that City officials enable billionaires to profit from our displacement while systematically excluding residents from participating in closed-door decisions that have drastic impacts on their lives, including traffic congestion and skyrocketing rent increases. This is essentially housing discrimination.

Katie McKeon, attorney with Public Counsel, added: "The Uplift Inglewood Coalition demonstrated to the Court that the only obstacle to compliance with the Surplus Land Act and other affordable housing laws, and building healthy housing on these sites, is political will. The Court's decision gives the City a pass on compliance with the SLA at a time of grave affordable and homeless crisis. As part of its #HomesBeforeArenas campaign, Uplift Inglewood will continue to consider all of its options to hold the City accountable to state affordable housing laws."

Representing the plaintiffs are Public Counsel, which bills itself as "the nation's largest not-for-profit law firm of its kind – handling impact litigation, pursuing legislative change, and providing direct legal services that reach more than 30,000 people every year in California and across the nation.

Also assisting the plaintiffs is Cozen O'Connor. ●

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