

# WASHINGTON CASE UPDATE

## “Foul Ball!” – Baseball’s Limited Duty and Assumption of Risk

case in point...

From the desk of Kyle D. Riley: America’s pastime holds a special place not only in American society and history, but also in its laws. Baseball has its very own rule that limits the liability of players and operators for injuries caused by the game to spectators. Even in a system of comparative negligence, baseball’s special duty rule has survived to bar recovery to spectators. Given the prevalence of baseball, this rule can arise not only in the context of professional baseball, but also amateur baseball including everything from college ball to recreation leagues. Read on to learn how the limited duty rule and assumption of the risk defense apply to foul balls and broken bats.

**Claims Pointer:** Nearly every American state has created some form of the “limited duty rule,” which defines the duty of care that a baseball stadium owner owes to spectators injured by foul balls. The duty requires a stadium owner to protect patrons seated in the most dangerous parts of the stadium (i.e., behind home plate) and to provide seating for those patrons that do not wish to sit in a dangerous area. In this case, the Washington Court of Appeals held that the stadium did not violate its limited duty when it did not provide protective screens down the entire length of the first base stands because the risk in that area was not unreasonably dangerous. Furthermore, assumption of the risk barred the plaintiff’s recovery for a number of reasons including that she had seen a foul ball land near her that day, was familiar with baseball, and had tweeted that she wanted a ball to land near her so she could take a ball home.

Reed-Jennings v. The Baseball Club of Seattle, L.P., 351 P.3d 887 (Wash. App., May 26, 2015)

On May 4, 2009, Teresa Reed-Jennings and her family (“the Jennings”) went to a Seattle Mariners’ game at Safeco Field (collectively, “the Mariners”). They arrive an hour early in order to watch the players warm up. Their tickets were two rows up from the field in section 116, along the first base line. Teresa had attended several games at Safeco and had sat in seats near section 116. A warning was printed on the ticket, walls, posts, and back of the seats for section 116 that there was a danger of foul balls and bats. The Jennings watched the Mariners warm up. In addition to the permanent safety fence behind home plate, the Mariners had set up additional safety nets (which the MLB did not require) around the batters and extending slightly beyond the permanent fence, but not the full length of the bases, including where Teresa was sitting. As is customary, the pitchers were holding three balls in their non-throwing hand in order to keep a rhythm for the batter warming up by limiting time between pitches. As a result, multiple balls can be in the air at the same time due to the brief delay between pitches.

While the visiting team was warming up, a foul ball landed near her. Teresa later tweeted about the ball landing near her, writing that “I said I wanted another one to land right there. It’ll be mine.” At one point, a ball was hit into center field. While Teresa was watching the ball she heard a ball being hit and as she turned her head, was struck in the face causing serious injury.

The Jennings sued the Mariners for negligence. The Mariners moved for summary judgment arguing that it had satisfied the limited duty rule and that the Jennings’ claims were barred by the assumption of the risk doctrine. The Jennings argued that the comparative fault statutes eliminated the “limited duty” rule. The trial court ruled for the Mariners on both the limited duty rule and assumption of the risk, dismissing the case. The Jennings appealed.

The Washington Court of Appeals upheld the trial court ruling. First, the Court of Appeals flatly rejected the Jennings’ argument that the comparative fault statute abrogated the limited duty rule. The Court explained that the Mariners satisfied their duty because they provided a permanent 26-foot screen behind home plate, provided temporary screens around the batters, and even set up safety screens along a part of the foul lines (which was not mandated by Major League Baseball). Furthermore, section 116, where the Jennings were seated, was not an unreasonably dangerous area. In the four years preceding Teresa’s injury, more than 10,000,000 people had attended games at Safeco, in which there were 300 people injured by foul-related incidents, and only 5 of those incidents occurred in section 116. If there was any doubt as to whether the limited duty rule applied to batting practice, the Court explained that batting practice was part of the game of baseball (and therefore protected by the limited duty rule) because it is “integral” to the sport. The Court rejected the reasoning of treatises and other jurisdictions that had not been relied upon in Washington.



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As to the assumption of risk doctrine, the Court held that Teresa assumed the risk of being hit by a foul ball. The Court explained that implied primary assumption of the risk applied. To establish implied primary assumption of the risk, the defendant must show that the plaintiff subjectively knew of a risk and voluntarily chose to encounter the risk. Teresa argued that she did not subjectively appreciate the specific risk of injury resulting from a foul ball that was hit while another ball was in the air. The Court stated that while Teresa needed to subjectively know all the facts that would cause a reasonable person to be aware of a specific risk, she did not need to know of “every variable that might affect the likelihood or exact mechanism of harm.” In other words, Teresa knew and appreciated that a foul ball could harm her because of where she chose to sit. The facts demonstrated that Teresa was fully aware that a foul ball could harm her at the time of the incident.

The Court affirmed the trial court, concluding that the Jennings’ negligence case was barred by the limited duty rule and because Teresa assumed the risk of injury from a foul ball by watching batting practice.



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