

Take Me Out to the Ball Game, Take me Out to the E.R.

By Reg P. Wydeven
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A couple of weeks ago my family and I attended a Timber Rattlers game. Coincidentally, it just happened to be 'Star Wars' night. We took some great pictures with members of the 501st Legion – Wisconsin Garrison, a group of Star Wars enthusiasts who show up in costume at events to raise money for charity. After the photos, we watched the Rattlers defeat the Fort Wayne Tincaps.

One of the great things about T'Rats games is the family entertainment, especially in between innings. In addition to the mini-car races and hamburger-building relays, the Fang and Whiffer mascots toss prizes into the crowd. My daughter was hoping for a T-Shirt, so when Whiffer tossed one in our direction, I went for it. After scraping most of the flesh off one of my knuckles while diving for the shirt, I emerged from the violent scrum triumphant. We also caught a Frisbee two innings later.

We had an awesome night as a family and will have some great memories. Not everyone did, however. A fan in our section was struck in the head by an errant foul ball. The T'Rats staff immediately attended to him, but he was removed on a stretcher and taken to the hospital.

Because their dad is a lawyer, my kids immediately asked me if the fan would sue the Timber Rattlers because of his injuries. I told them to read the back of their tickets. After fishing in their pockets for the stubs, they intently read the disclaimer that states that fans voluntarily assume all risks of danger incidental to the game of baseball, including being injured by flying bats and balls.

The incident came on the heels of the tragedy at Fenway Park. Boston Red Sox fan Tonya Carpenter was struck in the face by a piece of a broken bat swung by Brett Lawrie, the Oakland Athletics' third baseman. The bloodied Carpenter was rushed to Beth Israel Deaconess Medical Center and was in critical condition for days. Like the T'Rats fan, it is unlikely Carpenter will sue because of the so-called Baseball Rule.

The legal concept holds that stadium owners and operators are not responsible for injuries sustained by foul balls or pieces of shattered bats so long as netted or screened seats are in place for a reasonable number of spectators. The burden of preventing injury is placed on the fans to look out for their own welfare.

The Baseball Rule was conceived over a century ago to protect the budding sport by preventing franchises from going under as a result of a lawsuit from an injured fan. There is a movement to overturn the Baseball Rule, however, due to a growing number of similar injuries across the country. Opponents of the rule argue that bigger and faster athletes combined with fans being closer to the action than ever before has resulted in increased and more severe injuries.

Despite the Baseball Rule, some fans have had success in court recently. A few years ago I wrote about John Coomer, a fan who sued the Kansas City Royals after their mascot, Sluggerrr, threw a hot dog and hit him in the eye. The Missouri Supreme Court held that unlike flying bats and balls, the risk of being hit by a hot dog "is not an unavoidable part of watching the Royals play baseball."

Similarly, courts in Idaho and Georgia ignored the Baseball Rule by allowing fans struck by foul balls to sue.

While I loved our souvenirs, it may be time to install safety nets along the entire first- and third-baselines. Snagging a foul ball with your hand is outweighed by catching a piece of a bat in your face.

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