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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GAIL PAYNE, individually and on behalf of all others similarly situated, Plaintiff, v. OFFICE OF THE COMMISSIONER OF BASEBALL (d/b/a MAJOR LEAGUE BASEBALL); and ROBERT D. MANFRED, JR., Defendants.	No. CLASS ACTION COMPLAINT **JURY TRIAL DEMANDED**

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Plaintiff, Gayle Payne, on behalf of herself and all others similarly situated, brings this class action complaint against the Office of the Commissioner of Baseball, an unincorporated association doing business as Major League Baseball ("MLB"); and Rob Manfred, the Commissioner of Major League Baseball, and complains and alleges upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

I. INTRODUCTION

> *A line-drive foul screams into the stands at 100 miles per hour. A bat slips from a player's hands, cartwheeling dangerously out of control as it crashes among the fans. A fielder hurries his throw, sailing the ball into the front rows. These, and other action-related events, pose serious safety issues for baseball fans. While there are no hard statistics, baseball, along with soccer and auto racing, is among the most dangerous spectator sports.*[1]

1. Each year, tens of millions of men, women, and children in the U.S. attend a Major League Baseball game.[2] Fans flock to ballparks and pay an average of $27.00 to $83.00 per ticket[3] to watch pitchers throw a ball at or over 100 miles an hour[4] and hear the crack of the bat when a batter swings for the fences. The lack of safety netting at major league ballparks is a problem creating over a thousand preventable injuries per season. Every year, a growing number of fans, of all ages but often children,[5] suffer often horrific and preventable injuries, such as blindness, skull fractures, severe concussions, and brain hemorrhages, when they are struck by a screaming foul ball or flying shrapnel from a shattered bat while sitting in an unprotected area.

2. 1,750 spectators are injured each year by wayward baseballs. This equates to twice every three MLB games, or, more often than a batter is hit by a pitch. In a typical MLB game, 35-

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[1] Robert Gorman and David Weeks, *Death at the Ballpark: A Comprehensive Study of Game-Related Fatalities, 1862-2007* (2009) (citing "Foul Play" Fan Fatalities in Twentieth-Century Organized Baseball" (2003)).

[2] http://espn.go.com/mlb/attendance/_/year/2014.

[3] https://www.teammarketing.com/public/uploadedPDFs/2014+mlb+fci.pdf (average, non-premium ticket price).

[4] In 2013, eight pitchers hit triple digits. http://triblive.com/sports/mlb/5423918-74/mph-velocity-cole#axzz3dp7EI79C.

[5] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year ("Child Victims - While the typical injury is minor, like a bruised hand or a bloodied lip, a small number are more serious, and those victims tend to be children.").

40 batted balls fly into the stands. And "fly" is the operative word. Baseballs have an average mass of 5.125 ounces, and a 90 miles per hour fastball can leave the bat at 100 miles per hour. The average professional batter's swing impacts 4,145 pounds of force to the ball. Peak forces from such a ball can exceed 8,300 pounds – enough to stop a Mini Cooper in its tracks. It is thus a serious safety hazard when foul balls fly into a ballpark's "Danger Zone" (the unprotected area along the first and third base lines).

3. Certainly baseball is part of the fabric of our culture and is undoubtedly one of the greatest pastimes in the history of American sport. The game is constantly changing and evolving. The look and feel of ballparks, the rules of the game and its players have evolved greatly since the turn of the century. Baseball has evolved, in many ways, to do the right thing – the better thing – for its fans, whether it's desegregating play, addressing the use of controlled substances, or implementing better security at crowded ballparks. And in doing the right thing for its fans, the institution of baseball has itself benefitted and grown stronger.

4. Manfred and the Office of the Commissioner have acknowledged both the risk to spectators and their duty to protect spectators. Defendants have promulgated spectator safety rules applicable in all MLB stadiums, and have made various public statements regarding its obligations: "Fan safety is our foremost goal for all those who choose to support our game by visiting our ballparks, and we will always strive for that experience to be safe and fan-friendly." Defendants have also admitted that it is specifically the role of the Commissioner, and the Office of the Commissioner of Major League Baseball to make a change with respect to fan safety if one was to be made ("there is no epidemic of foul ball damage yet that would warrant some sort of edict or action by the commissioner's office").[6] Major League Baseball's Commissioner, Rob Manfred,

[6] Statement of John McHale, MLB executive vice president, 2014. The former Commissioner also acknowledged it was within the role of the MLB and its Commissioner to promulgate rules to protect spectators. http://www.foxsports.com/mlb/story/boston-red-sox-fenway-park-mlb-broken-bat-injured-fan-safety-netting-060715 ("While we're always very, very concerned with the health and the welfare of the fans, you also don't want to do anything to obstruct the views of the fans, which creates really a major problem. You sort of have to weigh one against the other.").

has himself acknowledged "we're very cognizant of the severity of the injury"[7] and that MLB would "re-evaluate"… "take a fresh look at"… and "react strongly" to the issue of spectator injuries from errant balls and bats.[8] Despite these statements, responsibility, and awareness of the pattern and severity of spectator injuries, Manfred and the Office of the Commissioner have failed to act. Defendants have failed to follow the path of other professional sports in the United States[9] and in other countries[10] that have taken readily-available and relatively inexpensive steps to protect its spectators.[11] This is particularly alarming, as the technology to protect spectators has been around since before the turn of the century, and there are already rules requiring its implementation during batting practice (for spectator safety), as well as during official play (to help umpires more accurately judge fair and foul balls).[12] ***Finally, and tellingly, those who know the game and its dangers best – the players – have demanded since at least 2007 that protective measures be put in place – something Manfred and the Office of the Commissioner have never disclosed to the public.***[13]

5. At the same time Manfred and the Office of the Commissioner have failed to act, and have made statements regarding the need to "re-evaluate" safety, they have increased the risk to spectators. Manfred and the Office of the Commissioner have promoted Major League ballparks and even its most dangerous areas as safe and family-friendly, and the Commissioner has publicly stated that his "first and foremost goal"[14] is to get more children into MLB ballparks[15] at a younger

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[7] http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece.

[8] http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815.

[9] The National Hockey League and NASCAR have both reacted quickly and taken measures to protect spectators.

[10] For example, full netting down the foul lines is standard in Japan. http://ftw.usatoday.com/2015/05/mlb-statcast-stats-data-launch-angle-route-efficiency.

[11] A known remedy exists, which involves extending pre-existing netting to cover the areas of the ballpark where the vast majority of serious injuries occur.

[12] *See* 2012 MLB Code of Official Baseball Rules, Comment to Rule 2.00 (Fair Ball).

[13] This fact was revealed just weeks ago, from anonymous "major league sources." http://www.si.com/mlb/2015/06/http://www.si.com/mlb/2015/06/07/mlb-players-netting-cba-boston-red-sox-fan-broken-bat.

[14] https://www.youtube.com/watch?v=znD69U2Ht2U.

age.[16] To communicate his message that "it's about the kids," he asked a 9 year-old to throw out the ceremonial first pitch on opening day.[17] Described by some as the "Pied Piper of baseball,"[18] the Commissioner and his office has also prioritized creating a faster pace of play to mirror society's faster pace of life,[19] and include Wi-Fi in all ballparks, specifically so young fans can watch MLB.com content on their mobile devices while watching games,[20] to appeal to childrens' "shorter attention spans."[21] These actions, by bringing further distractions and visual stimuli into the ballpark, while at the same time providing assurances that the ballpark is safe for families, have greatly increased the risk to fans.

6. Even after a June 5, 2015 incident at Fenway Park where an eight year-old saw his mother horribly injured by a flying shard of bat, and a June 19, 2015 incident in which a young boy was pummeled by a line drive, the Commissioner and his office have shown a remarkable lack of responsibility on this issue. On June 23, 2015, Major League Baseball's website posted video and photo of a man, who had just caught a foul ball while sitting in an unprotected area of Wrigley Field along first base, while still holding his infant child (with his legs dangling, drinking from a baby bottle) with the headline *"Oh baby, what a catch! Fan holds son, snags ball."* Perhaps the Commissioner has forgotten that a child has already been killed by a foul ball at a Major League Baseball game,[22] or is waiting for it to happen again before taking the issue more seriously.

7. In 2013, the MLB had the highest season attendance of any sports league in the world,[23] and a record number of fans attended 2015 Spring Training.[24] It's also big business – in

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[15] https://www.youtube.com/watch?v=jHKTx0zII2U.

[16] http://espn.go.com/video/clip?id=12286112.

[17] http://www.washingtonpost.com/blogs/dc-sports-bog/wp/2015/04/06/mlb-commissioner-rob-manfred-asks-9-year-old-to-throw-ceremonial-first-pitch/.

[18] http://www.chicagotribune.com/sports/baseball/ct-sullivan-rob-manfred-baseball-changes-spt-0224-20150223-story.html.

[19] https://www.youtube.com/watch?v=jHKTx0zII2U.

[20] *Id.*

[21] https://www.youtube.com/watch?v=znD69U2Ht2U.

[22] His name was Alan Fish, and he was 14-years old (perhaps not young enough to be considered a child by some, but certainly too young to die at a baseball game).

[23] http://www.sportsmuntra.com/10-most-expensive-sports-leagues-by-revenue/.

2012, MLB agreed to a $12,400,000 eight-year television broadcast contract[25] and the MLB currently generates approximately $9,000,000,000 in yearly revenue.[26] Manfred and the Office of the Commissioner have the knowledge, the ability and the means to address this issue, but have fully failed to do so.

8. Commissioner Manfred and his office, as explained herein, have failed to adequately protect spectators through his failure to enact and enforce adequate safety measures. It is time for the Commissioner and his office to take action, to protect spectators in the most dangerous areas of the ballpark, where a growing number of fans are suffering serious and entirely preventable injury. It's also time to tell the truth about the game – a fact that Manfred and the Office of the Commissioner already know – in the modern era of baseball, "paying attention" often provides little or no protection from injury, and it is unreasonable and unconscionable for Manfred and the Office of the Commissioner to continue to perpetrate this myth and attempt to contract away the rights of spectators and shield itself from liability via the use of so-called "warnings."

9. Every ball thrown in the major leagues bears Commissioner Manfred's autograph.[27] It's time for the Commissioner and his office to take action. It is time for baseball to do the right thing, not just for the fans, but for the sport.

10. Plaintiff and the Class seek injunctive relief requiring Defendants, among other things, to adopt corrective measures regarding: the implementation of (1) a rule requiring all existing major league and minor league indoor and outdoor ballparks to be retrofitted to extend protective netting from foul pole to foul pole, by the beginning of the 2016-2017 MLB season; (2) a rule requiring any newly constructed ballpark intended to house major or minor league baseball games, to include at a minimum this amount of netting; (3) a program to study injuries and the rates of injuries amongst spectators, including the type and manner of injury and at what locations

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[24] http://hardballtalk.nbcsports.com/2015/04/07/major-league-baseball-set-a-spring-attendance-record/.

[25] http://www.huffingtonpost.com/barbara-bruno/the-nfl-mlb-and-viagra-so_b_6124724.html.

[26] http://www.latimes.com/sports/la-sp-baseball-shaikin-20150607-story.html#page=1.

[27] http://m.mlb.com/news/article/107340526/new-commissioner-makes-mark-on-official-ball.

in ballparks they occur, in an effort to continually reevaluate whether additional measures should be taken, so that precautionary measures can continue to evolve as the sport continues to evolve.

II. JURISDICTION AND VENUE

11. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). In the aggregate, Plaintiff's claims and the claims of the other members of the Class, including fees and the value of the injunctive relief sought, exceed $5,000,000 exclusive of interest and costs, and there are numerous class members who are citizens of states other than each Defendants' states of citizenship.

12. This Court has personal jurisdiction over Defendants because Manfred and the Office of the Commissioner are authorized to do business and in fact do business in this district and have sufficient minimum contacts with this district, and otherwise intentionally avails themselves of the markets in this district through sponsorship of games in this district, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1), 28 U.S.C. § 1391(b)(2), and 28 U.S.C. § 1391(c). Defendants reside in this judicial district because they are subject to personal jurisdiction here, a substantial part of the events and/or omissions giving rise to the claims emanated from activities within this jurisdiction, and Defendants conduct substantial business in this jurisdiction.

14. Major League Baseball is played in this district and spectators have been injured in this district as described herein.

III. PARTIES

A. Plaintiff

15. Plaintiff, Gail Payne, is an individual residing in Alameda County, in Oakland, California. She has been a devout fan of Major League Baseball's Oakland A's for nearly 50 years, since her aunt took her to her first A's game in 1968. She loves attending games, has attended many, and this year purchased tickets for the first time. She bought tickets in section 211, which she believes is less expensive than the sections covered by protective netting. At her seats, which are in an exposed section along the first base line, she fears for her and her husband's safety

and particularly for her daughter. Due to the fact that at Oakland Coliseum, the protective netting behind the backstop is minimal, and does not extend to her seat, foul balls have shot into the stands around her more times than she can count. Gail estimates that at every game, at least three or four balls enter her section alone, and she is constantly ducking and weaving to avoid getting hit by foul balls or shattered bats. On one occasion Gail ducked to avoid a foul ball flying her way, but as alleged herein there is no guarantee she can duck the next time. In addition, due to the fact that at Oakland Coliseum, there are many, many distractions, such as a giant screen across from her section, and fan-participation contests that involve texting or using applications on mobile devices, she believes she and other fans are at increase risk of injury.

16. As a result of Defendants' failure to implement reasonable safety measures Plaintiff is at increased and unreasonable risk of serious injury while attending MLB games.

17. Plaintiff, as described herein, has been damaged by the actions and inactions of the Defendants.

18. On behalf of herself and the Class, Plaintiff seeks class-wide injunctive or equitable relief in the form of changes to current MLB rules and practices with respect to protective netting in MLB ballparks.

B. Defendants

19. Defendant, The Office of the Commissioner of Baseball ("OCB" d/b/a Major League Baseball), is an office created pursuant to the Major League Agreement entered into by the member Clubs of Major League Baseball. Upon information and belief, the OCB has the power to act for and bind MLB in business matters centralized in the League.

20. Defendant Robert D. Manfred, Jr. ("Manfred") is the Commissioner of the Major League Baseball Association, having served in that capacity since 2015. Prior to becoming Commissioner, Manfred was MLB's Chief Operating Officer and longtime advisor to former MLB Commissioner Bud Selig.[28] According to his official MLB biography, the "traditional functions"

[28] http://grantland.com/features/the-consigliere-commissioner-rob-manfred-mlb-bud-selig-alex-rodriguez-peds-steroids-suspension/.

of the Commissioner's role include overseeing baseball operations. His biography also indicates that as MLB's Chief Operating Officer, he reported directly to the Commissioner and "oversaw all the traditional functions of the Commissioner's office."[29] Upon information and belief, Manfred is a resident of Tarrytown, New York.

IV. FACTUAL BACKGROUND

A. The Evolution of Spectator Protection at MLB Ballparks

1. No Protection for Fans at Turn of the Century.

21. A hundred years ago ballparks looked very different than they do today. It was not uncommon for ballparks to have no protection for fans. The area behind home plate was called the "slaughter pen" because spectators would get hit by foul balls and debris from broken bats.[30] This photo shows spectators crowded around the action at Hilltop Stadium in New York in 1903:[31]

22. Various changes occurred to bring about the change in protections for fans. For example, new sidearm pitching delivery began to evolve, followed by rules changes that allowed for overhead pitching, which increased pitched ball velocity and ball movement, resulting in more foul balls (and strikeouts).[32] At about the same time, protective screening behind home plate began

[29] http://mlb.mlb.com/mlb/official_info/about_mlb/executives.jsp?bio=manfred_rob.

[30] https://en.wikipedia.org/wiki/Major_League_Baseball.

[31] Photo depicts game resulting in Yankees (formerly the "Highlanders") first win in franchise history.

[32] Robert Gorman and David Weeks, *Death at the Ballpark: A Comprehensive Study of Game-Related Fatalities, 1862-2007* (2009).

to appear at ballparks.[33] In 1879, the Providence Grays became the first professional baseball team with protective netting behind home plate. Netting is now behind the backstop in all major league ballparks.[34]

2. Netting technology.

23. Netting has changed from hemp woven screens to screens made with thin lightweight polymers.[35] Today's screens are much thinner, more durable and longer lasting.[36] As depicted in this photograph from the Great American Ballpark (the site of this month's 'Major League Baseball All-Star game), the netting is virtually invisible except for the seams that connect different netting sections[37]:

[33] *Id.*

[34] http://www.arnolditkin.com/Personal-Injury-Blog/2014/September/Stadium-Liability-Can-MLB-Teams-be-Held-Liable-f.aspx.

[35] http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw.

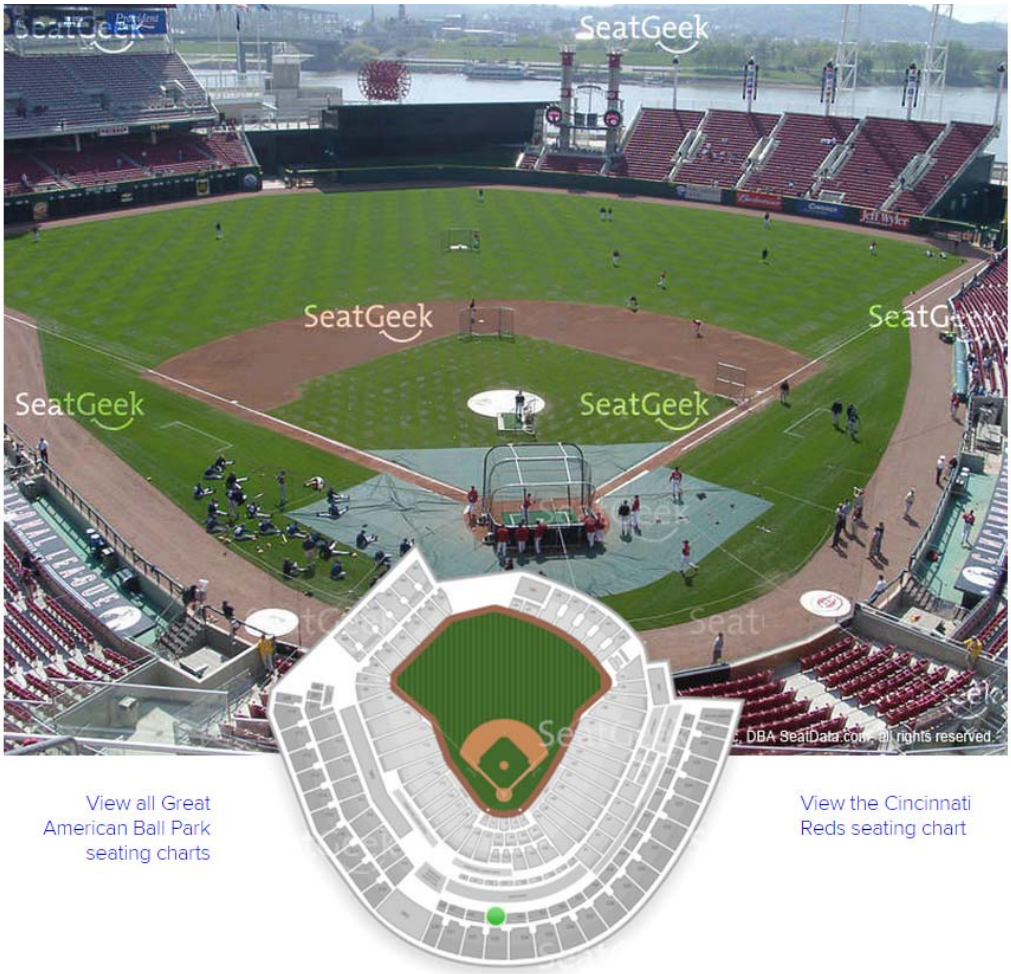
[36] "Plaintiffs in the Stands," Gil Fried, 2002, 20 Sum Ent. & Sports Law 8. The netting is very strong and was tested this past year when a drunk fan fell in Comiskey Park and landed on the net above the plate. The netting held his 200+ pound body and he was safely removed. *Id.*

[37] http://m.charlotterestaurantweek.com/articles/sports-top-stories-104670/hey-mlb-protect-your-fans-13663980.

3. Limitations of current netting.

24. Most MLB ballparks run the net 20 to 30 feet high and end the net at the start of the dugout.[38] Some ballparks end their netting at first and third base.[39]

25. The Great American Ball Park, site of this year's All Star Game, extends its netting only a short distance on either side of home plate, as shown in this overhead view from Section 423.[40]



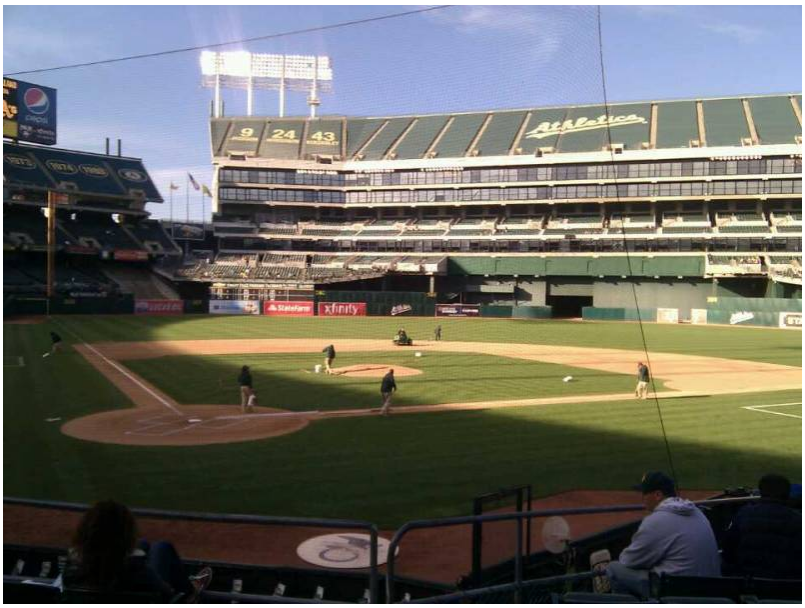
26. As better seen in this close-up:[41]

[38] http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw.

[39] *Id.*

[40] http://seatgeek.com/venues/great-american-ball-park/seating-chart/cincinnati-reds-230/section-423.

[41] http://aviewfrommyseat.com/photo/12764/O.co+Coliseum/section-115/row-18/seat-16/.

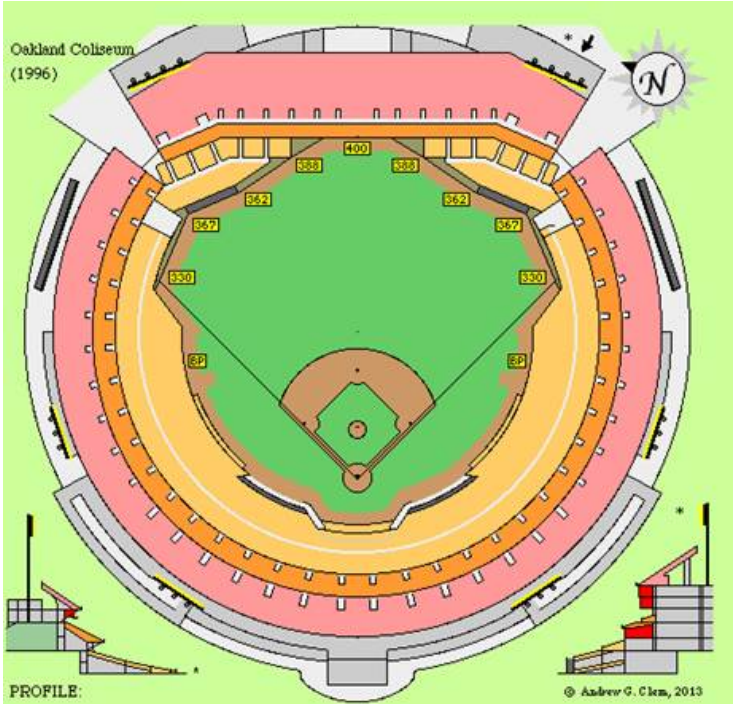


27. Oakland's Coliseum also has very minimal netting. The netting sits within an "indented" area behind home plate:[42]

28. As shown below, this "indented" section only extends just past home plate, leaving the remaining areas along first and third base and extended to the foul poles entirely exposed:[43]

[42] http://www.ballparksofbaseball.com/al/pictures/oco13954.jpg.

[43] *Id.*



29. There is no Major League Baseball standard for netting.[44]

4. Netted seats – "VIP only."

30. In Oakland's Coliseum, the area directly behind home plate in the netted section includes "Diamond Level Seats" that cost $15,990 per seat for season tickets[45] and $230.00 per individual game.[46] Section 211, where Plaintiff sits, costs $40.00 per individual game.[47]

31. "VIPs" including team personnel and professional players' family members traditionally sit in the netted area behind home plate. These seats are sometimes also held for major league scouts.[48] The seats behind the net are not considered to have an "obstructed" view – these are the most prized, highly coveted "premium" seats and are sometimes three times the price of other seats.[49] The availability of these seats is scarce – they are often occupied by premium

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[44] http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece.

[45] http://oakland.athletics.mlb.com/oak/ticketing/premium_seating.jsp#diamond.

[46] http://oakland.athletics.mlb.com/ticketing/pricing.jsp?c_id=oak&layout=gameflow.

[47] *Id.*

[48] Joint Pre-Trial Memorandum, *Costa v. The Boston Red Sox Baseball Club*, 2002 WL 33968373 (Mass. Super. Jan. 23, 2002).

[49] For example, tickets for the June 29th Reds v. Twins game at the Great American Ball Park show tickets in the protected area directly behind home plate were $260.00 each, nearly three times

paying season-ticket holders and can often be sold out. As noted by Diamondbacks reliever Brad Ziegler, "fans behind home plate pay the highest prices" and "those seats are always full."[50] The Manager of the Royals has stated "I don't think [the netting] restricts the vision in any way."[51]

32. Unlike the premium netted seats, the seats in the exposed areas just past the netting, along first and third base, between the foul poles, are often occupied by families because they are more affordable and/or protected seats are sold out. These seats are often occupied by young fans, some attending their first game, who make up for their small stature and inexperience by their eagerness to be a part of the action, wave and dance when the camera pans the crowd, and wear their little catchers mitts. However, the area along the foul lines is by far the most dangerous area of the ballpark.[52]

B. Risks to Spectators in Exposed Area of Ballpark

1. Frequency of Injury.

33. About 1,750 spectators get hurt each year by errant balls, mostly fouls, at major-league games. This means that it happens at least twice every three games. That's more often than a batter is hit by a pitch.[53]

2. The New Generation of Fan Watches the Game Differently and is at Increased Risk.

34. While revenue is at an all-time high, baseball's following is aging, and its TV audience skews older than that of any other major sport.[54] The number of kids playing baseball has

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the price of the tickets along first and third base. http://www.ticketmaster.com/event/16004D69C58D175D?tfl=Major_League_Baseball-Tickets-MLB_Tickets-na-x0.

[50] www.si.com/mlb/2015/06/07/mlb-players-cba-boston-red-sox-fan-broekn-bat.

[51] http://kansascity.legalexaminer.com/property-owners-liability-slip-fall/kc-royals-spectator-injuries-raises-questions-about-fan-safety/.

[52] "Rather, the most dangerous areas were down the first and third baselines for a significant distance past the dugouts." http://scholarship.law.marquette.edu /cgi/viewcontent.cgi?article=1266& context=sportslaw. In a study entitled "Don't Sit There…Or There…Or There: An Analysis of Ball Park Protection and Foul Ball Injury Risks" published in the International Journal of Sport Management (October 2012, pp. 423-443), researchers led by Gil Fried at the University of New Haven (CT), confirmed that the field level seating areas along the first and third base lines are the most likely to have foul balls hit into them.

[53] Elias Sports Bureau Inc. statistics. http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year.

been on a two-decade long decline.[55] "The Commissioner and his office have made it their mission to make the game more attractive to a younger demographic,[56] and the Commissioner has encouraged more "parents and grandparents…to get their kids into the ballpark at a young age."[57]

35. A multitude of distractions that have been added to ballparks to entertain spectators, generate additional revenue, and woo the next generation of baseball fan. The Commissioner has specifically acknowledged the shorter attention span of young spectators attending games, and has spoken of the need to "enhance the fan experience in the ballpark" via technology, the thing that "engages young people most completely."[58] He has indicated MLB.com, which oversees and provides content for all 30 MLB teams,[59] will ensure Wi-Fi is sufficient in all ballparks to support spectators' use of mobile devices during games. He referred to this experience as bringing the game to the "second screen," and stated that ballparks with Wi-Fi are "materially better."[60]

36. Manfred and the Office of the Commissioner have promoted eventual use of a twenty-second pitch clock[61] in the Major Leagues to increase the pace of play, in order to bring the game more in pace with the pace of modern times and engage the next generation of baseball fan.[62]

3. The most dangerous areas.

37. The most dangerous areas of the ballpark are the exposed areas along first and third base, between the foul poles, where most foul balls are hit (the "Danger Zone").[63] In the Danger

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[54] http://www.washingtonpost.com/sports/nationals/baseballs-trouble-with-the-youth-curve--and-what-that-means-for-the-game/2015/04/05/2da36dca-d7e8-11e4-8103-fa84725dbf9d_story.html.

[55] http://m.sportsbusinessdaily.com/Daily/Issues/2015/04/06/MLB-Season-Preview/MLB-League-issues.aspx.

[56] https://www.youtube.com/watch?v=znD69U2Ht2U.

[57] http://espn.go.com/video/clip?id=12286112.

[58] http://www.chicagotribune.com/sports/baseball/ct-sullivan-rob-manfred-baseball-changes-spt-0224-20150223-story.html.

[59] http://www.vault.com/company-profiles/sports/major-league-baseball/company-overview.aspx.

[60] https://www.youtube.com/watch?v=jHKTx0zII2U.

[61] http://m.sportsbusinessdaily.com/Daily/Issues/2015/04/06/MLB-Season-Preview/MLB-League-issues.aspx.

[62] https://www.youtube.com/watch?v=znD69U2Ht2U.

[63] The field level seating areas along the first and third base lines are the most likely to have foul balls hit into them. "Don't sit there…or there…or there: An Analysis of Ball Park Protection

Zone there is no protective netting and the spectator is entirely exposed. In addition, traditionally, line-drive fouls are normally hit flush, and send the ball at a higher velocity down the lines.[64] The combination of right-handed power pitchers and left-handed hitters that are likely to swing late at fastballs tends to make the area behind and near the third base dugouts particularly dangerous.[65] The first and third base lines are also dangerous because of their proximity to the bases, where players often throw at high velocity towards the bases in attempts to tag out runners, and spectators are at risk of danger from an errant throw.

38. At a typical major league game, between 35 and 40 batted balls fly into the stands.[66] When there is a fly ball to the outfield, fans look up, and just in time for the ball to end its downward trajectory towards the outfield, position themselves in the right spot, and hold out their catchers mitts. Line drives and particularly line-drive foul balls are entirely different, however. Attention is often no defense to serious injury from a 90-100 mile-an-hour screaming fast ball or shattered bat with numerous projectile pieces that fly in indiscriminate directions and can reach you before you even realize it's heading in your direction.

4. Speed and force of a flying baseball.

39. Major League Baseball has been described as having a "velocity obsession."[67] The modern era is all about power. Pitchers now throw harder than ever before.[68] In just the six years between 2008 and 2013, average MLB pitching velocity has climbed from 90.9 mph to 92 mph. In 2003, Houston reliever Billy Wagner was the only pitcher to throw at least 25 pitches at 100 mph

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and Foul Ball Injury Risks," *International Journal of Sport Management* (October 2012), pp. 423-443.

[64] In contrast, balls hit straight back are hit with the bat coming underneath the ball, which takes off some of the speed. http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw (citing Tom Verducci, *Safety Squeeze*, Sports Illustrated, Apr. 1, 2002, at 64).

[65] http://www.si.com/vault/2002/04/01/321174/safety-squeeze-with-new-ballparks-putting-spectators-closer-than-ever-to-the-action-more-fans-are-getting-in-harms-way.

[66] http://www.atlantamagazine.com/great-reads/foul-territory/.

[67] http://bleacherreport.com/articles/2083154-how-mark-buehrle-is-rising-above-the-velocity-obsession-in-mlb.

[68] http://www.washingtonpost.com/opinions/5-myths-about-major-league-pitchers/2015/04/03/184e408e-d8b1-11e4-ba28-f2a685dc7f89_story.html.

or faster.[69] In 2013, eight pitchers hit triple digits.[70] Some of the velocity increase is attributed to the new specific focus on pitcher shoulder strengthening[71] and the instant feedback available via pitch-speed tracking technology.[72]

40. A 2002 study of a 1998 foul ball injury at Fenway Park concluded that it took the ball *a mere 1.07 seconds to travel 141 feet*.[73] The ball was estimated to be traveling at 90 miles an hour. This means that a foul ball will reach a fan in less time than it takes to say the word "foul"[74] – well before he or she has likely had the opportunity to even process that an object is headed towards them and react. It is common for bystander accounts to describe first hearing the sound of the ball hitting someone's skull, or the sound of screams, as the first sign that something awful has happened, and photographs of fans in the surrounding area depict fans frozen, with mouths agape or hands over mouths in shock immediately following the injury.

41. In this modern era, baseballs have an average mass of 5.125 ounces, and a 90-mph fastball can leave the bat at 110 mph. In a collision between the bat and the ball, lasting less than one-thousandth of a second, the average professional batter's swing imparts 4,145 pounds of force to the ball. Peak forces exceed 8,300 pounds – enough to stop a Mini Cooper, rolling at 10 mph, in its tracks.[75] Attached to this complaint as Exhibit A is a video showing the speed, force, and damage from a fast-moving baseball.

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[69] http://triblive.com/sports/mlb/5423918-74/mph-velocity-cole#axzz3eefq0gaZ.

[70] *Id.*

[71] *See e.g.*, http://triblive.com/sports/mlb/5423918-74/mph-velocity-cole#axzz3eefq0gaZ ("For a long time, pitchers really focused on the front side, their beach muscles. Front-side shoulder muscles help to increase acceleration of the baseball. But the back-side shoulder muscles put on the brakes. Your brain knows not to accelerate beyond a limit it cannot possibly slow down. Some of these guys who had underdeveloped back-side shoulder muscles were not able to max out velocity even though they were yoked out in on the front side. A lot of (the velocity increase) is working the back-side shoulder muscles.").

[72] http://triblive.com/sports/mlb/5423918-74/mph-velocity-cole#axzz3eefq0gaZ.

[73] http://www.athleticbusiness.com/athlete-safety/baseball-coaches-sport-helmets-as-a-safety-measure.html.

[74] http://www.atlantamagazine.com/great-reads/foul-territory/.

[75] http://www.popularmechanics.com/adventure/sports/a4569/4216783/.

5. Risk to players, coaches and umpires.

42. At nearly every game, professional MLB players, who are specially trained, as well as paid, to pay rapt attention to the action on the field, are unable to react quickly enough to avoid being hit by line drives. Many players have been seriously injured or killed. In the minor leagues, hitting coach Mike Coolbaugh was fatally struck in the neck from a foul ball while coaching first base.[76] In 2000 Red Sox pitcher Bryce Florie was hit in the face and suffered broken bones and retinal damage.[77] Luis Salazar, an Atlanta Braves coach, lost an eye from a line drive.[78] As recently as July 1, 2015, umpire Tom Hallion was injured by a foul ball during a Colorado vs. Oakland game despite wearing a protective mask.[79]

43. Those who know the game best know attention is often not a protection to injury. After a game in May 2014 when a little boy was hit in the head by a ball, Braves' pitcher Julio Teheran said "no one had a chance to get out of the way." Carlos Gomez, the batter, said "The ball comes really hard. It can kill you."[80] Teammate Will Venable commented "Most fans aren't prepared for how fast those balls are coming off the bat…It only takes one. And if the person in front of you dives out of the way, you are helpless."[81]

44. Players admit they ask family members never to sit in unprotected seats.[82] Milwaukee Brewers (former Cub) Matt Stairs has stated that you couldn't pay him to let his three daughters sit in an exposed area.[83] Chipper Jones, the Atlanta Braves' legendary third baseman,

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[76] http://sports.espn.go.com/minorlbb/news/story?id=2945798.

[77] http://espn.go.com/talent/danpatrick/s/2001/0705/1222698.html.

[78] http://m.mlb.com/news/article/16976144/.

[79] http://www.usatoday.com/story/sports/mlb/2015/07/01/umpire-hallion-hit-in-mask-by-foul-leaves-rockies-as-game/29580939/.

[80] http://www.atlantamagazine.com/great-reads/foul-territory/.

[81] *Id.*

[82] Chipper Jones, the Braves' legendary third baseman, has said that he would not permit his own children to sit in the unprotected areas behind the dugouts. Braves manager Fredi Gonzalez advises his wife to sit behind the home plate netting, or "way up" in the stands. http://www.atlantamagazine.com/great-reads/foul-territory/; http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year.

[83] http://articles.chicagotribune.com/2002-05-12/sports/0205120214_1_major-league-baseball-major -league-dugouts.

has said that he would not permit his own children to sit in the unprotected areas behind the dugouts. Braves' manager Fredi Gonzalez advises his wife to sit behind the home plate netting, or "way up" in the stands.[84]

6. Why spectators, and particularly children, are at most risk.

45. For many reasons, the risk to spectators is much greater than players. Spectators have no protective equipment. They are not as familiar with the game as professional players. Some in unexposed sections are sitting closer to the action than the batter is to the pitcher. Spectators also are subject to distractions not visible to players. Spectators are also not specially trained to react or have the reaction time of athletes. Spectators are also not aware of the dangers the way players are.

46. Considerable research supports the proposition that children are particularly vulnerable. A child has a slower reaction time. Also, children sit lower in seats and may have an obstructed view. Also, children are less familiar with the game, and more distracted by technology. If a ball goes into the stands, a child is as likely to turn to their parent to understand how to react rather than help themselves, as they are trained from an early age to take their cues from their parents.

47. Children are also at more risk due to their relative head size. A child's brain and head are disproportionately large compared to the rest of the body, especially through the first five-to-eight years of life. This anatomical relationship continues through about the age of 14, by which time a child's skull has grown to be about 90 percent as large as an adult-size one. The disproportionately larger head size and weight, coupled with a child's weaker neck, mean that the child can't brace for a hit (if given the opportunity to brace) the way that an adult does.[85]

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[84] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year?.

[85] Cantu, Robert, *Concussions and Our Kids*, 2012.

48. And children are at risk even when they perceive they can protect themselves as depicted in Exhibit A, where a child is beaned by a ground ball even when he attempted to field the ball.[86]

C. Risk From Broken Bats

1. The change to more dangerous bats.

49. In the modern era, maple has replaced ash as the wood bat of choice in the Major Leagues.[87] About 60 percent of all big league players use maple bats instead of ash because they believe the wood is stronger and it lasts longer.[88] However, this has greatly increased the risk of spectator injury. Unlike ash bats which, if they break, usually do not shatter into many pieces, maple bats have a tendency to explode[89] and send multiple shrapnel-like pieces in indiscriminate directions.

2. Frequency of shattered bats.

50. There were 2,232 broken bats during three months of the 2008 season, the highest number of bat breakages for any season.[90] Of those, 756 were multi-piece breaks.[91]

3. Injuries to players, coaches and umpires.

51. Players, coaches, and umpires have been badly injured by broken bats. In 2008, Don Long was in the visitor's dugout on the first-base side of Dodger Stadium when he felt something hit him.[92] A large splinter from a broken bat hit below his left eye, leaving a bloody gash that needed ten stiches.[93] For a month, he had no feeling or mobility in that area.[94] That same year a home-plate umpire was hit in the head by a shattered piece of maple bat, sending blood

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[86] https://www.youtube.com/watch?v=2gjFRGedce0.

[87] http://m.mlb.com/news/article/2989456/.

[88] *Id.*

[89] *Id.*

[90] "Take Me Out to the Ballgame…But Bring a Helmet. Reforming the 'Baseball Rule' in Light of Recent Fan Injuries at Baseball Stadiums," Matthew J. Ludden, Marquette University, 2013.

[91] *Id.*

[92] http://m.mlb.com/news/article/2989456/.

[93] *Id.*

[94] *Id.*

streaming down his face.[95] Of the issue of broken bats, Chicago Cubs shortstop Ryan Theriot has said, "I think they should increase the netting … I hate it when I look above the dugout and there's a little baby sitting there. It's not safe. I don't know what to do – maybe they ought to let us use aluminum."[96]

D. An Injury Scorecard – The Modern Day Slaughter Pen

1. Frequency and overall amount of injuries from errant balls and bats.

52. The power game of baseball has created a modern-day slaughter pen. A sample list of injuries suffered to spectators located in the unprotected areas along first and third base between the foul poles, during official play,[97] is attached to this Complaint as Exhibit B.[98]

2. Deaths in MLB ballparks.

53. Several people have been killed by errant balls and bats. In 1943, a 32-year-old man was killed during a Washington Senator's game in D.C when a wild throw by Senators third baseman Serry Robertson went into the stands behind first base.

54. In 1960, a 68-year-old man died after he was hit by a foul ball at a Triple-A game in Florida.

55. In 1970, a child died after being hit by a baseball at a Major League Game.

56. 14-year-old Alan Fish was hit while sitting along the first base line, near the visitor's dugout. He was himself a baseball player, and was attending the game with several others, including his 10-year-old brother.[99] After he was hit, he went home and started walking in circles. He was taken to the hospital and died four days later.[100]

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[95] http://usatoday30.usatoday.com/sports/baseball/2008-06-25-umpire-injured_N.htm.

[96] http://m.mlb.com/news/article/2989456/.

[97] A significant number of injuries also occur during batting practice. These are not recorded on this chart.

[98] Exhibit B provides just a sampling of significant injuries suffered by spectators in the unprotected areas along the first and third base lines, which could have been prevented if these spectators were protected by netting.

[99] http://www.insidesocal.com/tomhoffarth/2010/05/16/40-years-ago-to-1/.

[100] http://isportsweb.com/2010/06/08/dodger-news-flash-girl%E2%80%99s-skull-fractured-by-line-drive/. There have been deaths in the minor league as well. In 1943, a 32 year-old man was killed during a Washington Senator's game in D.C when a wild throw by Senators third baseman

57. In June 2010, a 39-year-old mother of two was sitting in the exposed area just past the dugout on the third-base line at a San Angelo (Texas Colts) minor league game when she was killed by a foul ball.[101]

3. An epidemic of injuries.

58. There have been numerous serious and entirely preventable injuries in the modern area. The following is a sampling:

59. In 1998, Jane Costa was hit in the face and seriously injured (severe and serious injuries to her face including multiple fractures to her cheek bone, eyebrow and jaw, leaving her with swelling, severe bruising and discoloration) by a foul ball while seated 20 rows behind the home dugout at Boston's Fenway Park.[102] She required surgery to place eight facial plates into her face, has constant and severe pain in her jaw, eyes, and temples and is permanently injured and will require comprehensive medical therapy for the rest of her life.[103]

60. On June 25, 2001, Neil Pakett was sitting near the backstop at Veterans Stadium for a game between the Phillies and the Braves. He was near but not behind a protective screen. A baseball hit him in the right eye, and he suffered severe and disabling injuries including a loss of vision in his right eye (initially a complete loss); traumatic vitreous hemorrhage and preretinal hemorrhage; retinal, macular and foveal traction, distortion, and pigment changes; contusions and swelling; an epiretinal membrane; choroidal rupture, and impairment of his field of vision and depth perception.[104]

61. In August 2007, James Falzon took his 11-year-old son, his nine-year-old nephew, and his father to a baseball game between the Mets and the Braves at New York's Shea Stadium. Falzon was sitting in the second row along the third-base line of the stadium. During the seventh

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Serry Robertson went into the stands behind first base. In 1960, a 68 year-old man died after he was hit by a foul ball at a Triple-A game in Florida.

[101] http://www.reporternews.com/news/baseball-accident-a-tragedy.

[102] Joint Pretrial Memorandum, *Costa v. The Boston Red Sox Baseball Club*, 2002 WL 33968373 (Mass. Super. Jan. 23, 2002).

[103] *Id.*

[104] *Pakett, et al. v. The Phillies Veterans Stadium*, 2003 WL 25950448 (Pa. Com. Pl. June 17, 2013).

inning, Mets' second baseman Luis Castillo broke his maple bat when he hit a fly ball. Pieces of the broken bat flew into the stands, including the heaviest portion – the barrel of the bat. Falzon was watching the ball when the bat shattered and he did not see the barrel fly into the stands. It struck him in the face and caused extensive injuries, including a broken nose, eye socket, and pallet. Falzon had metal plates and pins surgically implanted into his skull.[105]

62. In 2008, Susan Rhodes was struck in the side of the face with a broken maple bat while sitting four rows behind the dugout at Dodger Stadium.[106] Surgeons used metal to piece her jaw back together.[107] She commented to a reporter at the time that she didn't see the bat coming and first thought she had been hit by a ball.[108]

63. In July, 2008, a seven year-old suffered a fractured skull and swelling around the brain after being hit with a baseball at Wrigley Field.[109]

64. On August 30, 2010, six-feet, 210-pound switch-hitter Cabrera was batting left-handed against right-handed reliever Elmer Dessens from the Mets. On the first pitch, Dessens threw an 88-mile-per-hour fastball, and Cabrera's swing connected solid but late. A man sitting 144 feet from home plate saw a flash of white, heard a sickening smack, and saw blood. The ball fractured his six-year-old daughter's skull, requiring surgery to install 31 metal pieces:

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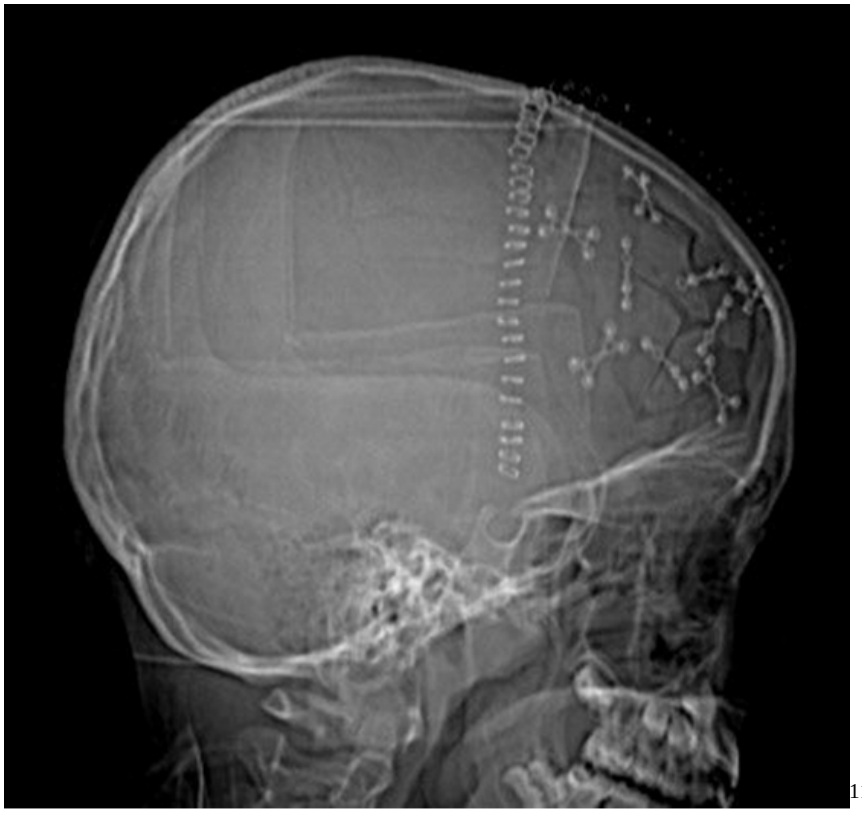
[105] "Take Me Out to the Ballgame…But Bring a Helmet. Reforming the 'Baseball Rule' in Light of Recent Fan Injuries at Baseball Stadiums," Matthew J. Ludden, Marquette University, 2013.

[106] http://m.mlb.com/news/article/2989456/.

[107] http://www.hngn.com/articles/99560/20150609/mlb-news-commissioner-rob-manfred-to-review-fan-safety-players-say-incident-at-fenway-park-could-have-been-avoided.htm.

[108] http://m.mlb.com/news/article/2989456/.

[109] http://articles.chicagotribune.com/2008-07-16/sports/0807150891_1_maple-bats-replay-logical-solution.

 [110]

65. On September 14, 2010, 77-year-old Reva Ezell was sitting in the 12th row behind third base at an Atlanta Braves game when a foul pop-up struck her face. She lost vision in her right eye and required eight surgeries.[111]

66. In 2011, a foul ball sent an 18-month old to a Seattle hospital.[112]

67. On August 29, 2011, an 11-year old was hit in the face with a line drive foul ball at Citi Field. He suffered severe internal bleeding, had to have two blood transfusions and four CT scans, and was in intensive care for five days.[113]

68. In 2011, a man was hit in the face by a foul ball during a baseball game between the Texas Rangers and the Oakland Athletics:

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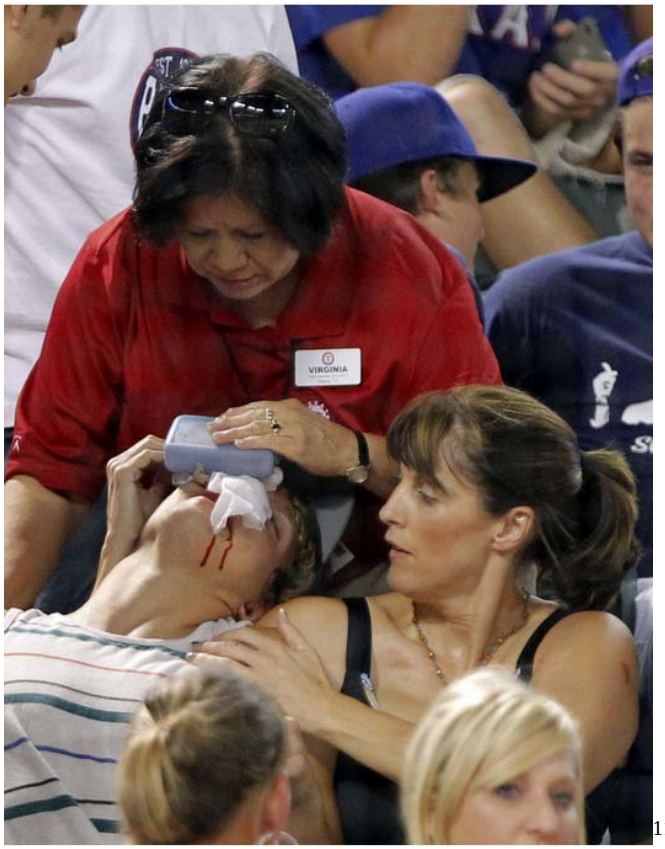
[110] An image of Fletcher's daughter's head after her surgery. The dark lines in her forehead show the fractures. http://www.atlantamagazine.com/great-reads/foul-territory/.

[111] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year.

[112] *Id.*

[113] http://mentalfloss.com/article/28902/if-foul-ball-hits-you-does-team-owe-you-anything.



[114]

69. On August 6, 2012, a child sitting in an unprotected seat near first base was hit in the face by a foul ball at a Texas/Boston game at Fenway Park.[115]

70. On May 20, 2014, an eight-year-old boy seated in the first row behind home base was hit in the head by a line-drive foul off the bat of Milwaukee Brewer Carlos Gomez during the seventh inning. When the ball rocketed into the stands behind the first-base dugout, the batter dropped to a knee in prayer.[116] It was the boy's first major league baseball game, and he was sitting approximately four rows above the Braves' first-base-side dugout. Third baseman Chris Johnson said the sound the ball made when it hit the boy's head sounded similar to the sound the ball made when it came off the bat.[117] Three other fans were also injured at that game.[118]

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[114] http://m.mlb.com/news/article/135162588/foul-ball-hits-fan-braves-brewers-game-halted; http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-ayear.

[115] https://www.youtube.com/watch?v=2gjFRGedce0.

[116] http://www.atlantamagazine.com/great-reads/foul-territory/.

[117] http://m.mlb.com/news/article/76278682/boy-hit-with-foul-ball-in-atlanta-ok-gets-visit-from-players-in-hospital.

71. On June 29, 2014, two fans along the right-field line were hit in the face by foul balls during a Marlins-Athletics game.[119] Miami manager Mike Redmond stated "Marlins Park was a dangerous place today…I saw the girl get hit square on. She had no idea it was coming." On the television broadcast, a commentator states "you know, it's an area…and someday I think you'll see it…I saw it in Japan, at the World Baseball Classic, there are nets much like the…just like the home plate screen that run from the home plate screen all the way on top of the dugouts all the way along down the right field line." The other announcer adds "I know there are some parks we visit that have those screens during batting practice. None in Major League Baseball have them during the game."[120]

72. On May 3, 2015, a boy was hit in the head by a foul ball during the Giants vs. Angels game at San Francisco's AT&T ballpark.[121] Video captures the audible reaction of the crowd and shows the upset boy being carried out of the stands for medical attention.[122] Afterwards, the batter commented:

> I really don't understand why you would put little kids there, not behind the net, in the first place… As an adult, I wouldn't sit there because there's not enough time to react to those things. At first, my heart sank, because I didn't know how bad he was hurt. Then, I was [ticked] off because of the area they were sitting in in the first place. It's not a place for kids. It's really not. I wouldn't put my kids there. I wouldn't even sit there. It's different when you're a player, you're in every pitch, but as a fan, you're distracted. …They're not paying attention. It's a bad scenario.[123]

Referencing the fact that the boy received a care package from the team, Iannetta added:

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[118] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year indicates four fans were injured at this game.

[119] http://espn.go.com/mlb/story/_/id/11153032/2-fans-hit-face-foul-balls-miami-marlins-game.

[120] https://www.youtube.com/watch?v=HF7Ma5RPKvs&list=PLPSbXLqq-krdZxYucz-5ZwTqDODOKOa3w.

[121] http://www.latimes.com/sports/sportsnow/la-sp-sn-angels-giants-young-fan-hit-by-foul-ball-20150503-story.html.

[122] https://www.youtube.com/watch?v=6_X_wa_gAnI.

[123] http://www.latimes.com/sports/sportsnow/la-sp-sn-angels-giants-young-fan-hit-by-foul-ball-20150503-story.html.

He made out on the swag end, but he definitely dodged a bullet.[124]

73. In June 2015, Tonya Carpenter, who was seated in the unprotected area between home plate and the third-base dugout at Fenway Park, was struck by a flying shard of the bat. Her eight-year-old son was seated with her and witnessed the injury, though he was eventually picked up by a police officer who tried to shield his eyes.[125] The Boston Globe reported that her screams could be heard by fans and by those listening on the radio to the game's live radio broadcast.[126] The game resumed less than a minute after her stretcher left the field.[127] When asked about the injury, one of the Red Sox players commented:

> The only thing there, you've got limited netting here in Boston. When you're behind home plate and you're along the third base side and first base side, you've really got to be heads-up for foul balls, anything coming into the stands, because it's so close there's really no time to react.[128]

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[124] *Id.*

[125] https://www.bostonglobe.com/sports/2015/06/05/fan-injured-broken-bat-taken-out-stretcher-fenway/Ie9sz929jciWL4Ez7YqOoK/story.html.

[126] *Id.*

[127] *Id.*

[128] *Id.*

[129]

74. On June 19, 2015, a boy seated along the first-base line was injured by a foul ball.[130]

75. On July 6, 2015, a female fan who was sitting approximately seven rows above the Brewers' dugout on the first base side, was injured when she was hit in the face by a foul ball.[131]

E. Players Demand Adequate Netting for Spectators

76. These injuries could all have been prevented if MLB had listened to its players. Anonymous sources revealed just this year that players proposed for the 2007 and 2012 labor agreements that protective netting at parks extend down the foul lines and as far as the foul poles. This vote was not disclosed to the public by Manfred and the Office of the Commissioner. As stated by Derek Holland, the Rangers' player representative, "We're the ones who are down there, so we know how dangerous it can be, and that's probably why the players have been pushing for so

[129] http://www.si.com/mlb/2015/06/12/fenway-park-fan-tonya-carpenter-hit-bat-released-hospital.

[130] http://espn.go.com/mlb/story/_/id/13117654/young-fan-hit-foul-ball-philadelphia-phillies-st-louis-cardinals-game-taken-hospital.

[131] http://m.mlb.com/news/article/135162588/foul-ball-hits-fan-braves-brewers-game-halted.

long to get a change….You know things happen, and you can't control where the ball goes or if a bat breaks, and that's why it would be nice to have more protection."[132]

77. Just a month after Tonya Carpenter's horrific injury, another woman was injured at Fenway Park. On July 10, 2015, Stephanie Wapenski was hit in the face with a foul ball, requiring over 30 stitches. She had no time to react, a fact also supported by witness accounts. Wapenski said: "I was paying attention to the game. I saw the ball in the air and thought 'Which way is that ball going?' I didn't have time for that entire thought. I saw the ball and it hit me, bang bang."[133]

F. MLB's Authority and Refusal to Act

1. MLB and Commissioner background and authority.

78. Major League Baseball oversees the game of professional baseball, which currently includes 30 franchises in 28 cities in the U.S. and Canada. The organization also oversees minor-league baseball leagues, which comprise about 240 teams affiliated with the major-league clubs. Teams are governed by Major League Baseball, which sets official rules.[134] Major League Baseball is led by the Commissioner of Baseball, Rob Manfred, Commissioner of Baseball[135] who was chosen by a vote of team owners.[136] Commissioner Manfred has referred to the "enormity of the responsibility" of his role, as one of only a handful of MLB commissioners in history.[137] The Commissioner's role includes overseeing MLB's baseball operations[138] and Manfred's biography indicates he oversaw operations even before becoming Commissioner.[139]

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[132] http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece.

[133] http://www.wmur.com/sports/woman-injured-by-foul-ball-at-fenway-park-released-from-hospital/34119536.

[134] http://www.vault.com/company-profiles/sports/major-league-baseball/company-overview.aspx.

[135] https://en.wikipedia.org/wiki/Major_League_Baseball#cite_note-2000nl-5.

[136] https://en.wikipedia.org/wiki/Commissioner_of_Baseball.

[137] http://espn.go.com/video/clip?id=12286112.

[138] http://mlb.mlb.com/mlb/official_info/about_mlb/executives.jsp?bio=manfred_rob.

[139] *Id.*

2. MLB's authority and responsibility regarding spectator safety.

79. Major League Baseball has promulgated a number of spectator safety rules that apply universally to all MLB ballparks. For example, the MLB recently mandated that all MLB ballparks include security checkpoints for fans, either using metal detectors or walk-through magnetometers.[140] It appears MLB also implemented a rule in 2012 that MLB ballparks employ temporary screens during batting practice in order to protect spectators.[141] The MLB organization also includes an executive in charge of ballpark security and management. The MLB also has the power to oversee, assess and criticize MLB ballparks with lax safety measures.[142]

80. In addition to this, Manfred and the Office of the Commissioner also made numerous public statements acknowledging its duty to protect spectators and holding themselves out as having a duty to spectators. For example, earlier this year, Manfred and the Office of the Commissioner commented:

> Fan safety is our foremost goal for all those who choose to support our game by visiting our ballparks, and we will always strive for that experience to be safe and fan-friendly.

MLB has also admitted that it is the role of the Commissioner and the Office of the Commissioner to make a change:

> …[T]here is no epidemic of foul ball damage yet that would warrant some sort of edict or action by the commissioner's office.[143]

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[140] http://www.nydailynews.com/sports/baseball/mlb-metal-detection-stadiums-2015-article-1.1587239.

[141] *See e.g.*, Testimony from Bob Christofferson, Mariners' head groundskeeper at Safeco Field, in *Reed-Jennings vs. Baseball Club of Seattle, L.P.*, No. 71545-3-I, Respondent's Br. at 6 (Wash. App. 2012) ("The screens along the foul lines were not required by Major League Baseball until April 2012.").

[142] http://www.latimes.com/local/la-me-0621-bryan-stow-trial-20140621-story.html. *See e.g.*, MLB's "Dodger Stadium Assessment," in which the MLB refers to a "culture of apathy and indifference" that contributed to a beating of a spectator at Dodger stadium. http://www.latimes.com/local/la-me-0621-bryan-stow-trial-20140621-story.html. MLB's official rules of baseball also include safety-related provisions for its players, such as a provision that relates to deciding when to turn ballpark lights on, if it is determined that darkness makes play hazardous. Rule 4.14.

[143] Statement of John McHale, MLB executive vice president, 2014. The former Commissioner also acknowledged it was within the role of the MLB and its Commissioner to promulgate rules to protect spectators. http://www.foxsports.com/mlb/story/boston-red-sox-fenway-park-mlb-broken-bat-injured-fan-safety-netting-060715 ("While we're always very, very concerned with the health

81. Players have also acknowledged Manfred and the Office of the Commissioner's role. After the 2015 incident at Fenway Park, player Matwick said "there has been plenty of discussion on the topic, so we'll look for some direction from Major League Baseball, too."[144]

82. Commissioner Manfred has made numerous statements acknowledging both his personal duty and responsibility and that of his office:

> When you have an issue like this, an incident like this, you have to go back and re-evaluate where you are on all of your safety issues and, trust me, we will do that. Just like we are on a variety of issues right now at the beginning of my tenure … there's a variety of issues that we're going to take a fresh look at …. You have to react strongly to an incident like this, but I think the best word for it is that we're going to re-evaluate where we are on the topic[145] … The MLBPA might be involved in those discussions,… And then obviously us and the clubs.[146]

3. Manfred and the Office of the Commissioner have at all times been aware of the risk of injury.

83. Manfred and the Office of the Commissioner have been fully aware and have failed to address the fact that a modern day slaughter pen has formed, that the area of danger has shifted to the areas along first and third bases and between the poles, where spectators are left entirely exposed and have suffered and are at risk of serious injury.

84. Manfred and the Office of the Commissioner were aware of scholarly articles acknowledging the risk from baseballs and particularly foul balls since at least 1940:

> Baseball clubs cannot help but realize that baseballs occasionally inflict injury on spectators. When thrown or batted vigorously they are dangerous missiles and have broken bones not only of players but also of spectators. Tipped foul balls may be equally dangerous on account of the great speed which many pitchers possess.[147]

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and the welfare of the fans, you also don't want to do anything to obstruct the views of the fans, which creates really a major problem. You sort of have to weigh one against the other.").

[144] www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece.

[145] http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815.

[146] *Id.*

[147] http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=3724&context=mulr.

85. Manfred and the Office of the Commissioner have also been aware of numerous lawsuits on behalf of injured spectators. *See* Exhibit B for a partial list of lawsuits.

86. Manfred and his Office also regularly received reports of ballpark injuries from a company that handles insurance claims.[148]

87. Manfred and the Office of the Commissioner have also been aware of the existence of first aid and foul ball logs, kept at every MLB ballpark, which track all injuries from errant balls and bats. These logs are sometimes kept "confidential" to the public.[149]

88. Manfred and the Office of the Commissioner's rules also show they were fully aware of the risks from errant balls and flying bats. For example, Major League Baseball has acknowledged the safety issue posed by broken bats[150] in undertaking a study of all shattered bats. In 2012, Manfred and the Office of the Commissioner implemented a rule that temporary screens were required during batting practice.[151] Indeed, there is little doubt that Major League Baseball recognizes the need for screening and netting – Major League Baseball has authored a Field Maintenance Guide that recommends, promotes and advocates the use of netting technology to protect baseball players in all levels of play.[152]

89. Manfred and the Office of the Commissioner were also aware of the risk via players' concerns expressed in collective bargaining negotiations, as well as public statements.

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[148] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year ("MLB regularly receives reports about such injuries from a company that handles insurance claims.").

[149] The Rangers, for example, keep confidential statistics on injuries. http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece.

[150] In 2008, then Commissioner Selig stated, "The maple bats safety issue is very real." "I'm very concerned."

[151] *See e.g.*, Testimony from Bob Christofferson, Mariners' head groundskeeper at Safeco Field, in *Reed-Jennings vs. Baseball Club of Seattle, L.P.*, No. 71545-3-I, Respondent's Br. at 6 (Wash. App. 2012) ("The screens along the foul lines were not required by Major League Baseball until April 2012.").

[152] http://web.mlbcommunity.org. The Field Maintenance Guide was authored by a 30 year turf and field consultant for MLB and created the document "to provide a resource for baseball field development and field maintenance for organizations involved in all levels of the game."

G. Manfred and the Office of the Commissioner's Negligence and Failure to Provide "Reasonably Safe" Facility

1. Manfred and the Office of the Commissioner Failed to Provide Sufficient Netting.

90. Manfred and the Office of the Commissioner were negligent in failing to provide a reasonably safe facility for spectators sitting in the exposed areas along the first and third base lines, between the foul poles. Manfred and the Office of the Commissioner failed to minimize the risk that spectators would be hit from flying balls or bats by promulgating rules to impose adequate netting in these areas. Manfred and the Office of the Commissioner failed to take reasonable measures that could easily have been taken without altering the nature of the sport. The harm to Plaintiff far outweighs any social value of Manfred and the Office of the Commissioner's interest in having exposed seats in this section, and precautions could have been taken with relative ease given MLB's resources, the presence of netting in other forms and Manfred and the Office of the Commissioner's familiarity with this technology. Manfred and the Office of the Commissioner's failure to act breached their duty and resulted in serious spectator injury and put spectators at unreasonable risk from injury. Manfred and the Office of the Commissioner knew and have known that the areas along the first and third base lines, between the foul poles, were the most dangerous areas – the areas where balls are likely hit the hardest, where the greatest danger exists and where, based on its knowledge such an occurrence could be reasonable be expected, but did not provide protection in these areas.

2. Manfred and the Office of the Commissioner Failed to Provide Enough Access to Currently Netted Seats.

91. Manfred and the Office of the Commissioner were also negligent in failing to provide enough access to currently netted seats for as many fans as would reasonably be expected to request such seats. At Oakland's ballpark, for example, there are only a number of protected seats compared to the number overall, and many are reserved for longtime season-ticket holders. This was not an area sufficiently large to accommodate as many as may have reasonably been expected to call for such protection.

3. Manfred and the Office of the Commissioner Failed to Promulgate standards regarding netting.

92. Manfred and the Office of the Commissioner failed to provide a consistent netting rule for all stadiums, or to promulgate standards on this issue. This was fully within MLB's power, as evidenced by Manfred and the Office of the Commissioner's recent institution of a uniform MLB rule requiring safety checks at all MLB ballparks and the apparent 2012 rule regarding batting practice netting.

4. Manfred and the Office of the Commissioner Failed to Heed the Warnings of Professional Baseball Players.

93. Manfred and the Office of the Commissioner failed to heed the warnings of players, those who know the game best.

5. Manfred and the Office of the Commissioner Were Negligent in Allowing Use of Maple Bats.

94. Manfred and the Office of the Commissioner were negligent in allowing maple bats in the first place and have been negligent in not outlawing them once the risk became known. In 2008 MLB Commissioner Selig said that the issue of broken bats kept him up at night.[153] Major League Baseball now sends every shattered bat to a lab, where it can be studied.[154] Manfred and the Office of the Commissioner changed some regulations with regard to bats, decreasing their incidence. But bats are still breaking into multiple pieces at a rate of .53 bats per game (as of the 2012 season).[155] Manfred and the Office of the Commissioner, despite knowing full well that maple bats tend to explode, and spending its *own money* to study the issue, have not outlawed their use.

6. Manfred and the Office of the Commissioner Failed to take measures commonly taken in other sports, in other ballparks, and in other countries.

95. Recognizing the risk of spectator injury, several other professional sports leagues and organizations, but not Major League Baseball, have modified rules to limit spectators'

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[153] http://articles.chicagotribune.com/2008-07-16/sports/0807150891_1_maple-bats-replay-logical-solution.

[154] Take Me Out to the Ballgame…But Bring a Helmet: Reforming the "Baseball Rule" in Light of Recent Fan Injuries at Baseball Stadiums, Matthew J. Ludden.

[155] *Id.*

exposure to preventable injuries by erecting barriers between the field of play and the spectators. In 2002, after a teenage girl was hit by a puck and died, the National Hockey League acted quickly to mandate netting behind the goal line that extends beyond the end glass and higher Plexiglas above the side boards.[156] It is estimated that these measures have stopped more than 23,700 errant pucks from injuring fans.[157] After a NASCAR incident in which car fragments were hurled towards the spectators, NASCAR officials reacted quickly by mandating the use of restrictor plates.[158]

96. Protective netting is common in other countries. For example, it is standard in Japan, where baseball is extraordinarily popular.

7. Manfred and the Office of the Commissioner Failed to use technology at its disposal to protect spectators.

97. All MLB parks are now equipped with Major League Baseball's Statcast technology, which measures the speed of pitches and batted balls, including their spin rates and launch angles.[159] It also tracks the efficiency of players' routes to balls, the strength of their arms, runners' top speeds on the base paths, the quickness of their initial steps, and measures their reaction times.[160] Major League Baseball has not used this technology to advance spectators safety in any way.

8. Manfred and the Office of the Commissioner Failed to Promulgate standards re minimum distance from field of play.

98. At the same time that Manfred and the Office of the Commissioner have attempted to entice more and younger spectators to MLB ballparks, and have provided greater and more elaborate distractions for fans, Manfred and the Office of the Commissioner are aware and have allowed newer stadiums to be built in smaller proportions, with less distance between the field and the spectator seating area. In Cobb County, Georgia, a new 41,500-seat facility is set to open in 2017, which will place a higher percentage of seats closer to the field than any other MLB

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[156] http://reportingtexas.com/into-the-stands-how-safe-is-professional-baseball/.
[157] *Id.*
[158] http://fisherpub.sjfc.edu/cgi/viewcontent.cgi? article=1038&context=sport_undergrad.
[159] http://ftw.usatoday.com/2015/05/mlb-statcast-stats-data-launch-angle-route-efficiency.
[160] *Id.*

ballpark.[161] Manfred and the Office of the Commissioner have failed to promulgate any standards to create a minimum distance between the spectator and the field of play in MLB ballparks. Manfred and the Office of the Commissioner knew these spectators were at enhanced and increased risk.

9. Manfred and the Office of the Commissioner Failed to Promulgate Standards regarding Injury Response.

99. Manfred and the Office of the Commissioner failed to provide consistent standards regarding injury response. MLB ballparks have been left to their own devices, implementing entirely inadequate measures. Some parks equip ushers with pagers, and place them in areas with high foul-ball frequencies, so they can quickly call in emergencies.[162] Some ballparks also contract with local hospitals by giving attending physicians tickets in exchange for being on call at games.[163]

H. Major League Baseball's Increased the Risk to Spectators

1. Manfred and the Office of the Commissioner have increased the risk by including non-necessary distractions at ballparks.

100. At the same time that Manfred and the Office of the Commissioner failed to act, Manfred and the Office of the Commissioner have also added or have allowed the addition of a number of changes to the ballpark viewing environment to entice more fans, market the game, and increase revenue. These additions have been made not to benefit the game itself, have materially altered the game and could reasonably be expected to divert the attention of spectators from the field of play. For example, baseball fields have video display monitors on the back of seats, food ordering displays attached to seats, various contests on and off the field, vendors using humorous techniques to deliver food (hot dog cannons), and team mascots designed to entertain the crowd. There are vendors and merchandise "hawkers" roaming the seats. Ballparks in the United States

[161] http://www.atlantamagazine.com/great-reads/foul-territory/#sthash.RdFeXLDC.dpuf.

[162] http://www.thewire.com/culture/2014/09/foul-balls-hurt-way-more-people-than-they-should/379869/.

[163] http://www.atlantamagazine.com/great-reads/foul-territory/.

have enormous jumbotron screens, some over 11,000 square-feet in dimension, some of the largest video screens anywhere in the world.[164]

2. Manfred and the Office of the Commissioner have increased the risk by calling for use of mobile devices, particularly by children, while watching live games in MLB ballparks.

101. Major League Baseball has also encouraged, and even called for, fans, including and especially children, to use mobile devices during games. The Commissioner has spoken specifically about the need to further enhance the fan experience in the ballpark, and particularly that of young people, using technology.[165] He has indicated he is "worried" that every ballpark does not have Wi-Fi, and praised those that did. He has spoken specifically of filling spectators' "second screens" (their mobile devices) with MLB.com content during live ballgames. Manfred and the Office of the Commissioner have acknowledged these extemporaneous features and intentional measures, used to enhance the game experience from a marketing perspective, could pose a distraction: "We don't want to distract them, we want to give them additional information that makes them appreciate the play of the game on the field even more."[166]

3. Manfred and the Office of the Commissioner have increased the risk by marketing ballparks and their most dangerous areas as safe and family friendly.

102. The Commissioner and his office have also marketed the game to and encouraged parents and grandparents to bring more children to MLB games at a younger age, knowing that these youngest fans in particular cannot always clearly see the field, may have diminished reaction times, and are often the most physically vulnerable to serious injury.

103. The Commissioner and his office have also increased the risk by wooing young fans into ballparks, and marketing the most dangerous and exposed areas of MLB ballparks as safe for

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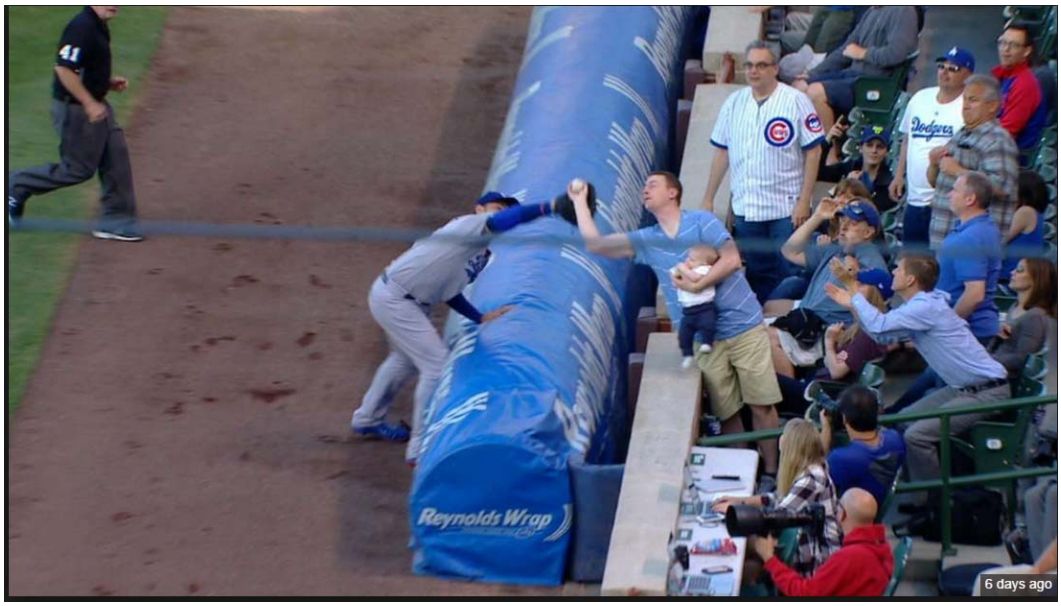
[164] https://en.wikipedia.org/wiki/List_of_largest_video_screens.

[165] http://www.chicagotribune.com/sports/baseball/ct-sullivan-rob-manfred-baseball-changes-spt-0224-20150223-story.html.

[166] https://www.youtube.com/watch?v=jHKTx0zII2Uhttps://www.youtube.com/watch?v=jHKTx0zII2U. In 2004, AT&T park in San Francisco became the first professional venue to provide WiFi at their home field. http://sportsvideo.org/main/blog/2009/07/att-park-offers-giants-fans-uniquely-digital-ballpark-experience/. At least 10 of the 15 MLB major league ballparks offer Wi-Fi. http://blog.socialsign.in/2014/04/01/wifibaseball.

families, children, and even infants. On June 23, 2015, MLB's website, www.mlb.com, posted an "*Oh baby, what a catch! Fan holds son, snags ball*" article, with accompanying photo and video, showing a man in the unprotected area along first base catching a foul ball while cradling his infant baby son, drinking from his baby bottle, in his other hand.[167] Despite the fact that it was described as a "pop up" foul, the video also clearly shows two adult men, near the infant, recoiling their hands and bodies back in a defensive stance, with grimaces on their faces[168]:



104. Manfred and the Office of the Commissioner have made other statements marketing and advertising the game and ballparks as family friendly. For example, on January 5, 2015, MLB's website, www.mlb.com, posted an article entitled "'Family friendly' Progressive Field recognized," which refers to changes to "cater to families and children" and "create a kid-friendly experience."

105. In early 2014, the Chicago Cubs announced their first, official team mascot would be "Clark," a "young, friendly cub"...who "can't wait to interact with our other young Cub fans. He'll be a welcoming presence for families at Wrigley Field…"[169]

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[167] http://m.mlb.com/news/article/132444096/cubs-fan-makes-catch-holding-baby. The manager of the Cubs manager admitted he was worried about the baby while watching the play.

[168] http://m.mlb.com/news/article/132444096/cubs-fan-makes-catch-holding-baby.

[169] http://www.cbssports.com/mlb/eye-on-baseball/24408433/cubs-announce-new-mascot-clark-a-young-friendly-cub.

106. As of this year, an MLB ballpark also has a facility designed exclusively as a nursing area, where mothers can feed and care for their babies.[170]

4. Manfred and the Office of the Commissioner have increased the risk by calling for an increased pace of play.

107. The Commissioner and his office have also increased the risk by calling for an increased pace of play via the pitch count. This would likely decrease the amount of time in between pitches and reduce the amount of time that spectators have to re-direct their attention away from other activities, such as watching an instant replay, checking the scoreboard or keeping score, to prepare for the next pitch and at-bat or the multitude of distractions and additional visual stimuli introduced by Manfred and the Office of the Commissioner. This would also likely increase the risk of danger to spectators.

V. CLASS ACTION ALLEGATIONS

108. Plaintiff brings this action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of herself and the members of the following Nationwide "Danger Zone" Class:

> All persons that purchased a season ticket to a Major League Baseball game and whose seat(s) are located in any unnetted/uncovered area between home plate and the foul plates located at the end of the right and left field lines ("the Danger Zone").

109. Plaintiff also brings certain claims on behalf of California Danger Zone subclass defined as follows:

> All persons or entities that purchased a season ticket to a Major League Baseball game played in California located in the Danger Zone.

110. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants, and Defendants' legal representatives, predecessors, successors, assigns, and employees.

111. Plaintiff reserves the right to amend the class definition prior to class certification.

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[170] https://en.wikipedia.org/wiki/Great_American_Ball_Park#Screen_renovations_for_the_2009_season.

112. The Class consists of hundreds of individuals, making joinder impractical, in satisfaction of Fed. R. Civ. P. 23(a)(1). The exact size of the class is ascertainable through public records.

113. The Claims of Plaintiff are typical of the Claims of the Class. The claims of Plaintiff and the Class are based on the same legal theories and arise from the same unlawful and willful conduct, resulting in the same injury to the Plaintiff and the Class.

114. Defendants have acted and failed to act on grounds generally applicable to Plaintiff and the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct towards the Class.

115. There are many questions of law and fact common to the claims of Plaintiff and Class members, and those questions predominate over any questions that may affect only individual Class members within the meaning of Fed. R. Civ. P. 23(a)(2) and 23(b)(2).

116. Common questions of fact and law affecting members of the Class include, but are not limited to, the following:

a. What is the nature of the duty that the Defendants owe to Plaintiff and the Class?

b. Did Defendants breach that duty?

c. Does Defendants' breach unreasonably increase the risk of injury to Plaintiff and the Class?

d. Are Plaintiff and the Class entitled to injunctive relief?

e. Did Defendants misrepresent ballparks as safe and family friendly?

f. Have Defendants violated California statutory law?

VI. CLAIMS ALLEGED

FIRST CAUSE OF ACTION

NEGLIGENCE
(On Behalf of the Class)

117. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

118. At all relevant times, Defendants had a duty towards Plaintiff and the Class to supervise, regulate, monitor, and provide reasonable and appropriate rules to minimize the risk of injury to spectators.

119. Defendants were aware of the severe and preventable nature of the injuries suffered by spectators seated in the unprotected areas between foul poles at MLB-sanctioned baseball games. Despite their knowledge and controlling role in governing Major League Baseball, the teams, the players, and facility safety, including having an executive specifically in charge of facility maintenance and security, Defendants turned a blind eye to the risk and failed to warn and/or impose safety regulations governing this health and safety issue. At the same time, Defendants have provided various assurances regarding fan safety, stating that "our first and foremost concern remains the safety of our fans" and describing the game as an "extraordinarily healthy entertainment product"[171] and marketed the game as family-friendly and these unprotected areas of MLB ballparks as safe for adults, children and infants.

120. Defendants have made various public statements acknowledging their duties regarding spectator safety. For example, after the June 2015 incident at Fenway Park, when asked whether MLB would take action, Manfred stated "When you have an issue like this, an incident like this, you have to go back and re-evaluate where you are on all of your safety issues and, trust me, we will do that. Just like we are on a variety of issues right now at the beginning of my tenure … there's a variety of issues that we're going to take a fresh look at…. You have to react strongly to an incident like this, but I think the best word for it is that we're going to re-evaluate where we are on the topic."[172] He indicated "I don't have a firm timetable in mind … We're very cognizant of the severity of the injury, and obviously it's a great concern to us, but we want to make a decision that's the right decision over the long haul in terms of promoting fan safety."[173] He

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[171] http://www.washingtonpost.com/sports/nationals/baseballs-trouble-with-the-youth-curve--and-what-that-means-for-the-game/2015/04/05/2da36dca-d7e8-11e4-8103-fa84725dbf9d_story.html.

[172] http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815.

[173] http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece.

specifically acknowledged that "The MLBPA might be involved in those discussions," Manfred said, "And then obviously us and the clubs."[174] Defendants have also acknowledged their role by stating that "there is no epidemic of foul ball damage yet that would warrant some sort of edict or action by the commissioner's office." Former Commissioner Selig also acknowledged this responsibility, indicating in 2008 that the organization would discuss whether fans are at risk from batted balls, and review the issue at annual meetings.[175] Defendants have also taken ownership of this role by voluntarily choosing how to spend funds to investigate and regulate many different circumstances affecting spectator health and safety, including compiling statistics of and testing the rate of shattered bats[176] and implementing changes to bat regulations.[177] The Commissioner has also publicly stated "…we have taken important steps in this area … We've spent a lot of time, effort and money to make sure that our bats are safer and we have less of these incidents."[178]

121. While Defendants, through these and other statements and actions, have held themselves out as responsible for and responsive to spectator safety issues, spectators, including the Plaintiff and the putative class, have looked to Defendants for guidance on spectator safety issues.

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[174] http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815.

[175] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year.

[176] "Take Me Out to the Ballgame…But Bring a Helmet: Reforming the Baseball Rule In Light of Recent Fan Injuries at Baseball Stadiums," Matthew J. Ludden, 2013, Marquette University.

[177] http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815. MLB has attempted to reduce the number of breaks by conducting studies into the science behind bat breaks and imposing certain regulations on the structure of bats, which has resulted in a decrease in the total number of breaks since the 2008 season. "Take Me Out to the Ballgame…But Bring a Helmet: Reforming the Baseball Rule In Light of Recent Fan Injuries at Baseball Stadiums," Matthew J. Ludden, 2013, Marquette University. For example, one regulation requires that a bat's slope of grain for the handle and tapered regions must be no greater than three degrees, and must be maintained on the edge and face of the grain surfaces. Also, a bat's entire grain must be sufficiently discernible to permit visual grading to detect defects. http://m.mlb.com/news/article/36046676/.

[178] http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815.

122. Defendants have also demonstrated their duty for spectator safety by promulgating other rules universal to MLB ballparks, such as a rule requiring security checks and an apparent rule requiring netting during batting practice.

123. Defendants have been and are aware of publications in the sports and medical communities that established that injuries were a significant and preventable risk to spectators in unprotected areas between the foul poles at MLB games, and were also aware of studies indicating there likely is no possibility that fans sitting in certain areas of the stadium would have time to react to avoid injury.[179] Defendants were also aware of the presence of statistics, such as those assembled on "foul ball logs," and other first-aid records, such as those maintained at Atlanta Braves' Turner field.[180] Defendants were also aware that players, during collective bargaining, had asked for additional netting, but did not disclose this to ticketholders or the public at large. Defendants were also aware of the myriad distractions MLB has added to MLB ballparks.

124. Defendants have failed to meet their responsibility to safeguard spectators, and have engaged in a pattern of negligence and inaction with respect to spectator injuries, while profiting from these same spectators.

125. Specifically, Defendants failed to provide adequate protection for spectators sitting in the most dangerous parts of MLB ballparks. Defendants failed to ensure that an adequate number of protected seats would be available to the casual spectator and season-ticket holders. Defendants also failed to extend netting in the part of the ballpark where the greatest danger from flying balls exists.

126. Defendants also failed to timely educate and provide proper oversight over individual baseball clubs.

127. Article II of the Major League Constitution includes oversight power over individual baseball clubs and Section 2(b) empowers the Commissioner with authority "[t]o investigate . . . any act, transaction or practice charged, alleged or suspected to be not in the best

[179] For example, in a lawsuit against MLB's Chicago Red Sox, expert testimony concluded it took the ball a mere 1.07 seconds to travel 141 feet into the stands.

[180] http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year.

interest of the national game of Baseball." The Commissioner can discipline leagues, clubs, officers, employees and players for conduct "deemed by the Commissioner not to be in the best interests of Baseball."[181] Notwithstanding its own obligations and duties, Defendants have also issued reports criticizing individual ballparks for lax spectator safety.

128. Defendants also increased the risk to spectators by calling for more distracting technology to lure in younger fans and appeal to their shorter attention spans, and by advocating for a pitch clock that would reduce the amount of time between pitches/bats.

129. Defendants also made false statements and assurances about the priority of fan safety and the "entertainment" aspects of the game, encouraging families to bring their children to games at a younger and younger age.

130. Defendants' conduct is particularly egregious in light of the fact that the MLB has long taken similar steps, such as installing netting in front of some dugouts[182] and mandating in 2008 that all MLB base coaches wear protective helmets,[183] to protect its highly paid athletes. Unlike professional athletes, who have the resources to pay for medical care necessitated by head and facial injuries caused during their professional careers, spectators do not have such resources, and are not compensated for their injuries, which can have long-term, debilitating effects. The MLB has also placed technology in every Major League ballpark that can track the speed of balls as well as player reaction times.[184]

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[181] The best-interests power does not extend to anything that requires the club to act, or not to act, on the election of a Commissioner; expansion; sale or relocation of a club; provisions affecting revenue sharing; provisions amending the Major League Agreement; any matter subject to collective bargaining with the MLBPA; or anything which a league constitution specifies must be voted on by members of the league. However, there is an important exception: "*Except as necessary to preserve the integrity of, or public confidence in, baseball.*" The Commissioner himself acknowledged that this exception might not even be necessary, acknowledging that management could order expanded netting to protect fans without bargaining over the matter with the players' association. http://espn.go.com/mlb/story/_/id/13092427/rob-manfred-mlb-commissioner-open-change-all-star-game-fan-voting-proves-flawed.

[182] For example, after California Angels pitcher Matt Keough was hit in the right temple and nearly killed by a line drive while seated in the dugout of Scottsdale Stadium in Arizona in 1992, a fence was installed in front of the dugout for the safety of the players and staff. http://www.si.com/vault/2002/04/01/321174/safety-squeeze-with-new-ballparks-putting-spectators-closer-than-ever-to-the-action-more-fans-are-getting-in-harms-way.

[183] http://m.mlb.com/news/article/2989456/.

[184] http://ftw.usatoday.com/2015/05/mlb-statcast-stats-data-launch-angle-route-efficiency.

131. Defendants were in a superior position with respect to knowledge of the risk to spectators, and breached their duty to provide a safer environment for spectators.

132. Defendants acted carelessly and negligently in their position as the regulatory authorities for Major League Baseball. Defendants knew or should have known that their action or inaction in light of the rate and extent of injuries reported and made known to Major League Baseball would cause harm to spectators in both the short and long-term.

133. Defendants were careless and negligent by breaching the duty of due care they assumed for the benefit of the Plaintiff and the Class, both generally and in the following particular respects as set forth above and summarized below:

a. Failing to provide adequate netting;

b. Failing to ensure enough seats under existing netting;

c. Failing to disclose the special risk of injury to fans sitting along first and third base lines, between the poles;

d. Failing to disclose the special risk of injury from shattered bats;

e. Failing to promulgate rules and regulations to adequately address the dangers;

f. Failing to disclose that players requested adequate netting;

g. Failure to promulgate rules and regulations regarding minimum distance from field of play;

h. Misrepresenting ballparks as safe and family friendly;

i. Concealing pertinent facts; and

j. Other acts of negligence or carelessness that may materialize during the pendency of this action.

134. It was reasonable and foreseeable that these failures would increase the risk to spectators.

135. The Plaintiff individually and the Class members that sit in these sections are at an unreasonable risk due to Defendants' breaches.

136. As a result of the foregoing, the Plaintiff and the Class have an improper risk of injury and will in the future suffer damages caused by the misconduct of Defendants.

137. The Plaintiff and the Class are entitled to injunctive relief requiring Defendants, among other things, to adopt corrective measures regarding the implementation of: (1) a rule requiring all existing major league and minor league indoor and outdoor ballparks to be retrofitted to extend protective netting from foul pole to foul pole by the beginning of the 2016-2017 MLB season; (2) a rule requiring any newly constructed ballpark intended to house major or minor league baseball games, to include at a minimum this amount of netting; and (3) a program to study injuries and the rates of injuries amongst spectators, including the type and manner of injury and at what locations in ballparks they occur, in an effort to continually reevaluate whether additional measures should be taken, so that precautionary measures can continue to evolve as the sport continues to evolve.

138. Moreover, Plaintiff has no adequate remedy at law in that monetary damages alone cannot compensate her for the risk of injury.

SECOND CAUSE OF ACTION

FRAUDULENT CONCEALMENT
(On Behalf of the Class)

139. Plaintiff adopts and incorporates by reference all prior paragraphs of this Complaint as if fully set forth herein.

140. Defendants concealed facts and information which were material. As more fully described above, the incidence of spectator injuries has been well known to Defendants. Further, based on studies for which the MLB *itself* paid, Defendants were aware of the incidence of shattered bats. Defendants were also aware that a readily available and inexpensive protective measure has been in use before the turn of the century and had already been implemented between the foul poles in newer ballparks in the U.S., as well as other countries like Japan. Defendants also knew and concealed to the public that major league baseball players had asked for increased netting during the course of collective bargaining negotiations. Defendants also were aware of studies that determined that fans sitting in exposed areas of ballparks cannot reasonably be expected to react quickly enough to protect themselves from a foul ball. Defendants were also in possession of technology measuring the speed of baseballs and human reaction time.

141. Through this concealment, as well as concealing the truth via statements such as that baseball is an "extraordinarily healthy entertainment product," and statements encouraging parents and grandparents to bring children to games, and advertising the game as family friendly via articles on its website showing infants in the unprotected areas of ball fields, Defendants induced a false belief in spectators that that they should continue to purchase tickets for and attend MLB games, and continue to sit in and bring their minor children to exposed areas of the ballpark between the foul poles. This concealment was also achieved via the use of unconscionable "warnings" on the back of tickets and/or signage in stadiums that perpetuated a myth that attention was a defense to serious injury from an errant ball or a flying bat and would lead reasonable spectators to believe that these areas of the ballpark would be "safe" as long as they generally paid attention to the game.

142. As a proximate cause of Defendants' concealment, Plaintiff and the putative Class members suffered harm described above.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, *et seq.*)

143. Plaintiff realleges the foregoing allegations as if fully set forth herein on behalf of a class of persons or entities that bought season tickets to games in California who are seated in the Danger Zone.

144. The California Unfair Competition Law ("UCL") prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising." CAL BUS. & PROF. CODE § 17200.

145. Defendants have engaged in unfair competition and unfair, unlawful or fraudulent business practices by their conduct, statements, and omissions described above. In addition, Defendants have engaged in unfair competition by engaging in fraud and deceit.

146. The acts engaged in by Defendants are fraudulent and show a pattern of untruthful statements, false representations, concealment, and intent to mislead were all part of a scheme to mislead.

147. These acts and practices have deceived Plaintiff and the putative Class and are likely to deceive the public. Defendants' violations of the UCL caused injuries to Plaintiff and Class members.

148. The injuries suffered by Plaintiff and Class members are greatly outweighed by any potential countervailing benefit to consumers or to competition. Nor are they injuries that Plaintiff and Class members should have or could have reasonably avoided.

149. Defendants' representations and acts as set out above induced Plaintiff and others similarly situated to continue to purchase tickets for and attend MLB games. Plaintiff reserve the right to identify additional violations by Defendants as may be established through discovery.

150. Pursuant to California Business and Professions Code section 17203, Plaintiff seeks an order of this Court:

a. Declaring that Defendants have violated the provisions of California Business & Professions Code section 17200, and any other statutory violations; and by enjoining Defendants from violating the statute.

FOURTH CAUSE OF ACTION

VIOLATIONS OF CONSUMER LEGAL REMEDIES ACT ("CLRA"), CALIFORNIA CIVIL CODE § 1750, *et seq.*

151. Plaintiff incorporates by reference all allegations of the preceding paragraphs as though fully set forth herein on behalf of the California subclass.

152. Plaintiff is a "person" as defined at California Civil Code § 1761(c) and a "consumer" as defined at California Civil Code § 1761(d).

153. Defendant Manfred is a "person" as defined at California Civil Code § 1761(c).

154. Defendant Office of the Commissioner of Baseball is a "person" as defined at California Civil Code § 1761(c).

155. A ticket to an MLB major or minor league game is a "good" as defined at California Civil Code § 1761(a).

156. By systematically holding out MLB games, including the unprotected areas of the ballparks, as safe, Defendants represented that an MLB game at an MLB-sanctioned ballpark had a characteristic that it did not have (Cal. Civ. Code § 1770(a)(5)), that it was of a particular standard or quality (Cal. Civ. Code § 1770(a)(7)), did not disclose that part of the reason for the reduced ticket price of unprotected seats is related to their unprotected nature (Cal. Civ. Code § 1770(a)(13)), and inserted an unconscionable assumption of risk provision in the contract entered into when a ticket is purchased,[185] despite its superior knowledge that it was unreasonable and against public policy to ask spectators to contract away a risk that is impossible to avoid due to the physical limits of human reaction time. Cal. Civ. Code § 1770(a)(19).

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests judgment as follows:

A. Certification of the proposed Class pursuant to Federal Rules of Civil Procedure Rule 23(a) and (b)(2);

B. Designation of Plaintiff as representative of the proposed Class and designation of Plaintiff's counsel as Class counsel;

C. Injunctive relief;

D. An award to the Plaintiff and the Class of prejudgment interest, costs, and attorneys' fees; and

E. An award to the Plaintiff and Class for such other and further relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of all claims in this Complaint so triable.

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[185] MLB tickets contain a generalized statement, in five point size "mouse print," advising the ticket holder that he/she assumes all risks and danger. *See e.g.*, Joint Pretrial Memorandum, *Costa v. The Boston Red Sox Baseball Club*, 2002 WL 33968373 (Mass. Super. Jan. 23, 2002).

DATED: July 13, 2015

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

GAIL PAYNE, individually and on behalf of all others similarly situated, Plaintiff, v. OFFICE OF THE COMMISSIONER OF BASEBALL (d/b/a MAJOR LEAGUE BASEBALL); and ROBERT D. MANFRED, JR., Defendants.	No. **AFFIDAVIT OF VENUE BY PLAINTIFF GAIL PAYNE PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1780(d)** CLASS ACTION

AFFIDAVIT OF VENUE BY PLAINTIFF GAIL PAYNE

I, GAIL PAYNE, hereby declare as follows:

1. I am the Plaintiff in *Payne v. Office of the Commissioner of Baseball, et al.* Pursuant to California Civil Code section 1780(d), I make this declaration in support of the Complaint filed July 13, 2015 and the claim therein for relief under California Civil Code section 1780(a). I have personal knowledge of the facts stated herein and, if necessary, could competently testify thereto.

2. My Complaint filed in this matter contains causes of action for violations of the Consumers Legal Remedies Act against The Office of the Commissioner of Baseball d/b/a Major League Baseball, an office created pursuant to the Major League Agreement entered into by the member Clubs of Major League Baseball, and Rob Manfred, the Commissioner of Major League Baseball.

3. I am informed and believe that The Office of the Commissioner of Baseball d/b/a Major League Baseball, and Rob Manfred, the Commissioner of Major League Baseball, do business nationwide, including in Alameda County. A substantial portion of the transactions with The Office of the Commissioner of Baseball d/b/a Major League Baseball, and Rob Manfred, the Commissioner of Major League Baseball, which led to the filing of this lawsuit occurred in Alameda County.

4. These causes of action arise from Commissioner Manfred and the Office of the Commissioner's widespread pattern of negligence, failure to exercise a proper duty of care, and misrepresentations and omissions towards baseball spectators at Major League Baseball games.

5. I have purchased tickets to and attended baseball games at Oakland Coliseum, in Alameda County.

This declaration is signed under penalty of perjury under the laws of the State of California this 10 day of July 2015 in Oakland, California.

Gail Payne

GAIL PAYNE

HAGENS BERMAN

PAYNE v. OFFICE OF THE COMMISSIONER OF BASEBALL, ET AL.

COMPLAINT EXHIBIT A

- VIDEO FILE -

excerpted from source:

https://www.youtube.com/watch?v=2gjFRGedce0

EXHIBIT A TO BE SUBMITTED MANUALLY

EXHIBIT B

Name	Date	Lawsuit (if applicable)	Injury sustained	Position in Stadium	Location	Team	Link/Video (if applicable)
Anderson, Betty	5-Sep-47	Lawsuit, 231 S.W.2d 170 (Mo. 1950)	hit by foul ball, was hospitalized as a result of her injuries	originally, plaintiff was seated behind protective wire netting, but before getting hit, an usher moved her to unscreened seat	Municipal Stadium	Kansas City Blues	https://foulballz.com/research/lawsuits-1951-1999/
Arthur, Mike (47)	15-Mar-13		hit by shattered bat, received 7 stiches above right eye at the bridge of his nose and came within half an inch of losing his eyesight	above right base dugout, Section 112, Row R, Seats 3 and 4	Tropicana Field	Tampa Bay Rays	http://tbo.com/sports/rays/rays-fan-hit-by-bat-still-recovering-43379
Benejam, Alyssia	Jul-94	Lawsuit, 246 Mich. App. 645 (Mich. Ct. App.2001)	player's bat broke and hit girl; girl's fingers were crushed and she suffered multiple injuries after the accident; her middle finger stopped growing and her ring finger began to grow at a 45-degree angle	fourth row seat along the third base line	Comerica Park	Detroit Tigers	http://caselaw.findlaw.com/mi-court-of-appeals/1275801.html
Cain, Reagan (11)	1-May-13		hit in the leg by foul ball, substantial bruising		Dodger Stadium	Los Angeles Dodgers	https://www.youtube.com/watch?v=mAaSjR87VnY
Carpenter, Tonya	5-Jun-15		struck in face by barrel of broken bat, serious injuries, initially thought to be life-threatening	field level	Fenway Park	Boston Red Sox	https://deathattheballpark.wordpress.com
Cates, John C.	6-Sep-36	Lawsuit, 215 N.C. 64 (N.C. 1939)	struck in eye by foul ball	parallel to and in close proximity to third base	El Toro Park	Durham Bulls	https://foulballz.com/research/lawsuits/

Chapman, Stephanie	4-Jul-15		hit on right side of head with foul pop-up ball	unscreened seat	Lynchburg City Stadium	Lynchburg Hillcats	http://www.wset.com/story/29479309/woman-hospitalized-after-being-hit-by-foul-ball-at-lynchburg-hillcats-game
Clapman, David	Jul-97	Lawsuit, 63 N.Y.2d 669 (N.Y. Ct. App. 1984)	hit with foul ball	seated in box seat behind Yankee dugout	Yankee Stadium	New York Yankees	https://foulballz.com/research/lawsuits-1951-1999/
Cooney, Sue (64)	25-Mar-11		shattered bat handle flew into Cooney's face, near right eye, required facial surgery	behind the Angels' dugout along the third-base line	Kauffman Stadium	Kansas City Royals	http://sports.espn.go.com/los-angeles/mlb/news/story?id=6283781
Coronel, Blanca	16-Aug-86	Lawsuit, 595 N.E.2d 45 (Ill. Ct. App. 1992)	struck in face by line-drive, foul-tipped ball and suffered broken jaw	behind home plate, facing first base, approximately three seats away from edge of protective screen	Comiskey Park	Chicago White Sox	http://foulballz.com/research/lawsuits-1951-1999/
Costa, Jane	11-Sep-98	Lawsuit, 61 Mass. App. Ct. 299 (Mass. Ct. App. 2003)	hit in face by foul ball, suffered severe injuries to her face including multiple fractures to her cheek bone, eyebrow and jaw, leaving her with swelling, severe bruising and discoloration	seated 20 rows behind home dugout at Fenway Park	Fenway Park	Boston Red Sox	http://caselaw.findlaw.com/ma-court-of-appeals/1358759.html
Crane, S.J.	Early 1900s	Lawsuit, 168 Mo. App. 301 (Kan. Ct. App. 1913)	struck and injured by foul ball	unscreened grandstand seats	Kansas City	Kansas City Blues	https://foulballz.com/research/lawsuits/

Crossley, Doug	5-Oct-13		hit in the chin by bouncing foul ball	behind first base (right side)	Natick, MA/ Fenway Park	Boston Red Sox	http://sports.yahoo.com/blogs/big-league-stew/unlucky-red-sox-fan-takes-foul-ball-face-194006363--mlb.html http://vzaar.com/videos/1637759
Davidoff, Jennifer A. (14)	25-May-79	Lawsuit, 61 N.Y.2d 996 (N.Y. 1984)	hit in face with foul ball, lost vision in one eye	box seat behind first base	Shea Stadium	New York Mets	http://www.leagle.com/decision/198355392AD2d461_1484
Decker, Travis	6-Jul-12		hit in the shoulder with foul ball	2nd deck along the first base line	Petco Park	San Diego Padres	https://www.youtube.com/watch?v=0UmxgU0xJLk http://vzaar.com/videos/1637755
DeJesus, Juanita	23-May-09	Lawsuit, 982 N.W.2d 1076 (Ind. 2013)	hit in the head with pop-up foul ball	Section 111, Row R, Seat 16, along the first base line closer to home plate than first base	U.S. Steel Yard	Gary ShouthShore Railcats	https://foulballz.com/research/lawsuits-2000-to-present/

Dent, Lizabeth	10-Aug-84	Lawsuit, 764 S.W.2d 345 (Tex. App.--Fort Worth 1989)	hit with foul ball	unscreened seat	Ranger Stadium	Texas Rangers	https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB8QFjAAahUKEwjt8JnJ_NDGAhWTFZIKHWbODso&url=http%3A%2F%2Ffoulballz.com%2Fwp-content%2Fuploads%2F2014%2F09%2F054-Dent-v-Texas-Rangers-Ltd.rtf&ei=ZfGfVa2qDJOryATmnLvQDA&usg=AFQjCNHbzXD0H19
DiAngi, Dominic (7)	10-Jul-08		hit with foul ball, placed into medical coma because he could not breathe on his own	lower level seat off third base	Wrigley Field	Chicago Cubs	http://www.highbeam.com/doc/1N1-1223B2EE6C7852B8.html
Erickson, Cliff A.	Mid-1950s	Lawsuit, 233 N.C. 627 (N.C. 1951)	hit with foul ball	right field unscreened seat	Lexington Park	St. Paul Saints	https://foulballz.com/research/lawsuits-1951-1999/

Ezell, Reva	14-Sep-10		hit in face by foul pop-up ball, lost vision in her right eye and required 8 surgeries	seated in 12th row behind third base	Turner Field	Atlanta Braves	http://www.ajc.com/news/sports/baseball/local-braves-fan-just-like-salazar-knows-dangers-o/nQs8W/
Falzon, James G.	1-Aug-07	Lawsuit, No. 11508/10 (N.Y. Super. Ct. 2011)	shattered bat handle hit him in the face, suffered multiple facial fractures, including a broken palate, nose and eye socket. He had metal plates implanted into his skull.	seated in the second row along the third base line of the stadium	Former Shea Stadium	New York Mets	http://sports.espn.go.com/new-york/mlb/news/story?id=5449775
Fish, Alan (14)	16-May-70		died after he was hit with line-drive foul ball behind and above his left ear, suffered intracerebral hemorrhage	second row along first base line	Dodger Stadium	Los Angeles Dodgers	http://www.ajc.com/news/news/local/lawsuit-filed-for-girl-injured-by-foul-ball-at-b-1/nQXLw/
Friedman, Karen (11)	14-Jul-78	Lawsuit, 731 S.W.2d 572 (Tex. App.--Houston (1st Dist.) 1987)	hit with foul ball	behind first base dugout in unscreened area	Astrodome	Houston Astros	http://www.leagle.com/decision/19871303731SW2d572_11274.xml/FRIEDMAN%20v.%20HOUSTON%20SPORTS%20ASS'N
Gunther, Mary Sue	22-May-90	Lawsuit, 854 F. Supp. 424 (S.C. 1994)	struck in face by foul ball, causing severe and painful injuries	seated in the second row of bleachers (one row away from field), behind the third base dugout and 81 feet from home plate	BB&T Ballpark	Charlotte Knights and Jacksonville Suns	https://foulballz.com/research/lawsuits-1951-1999/#1999

Harting, Roxanne	16-Jun-04	Lawsuit, 870 N.E.2d 766 (Ohio App. 2007)	struck in the head by line-drive foul ball, knocked unconscious, transported by ambulance to Miami Valley Hospital	seated in the front row, behind the dugout along the third base line	Fifth Third Field	Dayton Dragons and Wisconsin Timber Rattlers	http://foulballz.com/wp-content/uploads/2014/09/ernst-harting_decision_003413031.pdf
Hoskey, Alexis (4)	29-Apr-11		hit in head with foul ball, suffered a skull fracture and brain bleed	third base stands	Kauffman Stadium	Kansas City Royals	http://www.stjoechannel.com/story/d/story/toddler-recovering-after-getting-hit-by-baseball/37575/UyiJdn5cXUqu8vVyrwN_GQ http://app.vzaar.com/videos/1637769
Hudson, Eugene L.	28-Jul-40	Hudson v. Kansas City Baseball Club, 349 Mo. 1215 (Mo. 1942)	hit with foul ball	seated in grandstand in unscreened area	Ruppert Stadium (early Municipal Stadium)	Kansas City Blues	http://foulballz.com/research/lawsuits/#1942
Hull, Luella	14-Aug-41	Lawsuit, 196 Okla. 40 (Okla. 1945)	hit with foul ball	seated in grandstand	Holland Park	Oklahoma City Indians	https://foulballz.com/research/lawsuits/
Hummel, X	13-Aug-41	Lawsuit, 71 Ohio App. 321 (Oh. Ct. App. 1943)	struck in right side of abdomen, causing severe injuries	seated in fifth row of left field bleachers, along third base line	Red Bird Stadium	Memphis Redbirds	https://foulballz.com/research/lawsuits/
Iervolino, Evelyn	6-Jun-62	Lawsuit, 212 Pa. Super. 330 (Pa. Super. Ct. 1968)	struck in eye by foul ball	box seats on the ground floor of the stands along the first base line, seven or eight rows back from the bottom of the stands behind the Pittsburgh dugout	Forbes Field	Pittsburgh Pirates and Los Angeles Dodgers	https://foulballz.com/research/lawsuits-1951-1999/

Ivory, X	5-Aug-35	Lawsuit, 1939 WL 3331 (Ohio Com. Pl. 1939)	struck in left breast by foul ball, causing her to suffer excruciating pain and have a lump on her breast	seated in an area known as the pavilion, contiguous to the grandstand which begins 100 to 120 feet from home plate	Cincinnati Ball Park	Cincinnati Reds	https://foulballz.com/research/lawsuits/
Jasper, James	22-Aug-95	Lawsuit, 309 Ill. App. 3d 124 (1999)	hit with foul ball, lost vision in right eye	behind home plate to the left side	Wrigley Field	Chicago Cubs	http://www.illinoiscourts.gov/opinions/appellatecourt/1999/1stdistrict/december/html/1973360.htm
Jones, Catherine	6-Sep-51	Lawsuit, 266 S.W.2d 470 (Tex. App.--Austin 1954)	hit in face with batted foul ball	seated in the grandstand on first base side, second row from the top	Disch Field	Austin Pioneers	https://foulballz.com/research/lawsuits-1951-1999/
Kavafian, Edward A.	10-Jan-19 (case date)	Lawsuit, 105 Wash. 215 (Wa. 1919)	hit on knee with foul ball	seated in the grandstand on a front seat, within 60 feet and more than 30 feet to the right of the center of the grandstand; there was no screen in front of him	Dugale Baseball Park	Seattle Indians	https://foulballz.com/research/lawsuits/
Kelly, Morgan (11)	24-Sep-11		hit with foul ball, fractured cheek bone and other broken bones in face	first tier, upper first base line	Yankee Stadium	New York Yankees	http://7online.com/archive/8368518/
Keys, Frieda (42)	1930s	Lawsuit, 150 S.W.2d 368 (Tex. App.--San Antonio 1941)	hit in chest and leg with foul ball	unscreened section in the grandstand	Tech Field	San Antonio Missions	http://chrismoore-portfolio.weebly.com/uploads/1/8/1/5/18151199/rptm_460_political_and_legal_cases_final.pdf

LaSala, Dominic (68)	27-Aug-60		died after he was struck in side of head with line drive foul ball	third base box seats	Miami Stadium	Marlins and Ohio Jets	http://www.sbnation.com/2010/6/28/1541775/death-ballpark-maple-bats-foul-balls
Lawson, Brook (6)	4-Jul-91	Lawsuit, 901 P.2d 1013 (Utah 1995)	hit by foul ball in the head, causing severe head injuries	above first base, approximately 143 feet from home plate, halfway up the stands	Derks Field	Salt Lake Trappers	https://foulballz.com/research/lawsuits-1951-1999/#1999
Lowe, John	26-Jul-84	Lawsuit, 56 Cal. App. 4th 112 (Cal. App. 1997)	hit on left-side of face with foul ball, shattering multiple facial bones	seated in the Left Terrance section, which is located northwesterly of the left field foul ball territory, and in the direct line of foul balls passing west of the third base line	Epicenter Baseball Stadium	Rancho Cucamonga Quakes and San Bernardino Spirit	https://foulballz.com/research/lawsuits-1951-1999/#1999
M.F., 6 year old female	30-Aug-10	Lawsuit, 2014 WL 3377159	hit in head with foul ball, skull fracture and brain injuries. She had to have surgery to install 31 metal pieces in her skull.	behind visitors' dugout	Turner Field	Atlanta Braves	http://www.ajc.com/news/news/foul-ball-lawsuit-against-atlanta-braves-moves-for/ngfW2/
Maytnier, David M.	Sep-57	Lawsuit, 80 Ill. App. 2d 336 (Ill. C. App. 1967)	hit by thrown ball on left side of his head	front row seat behind the Cubs dugout	Wrigley Field	Chicago Cubs	http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1033&context=sports_entertainment
Neinstein, Shirley	00-00-86	Lawsuit, 185 Cal. App. 3d 176 (Cal. App. 1986)	struck with batted foul ball, necessitated first aid treatment	seated on first base side in an unscreened area	Dodger Stadium	Los Angeles Dodgers	https://foulballz.com/research/lawsuits-1951-1999/#1999

Olds, Rose	Aug-32	Lawsuit, 232 Mo. App. 897 (Mo. Ct. App. 1937)	struck in face and nose by batted foul ball and severely injured	grandstand in section L, east of the screen area	Sportsman's Park	St. Louis Cardinals	https://foulballz.com/research/lawsuits/
Packett, Neil	25-Jan-01	Lawsuit, 871 A.2d 304 (2005)	hit in right eye by foul ball, suffered severe and disabling injuries including a loss of vision in his right eye, traumatic viterous hemorrhage and preretinal hemorrhage, retinal, macular and foveal traction, distortion and pigment changes, contusions and swelling, an epiretinal membrane, choroidal rupture and impairment of his field of vision and depth perception	seated near the backstop in an unscreened area	Veterans Stadium	Philadelphia Phillies	https://www.courtlistener.com/opinion/2180148/pakett-v-the-phillies-lp/
Powless, Ramona (Dietrich)	9-Jun-54	Lawsuit, 6 Wis. 2d 78 (Wis. 1959)	hit with foul ball	lower deck boxes, twelve rows back from the playing field. The seat was approximately 60 feet off of the third base foul line, 234 feet from home plate and eight feel above the level of the field	Milwaukee County Stadium	Milwaukee Braves and New York Giants	https://foulballz.com/research/lawsuits-1951-1999/
Quinn, Joan (minor)		Lawsuit, 35 P.2d 602 (Ca. Ct. App. 1934)	hit by foul ball batted by player Suhr	seated in open section of grandstand near first base	Recreation Park	San Francisco Seals	https://foulballz.com/research/lawsuits/

Ray, Pinaki and Debbie	4-Jul-99	Lawsuit, No. 5563/01 2002 WL 181829 (N.Y.S.2d 2002)	hit with foul ball	seated in Section 101, Row E, Seat 5	Dutchess Stadium	Hudson Valley Renegades	https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=0CCUQFjABahUKEwi5gPnUp9HGAhWIF5IKHbjCCKU&url=http%3A%2F%2Fwww.leagle.com%2Fdecision%2F2003570306AD2d264_1292.xml%2FRAY%2520v.%2520HUDSON%2520VALLEY%2520STADIUM%2520CORP.&ei
Rees, Donna	1998	Lawsuit, 2004 WL 2610531 (2004)	hit in face by broken bat	second row near third base	Jacobs Field	Cleveland Indians and New York Yankees	https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2004/2004-Ohio-6112.pdf

Reese, Judith (69)	9-Apr-12		hit in temple with foul ball, suffered a concussion and serious bruising	slightly down from the third base dugout (left side)	Denver, Colorado	Colorado Rockies	http://espn.go.com/mlb/story/_/id/7793565/woman-suffers-concussion-hit-head-ball-coors-field http://vzaar.com/videos/1637754
Rhodes, Susan	4-Apr-08		hit with shards from broken bat, caused concussion and two jaw fractures, required surgery and titanium plate	seated four rows behind the first base dugout at Dodger Stadium	Dodger Stadium	Los Angeles Dodgers	http://www.usatoday.com/story/sports/mlb/2015/06/06/fan-broken-bat-fenway-park-dodger-stadium-todd-helton-susan-rhodes/28608195/
Romeo, Nancy	13-Jul-98	Lawsuit, 787 A.2d 1027 (2001)	batted ball struck her in the face and mouth	third baseline in field box seats, no screening or netting	Three Rivers Stadium	Pittsburgh Pirates	http://caselaw.findlaw.com/pa-superior-court/1121379.html
Rosenfeld, Judith	2008	Lawsuit, 65 A.D. 3d 117 (N.Y. App. 2009)	hit in head with foul ball	in picnic area along third base line	Dutchess Stadium	Hudson Valley Renegades	https://foulballz.com/research/lawsuits-2000-to-present/

Rountree, Bud	13-Aug-08	Lawsuit	hit in the face with foul ball, lost vision in eye	unscreed Executive Club section	Boise Hawks Stadium	Boise Hawks	http://www.cbsnews.com/news/baseball-fan-who-lost-eye-can-sue-over-foul-ball-injury-idaho-court-rules/
Rudnick, Loretta	Mid-1980s	Lawsuit, 156 Cal. App. 3d 783	hit with foul ball	unscreened section near first base	Anaheim Stadium	California Angels	http://law.justia.com/cases/california/court-of-appeal/3d/156/793.html
Saco-Vertiz, Sara	9-Aug-10		hit in the arm with foul ball	left field line	Minute Maid Park	Houston Astros	http://m.astros.mlb.com/news/article/13257288/
Schentzel, X	5-Jun-49	Lawsuit, 173 Pa. Super. 179 (Pa. Super. Ct. 1953)	hit with foul ball	upper stand on first base line	Shibe Park	Philadelphia Phillies and Chicago Cubs	https://foulballz.com/research/lawsuits-1951-1999/
Shalomoff, Eliezer (11)	29-Aug-11		hit in face with line-drive foul ball, suffered broken nose, fractured sinus, internal bleeding, 8 stitches, also had to have two blood transfusions, four CT scans and was in intensive care for five days		Citi Field	New York Mets	http://msn.foxsports.com/mlb/story/Boy-still-in-pain-after-being-hit-by-foul-ball-091511 http://vzaar.com/videos/1637797
Shaw, Lilian	26-Apr-42	Lawsuit, 325 Mass. 419 (Mass. 1950)	struck in the head by a foul ball	Box A-31, on the first base line, approximately seventy feet from home plate	Fenway Park	Boston Red Sox and New York Yankees	https://foulballz.com/research/lawsuits-1951-1999/

Sweeney, Tara (8)	30-Jun-03		hit with errant bat on the right side of her head; bat flew about 120 feet approximately six feet in the air	third or fourth row of the bleachers along the third base line	John O'Donnell Stadium (currently Modern Woodmen Park)	Quad Cities River Bandits, affiliated with the Houston Astros	https://foulballz.com/research/lawsuits-2000-to-present/
Thalhammer, Nick	11-Apr-15		hit in face with foul ball	he and his girlfriend were seated in section 133, row I, seats four and five. Nick looked down at his phone momentarily when he was struck	Great American Ball Park	Cincinnati Reds and St. Louis Cardinals	http://www.wcpo.com/news/local-news/Hamilton-county/Cincinnati/fan-hit-by-foul-ball-at-great-american-ball-park-recovering-not-phased
Thurmond, Donna P.	Aug. 97	Lawsuit, 265 Va. 59 (Va. 2003)	struck with line-drive foul ball on the right side of face, sustained various injuries, including fractures to her facial bones, damage to her eye socket and extensive nerve damage	along the third base line	G. Richard Pfitzner Stadium	Prince William Cannons (Class A minor league team affiliated with the St. Louis Cardinals)	http://caselaw.findlaw.com/va-supreme-court/1457161.html
Tucker, R. Keith	17-Apr-98	Lawsuit, 102 P.3d 660 (Ok. 2004)	hit with foul ball to left facial and eye area	luxury suite seating area	Red Hawks Stadium	Oklahoma Red hawks	https://foulballz.com/research/lawsuits-2000-to-present/
Unidentified (18 months)	2012		Hospitalization (injuries unclear)		Seattle, WA		http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year

Unidentified Boy	6-Aug-12		hit in face by foul ball	first row first base line	Fenway Park	Red Sox	https://www.youtube.com/watch?v=2gjFRGedce0
Unidentified Boy	3-May-15		hit in head with foul ball	behind first base dugout	AT&T	Giants and Angels	https://www.youtube.com/watch?v=2F4bQk_f2c8
Unidentified Boy	19-Jun-15		hit in upper chest close to left shoulder	along first base line	Citizens Bank Park	St. Louis Cardinals and Philadelphia Phillies	http://www.foxsports.com/mlb/story/philadelphia-phillies-young-fan-hit-by-foul-ball-taken-to-hospital-061915
Unidentified Boy (8)	20-May-14		unknown due to family's request;	behind first base dugout (right of field)	Turner Field	Atlanta Braves and Milwaukee Brewers	http://espn.go.com/mlb/story/_/id/10971761/boy-hit-head-foul-ball-milwaukee-brewers-atlanta-braves-game-hospital
Unidentified Girl (3)	7-Jun-10		hit in head by foul ball and knocked unconscious, fractured skull, had surgery	stands near third base	Dodger Stadium	Los Angeles Dodgers	http://www.scpr.org/news/2010/06/08/15967/foul-ball-dodger-game-strikes-3-year-old-child/

Unidentified man			hit in face by foul ball	right field by foul ball marker	Fenway Park	Red Sox	https://www.youtube.com/watch?v=8t70TMt0oFU
Unidentified Woman + Unidentified Man	29-Jun-14		hit in the face by foul ball	along the right field line	Marlins Park	Marlins and Athletics	http://espn.go.com/mlb/story/_/id/11153032/2-fans-hit-face-foul-balls-miami-marlins-game
Unidentified Man	2011		hit in face by foul ball			Texas Rangers and Oakland Athletics	http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year
Unidentitfied Man	19-Aug-10		hit in face by bat	along the first base line	Ranger Stadium	New York Mets and Rangers	https://www.youtube.com/watch?v=TUTi4nIfAfA&app=desktop
Unidentitfied Man	16-Apr-10		hit in head by bat	along the third base line	Rogers Centre	Los Angeles Angels and Toronto Blue Jays	https://www.youtube.com/watch?v=LfUxwx9McUw&app=desktop

Unidentified Man (56)	27-Mar-12		hit in the head with foul ball, suffered a brain hemorrhage				http://chicago.cubs.mlb.com/news/article.jsp?ymd=20100809&content_id=13241938&notebook_id=13257288&vkey=notebook_hou&fext=.jsp&c_id=hou http://vzaar.com/videos/1637814
Unidentitfied Woman	6-Jul-15		hit in head by foul ball; carried out of game on a stretcher	seated above Brewer's dugout on the first base line	Miller Park	Milwaukee Brewers	http://www.cbs58.com/story/29489754/woman-hit-by-foul-ball-at-brewers-game-monday-night
Unidentified Woman	29-Apr-14		hit in the head by foul ball	along first base line	Yankee Stadium	Yankees	http://www.usnews.com/news/sports/articles/2015/07/07/fan-hit-by-line-drive-and-injured-during-braves-brewers-game
Unidentified Woman	17-Jul-11		hit on head with broken bat	along third base line	Great American Ball Park	Cincinnati Reds and St. Louis Cardinals	https://www.youtube.com/watch?v=ivS0B83KUBE

Unidentitfied Woman	29-Jun-14		hit in face by foul ball	along the right field line	Marlins Park	Marlins and Athletics	http://espn.go.com/mlb/story/_/id/11153032/2-fans-hit-face-foul-balls-miami-marlins-game
Unknown			hit in face with foul ball		Yankee Stadium	New York Yankees	http://app.vzaar.com/videos/1637744
Vines, Gerald	6-Aug-82	Lawsuit, 450 So. 2d 455 (Ala. 1984)	hit in face with batted ball, suffered serious facial injuries	along first base line	Rickwood Field	Birmingham Barons	https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB4QFjAAahUKEwip5OOmgNHGAhUNOpIKHYxODNs&url=http%3A%2F%2Ffoulballz.com%2Fwp-content%2Fuploads%2F2014%2F09%2F019-Vines-v-Birmingham-Baseball-Club-Inc.rtf&ei=TvWfVamFLo30yAS

Wellmeyer, Karen (37)	9-Aug-05		hit in side with flying bat, suffered a ruptured spleen	behind first base dugout	Marlins Park	Arizona Diamondbacks and Florida Marlins	http://usatoday30.usatoday.com/sports/baseball/nl/marlins/2005-08-11-woman-hit-by-bat_x.htm
Whitehead, Wendy (39)	12-Jun-12		killed after being hit in the head with a foul ball	third base line	San Angelo's Foster Field	San Angelo Colts	http://www.reporternews.com/news/2010/Jun/15/baseball-accident-a-tragedy/
Williams, Edith	1940s	Lawsuit, 154 S.W.2d 874 (Tex. App.--Galveston 1941)	hit by a foul ball	seated in a box seat on the right hand side of the stands	Buffalo Stadium (aka Busch Stadium)	Houston Buffaloes	https://foulballz.com/research/lawsuits/
Wilson, Wanda	31-Mar-10		hit in the upper chest	behind third base dugout	Yankee Stadium	Minnesota Twins	http://sports.espn.go.com/mlb/spring2010/news/story?id=5043987 http://app.vzaar.com/videos/1637749

Yates, Delbert (minor)	20-Aug-83	Lawsuit, 172 Ill. App. 3d 472 (1992)	hit by foul ball, suffered a knot in eye, had blood pouring from face, and required 5 day surgery	25 rows back on the third base side, just left of the screen behind homeplate	Wrigley Field	Chicago Cubs and Atlanta Braves	https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0CC8QFjADahUKEwjLvu2sgNHGAhXHFJIKHcNCBqM&url=http%3A%2F%2Fwww.leagle.com%2Fdecision%2F19921165595NE2d570_11111.xml%2FYATES%2520v.%2520CHICAGO%2520NAT.%2520LEAGUE%2520BALL%2520CLUB%2C%2520INC.&ei=W_WfVYulHsepyATDhZmYCg&usg=AFQjCNEZRr0kUrP99aO9pBtxEoQUdPbiKw&sig2=IHG48J4FeZYFk7X8UkW4RQ&bvm=bv.97653015,d.aWw