



The extent of protection that a team or University owes its fans has been a topic of discussion for years in the sporting world and the judicial system. Often the issue involves a baseball or hockey puck that a player hits into the stands, which injures or kills a spectator. [EN 13] In almost all of those cases, the object sent into the stands resulted from an accidental circumstance that occurred during the course of play on the field. Whether or not the fans put themselves at risk or whether the team or University stands at risk for the liability for fan injuries is the issue in question.

The logic sported in *Hayden* was extended even further in *Telega v. Security Bureau, Inc.*, a Pennsylvania case that resulted from an incident at a Pittsburgh Steelers football game in 1992. [EN 14] In *Telaga*, the plaintiff sued the firm responsible for fan security at the game due to its failure to prevent other fans from tackling him when he caught a ball that soared over the protective netting during a field goal attempt. [EN 15] The plaintiff contended that the security firm breached its duty when it failed to control fans from attacking him when he caught the ball. [EN 16] Although the trial court granted the defendant's motion for summary judgment on the basis that no duty was owed to the plaintiff for such an incident, the Superior Court of Pennsylvania reversed and ruled that the "no duty" rule was inapplicable, because the rule only applied to risks inherent in attending the game. [EN 17] The Superior Court ruled that the fans' attack was a risk not inherent in attending a football game and hence, the plaintiff could not anticipate it. [EN 18]

While the logic of this holding may appear to have some merit in its initial application to the particular case, it suffers when compared to the rulings in other negligent cases involving team and University liability. Courts have repeatedly held that balls or pucks that enter the stands off the bat or stick of a player are foreseeable and inherent risks that result from the course of play on the field. [EN 19] As long as there is sufficient fencing or protective glass in a sufficient area of the stadium, the liability of the stadium operator does not extend to fans who choose to sit in areas of the stadium that are not fenced. [EN 20] However, the rulings of *Hayden* and *Telega* challenge this legal logic.

*Hayden* and *Telega* deal with team or University liability not when a ball hits a fan, but when fans hit another fan in an attempt to catch a ball sent off the field of play. Whereas in the former cases, stadium operators do not owe a duty of protection so long as there is sufficient protective covering, courts seek to establish a duty of protection in the latter cases that would require such netting throughout the entire stadium. Although *Hayden* and *Telega* involved incidences in which a ball flew over already existing protective netting, the logic of the ruling would allow fans to bring suits for incidences that involve balls flying into all areas of the stadium. Whenever a ball flies out of play into any area of stadium seating in any sport and a fan suffers an injury from the ensuing rush of fans to the ball, the injured fan could sue the stadium operator for the fans' action. According to the courts, fans have the ability to foresee a ball flying out of play into the stands. It is a matter of common knowledge. Therefore, fans assume the risk of such an incident.

Courts assume that fans lack the capability of foreseeing a group of enthusiastic spectators pursuing the ball hit out of play during the course of which the fan in question may suffer an injury. Even in cases in which a fan may foresee such an event due to his regular attendance at games, courts excuse the assumption of risk factor and claim that the stadium operator's foreseeability outweighs the fan's, because it does not constitute a matter of common knowledge. [EN 21] Ultimately, this conclusion insults fan knowledge. The fan pursuit of a foul ball during a baseball game or a kicked football during a football game is a documented event



seats thousands of fans and expect the same elements of safety that he or she experiences in the comforts of a home. Ultimately, what true sports fans have long realized, but what courts in *Hayden* and *Telega* failed to recognize, is that when you are at the game, you are in the game.

[EN 1] 716 N.E.2d, 603, 604 (Ind. App. 1999).

[EN 2] *Id.*

[EN 3] *Id.* at 607.

[EN 4] *Id.* at 606.

[EN 5] *Id.* at 604.

[EN 6] *Id.* at 607.

[EN 7] The push by the fans, which sent the plaintiff to the ground, constituted a criminal action in that one could argue it constituted criminal assault. Section 211.1 (1)(a) of the Model Penal Code states “A person is guilty of assault if he attempts to cause or purposefully, knowingly, or recklessly causes bodily injury to another.” Plaintiff’s tort suit concerns the University’s negligence for failing to decrease the possibility that an assault may occur.

[EN 8] *Hayden*, 716 N.E.2d at 605.

[EN 9] *Id.*

[EN 10] *Id.* (citing *Delta Tau Delta v. Johnson*, 712 N.E.2d 968, 973 (Ind. 1999)).

[EN 11] *Id.* at 607.

[EN 12] *Id.*

[EN 13] However, courts have extended liability to teams when a bat is thrown into the crowd and strikes a spectator. Such incidents are ruled to be unforeseeable. Whereas a foul ball off the bat occurs in the normal play of the game, a thrown bat is not the result of a usual play.

[EN 14] 719 A.2d 372 (Pa. Super. 1998).

[EN 15] *Id.* at 374.

[EN 16] *Id.*

[EN 17] *Id.* at 375.

[EN 18] *Id.* at 376.

[EN 19] *See Brown v. San Francisco Ball Club, Inc.*, 222 P.2d 19 (Cal. App. 1950) (Woman hit by foul ball assumed reasonably foreseeable risk inherent in the game); *Gunther v. Charlotte Baseball, Inc.*, 854 F. Supp. 424 (D.S.C. 1994) (Patron assumed risk of batted or thrown balls); *Pestalozzi v. Philadelphia Flyers, Ltd.*, 576 A.2d 72 (Pa. Super. 1990) (Fan hit by errant puck assumed reasonably foreseeable risk inherent in the game).

[EN 20] *See Davidoff v. Metropolitan Baseball Club*, 463 N.E.2d 1219 (N.Y. 1984); *Brown*, 222 P.2d 19.

[EN 21] *Telega*, 719 A.2d at 377.

[EN 22] *See Brown*, 222 P.2d 19 (ruling that unfamiliarity with a baseball game does not eradicate the fan's assumption of risk from attending the game).

[EN 23] This statement represents the opinion of the author in his analysis of the decisions by the courts in *Hayden* and *Telega*. In both cases, the courts ruled that while plaintiffs assumed risk of attending the sporting events, the stadium operators could have foreseen the plaintiffs' injuries due to other fans' actions. Therefore, it appears that the courts balanced the foreseeability of both parties and in both cases ruled for plaintiffs. Such decisions were likely based on the ability of the defendants to more easily cover the costs of injuries rather than the individuals who suffered injuries.

[EN 24] *Hayden*, 716 N.E.2d at 603.