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Flying Hot Dogs Make Bad Law



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OPINION | COMMENTARY

# Flying Hot Dogs Make Bad Law

A court got it wrong when it said a fan could sue the Royals over an errant frank.



The Phillie Phanatic launches hot dogs into the stands between innings during a game between the Philadelphia Phillies and the Arizona Diamondbacks at Citizens Bank Park on June 20, 2016. PHOTO: HUNTER MARTIN/GETTY IMAGES

By Randy Maniloff

0 COMMENTS

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Kathy McVay was struck in the face by a flying object while attending a Major League Baseball game in Philadelphia. In interviews after the incident, Ms. McVay looked as if she'd gone a few rounds with Floyd Mayweather.

But the flying object was not a baseball. Ms. McVay's shiner was caused by an airborne hot dog, wrapped in duct tape. The collision took place amid the Phillie Phanatic's hot-dog launch, in which the team's longtime green and furry mascot uses what resembles a rocket launcher to propel wieners into the stands between innings. The device would not appear out of place at a Bastille Day parade.

Ms. McVay has indicated that she does not plan to take legal action. If she did, it would be a trifecta of Americana—baseball, hot dogs and litigation. But suppose Ms. McVay changes her mind. Could she win? Surprisingly, or perhaps not, the law has spoken to the very issue of baseball-mascot-propelled hot-dog liability.

During a 2009 Kansas City game, the Royals' mascot, Sluggerrr, an adorable furry lion, tossed a hot dog—behind his back—into the stands. An unlucky Royals fan chose the wrong moment to look at the scoreboard. The hot dog hit him in the eye. He suffered a detached retina.

Litigation ensued. It was alleged that the Royals failed to train Sluggerrr how to throw hot dogs into the stands safely. (Though the team apparently could train the massive carnivore not to eat the hot dogs.)

The case made its way to the Missouri Supreme Court, which held that the injured fan could get his day in court because being injured by a flying hot dog is not a risk that is tied to the “essential character” of watching the Royals play.

But is that so? Baseball is a business. Teams are struggling to put bodies in the seats. Baseball moves too slowly for many youngsters and lacks the NBA's glitz. Mascots are part of a team's efforts to address the well-reported crisis in attracting and retaining fans. If it takes the Phillie Phanatic rubbing a bald fan's head to keep fans interested during the tedious breaks every half-inning, then his activities are intertwined with those on the field.

Of course the essential character of baseball, as a sport, does not include airborne hot dogs. But as the Royals argued, such high jinks are part of the essential character of attending a game in person today. Going out to the ballgame is not what it was when men sat in the stands wearing fedoras.

Sluggerrr's mistimed hot dog toss made bad law, even though a jury ultimately absolved the Royals of liability. Let's hope, for the Phanatic's sake, Kathy McVay doesn't have second thoughts.

*Mr. Maniloff is an attorney at White and Williams, LLP in Philadelphia and an adjunct professor at Temple University Law School.*