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## OPINION

### Class-Action in Foul Territory

By Randy Maniloff

For over a century, baseball fans hit by foul balls or splintered bats have struck out virtually every time they've sought compensation for their injuries through the legal system. And the reason for this slump hasn't changed in all that time. Think of it as plaintiffs' lawyers in Cubs uniforms.

U.S. courts, dating back to a Missouri appeals court in 1913, have consistently applied some derivation of what has become known as the "Baseball Rule." The risk of being hit by a foul ball or broken bat is well-known to spectators. As long as the stadium operator provides a reasonable number of seats protected by netting, a spectator who purchases one outside of this area assumes the risk of being injured.

The umpire doesn't even have to shout "Play ball!" In 2013, a Texas appeals court denied recovery to a fan injured by a batting-practice home run before a Houston Astros home game.

**Lawyers want to force teams to use 'foul pole' netting to protect fans from injury.**

Yet despite all these strike outs, on July 13 a class-action lawsuit was filed in a California federal court seeking redress associated with the 1,750 injuries a year—some horrific—caused by batted balls, most of them fouls, at Major League Baseball games.

Instead of the usual route—suing a team or stadium operator on behalf of an injured client—the lawyers enlisted longtime, and uninjured, Oakland A's fan Gail Payne to sue Major League Baseball, and its commissioner, Rob Manfred, seeking to compel them to expand the area in stadiums



Keith Hartley, with 7-month-old son Isaac, beats Los Angeles Dodgers first baseman Adrian Gonzalez to a foul ball at Chicago's Wrigley Field, June 23.

with protective netting.

Ms. Payne is an Oakland A's season-ticket holder whose first-base-line seats are not behind the stadium's protective netting. She maintains that only fans who can afford to pay \$230 per ticket for seats behind home plate, or VIPs, get the benefit of protective netting. Those who can't are forced to purchase seats outside the protected area. For Ms. Payne this means that she is "constantly ducking and weaving to avoid getting hit by foul balls or shattered bats."

Ms. Payne—on behalf of every Major League Baseball season-ticket holder with an unnetted seat between home plate and the foul poles—complains that MLB is "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." And the situation is not going to get any better on account of a "multitude of distractions that have been added to ballparks to entertain spectators, generate additional revenue, and woo the next generation of baseball fans."

Paying close attention to the

game, she avers, offers no guarantee that you won't be injured by a ball that can "reach a fan in less time than it takes to say the word 'foul.'" And "numerous projectile pieces" from a shattered bat, flying in "indiscriminate directions," can reach you before you even know what's happening.

The complaint alleges that Major League Baseball and Mr. Manfred are well aware of the risks of not having protective netting from "foul pole to foul pole," but have "turned a blind eye." So Ms. Payne coughed up the \$400 filing fee to ask a federal court to do what MLB won't—protect her and other baseball fans. She also seeks a ruling that MLB violated certain California consumer protection laws.

More netting does seem a simple solution to prevent some sure-to-occur injuries, and certainly the serious ones caused by screaming line drives. Teams will not have to go looking for loose change in seat cushions to make this happen.

But if Major League Baseball is going to require all stadiums to have "foul pole to foul pole" netting, it should be because MLB

makes that decision—not a federal court. On closer examination, Ms. Payne's complaint, like a poorly played inning, is full of errors.

First, season-ticket holder or not, it is highly questionable whether Ms. Payne has legal standing—the right to ask a federal court to compel Major League Baseball to extend the netting. At the minimum a ticket to federal court requires that a litigant suffered a "concrete and particularized injury." Her claim could easily be picked off here.

Second, the notion that only the rich and powerful can afford access to protected seats is false. Most seats in a baseball stadium offer no risk of injury by a foul ball or splintered bat because of their height or distance from home plate. Ms. Payne's decision to purchase season tickets in a potentially dangerous area was her own. And a check of a major ticket resale website reveals that there are tickets available for A's games at Oakland Coliseum—in the same price range as Ms. Payne's—that offer the protection of the net.

Third is precedent. Courts have long concluded that even injured fans are not entitled to compensation. No doubt a person who sets out to enjoy a day at the old ballpark, and ends up in the emergency room, makes for a sympathetic litigant. Nonetheless, even those with real injuries have consistently been unable to overturn this call.

Baseball is a long-standing tradition in America. Other long-standing traditions—individual responsibility and consumers' freedom of choice—is why Ms. Payne's lawsuit should be outta here.

*Mr. Maniloff is an attorney at White and Williams LLP in Philadelphia.*

Kim Strassel is away.