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Potential Stadium Owner Liability for Outdoor Ice Hockey Games

Joshua D. Winneker¹

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I. INTRODUCTION

Despite their relative novelty in the United States, outdoor ice hockey games are occurring more frequently and becoming more popular.² Since 2008, the National Hockey League (NHL) has hosted its “Winter Classic”, where two teams compete on an outdoor rink.³ The rinks are typically set up inside a football or baseball stadium, creating a unique and exciting atmosphere.⁴ Because of these uniquely exciting events, the NHL has recorded its highest attendance levels at these games. To date, “Winter Classic” games have featured a number of teams from across the country, including the Boston Bruins, Philadelphia Flyers, Los Angeles Kings, and the Anaheim Ducks, to name a few.⁵

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2. See Joshua D. Winneker, *Potential Liability for Outdoor Collegiate Ice Hockey Games*, COLL. SPORTS BUS. NEWS (Sep. 12, 2011), <http://collegesportsbusinessnews.com/issue/october-2011/article/potential-liability-for-outdoor-collegiate-ice-hockey-games>.

3. *Id.*

4. See *infra*, note 16.

5. Ken Gurnick, *Fans pack into Dodger Stadium for outdoor ice hockey*, MLB.COM (Jan.

These wildly successful games offer a classic environment, bringing the game of ice hockey back to its original forum.⁶ The instant success of outdoor ice hockey has not been limited to the NHL. The NCAA has been hosting outdoor college hockey games for several years, including recent games played at Chicago's Soldier Field between the University of Michigan and Michigan State University and Miami University and Western Michigan.⁷

The increasingly common occurrence of highly attended outdoor hockey games raises the question of how liability would be assessed in the event that a spectator brings a lawsuit for an injury sustained at one of these events. Currently, this is a novel concept that leaves stadium owners unsure of their legal position. Existing liability theories tend to revolve around assessments of risks that are known to be associated with the sport, but given that these outdoor games represent a relatively new form of the sport, the risks to the fans and hosts are not yet entirely known.⁸ As a result of this problem, this article argues that courts should employ a comparative negligence standard when attempting to assess liability in cases where patrons have been injured during outdoor hockey games.

Part I of this article discusses the history and current status of amateur and professional outdoor hockey games. Part II examines general premises liability law. Part III details various legal theories for apportioning liability between hosts and patrons at sports stadiums. Part IV discusses the current treatment of indoor ice hockey stadium owner liability, while Part V concludes by arguing that the appropriate standard for stadium owner liability during outdoor ice hockey games should be comparative negligence.

II. HISTORY AND CURRENT STATUS OF OUTDOOR ICE HOCKEY GAMES

Ice hockey was originally played outdoors on frozen lakes, ponds, or any other frozen-over surfaces.⁹ At the first Winter Olympics, in 1924, ice hockey

26, 2014), <http://m.mlb.com/news/article/67132968/dodger-stadium-sells-out-for-anaheim-ducks-los-angeles-kings-outdoor-ice-hockey>. See also Corey Masisak, *Three Outdoor Games Highlight 2015-16 Schedule*, NHL.COM (Jan. 24, 2015, 3:58 PM), <http://www.nhl.com/ice/news.htm?id=750092>.

6. See *infra*, note 9.

7. See *College Hockey Outdoor Games*, USCHO, <http://www.uscho.com/college-hockey-outdoor-games/> (last visited May 1, 2015). New Jersey high schools have even gotten on board. See also John Christian Hageny, *Ice Hockey: Christian Brothers vs. St. Peter's Prep Outdoor Classic COMPLETE COVERAGE* NJ.COM (Feb. 5, 2015, 1:56 AM), <http://highschoolsports.nj.com/news/article/5040668646779102673/ice-hockey-christian-brothers-vs-st-peters-prep-complete-coverage/>.

8. See Paul Steinbach, *Staging Hockey Games in Outdoor Stadiums Remains Delicate Balance of Nature vs. Nurture*, ATHLETIC BUS. (April 2010), <http://www.athleticbusiness.com/Stadium-Arena/staging-hockey-games-in-outdoor-stadiums-remains-delicate-balance-of-nature-vs-nurture.html>.

9. Garth Vaughn, *Quotes Prove Ice Hockey's Origin*, THE BIRTHPLACE OF HOCKEY, <http://www.birthplaceofhockey.com/origin/overview/> (last visited May 1, 2015) ("[E]stablished in 1788, adapted the exciting field game of Hurley to the ice of their favorite skating ponds and originated a new winter game, Ice Hurley. Over a period of decades, Ice Hurley gradually developed

games were played outside.¹⁰ The NHL first began to experiment with outdoor games in 1954 when the Detroit Red Wings played a game against inmates from Michigan's Marquette Branch Prison.¹¹ The NHL's first modern outdoor game was played in 1991 between the New York Rangers and Los Angeles Kings in an outdoor exhibition game in Las Vegas.¹²

But what has widely been considered to be the birth of modern outdoor ice hockey comes from the "The Cold War," a game played between the University of Michigan and Michigan State University in Michigan State's Spartan Stadium in 2001.¹³ In fact, the 2010 edition of this game, dubbed "The Big Chill at the Big House," holds the world record for attendance at an ice hockey game.¹⁴

In 2003, the NHL hosted the "Heritage Classic, its first regular season outdoor hockey game, in which the Edmonton Oilers faced the Montreal Canadiens.¹⁵ It was not until 2008, however, that the NHL decided to begin the annual "Winter Classic", which has helped to increase the popularity of outdoor ice hockey.¹⁶ The first Winter Classic, featuring the Pittsburgh Penguins and the Buffalo Sabres, had a record setting attendance of 71,217 at Ralph Wilson Stadium.¹⁷ In 2014, the Winter Classic was played at the University of Michigan's football stadium between the Toronto Maple Leafs and the Detroit Red Wings, which then set a league attendance record of 105,491.¹⁸ Not surprisingly, the popularity of these professional and collegiate games also extended to interscholastic areas as high schools joined in and began having outdoor ice hockey games as well.¹⁹

into Ice Hockey.").

10. Joe Pelletier, *1924- The First Winter Olympic Games*, GREATESTHOCKEYLEGENDS.COM (Jan. 10, 2014, 7:02 AM), <http://www.greatesthockeylegends.com/2010/01/1924-first-winter-olympic-games.html>.

11. Bill Roose, *Wings' First Outdoor Game was in Prison*, REDWINGS.NHL.COM (Feb. 9, 2012, 10:30 AM), <http://redwings.nhl.com/club/news.htm?id=615868>.

12. Melody Huskey, *Kings No Stranger to Outdoor Game*, KINGS.NHL.COM (Dec. 31, 2008, 10:03 AM), <http://kings.nhl.com/club/news.htm?id=456401>.

13. *Outdoor College Hockey Through the Years*, HOCKEYCITYCLASSIC.COM, <http://www.hockeycityclassic.com/page/show/1317697-outdoor-college-hockey-through-the-years> (last visited May 1, 2015).

14. See Record Crowd Watches Hockey Game, ESPN (Dec. 12, 2010), <http://sports.espn.go.com/ncaa/news/story?id=5909615>; Report: NHL Won't Get Record for Fans, ESPN (Jan. 27, 2014), http://espn.go.com/nhl/story/_/id/10358377/guinness-give-nhl-record-attendance-winter-classic-michigan-stadium.

15. *2003 Heritage Classic: Montreal @ Edmonton*, CANADIENS.NHL.COM (Nov. 22, 2003), <http://canadiens.nhl.com/club/page.htm?id=63666>.

16. See generally The NHL Winter Classic: 2008-Present, <http://www.washingtonpost.com/wp-srv/special/sports/winter-classic-venues/> (last visited May 1, 2015) (detailing the history of the Winter Classic from its inception in 2008).

17. *Id.*

18. *Id.*

19. See Hageny, *supra* note 7. See also David La Vaque, *Five high school hockey games set for Saturday at TCF Bank Stadium*, STAR TRIBUNE (Jan. 13, 2014, 9:23 AM),

Based on this recent history, it is abundantly clear that outdoor ice hockey is not only here to stay but it is becoming more prevalent than ever before. It is therefore an increasingly more difficult task for stadium owners to prepare for these events given the uncertainty in what is really a new sport. Thus, determining the potential liability for spectator injury is extremely important.

III. PREMISES LIABILITY

In analyzing the potential legal consequences for a host of an event, courts look to the general concept known as “premises liability.” The doctrine of premises liability refers to a situation where an individual is injured on the property, or “premises” owned or maintained by someone else.²⁰ These accidents and injuries generally fall under tort law.²¹

Under premises liability, property owners and residents will be held liable for accidents and injuries that occur on their property.²² This liability creates both a duty of care in the landowner, as well as a reasonable expectation for those who enter onto the land that they will not get injured on the premises.²³ The landowner’s duty of care, however, is determined by the classification of the entrant.²⁴ “The duty owed by owners and possessors of land depends on the status of the person injured on the land - that is, whether he or she is an invitee, licensee, or trespasser.”²⁵

First, a trespasser is one who enters onto land without permission from the property owner.²⁶ A property owner does not owe a duty of care to a trespasser.²⁷

Next, a licensee is someone who enters onto land with permission from the property owner, but does so for his or her own “convenience, curiosity, or entertainment.”²⁸ A property owner only owes a duty to “refrain from willfully or wantonly injuring him or her or acting in a manner to increase his or her peril” towards licensees.²⁹ This includes a duty to warn the licensee of any non-obvious danger that the property owner is aware of and the licensee would not have known about without prior warning.³⁰ Thus, the landowner does not have a duty to inspect the premises for danger and to keep it safe for licensees, but

<http://www.startribune.com/sports/239707361.html>.

20. *Premises Liability*, BLACK’S LAW DICTIONARY (10th ed. 2014).

21. *Id.* See also *Turner v. Mandalay Sports Entertainment LLC*, 180 P.3d 1172, 1175 (2008) (listing the required elements of a negligence claim).

22. *Ryan v. Rademacher*, 142 S.W.3d 846, 849 (Mo. Ct. App. 2004).

23. *See id.*

24. *Id.*

25. *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 377 (Idaho 2013) (*citing* *Ball v. City of Blackfoot*, 273 P.3d 1266, 1270 (Idaho 2012)).

26. *Trespasser*, BLACK’S LAW DICTIONARY (10th ed. 2014).

27. *Ryan*, 142 S.W.3d at 849.

28. *Yates v. Johnson County Bd. of Com’rs*, 888 N.E.2d 842, 849 (Ind. Ct. App. 2008).

29. *Id.* at 848.

30. *Id.*

rather has a duty only to warn of dangers that he or she already knows exist.³¹ For example, in *Felix v. O'Brien*, the plaintiff was at a country club and needed to use the restroom.³² When she opened what she believed was a restroom door, she fell down a cellar stairway.³³ The court found that that the plaintiff was a licensee and that the condition that led to her injury did not require the imposition of liability on the landowner.³⁴ The court believed that the entrance to the cellar was neither unusual nor a defect in the premises that would present an unreasonable risk to the plaintiff.³⁵ The court also stated that the defendant had no reason to believe that the plaintiff would open the wrong door and fail to discover the stairway after using reasonable care.³⁶ Finally, the court held that the danger presented was not obvious and was unknown to the defendant.³⁷ Therefore, the defendant did not have a duty to warn the plaintiff.³⁸

Lastly, an invitee is someone who was invited onto the land.³⁹ A landowner “owes an invitee the duty to keep the premises in a reasonably safe condition, or to warn of hidden or concealed dangers.”⁴⁰ There are three types of invitees: a public invitee, a business visitor, and a social guest.⁴¹ A business visitor invitee “is one who enters upon the premises of another for a purpose connected with the business conducted on the land.”⁴² A visitor at a stadium who has paid to watch a sporting event has typically been identified by the courts as a business visitor invitee.⁴³

The main difference between a licensee and a business visitor invitee is that a licensee enters onto land for their own convenience, curiosity, or entertainment, whereas a business visitor invitee enters onto the land for a business purpose.⁴⁴ A key factor in determining whether a visitor is a licensee or invitee is whether the property owner received an economic benefit from allowing the

31. Fleming James, Jr., *Tort Liability of Occupiers of Land: Duties Owed to Licensees and Invitees*, 63 Yale L.J. 605, 606 (1954).

32. *Felix v. O'Brien*, 199 A.2d 128, 129 (Pa. 1964).

33. *Id.*

34. *Id.* at 130.

35. *Id.*

36. *Id.*

37. *Id.*

38. *See id.*

39. *Yates v. Johnson County Bd. of Com'rs*, 888 N.E.2d 842, 849 (Ind. Ct. App. 2008).

40. *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 377 (Idaho 2013).

41. *Yates*, 888 N.E.2d at 850.

42. *Rountree*, 296 P.3d at 377. *See also Yates*, 888 N.E.2d 850 (explaining that the type of invitee in *Rountree* was a business invitee).

43. *Williams v. Strickland*, 112 S.E.2d 533, 537 (N.C. 1960) (“Since plaintiff purchased an admission ticket, and entered on the race track premises, a business conducted for profit, in the character of a patron, he occupied the status of an invitee.”). *See generally Baker v. Mid Maine Med. Ctr.*, 499 A.2d 464 (Me. 1985); *Maisonave v. Newark Bears Professional Baseball Club, Inc.*, 881 A.2d 700 (N.J. 2005); *James v. Rhode Island Auditorium*, 199 A. 293 (R.I. 1938) (classifying spectators at sporting events as business invitees).

44. *See Yates*, 888 N.E.2d at 849.

visitor access to his land.⁴⁵ In *Yates v. Johnson County Bd. Of Com'rs*, the Town of Edinburgh, Indiana hosted a circus to raise money for the parks and recreation department.⁴⁶ The town held the circus on land known as “School Hill,” where a school was once located, but had since been torn down.⁴⁷ Because the school still owned the land, the town executed a “Facility Usage Request” with the School Corporation to obtain permission to use the land without paying the school for its use.⁴⁸ While attending the circus, the plaintiff fell on a set of stairs and brought suit against the School Corporation.⁴⁹ The court ruled that because the School Corporation did not expect to receive any economic benefit from the plaintiff’s entry onto the land, she was not a business visitor invitee.⁵⁰

In contrast, because stadium owners expect to receive an economic benefit from selling tickets to fans, fans are considered business visitor invitees.⁵¹ Although fans do enter the stadium as a result of their own “convenience, curiosity, or entertainment” because stadiums solicit fans to enter the premises, the fans are invitees.⁵²

The recent interest in outdoor ice hockey has presented the unique dilemma of stadium owners not knowing what defines a reasonably safe condition of their stadium for their business visitor invitees. Because the dangers of outdoor ice hockey have yet to be fully conceived, courts will have to determine what a reasonably safe condition for a stadium hosting this event means; the learning curve of which could be costly for stadium owners. Aside from outdoor ice hockey, premises liability for spectator negligence claims at sporting events is not a novel concept. Courts have adopted different approaches to dealing with the injured fans.

IV. CURRENT LEGAL THEORIES FOR SPORT STADIUM OWNER LIABILITY

A. *Baseball’s Limited Duty Rule*

In terms of premises liability for invitees to a professional baseball game, the majority of courts that have faced the issue have adopted what is known as the “limited duty rule.”⁵³ According to the rule, once stadium owners fulfill a

45. *See id.*

46. *Id.* at 846.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 849.

51. *See id.*; *Major League Baseball – revenue by team in 2014 (in million U.S. dollars)*, STATISTA, <http://www.statista.com/statistics/193645/revenue-of-major-league-baseball-teams-in-2010/> (last visited June 27, 2015).

52. *Yates*, 888 N.E.2d at 850; *See Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 377 (Idaho 2013); Fleming James, Jr., *Tort Liability of Occupiers of Land: Duties Owed to Licensees and Invitees*, 63 Yale L. J. 605, 619–20 (1954).

53. Jake Simpson, *Idaho Court’s Baseball Rule Balk Could Impact Other Sports*, LAW 360 (Mar. 28, 2013), <http://www.law360.com/articles/427626/idaho-court-s-baseball-rule-balk->

limited duty to the patrons, the owners are shielded from spectator liability lawsuits.⁵⁴

In *Turner v. Mandalay Sports Entertainment LLC*, the Nevada Supreme Court detailed the modern day limited duty rule.⁵⁵ There, the plaintiff and her husband went to a home game for the Las Vegas 51s, a minor league baseball team.⁵⁶ During the game, the plaintiff went to the stadium's "beer garden" where she was struck in the face with a foul ball while waiting for a drink, knocking her unconscious, breaking her nose, and causing facial lacerations.⁵⁷ Due to her extensive injuries, the plaintiff sued the stadium owner for negligence.⁵⁸ The plaintiff lost in the trial court, with the Nevada Supreme Court affirming that decision.⁵⁹ In its holding, the court specifically adopted baseball's limited duty rule for Nevada.⁶⁰

The *Turner* court stated that under the limited duty rule, the stadium owner must complete two steps in order to fulfill its duty to the spectators.⁶¹ First, the stadium owner must provide a sufficient amount of protected seating for those spectators who may be reasonably anticipated to desire protected seats on an ordinary occasion.⁶² Next, the stadium owner must provide protection for all spectators located in the most dangerous parts of the stadium where there is a high risk of injury from broken bats and foul balls.⁶³

The court noted that the plaintiff left her protected seat in order to enter the beer garden and that the beer garden was not considered to be a dangerous part of the stadium requiring that the stadium owner provide sufficient protection.⁶⁴ Thus, the court ruled that the defendant had fulfilled its limited duty to the plaintiff and the rest of the patrons, and that the stadium owner cannot be subject to liability for a negligence claim caused by an errant foul ball.⁶⁵ The court explained that foul balls are a known risk when attending a baseball game, and the plaintiff assumed that risk when she chose not to sit in a protected seating area.⁶⁶

could-impact-other-sports.

54. *Id.*

55. See *Turner v. Mandalay Sports Entertainment LLC*, 180 P.3d 1172, 1175–76 (2008).

56. *Id.* at 1174; Joshua D. Winneker et al., *Who let the Dog's Out: Should a Stadium Owner be Held Liable for Injuries Sustained from a Mascot's Errant Hot Dog Toss?*, 21 JEFFREY S. MOORAD SPORTS LAW JOURNAL 369, 374 (2014).

57. *Turner*, 180 P.3d at 1174; Winneker et al., *supra* note 56, at 375.

58. *Turner*, 180 P.3d at 1174; Winneker et al., *supra* note 56, at 375.

59. *Turner*, 180 P.3d at 1174; Winneker et al., *supra* note 56, at 375.

60. Winneker et al., *supra* note 56 at 375; see generally *Turner*, 180 P.3d at 1175–78 (explaining the limited duty rule and expressly adopting it).

61. *Turner*, 180 P.3d at 1175; Winneker et al., *supra* note 56, at 375.

62. *Turner*, 180 P.3d at 1175; Winneker et al., *supra* note 56, at 375.

63. *Turner*, 180 P.3d at 1175; Winneker et al., *supra* note 56, at 375.

64. *Turner*, 180 P.3d at 1176; Winneker et al., *supra* note 56, at 375.

65. *Turner*, 180 P.3d at 1176; Winneker et al., *supra* note 56, at 375.

66. *Turner*, 180 P.3d at 1174, 1176–77; Winneker et al., *supra* note 56 at 375; 16 States have adopted baseball's limited duty rule. Additionally, at least four states: New Jersey, Arizona,

As detailed in *Turner*, the rationale behind the limited duty rule is that the stadium owner generally has no legal duty to eliminate risks inherent in the sport itself, but they have a duty to use due care not to increase the risks to a spectator over and above those inherent in the sport.⁶⁷ There are inherent risks in certain sports that spectators should be aware of given the nature of the sport.⁶⁸ When a patron comes to a baseball game for instance, they know going into it that objects such as foul balls and broken bats flying into the stands is a common occurrence.⁶⁹ Under the law, the spectator is assuming the risk of potentially being hit by a foul ball or a broken bat during the game.⁷⁰ Thus, the stadium owner does not have a duty to protect the patrons against known risks. However, the owner does have a duty to not increase the potential for harm to the spectators, which is why, despite the fact that spectators know that they can be hit by a fly ball or a broken bat at a baseball game, the places in the stadium where there is the highest risk of being hit (i.e., behind home plate) must be protected by the stadium owners.⁷¹

B. The “No Duty” Rule

A variation of the limited duty rule, the “no duty rule,” exists in other jurisdictions, such as Pennsylvania. The Pennsylvania Supreme Court first addressed this issue in *Jones v. Three Rivers Management Corp.*, where a fan was hit by a ball during batting practice as she was walking around the concourse on the stadium’s opening day.⁷² The court noted that “even in a ‘place of amusement’ not every risk is reasonably expected,” and held that the “no duty rule” was limited to injuries incurred “as a result of risks any baseball spectator must and will be held to anticipate.”⁷³ Based on this, the court ruled that the stadium owner had no duty to protect patrons from risks which are “common, frequent and expected.”⁷⁴

Additionally, in *Loughran v. The Phillies*, the court again upheld Pennsylvania’s no duty rule.⁷⁵ In that case, the Philadelphia Phillies’ Marlon Byrd tossed the ball into the stands after catching the last out of the inning.⁷⁶ The ball struck the plaintiff in the head, causing injuries that required numerous

Colorado and Illinois have passed laws codifying the rule. See Ariz. Rev. Stat. § 12-554 (1999); Colo. Rev. Stat. §13-21-120 (1994); 745 Ill. Comp. Stat. 38/10 (1992); *New Jersey Baseball Spectator Safety Act of 2006*, N.J. Stat. Ann. §§2A:53A-43; 44; 45; 46; 47; 48 (2006).

67. *Turner*, 180 P.3d at 1175–76.

68. See *Hurst v. East Coast Hockey League, Inc.*, 637 S.E.2d 560, 562–63 (S.C. 2006).

69. See *Turner*, 180 P.3d at 1176.

70. See *id.* at 1176–77.

71. See *id.* at 1175–76.

72. See *Jones v. Three Rivers Management Corp.*, 394 A.2d 546, 547–48, 551–52 (Pa. 1978).

73. *Id.* at 551.

74. *Id.*

75. See *Loughran v. The Phillies*, 888 A.2d 872, 875–77 (Pa. Super. Ct. 2005).

76. *Id.* at 873–74.

hospital visits.⁷⁷ The court noted that the “application of the ‘no duty’ rule hinges on whether the activity in question is a ‘common, frequent, or expected part of the game.’”⁷⁸ The court then ruled that “[e]ven a casual baseball spectator would concede it was not uncommon for a player to toss a memento from the game to nearby fans,” and as such it constituted an inherent and known risk of the game.⁷⁹ The court then affirmed the lower court’s application of the “no duty” rule and held that the defendants were not liable for the plaintiff’s injuries.⁸⁰

C. Negligence and Comparative Negligence

Not every state has applied the limited or no duty rule when dealing with spectator injuries at sporting events. Specifically, the Idaho Supreme Court recently declined to adopt the limited or no duty rule in *Rountree v. Boise Baseball, LLC*.⁸¹ There, the plaintiff attended a Boise Hawks minor league baseball game, where he was a season ticket holder for over twenty years.⁸² Despite having seats behind the protective netting, the plaintiff and his family left that area to dine in the stadium’s “Executive Club”.⁸³ The Executive Club is one of the only areas in the stadium not covered by vertical netting.⁸⁴ While in the Executive Club, the plaintiff was hit by a foul ball in the eye, resulting in loss of the eye.⁸⁵ The plaintiff sued the stadium owner, among others, asserting negligence for his injuries.⁸⁶

At the trial court, the defendants moved for summary judgment seeking to have the court adopt baseball’s limited duty rule in Idaho.⁸⁷ The trial court denied the motion and the defendants appealed to the Idaho Supreme Court, which was then faced with a matter of first impression in their state.⁸⁸

In declining to adopt the limited duty rule in Idaho, the court stated:

[W]e do not find that an equally compelling public policy exists here. . . . No similar link between baseball and spectator injuries has been shown. In fact, Boise Baseball admits that at least for “seven sea-

77. *Id.*

78. *Id.* at 875.

79. *Id.* at 876.

80. *Id.* at 877; *see also* Needle, Goldenziel, Pascale & Consagra, P.C., *No Duty to Spectators in Pennsylvania Baseball Injury Case*, SCRANTON PERSONAL INJURY LAWYER BLOG (Feb. 17, 2014), <http://www.scrantonpersonalinjurylawyerblog.com/2014/02/17/duty-spectators-pennsylvania-baseball-injury-case/> (applying the no duty rule when a parent was injured in the stands of a little league baseball game).

81. *See Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 376-79 (Idaho 2013).

82. *Id.* at 375.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 377-78.

sons [Mr. Rountree's] accident is the only time a spectator has suffered a 'major' injury because of a foul ball" at Memorial Stadium. The rarity of these incidents weighs against crafting a special rule. There is no history of accidents that we can look to, and draw from, to sensibly create a rule.⁸⁹

Essentially, the court did not believe that the risk of fly balls creating injuries at a baseball game was inherent in the sport.⁹⁰ Therefore, the court allowed the injured fan to maintain a negligence action against the stadium owner, which required the stadium owner to prevent unreasonable, foreseeable risk of harm to the patrons.⁹¹ Additionally, the court rejected the assumption of risk defense advanced by the stadium owner and instead held that Idaho's comparative negligence law would be the proper avenue to determine liability.⁹² As the court noted, under comparative negligence principles, both the plaintiff's actions and the defendant's actions will be examined and apportioned fault.⁹³

In the end, when dealing with a situation where the risks were not considered common, the court felt the best route was to allow the plaintiff to maintain a negligence lawsuit without the defendant having the ability to argue the limited or no duty rule or utilize the assumption of risk defense. Instead, the plaintiff's own negligence will be compared and used to reduce any award received against the defendant.

V. INDOOR ICE HOCKEY STADIUM OWNER LIABILITY

Regarding ice hockey and spectator liability lawsuits, baseball's limited duty rule has been extended in some states to indoor ice hockey games, while other states have taken a slightly different approach.⁹⁴ Until 2001, when New Jersey examined the issue in *Schneider v. American Hockey and Ice Skating Center, Inc.*, no court had specifically addressed an ice hockey rink operator's duty to injured spectators.⁹⁵

In *Schneider*, the plaintiff was attending her son's hockey game at the defendant's facility when a puck struck her between the eyes.⁹⁶ The court determined that a rink operator has a limited duty of care to provide spectators with

89. *Id.* at 379.

90. *See id.*

91. *See id.* at 381.

92. *See id.*

93. *See id.* at 380.

94. *See generally* *Verneris v. Wang*, 49 Conn. L. Rptr. 522 (Conn. Super. Ct. 2010) (applying the limited-duty rule in Connecticut); *Sciarrota v. Global Spectrum*, 944 A.2d 630 (N.J. 2008) (applying the limited-duty rule in New Jersey); *Gilchrist v. City of Troy*, 494 N.E.2d 1382 (N.Y. 1986) (applying the limited-duty standard in New York); *Ingersoll v. Onondaga Hockey Club*, 281 N.Y.S. 505 (N.Y. App. Div. 1935) (applying the limited-duty rule in New York). *See also* *Akins v. Glens Falls City School Dist.*, N.E.2d 531 (N.Y. 1981) (defining the limited-duty standard in New York).

95. *See Schneider v. American Hockey and Ice Skating Center, Inc.*, 777 A.2d 380, 383 (N.J. Super. Ct. App. Div. (2001)).

96. *Id.* at 382.

protection from pucks that fly into the stands.⁹⁷ The court stated that, as in baseball, the limited duty is two-fold: (1) the operator must provide protected seating sufficient for those who can “be reasonably anticipated to desire protected seats”; and (2) “the operator must provide protection for spectators in the most dangerous section of the stands.”⁹⁸ The court reasoned that the measure of duty is due care based on the totality of the circumstances, and, in this case, most spectators prefer to sit where they can have an unobstructed view of the game.⁹⁹

New Jersey revisited spectator liability in indoor ice hockey several years later in *Sciarrotta v. Global Spectrum*.¹⁰⁰ There, the plaintiff was injured by a flying puck during warm-ups.¹⁰¹ The plaintiff argued that because the likelihood of being struck by a puck increased during the warm-up period due to the sheer number of pucks in use, the duty of care owed by the rink operator also increased.¹⁰² The court found that creating differing and dissimilar duties of care would cause endless permutations and may, in some cases, impair spectators’ enjoyment of the game.¹⁰³ Furthermore, the court stated that imposing a higher duty of care for the warm-up period would ensure that facility owners would comply with the higher duty, effectively rendering the limited duty rule obsolete.¹⁰⁴

Other states have addressed stadium owner liability at ice hockey games but have not specifically adopted baseball’s limited duty rule.¹⁰⁵ For example, in South Carolina in *Hurst v. East Coast Hockey League, Inc.* the appellant was struck in the face by a puck while standing behind the goal.¹⁰⁶ The ice rink was encircled by dasher boards and Plexiglas walls.¹⁰⁷ The court ruled that the risk of a hockey spectator being struck by a flying puck is inherent to the game of

97. *Id.* at 383–84.

98. *Id.* at 384.

99. *See id.*

100. 944 A.2d 630 (N.J. 2008).

101. *Id.* at 632.

102. *Id.* at 635.

103. *Id.* at 637–38.

104. *Id.* Other jurisdictions have extended the limited duty rule to hockey as well including Connecticut, New York, Pennsylvania, and Wisconsin. *See Verneris v. Wang*, 49 Conn. L. Rptr. 522 (Super. Ct. 2010); *Stern v. Madison Square Garden*, 641 N.Y.S.2d 41 (App. Div. 1996); *Pestalozzi v. Philadelphia Flyers*, 576 A.2d 72 (Pa. Super. Ct. 1990), *Moulas v. PBC Productions Inc.*, 570 N.W.2d 739 (Wisc. Ct. App. 1997).

105. *See generally Nemarnik v. Los Angeles Kings Hockey Club, L.P.*, 127 Cal. Rptr. 2d 10 (Ct. App. 2002) (addressing stadium owner liability in California); *Modoc v. City of Eveleth*, 29 N.W.2d 453 (Minn. 1947) (addressing stadium owner liability in Minnesota); *Kennedy v. Providence Hockey Club, Inc.*, 376 A.2d 329 (R.I. 1977) (addressing stadium owner liability in Rhode Island); *Hurst v. East Coast Hockey League, Inc.*, 637 S.E.2d 560 (S.C. 2006) (addressing stadium owner liability in South Carolina).

106. *Hurst*, 637 S.E.2d at 561.

107. *Id.*

hockey and is a common, expected and frequent risk of hockey.¹⁰⁸ Therefore, the stadium owner did not have a duty to protect the fans against these inherent risks.¹⁰⁹

In California, in *Nemarnik v. Los Angeles Kings Hockey Club, L.P.*, the plaintiff was sitting in a fourth-row seat at a Los Angeles Kings game but could not see the ice because of a large group of people that had congregated in front of her.¹¹⁰ A puck flew off the ice and, due to the crowd, the plaintiff was unable to see it coming toward her and could not get out of the way.¹¹¹ The plaintiff argued that the defendants were negligent in failing to prevent other spectators from crowding around the ice during warm-ups.¹¹² The plaintiff argued that while the risk of a puck leaving the ice might be inherent to the game, it is not an inherent risk that people with bad tickets would sneak down to the ice.¹¹³ The court disagreed and ruled that an obstruction of view caused by unpredictable movements of other fans is in fact an inherent and unavoidable part of attending a sporting event.¹¹⁴ Indeed, the court noted that views are blocked whenever fans spontaneously leap to their feet or move to and from their seats.¹¹⁵ The court also stated that the plaintiff failed to assert that if she had a clear line of sight, she would have been able to avoid the puck.¹¹⁶ The court then held that if it were to impose a duty in this case, it would force the defendants to either provide a floor to ceiling protective screen, which would impair everyone's view, or instead increase ticket prices to cover the increased liability costs.¹¹⁷ Therefore, the court ruled that the defendants owed no duty to eliminate the inherent risk of injury from flying pucks.¹¹⁸

In Minnesota, in *Modoc v. City of Eveleth*, the plaintiff suffered an injury after being hit by a puck while watching a hockey game.¹¹⁹ The court ruled that plaintiff assumed the risk of injury from a flying puck while attending a hockey game as a spectator.¹²⁰ She had lived in the city all of her life and attended several hockey games.¹²¹ As there was no dispute that she was familiar with the general purpose of an ice hockey game and with the surroundings in the arena, the court ruled that any person of ordinary intelligence can watch a hockey game for any amount of time and realize the risks involved to players

108. *Id.* at 561–62.

109. *Id.* at 562–63.

110. *Nemarnik*, 127 Cal. Rptr. 2d at 11–12.

111. *Id.*

112. *Id.* at 12.

113. *Id.* at 15.

114. *Id.*

115. *Id.*

116. *Id.* at 16.

117. *Id.* at 17.

118. *Id.* at 18.

119. *Modoc v. City of Eveleth*, 29 N.W.2d 453, 454 (Minn. 1947).

120. *See id.* at 457.

121. *Id.*

and spectators alike.¹²²

Finally, in Rhode Island, in *Kennedy v. Providence Hockey Club, Inc.*, the plaintiff was struck in the eye by a flying puck while she was sitting in the fourth row at a hockey game.¹²³ Prior to her injury she had attended 30-40 hockey games and watched Boston Bruins games on television.¹²⁴ Because the plaintiff was familiar with the “puck-flying syndrome,” the court determined that the only inference it could make was that she knew there was risk that the puck might fly into the crowd.¹²⁵

VI. OUTDOOR ICE HOCKEY STADIUM LIABILITY

The most significant risk in indoor hockey games is that a puck will fly into the stands, which can cause injury or even death to spectators. This potential for injury led teams to place protective glass around the rink along with screens behind the goals. This inherent risk is also the reason courts have either adopted the limited duty rule when faced with the issue of spectator safety, or courts have simply stated that stadium owners do not have a duty to protect against these obvious dangers.

Outdoor ice hockey games present a different issue because these games are not a common occurrence and take place in non-traditional hockey venues, like baseball and football stadiums. Thus, can there be inherent risks in an activity that is not a common occurrence? The potential for injury to patrons is less certain for a specialty event like an outdoor hockey game. In fact, the NHL’s most recent Winter Classic faced the issue of glare, which affected the game and could present liability issues that may not have been contemplated prior to the game.¹²⁶ Also, the outdoor games played in California presented another new challenge: the 63-degree temperatures softened the ice and caused the puck to bounce with more frequency, increasing the risk of the puck flying into the stands.¹²⁷ Additionally, unexpected rain and wind could also impact the way the game is played and potential danger areas in the stadium.¹²⁸

The possibility of a puck flying out of the rink still exists, but seating configuration in the larger outdoor stadiums (which are mainly football and baseball stadiums) move fans further from the action. It seems then that a limited

122. *Id.* at 454–55.

123. *Kennedy v. Providence Hockey Club, Inc.*, 376 A.2d 329, 331 (R.I. 1977).

124. *Id.*

125. *Id.* at 333.

126. See Katie Strang, *Winter Classic starts on time*, ESPN (Jan. 1, 2015), http://espn.go.com/nhl/winterclassic15/story/_/id/12107087/winter-classic-washington-capitals-chicago-blackhawks-starts-glare.

127. Gurnick, *supra* note 5 (“Game-time temperature was 63 degrees, leaving the ice soft and the puck bouncing.”).

128. See *supra* note 8 (“The worst part was we had high winds coming out of the south . . . So the ice we had made the night before was turning into water, and the water started leaking out under the boards.”).

duty rule would likely not be applicable in an outdoor ice hockey game. Without fully knowing the obvious risks, it would be difficult for a stadium owner to determine where all of the danger zones are, where screens might be needed if possible, and where safe seating should be designated.

Thus, a stadium owner is faced with a situation where she needs to protect against any potential risks, and would not be able to limit her liability by merely erecting a net behind the goal. This does not mean that the spectators cannot get hit with a puck; it just means that the danger areas simply are not well known at this point. Because of the unknown risks, stadium owners are likely to face higher costs associated with protecting against heightened risk areas in order to minimize the potential lawsuits that could occur in the absence of a limited duty rule.

Given the above-stated legal theories for premises liability at sporting events, it seems the most appropriate rule for outdoor ice hockey games to follow is comparative negligence. Because the inherent risks are not completely known to the patrons at this point, the stadium owners should not be exempt from liability by saying the fans knew the inherent risks of attending an outdoor hockey game. Thus, a limited duty or no duty rule simply would not be fair. The reverse is true as well; the stadium owners cannot be held completely liable for risks that they cannot anticipate.

The best compromise then is to hold both the stadium owner and the patrons to a similar level of responsibility. The stadium owner should be responsible for discovering and trying to prevent all of the possible high-risk scenarios, while spectators should also be trying to avoid any dangerous situations.¹²⁹

While it is true that comparative negligence does not exist as a legal theory in every state, this article asserts that all states should adopt this principle on a case-by-case basis for liability at outdoor ice hockey games.¹³⁰ At this point in time, and until outdoor ice hockey games become more established, this is the most equitable solution.

This compromise was also struck by the Idaho Supreme Court in *Rountree* when the court specifically declined to adopt a limited duty rule, a no duty rule, or an assumption of risk defense in favor of a comparative negligence theory because the risk of injury to spectators at baseball games in that state was simp-

129. Recently a fan was hit by a foul ball at PNC Park while she was walking to her seat, which was located in the first few rows behind home plate. There was protective netting in place, but the ball ricocheted off the bat with such velocity that the netting could not prevent the fan from getting hurt. The fan, however, had her back to the field of play at the time of the incident. See Jesse Rogers, *Fan 'alert' after being struck in head by foul ball, carted off on stretcher*, ESPN (Apr. 21, 2015), http://espn.go.com/mlb/story/_/id/12730589/fan-taken-stretcher-foul-ball-pnc-park-pittsburgh.

130. Alabama, District of Columbia, Maryland, North Carolina, and Virginia recognize the pure contributory negligence rule and have not adopted the legal theory of comparative negligence. Gary Wickert, *Understanding Comparative Fault, Contributory Negligence and Joint & Several Liability*, CLAIMS JOURNAL (Sept. 5, 2013), <http://www.claimsjournal.com/news/national/2013/09/05/235755.htm>.

ly not common.¹³¹ The same rule applies here with regards to the risks associated with outdoor ice hockey.

VII. CONCLUSION

Ice hockey is one of the most exciting sports to watch in person, and when teams compete outdoors, it becomes a terrific atmosphere for spectators. Record-breaking attendance at games provides evidence that outdoor ice hockey is increasing in popularity. With the huge crowds and novelty of the venue, however, new potential liability concerns arise. Indeed, being struck by a puck traveling 102 miles per hour can be deadly in an indoor game where you are aware of the danger zones; the issue has even greater significance when the danger zones are not readily apparent to the stadium owners or the spectators. Instead of attempting to place the blame on either the fan or the stadium owner, the more measured approach in a spectator liability situation is to compare the negligence of both parties. This way, the new outdoor games can continue to thrive and gain popularity, while stadium owners can feel comfortable hosting these events, and fans can feel comfortable that they will not be injured without any recourse.

131. See *Rountree v. Boise Baseball, LLC*, 296 P.3d 373, 381 (Idaho 2013).