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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

GAIL PAYNE, ROBERT GORMAN, and  
STEPHANIE SMITH, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF  
BASEBALL (d/b/a MAJOR LEAGUE  
BASEBALL), ROBERT D. MANFRED, JR.,  
THE ATLANTA BRAVES, THE MIAMI  
MARLINS, THE NEW YORK METS, THE  
PHILADELPHIA PHILLIES, THE  
WASHINGTON NATIONALS, THE  
CHICAGO CUBS, THE CINCINNATI REDS,  
THE MILWAUKEE BREWERS, THE  
PITTSBURG PIRATES, THE ST. LOUIS  
CARDINALS, THE ARIZONA

No. 4:15-CV-03229-SC

FIRST AMENDED CLASS ACTION  
COMPLAINT

**JURY TRIAL DEMANDED**

DIAMONDBACKS, THE COLORADO  
ROCKIES, THE LOS ANGELES DODGERS,  
THE SAN DIEGO PADRES, THE SAN  
FRANCISCO GIANTS, THE BALTIMORE  
ORIOLES, THE BOSTON RED SOX, THE  
NEW YORK YANKEES, THE TAMPA BAY  
RAYS, THE TORONTO BLUE JAYS, THE  
CHICAGO WHITE SOX, THE CLEVELAND  
INDIANS, THE DETROIT TIGERS, THE  
KANSAS CITY ROYALS, THE MINNESOTA  
TWINS, THE HOUSTON ASTROS, THE LOS  
ANGELES ANGELS OF ANAHEIM, THE  
OAKLAND ATHLETICS, THE SEATTLE  
MARINERS, AND THE TEXAS RANGERS.

Defendants.

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1 Plaintiffs, Gail Payne, Robert Gorman, and Stephanie Smith, on behalf of themselves and  
 2 all others similarly situated, bring this class action complaint against the Office of the  
 3 Commissioner of Baseball, an unincorporated association doing business as Major League Baseball  
 4 (“MLB”); Rob Manfred, the Commissioner of Major League Baseball, and the thirty Major League  
 5 Baseball teams, and complain and allege upon personal knowledge as to themselves and their own  
 6 acts and experiences, and, as to all other matters, upon information and belief, including  
 7 investigation conducted by their attorneys.

## 8 I. INTRODUCTION

9 *A line-drive foul screams into the stands at 100 miles per hour. A bat slips from a*  
 10 *player’s hands, cartwheeling dangerously out of control as it crashes among the*  
 11 *fans. A fielder hurries his throw, sailing the ball into the front rows. These, and*  
 12 *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.*<sup>1</sup>

13 1. Each year, tens of millions of men, women, and children in the U.S. attend a Major  
 14 League Baseball game.<sup>2</sup> Fans flock to ballparks and pay an average of \$27.00 to \$83.00 per ticket<sup>3</sup>  
 15 to watch pitchers throw a ball at or over 100 miles an hour<sup>4</sup> and hear the crack of the bat when a  
 16 batter swings for the fences. The lack of safety netting at major league ballparks is a problem  
 17 creating over a thousand preventable injuries per season. Every year, a growing number of fans, of  
 18 all ages but often children,<sup>5</sup> suffer often horrific and preventable injuries, such as blindness, skull

20 <sup>1</sup> Robert Gorman and David Weeks, *Death at the Ballpark: A Comprehensive Study of Game-*  
 21 *Related Fatalities, 1862-2007* (2009) (citing “Foul Play” Fan Fatalities in Twentieth-Century  
 Organized Baseball” (2003)).

22 <sup>2</sup> [http://espn.go.com/mlb/attendance/\\_/year/2014](http://espn.go.com/mlb/attendance/_/year/2014).

23 <sup>3</sup> <https://www.teammarketing.com/public/uploadedPDFs/2014+mlb+fcf.pdf> (average, non-  
 premium ticket price).

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

25 <sup>5</sup> [http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-](http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year)  
 26 [injure-1750-fans-a-year](http://chicago.suntimes.com/sports/7/71/902333/put-netting-mlb-ballparks-somebody-gets-killed) (“Child Victims - While the typical injury is minor, like a bruised hand or  
 27 a bloodied lip, a small number are more serious, and those victims tend to be children.”). *See also*  
 28 <http://chicago.suntimes.com/sports/7/71/902333/put-netting-mlb-ballparks-somebody-gets-killed>  
 (“Baseballs traveling into the stands at 100 m.p.h. don’t care if you’re paying attention to the action  
 on the field. They don’t care if you have the concentration powers of a stalking lion. They know  
 that you are civilians, that most of you aren’t wearing mitts or helmets and that almost all of you  
 lack the reflexes necessary to stop a screaming line drive. They seem especially fond of women

1 fractures, severe concussions, and brain hemorrhages, when they are struck by a screaming foul  
2 ball or flying shrapnel from a shattered bat while sitting in an unprotected area.

3 2. 1,750 spectators are injured each year by wayward baseballs.<sup>6</sup> This equates to twice  
4 every three MLB games, or, more often than a batter is hit by a pitch. In a typical MLB game, 35-  
5 40 batted balls fly into the stands.<sup>7</sup> And “fly” is the operative word. Baseballs have an average  
6 mass of 5.125 ounces, and a 90 mile per hour fastball can leave the bat at 100 miles per hour. The  
7 average professional batter’s swing impacts 4,145 pounds of force to the ball. Peak forces from  
8 such a ball can exceed 8,300 pounds – enough to stop a Mini Cooper in its tracks. It is thus a  
9 serious safety hazard when foul balls fly into a ballpark’s “Danger Zone” (the unprotected area  
10 along the first and third base lines).

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

18 4. Manfred and the Office of the Commissioner have acknowledged both the risk to  
19 spectators and their duty to protect spectators. Defendants have promulgated spectator safety rules  
20 applicable in all MLB stadiums, and have made various public statements regarding their  
21 obligations. For example, Major League Baseball released this public statement earlier this year:  
22 “Fan safety is our foremost goal for all those who choose to support our game by visiting our

23 and children.”; [http://espn.go.com/mlb/story/\\_/id/13486481/fan-hit-foul-ball-detroit-tigers-home-](http://espn.go.com/mlb/story/_/id/13486481/fan-hit-foul-ball-detroit-tigers-home-game-texas-rangers)  
24 [game-texas-rangers](http://espn.go.com/mlb/story/_/id/13486481/fan-hit-foul-ball-detroit-tigers-home-game-texas-rangers) (“It seems like something happens once a game, where a ball just misses a fan  
and, inevitably, it’s always small kids or women, you know.”).

25 <sup>6</sup> [http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-](http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year)  
26 [injure-1750-fans-a-year](http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year). One estimate places the number at nearly 4,000, taking into account all of  
the nation’s 200-plus professional baseball stadiums. [http://reportingtexas.com/into-the-stands-](http://reportingtexas.com/into-the-stands-how-safe-is-professional-baseball/)  
27 [how-safe-is-professional-baseball/](http://reportingtexas.com/into-the-stands-how-safe-is-professional-baseball/)

28 <sup>7</sup> [http://www.atlantamagazine.com/great-reads/foul-territory/;](http://www.atlantamagazine.com/great-reads/foul-territory/)  
<http://theweek.com/articles/444131/why-baseball-americas-most-dangerous-spectator-sport>

1 ballparks, and we will always strive for that experience to be safe and fan-friendly.”<sup>8</sup> Major  
 2 League Baseball in 2014 also admitted that it was aware of this issue and acknowledged its role to  
 3 protect fan safety, releasing this statement publicly: “there is no epidemic of foul ball damage yet  
 4 that would warrant some sort of edict or action by the commissioner’s office”.<sup>9</sup> This statement also  
 5 created a false assurance that ballparks, including the “Danger Zone” were safe. Major League  
 6 Baseball’s Commissioner, Rob Manfred, himself acknowledged this year that “we’re very  
 7 cognizant of the severity of the injury, and obviously it’s a great concern to us, but we want to  
 8 make a decision that’s the right decision over the long haul in terms of promoting fan safety”<sup>10</sup> and  
 9 that MLB would “re-evaluate”... “take a fresh look at”... and “react strongly” to the issue of  
 10 spectator injuries from errant balls and bats: “When you have an issue like this, an incident like  
 11 this, you have to go back and re-evaluate where you are on all of your safety issues and, trust me,  
 12 we will do that.”<sup>11</sup> Major League Baseball has also acknowledged the responsibility of the  
 13 individual teams on this issue.<sup>12</sup> Despite this acknowledgment of the problem and Major League  
 14 Baseball’s responsibility and repeated false assurances Plaintiffs, baseball spectators and the  
 15 public, Defendants have failed to act.

16 5. Defendants have failed to follow the path of other professional sports in the United  
 17 States<sup>13</sup> and in other countries<sup>14</sup> that have taken simple, readily-available and relatively inexpensive

18 <sup>8</sup> <http://www.chicagotribune.com/sports/baseball/ct-fan-safety-cubs-white-sox-spt-0802-20150801-story.html>

19 <sup>9</sup> Statement of John McHale, MLB executive vice president, 2014. The former Commissioner  
 20 also acknowledged it was within the role of the MLB and its Commissioner to promulgate rules to  
 21 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  
 22 and the welfare of the fans, you also don’t want to do anything to obstruct the views of the fans,  
 23 which creates really a major problem. You sort of have to weigh one against the other.”).

24 <sup>10</sup> <http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece>. Manfred statement  
 25 to reporters in Boston Massachusetts on June 16, 2015.

26 <sup>11</sup> <http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815>. Manfred speaking before the amateur draft  
 27 at MLB Network studios.

28 <sup>12</sup> <http://www.forbes.com/sites/andrewkulha/2015/07/15/mlb-should-break-habit-and-act-quickly-on-fan-safety-issue>

<sup>13</sup> The National Hockey League and NASCAR have both reacted quickly and taken measures to protect spectators.

steps to protect its spectators.<sup>15</sup> 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).<sup>16</sup> ***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.***<sup>17</sup> In light of MLB’s inaction and a spate of injuries this past summer, players are imploring MLB and the teams to do something. Detroit Tigers’ Justin Verlander demanded that the issue be addressed “immediately,” pleading for extended netting “before it’s too late”: “More protective measures need to be put in place in all ball parks! Players are sick of seeing injuries that could easily be avoided!”<sup>18</sup> Teammate Nick Castellanos said nets needed to go up in both major and minor league stadiums.<sup>19</sup> “If today doesn’t get nets up, what else is it going to take?...What else has to happen for nets to go up?”<sup>20</sup> Even baseball commentators, reporters and columnists, who rely on baseball for their livelihood, have begun to question MLB’s inaction and demand increased protection for fans.<sup>21</sup>

<sup>14</sup> 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>.

<sup>15</sup> 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.

<sup>16</sup> See 2012 MLB Code of Official Baseball Rules, Comment to Rule 2.00 (Fair Ball).

<sup>17</sup> 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>.

<sup>18</sup> <https://twitter.com/JustinVerlander/status/634922009374392320>. As of August 25, 2015, several hundred individuals have retweeted this message and a thousand individuals have marked this message as a “favorite.”

<sup>19</sup> <http://www.themorningsun.com/sports/20150822/tigers-are-right-mlb-players-union-needs-to-keep-pushing-until-mlb-does-something-about-fan-safety>

<sup>20</sup> [http://www.mlive.com/tigers/index.ssf/2015/08/column\\_tigers\\_players\\_100\\_perc.html](http://www.mlive.com/tigers/index.ssf/2015/08/column_tigers_players_100_perc.html)

<sup>21</sup> See e.g. <https://www.youtube.com/watch?v=8QzH4e9Yu2U&feature=youtu.be> (“I don’t know how much longer it’s going to take or how many more people have to vouch for the need for it before action is taken.”...“I’m with you 100% on that. With all due respect to Major League Baseball, I understand the studies, what else do you need to study?”);  
<http://www.usatoday.com/story/sports/mlb/2015/06/06/broken-baseball-bat-fan-feway-park-netting-maple-bats/28611829/> (“How many more injuries do we need? Or do we need the first death since a 14-year-old boy died at Dodger Stadium after being hit by a foul ball in 1970, to

6. At the same time Defendants have failed to act, and have made statements regarding their responsibility to “re-evaluate” safety, they have greatly increased the risk to spectators. Defendants have promoted Major League ballparks and even the most dangerous areas of these ballparks as safe and family-friendly, and the Commissioner has publicly stated in speeches and radio interviews that his “first and foremost goal”<sup>22</sup> is to get more children into MLB ballparks<sup>23</sup> at a younger age.<sup>24</sup> 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 – as Manfred stated that day, “The message we

change our thinking on how far the netting should extend at every ballpark?”); [http://www.csnchicago.com/video\\_content\\_type/sportstalk-live-should-mlb-extend-safety-netting](http://www.csnchicago.com/video_content_type/sportstalk-live-should-mlb-extend-safety-netting) (“Someone will die.”...“I don’t think paying attention does anything for you.”); <http://www.chicagotribune.com/sports/rosenblog/ct-baseball-netting-fans-danger-rosenbloom-20150803-column.html#> (“Fans will get used to the netting or additional screens.”); <http://www.cbssports.com/mlb/eye-on-baseball/25279227/this-week-in-dumb-baseball-just-extend-the-nets-please> (“Basically, every argument against the netting is ...dumb. It just makes people feel better to victim shame in favor of playing the tough guy these days, which is a shame. Every single discussion doesn’t have to be a referendum on how we’re overrun with weaklings in this day and age. Sometimes things like seat-belts and helmets are for the greater good. Extending the nets can be in that discussion. Let’s hope MLB teams start to take this a bit more seriously before someone is killed because that could very well be where we’re headed.”); [http://www.cleveland.com/tribe/index.ssf/2015/08/mlb\\_needs\\_to\\_install\\_protectiv.html](http://www.cleveland.com/tribe/index.ssf/2015/08/mlb_needs_to_install_protectiv.html) (“...it’s hard to believe MLB has not already installed protective netting...”); “I’ve always loved going to a ballpark and calling it work. I’ve been doing it most of my adult life. I used to think nothing could go wrong there. But that’s from the safety of the pressbox. Sitting behind the dugout along the first or third base lines is a different story...”); <http://sports.yahoo.com/news/tuesday-s-with-brownie--more-nets-or-more-stretchers--it-s-mlb-s-choice-163348812.html> (“...why don’t we make this about the next fan, the one who won’t see the ball coming? Who can’t evade the broken bat through all the arms and heads and confusion? Let’s save him. Or her.”); <https://twitter.com/LanceMcAlister/status/636526833589219328> (“If paying attention is simple solution to not getting hit by foul ball, let’s take down fence in front of the dugouts.”); [http://www.pantagraph.com/sports/columnists/kindred/kindred-dangerous-foul-balls-should-have-net-effect/article\\_2331d7ad-b091-5156-96a7-32fdf7b337cf.html](http://www.pantagraph.com/sports/columnists/kindred/kindred-dangerous-foul-balls-should-have-net-effect/article_2331d7ad-b091-5156-96a7-32fdf7b337cf.html) (referencing Brittanie Cecil)(“An Oakland A’s season ticket holder has asked a federal court to order MLB to install safety netting from foul pole to foul pole at every ballpark. Now there’s something to cheer. It shouldn’t take a lawsuit to get it done. Or the death of another 13-year-old honor student.”); <http://www.dispatch.com/content/stories/sports/2015/08/26/arace-column.html> (“There is no need to offer the excuse that fans should be ‘paying attention.’ There is no absolution in that. Pick a game, any game, and look at how players scatter when a screaming line drive comes toward the dugout. They understand how dangerous it is, and they are professional athletes, and they are paying attention. Put up the nets.”); <https://twitter.com/SandlerJ/status/634905360055169024> (“...are we really valuing a freaking foul ball over human safety? C’mon people. It hasn’t hurt hockey, it won’t hurt baseball.”)

<sup>22</sup> <https://www.youtube.com/watch?v=znD69U2Ht2U>.

<sup>23</sup> <https://www.youtube.com/watch?v=jHKTx0zII2U>.

<sup>24</sup> <http://espn.go.com/video/clip?id=12286112>.

1 want our fans to get is, it's about the kids...I thought it was a nice symbol to let a kid do it.”<sup>25</sup>  
 2 Described by some as the “Pied Piper of baseball,”<sup>26</sup> Defendant Manfred has also prioritized  
 3 creating a faster pace of play to mirror society's faster pace of life,<sup>27</sup> and Defendant MLB  
 4 generated a \$300 million plan to bring Wi-Fi and other wireless technology to every ballpark<sup>28</sup>,  
 5 specifically so young fans can watch MLB.com content on their mobile devices while watching  
 6 games,<sup>29</sup> to appeal to childrens' “shorter attention spans.”<sup>30</sup> These actions, and numerous other  
 7 intentional distractions and visual stimuli introduced into the game of baseball by Defendants,  
 8 combined with the assurances and misrepresentations to Plaintiffs, spectators and the general  
 9 public that the ballpark is safe for families, have greatly increased the risk to Plaintiffs and other  
 10 baseball fans.

11 7. Even after a June 5, 2015 incident at Fenway Park where an eight year-old saw his  
 12 mother horribly injured by a flying shard of bat, a June 19, 2015 incident in which a young boy  
 13 was pummeled by a line drive, and a spate of injuries this summer , Defendants have shown a  
 14 remarkable lack of responsibility and concern on this issue. On June 23, 2015, Major League  
 15 Baseball's website posted video and photo of a man, who had just caught a foul ball while sitting in  
 16 an unprotected area of Wrigley Field along first base, while still holding his infant child (with his  
 17 legs dangling, drinking from a baby bottle) with the headline “*Oh baby, what a catch! Fan holds*  
 18 *son, snags ball.*” Perhaps Defendants have forgotten that a child has already been killed by a foul  
 19 ball at a Major League Baseball game,<sup>31</sup> or are waiting for it to happen again before taking the  
 20 issue more seriously.

21 \_\_\_\_\_  
 22 <sup>25</sup> <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/>. Game was televised and 42,295 fans were in attendance.

23 <sup>26</sup> <http://www.chicagotribune.com/sports/baseball/ct-sullivan-rob-manfred-baseball-changes-spt-0224-20150223-story.html>.

24 <sup>27</sup> <https://www.youtube.com/watch?v=jHKTx0zII2U>.

25 <sup>28</sup> <http://www.mobilesportsreport.com/2015/06/report-excerpt-mlbs-wi-fi-everywhere-plan-nears-completion/>

26 <sup>29</sup> *Id.*

27 <sup>30</sup> <https://www.youtube.com/watch?v=znD69U2Ht2U>.

28 <sup>31</sup> 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).

8. In 2013, the MLB had the highest season attendance of any sports league in the world,<sup>32</sup> and a record number of fans attended 2015 Spring Training.<sup>33</sup> It's also big business – in 2012, MLB agreed to a \$12,400,000 eight-year television broadcast contract<sup>34</sup> and the MLB currently generates approximately \$9,000,000,000 in yearly revenue.<sup>35</sup> It was recently estimated that if Major League Baseball was traded on the stock exchange it would be worth \$36 billion.<sup>36</sup> The average MLB team is worth \$1.2 billion and each team also makes no less than \$12 million a year in local broadcast money.<sup>37</sup> The Commissioner also has a multi-million dollar discretionary fund. Defendants each individually and collectively have the knowledge, ability and means to address this issue - if they wanted to - but have fully failed to do so. As a result, since this lawsuit was first filed, there have been at least 89 (many more likely unreported), serious injuries or near-misses that would not have occurred if Defendants had taken immediate action. Injured fans have been left helpless, often with astronomical medical bills, and have had to turn online to strangers for financial support, and to plead with Defendants to something to make the game safer.

9. Defendants have failed to adequately protect spectators through their failure to enact and enforce adequate safety measures. It is time for MLB to protect spectators in the most dangerous areas of the ballpark, where a growing number of fans are suffering serious and entirely preventable injury and others face an imminent risk of injury each time they attend a baseball game. It's also time to tell the truth about the game – a fact that Manfred, the Office of the Commissioner, and the teams already know, but which is not commonly known or understood to Plaintiffs, spectators or the general public and which has actively been withheld from them - *in the modern era of baseball, “paying attention” often provides little or no protection from injury* -

<sup>32</sup> <http://www.sportsmuntra.com/10-most-expensive-sports-leagues-by-revenue/>.

<sup>33</sup> <http://hardballtalk.nbcsports.com/2015/04/07/major-league-baseball-set-a-spring-attendance-record/>.

<sup>34</sup> [http://www.huffingtonpost.com/barbara-bruno/the-nfl-mlb-and-viagra-so\\_b\\_6124724.html](http://www.huffingtonpost.com/barbara-bruno/the-nfl-mlb-and-viagra-so_b_6124724.html).

<sup>35</sup> <http://www.latimes.com/sports/la-sp-baseball-shaikin-20150607-story.html#page=1>.

<sup>36</sup> <http://www.forbes.com/sites/mikeozanian/2015/03/25/mlb-worth-36-billion-as-team-values-hit-record-1-2-billion-average/>. Three of the top ten richest teams are California teams.

<sup>37</sup> [http://sports.espn.go.com/mlb/columns/story?columnist=stark\\_jayson&page=rumblings091119](http://sports.espn.go.com/mlb/columns/story?columnist=stark_jayson&page=rumblings091119).

1 and it is unreasonable and unconscionable for Defendants to continue to perpetrate this myth and  
 2 attempt to contract away the rights of spectators and shield themselves from liability via the use of  
 3 so-called “warnings” that induce Plaintiffs, spectators and the public into believing they are safe in  
 4 the “Danger Zone” if they “stay alert.”

5 10. Every ball thrown in the major leagues bears Commissioner Manfred’s autograph.<sup>38</sup>  
 6 It’s time for Major League Baseball to take action. It is time for baseball to do the right thing, not  
 7 just for the fans, but for the sport.

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

## 18 **II. JURISDICTION AND VENUE**

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

24 13. This Court also has supplemental jurisdiction over Plaintiff Smith’s state law claims  
 25 pursuant to 28 U.S.C. §1367.

26  
 27  
 28 <sup>38</sup> <http://m.mlb.com/news/article/107340526/new-commissioner-makes-mark-on-official-ball>.



1 time. In addition, due to the fact that at Oakland Coliseum, there are many, many intentional  
 2 distractions, such as a giant screen across from her section, and fan-participation contests that  
 3 involve texting or using applications on mobile devices, she believes she and other fans are at  
 4 increased and imminent risk of injury due to distractions.

5 18. Ms. Payne's seats are in prime foul ball territory – they are “plaza infield” seats in  
 6 the second level. The second level at Oakland Coliseum has a “solid” view<sup>39</sup> and “plaza infield”  
 7 sections are “positioned in the best locations throughout the ballpark to give fans an ideal view of  
 8 the game from the second level.”<sup>40</sup> The “king of foul balls” picked the second level (after  
 9 previously trying the first level) as the area where he positions himself to catch foul balls at  
 10 Oakland.Co, and his section of choice is “foul ball alley” - section 220 – the near equivalent of Ms.  
 11 Payne's section on the third base side.<sup>41</sup> In section 220 he's caught thirty-seven foul balls this past  
 12 season, and describes it as the “perfect spot – they [the balls] come right to you.”<sup>42</sup> A study of foul  
 13 balls at Oakland Coliseum also identifies the areas in proximity to Ms. Payne's seats as some of the  
 14 areas that receive the most foul balls. Specifically, one study finds that the best sections for foul  
 15 balls on the first base side include sections 111-114 (111 is the area exactly in front of Ms. Payne's  
 16 section and 112-114 are the areas just in front and to the left of her section)<sup>43</sup> as shown on this map:  
 17  
 18  
 19  
 20  
 21  
 22

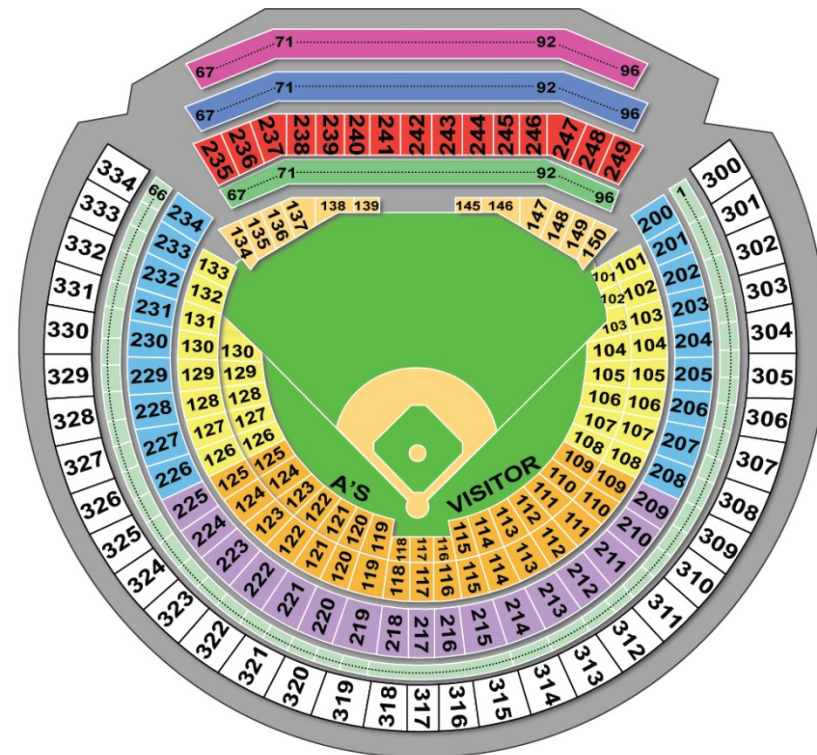
23 <sup>39</sup> <http://bestbaseballseats.com/oakland-athletics.html>

24 <sup>40</sup> <http://www.athleticsseatingchart.com/oakland-athletics-plaza-infield/>. Beginning in 2006 the  
 25 A's closed the third deck of the ballpark, “moving fans closer to the action and making the stadium  
 more intimate.”

26 <sup>41</sup> <http://kron4.com/2015/08/22/oakland-as-king-of-foul-ball/>

27 <sup>42</sup> *Id.*

28 <sup>43</sup> <http://www.bestfoulballseats.com/mlb-parks/oakland-alameda-county-coliseum-oakland-athletics/>



Oakland-Alameda County Coliseum - Baseball

© TicketUtils, Inc. (SS)

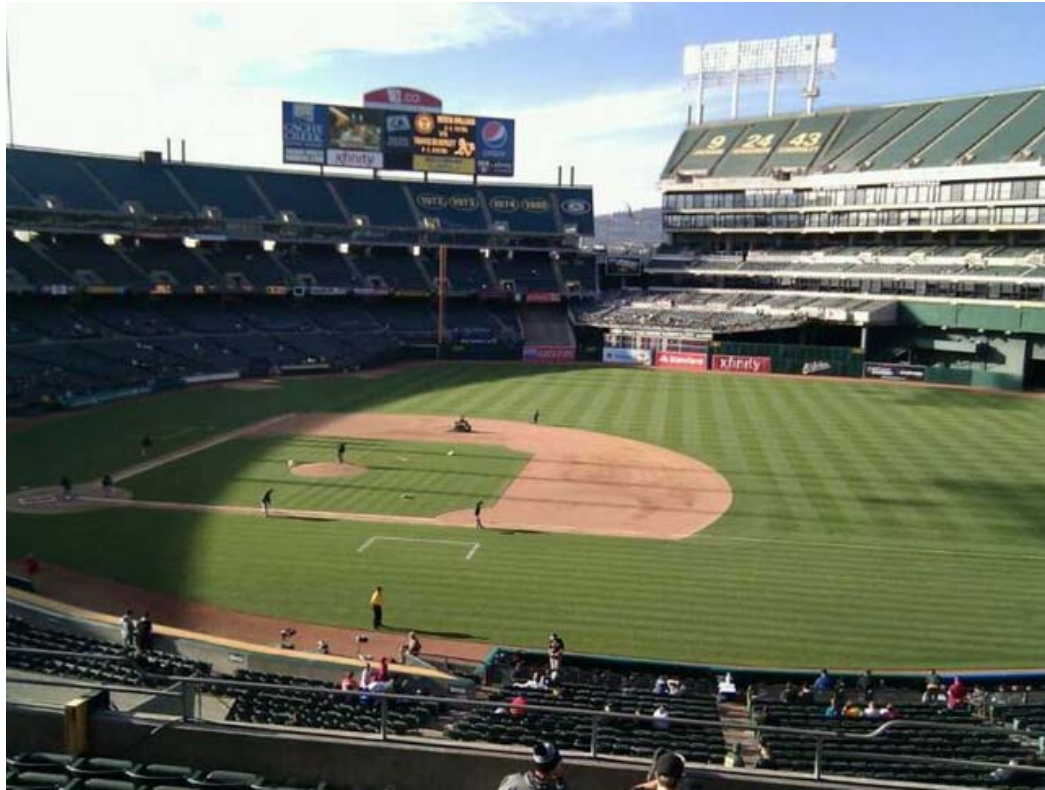
Loge Suites Loge Field Level Plaza Outfield Plaza Reserved  
 Club Suites MVP Bleachers Plaza Infield Plaza Suites

Unavailable

44

Here is a photograph taken from Section 211:

<sup>44</sup> [https://www.google.com/search?q=oakland+coliseum+overhead+seating+map&safe=active&biw=1024&bih=1219&tbm=isch&imgil=VIGnHcntyurxmM%253A%253B17fRrao7Td2g\\_M%253Bhttp%25253A%25252F%25252Fwww.ballparksofbaseball.com%25252Fal%25252FOcoColiseum.htm&source=iu&pf=m&fir=VIGnHcntyurxmM%253A%252CI7fRrao7Td2g\\_M%252C\\_\\_&usg=\\_\\_Dca0VRHZPjr2EOk-lqMtip0nc9I%3D&ved=0CEYQyjdqFQoTCI\\_Y\\_cPfsMgCFUU3iAodaCEM8g&ei=t0MVVs-gAcXuoATowrCQDw#imgdii=VIGnHcntyurxmM%3A%3BVIGnHcntyurxmM%3A%3Bgv3p3eq3Pjy-qM%3A&imgsrc=VIGnHcntyurxmM%3A&usg=\\_\\_Dca0VRHZPjr2EOk-lqMtip0nc9I%3D](https://www.google.com/search?q=oakland+coliseum+overhead+seating+map&safe=active&biw=1024&bih=1219&tbm=isch&imgil=VIGnHcntyurxmM%253A%253B17fRrao7Td2g_M%253Bhttp%25253A%25252F%25252Fwww.ballparksofbaseball.com%25252Fal%25252FOcoColiseum.htm&source=iu&pf=m&fir=VIGnHcntyurxmM%253A%252CI7fRrao7Td2g_M%252C__&usg=__Dca0VRHZPjr2EOk-lqMtip0nc9I%3D&ved=0CEYQyjdqFQoTCI_Y_cPfsMgCFUU3iAodaCEM8g&ei=t0MVVs-gAcXuoATowrCQDw#imgdii=VIGnHcntyurxmM%3A%3BVIGnHcntyurxmM%3A%3Bgv3p3eq3Pjy-qM%3A&imgsrc=VIGnHcntyurxmM%3A&usg=__Dca0VRHZPjr2EOk-lqMtip0nc9I%3D)



45

19. Plaintiff Robert Gorman is a resident of South Carolina. He has been a baseball fan since he was seven years old. Growing up, he was fond of the New York Yankees, and currently is a fan of the Miami Marlins (he is originally from Florida), the Atlanta Braves, and his local Charlotte minor league team, the Knights. Mr. Gorman purchased current Knights season tickets (a ½ home game package) in section 114, located between third base and home plate, on row V, 22 rows back, on the edge of concourse. These seats are not protected by netting. In the Knights ballpark (“BB&T ballpark”) full netting is behind home plate and half netting (4-5 feet high) extends to protect the first few rows above the dugout. Here is a view from Mr. Gorman’s seats:

<sup>45</sup> <http://aviewfrommyseat.com/venue/O.co+Coliseum/seating-chart/>



20. Mr. Gorman has been hit by a foul ball, his wife has been hit by a foul ball, and he's witnessed numerous foul ball injuries at the Knights' ballpark, including several this season. According to Mr. Gorman, "screaming foul balls" enter his section at least two to three times per game. He has seen countless foul balls enter all areas of the ballpark and has even seen foul balls enter the concourse, one of which hit the food kiosk, where people purchase food. Earlier this season, he saw a woman seated approximately ten rows in front of him hit in her left collarbone, near the neck. He does not believe she had time to react, and that if the ball had hit her just slightly differently, she would have been killed. He witnessed another woman hit in head by a pop fly this season. He also saw a bat fly into the stands near first base this season. Fortunately it was near the end of the game and the fans who had occupied that section had left. On August 26, 2015, a friend sitting next to him "almost had his head taken off" by a line drive foul. Mr. Gorman believes if his friend had not managed to raise his hands in time to defend himself, the ball would have injured his head. At this same game, another foul ball flew past Mr. Gorman and hit a food kiosk on the concourse, and another foul ball hit a woman seated on the first base side. The ball appeared to hit

1 her arm, and she and the rest of her seatmates left the game. At that same game, the pitcher in a  
2 pickoff attempt overthrew to first base and hit a seat in the stands. Fortunately there was no one  
3 sitting in the seat that it struck.

4 21. Mr. Gorman has been hit in the head by a foul ball, approximately fifteen years ago,  
5 at the Charlotte Knights' former ballpark. He was seated in the upper deck and stood up as a foul  
6 ball approached. The ball nicked the railing, deflected, hit him square in the forehead and nearly  
7 shattered his glasses. Mr. Gorman's wife was also hit, outside a college baseball stadium, when a  
8 foul ball shot backward over the backstop and hit her as she was walking with her husband to buy  
9 tickets at the ticket booth.

10 22. Mr. Gorman believes that even if someone is paying rapt attention, they likely  
11 would not have time to react to avoid injury from an errant ball or bat, and that he and the putative  
12 class are at imminent risk of injury, because of the speed of foul balls/bats entering the stands, as  
13 well as the nature and amount of intentional distractions he and other spectators are subjected to at  
14 the ballpark. There are many distractions visible to Mr. Gorman during Knights games. There is a  
15 scoreboard to his left, and loud, "ear-splitting" music. When a foul ball is hit, audio of shattered  
16 glass is played. Fans are also frequently on mobile devices. The ballpark also specifically  
17 encourages people to take pictures and send them via tweets (the ballpark offers free WiFi) to be  
18 shown later on the ballpark's video screen. The Charlotte Knights' team mascot, "Homer the  
19 Dragon," also walks and stands in the unprotected sections in the stands, and areas where half  
20 netting does not adequately protect fans sitting higher than four to five rows from the field,  
21 distracting fans and blocking their view. He also often poses for photographs with fans using their  
22 cameras and cellphones, facing away from the action on the field, and diverting, distracting and  
23 blocking the view of spectators including Mr. Gorman. Here is an example of this distraction:



46

23. Mr. Gorman is also a university professor and co-author of a book that examines fatalities in baseball.<sup>47</sup>

24. Plaintiff Stephanie Smith is 28 years old. She is a temporary resident of California and permanent resident of King County, Washington. She is a Certified Public Accountant and holds a Master's Degree in Business Administration. On June 7, 2015, Stephanie was attending a Dodgers game with her family and was seated on the third base line, field level, when she was hit in the stomach by a line drive foul ball. Her ER doctors could not definitively determine from an X-ray, but the ball is believed to have broken her ribs. She suffered a 10-15% collapsed lung and experiences constant pain in her ribs. Stephanie is very athletic, and she played softball in high

<sup>46</sup> Photo from 8/24/15 Charlotte Knights game.

<sup>47</sup> "Death at the Ballpark" is a comprehensive study of game-related fatalities in amateur and professional baseball from various circumstances, such as violence, falls, risky behavior, health conditions, weather, field incidents, collisions, and errant bats and balls.

1 school. She saw the ball coming and attempted to get out of the way, which is why it hit her in the  
 2 ribs instead of the face. The Dodgers sent Stephanie a letter claiming the team was not liable for  
 3 her injuries, and she has incurred significant medical expenses totaling approximately \$4,300.00.  
 4 This was not the only foul ball injury at Dodgers Stadium that day.

5 25. As a result of Defendants' failure to implement reasonable safety measures  
 6 Plaintiffs are at increased and unreasonable risk of serious injury while attending MLB games.

7 26. Plaintiffs, as described herein, have been damaged by the actions and inactions of  
 8 the Defendants.

9 27. On behalf of themselves and the Class, Plaintiffs seek class-wide injunctive or  
 10 equitable relief in the form of changes to current MLB rules and practices with respect to protective  
 11 netting in MLB ballparks.

12 28. Plaintiff Smith also seeks damages for her individual personal injuries.

#### 13 **B. Defendants**

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

18 30. Defendant, Robert D. Manfred, Jr. ("Manfred"), is the Commissioner of the Major  
 19 League Baseball Association, having served in that capacity since 2015. Prior to becoming  
 20 Commissioner, Manfred was MLB's Chief Operating Officer and longtime advisor to former MLB  
 21 Commissioner Bud Selig.<sup>48</sup> According to his official MLB biography, the "traditional functions"  
 22 of the Commissioner's role include overseeing baseball operations. His biography also indicates  
 23 that as MLB's Chief Operating Officer, he reported directly to the Commissioner and "oversaw all  
 24

25  
 26  
 27  
 28 <sup>48</sup> <http://grantland.com/features/the-consigliere-commissioner-rob-manfred-mlb-bud-selig-alex-rodriguez-peds-steroids-suspension/>.

the traditional functions of the Commissioner's office."<sup>49</sup> Upon information and belief, Manfred is a resident of Tarrytown, New York.

31. Defendant, Atlanta National League Baseball Club, Inc. (the Atlanta Braves), is a Major League Baseball team.

32. Defendant, Miami Marlins, L.P. (the Miami Marlins) is a Major League Baseball team.

33. Defendant, Sterling Mets, L.P. (the New York Mets) is a Major League Baseball team.

34. Defendant, The Philadelphia Phillies (the Philadelphia Phillies), is a Major League Baseball team.

35. Defendant, Washington Nationals Baseball Club, LLC (the Washington Nationals), is a Major League Baseball team.

36. Defendant, Chicago National League Ball Club, LLC (the Chicago Cubs), is a Major League Baseball team.

37. Defendant, The Cincinnati Reds LLC (the Cincinnati Reds), is a Major League Baseball team.

38. Defendant, Milwaukee Brewers Baseball Club (the Milwaukee Brewers), is a Major League Baseball team.

39. Defendant, Pittsburgh Associates, LP (the Pittsburgh Pirates), is a Major League Baseball team.

40. Defendant, St. Louis Cardinals LLC (the St. Louis Cardinals), is a Major League Baseball team.

41. Defendant, Arizona Professional Baseball LP (the Arizona Diamondbacks), is a Major League Baseball team.

42. Defendant, Colorado Rockies Baseball Club, Ltd. (the Colorado Rockies), is a Major League Baseball team.

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<sup>49</sup> [http://mlb.mlb.com/mlb/official\\_info/about\\_mlb/executives.jsp?bio=manfred\\_rob](http://mlb.mlb.com/mlb/official_info/about_mlb/executives.jsp?bio=manfred_rob).

43. Defendant, Los Angeles Dodgers LLC (the Los Angeles Dodgers), is a Major League Baseball team. The Dodgers recently made Forbes' list of one of the five richest teams in baseball, with a current value of 2.4 billion dollars.<sup>50</sup> In 1970, a boy was killed by a foul ball at a Dodgers game.

44. Defendant, San Diego Padres Baseball Club (the San Diego Padres), is a Major League Baseball team.

45. Defendant, San Francisco Giants Enterprises LLC (the San Francisco Giants), is a Major League Baseball team. In September 2015, Giants' Chief Executive Officer admitted the organization is aware of the issue of serious injuries from errant balls and bats: "we're absolutely aware of the liability."<sup>51</sup> The Giants recently made Forbes' list of one of the five richest teams in baseball, with a current value of 2 billion dollars.<sup>52</sup>

46. Defendant, Baltimore Orioles Limited Partnership (the Baltimore Orioles), is a Major League Baseball team.

47. Defendant, Boston Red Sox Baseball Club Limited Partnership (the Boston Red Sox), is a Major League Baseball team.

48. Defendant, New York Yankees Partnership (the New York Yankees), is a Major League Baseball team.

49. Defendant, Tampa Bay Rays Baseball Limited (the Tampa Bay Rays), is a Major League Baseball team.

50. Defendant, Toronto Blue Jays Baseball Club (the Toronto Blue Jays), is a Major League Baseball team.

51. Defendant, Chicago White Sox Ltd. (the Chicago White Sox), is a Major League Baseball team.

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<sup>50</sup> <http://www.forbes.com/mlb-valuations/list/>

<sup>51</sup> <http://www.sfchronicle.com/giants/jenkins/article/Maple-bats-put-fans-and-players-in-danger-yet-6507125.php?t=d9e87a51f0f294ee0d&cmpid=tfb-premium>

<sup>52</sup> <http://www.forbes.com/mlb-valuations/list/>

52. Defendant, Cleveland Indians Baseball Company Limited Partnership (the Cleveland Indians), is a Major League Baseball team.

53. Defendant, Detroit Tigers, Inc. (the Detroit Tigers), is a Major League Baseball team.

54. Defendant, Kansas City Royals (the Kansas City Royals), is a Major League Baseball team.

55. Defendant, Minnesota Twins Baseball Club (the Minnesota Twins), is a Major League Baseball team.

56. Defendant, Houston Astros, LLC (the Houston Astros), is a Major League Baseball team.

57. Defendant, Angels Baseball LP (the Los Angeles Angels of Anaheim), is a Major League Baseball team. The Angels are one of the top ten richest teams in MLB, with a value of 1.3 billion dollars.

58. Defendant, Oakland Athletics Limited Partnership (the Oakland Athletics), is a Major League Baseball team. The Oakland Athletics are in a “revenue sharing” relationship with Major League Baseball, and a large portion of the team’s revenue comes from MLB. The team has been described as on MLB’s “dole.”<sup>53</sup> The Oakland Athletics have a value of 725 million dollars.<sup>54</sup>

59. Defendant, The Baseball Club Of Seattle LLP (the Seattle Mariners), is a Major League Baseball team.

60. Defendant, Rangers Baseball Express LLC (the Texas Rangers), is a Major League Baseball team.

#### IV. FACTUAL BACKGROUND

##### A. The Evolution of Spectator Protection at MLB Ballparks

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

61. 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

<sup>53</sup> <http://newballpark.org/2015/07/28/wolff-suggests-mlb-will-help-subsidize-oakland-ballpark/>

<sup>54</sup> <http://www.forbes.com/mlb-valuations/list/>

“slaughter pen” because spectators would get hit by foul balls and debris from broken bats.<sup>55</sup> This photo shows spectators crowded around the action at Hilltop Stadium in New York in 1903:<sup>56</sup>



62. 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).<sup>57</sup> At about the same time, protective screening behind home plate began to appear at ballparks.<sup>58</sup> 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.<sup>59</sup>

## 2. Netting technology.

63. Netting has changed from hemp woven screens to screens made with thin lightweight polymers.<sup>60</sup> Today’s screens are much thinner, more durable and longer lasting.<sup>61</sup> As

<sup>55</sup> [https://en.wikipedia.org/wiki/Major\\_League\\_Baseball](https://en.wikipedia.org/wiki/Major_League_Baseball).

<sup>56</sup> Photo depicts game resulting in Yankees (formerly the “Highlanders”) first win in franchise history.

<sup>57</sup> Robert Gorman and David Weeks, *Death at the Ballpark: A Comprehensive Study of Game-Related Fatalities, 1862-2007* (2009).

<sup>58</sup> *Id.*

<sup>59</sup> <http://www.arnolditkin.com/Personal-Injury-Blog/2014/September/Stadium-Liability-Can-MLB-Teams-be-Held-Liable-f.aspx>.

<sup>60</sup> <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw>.

<sup>61</sup> “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.*

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<sup>62</sup>:



### 3. Limitations of current netting.

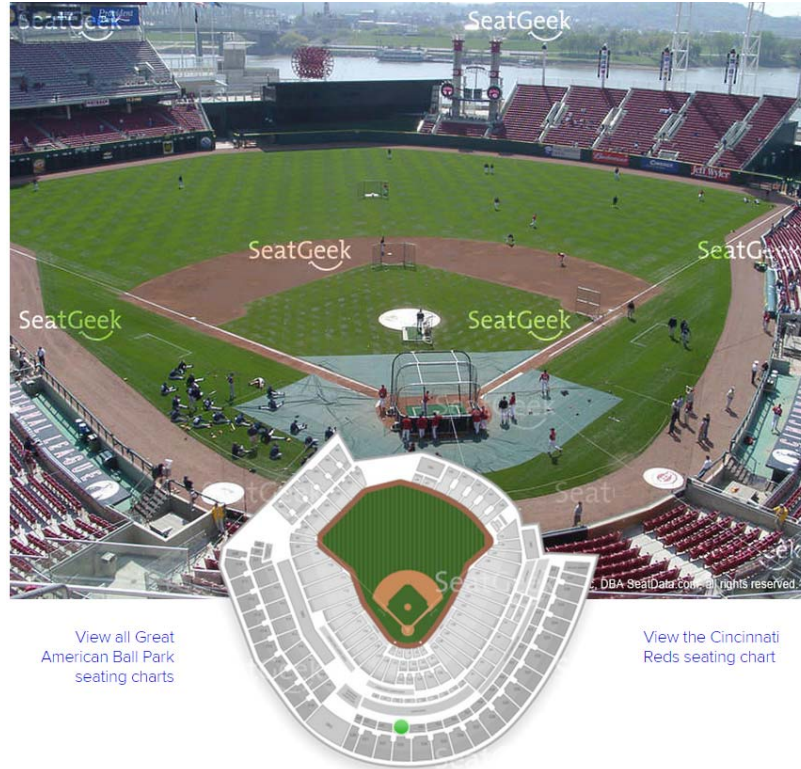
64. While netting technology has evolved, the length and extent of netting at baseball stadiums has not kept up with the evolving pace and power of the game of baseball, and the fact that the most dangerous areas of the stadium are now the unprotected areas between the foul poles (the "Danger Zone"). Most MLB ballparks run the net 20 to 30 feet high and end the net at the start of the dugout, leaving the areas between the dugouts and the foul poles entirely exposed.<sup>63</sup> Some ballparks end their netting at first and third base, which still leaves a large section of the stands vulnerable to errant balls and bats.<sup>64</sup>

<sup>62</sup> <http://m.charlotterestaurantweek.com/articles/sports-top-stories-104670/hey-mlb-protect-your-fans-13663980>.

<sup>63</sup> <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw>.

<sup>64</sup> *Id.*

65. The Great American Ball Park, site of this past season'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.<sup>65</sup>



66. The end of the netting is visible in this close-up:<sup>66</sup>

<sup>65</sup> <http://seatgeek.com/venues/great-american-ball-park/seating-chart/cincinnati-reds-230/section-423>.

<sup>66</sup> <http://aviewfrommyseat.com/photo/12764/O.co+Coliseum/section-115/row-18/seat-16/>.



67. Oakland's Coliseum also has very minimal netting – only 47 feet, which is below average for MLB ballparks.<sup>67</sup> The netting sits within an “indented” area behind home plate:<sup>68</sup>

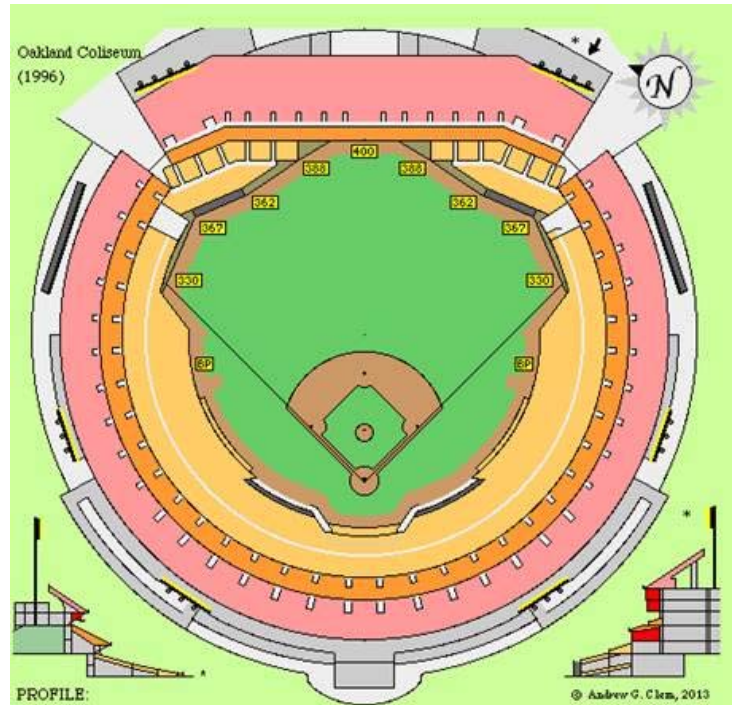


68. As shown below, this “indented” section only extends just past home plate, leaving the remaining areas along first and third base and extended to the foul poles entirely exposed:<sup>69</sup>

<sup>67</sup> Personal interview with Dave Benn, VP sales, Stan Mar Sports Nets, Jan 10, 2001, cited in “Plaintiffs in the Stands,” *supra* note 61.

<sup>68</sup> <http://www.ballparksofbaseball.com/al/pictures/oco13954.jpg>.

<sup>69</sup> *Id.*



69. At Dodgers stadium, netting is also relatively minimal and does not adequately protect fans sitting between the foul poles:



<sup>70</sup> <http://dodgersway.com/2012/10/06/dodger-stadium-will-be-upgraded-this-offseason/>

70. Citizens Bank Park in Philadelphia is also an example of a ballpark with very minimal netting:



71. There is no Major League Baseball standard for netting.<sup>72</sup> It has been estimated that installing increased netting would be relatively inexpensive, costing approximately \$8,000 to \$12,000 per stadium.<sup>73</sup>

#### 4. Netted seats – “VIP only.”

72. 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<sup>74</sup> and \$230.00 per individual game.<sup>75</sup> These are described as “premium seats” on MLB’s website.<sup>76</sup> Section 211, where Plaintiff sits, costs \$40.00 per individual game.<sup>77</sup>

<sup>71</sup> [https://www.google.com/search?q=Citizens+Bank+Park,+philadelphia&safe=active&biw=1920&bih=979&source=lnms&tbm=isch&sa=X&ved=0CAcQ\\_AUoAmoVChMIvP7SyJfSyAIVCzKICH2jegI7&dpr=1#imgcr=3fTIWrpj3QhhM%3A](https://www.google.com/search?q=Citizens+Bank+Park,+philadelphia&safe=active&biw=1920&bih=979&source=lnms&tbm=isch&sa=X&ved=0CAcQ_AUoAmoVChMIvP7SyJfSyAIVCzKICH2jegI7&dpr=1#imgcr=3fTIWrpj3QhhM%3A)

<sup>72</sup> <http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece>.

<sup>73</sup> This is one vendor’s estimate. <http://www.kansascity.com/sports/mlb/kansas-city-royals/article27539521.html>

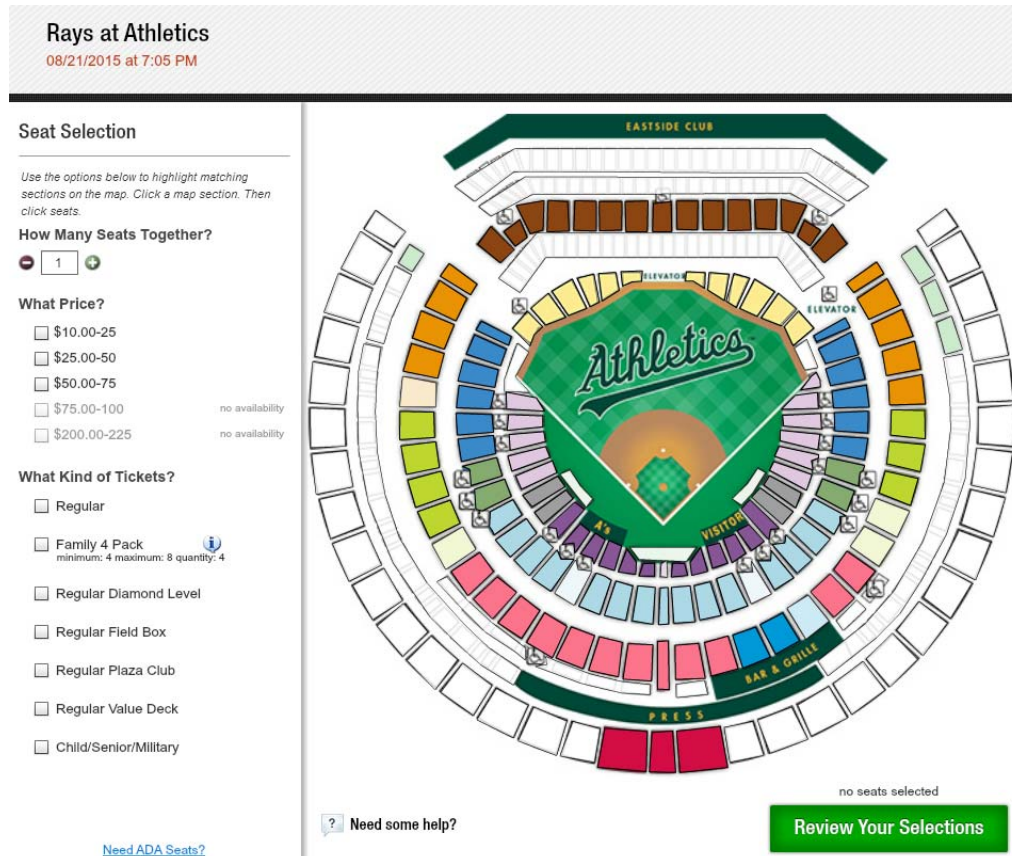
<sup>74</sup> [http://oakland.athletics.mlb.com/oak/ticketing/premium\\_seating.jsp#diamond](http://oakland.athletics.mlb.com/oak/ticketing/premium_seating.jsp#diamond).

<sup>75</sup> [http://oakland.athletics.mlb.com/ticketing/pricing.jsp?c\\_id=oak&layout=gameflow](http://oakland.athletics.mlb.com/ticketing/pricing.jsp?c_id=oak&layout=gameflow).

<sup>76</sup> [http://mlb.mlb.com/oak/ticketing/premium\\_seating.jsp](http://mlb.mlb.com/oak/ticketing/premium_seating.jsp)

<sup>77</sup> *Id.*

73. Ticketing sites typically do not specify which seats are or are not protected by netting and seating maps typically do not depict netting, specify which areas are protected by netting and/or how far netting extends. For example, Major League Baseball's official ticket purchasing portal shows only basic seat categories and prices and does not at any point specify whether seats are or are not protected by netting:



74. “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, whose job it is to catch every detail of a player’s performance.<sup>79</sup> The seats behind the net are not considered to have an “obstructed” view –these are the most prized, highly

<sup>78</sup>[http://purchase.tickets.com/buy/MLBEventInfo?agency=MLB&pid=7902901&tfl=Major\\_League\\_Baseball-Tickets-MLB\\_Tickets-Lowest\\_Price-xo](http://purchase.tickets.com/buy/MLBEventInfo?agency=MLB&pid=7902901&tfl=Major_League_Baseball-Tickets-MLB_Tickets-Lowest_Price-xo)

<sup>79</sup> Joint Pre-Trial Memorandum, *Costa v. The Boston Red Sox Baseball Club*, 2002 WL 33968373 (Mass. Super. Jan. 23, 2002); <http://www.cincinnati.com/story/redblog/2015/04/13/bar-is-it-time-to-expand-netting-in-mlb-stadiums/25706935/>

1 coveted “premium” seats and are sometimes three times the price of other seats.<sup>80</sup> The availability  
 2 of these seats is scarce – they are often occupied by premium paying season-ticket holders and can  
 3 often be sold out and unavailable to other season ticket holders or to single ticket purchasers. As  
 4 noted by Diamondbacks reliever Brad Ziegler, “fans behind home plate pay the highest prices” and  
 5 “those seats are always full.”<sup>81</sup> The Manager of the Royals has stated “I don’t think [the netting]  
 6 restricts the vision in any way.”<sup>82</sup>

7 75. Unlike the premium netted seats, the seats in the exposed areas just past the netting,  
 8 along first and third base, between the foul poles, are often occupied by families because they are  
 9 more affordable and/or protected seats are sold out. These seats are often occupied by young fans,  
 10 some attending their first game, who make up for their small stature and inexperience by their  
 11 eagerness to be a part of the action, wave and dance when the camera pans the crowd, and wear  
 12 their little catchers mitts. However, the unprotected area along the foul lines is the most dangerous  
 13 area of the ballpark.<sup>83</sup>

## 14 **B. Risks to Spectators in Exposed Area of Ballpark**

### 15 **1. Frequency and Nature of Injury.**

16 76. About 1,750 spectators get hurt each year by errant balls, mostly fouls, at major-  
 17 league games. This means that it happens at least twice every three games. That’s more often than

18 <sup>80</sup> For example, tickets for the June 29th Reds v. Twins game at the Great American Ball Park  
 19 show tickets in the protected area directly behind home plate were \$260.00 each, nearly three times  
 20 the price of the tickets along first and third base.

21 [http://www.ticketmaster.com/event/16004D69C58D175D?tf1=Major\\_League\\_Baseball-Tickets-  
 MLB\\_Tickets-na-x0](http://www.ticketmaster.com/event/16004D69C58D175D?tf1=Major_League_Baseball-Tickets-MLB_Tickets-na-x0).

22 <sup>81</sup> [www.si.com/mlb/2015/06/07/mlb-players-cba-boston-red-sox-fan-broekn-bat](http://www.si.com/mlb/2015/06/07/mlb-players-cba-boston-red-sox-fan-broekn-bat).

23 <sup>82</sup> [http://kansascity.legalexaminer.com/property-owners-liability-slip-fall/kc-royals-spectator-  
 injuries-raises-questions-about-fan-safety/](http://kansascity.legalexaminer.com/property-owners-liability-slip-fall/kc-royals-spectator-injuries-raises-questions-about-fan-safety/).

24 <sup>83</sup> “Rather, the most dangerous areas were down the first and third baselines for a significant  
 distance past the dugouts.” [http://scholarship.law.marquette.edu](http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=1266&context=sportslaw)  
 25 [/cgi/viewcontent.cgi?article=1266&context=sportslaw](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  
 26 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  
 27 first and third base lines are the most likely to have foul balls hit into them. A study out of Wake  
 Forest University and North Carolina University refers to the “most vulnerable areas down the 1st  
 28 or 3rd base lines, or directly behind home plate.” J Winslow, A Goldstein. Spectator Risks at  
 Sporting Events. The Internet Journal of Law, Healthcare and Ethics. 2006 Volume 4 Number 2.

1 a batter is hit by a pitch.<sup>84</sup> Most injuries suffered by fans involve the head and facial region as the  
 2 head and face are most exposed areas.<sup>85</sup> Injuries commonly involve facial or head trauma from  
 3 direct contact with a hit baseball.<sup>86</sup> Injuries from objects other than baseballs, such as fractured  
 4 baseball bats that go into the stands, are less frequent but equally serious.<sup>87</sup>

## 5 **2. The New Generation of Fan Watches the Game Differently and is at** 6 **Increased Risk.**

7 77. While revenue is at an all-time high, baseball's following is aging, and its TV  
 8 audience skews older than that of any other major sport.<sup>88</sup> The number of kids playing baseball has  
 9 been on a two-decade long decline.<sup>89</sup> While it is still marketed and touted as "America's pastime,"  
 10 this year a Bloomberg politics poll found that only 28% polled considered baseball "America's  
 11 pastime" - 67% chose football.<sup>90</sup> The Commissioner and his office have made it their mission to  
 12 make the game more attractive to a younger demographic,<sup>91</sup> and the Commissioner has encouraged  
 13 parents and grandparents to bring young kids to Major League Baseball games: "we... see it as an  
 14 opportunity because we think those people are parents and grandparents, and we think we can  
 15 motivate them to do what our parents and grandparents did, that is get their kids in the ballpark at a  
 16 young age."<sup>92</sup>

17 78. A multitude of distractions have been intentionally added to ballparks to entertain  
 18 spectators, generate additional revenue, and woo the next generation of baseball fan. The

19 <sup>84</sup> Elias Sports Bureau Inc. statistics. <http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year>.

20 <sup>85</sup> J Winslow, A Goldstein. Spectator Risks at Sporting Events. The Internet Journal of Law,  
 21 Healthcare and Ethics. 2006 Volume 4 Number 2.

22 <sup>86</sup> *Id.*

23 <sup>87</sup> *Id.*

24 <sup>88</sup> [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](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).

25 <sup>89</sup> <http://m.sportsbusinessdaily.com/Daily/Issues/2015/04/06/MLB-Season-Preview/MLB-League-issues.aspx>.

26 <sup>90</sup> <http://national.suntimes.com/national-sports/nfl/7/72/947037/football-americas-pastime/>

27 <sup>91</sup> <https://www.youtube.com/watch?v=znD69U2Ht2U>.

28 <sup>92</sup> <http://espn.go.com/video/clip?id=12286112> (televised interview with Rob Manfred on "Outside the Lines").

Commissioner has specifically acknowledged the shorter attention span of young spectators attending games. In his first major news conference after taking over the position as Commissioner, he stated, of children: “One thing I can say for sure is their attention span seems to be shorter than the rest of ours, and it’s an issue that we need to keep that fan base.”<sup>93</sup>, and spoke of the need to “enhance the fan experience in the ballpark” via technology: “I think there’s more to it than just short (attention spans) though. I think we also have to enhance the fan experience in the ballpark and in our broadcast by using technology because technology is the thing that engages young people most completely.”<sup>94</sup> He has indicated MLB.com, which oversees and provides content for all 30 MLB teams,<sup>95</sup> 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.”<sup>96</sup> Major League Baseball’s executive vice president and chief technology officer recently stated: “everybody has an interest in making sure the people attending the game are happy with their [wireless] experience” and described the collaborative work of MLB and the individual teams in implementing this technology.<sup>97</sup> MLB Advanced Media currently has the most successful and highest-grossing sports mobile application in the world: “MLB At-Bat.”<sup>98</sup> MLB specifically markets this application as something to use while experiencing the live game in the ballpark – it is a “Ballpark App” - your “mobile companion when visiting your favorite...ballparks” – and includes social media features, videos, and the ability to order food remotely from concessions while seated in the stands.<sup>99</sup>

<sup>93</sup> <http://www.chicagotribune.com/sports/baseball/ct-sullivan-rob-manfred-baseball-changes-spt-0224-20150223-story.html>.

<sup>94</sup> *Id.*

<sup>95</sup> <http://www.vault.com/company-profiles/sports/major-league-baseball/company-overview.aspx>.

<sup>96</sup> <https://www.youtube.com/watch?v=jHKTx0zII2U>.

<sup>97</sup> <http://www.mobilesportsreport.com/2015/06/report-excerpt-mlbs-wi-fi-everywhere-plan-nears-completion/>

<sup>98</sup> <http://businesssideofsports.com/2015/08/15/samford-sports-marketing-student-blake-gardner-rebuts-idea-that-baseball-is-dead/>

<sup>99</sup> [http://mlb.mlb.com/mobile/ballpark/index.jsp?tcid=rd-atb&c\\_id=mlb](http://mlb.mlb.com/mobile/ballpark/index.jsp?tcid=rd-atb&c_id=mlb)

79. MLB has also promoted use of a pitch clock<sup>100</sup> 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.<sup>101</sup> New rules implemented for the 2015 season “represent a step forward in our efforts to streamline the pace of play,” according to the Commissioner.<sup>102</sup> The changes include hitters keeping at least one foot in the batter’s box during at bats, and a prompt return to play after breaks and pitching changes.<sup>103</sup>

### 3. The most dangerous areas.

80. 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”).<sup>104</sup> In the Danger 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.<sup>105</sup> 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.<sup>106</sup> 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.

<sup>100</sup> <http://m.sportsbusinessdaily.com/Daily/Issues/2015/04/06/MLB-Season-Preview/MLB-League-issues.aspx>.

<sup>101</sup> <https://www.youtube.com/watch?v=znD69U2Ht2U>.

<sup>102</sup> [http://espn.go.com/mlb/story/\\_/id/12351883/major-league-baseball-announce-pace-play-rules](http://espn.go.com/mlb/story/_/id/12351883/major-league-baseball-announce-pace-play-rules)

<sup>103</sup> *Id.*

<sup>104</sup> 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 and Foul Ball Injury Risks,” *International Journal of Sport Management* (October 2012), pp. 423-443.

<sup>105</sup> 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).

<sup>106</sup> <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>.

81. At a typical major league game, between 35 and 40 batted balls fly into the stands.<sup>107</sup> 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.

82. Major League Baseball has been described as having a “velocity obsession.”<sup>108</sup> The modern era is all about power. Pitchers now throw harder than ever before.<sup>109</sup> 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 or faster.<sup>110</sup> In 2013, eight pitchers hit triple digits.<sup>111</sup> Some of the velocity increase is attributed to the new specific focus on pitcher shoulder strengthening<sup>112</sup> and the instant feedback available via pitch-speed tracking technology.<sup>113</sup> Major League Baseball has recently bragged about the “historic” speed achieved by its current pitchers.<sup>114</sup> Here is the average batted ball velocity of all hitters that had at least 50 appearances at the plate in 2015:

<sup>107</sup> Estimates vary; See estimates at [http://www.atlantamagazine.com/great-reads/foul-territory/\(35-40\);](http://www.atlantamagazine.com/great-reads/foul-territory/(35-40);) <http://time.com/foul-ball/> (30).

<sup>108</sup> <http://bleacherreport.com/articles/2083154-how-mark-buehrle-is-rising-above-the-velocity-obsession-in-mlb>.

<sup>109</sup> [http://www.washingtonpost.com/opinions/5-myths-about-major-league-pitchers/2015/04/03/184e408e-d8b1-11e4-ba28-f2a685dc7f89\\_story.html](http://www.washingtonpost.com/opinions/5-myths-about-major-league-pitchers/2015/04/03/184e408e-d8b1-11e4-ba28-f2a685dc7f89_story.html).

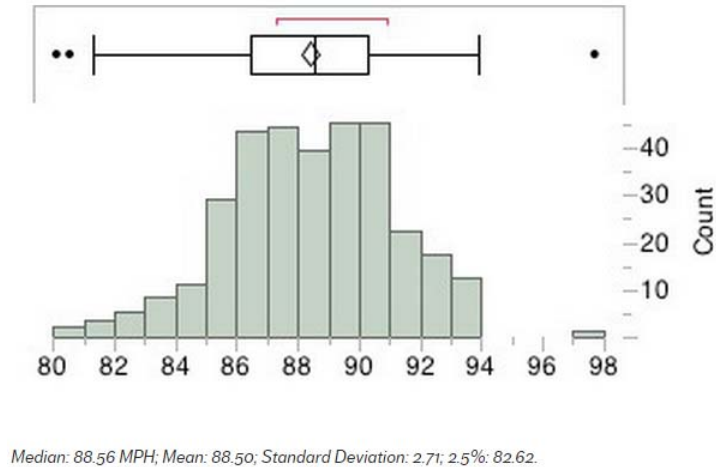
<sup>110</sup> <http://triblive.com/sports/mlb/5423918-74/mpg-velocity-cole#axzz3eefq0gaZ>.

<sup>111</sup> *Id.*

<sup>112</sup> See e.g., <http://triblive.com/sports/mlb/5423918-74/mpg-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.”).

<sup>113</sup> <http://triblive.com/sports/mlb/5423918-74/mpg-velocity-cole#axzz3eefq0gaZ>.

<sup>114</sup> <https://twitter.com/statcast/status/621726009029570560>



115

83. 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*.<sup>116</sup> 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”<sup>117</sup> – 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. Spectators are sometimes hit squarely between the eyes – because they were looking directly at the ball approaching them when they were hit, but could not respond in time.

84. 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

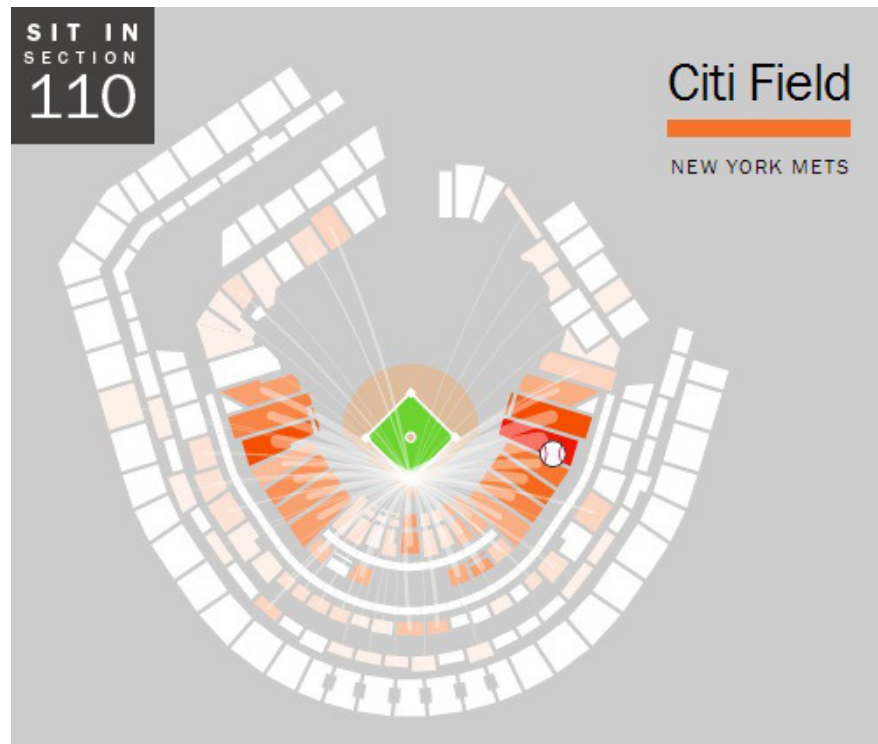
<sup>115</sup> <http://redlegnation.com/2015/07/10/53403/>

<sup>116</sup> <http://www.athleticbusiness.com/athlete-safety/baseball-coaches-sport-helmets-as-a-safety-measure.html>.

<sup>117</sup> <http://www.atlantamagazine.com/great-reads/foul-territory/>.

its tracks.<sup>118</sup> Attached to this complaint as Exhibit A is a video showing the speed, force, and damage from a fast-moving baseball.

85. The boy shown in Exhibit A was seated past first base at Fenway Park. This Exhibit illustrates how spectators are not adequately protected at ballparks where netting extends just over the backstop, or just to the dugout. If the distance from home plate to first base is approximately 90 feet, this means that foul balls can and do travel past netted sections nearly instantaneously. The unprotected sections where the most foul balls are hit are often well past the bases, where the ball boys and ball girls stand.<sup>119</sup> For example, statistics indicate that in Yankee Stadium, Section 112, well past first base, receives the most foul balls.<sup>120</sup> At Safeco Field, Section 142, well past first base, receives the most foul balls.<sup>121</sup> Here is a graphic showing the areas most prone to foul balls at Citi Field:



Here is a view from one of the areas most prone to foul balls at the Tampa Bay Rays stadium:

<sup>118</sup> <http://www.popularmechanics.com/adventure/sports/a4569/4216783/>.

<sup>119</sup> [http://www.newyorker.com/magazine/2015/08/24/foul-tips?mbid=social\\_twitter](http://www.newyorker.com/magazine/2015/08/24/foul-tips?mbid=social_twitter)

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*



122

##### 5. Risk to players, coaches and umpires.

86. 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.<sup>123</sup> In 2000 Red Sox pitcher Bryce Florie was hit in the face and suffered broken bones and retinal damage.<sup>124</sup> Luis Salazar, an Atlanta Braves coach, lost an eye from a line drive.<sup>125</sup> As

<sup>122</sup> <http://idealseat.com/idealseatchallenge-part-2-texas-to-new-york/>, <http://time.com/foul-ball/>

<sup>123</sup> <http://sports.espn.go.com/minorlbb/news/story?id=2945798>.

<sup>124</sup> <http://espn.go.com/talent/danpatrick/s/2001/0705/1222698.html>.

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.<sup>126</sup>

87. 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."<sup>127</sup> 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."<sup>128</sup> Marlon Byrd has stated "You just hope the fans are safe. It's hard to get out of the way of a line drive, period. It comes quick."<sup>129</sup> After a woman was injured on August 21, 2015 by a foul ball struck by Detroit Tigers' Anthony Gose, he advocated for more netting to protect fans, stating:

*Even if you're paying attention, you can't react that fast. We can't react that fast in the dugout and we're paying attention to the game. You're sitting there and you can't react fast enough in the dugout.<sup>130</sup> A fan who's never seen anything moving that fast at them in their life? No chance. There's zero chance in this world, a fan sitting right there over our dugout could react. We can't react that fast in the dugout. Pitchers can't react fast enough on the mound. How's a fan going to react? They can't. They physically can't.*

*She didn't do anything wrong, she just wants to enjoy a game. Now put up a net and people will still enjoy the game. You're not gonna lose that many people or that much money putting up a net. I guarantee it.<sup>131</sup>*

<sup>125</sup> <http://m.mlb.com/news/article/16976144/>.

<sup>126</sup> <http://www.usatoday.com/story/sports/mlb/2015/07/01/umpire-hallion-hit-in-mask-by-foul-leaves-rockies-as-game/29580939/>.

<sup>127</sup> <http://www.atlantamagazine.com/great-reads/foul-territory/>.

<sup>128</sup> *Id.*

<sup>129</sup> <http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/>

<sup>130</sup> *Id.*

<sup>131</sup> <http://www.usnews.com/news/sports/articles/2015/08/22/tigers-say-injured-fan-released-from-hospital>

1 After this injury, Detroit Tigers' Justin Verlander stated "Those low liners, they catch us off guard  
 2 in the dugout, and we're Major League Baseball players, and we still get hit. So everybody else  
 3 can be in serious danger."<sup>132</sup>

4 88. Players admit they ask family members never to sit in unprotected seats.<sup>133</sup>  
 5 Milwaukee Brewers (former Cub) Matt Stairs has stated that you couldn't pay him to let his three  
 6 daughters sit in an exposed area.<sup>134</sup> Chipper Jones, the Atlanta Braves' legendary third baseman,  
 7 has said that he would not permit his own children to sit in the unprotected areas behind the  
 8 dugouts. Braves' manager Fredi Gonzalez advises his wife to sit behind the home plate netting, or  
 9 "way up" in the stands.<sup>135</sup> Cubs' manager Joe Maddon has stated "It's awful. What I see is that I  
 10 never want my kids sitting unprotected, even though it's a good seat."<sup>136</sup> Former Reds' Marlon  
 11 Byrd has stated that his family sits behind the netting for games."<sup>137</sup>

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

13 89. For many reasons, the risk to spectators is much greater than players. Spectators  
 14 have no protective equipment. They are not as familiar with the game as professional players.  
 15 Some in exposed sections are sitting closer to the action than the batter is to the pitcher. Spectators  
 16 also are subject to distractions not visible to players. Spectators are also not specially trained to  
 17 react or have the reaction time of athletes. Spectators are also not aware of the dangers the way  
 18 players are. Spectators are also actively misled that these areas of the ballpark are safe.

19  
 20 <sup>132</sup> [http://espn.go.com/mlb/story/\\_/id/13486481/fan-hit-foul-ball-detroit-tigers-home-game-texas-rangers](http://espn.go.com/mlb/story/_/id/13486481/fan-hit-foul-ball-detroit-tigers-home-game-texas-rangers)

21 <sup>133</sup> Chipper Jones, the Braves' legendary third baseman, has said that he would not permit his  
 22 own children to sit in the unprotected areas behind the dugouts. Braves manager Fredi Gonzalez  
 23 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.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.](http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year)

24 <sup>134</sup> [http://articles.chicagotribune.com/2002-05-12/sports/0205120214\\_1\\_major-league-baseball-](http://articles.chicagotribune.com/2002-05-12/sports/0205120214_1_major-league-baseball-major-league-dugouts)  
 25 [major-league-dugouts.](http://articles.chicagotribune.com/2002-05-12/sports/0205120214_1_major-league-baseball-major-league-dugouts)

26 <sup>135</sup> [http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-](http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year?)  
[injure-1750-fans-a-year?.](http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year?)

27 <sup>136</sup> <http://www.ksl.com/?nid=249&sid=34418293>

28 <sup>137</sup> [http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-](http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/)  
[a-day-later/25674533/](http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/)

90. 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.

91. 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.<sup>138</sup>

92. And children are at risk even when they perceive they can protect themselves as depicted in Exhibit A, showing a child struck by a foul ball even as he attempts to field the ball.<sup>139</sup>

### C. Risk From Broken Bats

#### 1. The change to more dangerous bats.

93. In the modern era, maple has replaced ash as the wood bat of choice in the Major Leagues.<sup>140</sup> 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.<sup>141</sup> 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<sup>142</sup> and send multiple shrapnel-like pieces in indiscriminate directions. The risk to fans is enhanced by the fact that they may be attempting to track the struck ball's projectile rather than that of a bat flying simultaneously through the air. Spectators do not

<sup>138</sup> Cantu, Robert, *Concussions and Our Kids*, 2012.

<sup>139</sup> <https://www.youtube.com/watch?v=2gjFRGedce0>.

<sup>140</sup> <http://m.mlb.com/news/article/2989456/>.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

commonly know or understand the propensity of maple bats to explode, and the line of flight of broken bats and shards of broken bats is indeterminate and indiscriminate.

### 2. Frequency of shattered bats.

94. There were 2,232 broken bats during three months of the 2008 season, the highest number of bat breakages for any season.<sup>143</sup> Of those, 756 were multi-piece breaks.<sup>144</sup>

### 3. Injuries to players, coaches and umpires.

95. 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.<sup>145</sup> A large splinter from a broken bat hit below his left eye, leaving a bloody gash that needed ten stitches.<sup>146</sup> For a month, he had no feeling or mobility in that area.<sup>147</sup> That same year a home-plate umpire was hit in the head by a shattered piece of maple bat, sending blood streaming down his face.<sup>148</sup> 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."<sup>149</sup> Joe Maddon, manager for the Tampa Bay Rays, has stated "If we're going to wait for somebody to actually get killed or impaled, we're going to wait way too long."<sup>150</sup>

<sup>143</sup> "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.

<sup>144</sup> *Id.*

<sup>145</sup> <http://m.mlb.com/news/article/2989456/>.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> [http://usatoday30.usatoday.com/sports/baseball/2008-06-25-umpire-injured\\_N.htm](http://usatoday30.usatoday.com/sports/baseball/2008-06-25-umpire-injured_N.htm).

<sup>149</sup> <http://m.mlb.com/news/article/2989456/>.

<sup>150</sup> <http://www.tbo.com/sports/rays/rays-fan-hit-by-bat-still-recovering-43379>



151

#### **D. An Injury Scorecard – The Modern Day Slaughter Pen**

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

96. 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,<sup>152</sup> is attached to this Complaint as Exhibit B.<sup>153</sup>

##### **2. Deaths in MLB ballparks.**

97. 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.

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

<sup>151</sup> <http://www.sodahead.com/united-states/the-moment-before-the-pain-begins/blog-264565/>

<sup>152</sup> A significant number of injuries also occur during batting practice. These are not recorded on this chart.

<sup>153</sup> 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. In 1970, a child died after being hit by a baseball at a Los Angeles Dodgers Major League Game.

100. 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.<sup>154</sup> After he was hit, he went home and started walking in circles. He was taken to the hospital and died four days later.<sup>155</sup>

101. 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.<sup>156</sup>

### 3. An epidemic of injuries.

102. There have been numerous serious and entirely preventable injuries or serious near-misses in the modern area. The following is a sampling:

103. 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 twenty rows behind the home dugout at Boston's Fenway Park.<sup>157</sup> 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:<sup>158</sup> "to this day I don't see right out of my left eye and I don't hear right out of my left ear. I still have horrible pain in my face all the

<sup>154</sup> <http://www.insidesocal.com/tomhoffarth/2010/05/16/40-years-ago-to-1/>.

<sup>155</sup> <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 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.

<sup>156</sup> <http://www.reporternews.com/news/baseball-accident-a-tragedy>.

<sup>157</sup> Joint Pretrial Memorandum, *Costa v. The Boston Red Sox Baseball Club*, 2002 WL 33968373 (Mass. Super. Jan. 23, 2002).

<sup>158</sup> *Id.*

1 time. I have permanent nerve damage.”<sup>159</sup> The ball was traveling close to 100 miles an hour, and  
 2 she heard it, but “never saw it coming.”<sup>160</sup>



161

13 104. On June 25, 2001, Neil Pakett was sitting near the backstop at Veterans Stadium for  
 14 a game between the Phillies and the Braves. He was near but not behind a protective screen. A  
 15 baseball hit him in the right eye, and he suffered severe and disabling injuries including a loss of  
 16 vision in his right eye (initially a complete loss); traumatic vitreous hemorrhage and preretinal  
 17 hemorrhage; retinal, macular and foveal traction, distortion, and pigment changes; contusions and  
 18 swelling; an epiretinal membrane; choroidal rupture, and impairment of his field of vision and  
 19 depth perception.<sup>162</sup>

20 105. In 2006, a woman was attending a game at Busch Stadium when a line drive foul hit  
 21 her in the mouth. She suffered multiple injuries to her teeth, neck, face, ears, and has permanent  
 22 injuries. She estimates the ball that hit her was traveling over 100 miles per hour.  
 23  
 24

25 <sup>159</sup> <http://boston.cbslocal.com/2015/06/08/woman-who-sued-red-sox-after-serious-injury-speaks-out/>

26 <sup>160</sup> *Id.*

27 <sup>161</sup> *Id.*

28 <sup>162</sup> *Pakett, et al. v. The Phillies Veterans Stadium*, 2003 WL 25950448 (Pa. Com. Pl. June 17, 2013).

1           106. In August 2007, James Falzon took his 11-year-old son, his nine-year-old nephew,  
2 and his father to a baseball game between the Mets and the Braves at New York's Shea Stadium.  
3 Falzon was sitting in the second row along the third-base line of the stadium. During the seventh  
4 inning, Mets' second baseman Luis Castillo broke his maple bat when he hit a fly ball. Pieces of  
5 the broken bat flew into the stands, including the heaviest portion – the barrel of the bat. Falzon  
6 was watching the ball when the bat shattered and he did not see the barrel fly into the stands. It  
7 struck him in the face and caused extensive injuries, including a broken nose, eye socket, and  
8 pallet. Falzon had metal plates and pins surgically implanted into his skull.<sup>163</sup>

9           107. In 2008, Susan Rhodes was struck in the side of the face with a broken maple bat  
10 while sitting four rows behind the dugout at Dodger Stadium.<sup>164</sup> Surgeons used metal to piece her  
11 jaw back together.<sup>165</sup> She commented to a reporter at the time that she didn't see the bat coming  
12 and first thought she had been hit by a ball.<sup>166</sup>

13           108. In 2008, a man was injured by a foul ball at a Cubs vs. Rockies game while seated  
14 six rows above the dugout along the 3rd base line. He was hit on right side of face, and suffered  
15 two broken cheekbones, a broken nose, a detached retina and lost a number of teeth.

16           109. In July, 2008, a seven year-old suffered a fractured skull and swelling around the  
17 brain after being hit with a baseball at Wrigley Field.<sup>167</sup>

18           110. On August 13, 2008, a man was at the end of the third base line beyond the  
19 grandstand at a Boise Hawks game when he was struck by a foul ball in his face.<sup>168</sup> The injury  
20 resulted in the loss of his eye.<sup>169</sup>

21  
22 <sup>163</sup> "Take Me Out to the Ballgame...But Bring a Helmet. Reforming the 'Baseball Rule' in  
23 Light of Recent Fan Injuries at Baseball Stadiums," Matthew J. Ludden, Marquette University,  
24 2013.

25 <sup>164</sup> <http://m.mlb.com/news/article/2989456/>.

26 <sup>165</sup> <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>.

27 <sup>166</sup> <http://m.mlb.com/news/article/2989456/>.

28 <sup>167</sup> [http://articles.chicagotribune.com/2008-07-16/sports/0807150891\\_1\\_maple-bats-replay-logical-solution](http://articles.chicagotribune.com/2008-07-16/sports/0807150891_1_maple-bats-replay-logical-solution).

<sup>168</sup> <http://baseballlawreporter.blogspot.com/2013/08/man-loses-eye-when-struck-by-foul-ball.html>

<sup>169</sup> *Id.*

111. In 2009, a nine year old boy was seriously injured when he was hit by a line drive foul ball at a Mahoning Valley Scrappers minor league game.<sup>170</sup>

112. On May 23, 2009, a woman suffered serious injuries, including several fractured bones in her face and blindness in her left eye, when she was struck by a foul ball at a Gary SouthShore RailCats game.<sup>171</sup>

113. In September 2009 a four-year-old boy was nearly killed by a foul ball at a Mahoning Valley Scrappers minor league game. He was hit in the back of the head as he sat in his father's lap and immediately fell limp.<sup>172</sup> A horrified crowd watched his father run up the stands to meet paramedics.<sup>173</sup> The boy vomited, aspirated into his lungs and nearly died on the way to the hospital.<sup>174</sup> He was initially in a coma and it took him three months to speak again. The injury destroyed tissue in his cerebellum and brain stem.<sup>175</sup>

114. In June 2010 a five-year-old boy was injured at a White Sox game and left fighting or his life in the intensive care unit at Comer's Children's Hospital. He was seated just rows away from third base and was struck in the head by a foul ball off Gordon Beckham's bat. He suffered a fractured skull and bleeding in the brain.

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<sup>170</sup> <http://www.tribtoday.com/page/content.detail/id/637704/Boy-recovers-to-beat-odds.html?nav=5021>

<sup>171</sup> <http://www.in.gov/judiciary/opinions/pdf/02151302cjb.pdf>

<sup>172</sup> <http://www.pottsmc.com/article/MP/20091220/SPORTS/312209989>

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*



176

115. In July 2010, a man was struck by the sharp end piece of the barrel of a shattered bat while seated above the dugout at a Tampa Bay Rays vs. New York Yankees game, and carried out on a stretcher in a neck brace.<sup>177</sup> He came within a half-inch of losing sight in his eye and needed seven stitches.<sup>178</sup> The bat hit his wife as well.<sup>179</sup>

116. 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:

<sup>176</sup> <http://chicago.cbslocal.com/2011/01/06/2-investigators-ballpark-dangers/>

<sup>177</sup> <http://www.tbo.com/sports/rays/rays-fan-hit-by-bat-still-recovering-43379>

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*



180

117. 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.<sup>181</sup>

118. In 2011, a foul ball sent an 18-month old to a Seattle hospital.<sup>182</sup>

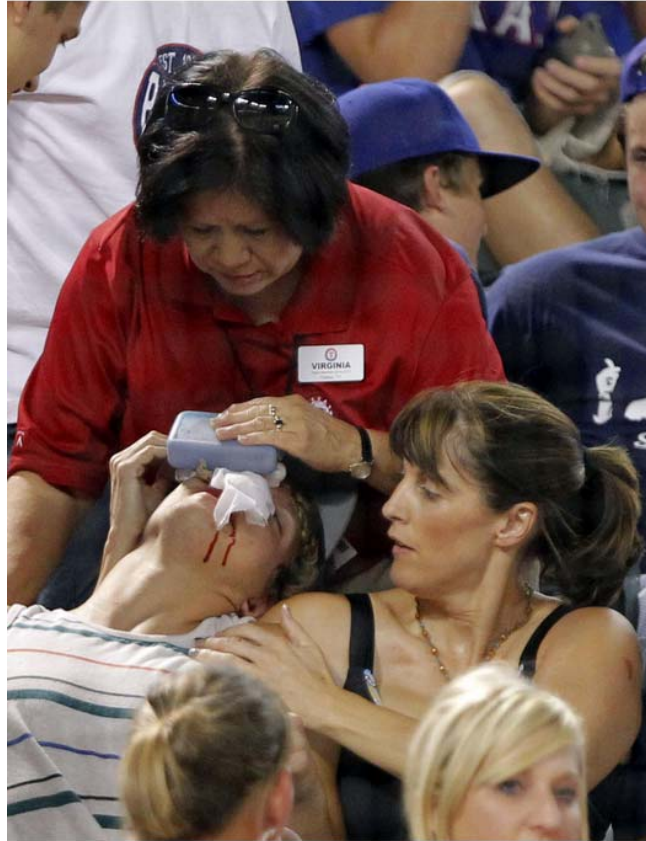
119. In 2011, a boy was hit in the mouth by a foul ball at a Gwinnett Braves minor league game, and lost his tooth.<sup>184</sup> It also nearly hit another spectator in the head.<sup>185</sup>

120. 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:

<sup>180</sup> 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/>.

<sup>181</sup> <http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year>.

<sup>182</sup> *Id.*



186

121. On March 12, 2011, a woman was seated near the third baseline at an Astros vs. Orioles game at Osceola Stadium when she was struck in the face by a foul ball. The ball fractured her orbit, cheekbone, crushed her sinus and caused other medical problems. She endured ten eye/facial surgeries, has bills exceeding \$500,000 and has several permanent scars and facial paralysis.

122. On August 25, 2011, a man was injured by a foul ball at Yankee Stadium. He required major reconstructive surgery to his eye and face and has permanent disabilities, pain, double vision and numbness as a result.

123. 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.<sup>187</sup>

<sup>186</sup> <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>.

<sup>187</sup> <http://mentalfloss.com/article/28902/if-foul-ball-hits-you-does-team-owe-you-anything>.



188

124. In 2012, a woman was hit in the head with a splintered bat at Yankees stadium. She suffered a gash on the head and was taken to the hospital.

125. In 2012, a man visited the new Marlins Park stadium to attend a Marlins vs. Cardinals game. He was seated near third base, in the third inning, when he was hit by a foul ball. He lifted his hand as a reflex, which resulted in a dislocated thumb, but he believes this action prevented the ball from hitting a woman next to him in the head. He received months of physical therapy for his injury.

126. In early 2012 a woman sustained a concussion when she was struck by a foul ball in the fourth inning of the Colorado Rockies' home opener.<sup>189</sup> A witness noted "the ball came too fast and nobody could respond."<sup>190</sup>

127. On July 20, 2012, a man was hit in the eye by a foul ball at a Cleveland Indians game.<sup>191</sup> The man said "My face exploded. I knew what had happened instantly."<sup>192</sup> The ball

<sup>188</sup> <https://www.change.org/p/citi-field-mlb-do-not-allow-children-to-sit-in-seats-that-are-unprotected-by-netting-at-baseball-games>

<sup>189</sup> <http://usatoday30.usatoday.com/sports/baseball/story/2012-04-09/women-hit-in-head-by-foul-ball-rockies-giants/54137334/1>

<sup>190</sup> *Id.*

<sup>191</sup> <http://fox8.com/2012/08/17/fan-starts-movement-after-getting-hit-by-foul-ball/>

<sup>192</sup> *Id.*

1 fractured his eye socket, nose and sinus, he underwent ten hours of surgery, and is now blind in one  
2 eye.<sup>193</sup>

3 128. On August 6, 2012, a child sitting in an unprotected seat near first base was hit in  
4 the face by a foul ball at a Texas/Boston game at Fenway Park.<sup>194</sup>

5 129. On September 3, 2013, a woman was hit in the eye by a bat at Chase Field while  
6 attending her first major league game. She was seated twelve rows back, in the lower deck,  
7 directly behind the Diamondbacks dugout. Her glasses were shattered, she was rushed to the ER,  
8 and was told she would need many stitches. The bat narrowly missed hitting two small children  
9 seated two rows in front of her, and hit her with such force that it bounced off her, and flew to the  
10 right, hitting and bruising a fan seated behind her. Nearly two years later, her orbital rim is still  
11 broken and has a traumatic brain injury. This injury has changed her life – limiting what activities  
12 she can do, what she can eat, and how long she can talk and smile.



23 130. On May 6, 2014, a man was seated near the third base line at a New Orleans  
24 Zephyrs game when he was struck by a foul ball. He was blinded in his right eye and suffered a  
25 head injury.  
26

27 <sup>193</sup> *Id.*

28 <sup>194</sup> <https://www.youtube.com/watch?v=2gjFRGedce0>.

1           131. On May 20, 2014, an eight-year-old boy seated in the first row behind home base  
 2 was hit in the head by a line-drive foul off the bat of Milwaukee Brewer Carlos Gomez during the  
 3 seventh inning. When the ball rocketed into the stands behind the first-base dugout, the batter  
 4 dropped to a knee in prayer.<sup>195</sup> It was the boy's first major league baseball game, and he was  
 5 sitting approximately four rows above the Braves' first-base-side dugout. Third baseman Chris  
 6 Johnson said the sound the ball made when it hit the boy's head sounded similar to the sound the  
 7 ball made when it came off the bat.<sup>196</sup> Three other fans were also injured at that game.<sup>197</sup>

8           132. On May 29, 2014, a man was seated in Section 134 of Citizens Bank Park at a  
 9 Phillies vs. Mets game when he was struck in the head by a foul ball while a vendor was selling  
 10 him a beverage. He suffered extensive skull fracturing requiring reconstructive surgery, a  
 11 concussion, and ocular damage. Here is a photo of his fractured skull:



24           <sup>195</sup> <http://www.atlantamagazine.com/great-reads/foul-territory/>.

25           <sup>196</sup> <http://m.mlb.com/news/article/76278682/boy-hit-with-foul-ball-in-atlanta-ok-gets-visit-from-players-in-hospital>.

26           <sup>197</sup> <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. *See also*  
 27 <http://resources.netting.com/blog/foul-balls-are-more-dangerous-than-you-think> (On May 20 of  
 28 2014, 4 fans at Turner Field were injured by foul balls during the course of one game, including an 8 year old boy.”

133. On June 29, 2014, two fans along the right-field line were hit in the face by foul balls during a Marlins-Athletics game.<sup>198</sup> 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.”<sup>199</sup>

134. In late August, 2014, a woman was hit in the face by a broken bat at a game between the Hooks and the Roughriders. She was seated in the first row behind the Hooks’ dugout. She lost two front teeth, suffered a facial laceration and required seven months of dental reconstruction.

135. In late August, 2014, a 10-year-old was injured by a foul ball at a Lakewood Blue Claws minor league game.<sup>200</sup> She suffered a concussion and two facial fractures.<sup>201</sup> Her mother stated: “She just kept saying mommy hold my hand please, hold my hand while they were putting her on a board, putting on a neck brace, all the things they need to do to keep her safe, but for a 10-year-old kid when you’re just watching the ballgame seconds before and then you’re being strapped to a platform and a neck brace, she was terrified.”

<sup>198</sup> [http://espn.go.com/mlb/story/\\_/id/11153032/2-fans-hit-face-foul-balls-miami-marlins-game](http://espn.go.com/mlb/story/_/id/11153032/2-fans-hit-face-foul-balls-miami-marlins-game).

<sup>199</sup> <https://www.youtube.com/watch?v=HF7Ma5RPKvs&list=PLPSbXLqq-krdZxYucz-5ZwTqDODOKOa3w>.

<sup>200</sup> <http://www.my9nj.com/story/26436988/10-year-old-hit-in-face-with-foul-ball-at-blue-claws-game>

<sup>201</sup> *Id.*



202

136. On September 7, 2014, a man was injured by a foul ball at a Cardinals vs. Brewers game at Miller Park.<sup>203</sup>



204

137. On September 17, 2014, a fan was hit in the face by a foul ball at an Atlanta Braves game.<sup>205</sup>

<sup>202</sup> *Id.*

<sup>203</sup> <http://www.bankrate.com/financing/insurance/take-me-out-to-the-ballgame-ouch/>

<sup>204</sup> *Id.*

<sup>205</sup> <http://m.mlb.com/video/v36345869/wshatl-fan-goes-for-ball-gets-hit-in-face/?query=braves>

1           138. On April 11, 2015, a man suffered a head injury when he was struck by a foul ball  
 2 in the seventh inning in a game between the Reds and the Cardinals.<sup>206</sup> The ball shattered his  
 3 glasses, he sustained a large cut above his right eye, and underwent a CAT scan.<sup>207</sup> He was hit  
 4 with such force that he “thought my eyeball might have been laying on the ground when it first  
 5 happened. I’m thanking God I can see today.”<sup>208</sup> Witnesses posted photos of blood surrounding  
 6 the area where he had been sitting.<sup>209</sup>



210

16           139. On April 19, 2015, a family had just sat down in their seats at Comerica Park, about  
 17 to eat their hot dogs, when a line drive foul ball came flying toward their two year old daughter.<sup>211</sup>  
 18 Her mom shielded her and suffered a shattered nose.<sup>212</sup> She was treated at the first aid center and  
 19

21 <sup>206</sup> <http://m.mlb.com/news/article/117630802/fan-hit-by-foul-ball-during-reds-cardinals-game>

22 <sup>207</sup> [http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-](http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/)  
 23 [a-day-later/25674533/](http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/)

24 <sup>208</sup> [http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-](http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/)  
 25 [a-day-later/25674533/](http://www.cincinnati.com/story/redsblog/2015/04/12/fan-hit-by-marlon-byrds-foul-ball-ok-a-day-later/25674533/)

26 <sup>209</sup> *Id.*

27 <sup>210</sup> [http://www.wcpo.com/news/local-news/hamilton-county/cincinnati/fan-hit-by-foul-ball-at-](http://www.wcpo.com/news/local-news/hamilton-county/cincinnati/fan-hit-by-foul-ball-at-great-american-ball-park-recovering-not-phased)  
 28 [great-american-ball-park-recovering-not-phased](http://www.wcpo.com/news/local-news/hamilton-county/cincinnati/fan-hit-by-foul-ball-at-great-american-ball-park-recovering-not-phased)

<sup>211</sup> [http://www.tctimes.com/news/local\\_news/foul-ball-injures-linden-native-at-comerica-](http://www.tctimes.com/news/local_news/foul-ball-injures-linden-native-at-comerica-park/_66c3e832-e8f5-11e4-833a-e7e897221af3.html)  
 27 [park/\\_66c3e832-e8f5-11e4-833a-e7e897221af3.html](http://www.tctimes.com/news/local_news/foul-ball-injures-linden-native-at-comerica-park/_66c3e832-e8f5-11e4-833a-e7e897221af3.html)

28 <sup>212</sup> *Id.*

1 then at an emergency room.<sup>213</sup> The woman commented that she was paying attention but “didn’t  
 2 even have a second to think about it” and that if the ball had hit her daughter, “I don’t know what  
 3 would’ve happened. Blood was everywhere.”<sup>214</sup>

4 140. On April 27, 2015, a fan seated between the Cubs’ dugout and the end of the netting  
 5 behind home plate was injured by a flying bat at Wrigley Field, carried bleeding from the stands on  
 6 a stretcher and taken by ambulance to a hospital.<sup>215</sup>

7 141. On May 3, 2015, a boy was hit in the head by a foul ball during the Giants vs.  
 8 Angels game at San Francisco’s AT&T ballpark.<sup>216</sup> Video captures the audible reaction of the  
 9 crowd and shows the upset boy being carried out of the stands for medical attention.<sup>217</sup>

10 Afterwards, the batter commented:

11 *I really don’t understand why you would put little kids there, not*  
 12 *behind the net, in the first place... As an adult, I wouldn’t sit there*  
 13 *because there’s not enough time to react to those things. At first, my*  
 14 *heart sank, because I didn’t know how bad he was hurt. Then, I was*  
 15 *[ticked] off because of the area they were sitting in in the first place.*  
 16 *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.*<sup>218</sup>

17 Referencing the fact that the boy received a care package from the team, Iannetta added: “He made  
 18 out on the swag end, but he definitely dodged a bullet.”<sup>219</sup>

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22 <sup>213</sup> *Id.*

23 <sup>214</sup> *Id.*

24 <sup>215</sup> <http://www.ksl.com/?nid=249&sid=34418293>

25 <sup>216</sup> <http://www.latimes.com/sports/sportsnow/la-sp-sn-angels-giants-young-fan-hit-by-foul-ball-20150503-story.html>.

26 <sup>217</sup> [https://www.youtube.com/watch?v=6\\_X\\_wa\\_gAnI](https://www.youtube.com/watch?v=6_X_wa_gAnI).

27 <sup>218</sup> <http://www.latimes.com/sports/sportsnow/la-sp-sn-angels-giants-young-fan-hit-by-foul-ball-20150503-story.html>.

28 <sup>219</sup> *Id.*



- 54 -

1           143. On May 20, 2015, a young boy was struck in the face by a foul ball at a Rochester  
2 Red Wings game, and suffered a broken nose.<sup>222</sup>

3           144. On June 5, 2015, Tonya Carpenter, who was seated in the unprotected area between  
4 home plate and the third-base dugout at Fenway Park, was struck by a flying shard of the bat of  
5 Oakland A's Brett Lawrie. Her eight-year-old son was seated with her and witnessed the injury.  
6 He was eventually picked up by a police officer who tried to shield his eyes<sup>223</sup> but was described as  
7 distraught by witnesses.<sup>224</sup> The Boston Globe reported that her screams could be heard by fans and  
8 by those listening on the radio to the game's live radio broadcast.<sup>225</sup> The game resumed less than a  
9 minute after her stretcher left the field.<sup>226</sup> When asked about the injury, one of the Red Sox players  
10 commented:

11                   *The only thing there, you've got limited netting here in Boston. When*  
12                   *you're behind home plate and you're along the third base side and*  
13                   *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.*<sup>227</sup>

23           <sup>222</sup> [http://www.democratandchronicle.com/story/news/2015/08/11/major-league-baseball-](http://www.democratandchronicle.com/story/news/2015/08/11/major-league-baseball-minor-rochester-red-wings-frontier-field-fan-safety/31466093/)  
24           [minor-rochester-red-wings-frontier-field-fan-safety/31466093/](http://www.democratandchronicle.com/story/news/2015/08/11/major-league-baseball-minor-rochester-red-wings-frontier-field-fan-safety/31466093/)

25           <sup>223</sup> [https://www.bostonglobe.com/sports/2015/06/05/fan-injured-broken-bat-taken-out-](https://www.bostonglobe.com/sports/2015/06/05/fan-injured-broken-bat-taken-out-stretcher-fenway/Ie9sz929jciWL4Ez7YqOoK/story.html)  
26           [stretcher-fenway/Ie9sz929jciWL4Ez7YqOoK/story.html.](https://www.bostonglobe.com/sports/2015/06/05/fan-injured-broken-bat-taken-out-stretcher-fenway/Ie9sz929jciWL4Ez7YqOoK/story.html)

27           <sup>224</sup> [http://www.usatoday.com/story/sports/mlb/2015/06/06/boston-police-fan-hurt-by-bat-at-](http://www.usatoday.com/story/sports/mlb/2015/06/06/boston-police-fan-hurt-by-bat-at-fenway-expected-to-survive/28593271/)  
28           [fenway-expected-to-survive/28593271/](http://www.usatoday.com/story/sports/mlb/2015/06/06/boston-police-fan-hurt-by-bat-at-fenway-expected-to-survive/28593271/)

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*



228

145. On June 7, 2015, a woman was struck in the forehead by a foul ball at a Dodgers game at Dodgers Stadium and sustained a large bruise.<sup>229</sup>

146. On June 7, 2015, Stephanie Smith was injured at this same game. She was hit in the ribs by a line drive (described as a “rocket” by the ESPN game announcer on the nationally televised game). She was attending the game with her family and was seated on the third base line, field level. The Dodgers sent Stephanie a letter claiming they were not liable for her injuries.

147. On June 11, 2015, a woman was struck in the face by a foul ball at a TinCaps minor league baseball game. She lost eight teeth, needed plastic surgery and bone grafts in her face, and is permanently disfigured.

<sup>228</sup> <http://www.si.com/mlb/2015/06/12/fenway-park-fan-tonya-carpenter-hit-bat-released-hospital>.

<sup>229</sup> <https://twitter.com/AluraSilver/status/610126427871014912>



230

148. On June 16, 2015, a woman was hit by a foul ball at Mets Stadium. She suffered a concussion and laceration to her face and was taken on a stretcher by ambulance to the hospital. She underwent plastic surgery, has been left with a very noticeable scar, has experienced pain for months after the surgery, and requires additional surgery.

149. On June 19, 2015, a boy seated along the first-base line at a Phillies vs. Cardinals game was injured by a foul ball.<sup>232</sup>

150. On July 1, 2015, a woman and her daughter received medical treatment after they were struck by a bat at a Rochester Red Wings game.<sup>233</sup>

151. On July 3, 2015, a bat flew into the unprotected section of the stands at Nationals Park.<sup>234</sup>

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<sup>230</sup> *Id.*

<sup>232</sup> [http://espn.go.com/mlb/story/\\_/id/13117654/young-fan-hit-foul-ball-philadelphia-phillies-st-louis-cardinals-game-taken-hospital](http://espn.go.com/mlb/story/_/id/13117654/young-fan-hit-foul-ball-philadelphia-phillies-st-louis-cardinals-game-taken-hospital).

<sup>233</sup> <http://www.democratandchronicle.com/story/news/2015/08/11/major-league-baseball-minor-rochester-red-wings-frontier-field-fan-safety/31466093/>

<sup>234</sup> [https://www.youtube.com/watch?v=IzGOeLr\\_KRY](https://www.youtube.com/watch?v=IzGOeLr_KRY)

1           152. On July 4, 2015, Stephanie Chapman was hit by a foul ball at a Lynchburg Hillcats  
2 game.<sup>235</sup> She reported that she did not have time to react.<sup>236</sup> She suffered a bad concussion and her  
3 doctor told her if the impact had been slightly harder she would be in a coma and in surgery.<sup>237</sup>

4           153. On July 6, 2015, a female fan who was sitting approximately seven rows above the  
5 Brewers' dugout on the first base side, was injured when she was hit in the face by a foul ball.<sup>238</sup>  
6 Doctors told her if her head was turned a millimeter to the left or the right, she would have been  
7 dead on the spot."<sup>239</sup> The ball was estimated to be traveling at 100-120 miles per hour.<sup>240</sup> It hit and  
8 broke a main nerve in her face and fractured her forehead, left eye and sinus cavity, the left side of  
9 her face is permanently numb, and her eye can barely open.<sup>241</sup> She has had two titanium plates put  
10 in her face.<sup>242</sup>



243

20           <sup>235</sup> <http://www.wset.com/story/29479309/woman-hospitalized-after-being-hit-by-foul-ball-at-lynchburg-hillcats-game>

21           <sup>236</sup> *Id.*

22           <sup>237</sup> *Id.*

23           <sup>238</sup> <http://m.mlb.com/news/article/135162588/foul-ball-hits-fan-braves-brewers-game-halted>.

24           <sup>239</sup> <http://www.athleticbusiness.com/more-news/miller-park-foul-ball-victim-a-millimeter-from-death-br.html>

25           <sup>240</sup> *Id.*

26           <sup>241</sup> *Id.*

27           <sup>242</sup> *Id.*

28           <sup>243</sup> <http://www.aol.com/article/2015/07/07/fan-hit-by-line-drive-and-injured-during-braves-brewers-game/21205833/>

154. 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."<sup>244</sup>



245

155. On July 12, 2015 a man came inches from being hit in the head by a 70-80 mph foul ball at a Giants game at AT&T park.<sup>246</sup> The man had turned to get food he had ordered and was saved by his son who placed his catcher's mitt directly in the ball's path, in front of his father's head.<sup>247</sup>

156. On July 16, 2015 a bat flew into the stands above the third base dugout at a Rochester Redwings game.

157. On July 17, 2015 two spectators were injured by separate foul balls at a Buffalo Bison's game at Coca Cola Field. One was hit in the eye but managed to save her 15-month-old

<sup>244</sup> <http://www.wmur.com/sports/woman-injured-by-foul-ball-at-fenway-park-released-from-hospital/34119536>.

<sup>245</sup> <http://www.wfsb.com/story/29541498/ct-woman-recovering-after-being-hit-by-foul-ball>

<sup>246</sup> <http://abcnews.go.com/US/kid-saves-dad-80-mph-foul-ball-giants/story?id=32499607>

<sup>247</sup> *Id.*

1 child sitting on her lap. She had brain hemorrhaging, a bruised eyeball, an orbital floor fracture and  
 2 a broken nose. When she was being treated at the hospital she was told another man had also been  
 3 taken there when he was hit by a different foul ball.

4 158. On July 21, 2015 a shattered bat flew into protective netting at Pepco Park. It  
 5 landed just feet away from unprotected spectators.<sup>248</sup>



15 159. On July 21, 2015 a woman suffered a concussion from a foul ball at a South Bend  
 16 Cubs game.<sup>249</sup>

17 160. On July 22, 2015, an NBC sports reporter indicated she was almost “nailed” with a  
 18 “hot, incoming foul ball” hit by Arizona Diamondbacks’ Paul Goldschmidt, and also appeared to  
 19 indicate a different foul ball nearly hit the Diamondbacks’ media relations staff.<sup>250</sup>

20 161. On July 22, 2015 a man was hit by a foul ball at an Angels game.<sup>251</sup>

21 162. On July 26, 2015, a woman reported that she “almost got my head taken off by a  
 22 foul ball” at a Diamondbacks game.<sup>252</sup>

23  
24 <sup>248</sup> [http://www.youtube.com/watch?v=cT\\_oylBouOk](http://www.youtube.com/watch?v=cT_oylBouOk)

25 <sup>249</sup> [http://www.southbendtribune.com/news/local/foul-ball-injury-at-south-bend-game-highlights-delicate-safety/article\\_3be62ae1-7e6c-5700-9f71-5b98b80a377b.html](http://www.southbendtribune.com/news/local/foul-ball-injury-at-south-bend-game-highlights-delicate-safety/article_3be62ae1-7e6c-5700-9f71-5b98b80a377b.html)

26 <sup>250</sup> <https://twitter.com/KaylaMortellaro/status/625136435687862272>

27 <sup>251</sup> [https://twitter.com/Sombrero\\_Girl/status/624067147069804544](https://twitter.com/Sombrero_Girl/status/624067147069804544)

28 <sup>252</sup> <https://twitter.com/carlibauer/status/625449876902424577>

1           163. On July 26, 2015, a woman reported she was “almost smoked in the head by a foul  
2 ball” at a Sox game.<sup>253</sup>

3           164. On July 26, 2015, an elderly woman was hit in the eye by a foul ball at an Indians  
4 game.<sup>254</sup>

5           165. On July 27, 2015, a woman reported being hit in the eye by a foul ball at an Indians  
6 game.<sup>255</sup>

7           166. On July 30, 2015, Sarah Shaffer suffered a black eye when she was hit in the eye by  
8 a foul ball at a Tampa Bay Rays game.<sup>256</sup>

9           167. On July 30, 2015, a fan was injured by a foul ball hit by Randal Gracchus.<sup>257</sup>

10          168. On July 31, 2015, a woman was struck in the clavicle by a line drive hit by Victor  
11 Martinez at a Detroit Tigers game.<sup>258</sup>

12          169. On July 31, 2015, a man injured and possibly broke his thumb when he was hit by a  
13 foul ball at a Mets game at Citi Field.<sup>259</sup>

14          170. On July 31, 2015, a ten year old girl was hospitalized when she was hit directly in  
15 the face by a foul ball at a Durham Bulls game.<sup>260</sup> She began screaming immediately and was  
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20           <sup>253</sup> <https://twitter.com/lindseylaperle/status/625462951705772032>

21           <sup>254</sup> There appear to be three independent reports of an injury to a woman at this game. One  
22 reported that the woman was walking up the concourse with a towel pressed to her head: “Hope  
she’s ok . [https://twitter.com/J\\_Jones48/status/625389495484084224](https://twitter.com/J_Jones48/status/625389495484084224); <https://twitter.com/Insley6/status/625386100962365440>; [https://twitter.com/H\\_Grove/status/625385293793771521](https://twitter.com/H_Grove/status/625385293793771521)

23           <sup>255</sup> <https://twitter.com/alayahwypasek/status/625812745707999232>

24           <sup>256</sup> <http://www.myfoxtampabay.com/story/29673571/a-tampa-bay-rays-fan-took-a-tough-shot-to-the-eye-off-a-foul-ball-hit-by-evan-longoria-at-wednesday-nights-game-against-detroit>

25           <sup>257</sup> <https://twitter.com/btsullivan91>

26           <sup>258</sup> <https://twitter.com/Sarah1216/status/627280976494858240>

27           <sup>259</sup> [https://twitter.com/allison\\_dex/status/627288058153553920](https://twitter.com/allison_dex/status/627288058153553920)

28           <sup>260</sup> <http://www.wralsportsfan.com/girl-injured-at-bulls-game-after-being-hit-in-face-by-foul-ball/14805466/>

placed on a stretcher and rushed to Duke University Hospital.<sup>261</sup> A witness reported that it was “tough to watch”<sup>262</sup> and that there was not enough time to stop the foul ball from hitting her.<sup>263</sup>



264

171. On July 31, 2015, a woman reported that she was almost hit in the face by a foul ball at a Sox game.<sup>265</sup>

172. On July 31, 2015, a woman was hit by a foul ball at a Memphis Red Birds game.<sup>266</sup> A witness indicated she “never saw it coming.”<sup>267</sup>

173. On August 1, 2015, a woman reported that her infant daughter was almost hit by a foul ball at a minor league game.<sup>268</sup>

174. On August 1, 2015 a man was struck by a foul ball hit by Buster Posey.<sup>269</sup>

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<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> <http://abc11.com/news/foul-ball-injures-young-girl-at-durham-bulls-game/896577/>

<sup>264</sup> *Id.*

<sup>265</sup> [https://twitter.com/tess\\_corkery/status/627324518193889280](https://twitter.com/tess_corkery/status/627324518193889280)

<sup>266</sup> <https://twitter.com/RonnieDye/status/627289646074966016>

<sup>267</sup> *Id.*

<sup>268</sup> <http://imgur.com/NbPv3lX>. The photo depicts an AAA MiLB International League Stamp.

1 175. On August 1, 2015, a woman was hit by a piece of a bat at a Brewers game at Miller  
2 Park.<sup>270</sup>

3 176. On August 1, 2015, a woman reported that she was almost struck by a foul ball hit  
4 by Peter Van Ginseng of the San Diego Padres.<sup>271</sup>

5 177. On August 1, 2015, a man was hit in the chest by a foul ball at a Brewers game.<sup>272</sup>

6 178. On August 1, 2015, a child seated in the second row at a St. Louis Cardinals game  
7 was “smoked” by a foul ball, according to a witness.<sup>273</sup>

8 179. On August 1, 2015, a woman reported she “almost got killed by a foul ball” at a  
9 Rangers game.<sup>274</sup>

10 180. On August 1, 2015, a man was hit in the nose by a foul ball at a Twins game.<sup>275</sup>

11 181. On August 2, 2015, a man was hit in the head by a foul ball at a Phillies game at  
12 Citizens Bank Park.<sup>276</sup> The television announcer said “I hope he’s okay” and described it as a  
13 “smoked” foul ball.<sup>277</sup> The pitch was traveling 97 miles an hour and he was sitting in the first  
14 row.<sup>278</sup>

15 182. On August 2, 2015, a broken bat flew into the stands at a Chicago White Sox game  
16 at U.S. Cellular Field.<sup>279</sup>

17  
18  
19 <sup>269</sup> [https://twitter.com/HestonTole\\_17/status/627700902070087680](https://twitter.com/HestonTole_17/status/627700902070087680)

20 <sup>270</sup> <http://sports.yahoo.com/news/rizzo-homers-4th-straight-game-cubs-beat-brewers-022244272--mlb.html>; <https://twitter.com/Haudricourt/status/627629070617059329>

21 <sup>271</sup> <https://twitter.com/JessicaJFelice/status/627667293405736961>

22 <sup>272</sup> <https://twitter.com/IAMJUSTINAARON/status/627652733907128320>

23 <sup>273</sup> <https://twitter.com/StullySTL/status/627660751939895296> (...that “kid in the second row is  
being pretty tough after getting smoked by that foul ball.”)

24 <sup>274</sup> [https://twitter.com/Dr\\_Marlos/status/627646650165530624](https://twitter.com/Dr_Marlos/status/627646650165530624)

25 <sup>275</sup> <https://twitter.com/Budde24/status/627650225205678080>

26 <sup>276</sup> <http://m.mlb.com/video/v324747883/atlphi-fan-shaken-up-after-getting-hit-by-foul-ball>  
<https://twitter.com/longrunstacy/status/627938975030841344>

27 <sup>277</sup> *Id.*

28 <sup>278</sup> *Id.*

<sup>279</sup> <http://m.mlb.com/atl/video/v324155783/nyycws-fan-gets-saladinos-broken-bat>

1           183. On August 2, 2015, a foul ball hit by Randal Grichuk struck a child at a Cardinals  
2 game.<sup>280</sup> A witness indicated the ball “almost killed some 9 year old” and posted a photo of  
3 paramedics tending to the victim.<sup>281</sup>

4           184. On August 3, 2015, a man seated above the dugout was struck by a bat at a Mets  
5 game at Citi Field.<sup>282</sup> The television commenters stated: “There’s just no way to get out of the  
6 way of that either; to react to that.”...“It’s certainly unnerving for everybody on the field...if you  
7 ask any player in Major League Baseball if they would like the nets to extend down the baselines  
8 you would get a 100 percent – would say ab-so-lutely. To protect from bats, to protect from balls.  
9 And I think that’s something that is going to be looked into.”...“Let’s hope so.”<sup>283</sup>

10           185. On August 3, 2015, a woman was hit by a foul ball batted by Kyle Seager at a  
11 Mariners game.<sup>284</sup>

12           186. On August 4, 2015, a man was hit by a foul ball at a Texas Rangers game.<sup>285</sup>

13           187. On August 4, 2015, a man reported nearly being “killed” by a foul ball at a  
14 Nationals game.<sup>286</sup>

15           188. On August 4, 2015, a woman was struck in the head by a foul ball hit by Chase  
16 Utley at a Phillies game.<sup>287</sup>

17           189. On August 4, 2015, a woman was hit in the stomach by a foul ball at a Marlins  
18 game.<sup>288</sup>

19           190. On August 5, 2015, a girl was hit in the leg with a foul ball at a Reds game.<sup>289</sup>

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21           <sup>280</sup> <https://twitter.com/Cardsnationjnky/status/627957710558904321>

22           <sup>281</sup> *Id.*

23           <sup>282</sup> <https://www.youtube.com/watch?v=eR4nj5371Mw&feature=youtu.be>

24           <sup>283</sup> *Id.*

25           <sup>284</sup> <https://twitter.com/AJ0913x/status/628388088788615168>

26           <sup>285</sup> <https://twitter.com/JTre17/status/628742256732680192>

27           <sup>286</sup> <https://twitter.com/YERPitsRudy/status/628735886000304128>; <https://twitter.com/YERPitsRudy/status/628735262378590208>

28           <sup>287</sup> <https://twitter.com/tonythetigre4/status/628731113989623808>; <https://twitter.com/PhoulBallz/status/628713258606837760>; <https://twitter.com/PhoulBallz/status/628714351734726656>

<sup>288</sup> [https://twitter.com/\\_lexayy/status/628750116057427968](https://twitter.com/_lexayy/status/628750116057427968)

191. On August 5, 2015, a girl was hit in the face by a foul ball at a Cardinals game.<sup>290</sup>

192. On August 5, 2015, a toddler/preschool aged boy was hit in the head by a foul ball at a Cubs vs. Pirates game.<sup>291</sup> The ball was pitched at 93 miles per hour and the injury occurred in the eighth inning.<sup>292</sup> The boy was seated above the Cubs dugout.<sup>293</sup>

193. On August 6, 2015, a woman was hit by a foul ball at a Braves game.<sup>294</sup>

194. On August 7, 2015, a woman was hit in the arm by a foul ball at a Cardinals game.<sup>295</sup>

195. On August 8, 2015, at a Tigers game at Comerica Park, a man wearing a baby smacked a foul ball away, preventing it from hitting two companions.<sup>296</sup>

196. On August 11, 2015, a woman was hit by a foul ball at a Diamondbacks game at Chase Field.<sup>297</sup>

197. On August 14, 2015, Mike O'Neill of the St. Louis Cardinals messaged: "To the fan that was hit by my foul ball today, I hope that you are okay. My thoughts and prayers are with you."<sup>298</sup>

198. On August 14, 2015, a woman was struck in the face by a line drive foul ball at a Frisco RoughRiders game.<sup>299</sup> She suffered traumatic injuries including multiple fractures and crushed sinuses, endured nine hours of reconstructive surgery, and is left with an incision from one

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<sup>289</sup> <https://twitter.com/NCraigMoseley/status/629127740076236800>

<sup>290</sup> <https://twitter.com/mweimar12/status/629112584499822592>

<sup>291</sup> <https://twitter.com/QuadCityPat/status/629105383852875776>; <https://www.youtube.com/watch?v=NPuRDFVX8eM&feature=youtu.be>; <https://www.youtube.com/watch?v=ayh42I3iXOE&feature=youtu.be>

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> <https://twitter.com/isabellab44/status/629467702382362624>

<sup>295</sup> [https://twitter.com/ash\\_lawlz/status/629810580648534016](https://twitter.com/ash_lawlz/status/629810580648534016)

<sup>296</sup> <https://twitter.com/Taraiu06/status/630168607167787008>

<sup>297</sup> [https://www.youtube.com/watch?v=ie8\\_V878itM](https://www.youtube.com/watch?v=ie8_V878itM)

<sup>298</sup> <https://twitter.com/MikeONeillUSC/status/632392964765954048>

<sup>299</sup> <http://www.gofundme.com/danamattay>; <http://www.nbcdfw.com/news/health/Woman-Injured-By-Foul-Ball-Warns-Others-323774481.html>

side of her head to the other side, from ear to ear.<sup>300</sup> The woman stated she had “no time to react” as a foul ball approached and hit her right between the eyes, and considers herself lucky to be alive.<sup>301</sup> Her ten year old daughter is also lucky, as minutes before her mother was hit, the daughter had been sitting in her mother’s seat.<sup>302</sup>



303

199. On August 16, 2015, a man reported that his wife was hit by a foul ball at a Twins game.<sup>304</sup> It hit her right leg, and he posted a photo of her large bruise.<sup>305</sup>

200. On August 16, 2015, two women were hit by a foul ball at an Astros game.<sup>306</sup>

201. On August 16, 2015, a woman was hit in the stomach by a foul ball at a Dodgers game.<sup>307</sup>

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<sup>300</sup> *Id.*

<sup>301</sup> <http://dfw.cbslocal.com/video/3289666-womans-face-injured-by-foul-ball/>

<sup>302</sup> *Id.*

<sup>303</sup> <http://www.nbcdfw.com/news/health/Woman-Injured-By-Foul-Ball-Warns-Others-323774481.html>

<sup>304</sup> <https://twitter.com/tvsportsshoooter/status/632939227148234752>

<sup>305</sup> *Id.*

<sup>306</sup> [https://twitter.com/Hannahlynn\\_LCLM/status/633014909228314624](https://twitter.com/Hannahlynn_LCLM/status/633014909228314624)

<sup>307</sup> <https://twitter.com/jqualynn/status/633053695601569792>

1           202. On August 17, 2015, a man was injured saving a three year old from a foul ball that  
2 father did not see approaching.<sup>308</sup>

3           203. On August 18, 2015, a boy was hit by a “sharp foul ball” at a Diamondbacks  
4 game.<sup>309</sup> Video shows the boy applying ice to his shoulder.<sup>310</sup>

5           204. On August 18, 2015, a witness reported seeing a man’s teeth knocked out by a foul  
6 ball at a Pirates game.<sup>311</sup>

7           205. On August 18, 2015, a reporter writes of a “scary moment as a broken bat flies into  
8 the stands” at an Augusta GreenJackets game.<sup>312</sup>

9           206. On August 19, 2015, a man was injured by a foul ball at the top of the eighth inning  
10 at a Corpus Christi Hooks vs. Arkansas Travelers game.<sup>313</sup> The man was struck, dropped down out  
11 of his seat, was immediately tended to by surrounding fans, and eventually had a large bandage  
12 applied around his head by responders.<sup>314</sup>

13           207. On August 21, 2015, a woman was struck on the right side of her head by a foul off  
14 of a 96 mph fastball at a Tigers vs. Rangers game.<sup>315</sup> The woman was initially speaking and then  
15 reportedly lost or nearly lost consciousness.<sup>316</sup> The batter said that the knot on her head was bigger  
16 than the baseball, and that “if that hit her flush on the face, she might have died.”<sup>317</sup>

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18  
19           <sup>308</sup> <https://twitter.com/GreatBlambino/status/633444732958457857>

20           <sup>309</sup> [http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
21 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
22 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
23 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
24 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
25 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
26 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
27 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)  
28 [by-foul/?partnerId=as\\_ari\\_20150819\\_51062556&adbid=633851724541726721](http://m.dbacks.mlb.com/ari/video/v383725983/aripit-young-fan-gets-gift-after-being-hit-by-foul/?partnerId=as_ari_20150819_51062556&adbid=633851724541726721&adbpl=tw&adbpr=31164229)

29           <sup>310</sup> *Id.*

30           <sup>311</sup> <https://twitter.com/sworthing1304/status/633791146943250432>

31           <sup>312</sup> <https://twitter.com/David11Lee/status/633788230069014528>

32           <sup>313</sup> <https://www.youtube.com/watch?v=G8WQ2KtcYJ0&feature=youtu.be>

33           <sup>314</sup> <https://youtu.be/G8WQ2KtcYJ0;>  
34 [https://www.youtube.com/watch?v=7431nRg\\_Cm4&feature=youtu.be](https://www.youtube.com/watch?v=7431nRg_Cm4&feature=youtu.be)

35           <sup>315</sup> [http://www.mlive.com/tigers/index.ssf/2015/08/detroit\\_tigers\\_anthony\\_gose\\_on.html](http://www.mlive.com/tigers/index.ssf/2015/08/detroit_tigers_anthony_gose_on.html)

36           <sup>316</sup> *Id. See also*  
37 [http://www.mlive.com/tigers/index.ssf/2015/08/column\\_tigers\\_players\\_100\\_perc.html#distra](http://www.mlive.com/tigers/index.ssf/2015/08/column_tigers_players_100_perc.html#distra)

38           <sup>317</sup> *Id.*



Batter Anthony Gose said “She had no chance. No chance.”<sup>318</sup> He recounted hearing the ball bounce off of the victim: “You could hear it. The ball had already hit her and I could see the ball kinda bounce off, but I heard it. And that’s how I knew. And then she was sitting there and I thought OK maybe she’s alright maybe it just kinda glanced her but you knew by the sound of it. They put her on the ground and I was like ‘Oh God.’”<sup>319</sup>

208. On August 21, 2015, at this same game, in the next inning, Adrian Beltre’s bat was split in half and flew into the stands, in the same section, and a man was injured and treated at the ballpark’s First Aid section.<sup>320</sup>

209. On August 22, 2015, a woman was hit in the eye by a foul ball at a Jackson Generals game. She sustained swelling and needed stitches.<sup>321</sup>

<sup>318</sup> <http://www.themorningsun.com/sports/20150822/tigers-are-right-mlb-players-union-needs-to-keep-pushing-until-mlb-does-something-about-fan-safety>

<sup>319</sup> *Id.*

<sup>320</sup> <http://www.sbnation.com/2015/8/22/9192269/mlb-fan-safety-netting-detroit-tigers-boston-red-sox>

<sup>321</sup> <https://www.facebook.com/jacksongenerals/posts/954326454605447>

210. On August 22, 2015, a broken bat flew into the stands at a Cubs game, landing in a camera well with two occupants.<sup>322</sup>

211. On August 23, 2015, a woman was taken to the hospital after she was struck in the head off Addison Russell's line-drive foul ball at a Cubs vs. Braves game at Wrigley Field.<sup>323</sup> She was sitting just past the camera well located on the ballpark's first base side.<sup>324</sup> The pitch was traveling 85 mph and "hammered" into the seats.<sup>325</sup> Witnesses stated she had no real chance to react, as it happened so quickly.<sup>326</sup>



As seen in this photo, the ball could easily have hit the child in front of her, and this child also witnessed the incident:

<sup>322</sup> <https://twitter.com/detnewsRodBeard/status/635185501188845568>;  
<https://twitter.com/PWSullivan/status/635185288680206336>

<sup>323</sup> <http://chicago.suntimes.com/news/7/71/901115/fan-foul-ball-wrigley-field>

<sup>324</sup> *Id.*

<sup>325</sup> <https://www.youtube.com/watch?v=8QzH4e9Yu2U&feature=youtu.be>

<sup>326</sup> <http://abc7chicago.com/sports/woman-hit-by-foul-ball-at-wrigley-field-hospitalized/953482/>

<sup>327</sup> <http://nypost.com/2015/08/23/another-mlb-fan-stretchered-off-in-alarming-spate-of-injuries/>



328

On the broadcast, one commentator stated: “I don’t know how much longer it’s going to take or how many more people have to vouch for the need for it before action is taken.”<sup>329</sup> The other commentator stated “I’m with you 100% on that. With all due respect to Major League Baseball, I understand the studies, what else do you need to study? Players are bigger, stronger, velocities are faster and faster off the bat, faster and faster out of the arms of the pitchers, the fans want to be closer and closer to the action and as a result, things like this are happening more and more.”<sup>330</sup> The other commentator replied: “Well Verlander made a good point. He said why must we wait until something dire happens, in other words, does somebody have to die before baseball to take action on this? I don’t know what the hold up could be.”<sup>331</sup>

<sup>328</sup> <http://www.espn1530.com/onair/lance-mcalister-7818/1st-ml-team-makes-move-to-13892484/>

<sup>329</sup> <https://www.youtube.com/watch?v=8QzH4e9Yu2U&feature=youtu.be>

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

212. On August 23, 2015, at this same game, a bat flew into the stands and hit a spectator.<sup>332</sup>

213. On August 25, 2015, a two year old girl was hit in the head by a foul ball at a Princeton P-Rays game. She suffered a fractured skull and was placed in an induced coma to undergo surgery.<sup>333</sup>

214. On August 26, 2015, a man was nearly injured by a foul ball at a Charlotte Knights game. If he had not managed to raise his hands in time, it would have hit him on the head. At this same game, another foul ball flew past him and hit a food kiosk on the concourse. At this same game, a woman on the first base side was struck by a foul ball. The ball appeared to hit her arm, and she and the rest of her seatmates left the game. At that same game, the pitcher in a pickoff attempt overthrew to first base and hit a seat in the stands; fortunately there was no one sitting in the seat that it struck.

215. On August 27, 2015, a broken bat flew into the stands at a Chicago White Sox v. Seattle Mariners game.<sup>334</sup>

216. On August 27, 2015, a broken bat flew into the stands at a Rangers game.<sup>335</sup>

217. On August 29, 2015, a man was bruised by a foul ball at a Dodgers game.<sup>336</sup>

218. On August 30, 2015, a witness described seeing a man hit in the head by a foul ball at a Padres game.<sup>337</sup> Another witness described “fans” hit and seeing a medical response.<sup>338</sup>

<sup>332</sup> <http://www.sbnation.com/2015/8/22/9192269/mlb-fan-safety-netting-detroit-tigers-boston-red-sox>; [http://www.pantagraph.com/sports/columnists/kindred/kindred-dangerous-foul-balls-should-have-net-effect/article\\_2331d7ad-b091-5156-96a7-32fdf7b337cf.html](http://www.pantagraph.com/sports/columnists/kindred/kindred-dangerous-foul-balls-should-have-net-effect/article_2331d7ad-b091-5156-96a7-32fdf7b337cf.html); *See e.g.* <http://www.ishn.com/articles/102115-baseball-fans-in-danger-from-foul-balls> (suggesting caused injury)(reports vary on whether fan required hospitalization).

<sup>333</sup> <http://www.thetimesnews.com/article/20150829/SPORTS/150828678>; [http://www.register-herald.com/sports/sports\\_columns/protective-netting-necessary-to-ensure-good-not-bad-memories-at/article\\_1ffd2063-adbc-52c1-9928-678305cd0206.html](http://www.register-herald.com/sports/sports_columns/protective-netting-necessary-to-ensure-good-not-bad-memories-at/article_1ffd2063-adbc-52c1-9928-678305cd0206.html)

<sup>334</sup> <https://twitter.com/ESPNChiSox/status/637073895695237120>

<sup>335</sup> <https://twitter.com/ShiDavidi/status/637006905819295744>

<sup>336</sup> <https://twitter.com/laytonlaw/status/637839413209251840>

<sup>337</sup> <https://twitter.com/RandyJMiller/status/638044667574132736>;  
<https://twitter.com/RandyJMiller/status/638045342467006464>

1           219. On August 30, 2015, a three year old was hit in the head by a foul ball at a  
2 Minnesota Twins game.<sup>339</sup>

3           220. On August 31, 2015, a woman was hit by a bat and attended to by medical  
4 personnel at a Yankees game.<sup>340</sup>

5           221. On September 1, 2015, a fan was reportedly hit by a flying bat at Fenway Park.<sup>341</sup>

6           222. On September 2, 2015, a man was injured and suffered a possible concussion when  
7 he flipped over backwards and landed on concrete trying to catch an incoming foul ball.<sup>342</sup>

8           223. On September 2, 2015, a man was struck in the neck by a foul ball at a Padres  
9 game.<sup>343</sup>

10          224. On September 5, 2015, a woman was struck in the face by a line drive foul ball at a  
11 Las Vegas 51s game. She suffered ten facial fractures.

12          225. On September 6, 2015, an elderly couple were struck by a foul ball at a Mets  
13 game.<sup>344</sup> The woman was hit above the right eye and the man was hit on the head.<sup>345</sup>

14          226. On September 9, 2015, a man was injured on the shoulder by a foul ball at a Red  
15 Sox game.<sup>346</sup>

16          227. On September 10, 2015, a girl suffered a head injury from a foul ball at a San  
17 Antonio Lemurs game.<sup>347</sup> She was hospitalized in serious condition.<sup>348</sup>

18  
19 <sup>338</sup> <https://twitter.com/Phrankieboy/status/6384301389050470>; *see also*  
20 [http://www.gettyimages.com/detail/news-photo/justin-upton-of-the-san-diego-padres-breaks-his-](http://www.gettyimages.com/detail/news-photo/justin-upton-of-the-san-diego-padres-breaks-his-bat-in-the-news-photo/485940866)  
21 [bat-in-the-news-photo/485940866](http://www.gettyimages.com/detail/news-photo/justin-upton-of-the-san-diego-padres-breaks-his-bat-in-the-news-photo/485940866)

22 <sup>339</sup> <https://twitter.com/itsMeganOlson/status/638062600027176964>

23 <sup>340</sup> [http://www.sunherald.com/2015/08/31/6392095\\_female-fan-hit-by-mccanns-bat.html?rh=1](http://www.sunherald.com/2015/08/31/6392095_female-fan-hit-by-mccanns-bat.html?rh=1)

24 <sup>341</sup> <https://twitter.com/TimBritton/status/638864613577216001>

25 <sup>342</sup> [https://www.bostonglobe.com/sports/2015/09/02/fan-injured-fenway-park-after-](https://www.bostonglobe.com/sports/2015/09/02/fan-injured-fenway-park-after-falling/ma0evbLT57JbWGFntjdffM/story.html)  
26 [falling/ma0evbLT57JbWGFntjdffM/story.html](https://www.bostonglobe.com/sports/2015/09/02/fan-injured-fenway-park-after-falling/ma0evbLT57JbWGFntjdffM/story.html)

27 <sup>343</sup> <https://twitter.com/RafaAvitabile/status/639667808117260288>

28 <sup>344</sup> <https://twitter.com/JoeFrisaro/status/640598228434558977>;  
<http://www.chicagotribune.com/sports/baseball/ct-fans-foul-ball-marlins-20150906-story.html>

<sup>345</sup> *Id.*

<sup>346</sup> [http://www.chicagotribune.com/sports/baseball/ct-baseball-fenway-fan-injured-spt-](http://www.chicagotribune.com/sports/baseball/ct-baseball-fenway-fan-injured-spt-20150909-story.html)  
20150909-story.html

<sup>347</sup> <http://www.kgns.tv/home/headlines/lemurs-327501881.html>

- 1           228. On September 15, 2015, a man was hit on the head by a foul ball at Progressive  
2 Field.<sup>349</sup>
- 3           229. On September 17, 2015, a man was hit in the face by a foul ball at a Braves game.<sup>350</sup>
- 4           230. On September 19, 2015, a reporter near the dugout was hit by a foul ball at a Pirates  
5 game.<sup>351</sup>
- 6           231. On September 19, 2015, a girl was hit in the head by a foul ball at a Tigers game.<sup>352</sup>
- 7           232. On September 21, 2015, a fan was reportedly hit by a foul ball at a Blue Jays  
8 game.<sup>353</sup>
- 9           233. On September 22, 2015, an elderly woman was struck in the head by a foul ball at a  
10 Marlins game.<sup>354</sup>
- 11          234. On September 25, 2015, two fans were injured by a foul ball at an Angels game.<sup>355</sup>
- 12          235. On September 25, 2015, a fan was injured on the head by a foul ball at a Tigers  
13 game.<sup>356</sup>
- 14          236. On September 26, 2015, a fan was struck at a foul ball at a Tigers game. Several  
15 spectators reported that the fan's section of the crowd was doing the wave at the time of the  
16 injury.<sup>357</sup>

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18          <sup>348</sup> *Id.*

19          <sup>349</sup> <http://www.tigerdroppings.com/mlb/fan-takes-foul-ball-off-the-head/58842505/>

20          <sup>350</sup> <http://m.mlb.com/video/topic/6479266/v36345869/wshatl-fan-goes-for-ball-gets-hit-in-face>

21          <sup>351</sup> <https://twitter.com/stephenjnesbitt/status/645441769002242048>

22          <sup>352</sup> <https://twitter.com/JohnDBuckler/status/645430883927891968>

23          <sup>353</sup> [https://twitter.com/bensnider\\_10/status/646143141595246592;](https://twitter.com/bensnider_10/status/646143141595246592;)  
24 <https://twitter.com/BaseballHer/status/646141931483959296>

25          <sup>354</sup> <http://www.arcamax.com/sports/baseball/s-1726963>

26          <sup>355</sup> <https://twitter.com/AngelsFanatica/status/647659832904822784>

27          <sup>356</sup> <https://twitter.com/laurenniz/status/647587261207453696;> [https://twitter.com/hs\\_leall/status/647586427836960769;](https://twitter.com/hs_leall/status/647586427836960769;) <https://twitter.com/CSlonksnis/status/647587425326239744;>  
28 <https://twitter.com/MamaRach73/status/647587780978180096>

<sup>357</sup> <https://twitter.com/MattSchochVIDN/status/647952556732366849;> [https://twitter.com/mlb\\_tina\\_14/status/647951356595077120;](https://twitter.com/mlb_tina_14/status/647951356595077120;) <https://twitter.com/CSlonksnis/status/647951138721935360;>  
<https://twitter.com/emilyzielinskii/status/647951350681178112;> <https://twitter.com/LaVelleNeal/status/647951187933663232>

237. On September 26, 2015, a woman was hit in the knee by a foul ball at an Angels game.<sup>358</sup>

238. On September 26, 2015, a woman was hit by a foul ball at a Royals game.<sup>359</sup>

239. On September 27, 2015, a foul ball struck a woman's hand as she was feeding her 17 month old toddler at a Marlins game.<sup>360</sup> The woman was tended to by paramedics.<sup>361</sup>

240. On September 27, 2015, a young boy was almost hit by a foul ball at a Marlins game, and the startled boy was provided a bat by the team.<sup>362</sup>

241. On September 27, 2015, a fan was struck by a foul ball at a Cubs game.<sup>363</sup>

242. On September 28, 2015, a man was reportedly hit by a foul ball at a Giants game.<sup>364</sup>

243. On September 28, 2015, a woman was hit in the face by a foul ball at a Yankees game.<sup>365</sup>

244. On October 12, 2015, a child was hit by a foul ball at the playoff game between the Royals and the Astros and was quickly rushed out of the stands.<sup>366</sup>

#### **E. Lack of Support for Injured Fans**

245. These injured fans often incur astronomical medical bills, and many are unaware of the reality that MLB does not offer financial support for injured fans. These individuals often have to turn to family, friends and even strangers for help. The family of Tonya Carpenter set up an online campaign for the “beautiful, positive, upbeat, hardworking single mom” to help relieve

<sup>358</sup> [https://twitter.com/blueeyes8\\_jj/status/647948643182350336](https://twitter.com/blueeyes8_jj/status/647948643182350336)

<sup>359</sup> <https://twitter.com/MorganShobe/status/647941157465387008>

<sup>360</sup> [https://trove.com/a/Foul-ball-at-Marlins-game-hits-mom%E2%80%99s-hand-misses-toddler.s9rSE?utm\\_campaign=hosted&utm\\_medium=twitter&ts=1443499138&utm\\_source=sns&nocrawl=1](https://trove.com/a/Foul-ball-at-Marlins-game-hits-mom%E2%80%99s-hand-misses-toddler.s9rSE?utm_campaign=hosted&utm_medium=twitter&ts=1443499138&utm_source=sns&nocrawl=1)

<sup>361</sup> *Id.*

<sup>362</sup> [https://twitter.com/\\_1nez/status/648246180288196608](https://twitter.com/_1nez/status/648246180288196608);  
<https://twitter.com/JAyP187/status/648242531696709632>

<sup>363</sup> <https://twitter.com/bradrobinson8/status/648288881306128384>;  
[https://twitter.com/WSDreaming\\_Cubs/status/648288264583909376](https://twitter.com/WSDreaming_Cubs/status/648288264583909376)

<sup>364</sup> <https://twitter.com/nigelspeed/status/648689770617397250>

<sup>365</sup> <https://twitter.com/AnnaGutierrez80/status/648667427543339008>

<sup>366</sup> <http://www.pitch.com/FastPitch/archives/2015/10/12/youngster-struck-by-foul-ball-in-todays-royals-astros-said-to-be-ok>

1 some of her financial burden from an extensive hospital stay.<sup>367</sup> The family and friends of a  
 2 woman permanently injured by a foul ball at a Brewers vs. Braves game set up an online fundraiser  
 3 to attempt to raise money to cover some portion of her medical bills totaling over \$215,000  
 4 dollars.<sup>368</sup> Another spectator who was blinded by a foul ball and lost his thirty-year career as a  
 5 result sought funding to help pay for the prosthetic eye he may need.<sup>369</sup> Another campaign sought  
 6 help for a nine-year-old girl who suffered skull fractures after being hit by a foul ball and had ten  
 7 metal plates placed in her head.<sup>370</sup> Fans also go online to plead with MLB and the Commissioner.  
 8 A victim's Facebook page is entitled "Make MLB Safe for Fans."<sup>371</sup> A mother whose 12-year-old  
 9 suffered a skull fracture and a shattered nose started a Change.org petition to prevent "anyone else  
 10 from getting hurt."<sup>372</sup> Stephanie Wapenski, one of the Fenway Park victims, posted: "@MLB  
 11 Time to do something to protect your fans. BEFORE we reach tragedy status."  
 12 #dontwaittoolate."<sup>373</sup>

#### 13 **F. Lack of public awareness of serious injuries**

14 246. Despite the relative frequency of serious injuries, spectators, baseball fans and the  
 15 general public are often not aware of the risk of injury, frequency of injuries and/or severity of  
 16 injuries unless they attend a game and are sitting near someone who is injured and/or know  
 17 someone who has been injured. On television broadcasts, cameras routinely cut away after the ball  
 18 leaves the field of play. Several recent injuries have not been covered by traditional media and are  
 19 only made known through bystander accounts. For example, no less than three separate bystanders  
 20 self-reported that a woman was hurt by a foul ball at a July 26, 2015 game, possibly involving the  
 21  
 22

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23 <sup>367</sup> <http://www.gofundme.com/TCRoadtoRecovery>

24 <sup>368</sup> <http://www.youcaring.com/laura-turek-399678>

25 <sup>369</sup> <https://www.giveforward.com/fundraiser/khc1>

26 <sup>370</sup> <http://www.cbs46.com/story/19263227/girl-hit-by-baseball-survives-skull-fractures>

27 <sup>371</sup> <https://www.giveforward.com/fundraiser/khc1> (Related Links)

28 <sup>372</sup> <https://www.change.org/p/citi-field-mlb-do-not-allow-children-to-sit-in-seats-that-are-unprotected-by-netting-at-baseball-games>

<sup>373</sup> <https://twitter.com/Stwap4646/status/635981231369416705>

Cleveland Indians.<sup>374</sup> It does not appear that the incident was reported elsewhere. HIPAA laws also limit hospitals' ability to release information regarding injured patients. It also appears that MLB.com did not find the unprecedented occasion of Justin Verlander and his teammates making public pleas for action to protect fans worthy of coverage on its website, although MLB.com has covered other noteworthy Verlander news, ranging from pitching a no-hitter, to signing the wall at the Green Monster, cooking a pizza, and being buzzed by a bee on the pitcher's mound.<sup>375</sup>

247. A 2006 study supports this view, finding that few articles regarding spectator safety are present in the media, and the majority that are, are based in the legal community.<sup>376</sup> It found that while over 15 million Americans attend sporting events yearly, and spectator deaths have occurred in baseball and other sports, *little information quantifies the risk to spectators or discusses ways to reduce the risk, and many spectators may falsely assume that they are safe at such events:*

*No published studies exist to determine if spectators are aware of, understand, or agree with the assumption of risk concept which is printed on the back of their tickets. A spectator attending 1 or more prior games may or may not be aware of the different types of possible injuries. Since there is minimal research that looks at the frequency, location, or types of possible injuries, it appears difficult to believe spectators could be adequately informed of the risk....Thus, from a public health viewpoint, it is difficult to see how the majority of spectators at professional baseball events can have a clear grasp of injury risks or legal ramifications assumed at such events. It appears even less tenable that a minor could appreciate these risks given the competing elements of speed and excitement, elements known to increase youth experimentation with risky behaviors. To say that fans "welcome a risk" is to deny the competing reality that fans "appreciate being safe". While all fans desire a "souvenir" baseball, it requires a leap of faith unsubstantiated by data to suggest that they would sacrifice their own personal safety or that of their family for such an opportunity.<sup>377</sup>*

<sup>374</sup> [https://twitter.com/J\\_Jones48/status/625389495484084224](https://twitter.com/J_Jones48/status/625389495484084224) (man reports that an elderly woman was hit in the eye by a foul ball); <https://twitter.com/Insley6/status/625386100962365440> (man reports a woman was drilled by a foul ball in the face); [https://twitter.com/H\\_Grove/status/625385293793771521](https://twitter.com/H_Grove/status/625385293793771521) ("Fan struck by the foul ball is walking up to the concourse with a towel pressed to her head. Hope she's ok.")

<sup>375</sup> [http://mlb.mlb.com/search/?c\\_id=mlb&query=Verlander](http://mlb.mlb.com/search/?c_id=mlb&query=Verlander) (last accessed 8/25/2015).

<sup>376</sup> J Winslow, A Goldstein. *Spectator Risks at Sporting Events*. The Internet Journal of Law, Healthcare and Ethics. 2006 Volume 4 Number 2.

<sup>377</sup> *Id.*

1           248. The players agree. "A lot of fans don't understand how dangerous it is," Kansas  
 2 City Royals pitcher Jeremy Guthrie told MLB.com last year. "I understand there's a great fan  
 3 experience sitting behind a dugout, but there's a ton of inherent danger and I think a lot of people  
 4 are not really quite aware of just how dangerous it is for everybody, kids and adults alike."

5           249. Defendants, however, are well aware of the risk of injury and severity of injury, and  
 6 have superior knowledge of these risk. Each stadium tracks injuries, they and their insurance  
 7 companies receive claims, and they are the subject of personal injury lawsuits. For example, a  
 8 2000 lawsuit filed against the Boston Red Sox included statistics regarding the number of injuries  
 9 sustained by foul balls over a five year period<sup>378</sup> Defendants are also well aware of the nature and  
 10 severity of injuries caused by foul balls and bats based on their occurrences to their own  
 11 ballplayers. MLB maintains an electronic medical records system, and when a player receives a  
 12 concussion the Office of the Commissioner receives a concussion-specific diagnostic form that  
 13 includes the date and mechanism of the injury, and MLB and the Office of the Commissioner also  
 14 receive an annual epidemiologist's report summarizing concussion activity for the preceding  
 15 season.<sup>379</sup>

16           250. Major League Baseball has also acknowledged, in an MLB publication, that a  
 17 shortened distance increases the danger from baseballs, due to a lack of reaction time, and that  
 18 protective netting is highly recommended for protection: "During batting practice, the pitcher is  
 19 normally throwing from a shortened distance (10-15 feet shorter than regulation, in front of the  
 20 pitcher's mound.) This places the batting practice pitcher in great danger as his reaction time to  
 21 protect himself is greatly reduced. Therefore, a pitcher's protection screen is highly  
 22 recommended."<sup>380</sup>

24           <sup>378</sup> <https://www.bostonglobe.com/metro/2015/06/06/family-woman-injured-fenway-requests-privacy/U4Npq2UK3lHo86vurC4dBJ/story.html>

26           <sup>379</sup> Attachment 36 (Letter from Daniel R. Halem, Office of the Commissioner, to David Prouty, Esquire, Major League Baseball Players Association) to 2012-2016 Basic Agreement between Major League Baseball and Major League Baseball Players Association.

28           <sup>380</sup> [http://web.mlbcommunity.org/downloads/baseball\\_tomorrow\\_fund/y2012/field\\_maintenance\\_guide\\_english.pdf](http://web.mlbcommunity.org/downloads/baseball_tomorrow_fund/y2012/field_maintenance_guide_english.pdf) (last accessed August 24, 2015).

**G. Players Demand Adequate Netting for Spectators**

251. These injuries could all have been prevented if Defendants had listened to its baseball 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 Plaintiffs, baseball spectators or the public by Defendants. Major League Baseball rejected these proposals, citing concerns that additional safety precautions would detract from the experience in premium seats.<sup>381</sup>

252. Despite this, players have continued to express safety concerns. 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 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."<sup>383</sup> On August 18, 2015, Toronto Blue Jays' David Price pitcher stated: "I think we need to worry about the fans a little bit more. You see too many foul balls and bats flying into the stands at a very high velocity, and people are just not paying attention in the first or second row. It's going to take something really bad to happen until we make that change, and I just hope I'm not a part of it."<sup>384</sup> He recommended the simple and inexpensive solution of additional netting: "It's more netting over the dugout and down the line. They need to do something about it; it's an easy fix if you ask the players, and they always have wires in these stadiums holding up the net. It's not going to cost a whole lot of money. I mean it's something that can be done, something that should be, and I really do believe it's something that will be done."<sup>385</sup>

<sup>381</sup> <http://www.foxsports.com/mlb/story/mlb-protective-netting-extend-fan-safety-broken-bats-foul-balls-philadelphia-phillies-082615>

<sup>383</sup> <http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece>.

<sup>384</sup> <http://jimrome.com/2015/08/18/david-price-talks-fan-safety-at-ballparks-on-the-jim-rome-show/>

<sup>385</sup> *Id.*

## H. Defendants' Authority and Refusal to Act

### 1. Defendants' background and authority.

253. Major League Baseball oversees the game of professional baseball, which currently includes thirty franchises in 28 cities in the U.S. and Canada. Major League Baseball also includes the minor leagues - 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.<sup>386</sup> Major League Baseball is led by the Commissioner of Baseball, Rob Manfred, Commissioner of Baseball<sup>387</sup> who was chosen by a vote of team owners.<sup>388</sup> Commissioner Manfred has referred to the "enormity of the responsibility" of his role, as one of only a handful of MLB commissioners in history.<sup>389</sup> The Commissioner's role includes overseeing MLB's baseball operations<sup>390</sup> and Manfred's biography indicates he oversaw operations even before becoming Commissioner.<sup>391</sup> The Commissioner's role has been described as "the game's ultimate umpire in residence."<sup>392</sup> Major League Baseball also in various other ways acts for the benefit of the leagues and the teams; for example certain teams, including the Oakland A's, receive significant financial support from Major League Baseball.

### 2. Defendants' authority and responsibility regarding spectator health and safety.

254. Major League Baseball has promulgated a number of spectator health and 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-

<sup>386</sup> <http://www.vault.com/company-profiles/sports/major-league-baseball/company-overview.aspx>.

<sup>387</sup> [https://en.wikipedia.org/wiki/Major\\_League\\_Baseball#cite\\_note-2000nl-5](https://en.wikipedia.org/wiki/Major_League_Baseball#cite_note-2000nl-5).

<sup>388</sup> [https://en.wikipedia.org/wiki/Commissioner\\_of\\_Baseball](https://en.wikipedia.org/wiki/Commissioner_of_Baseball).

<sup>389</sup> <http://espn.go.com/video/clip?id=12286112>.

<sup>390</sup> [http://mlb.mlb.com/mlb/official\\_info/about\\_mlb/executives.jsp?bio=manfred\\_rob](http://mlb.mlb.com/mlb/official_info/about_mlb/executives.jsp?bio=manfred_rob).

<sup>391</sup> *Id.*

<sup>392</sup> <http://www.forbes.com/sites/rogergroves/2015/04/28/postponing-the-baseball-game-was-one-good-call-in-baltimore-but-whats-next/>

1 through magnetometers.<sup>393</sup> – “this procedure, which results from “MLB’s continuing work with the  
 2 Department of Homeland Security to standardize security practices across the game, will be in  
 3 addition to bag checks that are now uniform throughout MLB.”<sup>394</sup> It appears MLB also  
 4 implemented a rule in 2012 that MLB ballparks employ temporary screens during batting practice  
 5 in order to protect spectators.<sup>395</sup> MLB also implemented a rule prohibiting players from tossing  
 6 baseballs far into the stands after a man fell over the railing at a Texas Rangers game and died.<sup>396</sup>  
 7 The MLB organization also includes an executive in charge of ballpark security and management.  
 8 The MLB also has the power to oversee, assess and criticize MLB ballparks with lax safety  
 9 measures.<sup>397</sup> In April 2015, when protests supporting a man who had died in police custody were  
 10 taking place in Baltimore, Commissioner Manfred personally consulted local offices and made the  
 11 decision to cancel a baseball game for safety reasons.<sup>398</sup> This year MLB also issued a statement  
 12 saying it has “long supported a ban of smokeless tobacco at the Major League level” in response to  
 13 this spectator health and safety issue<sup>399</sup> and the Major League Players’ agreement with MLB  
 14 currently states that at any time when fans are permitted in the ballpark, players may not possess  
 15  
 16

17 <sup>393</sup> <http://www.nydailynews.com/sports/baseball/mlb-metal-detection-stadiums-2015-article-1.1587239>.

18 <sup>394</sup> Baseball spokesman Michael Teevan. <http://thebrewersbar.com/2014-articles/absurd-mlb-mandates-metal-detectors-in-all-stadiums-to-solve-non-existent-problem.html>  
 19

20 <sup>395</sup> 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.”).  
 21

22 <sup>396</sup> <http://www.usatoday.com/story/sports/mlb/2015/06/06/broken-baseball-bat-fan-feway-park-netting-maple-bats/28611829/>

23 <sup>397</sup> <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.  
 24 <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.  
 25  
 26

27 <sup>398</sup> <http://www.forbes.com/sites/rogergroves/2015/04/28/postponing-the-baseball-game-was-one-good-call-in-baltimore-but-whats-next/>

28 <sup>399</sup> <http://time.com/3831023/san-francisco-giants-chewing-tobacco-ban/>

1 tobacco products.<sup>400</sup> MLB also works with a Stadium Operations Advisory Board to address issues  
 2 like employee background screening, bag checks and crowd control.<sup>401</sup> MLB also partnered with  
 3 organization IAAM and other professional leagues to produce a video targeted at game day  
 4 employees and hosts a three day seminar for ballpark managers, also bringing in outside safety and  
 5 security professionals.<sup>402</sup> MLB has also taken a leadership role in a TEAM coalition to promote  
 6 effective alcohol management at ballparks.<sup>403</sup>

7 255. In addition to this, Defendants also made numerous public statements  
 8 acknowledging their duty to protect spectators and holding themselves out as having a duty to  
 9 spectators. MLB has stated that “Nothing is more important to us than the safety of our fans.”<sup>404</sup>  
 10 Earlier this year, Manfred and the Office of the Commissioner commented:

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

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

15 *...[T]here is no epidemic of foul ball damage yet that would warrant*  
 16 *some sort of edict or action by the commissioner’s office.*<sup>405</sup>

17  
 18 <sup>400</sup> “Players, managers, and coaches will be prohibited from using smokeless tobacco during  
 19 televised interviews and Club appearances. In addition, at any time when fans are permitted in the  
 20 ballpark, players, managers and coaches must conceal tobacco products (including packages and  
 21 tins), and may not carry tobacco products in their uniforms or on their bodies. Individuals who  
 violate the policy will be subject to discipline. The parties also agreed upon an extensive program  
 of education and public outreach regarding the dangers of smokeless tobacco.” Summary of Major  
 League Baseball Players Association – Major League Baseball Labor Agreement, VIII. Health and  
 Safety. [http://mlb.mlb.com/mlb/downloads/2011\\_CBA.pdf](http://mlb.mlb.com/mlb/downloads/2011_CBA.pdf)

22 <sup>401</sup> <http://www.teamcoalition.org/news/articles/mlbplaysitsafe.pdf>

23 <sup>402</sup> <http://www.teamcoalition.org/news/articles/mlbplaysitsafe.pdf>

24 <sup>403</sup> *Id.*

25 <sup>404</sup> [http://sports.yahoo.com/blogs/mlb-big-league-stew/mlb-now-requiring-metal-detector-](http://sports.yahoo.com/blogs/mlb-big-league-stew/mlb-now-requiring-metal-detector-screenings-at-every-ballpark-194727747.html)  
[screenings-at-every-ballpark-194727747.html](http://sports.yahoo.com/blogs/mlb-big-league-stew/mlb-now-requiring-metal-detector-screenings-at-every-ballpark-194727747.html)

26 <sup>405</sup> Statement of John McHale, MLB executive vice president, 2014. The former Commissioner  
 27 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-](http://www.foxsports.com/mlb/story/boston-red-sox-fenway-park-mlb-broken-bat-injured-fan-safety-netting-060715)  
[bat-injured-fan-safety-netting-060715](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  
 28 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.”).

256. Players have also acknowledged Defendants' 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."<sup>406</sup> Second baseman Ian Kinsler of the Detroit Tigers commented "It's something we talked about with the players association and MLB. Hopefully that moves it along a little bit faster and we can get some fan protection."<sup>407</sup>

257. Major and minor league teams have indicated recently that they are looking to MLB and its Commissioner for guidance. The South Bend Cubs said the team would monitor developments in Major League Baseball for possible guidance on safety.<sup>408</sup> The Vice President of Community Affairs for the Kansas City Royals also recently stated "I think the general sense is that we're going to wait for a while and just see if there's a little bit more direction from MLB first."<sup>409</sup> I would say it's fair to say that we've discussed possibilities, and we would likely wait for further guidance from MLB."<sup>410</sup> The Phillies have said they intend to install netting but are waiting on MLB before proceeding with final plans.<sup>411</sup> These statements acknowledge a duty on the part of the teams and the Commissioner.

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

*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<sup>412</sup> ... The MLBPA*

<sup>406</sup> [www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece](http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece).

<sup>407</sup> "Players, officials push for better baseball fan protection," Rod Beard, The Detroit News, June 24, 2015.

<sup>408</sup> <http://www.modbee.com/living/health-fitness/article28501345.html>

<sup>409</sup> <http://www.kansascity.com/sports/mlb/kansas-city-royals/article27539521.html>

<sup>410</sup> *Id.*

<sup>411</sup> <http://www.foxsports.com/mlb/story/mlb-protective-netting-extend-fan-safety-broken-bats-foul-balls-philadelphia-phillies-082615>

<sup>412</sup> <http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815>.

1                    *might be involved in those discussions,... And then obviously us and*  
 2                    *the clubs.*<sup>413</sup>

3                    259. Manfred also recently stated “I think the most likely course for (MLB) is that the  
 4                    evaluation will continue this season and whatever change, if we decide to make one, will be  
 5                    something that will be a regulation for next year.”<sup>414</sup>

6                    **3. Defendants have at all times been aware of the risk of injury.**

7                    260. Defendants have been fully aware and have failed to address the fact that a modern  
 8                    day slaughter pen has formed, that the area of danger has shifted to the areas along first and third  
 9                    bases and between the poles, where spectators are left entirely exposed and have suffered and are at  
 10                  risk of serious injury. Defendants were in a superior position to Plaintiffs regarding knowledge of  
 11                  these facts and knowledge of the risk of serious injury, and failed to disclose these risks for  
 12                  Plaintiffs, other spectators and the public.

13                  261. Defendants were aware of scholarly articles, not widely distributed the public,  
 14                  acknowledging the risk from baseballs and particularly foul balls since at least 1940:

15                    *Baseball clubs cannot help but realize that baseballs occasionally*  
 16                    *inflict injury on spectators. When thrown or batted vigorously they*  
 17                    *are dangerous missiles and have broken bones not only of players*  
                      *but also of spectators. Tipped foul balls may be equally dangerous*<sup>415</sup>  
                      *on account of the great speed which many pitchers possess.*

18                  262. Defendants have also been aware of numerous lawsuits on behalf of injured  
 19                  spectators. See Exhibit B for a partial list of lawsuits. Defendants were in a superior position to  
 20                  Plaintiffs regarding knowledge of these lawsuits.

21                  263. Defendants also regularly received reports of ballpark injuries via lawsuits and from  
 22                  a company that handles insurance claims.<sup>416</sup> Defendants were in a superior position to Plaintiffs  
 23                  regarding knowledge of these claims.

24                  <sup>413</sup> *Id.*

25                  <sup>414</sup> [http://www.bostonherald.com/sports/red\\_sox\\_mlb/clubhouse\\_insider/2015/07/  
 26                  mlb\\_no\\_league\\_wide\\_fan\\_safety\\_changes\\_this\\_season](http://www.bostonherald.com/sports/red_sox_mlb/clubhouse_insider/2015/07/mlb_no_league_wide_fan_safety_changes_this_season)

26                  <sup>415</sup> <http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=3724&context=mulr>.

27                  <sup>416</sup> [http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-  
 28                  injure-1750-fans-a-year](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.”).

264. Defendants 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<sup>417</sup> and the presence of these logs is not generally publicly known or commonly discussed. Defendants were in a superior position to Plaintiffs regarding knowledge of these logs and the information disclosed in these logs.

265. MLB’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<sup>418</sup> in undertaking a study of all shattered bats. In 2012, MLB implemented a rule that temporary screens were required during batting practice.<sup>419</sup> 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, and also advocates netting for “spectator safety”: “selecting the proper height and width of the backstop is important to provide adequate player and spectator safety.”<sup>420</sup>

266. Defendants were also aware of the risk via players’ concerns expressed in collective bargaining negotiations, as well as public statements.

## **I. Defendants’ Negligence and Failure to Provide “Reasonably Safe” Facility**

### **1. Defendants Failed to Provide Sufficient Netting.**

267. Defendants 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.

<sup>417</sup> 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>.

<sup>418</sup> In 2008, then Commissioner Selig stated, “The maple bats safety issue is very real.” “I’m very concerned.”

<sup>419</sup> 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.”).

<sup>420</sup> <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.”

1 Defendants failed to minimize the risk that spectators would be hit from flying balls or bats by  
2 promulgating rules to impose adequate netting in these areas. Defendants failed to take reasonable  
3 measures that could easily have been taken without altering the nature of the sport. The harm to  
4 Plaintiffs and the class far outweighs any social value of Major League Baseball's interest in  
5 having exposed seats in this section, and precautions could have been taken with relative ease  
6 given MLB's resources, the presence of netting in other forms and MLB's familiarity with this  
7 technology. Defendants' failure to act breached their duty to Plaintiffs and resulted in serious  
8 spectator injury and puts spectators at unreasonable risk from injury. Defendants knew and have  
9 known that the areas along the first and third base lines, between the foul poles, were the most  
10 dangerous areas – the areas where balls are likely hit the hardest, where the greatest danger exists  
11 and where, based on its knowledge such an occurrence could be reasonable be expected by  
12 Defendants based on their superior knowledge of the risk - but Defendants wholly failed to provide  
13 protection in these areas.

14 **2. Defendants Failed to Provide Enough Access to Currently Netted Seats.**

15 268. Defendants were also negligent in failing to provide enough access to currently  
16 netted seats for as many fans as would reasonably be expected to request such seats. At Oakland's  
17 ballpark, for example, there are only a relatively number of protected seats compared to the number  
18 overall, and many are reserved for longtime season-ticket holders. This was not an area  
19 sufficiently large to accommodate as many as may have reasonably been expected to call for such  
20 protection. Defendants also failed to provide adequate access by not ensuring that spectators had  
21 information to understand which seats are and are not protected, during the ticket purchasing  
22 process.

23 **3. Defendants Failed to Promulgate standards regarding netting.**

24 269. MLB failed to provide a consistent netting rule for all stadiums, or to promulgate  
25 standards on this issue. This was fully within MLB's power, as evidenced by Manfred and the  
26 Office of the Commissioner's recent institution of a uniform MLB rule requiring safety checks at  
27 all MLB ballparks and the apparent 2012 rule regarding batting practice netting.  
28

**4. Defendants Failed to Heed the Warnings of Professional Baseball Players.**

270. Defendants failed to heed the warnings of players, those who know the game best.

**5. Defendants Were Negligent in Allowing Use of Maple Bats.**

271. Defendants 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.<sup>421</sup> Major League Baseball now sends every shattered bat to a lab, where it can be studied.<sup>422</sup> Major League Baseball 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).<sup>423</sup> Major League Baseball, despite knowing full well that maple bats tend to explode, and spending its *own money* to study the issue, has not outlawed their use. Remarkably, with the inside knowledge Major League Baseball gained via its study, MLB decided to require bat manufacturers to have at least \$10 million in liability insurance and seek to avoid MLB liability.<sup>424</sup>

**6. Defendants Failed to take measures commonly taken in other sports, in other ballparks, and in other countries.**

272. Recognizing the risk of spectator injury, several other professional sports leagues and organizations, but not Major League Baseball, have modified rules to limit spectators' exposure to preventable injuries by erecting barriers between the field of play and the spectators. In 2002, after thirteen-year-old Brittanie Cecil 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.<sup>425</sup> It is estimated that these measures have stopped more

<sup>421</sup> [http://articles.chicagotribune.com/2008-07-16/sports/0807150891\\_1\\_maple-bats-replay-logical-solution](http://articles.chicagotribune.com/2008-07-16/sports/0807150891_1_maple-bats-replay-logical-solution).

<sup>422</sup> 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.

<sup>423</sup> *Id.*

<sup>424</sup> <http://www.breitbart.com/sports/2015/07/06/baseball-can-kill-you-an-interview-with-the-ballpark-fatalities-stats-keeper/>

<sup>425</sup> <http://reportingtexas.com/into-the-stands-how-safe-is-professional-baseball/>.

than 23,700 errant pucks from injuring fans.<sup>426</sup> After a NASCAR incident in which car fragments were hurled towards the spectators, NASCAR officials reacted quickly by mandating the use of restrictor plates.<sup>427</sup>

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

**7. Defendants Failed to use technology at its disposal to protect spectators.**

274. Major League Baseball has always kept a wealth of statistics about the game of baseball. The oldest known record tracking balls foul balls going into the stands comes from a 1931 game recap produced by Major League Baseball for the American League.<sup>428</sup> PITCH f/x technology began measuring the velocities and trajectories of pitches in 2006.<sup>429</sup> Major League Baseball now has even more data tracking capability via Major League Baseball's Statcast technology, a state-of-the-art tracking system which gathers and displays a wide range of data in each ballpark, including the speed of pitches and batted balls, including spin rates, launch angles and exit velocity (the velocity of the ball off the bat).<sup>430</sup> 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 (the "first step" data point measures the time elapsed from time of bat-on-ball contact to the fielder's first movement toward the ball).<sup>431</sup> Cameras and sensors installed at each of the thirty big league ballparks capture 120,000 bits of data per second.<sup>432</sup> Here is a photo of the cameras at Nationals Park:

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<sup>426</sup> *Id.*

<sup>427</sup> [http://fisherpub.sjfc.edu/cgi/viewcontent.cgi?article=1038&context=sport\\_undergrad](http://fisherpub.sjfc.edu/cgi/viewcontent.cgi?article=1038&context=sport_undergrad).

<sup>428</sup> "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) at 2.

<sup>429</sup> <http://www.usatoday.com/story/sports/mlb/2015/04/20/data-deluge-mlb-rolls-out-statcast-analytics-on-tuesday/26097841/>

<sup>430</sup> <http://ftw.usatoday.com/2015/05/mlb-statcast-stats-data-launch-angle-route-efficiency>.

<sup>431</sup> *Id.*

<sup>432</sup> <http://www.usatoday.com/story/sports/mlb/2015/04/20/data-deluge-mlb-rolls-out-statcast-analytics-on-tuesday/26097841/>



433

275. This hardware behind this technology was designed specifically for Major League Baseball, at a cost of tens of millions of dollars.<sup>434</sup> This technology has only recently been made known to the public. Despite the vast resources at its disposal, Major League Baseball has not used this technology or knowledge regarding ball velocity and reaction times to advance spectators' safety in any way. Instead Major League Baseball has used these resources to brag about how powerfully balls are being hit, using terms including "scorches", "smoked," "crushed," "blast," "launches," and "slam" to describe batted balls on the Statcast twitter feed<sup>435</sup> and to tout the "historic heat" currently being thrown by MLB pitchers.<sup>436</sup> MLB includes a "Statcast Leaderboard" list on its website, ranking players' HR Distance, Exit Velocity, Average Hit Velocity, Fastest Pitches and Average Pitch Velocity.<sup>437</sup> The current leader for Exit Velocity had a top batting "launch speed" of 120.3 miles per hour, achieved in May 2015.<sup>438</sup> Even players have commented about how Statcast technology could be used to save fans. Detroit Tigers' Anthony Gose commented, after a recent injury: "How long before they do something? Guys are only

<sup>433</sup> <https://twitter.com/statcast/status/590620209674907650>

<sup>434</sup> <http://www.usatoday.com/story/sports/mlb/2015/04/20/data-deluge-mlb-rolls-out-statcast-analytics-on-tuesday/26097841/>

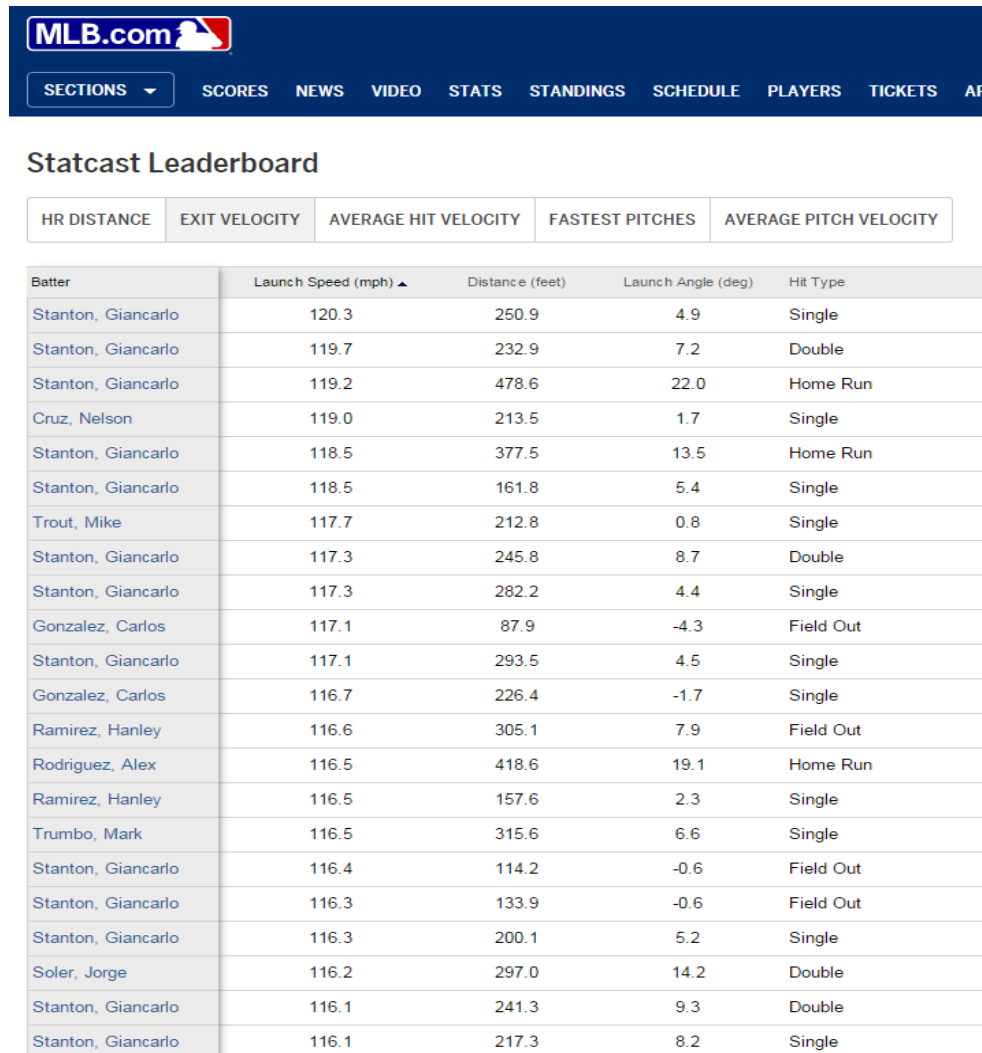
<sup>435</sup> These are all words used recently on MLB's "Statcast" twitter feed.

<sup>436</sup> <https://twitter.com/statcast/status/621726009029570560>

<sup>437</sup> <http://m.mlb.com/statcast/leaderboard>

<sup>438</sup> <http://m.mlb.com/statcast/leaderboard#exit-velo>

throwing harder. They have Statcast — they can see the balls coming off 100 mph off peoples' bats.”<sup>439</sup>



Batter	Launch Speed (mph) ▲	Distance (feet)	Launch Angle (deg)	Hit Type
Stanton, Giancarlo	120.3	250.9	4.9	Single
Stanton, Giancarlo	119.7	232.9	7.2	Double
Stanton, Giancarlo	119.2	478.6	22.0	Home Run
Cruz, Nelson	119.0	213.5	1.7	Single
Stanton, Giancarlo	118.5	377.5	13.5	Home Run
Stanton, Giancarlo	118.5	161.8	5.4	Single
Trout, Mike	117.7	212.8	0.8	Single
Stanton, Giancarlo	117.3	245.8	8.7	Double
Stanton, Giancarlo	117.3	282.2	4.4	Single
Gonzalez, Carlos	117.1	87.9	-4.3	Field Out
Stanton, Giancarlo	117.1	293.5	4.5	Single
Gonzalez, Carlos	116.7	226.4	-1.7	Single
Ramirez, Hanley	116.6	305.1	7.9	Field Out
Rodriguez, Alex	116.5	418.6	19.1	Home Run
Ramirez, Hanley	116.5	157.6	2.3	Single
Trumbo, Mark	116.5	315.6	6.6	Single
Stanton, Giancarlo	116.4	114.2	-0.6	Field Out
Stanton, Giancarlo	116.3	133.9	-0.6	Field Out
Stanton, Giancarlo	116.3	200.1	5.2	Single
Soler, Jorge	116.2	297.0	14.2	Double
Stanton, Giancarlo	116.1	241.3	9.3	Double
Stanton, Giancarlo	116.1	217.3	8.2	Single

## 8. Defendants Failed to Promulgate Standards regarding Injury Response.

276. Defendants 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

<sup>439</sup> <http://www.detroitnews.com/story/sports/2015/08/22/woman-injured-foul-ball-released-players-repeat-call-netting/32208047/>

<sup>440</sup> Batting “launch speed,” in miles per hour, and other statistics, calculated, tracked and ranked via MLB’s Statcast technology. <http://m.mlb.com/statcast/leaderboard> (last accessed 8/26/15).

1 quickly call in emergencies.<sup>442</sup> Some ballparks also contract with local hospitals by giving  
 2 attending physicians tickets in exchange for being on call at games.<sup>443</sup>

3 277. For example, at an August 2, 2015 game between the Atlanta Braves and the  
 4 Philadelphia Phillies, a man was hit in the head by a foul ball in the ninth inning. The pitch was  
 5 traveling 97 miles per hour and the commentator described it as a “smoked” foul ball.<sup>444</sup> The man  
 6 was sitting in the first row, closest to the action.<sup>445</sup> The commentator said “I hope he’s okay....not  
 7 in the head!”<sup>446</sup> The video shows someone who appears to be affiliated with MLB (wearing a  
 8 lanyard, with a Phillies baseball hat) speaking to the man for a few seconds.<sup>447</sup> Then the man  
 9 walks off and the victim is left sitting in his seat, and the video depicts him opening and closing his  
 10 mouth a few times, stretching out his jaw.<sup>448</sup> The commentator then says “he’s going to remember  
 11 Rob Manfred’s name for a while.”<sup>449</sup> And after a boy was hit by a foul ball pitched at 93 miles per  
 12 hour at a Cubs vs. Pirates game on August 5, 2015, he was not removed from the game even  
 13 though medical personnel were present, and as play resumes, his father is shown cradling him and  
 14 applying ice to his head.<sup>450</sup> This compelled a witness to post: “That Pirates fan with the young  
 15 child hit in the head by a foul ball should leave and take him to ER now. Head trauma is no  
 16 joke.”<sup>451</sup>

17 278. This is particularly troubling as the effect of head trauma may not immediately be  
 18 evident. Most concussions, for example, do not cause a loss of consciousness.<sup>452</sup> Clarence  
 19

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20 <sup>442</sup> <http://www.thewire.com/culture/2014/09/foul-balls-hurt-way-more-people-than-they-should/379869/>.

21 <sup>443</sup> <http://www.atlantamagazine.com/great-reads/foul-territory/>.

22 <sup>444</sup> <https://www.youtube.com/watch?v=9u3XHqXSigI&feature=youtu.be>

23 <sup>445</sup> *Id.*

24 <sup>446</sup> *Id.*

25 <sup>447</sup> *Id.*

26 <sup>448</sup> *Id.*

27 <sup>449</sup> *Id.*

28 <sup>450</sup> <https://www.youtube.com/watch?v=NPuRDFVX8eM&feature=youtu.be>

<sup>451</sup> <https://twitter.com/QuadCityPat/status/629105383852875776>

<sup>452</sup> <http://www.mayoclinic.org/diseases-conditions/concussion/basics/definition/con-20019272>

1 Stagemyer, who was killed by a wild throw at a Cleveland Indians game, at first appeared to be  
 2 uninjured, and simply shook his head a few times.<sup>453</sup> He died several hours after he was hit and his  
 3 autopsy revealed he died from a concussion and fractured skull.<sup>454</sup> On June 15, 2015, legendary  
 4 Brewers broadcaster Bob Uecker was struck in the head by a foul ball during Brewers batting  
 5 practice.<sup>455</sup> He called the game as he ordinarily would, but eventually felt “out of sorts” and was  
 6 diagnosed with a concussion and hospitalized for observation.<sup>456</sup> And after Alan Fish received a  
 7 brief medical examination, he was told he could resume normal activities and returned to his seat to  
 8 watch the rest of the game.<sup>457</sup> After the game, he suddenly became dizzy and started crying and  
 9 shaking, and it was only after his parents learned what happened and he was fully examined that x-  
 10 rays revealed a mass on his brain. An autopsy revealed that he had suffered a hairline fracture  
 11 from the blow that forced a portion of his skull into his brain.<sup>458</sup>

12 279. If these incidents had happened to a player, MLB would have followed a specific  
 13 protocol that dictates that the game must be stopped and the player must receive a specific type of  
 14 evaluation for a potential concussion:

15 *If a player is involved in an incident during a game that is associated with a high*  
 16 *risk of concussion, the game will be stopped and the Player will be evaluated on the*  
 17 *field for a potential concussion by a Certified Athletic Trainer (“ATC”) following*  
 18 *the National Athletic Trainers’ Association (“NATA”) guidelines for management*  
 19 *of sports-related concussions.*<sup>459</sup>

20 *Even if the trainer does not detect any sign and/or symptom of a concussion, “serial*  
 21 *examinations should be performed between innings for the remainder of the*  
 22 *game.”*<sup>460</sup>

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21 <sup>453</sup> Gorman and Weeks, *supra* note 1, at 140.

22 <sup>454</sup> *Id.*

23 <sup>455</sup> <http://www.cbssports.com/mlb/eye-on-baseball/25216398/bob-uecker-struck-by-ball-suffers-mild-concussion>

24 <sup>456</sup> *Id.*

25 <sup>457</sup> Gorman and Weeks, *supra* note 1, at 133.

26 <sup>458</sup> *Id.*

27 <sup>459</sup> Attachment 36 (Letter from Daniel R. Halem, Office of the Commissioner, to David Prouty, Esquire, Major League Baseball Players Association) to 2012-2016 Basic Agreement between Major League Baseball and Major League Baseball Players Association.

28 <sup>460</sup> *Id.*

280. There is also an “MLB Concussion Assessment Tool” that “represents a standardized method of evaluating MLB players for concussion consistent with the reasonable objective practice of the healthcare profession.”<sup>461</sup> No such standard, direction, or vigilance exists for the assessment of spectator injuries.

## **J. Major League Baseball’s Increased the Risk to Spectators**

### **1. Defendants have increased the risk by including non-necessary distractions at ballparks.**

281. At the same time that Defendants failed to act, Defendants have also added a number of intentional distractions 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, such as “Stomper” and “Banjo Man” at Oakland Coliseum. There are vendors and merchandise “hawkers” roaming the seats, including engaging and distracting spectators while the ball is in play. Ballparks in the United States have enormous jumbotron screens, some over 11,000 square-feet in dimension, some of the largest video screens anywhere in the world.<sup>462</sup> For example, Dodgers Stadium has new video boards with the highest pixel densities in the MLB, totaling approximately 2,488 sq. feet of combined video space, and are nearly 78 feet wide<sup>463</sup>, with a viewing area 66% larger than the stadium’s prior screens.<sup>464</sup> Major League Baseball also allows other crowd distractions, such as the “wave,” to occur while the ball is in play.

<sup>461</sup> Attachment 36 (Letter from Daniel R. Halem, Office of the Commissioner, to David Prouty, Esquire, Major League Baseball Players Association) to 2012-2016 Basic Agreement between Major League Baseball and Major League Baseball Players Association (attached MLB Concussion Assessment Tool).

<sup>462</sup> [https://en.wikipedia.org/wiki/List\\_of\\_largest\\_video\\_screens](https://en.wikipedia.org/wiki/List_of_largest_video_screens).

<sup>463</sup> <http://www.truebluel.com/2013/2/28/4040888/dodger-stadium-scoreboards-high-definition>

<sup>464</sup> [http://losangeles.dodgers.mlb.com/la/ballpark/stadium\\_upgrades/index.jsp](http://losangeles.dodgers.mlb.com/la/ballpark/stadium_upgrades/index.jsp)

At least one injury this season reportedly occurred to a fan who was in a section doing “the wave” at the time the fan was struck.<sup>465</sup>

**2. Defendants have increased the risk by calling for use of mobile devices, particularly by children, while watching live games in MLB ballparks.**

282. Defendants have 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<sup>466</sup> and admitted in his first major press conference after becoming Commissioner that he was aware of the shorter attention spans of children in the ballpark, and wanted to cater to these distractible fans using enhanced technology. 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. Major League Baseball has even 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.”<sup>467</sup> Remarkably, Major League Baseball markets its “MLB.com Ballpark for iPhone and Android” as “your mobile companion when visiting your favorite Major League Baseball ballparks.”<sup>468</sup> The official MLB ballpark application “perfectly complements and personalizes your trip with mobile check-in, social media, offers, rewards and exclusive content.” The Oakland Athletics team also provided an additional distraction to spectators at O.Co Coliseum, through the

<sup>465</sup> <https://twitter.com/MattSchochVIDN/status/647952556732366849>; [https://twitter.com/mlb\\_tina14/status/647951356595077120](https://twitter.com/mlb_tina14/status/647951356595077120); <https://twitter.com/CSlonksnis/status/647951138721935360>; <https://twitter.com/emilyzielinskii/status/647951350681178112>; <https://twitter.com/LaVelleNeal/status/647951187933663232>

<sup>466</sup> <http://www.chicagotribune.com/sports/baseball/ct-sullivan-rob-manfred-baseball-changes-spt-0224-20150223-story.html>.

<sup>467</sup> <https://www.youtube.com/watch?v=jHKTx0zII2U><https://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>.

<sup>468</sup> [http://mlb.mlb.com/mobile/ballpark/index.jsp?tcid=rd-atb&c\\_id=mlb](http://mlb.mlb.com/mobile/ballpark/index.jsp?tcid=rd-atb&c_id=mlb)

use of games and contests, such as the invitation to “Play Keyboard Wars” using the MLB.com app on their mobile device:



283. Select MLB ballparks also offer mobile food ordering and merchandise ordering and seat and experience upgrade components: Check in automatically with iBeacon technology...”.<sup>470</sup> Ballparks also offer other services obtained via text message.<sup>471</sup> Commissioner

<sup>469</sup> <https://twitter.com/Athletics/status/639973873975361537>

<sup>470</sup> *Id.*

<sup>471</sup> For example, at Oakland’s ballpark, fans who witness violations of the Fan Code of Conduct can text their issue and location to a specific number to solicit a response. <http://oakland.athletics.mlb.com/oak/ballpark/information/index.jsp?content=guide>; *see also* <http://www.teamcoalition.org/news/articles/mlbplaysitsafe.pdf>

1 Manfred has stated that 5.7 million people every day use MLB's "At Bat" application during the  
 2 season<sup>472</sup> and has stated:

3 *Look, we own a world-class technology company. Forget about a sports website.*  
 4 *We own a world-class technology company. A great vehicle for engaging younger*  
 5 *people with the game is through the use of technology. I think it's important that we*  
 6 *take all the ability, brainpower and muscle that is embedded in that company and*  
 7 *use it to make sure our broadcasts are as good as possible, and to make sure our in-*  
 8 *park experience is as good as possible. There is nothing that attracts kids like*  
 9 *technology.*<sup>473</sup>

10 284. Commissioner Manfred also replaced MLB's longtime business chief and promoted  
 11 the leaders of technology divisions MLB Network and MLB Advanced Media (MLBAM) to take  
 12 charge of the sport's business operations.<sup>474</sup>

13 285. These efforts to enhance WiFi and other mobile technology in the ballpark result in  
 14 free marketing for Major League Baseball, as Bob Bowman, the CEO of MLB Advanced Media  
 15 LP, admitted in 2014: "We started doing it for perhaps the wrong reasons: Our ability to reach  
 16 you. You're the customer, now we want to send something, push something to you. But in today's  
 17 world, it's almost reverse. You're taking a selfie with your daughter, your spouse, you're posting  
 18 it, you're Tweeting it, that's all outbound from your fans. If you think about it, there's no better  
 19 marketing."<sup>475</sup> However, this free marketing comes at a price – increasingly distracted spectators.

20 **3. Defendants have increased the risk by marketing ballparks and their**  
 21 **most dangerous areas as safe and family friendly.**

22 286. Major League Baseball has also marketed the game to and encouraged parents and  
 23 grandparents to bring more children to MLB games at a younger age, knowing that these youngest  
 24 fans in particular cannot always clearly see the field, may have diminished reaction times, and are  
 25 often the most physically vulnerable to serious injury. Commissioner Manfred has stated "...we  
 26 need to make sure that what I think of as the generational aspect of our game continues. What I

27 <sup>472</sup> <http://www.latimes.com/sports/la-sp-manfred-transcript-20150204-story.html>

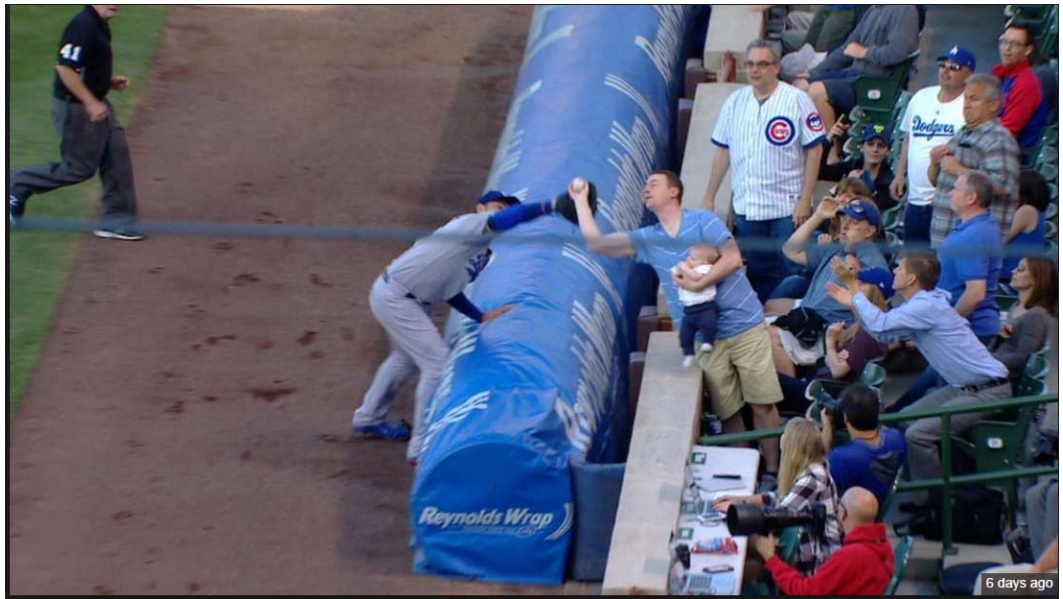
28 <sup>473</sup> *Id.*

<sup>474</sup> <http://www.latimes.com/sports/la-sp-baseball-future-20150204-story.html#page=1>

<sup>475</sup> <http://www.bizjournals.com/newyork/blog/techflash/2014/10/why-mlb-really-wants-you-to-have-wifi-and-a-smart.html>

mean by that is that we want parents and grandparents to get their kids into the park at an early age, and instill in those young people the love of the game that our generation has.”<sup>476</sup>

287. Defendants 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 families, children, and even infants. On June 23, 2015, MLB’s website, [www.mlb.com](http://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.<sup>477</sup> 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<sup>478</sup>:



288. Major League Baseball has made other statements marketing and advertising the game and ballparks as family friendly, affordable for families and an environment appropriate for families. For example, on January 5, 2015, MLB’s website, [www.mlb.com](http://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.” Promotional materials for the minor

<sup>476</sup> <http://www.latimes.com/sports/la-sp-manfred-transcript-20150204-story.html>

<sup>477</sup> <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.

<sup>478</sup> <http://m.mlb.com/news/article/132444096/cubs-fan-makes-catch-holding-baby>.

1 leagues include statements touting that “Minor League Baseball is the backbone of America’s  
 2 pastime”; that it is “geared towards affordability, memories and family entertainment...designed to  
 3 entertain guests of all ages”<sup>479</sup> and that games are very affordable for families, compared to other  
 4 sports: “The average cost of attending a Minor League Baseball game for a family of four is only  
 5 \$54.54. That’s more than three times less than any other professional sporting event!”<sup>480</sup>

6 289. In early 2014, the Chicago Cubs announced their first, official team mascot would  
 7 be “Clark,” a “young, friendly cub”...who “can’t wait to interact with our other young Cub fans.  
 8 He’ll be a welcoming presence for families at Wrigley Field...”<sup>481</sup>

9 290. As of this year, an MLB ballpark also has a facility designed exclusively as a  
 10 nursing area, where mothers can feed and care for their babies.<sup>482</sup> Other ballparks designate  
 11 specific areas for this purpose.<sup>483</sup>

12 291. Ballparks also offer free entry to children under a certain age or below a certain  
 13 height.<sup>484</sup>

14 292. At the Oakland A’s Oakland Coliseum, the game is also marketed to children  
 15 through the use of the “A’s kids” program and the team mascot, “Stomper,” as illustrated on Major  
 16 League Baseball’s website:

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19 <sup>479</sup> [http://www.ircgov.com/dodgertown/MiLB\\_Presentation.pdf](http://www.ircgov.com/dodgertown/MiLB_Presentation.pdf)

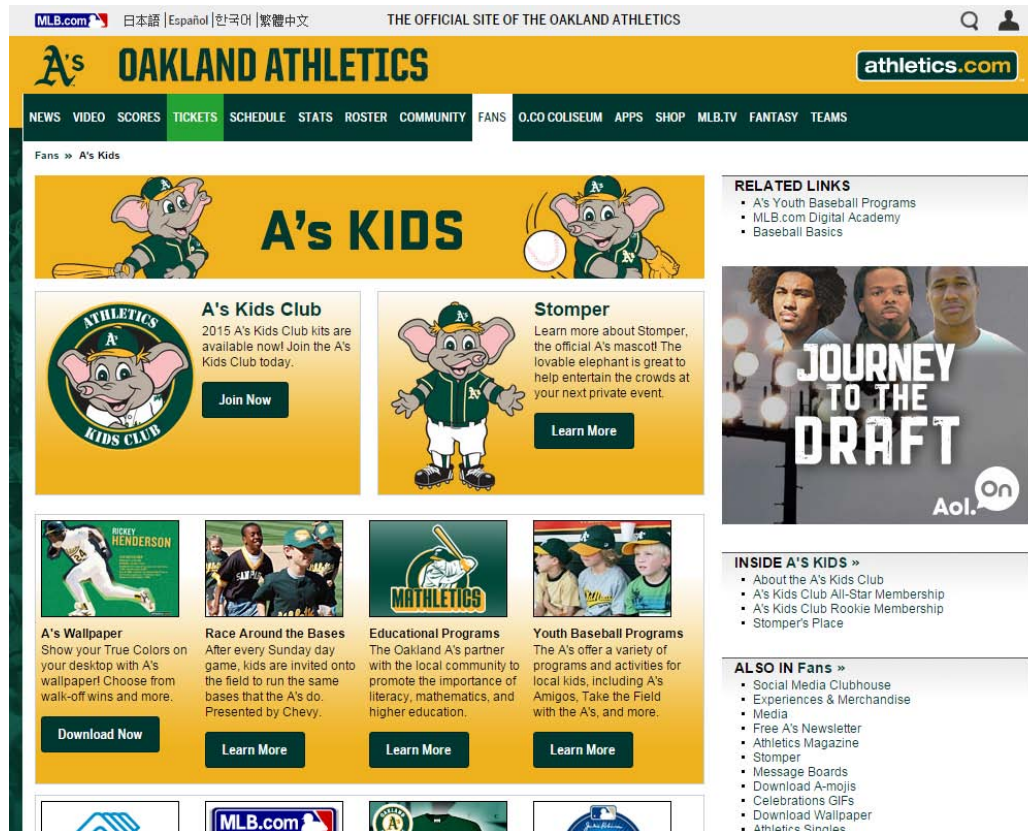
20 <sup>480</sup> *Id.*

21 <sup>481</sup> <http://www.cbssports.com/mlb/eye-on-baseball/24408433/cubs-announce-new-mascot-clark-a-young-friendly-cub>.

22 <sup>482</sup> [https://en.wikipedia.org/wiki/Great\\_American\\_Ball\\_Park#Screen\\_renovations\\_for\\_the\\_2009\\_season](https://en.wikipedia.org/wiki/Great_American_Ball_Park#Screen_renovations_for_the_2009_season).

23 <sup>483</sup> For example, the Oakland Ballpark designates the First Aid Station in Section 109.  
 24 <http://oakland.athletics.mlb.com/oak/ballpark/information/index.jsp?content=guide>

25 <sup>484</sup> For example, the Oakland Athletics offer free tickets to children under 2 years old.  
 26 <http://oakland.athletics.mlb.com/oak/ballpark/information/index.jsp?content=guide> . The Minnesota Twins offer complimentary admission to children under 30” in height.  
 27 <http://minnesota.twins.mlb.com/min/ticketing/sth/gen/faq.jsp> . The Seattle Mariners offer free admission to children under two years of age.  
 28 [http://seattle.mariners.mlb.com/sea/help/sea\\_help\\_faq\\_mariners.jsp](http://seattle.mariners.mlb.com/sea/help/sea_help_faq_mariners.jsp). The Yankees admit children 3 years and younger and less than 30” tall for free.  
<http://newyork.yankees.mlb.com/nyy/ballpark/information/index.jsp?content=guide>



485

293. The team also offers “kids club” memberships that include opportunities to come onto the field to watch batting practice, “steal the base,” act as a guest P.A., and bring water to the home plate umpire.<sup>486</sup> Other activities promoted on Major League Baseball’s Oakland Athletic’s page that appear geared to children and young adults include the ability to follow the A’s on Twitter, Snapchat, Facebook, Instagram, Tumblr, and Vine and download “A-moji” (similar to emoji) “stickers” to share via social media and in text messages.<sup>487</sup>

<sup>485</sup> [http://mlb.mlb.com/oak/fan\\_forum/kids\\_index.jsp](http://mlb.mlb.com/oak/fan_forum/kids_index.jsp)

<sup>486</sup> [http://oakland.athletics.mlb.com/oak/fan\\_forum/kids\\_club\\_info.jsp](http://oakland.athletics.mlb.com/oak/fan_forum/kids_club_info.jsp)

<sup>487</sup> [http://mlb.mlb.com/fan\\_forum/social\\_media/?c\\_id=oak](http://mlb.mlb.com/fan_forum/social_media/?c_id=oak)

## SOCIAL MEDIA INITIATIVES



### A-mojis

A's fans can download and share A-mojis! Similar to emojis, these A-moji "stickers" can be downloaded and shared across your social media accounts and in text messages. [Check them out »](#)

294. MLB.com also has a "GIF and Sticker" keyboard app with similar content:



488

295. At Dodgers stadium, the team and MLB also employ a number of intentional, unnecessary distractions. Some are geared specifically towards children. For example, the

<sup>488</sup> <https://itunes.apple.com/us/app/id1039956978>

1 Dodgers recently debuted an unnamed “unique performance character” with a cartoonish  
2 appearance. The Dodgers have admitted this character appeals to children and can create a  
3 distraction: As stated by Dodgers’ executive vice president of marketing Lon Rosen, “the kids  
4 were wild about it....They were all taking selfies with it.”



20 296. At Dodgers Stadium there is also a fan dressed in a bear suit, who performs various  
21 antics.

27  
28 <sup>489</sup> <http://www.foxsports.com/mlb/story/so-do-the-dodgers-have-a-new-mascot-or-not-040814>



490



These antics occur while the game is in play.<sup>491</sup>

<sup>490</sup> <http://www.foxsports.com/mlb/story/so-do-the-dodgers-have-a-new-mascot-or-not-040814>

<sup>491</sup> *Id.* See e.g. video at this link, depicting bear distracting crowd while game is in play, is eventually stopped by security.

**4. Defendants have increased the risk by calling for an increased pace of play.**

297. Major League Baseball has also increased the risk by calling for an increased pace of play via the pitch count. This decreases the amount of time in between pitches and reduces 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 Major League Baseball. This increases the risk of danger to spectators. The president of the Pittsburgh Pirates has stated: "Obviously, the attention span of children seems to be getting smaller...We need to make sure we are recognizing that, and putting a product before them that they can consume in a way they like to consume it. Pace of the game is certainly part of it, but that is only one part of it." Manfred admitted in his first major news conference after becoming Commissioner that he was both aware of children's shorter attention spans in the ballpark, and wanted to cater to that shorter attention span by increasing the pace of play.

**5. Defendants Failed to Promulgate Standards Regarding Minimum Distance from Field of Play.**

298. At the same time that Major League Baseball has attempted to entice more and younger spectators to MLB ballparks, and have intentionally developed, initiated and employed greater and more elaborate distractions for fans, MLB has been aware and has 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 ballpark.<sup>492</sup> Defendants have failed to promulgate any standards to create a minimum distance between the spectator and the field of play in MLB ballparks. Defendants knew these spectators were at enhanced and increased risk.

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<sup>492</sup> <http://www.atlantamagazine.com/great-reads/foul-territory/#sthash.RdFeXLDC.dpuf>.

**6. Defendants have increased the risk by increasing the amount of seats in the Danger Zone**

299. Major League Baseball is adding additional seats closer to the field of play, increasing the risk. For example, Fenway Park installed additional unnetted seating approximately thirteen years ago.<sup>493</sup> It also appears that Wrigley Field will be adding more seating near the field of play.<sup>494</sup>

**V. CLASS ACTION ALLEGATIONS**

300. Plaintiffs bring this action pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and the members of the following Nationwide “Danger Zone” Class:

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

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

All persons or entities that purchased a ticket to a Major League Baseball game played in California and whose seat(s) are located in the Danger Zone.

302. 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.

303. Plaintiffs reserve the right to amend the class definitions prior to class certification.

304. 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.

<sup>493</sup> <https://www.bostonglobe.com/metro/2015/06/06/family-woman-injured-fenway-requests-privacy/U4Npq2UK3lHo86vurC4dBJ/story.html>

<sup>494</sup> <http://chicago.cubs.mlb.com/chc/restore-wrigley/our-vision/overview/>

1           305. The Claims of Plaintiffs are typical of the Claims of the Class. The claims of  
2 Plaintiffs and the Class are based on the same legal theories and arise from the same unlawful and  
3 willful conduct, resulting in the same injury to the Plaintiffs and the Class.

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

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

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

12                   a. What is the nature of the duty that the Defendants owe to Plaintiffs and the  
13 Class?

14                   b. Did Defendants breach that duty?

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

17                   d. Are Plaintiffs and the Class entitled to injunctive relief?

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

19                   f. Have Defendants violated California statutory law?

20                                   **VI. CLAIMS ALLEGED**

21                                   **FIRST CAUSE OF ACTION**

22                                   **NEGLIGENCE**  
23                                   **(On Behalf of the Class)**

24           309. Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint  
25 as if fully set forth herein.

26           310. At all relevant times, Defendants had a duty towards Plaintiffs and the Class to  
27 supervise, regulate, monitor, and provide reasonable and appropriate rules to minimize the risk of  
28 injury to spectators.

311. 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, 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”<sup>495</sup> and marketed the game as family-friendly and these unprotected areas of MLB ballparks as safe for adults, children and infants.

312. 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.”<sup>496</sup> 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.”<sup>497</sup> He specifically acknowledged that “The MLBPA might be involved in those discussions,” Manfred said, “And then obviously us and the clubs.”<sup>498</sup> 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

<sup>495</sup> [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](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).

<sup>496</sup> <http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815>.

<sup>497</sup> <http://www.dallasnews.com/sports/texas-rangers/headlines/20150627-after-recent-dangerous-incident-should-rangers-hang-more-netting-at-globe-life-park.ece>.

<sup>498</sup> <http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815>.

responsibility, indicating in 2008 that the organization would discuss whether fans are at risk from batted balls, and review the issue at annual meetings.<sup>499</sup> 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<sup>500</sup> and implementing changes to bat regulations.<sup>501</sup> 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."<sup>502</sup>

313. 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 Plaintiffs and the putative class, have looked to Defendants for guidance on spectator safety issues.

314. Defendants have also demonstrated their duty for spectator safety by promulgating other rules universal to MLB ballparks, such as a rule mandating that all clubs must implement security screening at ballpark entrances in time for opening day 2015,<sup>503</sup> and an apparent rule requiring netting during batting practice. Major League Baseball also created a Field Maintenance publication that advocates for a "proper height and width" of protecting fencing or netting, "to

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<sup>499</sup> <http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year>.

<sup>500</sup> "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.

<sup>501</sup> <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/>.

<sup>502</sup> <http://www.foxsports.com/mlb/story/woman-hit-bat-fenway-park-stands-upgraded-fair-commissioner-rob-manfred-re-evaluate-safety-060815>.

<sup>503</sup> <http://newpittsburghcourieronline.com/2015/04/06/major-league-ballparks-beef-up-security-with-metal-detectors/>

1 provide adequate player and spectator safety.” and advocates specifically for netting rather than  
 2 fencing for “higher level and competitive fields.”<sup>504</sup>

3 315. Defendants have been and are aware of publications in the sports and medical  
 4 communities, but not commonly known to the Plaintiffs, spectators or the general public, that  
 5 established that injuries were a significant and preventable risk to spectators in unprotected areas  
 6 between the foul poles at MLB games, and were also aware of studies indicating there likely is no  
 7 possibility that fans sitting in certain areas of the stadium would have time to react to avoid  
 8 injury.<sup>505</sup> Defendants were also aware of the presence of statistics, such as those assembled on  
 9 “foul ball logs,” and other first-aid records, such as those maintained at Atlanta Braves’ Turner  
 10 field.<sup>506</sup> Defendants were also aware that players, during collective bargaining, had asked for  
 11 additional netting, but did not disclose this to Plaintiffs, ticketholders or the public at large.  
 12 Defendants were also aware of the myriad distractions MLB has added to MLB ballparks. None of  
 13 this information would have reasonably been known to Plaintiffs, spectators or the public at large.

14 316. Defendants have failed to meet their responsibility to safeguard spectators, and have  
 15 engaged in a pattern of negligence and inaction with respect to spectator injuries, while profiting  
 16 from these same spectators, including profiting via ticket revenue, and profiting through the free  
 17 marketing obtained via the use of distracting technology in ballparks.

18 317. Specifically, Defendants, as sponsors of Major League Baseball games, occupiers of  
 19 the ballparks in which these games and played, and the entities that sold Plaintiffs and the putative  
 20 Class their tickets, failed to provide adequate protection for spectators sitting in the most dangerous  
 21 parts of MLB ballparks. Defendants, as sponsors of Major League Baseball games, occupiers of  
 22 the ballparks in which these games are played, and the entities that sold Plaintiffs and the putative  
 23 class their tickets, failed to ensure that an adequate number of protected seats would be available to  
 24

25 <sup>504</sup> [http://web.mlbcommunity.org/downloads/baseball\\_tomorrow\\_fund/y2012/field\\_maintenance\\_guide\\_english.pdf](http://web.mlbcommunity.org/downloads/baseball_tomorrow_fund/y2012/field_maintenance_guide_english.pdf) (last accessed August 24, 2015).

26 <sup>505</sup> For example, in a lawsuit against MLB’s Chicago Red Sox, expert testimony concluded it  
 27 took the ball a mere 1.07 seconds to travel 141 feet into the stands.

28 <sup>506</sup> <http://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1750-fans-a-year>.

1 the casual spectator and season-ticket holders. Defendants, as sponsors of Major League Baseball  
2 games, occupiers of the ballparks in which these games are played, and the entities that sold  
3 Plaintiffs and the putative Class their tickets, also failed to extend netting in the part of the  
4 ballpark where the greatest danger from flying balls exists. Defendants also failed to employ a  
5 system to allow spectators to actively select tickets in protected areas of the ballpark during the  
6 ticket purchasing process.

7         318. Defendants failed to warn spectators of the specific risk posed by errant balls and  
8 bats that currently travel at a rate that makes them impossible to defend from. Defendants were in  
9 a superior position with respect this knowledge regarding the speed of errant balls and bats in the  
10 modern era of baseball, and the fact that spectators often cannot protect themselves even by paying  
11 attention. This fact was at no time disclosed to Plaintiffs, spectators or the general public. The  
12 content of the “so-called” warnings located in ballparks was insufficient to adequately warn and  
13 did not communicate all potentially relevant information. The warning was not of a character  
14 reasonably calculated to bring home to a reasonably prudent person the nature and extent of the  
15 danger, could not reasonably be expected to catch the attention of a reasonably prudent person in  
16 the circumstances of its use, and its content was not of a such a nature as to be comprehensible to  
17 the average person. The warning did not in any way alert spectators to the true nature of, severity  
18 or magnitude of the hazard, the likelihood of it being encountered, did not clearly identify or state  
19 the consequences of the hazard, and did not provide instructions on how to avoid the hazard. In  
20 fact, certain “so-called” warnings actively increased and contributed to the risk by misleading  
21 spectators who relied on the fact that they would be safe sitting in the Danger Zone if they “paid  
22 attention” or were “alert,” following these false and misleading instructions, which wholly  
23 misrepresented the true nature of the risk, which was not open and obvious to Plaintiffs, spectators  
24 or the general public.

25         319. Defendants also failed to timely educate and provide proper oversight over  
26 individual baseball teams or to control the conduct of or warn others of the conduct of the teams, in  
27 its oversight role and via its fiduciary relationship to the teams. Defendants stood in a special  
28

1 relationship with the teams, by virtue of the fact that they provide oversight, promulgate rules and  
2 share revenue with these entities.<sup>507</sup>

3 320. Article II of the Major League Constitution includes oversight power over  
4 individual baseball clubs and Section 2(b) empowers the Commissioner with authority “[t]o  
5 investigate.... any act, transaction or practice charged, alleged or suspected to be not in the best  
6 interest of the national game of Baseball.” The Commissioner can discipline leagues, clubs,  
7 officers, employees and players for conduct “deemed by the Commissioner not to be in the best  
8 interests of Baseball.”<sup>508</sup> Notwithstanding its own obligations and duties, Defendants have also  
9 issued reports criticizing individual ballparks for lax spectator safety.

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

13 322. Defendants also made false statements and assurances about the priority of fan  
14 safety and the “entertainment” aspects of the game, encouraging families to bring their children to  
15 games at a younger and younger age.

16 323. Defendants’ conduct is particularly egregious in light of the fact that the MLB has  
17 long taken similar steps, such as installing netting in front of some dugouts<sup>509</sup> and mandating in  
18

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19 <sup>507</sup> Each team gets an MLB central-fund payout of tens of millions of dollars, and teams that  
20 derive a smaller amount of income receive revenue-sharing funds in the millions.  
[http://sports.espn.go.com/mlb/columns/story?columnist=stark\\_jayson&page=rumbblings091119](http://sports.espn.go.com/mlb/columns/story?columnist=stark_jayson&page=rumbblings091119)

21 <sup>508</sup> The best-interests power does not extend to anything that requires the club to act, or not to  
22 act, on the election of a Commissioner; expansion; sale or relocation of a club; provisions affecting  
23 revenue sharing; provisions amending the Major League Agreement; any matter subject to  
24 collective bargaining with the MLBPA; or anything which a league constitution specifies must be  
25 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](http://espn.go.com/mlb/story/_/id/13092427/rob-manfred-mlb-commissioner-open-change-all-star-game-fan-voting-proves-flawed).

26 <sup>509</sup> For example, after California Angels pitcher Matt Keough was hit in the right temple and  
27 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.  
28 <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>.

2008 that all MLB base coaches wear protective helmets<sup>510</sup> to protect its highly paid athletes. Remarkably, one MLB team is even moving bullpens under bleachers “to enhance player safety,” and is *replacing the old bullpen area with spectator seats*.<sup>511</sup> This, despite the fact that the bullpen area was so frequented with flying balls that players dodged balls on a daily basis and one player expressed trepidation about being unprotected in the bullpen.<sup>512</sup> MLB also implemented a rule restricting home plate collisions to protect players.<sup>513</sup> The most recent agreement between the players and MLB also improved concussion policy, and mandated that new, smaller helmets would be used, starting in 2013, to protect against concussions and pitches faster than 100 miles per hour.<sup>514</sup> MLB also makes its “resident security agents” available to meet with player and club representatives to discuss other players’ safety concerns, such as players’ family security at the ballparks, including player and family parking, family seating and security and family rooms.<sup>515</sup> In addition, MLB has had conversations with the players’ association regarding domestic violence issues.<sup>516</sup> MLB has also improved health care and other benefits to players.<sup>517</sup>

<sup>510</sup> <http://m.mlb.com/news/article/2989456/>.

<sup>511</sup> To “enhance player safety,” the Chicago Cubs are relocating home and visiting bullpens from the exposed area near the foul lines to a protected area underneath the bleachers. <http://chicago.cubs.mlb.com/chc/restore-wrigley/our-vision/overview/>.

<sup>512</sup> Cubs’ Justin Grimm described a game where players tried to absorb foul balls on a daily basis without using their glove: “I’m probably the weakest. I’ll say that. Because if I see a ball coming at my face, I’m not going to let it hit me in the face. You know it’s a game where if you get hit in the face, you’re the winner. I don’t think you want to win, right? It’s lose, lose.” <http://www.chicagotribune.com/sports/baseball/cubs/ct-justin-grimm-hates-hard-grounders-20150818-story.html>

<sup>513</sup> [http://espn.go.com/mlb/story/\\_/id/10512206/mlb-bans-home-collisions-1-exception](http://espn.go.com/mlb/story/_/id/10512206/mlb-bans-home-collisions-1-exception)

<sup>514</sup> [http://mlb.mlb.com/mlb/downloads/2011\\_CBA.pdf](http://mlb.mlb.com/mlb/downloads/2011_CBA.pdf)

<sup>515</sup> Attachment 17 (Letter from Robert D. Manfred, Jr., then Executive Vice President, Labor and Human Relations, to Michael S. Weiner, Esquire, Major League Baseball Players Association) to 2012-2016 Basic Agreement between Major League Baseball and Major League Baseball Players Association.

<sup>516</sup> <http://www.latimes.com/sports/la-sp-manfred-transcript-20150204-story.html>

<sup>517</sup> The current agreement between MLB and the players included improved health care benefits and improved access to health coverage. VII. Benefit Plan (d) Waiting periods for life insurance and disability insurance for active players has been eliminated; (f) Access to health coverage has been improved for international players and their families; (g) Health care benefits have been improved while managed care initiatives have been introduced to help with costs.” [http://mlb.mlb.com/mlb/downloads/2011\\_CBA.pdf](http://mlb.mlb.com/mlb/downloads/2011_CBA.pdf).

324. 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.

325. The MLB also placed technology in every Major League ballpark that can track the speed of balls as well as player reaction times.<sup>518</sup>

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

327. Defendants acted carelessly and negligently in their position. 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.

328. Defendants were careless and negligent by breaching the duty of due care they assumed for the benefit of the Plaintiffs 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 and unduly high risk of injury to fans sitting along first and third base lines, between the poles;
- d. Failing to disclose the special and unduly high risk of injury from shattered bats, including to fans sitting along first and third base lines, between the poles;
- e. Failing to promulgate rules and regulations to adequately address these dangers;
- f. Failing to disclose that players requested adequate netting;
- g. Failure to promulgate rules and regulations regarding minimum distance from field of play;

<sup>518</sup> <http://ftw.usatoday.com/2015/05/mlb-statcast-stats-data-launch-angle-route-efficiency>.

- h. Misrepresenting ballparks as safe and family friendly;
- i. Concealing pertinent facts;
- j. Introducing unnecessary distractions to ballparks and failing to properly supervise to ensure that others did not cause distraction; and
- k. Other acts of negligence or carelessness that may materialize during the pendency of this action.

329. It was reasonable and foreseeable that these failures would increase the risk to Plaintiffs and other spectators.

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

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

332. The Plaintiffs 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.

333. Moreover, Plaintiffs have no adequate remedy at law in that monetary damages alone cannot compensate them for the risk of injury.

1 **SECOND CAUSE OF ACTION**

2 **FRAUDULENT CONCEALMENT**  
 3 **(On Behalf of the Class)**

4 334. Plaintiffs adopt and incorporate by reference all prior paragraphs of this Complaint  
 5 as if fully set forth herein.

6 335. Defendants intentionally concealed facts and information which were material and  
 7 which they had a duty to disclose. As more fully described above, the risk of spectator injuries and  
 8 incidence of spectator injuries has been well known to Defendants. Further, based on studies for  
 9 which the MLB *itself* paid, Defendants were aware of the incidence of shattered bats. Remarkably,  
 10 with the inside knowledge Major League Baseball gained via its study, MLB decided to require bat  
 11 manufacturers to have at least \$10 million in liability insurance and seek to avoid MLB liability,<sup>519</sup>  
 12 a fact not commonly known to Plaintiffs, the putative class or the public. Defendants were also  
 13 aware that a readily available and inexpensive protective measure has been in use before the turn of  
 14 the century and had already been implemented between the foul poles in newer ballparks in the  
 15 U.S., as well as other countries like Japan. Defendants also knew and concealed to the public that  
 16 major league baseball players had asked for increased netting during the course of collective  
 17 bargaining negotiations. Defendants also were aware of studies that determined that fans sitting in  
 18 exposed areas of ballparks cannot reasonably be expected to react quickly enough to protect  
 19 themselves from a foul ball. Defendants were also in possession of technology measuring the  
 20 speed of baseballs and human reaction time. Defendants had knowledge of the falsity of facts they  
 21 promulgated through the use of so-called “warnings” at ballparks that spectators sitting in the  
 22 Danger Zone could avoid injury by being “alert” or “paying attention.”

23 336. Through this concealment, as well as concealing the truth via statements, outlined  
 24 above and repeated often, that baseball is safe, that Major League Baseball can be entrusted with  
 25 spectator safety due to their “concern” regarding the issue, that baseball is an “extraordinarily  
 26 healthy entertainment product,” by statements encouraging parents and grandparents to bring

27 <sup>519</sup> [http://www.breitbart.com/sports/2015/07/06/baseball-can-kill-you-an-interview-with-the-](http://www.breitbart.com/sports/2015/07/06/baseball-can-kill-you-an-interview-with-the-ballpark-fatalities-stats-keeper/)  
 28 [ballpark-fatalities-stats-keeper/](http://www.breitbart.com/sports/2015/07/06/baseball-can-kill-you-an-interview-with-the-ballpark-fatalities-stats-keeper/)

1 children to games, and by advertising and marketing the game as family friendly via articles on its  
 2 website showing infants in the unprotected areas of ball fields, and other “kid-friendly” and  
 3 “family-friendly” promotions and marketing efforts detailed above, Defendants induced a false  
 4 belief in Plaintiffs and spectators who justifiably relied on such statements and believed that they  
 5 were safe to continue to purchase tickets for and attend MLB games, and continue to sit  
 6 in and bring their minor children to exposed areas of the ballpark between the foul poles. This  
 7 concealment was also achieved via the use of unconscionable “warnings” on the back of tickets  
 8 and signage in stadiums that perpetuated a myth that attention was a defense to serious injury from  
 9 an errant ball or a flying bat and would lead reasonable spectators, including Plaintiffs, to rely on  
 10 these statements and believe that these areas of the ballpark would be “safe” as long as they  
 11 generally paid attention to the game. Defendants in essence created a concealed danger known to  
 12 them, a danger clothed with the deceptive appearance of safety.

13 337. Defendants’ conduct was a substantial factor in bringing about harm to Plaintiffs.  
 14 As a proximate cause of Defendants’ concealment, Plaintiffs and the putative Class members were  
 15 damaged and suffered harm described above, including injury and the fear of imminent injury.

### 16 **THIRD CAUSE OF ACTION**

#### 17 **VIOLATIONS OF THE CALIFORNIA UNFAIR COMPETITION LAW** 18 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

19 338. Plaintiffs reallege the foregoing allegations as if fully set forth herein on behalf of a  
 20 class of persons or entities that bought season tickets to games in California who are seated in the  
 21 Danger Zone.

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

25 340. Defendants have engaged in unfair competition and unfair, unlawful or fraudulent  
 26 business practices by their conduct, statements, and omissions described above. In addition,  
 27 Defendants have engaged in unfair competition by engaging in fraud and deceit.  
 28

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

4           342. These acts and practices have deceived Plaintiffs and the putative Class and are  
5 likely to deceive the public. Defendants' violations of the UCL caused injuries to Plaintiffs and  
6 Class members.

7           343. The injuries suffered by Plaintiffs and Class members and which Plaintiffs and  
8 Class members are at imminent risk of suffering greatly outweigh any potential countervailing  
9 benefit to consumers or to competition of not protecting these seats. Nor are they injuries that  
10 Plaintiffs and Class members should have, could have, or can reasonably avoided, or can avoid.

11           344. Defendants' representations and acts as set out above were justifiably relied upon by  
12 Plaintiffs and induced Plaintiffs and others similarly situated to continue to purchase tickets for and  
13 attend MLB games. Plaintiffs reserve the right to identify additional violations by Defendants as  
14 may be established through discovery.

15           345. Pursuant to California Business and Professions Code section 17203, Plaintiffs seek  
16 an order of this Court:

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

20                           **FOURTH CAUSE OF ACTION**

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

23           346. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as  
24 though fully set forth herein on behalf of the California subclass.

25           347. Plaintiffs are "persons" as defined at California Civil Code § 1761(c) and a  
26 "consumer" as defined at California Civil Code § 1761(d).

27           348. Defendant Manfred is a "person" as defined at California Civil Code § 1761(c).  
28

349. Defendants the Office of the Commissioner of Baseball, Rob Manfred and the teams are a “person” as defined at California Civil Code § 1761(c).

350. A ticket to an MLB major or minor league game is a “good” as defined at California Civil Code § 1761(a). Plaintiff Payne and Gorman’s tickets were acquired from the Oakland Athletics and Charlotte Knights, respectively.

351. Major League Baseball and its teams are in the business of selling tickets. Tickets can be purchased at MLB.com’s website. For example, tickets for Oakland Athletics’ games, including season tickets, can be purchased at MLB.com’s “Athletics Tickets” site.<sup>520</sup> By systematically holding out MLB games, including the unprotected areas of the ballparks, as safe through the specific statements and misrepresentations outlined above, 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,<sup>521</sup> 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). Plaintiffs relied on these representations and were injured as a result.

## FIFTH CAUSE OF ACTION

### VIOLATIONS OF CALIFORNIA CIVIL CODE §1668

352. Plaintiffs incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein on behalf of the California subclass.

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<sup>520</sup> [http://mlb.mlb.com/ticketing/index.jsp?c\\_id=oak&affiliateId=B1Q7F6591-91G](http://mlb.mlb.com/ticketing/index.jsp?c_id=oak&affiliateId=B1Q7F6591-91G)

<sup>521</sup> 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).



**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of the Class, request 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 Plaintiffs as representative of the proposed Class and designation of Plaintiffs' counsel as Class counsel;

C. Injunctive relief;

D. An award to Plaintiff Smith of damages due to her personal injury;

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

F. An award to the Plaintiffs 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), Plaintiffs demand a trial by jury of all claims in this Complaint so triable.

1 DATED: October 23, 2015

HAGENS BERMAN SOBOL SHAPIRO LLP

2  
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