

NEW MEXICO INJURY ATTORNEY BLOG

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New Mexico Court Takes #5 Honors on List of Judicial Hellholes

The American Tort Reform Association named the New Mexico appellate courts #5 on their list of judicial hellholes. Among the reasons for the listing was the refusal to adopt the baseball rule in a lawsuit against the Albuquerque Isotopes ballpark when a spectator was badly injured by a baseball.

The report neglects to address the real problem in the case and the basis for liability. The individual that was injured was a 4 year old child injured in a picnic area set up in the outfield of the park. Many picnic tables are located in the area. None of the tables are covered or protected from incoming balls. There is no netting, and there were no warning signs. Worse yet, the game had not started. Batting practice began without any warning to the spectators. The family had no idea that they or their 4 year old son Emilio was at risk. There was no reason for them to anticipate the risks of the fractured skull that their 4 year old suffered as a result of the negligence of the ballpark.

Moreover the New Mexico Court of Appeals simply reversed the trial court's summary judgment in favor of the ballpark. The court basically said that there were facts weighing against the protection of the "baseball rule" in this case. The ballpark can still argue the baseball rule and assumption of risk at trial. They simply do not win by default by application of the "baseball rule."

The baseball rule states that fans assume the risk of foul balls. Many are injured every year as balls are fired into the crowds. However, these incidents typically occur during games not in warm up when fans are unaware of the activity. They also typically occur down the foul baselines where fouls are usually hit. They do not typically occur in a picnic area before the game begins.

Does the baseball rule really make sense at all? Rather than the leagues and teams bearing the costs of a little safety netting down the lines and in the outfield, the fans must bear the costs of being plugged in the head by a ball traveling over hundred miles per hour. And they assume this risk while drinking beer as fast the concession stands can pour it down them. Perhaps, these parks should stop serving beer. That would cut into profits as would the safety netting.

Aside from the fact that there are children present who are not legally competent to assume these risks any more than they should assume the risk of their parents drinking and driving, the parents with whom they came can hardly be expected to stay alert the entire game themselves. Again, they have been drinking. If they haven't been drinking,

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they most certainly have been eating. If they are on some kind of bizarre ballpark diet that prohibits food and drink, they most likely are socializing. This is the point isn't? Or do the fans all really come to the park for the love, joy and intrigue of watching minor league baseball.

The fact is there are many distractions. The game is often the least of the distractions particularly in Albuquerque. The parents are more excited about the beer and food than the game. The kids are more excited about Homer Simpson making an appearance in the 7th. Clearly, somebody is going to get hit. Even if they were paying attention the entire game, they might just not be agile enough to dodge a laser coming at their chest. People getting hit by balls is no surprise. The real surprise is that more people are not killed at these events. Even more surprising is the existence of a "baseball rule" that would say that you are on your own once you enter a baseball stadium, "enter this stadium at your own risks." Strange indeed.

I am glad that there are men that value the safety of children, families, parents, and even beer-drinkers over the preservation of a archaic and nonsensical rule, no matter how cool it sounds when it is called the "baseball rule." I for one applaud the court. Hopefully, if the case or another case like it makes it way back to the Court of Appeals, the judges throw the "baseball rule" out completely. It seems to me that 4 year olds like Emilio are far more deserving of protection than corporations like Albuquerque that own baseball teams and stadiums.

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