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Injuries from Foul Balls, Broken Bats, and Railing Fall-Overs: Who is Liable?

JENNIFER BEEBE*

Every Major League Baseball season ends with multiple injuries, if not casualties, resulting from flying baseball bats and baseballs entering the stands at unimaginable speeds, or eager spectators falling over the railings trying to catch a souvenir. The Illinois Baseball Facility Liability Act addresses who is liable when these unfortunate situations occur. However, the Act fails to give concrete safeguards that could be implemented in professional baseball stadiums to help alleviate some of the injuries that continue to occur. Additionally, the Act fails to give those unfortunate victims of these injuries or casualties a clear idea as to when they would be successful in a legal action against the ballpark. Re-writing the Illinois Baseball Facility Liability Act could make it clear to both the victims, as well as the ballpark personnel, as to what safeguards are required at the professional ballparks, as well as who is liable when injuries do occur.

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I. INTRODUCTION

It was a Friday night in the middle of the second inning at Fenway Park.\(^1\) A young woman was watching the game with her husband and son.\(^2\) Brett Lawrie hit the ball, breaking his bat, causing the shattered pieces to fly into the stands.\(^3\) The woman, sitting in the second row between home plate and third base, was not protected by the netting.\(^4\) The young woman was hit by the broken bat in the head and suffered life-threatening injuries.\(^5\) However, that was not the only serious injury in 2015.

In August of 2015, a woman suffered a severe injury when she was hit by a foul ball while attending a Detroit Tigers game.\(^6\) While Anthony Gose was up to bat, the pitcher pitched the ball at ninety-six miles per hour.\(^7\) Once the ball hits the bat, it continues to pick up speed.\(^8\) The woman who was hit by the foul ball was sitting in the first row, approximately eighty feet from home plate.\(^9\) It was determined that a ball that is hit off of a ninety-six miles per hour pitch, and travels eighty feet towards the stands, only gives the fans seated there between 0.6 and 0.7 seconds to react.\(^10\) Even the most attentive fan would not have the time needed to avoid the foul ball coming her way.

After the game, Gose, who hit the ball, made the comment that even the players in the dugout who are paying attention to the game do not have time to react to a foul ball.\(^11\) Gose continued to say, "[z]ero chance in this world, a fan sitting right there over our dugout could react . . . ."\(^12\) Gose continued to mention that fans just want to enjoy the game, and that fans will continue

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2. Id.
3. Id.
5. ESPN, *supra* note 1.
7. Id.
8. Id.
9. Id.
10. Id.
12. Id.
to enjoy the game even when there is a safety net separating them from the
field.13

Baseball is considered one of the most dangerous sports for spectators.14 The most common area to find bats and balls flying into the stands is along the third and first base lines.15 Not only do they see more bats and balls, they are also the seats fans prefer to sit in.16 Because more fans prefer these seats, the more likely the seats will be filled. Thus, the more likely a fan is to be hit, and possibly injured, by a flying object from the field.

Injuries do not occur only from broken bats and flying balls. In 2011, a Texas Rangers fan lost his life when he reached over the railing to catch a ball thrown to him by a player.17 Shannon Stone was attending the Texas Rangers game with his young son on a Thursday evening.18 As any eager fan, Stone wanted to catch the ball being tossed up into the stands.19 As Stone reached over the railing, he lost his balance and went head first over the railing.20 Unfortunately, Stone has not been the only fan to fall over a railing.21 Every year a spectator is injured by a foul ball, broken bat, or falling over the railing. Most of these incidents could have been prevented. Instead, however, injuries will continue to occur, and the injured spectators will not receive any compensation for the injuries. This problem could be resolved if the Illinois Baseball Facility Liability Act is re-written to be more specific, and if it is enforced in all states, instead of just Illinois.

Part II of this Article will address the Limited Liability Rule that most, but not all states, follow. It will discuss the Illinois Baseball Facility Liability Act, and how the Act should be re-written. Part III discusses the history and changes to the game. It includes how pitching has changed throughout the years, and when and how professional ballparks began adding safety netting in their stadiums. Part IV discusses the statistics in relation to spectator injuries. Part V discusses the differences between the old ballparks and the new ballparks. It also contains information on the increased dangers in the newer ballparks, as well as distractions to spectators during the game.

13. Id.
15. Id.
16. Id.
18. Id.
19. Id.
20. Id.
Part VI discusses the injuries throughout the years due to a lack of safety nets, including lawsuits that were filed and lost by spectators. Part VII discusses the fatalities caused by a lack of safety netting, or spectators falling over a railing. Part VIII discusses the laws in different states in regards to liability and spectator injuries in professional baseball parks. Part IX discusses safety netting in professional ballparks and the views of both professional baseball players and of spectators in relation to the amount of safety netting in the ballparks.

Part X discusses broken bats that leave the ballpark, and the reasons why the bats break, along with the injuries they cause. Part XI discusses the railing heights in the ballparks, while Part XII discusses the particular things professional baseball owners and organizations are currently doing to help prevent injuries and to prevent liability. Part XIII discusses the current class action lawsuit that was filed against the Commissioner of Baseball and his office in the summer of 2015 regarding the lack of safety netting in the Oakland Athletics’ Ballpark. Part XIV discusses the Commissioner of Baseball’s new netting recommendation as of December 2015.

II. LIMITED LIABILITY

A case from 1914 was one of the first cases where the court recognized that the ballpark owner is responsible for maintaining safety netting, and the liability rests on that of the owner where that duty is not met. In that particular case, the spectator was injured when he was sitting behind a rotted safety netting while attending a professional baseball game in Kansas City. The court stated that although spectators take a natural risk of being hit by a ball when attending a professional baseball game, the baseball stadium owner is to provide reasonable care to protect spectators from injuries.

The court also stated that when stadium owners invite spectators to the stadium to attend the games, and foul balls are hit towards spectators, it is the duty of the ballpark owner to provide a protective screening. The court further went on to state, “where one person owes a duty to another, the person for whose protection the duty exists cannot be held to have assumed risks of injury created solely by a negligent breach of such duty.” The court stated that the duty of the ballpark to maintain the safety screens is an implied assurance that spectators should be able to rely on when attending games.

23. Id. at 909.
24. Id. at 910.
25. Id.
26. Id.
27. Edling, 168 S.W. 908 at 910.
When one reads the Illinois Baseball Facility Liability Act, however, it is hard to tell what exactly is considered a negligent act by the stadium owner. Due to the increase in injuries sustained by fans at Major League Baseball games, Illinois should change its current statute, the Baseball Facility Liability Act, to include netting length requirements, as well as railing height requirements. The current statute reads,

Liability limited. The owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person being hit by a ball or bat unless: (1) the person is situated behind a screen, backstop, or similar device at a baseball facility and the screen, backstop, or similar device is defective (in a manner other than in width or height) because of the negligence of the owner or operator of the baseball facility; or (2) the injury is caused by willful and wanton conduct, in connection with the game of baseball, of the owner or operator or any baseball player, coach or manager employed by the owner or operator.28

The current statute is too broad. All it states is that the owner or operator of the baseball facility shall not be responsible, unless the injury is a result of the screen, backstop, or similar device being defective.29 It does not, however, indicate what constitutes a screen as being defective. The Illinois Baseball Facility Liability Act should be changed to include the height of railings and the height and width of the netting. Additionally, other states should adopt the newly written Illinois Baseball Facility Liability Act.

The Illinois Baseball Facility Liability Act should be re-written as follows:

The owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person being hit by a ball or bat unless: (1) the person is situated behind a screen, backstop, or similar device at a baseball facility and the screen, backstop, or similar device is defective, or the screen, backstop, or similar device does not meet the required dimensions of seventy feet from the home plate towards the foul pole on both the first and third base side of the stands,

29. Id.
and is twenty to thirty feet high. If the screen, backstop, or similar device is the proper length and height and not defective, the spectator assumes the risk and the owner or operator of the baseball facility shall not be liable.

The owner or operator of a baseball facility shall not be liable for any injury to the person or property of any person as a result of that person falling over a railing, unless: (1) the railing height does not meet the required height, or (2) the railing is defective. The required height of the railing in front of the seats must be forty-two inches, and the railings at the bottom of down aisle must be forty-two inches. If any person falls over the railing that is of proper height and is not defective, the owner or operator of the baseball facility shall not be liable for any injury to the person or property as a result of that person falling over the railing. The owner or operator of a professional baseball stadium will not be liable for any person who falls over a railing due to drunkenness or foul play by the person.

The dimensions of the safety netting should be seventy feet from home plate towards first base and from home plate towards third base because that is the recommendation the Commissioner of Baseball has given. The reason this recommendation should be followed is because it gives spectators who want to sit close to the field, but want extra protection from being hit with a foul ball or broken bat, the protection they are looking for. In addition, because the netting would only have to go seventy feet from home plate towards both the first base and third base foul pole, it would still give those spectators who would like to sit close to the field and experience the full effects of the game. The experiences those spectators would like to maintain, such as catching foul balls, would not be obstructed from the safety nets. By implementing a statute that mandates the length of the safety netting, all spectators would be able to sit in a desired seat without feeling unsafe, as well as limiting the liability of the baseball organization and owner.

The height of the safety netting would be kept at the same height most ballparks maintain their safety nets. The height of the safety netting in most professional baseball parks is twenty to thirty feet. By enforcing a mandated railing height requirement, spectators will be further protected from falling

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over the railings. The height requirement will not prevent spectators from visibility from the field. The forty-two-inch railing height in front of the seats should be used because the railing at that height would reach the stomach of a five-foot-nine person, the average height of a male.31

The professional baseball organization and owner, in addition, would not be liable for any falls over the railing if the railing is of mandated height. Further, if a spectator falls over the railing due to the spectator’s own negligence, such as too much drinking, the professional baseball organization and owner would not be liable for such instances.

III. HISTORY AND CHANGES TO THE GAME

Stadiums have been updated throughout the years. Additionally, the rules of the game have also changed. Originally, pitchers threw underhand rather than over-hand.32 This was the rule until the late 1870’s.33 During this time, there were not any reported injuries suffered by fans due to foul balls.34 Underhand pitching was followed by a side-arm pitch, then in 1884, over-hand pitching.35 As soon as pitchers were allowed to throw over-hand, safety nets began to appear in ballparks.36

Originally the protection consisted of what was known as “catcher’s fences.”37 “Catcher’s fences” were intended to stop balls from getting away from the catcher, rather than protecting the spectators.38 Eventually, “catcher’s fences” turned into something much more. In 1878, the Providence Grays installed the first fan-protective screen.39 The screen was installed in an area known as “slaughter pens”, directly behind the catcher.40 This location was referred to as “slaughter pens” due to the amount of foul balls that ended up there.41

The current safety netting consists of a lightweight polymer, contrasted from the original netting made of hemp woven screens.42 The lightweight polymer is thinner and more durable than past netting.43 The current screens

31. Lavigne, supra note 21.
32. GORMAN & WEEKS, supra note 14.
33. GORMAN & WEEKS, supra note 14.
34. GORMAN & WEEKS, supra note 14.
35. GORMAN & WEEKS, supra note 14.
36. GORMAN & WEEKS, supra note 14.
37. GORMAN & WEEKS, supra note 14.
38. GORMAN & WEEKS, supra note 14.
40. GORMAN & WEEKS, supra note 14, at 151-52.
41. GORMAN & WEEKS, supra note 14, at 152.
43. Id.
are mostly invisible to fans, other than where one section of netting connects with another.\footnote{Id.} Because the netting is so thin and practically invisible, it will not cause obstructions to the view of fans.

As spectator injuries continued to progress, some stadiums took the initiative of installing additional netting or Plexiglas.\footnote{GORMAN & WEEKS, supra note 14.} However, not all stadiums have followed this lead. Most stadiums maintain only the behind-the-plate netting set forth in the late 1800s.\footnote{GORMAN & WEEKS, supra note 14.}

Most foul balls land within the foul pole lines.\footnote{Class Action Complaint, supra note 42, at 13.}

As pitching rules changed in the game of baseball, safety precautions also changed, as noted above. Baseballs have also increased in speed as well when leaving both the pitchers’ hands and the baseball bats. “Major League Baseball has been described as having a ‘velocity obsession.’”\footnote{Class Action Complaint, supra note 42, at 15.} The average speed of a pitch has gone from 90.9 miles per hour (mph) to 92 mph between the years 2008 and 2013.\footnote{Class Action Complaint, supra note 42, at 15.}

In 2003, one pitcher alone threw at least twenty-five pitches at 100 mph in one game.\footnote{Class Action Complaint, supra note 42, at 15.} Pitch-speed tracking technology, along with pitcher shoulder strengthening, has led to the increase in pitching speed.\footnote{Class Action Complaint, supra note 42, at 16.}

In 2013, eight pitchers threw pitches that reached a speed of at least 100 mph.\footnote{Class Action Complaint, supra note 42, at 16.}

Additionally, a study was done in 2002 regarding an injury due to a foul ball.\footnote{Class Action Complaint, supra note 42, at 16.}

The test revealed that it took the foul ball 1.07 seconds to travel 141 feet.\footnote{Class Action Complaint, supra note 42, at 16.}

IV. STATISTICS

Although fans love souvenirs, “[t]he foul ball . . . is the stuff of the baseball fan’s fantasy, and nightmare.”\footnote{David Glovin, Baseball Caught Looking as Fouls Injure 1,750 Fans a Year, BLOOMBERG (Sept. 9, 2014, 3:05 PM), https://www.bloomberg.com/news/articles/2014-09-09/baseball-caught-looking-as-fouls-injure-1-750-fans-a-year.} Of the foul balls that are hit, about seventy-three percent are hit into the stands.\footnote{Catherine Cloutier, How Often Are Baseball Spectators Injured During Game Play?, BOS. GLOBE (June 9, 2015), https://www.bostonglobe.com/metro/2015/06/09/how-often-are-baseball-spectators-injured/bVBG11Yz8u0dy1DLGx0cmI/story.html.} Throughout baseball, about 1,750
fans are injured every season due to baseballs entering the stands.\textsuperscript{57} Additionally, thirty to forty balls end up in the stands during every major league game.\textsuperscript{58} In three out of every four games, at Fenway Park alone, a fan is injured by a foul ball or bat.\textsuperscript{59} Fenway is not the only ballpark where fans are injured. Other incidences have included a six-year-old suffering a shattered skull at the Atlanta Braves stadium, as well as a seven-year-old in Chicago suffering brain swelling due to foul balls.\textsuperscript{60}

V. NEW V. OLD BALLPARKS

Ballparks have changed throughout the years and are continuing to change.\textsuperscript{61} Originally, ballparks did not even consist of outfield fencing.\textsuperscript{62} “As baseball became more . . . popular, fences were” put in place, but there was not a set standard each stadium had to abide by.\textsuperscript{63} Each stadium has its own uniqueness to it for particular reasons and, therefore, the stadiums must all be shaped differently.\textsuperscript{64} Baseball ballparks have never been identical. For example, as fences started appearing at professional ballparks, “Fenway Park . . . [had] a short left field to accommodate Landsdowne Street.”\textsuperscript{65} In order to create identical stadiums, Fenway Park would have had to buy and close a street filled with businesses, the rest of the Major League Baseball would have needed to follow the dimensions at Fenway Park, or the Boston “Red Sox would have needed to build a new stadium . . .”\textsuperscript{66} Due to the financial burden that building identical stadiums would cause, each stadium owner has been able to build their own stadium. As each stadium owner is able to renovate its stadium, even just a little bit, spectator safety continues to be a concern.

As new ballparks are built, or old ballparks renovated, fans are sitting closer to the field.\textsuperscript{67} Although the seats are less safe, the closer seats are in

\begin{itemize}
\item \textsuperscript{57} Glovin, supra note 55.
\item \textsuperscript{58} Gorman & Weeks, supra note 14.
\item \textsuperscript{59} Cloutier, supra note 56.
\item \textsuperscript{60} Cloutier, supra note 56.
\item \textsuperscript{62} Id.
\item \textsuperscript{63} Id.
\item \textsuperscript{64} Id.
\item \textsuperscript{65} Id.
\item \textsuperscript{66} Id.
\item \textsuperscript{67} Id.
\end{itemize}

high-demand, thus they will remain occupied. In addition to fans sitting closer to the fields, other factors play into the unsafe conditions at the ballparks. Players are stronger than they were in the past, causing the foul balls to be hit harder. Distractions including loud music, scoreboards, and advances in technology such as cell phones, also increase the risk of fans sitting closer to be hit by a foul ball or broken bat. Newer stadiums, in addition, are placing seats closer to the field. In 2017, a Georgia stadium will be opening and the seats will be closer to the field than any other Major League Baseball stadium. The closer fans are to the field, the more at risk they are to injury. There is not a rule on the distance seats must be from the field. The lack of requirement for seating placement is another reason why there should be a statute requiring specific netting measurements.

Each ballpark owner is allowed to put up safety nets as he desires. Arizona has already changed their netting requirements. They extended their netting an additional seventy-seven feet on both sides of the field. However, no other teams have taken the initiative to adjust their safety net dimensions.

There is not a particular length, or size, of safety nets. Most stadiums install nets to reach as high as twenty to thirty feet. The distance the nets reach also varies among stadiums. Some stadiums extend the netting from the beginning of one dug out, behind home plate, to the beginning of the next dugout. Other stadiums extend the netting to first and third bases, while other stadiums stop the netting closer to home plate. Without a standard to go by, stadium owners can choose where to place the netting. By incorporating a set standard within the statute, both spectators and stadium owners will know, before a lawsuit is filed, whether the stadium owner is liable for the injury, or whether the liability is placed on the spectator.

68. Id.
70. Id.
71. Class Action Complaint, supra note 42, at 34.
72. Class Action Complaint, supra note 42, at 34.
73. Class Action Complaint, supra note 42, at 34.
74. Slonksnis, supra note 6.
75. Jenkins, supra note 67.
76. Jenkins, supra note 67.
77. Slonksnis, supra note 6.
78. Class Action Complaint, supra note 42, at 10.
While foul balls can soar into the stadium at more than 100 miles per hour, many players have switched to maple bats, causing an increase in the number of broken bats. Approximately seventy-five percent of players are using the maple bats. The speed of the foul balls, as well as breaking maple bats have led to an increase risk of injury as new baseball stadiums are changing the seating of fans.

As stadiums are being built and re-designed, changes have been taking place as to the height of railings. However, there is not a uniform standard height requirement, and stadiums are choosing the height they want. After the Texas Rangers had multiple fans fall over rails that were thirty inches high, they changed the height of their railings to forty-two inches. Some stadiums followed the Rangers, however, some stadiums have chosen to leave their railings at thirty inches. A forty-two-inch railing would rise to the sternum of the average height male at five-foot nine-inches. Anything less than that could increase the risk of fans falling over the railing.

The Texas Rangers had two incidents in the same year, 2010, where a fan fell over the railing to try and catch a ball. Although there is not a required baseball stadium structure that all stadiums must comply with, there are set railing requirements. All stadiums must comply with a twenty-six-inch railing in front of seats, as well as a forty-two-inch height requirement at the bottom of down aisles. As fans continue to fall over the railings, however, this railing height requirement should be amended and added to the Illinois Baseball Facility Liability Act.

Although changing the requirements for railings, and adding a requirement for netting could reduce injury to spectators and lawsuits against stadium owners, not all fans are in favor of a change. For example, some fans believe that the railing heights are okay as is. It has been suggested by baseball fans that even if railing heights were changed, spectators would crawl through the railings, and instead, spectators should be more aware of their

81. Cloutier, supra note 56.
82. Westover, supra note 69.
83. Jenkins, supra note 67.
84. Jenkins, supra note 67.
85. Lavigne, supra note 21.
86. Lavigne, supra note 21.
87. Lavigne, supra note 21.
88. Lavigne, supra note 21.
89. Lavigne, supra note 21.
91. Lavigne, supra note 21.
92. Lavigne, supra note 21.
surroundings. However, other fans believe the railings heights should be changed. One fan, for example, fell thirty-five feet over a railing when she tilted backwards when looking up into the stands. Spectators believe there will be additional deaths in the future if the railing height requirements are not changed.

VI. INJURIES THROUGHOUT THE YEARS DUE TO SAFETY NETS AND THE BALLPARK OWNERS PREVAILING

As fans continue to get injured at ballparks, lawsuits continue to fill the courts. The cases being brought have the opportunity to change the liability of the injury from the fan, to the stadium owner. Most cases end in favor of the stadium; however, in 2005, a spectator was awarded damages in New Jersey. The case in which the fan prevailed involved a man who was hit with a ball, suffering a severe eye injury, while purchasing a drink from a concession stand. Although New Jersey follows the Limited Duty Rule, the court issued a split decision in favor of the spectator. The court concluded that if the spectator were in an area where he would not suspect he would be hit and would not be paying attention, then the spectator is not responsible for injuries sustained if he is hit. Although this case involved a fan that was hit outside of the stands, more and more fans inside the stadium have reasons to be distracted from the game, thus causing them to not pay attention.

There are a lot more distractions in ballparks than in the past. As the demographic of baseball spectators has changed, the attention span of spectators has changed. The Office of the Commissioner has begun to add technology to the ballparks to increase the interest of spectators. Additionally, the Commissioner has discussed the idea of changing the pace of the game in order to keep spectators engaged. The Commissioner has suggested a twenty-second-pitch clock. By increasing the pace of the game, it would lead to a shorter amount of time between pitches. A shorter amount of time between pitches could lead to additional pitches, and additional foul balls flying out into the stands. The increase in foul balls that are entering the

93. Lavigne, supra note 21.
94. Lavigne, supra note 21.
95. Lavigne, supra note 21.
96. GORMAN & WEEKS, supra note 14, at 152.
97. GORMAN & WEEKS, supra note 14.
98. GORMAN & WEEKS, supra note 14.
100. GORMAN & WEEKS, supra note 14.
103. Class Action Complaint, supra note 42, at 14.
stands, the more fans that are at risk of being hit. In addition, the less time between pitches, the less time a spectator has to look at his phone, get up from his seat, or buy a hot dog from a vendor, without taking his eyes off the ballgame.

Other distractions have included video display monitors on the back of seats, ordering food from seats, and fan contests. Stadiums also allow vendors to use humor when selling food, as well as using mascots as entertainment. Large television screens, some larger than 11,000 square feet, called jumbo-trons, also provide distractions for fans.

The Commissioner of Baseball has indicated he is aware of the additional distractions brought into baseball stadiums with the increase in technology. For example, baseball stadiums will maintain sufficient Wi-Fi for fans to use while at the games. Allowing efficient Wi-Fi could increase the amount of time a fan is looking at a cell phone, rather than the field, thus increasing the risk of injury from a flying ball or bat.

For over a century, fans have been getting injured while watching games at ballparks. In 1913, there was a case filed against owners of a ballpark in Kansas City. The plaintiff was injured when a foul ball hit him. The reasoning for his claim against the owner was that the safety nets did not protect him. However, the court found that the ballpark owner did provide safety netting, but it was up to the spectator to sit in one of the protected seats.

In 1932, another plaintiff was denied relief when struck with a foul ball. In this case, there were not any seats available behind protected screens when the plaintiff arrived at the game. Therefore, the plaintiff was forced to sit in an unprotected seat if he wished to watch the game. The court held that it is not the responsibility of the ballpark to have netting in position to protect every seat. The court stated they only needed to provide netting to protect the most dangerous seats, in addition to those who may

105. Class Action Complaint, supra note 42, at 35.
106. Class Action Complaint, supra note 42, at 35.
107. Class Action Complaint, supra note 42, at 35.
111. Id.
112. Id.
113. Id. at 1178.
114. Brisson v. Minneapolis Baseball & Athletic Ass’n, 240 N.W. 903, 904 (Minn. 1932).
115. Id.
116. Id.
117. Id.
reasonably anticipate sitting in protected seats.\textsuperscript{118} But who decides where the most dangerous seats are? Professional ballparks have different safety netting dimensions. Each team chooses the most dangerous seats. The dangerous seats should be decided based on research and statistics. This is another reason why safety netting should be in the statute and be seventy feet from home plate towards the foul pole on both the first and third base side of the field.

In 1950 another fan brought a complaint against a baseball organization for injuries sustained after being hit by a baseball.\textsuperscript{119} In that case, the plaintiff was in a seat unprotected by netting.\textsuperscript{120} The court held that on this occasion, the game was being played in a custom and usual way, and that it was not negligence on the part of the ballpark to not protect every seat with netting.\textsuperscript{121} The court further stated that the ballpark needed to only provide screening where the balls most frequently enter the stands.\textsuperscript{122} In 1981, a New York court looked to answer the question as to how much netting a ballpark is required to have in their stadium.\textsuperscript{123} The court held that the screens need to only protect the seats in the most dangerous section of the game.\textsuperscript{124} Further, the court held that the screens must be sufficient enough for those fans who, “may be reasonably anticipated to desire protected seats on an ordinary occasion.”\textsuperscript{125} The court indicated that the most dangerous part of the stadium was behind home plate but did not indicate how a ballpark is to determine what is enough screening to satisfy the reasonably anticipated number of protected seats at a game.\textsuperscript{126}

Upon entering the 2000s, lawsuits continued to be filed against ballparks due to injuries sustained by spectators. In 2001, a woman attending a game with her husband was hit in the mouth with a foul ball as she turned her head away from the game for only a second.\textsuperscript{127} This court applied a “no duty” rule and held the defendant was not liable.\textsuperscript{128} The court used the “no duty” rule because they found that being hit by a foul ball is a common and expected risk of the ballgame.\textsuperscript{129}

Not all cases brought against baseball stadiums are as a result of foul balls. In 2006 a spectator brought a claim against a ballpark due to an injury

\textsuperscript{118} Id.
\textsuperscript{119} Anderson v. Kan. City Baseball Club, 231 S.W.2d 170 (Mo. 1950).
\textsuperscript{120} Id. at 171.
\textsuperscript{121} Id. at 172.
\textsuperscript{122} Id. at 173.
\textsuperscript{124} Id.
\textsuperscript{125} Id.
\textsuperscript{126} Id.
\textsuperscript{128} Id. at 1031.
\textsuperscript{129} Id.
Injuries from Foul Balls, Broken Bats, and Falling Fall-Overs

sustained from a thrown ball. The court in this case looked to the doctrine of primary assumption of risk. The court held that warm-up throws between two players is considered to be within the scope of the game, and therefore, spectators assume the risk of being hit by a stray ball. While players are warming up before the ballgame, spectators are more likely to not pay attention.

In 2001, a claim was filed against the Detroit Tigers when a child was hit by a broken bat. While the child was sitting along the third base line, a broken bat curved around the net and hit her, crushing her fingers. Part of the plaintiff’s argument was that the net was not long enough. The court applied the limited duty rule in holding the baseball organization was not liable. When following the limited duty rule, the court quoted Akins when stating, “[e]very spectator injured by a foul ball, no matter where he is seated or standing in the ball park, would have an absolute right to go to the jury on every claim of negligence.”

With a mandatory safety netting requirement, a spectator would know whether he had a claim before filing a lawsuit. Further, the court stated how there was netting in other parts of the ballpark where seats were available, and the plaintiff could have sat in those seats if chosen. By allowing netting to go seventy feet from home plate towards each foul pole, it would give spectators the opportunity to sit closer and still be protected.

In a more recent case from 2015, a fan filed a claim against a baseball organization when she was hit with a ball during batting practice. The court noted that over the course of four years, over 10,000,000 spectators attended games at this particular stadium. However, out of 500 fans hit by a foul ball, only five were sitting in that same section. That is, five fans over the course of four years. However, it only takes one ball to cause serious injury. During batting practice, spectators are arriving, buying snacks, and settling into their seats. All of the spectators are not watching what is going on down

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131. Id. at 838.
132. Id.
134. Id.
135. Id.
136. Id. at 225.
137. Id.
140. Id. at 889.
141. Id.
on the field. If a safety netting requirement had been implemented and followed, five fewer injuries would have resulted. Every injury is an injury, and a spectator suffers. It should not matter how many spectators are injured before something is done to prevent the injuries.

VII. Fatalities

In 1970, a fourteen-year-old was watching a Los Angeles Dodgers’ game when he was struck with a foul ball on the head, above his left ear. The fan, Alan Fish, was sitting in the second row behind the first base line. Fish was knocked unconscious from the impact, but a minute later regained consciousness. Unfortunately, however, he later died from the impact of the foul ball, which forced a portion of the skull into the brain.

Another instance where a spectator died as a result of being hit by a foul ball occurred during a minor league game in 1960. The spectator, Dominick Lasala, was sitting in third base box seats. Because of the proximity to the field and the speed of the ball, Lasala was not able to avoid the impact of the ball. Lasala was hit in the side of the head and suffered cerebral bleeding, leading to his death two days later.

A third instance occurred in 2010 when a spectator, Wendy Lee Wismer Whitehead, was hit in the head with a foul ball. Whitehead was seated along the third base side and had leaned forward to talk to someone. Although there was safety netting in place, the netting did not extend past the end of the dugout, where Whitehead was sitting.

Not only have deaths been caused by foul balls, missed throws during in-field play have also resulted in a spectator death. On a night in 1943, Clarence Stagemyer was attending a Major League Game when a wild throw caused the ball to head into the stands along the first base line. Stagemyer suffered a concussion and a fractured skull, causing his death. The first and third base lines are dangerous due to the seats in those areas being closer to

142. GORMAN & WEEKS, supra note 14, at 153.
143. GORMAN & WEEKS, supra note 14, at 153.
144. GORMAN & WEEKS, supra note 14, at 153.
145. GORMAN & WEEKS, supra note 14, at 153.
146. GORMAN & WEEKS, supra note 14, at 153.
147. GORMAN & WEEKS, supra note 14, at 153.
148. GORMAN & WEEKS, supra note 14, at 153.
149. GORMAN & WEEKS, supra note 14, at 153.
150. GORMAN & WEEKS, supra note 14, at 153.
151. GORMAN & WEEKS, supra note 14, at 153.
152. GORMAN & WEEKS, supra note 14, at 153.
153. GORMAN & WEEKS, supra note 14, at 153.
154. GORMAN & WEEKS, supra note 14, at 153.
155. GORMAN & WEEKS, supra note 14, at 153.
the bases.\textsuperscript{156} Players throw at higher speeds to tag base runners out, and at times the throws are off target.\textsuperscript{157}

Although fan fatalities existed more in the eighteenth and nineteenth centuries, changes in the proximity of fans to the field have occurred since that time.\textsuperscript{158} Initially, baseball games were being played all over the place, including wide-open areas.\textsuperscript{159} During this time, fans were not provided seating, leading fans to find their own seats within close proximity to the foul lines.\textsuperscript{160} Because fans sat so close, they did not have the ability to get out of the way when a ball or bat was heading towards them.\textsuperscript{161} With seat options in existence, which would occur with the mandated safety netting requirement, professional ballparks would leave spectators with close, protected seats, and fatalities would be even less.

VIII. \textbf{Different State Rules}

Some states follow the Limited Duty Rule. The Limited Duty Rule states that “a baseball stadium owner is not liable for injuries to spectators that result from projectiles leaving the field during play if safety screening has been provided behind home plate and there are sufficient number of protected seats to meet ordinary demand.”\textsuperscript{162} This rule is very broad. It does not specify what the number of protected seats to meet ordinary demand is. Additionally, it does not state anything about railing height requirements. Illinois also has its own baseball act, known as the Baseball Facility Liability Act, as discussed above.\textsuperscript{163}

An additional state that has its own laws regarding baseball spectator safety is Colorado, which follows the Colorado Baseball Spectator Safety Act of 1993.\textsuperscript{164} Within the Act it is stated that the spectators are liable for any injuries resulting from a baseball or bat while at a game, unless the injury is a result of a particular circumstance.\textsuperscript{165} These circumstances pertain to an injury that was a result of a negligent act by the stadium owner.\textsuperscript{166} Such negligent acts include: failing to post warning signs; failing to design, alter, or

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\textsuperscript{156} Class Action Complaint, \textit{supra} note 42, at 15.  
\textsuperscript{157} Class Action Complaint, \textit{supra} note 42, at 15.  
\textsuperscript{158} GORMAN \& WEEKS, \textit{supra} note 14, at 153.  
\textsuperscript{159} GORMAN \& WEEKS, \textit{supra} note 14, at 153.  
\textsuperscript{160} GORMAN \& WEEKS, \textit{supra} note 14, at 153.  
\textsuperscript{161} GORMAN \& WEEKS, \textit{supra} note 14, at 153.  
\textsuperscript{163} 745 ILL. COMP. STAT. 38/10 (West, Westlaw through P.A. 99-930 of the 2016 Reg. Sess.).  
\textsuperscript{165} COLO. REV. STAT. § 13-21-120 (b); § 13-21-120 (c)(5)(a)-(c).  
\textsuperscript{166} COLO. REV. STAT. § 13-21-120 (c)(5)(a)-(c).
maintain the premises of the stadium to ensure the safety of the spectators; or the injury to the spectator was intentional. 167 The Act also contains a statement that says spectators are presumed to have the knowledge of professional baseball games, and that there is a risk of injury while attending the game. 168

It is hard to believe the Colorado Baseball Spectator Act of 1993 was written to help ensure the safety of spectators. According to the Act, Colorado will benefit economically from enforcing the Act by encouraging attendance at games, while also limiting liability of those who own professional baseball teams. 169 Further, the Act states that unless those certain exceptions are met, a spectator is barred from filing suit against the owner of the stadium, and the liability of the injury rests on the spectator. 170 Although the Act lays out the three exceptions, the exceptions are not very narrow. When discussing maintenance of the stadium premises by making an effort to design or alter the stadium to ensure spectator liability, the Act fails to state what altering or designing the premises means. 171 By re-writing the Illinois Liability Safety Act to incorporate the dimensions of the netting and the height of the railings, it would be clearer as to what is expected of professional baseball ballparks in terms of design and spectator safety.

States that follow the Limited Duty Baseball Rule include California, Louisiana, Minnesota, Missouri, New York, North Carolina, Ohio, Utah, Washington, Texas, Michigan, New Jersey, Nevada, New Mexico, and Virginia. 172 Re-writing the Illinois Baseball Facility Liability Act and implementing it in every state will help spectators, as well as professional baseball park owners and organizations, understand who is liable when an injury does occur at the ballpark.

IX. NETTING: WHAT THE PLAYERS AND SPECTATORS THINK

The netting at baseball games has become a major topic in Major League Baseball. 173 Players are stating their opinions regarding the amount of netting in the stadium. 174 Players have proposed that netting should extend possibly as far as the foul poles; however, the proposals have been rejected. 175

167. Id.
169. COLO. REV. STAT. § 13-21-120 (2).
171. COLO. REV. STAT. § 13-21-120 (5)(a).
175. Rosenthal, supra note 4.
The reasoning behind the rejection is related to concerns over the fan experience. In addition, there are some objections from fans, who believe the height and length of the netting should not be altered. The main reason for this objection is due to the possibility that the netting would obstruct views, taking away some of the experience of watching the game. One of the reasons is because fans prefer to have the opportunity to catch a foul ball. Fans anticipate catching foul balls, many of who even take gloves to the games in anticipation of taking home a souvenir. Other fans just do not want to have to look at the field through a safety net.

Although there are objections to the possibility of changes to safety nets, there are also fans who do not see a problem with it. Some of the most expensive seats are located behind the safety net. At the ballpark in Oakland, California, the price difference between a seat that is protected is huge compared to that of a seat that is not protected by the netting. For example, some of the seats at the stadium in Oakland protected by the netting are considered VIP, and some cost as much as $230 per seat per game. The price for a seat in an unprotected, yet in close proximity of the field, is $40. Additionally, seats in the protected area are in higher demand and are usually unavailable.

The most dangerous part of the stadium to sit has been determined as the seats along the foul pole lines. Players have stated, “baseball needs to act before a tragedy occurs in a major-league park.” Some players have even admitted that they tell their families not to sit in seats that are not protected by the safety netting. Matt Stairs and Chipper Jones both admitted that they do not let their children sit in unprotected seats. Additionally, Fredi Gonzales advises his wife to, “sit behind the home plate netting, or

177. Glovin, supra note 55.
178. Glovin, supra note 55.
179. Glovin, supra note 55.
180. Glovin, supra note 55.
181. Glovin, supra note 55.
182. Cloutier, supra note 56.
183. Class Action Complaint, supra note 42, at 12.
184. Class Action Complaint, supra note 42, at 12.
185. Class Action Complaint, supra note 42, at 12.
188. Rosenthal, supra note 4.
189. Class Action Complaint, supra note 42, at 17.
‘way up’ in the stands.”

When asked about the netting at Fenway Park, one player commented:

The only thing there, you’ve got limited netting here in Boston. When you’re behind home plate and you’re along the third base side and 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.

The distinction between fan safety and fan experience is the concern of owners.

X. BROKEN BATS

In an article written by Javier Diaz in 2012, Diaz discussed the seriousness of maple bats in regards to spectator injuries. He argued that even the reasonable, experienced fan is not aware of the dangers of maple bats. Diaz discussed how the use of maple bats increases the injury sustained to a spectator due to the way a maple bat shatters. The maple bats shatter easier than other bats because they consist of a thin handle and a heavier head. In addition, the material used in a maple bat is more likely to shatter. The more likely a bat is to shatter, the more likely jagged pieces of the bat will end up in the stands, hitting an unfortunate spectator who did not anticipate it coming. Further, spectators do not look for broken bats flying from the field. Spectators are more concerned with where the ball was hit into the field.

There is a large number of broken bats. In three months alone, in 2008, 2,232 bats were broken during the game, 756 of which broke into multiple pieces. In 2008, a fan was hit by a broken bat, resulting in surgery. The fan had to receive a metal piece in order to put her jaw back together.

191. Class Action Complaint, supra note 42, at 17.
195. Id.
196. Id.
197. Id. at 318.
198. Id. at 319.
199. Class Action Complaint, supra note 42, at 19.
200. Class Action Complaint, supra note 42, at 22.
201. Class Action Complaint, supra note 42, at 22.
XI. Railing Heights

There have been an increasing number of spectators falling over railings in Major League ballparks. In 2009, a man fell twelve feet over a railing, suffering injuries to his face.202 Between 2000 and 2009, at least three deaths occurred due to spectators falling over railings at baseball parks.203 The international building code requires railings to be forty-two inches along the aisles, but only twenty-six inches in front of seats.204 The issue arises, however, when fans sitting directly behind the railing have an obstruction of their view.205 Fans, however, have an option of where to sit at baseball games. They choose which seats they want, while looking at a diagram of the field. Spectators can also choose not to sit directly behind the railing.

The twenty-six inch railing height requirement in front of the seats is the same height requirement implemented in 1929.206 The requirement was from the National Fire Protection Association Building Exits Code, which was used in other structures, such as factories.207 The division manager for the National Fire Protection Association Building Fire Protection and Life Safety stated that the twenty-six inch height requirement was most likely implemented so that the railing would not obstruct views of patrons at theatres and symphony halls.208 The owner of Larimer Design, Architecture and Planning admitted that twenty-six inches is too low.209 Further, he said that at twenty-six inches the railing hits right above the knee or thigh.210 The problem with the railing hitting right above the knee or thigh is that it would be easy for a spectator’s center of gravity to go over the railing.

An article from 2011 shows the difference in views of fans in regards to railing heights.211 Some fans think the view of the field is more important, while others think the safety of fans is more important.212 However, if Illinois set a requirement in the Illinois Baseball Facility Act, it would not be up to professional baseball to determine what height is most appropriate in Illinois. Further, other states may follow. After the tragedy in Texas when a fan fell over the railing trying to catch a ball and died, the Texas Rangers decided to

203. Id.
204. Id.
205. Lavigne, supra note 21.
206. Lavigne, supra note 21.
207. Lavigne, supra note 21.
208. Lavigne, supra note 21.
209. Lavigne, supra note 21.
211. Steinbach, supra note 202.
consider changing all of their railings to a new height.\textsuperscript{213} If all stadiums waited for a tragedy to occur before implementing a new height requirement for railings, it would be too late.

**XII. WHAT BALLPARK OWNERS ARE CURRENTLY DOING**

Currently, baseball stadiums follow procedures other than installing additional safety nets and increasing railing heights. Each team is responsible for providing adequate backstops and displaying warning signs to fans.\textsuperscript{214} In Atlanta, the fans are regularly warned of possible balls and bats entering the stands.\textsuperscript{215} Additionally, they ensure that each usher located in the sections where injuries resulting from flying balls and bats are more likely to occur carry pagers to alert medical personnel quickly when such injuries do occur.\textsuperscript{216} By ensuring ushers are properly prepared to alert medical staff when an injury occurs, the stadium owners are suggesting that those injuries will, and do, occur. By expanding the safety netting, they could significantly reduce the chance of an injury occurring. Some ballparks contract with hospitals to allow physicians to be on-call at games in exchange for tickets.\textsuperscript{217} Thus, another example which shows owners are not aware of the high risk of injury.

Major League Baseball has also implemented other rules to help with fan safety from flying bats and balls.\textsuperscript{218} One rule that was implemented was that additional netting is required during batting practice.\textsuperscript{219} This rule provides evidence that flying balls and bats are an apparent concern in baseball. Other countries provide extensive safety netting to protect fans, such as Japan.\textsuperscript{220}

Other sporting events have taken safety measures to assure spectator safety. The National Hockey League took fan safety seriously after a teenage girl was hit with a puck and died while attending a game.\textsuperscript{221} After the death, the National Hockey League required netting behind the goal line to extend beyond the end glass, in addition to higher Plexiglas above the side boards.\textsuperscript{222} After extending the netting and Plexiglas, it was estimated that more than 23,700 spectator injuries have been prevented at hockey games.\textsuperscript{223} Hockey is

\begin{footnotesize}
\begin{enumerate}
  \item Lavigne, supra note 21.
  \item Glovin, supra note 55.
  \item Glovin, supra note 55.
  \item Glovin, supra note 55.
  \item Class Action Complaint, supra note 42, at 35.
  \item Class Action Complaint, supra note 42, at 31.
  \item Class Action Complaint, supra note 42, at 31.
  \item Class Action Complaint, supra note 42, at 34.
  \item Class Action Complaint, supra note 42, at 31.
  \item Class Action Complaint, supra note 42, at 34.
  \item Class Action Complaint, supra note 42, at 34.
  \item Class Action Complaint, supra note 42, at 34.
\end{enumerate}
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not the only sport that implemented additional safety measures after fans were injured. NASCAR mandated the use of restrictor plates after fans were injured when car fragments flew toward the fans.\footnote{224}

**XIII. CURRENT CLASS ACTION LAWSUIT**

Over the summer of 2015, a class action lawsuit was filed in Oakland, California.\footnote{225} The lawsuit came about when a season ticket holder began to feel unsafe in her seats due to the lack of safety netting protecting her from foul balls.\footnote{226} The season ticket holder, Gail Payne, brought an action against the Office of the Commissioner of Baseball, as well as Robert Manfred, Jr., the Commissioner of the Major League Baseball Association.\footnote{227} Payne filed the action due to her fear of being hit by a foul ball at the game.\footnote{228} Payne is more fearful for her daughter’s safety, and it has been shown children are more at risk of injury while attending a ballgame.\footnote{229}

The Office of the Commissioner of Baseball, along with the Commissioner, have been working towards increasing the number of children who attend ballgames.\footnote{230} Children are at a greater risk of being hit by a ball than an adult.\footnote{231} Research has shown that the reaction time of a child compared to an adult is much slower.\footnote{232} Additionally, a child’s view of the game is obstructed due to being situated lower in the seat.\footnote{233} Children also are more susceptible to technology and the distractions the modern stadiums provide.\footnote{234}

**XIV. COMMISSIONER CHANGING THE NETTING REQUIREMENTS**

The Commissioner of Baseball has already begun discussing the possibility of implementing some type of safety netting requirement to begin the 2016 season.\footnote{235} Major League Baseball has been studying the number of injuries due to foul balls and broken bats, the fans’ opinions on the matter, and

\begin{itemize}
\item[\footnote{224}]{Class Action Complaint, supra note 42, at 34.}
\item[\footnote{225}]{Class Action Complaint, supra note 42, at 34.}
\item[\footnote{226}]{Class Action Complaint, supra note 42, at 6-7.}
\item[\footnote{227}]{Class Action Complaint, supra note 42, at 6.}
\item[\footnote{228}]{Class Action Complaint, supra note 42, at 7.}
\item[\footnote{229}]{Class Action Complaint, supra note 42, at 7.}
\item[\footnote{230}]{Class Action Complaint, supra note 42, at 14.}
\item[\footnote{231}]{Class Action Complaint, supra note 42, at 18.}
\item[\footnote{232}]{Class Action Complaint, supra note 42, at 18.}
\item[\footnote{233}]{Class Action Complaint, supra note 42, at 18.}
\item[\footnote{234}]{Class Action Complaint, supra note 42, at 18.}
\end{itemize}
different types of netting. The concern with the Commissioner is that the stadiums are all one-of-a-kind.

One thing stadium owners are changing is the amount of seats, making a larger amount. The new features, or adjustments of the stadiums, have to be approved by the Commissioner’s office. The Commissioner’s office, when approving these changes to the stadiums, especially the closer seats, should take into consideration the safety of the spectators. Additionally, due to the amount of injuries from lack of netting, a set-netting requirement would assure that when the Commissioner’s office approves the closer seats, the risk to a spectator getting injured by a bat or a ball does not increase.

Due to the fact that each stadium is unique, coming up with a mandatory safety netting requirement would be difficult. There are some features of the ballparks, however, that are exactly the same. The pitcher’s mound, the distance between the bases, and the orientation of the stadium must follow particular guidelines. The infield of professional baseball parks must be ninety-square feet. The distance between home plate and the nearest fence or stand on fairground must be at least 250 feet. Also, there must be ninety feet between home plate and first base, home plate and third base, first base to second base, and second base to third base. Therefore, in every professional baseball park, there is a distance of ninety feet between home plate and both first and third base. Since these dimensions are the same in every ballpark, they should be used when determining a safety-netting requirement.

In December of 2015 during the winter meetings, Major League Baseball came out with a recommended safety-netting strategy. Major League Baseball suggested that stadium owners expand netting to be installed from home plate, to seventy feet towards each foul pole. In defending this recommendation, Major League Baseball discussed the need to provide an available number of seats for the spectators who wish to sit without the netting, and those that wish to sit closer to the field, but protected. Major League Baseball was concerned with the number of fans who would rather have the

236. Id.
237. Id.
238. Davis, supra note 61.
239. Davis, supra note 61.
240. Hagen, supra note 235.
241. Davis, supra note 61.
243. Id.
244. Id.
245. Safety Netting, supra note 30.
246. Safety Netting, supra note 30.
247. Safety Netting, supra note 30.
experience of interactive spectators, such as catching balls. Not only are
the netting recommendations being used during regular season games, the
recommendation also applied to ballparks used during spring training. The
president of the National Association of Professional Baseball Leagues, Pat
O’Conner, said the minor league teams will also be encouraged to amend
their safety-netting to follow that of Major League Baseball.

Some Major League teams have already announced, as of December
2015, that they will be implementing this recommendation into their ball-
parks immediately. Three of these teams include the Boston Red Sox, the
Los Angeles Dodgers, and the Philadelphia Phillies. In addition, two
teams, the Cincinnati Reds and the Houston Astros, already have safety net-
ting that expands seventy feet in both directions from home plate. Major
League Baseball is also hoping that, by the 2017 season, the tickets them-
selves will indicate whether the seat is behind a safety net. This additional
measure will help ensure that the spectators who are wanting to sit behind
the safety netting will be seated there, and those spectators who want to sit
without the safety netting, will be seated in those seats.

Although Major League Baseball has released a recommendation for
safety-netting, it is not a requirement. Additionally, the recommendation is
for the Major League Baseball Association. Re-writing the Illinois Baseball
Facility Liability Act, then enforcing it in all professional ballparks in every
state, would provide particular safety netting and railing requirements.

XV. CONCLUSION

By re-writing the Illinois Baseball Facility Liability Act, spectators, pro-
fessional baseball organizations, and owners will be aware of what exactly
each is liable for. As the Act is currently written, it is unclear exactly what is
considered negligent by the ballpark owners. Spectators who are sitting in
close seats are always held liable for injuries that occur to them from flying
objects from the field. Additionally, the ballpark owners are never liable
when a spectator falls over a railing. Re-writing the Illinois Baseball Facility
Liability Act will assure that spectators will have seats they can feel safe in,
and be compensated when those protected seats prove faulty.

248. Safety Netting, supra note 30.
249. Safety Netting, supra note 30.
250. Safety Netting, supra note 30.
251. Safety Netting, supra note 30.
252. Safety Netting, supra note 30.
254. Safety Netting, supra note 30.