

THE BASEBALL RULE AND THE CORONAVIRUS

By: Jack Greiner on May 22, 2020 on graydon.law

I saw a really [interesting piece](#) today in the Hollywood Reporter. It discusses the “baseball rule” and whether it might apply as theme parks, movie theaters and other gathering spots re-open. The ‘baseball rule” refers to a string of cases that have pretty consistently found that there is an inherent and almost unavoidable risk of getting hit by a foul ball while attending a baseball game. Consequently, fans who get hit by a foul ball have as much luck in court as I would trying to hit a Luis Castillo change up.

So, what does that have to do with the coronavirus? Maybe nothing, but some operators are arguing that there is an inherent risk of contracting the virus when in large groups. So, if one opts to visit the Magic Kingdom, a movie theater, or a baseball game, perhaps the person is assuming the risk of contracting the virus, in much the same way a baseball fan risks an unpleasant encounter with a foul ball.

Will this theory carry the day? I’m not so sure. For one thing there’s no guarantee that the baseball rule is all that rock solid. We’ve seen over the past few years fans suffer some [horrific injuries](#) from sharply hit foul balls. Indeed, a number of MLB parks have [extended screens](#) up the third and first base lines. Whether it’s due to bigger and stronger players or distracted fans, the view on foul ball liability seems to be shifting.

And from a public policy perspective, I’m not sure we’re ready for a scenario where an organization could escape liability for a corona outbreak strictly on the basis that the customer knowingly assumed the risk. At a minimum it begs the question, “what risk”? Does the customer assume the risk of contracting the virus where the operator has taken all precautions? Perhaps. But is that the same assumed risk if the operator does nothing? Too lenient of an immunity rule could enhance the prospect of operators not taking all necessary precautions, which could increase the spread of the virus.

I suspect this issue will not be left up to courts. I imagine we will see legislation designed to balance the concerns on both sides. Stay tuned. As with most everything associated with the pandemic, it is tough to predict what’s coming next.