

# *Legally Speaking*

## Ballpark Leases MiLB-Regulated Transactions Liability Update

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# Overview

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What we will cover today:

- Ballpark leases – how to save money.
- MiLB-regulated transactions – MLR 54 requirements.
- Ballpark liability update.

# Ballpark Leases

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- I. When is a good time to negotiate?
  - A. Commencement of the lease.
  - B. Re-opener.
  - C. Renewal.
  - D. Before a default.
  - E. Refinancing.
  - F. Mutual agreement.

## Ballpark Leases (cont.)

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### II. What can you negotiate?

- A. Term (length of the lease and any renewal).
- B. Re-opener – window of time for re-negotiating all or some of the terms.

## Ballpark Leases (cont.)

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C. Annual rent – examination of each factor that determines the rent rate, such as amortization of debt, capital repair and improvement, and landlord's maintenance burden.

D. Override % – ticket taxes.

## Ballpark Leases (cont.)

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- E. Rent credits – expenses paid on behalf of landlord (for example, traffic control and security).
  
- F. Capital replacement and improvement fund – escrow money dedicated to capital projects:
  1. Who controls the funds?
  2. Process for expenditures.
  3. Use for MLR 58 survey compliance.

## Ballpark Leases (cont.)

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G. Common Area Maintenance (CAM) charges:

1. Maintenance – capital vs. repair:
  - a. List of responsibilities.
  - b. Documentation of the repairs.
  - c. Setoff against rent.
2. Taxes.

## Ballpark Leases (cont.)

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### 3. Insurance:

a. Premiums.

b. Limits.

c. Additional insureds.

### 4. Utilities:

a. Who pays?

b. Cooperation in reduced rates.



## Ballpark Lease (cont.)

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### H. Parking:

1. More spaces.
2. Revenue and expenses.

### I. Courtesies:

1. Free tickets.
2. Suite access.

## Ballpark Leases (cont.)

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### J. Advertising space:

1. Signs.
2. Video boards.
3. Billboards.

### K. Naming Rights:

1. Ballpark.
2. Field.
3. Other areas and activities.

### L. Public Records review.

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## Ballpark Leases (cont.)

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- M. Exchange of information may include the team's financial picture – see *Hamilton County Board of Commissioners vs. NFL*, 491 F.3d 310 (6<sup>th</sup> Cir., 2007). The county (landlord) failed to assert its potential antitrust claim within the four year limitation period. The team (Cincinnati Bengals) did not fraudulently withhold information about its financial situation that might have tolled the limitation period. The County did not pursue that information, and the team did not conceal it.

## Ballpark Leases (cont.)

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Does this decision imply that the team must produce financial information upon a timely request?

# MiLB-Regulated Transactions

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- I. Major League Rule 54 covers several topics relating to financial viability.
  - A. Regulated transactions ("RT"):
    - 1. Sales or transfers of equity interests.
    - 2. Loan agreements.
    - 3. Stadium leases.
    - 4. Webcast, TV, and radio rights agreements.

## Regulated Transactions (cont.)

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5. Concession agreements having a potential duration of more than one year (including any options or renewals).
6. Naming rights agreements.
7. Any contracts having a potential duration of five years or longer (including any options or renewals).

## Regulated Transactions (cont.)

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- B. An RT may also be a Control Interest Transfer (“CIT”), the transfer of a controlling interest in the team. The President of MiLB may require additional information to determine whether a transaction is a CIT.
  1. MLR 54 gives the President the authority to require much more detail for a CIT application, including personal financial information and a background check.

## Regulated Transactions (cont.)

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C. Several RT agreements require special language that MiLB will provide upon request. Contact MiLB with questions. Examples are posted on [www.legallyspeakingonline.com](http://www.legallyspeakingonline.com).



## Regulated Transactions (cont.)

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- D. A material failure to disclose information may, at the discretion of the President of MiLB, result in a transaction being rendered null and void and may result in a fine or penalty.
- E. All financial disclosures are confidential.

# Ballpark Liability Update

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- I. Baseball Rule.
- II. Preventing a Problem.
- III. Recent Cases and Updates.

# Ballpark Liability Update

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## I. Baseball Rule.

A. Negligence analysis—elements to prove:

1. Owner owes a duty of care to the patron (but no duty if patron assumes the risk).
2. Owner fails to perform the duty of care (negligence).

## Ballpark Liability Update (cont.)

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3. Patron suffers an injury.
4. Injury is proximately caused by the owner's failure to perform the duty of care.

## Ballpark Liability Update (cont.)

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### B. Defenses:

1. Assumption of the risk—A patron assumes the risk and may not recover for injuries that result from common hazards inherent in and incident to a game or sport.
2. Open and obvious dangers.

## Ballpark Liability Update (cont.)

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C. The Baseball Rule: Owner has limited duty to the patron because the patron assumes the risk. The owner must protect the most dangerous sections with screening and provide enough screened seats to reasonably fulfill requests from spectators on ordinary occasions.

## Ballpark Liability Update (cont.)

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- Open to interpretation by the courts—What dangers are inherent to the game? Most dangerous sections? Adequate screening? Industry standard? Open and obvious risks?
- Baseball Rule applies in most jurisdictions, but it is a state-by-state issue. Check your state law. Baseball Rule may apply with restrictions.

## Ballpark Liability Update (cont.)

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### II. Preventing a Problem:

- A. Print warnings on tickets and post warnings throughout the ballpark.
- B. Make public address announcements before and during the game and log the announcement.
- C. Keep all screening in excellent condition and perform periodic inspections; log and document the inspections.



## Ballpark Liability Update (cont.)

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- D. Promptly respond to injured spectators and provide medical assistance.
- E. Check with insurance carrier regarding on-field participants, amateur players, any promotions during warm-ups or between innings.
- F. Control the things you can control.

## Ballpark Liability Update (cont.)

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- G. Use participant release of liability to protect against negligence.
- H. Require adult to sign for a minor.

## Ballpark Liability Update (cont.)

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### Why take these precautions?

- Promotes safety; prevents injuries.
- Gives actual knowledge to the patrons.
- Defense against alleged negligence.
- Court sees that owner did everything possible.

## Ballpark Liability Update (cont.)

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### III. Recent Cases and Updates:

1. *Turner v. Mandalay Sports (2008)*— Nevada Supreme Court upheld the Baseball Rule. The risk of injury by a foul ball hit into the concession area was not an unduly high risk that required screening.

## Ballpark Liability Update (cont.)

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2. *Demelio v. Playmakers Inc.*—An issue of fact existed as to whether the design of a batting cage facility created a unique and dangerous condition when a batted ball ricocheted off a post and struck the boy in the eye. Court of Appeals has affirmed the trial court's ruling.

## Ballpark Liability Update (cont.)

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3. *Correa vs. City of New York, NY Yankees, ESPN, and others* – A security guard stationed behind the home plate screen was injured when a ball flew through a hole for a TV camera where the screening was not tightly clipped to the camera. An employee assumes the risks inherent in the game, but an employee does not assume enhanced risks. Whether the screen in this condition is an enhanced risk is an issue of fact for a jury.

## Ballpark Liability Update (cont.)

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4. Criminal conviction – Julio Castillo, a pitcher with the Peoria Chiefs, was found guilty on Aug. 4, 2009 of felonious assault causing serious physical injury. During a dugout-emptying confrontation in July, 2008, Castillo threw a ball toward the Dayton Dragons dugout, but the ball sailed into the stands and injured a spectator.

## Ballpark Liability Update (cont.)

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5. Criminal case pending – On Aug. 13, 2009, Chicago police charged a 21-year-old man with one count of battery and one count of illegal conduct within a sports facility after he threw a beer at outfielder Shane Victorino at Wrigley Field while the outfielder was catching a fly ball. Victorino filed a police report.



## Ballpark Liability Update (cont.)

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6. Constitutional rights suit – Several teenagers, through their legal guardians, filed a civil suit against the Newark Bears on Sept. 4, 2009 alleging discrimination and violation of federal free speech rights. The Bears security staff allegedly ejected them from a ball game when they refused to rise for “God Bless America”.

## Ballpark Liability Update (cont.)

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7. Related issue – On Dec. 16, 2008, a North Carolina state court of appeals reversed on technical grounds a trial court's dismissal of a civil complaint filed by a plaintiff who was injured during soccer warm-ups when a soccer ball left the field and stuck her in the head. The court cited and approved the Baseball Rule and assumption of risk principles established under North Carolina law.

## Ballpark Liability Update (cont.)

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### Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

1. ADAAA was effective Jan. 1, 2009. In Sept., 2009 EEOC issued a notice of proposed rules making (NPRM). No final rules or regs as of yet.
2. Directly affects employment practices; may affect facilities regulations.

## Ballpark Liability Update (cont.)

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3. More people will qualify for protection.
4. The EEOC's job is to determine the specifics and exactly how to implement the ADAAA.
5. The NPRM proposed changes both to the ADA regulation itself and to the interpretive guidance.

## Ballpark Liability Update (cont.)

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6. The purpose of the NPRM was to seek input from interested parties and people whom the rules and regs likely will impact.
7. The public comment period ended in November.

## Ballpark Liability Update (cont.)

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8. The EEOC will evaluate the comments, submit final proposed regs to the OMB, confer with other relevant agencies, and then final regs will be published in the Federal Register.



See you  
at the  
ballpark!