

New Jersey's Highest Court Applies Limited Duty of Care in Hockey Spectator Injury Case

Arguments Regarding Warm-Up Activities and Duty to Warn Rejected

By Carla Varriale, Esq.¹

In 2003, Denise Sciarrotta attended a professional hockey game at the Sovereign Bank Arena in Trenton, New Jersey. Her seat was located six or seven rows from the ice and above the Plexiglas barrier mounted on the sideboards. The area in which she was sitting was not protected by the netting which extended above the Plexiglas. During the pre-game warm-up period, when each team used as many as twenty-five pucks, an errant puck struck a goal post, flew above the Plexiglas and hit Ms. Sciarrotta, causing her to sustain injuries.

In *Sciarrotta v. Global Spectrum, et al.*, 2008 N.J. Lexis 314 (2008), the Supreme Court of New Jersey addressed two aspects of the limited duty rule, a specialized standard of care applied to sports venues because of the unique risk posed by objects leaving the field of play. The rule mandates that an owner or operator who provides protected seating in the most dangerous section of the venue and makes it available for those spectators who desire such seating has satisfied its duty of care. A spectator who chooses not to occupy a seat in the protected area cannot maintain a negligence action against an owner, operator or, arguably, a player.

The Supreme Court previously considered the limited duty of care in the context of an injured baseball spectator in the highly publicized (and criticized) case, *Maisonave v. Newark Bears Prof'l Baseball Club, Inc.*, 185 N.J.70, 881 A.2d 700 (2005). In *Maisonave*, the Supreme Court created an exception to the limited duty rule for those patrons who were not “spectators” at the time of the accident or who were otherwise engaged in one of the sports arena’s commercial ventures. By essentially gerrymandering a baseball stadium into recreational or commercial areas, the Court created two distinct duties of care with regard to objects leaving the field of play – the limited duty of care or a broader duty of care traditionally owed to business invitees – depending on the location of a spectator when injured. *Maisonave* was, however, promptly rejected superseded by the New Jersey Baseball Spectator Safety Act of 2006, L. 2005, c. 362, N.J.S.A.@A:53A-43-48.

The Limited Duty Rule Applies To Pre-Game Activities

The Supreme Court concluded that the limited duty applies to “all activities on the field of play, including pre-game warm-ups.” In finding that there are no “temporal limitations” to the application of the limited duty rule, the Supreme Court expressly rejected the argument that there are differing levels of distraction, depending on whether the game is in progress. Moreover, the Court found that many spectators attend sporting events for the “entire experience” and that

¹ Carla Varriale, Esq. is a partner at Havkins, Rosenfeld, Ritzert and Varriale, LLP in New York where she specializes in the defense of injury claims brought by spectators and participants in sporting events. She has successfully defended claims arising out of marketing and promotions at sports and entertainment venues. She can be reached at: carla.varriale@hrrvlaw.com

some hockey fans arrive early to “..scramble for the pucks the players inevitably lift into the stands for the spectators’ delight.” Noting that the New Jersey Baseball Spectator Safety Act of 2006 defined a professional baseball game to include pre-game activities, the Court found that there was no reason to craft a different definition for the scope of the limited duty with respect to professional ice hockey.

The Limited Duty Rule Does Not Encompass a Duty to Warn

The Supreme Court also held that the limited duty rule does not include a separate duty to warn spectators of the inherent danger of objects leaving the field of play, calling the danger a “self-evident risk.”

In contrast, the dissent argued that the plaintiff should have been warned of the risk of injury so that she could have made an informed decision. The dissent would have required that the following warning be posted at ticket booths and within the arena, stating that it conformed with the Court’s prior jurisprudence regarding the duty of care owed to spectators:

During warm-ups and hockey games, pucks and other items may fly off the ice and into the stands. Under New Jersey Law, a hockey rink operator must provide a protected area for spectators who choose not to be exposed to such risks. You have a right to ask for such protected seating, and the operator has a duty to provide it if available. If you do not do so and are injured, you will not be able to recover money damages from the operator.

Impact of the Decision

The Supreme Court’s decision is noteworthy for several reasons. The Court held that the limited duty rule applies to “*all* activities on the field of play, including pre-game warm-ups,” arguably opening the door for an application of the limited duty rule to promotional and marketing activities which take place on the field of play, such as a t-shirt launch. Moreover, the Court held that the limited duty rule applies without regard to whether a spectator is distracted, torpedoing the so-called “distraction” theory that has been advanced in an attempt to circumvent the effect of the limited duty rule.

The Court viewed the attempt to impose a duty to warn of a self-evident risk with “skepticism.” This aspect of the *Sciarrotta* decision could arguably call into question the need for announcements warning of the risk of injury created by objects leaving the field of play.

Finally, the *Sciarrotta* decision is noteworthy to another kind of spectator, as the limited duty rule has inspired strong opinions and a vigorous debate, even within the New Jersey Supreme Court. “Court watchers” may recall that Justice Rivera-Soto, who delivered the Supreme Court’s majority opinion in *Sciarrotta*, was the author of a withering dissenting opinion in *Maisonave*. Traces of Justice Rivera-Soto’s forceful critique of the hybrid rule set forth in *Maisonave* can be found in the *Sciarrotta* decision. Moreover, the dissenting opinion in *Sciarrotta* was authored by Justice Long and joined by Justices Albin and Wallace, all of whom signed on to the majority

decision in *Maisonave*. As such, the limited duty rule has inspired strong opinions and a vigorous debate, even within the New Jersey Supreme Court.

|