

## Email Legal Alert

August 28, 2006

### Keep On Truckin'

#### *Dones v. Super Service*

**(Commercial Truck Passenger Release Enforced)**  
(Kentucky--UNPUBLISHED\*)



The lawsuit was filed by a passenger in a commercial truck, who was injured in an accident. At issue was the enforceability of a release signed by the passenger prior to the accident purporting to relieve the trucking company of liability for her injuries.

Highly relevant to this issue of validity of the release was the choice of law provision, which stated that Michigan law should apply. The issue was quite important since there was a significant difference between Michigan and Kentucky with respect to releases agreements.

The court noted that the document was signed in Kentucky; the trucking company was a Kentucky corporation with its principal office there; the alleged negligence and accident occurred in Kentucky; and the passenger was a resident of Kentucky. No vital element of the contract was associated with Michigan. Therefore, the court concluded that Kentucky has greater contacts and that Kentucky law should apply.

The passenger claimed that the release did not clearly set out the negligence for which liability is to be avoided since it did not include the word "negligence." However, the court disagreed, noting that, it provided that the corporation "will not pay any amount for any accident, injury, loss or damage arising out of or related to Passenger riding in the Equipment." Such language complied with the requirements of Kentucky law.

The passenger also argued that the release failed to mention the trucking company by name, making it unenforceable under Kentucky law. However, the court again disagreed explaining that the trucking company was an affiliate of the corporate entity named in the release and the list of "releasees" included affiliated entities.

While the court acknowledged that the release court not protect the trucking company from "wilful and wanton negligence" (which is "substantially the equivalent of 'gross negligence'"), it highlighted that no such allegation were found in the complaint. Therefore, the release was enforced and the passenger's claims were barred.

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# Taking One *From* the Team

## *Neal v. Team Kalamazoo*

**(Game Patron Struck by Baseball on Walkway Assumed Risk)**  
(Michigan--UNPUBLISHED\*)

The plaintiff was injured when she was struck in the head by a baseball as she was leaving a minor league baseball field. At the time of the incident, the plaintiff was standing and talking with another patron about 12-15 feet away from a 6 foot high fence separating the playing field from a walkway running down the first base line.

The defendant team argued that the plaintiff's action was barred by the limited duty rule established by other baseball spectator cases. The team also argued that plaintiff's action was barred by an application of the open and obvious danger doctrine (i.e., being hit by a baseball leaving the field of play was a "well-known risk"). Finally, the team contended that the action was barred due to the contractual assumed of the risk found in the disclaimer language that appeared on the back of her admission ticket.

The plaintiff argued that the limited duty rule did not apply on the facts because she was not in her seat watching the game at the time of the incident. Plaintiff also argued that an issue existed as to whether team acted reasonably in constructing and placing a promotional deck that blocked her view of the hazard. Finally, plaintiff argued that there was no contractual assumption of the risk because the alleged contract was an adhesion contract, and because there was no express contractual relationship.

Ultimately, the court granted the team's motion for summary judgment based upon the limited duty rule. The court explained that "a baseball stadium owner that provides screening behind home plate sufficient to meet ordinary demand for protected seating has fulfilled its duty with respect to screening and cannot be subjected to liability for injuries resulting to a spectator by an object leaving the playing field." The plaintiff contended that she was no longer a spectator at the time of the incident, but the court agreed. She was still near the playing field and others in the area were watching the game.

The court did not address the issue regarding the express assumption of the risk language on the back of the admission ticket.

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\* This case is not binding legal authority and should not be cited in legal briefs.

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