Negligence--Assumption of Risk Applied to Spectator at Hockey Game

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In a case of first impression, the Ohio Supreme Court allowed recovery for injuries sustained by a spectator at a hockey game. The court refused to apply, as a matter of law, the doctrine of assumption of risk which has been the usual ground for denial of relief in other sport and amusement cases.

The plaintiff, who received a reserve seat ticket to the hockey game as a gift, contended a complete lack of knowledge of the game. Heavy wire screens protected the patrons at each end of the rink, but the side where the plaintiff's seat was located was unprotected. Struck by a misdirected hockey puck, the plaintiff claimed that the defendant was negligent in failing to equip the side of the rink with wire screening and in failing to post signs warning patrons of the danger from flying pucks. The court stated that the risk of being hit by a flying puck was not a matter of common knowledge, and, therefore, the question of whether the plaintiff as a reasonable man should have known the risks and thus have assumed them was properly submitted to the jury.

The court dismissed the contention advanced by the defendant that the general custom of the industry conclusively determines the standard of care, and declared that such evidence as to customary methods of protection must be considered with other circumstances in determining if ordinary care has been exercised.

The most troublesome issue facing the court was whether to apply the so-called "baseball rule" to hockey. The "baseball rule" is based on the belief that the risks inherent in baseball are so obvious that they must be known and appreciated by all who attend the game. Therefore, such risks are assumed as a matter of law by patrons. The rule is qualified to the

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2 "Those who participate or sit as spectators at sports and amusements assume all the obvious risks of being hurt by roller coasters, flying balls, fireworks explosions or the struggles of the contestants." PROSSER, TORTS 383 (1941).
4 Accord, Ault v. Hall, 119 Ohio St. 422, 164 N.E. 518 (1928) PROSSER, TORTS 241 (1941)
5 The status of the "baseball rule" is uncertain in Ohio because of the lack of a conclusive Ohio Supreme Court decision. Hummel v. Columbus Baseball Club, 71 Ohio App. 321, 49 N.E.2d 773 (1943); Ivory v. Cincinnati Baseball Club, 62 Ohio App. 514, 24 N.E.2d 837 (1939). Both of these cases applied the "baseball rule" placing great weight on a dictum in Cincinnati Baseball Club v. Eno, 112 Ohio St. 175, 181, 147 N.E. 86, 87 (1925) (Rule was not applied as the injury occurred