IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPREME COURT NO. 92004-4

COURT OF APPEALS NO. 71545-3-I

TERESA REED-JENNINGS and **CLIFF JENNINGS,** Wife and Husband and their marital community,

Appellants,

v.

THE BASEBALL CLUB OF SEATTLE, L.P., a Washington Corporation, d/b/a **THE SEATTLE MARINERS,**

Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF THE PETITIONERS

The Petitioners are Teresa Reed-Jennings and Cliff Jennings (the "Jennings"), Plaintiffs in King County Superior Court and Appellants in the Court of Appeals.

II. CITATION TO COURT OF APPEALS DECISION

Petitioners seek review of the Court of Appeals decision, *Reed-Jennings v. The Baseball Club of Seattle, L.P.*, No. 71545-3-I ("Decision"), filed on May 26, 2015. A copy of the Decision is attached hereto as Appendix A. The Order Granting Respondent's Motion to Publish, dated and filed July 1, 2015, is attached hereto as Appendix B.

The Decision affirmed summary judgment dismissal of the Jennings' premises liability claim based on two theories: that the Limited Duty Rule from 1919 circumscribes the duty of care owed by baseball stadium operators in spite of developments in tort law; and Mrs. Reed-Jennings subjectively understood the nature and extent of the risks she faced at her first batting practice, despite her declaration and expert testimony to the contrary.

III. ISSUES PRESENTED FOR REVIEW

1. The Limited Duty Rule for baseball stadium operators, which originated in 1919, owes its existence to the common law rule of contributory fault. Contributory fault has since been superseded by comparative fault in Washington. Does the Court of Appeals Decision,

by applying the Limited Duty Rule, conflict with Washington State's adoption of comparative fault?

2. Washington State has redefined the duty of landowners to invitees over the 96 years since the Limited Duty Rule was adopted. The Limited Duty Rule now stands as an antiquated exception to general principles of landowner liability. Is this Court's reevaluation of a stadium operator's duty of care to its invitees of substantial public interest in light of the significant developments in Washington State law over the last 96 years?

3. This Court has held that primary implied assumption of risk cannot support summary judgment where a plaintiff cites sufficient evidence for a reasonable juror to conclude that either (A) the plaintiff's injury was caused in whole or in part by the negligence of the defendant, or (B) the plaintiff did not subjectively understand the nature and extent of the injury causing risk. Here, Appellants cited sufficient evidence to establish material issues of fact regarding (A) and (B). Does the Decision conflict with this Court's decisions interpreting primary implied assumption of risk and summary judgment?

IV. STATEMENT OF THE CASE

1. Parties

Mrs. Reed-Jennings is a civil engineer and Mr. Jennings is a police officer for the City of Bellingham. CP 180, 219. Respondent is the Baseball Club of Seattle (the "Mariners"), lessee of Safeco Field. CP 5.

2. Injury

Mrs. Reed-Jennings was struck in the left eye by a baseball during the first several minutes of the first batting practice she ever attended. CP 194-95; 279 at ¶ 4 (Reed-Jennings Decl.) While she and her husband were focused on tracking the flight of a batted baseball, another baseball was batted, striking her in the left eye as she turned to look. CP 197-98.[1] Mr. Jennings recalled the incident in his deposition in a similar fashion, describing the baseball that struck his wife as a flash. CP 233.

The Jennings were seated in section 116 along the right field foul line in the second row from the field. CP 226. Mr. Jennings took the seat to the left of his wife. CP 188, 226. After practice commenced, Mrs. Reed-Jennings recalled that a batted ball was hit into the stands that bounced

[1] During her deposition, Mrs. Reed-Jennings recalled the incident: "We were watching the balls get hit and – and the guy hit the ball and we – because we were watching and following and watching them get caught and the batter hit the ball – and this guy out here was running back up like that to catch the ball because it was a longer ball and then I heard a ball – another ball get hit and I turned my face and it was right there." CP 197-98.

into their section. CP 196. The photo, at CP 290, was taken by Mrs. Reed-Jennings and depicts the scene before her injury. CP 105-06.

Mrs. Reed-Jennings started a Twitter account during her recovery and a portion of the Twitter feed was introduced during her deposition. CP 207-08. Mrs. Reed-Jennings' account of the accident on Twitter mirrors her deposition testimony. See generally CP 292-96 (Twitter Feed).

3. Mrs. Reed-Jennings did not understand the nature and extent of the specific risk that caused her injury

Mrs. Reed-Jennings did not subjectively understand the nature and extent of the risk of batting practice, specifically with regard to simultaneously batted baseballs or the force of line drives.

Prior to being struck in the eye by a batted baseball on May 4, 2009, Mrs. Reed-Jennings had never attended batting practice. CP 279 at ¶ 4. She did not know that multiple baseballs could be batted into the air simultaneously during batting practice. CP 280 at ¶ 7. She did not know that a person could be seriously injured or killed if struck by a batted baseball. Id. The screen along the right field foul line, to her left side, gave her a sense of protection. CP 280 at ¶ 8; CP 290 (Photo). She believed she was protecting herself by paying attention to the baseball that was batted just prior to the incident. CP 280 at ¶ 7.

4. It is unreasonable to charge Mrs. Reed-Jennings with full subjective knowledge of the specific risks of batting practice after a few minutes of observation

Contrary to the controlling subjectively based legal doctrine, the Decision reverted to an objective person standard to explain what Mrs. Reed-Jennings should have known of batting practice. (App. A at 13-14.) [2]

The time Mrs. Reed-Jennings spent actually observing her first batting practice before she was struck in the face was a matter of minutes. CP 194-95. There is no evidence in the record that simultaneously batted baseballs occurred during that interval. Further, it does not stand to reason that she would comprehend the speed and destructive force of a line drive baseball, or perceive the possibility of simultaneously batted baseballs, after a few minutes of observation.

In contrast, it is fully reasonable, and consistent with Washington State law, for Mrs. Reed-Jennings to have expected that Safeco Field had been made safe for her use for the purposes of the invitation.

5. Gil Fried's expert testimony regarding Safeco Field

The Jennings engaged the services of Gil Fried, an expert in ballpark safety and management. His knowledge, skill, experience, training, and education are summarized in his declaration and CV. CP

[2] "A reasonable person in Teresa's shoes would know and consider that by choosing to sit in an unscreened area, there is a possibility that a ball could enter the stands and injure her." (App. A at 14-15.)

302-06 (Fried Decl.); CP 307-25 (Fried CV).

Mr. Fried described in detail the enhanced risk of injury to a patron from a batted baseball during batting practice as opposed to during a game. CP 304 at ¶ 13-17. In Mr. Fried's expert opinion, a ballpark operator should take measures to protect patrons from the unique risks present during batting practice. It is also Mr. Fried's opinion that the Mariners failed to provide the Jennings reasonable warning of the dangers commensurate with batting practice, specifically with regard to the possibility of simultaneously batted baseballs. CP 305 at ¶ 25.

6. Failure to reasonably investigate safety screening

For batting practice, the Mariners' grounds crew sets up temporary screens along the left and right field foul lines to stop line drives from entering the adjacent seating. CP 243-44. Yet the Mariners did not conduct any study or analysis into the selection of an appropriate screen. CP 251.

In 2012 Major League Baseball issued a Memo to the Mariners requesting that screens be placed along the foul lines during batting practice. CP 270; CP 298 (Memo). Although the Memo encouraged the Mariners to analyze Safeco Field and add more screening where necessary, the Mariners' VP of Ballpark Operations, Scott Jenkins, testified that he "felt when that memo came out that we were adequately protected." CP 272. He could not recall any independent study of patron

accidents occurring at Safeco Field. CP 273-74.

7. Proceedings below

The Mariners filed for summary judgment on December 20, 2013. The trial court granted the Mariners' motion from the bench without a written decision on January 24, 2014. CP 401 (Order). The Jennings timely appealed the trial court's grant of summary judgment to the Court of Appeals. CP 398 (Notice of Appeal). The Court of Appeals Decision affirmed the trial court's grant of summary judgment. (App. A.)

V. ARGUMENT

First, the Court of Appeals Decision, in its reliance on the 1919 Limited Duty Rule, conflicts with Washington State's adoption of comparative fault. The conflict stems from the Limited Duty Rule's foundation in the obsolete common law concept of contributory fault. The harsh result here is the denial of the Jennings' right to present their claim of negligence to a jury.

Second, it is a matter of substantial public interest for this Court to evaluate the persistent use of the Limited Duty Rule. Since the Rule's adoption in 1919, Washington State has redefined and universalized the duty of care owed by landowners to invitees. It no longer stands to reason that Washington baseball stadium operators should enjoy a judicially created exception to general principles of landowner liability.

Third, the Decision affirmed summary judgment despite sufficient evidence for a reasonable juror to conclude that: (A) the Mariners enhanced the risk of injury during batting practice through its own negligence; and (B) Mrs. Reed-Jennings did not subjectively understand the nature and extent of the specific risks of batting practice. The Decision thus conflicts with this Court's decisions interpreting the application of summary judgment pursuant to CR 56.

1. **The Limited Duty Rule was implicitly overruled by the adoption of comparative fault in Washington**

The Decision relied on the Limited Duty Rule from 1919 to affirm the trial court's grant of summary judgment. (App. A at 7.) The Court of Appeals, applying the Rule, found that the Mariners satisfied its limited duty to screen a reasonable number of seats behind home plate. (Id.) Because the Jennings were seated in section 116 along the right field foul line, the Decision held that the Mariners did not owe them any duty with respect to batted baseballs during batting practice. (Id. at 9.)

The Decision, in its application of the Limited Duty Rule, conflicts with Washington's adoption of comparative fault. Specifically, the Limited Duty Rule exists as a universal standard of ballpark operator care because of common law *contributory* fault: a stadium operator is shielded from liability because it could be said in 1919 that a patron struck by a

baseball was either contributorily negligent or assumed the risk of such an injury. In either case, that patron would be barred from recovery. This understanding follows from an examination of *Kavafian v. Seattle Baseball Club Association,* 105 Wash. 215, 181 P. 679 (1919) (*en banc*)[3], the case that first announced the Limited Duty Rule in Washington.

The legal foundation that gave the Limited Duty Rule universal meaning no longer holds true. Today, a plaintiff's contributory negligence, or unreasonable assumption of risk, will not bar his or her recovery.

Here, the result of the Rule's application is to improperly deny the Jennings an opportunity to present to a jury their claim that the Mariners were negligent in the provision of warnings, adequate safeguards, and management of batting practice.

A. The Limited Duty Rule is based on contributory fault

A close reading of the *Kavafian* decision reveals that the Limited Duty Rule's existence is predicated on common law contributory fault.

In *Kavafian*, a patron sitting in an unscreened seat was struck by a foul ball. 105 Wash. at 217, 177 P. 776. Department One of this Court found that contributory negligence and assumption of risk were properly submitted to the jury and upheld the plaintiff's verdict. *Id.* at 218-19.

Upon rehearing, Department One's decision was reversed. 105

[3] Its precursor, with more detailed facts, is *Kavafian v. Seattle Baseball Club Association*, 105 Wash. 215, 177 P. 776 (1919) (Department 1).

Wash. 215, 219, 181 P. 679 (Mitchell, J., dissenting.) After noting the patron's familiarity with baseball and the obviousness of the lack of screening, the majority stated: "It matters not whether one designates his act in this regard contributory negligence or views it as in the nature of assumption of risk, the result is the same." *Id.* at 220. Because the patron had chosen an unscreened seat when a screened seat was available, he was barred from recovering for his injury. *Id. Crane v. Kansas City Baseball & Exhibition Co.*, 168 Mo.App. 301, 153 S.W. 1076 (1913), a seminal case cited by the *Kavafian* Court, explains the same [4]. *Id.*

The *Kavafian* Court conflated the concepts of assumption of risk and contributory negligence. It could, because in 1919 the two concepts were interchangeable. At common law, both assumption of risk and contributory negligence operated as absolute bars to recovery. *Scott v. Pacific West Mt. Resort*, 119 Wn.2d 484, 496, 834 P.2d 6 (1992). That is how a universal rule limiting liability for stadium operators was born.

B. The Limited Duty Rule conflicts with comparative fault

Today, it can no longer be assumed that a baseball patron is barred from recovery because of his or her contributory negligence for taking an

[4] "So in the present case plaintiff, doubtless for the purpose of avoiding the annoyance of the slight obstruction to vision offered by the netting, voluntarily chose an unprotected seat, and thereby assumed the ordinary risks of such position. And if it could not be said that he assumed the risk, still he should not be allowed to recover, since his own contributory negligence is apparent and indisputable." *Crane*, 153 S.W. at 1078.

unscreened seat. The Washington legislature ameliorated the harsh result of denying recovery for contributory negligence by adopting comparative fault. *ESCA Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 830, 959 P.2d 651 (1998) (codified at RCW 4.22.005, RCW 4.22.015).

The Indiana Supreme Court recently came to this same, logical conclusion regarding the affect of comparative fault on the Limited Duty Rule (aka the Baseball Rule). *South Shore Baseball, LLC v. DeJesus*, 11 N.E.3d 903, 909 (2014). As that court points out, even if it assumed the Baseball Rule was adopted in Indiana, the Indiana Comparative Fault Act would render its legal grounds obsolete. *Id.* The same reasoning applies in Washington.

Today, the comparative fault of a patron in choosing an unscreened seat cannot support a universal rule that limits stadium operator liability as it once did. Applied to the present matter, the Jennings' seating choice does not dictate contributory negligence or assumption of risk sufficient to support summary judgment.

C. This Court has not addressed the Limited Duty Rule after Washington State's adoption of comparative fault

This Court has not addressed the continued viability of the Limited Duty Rule after Washington State adopted comparative fault.

Indeed, the only apparent comment by this Court on the Rule since

the *Kavafian* decision was in *Leek v. Tacoma Baseball Club*, 38 Wn.2d 362, 229 P.2d 329 (1951). But the *Leek* Court did not apply the Limited Duty Rule:

> Our disposition of the case makes it unnecessary to consider whether, in any event, appellant was contributorily negligent or assumed the risk with regard to the injuries suffered. It is only on this latter point that the one Washington case involving injuries in a baseball park (*Kavafian v. Seattle Baseball Club Ass'n*, 105 Wash. 215, 177 Pac. 776, 181 Pac. 679) is pertinent.

Leek, 38 Wn.2d at 369, 229 P.2d 329.

Because the patron was injured by a baseball while sitting behind the home plate screen, the Court turned to Restatement of Torts § 343 to evaluate liability. *Id* at 365-66. (In contrast, the Decision declined to hold the Mariners to the liability outlined in § 343. App. A at 8.)

Here, by taking review, this Court has the opportunity to resolve the conflict between the Limited Duty Rule and comparative fault in Washington.

2. The Limited Duty Rule involves a substantial public interest

It is a matter of substantial public interest for this Court to evaluate the persistent use of the Limited Duty Rule. Under the Rule, ballpark operators are absolved from legal consequences for failing to take reasonable measures to protect patrons. Release from legal responsibility is particularly dangerous considering the evolving risks to baseball

patrons. Since the Limited Duty Rule's adoption, this Court has articulated modern standards of premises liability that are entirely appropriate for ballpark liability as any other business.

A. The Limited Duty Rule removes the legal incentive for ballpark operators to reasonably safeguard patrons

The speed of baseball, and the corresponding risk posed to its patrons, has increased dramatically over the 96 years since *Kavafian* was decided. Pitches are thrown faster; baseballs come off bats quicker; fans sit closer. Further compounding risk is the proliferation of distractions at the ballpark. In the modern baseball experience the patron's attention is called away from the action on the field by all manner of diversion.[5]

Stadium owners, like any other landowner, are in the best position to assess the developing risks to invitees and take precautions to safeguard against those risks. Yet the Limited Duty Rule shields stadium operators from liability and, by extension, acts as a disincentive for them to adopt reasonable safety measures for the protection of patrons.[6]

The record here indicates how the disincentive is playing out at Safeco Field: the Mariners conducted no study into the selection of appropriate foul line screening either when it initially placed the screens or

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[5] Gil Fried; Ammon, Robin Jr., *Baseball Spectators' Assumption of Risk: Is It Fair or Foul*, 13 Marq. Sports L. Rev. 39, 55 (2002-2003).

[6] For a more complete treatment of the arguments against the Limited Duty Rule, and for the adoption of a duty of reasonable care, see David Horton, *Rethinking Assumption of Risk and Sports Spectators*, 51 UCLA L. Rev. 339 (2003-2004).

when MLB encouraged such an analysis in 2012. In fact, the Mariners' VP of Operations could not recall any independent study of patron accidents occurring at Safeco Field. CP 273-74. Businesses in Washington owe a duty to take reasonable measures to discover dangerous conditions – the same should be true of stadium operators.

Here, Mrs. Reed-Jennings, in the initial minutes of her first batting practice, was struck in the face while tracking the flight of the previously batted baseball. The injury could have been prevented by any number of means that would not alter the nature of the game. Yet the entity that is in the best position to anticipate and provide reasonable safeguards for its patrons is under no legal duty to do so.

B. The current legal framework for addressing premises liability is well suited for baseball stadium operators

Current principles of landowner liability, adopted after the Limited Duty Rule, allow the fact finder to assess a patron's assumption of risk and the ability of stadium owners to guard against risk.

Washington looks to the Restatement of Torts for guidance with issues of landowner liability. *Egede-Nissen v. Crystal Mt., Inc.*, 93 Wn.2d 127, 131-32, 606 P.2d 1214 (1980). Restatement (Second) of Torts § 343 (1965) describes when a landowner is liable to a business invitee for

injuries caused by a condition on the land.[7] *Tincani v. Inland Empire Zoological Soc'y,* 124 Wn.2d 121, 138-39, 875 P.2d 621 (1994).

Should the landowner anticipate the harm despite such knowledge or obviousness, they may still be held liable to the invitee pursuant to Restatement (Second) of Torts § 343A. *Id.* A landowner may anticipate harm where they have reason to expect that the invitee will be distracted, or forget what risk was discovered, or fail to protect against it. *Id.* at 140 (citing § 343A cmt. *f.*)

Here, the baseball stadium is well suited to the standard outlined in §§ 343 and 343A. Comment *f* appears tailor made to the risk of batted baseballs: the Mariners have ample reason to expect that patrons will be distracted, or forget the risk, or otherwise fail to protect themselves from baseballs during batting practice. Applying §§ 343 and 343A to ballpark operators would bring the standard applied to every other business in Washington into the baseball stadium.

C. The Supreme Courts of Indiana and Idaho have rejected the Limited Duty Rule, deferring to the legislature process

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[7] Restatement § 343 states:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, [the possessor]

(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

(b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) fails to exercise reasonable care to protect them against the danger.

Washington would not be alone in declining to follow the Limited Duty Rule. The Supreme Courts of Indiana and Idaho have done the same.

The Indiana Supreme Court, while admitting to the romance of baseball, declined to hold stadium operators to a limited duty. *South Shore Baseball, LLC*, 11 N.E.3d at 909 (2014). Noting baseball's "special place in American life and culture," the *South Shore* court aptly stated: "Nevertheless, we are not convinced that any sport, even our national pastime, merits its own special rule of liability." *Id.* The court deferred to Indiana's legislative branch on whether an exception to general principles of landowner liability is warranted for baseball. *Id.*

Similarly, the Idaho Supreme Court also declined to adopt the Limited Duty Rule. *Rountree v. Boise Baseball, LLC*, 154 Idaho 167, 296 P.3d 373 (2013). That court noted a lack of a public policy rationale to support the Rule's adoption. Rather, the *Rountree* court found that exceptions for stadium owner liability are appropriately addressed by the legislature because it "has the resources for the research, study and proper formulation of broad public policy." 296 P.3d at 379 (citation omitted.)

Here, this Court has the opportunity to evaluate the continued necessity and logic of a rule that shields stadium operators from liability. In the absence of a legitimate public policy rationale and empirical research backing baseball's exceptionality, the issue of the Limited Duty

Rule should be the province of the legislative branch.

3. The Court of Appeals Decision affirmed summary judgment despite the Jennings have established material issues of fact

In addition to the Limited Duty Rule, the Decision also rested upon the doctrine of primary implied assumption of risk. (App. A at 9.) To do so, the Court of Appeals made a factual finding about Mrs. Reed-Jennings' subjective understanding that is not in accord with the record before the trial court.

It was the Jennings' burden to respond to the Mariners' motion for summary judgment with documents allowed by Civil Rule 56(e) that demonstrate a genuine issue of material fact for trial. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225-26, 770 P.2d 182 (1989).

> A plaintiff, if he is the nonmoving party, must create an issue of fact in order to avoid summary judgment and an affidavit asserting any supportable, relevant fact inconsistent with the defendant's position will be sufficient to do so. The defendant's task, to show that there are no disputed facts, is necessarily much more difficult. *Id.*

Here, the Jennings met their burden as described by the *Young* Court. First, the record indicates sufficient evidence for a reasonable juror to conclude that the Jennings' injury was caused, at least in part, by the Mariners' negligence. Such a showing precludes summary judgment based on primary implied assumption of risk. Second, there was sufficient evidence to conclude that Mrs. Reed-Jennings did not subjectively

understand the nature and extent of the risks of batting practice, making it improper for the Court of Appeals to determine her state of mind.

A. The Jennings cited sufficient evidence for a reasonable juror to find that the Mariners' negligence caused their injuries

While primary implied assumption of risk can act as a complete bar to recovery after the adoption of comparative fault, *Shorter v. Drury*, 103 Wn.2d 645, 695 P.2d 116, *cert. denied*, 474 U.S. 827 (1985), it cannot support summary judgment where there is sufficient evidence that the defendant was negligent. *Scott v. Pac. W. Mountain Resort*, 119 Wn.2d 484, 495, 834 P.2d 6 (1992). If there is sufficient evidence that a defendant's negligence contributed to the plaintiff's injury, then a jury must apportion responsibility. *Kirk v. WSU*, 109 Wash.2d 448, 457, 746 P.2d 285 (1987) (jury correctly instructed on primary implied assumption of risk as a damage mitigating factor.)

To defeat summary judgment, the Jennings cited to sufficient evidence that the Mariners were negligent pursuant to the Restatement (Second) of Torts § 343. CP 163-65. Specifically, the Jennings cited in the record: that the Mariners unnecessarily invite patrons to take seats in the most dangerous area of the stadium during the latter half of the Mariners' practice and during all of the visiting team's practice; that the Mariners failed to provide reasonable warning of the dangers unique to batting

practice; and that the Mariners failed to conduct any inquiry into the appropriate size or placement of protective screens along the foul lines. Id.

The Jennings met their obligation to demonstrate an issue of fact regarding the Mariners' negligence. Therefore, the Decision affirming summary judgment conflicts with this Court's rulings in *Young* and *Kirk*.

B. The Jennings cited sufficient evidence to establish a material issue of fact regarding Mrs. Reed-Jennings' assumption of risk

Primary implied assumption of risk is established if the plaintiff has full subjective understanding of the presence and nature of the specific risk, and voluntarily chose to encounter the risk. *Kirk*, 109 Wash.2d at 453, 746 P.2d 285. The defendant carries the burden of demonstrating that a plaintiff impliedly assumed a risk of harm. *Home v. North Kitsap School Dist.*, 92 Wn. App. 709, 717, 965 P.2d 1112 (1998).

Here, the record before the trial court, and by extension the Court of Appeals, presented sufficient evidence to create a material issue of fact regarding Mrs. Reed-Jennings' subjective understanding of the risks of batting practice. This evidence is summarized in this Petition at page 4.

The Decision disregards the Jennings' evidence and the Mariners' burden. The Mariners only established that the Jennings knew batted baseballs could enter the area where they were sitting. There is a chasm between what the Mariners established factually (knowledge that baseballs

could enter the stands) and the Mariners burden of proof (full subjective understanding of the nature and presence of the specific risk posed by batting practice – specifically, the risk posed by simultaneously batted baseballs and line drives.)

Primary implied assumption of risk is the Mariners' defense, and it necessitates a determination of Mrs. Reed-Jennings' state of mind. The Decision impermissibly concludes that no juror would believe Mrs. Reed-Jennings' testimony or the testimony of the Jennings' expert, Gil Fried. Mrs. Reed-Jennings' subjective understanding about the risks she was exposed to in the minutes of her first batting practice is a material issue of fact for trial, not for a court of law.

VI. CONCLUSION

For the reasons above, Petitioners respectfully request that this Court grant review under RAP 13.4(b) of the Court of Appeals Decision.

DATED this 29th day of July, 2015.

Respectfully submitted,

By: _____

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DECLARATION OF SERVICE

I certify that on the 29th day of July, 2015, I emailed a courtesy copy and deposited in the U.S. Postal Service for service a true and accurate copy of the Petition for Review to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED this 29th day of July, 2015.

Max J. Pangborn, WSBA #43555

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TERESA REED-JENNINGS and CLIFF JENNINGS, wife and husband and their marital community,	)	No. 71545-3-I
Appellants,	)	
v.	)	
THE BASEBALL CLUB OF SEATTLE, L.P., a Washington corporation, d/b/a The Seattle Mariners, WASHINGTON STATE MAJOR LEAGUE BASEBALL STADIUM PUBLIC FACILITIES DISTRICT, a municipal corporation; Defendants John Doe I-X,	)	UNPUBLISHED OPINION
Respondents.	)	FILED: May 26, 2015

VERELLEN, A.C.J. — During batting practice before a Seattle Mariners baseball game, a batter hit a foul ball into the stands along the right field foul line, seriously injuring Teresa Reed-Jennings. The trial court properly dismissed the Jennings' negligence claim against the Mariners because the Mariners did not breach its limited duty of care, and, alternatively, assumption of risk bars any recovery. We affirm.

FACTS

The material facts are undisputed. The Jennings attended a Mariners game at Safeco Field on May 4, 2009, and arrived more than an hour before the game to watch

batting practice.[1] They sat along the right field foul line, two rows up from the field in section 116.

The Jennings' ticket included a warning that explained the dangers of balls and bats entering the stands. Cliff Jennings, Teresa's husband, read the warning, but Teresa did not. On the concourse above section 116, several support posts for the lower level warned spectators about bats and balls leaving the playing field. Near the Jennings' seats on the wall separating the seats from the field, additional warnings cautioned spectators about bats or balls leaving the field. The back of each seat in section 116 warned spectators about "bats and balls leaving the field."[2] Teresa maintains she did not see any of these warnings but "knew that balls could come into the stands" during batting practice.[3]

Safeco Field has a permanent 26-foot safety screen behind home plate. For batting practice, the Mariners place a batting cage above and around three sides of home plate and temporary safety screens at first base, second base, center field, and the pitcher's mound. Since 2002, the Mariners have placed 8- by 10-foot temporary safety screens along the left field and right field foul lines. Major League Baseball (MLB) did not require teams to have temporary safety screens along the foul lines until 2012.

From 2005 to May 2009, over 10,000,000 spectators attended a Mariners baseball game. Of those 10,000,000, 300 spectators have been hit by either fair or foul balls. Of those 300, only 5 spectators were injured while sitting in section 116.

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[1] We use the parties' first names for ease of reference.

[2] Clerk's Papers (CP) at 111.

[3] CP at 280, ¶ 6.

Batting practice affords spectators more protection because the Mariners remove the batting cage and other temporary safety screens once the game starts. Teresa was aware that a safety screen did not extend all the way down the first base line to protect her from all foul balls.

The visiting team performs batting practice after the Mariners. The pitcher "typically hold[s] three balls in his non-pitching hand and one ball in his pitching hand" to reduce "delay between pitches."[4] The pitcher "must throw in a rhythm during batting practice so that players and coaches can get the maximum work done and are not unduly exposed to danger."[5] Batting practice runs rapidly and consists of "many activities occurring at the same time."[6] Pitchers do not wait long between pitches, so batters can get the proper number of swings. Every other MLB team conducts batting practice in a similar fashion. Before May 4, 2009, Teresa had never attended or seen batting practice.

The Jennings previously attended several baseball games at Safeco Field and, on those occasions, sat near or in section 116. The Jennings recalled seeing foul balls land in the stands on previous occasions. The Jennings knew foul balls could reach their area. But Teresa did not know "multiple balls could be batted into the air simultaneously during batting practice."[7]

On May 4, 2009, Teresa saw a foul ball land near her seat during batting practice. Shortly after, a batter hit a ball into center field, and Teresa attempted to track

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[4] CP at 135, ¶ 6.

[5] CP at 135 ¶ 8.

[6] CP at 136, ¶ 9.

[7] CP at 280, ¶ 7.

the ball's flight. Before that ball was caught, Teresa heard another ball being hit. When she turned her head, the second ball hit her in the face. Teresa sustained serious injuries to her left eye. She twice tweeted several days after the game: "A foul ball landed in the seats in front of us and the young man next to Cliff scampered over the seats and grabbed it,"[8] and "I said, well, that really should have been my ball. I just wasn't fast enough. I said I wanted another one to land right there. It'[ll] be mine."[9]

The Jennings sued the Mariners, alleging negligence.

The Mariners moved for summary judgment, arguing it satisfied its limited duty to protect spectators from foul balls by placing several temporary safety screens on the field and a permanent 26-foot safety screen behind home plate. The Mariners also argued Teresa assumed the risk of her injury because "she knew batting practice was ongoing" and "a foul ball had landed in her seating area earlier."[10]

The Jennings argued the adoption of comparative fault statutes abrogated the limited duty rule. They also argued the implied primary assumption of risk doctrine does not bar their recovery because the Mariners breached its duty to exercise reasonable care under *Restatement (Second) of Torts* § 343 (1965).

The trial court granted the Mariners summary judgment. The trial court determined the Mariners did not breach a duty owed to the Jennings, and, even if the Mariners did breach a duty, the Jennings assumed the risk of injury.

The Jennings appeal.

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[8] CP at 113.

[9] CP at 114.

[10] CP at 11.

ANALYSIS

The Jennings challenge the trial court's summary judgment dismissing their negligence claim. They specifically argue genuine issues of material fact exist as to whether the Mariners breached its duty of care and whether Teresa assumed the risk posed by multiple batted balls being simultaneously in play during batting practice.

We review a summary judgment order de novo, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party.[11] Summary judgment is proper if no genuine issues of material fact exist and "reasonable persons could reach but one conclusion."[12] "A material fact is one that affects the outcome of the litigation."[13]

Limited Duty Rule

Contrary to the Jennings' contention, Washington follows the limited duty rule. For many decades throughout the United States, the majority of jurisdictions have applied the limited duty rule to define the duty a baseball stadium operator owes to its patrons injured from foul balls before or during a game.[14] The limited duty rule requires

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[11] Fulton v. State, Dep't of Soc. & Health Servs., 169 Wn. App. 137, 147, 279 P.3d 500 (2012).

[12] Vallandigham v. Clover Park Sch. Dist., 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

[13] Wm. Dickson Co. v. Pierce County, 128 Wn. App. 488, 492, 494, 116 P.3d 409 (2005).

[14] A partial list of other jurisdictions that have applied the limited duty rule under similar circumstances includes: Turner v. Mandalay Sports Entm't, LLC, 124 Nev. 213, 217-19, 180 P.3d 1172 (2008) (adopting the limited duty rule where an in-game foul ball hit the plaintiff as she sat in the stadium's beer garden); Lawson ex rel. Lawson v. Salt Lake Trappers, Inc., 901 P.2d 1013, 1015 (Utah 1995) (applying the limited duty rule where an in-game foul ball struck plaintiff as he sat at his seat); Arnold v. City of Cedar Rapids, 443 N.W.2d 332, 333 (Iowa 1989) ("[A baseball stadium operator] fully discharges any obligation to protect spectators from thrown or hit balls by providing seating in a fully protected area."); Akins v. Glen Falls City Sch. Dist., 53 N.Y.2d 325,

baseball stadium operators "to screen some seats . . . to provide protection to spectators who choose it."[15] This rule imposes two requirements on baseball stadium operators. First, baseball stadium operators must provide a sufficient number of protected seating for those spectators "'who may be reasonably anticipated to desire protected seats on an ordinary occasion.'"[16] Second, baseball stadium operators must "provide protection for all spectators located in the most dangerous parts of the stadium, that is, those areas that pose an unduly high risk of injury from foul balls (such as directly behind home plate)."[17]

Washington courts have long imposed a limited duty on baseball stadium operators to screen some seats, generally those behind home plate.[18]

329-30, 441 N.Y.S.2d 644, 424 N.E.2d 531 (1981); Erickson v. Lexington Baseball Club, 233 N.C. 627, 628-29, 65 S.E.2d 140 (1951); Anderson v. Kansas City Baseball Club, 231 S.W.2d 170, 172-73 (Mo. 1950); Brisson v. Minneapolis Baseball & Athletic Ass'n, 185 Minn. 507, 508-09, 240 N.W. 903 (1932); Wade-Keszey v. Town of Niskayuna, 4 A.D.3d 732, 733-35, 772 N.Y.S.2d 401 (2004); Benejam v. Detroit Tigers, Inc., 246 Mich. App. 645, 635 N.W.2d 219, 225 (2001) ("[A baseball stadium operator] 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."); Bellezzo v. State, 174 Ariz. 548, 554, 851 P.2d 847 (1992); Crane v. Kansas City Baseball & Exhibition Co., 168 Mo. App. 301, 153 S.W. 1076 (1913); see generally James L. Rigelhaupt, Jr., Annotation, *Liability to Spectator at Baseball Game Who is Hit by Ball or Injured as Result of Other Hazards of Game*, 91 A.L.R.3d 24 (1979).

[15] Taylor v. Baseball Club of Seattle, L.P., 132 Wn. App. 32, 37, 130 P.3d 835 (2006).

[16] Turner, 124 Nev. at 217-18 (quoting Schneider v. Am. Hockey, 342 N.J. Super. 527, 533-34, 777 A.2d 380 (2001).

[17] Id. at 218.

[18] Taylor, 132 Wn. App. at 37; Leek v. Tacoma Baseball Club, Inc., 38 Wn.2d 362, 364, 229 P.2d 329 (1951) ("[A baseball stadium operator's] duty is fulfilled when screened seats are provided for as many as may reasonably be expected to call for them on any ordinary occasion."); Kavafian v. Seattle Baseball Club Ass'n, 105 Wash. 215, 181 P. 679 (1919).

The Mariners clearly satisfied its limited duty to screen a reasonable number of seats. Safeco Field has a permanent 26-foot safety screen behind home plate. The Mariners' head groundskeeper Bob Christofferson testified that he and his crew place temporary safety screens on the field during batting practice, including a batting cage above and around three sides of home plate and temporary safety screens at first base, second base, center field, and the pitcher's mound. As previously noted, since 2002, the Mariners have placed 8- by 10-foot temporary safety screens along the left field and right field foul lines. MLB did not require teams to have temporary safety screens along the foul lines until 2012. Christofferson placed the temporary safety screens along the foul lines "to reduce the number of line drive foul balls reaching the spectator seats."[19] No evidence in the record suggests the Mariners' screening of certain sections of the stadium deviated from the screening customarily employed at other MLB stadiums.

The record reveals a very low risk of injury in section 116 from foul balls. For example, the Mariners' Vice President of Ballpark Operations Scott Jenkins testified that from 2005 to May 2009, over 10,000,000 patrons attended a Mariners game at Safeco Field. During that period, for both games and batting practice, "300 people had some form of injury or contact with a ball that left the playing field."[20] Of those 300 incidents, only 5 occurred in section 116 where Teresa was injured. Nothing in the record indicates "foul balls of this kind cause serious injuries with sufficient frequency to be considered an unreasonable risk."[21] Similar to throwing balls pregame ("long toss") in Taylor v. Baseball Club of Seattle, L.P., batting practice is a normal part of pregame

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[19] CP at 366, ¶ 8.

[20] CP at 74.

[21] Leek, 38 Wn.2d at 366; Taylor, 132 Wn. App. at 41 ("The fact that no one has been injured simply shows that long toss does not pose an unreasonable risk.").

warm-ups.[22] No evidence suggests the batting practice here did not conform to MLB custom.

The Jennings cite Leek v. Tacoma Baseball Club for the proposition that Washington applies *Restatement (Second) of Torts* § 343 to define a baseball stadium operator's duty of care.[23] But Leek only discussed the restatement in pronouncing its holding that the limited duty rule applies. No Washington courts have cited § 343 in the baseball context since Leek. And no Washington courts, including Leek, have applied § 343 in the baseball context.

Additionally, the Jennings cite Rountree v. Boise Baseball LLC, a 2013 Idaho Supreme Court decision rejecting the limited duty standard.[24] Rountree is not compelling. Rountree involved a different factual scenario, rejected the limited duty rule, and determined "primary implied assumption of the risk is not a valid defense" in Idaho.[25] Because Washington applies the limited duty rule and accepts primary implied assumption of the risk as a valid defense,[26] we decline to follow Roundtree.

The Jennings also contend that, to the extent Kavafian v. Seattle Baseball Club Association[27] and Leek previously recognized the limited duty rule, subsequent comparative fault statutes have impliedly overruled it. But the Jennings cite no

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[22] 132 Wn. App. 32, 37, 130 P.3d 835 (2006).

[23] 38 Wn.2d 362, 229 P.2d 329 (1951).

[24] 154 Idaho 167, 296 P.3d 373 (2013).

[25] Id. at 174.

[26] Scott ex rel. Scott v. Pac. W. Mountain Resort, 119 Wn.2d 484, 495, 834 P.2d 6 (1992) ("Primary implied assumption of risk continues as a complete bar to recovery [even] after the adoption of comparative negligence laws.").

[27] 105 Wash. 215, 181 P. 679 (1919).

compelling authority for this proposition. The Jennings demonstrate nothing about comparative fault that precludes the continued viability of the limited duty rule.

Therefore, because the Mariners satisfied its duty of screening a reasonable number of seats, the Jennings chose not to sit in those screened seats, and the seats they chose did not pose an unduly high risk of injury from foul balls, they fail to demonstrate any breach of duty regarding injury from a foul ball in section 116 during batting practice. The trial court properly applied the limited duty rule to grant the Mariners summary judgment dismissing the Jennings' negligence claim.

Implied Primary Assumption of Risk

Even if the limited duty rule did not apply here, the defense of implied primary assumption of risk would preclude any recovery. The interplay between a landowner's general duty of care and a plaintiff's assumption of risk is nuanced. The "'boundaries of the defendant's duty to act do not . . . coincide in all cases with those of the plaintiff's assumption of risk.'"[28]

> The duty is determined upon the basis of what the defendant should expect, while assumption of risk is a matter of what the plaintiff knows, understands, and is willing to accept. Thus one who supplies a defective chattel for the use of another may be under a duty to make it safe, to warn the other of the defect, or otherwise to protect him, because it may be expected that he will not discover the defect. When the other does discover it, and nevertheless proceeds quite voluntarily to make use of the chattel, he assumes the risk.[29]

Even assuming that a general landowner's duty applies, the boundaries of the landowner's duty do not coincide in all cases with the defense of implied primary assumption of the risk.

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[28] Hvolboll v. Wolff Co., No. 31836-2-III, 2015 WL 1573274, at *6 (Wash. Ct. App. Feb. 12, 2015) (quoting RESTATEMENT (SECOND) OF TORTS § 496C cmt. e (1965)).

[29] RESTATEMENT (SECOND) OF TORTS § 496C cmt. e.

Teresa argues she did not fully subjectively understand the specific risk that she could be hit and injured by a foul ball sitting in an unscreened seat during batting practice when multiple batted balls are simultaneously in play. She contends she did not voluntarily choose to encounter that specific risk. We disagree.

Washington recognizes "'four categories of assumption of risk: (1) express, (2) implied primary, (3) implied reasonable, and (4) implied unreasonable.'"[30] Implied primary assumption of risk "occurs when the plaintiff has impliedly consented to assume a duty."[31] "Since implied primary assumption of the risk negates duty," it bars recovery "when the injury results from one of the risks assumed."[32] Assumption of the risk limits recovery but only to the extent the plaintiff's damages resulted from the specific risks known to and appreciated by the plaintiff and voluntarily encountered.[33]

To establish the implied primary assumption of risk defense, the defendant must show the plaintiff fully subjectively understood the specific risk's nature and presence, and he or she voluntarily chose to encounter the risk.[34] In other words, the spectator "*knowingly* and *voluntarily* chose to encounter the risk."[35] [36] "If reasonable minds could

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[30] Hvolboll, 2015 WL 1573274, at *5 (quoting 16 DAVID K. DEWOLF & KELLER, W. ALLEN, WASHINGTON PRACTICE: TORT LAW AND PRACTICE 9:11, at 398 (4th ed. 2013)); Scott, 119 Wn.2d at 496.

[31] Scott, 119 Wn.2d at 497.

[32] Id. at 498 (emphasis omitted).

[33] Id. at 496; Kirk v. Wash. State Univ., 109 Wn.2d 448, 454-55, 746 P.2d 285 (1987).

[34] Taylor, 132 Wn. App. at 38; Kirk, 109 Wn.2d at 453.

[35] Jessee v. City Council of Dayton, 173 Wn. App. 410, 414, 293 P.3d 1290 (2013) (emphasis added).

[36] The comments to the restatement provide an apt illustration: "A, the owner of a baseball park, is under a duty to the entering public to provide a reasonably sufficient number of screened seats to protect those who desire it against the risk of being hit by batted balls. A fails to do so. B, a customer entering the park, is unable to find a

not differ on the knowledge and voluntariness, there is implied primary assumption of the risk as a matter of law."[37]

Implied primary assumption of risk generally applies a subjective standard.[38] In particular, the test for knowledge is subjective, but the facts that should be known are objectively determined. A plaintiff has knowledge if, "at the time of decision, [he or she] *actually and subjectively* knew all facts that a reasonable person . . . in the plaintiff's shoes would want to know and consider."[39] A plaintiff "must be aware of more than just the generalized risk of their activities; there must be proof [he or she] knew of and appreciated the specific hazard which caused the injury."[40]

"Whether a plaintiff decides *voluntarily* to encounter a risk depends on whether he or she elects to encounter it despite knowing of a reasonable alternative course of action."[41] The plaintiff "'must have had a reasonable opportunity to act differently or proceed on an alternate course that would have avoided the danger.'"[42]

Teresa claims she did not appreciate the specific risk posed by multiple batted balls simultaneously in play during batting practice. But the required knowledge is of a particular type of risk, not knowledge of every variable that might affect the likelihood or exact mechanism of harm. Simpson v. May explains:

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screened seat, and although fully aware of the risk, sits in an unscreened seat. B is struck and injured by a batted ball. Although A has violated his duty to B, B may be barred from recovery by his assumption of the risk." RESTATEMENT (SECOND) OF TORTS § 496C cmt. g(4).

[37] Jessee, 173 Wn. App. at 414.

[38] Taylor, 132 Wn. App. at 38.

[39] Home v. N. Kitsap Sch. Dist., 92 Wn. App. 709, 720, 965 P.2d 1112 (1998).

[40] Shorter v. Drury, 103 Wn.2d 645, 657, 695 P.2d 116 (1985).

[41] Home, 92 Wn. App. at 721.

[42] Id. (quoting Zook v. Baier, 9 Wn. App. 708, 716, 514 P.2d 923 (1973)).

> To illustrate, one who attends a baseball game may be precluded from recovering for damages suffered when hit by a ball or broken bat. This preclusion may apply *even if the circumstances leading to the injury were somewhat bizarre*. He [or she] would not be precluded from recovering for damages from a collapsing grandstand or from eating tainted concession food unless he [or she] knew of this specific risk and voluntarily accepted these risks.[43]

The particular risk faced in attending batting practice at a Mariners game at Safeco Field is the occasional risk of an errant throw or foul ball or bat entering the stands.

The record here supports that Teresa had a full subjective understanding of the specific risk, both its nature and presence, that a foul ball could be hit into section 116 and injure her during batting practice:

- She has been to Safeco Field for a Mariners game between four to six times and sat in section 116 on several of those occasions.
- She choose to sit in section 116, an unscreened section, and arrived early at Safeco Field to specifically watch batting practice.
- When she arrived at her seat, she noticed players catching balls and a batter hitting balls.
- A foul ball landed near her seat before another foul ball hit her.
- She knew foul balls could reach the stands where she sat in section 116.
- She was familiar with baseball because she watched her child play it and attended many baseball games at both the Kingdome and Safeco Field.
- She was aware that neither a permanent nor temporary safety screen extended all the way down the first base line to protect her from foul balls.
- She tweeted several days after her injury that a foul ball landed in the stands near her seat on May 4, 2009, and that she wanted another foul ball to land near her.

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[43] 5 Wn. App. 214, 218, 486 P.2d 336 (1971) (citation omitted) (emphasis added).

No reasonable juror could find that Teresa lacked knowledge of the specific risk of being hit by a foul ball while in section 116.

Moreover, Teresa is "deemed to have known and understood the risk of such injury where such risk would have been quite clear and obvious to a reasonably careful person under the same or similar circumstances."[44] The record reflects Teresa subjectively appreciated the risk of foul balls and she voluntarily chose to encounter that risk.[45]

The Jennings attempt to distinguish Taylor, but Taylor controls. There, a pitcher during "long toss" warm-ups before a Mariners game at Safeco Field accidentally threw a ball into the stands, injuring a patron. Taylor affirmed the trial court's dismissal of the patron's negligence claim under the implied primary assumption of risk doctrine. Taylor first determined "warm-ups are integral to the game of baseball and that a spectator assumes the risk of being struck by a baseball during warm-ups."[46] Second, Taylor determined "the circumstances leading to Taylor's injury" did not constitute "an unusual danger."[47] Third, Taylor determined the specific risk of injury from an errant throw during warm-ups was "foreseeable to a reasonable person with Taylor's familiarity with baseball," even though "no one . . . had ever seen someone hit by an overthrown ball during [warm-ups]."[48] Taylor concluded that the patron "assumed the risk of a ball

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[44] Ridge v. Kladnick, 42 Wn. App. 785, 787, 713 P.2d 1131 (1986).

[45] She tweeted several days after her injury that she wanted a foul ball to land near her seat during batting practice.

[46] Taylor, 132 Wn. App. at 39.

[47] Id. at 40.

[48] Id. at 40-41.

entering the stands," and because the injury resulted from a risk inherent in the activity, the patron was barred from recovery.[49]

Similarly, Teresa's injury occurred during batting practice, also part of warm-ups, "an event necessarily incident to the game."[50] No evidence suggests the batting practice was conducted in an irregular manner. The Mariners' third base coach Jeff Datz stated that every other MLB team conducts batting practice in a similar manner as that conducted on the day of Teresa's injury. No evidence suggests the circumstances leading to Teresa's injury "constituted an unusual danger."[51] The parties do not dispute that (1) batting practice is part of the sport, (2) MLB teams typically conduct batting practice in the manner that can include more than one batted ball simultaneously in the air, (3) Teresa purposely attended batting practice, and (4) the Mariners permit spectators to view batting practice. As in Taylor, there were multiple balls simultaneously in the air at the time of Teresa's injury. The risk of Teresa's injuries "are within the normal comprehension of a spectator who is familiar with the game."[52]

Teresa contends that because she was distracted by a previously hit ball, she "could not be reasonably expected to avoid such an injury."[53] But the specific mechanism of the foul ball entering the stands has no bearing on the outcome. Batting practice typically involves pitchers throwing balls in quick succession with the chance that multiple balls could be simultaneously in play. A reasonable person in Teresa's shoes would know and consider that by choosing to sit in an unscreened area, there is

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[49] Id. at 41.

[50] Id. at 39.

[51] Id. at 40.

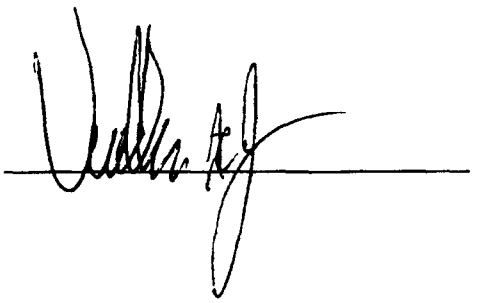
[52] Id. at 40.

[53] Appellants' Br. at 45.

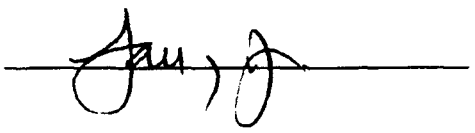
a possibility that a ball could enter the stands and injure her. Especially when a foul ball had just landed in Teresa's section moments before her injury, no reasonable juror could conclude that Teresa did not knowingly and voluntarily choose to encounter this specific risk. Even if this particular circumstance of multiple batted balls simultaneously in play could be considered "somewhat bizarre," assumption of the risk precludes recovery here.

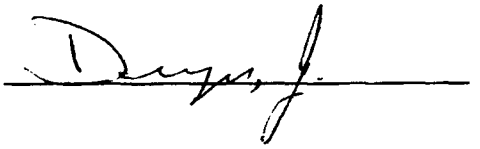
Therefore, we conclude the Jennings' negligence claim is barred by the limited duty rule. Even if the limited duty rule did not apply, Teresa assumed the risk of a foul ball from batting practice entering the stands.

We affirm.



WE CONCUR:





APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

TERESA REED-JENNINGS and CLIFF JENNINGS, wife and husband and their marital community, Appellants, v. THE BASEBALL CLUB OF SEATTLE, L.P., a Washington corporation, d/b/a The Seattle Mariners, WASHINGTON STATE MAJOR LEAGUE BASEBALL STADIUM PUBLIC FACILITIES DISTRICT, a municipal corporation; Defendants John Doe I-X, Respondents.	)	No. 71545-3-I ORDER GRANTING MOTION TO PUBLISH OPINION

Respondent The Baseball Club of Seattle, LLLP filed a motion to publish the court's opinion entered May 26, 2015. Appellants filed a response expressing no objection to the motion. After due consideration, the panel has determined that the motion should be granted.

Now therefore, it is hereby

ORDERED that the motion to publish the opinion is granted.

Done this 1st day of July, 2015.

FOR THE PANEL:

Verellen, ACJ