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Injured fans finding little recourse

Lawyers reluctant to handle cases where people are hurt in recreational settings.

By Fred Girard
The Detroit News

Stephanie Rutherford was seriously injured last year while on the premises of a high-visibility Detroit business — Tiger Stadium.

She lost an eye, might lose the vision in her other eye, has lost her job as a nurse's aide, has lost her home and is about to lose the car she can't drive.

The ballpark's insurance policy pays \$5,000 in medical benefits, and the Tigers say they are not giving her a dime more. People go to a ballpark knowing that balls and even bats might fly into the stands, the Tigers' attorney said, and warning signs, announcements and even a mes-

sage on the back of each ticket serve as reminders.

Call Geoffrey Fieger, Michigan's most famous lawyer, you say? Or Sam Bernstein, whose television advertisements ask people who have been injured to let him represent them? Rutherford called them, but they declined to take the case.

A third lawyer, Alan G. Blatnikoff of Southfield, also declined to file a lawsuit on her behalf. His fee was a third of her \$5,000 for the research he did in reaching that decision.

"My representation of her was on a one-third contingency fee basis," Blatnikoff said, "mean-

No appeal

Courts have tendency to rule in favor of liability waivers.
Page 7D

whatever she received."

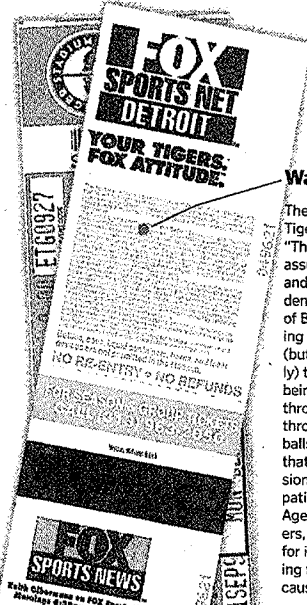
A glass replacement for her lost eye cost another \$1,395, leaving her with \$1,900, intense headaches, blurred and failing vision in her remaining eye and no job.

"We would have been immediately kicked out of court," Fieger said, explaining his office's decision not to file suit for Rutherford. "This is a result of (Gov. John) Engler-appointed judges who have made it impossible to win a lawsuit in this state."

Please see LAWSUIT, Page 7D



Charles V. Tines / The Detroit News
Stephanie Rutherford of Detroit is suing the Tigers because she lost an eye after getting hit by a foul ball at Tiger Stadium.



Waiver rule

The back of a Tigers ticket reads: "The holder assumes all risk and danger incidental to the game of Baseball, including specifically (but not exclusively) the danger of being injured by thrown bats and thrown or batted balls, and agrees that the Commissioner, the Participating Clubs, their Agents and Players, are not liable for injuries resulting from such causes."

"This is a ballpark. People go there with an expectation there's a game to be played that could involve balls and bats leaving the field, or a puck leaving a rink."

JOHN J. HOFFMAN, lawyer for the Detroit Tigers

LAWSUIT

Continued from Page 1D

Interviews conducted by The Detroit News and a recent string of appellate cases indicate that Rutherford's situation is far from unique. In case after case, courts have ruled that people injured in recreational settings have no redress because they signed waivers, or should have known they were in a risky environment. Among the rulings:

■ A woman was exercising at Beverly Hills Racquet Club when a large mirror fell off a wall and shattered, lacerating her arm and leaving a scar. Her case was tossed out because she signed a release to join the club.

■ During family skate time at a Berkley city rink, a woman was run over and injured by a youngster skating backward at a high speed. Her lawsuit was dismissed when the court ruled that she should have known ice rinks are "inherently dangerous."

■ A man who was injured in a game at Suburban Softball sliding into a fixed base lost his lawsuit because a form he signed — which he thought was only for his T-shirt size — also contained fine print waiving his rights.

■ A man was jogging on a track at an east-side Detroit Vic Tanny's — now Bally's — when he was injured tripping over a bucket maintenance men had left under a leaky roof. His lawyer has declined to file a lawsuit because the release the man had signed to join appears so bullet-proof. "The insurance company has been winning all these suits," the lawyer, James Simasko of Mt. Clemens, said.

Rutherford knew nothing about these cases, or how the trend they represent would affect her so personally, she said in an interview last week. She cried quietly as she relived her experience. On a table in front of her lay her latest medical bill — from Henry Ford Hospital, for \$14,683.

Rutherford, a soft-spoken Henry Ford High graduate, said she has asked lawyers to represent her for only one reason.

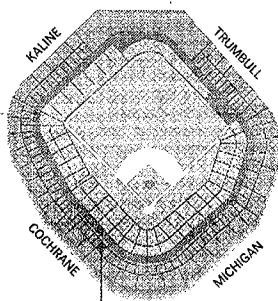
"I just think the Tigers should pay my medical bills," she said.

James O. Elliott, a Bloomfield Hills attorney, said Rutherford deserves much more. He has taken her on as a client, and is putting finishing touches on a lawsuit demanding \$10 million or more in damages from the Tigers, who are owned by Mike Ilitch.

"The law of Michigan states that the owner of a premise has a duty to correct any dangerous areas, and to adequately warn people of unreasonable risks of

Danger zone?

Stephanie Rutherford was sitting in section 338 in Tiger Stadium when she was injured by a foul ball on April 14 last season.



Section 338

Source: Detroit News research
The Detroit News

injury," Elliott said. "Baseball stadiums, hockey arenas, these are no exceptions."

Elliott is no stranger to lawsuits against the Tigers.

In October 1998, he won the largest judgment ever against a Michigan sports business, according to a News study of such cases — \$1 million against the Tigers. His client was Alyssia Benejam, then a West Bloomfield fifth-grader, who was sitting in a fourth-row seat at Tiger Stadium when her hand was impaled by a shard from a shattered bat.

Elliott showed a Wayne Circuit jury diagrams of Tiger Stadium speckled by black dots where scores of beanings or bat injuries had occurred. He convinced them the Tigers were negligent in not providing more screens or Plexiglas protectors.

The Tigers have appealed. Major League Baseball has asked to join their appeal against Benejam, saying her verdict "threatens to alter the play of Major League Baseball as Americans have grown to know it," and "potentially alter the design of every major-league stadium."

Despite the Benejam decision, when the 1999 season opened, the Tigers reduced fan protection by taking down the upper-deck screen behind home plate to improve visibility.

"I was shocked when they took that netting down," said longtime fan Mark Shoup of Grosse Pointe Park. "So many foul balls started shooting up there it was like sitting in an asteroid belt."

"I've always thought Tiger Stadium needed to do more to warn people about the danger," said Shoup, an attorney who frequently has defended companies such as the Tigers. "You're subjecting people to some missiles they really can't get out of the way of."

Rutherford's upper-deck seat on the third-base side of the plate would not have been protected by the netting the Tigers removed — a critical factor to the lawyers who refused to represent her. Elliott said it strengthens her case.

"That tells me they cared less about fans' and patrons' safety" even after the Benejam decision, he said. "These are the most dangerous seats."

Shoup was sitting nearby when Rutherford was struck in the face by a sharply hit foul on April 14. "It was terrible," he said.

Rutherford and her fiancé, Ernest Tabb, were attending their first Tigers game since their childhood.

"Ernest had gotten us some popcorn," she said. "I turned, just for a second, to take some, and when I turned my head back the ball was already there. I couldn't do a thing — I couldn't throw up my hand, or turn away, I couldn't even close my eye."

"I can't even begin to describe what it was like. I never lost consciousness the whole time. They came right away and put a towel over my face and helped me out of my seat. They put me in a wheelchair and took me down to the first aid room. EMS was already there, and they took me to Henry Ford (Hospital)."

"I'd been holding my hand pressed hard to my face the whole time, and my eye squinched shut, and when I took it away at the hospital and tried to open my eye, everything just rolled down my cheek."

"My eye had been wide open when the ball hit it. They told me the globe of my eye had been ruptured."

X-rays revealed a broken nose and broken facial bones, as well. Doctors performed emergency surgery, but were unable to save her eye.

Less than two months earlier, Rutherford had gone to work for a Southfield home health care company, assisting private patients — driving them to medical appointments, helping with their medication, even cooking for them. Unable to work, and not eligible for medical benefits, she fell behind on her bills. John Mason, of the show Mason & Co. on WJLB-FM 97.9, opened an emergency account for her at Michigan National Bank and appealed to listeners for help, enabling Rutherford to hold out another few months.

The week before Christmas, though — two weeks before her 38th birthday — Rutherford was forced to give up her comfortable apartment in Warren and move in with her sister in Detroit. She is \$1,700 behind in



Charles V. Tines / The Detroit News
Stephanie Rutherford of Detroit, and her attorney, Jim Elliott, look at drawing of Tiger Stadium that shows where fans have been hit by foul balls.

payments on her 1996 Mercury Tracer — which she cannot drive because of her blurred vision — and repossession is imminent.

And then there are the medical bills.

"I still have to see the doctor every three months, so that's just going to add to it," she said. "They still don't know if they'll be able to save the vision in my other eye."

Her employer has turned down Rutherford's request for disability benefits, she said. She has reapplied and is awaiting a decision.

Elliott said he realizes personal-injury cases have become increasingly difficult to win in Michigan's appellate courts. But the law is on Rutherford's side, he said, just as it was on Alyssia Benejam's, whom he predicts will prevail against the Tigers in the Court of Appeals.

He points out he won a \$65,000 settlement for a boy whose teeth were smashed by a fly ball at Tiger Stadium shortly before Rutherford's incident. And he got a \$27,500 settlement from another Ilitch team, the Red Wings, for a boy struck in the chin by a puck at Joe Louis Arena.

"I can show you incident reports of hundreds of people hurt in a very small area" at Tiger Stadium, Elliott said. "Lost eyes, shattered jaws, lacerations, scars, going back 25 years or more. The Tigers have a duty to protect their fans."

Rutherford and Tabb say they did not hear any announcements or see any signs warning of the dangers of foul balls. And neither read the 21 lines of fine print jammed onto less than half of the back of their admission ticket.

Four of those lines read: "The holder assumes all risk and danger incidental to the game of baseball, including specifically (but not exclusively) the danger

of being injured by thrown bats and thrown or batted balls, and agrees that the Commissioner, the participating clubs, their agents and players, are not liable for injuries resulting from such causes."

Elliott said Michigan courts ruled more than 20 years ago that the warning on the back of the ticket was "legally inadequate," in the case of Kathy Falkner, who also lost an eye after getting struck by a foul ball at Tiger Stadium.

"Adequacy of a warning is a jury question," the court held in the Falkner case. A jury disregarded the ticket warning in Alyssia Benejam's case, Elliott said, and will do the same for Rutherford.

The Tigers' lawyer, John J. Hoffman, of Southfield, said Elliott's reading of the Tigers' liability would be correct "if we were talking about a manager at Kroger's who knew there was a banana peel over in Aisle 3 and didn't have it picked up, and somebody gets hurt."

"But this is a ballpark," Hoffman said. "People go there with an expectation there's a game to be played that could involve balls and bats leaving the field, or a puck leaving a rink. These are prized souvenirs, people are hoping they come their way. Have you ever heard somebody say, 'Please give me a seat as far from the action as possible?' What should we do, ask everybody who comes in the ballpark to put on a full suit of armor?"

"No, I think some people (who sue) bend the law by checking their common sense at the door. And that's not right."

Those interested in helping Stephanie Rutherford can send checks to Michigan National Bank, c/o Stephanie Rutherford, 625 Shelby, Detroit, 48226.