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STEPHEN J. MOORE
Director
Licensed in Missouri, Illinois, Louisiana
and Connecticut

SMOORE@GJTBS.COM

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7710 CARONDELET STREET
SUITE 217
ST. LOUIS, MISSOURI 63105
TEL: 314-725-0525
FAX: 314-725-7150
WWW.GJTBS.COM

The Slings and Arrows (and Frankfurters) of the Leisure and Sports Industry

The Missouri Appellate Court recently authored a pair of decisions with implications for the sports and leisure industries and their fans and spectators.

In the first case, a Kansas City Royals baseball fan was injured when he was struck in the eye by a hot dog thrown by Royals mascot, "Sluggerrr". The "Hot Dog Launch" was a regular part of Royals game-time fan entertainment. In the suit that followed, the Royals argued that the plaintiff had assumed the risk of injury. The jury agreed, delivering a defense verdict. The plaintiff appealed and the appellate court reversed, concluding that the defense of assumption of the risk should not have been submitted to the jury. The Court reasoned that assumption of the risk applies where the plaintiff is injured as the result of a danger inherent in the nature of the activity. In the case of baseball games, that includes most commonly, being struck by a foul ball. Assumption of the risk did not apply in these circumstances, according to the Court, because being struck by a flying hot dog is not a risk inherent in the game of baseball. The fact that the Hot Dog Launch had been a regular part of the Royals experience for many years did not change the Court's view. The case is *Coomer v. Kansas City Royals*, 2013 WL 150838 (Ma. App. W.D. 2013).

In the second case, another division of the Missouri Appellate Court refined Missouri's law respecting written releases for future negligence. It has been clear for many years that Missouri Courts will enforce a release of future negligence if the release language is clear and explicit and includes the words "negligence" or "fault" or similar terms. In this case, the plaintiff was a participant in a charity race event. Before the race, she signed a broad release of claims that applied to the race organizers and to "any event sponsors and their agents and employees and all other persons or entities associated with this event." Subsequently, a local TV station signed a sponsorship agreement with the race organizers and attended the event to provide news coverage. Plaintiff was injured when she tripped over some of the station's audio visual equipment. She filed suit, and the television station moved for summary judgment, which the court granted. On appeal from the judgment, plaintiff argued that the release was faulty because it did not specifically name the parties to be released. The Court held that the term "any and all sponsors," while broad, was not ambiguous. The Court noted that while Missouri law is more exacting in its requirements for the language of a release of future negligence, there is no requirement that the released parties be specifically named. The Court likewise rejected plaintiff's second argument that the television station could not have been among the released parties since it was not a sponsor at the time plaintiff signed the release. The Court held that the release language did not include any such limitation on the scope of the parties released. The case is *Holmes v. Multimedia KSDK, Inc.*, 2013 WL 150809 (Mo.App. E.D. 2013).

The moral of these two cases: if your mascot is going to throw foodstuffs at the fans, make sure you have a release.