

# Sports Litigation Alert

Reprinted from *Sport Litigation Alert*, Volume 5, Issue 11, June 20, 2008. Copyright © 2008 Hackney Publications.

## Family Sues Little League, Retailer and Metal Bat Manufacturer Over Personal Injuries Suffered by Child

By **Jarett L. Warner**

The family of a fourteen year old boy has commenced a lawsuit against a Little League affiliate, a sporting goods retailer and the bat's manufacturer. Twelve year old Steven Domalewski was injured while pitching for his baseball team in 2006, when a line drive struck him in the chest and sent him into cardiac arrest. As a result, due to a lack of oxygen to his brain, the now fourteen year old has extensive brain damage and is confined to a wheel chair.

Steven Domaleski, a minor, by and through his mother and guardian ad litem, Nancy Domalewski, and Joseph Domalewski, his father, individually commenced a lawsuit in the Superior Court of New Jersey, Passaic County against Hillerich & Bradsyby d/b/a Louisville Slugger (the parent company of Louisville Slugger), the manufacturer of the type of bat used during the accident, The Sports Authority, Inc. (the seller of the bats in question) and the New Jersey State Little League. The Complaint alleges that on June 6, 2006, Steven was 12 years old and pitching in a youth baseball game to a batter using a Louisville Slugger TPX Platinum bat- Model YB504, 31 inches long and 19 ounces heavy- in a game being held in Wayne, New Jersey. The batter hit a ball that was hit with such velocity that it struck Steven in the chest, without an opportunity to react. As a result, Steven went into cardiac arrest and was thereafter resuscitated and transported to the hospital.

The plaintiffs allege that: the defendants knew or should have known that the subject baseball bat presented an unreasonable risk of harm to users and third parties; that the defendants negligently deviated from acceptable practices in the design and manufacturing of the bats and failed to provide safeguards or warn-

ings in the design of the bat; that the defendants are strictly liable for the deviation of the design and manufacturing of the bat; and that the defendants breached their implied and express warranties of merchantability concerning the bat. The Little League was named as a defendant despite the fact that Steven was not playing in a Little League game at the time of the accident (it was in a Police Athletic League game), based upon allegations that it put its seal of approval on the bat, certifying that it was safe for use by children.

The bat manufacturer, Hillerich & Bradsyby, disputes the allegations, stating that the injuries sustained are rare and are more often caused by thrown balls rather than batted balls. Sports Authority did not comment. The President and CEO of Little League Baseball would not make any specific comments, but noted that safety was Little League's primary concern.

The safety of the use of metal and aluminum bats has been a prevalent topic in recent times. On August 27, 2007, the United States District Court for the Eastern District of New York held that the New York City Council acted constitutionally in prohibiting the use of metal baseball bats by high school students in competitive baseball games. In *USA Baseball v. City of New*

*continued*

**Sports Litigation Alert** (SLA) is a narrowly focused newsletter that monitors case law and legal developments in the sports law industry. Every two weeks, SLA provides summaries of court opinions, analysis of legal issues, and relevant articles. The newsletter is published 24 times a year. To subscribe, please visit our website at <http://www.sportslitigationalert.com>

# Sports Litigation Alert

*Reprinted from Sport Litigation Alert, Volume 5, Issue 11, June 20, 2008. Copyright © 2008 Hackney Publications.*

## Family Sues Little League, Retailer and Metal Bat Manufacturer Over Personal Injuries Suffered by Child

*continued*

*York*, the plaintiffs (which included coaches and parents of New York City high school baseball players, sporting goods manufacturers, the National High School Baseball Coaches Association and USA Baseball) had sought an injunction against the enforcement of New York City Local Law 20 of 2007 (N.Y.C. Administrative Code §10-165) (known as the “Bat Ordinance”), which directed that high school students participating in competitive baseball games sponsored by public or private schools in New York City could only use wooden bats. Judge John G. Koeltl granted the City’s cross-motion for summary judgment to dismiss the lawsuit and denied the plaintiffs’ motion seeking both an injunction and a summary judgment. The only other known entity other than the City of New York to have banned the use of metal bats from youth and school sports is North Dakota. In 2005, North Dakota banned the use of metal bats for players in seventh through twelfth grades.

Some detractors to the ban on metal and aluminum bats, point to the case of Mike Coolbaugh, the first base coach of minor league team, *Tulsa Drillers*. He died in July, 2007 after being struck in the head by a foul ball hit off a wooden bat in a game in North Little Rock, Arkansas. These critics argue that an individual can die just as easily from a ball hit off a wooden bat.

It should be noted that more recently, in two separate incidents, Major League Baseball pitchers were struck by balls hit off wooden bats. On June 1, 2008, Minnesota Twins pitcher Nick Blackburn was hit in the face with a line drive off the bat of New York Yankee Bobby Abreu. Blackburn only suffered bruises, although this was due, in part, to the fact that the ball first nicked his glove. Blackburn did not spend any time on the disabled list as a result. On May 21, 2008, San Diego Padres pitcher Chris Young was hit in the nose

by a line drive hit by St. Louis Cardinal Albert Pujols. Young sustained multiple fractures to his nasal bone that resulted in damage to his facial bones, a deviated septum and a small crack to the bone of the skull. Young has been on the disabled listed since the incident, but many believe that he will make a full recovery. Neither incident is believed to be life threatening.

Regardless of the findings of the numerous studies, the reported incidents and the ensuing litigation, one thing is certain. The statutory and case law created in certain jurisdictions could set a significant precedent, should other municipalities, counties and/or states follow the lead of cities such as the City of New York and the State of North Dakota. A trend in similar legislation could give rise to a new standard of care. Although the ban on aluminum bats is not without its detractors (most notably, players and their parents concerned about the negative impact on performance, and sporting goods manufacturers concerned about the likely detrimental affect on the sale of aluminum bats), it is unlikely that a court would ignore the significant evidence that the use of non-wood bats creates an unnecessary risk and places performance over safety.

---

*Jarett L. Warner is an associate at Havkins Rosenfeld Ritzert & Varriale, LLP in New York, New York. He specializes in the defense of professional and minor league sports teams in personal injury actions and litigations arising out of stadium construction. He has also counseled risk managers, venue owners and operators, general counsels and clients with self-insured retentions to minimize liability and to develop successful litigation strategies. He can be reached at Jarett.Warner@hrrvlaw.com or (646) 747-5104.*

*This article initially appeared in Sports Litigation Alert (Vol. 5, Iss. 11). It is reprinted with permission of Sports Litigation Alert ([www.sportslitigationalert.com](http://www.sportslitigationalert.com)).*