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A home run for Little Leaguer whose ball hit the wrong car

By Steven Crighton
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Last March, 12-year-old Danny Perez drove a pitch so deep it landed in court.

Perez, a player at the Northridge City Little League, was at practice when he hit a home run that soared over the fence surrounding the field and struck the car hood of another player's parent, causing a dent. The parent, Allen Petersen, ran onto the field and accused Perez of purposely aiming for his car, according to a coach who witnessed the exchange.

After an argument between Petersen and Perez's father, who was coaching another team, Perez's father told Petersen to take it up with the league. Instead, he sued the boy in small claims court. *Petersen v. Perez*, 17CHSC00887 (L.A. Super. Ct., filed Oct. 10, 2017).

Lucky for Perez, he had a lawyer in the family to turn to for advice. His uncle, Kenneth Feldman, is a partner at Lewis Brisbois Bisgaard & Smith LLP and chair of the firm's legal malpractice defense department.

Feldman said he offered some guidance on how to handle things, but as respondents are prohibited from being represented by counsel in small claims court, he wasn't able to help in court. But he figured the demand was so absurd that it wouldn't require some riveting legal argument to get the case dropped.

He was wrong. Los Angeles County Superior Court Judge Andrew E. Cooper found in Petersen's favor and awarded him \$1,305. In a brief explanation of his ruling, Cooper wrote that while the court didn't find that Perez intentionally struck the plaintiff's car, "he was acting

in a manner in which it was foreseeable something would be struck outside the fence area."

Feldman said he was stunned by the finding, particularly given the Chatsworth-based judge's acknowledgment that Perez had not hit the ball into Petersen's car intentionally. Feldman said he felt the judge hadn't considered the assumption of the plaintiff's risk.

"I was told [small claims court] can be the wild wild West," Feldman said. "Sometimes, even if you have the law and facts on your side, they won't necessarily carry the day."

Cooper said Wednesday that it is his practice "not to comment on the details of specific cases out of respect for the litigants." But he explained that small claims appeals, unlike traditional appeals, are trials de novo and not reviews of the initial trial.

"The trial de novo may include completely different or additional evidence and testimony that was not presented at the initial trial," Cooper wrote in an email.

Additionally, Cooper noted, litigants on appeal are able to retain counsel. Feldman stepped in, and spent a large number of his off-hours in the days leading up to Christmas preparing a brief for the Dec. 27 appeal.

Feldman said the fact that a sitting superior court judge hadn't ruled in Perez's favor, despite what he saw as "an overwhelming amount of facts and law in Danny's favor," made him apprehensive about the matter going before a commissioner. As a legal malpractice defense attorney, he said he didn't have any experience with small claims proceedings.

"It was an informal process," Feldman said. "I'm used to much more formality."

That informality may have



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Kenneth Feldman, a partner at Lewis Brisbois Bisgaard & Smith LLP, represented his 12-year-old nephew, who was sued by a Little League parent over a home run ball that dented a car. Feldman won on appeal.

proved an advantage when Feldman called to the witness stand Gabriel Wainfeld, a longtime coach for the little league who witnessed the verbal exchange. Los Angeles County Superior Court Commissioner Susan K. Weiss allowed him to plainly explain the events as he'd seen them, Wainfeld said.

"Ken basically asked me a question, and I don't recall how far I was able to go, but the commissioner let me keep speaking," Wainfeld said. "It was almost like 'The People's Court,' the way she just let me go with it."

He explained that in the 18 years he'd been a coach for the league, and the countless times he'd seen a wayward baseball hit a car, he'd never seen someone seeking payment for it.

While Petersen had argued that practice was over and Perez shouldn't have been batting, Wainfeld said it wasn't, and since it was simply practice, there were ample parking spots further away from the fence that Petersen could have moved to if he was concerned about his car's safety. There are even signs warning motorists to "park at their own risk," though Wainfeld said it

was "really just common sense."

As an attorney at York & Wainfeld in Chatsworth, Wainfeld was no stranger to court trials. But he said the opportunity to simply lay out the facts as he'd seen them was a new experience.

"I don't think the judge really knew I was an attorney until right at the end, when Petersen said something and I told him, 'That's something that calls for an expert opinion,'" Wainfeld said. "That's when I told her, 'By the way, I'm an attorney.'"

Petersen, who represented himself, could not be reached for comment.

Weiss issued a brief ruling vacating the \$1,350 awarded to Petersen. Feldman said he was pleased Weiss had chosen to vacate the award, rather than "split the baby" by reducing the amount.

"That money wouldn't have changed anyone's life. But it's beyond economics," Feldman said. "It was truly a classic case of principle, right versus wrong, and ultimately justice — which is why I got into this business in the first place."

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