

TORT LIABILITY—Athletic Coaches and Officials—Volunteers—Civil Immunity From Liability—To Be Codified At N.J. Stat. Ann. § 2A:62A-6.

Little League Baseball, Pop Warner Football, and other non-profit forms of organized athletic competition have flourished in New Jersey for many years. Despite such popularity and success, the foundation of volunteerism which supports these programs is being undermined by the growing problem of athletic coaches and officials liability.¹ Recreation officials in New Jersey, however, remain unconcerned over the amount of personal injury lawsuits filed against organized sports officials and coaches, and point to the fact that there is no shortage of volunteers as evidence that a liability crisis does not exist.²

On May 12, 1986, Governor Thomas Kean confronted this issue by signing into law S-1678, sponsored by Senator Daniel Dalton (D-Camden).³ The new law provides immunity to volunteer athletic coaches and officials from civil suits for damages resulting from their acts or omissions during the ordinary course of their athletic supervision.⁴ This immunity extends to organized sports competitions as well as to practice and instruction sessions.⁵

Since coaches and officials normally have the most direct control of the activities of athletes, it is not surprising that they are frequently named as defendants in suits brought by injured athletes.⁶ In these cases, the critical inquiry is usually whether the coach has fulfilled the duty to exercise reasonable care for the protection of the athletes under his or her supervision. This duty

¹ The Star Ledger (Newark, NJ), Mar. 2, 1986, at 1, col. 2.

² Personal injury lawsuits against sports officials and coaches are on the rise, according to lawyers who participated in a forum on this issue at the 1985 annual New Jersey Bar Association Meeting. *See id.*

³ On this same date, Pennsylvania enacted similar legislation by amending Title 42 of the Pennsylvania Consolidated Statutes. The new law establishes a negligence standard for managers, coaches, umpires, referees, officers, directors, and trustees of non-profit organizations. 42 PA. CONS. STAT. ANN. § 8332.1(b)(1)(i) (Purdon 1986).

⁴ Athletic Coaches and Officials—Volunteers—Civil Immunity From Liability Act, 1986 N.J. Sess. Law Serv. 13 (West) (to be codified at N.J. STAT. ANN. § 2A:62A-6) [hereinafter cited as Immunity Act or Act].

⁵ *Id.*

⁶ J. WEISTART & C. LOWELL, THE LAW OF SPORTS, § 8.06 (1979).

can be satisfied by showing that proper instruction in how to play the game is provided, and due concern is given to ensure that the athletes are in proper physical condition.⁷ Coaches and officials are not, however, insurers of an athlete's safety, and accordingly, the duty of care is satisfied when they have taken all reasonable steps to minimize the possibility of an athlete's injury in games which inevitably involve a substantial certainty of physical contact.⁸

The New Jersey Volunteer Athletic Coaches and Officials Civil Immunity From Liability law⁹ partially removes volunteer coaches and officials from the reasonable care standard of liability for their acts or omissions. The statutory grant of civil immunity does not, however, apply to coaches, managers or officials who: (1) cause damage through their willful, wanton, or grossly negligent acts of commission or omission; (2) have not participated in a safety orientation and training program established by the league with which they are affiliated; (3) have caused damage as the result of their negligent operation of a motor vehicle; (4) have caused damage by permitting a sport competition or practice to be conducted without supervision; and finally, (5) provide their services or assistance as part of a public or private educational institution's athletic program.¹⁰

Conceptually, New Jersey's Immunity Act mirrors similar legislation enacted in Pennsylvania. Both the New Jersey and Pennsylvania statutes provide civil immunity from liability to persons involved in non-profit sports programs and associations. Like New Jersey's Immunity Act, Pennsylvania's statute does not extend immunity for acts or omissions relating to the transportation of participants in a sports program, or others to or from a game, event, or practice.

Pennsylvania's statute differs, however, in that its negligence standard for revoking the privilege of civil immunity is slightly

⁷ *Id.* at 980.

⁸ *Id.* at 980; *see also* *Vendrell v. School District No. 26C Malheur County*, 233 Or. 1, 376 P.2d 406 (1962) (where the Supreme Court of Oregon noted that the game of football was inherently dangerous and held that the coaches of the injured plaintiff were not liable for his injuries because they had organized a conditioning program for their athletes and the plaintiff had participated in the program prior to his injury).

⁹ *See supra* note 4.

¹⁰ *Id.*

higher than New Jersey's.¹¹ Specifically, when an individual coach or official's conduct falls below the generally accepted standards applicable to persons in similar non-profit athletic associations, and the individual is under a duty to know, or has reason to know, that his or her acts would create a substantial risk of actual harm to a participant, immunity from civil liability will not attach.¹² Furthermore, for liability to be imposed upon coaches, officials, or sports associations, something more than failure to maintain ordinary standards of care must be established.¹³

In contrast, New Jersey's standard for liability is more precise. Specifically, the law imposes civil liability upon an individual whose conduct is willful, wanton, or grossly negligent.¹⁴

New Jersey's Immunity Act was drafted in response to recent lawsuits brought against volunteer coaches, officials, and non-profit sports associations throughout the state. In 1982, a Camden County parent filed a \$750,000 damage suit against the Runnemedede Youth Athletic Association and several of its coaches after her ten-year-old son was hit in the face when he misjudged a fly ball while warming up for an association organized baseball game.¹⁵ The accident caused the boy permanent eye damage.¹⁶ In addition, the league's insurance limit was only \$300,000, and its insurance policy did not cover punitive damages.¹⁷ The suit was settled in 1985 for \$25,000 in damages.¹⁸

In *Nash v. Borough of Wildwood Crest*,¹⁹ the plaintiff was injured when he was struck in the eye by a softball while catching without wearing a mask.²⁰ The plaintiff suffered partial loss of vision and brought suit alleging that the umpire should have given the plaintiff his umpire's mask and then officiated from a position be-

¹¹ See 42 PA. CONS. STAT. ANN. § 8332.1(b)(1)(i) (Purdon 1986).

¹² PA. CONS. STAT. ANN. § 8332.1 (Purdon 1986).

¹³ *Id.*

¹⁴ Athletic Coaches and Officials-Volunteers-Civil Immunity From Liability Act, 1986 N.J. Sess. Law Serv. 13 (West) (to be codified at N.J. STAT. ANN. § 2A:62-A-6(1)(c)).

¹⁵ The Star Ledger (Newark, N.J.), Mar. 2, 1986, at 1, col. 5.

¹⁶ *Id.*

¹⁷ *Id.* at 24, col. 1.

¹⁸ *Id.*

¹⁹ Docket No. L-6624-77 (N.J. Superior Court, Cape May County 1983).

²⁰ H. APPENZELLER, SPORTS & LAW: CONTEMPORARY ISSUES, § 6.2(F)(3) (1985). In slow-pitch softball a catcher is not required to wear a catcher's mask. *Id.*

hind the pitcher rather than from behind home plate.²¹ The case was settled prior to trial with the plaintiff receiving \$24,000.²²

In 1985, the Morris County Industrial Recreation Association was made a defendant in three lawsuits: one from a woman hit by a bat while playing catch during an organized softball game; another from a softball game spectator who was hit by an overthrown ball; and a third by a soccer goalie who broke his leg during an organized contest.²³ Only the first case has been settled for approximately \$10,000.²⁴ Nevertheless, the Recreation Association has had its annual insurance premium raised from \$4,000 per year to \$33,000 per year and was informed by its insurer that its policy would no longer cover sports participants.²⁵

These cases form an emerging pattern in New Jersey; lawsuits against non-profit sports associations are disposed of by relatively low cost insurance settlements followed by dramatic increases in insurance premiums for the defendant association. These premium increases reflect the fear of insurance companies that the big settlement or damage award is just a matter of time.²⁶

New Jersey's Immunity Act is directly aimed at reducing the impact of this insurance crisis. The goal of the law is to retain a pool of volunteers to fill the coaching and official positions necessary to perpetuate local community sports organizations.²⁷ By providing civil immunity from liability, the legislature moved to close the liability gap created by insurance companies which have

²¹ R. BERRY & G. WONG, *LAW AND BUSINESS OF THE SPORTS INDUSTRIES* § 4.27-9 (1986).

²² *Id.* at 378.

²³ *The Star Ledger* (Newark, N.J.), Mar. 2, 1986, at 24, col. 2.

²⁴ *Id.* at 24, col. 3. This amount is an estimation from resulting insurance payments of "less than \$2,000" from each of the "four or five" defendants, according to officers of the association. *Id.*

²⁵ *Id.* at 24, col. 3. The Recreation Association later negotiated the new premium down to \$8,000 and got the insurer to drop the sports participant clause. *Id.*

²⁶ In early 1986 several coaches of the Lodi Little League program were named defendants in a multi-million dollar lawsuit involving a girl whose leg was gashed as she slid into third base. *See The Bergen Record*, March 14, 1986, at C1, col. 2. It is also interesting to note that the average damage award in the United States rose from \$345,000 in 1974 to \$1,070,000 in 1985. *The Star Ledger* (Newark, N.J.), March 2, 1986, at 24, col. 5, 6.

²⁷ S.R. 1678, 202nd Leg., 1st Sess. (1986).

either drastically raised insurance rates for volunteer sports organizations or dropped their coverage altogether.

It may be too early to tell whether New Jersey's Immunity Act will meet its intended goals. While the law alleviated last year's liability problems for volunteer coaches and officials, it does not touch on the growing issue of tort liability for paid athletic coaches and officials. Although further legislative action is imperative, the Immunity Act is an important and prudent first step.

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