Defense Digest 12/08: No Duty To Protect Sports Participants From Inherent Risk Of Being Struck By Thrown Ball

By Stephen J. Poljak, Esq.*

Pennsylvania - Amusements, Sports & Entertainment

In Craig v. Amateur Softball Association of America, 2008 Pa. Super. 123 (Pa. Super. 2008), a panel of the Superior Court has upheld the longstanding rule that a defendant owes no duty of care to protect individuals from risks which are common, frequent, and expected during sporting events. In Jones v. Three Rivers Management Corporation, 394 A.2d 546 (Pa. 1978), the Pennsylvania Supreme Court held that operators of sporting events are not insurers of the safety of the spectators attending the event. The Supreme Court held that the operators of sporting events have no duty to protect the spectators of the sporting events from risks of the sport which are inherent. In the Jones case, the Supreme Court ultimately determined that being struck by a baseball while walking along the interior concourse of a stadium could not be considered an inherent risk of the game of baseball. The Supreme Court reversed a prior ruling of the Superior Court and reinstated a jury verdict in favor of the plaintiff.

In Craig, the plaintiff asserted that the Amateur Softball Association of America owed him a duty of care to protect him from being struck by a softball while being a participant in the game.

The plaintiff alleged that at the time of his injuries, he was a participant in a softball game sanctioned by the defendant, Amateur Softball Association of America (ASA). He alleged that the game was governed by the defendant's rules. Apparently, while the plaintiff was playing the softball game, he hit a ground ball between first and second base, which both the first and second basemen attempted to field. Despite the fact that the first baseman had left first base, the pitcher did not attempt to cover the base. The second baseman fielded the ground ball and attempted to throw the plaintiff out at first base. The plaintiff alleged that the ball struck him in the left temple as he crossed first base. As a result of being struck by the thrown ball, the plaintiff alleged to have sustained serious skull fractures and resultant injuries. The plaintiff was not wearing any type of protective head gear at the time. Discovery revealed that the plaintiff was a lifelong participant of the sports of both baseball and softball.

Following discovery, attorney Thomas P. Birris (of our Pittsburgh office), who represented the defendant throughout the lower court proceedings, filed a Motion for Summary Judgment asserting that pursuant to the Supreme Court decision in Jones and subsequent cases, the defendant had no duty to protect Mr. Craig from the inherent risks associated with playing a game of softball. Those risks included being struck by batted and thrown balls. The plaintiff argued that the defendant owed a duty under Jones since the injuries he suffered were not common, frequent, or expected results of playing a game of softball.

The plaintiff also argued that the defendant had deviated from its own established custom of requiring protective head gear in other divisions of its Association. The plaintiff argued that the defendant required the wearing of helmets by all adults participating in fast pitch or modified pitch softball. Also, the defendant required the wearing of helmets by Junior Olympic players. The plaintiff was not participating in these various divisions at the time of his injury. The plaintiff was participating in adult slow pitch softball. The defendant did not require the wearing of helmets during adult slow pitch softball but issued rules indicating that adults participating in the sport may wear protective head gear if they so chose.

Following argument, the Honorable Judge Eugene F. Scanlon granted ASA's Motion for Summary Judgment and dismissed the plaintiff's action with prejudice. On appeal, the plaintiff argued that the lower court committed an error of law regarding its determination that ASA had no duty to the plaintiff. The plaintiff also argued that the lower court committed error of law in finding that ASA had not deviated from established custom and that a duty existed between the plaintiff and the defendant based upon Pennsylvania Public Policy.

On June 4, 2008, the Honorable Judge Patrick Tamilia issued the Superior Court's unanimous Opinion affirming the decision of the Court of Common Pleas of Allegheny County in granting ASA's Motion for Summary Judgment. In addressing the plaintiff's argument that the risk of being struck in the head by a ball thrown with such force that one's skull becomes crushed is not inherent to the game of softball, Judge Tamilia held that the plaintiff's argument confused the concepts of risk and result. As the court stated, "[t]he risk at issue in this matter is being struck by an errant softball; the risk is not the injuries that resulted from being struck." Loughran v. Phillies, 888 A.2d 872 (Pa. Super. 2005), appeal denied 906 A.2d 543 (2006).

As recognized by the Superior Court's decision, there is nothing in the application of the no-duty rule which requires consideration of the severity of the injury caused by the risk in question. Likewise, there is nothing in the Supreme Court's opinion in Jones, and subsequent opinions by other courts applying the no-duty rule, which suggests that the rule only applies in circumstances where the injury sustained by a plaintiff could be considered minor in nature. In fact, the opposite is true.

The rule in Pennsylvania clearly focuses on the nature of the risk experienced and not the significance of the injuries suffered. Thus, if the plaintiff's injuries, whether minor or significant, were "suffered as a result" of an expected risk inherent during the activity, the no-duty rule applies and the defendant has no duty to protect a plaintiff from that risk.

Further, the Superior Court rejected the plaintiff's argument that the defendant owed a duty of care to him because it was foreseeable he could be struck with a softball during the game. The court stated that while there is no question that foreseeability is relevant in determining whether a duty of care exists, the plaintiff's argument in this regard was flawed. "All inherent risks which fall within the parameters of the no-duty rule are, by definition, foreseeable. Once a risk is deemed inherent, it no longer matters whether the risk is also foreseeable."

Regarding the plaintiff's argument that a duty existed between the plaintiff and the defendant based upon public policy alone, the Superior Court noted that there is no case law which supersedes the no-duty rule on the basis of public policy. The court noted that the Supreme Court in Jones set forth a single exception to the no-duty rule. "Only when the Plaintiff introduces adequate evidence that the amusement facility in which he was injured deviate in some relevant respect from established custom will it be proper for an 'inherent-risk' case to go to the jury." Thus, the court held that public policy considerations do not supersede the no-duty rule set forth in Jones.

The Superior Court's decision in Craig reinforces the long-standing rule in Pennsylvania that the mere fact that an accident occurs does not mean that the accident is compensable.
"Compensability requires fault and fault derives from defined standards of negligence." In this case, since an inherent risk in playing a game of softball includes being struck by a thrown ball, the defendant owed no duty to the plaintiff to protect him from that risk. Based upon the Superior Court's decision, it remains the responsibility of the individual participating in the sport to protect themselves, as much as possible, from a sports common, frequent, and expected risks.

* Stephen is a shareholder in the firm's Pittsburgh, Pennsylvania, office. He can be reached at (412) 803-1154 or sjpoljak@mdwcg.com.