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“No-duty” Rule is Key to the Successful Defense of Sports Injury Lawsuits in Pennsylvania, U.S.A.

When defending a lawsuit involving sporting activities in Pennsylvania, U.S.A., defendants would be wise to argue the no-duty rule. The “no-duty” concept involves a finding that the defendant had no duty to the plaintiff and, therefore, was not negligent. The defendant is not liable regardless of whether the defendant could successfully raise the assumption of the risk defense. In an assumption of risk defense, the defendant owed a duty but may be relieved of liability because the plaintiff assumed the risk. However, when inherent risks of the sport are involved, negligence principles are irrelevant because there is no-duty and, therefore, there can be no recovery based on a negligence claim.

Recently, the no-duty rule was the focus in a federal court lawsuit which analyzed Pennsylvania state law. *Barrett v. New American Adventures, LLC et al.,* 2023 WL 4295807 (W. D. Pa. June 30, 2023). The *Barrett* lawsuit arose out of an injury while the plaintiff was participating on an obstacle course.

To bring a claim of negligence under Pennsylvania law, a plaintiff must show that:

(1) the defendant had a duty or obligation recognized by law;

(2) the defendant breached that duty;

(3) a connection exists between the breach and the duty; and

(4) the breach created actual loss or damage. *Krentz v. Consol. Rail Corp.,* 910 A.2d 20, 27–28 (Pa. 2006). In *Barrett*, it was argued that the plaintiff could not show the first element - a legal duty recognized by law. Specifically, the defendants submitted that they had no duty to protect a plaintiff from the inherent risk of falling while running, climbing, jumping, and swinging on an obstacle course.

The "no-duty" rule provides that "an owner or operator of a place of amusement has no duty to protect the user from any hazards inherent in the activity." *Chepkevich v. Hidden Valley Resort, L.P.,* 2 A.3d 1174, 1186 (Pa. 2010), citing Restatement (Second) of Torts § 496A, CMTT c, 2 (where plaintiff has entered voluntarily into some relation with defendant which he knows to involve the risk, he is regarded as tacitly or impliedly agreeing to relieve defendant of responsibility, and to take his own chances); *Hughes v. Seven Springs Farm, Inc.*, 762 A.2d 339, 343-44 (citing *Jones v. Three Rivers Mgmt. Corp.,* 394 A.2d 546 (Pa. 1978)). "Where there is no duty, there can be no negligence, and thus when inherent risks are involved, negligence principles are irrelevant...and there can be no recovery based on allegations of negligence." *Chepkevich,* 2 A.3d at 1186, citing *Althaus ex rel. Althaus v. Cohen*, 756 A.2d 1166 (Pa. 2000). Pennsylvania applies the "no-duty" rule to sports, recreation, and places of amusement. *Chepkevich*, 2 A.3d at 1186.

The severity of the injury, whether minor or extreme, has no bearing on whether the "no-duty" rule applies. *Richmond v. Wild River Waterpark, Inc.*, No. 1972 MDA 2013, 2014 WL 10789957, at *1 (Pa. Super. 2014). Rather, to apply the "no-duty" rule in a lawsuit involving a sporting activity, there is a two-part inquiry:

(1) whether the participant was engaged in the sporting activity

(2) at the time of the injury; and

(3) whether the injury arose out of a risk inherent in the sporting activity.

See *Chepkevich*, 2 A.3d at 1186. When both questions are answered in the affirmative, summary judgment is warranted. Id. "If those risks are not inherent, traditional principles of negligence apply and [the Court] must determine what duty," if any, a defendant owes to a plaintiff, whether the defendant breached that duty, and whether the breach caused the plaintiff's injuries. *Quan Vu v. Ski Liberty Operating Corp.*, 295 F. Supp. 3d 503, 507 (M.D. Pa. 2018), aff'd sub nom. *Vu v. Ski Liberty Operating Corp.,* 763 F. pp'x 178 (3d Cir. 2019).

In *Barrett*, the court determined that there was no question that, at the time of the injury, the plaintiff was engaged in the sporting activity of an obstacle course. She was swinging from plank to plank when she slipped off and fell, injuring her knee. As to the second inquiry, the key question was whether the plaintiff's injury arose out of a risk inherent of an obstacle course. A risk that is "common, frequent, and expected" is an inherent risk. *Chepkevich,* 2 A.3d at 1187. Though a plaintiff's subjective awareness of a specific inherent risk is not required, *Quan Vu,* 295 F. Supp. 3d at 509, the *Barrett* court looked to plaintiff's own testimony. She admitted to experiences involving other sports and recreational activities, as well participating in other adventure courses. The plaintiff testified she knew there was a possibility that while running, climbing, jumping, and swinging on an obstacle course that she could slip, lose her grip, and/or not catch the second plank. She also testified that she understood that, if that happened, she would fall and could be injured.

Additionally, in *Barrett*, the plaintiff's expert stated that "[i]t is not unreasonable to expect that users will lose their grip and either unintentionally or intentionally fall." He further stated that a fall from an obstacle course "would not be unexpected." *Id.* at p. 13. In fact, the plaintiff acknowledged that participating in an obstacle course presents inherent risk of injury from a fall. Courts should adopt "a practical and logical interpretation of what risks are inherent to the sport....' *Vu*, 763 F. App'x at 181, quoting, *Chepkevich*, 2 A.3d at 1187-88. Applying the same, the *Barrett* court found that

falling from planks on an obstacle course and any subsequent injury arising therefrom is an obvious danger when engaging in an obstacle course and falling is an inherent risk.

The *Barrett* court opined there is no doubt that the risk of injury from falling into a pit while participating in an obstacle course is "a common, frequent, and expected" part of engaging in this activity. "Participating in an obstacle course contains a risk of injury, particularly from a fall." The court determined that a fall while on an obstacle course into the pit below "is more likely than not. It is a quintessential risk" of the obstacle course. It also found that the risk of falling from the planks is an "inherent risk" and a subsequent injury cannot be removed from the obstacle course without altering the fundamental nature of the activity. As set forth above, if the risk is inherent, an owner or operator has no duty to protect the user from it and the user cannot recover for any alleged negligence on the part of the owner/operator. See *Quan Vu*, 295 F. Supp. 3d at 507-509; *Chepkevich,* 2 A.3d at 1186. Accordingly, the "no-duty" rule applied in *Barrett* for any alleged negligence on the part of the owner/operator of the obstacle course.

In opposition, the *Barrett* plaintiff argued the "no-duty" rule does not apply because there is evidence that the defendants deviated "from established custom" by failing to meet industry standards. To that end, the plaintiff's experts opined that the obstacle course failed to meet industry standards and that the defendant failed to properly maintain and operate the obstacle course within the standards set forth in the operations manual for the obstacle course. For example, the plaintiff suggested that the defendants should have used a different type of padding system in the pit to minimize the risk, and that the defendants should have advised her not to land with a straight leg.

The *Barrett* court stated that "these arguments go to negligence principles, not as to salient question of whether the risk was inherent. The question of inherent risk must be determined first." *See Quan Vu, supra; Jones, supra; Telega, supra.* "When inherent risks are involved, negligence principles are irrelevant," the inquiry is over, and summary judgment is proper. *Quan Vu*, 295 F. Supp. 3d at 509. Therefore, the *Barrett* court concluded that the "plaintiff's arguments in this regard, and the evidence submitted to support them, fail to raise a genuine issue of material fact. In conclusion, the court stated it "is not unsympathetic to plaintiff's injury, but the extent of her injury is of no moment when considering the issue of whether the 'no-duty' rule applies." The court granted summary judgment to the defendants and dismissed the lawsuit.

When defending lawsuits involving sports injuries in Pennsylvania, if the injury was caused by the typical risks of the sport, such as falling down or being bumped by other participants, then defendants have no-duty and cannot be found negligent. If your jurisdiction does not have the no-duty rule, negligence principles may apply. Defendants then may argue under the assumption of risk defense, even if the defendant owed a duty to the plaintiff, the defendant may be relieved of liability because the plaintiff assumed the risk. The affirmative defense of assumption of risk requires that the defendant show that the plaintiff was subjectively aware of facts which created danger; the plaintiff appreciated the danger itself; and nature, character, and extent which made it unreasonable, and the plaintiff voluntarily encountered risk. Be mindful, when taking the deposition of the plaintiff, to seek key admissions to meet the legal elements so that the no-duty rule and/or assumption of risk defense can be successfully raised in a motion for summary judgment to dismiss the lawsuit.

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