

Fair Game? Legal Exposures Alter The Playing Field for Youth Sports

Why lawsuits, if not the actual risks, in youth sports are growing-- and why underwriters should be mindful.

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PropertyCasualty360.com

May 26, 2014

For years, sports camps and athletic organizations have been targets of personal injury lawsuits—and insurance companies are right in the middle of it. Such suits are arguably inevitable due to the inherent risk of injury—sometimes serious injury—from the activities that occur while playing sports; when camps and athletic organizations allow sports that involve bodily contact, running, diving, jumping or sliding, they risk exposure to legal action.

Insuring camps and athletic organizations has proven to be profitable, but a trend of growing exposure exists for certain sports, including baseball, football, soccer and gymnastics. This trend has insurers on alert, especially with more children engaging in athletics at a much younger age.

Participants and their families who have brought suit generally claimed that the camp or athletic organization did not properly supervise the participants in an athletic event. As the volume of these lawsuits increases, so too does awareness of the critical role that supervision plays in preventing injuries and in protecting camps and athletic organizations from a potential lawsuit.

To determine the proper amount of supervision, administrators and risk managers must evaluate a number of factors, including the specific sport involved, the children's ages

and size, experience, skill, and conditioning level of the participants. While recognizing these factors remains important, insurance carriers must also acknowledge that the current trend of litigation has gone beyond the mere failure to supervise during athletic events and now targets alleged failures to warn of the risks of the sport and failure to provide proper instructions.

The “No-Duty Rule” and “Assumption of the Risk” Defenses

To defend against these theories of liability, sports camps and athletic organizations often raise the so-called “no-duty rule.” This rule provides that a defendant owes no duty of care to warn, protect, or insure against risks that are common, frequent, expected, and inherent in an activity. A related defense is “assumption of the risk,” which is an absolute defense in some states and is used in others to diminish the defendant's duty where the injured child was aware of, appreciated the nature of, and voluntarily assumed all of the risks associated with the activity.

To determine whether a child was aware of a particular risk, courts applying assumption of the risk assess the child's background and skill in the sport or athletic activity. Where the defendant created a unique condition that went over and above the usual dangers inherent in the sport, assumption of the risk will not apply

and the defendant will likely owe a duty to the injured child.

These defenses are best understood in the context of actual cases. As will be seen, the outcome of these cases generally turns on the injured child's experience with the sport at issue, his or her knowledge of the sport's risks, and the instructions provided by the defendant recreational organization.

One such lawsuit involved a 14-year-old who injured himself while sliding into base during a baseball game. The defendant moved to dismiss the case on the basis that it neither breached a duty to the child nor caused his harm and the child assumed the risk of his injury insofar as sliding is an inherent part of baseball that presents obvious risks. The court agreed with the defendant and dismissed the case because the child was an experienced baseball player, had played baseball for several years, understood that sliding was an integral part of the game, and voluntarily assumed the risk that he might be injured sliding. Furthermore, the court noted, the defendant did not create a dangerous condition over and above the usual danger inherent in baseball.

In contrast, in a different case arising from a game of baseball, a 10-year-old suffered an injury after sliding into a base for the first time. The child alleged that the defendant did not warn about the risks of sliding, never taught the child to slide properly, and failed to appreciate that the child never previously slid into a base. Due to these factors, the court refused to dismiss the case and instead allowed a jury to decide whether the child should have appreciated the risk based upon his age and lack of experience in the sport.

Yet another lawsuit involved a 9-year-old who was injured while playing catcher at camp. During the baseball game, the child was hit in the head with a bat tossed by another player. The plaintiff had no prior experience playing catcher and was not provided with proper

protective equipment. In addition, the child was never instructed on the risks of playing catcher. On these facts, the court denied the camp's motion to dismiss the complaint.

Other cases emphasize that liability will not be imposed where the recreational organization acted properly, even if the risk that resulted in injury was not assumed by the injured child. For instance, in a case against a youth football camp, a 10-year-old was participating in a non-contact drill. However, another camper who failed to follow instructions tackled the plaintiff to the ground. While the facts showed that the plaintiff did not assume the risk of being tackled and thrown to the ground during a non-contact drill, the camp demonstrated that its coaches did not create, conceal, or unreasonably increase the risk of harm. Significantly, the plaintiff testified that his coaches provided him with the correct protective equipment and instructed the players not to tackle during the drill in question. Further, even the most vigilant and close supervision could not have prevented the sudden and surprise tackle.

Under these facts, the court refused to impose liability and reasoned that camps are not insurers of safety and are not required to continuously supervise and control all of the movements and activities of children, particularly when proper instruction is provided.

Reducing the Risk of Liability

As these cases demonstrate, the youth and inexperience of participants present significant challenges for insurance companies assessing the risk of injuries during youth athletics. Currently, children are engaging in more sporting activities and at a much younger age as compared to past years. These participants, especially those under the age of 10, often act impulsively, have little experience in the particular game or sport, and may not fully appreciate the potential dangers of their actions—thus setting the stage for significant

risks of both injuries to children and liability for camps and athletic organizations.

When the insurance company is asked to write a policy for a camp or athletic organization, the underwriter should consider the extent to which the organization maintains adequate supervision; explains potential dangers; supplies proper instruction about the rules of safety and special techniques required of the sport; and provides a safe environment and facility. Organizations that follow these steps, even those that cater to very young and athletically inexperienced children, can significantly reduce liabilities and related exposures to the insurance company.

While any injury to a child is unfortunate, camps and athletic organizations nonetheless can, and should, take these proper steps to ensure that an incident does not result in a claim and potential liability.

Claims managers should be aware that if an injury does occur and the camp or athletic organization is blamed, economic and business factors may warrant consideration of a settlement either before a lawsuit is filed or during the litigation process. However, it is important to keep in mind that settling in

situations where appropriate risk policies and procedures have been followed may encourage other lawsuits.

In addition to exonerating a blameless camp or athletic organization, the choice of litigation over settlement sends a powerful message to potential plaintiffs and their lawyers not to bring frivolous suits.

Injuries are an unfortunate reality of youth sports, but they do not always mean that someone is to blame. If insurance carriers offer settlements too readily, the result will be more future lawsuits, increased costs for insurers, and fewer sports camps and leagues for kids.

And that's a foul play if ever there was one.



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