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**An analysis of court decisions involving injuries to participants
and spectators in youth sport activities**

Appenzeller, Herbert Thomas, Jr., Ed.D.

The University of North Carolina at Greensboro, 1988

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AN ANALYSIS OF COURT DECISIONS INVOLVING
INJURIES TO PARTICIPANTS AND SPECTATORS
IN YOUTH SPORT ACTIVITIES

by

Herbert Thomas Appenzeller, Jr.

A Dissertation Submitted to the Faculty
of the Graduate School of the
University of North Carolina at Greensboro
in Partial Fulfillment of the Requirements
for the Degree Doctor of Education

Greensboro 1988

Approved by *Richard A. Swanson*

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The purpose of this study was to review and analyze judicial decisions involving injuries to participants and spectators in youth sport activities. For this research, youth sport activities are those adult-organized sport programs that are conducted outside of the school setting.

The number of court cases is limited but the decisions have been significant. The study demonstrates that no area of youth sport is immune from the threat of a lawsuit as administrators, coaches, officials, national, state and local organizations have all been involved in litigation. The number and frequency of cases appear to be increasing and there appears to be a trend to settle cases out of court.

Recent decisions place a responsibility on those who direct youth sport activities to provide adequate supervision during practice and games and inspect and maintain the environment to insure safe conditions for participants and spectators. A new emphasis has been added for proper instruction and the duty to warn those involved in the youth sport program of inherent risks in the activity.

The increase in litigation has resulted in the rising cost of liability insurance for individuals, organizations and sporting goods manufacturers. The increased cost of insurance is beginning to place financial burdens on youth

sport participants, and, in some instances, reducing participation.

State and federal legislation has been enacted to protect volunteer coaches and officials as a possible solution while several national organizations have begun to initiate educational programs to certify adult volunteer coaches.

The study has revealed a growing concern for the safety of participants and spectators involved in youth sport with guidelines designed to protect them by promoting safety.

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"Laws exist to protect children at work and in school, but their 'play' as governed by adults goes unchecked."

James A. Michener
Sports in America, 1976

Chapter 1

INTRODUCTION

It is estimated that in 1986 up to 20 million young people participated in organized youth sport in America (Wurzer, 1986, p. 1-C). According to Rainer Martens and Vern Seefeldt, these young people are directed by over 1.5 million adults who serve as coaches, officials, and league administrators (Martens & Seefeldt, 1979, p. 7). Pat McInally states that many youth coaches are lacking knowledge, experience and perspective (McInally, 1986, p. 10). Parents complain of "win at all costs" mentalities damaging the young athletes, unqualified coaches teaching unsafe techniques, improper fundamentals and treatment of injuries ranging from insensitive all the way to sadistic (McInally, 1986, p. 10).

Sport is a human activity that involves specific administrative organization and historical background of rules which define the objectives and limit the pattern of human behavior; it involves competition or challenge and a definite outcome primarily determined by physical skill (Gerber & Morgan, 1979, p. vi). No sport is completely safe and some involve more risk and potential for injury than others. A study of 5 million Little League Baseball players age 8 to 15 reveals the proportion of actual injuries: to the head,

38 percent; upper extremities, 39 percent; trunk, 4 percent; lower extremities, 19 percent. The study also shows the proportion of injuries according to position: pitcher, 5 percent; catcher, 16 percent; third baseman, 5 percent; shortstop, 5 percent; outfielders, 14 percent; runner, 17 percent; batter, 22 percent, on deck, 7 percent; miscellaneous, 3 percent (Galton, 1981, p. E-1). Injuries and accidents happen in sport but an injury is not an accident if it is the result of the negligence of an administrator, coach or official.

Administrators, coaches and officials are not expected to insure the safety of every participant and spectator involved in sport but reasonable care to prevent injuries is expected (Swanson v. Wabash College, 504 N.E. 2d 327, Ind. App. 1987). Some recent examples highlight a growing concern for liability in the area of youth sport, and also illustrate a broad range of issues. Two Pop Warner football officials from La Habra, California, on December 6, 1986 were beaten by irate fans after working an Orange Empire Pop Warner division game for seven and eight year olds. Official Robert Sims, 43, suffered a broken jaw in five places, and his partner, John Plowman, 36, suffered a sore jaw and pain in his shoulder from the assault (Referee, 1986, p. 34). On October 9, 1981, Tony Clark was a 13-year-old defensive back for the Optimist League Boca Jets. In settlement of his lawsuit stemming from a football injury that day, Tony has been awarded \$2 million

this year and up to \$14 million during his lifetime (The Trentonian, 1987, p.1). Jim Young, president of the Firthtown Boys Club has asked the Phillipsburg, PA town council to pay for volunteer coaches to enroll in a national training course. Completion of the course would qualify each coach for \$300,000 worth of liability insurance (Athletic Director and Coach, 1986, p. 5). The Lexington Insurance Company (liability) and the Life Insurance Company of North America (medical) will underwrite all new liability and accident programs covering youth sports groups for \$1,000,000 liability and \$250,000 medical coverage (Insights, 1987, p. 5). The Senate and General Assembly of the State of New Jersey on May 12, 1986, approved an act providing civil immunity from liability to certain state volunteer coaches and officials (Referee, 1987, p. 5).

In America, there is a growing concern for and awareness of the legal issues involved in sport for young people. Over the years, collegiate and professional sports have served as the role models for the youth sport version. These older models have witnessed the development of Sport Law and the increase in litigation is now beginning to be felt on the youth sport level.

The founding of Little League Baseball in Williamsport, Pennsylvania in 1939 is recognized as an early landmark in the development of youth sport in the United States. In fact, however, sport regulated and administered by interested

individuals solely for the use of small boys began in the early 1900's (Berryman, 1982, p. 4). The 1920's and 1930's, considered the first Golden Age of Sport in America, saw the development of many youth sport organizations. In 1924, the Cincinnati Community Service started a city baseball tournament for boys under the age of 13 (Berryman, 1982, p. 2). The Los Angeles Times conducted a junior pentathlon in 1928, the Southern California Tennis Association began in 1930, and Milwaukee organized its "Stars of Yesterday" and kid baseball in 1936 (Berryman, 1982, p. 10). In 1939 Life magazine published a feature article on a boys' football game in Denver (Berryman, 1982, p. 90). The article served to focus national attention on organized sport for children. The United States has a tradition of children participating in youth sport activities and being directed and coached by adults who are either paid or volunteer. Youth sport activities have continued to grow in popularity and recent developments have continued to focus attention on an organized sport for children.

The purpose of this research is to review judicial decisions where an injury to a participant or spectator in a youth sport activity has been reported. It will attempt to provide information to those associated with youth sport activities so that they can make informed decisions and policies to create the best possible environment within the parameters of the law. It will also review and analyze the issues

that come before the bar and the position of the court toward them (Appenzeller, Right to Participate, 1983, p. 15).

It has been said that the American law of negligence is based upon the theory of precedent, not in a written code of laws. A previous judicial decision is used as the basis for subsequent decisions and it is against this background that negligence is viewed (Appenzeller, From the Gym to the Jury, 1970, p. 12).

A review and analysis of previous judicial decisions in cases in which participants and spectators were injured during youth sport activities might be a first step in developing programs that are educationally and legally sound.

Statement of the Problem

The purpose of the study is to review and analyze judicial decisions in cases in which participants and spectators have been injured in non-school youth sports activities in programs involving children ages five to nineteen. Cases will be selected from the National Reporter System.

The study will review and analyze judicial decisions in an attempt to develop guidelines that will reduce accidents and injuries as well as potential litigation.

More specifically, five questions are formulated to guide the study:

- (1) What have the courts said regarding injuries to participants in youth sport programs?
- (2) What have the courts said regarding injuries to spectators in youth sport programs?
- (3) To what degree have the existing guidelines established by the various youth sport agencies and professional organizations been cited by and/or indirectly supported by the courts?
- (4) Are there specific trends that affect youth sport activities that can be determined from the examination and analysis of the court cases?
- (5) What additional guidelines should be developed for youth sport type activities?

Definition of Terms

There are numerous terms that need to be defined for a better understanding of the study. The writer has used Black's Law Dictionary and Sports and the Courts to define legal terms that are essential to the study. For youth sport activities, Martens and Seefeldt are used.

The following terms are defined as they are used in this study:

Affirm. To ratify, make firm, confirm, establish, reassure (Black, 1951, p. 8).

Appellate Court. A court having jurisdiction of appeal and review (Black, 1951, p. 106).

Charitable Immunity. The freedom of charitable institutions such as a hospital, from being held liable for certain actions rendered in pursuit of its charitable undertaking (Appenzeller, 1983, p. 369).

Civil Law. A personal action which is instituted to compel payment, or the doing of some other thing which is purely civil (Black, 1951, p. 312).

Damages. A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another (Black, 1951, p. 466).

In Loco Parentis. In the place of a parent; someone who stands in the place of a parent and is charged with the same rights, duties, and responsibilities (Appenzeller, 1983, p. 369).

Legal Liability. A liability which courts recognize and enforce as between parties' litigant (Black, 1951, p. 1040).

Litigation. The filing and trial of a lawsuit between two or more parties for the purpose of enforcing an

alleged right or recovering money damages for a breach of duty (Appenzeller, 1983, p. 300).

Negligence. The failure to use such care as a reasonably prudent person would use under similar circumstances; the doing of some act which a person of ordinary prudence would not have done under similar circumstances (Black, 1979, pp. 930-931).

Proximate Cause. The primary cause, or that which in natural continuous sequence, unbroken by an efficient intervening cause, produces the injury and without which the result would not have occurred (Black, 1979, p. 1103).

Stare Decisis. A legal decision that may serve as an example, reason or justification for a later decision (Black, 1951, p. 1557).

Strict Liability. A concept applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety (Black, 1979, p. 1275).

Summary Judgment. A judgment entered by a court without a trial because there is no genuine dispute about the facts; judgment is entered as a matter of law applied to undisputed facts (Appenzeller, 1983, p. 371).

Tort. A theory of negligence involving a wrongful act or a violation of a duty; there must be a legal duty to the person harmed, there must be a damage to the person wronged as the usual (approximate) result of the breach (Appenzeller, 1983, p. 371).

Youth Sport. Adult organized sports programs in which a schedule of contests for children is arranged and conducted according to prescribed rules (Martens and Seefeldt, 1979, p. 8). These are non-school sports activities for children ages 5 to 19.

Scope and Limitations of the Study

The cases chosen will involve some aspect of adult supervision either on a paid or volunteer basis and injuries to either participants or spectators involved in youth sport activities. Participants are players, coaches, officials and scorekeepers, while spectators will be individuals who are observing or who are in close proximity to the activity taking place. The selection of court cases will involve youth sport activities in a non-school environment. Cases involving school physical education, intramurals, interscholastic, and intercollegiate sport will not be analyzed. Cases concerning unstructured or unsupervised playground and free play activities will not be studied.

Methods and Sources of Information

In order to determine if a need existed for this research, a Dialog computerized literature search was conducted at East Carolina University. The computer search of three data bases included Educational Resource Information Center ERIC), Comprehensive Dissertation Abstracts and the Legal Resources Index. There was no other study of this nature reported by the Dialog searches. The three Dialog searches presented a list of relevant articles and information, but there was no dissertation which dealt with this specific topic. Prior dissertations involving injuries to participants and spectators in sport have dealt with sport on the interscholastic and intercollegiate levels.

The facilities of the law library at the College of William and Mary and the Jackson Library at the University of North Carolina at Greensboro provided the main source of material.

The writer has used legal research techniques in briefing cases reported since 1914 in the area of tort liability as they relate to youth sport activities. The Century, Decennial and General Digests of the American Digest System were employed. The National Reporter System and many state reports were read for cases in the study.

The writer utilized Shepard's Citations to obtain additional cases that identified with the subject and to follow the history of cases associated with the study.

Secondary sources include the legal encyclopedias American Jurisprudence, Corpus Juris and Corpus Juris Secundum. The writer secured further source material from books relating to tort liability and youth sport activities.

A number of unpublished manuscripts, law reviews, periodicals, and articles have furnished important background material to the study.

Significance of the Study

There is an increasing number of injuries to participants and spectators in youth sport activities being litigated in the United States. Insurance companies are now offering youth sport coaches liability insurance, while some states have passed legislation to protect the volunteer coach. Agencies like the National Youth Sport Coaches Association are training coaches across the country, so that these people will be qualified to coach and also qualify for liability insurance. Video tapes about the risks of lawsuits are now being marketed. More lawsuits than ever before are directed at actions and inactions of coaches on playing fields and in gymnasiums (Nygaard and Boone, 1981).

Litigation related to injuries to participants and spectators in youth sport activities is extremely restricted. Nygaard and Boone in their Coaches Guide to Sport Law target the youth sport coach and administrator.

They cite 28 cases but only one actually involves a youth sport activity. Nygaard and Boone and Kaiser in Liability and Law in Recreation, Parks and Sports use intramural, interscholastic, intercollegiate and professional sport cases and attempt to adapt them to the youth level. Coaches, officials and administrators of youth sport programs need information that relates to their particular area of sport. A review of judicial decisions involving injuries to participants and spectators in youth sport activities should reveal the types of cases on record.

A review and analysis of judicial decisions involving injuries to participants and spectators in youth sport activities should reveal the various factors that are involved in cases that go to court. A compilation of court cases with analysis of those factors influencing litigation should increase the knowledge of the legal precedents and requirements in this particular area.

The study has significance to administrators, coaches, and officials since it reviews cases that affect their area of concern. Judicial decisions are reviewed to learn from the evidence of the past, the problems, and mistakes made, with the hope that this information will prevent past mistakes from being repeated.

Procedures and Design of the Study

Procedures

Six factors have been formulated to direct this study following the review of court cases in the area of youth sport. Each court case will be analyzed to determine six basic facts that include the following:

- (1) The sport in which the injury occurred.
- (2) The age of the injured person;
- (3) The gender of the injured person;
- (4) The role of the injured person;
- (5) The legal principles involved in the decision;
- (6) The legal precedent established in the case.

Sport. The sports most litigated will be identified.

Age. The age of the injured party will be questioned to discover if the age of the party is a factor in the decision of the court. Does the court expect a different standard of care according to the individual's age? Do administrators, officials and coaches need to consider the age factor in establishing guidelines and rules of safety for particular activities?

Gender. The injured party's gender will be reviewed to discover if youth sport cases involve one sex more than the other. Does the sex of the individual favor one sex over the other in judicial decisions?

Role. The role of the injured party will be reviewed to discover if administrators, coaches, and officials have an obligation to develop different guidelines for participants than for spectators.

Legal Principle. The disclosure of the legal principle in each case should allow the administrator, coach and official to understand the reason a particular decision was made.

Legal Precedent. The finding of a particular legal precedent established in an individual case should give the administrator, coach and official an understanding of current legal trends in youth sport activities. A format has been devised to separate the relevant data from each case (Appendix A).

Design of the Study

The study will be divided into six parts. After the Introduction, the case study method is used in Chapters III and IV in an attempt to review judicial decisions as they relate to tort liability resulting from negligence in youth sport activities. The cases are paraphrased and arranged by topics.

Chapter II contains information on tort liability and negligence. It discusses information on the basic elements of negligence and the defenses against it in litigation.

Chapter III considers court cases involving injuries to participants in youth sport. The chapter will attempt to address question one under Procedures of the Study.

Chapter IV reviews cases involving injuries to spectators at youth sport activities. It will discuss question two under Procedures.

Chapter V addresses out-of-court settlements and recent trends of insurance companies toward litigation in youth sport. It examines recent legislation on the state and federal levels toward youth sport.

Chapter VI contains a summary of the preceding chapters, conclusions and recommendations for youth sport activities.

CHAPTER II

Review of Literature

It is important to understand certain legal concepts and terms when analyzing judicial decisions on the state and federal level. The review of literature will focus on American Law as well as identifying terms such as tort, liability and negligence.

American Law

The first step in understanding American Law is to know that there are two sources of law. Common or case law consists of actual judicial decisions while statutory or written law consists of constitutional provisions and legislative enactments. Statutory law is law made by the legislative branch of the government, and is subject to judicial review. "The interpretation of a statute is not complete until it has been interpreted by the highest courts" (Cleetwood, 1959, p. 10). "A legal purist maintains that case law is the only real authority in that a statute's meaning is fixed and determined only by judicial decisions" (Cleetwood, 1959, p. 10). Statutory law will only be introduced in this research if it relates to a particular case, or if needed to understand a judicial decision.

In order for there to be consistency in common or case law, judges must rely on past judicial decisions. State and federal judges rely on prior judicial decisions and legal

precedents to aid them in making decisions. "Using past decisions is referred to as the doctrine of stare decisis, a term derived from the legal maxim, to adhere to precedent and not to unsettle things which are settled" (Cleetwood, 1959, p. 10). "A principle of case law is that a decision in one case will be deemed imperative authority controlling the decisions of like cases in the same or lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority" (Cleetwood, 1959, p. 10). The doctrine of precedent established in American case law, provides insight into future decisions by examining past decisions. Judges study previous cases before making current decisions and analyze judicial decisions to understand the rationale behind the decision. Legal precedents are only established on the appellate court level and above.

Tort Law

In addition to understanding the American legal system, several terms need to be understood. The first term is tort, which means a wrong; injury; the opposite of right (Black, 1951, p. 1660). "In modern practice, tort is constantly used as an English word to denote a wrong or wrongful act, for which an action will be distinguished from a contract" (Black, 1951, p. 1660). "A tort is a legal wrong committed upon the person or property independent of contract" (Black, 1951, p. 1660).

Tort may be either:

- (1) A direct invasion of some legal right of the individual;
- (2) The infraction of some public duty by which special damage occurred to the individual;
- (3) A violation of some private obligation by which like damage occurs to the individual (Black, 1951, p. 1660).

"A tortious act has been defined as the commission or omission of an act by one without right, whereby another receives some injury, directly or indirectly in person, property or reputation" (American Jurisprudence, 1974, p. 620). A tort may be active or it may be passive, because something was done, or because something was not done. "A crime is an offense against the public pursued by the sovereign; while the tort is a private injury which is pursued by the injured party" (American Jurisprudence, 1974, p. 620). A personal injury may denote an injury affecting the reputation, character, conduct, name and habits of a person (American Jurisprudence, 1974, p. 621). "A personal injury whether administered intentionally, wantonly, or negligently constitutes a tort" (American Jurisprudence, 1974, p. 621). "A general rule is that a person injured by the commission of a tort is entitled to the actual monetary compensation for the injury sustained, and except where the circumstances are such as to warrant the allowance of exemplary damages, is limited to such compensation" (American Jurisprudence, 1974,

p. 626). Torts may be either intentional or unintentional (Stern, 1981, p. 143) and are usually divided into three classes:

- (1) Intentional;
- (2) Torts involving strict liability;
- (3) Torts resulting from negligent conduct (Phay, 1977, p. 1).

Intentional torts are injuries to another person resulting from acts designed to harm that person, and this conduct is called willful (Stern, 1981, p. 143). Unintentional torts result from negligent conduct (Stern, 1981, p. 143).

Liability

The legal question of responsibility for an injury is addressed by tort liability. "Tort liability is measured by the scope of the duty owed by the defendant rather than by the artificial concepts of priority" (American Jurisprudence, 1974, p. 627). "The general rule to determine whether there is liability in action of tort is the question whether the defendant has disregarded his duty" (American Jurisprudence, 1974, p. 626). "That duty or responsibility may be to an injured person as an individual or as a member of a class, group or team" (American Jurisprudence, 1974, p. 627). "The duty in the law of torts is to avoid causing harm to others" (American Jurisprudence, 1974, p. 630). If a person causes an injury to another person, the individual is liable or

legally responsible for the injured party. The individual, injured by a wrongful act, is entitled to compensation. "It is important to remember that an injury does not automatically create a damage. "Injuries and accidents occur, the consequence of which the sufferer must bear alone" (American Jurisprudence, 1974, p. 630). "Damage without fault does not constitute a cause of action" (American Jurisprudence, 1974, p. 630). Justice J. Neal in Swanson v. Wabash made a recent observation:

Injuries in sports are not only predictable, but a certainty...all baseball players have been hit by balls or bats, injured while sliding or colliding on a base path, at a base or with other fielders while fielding the ball...By the very nature of play, no coach or manager can possibly prevent such occurrences. All persons who play ball know this and assume the risks. (Swanson v. Wabash College, 504 n.e. 2d 327).

It has been said that:

Legal liability in tort is predicated upon acts which cannot be justified in law or which are done without just or lawful excuses or occasion. An unlawful act which injures another cannot be justified by showing that the wrongdoer could have committed a lawful act which would have caused an every greater injury (American Jurisprudence, 1974, p. 656).

Negligence

Determining the responsibility for injury is where the concept of negligence enters into judicial decisions. Negligence is the failure to exercise that degree of care which,

under the circumstances, the law requires for the protection of others (Stern, 1981, p. 143). Another commonly used definition states that negligence is the failure to exercise in regard to another person in the care, that which a hypothetical reasonable man would exercise in that situation (Phay, 1977, p. 2). Negligence is the absence of care, it may be an act of commission or omission, what should have been done, what should not have been done. The failure to use such care, as a careful person would use, is a simple definition of negligence. "The term negligence refers only to that legal delinquency which results whenever a man fails to exhibit the care which he should exhibit, whether it be slight, ordinary or great" (Black, 1979, p. 931). "The law of negligence is founded in reasonable conduct or reasonable care under all circumstances of a particular case" (Black, 1979, p. 931). The doctrine of negligence rests on the duty of every person to exercise due care in his conduct toward other people (Black, 1979, p. 931). The law of negligence is not to be found in written codes of law, but is a product of American common law. In court it must be proved that there is a connection between the injury and negligence. "In fact no court has held a defendant liable where there was substantial evidence that the defendant acted with prudence and caution in the performance of his duties" (Appenzeller, 1983, p. 183).

William Prosser, John W. Wade, and Victor E. Schwartz in Torts, Cases, and Materials, describe four elements that

must be present in a cause of action as follows:

- (1) A duty which is an obligation recognized by the law, requiring actor to conform to a certain standard of conduct, for the protection of others against unreasonable risks;
- (2) Breach of duty, a failure to conform to the standard required;
- (3) Proximate or legal cause, a reasonably causal connection between the conduct and resulting injury; and
- (4) Damage, actual loss resulting to the interest of another (Appenzeller, 1983, p. 182).

Defense Against Negligence

The best defense against a claim of negligence is to prove that one of the elements required for negligence is not present. Defenses against negligence include contributory negligence, comparative negligence and assumption of risk. "Contributory negligence prevents a person from receiving damages if he is at fault to even the slightest degree in causing his own injury" (Appenzeller, 1983, p. 184). "A court will consider what standard of conduct is required for someone of the person's age, physical capabilities, sex, and training before it makes a decision as to fault" (Appenzeller, 1983, p. 184). Comparative negligence means that the fault for given circumstances is prorated, and some

states now permit an individual to receive compensation on a prorated basis (Appenzeller, 1983, p. 186). "Assumption of risk occurs when a person assumes the responsibility of his own safety" (Appenzeller, 1983, p. 186). "A person who voluntarily assumes a risk of harm arising from the conduct of another, cannot recover if harm, in fact, results" (Appenzeller, 1983, p. 186). There are limitations to assumption of risk doctrine:

- (1) If by reason of age or lack of information, experience, intelligence or judgment, the plaintiff does not understand the risk involved in a situation, he will not be taken to assume the risk.
- (2) A plaintiff does not assume a risk of harm unless he voluntarily accepts the risk.
- (3) The plaintiff's acceptance of a risk is not voluntary if the defendant's tortious conduct has left him no reasonable alternative cause of conduct in order to....exercise or protect a right or privilege of which the defendant has no right to deprive him (Appenzeller, 1983, p. 187).

Immunity

Two legal principles that have directly affected youth sport litigation have been charitable immunity and governmental immunity. Youth sport, by its very nature depends on

charities, non-profit corporations and city and county municipalities to provide sporting opportunities for young people.

For many years, the United States legal system held that charitable organizations were immune from tort liability. Charitable institutions were immune for several reasons:

- (1) Donations to charities might decrease if they were held liable;
- (2) Those receiving the benefit of charities should not be allowed to sue the charity for injuries caused by them;
- (3) Respondent superior does not apply to charitable institutions;
- (4) Holding a charity liability in tort would divert donated trust funds to a purpose for which they were not given (Schubert, Smith, Trentadue, 1986, p. 209).

Charitable Immunity

In the early 1900s cases against Y.M.C.A.'s, Y.W.C.A.'s and similar organizations were usually decided on the immunity doctrine. While it was possible to sue a charity, winning against a charity was unlikely and difficult.

Over the last twenty years, the doctrine of charitable immunity has been evolving through the court system. Benton v. Y.M.C.A. of Westfield is an excellent example of the recent change in attitude. "Charitable immunity was introduced by the courts without legislative sanctions and the courts have moved to undo the doctrine" (Benton, p. 28). The

Superior Court of New Jersey, Appellate Division, stated, "The doctrine of charitable immunity found its way into American law through misconception or misapplication of previously established principles" (Benton, p. 30). "It is doubtful whether the administration of justice has ever been served by the rule" (Benton, p. 30). "In law as in morals, men must be just before they are generous" (Benton, p. 30).

"A charity should not be permitted to inflict injury upon some individual without a right of redress, merely in order to bestow charity upon others, because the result would be to compel the victim to contribute to the charity against his will," (Benton, p. 30). The Superior Court of New Jersey added: "The emphasis of the law generally has been a liability for wrong doing, rather than immunity. The maxim is that all men stand equal before the law, all should be bound alike or excused alike. The protection and preservation of life and well being by organized society is of greater importance to mankind than any particular charity" (Benton, p. 30).

The doctrine of charitable immunity is not a popular legal principle today but it is also not extinct. Charitable immunity has been a popular defense and will probably remain so.

Governmental Immunity

Sovereign or governmental immunity from tort liability shields federal, state and local governments in certain cases. "Governmental immunity means that unless the federal,

state or local government has consented to be sued for negligence, it is immune" (Schubert, Smith and Trentadue, 1986, p. 210). "This immunity may extend to governmental agencies as well as political subdivisions" (Schubert, Smith and Trentadue, 1986, p. 210). Governmental immunity is based on several policies:

- (1) A sovereign entity, the state can do no wrong.
- (2) Public agencies have limited funds and can expend them for only public purpose;
- (3) Public bodies cannot be responsible for the torts of their employees.
- (4) Public bodies have no authority to commit torts (Weistart, 1979, p. 1030).

"Immunity in its pure form will cloak the actions of all public bodies" (Weistart, 1979, p. 1030). "Recently many legislatures have abrogated the immunity doctrine by giving consent to suit in certain jurisdictions and where consent has not been given, courts often abrogate it by judicial action" (Weistart, 1979, p. 1030). According to John Weistart, a legal authority, "The modern rule is that the State and its agencies are subject to liability in tort" (Weistart, 1979, p. 1030). "A municipal corporation, subsequently a county or city recreation department, has a dual character under the law that affects tort liability" (Weistart, 1979, p. 1031). "A municipal corporation is both a subdivision of the State, performing governmental and political functions and a

corporation with special and local interests which are similar to those of a private corporation" (Weistart, 1979, p. 1031). "Immunity applies to the municipal corporation performing its governmental function but not in proprietary functions" (Weistart, 1979, p. 1032). Governmental functions are those acts and services that only government can provide, such as fire, police protection and education. (Schubert, Smith, Trentadue, 1986, p. 211). "Proprietary functions are those services a state or local government provides which are commonly performed by profit making businesses" (Schubert, Smith and Trentadue, 1986, p. 212). Operating a community swimming facility, stadium or golf course are examples of a proprietary function. By providing a service and collecting a fee when a municipal corporation behaves like a private enterprise, it is not immune from tort liability (Schubert, Smith and Trentadue, 1986, p. 212).

"The doctrine of sovereign immunity, both on the state and local level has been widely criticized and is on the decline in most jurisdictions" (Weistart, 1979, p. 1033). "The most common means of abolishing governmental or sovereign immunity is by passage of legislation known as tort claims acts" (Schubert, Smith and Trentadue, 1986, p. 212). "Tort claim statutes specify the condition under which government gives up its immunity" (Schubert, Smith and Trentadue, 1986, p. 212).

Charitable and governmental immunity are two legal principles, popular defenses in the past, but in the process of evolving through the legal system.

This chapter has attempted to explain certain legal terms and concepts that will be needed to analyze the cases used in the study. This review is by no means exhaustive but exposes the reader to basic information needed to understand the study.

CHAPTER III

Court Cases Involving Injuries to Participants

Injuries occur in sport because of the physical nature of the activities. When an injury is caused by negligence, however, the injured party has the right to seek a legal solution and remedy. This chapter will examine cases where participants in youth sport have been injured and sought remedies in state and federal court. An analysis of the individual cases will review the success and failure of each case to win an award for damages.

This chapter features a variety of sport cases that go back to World War I. The examples used in this chapter are by no means the total number of cases litigated, but these decisions were disputed on the trial level and appealed. Only when a decision is appealed does a legal precedent become established. This chapter has reviewed decisions that have established legal precedents in the area of youth sport.

Paramentier v. McGinnis

The history of youth sport litigation goes back to the first part of the twentieth century. The case of Paramentier v. McGinnis (1914) was decided on June 17, 1914, by the Supreme Court of Wisconsin, and involved two young men in a forerunner of the Golden Gloves. John Paramentier was a 17-

year-old youth when he engaged in a boxing exhibition. While resting in his corner between the fifth and sixth rounds of the exhibition, John collapsed into a state of unconsciousness and died. Sebastian Paramentier, his father, as administrator of the estate, brought action against the other contestant, the promoter, the referee, and two spectators to recover damages for the death of his son. The issue in the case was whether the fight was an exhibition or a prize fight under Wisconsin law. A prize fight by mutual consent would make each participant liable to the other for actual damages. The jury decided that the match was a boxing exhibition and not a prize fight, and ruled that no amount of money would compensate the parents for their son's death. The Supreme Court of Wisconsin affirmed that decision. The naming of multiple defendants, as in this case, has become a popular legal tactic in the 1980's: the Shallow Pocket and Deep Pocket Theory. Here is an early case in which five different individuals were named as defendants and the case was decided on a legal technicality. The court decided that the boxing match was an exhibition and not a prize fight; therefore, the cause of death was not considered material to the decision (p. 1007). Had young Paramentier been engaged in a prize fight, however, he would have been entitled to compensation under Wisconsin law. The sentiment that emerged in 1914 was that money could not replace the loss of a son to a family. This case demonstrates that there has been a shift regarding

compensation in recent tort cases and the involvement of multiple defendants. The intent of the shot gun approach is that if enough shots are fired, one defendant will be held responsible and have to pay the price.

Kanofsky v. Brooklyn Jewish Center

On March 30, 1927, Dorothy Kanofsky was participating in gymnastics at the Brooklyn Jewish Center. While attempting to jump over a buck, she fell and broke her arm and her father sought to recover damages for her injuries. In the case Kanofsky v. Brooklyn Jewish Center (1934), Kanofsky's father claimed that negligence was the cause of his daughter's injuries and sought to recover for the loss of his daughter's services and for her medical expenses. The trial judge dismissed the complaint on the grounds that there was no negligence on the part of the defendant. The trial court added that, "negligence was not the proximate cause of the accident, but that the plaintiff was guilty of contributory negligence and thereby assumed the risk of jumping, the danger being open and obvious" (p. 421). On appeal the New York Court of Appeals affirmed the trial court's decision.

Paine v. Young Men's Christian Association

In Paine v. Young Men's Christian Association (1940), Robert Paine, a reserve basketball player was injured during a game when he was knocked over bleachers located near the

court. The distance from the wall of the gymnasium was 47 inches and the width of the bleachers was 32 inches, so that there was a space of 15 inches between the front of the bleachers and the sidelines. Paine was a substitute and did not play until the third period. While going for a basketball he was knocked backwards into the bleachers and injured. Paine sued the Y.M.C.A. of Hillsborough, New Hampshire, claiming negligence for having bleachers too close to the playing area. A jury favored the plaintiff, and on appeal, the Supreme Court of New Hampshire overruled the trial court decision, finding in favor of the Y.M.C.A. The Supreme Court, in its decision, referred to the doctrine of assumption of risk, a popular defense used in litigation. Paine argued that the bleachers were dangerous and caused his injury, therefore, they should not have been located in close proximity to the court. The Supreme Court of New Hampshire ruled that the plaintiff was aware of the bleachers, knew that players, during the progress of a game, might be thrown against or into the bleachers. "The plaintiff entered an intense game and his attention was on the ball from the moment of his entry into the contest" (p. 820). The court held, "that a reasonable conclusion to be reached is that Paine voluntarily encountered a known danger with no heed thereto, and such conduct precludes recovery" (p. 820). Here is a 1940 case that hinges on the doctrine of assumption of risk. The Supreme Court did not use this phrase, but the

precedent was nevertheless established. The burden of responsibility in this case was placed on the participant who voluntarily entered into a dangerous sport in a hazardous area and assumed the risk of participation.

Gaspard v. Grain Dealers Mutual Insurance

A similar case where the assumption of risk doctrine was actually applied is Gaspard v. Grain Dealers Mutual Insurance Company (1961). Ronnie Gaspard was a minor who was struck by a baseball bat which slipped from the hands of Ronald Viator, a minor. Gaspard's parents sued Viator's parents and the Grain Dealers Mutual Insurance Company, the insurer of the defendant, under a comprehensive liability policy. Ronald Viator was 12 years of age and Ronnie Gaspard was 11 years of age at the time of the accident. Viator was the batter, and Gaspard was 15 feet behind the batter, stooping to select his own bat. A pitch was made, Viator swung, the bat slipped and hit Gaspard on the head. "Both boys were voluntary participants in the game of baseball and it was a lawful, supervised athletic contest. Neither boy was required to play, and both testified they had played before and after the accident (p. 832). The court stated, "A careful examination of all the facts and circumstances of this case convinced the court that the Viator boy was not negligent, that is, he exercised that degree of care reasonably expected

from a boy of his age engaged in such an athletic contest" (p. 833). The court said that, "the only thing Viator could have done to prevent the accident would have been not to bat" (p. 834). According to Appeals Court Judge Culpepper, "to impair such circumstances would in my opinion render the participation of children in this state in almost any game or sport a practical impossibility and become a constant nightmare to parents throughout the state." He continued to say that, "It appears that generally a participant in a lawful game or contest assumes the dangers inherent in that game or contest with consequent preclusion from recovery for injury or death resulting." However, a person does not assume the risk of injury resulting from negligence. Nor does a voluntary participant assume extraordinary risk unless he knows of them and voluntarily consents (p. 834). The Court of Appeals of Louisiana, Third Circuit, affirmed the judgment of the 15th Judicial District Court which ruled in favor of the defendant. One important point of law emerged from this case, a child is not expected or required to conform to the standard of behavior by which an adult is judged. Rather a child's conduct is to be judged by the accepted standard of behavior of other children of like age, intelligence and experience. Children are not adults when the issues of negligence and liability are brought into litigation. The court concluded that the defendant's actions were not negli-

gent and the plaintiff assumed the risk of injury when he voluntarily participated in the baseball game.

Carey v. Toles

On July 7, 1961, Edward Toles, a right handed batter, was at bat with two outs when he hit the ball to right field and threw his bat. The bat struck James Carey, a 13-year-old, who was standing on the first base sidelines. The injury necessitated extensive surgery on the plaintiff's mouth and jaw and the replacement of nine teeth. Carey v. Toles (1967) charged individual negligence against the defendant. A snowstorm, and the death in the family of a juror caused an extensive delay. On March 3, 1965, the charge of the jury was given and a verdict of no cause of action based on the doctrine of assumption of risk was returned. However, on March 1, 1965, the Michigan Supreme Court had eliminated the defense of assumption of risk in Felqner v. Anderson (1965). According to the Michigan Supreme Court, "the assumption of risk should not be used in this state as a substitute for or as a supplement to or as a corollary of contributory negligence" (p. 398). "The traditional concept of contributory negligence is more than ample to present an affirmative defense to negligent acts" (p. 389). The jury verdict specified it found no negligence on behalf of the defendant, but that the court of appeals reversed that decision and

recommended for a new trial because of the change in Michigan law, regarding the assumption of risk.

Whipple v. The Salvation Army

In Whipple v. The Salvation Army (1972), the doctrine of assumption of risk again became an issue. Robert Whipple was a 15-year-old boy who suffered a knee injury when he went out for a pass in a football game, jumped, caught the ball and was tackled immediately, sustaining a knee injury. The plaintiff alleged negligence against the defendant, the Salvation Army, claiming that:

- (1) It allowed plaintiff and other boys to play tackle football without adequate calisthenics, physical exercise and preparation for playing tackle football.
- (2) It allowed plaintiff and other boys playing in the football game to play football without adequate uniforms or equipment.
- (3) It allowed the playing of tackle football without adequate officiating or supervision.
- (4) It encouraged and allowed untrained boys, at an excessively early age, without adequate preparation and training, to play tackle football. (p. 740).

The Supreme Court of Oregon ruled that the defendant was negligent in the plaintiff's first two charges, but held that the plaintiff's injury could not be proven to be the result of the defendant's negligence, since there was nothing

in the evidence to indicate that the injury could have been prevented had the plaintiff received proper preliminary exercises and adequate equipment. There was no evidence that the plaintiff was over matched in the game since the boys were of the same age. If a ten-year-old boy had been injured as the result of being encouraged to play with 15-year-olds, the case would have had a different outcome. The court held, as a matter of law, "that a fifteen-year-old boy without evidence of mental deficiency or seclusion from life's experience common to boys of that age, sufficiently appreciates the dangers inherent in the game of football so that he assumed the risk when he played" (p. 740). The Salvation Army created the hazard and the plaintiff voluntarily exposed himself to the danger of playing football. A person does not assume the risk of negligent supervision but there has to be evidence that negligence caused the injury. The Supreme Court affirmed the decision of the Circuit Court which ruled in favor of the defendant, basing the 1972 judgement on the assumption of risk principle.

Dillard v. Little League Baseball, Inc.

Harold Dillard, a volunteer baseball umpire, took action against Little League Baseball Incorporated for its failure to issue equipment. Dillard was an umpire at a Little League baseball game on May 22, 1970 and was provided a mask, chest protector, but not shin guards or groin protector.

During the game the plaintiff was struck in the groin by a pitched ball, causing serious injury. Dillard charged Little League Baseball Incorporated with negligence. The circuit court held that the plaintiff had assumed the risk of his injury and on appeal, the appellate court affirmed that decision. The court said, "Generally, the participants of an athletic event are held to have assumed the risk of injury normally inherent in that sport." It added, "Players, coaches, managers, referees and others who voluntarily participate in sports must accept the risk to which their participation exposes them." The court reasoned, "A participant's conduct may create risks that should not be assumed but what the scorekeeper records as an error is not the legal equivalent of negligence." "An awareness of the general scope of risk, combined with the skill and experience of the participant in question is the primary factor influencing whether the assumption of risk doctrine is applied" (p. 736). Dillard was unable to present evidence that Little Leagues routinely provided athletic supporters with protective cups to umpires. Youth sport agencies are responsible for providing non-personal equipment to officials; equipment that can be used by several umpires or officials and is needed for safety. If Dillard's injury had been to a leg and evidence revealed that Little League failed to provide shin guards to the umpires, negligence could be a factor. If certain items of equipment through popular use become standard equipment,

that equipment will need to be furnished. The Supreme Court held that Dillard assumed the risk of his injury.

O'Bryan v. O'Connor

O'Bryan v. O'Connor (1977) involved an injury during an unsupervised baseball game on a field operated by the Little League. On August 1, 1972, Theodore O'Bryan and three other boys entered Dallas Little League Field and began to play "Home Run Derby." There was no supervision or employee present on duty at the time of the game. O'Bryan was sitting on a steel drum 25 feet from the batter, O'Connor, when the bat slipped and hit O'Bryan in the face. The appellate court dismissed the complaint against the Little League of Albany basing its decision on the concept of assumption of risk. Supervision was not a factor in this case. The fact that the Little League won the case belabors the point that Little League was involved in the first place. Four boys go over to the local ball park for a pick up game, an injury occurs and the parents sue to recover damages. Not only is the person charged who caused the injury, but Little League baseball is named as a third party defendant because they operate the facility. National, regional, state and local organizations are subject to litigation because of the "shallow pocket, deep pocket" theory. In O'Bryan v. O'Connor, Little League went to trial, was found not negligent and thus was proved innocent of the charges.

Howard v. Village of Chisholm

Two cases decided on the Minnesota Supreme Court level, 30 years apart, involved ice hockey and the municipalities' responsibility to youth participants. The case of Howard v. Village of Chisholm (1934) involved a 17-year-old boy who was injured during a hockey match when a balcony guard rail collapsed and fell on the plaintiff. The defendant, a municipal corporation, maintained a community building for hockey and other games. On the west side of the building, six feet above the ice was a balcony for spectators and the village usually kept a supervisor on the balcony to warn spectators to stay behind the rail. On March 26, 1933, while the plaintiff was playing hockey, spectators surged against the railing and twenty people fell to the ice causing the plaintiff to injure his left arm and left leg. The Village of Chisholm chose not to plead governmental immunity and a verdict of \$3,500.00 was returned for the plaintiff. The counsel for the parties agreed to try the case on the theory that the Village should be held liable if the evidence justified recovery against a private person owning and using the building. The Supreme Court of Minnesota ruled, "the evidence plainly justified the jury finding that the plaintiff's injuries were caused by the defendant's negligent construction and maintenance of the balcony railing" (p. 767). The plaintiff stayed in bed one week, remained at home one week and then returned to school. The Supreme Court of Minnesota,

however, felt that the \$3,500.00 was excessive since no bones were broken, no tissue or muscles cut or mangled. The verdict was affirmed and a new trial ordered solely on the amount of damages awarded. It should be remembered that this was 1934, a time of the Great Depression, and \$3,500.00 was a considerable amount of money. The significance of the decision was the fact that the city was found to be negligent and ordered to provide compensation to the injured boy.

Diker v. City of St. Louis Park

Thirty years later, Diker v. City of St. Louis Park (1964), a situation similar to the previous case, was tried in court. The City of St. Louis Park made a skating rink available to the general public without charge and did not assume responsibility for supervising sessions. On February 6, 1959, Bruce Diker, a 10-year-old boy sustained a serious injury when struck near the eye by a puck while playing hockey. A verdict of \$17,000 was returned in favor of Diker and his father was awarded \$2,000 for medical and hospital expenses. The Supreme Court of Minnesota held, "that a person who pays for admission has more reason to expect that supervision will be maintained and adequate equipment provided as a part of the admission price." "The municipality in opening the skating rink to the public without charge had no duty to provide supervision," according to the Supreme

Court of Minnesota. However, it noted that, "if supervision was provided the city must insure that it was performed adequately." "The city not did assume the duty to furnish equipment to the boys who played hockey" (p. 117). Since equipment was furnished, however, failure to provide the correct or needed equipment could constitute negligence. Bruce Diker was given equipment, but a face mask was not included. The principle of assumption of risk cannot be applied in this case because the plaintiff was only 10 years old. The plaintiff was advised by an attendant not to play goalie, but did anyway, froze when the puck came at him and was injured. The Supreme Court of Minnesota reversed the trial court's ruling in favor of the plaintiff and granted a new trial to explore the issues of the case. The Supreme Court of Minnesota, "held that evidence would not sustain finding the city had been negligent with respect to supervising practice games or supplying inadequate equipment" (p. 117). Two justices dissented because they felt that the trial was proper and the verdict should have been affirmed.

Reid v. Young Men's Christian Association of Peoria

Reid v. Young Men's Christian Association of Peoria is a suit charging negligence against a charitable organization. On Saturday, March 20, 1954, Baxter Reid was a participant in the Y.M.C.A.'s gymnasium. After putting some equipment up,

Reid walked back onto the gym floor, looked up toward a circular track 24 feet above the floor. Larry Embury, the defendant, dropped a punching bag which struck Reid in the face and caused permanent injuries to his left eye. The jury returned a verdict in favor of the plaintiff and against the Y.M.C.A. for \$15,000. The decision was appealed to the Appellate Court of Illinois by the defendant and the judgment was affirmed. The Appellate Court stated that, "the duties and responsibilities of an organization to which the care or control of children is entrusted are sometimes said to be akin to the duties and responsibilities of parents" (p. 23). A term not used in this case, but applied in education and law is in loco parentis, (in place of the parent). The appellate court noted, "that an organization like a Y.M.C.A. is not an insurer of the safety of the children involved, but on the other hand such an organization may not avoid liability for injuries resulting from its failure to exercise reasonable care" (p. 23). The court believed that Reid's injury could have been avoided by proper supervision. "The defendant negligently failed to supervise the gymnasium and failed to instruct members, servants and agents on proper use of facilities and equipment" (p. 22). This case also demonstrates that court cases can take years to litigate. The plaintiff was an 11-year-old youth when the injury occurred and 24 years of age at the time of the trial.

Foster v. Houston General Insurance Company

Special Olympics has become a very popular youth sport activity. Mentally and physically handicapped young boys and girls compete in various athletic activities such as races and softball throws. The case of Foster v. Houston General Insurance Company (1982) is a tragic example of good intentions going bad. Robert Foster, age 17, was a student at the Morehouse Educational Development Center (M.E.D.C.) with an I.Q. of 52 and a mental age of seven years and four months. Robert was chosen as a member of the Special Olympics basketball team, and practice sessions usually were conducted on an outdoor court at the M.E.D.C. facility. Inez Grant was in charge of the team and was assisted by Lloyd Gray. Grant arranged for the basketball team to practice in a gymnasium located three blocks from the outdoor courts since it was similar to the one where the game would be played. On the trip over to the gym, there were 11 players and one coach to walk the three block route. Going to the gym, Foster dashed out into the street between two parked cars, stopped in traffic, saw a car, slid and was run over and killed. The trial court ruled that, "considering the mental capacity of the team, one coach was not adequate for supervisory duties." The trial court stated, "that the route taken was ill advised and that more adult supervision and planning could have prevented the tragedy" (p. 761). Helen Foster sought and was awarded \$15,000 for her son's suffering and \$50,000 for the

loss of her son. The issue in this case involved proper supervision. For a group of 10 or 11 normal 17-year-olds, one adult would represent adequate supervision for this type of group. However, 10 or 11 children with an average mental age of seven and eight years in busy city traffic with only one adult supervisor represented negligent conduct. The Foster case set a standard that stated that the younger the child, mentally or chronologically, the greater the standard of care required for his/her safety.

Curtis v. Young Men's Christian Association
The Lower Columbia Basin

The 1973 case of Curtis v. Young Men's Christian Association of the Lower Columbia Basin (1973) brought the issue of product liability into youth sport. "Charlene Curtis was practicing gymnastics under the supervision of the Y.M.C.A. and was engaged in a maneuver called a sole circle when the top bar of a set of parallel bars separated from the saddles at each end of the bar." "Charlene fell five to seven feet and landed on her back in a jack knife position, half on and half off the mat." "As a result of the fall, the plaintiff sustained a fractured dislocation of the twelfth thoracic level, causing severe pressure on the spinal cord and accompanied by excruciating pain and paralysis of her legs" (p. 993). The plaintiff instituted a suit against the Y.M.C.A. as a defendant and Premier Athletic Products Corporation.

The trial court dismissed the Y.M.C.A. and directed the jury to return a verdict against the manufacturer. The bars in question were not built to National Collegiate Athletic Association (NCAA) specifications and could possibly have been an experimental model. The Y.M.C.A. supervisor testified that he unpacked the bars and did not change or alter the basic saddle assembly. The trial court awarded Curtis \$100,000 and the Supreme Court of Washington granted the plaintiff a new trial on the issue of damages only.

Griggas v. Clausan

The last three cases involve civil action taken against defendants alleging assault and battery, or a duty owed to participants to abide by the rules of the sport. In Griggas v. Clausan (1955), the plaintiff Robert Griggas and the defendant LaVerne Clausan, were both minors playing on youth league basketball teams. Griggas played for the Rockford Athletic Club while Clausan played for the Black Hawk Athletic Club. The plaintiff was on offense with his back to the defendant and about to receive a pass when the defendant pushed him, struck Griggas in the face with his fist and as the plaintiff fell, Clausan hit him again knocking Griggas unconscious. Griggas was taken to the hospital where his right temple and right eye were badly bruised and his lips were cut and swollen. "Griggas charged that Clausan malici-

ously, wantonly and willfully and without provocation assaulted the plaintiff" (p. 364). The circuit court awarded Griggas \$2,000 damages for assault and battery. The defendant appealed on the following:

- (1) Verdict is erroneous and manifestly against weight of evidence;
- (2) Verdict is excessive; and
- (3) One erroneous instruction was given by the court on behalf of the plaintiff (p. 364).

The appellate court held that the evidence was sufficient to sustain the verdict, and upheld the lower court ruling.

Nabozny v. Barnhill

The case of Nabozny v. Barnhill (1975) a youth sport case, is a landmark decision in sport law. Julian Nabozny was playing goal keeper for the Hansa soccer team when he received a pass from a teammate, went down on his left knee and pulled the ball to his chest. The defendant, David Barnhill, a member of the opposing Winnetka team, kicked the left side of the plaintiff's head causing severe injuries. The match was played under "Federation of International Football Association" (F.I.F.A.) rules, in which "the goal keeper is the only member of a team who is allowed to touch the ball in play so long as he remains in the penalty area." "Any contact with a goal keeper in possession of the ball in the

penalty area is an infraction of the rules, even if the contact is unintentional" (p. 260). As a result of being kicked in the head, the plaintiff suffered permanent damage to the skull and brain. The appellate court ruled, "that the law should not place unreasonable burdens on the free and vigorous participation in sports by a youth." It held, however, "that organized athletic competition does not exist in a vacuum." It noted that "some of the restraints of civilization must accompany every athlete onto the playing field." It added that "one of the educational benefits of organized athletic competition for youth is the development of discipline and self control" (p. 260). Sports have established rules, some secure better playing while others are designed to protect participants from serious injury. "A player has a legal duty to every other player to refrain from conduct proscribed by a safety rule." It reasoned that "a reckless disregard for the safety of other players cannot be excused." The opinion of this court stated, "that a player is liable for injury in a tort action if his conduct is such that it is either deliberate, willful or with a reckless disregard for the safety of the other players so as to cause injury to that player" (p. 261). The original circuit court decided in favor of the defendant but the appellate court reversed its decision and remanded the case back to the circuit court of Cook County for a new trial. The appellate court ruled that Nabozny was entitled to legal protection at

the hands of Barnhill the defendant. This decision reinforced the concept that sport is part of civilization and consequently rules are enforced and followed. Barnhill broke a fundamental rule of soccer when he kicked the goal keeper. The court held that in sport there are restraints and codes of behavior, and Nabozny was playing according to established rules and was seriously injured by another's disregard of those rules. Participants in sport, no matter how young, can still be held accountable for their actions.

Overall v. Kadella

The most recent case in this area is Overall v. Kadella (1984), a decision that involves a fight following an ice hockey match. On April 17, 1975, two amateur hockey teams, the Waterford Lakers and Clarkstown Flyers, were engaged in a hockey match. At the conclusion of the match a fight broke out when players left the benches and a melee developed. Steven Kadella struck Randall Overall with his hockey stick knocking him unconscious and fracturing the bones around the right eye. Overall remained on the bench during the fight, while Kadella skated over and struck the plaintiff who had not provoked the attack. The referee testified that, "the defendant had engaged in three fights after the match was over." "Kadella was given three game misconducts because fighting is against the rules of the Michigan Amateur Hockey

Association." "The rules were designed to prevent violence and the bench is considered part of the playing field." The district court found, "that without provocation the defendant in the heat of the game swung his hockey stick at Overall, who was not engaged in the fight, resulting in injuries to the plaintiff." The court found that, "Overall had suffered damages of \$21,000 for out of pocket expenses, pain and suffering and permanent injury and awarded an additional \$25,000 because the defendant's act had been intentional and malicious" (p. 354). The defendant appealed, on the basis of the phrase volenti non fit injuria (he who consents cannot receive an injury) (p. 355). The Court of Appeals of Michigan ruled, however, that "an intentional act causing injury which goes beyond what is ordinarily permissible is assault and battery and recovery may be possible (p. 355). The Court of Appeals affirmed the lower court's decision awarding Overall \$46,000.

Loosier v. Youth Baseball and Softball, Inc.

The case of Loosier v. Youth Baseball and Softball, Inc. is the type of case in which landmark decisions are established. A landmark decision means that there is no other case like it and the decision handed down could establish a precedent. Certain points of law emerge from the judicial opinion in a landmark case, that overturns tradition and sets

a new legal precedent. Jimmy Loosier was an 11-year-old boy playing Little League baseball in the summer of 1982. The defendant, Youth Baseball and Softball, Inc., raised funds through raffle sales each year. Selling the raffle tickets was purely voluntary and Youth Baseball and Softball, Inc. warned the children not to sell by themselves. The plaintiff had been selling tickets for four years when his injury occurred. After going to a shopping center to sell raffle tickets, Loosier was struck by a truck while crossing Interstate 57 on his way home. The plaintiff alleged that Youth Baseball and Softball, Inc. owed a duty to supervise the child at the time of his injury. "Whether the law empowers a duty on a defendant for injuries to a plaintiff depends on several factors taken together; foreseeability, likelihood of injury, magnitude of the burden of guarding against it, and the consequences of placing the burden on the defendant" (p. 935). The Appellate Court of Illinois held that "public policy does not require citizens who do volunteer work coaching baseball and softball teams to provide supervision of all team members when a team member is selling a raffle ticket." It added that "such a requirement would pose an unreasonable burden on those who operate youth sport programs." It added that "the defendant has a duty to supervise the activity of baseball and softball games while the players are on the field actively participating in the sport, and entrusted by their parents to their coaches. The duty to

supervise the plaintiff rested with his parents, not with the youth baseball organization." The court reasoned that "Youth Baseball owed no duty to exercise ordinary care for the plaintiff under the circumstances of the case" (p. 937). If the decision had been in favor of the plaintiff this case could have become a landmark decision. As stated earlier, a youth sport agency does not have an obligation to supervise players and team members during off hour activities, but there does exist a duty to supervise team members while they participate in sport activities. Coaches are given responsibility by parents, and assume the position of in loco parentis. This decision was a victory for youth sport agencies everywhere, but it also reinforced the responsibility of coaches during actual participation.

Summary

Chapter III contains a brief description of 17 cases involving injuries to participants in Youth Sport activities. The total number of cases reviewed is not an extensive number by any means, but a significant total that demonstrates that injuries to participants in Youth Sport have been litigated. Youth sport agencies, coaches and other participants have not been immune from litigation.

The cases reviewed for this research go back to 1914 and extend through 1986. It should be noted that there were five

cases in the first 55 years of the twentieth century and 12 cases in the last 26 years of this century. The ages of the participants involved in the 17 cases range from 10 years to 19 years of age, with one adult umpire involved in litigation. In the 16 cases involving participants under the age of 20, the average was 14.7 years of age. Eighty-nine percent of the participants involved in litigation were males and eleven percent were females. The participants were involved in seven different sporting activities with baseball involved five times, basketball and hockey three each, gymnastics and boxing twice and football and soccer once each. In eight of the cases the decision favored the defendant, while in seven cases the verdict favored the plaintiff. In the seven cases won by the plaintiff, damages were awarded to the plaintiff from \$2,000 to over \$100,000. Of the eight decisions in favor of the defendant, seven were decided on the issue of assumption of risk and one held that there was no duty to supervise the activity. In the seven cases where damages were awarded to the plaintiff, participants were held liable for injuries in three cases, there was inadequate supervision twice, negligence and product liability were grounds once each. In decisions handed down before 1950, 75% went in favor of the defendants and 25% favored the plaintiffs. However, since 1950, plaintiffs have been successful 55% of the time in cases involving injuries to participants

in youth sport activities, while defendants have won 45% of the time.

Observations

The cases involving injuries to participants in youth sport activities demonstrate several trends:

- (1) No one involved in youth sport is immune from litigation.
- (2) There are not a large number of cases historically but the numbers are increasing.
- (3) Males are more likely to be involved in litigation than females.
- (4) The injured participant will be approximately 14 to 15 years of age.
- (5) Assumption of risk has been a popular defense in many negligence actions.
- (6) Early in the century, participants were not as likely to win as they are today.
- (7) The amount of awards for damages can be significant.

Boundaries and Guidelines

Boundaries

The decisions in cases involving injuries to participants in youth sports activities have established legal boundaries for administrators, coaches and officials.

- (1) A participant in a lawful game or contest assumes the danger involved in the activity and may not recover damages for injuries or death. (Gaspard)
- (2) Coaches, managers and officials who voluntarily participate in youth sports activities must accept the risks to which their roles expose them (Dillard).
- (3) Citizens who volunteer in youth sport activities are not required to provide supervision of all team members in off-field activities, such as selling raffle tickets. (Loosier)
- (4) A youth sport organization is not responsible or liable for injuries when participants enter the playing field after hours without permission. (O'Bryan)
- (5) There is no duty to provide officials with personal protective equipment. (Dillard)
- (6) For damages to be awarded, it must be proven that negligence caused the injury. (Whipple)

Guidelines

The decisions and the judicial opinions in cases involving injuries to participants in youth sport activities provide several guidelines for the administrator, coach and official.

- (1) A participant does not assume the risk of a game or contest unless he knew of the risk beforehand. (Gaspard)
- (2) A participant does not assume the risk of negligence. (Gaspard)
- (3) A child is not required or expected to conform to the standards of behavior of an adult. (Gaspard)
- (4) A child's conduct will be judged by the standards of behavior of other children of similar age, intelligence and experience. (Gaspard)

- (5) The age, skill and experience of a participant will determine if assumption of risk is to be applied. (Dillard)
- (6) Children are not always susceptible to iron clad rules. (Diker)
- (7) An organization conducting youth sport programs has a duty to instruct participants on the proper use of facilities and equipment and has a duty to provide adequate supervision. (Reid)
- (8) The younger the child mentally or chronologically the more supervision is expected. (Foster)
- (9) A participant has a duty to abide by the rules of a particular sport. (Nabozny)
- (10) A participant may be held liable for injuries to another participant if his conduct is deliberate, willful and demonstrates a complete disregard of the safety rules. (Nabozny)
- (11) An intentional act that is beyond the safety rules and causes injury may be considered assault and battery. (Overall)
- (12) The constraints of civilization accompany each participant onto the playing field. (Nabozny)

Chapter IV

Court Cases Involving Injuries to Spectators

Chapter four will examine cases where spectators have been injured while observing youth sport activities. Cases involving spectators demonstrate the duty that is owed people who support youth sport by their presence at events. The cases involving injuries to spectators at youth sport events are not as numerous as litigation involving participants, but the cases do predate World War II.

Murphy v. Jarvis Chevrolet Co.

Murphy v. Jarvis Chevrolet Co. (1941) is a case involving a spectator injured at a soap box derby race. William H. Murphy and Sarah Dargel sued the Jarvis Chevrolet Company, the Peoria Journal-Transcript, Inc., and Johnson's Sales and Service, to recover for injuries when they were struck by a momentum propelled home-made automobile, engaged in the soap box derby race. The plaintiffs claimed that the defendants were negligent for failing to erect and maintain a barrier between the track and the spectators. The jury ruled that the sponsors were not negligent and the spectators were contributorily negligent. The Appellate Court of Illinois reversed the judgment of the lower court on appeal.

Bango v. Carteret Lions Club

In Bango v Carteret Lions Club (1951) the plaintiff was injured while watching a soap box derby race. John Bango was a police officer assigned to duty on Pershing Avenue during the soap box derby race. A 13-year-old male contestant lost control of his car, and ran into the police officer causing serious injury. The Superior Court of New Jersey stated, "a person who entices others to come upon his premises is under a duty to exercise reasonable care for their protection" (p. 58). The court added, "in order that the defendants be liable, it must be shown that they had such degree of control that they could have averted the danger, or such superior knowledge that they should have foreseen and given warning of a danger not apparent to the plaintiff" (p. 58). The defendants sponsored the soap box derby but the appellate court ruled that sponsorship did not mean the defendants had control of Pershing Avenue. The Lions Club turned protection of the spectators over to the local police department. The appellate court ruled that, "the sponsors performed their duty to protect the spectators from the danger of being struck by race cars leaving the course when the police and fire departments were persuaded to make the safety arrangements" (p. 58). The Lions Club delegated their responsibility to the police and fire departments and was not liable for the failure of the police and fire departments to take proper precautions.

Watford v. Evening Star Newspaper Co.

In Watford v. Evening Star Newspaper Co. (1954), a minor spectator was injured when struck by a soap box derby race car. The 1947 Washington Soap Box Derby was open to boys 11 to 15 years of age who built a miniature race car. The derby and its sponsors were extensively advertised, prizes were given to winners and spectators were admitted free of charge. The derby was conducted on public property and arrangements were made to have police supervise the race. Harvard Bailes, assistant to the publisher of the Evening Star coordinated the event and had assistance from the police department. Herman Watford was a six-year-old spectator who was injured when the racer of a 12-year-old driver went out of control and crashed into the crowd. The United States Court of Appeals stated, "whenever one invites others to come up on property for the purpose of viewing or participating in an event which was set in motion and is conducted for some private purpose or benefit, those invited have a right to assume not only that he has authority to use the property for that purpose, but that he also possesses concomitant control or ability to employ adequate measures for protection of invitees from foreseeable dangers arising out of such an event." "The invitee can be held liable for injuries resulting from failure to provide safety measures." The court added, "liability to invitees is not imposed merely because of ownership but because of the invitation" (p. 33).

Inviting the public creates a relationship and that relationship gives rise to a duty. The appellate court stated, "a spectator at a soap box derby race could assume that the promoters would take reasonable caution for the safety of the spectators and calling in police does not automatically discharge the duty" (p. 55). The district court ruled in favor of the defendant, but the United States Court of Appeals reversed the lower court and remanded for a new trial.

Christianson v. Hager

In Christianson v. Hager et al, (1954), the plaintiff took action against the defendant for assault and failure to provide supervision of the crowd. The plaintiff, Christianson, overheard Kenneth Hager make a threat against the safety of the umpire during a game they were watching. Hager said that another bad call by the umpire would result in a bottle thrown at the umpire. After Christianson disagreed and said that throwing a bottle at the umpire would not be a good idea, he was thrown over a fence. The verdict of the jury was that Hager did not commit assault and if there was no assault then there was no case against the recreational association. The Supreme Court of Minnesota agreed with the lower court concluding that since no assault and battery had been committed against the plaintiff, there could be no recovery against the recreational association.

The Supreme Court, in upholding the verdict, agreed that without a crime, there can be no punishment. There was no assault and consequently the recreational association was not liable. However, the Supreme Court of Minnesota added, "that the proprietor of a place of amusement has the duty to protect patrons from negligent injury at the hands of others as well as from injury resulting from intentional torts committed by other patrons" (p. 36). Even though the decision went in favor of the recreational association, the judicial opinion that emerges from this 1954 case establishes the legal principle that owners and operators of ball parks and similar recreational facilities have a duty to protect spectators from injury.

Mann v. Nutrilite, Inc.

Gene Mann was on a baseball field acting as a chaperone for a young girls' softball team known as the Pirates. During the warm-up period, Mann went to the outfield to help the girls warm up and she was hit by a ball thrown by Bessie Baker. The plaintiff, Mann, sought action for damages sustained by the injuries and the claim was made that the four defendants had the right to control the softball team. The complaint alleged that each defendant: Nutrilite Product, Inc., Nutrilite Foundations, B.P. Kids, Inc., and Boys Club of Oceana Park were corporations that owned and operated the

Pirates team. The plaintiff alleged that Bessie Baker, a player, was an agent who negligently and unlawfully threw a softball and the defendants negligently and unlawfully trained and managed her. B. P. Kids, Inc. was a nonprofit corporation which promoted youth activities in Oceana Park. The Pirates were a softball team for girls under the age of 18 and the word "Nutrilite" was sewn on the back of their uniforms. Mann was secretary and treasurer of the Orange Empire Girls Softball League and acted as a chaperone for the team on a voluntary basis. The decision handed down established a general rule that the risk of being struck by batted or thrown balls is one of the inherent risks assumed by spectators attending an athletic event. The court noted, "that in the absence of evidence that ordinary care was not exercised by the management, spectators assume the risk of injury" (p. 289). A person does not assume the risk of another person's negligent conduct but in this case there was no substantial evidence of negligence on the part of Baker. The coach was not negligent for failing to instruct team members to shout a warning when anyone was in the way. There was no evidence to support a finding that Baker was an agent or employee of a corporation. In conclusions the plaintiff assumed the risk of her injury and her injury was not caused by negligence on the part of any of the four defendants. Besides being another example of the "shallow pockets, deep pockets" theory of litigation the case brings

up several interesting points. It was alleged that having Nutrilite on the Pirates uniforms was a great benefit to Nutrilite Products by way of advertising. Nutrilite was a corporate sponsor but there was no evidence that Nutrilite had control or that Baker was an agent of the company. A coach was allegedly charged with failure to teach a player about how to warn about possible harm to other--not a failure to warn, but a failure to teach about giving a warning. The Appellate Court stated that, "it would be unsafe for corporations to make charitable contributions if they were held accountable for the actions of the recipients" (p. 286).

Berrum v. Powalisz

Rose Powalisz went to a Little League baseball game at the Berrum ball park. Powalisz sat in the grand stand behind a wire fence that the defendants had allowed to become damaged and worn with holes. Two Little League players, both about 11 years old, found a broken bat, put it back together and were swinging the bat when it broke apart and flew through the hole in the screen and struck the plaintiff. Assumption of risk was the issue in the case of Berrum v. Powalisz (1957) with the defendant claiming that as an adult the plaintiff saw holes in the screen and assumed the risk when she sat there. The defendant also claimed that the accident was so unusual that the injury could not have been

anticipated and thus he could not protect against this hazard. The trial court ruled that, "the hazard was reasonable and one that could be anticipated and thus the operators of the ball park were responsible for protecting the spectators" (p. 1092). The trial court added that, "assumption of risk requires actual knowledge of a hazard or it cannot be said that the risk was assumed" (p. 1091). "An invitee who paid for the privilege of using the facilities is not required to examine the safety of the facility." "An invitee is entitled to rely upon the fact that the facility provided was safe and the invitee is not contributorily negligent for failing to check the screen and grandstands" (p. 1093). Owners and operators owe a duty to spectators to provide a safe environment. Had the screen not had a hole, this injury could have been prevented, and consequently should not have occurred. A paying spectator has the right to attend a contest without constant worry about being injured. The Supreme Court of Nevada reasoned that "the owners and operators of a facility are responsible for providing a safe environment not the spectator" (p. 1093).

Stafford v. Catholic Youth Organization (CYO)

The Catholic Youth Organization (CYO) and Aetna Insurance Company were named as defendants in a 1967 case involving an injured spectator. Emory Stafford, age twelve,

was watching a wrestling match at the CYO when an accident occurred. "Sitting on the edge of the mat, Stafford's legs became tangled with one of the wrestlers and he suffered an oblique fracture of the upper portion of the fibula and a spiral fracture of the lower portion of the tibia" (p. 335). The trial court awarded the plaintiff judgment in the amount of \$3,000 and the defendants appealed. The trial judge held, "that Stafford was a spectator and not a participant and consequently assumption of risk did not apply" (p. 335). The Louisiana Court of Appeals reversed the district court's decision and dismissed the plaintiff's suit. The court of appeals could find no example of negligence or negligent conduct on the part of the participant or supervisor and found the defendants not liable for damages. "Stafford was unfortunately injured, but the injury was an accident and not a result of negligence," according to the Court of Appeals of Louisiana (p. 336).

Kozera v. Town of Hamburg

Stanley Kozera was attending a Little League baseball game in 1970 when he was hit in the eye by a ball during batting practice. Kozera sued the Town of Hamburg claiming that the defendant was negligent in constructing, operating and maintaining a baseball diamond. He also felt that there were inadequate facilities and equipment to provide protec-

tion for spectators and improper supervision while the game was played. Kozera was sitting on the third base bench watching pregame batting practice and several times the plaintiff and others on the bench had to duck in order to avoid being hit. While watching the coach filling out the line up card, Kozera was struck in the right eye by a batted ball. The Supreme Court, Appellate Division of New York, ruled "that a spectator assumes the risk necessarily incident to baseball as long as those risks are not unduly enhanced by the negligence of the owner of the ball park" (p. 761). There was a screened area behind the home plate and the plaintiff could have watched batting practice from the protected area. There was no evidence of any structural defects in the facility maintained by the team and no factual evidence of a lack of supervision. The complaint was dismissed. Two statements summing up the case are important:

- (1) Spectators assume the risk necessarily incident to a baseball game as long as those risks are not unduly enhanced by the negligence of the owner of the ball park.
- (2) Participants accept dangers inherent in athletic events as far as they are obvious and necessary.
(p. 761)

Plaintiff assumed the risk by being in the dugout area, but had he not been allowed in the area the injury could have been prevented. It is important for safety reasons to keep

spectators in the protected area whenever possible. Kozera assumed the risk, because he was given an alternate place from which to view the game.

Pomeroy v. Little League Baseball of Collingswood

Sarah Jo Pomeroy sued Little League Baseball of Collingswood when she was injured at a game where the bleacher collapsed. Pomeroy sued Little League and the Little League Organization moved for summary judgment on the grounds that the Little League was a charitable organization. The decision was handed down in 1976 by the Superior Court of New Jersey, Appellate Division upheld the Superior Court, Law Division's decision to dismiss the action. The Appellate Court ruled that the charitable immunity statute prevented recovery by a spectator for damages from Little League since Little League was actually engaged in performance of charitable objectives when the injury happened. The court believed that the plaintiff actually benefitted from the good works of the defendant. "The constitution of Little League stated that its purpose was to firmly implant in young boys of the baseball community the ideals of good sportsmanship, honesty, loyalty, courage and reverence, so that they might grow up to be finer, stronger and happier and will become good, clean, healthy men" (p. 41). The trial judge held that Little League Baseball had been formed for educational

purposes, and the term educational is generic and can include recreational activities. "The discipline of character through instruction is fulfilled in sport by the instruction and learning the rules of the game" (p. 41). Little League is educational and a charitable organization and is, therefore, protected by statutory law. High schools were protected by governmental immunity, but this is no longer the situation in many states. Charitable immunity in 1987 does not serve as a viable protection against liability and negligence for schools and recreation programs.

Jackson v. Cartwright School District

Jackson v. Cartwright School District (1980) is similar to Pomeroy, but the issue here is control rather than charitable immunity. Iva Jackson sued the Cartwright Little League, Inc. when she slipped on a ramp while leaving a Little League game where she had watched her son play. The field was owned and operated by the Cartwright School District and the playground was open for general use by the public before and after Little League games. Jackson and her husband had used the ramp 12 times and had complained to Anthony Mussi, Safety Director for the Little League about the condition of the ramp. The Jacksons never complained to the school district and no other complaints had been addressed to either Little League or the school district. The playgrounds were open to

the general public and were owned and operated by the school district and Little League had no control over the field. On the day of the accident, there were two other gates open and available for use. The Superior Court judge held, "that Jackson was precluded from recovery since she was aware that the ramp had been slippery in the past and yet continued to use the ramp" (p. 977). The Superior Court felt that plaintiff had assumed the risk and had to suffer the consequences. The Superior Court also ruled, "that Little League did not have possession or control of the ramp and could only request alterations to the facility" (p. 979). The School Board was responsible for the maintenance and upkeep of the facility and not Little League. This case demonstrates that just because a person has an accident there is no guarantee of a successful lawsuit. An important factor in this case is that there were alternative exits that could have been used but the plaintiff chose to take a chance. If there had only been one exit ramp, and reports had been filed about it being dangerous and then an accident occurred, the decision might have been different.

Summary

Chapter IV reviewed 10 cases that involved injuries to spectators at youth sport activities. The earliest case reviewed dates back to 1941, and the cases go through 1980. Of

the 10 cases, one took place before 1950 and nine cases took place after 1950, with four cases taking place since 1960. In the cases adult spectators were injured 80% of the time and children 20% of the time. There were six male spectators injured and four female spectators injured. The spectators were injured watching four different youth sport activities, with baseball involved in four lawsuits, Soap Box Derby three times, softball twice and wrestling once. Of the 10 cases, the verdict was in favor of the defendant eight times and the plaintiff twice. Successful defenses included charitable immunity, assumption of risk, contributory negligence, duty owed fulfilled and no duty owed.

Observations

Ten cases is not a significant number of decisions from which to make broad generalizations. The cases all seemed to be heard on an individual basis with very few common denominators. There have been more cases in the last 37 years than in the first 50 years of the twentieth century. Where a majority of injuries to participants involved males, the spectator injuries were almost even, 60%/40% males to females. The individuals injured were overwhelmingly adults with baseball being the sport leading the litigation.

Boundaries and Guidelines

Boundaries

With only ten cases it is difficult to find very many boundaries that have been established by the courts. However, in a few of the cases, the decisions handed down establish some boundaries for administrators, coaches and officials.

- (1) The risk of being struck by a batted or thrown ball is one of the natural risks assumed by spectators. (Mann)
- (2) A sponsor of a youth sport team without direct control is not liable for injuries to spectators. (Mann)
- (3) Possession and control of an area is important when deciding liability for injuries to spectators. (Jackson)

Guidelines

It is difficult to develop guidelines for administrators, coaches and officials from a minimum of cases, but several important points do emerge from the decision.

- (1) There is a duty to provide a safe place for spectators. (Banqo)
- (2) Opening an event to the public creates a duty to use care. (Watford)

- (3) Liability is not based on ownership of the facility, but on the invitation to the event. (Watford)
- (4) A proprietor has a duty to protect patrons from negligent injury by participants and other spectators. (Christiansen)
- (5) Assumption of risk requires actual knowledge or it cannot be said that risk has been assumed. (Berrum)
- (6) A spectator who has paid for the privilege of attending and using facilities is not required to examine the safety of the facility. (Berrum)

Chapter V
Litigation Resolved Out of Court

According to lawyer F. Lee Bailey, "In the world of sports today there is a growing interest in recovering damages for injuries." The well-known trial lawyer added, "If coaches in the past got thanks for helping their injured player, today they may be faced with these two new words: 'I'll sue!'" (Hage and Moore, 1981, p. 148).

Carr v.Korkow

The case of Carr v.Korkow (610 F. Supp. 1985) involved a 16-year-old youth participating in a kids rodeo. The plaintiff, Glenn Carr, was injured when the bucking horse he was riding fell over on him, rendering him paraplegic (Quinn, 1986, p. 76). The plaintiff settled out of court with six defendants before the trial for \$125,000 (Quinn, March, 1986, p. 76). Following the trial three additional defendants were found negligent and damages were set at \$1.25 million in a general verdict (Quinn, March, 1986, p. 76).

Lloyd v. Jewish Community Center

It was reported in the Atlanta Law Reporter that, "Adam Lloyd, 14 years of age, was practicing for the swimming team in the pool of the Jewish Community Center when his coach

told him to begin swimming sprints by diving off the 30-inch high starting block at the 3 1/2 foot shallow end of the pool." "Lloyd did a pike dive off the blocks and his head struck the pool bottom crushing his spine and rendering him quadraplegic" (Atlanta Law Reporter, March, 1986, p. 88). In Lloyd v. Jewish Community Center, MD, Montgomery Circuit Court, No. 0260, Oct. 31, 1986, Lloyd sued the Center, the coaches, and United States Swimming, Inc., the governing body of amateur swimming, for improper coaching and training, failure to warn about the dangers of doing a pike dive into shallow water and failure to supervise. The plaintiff sought damages of \$1.8 million. The court reasoned that, "the Jewish Community Center was granted immunity because it was a charitable institution, and the coaches, Hartford, and First State Insurance Companies settled with Lloyd for \$4.1 million." Adam will receive \$877,000 in cash payments of \$2,500 to \$10,000 a month for life with cost of living increases, and \$12,500 a year in annual payments for life and periodic lump sum payments (Atlanta Law Reporter, March, 1986, p. 88).

Clark v. Riddell

Tony Clark was a 13-year-old defensive back, playing for the Optimist League Boca Jets, when he was injured. Clark, who tackled a running back, is one of the youngest

players ever paralyzed in a football game. Attorney Carl Rentz sued the Riddell Company which manufactured the football helmet Clark was wearing, claiming the product was defective. The plaintiff's attorney argued that, "the rear rim of the helmet sat too low on the player's neck and thereby became a deadly piece of equipment when his head snapped back during a tackle." Riddell's attorney, William Merritt, stated, "there is nothing wrong with the football helmet and that Clark's injury was a freak accident in a contact sport." Riddell settled the case out of court in February, 1987 awarding Clark \$2 million that year with additional payments of \$14 million during his lifetime (The Trentonian, February, 1987, p. 1).

Fort v. Little League

Joey Fort, a 10-year-old little leaguer who lost a fly ball in the sun during baseball practice, was severely injured and sued his coaches for damages. Fort, a second baseman on his Rumenede, New Jersey team, was moved to the outfield for an All-Star game in July, 1982. During pre-game practice, Fort lost a pop fly in the sun and the ball hit him in the eye causing injuries that required five operations to correct (Blodgett, 1986, p. 72). The Forts contended that "their son should have been given flip down sun glasses or instructed how to use his glove to shield the sun

from his eyes before being moved from second base to the outfield." The \$750,000 lawsuit on their son's behalf against the Little League coach was settled out of court for \$25,000 (Blodgett, 1986, p. 72).

Doe v. Augusta County School Board

On Saturday morning, September 18, 1987, a father was attending his son's little league football game at Stuart's Draft High School field. The bleachers became wet after a brief rain and the father slipped on the bleachers while walking back to his seat. The father was injured by the fall and suffered a bruised leg. The father sued the Augusta County School Board, operator of the facility. Even though the county administrators found no evidence of negligence, the insurance carrier agreed to settle. This case never made headlines in the newspaper, but consequently the facilities which previously had been open to the public may soon be closed to all outside groups (Stout Interview, October 9, 1987).

Out of Court

These five cases are examples of a trend to settle cases out of court. Whether the Riddell helmet was defective or safe was not established in the Clark case. The failure to properly instruct or the failure to warn were

also issues that were not established by Fort and Lloyd. Liability or negligence were not determined, but lawyers and insurance companies chose the most inexpensive solution to the problem. "Joel Hyatt's law firm, the second largest in the nation with 575 attorneys and 200 offices in the United States, says lawyers have created a frivolous lawsuit industry" (Nation's Business, February, 1986, p. 26). Insurance companies decide cases on a cost basis (Bacas, February, 1986, p. 26). For example, if it costs \$5,000 to settle and \$8,000 to litigate the case, insurance companies will take the cheaper route (Bacas, February, 1986, p. 26). Hyatt believes insurance companies should take the long view of litigating cases regardless of expenses (Bacas, February, 1986, p. 26). Insurance companies might find lawyers who work on a percentage basis less likely to sue a company that will not settle out of court. A "get tough" policy might eliminate some frivolous cases.

Except for Fort who should regain his vision, the injuries in these cases are serious and tragic. Nobody wants to see a young person crippled for life, but accidents do happen in society. If negligence is proven or liability existed because a coach failed to instruct, warn or supervise then the award may be justified. However, the out-of-court settlement creates fear and provides business for insurance companies. In the Clark Case against the Riddell Helmet Company, Riddell increased the cost of their helmets

to help offset the loss. In other cases where insurance companies settled out of court, premiums are either raised or policies cancelled. Very little information comes out of an out-of-court settlement.

Burden of Responsibility

Recent court decisions and the out-of-court settlements make it appear that the court is placing all responsibilities for prevention of injuries and blame for sport activities injuries on the coach or supervisor (Adam and Bayless, 1983, p. 18). In Athletic Business it was noted that the age and experience of a participant has often led the courts to limit the amount of risk that a sports participant should be expected to assume. Emphasis in youth sport has shifted from recreation to proper instruction and adequate warnings (Athletic Business, March, 1986, p. 12). One contributing factor involved in this trend has been the involvement of children at increasingly early ages since some children are likely to begin competitive sport activity by age four or five.

Volunteer Coaches

Richard L. Robinson, a Kentucky attorney who specializes in sport liability, predicts that cases involving supervision and instruction will increase. "Not teaching how to

slide into a peg base in baseball or not warning about what might happen sliding into a peg base are two examples of Robinson's concern." The overriding concern has to be the safety of the child, and youth sport coaches have an obligation to protect the child from serious injury. Robinson comments that, "more qualified coaches can reduce sports-related injuries" (Athletic Business, March, 1986, p. 14). Youth sport and youth sport agencies have traditionally depended on volunteers to coach, provide supervision, and offer leadership. In most instances the volunteer is untrained, usually a parent of a team member or an interested adult. The volunteer usually has good intentions, rarely accepts monetary payments, relying only on intrinsic rewards. Education, experience and skill are not high priorities; rather, a willingness to give of one's self is all that is required. However, sport has changed over the last twenty years and recent cases demonstrate that the role and expectations of coaches, administrators and officials has changed. Youth sport agencies for years operated under the assumption that an unqualified person was better than no one at all. If that person is going to be a liability and create unnecessary risks for the participants, agencies will have to address the issue.

Litigation and Insurance

Going to court is not a recent development in the

United States. In the early 1800s, historian Alexis de Tocqueville commented that Americans had an extraordinary tendency to look to the courts to resolve their disputes. The modern era of sport litigation was inaugurated in the 1960's when a New Jersey court awarded a gymnast more than \$1 million for negligence and a California Court awarded \$300,000 to a football player who suffered paralyzing injury. In 1986 the U.S. Olympic Committee (U.S.O.C.) was unable to find an insurance company willing to write a policy to cover liability costs for the 1988 Olympic Games. The Amateur Softball Association, with 182,000 teams and 3.5 million participants, saw its premiums increase from \$7,000 in 1985 to \$150,000 in 1986. According to the U.S. Gymnastic Association, insurance premiums have gone up 10% to 15% each year despite never having had a claim (Lubell, 1987, p. 194). There are no longer any American manufacturers of trampolines or ice hockey protective equipment according to a 1987 report from the U.S. Justice Department. Ten years ago there were 14 manufacturers of football helmets and in 1987 there are only two (Lubell, 1987, p. 192).

In the May, 1986 issue of Athletic Business, it was reported that, "participants in sports liability include property-casualty insurance, municipal recreation, youth sport organizations, athletic equipment manufacturers, the American Bar Association, the American Trial Lawyers Association, state legislatures, insurance commissions, federal

administration, federal bureaucracy and the injured athlete. The only way not to lose may be not to play the game." (Athletic Business, May, 1987, p. 12). Some of these problems transcend all of sport but youth sport by its very nature is susceptible to these problems more so than any other type of sport. Youth sport relies on the volunteer and usually operates on a limited budget funded by private donations. For example, Roland Bedard, Commissioner of the 4500 team Soccer Association for Youth, says his organization's premiums have gone from \$4,500 to \$22,500 for one million dollars worth of liability coverage. As a direct result, team registration fees have already been raised two years in a row (Athletic Business, May, 1986, p. 15). Athletes are having to pay higher fees to play and the cost of equipment is increasing because of the cost of insurance.

Lawsuits

In 1984 there was one civil lawsuit for every fifteen Americans, today that figure is one lawsuit for every thirteen adults. "Million dollar awards total nearly three hundred a year, and a record twelve million lawsuits were filed in state courts between 1978-1983." "The average product liability award has increased from \$345,000 to one million in ten years" (Hazard, 1986, p. 76).

State and Federal Legislation

The increase in litigation and the recent insurance crisis have resulted in several interesting developments. John Porter, a member of the United States House of Representatives has introduced the "Volunteer Protection Act" (HR-911) in Congress. It was reported in Athletic Business that, "the bill is intended to encourage state governments to pass laws that would provide limited immunity from personal suits for volunteers with non-profit organization. The bill is essentially a Good Samaritan Act, but because liability suits fall under the jurisdiction of states the bill would have no force of law if passed" (Athletic Business, May, 1987, p. 10). Both New Jersey and Pennsylvania have similar bills introduced in their state assemblies. A New Jersey bill introduced by assemblyman, Dennis Riley, is a direct result of the Fort case and the subsequent \$25,000 out-of-court settlement (Blodgett, p. 34). Riley's bill provides that, "no volunteer athletic coach, manager or sports team official be held liable in any civil action as a result of their responsibilities as a coach or manager. It adds, however, that they must first have participated in a safety orientation and training program established by the league with which they are affiliated and on exception they can still be found liable for gross negligence" (Blodgett, p. 34). Riley added that the Fort case has made it tough for community teams to get volunteer coaches. According to

Riley, "if a kid looks mediocre and more likely to make mistakes, he will be cut from the team so the coach does not face the responsibility of a negligence charge." Pennsylvania representative John Fox has heard a similar concern. Volunteer managers and coaches say they do not want to lose their homes over a lawsuit. These two examples show that states, through legislation, are attempting to limit the liability of ordinary citizens who offer their services to aid others (Blodgett, p. 34).

Parks and Recreation Programs

Parks and recreation departments are beginning to experience an insurance crisis in the 1980's. Jack Matthews of the Chicago Parks District states, "We want to provide more things for kids, but because we have to be safety conscious, we cannot. Kids today are missing out on something that children of other generations had, and it is unfortunate" (Athletic Business, June, 1986, p. 12). Two cities serve as recent examples where insurance problems have affected sport. Blue Lake, California (population 1,300) was notified by its insurance provider that coverage had been cancelled. As a result, the Parks and Recreation Director was fired, the roller skating rink was closed and the tennis courts, basketball, baseball, and volleyball facilities were boarded up. Youngstown, Ohio with a population of 44,500 had its

insurance coverage dropped and closed 25 parks, a golf course, six swimming pools and cancelled the softball program (Athletic Business, June, 1986, p. 12).

Product Liability

Product liability lawsuits have increased 600 percent in the last decade (Athletic Business, May, 1986, p. 14). There are 75 to 95 lawsuits in progress against football helmet manufacturers. In the 1970's there were 17 helmet manufacturers and today the number is two companies for football helmets for interscholastic, intercollegiate and professional teams, and a few other companies that make helmets for youth sports. "Eleven injured football players between 1981 and 1983 settled for a total in excess of three million dollars" (Athletic Business, March, 1983, p. 13). Football helmets, trampolines, diving boards, and weight equipment are all becoming more expensive because of liability insurance. William H. Brine, a manufacturer of soccer and lacrosse equipment, told a Congressional Committee that his liability insurance had gone from \$8,000 for a \$25 million policy in 1984 to \$200,000 for a million dollar policy in 1986. Brine observes that, "the courts have reinterpreted liability precedents and juries have awarded damages greater than losses suffered by plaintiffs." Ken Penman, a legal scholar, notes that, "the courts are granting

enormous amounts of money for lawsuits related to sports equipment and product liability (Penman, June 1986, p. 107). "Insurance companies blame trial lawyers and the trial lawyers blame the insurance companies" (Athletic Business, June, 1986, p. 12). "The only winner may be the attorney for the plaintiff" (Miller and Black, March, 1983, p. 13). Lawsuits and insurance premiums are increasing and coaches and managers are refusing to volunteer because of fear and/or cost.

Search for Direction

Youth sport heads into the 1990's with some serious problems. Lawsuits and litigation against coaches, officials and administrators are on the increase. Liability insurance, when available, is expensive and the cost of product liability insurance is driving up the cost of equipment. A Riddell helmet, which sold for \$50 in 1980, now sells for \$110. National organizations are having to increase fees to cover the cost of insurance premiums. Youth sport is beginning to be affected in much the same manner as colleges and high schools in the 1970s. Colleges may hold a major solution to the problem, through educational programs preparing professionals and lay personnel for involvement in the sports community. There have been changes in every aspect of sport and new fields of sports medicine, management, law and psychology that were almost non-existent 30 years ago have

developed. Times have changed and youth sport coaches need to stay up to date with what is happening in sport. High schools and colleges, which are themselves institutions of education, have another advantage over the youth sport organization, funding. High schools and colleges usually have better financial backing than the neighborhood youth sport organization. People involved in youth sport need to understand the responsibility that exists for the child participating in organized sport. Education can provide the information needed to conduct safer youth sports activities.

Summary

Chapter V reviews five cases that were settled out of court and in three of the cases the damages awarded were substantial. Five cases is not enough to necessarily establish a trend, but from other information available, the decision to settle out of court is becoming more popular. The five cases settled out of court are all very recent; in fact each happened in the last three years. Four of the cases involved participants while one case involved an adult spectator. Settlements ranged from \$14 million down to medical expenses for the adult spectator. All five settlements involved males with the average age of the four participants being 13.2 years. The issue in Lloyd was failure to warn, in Fort it was failure to instruct and in

Clark it was product liability. Failure to warn and failure to instruct have become two popular legal arguments.

Observations

There appears to be a trend to settle claims out of court, particularly if insurance companies can save money. As a result of litigation with damage awards and out of court settlements, insurance companies raise premiums.

Organizations in sport related activities purchase liability insurance as protection against lawsuits. In many instances the sports organization is forced to pay escalated costs for insurance if they are able to obtain it or go out of business because they cannot purchase or afford liability insurance.

Manufacturers of sports equipment face unprecedented costs for liability insurance due to damage awards and out of court settlements. As a result, the manufacturer passes the cost of insurance on to the consumer to cover the cost of increased premiums.

State and federal legislation has attempted to provide protection for volunteer coaches, but the laws have had no significant effect to date.

Guidelines

Cases settled out of court do not establish precedent

and therefore, do not establish legal guidelines. However, two practical guidelines emerge from the out of court settlements that are important.

- (1) There is a duty to warn participants of possible dangers involved in sport.
- (2) There is a duty to provide proper instruction to participants in sport.

CHAPTER VI

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Summary

A recent study by the United States Department of Health and Human Services found that 84 percent of today's children take part in physical activity through recreation department programs, community sports teams, and YMCA's (Hellmich, Tuesday, December 8, 1987, p. D-1). Kathrine Armstrong, Coordinator of the "Children in the Schools" in the Office of Disease Prevention and Health Promotion, added, "this study emphasizes that children are getting physical activity outside of the school" (Hellmich, 1987, p. D-1).

The present study examines the issue of what happens when participants and spectators in non-school youth sport activities become injured and the injury results in a lawsuit. In conducting this research, cases have been reviewed and analyzed where participants and spectators have been injured in non-school youth sport activities and have sought legal remedy.

The cases chosen for the study have come from the National Reporter System and were located by using the following sources: Century, Decennial and General Digest of the American Digest System. Once a case was discovered,

it was shepardized to find the particular case history and to locate similar cases. American Jurisprudence, Corpus Juris, Corpus Juris Secundum and the West Law computer system were also employed in the search for relevant cases. Law reviews, unpublished manuscripts, periodicals, articles and books relating to tort liability were utilized as sources of information and cases.

The various cases reviewed for the study demonstrate that non-school youth sport activities have not been immune from litigation. Administrators, coaches, officials, players, spectators, national and local organizations have all been involved in legal action. Thirty-two different cases involving injuries to participants and spectators have been reviewed. Twenty-seven of the cases were litigated in the courts while five of the cases were settled out of court. The cases reviewed for this research date from 1914 to 1987. Of the 32 cases, five took place before 1950 and 27 cases have occurred since that date. There have been as many cases in each decade since 1950 as there were in the entire first half of the present century. Of the cases reviewed for this research, 28 percent have taken place during the last seven years.

The 32 cases reviewed include 21 cases involving injuries to participants and eleven involving injuries to spectators. The 21 cases involving injuries to participants include 17 cases in actual litigation and four cases which

were settled out of court. The eleven cases involving injuries to spectators include ten cases litigated and one case settled out of court.

The 21 cases involving injuries to participants all involved youthful participants except one case brought to litigation by an adult baseball umpire. Considering 20 of the 21 cases reviewed, the average age of the participant was 14.6 years of age, 14.7 years of age for the 16 litigated cases and 14.0 years of age for the out-of-court cases. The youngest person involved in litigation was a 10-year-old youth, and the oldest involved in litigation was 19 years old. Injuries to spectators at youth sport activities involved adults 81 percent of the time, with youthful spectators being injured in only two of eleven cases. The youngest spectator injured and involved in litigation was six years of age and the only other youthful spectator injured and involved in litigation was twelve years of age.

Of the 32 cases reviewed, 26 involved injuries to males with six cases involving injuries to females. Ninety percent of the cases of injuries to participants involved males while 63 percent of the cases of injuries to spectators involved males. Eighty-one percent of the 32 cases reviewed involved injuries to males, and 29 percent of the cases reviewed involved injuries to females.

The youth sport activities that the participants and spectators were involved in when the injury occurred ranged

from bareback bronco riding to the soap box derby. Nine of the 32 cases reviewed involved baseball, while basketball, football, hockey and the soap box derby were each involved three times. There were two cases each involving gymnastics and softball, with wrestling, boxing, soccer, swimming and bareback bronco riding each appearing once.

Conclusions

As a result of the findings of this study and based upon the questions set forth in the Statement of the Problem, the following conclusions are offered:

- (1) What have the courts said regarding injuries to participants in youth sport programs?
 - (a) A participant in a lawful game or contest assumes the danger involved in the activity and may not recover damages for injuries or death (Gaspard). Injuries, because of the physical nature of the sport, are inevitable. Under normal circumstances, an injured participant in sport will not be able to recover damages. For damages to be awarded to a participant, the participant has to be able to prove that negligence caused the injury.
 - (b) Coaches, managers and officials who voluntarily participate in youth sport activities must accept

the risks to which their roles expose them (Dillard). Coaches, managers and officials by virtue of their age, experience and education assume the risk of injury that might result from their participation in youth sport activities and are expected to understand and appreciate the risk involved in sports participation.

- (c) Citizens who volunteer in youth sport activities are not required to provide supervision of all team members in off-field activities (Loosier). Youth sports agencies historically have relied on private donations raised by raffles, candy sales, auctions, etc. to fund activities. Administrators, coaches, parents and participants usually become involved in fund raising efforts, but there is no legal duty to supervise these off-hour activities. Once the participant leaves the practice or game, the participant becomes the responsibility of the parent or legal guardian. Administrators and coaches are not expected and are not required to provide 24 hour a day supervision of participants involved in youth sport activities. Guidelines and warnings should be given to participants engaged in fund raising activities, but there is no duty to directly supervise these fund raising activities.

- (d) A youth sport organization is not responsible or liable for injuries when participants enter the playing field after-hours without permission (O'Bryan). All across the country there are little league ball parks where people can go after hours almost year round to practice and play. An attractive nuisance like a swimming pool or gymnastic facility would need to be locked or secured, but a baseball field or football field is similar to a town or city park and does not require constant supervision. When participants enter a playing field after-hours without permission, the participants assume the risk of injury and the national, state or local youth sport organization is not liable for injuries.
- (e) There is no duty to provide officials with personal protective equipment (Dillard). A youth sport organization has a responsibility to make sure that officials are properly equipped with nonpersonal protective equipment. Nonpersonal protective equipment is equipment that different officials can use such as a chest protector, face masks and shin guards in baseball. There is no duty by a youth sport organization to provide personal protective equipment to officials.

- (f) For damages to be awarded, it must be proven that negligence caused the injury (Whipple). It has to be proven by the participant that the negligent act actually caused the injury. The participant has to prove that negligence existed, while the administrator, coach or official does not have to prove the actions were not negligent. The burden of proof of an injury to a participant is placed on the participant. The administrator, coach and official are assumed innocent until proven otherwise.
- (2) What have the courts said regarding injuries to spectators in youth sport programs?
- (a) The risk of being struck by a batted or thrown ball is one of the natural risks assumed by spectators (Mann). Because of the nature of sports, spectators must assume certain risks when they are in attendance at sporting events. A youth sport organization cannot guarantee the complete safety of every spectator, but the effort must be made to provide the safest possible viewing area for spectators. The responsibility to check a facility to see that it is safe is not the responsibility of the spectator, but rather the youth sport organization. It is important that spectators not be allowed or placed in

dangerous areas. Spectators assume certain risks, as long as those risks are not enhanced by the youth sport organization.

- (b) A sponsor of a youth team, without direct control, is not liable for injuries to spectators (Mann). Youth sport organizations have traditionally relied on corporate and individual sponsors to fund teams and program. A corporate or individual sponsor who contributes money but does not have any direct control over the administrators, coaches, officials, participants, or spectators, is not liable for any injury that might happen to a spectator. Donating money to a youth sport organization or team does not create a duty owed to spectators in attendance at youth sport activities.
- (c) Possession and control of an area is important when deciding liability for injuries to spectators (Jackson). A youth sport organization that uses a facility owned or controlled by another organization is not liable for injuries to spectators if the youth sport organization has no input into the maintenance and upkeep of the facility. Whatever organization owns or controls a facility is responsible for spectator safety. If a youth sport organization uses a facility

that is in need of repair or has a potentially dangerous area, the youth sport organization should make the problem known to the controlling organization in writing. The owner of a facility is responsible for the upkeep and for providing spectators a safe viewing area.

(3) To what degree have the existing guidelines established by the various youth sport agencies and professional organizations been cited by and/or directly supported by the courts?

(a) In the 32 cases reviewed for this study, the rules of a youth sport agency were referred to twice.

(1) In the landmark decision, Nabozny v. Barnhill, an Illinois Appellate Court held that

Where a safety rule is contained in a recognized set of rules for athletic competition, a participant in such competition, trained and coached by knowledgeable personnel, is then charged with a legal duty to every other participant to refrain from conduct proscribed by the safety rule.

The Illinois Appellate Court added:

The constraints of civilization accompany each participant onto the playing field.

The Illinois Appellate Court referred to the rules of the Federation of Interna-

tional Football Association (F.I.F.A.) in making the decision. The appellate court decided that a player has a legal duty to every other player to abide by safety rules.

- (2) In Overall v. Kadella, the district court referred to the rules of the Michigan Amateur Hockey Association in making the decision. The Michigan Amateur Hockey Association had a rule against fighting, the purpose being to prevent violence. The district court found:

that without provocation the defendant in the heat of the game swung his hockey stick at the plaintiff who was not engaged in the fight, resulting in injuries to the plaintiff.

The Court of Appeals of Michigan added:

an intentional act causing injury which goes beyond what is ordinarily permissible is assault and battery and recovery may be possible.

The decisions in Nabozny and Overall demonstrate that the courts will refer to guidelines that national and local sports organizations have developed. Youth sport organizations need to develop rules and guidelines and

to make sure that all participants understand what the rules and guidelines are. With failure to instruct becoming an issue, particularly in out-of-court settlements, youth sport organizations would do well to develop rules and guidelines for coaches involved in instruction.

- (4) Are there specific trends that affect youth sport activities that can be determined from the examination and analysis of the court cases?

From the examination of cases reviewed for this study, several trends emerge. One trend is that no one involved in a youth sport activity is immune from litigation. Administrators, coaches, officials, participants, spectators, national and local organizations have all been involved in court cases. Even though youth sport activities involve volunteer participants and historically have been considered similar to a charity, the chance of a participant being involved in litigation is increasing as we head toward the 1990's.

There appears to be a trend by the courts to place greater expectations on those who direct youth sport activities. Adequate supervision during practice and games is required and the younger the child the more supervision is expected. The courts have ruled that facilities should be inspected and that participants and spectators should be protected from unneces-

sary injury. The leaders of youth sport activities are expected to not only provide proper instruction, but to also warn participants about possible dangers involved in the activity. The duty to provide proper instruction and the duty to warn have become very popular legal expectations.

Participants are expected to play by the rules of the sport, and acts of violence that injure other participants are no longer acceptable.

From the examination of several recent cases and current literature, another trend that seems to be emerging is the trend to settle cases out of court. Insurance companies look at litigation on a strictly cost basis, and the decision to go to court or settle is based purely on the cost factor. Insurance companies want to get out of a case in the least expensive way, with no apparent concern for future implications. When cases are settled, the insurance companies then raise premiums, or completely cancel coverage. The rising cost of liability insurance for individuals or organizations, and the increasing cost of insurance for the manufacturers of athletic and sporting equipment then places a burden on the youth sport participant. American manufacturers of athletic equipment, and parks and recreation departments are all beginning to experience an increase in premiums. State and federal legis-

lation is attempting to protect volunteer coaches, but the legislation has yet to undergo judicial review.

Because of higher expectations on the part of volunteers and leaders of youth sport activities, combined with increasing cost of equipment and insurance, one trend may be to sponsor fewer youth sport activities for the next generation of children.

- (5) What additional guidelines should be developed for youth sport type activities?
- (a) Based upon the judicial decisions analyzed and the out-of-court cases reviewed, it is clear that any sponsoring youth sport agency should include the following guidelines:
- (1) Safety rules and regulations for a particular sport should be in writing and participants should be made aware of them.
 - (2) Participants should abide by the established rules of conduct and play and the youth sport agency should enforce all such rules.
 - (3) Participants should be instructed by a member of the youth sport agency on the proper use of facilities and equipment.
 - (4) A youth sport agency should provide adequate supervision for practice and games. It should be noted that the younger the

age, chronologically or mentally, the more supervision required.

- (5) A youth sport agency should provide proper instruction to all participants involved in a particular sport.
- (6) A youth sport agency should ensure that all participants are warned about the danger involved in a particular sport.
- (7) A youth sport agency should provide a safe facility for all participants and spectators. It is the responsibility of the youth sport agency, not the participant or spectator, to foresee possible danger areas.

Recommendations

This research has demonstrated that youth sport activities have been and will continue to be involved in litigation. Just because a youth sport activities leader is a volunteer, or the organization is a non-profit group dedicated to providing opportunities for young people, when an injury occurs the possibility exists that a lawsuit will result. The guiding principle of this research has not been to protect administrators, coaches and officials from

lawsuits, but to determine what would provide a safer environment for youth participants.

Understanding the purpose of the research there are several recommendations that should be made. First, I believe that the time has come to train and/or certify coaches involved in youth sport activities. According to a 1981 investigation by the Sports Studies Foundation, "no longer can youth be handed over to well-intentioned adults who make inadvertant errors that can have lifelong effects on the child" (Appenzeller and Lewis 1981, p. 52). The American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD), recommended in 1968 that coaches complete college level courses in the medical aspects of coaching (Hage, Moore 1981, p. 142). The American Medical Association (AMA) Committee on Medical Aspects of Sports recommended over 20 years ago that coaches need to have first aid training (Hage, Moore, 1981, p. 151). A 1975 Michigan State study revealed that over 50 percent of the coaches and administrators felt that clinic workshops and sports medicine training are necessary and important (Youth Sports, 1981, p. 53). Currently there are several organizations that have certification programs for youth sport coaches. The National Youth Sport Coaches Association (NYSCA) is one organization that claims it has certified 100,000 coaches and to date has not had a single coach involved in a lawsuit. The goal of the NYSCA is not just to provide cheaper liability

insurance for coaches, but to protect the children involved in sport.

The Institute for the Study of Youth Sports, American Coaching Effectiveness Program and the National Association for Sport and Physical Education are three additional organizations concerned about the leadership and coaching children receive in youth sport activities. The National Association for Sport and Physical Education has developed the ten commandments of sports participation which is found in the appendix. Exactly what type of certification program needs to be developed on a national level would be an area of future research. What would be the best possible way to get information into the hands of volunteers who direct youth sport activities would be another research topic.

In conducting this research, it was discovered that the Pop Warner Little Scholars Program had developed a comprehensive guide book for administrators and coaches. Under the Pop Warner program, there are over 4,000 football teams in the United States and in 58 years they have never had a football related death or paraplegic. There are more teams playing Pop Warner football than the National Collegiate Athletic Association (NCAA) has colleges playing football. However, it has been the experience of the present writer there are local football programs being conducted that have no official ties to any national organizations. These local

organizations are started by parents who raise money and buy equipment, form a league and play games. Many of these independent organizations have few guidelines and rules to insure a safe program. On the interscholastic level there is a local board of education, a state organization and national organization, the National Federation of State High School Athletic Associations (NFSHSA) which all develop guidelines, establish rules and regulations and exercise control over sports on the high school level. It is recommended that youth sports follow the lead of the National Federation of State High School Athletic Associations, the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics and the Amateur Athletic Union and create one national organization that would develop rules and guidelines for all sports. Currently, the national and state leadership of youth sports is very fragmented even within a particular sport. For example, in baseball there is Babe Ruth baseball, Pony baseball, Little League baseball and Tar Heel baseball just to name a few organizations. With millions of participants and thousands of volunteer coaches involved each year in youth sport activities, there is a need to establish a single national organization and require local organizations to become members.

Youth sport activities are very popular and this trend will continue. The volunteer who will be coaching and leading these programs needs to receive some type of training in

order to do a better job. Education is the key to providing safer sporting activities for today's young people.

If this research assists youth sport organizations to realize that they are no longer immune from litigation and, in fact, have a duty to provide a safe sporting experience for participants and spectators, then the project will have been successful.

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APPENDIX A**CODE SHEET FOR CASES**

1. Case:
Date:
Court:
2. General Information
Age:
Gender:
Sport:
Role:
3. Issue:
4. Brief Summary:
5. Defendant:
6. Decision:
7. Legal Principles:
8. Precedent Established:
9. Unusual Circumstances:

APPENDX B

TABLE OF PRIMARY CASES

- Bango v. Carteret Lions Club, 79 A. 2d 57 (1951).
- Benton v. Y.M.C.A. of Westfield, 47 New Jersey, Superior 372, 136 A. 2d 27 (1957).
- Berrum v. Powalis1, 317 P. 2d 1090 (1957).
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- Dillard v. Little League Baseball, Inc., 390 N.Y.S. 2d 735, 55 A.D. 2d 477 (1977).
- Diker v. City of St. Louis Park, 130 N.W. 2d 113 (1964).
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258 (1975).
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- Overall v. Kadella, 361 N.W. 2d 352 (1984).
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(1914).
- Pomeroy v. Little League Baseball of Collingswood, 142 New
Jersey Superior 471, 362 A. 2d 39, (1976).
- Reid v. Young Men's Christian Association of Peoria, 197
Illinois App. 2d 170, 246 N.E. 2d 20, (1969).
- Stafford v. Catholic Youth Organization (CYO), Louisiana
202 So. 2d 333 (1967).
- Swanson v. Wabash College, 504 N.E. 2d. 327 (1987).
- Watford v. Evening Star Newspaper Co. 211 F. 2d 31 (1954).
- Whipple v. Salvation Army, Oregon 495 P. 2d 739 (Oregon,
1972).

APPENDIX C

TABLE OF SECONDARY CASES

- Alpert v. Finkelstein, 344 N.Y.S. 3d 649, 42 A.D. 2d 515 (1973).
- Bell v. Presbytery of Boise, 421 P. 2d 745 (1966).
- Berger v. Miller, 241 F. Supp. 283 (E.D. Pennsylvania, 1965).
- Bourque v. Duplechin, 331 So. 2d 40 (1976).
- Burgert v. Tietjens, 499 F. 2d 1 (1974).
- Clark v. Goshen Sunday Morning Softball, 493 N.Y.S. 2d 262 (1985).
- City of Aurora v. Weeks, 384 P. 2d 90 (1963).
- Creamer v. Empire Fire and Marine Insurance Company, 405 So. 2d 651 (1974).
- Dandurand v. Chebanse Recreation Center, 8 Ill. App. 3d 508, 290 N.E. 2d 276 (1972).
- Erickson v. Lexington Baseball Club, Inc., 233 N.C. 627, 65 S.E. 2d 140 (1951).
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- Johnson v. County Arena, Inc., 29 Maryland App. 674, 349 A 2d 643 (1976).

- Kabella v. Bouschelle, 100 N.M. 461 (N.M. App. 1983), 672 p. 2d 490 (1983).
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- Klocek v. Y.M.C.A. of Metropolitan Milwaukee, 48 Wisconsin 2d 43, 179 N.W. 2d 83, (1970).
- Kirby v. Columbian Institute, 101 New Jersey Supp. 205, 243 A. 2d 853 (1968).
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- Langheim v. Denison Fire Department Swimming Pool Association 21 N.W. 2d 295 (Iowa, 1946).
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- Novak v. Lamar Insurance Company, 488 So. 2d 739 (Louisiana, 1986).
- Rice v. Amusement Enterprises, 461 S.W. 2d 490 (Texas, 1970).
- Schmerz v. Salon, 272 N.Y.S. 2d 404, 26 A.D. 2d 691 (1966).
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- Stanley v. Board of Education of the City of Chicago, 9 Illinois App. 3d 963, 293 N.E. 2d 417 (1972).
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Terracciona v. Magee, 53 New Jersey Superior 557, 148 A. 2d 68, (1959).

Young v. Ross, 127 New Jersey 1, 211, 21 A 2d 762, (1941).

Wagenschnur v. Green Acres Recreation Association, 196 A. 2d 401 (Delaware).

Waloman v. Y.M.C.A. of Janesville, 277 N.W. 634 (Wisconsin, 1938).

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Y.M.C.A. v. Bailey, 112 Georgia App. 684, 146 S.E. 2d 342, (1965).

APPENDIX DSummary Sheet for Case Analysis

1. Case: Bango v. Carteret Lion's Club
Date: February 20, 1951
Court: 79 A 2d (Supreme Court of New Jersey Appellate Division)
2. General Information
Age: Adult
Gender: Male
Sport: Soap Box Derby
Role: Spectator
3. Issue: Negligence
4. Brief Summary: 13 year old boy in race lost control going down hill and ran into plaintiff causing injury.
5. Defendant: Sponsor of the race, Carteret Lion's Club
6. Decision: Affirmed judgment of lower court in favor of defendant.
7. Legal Principles: Duty owed to protect patrons.
8. Precedent Established: none
9. Unusual Circumstances: none

Summary Sheet for Case Analysis

1. Case: Berrum v. Powalisz
Date: November 25, 1957
Court: Supreme Court of Nevada

2. General Information
Age: Adult
Gender: Female
Sport: Softball
Role: Spectator

3. Issue: Assumption of Risk. Duty of anticipating or foreseeing the possible occurrence.

4. Brief Summary: Spectator injured by bat that flew through hole in screen.

5. Defendant: Owner of the Lewis Berrum Field.

6. Decision: Owners of field liable for spectator's injuries.

7. Legal Principles: Foreseeability.

8. Precedent Established: Assumption of risk requires actual knowledge

9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Carey v. Toles
Date: June 27, 1967
Court: Court of Appeals of Michigan
2. General Information
Age: 15
Gender: Male
Sport: Baseball
Role: Participant
3. Issue: Assumption of risk, contributory negligence.
4. Brief Summary: During baseball game defendant threw his bat and injured plaintiff seeking damages.
5. Defendant: Jury ruled in favor of defendant
6. Decision: Reversed and remanded for new trial.
7. Legal Principles: Contributory negligence not assumption of risk was issue.
8. Precedent Established: None
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Christianson v. Haeqer
Date: April 9, 1954
Court: Supreme Court of Minnesota
2. General Information
Age: Adult
Gender: Male
Sport: Baseball
Role: Spectator
3. Issue: Sufficient supervision of crowd
4. Brief Summary: Assault and battery on spectator
5. Defendant: Nonprofit recreational association
6. Decision: Jury ruled no assault, thus no claim against defendant.
7. Legal Principles: Duty owed patrons reasonable care.
8. Precedent Established: None
9. Unusual Circumstances: There was no assault, and plaintiff had no argument against defendant.

Summary Sheet for Case Analysis

1. Case: Curtiss v. Young Men's Christian Association of Lower Columbia Basin
Date: July 12, 1973
Court: Supreme Court of Washington

2. General Information
Age: 17
Gender: Female
Sport: Gymnastics
Role: Participant

3. Issue: Product Liability

4. Brief Summary: Charlene Curtiss engaged in a maneuver called "sole circle" at top bar of set of parallel bars which separated and she fell.

5. Defendant: Burden of proof was upon plaintiff in strict liability personal injury action to show that product was in defective condition when it left manufacturer.

6. Decision: Affirmed--damages \$100,000--rehearing.

7. Legal Principles: Manufacturer was liable

8. Precedent Established: Equipment supervisor followed directions and was not held liable.

9. Unusual Circumstances: Plaintiff won but wanted more money.

Summary Sheet for Case Analysis

1. Case: Diker v. City of St. Louis Park
Date: July 17, 1964
Court: Supreme Court of Minnesota
2. General Information
Age: 10
Gender: Male
Sport: Hockey
Role: Participant
3. Issue: Negligence
4. Brief Summary: 10 year old goalie froze and was hit in the face.
5. Defendant: Did not provide supervision or equipment (City of St. Louis Park)
6. Decision: Reversed and granted new trial
7. Legal Principles: Affirmative duty to make facility safe
8. Precedent Established: None
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Dillard v. Little League Baseball, Inc.
Date: January 21, 1977
Court: Supreme Court, Appellate Division
2. General Information
Age: Adult
Gender: Male
Sport: Baseball
Role: Umpire-Participant
3. Issue: Negligence
4. Brief Summary: Baseball umpire was hit and injured by a wild pitch.
5. Defendant: Little League Baseball, Inc.
6. Decision: Affirmed lower court decision that plaintiff had assumed the risk.
7. Legal Principles: Awareness, skill and experience are factors determining assumption.
8. Precedent Established: Assumption of Risk
9. Unusual Circumstances: Plaintiff could not prove that it was common practice by little leagues to provide personal protective equipment.

Summary Sheet for Case Analysis

1. Case: Foster v. Houston General Insurance Company
Date: November 2, 1981
Court: Court of Appeal of Louisiana
2. General Information
Age: 17
Gender: Male
Sport: Basketball
Role: Participant
3. Issue: Supervision
4. Brief Summary: Special Olympics team going to practice, Robert Foster ran into street and was killed.
5. Defendant: Houston General Insurance Company, two supervisors
6. Decision: In favor of plaintiff
7. Legal Principles: Contributory negligence, not established.
8. Precedent Established: Adolescents might act impulsively, should have foreseen danger. Better supervision would have prevented injury.
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Gaspard v. Grain Dealers Mutual Insurance Co.
Date: June 19, 1961
Court: Court of Appeal, Louisiana
2. General Information
Age: 12
Gender: Male
Sport: Baseball
Role: Participant
3. Issue: Negligence
4. Brief Summary: Batter had bat slip and hit another player near bench.
5. Defendant: Batter's insurance company
6. Decision: Evidence established that defendant was not negligent.
7. Legal Principles: Assumption of risk. Defendant not guilty of negligence.
8. Precedent Established: Children are not to be judged as adults.
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Griggas v. Clauson
Date: August 9, 1955
Court: Appellate Court of Illinois
2. General Information
Age: 19
Gender: Male
Sport: Basketball
Role: Participant
3. Issue: Assault and battery
4. Brief Summary: Defendant hit plaintiff during basketball game.
5. Defendant: LaVerne Clauson
6. Decision: Affirmed, for plaintiff \$2,000 damages.
7. Legal Principles: Maliciously, wantonly and willfully and without provocation assaulted plaintiff.
8. Precedent Established: Assault and battery may be committed in an athletic contest.
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Howard v. Village of Chisholm
Date: March 23, 1934
Court: Supreme Court of Minnesota

2. General Information
Age: 17
Gender: Male
Sport: Hockey
Role: Participant

3. Issue: Negligence of Village

4. Brief Summary: Spectators fell on hockey player when balcony railing gave way.

5. Defendant: Village of Chisholm

6. Decision: Judgment affirmed question of damages. Negligent construction and maintenance.

7. Legal Principles: Duty owed to participants using a facility.

8. Precedent Established: City has responsibility to provide safe facilities.

9. Unusual Circumstances: Issue of Governmental Immunity was not raised.

Summary Sheet for Case Analysis

1. Case: Jackson v. Cartwright School District and Cartwright Little League, Inc.
Date: January 8, 1980
Court: Court of Appeals of Arizona
2. General Information
Age: Adult
Gender: Female
Sport: Baseball
Role: Spectator
3. Issue: Recovery for injuries sustained on an exit ramp.
4. Brief Summary: Una Jackson was injured leaving a Little League game.
5. Defendant: School District and Cartwright Little League Inc.
6. Decision: Ramp was not unreasonably dangerous, Little League did not control the ramp.
7. Legal Principles: Assumption of Risk
8. Precedent Established: Little League was not responsible for maintenance and upkeep of ramp.
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Kanofsky v. Brooklyn Jewish Center
Date: November 20, 1934
Court: Appellate Division of Supreme Court
2. General Information
Age: 12
Gender: Female
Sport: Gymnastics
Role: Participant
3. Issue: Negligence
4. Brief Summary: During gymnastic practice plaintiff jumped over a buck, fell and broke her arm.
5. Defendant: Brooklyn Jewish Center
6. Decision: For defendant, affirmed lower court.
7. Legal Principles: Contributory negligence and assumption of risk.
8. Precedent Established: Assumption of Risk
9. Unusual Circumstances: No negligence was proved on defendant's part.

Summary Sheet for Case Analysis

1. Case Kozera v. Town of Hamburg
Date: November 2, 1972
Court: Supreme Court, Appellate Division, New York

2. General Information
Age: Adult
Gender: Male
Sport: Baseball
Role: Spectator

3. Issue: Inadequate facilities, equipment, improper supervision.

4. Brief Summary: Father on bench preceding Little League game was hit in eye.

5. Defendant: Municipal corporation.

6. Decision: Father assumed risk. Complaint dismissed.

7. Legal Principles: A participant accepts dangers inherent in an athletic event.

8. Precedent Established: None

9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Loosier v. Youth Baseball and Softball, Inc.
Date: April 11, 1986
Court: Appellate Court of Illinois

2. General Information
Age: 11
Gender: Male
Sport: Baseball
Role: Participant

3. Issue: Negligence

4. Brief Summary: A player was struck by a truck while selling raffle tickets.

5. Defendant: Youth Baseball and Softball Organization

6. Decision: Affirmed in part, reversed on part lower court ruling.

7. Legal Principles: Duty of supervision depended on public policy and social requirements.

8. Precedent Established: Volunteer coaches are not obligated to supervise team members all the time.

9. Unusual Circumstances: Child was in control of parents at time of accident.

Summary Sheet for Case Analysis

1. Case: Mann v. Nutrilite, Inc.
Date: November 3, 1955
Court: District Court of Appeal, 4th District
California

2. General Information
Age: Adult
Gender: Female
Sport: Softball
Role: Chaperone

3. Issue: Assumption of Risk

4. Brief Summary: Volunteer chaperone injured by thrown ball during warm up.

5. Defendant: Nutrilite, Inc. team sponsor

6. Decision: Plaintiff assumed risk

7. Legal Principles: Failure to instruct

8. Precedent Established: Natural risk assumed by spectators at ball game

9. Unusual Circumstances: Failure of coach to instruct players to shout warning.

Summary Sheet for Case Analysis

1. Case: Murphy v. Jarvis Chevrolet Company
Date: April 25, 1941
Court: 34 N.E. 2d 872 (Appellate Court of Illinois,
Second District)

2. General Information
Age: Unknown--adult
Gender: Male
Sport: Soap Box Derby
Role: Spectator

3. Issue: Negligence

4. Brief Summary: Spectators were injured by soap box
derby racer.

5. Defendant: Sponsors of the race, Jarvis Chevrolet
Company

6. Decision: Judgments reversed and causes remanded

7. Legal Principles: Contributory negligence

8. Precedent Established: None

9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Nabozny v. Barnhill
Date: July 23, 1975
Court: Appellate Court of Illinois

2. General Information
Age: 15
Gender: Male
Sport: Soccer
Role: Participant

3. Issue: Legal protection in a competitive athletic contest.

4. Brief Summary: Nabozny, a soccer goalie, was kicked by another player while in the penalty area.

5. Defendant: Barnhill, kicked the goalie in the head causing serious injury.

6. Decision: Appellate Court reversed the circuit court and ruled plaintiff was entitled to legal protection.

7. Legal Principles: Assumption of risk, contributory negligence.

8. Precedent Established: Restraints of civilization must accompany each athlete onto playing field.

9. Unusual Circumstances: Game played under "FIFA" rules.

Summary Sheet for Case Analysis

1. Case: O'Bryan v. O'Connor
Date: November 3, 1977
Court: Supreme Court, Appellate Division

2. General Information
Age: 14
Gender: Male
Sport: Baseball
Role: Participant

3. Issue: Supervision

4. Brief Summary: Group of boys entered Dolton Little League field and began to play home run derby, plaintiff hit in face by bat.

5. Defendant: National Little League of Albany, Inc.

6. Decision: Affirmed, Little League was not liable.

7. Legal Principles: Assumption of risk and supervision

8. Precedent Established: There was no duty owed to supervise the field after hours.

9. Unusual Circumstances: Supervision or lack of, did not cause injury.

Summary Sheet for Case Analysis

1. Case: Overall v. Kadella
Date: October 16, 1984
Court: Court of Appeals (Michigan)

2. General Information
Age: 16
Gender: Male
Sport: Hockey
Role: Participant

3. Issue: Liable for injuries. Assault and battery.

4. Brief Summary: Plaintiff was struck in eye by defendant during fight after a hockey game was over.

5. Defendant: Steve Kadella

6. Decision: Awarded \$46,000 to the plaintiff, affirmed lower court ruling.

7. Legal Principles: Intentional injury which goes beyond the rules of the game is assault and battery.

8. Precedent Established: Violation of league rules resulted in liability for injuries.

9. Unusual Circumstances: Michigan Amateur Hockey Association rules designed to stop violence.

Summary Sheet for Case Analysis

1. Case: Paine v. Young Men's Christian Association
Date: May 27, 1940
Court: Supreme Court of New Hampshire

2. General Information
Age: 18
Gender: Male
Sport: Basketball
Role: Participant

3. Issue: Assumption of risk

4. Brief Summary: Substitute player entered game and was injured on bleachers near the floor.

5. Defendant: YMCA

6. Decision: Voluntarily encountered a known danger without precautions.

7. Legal Principles: Defendant was not negligent in placing bleachers near the floor.

8. Precedent Established: Assumed risk

9. Unusual Circumstances: Trial for plaintiff, Supreme Court judgment for defendant.

Summary Sheet for Case Analysis

1. Case: Parmentier v. McGinnis
Date: June 17, 1914
Court: Supreme Court of Wisconsin
2. General Information
Age: 17
Gender: Male
Sport: Boxing
Role: Participant
3. Issue: Liability of boxer for death of opponent in ring.
4. Brief Summary: Boxing exhibition between 5th and 6th round plaintiff collapsed and died.
5. Defendant: Participant, promoter, referee, and two spectators.
6. Decision: Dismissed the complaint
7. Legal Principles: Liability for damages
8. Precedent Established: Assumption of risk
9. Unusual Circumstances: Fight vs. Exhibition, number of defendants

Summary Sheet for Case Analysis

1. Case: Pomeroy v. Little League Baseball of Collingswood
Date: June 18, 1976
Court: Superior Court of New Jersey Appellate Division
2. General Information
Age: Adult
Gender: Female
Sport: Baseball
Role: Spectator
3. Issue: Liability
4. Brief Summary: Plaintiff injured when bleachers collapsed.
5. Defendant: Little League Baseball of Collingswood
6. Decision: For defendant
7. Legal Principles: Charitable Immunity
8. Precedent Established: Spectator at Little League game is beneficiary of defendant's work
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case Reid v. Young Men's Christian Association of Peoria
Date: March 13, 1969
Court: Appellate Court of Illinois

2. General Information
Age: 11
Gender: Male
Sport: Boxing
Role: Participant

3. Issue: Negligence

4. Brief Summary: Plaintiff was injured when equipment was dropped on his head.

5. Defendant: YMCA had duty of supervision. Injury was foreseeable and result of inadequate supervision.

6. Decision: Judgment affirmed in favor of plaintiff.

7. Legal Principles: Foreseeability and proximate cause.

8. Precedent Established: Duties of an organization entrusted with the care of children is similar to parents.

9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Stafford v. Catholic Youth Organization (CYO)
Date: June 30, 1967
Court: Court of Appeal of Louisiana

2. General Information
Age: 12
Gender: Male
Sport: Wrestling
Role: Spectator

3. Issue: Assumption of Risk

4. Brief Summary: Plaintiff sitting at edge of mat was caught up in the action and broke a leg. Charged instructor was negligent.

5. Defendant: CYO/Aetna Insurance Company

6. Decision: Reversed and dismissed.

7. Legal Principles: Contributory negligence

8. Precedent Established: None

9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Watford v. Evening Star Newspaper Company
Date: January 8, 1954
Court: 211 F. 2d 31 (U.S. Court of Appeals)
2. General Information
Age: 6
Gender: Male
Sport: Soap Box Derby
Role: Spectator
3. Issue: Negligence
4. Brief Summary: 12 year old driver lost control and ran into 6 year old spectator.
5. Defendant: Sponsor of race, Watford Evening Star Newspaper
6. Decision: Reversed and remanded for new trial
7. Legal Principles: Spectator could rightfully assume promoters would take reasonable precautions
8. Precedent Established: None
9. Unusual Circumstances: None

Summary Sheet for Case Analysis

1. Case: Whipple v. Salvation Army
Date: April 4, 1972
Court: Supreme Court of Oregon

2. General Information
Age: 16
Gender: Male
Sport: Football
Role: Participant

3. Issue: Negligence of defendant

4. Brief Summary: 15 year old plaintiff suffered knee injury in tackle football game

5. Defendant: Salvation Army, accused of negligent supervision

6. Decision: Affirmed lower court ruling for defendant

7. Legal Principles: Assumption of risk

8. Precedent Established: Negligent conduct must cause injury for negligence to exist.

9. Unusual Circumstances: Supervisor was negligent but his negligence did not cause injury.

APPENDIX E**BILL OF RIGHTS FOR YOUNG ATHLETES**

The right to participate in sports.

The right to participate at a level commensurate with each student's developmental level.

The right to have qualified adult leadership.

The right to participate in safe and healthy environments.

The right of students to share in the leadership and decision-making of their sport participation.

The right to play as a student and not as an adult.

The right to proper preparation for participation in sports.

The right to an equal opportunity to strive for success.

The right to be treated with dignity.

The right to have fun in sport.

(Children and Youth in Action. 1980).

APPENDIX F

99th Congress 1st Session

H.R. 3756

To limit the civil liability of certain persons associated with non profit sports programs.

IN THE HOUSE OF REPRESENTATIVES

November 13, 1985

Mr. Gekas introduced the following bill, which was referred to the Committee on the Judiciary.

A BILL

To limit the civil liability of certain persons associated with nonprofit sports programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
Section 1. Short Title.

This Act may be cited as the "Nonprofit Sports Liability Limitation Act."

Section 2. Limitation on Liability of Nonprofit Sports Programs

(a) Uncompensated Qualified Staff - Any person who renders services without compensation as a member of the qualified staff of a nonprofit sports program shall not be liable under the laws of the United States or of any State for civil damages resulting from a negligent act or omission of such qualified member occurring in the performance of duty of such qualified member.

(b) Sponsors and Operators - Any person who sponsors

or operates a nonprofit sports program shall not be liable under the laws of the United States or of any State for civil damages resulting from any negligent act or omission:

- (1) of any person who renders services without compensation as a member of the qualified staff of a nonprofit sports program; and
- (2) occurring in the performance of any duty of such qualified member.

Section 3. Definitions.

For purposes of this Act:

- (1) The term "compensation" does not include:
 - (A) any gift; or
 - (B) any reimbursement for any reasonable expense incurred for the benefit of a nonprofit sports program.
- (2) The term "member of the qualified staff" means any person who:
 - (A) is a manager, coach, umpire or referee;
 - (B) an assistant to a manager, coach, umpire, or referee; or
 - (C) prepares any playing field for any practice session or any formal game.
- (3) The term "negligent act or omission" shall be defined in accordance with applicable State law,

except that such definition may not include any reckless act or omission.

(4) The term "nonprofit sports program" means any program (whether or not it is registered with or recognized by any State or any political subdivision of any State)

(A) that is in competitive sport formally recognized as a sport, on the date the cause of action to which this Act applies, by the Amateur Athletic Union or the National Collegiate Athletic Association;

(B) that is organized for recreational purposes and whose activities are substantially for such purposes; and

(C) no part of whose net earnings inures to the benefit of any private person.

(5) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Section 4. Applicability.

This Act shall apply to any cause of action arising

after the expiration of the ninety-day period beginning on the date of the enactment of this Act.

Prior Printer's Nos. 2071, 3130, 3246

Printer No. 3304

The General Assembly of Pennsylvania

HOUSE BILL

No. 1625 Session of 1985

Introduced by Plick, Pievsky, Fox, Maiale, Cimini, Chadwick, Haluska, Nahill, Distler, Godshall, Battisto, Merry, Carlson, Gladeck, Fargo, Vroon, Argail, Greenwood, J.L. Wright, Scheetz, Langtry, Belfanti, O'Brien, Markosek, Wilson, A.C. Foster, Jr., Pitts, Dorr, Civera, Fischer, Bowser, Saurman, Hershey, Morris, Noye, Bush, E.Z. Taylor, Coy Olasx, Phillips, Howlett, Petrone, Veon, Budy, Robbins, Kenney, Mayernik, Cowell, Micozzie, Weston, Black, B. Smith and Kasonic, September 18, 1985

As amended on third consideration, House of Representatives, April 16, 1986.

An Act

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for a manager, coach, umpire or referee and nonprofit association negligence standard in the conduct of certain sports programs: AND PROVIDING A NEGLIGENCE STANDARD FOR OFFICERS, DIRECTORS AND TRUSTEES OF NONPROFIT ORGANIZATIONS.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding section to read: 8332.1. Manager, coach, umpire or referee and nonprofit association negligence standard.

(a) General Rule--Except as provided otherwise in this section, no person who, without compensation and as a volun-

teer, renders services as a manager, coach, instructor, umpire or referee or who, without compensation and as a volunteer, assists a manager, coach, instructor, umpire or referee in a sports program of a nonprofit association, and no nonprofit association, or any officer or employee thereof, conducting or sponsoring a sports program, shall be liable to any person for any civil damages as a result of any acts of omissions in rendering such services or in conducting or sponsoring such sports program unless the conduct of such person or nonprofit association falls substantially below the standards generally practiced and accepted in like circumstances by similar persons or similar nonprofit association rendering such services or conducting or sponsoring such sports programs and unless it is shown that such person or nonprofit association did an act or omitted the doing of an act which such person or nonprofit association was under a recognized duty to another to do, knowing or having reason to know that such an act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of such person or nonprofit association fell below ordinary standards of care.

(b) Exceptions.

(1) Nothing in this section shall be construed as affecting or modifying the liability of such person or nonprofit association for any of the following:

(i) Acts or omissions relating to the transportation of participants in a sports program or others to or from a game, event or practice.

(ii) Acts of omissions relating to the care and maintenance of real estate unrelated to the practice or playing areas which such persons or nonprofit associations own, possess or control.

(2) Nothing in this section shall be construed as affecting or modifying any existing legal basis for determining the liability, or any defense thereto, of any person not covered by the standard of negligence established by this section.

(c) Assumption of risk or contributory fault-- Nothing in this section shall be construed as affecting or modifying the doctrine of assumption of risk or contributory fault on the part of the participant.

(d) Definitions--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Compensation." The term shall not include reimbursement for reasonable expenses actually incurred or to be incurred or, solely in the case of umpires or referees, a modest honorarius.

"Nonprofit association." An entity which is organized as a nonprofit corporation or nonprofit

unincorporated association under the laws of this Commonwealth or the United States or any entity which is authorized to do business in this Commonwealth as a nonprofit corporation or unincorporated association under the laws of this Commonwealth, including, but not limited to, youth or athletic associations, volunteer fire, ambulance, religious, charitable, fraternal, veterans, civic, county fair or agricultural associations, or any separately chartered auxiliary of the foregoing, if organized and operated on a nonprofit basis.

"Sports Program." Baseball (including softball), football, basketball, soccer and any other competitive sport formally recognized as a sport by the United States Olympic Committee as specified by and under the jurisdiction of the Amateur Sports Act of 1978 (Public Law 95-606, 36 U.S.C. 371 et seq.), the Amateur Athletic Union or the National Collegiate Athletic Association. The term shall be limited to a program or that portion of a program that is organized for recreational purposes and whose activities are substantially for such purposes which is primarily for participation or the competitive season, whichever is longer. There shall,

however, be no age limitation for programs operated for the physically handicapped or mentally retarded.

8332.2. Officer, Director or Trustee or Nonprofit Organization Negligence Standard

(A) General Rule.--Except as provided otherwise in this section, no person who serves without compensation other than reimbursement for actual expenses, as an officer, director or trustee of any nonprofit organization under Section 501 (c)(3) of the internal revenue code of 1954 (68A STAT. 3, 26 U.S.C. 501 (c)(3) shall be liable for any civil damages as a result of any acts or omissions relating solely to the performance of his duties as an officer, director or trustee unless the conduct of the person falls substantially below the standards generally practiced and accepted in like circumstances by similar persons performing the same or similar duties and unless it is shown that the person did an act or omitted the doing of an act which the person was under a recognized duty to another to do. Knowing or having reason to know that the act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of the person fell below the ordinary standards of care.

(B) Exception--Nothing in this section shall be construed as affecting or modifying any existing legal basis

for determining the liability, or any defense thereto, of any nonprofit association.

Section 2. This act shall take affect immediately.

National Association of Sports Officials

MODEL LEGISLATION

LIMITED CIVIL LIABILITY FOR SPORTS OFFICIALS

SECTION 1. Sports officials who officiate athletic contests at any level of competition in this State shall not be liable to any person or entity in any civil action for injuries or damages claimed to have arisen by virtue of actions or inactions related in any manner to officiating duties within the confines of the athletic facility at which the athletic contest is played.

SECTION 2. Sports officials are defined as those individuals who serve as referees, umpires, linesmen, and those who serve in similar capacities but may be known by other titles and are duly registered or members of a local, state, regional or national organization which is engaged in part in providing education and training to sports officials.

SECTION 3. Nothing in this law shall be deemed to grant the protection set forth to sports officials who cause injury or damage to a person or entity by actions or inactions which are intentional, willful, wanton, reckless, malicious or grossly negligent.

SECTION 4. This law shall take effect immediately and shall apply to all lawsuits filed after the effective date of this law, including those which allege actions or inactions of

sports officials which occurred prior to the effective date of this law.

APPENDIX G

RANDOM SURVEY OF NATIONAL, STATE AND
LOCAL YOUTH SPORT AGENCIES

Ahoskie Parks & Recreation
City Hall
205 W, Main Street
Ahoskie, NC 27190

National Council on
Youth Sport
1000 Skokie Drive
Wilmette, IL 60091
Justine Townsend Smith

American Coaching
Effectiveness Program
Box 5076
Champaign, IL 61820

National Youth Sport
Coaches Association
2611 Old Okeechobee Rd.
West Palm Beach, FL 33409
Mike Fall

Babe Ruth Baseball
1770 Brunswick Avenue
PO Box 5000
Trenton, NJ 08638
Ronnie Tolleson

Pony Baseball
PO Box 225
Washington, PA 15301
Abraham Key
Roy Gillespie

Face Guards, Inc.
4754 Old Rocky Mount Rd.
PO Box 8425
Roanoke, VA 24014

Product Liability--Sports
200 Castlewood Drive
North Palm Beach, FL 33408
Richard Feldman

Franklin YMCA
300 Crescent Drive
PO Box 581
Franklin, VA 23851

Tar Heel Baseball Association
PO Box 1244
Sanford, NC 27331
Jimmy Gaines

Greensboro Parks & Recreation
Drawer 2
Greensboro, NC 27401
Dick Witt

United States Gymnastics Fed.
Pan American Plaza
Suite 300, 201 S. Capitol Ave.
Indianapolis, IN 46225
Cathey Kelley

Ice Skating Inst. of America
1000 Skokie Boulevard
Wilmette, IL 60091

YMCA
2701 Wade Hampton Blvd.
Greenville, SC 29615
Ray Adams

Little Scholars, Inc.
1315 Walnut Street Bldg.
Philadelphia, PA 19107
Jim Taft

Little League Baseball
International Headquarters
Williamsport, PA 17701

National Association for
Sport & Physical Education
1900 Association Drive
Reston, VA 22091
Beth O'Conner