

## JUNE 2002 NRPA LAW REVIEW

### INJURED LITTLE LEAGUER LOST FLY BALL IN THE SETTING SUN

James C. Kozlowski, J.D., Ph.D.

© 2002 James C. Kozlowski

As a general rule, coaches or instructors in sports and recreation do not have a duty to protect participants against inherent risks in an activity. Rather, their legal duty is limited to providing adequate instruction, reasonable supervision, necessary equipment, and appropriate matching of participants in a manner which does not increase the risks to a participant over and above those inherent in the sport.

As illustrated by the case of *West v. Sundown Little League of Stockton, Inc.*, No. C038642 (Cal.App. Dist.3 02/20/2002), changing lighting conditions, including losing a ball in the sun, are inherent risks in the sport of baseball which all participants necessarily assume. In this particular case, ten-year-old Brandon West was warming up with a few of his teammates in the outfield before a Little League game. His coach threw him a pop fly. West lost the ball in the setting sun. It hit him in the eye and caused serious injury. The facts of the case were as follows:

In the spring of 1997, Brandon West was 10 years old. He was playing his first year on a Little League organized "hardball" baseball team, although he had previously played "softball" baseball in a physical education class and with his friends.

West's team was a Minor "A" team -- the second step up after T-Ball in his league. T-Ball is the most basic level of baseball in the Sundown Little League. It is for children between five and seven years old. The players use a soft, pliable baseball. They hit the ball off a batting tee using a special T- Ball bat. Minor "A" is for children between nine and twelve years old. The players pitch the ball. All other Little League rules in the Official Regulations and Playing Rules Book govern this level of play. While the minor league is "instructional," there is still a certain amount of competitiveness inherent to the game itself.

West claimed he could play baseball as well as any of the other players on his team. Prior to the day he was injured, West had participated in numerous practices, played in two practice games and played in several official games. Normally, West played pitcher or at first base.

The league's safety officer brought information to the Sundown Little League board that flip-up shatter-proof sunglasses would offer protection from losing the ball in the sun, but the board decided against purchasing these glasses based upon their cost.

## JUNE 2002 NRPA LAW REVIEW

Prior to the accident, no one in the league told West or his parents shatter-proof flip-up type sunglasses could be good protection from eye injuries. West also had heard an umpire, who was also a coach, state that sunglasses were not allowed during games. Based on unknown statements made to West's mother by coaches and the above-quoted language from the application, West's mother "believed that her son was not allowed to use any type of equipment other than that provided to him by the team."

West was injured on May 30, 1997. Just before the scheduled game that day, West's team was on the field. The other team was in its dugout. West was scheduled to play outfield. Coach Hughes stood on the third base line approximately halfway between third base and the outfield fence. He sent some of his players, including West, to center field to take fly ball practice. The sun was shining and located somewhere behind Coach Hughes as he faced center field. Thus, the boys in center field were facing the afternoon sun as they were taking practice.

The league's safety officer had warned coaches against hitting practice fly balls into the sun. Coach Hughes testified he was throwing warm-ups, not intentionally trying to get the boys to practice catching a fly ball that might get lost in the sun. Nevertheless, Coach Hughes believed West was sufficiently skilled to deal with losing a high fly ball in the sun. Prior to his injury, West had not received instruction as to how to deal with balls lost in the sun.

West was either the second or third boy in line for this drill. One of the first two caught the ball thrown from Coach Hughes; the other lost the ball in the sun. As Coach Hughes threw the ill-fated ball, West saw it but lost the ball in the sun while it was still going up. The ball came down and struck him in the left eye, causing permanent injury to the eye.

West filed his complaint against the defendants, including his local league, Little League Baseball Incorporated, and the coaches and agents of the league (Dennis Hughes, Ed Krager, and Bob Whitaker). The complaint alleged the defendants had negligently increased the risk of harm to West by their actions.

An expert witness testified on West's behalf arguing Coach Hughes "significantly enhanced" and "maximized" the inherent risk of losing the ball in the sun by the physical configuration of the practice drill. Moreover, plaintiff's expert claimed that "Coach Hughes knew or should have known that catching pop flies in the sun was a skill beyond the level of first year minor league players." According to West's expert witness, "players need to know how to protect their heads and faces while looking for the ball. Indeed, even professional ball players wearing flip-up sunglasses are at some risk doing this

## JUNE 2002 NRPA LAW REVIEW

activity; making ten-year-old children attempt this feat without any training or eye protection is extremely negligent."

The defendants denied any liability, claiming West had assumed the risk of injury under the circumstances of this case. The trial court agreed that West's complaint was barred by the assumption of risk defense. In the opinion of the trial court, "being struck by a baseball, losing it in the sun, and changing lighting conditions are inherent risks of the sport of baseball." Moreover, the trial court concluded "the defendants had no duty to affirmatively decrease any of these inherent risks, and defendants actions did not increase these inherent risks." Accordingly, the trial court granted defendants' motion for summary judgment, effectively dismissing West's negligence claims. West appealed.

### PARTICIPANTS ASSUME INHERENT RISKS

On appeal, West argued that "the trial court erred in finding that as a matter of law the defense of primary assumption of risk applied to the particular conduct and defendants in question" As described by the appeals court, "[p]rimary assumption of risk arises where a plaintiff voluntarily participates in an activity or sport involving certain inherent risks; primary assumption of risk bars recovery because no duty of care is owed as to such risks."

In the opinion of the appeals court, "[l]osing a fly ball in the sun and being hit by it is an inherent risk of baseball assumed by all players whether it happens during little league warm-ups or during Game 7 of the Major League World Series":

Baseball is played under various lighting conditions, even during the day. On a bright sunny day, the position of the ball relative to the sun can result in an increased risk of being hit by either a thrown or batted ball. Changing lighting conditions are inherent in the sport...

The juxtaposition of the sun and a baseball, either in practice, during pre-game warm-ups or during a game, is an inherent risk in the game. Being hit by that same ball after it disappears into the sun is a risk of the game. Many a pop fly has disappeared in the sun to a player on the ground. Sometimes it falls harmlessly away from the player. Other times, the ball bounces off the player's mitt. And sometimes, it hits the player trying valiantly to fight off the glare of the sun. Tragically, in this case, the ball caused a serious injury. Nothing the coach or the league, or Little League Baseball Incorporated, did, however, increased these fundamental risks inherent in baseball.

Furthermore, the appeals court found "the league and its coaches had no obligation to provide

## JUNE 2002 NRPA LAW REVIEW

additional safety equipment to its players,” specifically, flip-up shatter-proof sunglasses to offer protection from losing the ball in the sun. Rather, as described by the court, “[t]heir obligation was to not increase the risk of the game, not to affirmatively protect the players by providing non-standard equipment to its fielders.”

There is no duty to provide additional safety equipment over that normally worn by the team. To impose the duty to provide such equipment on schools and other supervisors and organizers of such sport in order to avoid liability for injuries inherent in the rough and tumble of such activity would have enormous social and economic consequences. The opportunities to participate in organized [sports]... would be significantly diminished.

On appeal, West had reiterated his claim that “the coach should have known that catching pop flies in the sun is a skill beyond the level of first year minor league players.” As characterized by the appeals court, West’s negligence claim focused “on the level of play of the minor league as a ground to avoid applying primary assumption of risk.” The appeals court rejected this argument. According to the appeals court, “losing sight of a pop fly in the sun is a risk inherent in baseball no matter what the level of play.”

There is nothing legally significant, however, about the level of play of the "minor leagues" of Little League baseball versus other levels of play. Minor league teams can be just as competitive as major league teams, as shown by the testimony of the league's safety officer. Anyone who has been to a Little League ballpark on a Saturday morning can attest to that fact. Fly balls occur in every level of baseball. The ball is the object of the game and hitting it as hard and far as you can is often the key to scoring runs.

### RECKLESS DRILL?

On appeal, West's had further contended that “the set-up of this drill constituted recklessness or risk-increasing conduct for which liability should attach.” The appeals court, however, found that this drill conformed to “the general proposition that a defendant owes a duty not to increase the risks inherent in the sport.”

In this drill, the coach duplicated a common scenario under which the game is played. It is not sound public policy to encourage coaches not to practice this common situation and allow his players to experience it for the first time under the stress of game conditions...

The simple fact remains, three inherent components of the sport of baseball are the ball,

## JUNE 2002 NRPA LAW REVIEW

the player and the sun. These three components mix frequently. Lining up these kids for this drill did not create extraordinarily dangerous conditions for which the coaches, the league or Little League Incorporated are liable.

Moreover, in the opinion of the appeals court, “placing baseball players in practice or warm-up situations that replicate game conditions does not, as a matter of law, increase the risk over and above that inherent in the sport.”

It is not legally significant that this accident happened during a pre-game warm-up drill rather than during the game itself. A major purpose of practice and warm-up drills is to place the players in situations that replicate game conditions to enable and encourage the participants to play the game as it should be played. In their practices, coaches and instructors may make mistakes. Where those mistakes are not outside the range of ordinary activity for the sport, the coaches are not liable if injuries result from their missteps.

Under such circumstances, the appeals court found that “[c]oaches must be free to push their players to levels that may, in hindsight, be beyond the student's abilities.”

Instruction in an activity... necessarily requires pushing a student to move more quickly, attempt a new move, or take some other action that the student previously may not have attempted. That an instructor might ask a student to do more than the student can manage is an inherent risk of the activity. Absent evidence of recklessness, or other risk-increasing conduct, liability should not be imposed simply because an instructor asked the student to take action beyond what, with hindsight, is found to have been the student's abilities. To hold otherwise would discourage instructors from requiring students to stretch, and thus to learn, and would have a generally deleterious effect on the sport as a whole. To instruct is to challenge, and the very nature of challenge is that it will not always be met..

An instructor, however, is not an insurer of the student's safety. Instructors have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport. Under primary assumption of risk, the defendant has a duty not to increase the risks inherent in the sport, not a duty to decrease the risks.

Having found that West assumed the risk of injury under the circumstances of this particular case, the appeals court affirmed the judgment of the trial court in favor of defendants.