Assumption of Risk Doctrine Bars New York Sports Injury Lawsuits - Part 2 (Baseball)

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New York courts have long held that people taking part in a sport or recreational activity are deemed to consent to those commonly appreciated risks or injuries that are inherent in and arise out of the nature of the sport generally. In other words, **most sports injury cases will be dismissed because of the doctrine known as assumption of risk.**

Previously, **here**, we discussed the difficulty of winning sports injury lawsuits in New York brought by schoolboys in a wrestling match and a floor hockey game as well as a spectator at a soccer game. **Now, we look at lawsuits by players and fans injured during baseball games and practices. These plaintiffs fare just as poorly as those in other sports.**

The most recent decision in a baseball case dealt with the claim by a **spectator** at a professional game at Keyspan Park, the minor league field of the New York Mets. On July 22, 2005, Gerard Elie, a season ticket holder with seats 15 feet off the third base line, was watching the visiting New Jersey Cardinals warm up - they were swinging bats and hitting baseballs to other players. Somehow, **one of the players' bats flew into the seats** and struck Elie in the nose. He sued. He lost. In **Elie v. City of New York**, the judge granted the summary judgment motion by the defendants (the city as owner of the park, both ball clubs and the player himself). He stated that Mr. Elie was a seasoned spectator of baseball and that he assumed the risk of many dangers, including the danger of being struck by a loose bat. Case dismissed.

By the way, if you wonder why at major league ballparks the coaches and ball boys often **hand** a used played ball to fans clamoring for them instead of tossing the ball, it's because of people like Giacinto Pira, a 35 year old fan in the third row at a New York Mets game back in 1999. He wasn't paying attention when a Mets pitcher tossed a ball to some fans, one of whom tipped the ball causing it to hit Pira in the nose. The ballplayer apologized and gave Pira an autographed ball. Pira then sued the Mets! And after having his case dismissed by the trial judge on assumption of risk grounds, Pira took it a step further and appealed. He lost again, in **Pira v.**

Sterling Equities, Inc., d/b/a The New York Metropolitans, and now you know why at most stadiums the fans have balls handed to them - so the teams don't have lawsuits thrown at them.

This lucky fan got a souvenir, wasn't hurt and didn't sue anyone:

In another recent case, a New York appeals court upheld the trial judge's dismissal of a case brought by a 15 year old boy for injuries he sustained during a **Little League practice**. Thomas Goodwin placed himself between two ongoing games of catch when he was **struck on the forehead by a ball thrown by one of his teammates**. In **Godwin v. Russi**, the court noted that Thomas, an experienced baseball player, a member of his high school team, arrived late to practice and walked, without putting his glove on, into the area other players were already warming up and tossing the ball around.

In a case that aroused a great deal of interest this summer, a Staten Island boy's mother sued on his behalf for knee injuries the boy sustained sliding into second base during a **Little League game**. The case, **Gonzalez v. New Springsville Little League** (Supreme Court, Richmond County; Index # 101879/07), was settled for **$125,000** and has generated a great deal of notoriety for example from **Rick Reilly of ESPN The Magazine**, **Walter Olson at Overlawyered** and **Justin Rebello at Lawyers USA**. It appears that then 12 year old Martin Gonzalez's suit was based on negligent coaching (i.e., allegations that Martin hadn't been taught the proper sliding mechanics) and improper equipment (i.e., allegations that the base itself was stationery and not detachable or moveable).

The injuries in the Gonzalez case - torn ligament and meniscus requiring two surgeries - are serious enough to warrant a settlement or verdict in the low to mid six figure range; however, it's the liability concept that has aroused so many and angered some. Only **Eric Turkewitz at New York Personal Injury Law Blog** appears sympathetic, suggesting that there may have been a valid failure to use break-away bases claim that led the league to settle.

We will continue to follow assumption of risk cases in general and sports injury cases in particular. Some of the types of cases that are being or will be litigated include those brought by professional athletes for dangerous playing field conditions, amateur baseball players claiming metal bats are inherently dangerous and kids injured at public batting cages. And, no doubt, we will revisit the Little League case settlement and the issues underlying it.