Another New York School Sports Injury Lawsuit Dismissal Upheld on Appeal

Posted on February 15, 2010 by John Hochfelder

Personal injury **lawyers are often asked, "Can I sue?"** I always answer, "Yes, of course." But the real question is **whether the inquiring plaintiff will win and in school sports injury lawsuits the answer is almost always, "No way."**

Time and again school kids are injured playing football, basketball, baseball and other sports in competition or just in gym class. And, too often, their parents, urged on by lawyers, end up suing school coaches and gym teachers on the theory that some obligation owed to the student was breached by the school personnel.

I say "too often" because **most of these cases are dismissed before trial.** And that's just what happened in the latest such case arising out of Pleasantville, New York - a bucolic village in Westchester County near the Hudson River established in 1695.

PLEASANTVILLE
SETTLED IN 1695 - STATE OF NEW YORK

On March 17, 2006, then 12 year old Sean Bramswig, a 7th grader, was playing **floor hockey in middle school gym class** when a teammate accidentally struck him in the mouth with a plastic hockey stick. They had just scored a goal and were at half-court for the ensuing face-off when Sean was hit.

Here's what a face-off looks like in floor hockey:

Sean's parents brought a lawsuit for their son's injuries (described below) asserting claims that the school was:

1. negligent in its supervision and instruction of students with respect to hockey equipment and play and
2. negligent in failing to provide Sean with proper safety equipment

After a year and a half of proceedings in **Bramswig v. Pleasantville Middle School**, including the depositions of Sean and his parents, the gym teacher and other school personnel, and after both sides hired expensive so called recreational activity experts, the **school district asked the judge to toss the suit**. In making a motion for summary judgment, **the defendants asserted that:**

- there were no significant factual disputes between the parties that needed a jury determination
- legal principles and precedent established that defendants could not be liable since there were two teachers supervising the game
- there was no horseplay or fooling around when the incident occurred
- the incident was so sudden that no amount of supervision, however intense, would have succeeded in preventing it
- the kids were given protective goggles and mouth guards were not required

The judge pretty much agreed with the defense. He dismissed that portion of the case that was based on negligence in failing to require mouth guards. That was easy (and that claim should never have been asserted) because of clear and recent precedent - the case of **Walker v. Comack School District** (2nd Dept. 1996) already established that goggles are enough protection and schools need not provide mouth guards to students playing floor hockey.

As to the claim of negligent instruction, though, the judge allowed the case to proceed. It was undisputed that the teachers had advised the kids they were not to "high stick" but the judge agreed with the plaintiffs that the teacher may have failed to properly instruct the students about the differences and dangers involved in high sticking above one's knees versus high sticking above one's waist.

On the defendants' appeal, **the appellate judges dismissed the only remaining aspect of the case (negligent instruction)**. Since Sean was struck by a teammate who high sticked above his waist, the court reasoned that it mattered not at all whether the kids were told of any distinction between high sticking above the knees or the waist.

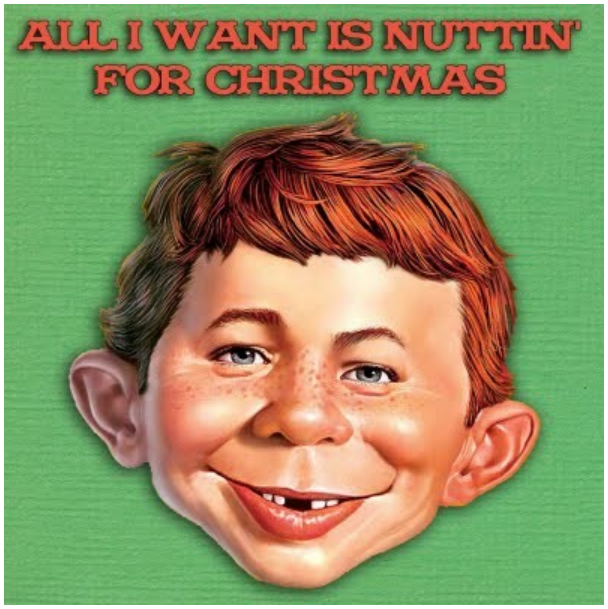
This entire case should never have been commenced. It should have been clear to the plaintiffs' attorneys that it was a loser. Winning sports injury cases in New York is hard enough under almost any set of facts, as we discussed **here**.

To boot, though, **Sean's injuries just weren't all that severe** (and his medical expenses were submitted to insurance). According to Sean's bill of particulars (in which one is required to specify injuries), Sean's **injuries** were:

- four front teeth which were "pushed backwards" and required oral surgery to be stabilized.

- a cut lip and stitches
- missed almost two weeks of gym class

The lawsuit was finally dismissed in full by the appeals court just three days before Christmas when many kids were hoping simply for two front teeth:



Inside Information:

Plaintiffs' attorneys are well-known as a "**defense firm**" - one that represents insurance companies in the defense of bodily injury lawsuits. On rare occasions (when the injury is quite severe and the liability of the defendant quite obvious), a defense firm will represent a plaintiff. One wonders why, though, **Shaub, Ahmuty, Citrin & Spratt** ever took on this case (i.e., one with minimal injuries and little prospect of proving fault on the defendants' part). I suspect it had to do with a pre-existing personal relationship with the parents. The firm would have been better served by taking a pass on this case.