

**MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN**

Attorneys At Law

**AN OVERVIEW
OF
PENNSYLVANIA CASES ON "NO DUTY" AND
RELEASE IN SPORTS AND AMUSEMENT MATTER**

**Lary I. Zucker, Esq.
Marshall, Dennehey, Warner, Coleman & Goggin**

1845 Walnut Street
Philadelphia, PA 19103
LIZucker@mdwccg.com
Phone: 856-414-6001
Fax: 856-414-6077
Cell: 856-816-8876

THESE MATERIALS AND THE ADVICE GIVEN AT THIS SEMINAR ARE PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE, WORK PRODUCT DOCTRINE AND ARE OTHERWISE NOT DISCOVERABLE.

© ALL RIGHTS RESERVED. NO PART OF THIS PUBLICATION MAY BE COPIED, REPRODUCED OR REPUBLISHED WITHOUT THE WRITTEN PERMISSION OF THE WRITER. NOTHING IN THIS PUBLICATION IS INTENDED OR SHOULD BE REGARDED AS ADVICE TO ANY PARTICULAR PERSON OR ENTITY ON ANY PARTICULAR MATTER OR ISSUE. THE OPINIONS SUMMARIZED MAY BE REVISED, WITHDRAWN OR OVERRULED BY THE COURTS, AND THE AUTHOR AND OUR FIRM MAKE NO REPRESENTATION AND UNDERTAKE NO OBLIGATION REGARDING THEIR OFFICIAL OR UNOFFICIAL STATUS.

I. INTRODUCTION

You may wish to consider the defenses of "no duty" and release when presented with a Pennsylvania sports and amusement claim. Both of these defenses are well established in the Pennsylvania sports and amusement arena and are powerful tools to employ when presented with a Pennsylvania claim. Pennsylvania courts continue to apply these defenses resulting in the dismissal of cases. You may be able to avoid paying some of these claims or negotiating a favorable result by using these defenses.

II. NO DUTY

Pennsylvania case law is clear regarding cases involving places of amusement and sporting venues where a Plaintiff alleges nothing more than injuries caused by a risk inherent in the activity in question. Pennsylvania courts have consistently held that spectators and participants at such events assume the risk inherent in the game or activity, and therefore, there is "no duty" to protect the patron from such dangers.

The no duty rule was set forth in Jones v. Three Rivers Management Corp., 394 A.2d 546 (Pa. 1978) by the Pennsylvania Supreme Court. In Jones, the Court actually allowed the Plaintiff to recover for injuries suffered when she was hit by a baseball during the first game at Three Rivers Stadium in Pittsburgh. Recovery was allowed only because the Plaintiff was struck while standing in a shielded concourse behind right field during an early and unexpected batting practice. However, in addressing the liability of the stadium operator, the Jones Court explained the background of the "no duty" rule. The Court noted:

There are...settled principles which apply to all cases involving a place of amusement for which admission is charged. An operator of such an establishment is not an insurer of his patrons. Evidence that an injured party was exposed in the stands of a baseball game to the predictable risk of batted balls is not sufficient to establish

prima facie, a breach of the standard of care owed to a baseball patron by a stadium operator. Id.

Since Jones, the "no duty" principle continues to be applied by Pennsylvania Courts and has actually been broadened. You may be able to take a more aggressive approach in evaluating a claim. Last month, the Philadelphia Court of Common Pleas applied the "no duty" rule to deny a spectator's injury claim after being hit by a foul ball during a Philadelphia Phillies game. Pakett v. Phillies, L.P., 2005 Pa. Commw. LEXIS 156 (Pa. Commw. Ct. Mar. 29, 2005). The "no duty" defense has also been extended to skiing and to the spectator of a hockey game who was seated behind protective plexiglass. See, Hughes v. Seven Springs Farm, Inc., 762 A.2d 339 (Pa. 2000) (skier struck from behind by another skier, denied recovery against ski resort because of the inherent risks associated with skiing as a matter of law); Petrongola v. Comcast Spectator, L.P., 789 A.2d 204 (Pa. Super. 2001), appeal denied 803 A.2d 736 (2002) (spectator at a hockey game assumes the risk of being hit by a hockey puck during the regular play of the game, even in an instance where the claimant was seated behind protective plexiglass intended to avoid injury).

These cases are just an overview. More and more claims in Pennsylvania are subject to the "no duty" defense. You may be able to avoid paying some of these claims or negotiating a more favorable result with this tool.

III. RELEASE

The defense of release/waiver card is also a powerful defense in Pennsylvania. Your initial investigation is very important here. Critical evidence including a signed waiver card and video footage must be identified and preserved to increase the likelihood of success.

Generally, Pennsylvania courts will dismiss a claim filed by an adult based upon the defense of signed release/waiver card so long as the release/waiver card meets three conditions. Top Copy Products, Inc. vs. Singletary, 626 A.2d 98 (Pa. 1993); Princeton Sportswear

Corporation vs. H&M Associates, 507 A.2d 339 (Pa. 1986); Stock vs. WOW Family Fun Center, et al., July Term, 1998 No. 2772. First, the release/waiver card must not contravene public policy. Second, the contract must be between persons relating entirely to their own private affairs. Third, each party must be a free bargaining agent to the agreement so that the contract is not one of adhesion. Top Copy Products, Inc. vs. Singletary; Princeton Sportswear Corporation vs. H&M Associates; Stock vs. WOW Family Fun Center, et al. There are a number of cases discussing the nuances of these requirements, which we can provide you. Pennsylvania courts though have readily applied the defense of release/waiver card.

For example, in Stock, the Pennsylvania Superior Court in a 1998 unpublished decision, analyzed the waiver card of WOW Family Fun Center. The Court observed that the waiver card set forth in bold typed letters "ASSUMPTION OF RISK AND COMPLETE RELEASE" The Court concluded that the waiver card was clear and unambiguous. The Court granted WOW's Motion for Summary Judgment and dismissed Plaintiff's complaint. Interestingly, the Court even applied the defense of release/waiver card although the waiver card was signed approximately two weeks earlier during a prior visit.

These cases are also just an overview. Many claims in Pennsylvania are also subject to the defense of release/waiver card. You will need to secure the critical evidence. You can successfully use this defense when handling a claim.

IV. CONCLUSION

The defenses of "no duty" and release are powerful defense tools in Pennsylvania including in sports and amusement claims. Your initial investigation is very important. You may be able to avoid paying some Pennsylvania claims or negotiating a favorable result by using these defenses.