

CLEAR DIRECTION IN
COMPLEX CASES

Attorneys

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Town Immune for Student Injured by Errant Shot Put During High School Track Meet

Notable PDP Victories

***Nicole Algeri v. Town of Reading* , Middlesex Superior Court, C.A. No. 2014-00281 (February 14, 2017)**

PDP prevailed on a motion for judgment on the pleadings on behalf of the firm's client, the Town of Reading, a student who was struck in the head by her teammate's practice shot put throw before a high school track meet. The case arises from an accident involving a student at the Town's high school, who claimed that she suffered a head injury during a track meet.

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The plaintiff sued the Town for negligence, alleging that the school failed to properly supervise the shot put event. She claimed that the school "armed" students with shot puts outside of a sanctioned area and in violation of the Massachusetts Claims Act, G.L. c. 258, sec. 1, *et seq.*

The Town moved to dismiss the Complaint on the grounds it was immune under Section 10(j) of the Massachusetts Claims Act to prevent or diminish the harmful consequences of a condition or situation not originally caused by the employee.

Superior Court Justice Helene Kazanjian dismissed the plaintiff's complaint, ruling that Section 10(j) applied to protect her from the harmful consequences (i.e., a head injury) of a condition or situation (another student throwing a shot put) that caused her injury. She ruled in favor of the Town because it did not engage in an affirmative act which "originally caused" the harmful condition or situation. The Town's failure to prevent the student-athletes from warming up for a track meet outside of a designated throwing area. In reaching her decision, Justice Kazanjian stated:

Here, the allegation is merely that the shot puts were located in a prohibited area at the time of the incident and that the plaintiff threw it in the direction of Algeri. There is no allegation that the Town instructed, encouraged or even permitted the students to have access to them, was not the condition or situation that caused Algeri's injury. Rather, the condition or situation that materially caused Algeri's injury.

This decision is also notable as yet another instance distinguishable from the Appeals Court opinion in *Gennari*, which held that Section 10(j) "was intended to provide some substantial measure of immunity from tort liability to government entities."

As previously reported in our newsletters, in *Gennari*, the Appeals Court held that Section 10(j) immunity was not applicable because the defendant's "affirmative decision" to conduct recess in an unsafe, concrete courtyard was the "original cause" of the student's injury.

Declining to follow *Gennari*, the Superior Court here rejected plaintiff's contention that merely placing the shot puts in a prohibited area that negated the Town's entitlement to immunity.