

Section 10(j) Shields Town From Liability For Bowling Pin Accident

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In a Rule 1:28 Decision, the Appeals Court affirmed that municipalities are immune from suit and liability to negligence claims based on injuries it did not originally cause. This case arises from an injury sustained by a second grade public school student who, at the end of a physical education class, crossed two toy plastic bowling pins on the floor, stepped on one of the pins, and popped it into his own face. The student filed suit in Essex Superior Court, alleging the Town was negligent in its maintenance and staffing of the school, its failure to adequately supervise the students, and its failure to provide the students with proper instruction. The Superior Court (Welch, J.) granted summary judgment in the Town's favor, holding the Town immune from plaintiff's negligent maintenance and staffing theory under G.L. c. 258, § 10(b) (the so-called "discretionary function" exception), and from the plaintiff's other two negligence theories under G.L. c. 258, § 10(j) (the so-called "public duty" rule). PD&P attorneys represented the Town.

The Appeals Court (Green, Smith & Fecteau, JJ.) affirmed the summary judgment granted to the Town, albeit on slightly different grounds. Choosing not to address Section 10(b), the Appeals Court instead held the Town immune from all three of plaintiff's claims (negligent maintenance and staffing, inadequate supervision of students, and failure to provide proper instruction) under Section 10(j), which bars any negligence claim against a municipality based on an act (or a failure to act) to prevent or diminish the harmful consequences of a condition or situation not originally caused by the municipality or its employees. Although the plaintiff argued that the affirmative acts of two physical education teachers in selecting the bowling game as part of the second grade physical education curriculum constituted the original cause of plaintiff's injuries, the Appeals Court was unconvinced, relying instead on the Town's arguments in support of the application of Section 10(j). This ruling illustrates the utility of Section 10(j) as a viable defense for public schools faced not only with lawsuits involving injuries inflicted by the tortious conduct of third parties, but also involving students injured by their own actions.