

## 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, when the Middlesex Superior Court ordered dismissal of a negligence claim brought by a former student who was struck in the head by her teammate's shot put throw before a high school track meet. The outcome of the case bolsters the strength of municipal immunity under the Massachusetts Tort Claims Act, G.L. c. 258, §§ 1, *et seq.*

The case arises from an accident involving a student at the Town's high school, who claimed that she suffered a serious head injury when a teammate threw a shot put in a prohibited area during warmups before a track meet.

The plaintiff sued the Town for negligence, alleging that the school failed to properly supervise the shot put event by allowing its athletes to warm up outside a designated area. At oral argument, the plaintiff expanded her claim and alleged that the school "armed" students with shot puts outside of a sanctioned area and in violation of Massachusetts Interscholastic Athletic Association rules and regulations.

The Town moved to dismiss the Complaint on the ground it was immune under Section 10(j) of the Massachusetts Torts Claims Act ("MTCA"), which bars claims against public employers based upon their failure to prevent or diminish the harmful consequences of a condition or situation not originally caused by the employer, including the "violent or tortious conduct of a third party." G.L. c. 258, § 10(j).

Superior Court Justice Helene Kazanjian dismissed the plaintiff's complaint, ruling that Section 10(j) applied to protect the Town from suit and liability. The student's claim was based on the Town's alleged failure to protect her from the harmful consequences (i.e., a head injury) of a condition or situation (another student throwing a shot put during practice before a track meet). The Court reasoned that the Town was immune from such a claim because it did not engage in an affirmative act which "originally caused" the harmful condition or situation, and under Section 10(j) the Town is not subject to liability based solely on its alleged failure to prevent the student-athletes from warming up for a track meet outside of a designated throwing area. In reaching its decision, the Court reasoned:

Here, the allegation is merely that the shot puts were located in a prohibited area at the time of the incident and that the coach was not supervising the teammate adequately when she picked one up and threw it in the direction of Algeri. There is no allegation that the Town instructed, encouraged or even allowed the students to warm-up or practice in that area .... The mere placing of shot puts where students had access to them, was not the condition or situation that caused Algeri's injury. Rather, the teammate's decision to pick-up and throw the shot put in a prohibited area was the specific 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 v. Reading Public Schools*, 77 Mass. App. Ct. 762 (2010), which disregarded the SJC's guidance that Section 10(j) "was intended to



provide some substantial measure of immunity from tort liability to government employers.”

As previously reported in our newsletters, in *Gennari*, the Appeals Court held that Section 10(j) immunity was unavailable to a public school for a claim brought against it by a first-grader who was injured during recess when he was accidentally pushed from behind by a fellow student, causing him to fall and strike his face against a concrete bench. Specifically, in *Gennari*, the Appeals Court reasoned that the principal’s “affirmative decision” to conduct recess in an unsafe, concrete courtyard was the “original cause” of the student’s injuries, thereby divesting the school of Section 10(j) protection.

Declining to follow *Gennari*, the Superior Court here rejected plaintiff’s contention that merely placing the shot puts on the ground before the meet began in an allegedly prohibited area was an “affirmative decision” that negated the Town’s entitlement to immunity.