

From the field to the court

Unsportsmanlike conduct can result in court penalties

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B&S Guest Writer

(Editor's Note: This is the first of a three-part series which will examine the liability of fellow players (this month) and other parties (next month) for such injuries. The third article will assess responsibility for injuries to spectators.)

Softball, like most sports, has its dangers. Balls, and sometimes bats, fly. Players slide into and collide with each other. Occasionally, someone gets injured, possibly causing pain, medical expenses and other losses.

When such an unfortunate event happens, the question arises: Who, or whose insurance company, is responsible?

Generally speaking, to assert a valid claim against another player, the injured person must show that the other player did not meet or "breached" some required "duty of care."

To determine what care was required, courts often look to the rules of the game as to when a duty of care arises. The violation of a rule designed to protect participants may subject the violator to liability for any resulting injury.

For example, a Louisiana case imposed liability on a runner who deliberately ran into a second baseman, who was standing four or five feet from the base. Following the second baseman's throw to first base on an attempted double play, the runner, who had been at first, ran full speed into the second baseman. The runner hit the infielder under the chin with his arm in an attempt to block his view of first base and keep him from executing the double play.

The court ruled that the runner's conduct constituted a breach of his duty to play the game in the ordinary manner and not to engage in unsportsmanlike conduct, causing injuries.

On the other hand, the law recognizes several "defenses" against a claim for injuries to a fellow player.

First, the general rule is that voluntary participants in sports such as softball "assume the risks" incident to the contest which are obvious and foreseeable.

For this defense to be applicable, it must be clear that the person assuming the risk had (1) actual knowledge of the danger and (2) an appreciation of its character. Courts would likely conclude that most regular softball players have such knowledge and appreciation of ordinary dangers of the game.

However, a player generally only assumes the risk of unintentional injuries suffered at the hands (or feet) of another. He or she does not assume the risk of injuries inflicted either intentionally or as a result of reckless disregard for the injured party's safety.

In the Louisiana case discussed earlier, the court agreed that the second baseman may have assumed the risk of being spiked by a player sliding into second base. The court ruled, however, that he did not assume the risk of a runner going out of his way to collide with him at full speed at a point far from the base. A player does not assume risks resulting from the unexpected and unsportsmanlike conduct of fellow players.

A second possible defense to a lawsuit for injuries, associated with the assumption of risk, is the doctrine of "consent." Some courts rule that an injured player may, by his very act of participating, have implicitly consented to those bodily contacts permitted by the rules of the game. Thus, the

"consent" need not be specifically or verbally given.

Applying these principles, a New York court ruled that a softball player struck in the eye by a ball thrown by a teammate during pre-game warm-up could not recover from his errant teammate. The court noted that the injured player had voluntarily consented by par-

ticipating in the injury-causing warm-up activities.

A third possible defense to a lawsuit for injuries is "contributory negligence." Recovery for damages may be barred if the injured player either accepted an unreasonable risk or failed to exercise his duty of care after having accepted a reasonable risk. Jurisdictions differ as to whether the

negligence of the injured party bars all recovery or just a part of it.

Next month we will examine the liability of third parties for injuries suffered by a player.

(Lawrence Savell is a lawyer in New York City. This column provides general information and is not intended as a substitute for consulting an attorney.) ■