

Risk Management

Forestieri v. Urban Recreation Ltd. 2015 BCSC 249

This case is of significant interest from a risk management point of view even though it does not actually involve a local government. It demonstrates the importance of proper implementation of risk management policy, and the ease in which improper implementation can lead to liability.

Factual Background

The Plaintiff, Mr. Forestieri, was a PhD student playing in a co-ed recreational soccer league called "Urban Rec". During a game between his team and a team from the Defendant Fairleigh Dickson University ("FDU"), he was injured when an unknown FDU player slide tackled him. Mr. Forestieri sued Urban Rec, FDU, an employee of FDU named Arlette Hernandez who had served as team captain for the FDU team, and John Doe, the unknown player who had slide tackled him.

The action against Urban Rec resolved out of Court, apparently because Mr. Forestieri had signed a waiver at the time of registration, which released Urban Rec from any claims. The action against the other Defendants (the "FDU Defendants") came to a summary trial.

The other key facts were as follows:

- the Rules of the Urban Rec league prohibited slide tackling;
- all registered players had to indicate, prior to registration, that they had read the Rules;
- according to the Rules, team captains were responsible for ensuring that players knew the Rules;

- John Doe, the FDU player who slide tackled Mr. Forestieri, had not been registered on the FDU team;
- there was no evidence that John Doe had otherwise read the Rules or had them drawn to his attention.

Court's Analysis

Mr. Forestieri argued that the FDU Defendants were negligent in failing to ensure that John Doe had properly registered to play in Urban Rec and otherwise failing to bring to his attention the Rules. The Court agreed, finding that these failures fell below the standard of reasonable care. The Court also found, over the arguments of the Defendants to the contrary, that Mr. Forestieri's injuries were caused by the FDU Defendants' negligence, because as a result of that negligence John Doe probably did not know that slide tackling was against the Rules.

FDU was therefore liable for Mr. Forestieri's damages.

Commentary

For entities such as local governments that regularly operate recreational sports leagues or events in which the public participates, this case highlights the importance of the proper implementation of risk management policies.

In this case, Urban Rec's policy was that all players must be registered. One step in the registration process is that the player indicates that he or she has read the Rules of the league, and another step was that the player agreed to release Urban Rec from any claims. The policy seems, on its face, to be solid and thorough.

On the implementation side, however, it does not appear that Urban Rec took any steps to ensure that the players actually on the field had, in fact, registered. In the

factual circumstances of this case, Urban Rec got lucky – the injured player was registered and had, in the registration process, agreed to waive all claims against Urban Rec. The Plaintiff then turned to FDU, which was not protected by the waiver, for recovery.

It should be noted, though, that the injury could just as easily happened to an unregistered player, against whom Urban Rec would not have had the defence of the release.

When it comes to risk management policies, the devil is not necessarily in the details, but it certainly is in the implementation.

Please contact us should you wish to discuss the implications of this decision in more detail.