Risk Management: Sovereign Immunity and Campus Sports, Athletics, and Recreation

The principle of sovereign immunity is an ancient concept with far-reaching modern ramifications with respect to campus sports, athletics, and recreation. Sovereign immunity not only raises risk management issues in tort claims with these campus programs but also extends as far as the "umbrella" of these programs when considering actors/agents thereof, special events and event staff/volunteers, and partnerships with non-profit or private organizations.

Sovereign immunity, tracing back to monarchical governments, simply states that the king cannot be sued or "the king can do no wrong" (Batista & Shaunessy, 2003, p. 84). This concept has been incorporated into the United States government as the Eleventh Amendment to the U.S. Constitution protecting the federal and state governments from being sued (absolute immunity) with the exceptions of consent to suit (federal/state government consents to suit) or explicit waiver of immunity under strict conditions (Cole, 2013).

In 1946, the Federal Tort Claims Act limited federal sovereign immunity (i.e. limited waiver of immunity) in liability and negligence cases by entities (such as a federal employee) acting as an extension of the federal government (Cole, 2013). Likewise, individual states have adopted some form of State Tort Claims Act or State Claims Act (suit cannot be filed in civil court but instead with a claims commission or other structure designated to handle such issues) which limits state sovereign immunity in liability and negligence cases (Cole, 2013). The strict conditions by which the state or state actors may be brought to suit (limited waiver) vary from state to state. Additionally, states cap the amount (again varying state to state) of damages should they or their agents ever be held responsible (Hinson, 2014).

State educational institutions (e.g. elementary/high schools, colleges, and universities) and their sports/athletics/recreational programs may invoke state sovereign immunity protecting them from numerous liability and negligence claims especially regarding sports and other participatory injuries. Risk management programs at these institutions must not only consider the obvious athletic programs such as state football or basketball teams, but also subsidiaries including intramural sports, club sports, instructional sports, informal sports, and any special events arising from or sponsored by such subsidiaries (Fields & Young, 2010). Complementarily, any entity that might be partially tied to or partnered with a state entity must be very aware of its instrumentality status as part of their risk management package.

Fields and Young's (2010) review of tort law cases involving campus recreation revealed that "duty of care" and the scope thereof as one of the most challenged issues along with the participant's "assumption of risk". Another common point of contention is the state recreational user statute which limits a landowner's liability from other entities' activities on the said land (Fields and Young, 2010). A fourth common issue in tort litigation is the use and durability of waivers and similar "release" type documents (Fields and Young, 2010).

As part of risk management, states may elect to use commercial or self insurance (Cole, 2013). Most states maintain offices specifically to deal with risk management and the related financial/budgetary responsibilities (Cole, 2013). Entities deemed state actors or partnered with the state should also consider their involvement and coverage with regards to insurances.

The high profile case of Plancher v. University of Central Florida Athletics Association, Inc. (UCFAA) and University of Central Florida (UCF) is significant in demonstrating the importance of establishing which entities are considered state actors or status of instrumentality (Hinson, 2014). Ereck Plancher was participating in off-season football conditioning drills when he was helped off the field and placed under the care of the UCF athletic training staff. Plancher was treated for dehydration but his condition deteriorated and he subsequently passed. During inquiries, it was revealed that Plancher was diagnosed with sickle cell trait (SCT) by UCFAA (Hinson, 2014) prior to participation. The parents of Plancher filed suit against UCFAA and UCF for negligence, and the initial ruling awarded the Planchers $10 million (Hinson, 2014). UCFAA and UCF appealed all the way up to Florida's Fifth District Court of Appeal where their crux of defense claimed sovereign immunity. Florida's Fifth District Court of Appeal upheld UCFAA's instrumentality status (as an agent of the state of Florida and thus protected under sovereign immunity) and reduced the amount of damages from $10 million to $200,000 which was the state cap on claims (Hinson, 2014). The Planchers followed by appealing to the discretionary power of the Florida Supreme Court by filing a jurisdictional brief (Hinson, 2014). This case is still open, but it will no doubt set precedence regarding technicalities of state sovereign immunity.

References

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