

## **CLIENT ALERT: Massachusetts Court of Appeals Affirms Denial of Summary Judgment Under Tort Claims Act**

The Massachusetts Appeals Court recently held that the Massachusetts Tort Claims Act (“MTCA”) did not insulate a school district from liability for a first grader’s injury sustained during a recess period. *Gennari v. Reading Public Schools*, No. 09-P-644 (Mass. App. Ct. Sep. 27, 2010). Writing for a panel of three appeals court justices, Judge Peter J. Rubin affirmed the denial of the town of Reading’s request for summary judgment against the plaintiff.

According to the facts reported by the Court, the injury in question occurred when a Reading elementary school principal directed that a first-grade recess be conducted in a concrete area outside the school, rather than an indoor gymnasium with padded walls. The outdoor area contained a series of bench walls with sharp edges and corners. While racing around with his classmates, the plaintiff (then six years old) was pushed from behind by a fellow student. The plaintiff then fell into a bench wall, severely injuring his face.

The plaintiff sued the Reading Public Schools on a theory of negligence. Essentially, he argued that the principal’s decision to conduct recess in the concrete area proximately caused his injury. He brought his cause of action under section 2 of the MTCA, which mandates “[p]ublic employers shall be liable for injury ...caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment....” M.G.L. c. 258 § 2.

The town argued in response that two provisions of the MTCA prevented the plaintiff from recovering damages. Specifically: section 10(j) of the MTCA, which indemnifies employers when the conduct in question was not the original cause of the injury; and section 10(b) of the MTCA, which prevents recovery when a public employee performs a “discretionary function” that results in an injury. M.G.L. c. 258 §§ 10(b), 10(j).

These arguments failed to persuade the court. The opinion explained that “[t]he causal link between [the principal’s decision to hold recess in a particular location] and [the plaintiff’s] injury is not so remote that as a matter of law we can say the principal’s decision is not an ‘original cause’ of the injury within the meaning of [the MTCA].” Furthermore, “[d]ecisions that require some discretion, but that do not involve social, political, or economic policy considerations are not immunized by [the MTCA].” Accordingly, the court found that the case should proceed to a jury trial to determine whether the principal was negligent in choosing the described location for recess.

In light of this decision, municipalities should caution their employees to take care in selecting locations for recess and other activities for students under their supervision. The MTCA will provide some degree of protection; however, the Appeals Court has clearly explained that the statute will not act as blanket insulation against all negligence claims.

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