

Pa. Justices Question College's Duty In Football Injury Row

By **Matt Fair**

Law360, Harrisburg (December 5, 2018, 5:23 PM EST) -- Members of Pennsylvania's highest court suggested during oral arguments on Wednesday that a lower court went too far when it found that Lackawanna College owed a legal duty to provide qualified medical personnel at football practices after two would-be players were injured during tryouts.

Justice Max Baer said a Superior Court decision reviving a lawsuit against the Scranton-based school should have focused solely on whether the claims were barred under the terms of a waiver the two plaintiffs in the case signed before participating in tryouts.

Instead, he said, the appeals court had strayed into topics not addressed by the trial court in the case: namely, the extent of Lackawanna College's legal obligations to participants in athletic events.

"Somebody's going to have to explain to me how that issue is even before this court," Justice Baer said during Wednesday's hearing in Harrisburg. "They can't go to the next issue which the trial court didn't even decide."

The appeal stems from a March 2012 lawsuit filed by Augustus Feleccia and Justin Resch in the Lackawanna County Court of Common Pleas accusing the college of failing to staff intercollegiate football practices with qualified athletic trainers able to adequately respond to serious injuries.

According to court records, Feleccia suffered a fractured vertebrae during a football practice in March 2010 as he attempted to make a tackle with his head down. Resch suffered an injury to the nerves in his right shoulder later during the same practice.

Both men were treated at the scene by two individuals employed by the school as so-called first responders, neither of whom were certified athletic trainers.

A trial judge threw out the lawsuit in February 2016 after finding that the claims were barred by a waiver releasing the school for "any and all liability" for sports-related injuries.

The Superior Court revived the claims in February 2017 as it said the waiver did not clearly indicate that Lackawanna College was being relieved of liability for its acts of negligence, and there were substantial questions over whether the school's conduct went beyond the

realm of a standard negligence claim and into the realm of gross negligence.

But the appeals court went beyond the waiver as it also found that, based on the Third Circuit's attempt a quarter-century ago to predict how the Pennsylvania Supreme Court would decide the issue, Lackawanna College owed Feleccia and Resch a duty of care to "have qualified medical personnel available at the football tryout ... and to provide adequate treatment in the event that an intercollegiate student-athlete suffered a medical emergency."

Whether or not the claims were waived, however, Kleinbard LLC attorney Steven Engelmyer argued on behalf of Lackawanna College on Wednesday that the Superior Court had failed to undertake the required analysis for imposing a previously unrecognized duty on a defendant.

"No court in this commonwealth has ever imposed a specific, delineated duty telling colleges that, not only do you have a duty to take care of your student-athletes, but in order to satisfy that duty in the context of a football program you must have qualified medical personnel at your practices," Engelmyer said.

Engelmyer added that whether Lackawanna College's conduct crossed into the territory of gross negligence was of no matter, because Pennsylvania did allow plaintiffs to plead gross negligence as its own independent cause of action.

"If the waiver applies to negligence, it also applies to gross negligence," he said.

Daniel Siegel, an attorney representing the student-athletes on appeal, argued that the Superior Court had not strayed beyond the bounds of the trial judge's decision in issuing its holding on Lackawanna College's duty.

Instead, he said the Superior Court's analysis of whether or not the lawsuit involved potentially waived claims of negligence required it to consider the scope of the school's responsibility to student-athletes.

"I believe their analysis in terms of the duty of care was how they reached their conclusion that the waiver was not enforceable as to negligence," he said. "The Superior Court did not impose a new duty on anyone. This case is about a party that assumed a duty to have trainers available and whether it did so appropriately."

The justices took the matter under advisement.

The student-athletes are represented by the Law Offices of Andrew P. Motel LLC and the Law Offices of Daniel J. Siegel LLC.

The college is represented by Eric Schreiner, Steven Engelmyer and Joshua Voss of Kleinbard LLC.

The case is Augustus Feleccia et al. v. Lackawanna College et al., case number 75 MAP 2017, before the Pennsylvania Supreme Court.

--Editing by Janice Carter Brown.

