

C&D's 17 Year Legal Odyssey Results in \$14.6 Million Trampoline Injury Settlement

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After 17 years and two Illinois Supreme Court opinions, the Chicago Board of Education and the Chicago Youth Centers finally agreed to settle yesterday, the day trial was scheduled to begin, a personal injury case filed on behalf of a student, who was injured after using a trampoline, for \$14,675,000.00 in front of Judge William D. Maddux, Presiding Judge of the Law Division of the Circuit Court of Cook County. The student was represented by [Thomas Demetrio](#) and [Susan Schwartz](#), partners at [Corboy & Demetrio](#).

On December 14, 1992, the 13 year-old eighth grade student at Bryn Mawr School (now known as Bouchet Academy), 7355 South Jeffrey Boulevard in Chicago, broke his neck and was rendered a quadriplegic when he struck his head performing a flip, while using a mini trampoline. He was injured during an extracurricular tumbling class, held during his lunch period, in the main gymnasium of his elementary school. The mini trampoline was owned by the Board of Education and stored in a locked closet. The tumbling class was conducted by James Collins, an employee of Chicago Youth Centers.

Demetrio and Schwartz, the student's attorneys, were prepared to present evidence that school districts all over the country had banned trampolines 10 to 15 years before Murray was injured and that the Board of Education should never have recently purchased the mini trampoline or permitted its use.

The lawsuit had a complicated and protracted judicial procedural history. At the trial level, there was a series of successive motions, including multiple motions to dismiss and motions for summary judgment, all of which had been denied by the trial court, until May 10, 2002, when summary judgment was entered in favor of defendants.

Attorneys

- Thomas A. Demetrio
- Susan J. Schwartz

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Defendants had asserted that they were entitled to absolute immunity for all discretionary and supervisory acts under sections 3-108(a) and 2-201 of the Tort Immunity Act. Plaintiff opposed these motions on numerous grounds, including the assertion that section 3-109(c)(2) of the Tort Immunity Act provides an exception for willful and wanton conduct during a hazardous recreational activity, which includes trampolining.

On appeal, the appellate court found that the trial judge had erred, specifically holding that section 3-109(c)(2) provides an exception to any immunity otherwise provided by the act and that there is no immunity for willful or wanton misconduct by a public entity or its employee that proximately causes an injury to an individual participating in a hazardous recreational activity.

Despite this holding, the appellate court nevertheless affirmed the entry of summary judgment, finding defendants' alleged behavior was not willful and wanton.

Curiously, when summary judgment had been entered by the trial court, defendants did not argue, and the trial judge did not decide, whether or not their conduct was willful and wanton. Plaintiff filed a petition for rehearing, asking the appellate court to take notice of the abundant evidence in the record and to apply a less restrictive definition of willful and wanton conduct. This petition was denied.

Plaintiff petitioned for leave to appeal, urging the Supreme Court of Illinois to find that the appellate court had applied an overly restrictive definition of willful and wanton conduct. Demetrio and Schwartz feared that if the appellate decision was allowed to stand, it would lead to harsh and unjust results in all cases under the Tort Immunity Act, as there would be no liability for willful and wanton acts that were reckless, rather than intentional.

Although the Supreme Court agreed to hear the case, relief for the Plaintiff was not immediate. Writing for the majority, now retired Justice Mary Ann McMorrow agreed that the trial judge erred in entering summary judgment on the basis that defendants were absolutely immune. The majority, tempered by a strong three member dissent, then held that willful and wanton conduct under the Tort Immunity Act required quasi intentional conduct, and defendants' conduct did not approach that degree of conduct.

Plaintiff immediately filed a petition for rehearing, asserting that the Supreme Court had announced a new definition of willful and wanton conduct, that would apply to all cases under the Tort Immunity Act, that was different from and in stark conflict with the historically recognized common law definition which had been set forth in many prior opinions of the court.

After a rare grant of rehearing, the Supreme Court reversed itself and rejected any limitation of willful and wanton conduct under the Tort Immunity Act to quasi intentional conduct. The court unequivocally held that willful and wanton conduct means a course of action which shows an actual or deliberate intention to cause harm or which, if not intentional, shows an utter indifference to or conscious disregard for the safety of others.

Writing for a unanimous court, Justice Thomas L. Kilbride observed that the Supreme Court has consistently applied the definition of willful and wanton conduct, as stated in IPI Civil 3d No. 14.01, to all cases, whether the underlying claim was based on a statutory immunity provision or common law. When the court compared the pattern jury instruction with the statutory definition under the immunity, they were virtually identical. The Supreme Court concluded that it was a question of fact for the jury as to whether or not the defendants' conduct was willful and wanton.

Demetrio stated that the evidence at trial would be un rebutted that the risk of spinal cord injury, including quadriplegia, from an improperly executed somersault while using a mini trampoline, was well known. According to Demetrio, "The utter indifference of the Board of Education for the safety of our client in allowing the use of a mini trampoline in this class, would have been absolutely clear. The class was supervised by a Chicago Youth Centers instructor who was not certified and did not have the qualifications to teach trampolining. Trained spotters and safety equipment, including appropriate landing mats and safety harnesses, were not provided, nor were any safety guidelines required by the United States Gymnastics Federation and set forth in their Safety Manual followed. "

The policy limits of two million dollars will be paid by the insurer for the instructor, James Collins, and his employer, Chicago Youth Centers. The remainder of the settlement will be paid by the Chicago Board of Education.