A GUIDE TO THE LEGAL LIABILITY OF COACHES FOR A SPORTS PARTICIPANT'S INJURIES*

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I. Introduction

This Article focuses on the legal liability of one of the most important and focal participants in sports, the coach.[1] The sal-

1. A "coach," in the athletic sense, is defined as a person who trains an athlete or a team of athletes. Webster's New Universal Unabridged Dictionary 282 (1989). *Compare* N.C.A.A. Operating Bylaws §§ 11.7.1 to 11.7.5.1.1.2 (1995-96) (delineating various gradings of coaches predicated upon compensation and responsibility). Despite the foregoing, a recent case illustrates that although most people might associate the meaning of a "coach" with a person of "authoritative" or "permanent" status, a person can be considered a "coach" for legal purposes even if that person only assumes that position for one isolated incident. *See, e.g.*, Hearon v. May, 540 N.W.2d 124 (Neb. 1995). In *Hearon*, a wrestling referee officiating a high school match "volunteered" to demonstrate a wrestling maneuver to the match's participants following the conclusion of the event. *Id.* at 127. The referee obtained the permission to demonstrate this maneuver from the coaches. *Id.* Upon demonstrating the maneuver to the group, the referee then instructed the group to pair off and practice the maneuver on each other. *Id.* at 128. The referee practiced with the plaintiff because the plaintiff had no partner. *Id.* During the execution of one of the drills, the referee caused the plaintiff to fall on his head instead of his hip or back, thus causing the plaintiff to sustain cervical injuries. *Id.* The plaintiff alleged that the referee had negligently supervised the drills, negligently instructed him with respect to the execution of the drill, and acted with "reckless disregard" for his safety. *Id.* The trial court granted the referee's motion for summary judgment and the plaintiff appealed. *Id.* at 129. On appeal, the issue was whether the referee was acting as a participant or an instructor. *Id.* at 130. The court stated that if the referee was found to have been acting as a participant, then he would only be liable if he acted in a "willful" manner with a "reckless disregard for the safety of another participant." *Id.* at 129-30. However,

aries attained by some coaches clearly illustrate their eminence in their respective sports.[2] At the amateur level,

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the court held that if the referee was acting as an instructor, then the case would be decided on negligence principles. *Id.* at 130. In this regard, the court stated:

> Although [the referee] was not the team coach, a high school teacher, or an official instructor, he did, after the wrestling meet, assume the role of instructor as to [the plaintiff]. [The referee] volunteered to instruct the high school wrestlers, and at the time [the plaintiff] received his injuries, [the referee] considered himself to be instructing [the plaintiff] on how to perform the [maneuver]. [The plaintiff's] high school coach and athletic director also viewed the post-wrestling-meet session as a time of instruction and practice led by a volunteer, [the referee].
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> [The plaintiff] stated in his deposition that as [the referee] increased his resistance to [the plaintiff's] attempted maneuvers, the drill simulated an actual wrestling match. [The plaintiff] also stated that increased resistance to maneuvers and continued practice of a maneuver are the routine forms of organized practice and coaching.
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> . . . .
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> The record reflects that [the plaintiff] was injured while [the referee] was instructing him on how to effectively participate in a contact sport.

Id.

2. Coaches such as Pat Riley, Jacques LeMaire, Mike Keenan, Don Nelson, and Don Shula (recently retired) have recently negotiated substantial contracts with their respective organizations which, in addition to salary, also include bonuses, incentives and even an ownership interest in the organization. *See, e.g., Around the NBA*, WASH. POST, Aug. 23, 1995, at B3 ("Pat Riley, who already has received a multiyear, multimillion-dollar contract offer from the Heat, also wants part ownership of the team . . . somewhere between 10 percent and 20 percent of the franchise."); *Don Shula Signs Pact - Acquires Minority Ownership*, ARIZONA REP., July 22, 1994, at D6 ("Don Shula signed a new contract . . . that will give him a minority ownership [of the Miami Dolphins.]").

For example, even before Mike Keenan signed with the St. Louis Blues, he had a substantial contract with the New York Rangers, whom he led to a Stanley Cup Championship in 1994 prior to going to the St. Louis Blues. *See, e.g.*, Mark A. Conrad, *Mike Keenan's Power Play - A Slap Shot Against the Rangers and a Slap on the Wrist by the NHL*, 5 SETON HALL J. SPORT L. 637 (1995). Conrad reports the terms of this contract as follows:

> Keenan's contract with the Rangers was indeed a lucrative one. Reflecting the team's desire to win the Cup, the then-owners of Madison Square Garden were ready to pay and pay big. The five year contract paid Keenan a rate starting at $750,000 for the first year, climbing to $850,000, $900,000, $950,000 and $1,000,000 annually for the next four years. Also included was a signing bonus of $660,875 and a loan of $400,000 or 75 percent of the cost of purchasing a residence in the New York Metropolitan area at a low interest rate of five percent per year. The agreement contained a substantial amount of incentive clauses. If the team attained these goals, Keenan would be paid the following:
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> Best overall record in the NHL - $50,000; or if the team finished second - $25,000; and
>
> [First in the eastern Conference - $40,000]
>
> [First in the division - $25,000]
>
> If the team participated in the NHL post-season playoffs, the bonuses came to the following:
>
> [Wins first round - $50,000]

coaches are generally recognized and responsible for the development of athletes as preparation for the next level of competition. At the professional level, a coach can be responsible for eliciting the most talent from their athletes, or for turning around a franchise and leading the team to a championship.[3]

However, beyond the glitz, glamour, and practical aspects of coaching is an issue plaguing coaches at all levels. This is the legal liability of coaches for injuries occurring to participants of their respective sport.[4] Coaches' liability is quickly

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> [Wins second round - $75,000]
> [Wins third round - $100,000]
> [Wins Stanley Cup - $200,000]
> [I]f Keenan received the "Coach of the Year" award - $25,000; if second - $12,000; third - $7,000.
> Additionally, the club was willing to provide an annuity of $50,000 per year commencing when he reached the age of 55 and continuing until his death.

Id. at 640-41 (footnotes omitted). For a good chronological history of Keenan's coaching history, *see* G. Smith, *Torn Asunder The Inner Conflicts That Drive St. Louis Blue Coach Mike Keenan To Succeed Also Make Him The Most Reviled Man In Hockey*, SPORTS ILLUSTRATED, May 8, 1995.

Such lucrative deals are by no means restricted to coaches at the professional level. For example, one commentator notes:

> The heightened visibility and mushrooming financial scale of intercollegiate athletics have created a new set of heroes whose exploits do not occur within the boundaries of the playing field. Athletic coaches - particularly football and basketball coaches at the National Collegiate Athletic Association (NCAA) Division I level - have become public figures whose private actions often constitute newsworthy events. In extreme cases the coach may be considerably more prominent than the university president, and an indication that the coach is seeking employment elsewhere may precipitate a statewide crisis. The most successful coaches receive massive salaries, collect substantial outside endorsement fees, and exercise autonomy in running their teams and athletic programs.

Steven G. Poskanzer, *Spotlight on the Coaching Box: The Role of the Athletic Coach Within the Academic Institution*, 16 J.C. & U.L. 1, 1 (1989)(footnotes omitted).

3. *See, e.g.*, Alex Carswell, *10 Reasons the Devils Won the Stanley Cup*, HOCKEY PLAYER MAG., Sept. 1995 (claiming Jacques Lemaire's coaching system and his motivational skills as significant factors in the New Jersey Devil's 1995 Stanley Cup victory); Michael Farber, *Sweeping Change After A Horrendous Start, The Montreal Canadiens Are Rolling, Thanks To A New Coach From The Old Days*, SPORTS ILLUSTRATED, Nov. 13, 1995 (discussing the Montreal Canadiens' competitive resurgence due to a recent coaching change); Michael Silver, *The Key Link At Its Best, The Relationship Between A Coach And His Quarterback Can Elevate A Team. At Its Worst, It Can Destroy An Entire Season*, SPORTS ILLUSTRATED, Sept. 4, 1995 (discussing key relationships between a coach and a quarterback and the effect of such relationships on the success of up and coming quarterbacks).

4. The legal liability issue invariably pertains more to coaches on the amateur level for obvious reasons. First, those coaches are not dealing with professional players who tend to be older, more skilled, and more experienced than their amateur counterparts.

approaching the forefront of concern, primarily due to increasing litigation resulting in massive verdicts[5] for participants injured as a result of the action or inaction of coaches.[6]

This Article will focus on legal actions brought primarily by injured athletes.[7] In addressing the liability of coaches in such

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Second, professionals are paid athletes and are usually insured for resulting injuries pertaining to the sport by their respective franchise.

5. For an example of coaches' liability resulting in large awards of damages, *see infra* notes 73-80 and accompanying text. *See also* Eugene C. Bjorklun, *Assumption of Risk and its Effect on School Liability for Athletic Injuries*, 55 EDUC. L. REP. 349 (1989). For example, Bjorklun notes:

> Multimillion-dollar damage awards to students injured while participating in athletic activities are not commonplace. They occur with enough regularity, however, that educators have become very aware that serious injuries bring about large damage awards. For example, in 1983, a jury in Seattle awarded $6.4 million in damages to a high school football player for a spinal cord injury that left him a quadriplegic. While the amount of this award was on appeal, the parties reached a settlement for slightly less than $4 million. More recently, in 1987, a jury in New Jersey awarded $6.5 million to a high school football player paralyzed while making a tackle. In December 1988, a jury in Iowa awarded a student $3.3 million and his mother just over $700,000 for an injury the student incurred when he slipped off the starting blocks during swimming practice, fell into the shallow end of the pool, hit his head, and was paralyzed.

Id. at 349 (footnotes omitted).

6. *See infra* notes 17-167 and accompanying text (discussing the various tort duties of coaches). It is worthy to note that a great number of injuries sustained by athletes are attributable to playing football. *See, e.g.*, Frederick O. Mueller, Ph.D. & Robert C. Cantu, M.D., National Center For Catastrophic Sports Injury Research, 12th Annual Report (Spring 1994) (this report, which is annexed hereto as Appendix B, details the number of severe and catastrophic injuries sustained by high school and college football players); Charles E. Spevacek, Note, *Injuries Resulting From Nonintentional Acts In Organized Contact Sports: The Theories of Recovery Available to the Injured Athlete*, 12 IND. L. REV. 687, 689-90 (1979) (discussing the overwhelming amount of helmet litigation arising from football injuries).

7. Sports officials (i.e., referees and umpires), spectators and even other coaches may also be potential *plaintiffs* against coaches. *See generally* Lindemuth v. Jefferson County Sch. Dist. R-1, 765 P.2d 1057 (Colo. Ct. App. 1988) (concerning a suit brought by a junior high school coach against a high school coach for defamation, negligence, and tortious interference with contract); Smith v. University of Texas, 664 S.W.2d 180 (Tex. Ct. App. 1984) (involving a suit brought against a university for the negligence of a coach and an assistant where a track official was struck in the head by a shot put during the warm-up of an event hosted by the university); Weldy v. Oakland High Sch. Dist. of Alameda County, 65 P.2d 851 (Cal. Dist. Ct. App. 1937) (concerning a negligent supervision claim against a school district brought by a student spectator hit by a bottle thrown by another spectator).

Respecting spectators, there have been a number of cases involving claims against school boards and coaches when the spectator has been injured while watching a football game from the sidelines and the players collide and run over the spectator following a play going out of bounds. *See, e.g.*, Turner v. Caddo Parish Sch. Bd., 214 So. 2d 153, 156-57 (La. 1968) (affirming the dismissal of a grandmother's claim against a school board after she was "bowled over" by football players while watching a football game on the

instances, this Article will first discuss the basis for such liability. The focus will then shift to the specific duties incumbent upon coaches, including a survey of the prevalent case law and legal commentary on this subject. Finally, there will be a discussion regarding the defenses available to coaches when confronted with exposure to liability.

II. Basis for Liability[8]

Because coaches generally have the most direct control over those involved in their respective sport, they are normally the principal defendants in lawsuits brought by participants.[9] Most cases regarding the legal liability of coaches involve injuries to participants of a particular sport. In this regard, the basis for this type of liability is generally predicated upon the

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sidelines because the school board had assigned coaches for "crowd control," designated a restraining line for spectators, and could not be required to know that persons on the sidelines would be unaware of such risk); Colclough v. Orleans Parish Sch. Bd., 166 So. 2d 647, 649-50 (La. Ct. App. 1964) (dismissing, on grounds of assumption of risk and contributory negligence, a spectator's negligence claim against a school board where the spectator was run over by football players during a scrimmage game while the spectator was standing on the sidelines); Perry v. Seattle Sch. Dist. #1, 405 P.2d 589, 593 (Wash. 1965) (affirming dismissal of a spectator's complaint where the spectator was watching a football game and was injured when football players ran her over on the sidelines because the school board fulfilled its duty to spectators/invitees). Of course, spectators watching other sports have brought suits as well. *See, e.g.*, Borushek v. Kincaid, 397 N.E.2d 172, 174 (Ill. App. Ct. 1979) (dismissing a plaintiff's claim that a father's failure to provide proper supervision caused the plaintiff to be injured while standing on a basketball court during a father and son match because the court found that the presence of supervisory personnel would not have prevented the injury from occurring); Domino v. Mercurio, 193 N.E.2d 893, 893-94 (N.Y. 1963) (finding a school board liable for the negligence of coaches who permitted spectators to move a bench closer to the field of play during a softball game).

Finally, in addition to suing the coach, another potential *co-defendant* in a coach's liability action might be a sports official. *See* Kenneth W. Biedzynski, Comment, *Sports Officials Should Only Be Liable For Acts of Gross Negligence: Is That The Right Call?*, 11 U. Miami Ent. & Sports L. Rev. 375 (1994).

8. George W. Schubert et al., Sports Law § 7.4, at 220 (1986)("A basis for liability must exist before a coach or teacher is charged with responsibility for injuries to a participant or spectator.").

9. Jack E. Karns, *Negligence and Secondary School Sports Injuries in North Dakota: Who Bears the Legal Liability?*, 62 N.D. L. Rev. 455, 480 (1986). *See also* John C. Weistart & Cym H. Lowell, The Law of Sports § 8.06, at 980 (1979)("Since coaches normally have the most direct control of the activities of athletes, it is not surprising that they are frequently named as defendants in suits brought by injured athletes."). Coaches, however, are usually not the only defendants. Because of such tort doctrines as respondeat superior, vicarious liability, and sovereign immunity, a coach's tortious conduct may result in liability against the coach's employer or another third party. *See infra* notes 168-189, 311-365 and accompanying text (discussing these doctrines in greater detail).

theory of negligence.[10]

Under the negligence model, a cause of action from which liability will follow requires: (1) a duty requiring a person to conform to a standard of conduct that protects others from unreasonable risk of harm;[11] (2) a breach of that duty (i.e., the person's failure to conform to the standard of conduct); (3) a causal connection between the breach of the duty and the resulting injury (i.e., proximate cause and cause in fact);[12] and

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10. Most suits against coaches for sports related injuries are predicated upon the theory of negligence. Karns, *supra* note 9, at 460. For example, as one commentator notes: "[i]n suits brought by injured athletes against school administrators, coaches, and officials for sports related injuries, the intentional tort theory is seldom relied upon as a basis for liability. These parties' primary liability exposure involves conduct that is negligent." *Id.*

There are, however, several other theories of liability respecting coaches that are not based upon the theory of negligence. For example, coaches have been found liable for intentional torts such as assault or battery, *see* Scogin v. Century Fitness, Inc., 780 F.2d 1316 (8th Cir. 1985), or even for what is known as "reckless misconduct" which purportedly falls somewhere between an intentional tort and negligence. Karns, *supra* note 9, at 460-63 (citing Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir.), *cert. denied*, 444 U.S. 931 (1979); Nabozny v. Barnhill, 334 N.E.2d 258 (Ill. App. Ct. 1975); Averill v. Luttrell, 311 S.W.2d 812 (Tenn. Ct. App. 1957); Griggas v. Clausen, 128 N.E.2d 363 (Ill. App. Ct. 1955)).

There has even been litigation where it was alleged that a coach's tardiness in forwarding a recommendation for an athlete's scholarship application cost the athlete the chance at an athletic scholarship. *See* Hunt v. Scotia-Glenville Cent. Sch. Dist., 460 N.Y.S.2d 205 (N.Y. App. Div. 1983). Finally, defamation claims have been brought against coaches. SCHUBERT, *supra* note 8, § 7.4, at 228-29.

11. The duty of care must take into account the degree of the hazard posed by the activity as well as the likelihood of injury. Wells v. Colorado College, 478 F.2d 158, 163 (10th Cir. 1973) (affirming a verdict in favor of a student who was injured during a class demonstration by his judo instructor).

12. *See, e.g.*, Barrett v. Phillips, 223 S.E.2d 918, 920 (N.C. Ct. App. 1976) (holding that a coach's league rule violation in allowing an ineligible player to compete was not the cause of the player's fatality); Albers v. Independent Sch. Dist. No. 303 of Lewis County, 487 P.2d 936, 939 (Idaho 1971) (holding that the failure of a school board to supply coaches to supervise a pickup basketball game was not the cause of a player's injury because the evidence failed to explain how the presence of a coach would have prevented such injury); Lowe v. Board of Educ. of City of New York, 321 N.Y.S.2d 508, 510 (N.Y. App. Div. 1971) (holding, in a case where a student claimed negligence of a gym class teacher when the teacher insisted the student participate in a gym class despite the teacher's knowledge of the student's physical disability, that no medical proof established causation between the alleged act of negligence and the injury, but the issue nevertheless required a trial).

See also Wright v. City of San Bernadino High Sch., 263 P.2d 25 (Cal. Ct. App. 1953). In *Wright*, a 16-year-old high school student was injured when he was struck in the face by a tennis ball during a tennis and handball class. *Id.* at 27. The coach had previously instructed the students that he would be in his office arranging a tournament. *Id.* at 26. Several of the students subsequently entered the school's gymnasium and began playing several different games whereby a tennis ball was thrown by one student to

(4) resulting injury or damages.[13]

Thus, the first and perhaps most critical factor in determining whether a coach is liable for the injuries of his players is whether the coach breached the requisite duty of care.[14] In general, coaches have a duty to exercise reasonable care to prevent foreseeable risks of harm to others.[15] Pursuant to this

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another student who would "hit" the ball "like a baseball bat." *Id.* Adjacent to where the plaintiff was playing, two other students were playing a game. *Id.* When the class period ended, the plaintiff stepped into the line of the adjacent baseball-like game and was struck in the eye with a "batted" ball. *Id.* at 27. The injured student filed suit alleging improper supervision. *Id.* The trial court dismissed the case upon a motion of non-suit made by the defendant. *Id.* On appeal, the California Court of Appeals affirmed the defendants' motion for nonsuit due to a lack of causation. *Id.* Despite the coach's absence from the gymnasium, the court found that his presence could not have prevented the injury. *Id.* at 28. Additionally, the court found that the cause of the plaintiff's injuries was his sudden dash into the line of the adjacent baseball-like game. *Id.*

13. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 30, at 164-65 (5th ed. 1984). *See also* Bjorklun, *supra* note 5, at 351; Karns, *supra* note 9, at 463. As Bjorklun comments:

> Negligence, which results in the imposition of liability for damages depends on the presence of certain elements within the situation in which the injury occurred. These elements are (1) an owed duty of care; (2) a breach of that duty through a negligent act or omission; (3) an injury; and (4) a proximate causal relationship between the breach of the duty and the injury. As Crook puts it, negligence "consists in the breach of a duty on the part of one person to protect another against injury, the proximate result of which is an injury to the person to whom the duty is owed." Moreover, all the elements must be present for negligence to exist. "In the absence of any one of them, no cause of action for negligence will lie."

Bjorklun, *supra* note 5, at 351 (quotations and footnotes omitted). Similarly, Karns provides:

> A plaintiff must prove the following elements in order to establish a negligence claim: (1) The defendant owed a duty to conform to a standard of conduct established by law for the protection of the plaintiff; (2) the defendant breached that duty; (3) the defendant's breach was the legal cause of the plaintiff's injury; and (4) the plaintiff suffered a compensable injury.

Karns, *supra* note 9, at 463.

14. WEISTART & LOWELL, *supra* note 9, § 8.06, at 980 ("[T]he critical inquiry will be whether the coach has fulfilled the duty to exercise reasonable care for the protection of athletes . . . ."); Karns, *supra* note 9, at 463 ("Thus, the first inquiry in a negligence case is whether the defendant owed a duty of care to the particular plaintiff.").

15. SCHUBERT, *supra* note 8, § 7.4, at 220. The level of care that a coach or sports instructor owes to athletes and other participants will vary from activity to activity, but the standard by which that care is measured will always be the same: a coach must use reasonable care to avoid the creating of a foreseeable risk of harm to others. *Id. See also* WALTER T. CHAMPION, JR., FUNDAMENTALS OF SPORTS LAW § 3.1, at 60 (1990) ("Coaches must use reasonable care to avoid the creation of foreseeable risks to participants."). This standard is also described as follows:

> Negligence is a matter of risk - that is to say, of recognizable danger of injury. It has been defined as "conduct which involves an unreasonably great risk of caus-

standard, various specific duties have evolved respecting sports coaches. Accordingly, identification of the specific duties is essential for understanding and evaluating what is required of coaches. It is also important to recognize that coaches are not insurers of a participant's safety and will not be liable for injuries resulting from the inherent dangers of the sport or activity provided they satisfy their duties as coaches.[16]

III. Duties

The primary duty of all coaches is to minimize the risk of injury to all participants, particularly to those under their control.[17] Participants are those who are "either directly or indirectly involved" in the sports activity.[18] Referees, assistants, and even ancillary personnel such as timekeepers and team physicians are all participants.[19] However, the primary participants in most sports are the athletes.

Prevalent case law and legal commentary establish the following specific duties upon coaches: (1) supervision; (2) training and instruction; (3) ensuring the proper use of safe equipment; (4) providing competent and responsible personnel; (5) warning of latent dangers; (6) providing prompt and proper medical care; (7) preventing injured athletes from competing;

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ing damage," or, more fully, conduct "which falls below the standard established by law for the protection of others against unreasonable risk of harm." "Negligence is conduct and not a state of mind."

Keeton, *supra* note 13, § 31, at 169 (footnotes omitted).

16. Weistart & Lowell, *supra* note 9, § 8.06, at 980. *See also* Schubert, *supra* note 8, § 7.4, at 220 ("Coaches, teachers and sports instructors are not insurers of the safety of those under their control, nor are they strictly liable for the injuries caused to others by the athletes they supervise.").

17. Schubert, *supra* note 8, § 7.4, at 231. The author goes on to note that coaches also have a duty to prevent injuries to spectators in that they should prevent those under their control from threatening or harming spectators. *Id.* Additionally, coaches must also exercise some form of "crowd control" to ensure that spectators do not come on to the playing surface during play and subject themselves to injury. *Id. Compare supra* note 7 (discussing spectator injuries incurred during sporting events). This same concern has been addressed to referees and umpires as well. *See* Alan S. Golderberger, Sports Officiating 81-82 (1984) (summarizing various rules for soccer coaches which pertain to a spectator's proximity to the playing field). With respect to a coach's duty to a spectator, one court noted that the scope of the duty has a direct relationship to whether or not an admission fee is charged and to the competitive level of the game. Perry v. Seattle Sch. Dist. #1, 405 P.2d 589, 593 (Wash. 1965).

18. Schubert, *supra* note 8, § 7.4, at 220.

19. *Id.*

and (8) matching athletes of similar competitive levels.[20]

Each particular duty owed by coaches is contingent upon the activity and the circumstances surrounding the activity.[21] The duty of care, for example, will generally vary according to the level of age, skill, and experience of the participants.[22] The

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20. As to legal commentary regarding these duties, *see* SCHUBERT, *supra* note 8, § 7.4, at 221-230; CHAMPION, *supra* note 15, §§ 3.1-3.6, at 60-73; Bjorklun, *supra* note 5, at 351; GARY A. UBERSTINE, LAW OF PROFESSIONAL AND AMATEUR SPORTS § 14.01, at 14-17 (1990); Melonie L. Davis, *Sports Liability of Coaches and School Districts*, 39 FED'N OF INS. & CORP. COUNS. 307, 308-13 (1989); Allan E. Korpela, *Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Occurring in Physical Education Classes*, 36 A.L.R. 3D 361, 366-67 (1971). *Compare* 57 AM. JUR. 2D *Municipal, County, School and State Tort Liability* § 601, at 540 (1988) (stating that the duties owed by coaches include "giving adequate instruction in the activity, supplying proper equipment, making a reasonable selection or matching of participants, providing non-negligent supervision of the particular contest, and taking proper post-injury procedures to protect against aggravation of the injury.").

21. SCHUBERT, *supra* note 8, § 7.4, at 220.

22. *Id.* § 7.4, at 221. *Compare infra* notes 200-202 and accompanying text (discussing the age and experience of participants in relation to the assumption of risk defense). An interesting issue, as it relates to a coach's duty of care, is whether or not a coach's violation of a safety or league rule will have the same effect as a violation of a statute which sometimes forms the basis for evidence of negligence in several cases. KEETON, *supra* note 13, § 36, at 230. In some states, a violation of a statute can only constitute evidence of negligence where there is in fact a violation of the statute, specifically, causation, an injury of a type the statute was designed to prevent, and a plaintiff who is a member of the class the statute was designed to protect. *Id.* § 36, at 230 n.9, 231. In the sports context, respecting violation of a safety, club or league rule, one commentator stated that the violation of a rule will only be evidence of negligence if "that rule is recognized by the court as establishing the standard of care required for the protection of others." SCHUBERT, *supra* note 8, § 7.2, at 180. *Compare* Nabozny v. Barnhill, 334 N.E.2d 258, 258 (Ill. App. Ct. 1975) (discussing the effect of a coach's violation of a rule designed for the safety of players).

The liability for failure to enforce or breach such rules seems more common to sports officials than coaches because it is the sports official's main responsibility to enforce the rules. *See* Biedzynski, *supra* note 7, at 399 n. 67. However, coaches do have control over some rules, although some courts have dismissed failure to enforce claims on the basis of causation. *See supra* note 12 and accompanying text (discussing claims of negligence predicated upon rule violations). A corollary to the question of a coach's liability for failure to enforce an *existing* rule is the question of negligence for failing to act in the *absence* of a safety rule. In Berman v. Philadelphia Bd. of Educ., 456 A.2d 545 (Pa. Super. Ct. 1983), an 11-year-old student was struck in the mouth by a hockey stick during an after-school floor hockey game in the school gymnasium. *Id.* at 548. The player's parents sued the board of education alleging negligence on the part of the coach for failing to provide mouth guards to the players. *Id.* In affirming a verdict in favor of the plaintiff, the court stated:

> [W]e find enough evidence supporting a determination of negligence. [The coach] was familiar with the safety and protective equipment available for ice or floor hockey. He was also aware that mouth injuries were recurring consequences of playing the sport. In fact, he appreciated the inherent risks enough to request on two or three separate occasions during the program's first year

duty of care owed by the coach is generally that which a coach of ordinary prudence, charged with the same duties, would exercise under similar circumstances.[23]

(1975-1976) that [the school board] purchase safety equipment for the students. The . . . Board of Education, however, turned a deaf ear to these continued requests; no helmets, shin guards, gloves, face masks or mouth guards were provided for the students until [after the injury occurred].

The standard of care was not diminished by [the expert witness'] admission that no rules or regulations for the adornment of mouth guards were imposed on floor hockey in 1976. The absence of a mouth guard mandate does not necessarily excuse the appellant's failure to impose similar rules itself.

Id. at 549.

23. Bjorklun, *supra* note 5, at 351 ("A negligent breach occurs when there is a failure '. . . to do what a reasonable and prudent person would ordinarily have done under the circumstances, or doing what such person would not have done . . . .'" (quotations omitted)). *Compare* RESTATEMENT (SECOND) OF TORTS § 283 (1965) (noting that the standard "is that of a reasonable person of like age, intelligence, and experience under like circumstances.").

In determining who a coach of ordinary prudence is in "similar circumstances" for purposes of comparing the duty of care owed by a particular coach, some jurisdictions have developed either the "locality" or "non-locality" rules. *Compare* RESTATEMENT (SECOND) OF TORTS § 299A (1965) (stating that a person undertaking to render services in a professional capacity must exercise the skill normally possessed by a member in good standing in similar communities). *Cf.* Green v. Orleans Parish Sch. Bd., 365 So. 2d 834, 838 (La. Ct. App. 1979) (affirming the dismissal of a high school student's action against a school board for the negligence of a teacher after the student became paralyzed from an improperly performed wrestling maneuver because the teacher's instruction and preparation did not fall below "any locally or nationally accepted reasonable standard of care for teachers under similar circumstances."). One commentator provides an excellent discussion respecting these rules:

> In determining whether a coach has been negligent, some states apply the "locality rule." The locality rule requires that a coach be held to the standard of reasonable skill and care exercised by other coaches in the same locality. In other words, the coach's actions are judged by a local rather than a state or national standard. The locality rule originated at a time when it was not reasonable to expect a rural professional to have access to centers of learning and the latest information. Today's professional organizations, clinics, and sports magazines make the exchange of coaching ideas and techniques so widespread that there may no longer be a legitimate reason for applying the locality rule.
>
> Some states have rejected the locality rule. Other jurisdictions have simply modified it to permit a coach's conduct to be judged by the standard of care observed in similar localities. Existence of the locality rule, however, will not generally affect the outcome of a sports injury negligence case because the standard of care for a professional or college coach is set at the national level. The same is true for instructors at health clubs and resorts that are either located in urban areas or draw their clientele from beyond the nearby community. Even the high school coach will have difficulty limiting the locale to anything less than the league to which the coach's school belongs, including schools from other communities. In some cases a coach's actions are so deficient that he or she would be considered negligent by any community's standards.

SCHUBERT, *supra* note 8, § 7.4, at 221. *See also* Beckett v. Clinton Prairie Sch. Corp., 494 N.E.2d 988, 989-90 (Ind. Ct. App. 1986) (holding that the proper standard of care was

A. Supervision

One of the primary responsibilities of coaches is to provide proper supervision over those under their control.[24] When coaches fail to properly supervise their players,[25] they are usually held liable for any resulting injuries.[26]

1. In General

In *Brahatcek v. Millard School District*,[27] for example, a

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"whether the defendant exercised that level of care which a reasonable and prudent person would have exercised under the same or similar circumstances."); Pirkle v. Oakdale Union Grammar Sch. Dist., 253 P.2d 1, 3 (Cal. 1953) (holding that since a physical education program's selection of participants for a touch football game implemented the same selection criteria "utilized throughout the state," it was therefore reasonable). One commentator has suggested that there may even be a contractual duty of care:

> A duty of care may also arise from a contractual relationship. This theory of recovery is most applicable to coaches and game officials, since both of these parties have entered into contracts prior to performing their respective duties. [In cases involving schools,] [t]he coach's contract is with the school district. The official may have signed a contract to work the game through a booking agent, or in some cases, directly with the school. In either case, the existence of the contract creates certain obligations that the parties must perform in a satisfactory manner to avoid negligence liability.

Karns, *supra* note 9, at 466-68 (footnotes omitted).

24. In fact, this duty has generated the most commentary of the various duties owed by coaches. *See generally* Allan E. Korpela, *Tort Liability of Public Schools and Institutions of Higher Learning For Injuries Resulting From Lack or Insufficiency of Supervision*, 38 A.L.R. 3D 830 (1971); Allan E. Korpela, *Tort Liability of Private Schools and Institutions of Higher Learning For Negligence of, or Lack of Supervision by, Teachers And Other Employees Or Agents*, 38 A.L.R. 3D 908 (1971).

25. *See* Cirillo v. City of Milwaukee, 150 N.W. 460, 465 (Wis. 1967). In terms of the factors which comprise "supervision," the court in *Cirillo* held:

> It does not seem inherently unreasonable to expect that teachers will be present in classes which they are entrusted to teach. This should not, of course, mean that a teacher who absents himself from a room is negligent as a matter of law. . . . [T]he teacher's duty is to use "reasonable care." What this means must depend upon the circumstances under which the teacher absented himself from the room. Perhaps relevant considerations would be the activity in which the students are engaged, the instrumentalities with which they are working . . ., the age and composition of the class, the teacher's past experience with the class and its propensities, and the reason for and duration of the teacher's absence.

Id. at 465.

26. *See, e.g.*, Armlin v. Board of Educ. of Middleburgh Cent. Sch. Dist., 320 N.Y.S.2d 402, 404 (N.Y. App. Div. 1971) (holding a gymnastics coach liable for failing to properly supervise a student performing a maneuver on the rings). Of course, whether or not an instructor's actions in supervising a participant are negligent is usually a question for the jury. *See* Duong v. City Univ. of New York, 540 N.Y.S.2d 872, 873 (N.Y. App. Div. 1989); Grant v. Lake Oswego Sch. Dist. No. 7, Clackamas County, 515 P.2d 947, 951 (Or. Ct. App. 1973).

27. 273 N.W.2d 680 (Neb. 1979).

golf student was killed as a result of being struck in the head by the errant swing of another student.[28] The Nebraska Supreme Court held that the coach was liable for the death of the golf student because he failed to provide proper supervision.[29] The court found that at the time of the accident, the coach was concentrating solely on one golfer and not paying attention to any of the other golfers.[30] The court noted that the accident would not have occurred if the coach was providing proper supervision.[31]

Similarly, in *Stehn v. Bernard MacFadden Foundations*,[32] liability was found when a wrestler was injured during practice by a fellow teammate.[33] The Tennessee District Court found that the coach failed to provide proper supervision because he was supervising two matches at the same time.[34] The court stated that the coach should have been supervising only one match at a time in order to minimize the risk of unnecessary injury to the wrestlers.[35] The court also noted that the coach could have recognized that one of the wrestlers was having difficulty with the hold and could have instructed the one wrestler to release the hold before the other wrestler was injured if the coach was fully supervising the match.[36]

In *Leahy v. School Board of Hernando County*,[37] the Florida District Court of Appeals reversed a directed verdict in favor of a school board where a helmetless freshman football player sustained injuries as a result of striking his face on another player's helmet during a drill.[38] The school board was found

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28. *Id.* at 683. In actuality, the player who fatally struck the decedent was trying to assist the decedent in learning how to swing a golf club in the coach's absence. *Id.* Unfortunately, the player providing the assistance did not see that the decedent moved closer to where he was taking his practice swing. *Id.* As a result, the decedent was struck in the head with the golf club, lost consciousness, and subsequently died two days later. *Id.*

29. *Id.* at 687.

30. *Id.* Additionally, in reviewing the record below, the court found that there was some dispute as to whether proper pre-session instructions were given on the day in question. *Id.*

31. *Id.*

32. C.A. 4398 (M.D. Tenn. 1969), *aff'd*, 434 F.2d 811 (6th Cir. 1970). For a discussion of this case, *see* CHAMPION, *supra* note 15, § 3.3, at 65.

33. CHAMPION, *supra* note 15, § 3.3, at 65.

34. *Id.*

35. *Id.*

36. *Id.*

37. 450 So. 2d 883 (Fla. Dist. Ct. App. 1984).

38. *Id.* at 885.

vicariously liable through its coach for permitting some of the team's players to perform practice drills without helmets.[39] In applying a standard requiring the providing of adequate instructions, proper equipment, and non-negligent supervision over drills,[40] the court remanded the matter for a new trial.[41]

2. "Related Settings"

Many courts have recognized that coaches must provide proper supervision not only during practices and games,[42] but also when athletes are in locker rooms or other "related settings."[43] For example, in *Massie v. Persson,*[44] a coach was held liable for the death of a student-athlete who was electrocuted while using a whirlpool bath in the high school's locker room.[45] In its reasoning, the Kentucky Court of Appeals held that the coach should have instructed and supervised his players as to the use of the machine.[46]

Likewise, in *Byrd v. Bossier Parish School Board,*[47] a fourteen year old athlete was injured while using an extractor in the locker room to wring out his clothes following a team practice.[48] Similar to the holding in *Massie*, the Louisiana Court of Appeals affirmed the trial court's finding that the plaintiff's injury resulted from the coach's failure to instruct and supervise his players as to the use of the extractor.[49]

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39. *Id.* at 883-84. For a discussion regarding vicarious liability, see *infra* notes 168-189 and accompanying text.

40. *Id.* at 885.

41. *Id.* at 887.

42. *See, e.g.,* Bauer v. Board of Educ. of the City of New York, 140 N.Y.S.2d 167, 168 (N.Y. App. Div. 1955) (holding the board of education liable for a coach's negligence in permitting the overcrowding of a gym class which resulted in a participant's injury during a "threeman" basketball game).

43. *Compare* Limerick v. Euclid Bd. of Educ., 591 N.E.2d 1299, 1301 (Ohio Ct. App. 1990) (rejecting a football player's claim that a school board negligently supervised his football tryouts by allowing him to compete without medical insurance).

44. 729 S.W.2d 448 (Ky. Ct. App. 1987).

45. *Id.* at 451. In addition to finding a general failure to supervise, there was also evidence that the coach modified the whirlpool by adapting it for simultaneous use by multiple players. *Id.* The evidence ultimately showed that the whirlpool was defectively grounded, which was in violation of a building code, and that this defect was the proximate cause of the decedent's death. *Id.*

46. *Id.* at 453-54.

47. 543 So. 2d 35 (La. Ct. App. 1989).

48. *Id.* at 36. The court noted that an "extractor" is a machine which performs much the same function as the spin cycle on a washing machine. *Id.*

49. *Id.* at 35-36.

3. Violent Conduct

There have also been claims against coaches for encouraging players to engage in belligerent or unsafe conduct outside the scope of the activity, or for permitting players with dangerous propensities to compete against other players.

One of the more popular cases in this regard is *Brown v. Day*.[50] In *Brown*, a soccer player brought a negligence action against the school and the opposing team's coach after the player was kicked in the mouth by an opposing player.[51] The plaintiff alleged that the coach had knowledge of the dangerous propensity of the opposing player.[52] The court rejected this claim on the basis that there was no evidence that the player had committed similar violent acts prior to the game in question.[53] However, the court expressly held that had the plaintiff been able to cite prior examples of violent behavior that would impute knowledge to the coach, the plaintiff would have a viable claim for negligence.[54] Similarly, in *Kline v. OID Associates, Inc.*,[55] the Ohio Court of Appeals rejected an injured soccer player's negligent supervision claim as a result of being kicked by an opposing player because the plaintiff failed to show that the coach knew of the player's propensity for violence or that "there was a total absence of management."[56]

4. Duty to Supervise Not Absolute

Like all of the duties incumbent upon coaches, the duty to supervise is not absolute.[57] In fact, some courts have rejected claims that coaches must provide constant supervision over their players.[58] In *Herring v. Bossier Parish School Board*,[59] a

50. 588 N.E.2d 973 (Ohio Ct. App. 1990).

51. *Id.* at 973. The kick fractured Brown's jaw. *Id.*

52. *Id.* at 974.

53. *Id.* at 974-75. The court held that mere allegations of unsportsmanlike conduct do not rise to the level of imputing knowledge. *Id.*

54. *Id.* at 975.

55. 609 N.E.2d 564 (Ohio Ct. App. 1992).

56. *Id.* at 565.

57. *See, e.g.*, Ferguson v. DeSoto Parish Sch. Bd., 467 So. 2d 1257, 1260 (La. App. Ct. 1985); Whitfield v. East Baton Rouge Parish Sch. Bd., 43 So. 2d 47, 51 (La. 1949). *Compare* Brackman v. Adrian, 472 S.W.2d 735, 739 (Tenn. Ct. App. 1971) ("[I]t is a matter of common knowledge that children participating in games or any ordinary form of play may injure themselves and that no amount of supervision on the part of the parents or others will avoid such injuries . . . .").

58. *See, e.g.*, Banks v. Terrebonne Parish Sch. Bd., 339 So. 2d 1295 (La. Ct. App.

player was struck by a baseball after the player moved from behind a screen in back of the pitchers' mound during batting practice.[60] The Louisiana Court of Appeals held that a baseball coach had no duty to exercise "constant supervision" over his players, and that the coach had satisfied his duty to supervise by implementing proper procedures and routines for conducting an orderly batting practice.[61]

Moreover, despite the imposition of a duty to supervise in "related settings," some courts have refused to extend a coach's duty to supervise to non-sporting events, such as team parties, picnics, fund raising outings,[62] and other events. In *Baker v.*

1976). In *Banks*, a 15-year-old student sustained injuries to his back and neck after he unsuccessfully completed a tumbling exercise. *Id.* at 1296. At the time the student was performing this exercise, the physical education instructor was conversing with other students and was unaware of the performance of the injured student's tumbling exercise. *Id.* The court affirmed a verdict in favor of the physical education instructor on the basis that the instructor was supervising a "recognized acceptable form of physical education" at the time of injury, the instructor was duly qualified to teach physical education, and the instructor had previously instructed the students that they were not authorized to commence such tumbling activities until the instructor had informed them to do so. *Id.* at 1296-97. Most importantly, the court stated that "[t]here is just no way that a teacher can give personal attention to every student all of the time." *Id.* at 1297.

59. 632 So. 2d 920 (La. Ct. App. 1994).

60. *Id.* at 921.

61. *Id.* at 922.

62. *See, e.g.*, Loosier v. Youth Baseball and Softball, Inc., 491 N.E.2d 933 (Ill. App. Ct. 1986). In *Loosier*, a minor was struck by a motor vehicle while he was crossing a highway. *Id.* at 934. The minor was a member of a baseball team playing in the defendant's summer baseball program. *Id.* The day of the minor's accident, he alleged that he was selling baseball raffle tickets in a shopping center near his home. *Id.* at 934-35. At trial, however, it was discovered that the minor went to the shopping center to "get out of the house." *Id.* at 935. Additionally, it was discovered that the minor was crossing the highway where the accident occurred to escape from friends who threatened to "beat the heck out [of him]" after he refused to steal a toy from the store where the minor was selling the raffle tickets. *Id.* The trial court granted the defendant's motion for summary judgment finding that the injuries "did not arise out of a time in which raffle tickets were being sold due to the fact that the sale of tickets had effectively been terminated prior to the activity which led to the plaintiff's injuries." *Id.* However, the trial court found that the defendant had a duty to supervise the selling of raffle tickets despite the additional circumstances surrounding the case. *Id.* On appeal, the Illinois Appellate Court affirmed the trial court's decision and its finding respecting the duty to supervise because the trial court "did not define under what circumstances such a duty would exist." *Id.* at 937. In commenting on the breach of the duty to supervise, the court held that public policy warrants that the burden of supervision be upon the parents of the minor. *Id.* The court stated:

> In the case at bar, we find that the care and control of the minor was with his parents. At the time of the accident the care of the minor had not been entrusted to [the defendant]. [The minor] was selling tickets with the consent of his parents. He had gone to the shopping center with his friends with his mother's

Goetz,[63] for example, a team outing was organized by a Little League baseball coach.[64] During putt-putt golf, one of the events organized for the outing, an eleven year old player sustained serious damage to his eye when he was struck by an errant swing.[65] Summary judgment was granted in favor of the coach at the trial level and affirmed on appeal.[66] The reviewing court noted that the coach could not have anticipated such an injury, especially in light of the fact that the injury occurred on the final hole of the golf course and that fifteen other groups had played the entire course without incident.[67]

These cases suggest that a court may consider the surrounding circumstances accompanying the incident when evaluating whether there is negligent supervision. A further example regarding this point is *Wilkinson v. Hartford Accident and Indemnity Co.*,[68] where a physical education teacher was not held liable for injuries sustained by a student who was racing other classmates in the foyer of a gymnasium.[69] The court stated that the teacher exercised proper supervision given the surrounding circumstances, namely the size of the class.[70]

B. Training and Instruction

Coaches must also instruct and train their players with respect to the fundamentals of the particular sport.[71] In this re-

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> permission to sell tickets which were obtained from the defendant by his father. The only involvement of [the defendant] was that it had provided the tickets that [the minor] was selling with the permission of and while in the care of his parents. Under these circumstances, we find that [the defendant] had no duty of supervision and affirm the trial court's entry of summary judgment in defendant's favor.

Id.

63. Docket No. CA-8845, 1992 WL 330269 (Ohio Ct. App. Nov. 9, 1992).

64. *Id.* at *1.

65. *Id.*

66. *Id.* at *1, *4.

67. *Id.* at *3-4. In *Baker*, the judge, dissenting in part, noted: "due to the age of the boys, the lack of instruction, the failure to observe and monitor play, and the design of the last hole, I believe that when construing the evidence . . ., reasonable minds could differ as to whether . . . [the coach] w[as] negligent in . . . [his] supervision of the boys." *Id.* at *4 (citation omitted).

68. 411 So. 2d 22 (La. 1985).

69. *Id.* at 24.

70. *Id.*

71. Darrow v. West Genesee Cent. Sch. Dist., 342 N.Y.S.2d 611, 611-12 (N.Y. App. Div. 1973) (involving a negligence action wherein soccer players were injured due to the failure of the coach to properly instruct on the execution of a line soccer drill). *See also*

gard, the following duties have been imposed upon coaches:

(1) teaching athletes the skills necessary to compete;
(2) teaching athletes procedures and methods to reduce the risk of injury to themselves and other participants;
(3) instructing athletes as to the rules of the particular sport or activity; and
(4) ensuring that athletes are physically fit to compete in the sport or activity.[72]

Coaches have often been held responsible for failing to provide participants with adequate training or instruction to minimize the risk of injury. However, if a coach provides proper training and instruction and takes all reasonable measures to reduce the risk of injury to participants, the coach will not be held responsible for a participant's injuries.

In *Woodson v. Irvington Board of Education*,[73] a football player sustained severe neck and back injuries while tackling an opposing player.[74] As a result, the player sued several members of the football team's coaching staff for failing to provide proper training and instruction.[75] The plaintiff was originally a track star and was recruited for football because of his speed.[76] He had only one practice session on tackling and was

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RESTATEMENT (SECOND) OF TORTS § 300 (1965) (describing duty to "make . . . preparation which a reasonable man in his position would recognize as necessary to prevent the act from creating an unreasonable risk of harm to another.").

72. WEISTART & LOWELL, *supra* note 9, § 8.06, at 980-81. *See also* Green v. Orleans Parish Sch. Dist., 365 So. 2d 834 (La. App. Ct. 1978). In *Green*, the court stated:

> Certain classes, such as . . . physical education . . . involve dangerous activities, and due care must be exercised in instructing, preparing and supervising students in these activities so as to minimize the risk of injury. When an activity is potentially dangerous, a student should not be required to attempt such activity without first receiving proper instruction and preparation, including an explanation of basic rules and procedures, suggestions for proper performance, and identification of risks. Considerations in determining whether instructions are proper and sufficient include the difficulty and inherent dangerousness of the activity and the age and experience of the students.

Id. at 836 (footnotes omitted). *See also* 57 AM. JUR. 2D *Municipal, County, School and State Tort Liability* § 603, at 542 (1988) (stating that the "facts and circumstances" concerning the victim's health problems, the failure of a coach to educate players about dangers of playing injured, the circumstances of the injury, the appropriate coaching standards, and causation are all relevant as to whether or not a coach was negligent in failing to instruct his or her players).

73. Docket No. ESX-L-56273 (N.J. Super. Ct. Law. Div. Nov. 19, 1988). For a complete discussion of this case, *see* CHAMPION, *supra* note 15, § 3.1, at 62.

74. CHAMPION, *supra* note 15, § 3.1, at 65.

75. *Id.*

76. *Id.*

not advised or instructed to keep his head up while tackling.[77] It was established that this type of instruction was one of the fundamental aspects of tackling.[78] Therefore, the court found the head coach 40% liable and the interior line coach 60% liable for $6.5 million dollars in damages.[79] In so holding, the court reasoned that it was not likely that the injury would have occurred if the plaintiff had been provided with proper training and instruction with respect to tackling.[80]

Similarly, in *Vendrell v. School District No. 26C, Malheur County,*[81] a high school football player sued the head coach for injuries resulting from charging head first into oncoming tacklers.[82] The Oregon Supreme Court held, however, that the coach was not liable for the player's injury, as he had satisfied his duty to provide training and instruction to his team by subjecting his players to an extensive training program, which included calisthenics, weight training and conditioning, instruction as to the fundamentals of the game, and instruction on using protective equipment to minimize the risk of injury.[83]

Perhaps one key to properly developing adequate instruction for a coaching program is to maintain a log of practices and games and evaluate the types of activities likely to cause injuries.[84] Additionally, coaches may want to review whether or not governing organizations have established guidelines or

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77. *Id.*
78. *Id.*
79. CHAMPION, *supra* note 15, § 3.1, at 65.
80. *Id.*
81. 376 P.2d 406 (Or. 1962).
82. *Id.* at 409.
83. *Id.* at 414.
84. For example, one recently published account of prior studies on football injuries and fatalities demonstrate that 31.5% of such injuries and fatalities were caused by improper tackling, 15.28% were caused when a player was carrying the ball, and 9.79% were caused by blocking activities. 7 AM. JUR. MODEL TRIALS § 1, at 7-213 (Supp. 1995). Additionally, this injury survey further showed that more fatalities were incurred by defensive players rather than offensive players. *Id.* The Authors also rely upon statistics compiled by the National Center for Catastrophic Sports Injury Research (NCCSIR). The NCCSIR research is funded by grants from the National Collegiate Athletic Association, the American Football Coaches Association, and the National Federation of State High Schools. This research, compiled in the NCCSIR's 12th Annual Report, is appended hereto as Appendix B. The Authors have chosen to append NCCSIR's most recent report hereto finding the research contained therein to be invaluable in planning a risk management program to minimize potential legal liability. *See* MUELLER & CANTU, *supra* note 6. As such, the Authors would like to extend their sincere thanks to Fredrick O.

recommendations regarding coaching techniques.[85]

C. Ensuring the Proper Use of Safe Equipment

Coaches are also responsible for taking reasonable measures to ensure that participants have the proper equipment to compete in games and practices. If a player does not have the proper equipment, the coach may be compelled to prohibit the player from participating in the game. If several players are not properly equipped, it may be necessary for the coach to cancel or reschedule the game.[86] In this regard, coaches should

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Mueller, Ph.D. & Robert C. Cantu, M.D., the authors of the report, for their cooperation in providing this information.

85. As part of any coach's education to prepare for proper coaching (which includes an understanding and awareness of the various duties and their fulfillment), coaches should also be aware of any regulating bodies which may be at fault if improper instruction is given. For example, in Peterson v. Multnomah County Sch. Dist. No. 1, 668 P.2d 385 (Or. Ct. App. 1983), a private organization (the Oregon School Activities Association (OSAA)) was found negligent for failing to disseminate safety recommendations and reports provided to it by the National Federation of High Schools, a national governing body for regulating high school athletics. *Id.* at 394. The issue arose following a 15-year-old high school player's lawsuit against the coaching staff, the school district, and OSAA after the player was rendered a quadriplegic resulting from an improper tackle. *Id.* at 387. The plaintiff alleged that the coaching staff approved the tackling technique that caused the injury. *Id.* The plaintiff further alleged that the organization had not required member schools not to permit live tackling during the first week of practice. *Id.* at 387. With respect to plaintiff's theory of adding OSAA as a defendant, the court stated:

> [The plaintiffs] added OSAA as a defendant through an amended complaint . . . alleging, *inter alia*, that OSAA was negligent for failing to require or recommend that member schools undertake vigorous training and safety measures and that they not permit live tackling during the first week of practice or "tackling with the head."
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> . . . .
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> In 1965, a joint committee of the National Federation and the American Medical Association (AMA) adopted safety recommendations concerning, inter alia, contact scrimmages in pre-season football practices. After setting forth certain detailed training and prepatory measures and certain limitations on the timing of contact in practices, the recommendations concluded that "[p]ractice games or game condition scrimmages should therefore be prohibited until after a minimum of two weeks of practice." The recommendations were transmitted to member state associations, including OSAA. OSAA did not adopt the National Federation-AMA recommendations as mandatory requirements for member schools and did not publish the recommendations or otherwise disseminate them to the schools.

Id. at 387-88 (second alteration in original).

In affirming a jury verdict in favor of the plaintiff, the court ultimately concluded that OSAA was negligent in either failing to transmit the recommendations or follow them. *Id.* at 390, 393.

86. In Locilento v. John A. Coleman Catholic High Sch., 523 N.Y.S.2d 198 (N.Y. App. Div. 1987), a 17-year-old participant was injured during an intramural tackle football

establish procedures to inspect players' equipment before the players engage in the activity to ensure that the players are using proper and non-defective equipment.

In *Baker v. Briarcliff School District*,[87] for example, a sixteen year old varsity field hockey player sustained injuries when she was struck in the face with a field hockey stick during practice.[88] The player sued the coach for failing to instruct the team of the importance of wearing mouthguards and for failing to ensure that the players were wearing them.[89] In declining summary judgment in favor of the coach, the New York court found that the coach was clearly aware that the player was not wearing her mouthguard.[90] Additionally, the coach admitted that no pre-practice check of safety equipment was made.[91] The court refrained from dismissing the plaintiff's claims, holding that a jury question existed as to whether or not the coach adequately instructed her players as to the importance of wearing their mouthguards.[92]

If a coach is responsible for selecting the particular equipment to be used, the coach has a greater duty to ensure that the equipment selected is the safest and best suited to prohibit the risk of injury.[93] For example, in *Everett v. Bucky Warren, Inc.*,[94] a nineteen year old hockey player was seriously injured when he was struck in the head by a puck that came through a gap in the player's helmet.[95] As a result, the player sued the

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game when he attempted to tackle another player while wearing no protective equipment. *Id.* at 199. The court held that "[i]t is also common knowledge that tackling injuries of this nature can occur even when players are professionally trained and equipped." *Id.* Thus, the fact that no protective equipment was supplied made the likelihood of injury clearly "greater." *Id.*

87. 613 N.Y.S.2d 660 (N.Y. App. Div. 1994).

88. *Id.* at 661.

89. *Id.*

90. *Id.* at 662.

91. *Id.*

92. *Id.* at 663.

93. *See, e.g.*, Gerrity v. Beatty, 373 N.E.2d 1323, 1326 (Ill. 1978) (holding a school district liable for the injuries of a 15-year-old football player because it supplied the player with an inadequate and poor-fitting helmet).

94. 380 N.E.2d 653 (Mass. 1978).

95. *Id.* at 656. For cases respecting defective helmet litigation, *see* Carrier v. Riddell, Inc., 721 F.2d 867 (1st Cir. 1983) (involving a high school football player who suffered severe spinal injury because of an alleged defective football helmet); Lister v. Bill Kelley Athletic, Inc., 485 N.E.2d 483 (Ill. App. Ct. 1985) (involving a high school football player who suffered a fractured spine from being tackled by another player); Fiske v. MacGregor, Div. of Brunswick, 464 A.2d 719 (R.I. 1983) (involving a high school football

coach, school, manufacturer, and retailer.[96] The court held that the school was required to exercise reasonable care not to provide equipment which it knew or had reason to know was dangerous for its intended use, especially since the helmet was specially ordered by the team's coach.[97] The court stated:

> Since many of the teams that [the school] played prior to 1970 (the year of injury) wore one-piece helmets, the jury could have found that the coach knew, or should have known, of their availability. There was sufficient evidence to permit the jury to decide whether, in these circumstances, the supplying of the helmet to the plaintiff was negligent conduct.[98]

The duty to ensure the proper use of safe equipment, however, is more limited than other duties, as coaches usually have less control over the equipment a player wears than other aspects such as the drills a player performs.[99] If coaches have any role in choosing or supplying equipment, they should maintain logs and records pertaining to the reasons for selecting the particular equipment, representations and recommendations made by the manufacturer or salespeople regarding

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player rendered a quadriplegic because of an alleged defective football helmet which improperly compressed the player's spine upon impact); Galindo v. Riddell, Inc., 437 N.E.2d 376 (Ill. App. Ct. 1982) (involving a high school football player who suffered dislocation of his cervical vertebrae and paralysis from defective protective suspension system and padding of his football helmet); Bernick v. Jurden, 293 S.E.2d 405 (N.C. 1982) (involving a hockey player who sustained severe jaw injuries when the mouth guard shattered after being struck by the stick of an opposing player); Hollings Sporting Goods Co. v. Daniels, 619 S.W.2d 435 (Tex. Civ. App. Ct. 1981) (involving a high school football player who sustained severe brain injury after his helmet collapsed when he collided with another player); Durkee v. Cooper of Canada Ltd., 290 N.W.2d 620 (Mich. Ct. App. 1980) (involving a hockey player who was injured when a puck struck the helmet's chin strap); Byrns v. Riddell, Inc., 550 P.2d 1065 (Ariz. 1976) (involving a high school football player who incurred brain injury after being struck in the head during a football game). *See also* 3 LAWYERS DESK REFERENCE §§ 34:1-34:21, at 1017-1071 (1993 volume) and 261-278 (Supp. 1995) (detailing extensive history and the current status of defective helmet litigation).

96. *Everett*, 380 N.E.2d at 657. Following a jury verdict in the plaintiff's favor, the trial judge granted a judgment notwithstanding the verdict in favor of the defendants based upon the plaintiff's assumption of risk except as to the count of strict liability. *Id.*

97. *Id.* at 657, 659 (stating that the coach, as a person with substantial experience in the game of hockey, may be held to a higher standard of care and knowledge than would an ordinary prudent person).

98. *Id.* at 659 (citations omitted). The coach conceded in his testimony that one-piece helmets were safer than the helmet worn by the plaintiff, since the gaps in the latter would allow for the penetration of a puck. *Id.*

99. *Compare* Brackman v. Adrian, 472 S.W.2d 735, 738-40 (Tenn. Ct. App. 1971) (dismissing a claim for a coach's failure to require a 14-year-old softball catcher to wear a catcher's mask because the evidence showed that the player was familiar with the risk of injury and was experienced with her position).

the equipment's qualities and fitness, and equipment maintenance and inspection.

D. Providing Competent and Responsible Personnel

Coaches have the responsibility to ensure that their assistants also have knowledge of the game.[100] For example, in *Vargo v. Svitchan*,[101] a fifteen year old high school football player was paralyzed as a result of overexerting himself while lifting weights in preparation for football tryouts.[102] The player claimed that he was "urged on" by the coach "to perform to the utmost . . . ."[103] As a result, the player sued the coach, the superintendent of the school, and the athletic director on the theory that the defendants allowed the coach "to abuse students and to threaten and pressure them into attempting athletic feats beyond their capabilities . . . ."[104] The Michigan Court of Appeals held that because the athletic director was in direct control over the program under which the plaintiff was injured, the jury could decide whether the athletic director was responsible for the coach's negligence.[105]

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100. *See, e.g.*, David P. Chapus, *Liability of School Authorities For Hiring or Retaining Incompetent or Otherwise Unsuitable Teacher*, 60 A.L.R. 4TH 260, 281 (1988) (noting that school authorities such as school boards and districts are under a similar duty to hire competent coaches).

101. 301 N.W.2d 1 (Mich. Ct. App. 1980).

102. *Id.* at 3.

103. *Id.* at 2. Unfortunately, two spotters did not react in time, and the player suffered severe injuries. *Id.*

104. *Id.*

105. *Id.* at 5. *See also infra* notes 168-189 and accompanying text (discussing vicarious liability and the doctrine of respondeat superior); Crohn v. Congregation B'Nai Zion, 317 N.E.2d 673 (Ill. App. Ct. 1974). In *Crohn*, the court discussed the problematic issue of choosing improper personnel to supervise young athletes where the minor plaintiff sustained personal injuries while attending a summer camp run by the defendant. 317 N.E.2d at 637. The plaintiff in that case, a 7-year-old female, was struck in the nose by a baseball bat which was errantly swung by another 10-year-old attending the camp. *Id.* at 638. The counselor supervising the activity was fifteen years old at the time and he testified that several bats were laying on the ground and that the 10-year-old player had picked up a bat contrary to the supervisor's instructions and began to swing the bat in a circular swing before he could stop the 10-year-old from swinging the bat. *Id.* The plaintiff claimed, amongst other things, that the defendant employed and hired an "immature and inexperienced child" to supervise the children. *Id.* at 639. Following a presentation of the plaintiff's case, a directed verdict was granted in favor of the defendant but was reversed on appeal and remanded for a new trial. *Id.* at 637. On appeal, the court found that triable issues of fact were presented as to whether or not "the employment of a 15-year-old counselor was reasonable . . . and whether there was sufficient supervision of the entire area and actitivity." *Id.* at 641. Thus, *Crohn* illustrates that whether or not

E. Warning of Latent Dangers

Complimenting a coach's duty to provide proper supervision, training and instruction, and equipment is the coach's duty to warn. Coaches have a duty to warn about certain dangers, such as the nature of the activity, the use of equipment, the condition of the playing surface and the techniques involved in the activity.[106] Coaches have a duty to warn of dangers that are known to the coach, or that should have been discovered by the coach in the exercise of reasonable care. Conversely, however, coaches do not have a duty to warn of dangers that are obvious and inherent to the particular sport.[107]

With respect to playing surfaces, if there is a sprinkler head exposed on a football field, a defect in the boards of an ice hockey rink, or sand and gravel on an asphalt tennis court, the coach has a duty to advise of these dangers and may be responsible for precluding those under his control from competing on such surfaces until the dangerous condition is rectified.

However, coaches are not required to advise of every condition that may be dangerous. For example, in *Schiffman v. Spring*,[108] a coach was not held liable for a soccer player's injuries that occurred during a soccer match played on a wet and slippery field.[109] The New York Appellate Division rejected the player's claim of negligence against the coach, finding that such conditions were obvious and that the player had assumed the risk of injury inherent in playing on such a field.[110]

A similar result was reached in *Snyder v. Morristown Cen-*

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proper supervision had been provided may include the consideration of the *age* of the persons responsible for the supervision.

106. Such a duty may also be incumbent upon third parties such as school boards. *See infra* notes 168-189 (discussing vicarious liability and respondeat superior). *Compare* Clary v. Alexander County Bd. of Educ., 212 S.E.2d 160, 164 (S.C. 1975) (holding that a jury could reasonably find liability on the part of the school district for negligence where a student trying out for a high school basketball team crashed into a glass window while running windsprints because the school elected to use "wire glass" instead of "tempered glass," which was considered safer).

107. *See, e.g.*, Hammond v. Board of Educ. of Carroll County, 639 A.2d 223, 227 (Md. Ct. Spec. App. 1994)(rejecting a female varsity football player's claim of failure to warn because "the possibility of injury to a voluntary participant in a varsity high school tackle football game was 'the normal, obvious and usual incident[ ]' of the activity." (alteration in original)).

108. 609 N.Y.S.2d 482 (N.Y. App. Div. 1994).

109. *Id.* at 484.

110. *Id.*

tral School District.[111] In *Snyder*, the parents of a touch football player brought suit against the school district alleging that the district was negligent in allowing a game to be played on a wet and muddy field.[112] The court held in favor of the school district, stating that it was not negligent in allowing such game to be played on a wet or damp playing field.[113] The court stated that to hold otherwise would preclude schools "from utilizing their playing fields during, and for a period of time following, each and every rain and, in fact, until each morning's dew evaporated."[114]

F. Prompt and Proper Medical Care

As in all instances of negligence, the test as to whether a coach should provide prompt medical care is whether a reasonable person in like circumstances would recognize that immediate medical assistance was required. For example, in *Mogabgab v. Orleans Parish School Board*,[115] two football coaches were found liable for the death of a football player as a result of heat stroke because they failed to obtain prompt medical assistance.[116] The Louisiana Court of Appeals noted that the coaches did not provide medical assistance until two hours after the football player first exhibited signs of heat exhaustion.[117] Therefore, the court stated that the coaches' had acted with unreasonable neglect.[118]

1. Specific Tests

Some jurisdictions have adopted specific tests in determining liability based upon whether the defendant was able to appreciate the severity of the injury, whether the defendant had the skill to provide adequate medical treatment (which includes getting the injured person to a doctor), and whether providing medical treatment would have avoided the injury.[119]

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111. 563 N.Y.S.2d 258 (N.Y. App. Div. 1990).
112. *Id.* at 258.
113. *Id.* at 259.
114. *Id.*
115. 239 So. 2d 456 (La. Ct. App. 1970).
116. *Id.* at 456.
117. *Id.* at 457.
118. *Id.*
119. *See, e.g.*, Stineman v. Fontbonne College, 664 F.2d 1082 (8th Cir. 1981). In *Stineman*, a deaf collegiate softball player was struck in her eye by an errantly thrown ball

In other jurisdictions, such as New Jersey, there is a "parental determination" test which evaluates a coach's responsibility against whether or not the choice of seeking medical attention can await "parental determination."[120] Under this test, coaches will be liable where the decision to seek medical attention cannot await the player's parents and the coach nevertheless fails to act.[121]

2. Proper Medical Treatment

Coaches also have a duty to refrain from aggravating an injury where a reasonable person would know such action would cause further injury. In *Halper v. Vayo*,[122] a high school coach was found liable for moving a wrestler after he sustained a severe knee injury.[123] The coach also failed to contact the proper medical authorities or the wrestler's parents after the

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during a team practice. *Id.* at 1085. Unfortunately, the injured player was not taken to a doctor until the following day when the plaintiff's eye began to hemorrhage. *Id.* Ultimately, the eye became infected and the player lost her vision. *Id.* Expert testimony revealed that immediate medical treatment may have prevented the permanency of the injury. *Id.* at 1086. The court found that the coach had a duty to provide prompt medical attention and affirmed a jury verdict in favor of the plaintiff. *Id.*

120. *See, e.g.*, Duda v. Gaines, 79 A.2d 695 (N.J. Super. Ct. App. Div. 1951). In *Duda*, a high school football player injured his shoulder in practice. *Id.* at 696. The player's arm was set in a sling by the school doctor. *Id.* Two weeks later, in accordance with the doctor's instructions, the player returned to practice and reinjured his shoulder during a supervised tackling practice. *Id.* The coach examined the player's shoulder and decided that it was not necessary for the plaintiff to obtain medical attention. *Id.* Thereafter, the player's parents sued the team's coaches and school personnel for their failure to obtain immediate medical attention for the injured player. *Id.* In rejecting this claim, the court set down the following test for when coaches must seek medical care for an injured player:

> [This] legal duty can be said to exist when a reasonable man having the knowledge of facts known to the teachers or which they might reasonably be expected to know would recognize a pressing necessity for medical aid, and the dictates of humanity, duty and fair dealing would require that there be put in the boy's reach such medical care and other assistance as the situation might in reason demand so that the pupil might be relieved of his hurt and more serious consequences be avoided. There is no emergency in the absence of proofs from which it is reasonably inferable that the decision whether to secure medical aid and the choice of the physician cannot safely await parental determination.

Id. (citations omitted).

121. *Id.*

122. 568 N.E.2d 914 (Ill. App. Ct. 1991).

123. *Id.* at 920. Vayo not only moved but pulled on Halper's leg and manipulated his knee in an attempt to treat the injury. *Id. Accord* Welch v. Dunsmuir Joint High Sch. Dist., 326 P.2d 633, 639 (Cal. Ct. App. 1958) (affirming jury verdict in favor of plaintiff, who was rendered a quadriplegic after being negligently moved from a football field without a stretcher).

injury occurred.[124] Similarly, in *Guerrieri v. Tyson*,[125] a teacher was found liable for rendering medical treatment in a negligent manner by immersing a student's infected finger in scalding water.[126] Therefore, as the aforementioned cases demonstrate, a coach not only has a duty to provide prompt medical assistance but also a duty to provide proper medical assistance.

G. Preventing Injured Participants From Competing

Under no circumstances are coaches to permit injured players from competing if there is an unreasonable risk of further injury to the player.[127] It is always difficult to keep an injured player from competing when such a player is talented and desires to play despite the injury. However, coaches will be liable for permitting injured athletes to compete if the coach knows, or in the exercise of due care should know,[128] that the

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124. *Halper*, 568 N.E.2d at 920.

125. 24 A.2d 468 (Pa. Super. Ct. 1942).

126. *Id.* at 469.

127. Coaches should also be aware of the team physician's duties. *See generally* Matthew J. Mitten, *Medical Malpractice Liability of Sports Medicine Care Providers for Injury to, or Death of, Athlete*, 33 A.L.R. 5TH 619 (1995); Matthew J. Mitten, *Team Physicians and Competitive Athletes: Allocating Legal Responsibility For Athletic Injuries*, 55 U. PITT. L. REV. 129 (1993).

The recent Hank Gathers tragedy exemplifies this point. Hank Gathers was a Loyola Marymount basketball player who collapsed and died of a heart attack in 1990 while participating in a basketball game. *See* Mitten, *Team Physicians and Competitive Athletes, supra*, at 129 (describing the Gathers tragedy and the Anthony Penny case which both involved the collapse and death of two star basketball players because of heart attacks suffered during competitive basketball games). Following Gathers' death, the family sued the college, the athletic trainer, several physicians, and the team coach alleging negligent diagnosis and treatment of Gathers. *Id.* at 130 n.10. *See* Barbara J. Lorence, *The University's Role Toward Student-Athletes: A Moral Or Legal Obligation?*, 29 DUQ. L. REV. 343 (1991) (recounting the Gathers tragedy in great detail).

Coaches will also be held liable for what they *should have known* about the player's physical condition. *See* Summers v. Milwaukee Union High Sch. Dist. No. 5, 481 P.2d 369, 370 (Or. Ct. App. 1971) (holding that where the instructor failed to respond to four requests from participant's doctor inquiring into the exercises the student was to perform, that instructor could be held to have known of the true hazard of the student exercising even in the absence of medical advice to the contrary).

128. *See Summers*, 481 P.2d at 369. *Summers* exemplifies a coach's duty to use due diligence in exploring a potential medical problem for which the failure to investigate could lead to liability if the student or player exercising or performing with an existing injury sustains further injury as a result of such participation. *Id.* In *Summers*, a high school student sustained serious injury when she jumped off a coil spring and attempted to land on her feet during gym class. *Id.* at 370. In recounting the student's physical history, the court found that during the plaintiff's freshman year, she had been excused

athlete is injured and that permitting the athlete to play will increase the risk of sustaining injury.[129]

The Oregon Appellate Court's decision in *Lamorie v. Warner Pacific College,*[130] is one of the more recent cases developing this duty. In *Lamorie*, the plaintiff was awarded a basketball scholarship to attend the defendant college.[131] The plaintiff subsequently injured his nose while playing football.[132] While the plaintiff was acting in his capacity as gym monitor, a requirement under his scholarship, the coach asked the plaintiff to participate in a basketball scrimmage even though the coach was aware of the plaintiff's injury.[133] Fearing that he would jeopardize his basketball scholarship by refusing to play, the plaintiff participated in the scrimmage.[134]

During the scrimmage, the plaintiff was struck in the eye and the nose by another basketball player.[135] The player sued

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from physical education because of a "back condition." *Id.* This same disability lingered during the plaintiff's sophomore year, and a second doctor's note to the school was produced by the plaintiff for support. *Id.* The plaintiff's doctor inquired with the school as to what exercises and type of gymnastics the plaintiff was required to perform at school. *Id.* This request was made four times, however, the school never responded. *Id.* In rejecting the defendant's objection on appeal to a verdict in favor of the plaintiff, the court held that "[h]ad it not been for defendant's failure to furnish the requested list of exercises, the defendant, presumably, would have been advised of the hazard by an excuse from the doctor." *Id.* The court found that the student could not have assumed the risk of injury. *Id.* Therefore, the court affirmed the jury verdict rendered below. *Id.*

129. Some courts have noted that in determining whether or not a coach has breached his or her duty to a student or athlete's medical condition , consideration should be given to each individual student or athlete's agility. *See, e.g.,* Bellman v. San Francisco High Sch. Dist., 81 P.2d 894 (Cal. 1938). In *Bellman*, a 17-year-old girl sustained serious injuries during a tumbling class conducted by a high school as part of its physical education program. *Id.* at 896. The court stated:

> It is a matter of common knowledge that some students show much more aptitude for athletics than do others. Some enjoy physical exercise; others find games or stunts of any kind very difficult. Frequently students of the same age have very different capacities for physical training. Also, some forms of exercise are considered entirely proper for boys while too strenuous or otherwise undesirable for girls. In the exercise of ordinary care, it was the duty of the teachers employed by the school district to take all of these factors with others into consideration in determining the kind of instruction to be given the respondent.

Id. at 897.

130. 850 P.2d 401 (Or. App. Ct. 1993).

131. *Id.* at 401.

132. *Id.*

133. *Id.* The plaintiff injured his nose while playing football and was required to wear a nose cast. *Id.* The plaintiff's eyes were visibly bruised, swollen and practically shut. *Id.*

134. *Id.* at 402.

135. *Bellman*, 850 P.2d 402.

the coach claiming that he re-aggravated his injury, and summary judgment was granted in favor of the coach.[136] In reversing summary judgment, the Oregon Court of Appeals held that the doctor's instruction not to participate in athletics was a critical factor in the case, and coupled with the fact that the plaintiff's face was visibly swollen and his eyes were black and blue, the court stated that a reasonable jury could infer that the coach knew or should have known that the plaintiff's participation in the scrimmage created an unreasonable risk of causing the plaintiff further injury.[137]

A competing interest to this duty, however, is an athlete's "right" to play despite his or her disability. Pursuant to the Rehabilitation Act of 1973 (the "Rehabilitation Act"),[138] institutions receiving federal assistance are prohibited from engaging in discrimination against disabled but otherwise qualified athletes.[139]

One of the more recent cases discussing this issue is *Pahulu v. University of Kansas*.[140] In *Pahulu*, a University of Kansas football player was disqualified by the team physician from participating in collegiate athletics following a head injury sus-

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136. *Id.*

137. *Id. See also* Jarreau v. Orleans Parish Sch. Bd., 600 So. 2d 1389, 1389-90 (La. Ct. App. 1992) (finding a coach liable for a football player's injuries where the coach permitted the player to play with an existing wrist injury of which the coach was aware); Morris v. Union High Sch. Dist., 294 P. 998, 999 (Wash. 1931) (holding a school district liable for a football coach's negligence in permitting, persuading, and coercing a 17-year-old high school football player to play in a football game despite the coach's knowledge that the player was still suffering from spinal injuries sustained during a previous practice). *Compare* Lowe v. Board of Educ. of City of New York, 321 N.Y.S.2d 508, 509 (N.Y. App. Div. 1971) (remanding matter for a trial on the issue of causation where the gym teacher "insisted" that the pupil perform "broad jumps" despite the existence of three doctor's notes giving notice of the student's disability).

138. 29 U.S.C. § 794(a) (1995). That statute provides, in pertinent part:

> No otherwise qualified individual with a disability in the United States, as defined in section 7(8) [29 U.S.C. § 706(8) (1995)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

Id.

For an excellent overview of the Act, *see generally* Matthew J. Mitten, *Amateur Athletes With Handicaps or Physical Abnormalities: Who Makes the Participation Decision*, 71 NEB. L. REV. 987 (1992).

139. 29 U.S.C. § 794 (1995).

140. 897 F. Supp. 1387 (D. Kan. 1995).

tained during a tackle.[141] Unsatisfied with this prognosis, the player sought a second opinion, where the player learned that he was no more at risk for paralysis than any other player.[142]

The player sued the University and the Athletic Director, amongst others, alleging a violation of the Rehabilitation Act.[143] In denying the player's application for injunctive relief, the court found that under the applicable standard for evaluating cases brought under the Rehabilitation Act,[144] the defendants' actions did not impair any activity or program referenced in the Rehabilitation Act because: (1) the player's scholarship continued despite the injury; (2) the player could participate in the activity in some capacity other than as a player; and (3) there were "a myriad of other education opportunities available to the plaintiff."[145]

H. Matching Participants of Similar Competitive Levels

The duty not to place players in a non-competitive setting, otherwise known as the duty not to "mismatch,"[146] can be un-

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141. *Id.* at 1388.

142. *Id.*

143. *Id.* at 1389.

144. According to the court, the standard is as follows:

> In order to succeed on the merits, Pahulu [the player] must establish a prima facie claim under Section 504 of the Rehabilitation Act, which sets forth the following elements:
>
> (1) he is "disabled" within the meaning of the statute;
> (2) he is "otherwise qualified" to participate in the activity or program in question;
> (3) he was excluded from the activity or program solely on the basis of his disability; and
> (4) the activity or program receives federal funding.

Id. at 1389-90 (citing 29 U.S.C. § 794; Eivins v. Adventist Health Sys./Eastern & Middle Am., Inc., 651 F. Supp. 340, 341 (D. Kan. 1987)). The "disabled" element is further broken down into a two-part analysis, which asks whether the person has a physical impairment and whether the impairment "'substantially limits one or more major life activities.'" *Id.* at 1390 (quoting Welsh v. City of Tulsa, Okla., 977 F.2d 1415, 1417 (10th Cir. 1992)).

145. *Id.* at 1393.

146. *See, e.g.*, Whipple v. Salvation Army, 495 P.2d 739 (Or. 1972). In *Whipple*, the plaintiff, a 15-year-old boy, sustained injuries after catching a pass in a tackle football game supervised by the Salvation Army. *Id.* at 740. Although no "mismatch" claim was alleged, the court noted:

> The question arising from the latter contention is whether defendant owed a duty to plaintiff not to allow or encourage him to play tackle football. We hold that defendant owed no such duty as long as plaintiff was aware of the risk. It is a common practice in our schools and elsewhere to encourage boys even younger than plaintiff [15-years-old] to engage in organized tackle football. Plaintiff sub-

derstood as a coach's responsibility not to pit players of unequal skill, size, weight, or strength against one another. Because coaches ultimately determine who will participate in the game or activity, they have a duty to select participants that are qualified to compete against other participants to reduce the risk of serious injury.[147] This duty applies not only to actual competitions but also to practices.[148]

In *Brooks v. Board of Education of City of New York*,[149] an athlete was kicked during a soccer drill by a fellow student who substantially outweighed him.[150] As a result, the plaintiff fell and hit the back of his head on the ground.[151] In holding for the plaintiff, the court found that the drill was hazardous by virtue of the physical inequities of the players.[152] The court reasoned that the Board of Education, therefore, had breached its duty of reasonable care by allowing such mismatched players to engage in such a "sense[less]" drill.[153] However, in *Laiche v. Kohen*,[154] a 110-pound eighth grader fractured his leg

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mits that in these instances the boys are provided adequate preparation, training and equipment. So they are; but there is no showing in the present case that plaintiff's injury resulted from the lack of any of these precautions. Moreover, there is no evidence here that plaintiff was overmatched by the other players. *Had a 10-year-old boy been injured as the result of being encouraged to play with 15-year-olds, perhaps the matter would have a different outcome.*

Id. at 743 (emphasis added).

147. *See, e.g.*, Reynolds v. Reynolds, 141 N.Y.S.2d 615 (N.Y. Cl. Ct. 1955). In *Reynolds*, a mismatch case involving two wrestling participants whereby one participant was injured by the other participant who weighed ten pounds more, the court held that the coach's "mental comparison" of the two participants was sufficient to satisfy the coach's duty of care. *Id.* at 617. The court held:

> It cannot justifiably be said that the keeping, or the failure to keep, records of weights, ages, height or other statistics, caused or contributed to this accident. The supervisor, experienced, trained and well-acquainted with these students was able to judge the strength and potentialities of the members of his class without reference to records or statistics. It appears very improbable in a class of thirty to pair off any exact match. In addition to size and weight, the supervisor, in this type of sport, must consider the muscular, nervous and mental reactions and the capabilities of the participants.

Id. at 618.

148. Leahy v. School Bd. of Hernando County, 450 So. 883, 885 (Fla. Dist. Ct. App. 1984).

149. 205 N.Y.S.2d 777 (N.Y. Sup. Ct. 1960).

150. *Id.* at 779. The drill entailed two players running at each other at full speed in a contest to see who could kick the ball first. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. 621 So. 2d 1162 (La. Ct. App. 1993).

after a 270-pound eighth grader fell on it.[155] The Louisiana Court of Appeals rejected the plaintiff's allegations that the coaches did not act reasonably, holding that the coaches had no duty to protect the plaintiff from the risk of injury in that instance.[156]

In addition to coaches, this duty was extended to "camp counselors" at a hockey clinic in *Zipper v. Ocean Ice Palace*.[157] In *Zipper*, a thirteen year old hockey player attended a one week hockey camp with other players from ages sixteen through eighteen.[158] The plaintiff's team played a group of counselors and instructors in an "all star" game.[159] During this game, the plaintiff was injured when he was struck in the leg by a slap shot taken by a nineteen year old player.[160] As a result, the plaintiff filed suit against the hockey rink under a negligent mismatch theory.[161] At trial, it was established that the plaintiff's leg pads were made for competition among players of the plaintiff's age group and skill, and that they were not made to absorb shots from players of heightened skill and ability.[162] It was further established that the mismatch in the age and skill of the two players created an unreasonably hazardous condition.[163] Although the case was remanded on the issue of damages, the defendants were found liable for allowing two players of such varied skill to compete against one another.[164]

As a corollary to mismatching players of one team against another, coaches themselves must be careful that they do not injure players during practices or otherwise because of their heightened skill.[165] The test in such a case is whether or not

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155. *Id.* at 1162. The mismatch suit was filed against the coach and the school board. *Id.*

156. *Id.* at 1165. Essentially, the court found that no duty had been breached because it determined that the coach did not act unreasonably after review of the record. *Id.* The same result was reached on similar facts in Benitez v. New York City Bd. of Educ., 541 N.E.2d 29, 33 (N.Y. 1989).

157. Docket No. OCN-L-4200-89 (N.J. Super. Ct. Law Div. Dec. 6, 1993). For a summary of the case, *see* NEW JERSEY JURY VERDICT REVIEW & ANALYSIS, Vol. 14, Issue 8 (Dec. 1993).

158. NEW JERSEY JURY VERDICT REVIEW & ANALYSIS, *supra* note 157, at 3.

159. *Id.* at 3.

160. *Id.*

161. *Id.*

162. *Id.* at 4.

163. NEW JERSEY JURY VERDICT REVIEW & ANALYSIS, *supra* note 157, at 4.

164. *Id.*

165. *See, e.g.*, Stafford v. Catholic Youth Org., 202 So. 2d 333, 336 (La. Ct. App. 1967)

the coach acted reasonably. Additionally, courts will ask whether or not the coach, by engaging in competitive activity with one of his players, could have reasonably anticipated the resulting injury. For example, in *Kluka v. Livingston Parish School Board*,[166] the court stated that a coach may engage in sports competition with athletes despite the coach's superior knowledge and skill so long as the coach "exercise[s] such restraint so as not to inflict injury upon . . . [the athlete] by reason of his superior instruction and knowledge."[167]

IV. Vicarious Liability and Respondeat Superior

The tort doctrines of vicarious liability[168] and *respondeat superior*[169] may also affect a coach's responsibility to his play-

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(holding that a wrestling coach's act of wrestling with 12-year-olds of inferior strength and size alone is not enough to establish liability on the part of the coach, a showing of the use of the coach's superior experience or strength with resulting injuries must be shown).

166. 433 So. 2d 302 (La. Ct. App. 1983).

167. *Id.* at 304 (citation omitted). Interestingly, the court stated it would reach the same result even if the "coach had a duty to absolutely refrain from physical activity with students . . . ." *Id.* This conclusion was based upon the court's finding that the plaintiff assumed the risk of injury despite the fact that "[p]laintiff testified at trial that he had never received instructions as to how to wrestle, did not know what it meant to wrestle, and did not realize that is was possible to get hurt while wrestling." *Id.*

168. *See* Keeton, *supra* note 13, § 69, at 500. As noted in Keeton, the doctrine is one that imputes liability for one's actions to another. *Id.* § 69, at 499-500.

> A multitude of very ingenious reasons have been offered for the vicarious liability of a master: he has a more or less fictious "control" over the behavior of the servant; he has "set the whole thing in motion," and is therefore responsible for what has happened; he has selected the servant and trusted him, and so should suffer for his wrongs, rather than an innocent stranger who has had no opportunity to protect himself; it is a great concession that any man should be permitted to employ another at all, and there should be a corresponding responsibility as the price to be paid for it — or, more frankly and cynically, "In hard fact, the reason for the employers' liability is the damages are taken from a deep pocket."

Id. § 69, at 500 (footnotes omitted).

169. *See, e.g.*, Black's Law Dictionary 1311 (6th ed. 1990). In the coaching liability context, the doctrine may have application as follows:

> A school district may be liable for such injuries because of the doctrine of *respondeat superior*. Under that doctrine, an employer is liable for negligent acts committed by employees while acting within the scope of their employment. That means that a [school] district is liable for the negligent acts of coaches, physical education instructors, teachers, and principals.

John P. Lenich, *One Strike and You're Out: An Overview of Negligence and High School Athletics*, 40 Educ. L. Rep. 1, 2-3 (1987). As some commentators have noted, the employment status of a coach may have special considerations. *See* Bruce Beezer & Robert Goldberg, *Employment Status of a Teacher-Coach*, 49 Educ. L. Rep. 835, 835 (1988) (stating coaches who are also teachers may have special considerations due to the "dual

ers.[170] If a coach, for example, has acted negligently in the employ of another, the employer may be liable under the theory of *respondeat superior*.[171] Similarly, if the negligent coach was *not* an employee but was acting as another's agent,[172] liability

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nature" of the teacher-coach). As is a frequent issue in *respondeat superior* matters, a question may arise as to whether or not the tortious action occurred within the employee's "scope of employment." *See generally* RESTATEMENT (SECOND) OF AGENCY §§ 228-236 (1958) (outlining factors and considerations for "scope of employment" analysis). For example:

> Respondeat superior as a general rule means the employer is legally liable for a tort of an employee committed in the course of employment or authority. Once an employer-employee relationship is established, it must be determined whether or not the employee was in his or her scope of employment at the time of the tortious act. When the employee is authorized to do what he or she did, and it was in furtherance of the employer's business at the time the plaintiff was injured, the employee would be in the scope of employment or authority. If the employee's act that caused the plaintiff's injury was done outside the scope of employment, the employer will not be liable under respondeat superior.

Bruce Beezer, *School District Liability For Negligent Hiring and Retention of Unfit Employees*, 56 EDUC. L. REP. 1117, 1117-18 (1990).

170. *See* Karns, *supra* note 9, at 473-74 (1986) (stating "[i]n sports cases, the concept of *respondeat superior* is extremely important because the negligent conduct of an official or coach may be imputed to the school district.") (footnote omitted).

171. *See* KEETON, *supra* note 13, § 69-70, at 499-508. *See also* SCHUBERT, *supra* note 8, § 7.2, at 203 (stating, "[a] high school coach would, for example, be an agent of the school athletic director, school principal, district superintendent, school board, school district, and city that operates the school system, and all of these principals might be sued for the coach's negligent acts." (citing Larson v. Independent Sch. Dist. No. 314, 289 N.W.2d 112 (Minn. 1980)). In Larson v. Independent Sch. Dist. No. 314, 289 N.W.2d 112 (Minn. 1980), an eighth grade student broke his neck and was rendered a quadriplegic after he unsuccessfully performed a gymnastic exercise which required him to perform a "headspring" on a mat. *Id.* at 115. The student sued his gym teacher alleging negligent supervision for failure to properly spot the exercise. *Id.* at 116. Additionally, the plaintiff sued the school principal and superintendent alleging their failure to properly supervise the school's physical education program as well as the teacher's physical education instruction. *Id.* A jury returned a verdict in favor of the plaintiff, finding the coach 90% at fault and the principal 10% at fault. *Id.* at 115. The trial court also granted a motion dismissing the plaintiff's claim against the school's superintendent. *Id.* at 115 n.1. On appeal, the verdict and the dismissal of the plaintiff's action against the superintendent was affirmed because the court found that the superintendent was too "removed" from the supervisory responsibility of overseeing the student's gym teacher. *Id.* at 119. However, based on the principal's closer relationship to the gym teacher, the court found that the principal was liable for failing to properly supervise the gym teacher. *Id.*

172. As a general matter, an agent is "[a] person authorized by another to act for or in place of him; one entrusted with another's business." BLACK'S LAW DICTIONARY 63 (6th ed. 1990). There are various ways in which a principal-agent relationship can arise. For example, the relationship can arise through *actual authority*, where the principal's words or conduct give a reasonable person in the agent's position the belief that the agent is authorized to act on behalf of the principal. *See generally* RESTATEMENT (SECOND) OF AGENCY § 26 (1958). Additionally, a principal-agent relationship can arise through *ap-*

may be imposed upon the coach's principal under the theory of *vicarious liability.*[173] If the tortfeasor is neither an employee nor agent, he or she may be deemed an *independent contractor,*[174] and liability will not be imposed upon a third person. These theories are relevant because they impute responsibility for the actions of a coach to third persons and may also shift the responsibility for the actions of *participants.*[175]

For example, in *Nydegger v. Don Bosco Prepatory High School,*[176] the court suggested that if a coach gives a direct command to a player to injure an opposing player, the coach

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parent authority, where the principal's words or conduct give *a third party* a reasonable belief that the agent has authority to act on behalf of the principle. *Id.* § 8. Finally, a principal-agent relationship can arise through *inherent authority. Id.* § 8A.

Hanson v. Kynast, 494 N.E.2d 1091 (Ohio 1986), tested an agency theory between a collegiate lacrosse player and his university. *Id.* at 1093. In *Hanson,* the plaintiff sustained a serious spinal injury during a collegiate lacrosse game. *Id.* at 1092. The injury was caused after a scuffle ensued between players and the plaintiff, who in an effort to intercede, was tossed to the ground. *Id.* at 1092-93. The plaintiff sued the opposing player and his university based on an agency theory. *Id.* at 1093. The court rejected this theory based on lack of "control" over the opposing player. *Id.* at 1095. The court noted that the opposing player had voluntarily undertaken to play lacrosse, that he was not playing under a scholarship, he used his own equipment to play, and he was not compensated for his lacrosse activities. *Id.* at 1094. The court characterized the tortfeasor's lacrosse activities as being part of that student's "diversified educational experience." *Id.* Furthermore, any control the coach had over the player was deemed "merely incidental to the [tortfeasor's] educational opportunity." *Id.* at 1095. *See also* Swanson v. Wabash College, 504 N.E.2d 327, 332 (Ill. App. Ct. 1987) (finding that a league organizer was not an agent of a college because he had no control over the recreational activity).

173. *See* KEETON, *supra* note 13, § 70, at 508.

174. An independent contractor is "one who, in exercise of an independent employment, contracts to do a piece of work according to his own methods and is subject to his employer's control only as to the end product or final result of his work." BLACK'S LAW DICTIONARY 770 (6th ed. 1990) (citation omitted).

175. *See* SCHUBERT, *supra* note 8, § 7.4, at 222, wherein the author notes:

> A coach must instruct pupils in methods which will safeguard them from . . . dangers. A coach will often delegate these duties to an assistant, but delegation does not relieve the coach of the ultimate responsibility for proper supervision. If the coach hires incompetent assistants, the coach will be considered negligent, as will the school administration for hiring an incompetent coach. A coach may [also] be negligent in failing to supervise and instruct assistants in carrying out their duties. Even if the coach or supervising instructor was not personally negligent in the hiring and training of assistants, vicarious[ ] liab[ility] may still exist for an assistant coach's negligence under the doctrine of *respondeat superior.* Both the coach and the negligent assistant are responsible for any harm caused. Of course, if the assistant is not negligent, neither the assistant nor the coach is liable.

Id. (citation omitted).

176. 495 A.2d 485 (N.J. Super. Ct. Law Div. 1985).

may be liable under a vicarious liability theory.[177] The court stated that the key element for consideration was the control a coach has over his players.[178] In this case, because the tortious act was not committed at the behest of the coach's instruction, the coach was not held liable for the player's actions.[179]

In *Toone v. Adams*,[180] a baseball umpire sued the team's manager for injuries sustained after the umpire was assaulted by a fan following the game.[181] The umpire argued that the manager's visible protest of several of his decisions during the game incited the fans to subsequently assault and injure him after the game.[182] The Supreme Court of North Carolina, however, rejected the umpire's argument, finding no causation between the manager's actions and the fan's actions, particularly because the manager did not instruct or encourage the fans to engage in the aggrieved of conduct.[183]

In *Lasseigne v. American Legion, Post 38*,[184] the parents of a player who was struck in the head by a baseball during practice sought to recover damages from the league's organizer, American Legion, Post 38 ("Post 38").[185] The parents argued that "by sponsoring and encouraging such practice sessions, Post 38 owed a duty to adequately safeguard and supervise these sessions and to insure that its employees, agents and assistants were adequately trained."[186] The Louisiana Court of Appeals rejected the parents' claim, finding that no duty was owed by the league organizer.[187] The basis for the court's conclusion was that the organizer had absolutely nothing to do with the selection of coaches or conduct of team practices.[188]

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177. *Id.* at 487.
178. *Id.*
179. *Id.* ("A coach cannot be held responsible for the wrongful acts of his players unless he teaches them to do the wrongful act or instructs them to commit the act.").
180. 137 S.E.2d 132 (N.C. 1964).
181. *Id.* at 132. After a game filled with controversial calls, the defendant ran to the umpire, without warning, and struck him with a blow to the head. *Id.* at 134.
182. *Id.* at 134.
183. *Id.* at 138.
184. 543 So. 2d 1111 (La. Ct. App. 1989).
185. *Id.* at 1112.
186. *Id.*
187. *Id.* at 1114.
188. *Id.* The court held: "Local private businesses sponsor[ed] the individual teams and select[ed] the coaches. The coaches are solely responsible for all aspects of practice, including frequency, location and length of each session. As Post 38 ha[d] no involvement in team practices, they can owe no duty to insure the safety of the game." *Id.*

Thus, from the *Lasseigne* and *Toone* decisions, it is clear that the element of control is predominant in determining vicarious liability.[189]

V. Immunities and Defenses

In contrast to the various duties previously discussed, it is equally important to canvass the available defenses to coaches and other entities which may be equally responsible for their actions. As a general matter, these defenses are affirmative, such as comparative negligence and assumption of the risk. However, there may also be immunity claims depending on the particular individual involved. Although each defense is unique, all may have application to the same set of facts.

As is always the case, it is important that coaches do not rely upon a particular defense to shield them from liability. The first and best line of defense is to negate any breach of duty owed by exercising due care. Reliance on the following defenses should only be had if, and when, necessary.[190]

A. Assumption of Risk

Assumption of risk exists in various forms.[191] It has been

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189. *See* Perkaus v. Chicago Catholic High Sch. Athletic League, 488 N.E.2d 623, 627-28 (Ill. App. Ct. 1986) (rejecting an injured rugby player's claims against a high school athletic league because the league did not sponsor the event and had no control over the coaches or management of the games).

190. Bjorklun, *supra* note 5, at 351 (1990) ("Although school personnel may be comforted by the available defense of assumption of the risk, their first and foremost concern should be to provide a safe environment for students. Thus, school personnel should be primarily concerned with eliminating negligence in the operation of their athletic activities.").

191. *See* Keeton, *supra* note 13, § 65, at 451. The defense of assumption of risk is probably the most frequently asserted defense interposed in civil actions arising from sporting events. *Id.* Various forms of the defense exist. For example, there is "express" assumption of risk and "implied" assumption of risk. *Id.* § 68, at 482, 484. *See also* Restatement (Second) of Torts §§ 496B (express assumption of risk); 496C (implied assumption of risk) (1965); 1 Arthur Best, Comparative Negligence § 4.20[1][b][i], at 4-26, 4-27 (1995 rev. ed.) ("[p]erhaps the most typical express assumption-of-risk situation is a plaintiff's agreement to endure the risks inherent in sports participation.").

In some jurisdictions, "implied" assumption of risk is further quantified into "primary" and "secondary" assumption of risk. *See* John L. Diamond, *Assumption of Risk after Comparative Negligence: Integrating Contract Theory into Tort Doctrine*, 52 Ohio St. L.J. 717, 731 (1991) (discussing Florida's approach to abolishing the tort doctrine of implied assumption of risk and merging it into primary and secondary assumption of risk). "Primary" assumption of risk arises when the "defendant was not negligent because he or she either owed no duty to the plaintiff or did not breach a duty that was

used as an effective shield in favor of and against coaches,[192]

owed." *Id.* at 731. "Secondary" implied assumption of risk applies to situations "where the defendant has in fact breached his or her duty to the plaintiff." *Id.* "Secondary" implied assumption of risk can be further divided into "reasonable" and "unreasonable" characterizations. *Id.* at 731-32. "Reasonable" secondary implied assumption of risk occurs when "the utility of the conduct is so high in comparison with the risk involved that it is reasonable for the plaintiff to encounter the risk; and the plaintiff is actually aware of the risk and voluntarily encounters it." Samuel Frizell, *Assumption Of Risk In California: It's Time To Get Rid Of It*, 16 W. ST. U. L. REV. 627, 631 (1989). Conversely, "unreasonable" implied secondary assumption of risk occurs when the conduct in question, "in light of the risk to the plaintiff, is unreasonable, and . . . the plaintiff is actually aware of the risk and voluntarily encounters it . . . ." *Id.* at 630.

For the purposes of this Article, the theoretical distinctions between the various forms of assumption of risk and their survival following the advent of comparative negligence (where adopted) is not treated herein except where necessary. Thus, as used herein, "assumption of risk" is a defense which completely bars or partially bars (depending upon whether the jurisdiction has adopted comparative negligence) a plaintiff's recovery where the plaintiff has voluntarily assumed the risk of harm arising from the negligent or reckless conduct of a defendant. *See* RESTATEMENT (SECOND) OF TORTS § 496A (1965). Moreover, the plaintiff must have known of the risk of harm created by the defendant's conduct and been able to appreciate its "unreasonable character." *Id.* § 496D. Lastly, the plaintiff must have voluntarily accepted the risk. *Id.* § 496E.

192. *See generally* 57 AM. JUR. 2D *Municipal, County, School and State Tort Liability* § 607, at 545 (1988) (noting the "key role" assumption of risk has upon coaches' liability action); Korpela, *Tort Liability of Public Schools, supra* note 24, at 729; La Mountain v. South Colonie Cent. Sch. Dist., 566 N.Y.S.2d 745, 746-47 (N.Y. App. Div. 1991) (holding a soccer player assumed the risk of a "luckless accident."). *See also* Parisi v. Harpursville Cent. Sch. Dist., 553 N.Y.S.2d 566, 567 (N.Y. App. Div. 1990) (holding that a second baseman, who was participating as a catcher during pitching warm-ups, may have assumed the risk of injury when she was struck in the face by a softball despite the coach's failure to require the player to wear a face mask); McGee v. Board of Educ. of City of New York, 226 N.Y.S.2d 329, 332 (N.Y. App. Div. 1962) (holding that a teacher, who was filling in for an absent baseball coach, assumed the risk of injury when he was struck by a thrown baseball); Dillard v. Little League Baseball, Inc., 390 N.Y.S.2d 735, 736 (N.Y. App. Div. 1977) (finding that an umpire, who had coached Little League teams prior to being struck by a baseball in the groin while umpiring a game, had assumed the risk of injury). In *Dillard*, a Little League umpire was injured when he was struck by a pitch in the groin. 390 N.Y.S.2d at 736. The umpire sued the Little League organization for failure to provide proper equipment since the umpire was only provided with a face mask and chest protector. *Id.* The court rejected the umpire's claim, as a matter of law, finding that he assumed the risk of injury. *Id.* The court found relevant the umpire's skill and experience (including his coaching experience) and concluded that the injury causing event should not have been a "total surprise" to the plaintiff-umpire. *Id.* at 737. *But see* Richmond v. Employers' Fire Ins. Co., 298 So. 2d 118 (La. Ct. App. 1974). In *Richmond*, a Louisiana State University "B" baseball player aspiring to make the varsity team was given permission to participate in a varsity practice. *Id.* at 120. During this practice session, the player was assigned to catch balls thrown to a coach who was hitting balls to players between batters during batting practice. *Id.* Since a player was batting who might hit a ball where the player and the coach were standing, the coach instructed the player to take up a position whereby the coach stood between the player and the batter. *Id.* at 121. However, the coach then lost control of the bat, which left his hands and struck the player in the face. *Id.* In ruling in favor of the coach on the basis of assumption

and its importance cannot be misunderstood. As a general matter, "[a] plaintiff who voluntarily assumes a risk of harm arising from the negligent or reckless conduct of the defendant cannot recover for such harm."[193] In determining assumption of risk, a subjective standard is used to determine whether the plaintiff assumed the risk.[194] Some commentators have noted that this defense may also be "enhanced," such as in the case of a person or athlete with an abnormality, illness, or existing injury.[195] In any event, the touchstone of this defense is its "voluntary" nature.[196]

With respect to sporting events, the risks assumed by participants are those ordinarily encountered in a sport.[197] The difficulty courts face are determinations of risks that are "part of the game," and are therefore assumed by the athlete.[198]

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of risk, the court noted that "[b]eing struck by a bat released by a fellow participant is [a] foreseeable risk inherent in baseball practice." *Id.* at 122.

193. RESTATEMENT (SECOND) OF TORTS § 496A (1965).

194. J. Barton Goplerud, *Liability of Schools and Coaches: The Current Status of Sovereign Immunity and Assumption of the Risk*, 39 DRAKE L. REV. 759, 769 (1989-90). The standard is judged by what a particular plaintiff sees, understands, and appreciates. *Id.* at 769. The subjective awareness of the risk by the injured plaintiff is a question for the jury, and should not be ruled on as a matter of law unless reasonable minds could not come to any other inference. *Id.* This subjective approach differs from the objective standard employed for determining contributory negligence. *Id.* If the plaintiff does not fully understand the risk involved in a particular situation by reason of age, experience, intelligence, or information, he will not be found to have assumed the risk. *Id.* at 769-70. However, under an objective reasonable man standard, a plaintiff may be found contributorily negligent. *Id.* at 770. *See also* Baker v. Briarcliff Sch. Dist., 613 N.Y.S.2d 660, 662 (N.Y. App. Div. 1994) ("Students who voluntarily participate in extracurricular sports 'assume the risks to which their roles expose them,' but not risks which have been unreasonably increased.").

195. Mitten, *Team Physicians and Competitive Athletes*, *supra* note 127, at 133.

196. *See, e.g.*, Kennedy v. Providence Hockey Club, Inc., 376 A.2d 329, 332 (R.I. 1977) (holding that a hockey spectator voluntarily and knowingly encountered the risk of being struck in the face by a puck).

197. Karns, *supra* note 9, at 472 ("[I]f the injury falls outside which is ordinarily encountered in a sport, the court may deem the conduct unreasonable and may conclude that the participant did not assume the risk of injury."). *Compare* Pichardo v. North Patchogue Medford Youth Athletic Ass'n, Inc., 569 N.Y.S.2d 186, 187 (N.Y. App. Div. 1991) (holding that a 19-year-old baseball player who was struck by lightning during a game assumed the risk of injury by continuing to participate in the game); Cuesta v. Immaculate Conception Roman Catholic Church, 562 N.Y.S.2d 537, 537-38 (N.Y. App. Div. 1990) (holding that an umpire assumed the risk of injury "common to [that] particular sport.").

198. James H. Davis, *"Fixing" the Standard of Care: Motivated Athletes and Medical Malpractice*, 12 AM. J. TRIAL ADVOC. 215, 228-29 (1988) (noting that athletes consent to accidental injuries by participating in the sport). The problem for the judicial system has been determining the level of injury players assume. *Id.* at 228. The use of the assump-

However, assumption of risk has been held to not encompass every existing risk facing an athlete. For example, participants do not consent to the risk of negligent supervision.[199]

An infant or child's assumption of risk will be tested by the child's maturity and capacity to evaluate the circumstances surrounding him, with due consideration given to the child's age, intelligence and experience.[200] Some courts and commentators believe that athletes under the age of fourteen may or may not be able to appreciate a risk of harm.[201] Other commentators have posited that because of the nature of the assumption of risk defense, i.e., that the actor appreciate a risk of injury, it may not be as effective when asserted against claims filed by minors.[202]

Courts have utilized several different factors when analyzing the assumption of risk defense. In *Hale v. Davies*,[203] the

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tion of risk defense to preclude all recoveries, except the few that involve blatant or outrageous conduct, has been severely criticized. *Id.* Courts now examine more closely the particular facts surrounding the injury and the extent of the risk of injury. *Id.* at 228-29.

199. City of Miami v. Cisneros, 662 So. 2d 1272, 1274 (Fla. Dist. Ct. App. 1995). In *Cisneros*, an 11-year-old football player was injured when he tackled an opposing player weighing approximately 128 pounds. *Id.* at 1273. The player sued, claiming negligence on the part of the coach in supervising a city-sponsored game. One issue on appeal following a verdict in favor of the player was whether or not the player expressly assumed the risk of injury. *Id.* at 1275. In ruling that the trial court had properly excluded such a bar to the player's action, the court held that although the player "may have chosen to waive those risks inherent in the sport itself—the risks that arise from the bodily contact with other players—those risks did not include negligent supervision, the claim at issue herein." *Id.* at 1274 (citation omitted). *See also* 57 AM. JUR. 2D *Municipal, County, School and State Tort Liability* § 606, at 544 (1988).

200. KEETON, *supra* note 13, § 68, at 487. *Cf.* Byrd v. Bossier Parish Sch. Bd., 543 So. 2d 35, 37 (La. Ct. App. 1989) (applying same concept to contributory negligence). *Compare* Whipple v. Salvation Army, 495 P.2d 739, 743 (Or.1972) (holding that a 15-year-old boys appreciate the dangers inherent in playing football notwithstanding "evidence of mental deficiency or untoward seclusion from life's experience common to boys of that age . . . .").

201. *See* Bjorklun, *supra* note 5, at 355 (noting the difficulty in proving implied assumption of risk in athletic injuries concerning minors). As a general rule, age fourteen is a dividing line to determine the use of the defense, with emphasis given to the minor's maturity and athletic skill. *Id. Compare* Marques v. Riverside Military Academy, Inc., 73 S.E.2d 574, 577 (Ga. Ct. App. 1952) (holding that "a child of 17 is presumptively considered to be chargeable with the same degree of diligence for his own safety as an adult. . . ." (citations omitted)). *But see* Berman v. Philadelphia Bd. of Educ., 456 A.2d 545, 549 (Pa. Super. Ct. 1983) (holding that minors under seven years of age are "conclusively presumed incapable of negligence," and that minors over fourteen years of age are "presumptively capable of negligence.").

202. Joseph H. King, Jr., *Exculpatory Agreements for Volunteers in Youth Activities The Alternative to "Nerf®" Tiddlywinks*, 53 OHIO ST. L.J. 683, 697-98 (1992).

203. 70 S.E.2d 923 (Ga. Ct. App. 1952).

Georgia Court of Appeals focused on the athlete's knowledge of danger to determine liability.[204] Holding that the athlete had assumed the risk, the court looked to the sixteen year old's pre-existing injury and his knowledge of the inherent risks associated with the sport.[205] In *Rutter v. Northeastern Beaver County*,[206] the Supreme Court of Pennsylvania looked to the player's free will in accepting the risk of injury rather than the knowledge of danger focused upon in *Hale*.[207] In *Everett v. Bucky Warren, Inc.*,[208] the court looked to the control of the player by the team coach as one factor militating against a player's assumption of risk.[209] Finally, the sport in which the participant is injured also may be a factor in whether or not the player assumed the risk of injury.[210]

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204. *Id.* at 925. In *Hale*, a football player aggravated a pre-existing injury based on his allegation that his coach had "ordered" him to engage in practice while injured. *Id.*

205. *Id.* Specifically, the court noted that the plaintiff voluntarily joined the football team, as he was not paid for playing, and there was no requirement by the school that he must engage in such a game. *Id.* He was sixteen years of age, of average intelligence, and knew that football was a rough and hazardous game capable of causing injury. *Id.* A person of his age, therefore, is presumed to be capable of realizing danger and of exercising caution to avoid it. *Id.* Presumptively, he would be chargeable with the same degree of care as an adult. *Id.*

206. 437 A.2d 1198 (Pa. 1981).

207. *Id.* at 1205. In *Rutter*, a high school football player was blinded in one eye during a drill in practice. *Id.* The court noted:

> There is at least a question for the jury, then, as to whether appellant [the player] was compelled to accept the risk of playing jungle football in order to exercise or protect his right or privilege to play football. If he was so compelled, the acceptance of the risk was not voluntary, and thus he was not subject to the bar of the rule. Similarly, there is at least a question for the jury as to whether appellant had a reasonable alternative course of action.

Id. (citations omitted).

New York has similarly adopted this rule. *See, e.g.*, Benitez v. New York City Bd. of Educ., 541 N.E.2d 29, 33 (N.Y. 1989) (describing New York's "inherent compulsion" test, which effectively bars an assumption of risk defense when a player or participant is either directed by a superior to take a particular action or the player or participant was compelled to do so for economic reasons).

208. 380 N.E.2d 653 (Mass. 1978). In *Everett*, a hockey player sued his coach and the manufacturer and supplier of a hockey helmet following serious head injury from a hockey puck. *Id.* at 656. The injury occurred when the puck became wedged between a gap in the player's adjustable helmet. *Id.* For further discussion of the *Everett* case, *see supra* notes 94-98 and accompanying text.

209. *Id.* at 659. The court specifically stated, "[t]he helmet had been supplied to him [the player] by a person with great knowledge and experience in hockey, a person whose judgment the plaintiff had reason to trust, and it was given to him for the purpose implied, if not expressed, of protecting him." *Id.* Thus, the jury was free to consider "the circumstances in which he [the player] received the helmet in order to arrive at a conclusion as to what the plaintiff knew at the time of the injury." *Id.*

210. *See, e.g.*, Deangelis v. Izzo, 596 N.Y.S.2d 560 (N.Y. App. Div. 1993). In *Izzo*, a

However, the rules applying assumption of risk are not so simple. In California, for example, recently reported decisions have demonstrated the difficulty courts have had with the various assumption of risk doctrines.[211] The California Court of Appeals encountered a situation where an equestrian rider sued her coach after she had incurred serious injuries while training for a horse show in *Galardi v. Sea Horse Riding Club.*[212] The trial court ruled in favor of the defendants based on the doctrine of assumption of risk.[213] However, following the California Supreme Court's decision in *Knight v. Jewett,*[214]

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beginner karate student suffered serious head injuries when he was punched twice in the head during a sparring match. *Id.* at 560. The plaintiff sued for failure to provide proper equipment, failure to properly supervise, and failure to warn. *Id.* The owners of the karate school brought a motion for summary judgment, which was denied by the trial court. *Id.* On appeal, that decision was affirmed. *Id.* at 561. Specifically, the *Izzo* court intimated that summary judgment was not the proper vehicle with which to resolve the assumption of risk issue. *Id.* Part of that issue pertained to the injured student's knowledge of the risks in consideration of the sport. *Id.* The court stated:

> Karate is not a commonly observed sport such as football or baseball, where the dangers are apparent to anyone who has engaged in the activity; to the contrary, much of the appeal of karate stems from the fact that it consists of specialized training to enable the practitioner to punch or kick in an effective manner. The record indicates that prior to sparring, beginners at defendants' school were trained in kicking and punching — presumably in the particularly effective methods of doing so that are at the heart of karate — but apparently not in the blocks or counters that are effective against such blows. Given the limited amount of plaintiff's preparation, it is not at all clear that the risks to which plaintiff was to be exposed [would have been known]. . . .

Id.

211. *See, e.g.,* Passantino v. Board of Educ. of New York City, 383 N.Y.S.2d 639 (N.Y. App. Div. 1976). In *Passantino,* a 16-year old baseball player was rendered a quadriplegic as a result of the player crashing into a catcher at home plate during a "squeeze play" with his head down "like a battering ram." *Id.* at 640 (Cohalan, J., dissenting). A $1.8 million dollar verdict was rendered after trial, and the matter was appealed on the issue of damages to the New York Appellate Division. *Id.* at 639. The court remanded the matter to reduce what it deemed to be an excessive verdict. *Id.* However, Presiding Judge Cohalan, the lone dissenter, would have dismissed the case entirely based on the assumption of risk doctrine. *Id.* at 640. For commentary respecting the difficulty with the assumption of risk defense, *see* Stephanie M. Widman & John C. Baker, *Time to Abolish Implied Assumption of a Reasonable Risk in California,* 25 U.S.F.L. REV. 647 (1991); Ann K. Bradley, *Knight v. Jewett: Reasonable Implied Assumption of Risk As A Complete Defense In Sports Injury Cases,* 28 SAN DIEGO L. REV. 477 (1991).

212. 20 Cal. Rptr. 2d 270 (Cal. Ct. App. 1993).

213. *Id.* at 270-72.

214. 11 Cal. Rptr. 2d 2 (Cal. 1992). In *Jewett,* friends had gathered together to watch the 1987 Super Bowl game. At halftime, some of the partygoers decided to engage in an informal game of touch football on a nearby dirt lot. *Id.* at 3. During the game, a male participant somehow landed and ultimately damaged a female participant's right hand.

Id. After several unsuccessful operations, one of her fingers had to be amputated. *Id.* at 4. Thereafter, the female player sued the male player, claiming negligence and assault and battery. *Id.* The defendant answered and filed a motion for summary judgment, claiming that "reasonable implied assumption of the risk" barred plaintiff's claim. *Id.* The trial court granted the defendant's motion, and on appeal, the California Court of Appeals affirmed the trial court's judgment. *Id.* at 5. The California Supreme Court affirmed. *Id.* at 18. The court framed the issue on appeal as being that of resolving conflicts between several court of appeals decisions which disagreed with whether or not the "reasonable implied assumption of risk" doctrine applied following the California Supreme Court's landmark decision in Li v. Yellow Cab Co., 532 P.2d 1226 (Cal. 1975), which essentially adopted comparative negligence principles. *Id.* at 5. According to the *Jewett* court, the proper distinction under *Li* between the forms of assumption of risk which merge and do not merge under comparative negligence principles, is as follows:

> [T]he distinction to which the *Li* court referred was between (1) those instances in which the assumption of risk doctrine embodies a legal conclusion that there is "no duty" on the part of the defendant to protect the plaintiff from a particular risk — the category of assumption of risk that the legal commentators generally refer to as "primary assumption of risk" — and (2) those instances in which the defendant does owe a duty of care to the plaintiff but the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty — what most commentators have termed "secondary assumption of risk." Properly interpreted, the relevant passage in *Li* provides that the category of assumption of risk cases that is not merged into the comparative negligence system and in which the plaintiff's recovery continues to be completely barred involves those cases in which the defendant's conduct did not breach a legal duty of care to the plaintiff, i.e., "primary assumption of risk" cases, whereas cases involving "secondary assumption of risk" properly are merged into the comprehensive comparative fault system adopted in *Li*.

11 Cal. Rptr.2d at 9 (footnote omitted). Thus, the court provided:

> First, in "primary assumption of risk" cases — where the defendant owes no duty to protect the plaintiff from a particular risk of harm — a plaintiff who has suffered such harm is not entitled to recover from the defendant, whether the plaintiff's conduct in undertaking the activity was reasonable or unreasonable. Second, in "secondary assumption of risk" cases — involving instances in which the defendant has breached the duty of care owed to the plaintiff — the defendant is not entitled to be entirely relieved of liability for an injury proximately caused by such breach, simply because the plaintiff's conduct in encountering the risk of such an injury was reasonable rather than unreasonable. Third and finally, the question whether the defendant owed a legal duty to protect the plaintiff from a particular risk of harm does not turn on the reasonableness or unreasonableness of the plaintiff's conduct, but rather on the nature of the activity or sport in which the defendant is engaged and the relationship of the defendant and the plaintiff to that activity or sport.

Id. at 10.

In applying the foregoing test to the facts, the court held that since participants in a sport only breach a duty of care if the participant engages in reckless conduct which is outside of the range of "the ordinary activity involved in the sport," and since no evidence appeared on the record to substantiate reckless conduct, that the trial court and the court of appeals were correct in dismissing the plaintiff's complaint. *Id.* at 17. In other words, *Jewett* found that since no duty had been breached by the defendant, that the case fell within the "primary assumption of risk" doctrine and hence, the plaintiff's claim was barred. *Id.* at 18.

the court reversed based on its interpretation of the assumption of risk doctrine.

In *Galardi*, the court found that the plaintiff's actions constituted secondary assumption of risk and as such were not barred.[215] In applying the secondary assumption of risk doctrine, the court found that under *Knight*, "[i]n instances of secondary assumption of risk, the defendant does owe a duty of care to the plaintiff and has some liability even though the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty."[216] Additionally, the court also found that under *Knight*, the court must decide whether a duty is owed based on the nature of the sport and the relationship of the parties engaged in the sport.[217] Therefore, under California law, secondary assumption of risk will not operate as a bar to liability on the part of the defendant upon the finding that a duty is owed to the plaintiff. Of course, the key inquiry is still to determine whether or not a duty is initially owed to the plaintiff.[218]

The court's analysis in *Galardi* strongly suggests that had the injuries occurred during normal competition, the plaintiff's action may have been barred. However, the court drew upon the fact that because the plaintiff had placed her training and instruction in the hands of the defendant coach, the coach had a duty to avoid unreasonable risk of injury to the plaintiff.[219]

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215. For a discussion of primary and secondary assumption of risk, *see supra* note 191 and accompanying text.

216. 20 Cal. Rptr. 2d at 273 (quoting *Knight*, 11 Cal. Rptr. 2d at 9).

217. *See also* Fidopiastis v. Hirtler, 41 Cal. Rptr. 2d 94 (Cal. Ct. App. 1995). In *Fidopiastis*, a coach moved for summary judgment based on the absence of a duty to his student. *Id.* at 95. In the alternative, he claimed that even if he did owe a duty, the student failed to establish a breach. *Id.* In reversing the trial court's granting of the coach's motion for summary judgment, the court found as distinguishing the fact that the defendant was a coach and not a "coparticipant." *Id.* Based on the fact the case fell out of the "coparticipant" rule of *Knight*, which required recklessness for liability, the question of duty depended on the sport and the relationship between the parties. *Id.* at 96. In essence, then, a complaint against a coach or trainer for alleged negligence committed during training is considered under the "secondary" assumption of risk doctrine, and the jury is permitted to consider the fault of the parties and apportion the loss appropriately. *Id.*

218. *Galardi*, 20 Cal. Rptr. 2d at 273.

219. In Bushnell v. Japanese-American Religious and Cultural Ctr., Concord Judo Club, 50 Cal. Rptr.2d 671 (Cal. Ct. App. 1996), decided after *Tan* and *Galardi*, the court appeared to temper the impact that the mere involvement of a coach in a sports related personal injury action has upon the primary assumption of risk doctrine. In *Bushnell*, a judo student, who was practicing a "throw" with an instructor during a class, became

Based on the secondary assumption of risk analysis, therefore, a trial court could find a duty of care and could apportion liability based on the relative responsibility of the parties.[220]

Practitioners should understand that assumption of risk may not apply in extreme situations. For example, in a case where a football player participated in a drill without a helmet, the court held that where inadequate instruction of the drill was given by the coach, a jury question was raised as to the player's ability to have appreciated the risk of injury.[221] Con-

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injured and suffered a broken leg although the exact cause of the injury was unknown. *Id.* at 673. The student alleged "that the injury was at least part the result of the speed at which . . . [the instructor] approached him." *Id.* Following the commencement of the lawsuit, summary judgment was granted at the trial level in favor of the defendants on the basis of primary assumption of risk following *Knight*, which the trial court held "provided a complete defense to the action." *Id.* at 672. On appeal, that judgment was affirmed. *Id.* at 676. In commenting on the fact that one of the defendants was an instructor, the court remarked at various points in its opinion that it wanted to refrain from causing a "chilling effect" upon the sport by imposing liability. *Id.* at 675, 676. In commenting on the *Tan* and *Galardi* decisions, the court in *Bushnell* stated "[t]here is nothing in *Knight* from which it follows that an instructor always owes a duty of care to his or her students and thus becomes an insurer of their safety, and we would disagree with *Tan* and *Galardi* if they held otherwise." *Id.* at 676. Once again, "[t]he question is participation in the activity." *Id.* Thus, the court in *Bushnell* distinguished its holding from the instructor in *Tan* who told his student to ride a horse he knew was injured on a defective track since "requiring the defendant to provide a safe horse and track could have no chilling effect on the activity itself, not would it interfere with the ability of the instructor to teach the student new and better skills." *Id.* The court in *Bushnell* also distinguished *Galardi* by noting that a instructor who raised the height of jumps for a horse riding student while not increasing the distance between the jumps, incurs liability because the instructor has "increased the risk inherent in the activity." *Id.* "If, however, the court found that liability might attach because the defendants were negligent in asking the plaintiff to take on new challenges in order to improve her skills [as in *Bushnell*], we do not agree that liability might attach, at least in the absence of evidence that the instructor acted recklessly or with an intent to cause injury." *Id.* In sum, the court's rule in *Bushnell* could be distinguished as follows:

> To instruct is to challenge, and the very nature of challenge is that it will not always be met. It is not unreasonable to require a plaintiff who has chosen to be instructed in a particular activity to bear the risk that he or she will not be able to meet the challenges posed by the instructor, at least in the absence of intentional misconduct or recklessness on the part of the instructor.

Id.

220. *Galardi*, 20 Cal. Rptr. 2d at 275. The crux of the *Galardi* opinion is that "a complaint raising the issue of coach or instructor negligence during training involves secondary assumption of risk, which is not a complete bar to recovery and permits a trier of fact to consider comparable fault principles and the relative responsibilities of the parties and to apportion the loss resulting from the plaintiff's injury." *Id.*

221. Leahy v. School Bd. of Hernando County, 450 So. 2d 883, 887 (Fla. Dist. Ct. App. 1984) (reversing and remanding the case for a new trial due to the presence of a jury question).

versely, in *Russini v. Incorporated Village of Mineola*,[222] a softball player sued the Village of Mineola for injuries sustained when the player was running between second and third base during a game and fell in a hole in the basepath.[223] In rejecting the plaintiff's failure to warn claim, the court applied a standard focusing on the foreseeability of the injury and the concealment of the danger.[224] In applying this standard, the court found that the player had observed the hole prior to the game, and since the defect in the field was not concealed, the player had assumed the risk of injury.[225]

B. Comparative Negligence

Most states used to follow the rule of contributory negligence.[226] Contributory negligence, for example, occurs when a coach has instructed a football player not to make initial contact with another player with his helmet, yet the player fails to heed his coach's instruction.[227] In a majority of jurisdictions,

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222. 584 N.Y.S.2d 622 (N.Y. App. Div. 1992). In *Russini*, the plaintiff was injured as a result of falling in a hole that was four to six inches deep and six to twelve inches wide. *Id.* at 622.

223. *Id.* at 622.

224. *Id.* The court stated:

> Participants in sporting events may be held to have consented to those injury-causing events which are the known, apparent or reasonably foreseeable consequences of their participation. However, the doctrine of assumption of the risk will not serve as a bar to liability if the risk is unassumed, concealed, or unreasonably increased.

Id.

225. *Id.*

226. *See* RESTATEMENT (SECOND) OF TORTS § 463 (1965) (defining contributory negligence). Contributory negligence is conduct on the part of the plaintiff, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection. *Id.* Unlike assumption of risk, the defense does not rest upon an idea that the defendant is relieved of any duty toward the plaintiff. Rather, although the defendant has violated his duty, has been negligent, and would otherwise be liable, the plaintiff is denied recovery because his own conduct disentitles him to maintain the action. In the eyes of the law both parties are at fault; and the defense is one of the plaintiff's disability, rather than the defendant's innocence. *See* KEETON, *supra* note 13, § 65, at 452.

227. Karns, *supra* note 9, at 471. *See also* Siau v. Rapides Parish Sch. Bd., 264 So. 2d 372 (La. Ct. App. 1972). In *Siau*, a tenth grade student ran into a javelin which had been placed in the ground by another student during a physical education class. *Id.* at 375. The court found the injured student's action to be barred by his contributory negligence, since the coach had told the student to stop running and the student failed to make an "extra effort [to] commensurate" for his impaired vision. *Id.* The student, although he wore glasses to correct his impaired vision, was not wearing them on the day in question. *Id. Compare* Grant v. Lake Oswego Sch. Dist. No. 7, Clackamas County, 515 P.2d 947,

however, contributory negligence has been replaced with the rule of comparative negligence.[228] Generally speaking, there are various forms of comparative negligence statutes depending upon the particular jurisdiction in question. For example, some states adhere to a "pure" form of comparative negligence, where the plaintiff can recover diminished damages regardless of the extent of his own fault as long as the defendant is partially negligent.[229] Additionally, there is a "modified" form of comparative negligence, where the plaintiff has to be found "less negligent" than the defendant to recover.[230] Finally, there is the "New Hampshire" rule, which appears to be a form of modified comparative negligence. Essentially, the theory is that although the plaintiff must be less negligent than the defendant, if the plaintiff is just as liable as the defendant, (i.e., 50%), then the plaintiff is still permitted to recover damages.[231]

Comparative negligence may still be an effective defense, although in coaching liability litigation, assumption of risk may be more effective.[232] Perhaps this is because, as one court noted, summary judgment (the most frequently filed motion in coaching negligence actions) is a "poor device" for deciding issues of comparative negligence.[233] Therefore, this defense may actually *protract* litigation rather than quickly end it.[234]

C. Releases, Disclaimers and Exculpatory Agreements

The defenses of release, waiver and exculpatory agreements are essentially based on contract law principles.[235] The

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952 (Or. Ct. App. 1974) (reversing judgment notwithstanding the verdict rendered in favor of school district in action by 12 year old student alleging gym teacher's failure to warn and properly supervise after student struck her head on a beam while performing jump off springboard during physical education class and permitting question of student's knowledge of the danger and contributory negligence to go the jury).

228. *See generally* HENRY WOODS, COMPARATIVE FAULT § 1.11 (1987 & Supp. 1995).

229. *Id.* § 1:11, at 26.

230. *Id.* § 1:11, at 28.

231. *Id.*

232. Bjorklun, *supra* note 5, at 350 ("[S]chool personnel could claim that the injury occurred as a result of the student's own negligence in protecting her/himself from harm, and/or that the student voluntarily chose to place her/himself at risk of injury. Of the two defenses [i.e., comparative negligence and assumption of risk], assumption of risk appears to the be the more prominent, if not the more successful.").

233. Cirillo v. City of Milwaukee, 150 N.W.2d 460, 466 (Wis. 1967).

234. *See, e.g., id.* at 466 (involving a student's suit against a gym teacher for negligent supervision after the student was injured during an unsupervised basketball game).

235. *See* William H. Baker, *Injuries to College Athletes: Rights & Responsibilities*, 97

defenses more or less amount to an affirmative denial of a plaintiff's claim evidenced in a writing signed by the plaintiff. The writing either releases, disclaims or waives liability on the defendant's part. Arguably, releases, waivers, and exculpatory agreements are terms used for the same instrument.[236]

The practical consequence of using such agreements is that they are frowned upon by both participants and their parents. Invariably, the common perception of the release or waiver is that it raises suspicion as to the need for such an agreement.[237] Moreover, courts have not looked upon these instruments favorably, and frequently, these agreements are difficult to enforce.[238]

1. Releases

As a general matter, a release[239] is the surrender of the right to sue,[240] usually given in return for the payment of money or other consideration.[241] Releases are often popular

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DICKINSON L. REV. 655 (1993). In actuality, these agreements have both contract and tort facets to them. *Id.* at 666. The author states:

> A waiver is a peculiar instrument in the sense that it has both contract and tort aspects. Under the law of contract, one would think that a person has the right to enter into any such contract, but on the other hand, there is the tort rule which holds that if a person negligently injures another, there should be liability on the part of the tortfeasor.

Id. (footnote omitted). *See also* King, *supra* note 202, at 684 (stating that "[e]xculpatory agreements, also called 'releases' or 'waivers,' are basically written documents in which one party agrees to release, or 'exculpate,' another from potential tort liability for future conduct covered in the agreement.").

236. King, *supra* note 202, at 683.

237. Practitioners should carefully outline the enforceability problems of such agreements for clients. These considerations are also important for document drafting.

238. *See, e.g.*, Walter T. Champion, Jr., *"At the Ol' Ball Game" and Beyond: Spectators and the Potential For Liability*, 14 AM. J. OF TRIAL ADVOC. 495, 516-17 (1991) (explaining the difficulty of enforcing such agreements because they exonerate one party from liability perhaps without the benefit of bargaining and because of a lack of clarity in the document's wording).

239. *See also* RESTATEMENT (SECOND) OF CONTRACTS § 284 (1981) (defining a release as "a writing providing that a duty owed to the maker of the release is discharged immediately or on the occurrence of a condition.").

240. A sometimes litigated question is *who* is foreclosed from suing. This question usually arises in the case where the party releasing the other has died and a subsequent wrongful death action has commenced. In that case, a release may not be sufficient so as to bar a wrongful death action. *See, e.g.*, Scroggs v. Coast Community College Dist., 239 Cal. Rptr. 916, 919 (Cal. Ct. App. 1987) (holding, in a case of a scuba student who drowned during a scuba class, that an heir prosecuting a wrongful death action would not be barred from bringing such an action based solely upon the existence of a release).

241. SCHUBERT, *supra* note 8, § 7.3, at 219. A release is a means whereby an existing

subjects amongst sports organizations and clubs, since they may add a perceived shield from liability for both the coach and the party who may be responsible for the coach's actions.[242] However, the validity of releases in athletic competi-

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tort claim can be resolved without resorting to a court of law. *Id.* Releases are similar to exculpatory agreements in that they are both consensual attempts to absolve a party of tort liability, but they differ in that releases are negotiated and entered into *after* the tort has been committed, while exculpatory agreements are entered into *before* commission of the tort. *Id.* Releases are often negotiated between a tort-feasor's insurance carrier and the injured person. *Id.* The usual release will explicitly extend to "all known and unknown, foreseen and unforeseen injuries and the consequences thereof," and once signed and delivered, it will effectively bar any additional recovery. *Id.* Releases are final even if the injuries turn out to be more serious and extensive than the tort victim originally thought. *Id.* Of course, if the release was the product of a mutual mistake or was obtained by fraud on the part of the insurance company, a court can set it aside and allow the injured party to sue. *Id.* Some states have even passed laws giving an injured party the absolute right to rescind a release if rescission takes place within a designated time period. *Id.* Absent such statutory authorization, however, it is difficult to vacate a release. *Id.*

242. With respect to experienced athletes and releases, *see* Garretson v. United States, 456 F.2d 1017, 1021 (9th Cir. 1972) (holding that an amateur ski-jumper who had signed a release prior to competition was barred from bringing a negligence action because the release was reasonable and not contrary to state law). In Buchan v. United States Cycling Fed'n, Inc., 277 Cal. Rptr. 887 (Cal. Ct. App. 1991), an experienced cyclist sued the sponsors and sanctioning body of a racing event after she had sustained injuries from a collision occurring during the race. *Id.* at 898-99. As a condition to participation in the race, the cyclist had executed a release. *Id.* On appeal, the California Court of Appeals upheld the validity of the release and thus barred the plaintiff's action. *Id.* The court essentially focused on the fact that the cycling activity was *not* an issue of "public interest," since the event was a recreational one and no public policy ground existed to void the release. *Id.* at 898. As such, the release was used as evidence of the plaintiff's express assumption of risk. *Id.* at 893, 899. Thus, the legal consequence of a court finding no public interest is that the court will essentially focus on the plaintiff's assumption of risk. *But see* Tunkl v. Regents of Univ. of Calif., 383 P.2d 441 (Cal. Ct. App. 1963). In *Tunkl*, the issue was the validity of a release imposed as a condition for admission into a charitable research hospital. *Id.* at 441. In *Tunkl*, the court held the release to be void, as it implicated a "public interest." *Id.* at 445. In so holding, the court enunciated the following factors in determining whether or not a release affects a public interest: 1) whether the business is "a business of a type generally thought suitable for public regulation"; 2) whether the party seeking exculpation is "performing a service of great importance to the public"; 3) whether the "party holds himself out as willing to perform this service for any member of the public who seeks it"; 4) whether the party seeking exculpation "possesses a decisive advantage of bargaining strength against any member of the public who seeks his services"; 5) whether the party seeking exculpation "confronts the public with a standardized adhesion contract"; 6) whether the exculpation agreement "makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence"; and 7) whether "as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or its agents." *Id.* at 445-46 (footnotes omitted). In applying these factors, the court found the release to fall within the "category of agreements affecting the public interest." *Id.* at 447.

tive settings have generally not faired well and should not be relied upon by coaches.[243]

Wagenblast v. Odessa School No. 105-157-166J,[244] is perhaps the seminal case on the validity of releases. In that case, the Washington Supreme Court examined a school district's requirement that students and parents execute a release prior to participation in school-related activities.[245] In *Wagenblast*, the court held that releases relieving a school district from any future negligence were invalid and violated public policy.[246] The *Wagenblast* court acknowledged the general rule permitting parties to contract for non-liability based on freedom of contract principles; however, the court held that an exception to that rule applied.[247]

Obviously, following *Tunkl*, the key query is whether or not a "public service" is involved since the presence of that factor, almost by itself, will invalidate a release. *See, e.g.*, Kyriazis v. University of W. Va., 450 S.E.2d 649 (W. Va. 1994). In *Kyriazis*, a sophomore joined a rugby club which was sponsored by a state university. *Id.* at 651. During a match, the player somehow sustained injury. *Id.* at 652. He then brought suit against several defendants, including the coach. *Id.* As their defense, the defendants raised a release which the player had signed prior to sustaining injury. *Id.* at 651-52 & 652 n.1. In ruling on the validity of the release, the court expressly relied on *Tunkl*, and found the "public service" factor, which was based on the "nature" of the enterprise, as being dispositive of the invalidity of the release. *Id.* at 654-55. The court stated:

> When a state university provides recreational activities to its students, it fulfills its educational mission, and performs a public service. As an enterprise charged with a duty of public service here, the University owes a duty of care to its students when it encourages them to participate in any sport.

Id. at 655.

243. Apparently, team physicians have not faired any better. One commentator has noted:

> Generally, courts have invalidated contracts releasing physicians from liability for negligent medical care of their parents. Such contracts have been held to violate public policy because medical services are essential public services; the physician holds himself out as willing and able to provide such services; the patient places herself under the physician's control but remains subject to the risks of carelessness; and the physician has the bargaining power to require the release from negligence liability as a condition of providing medical treatment. A court probably would follow these cases and invalidate a waiver that purports to release a team physician from negligence liability for medical care rendered to a competitive athlete.

Mitten, *Team Physicians and Competitive Athletes*, *supra* note 127, at 165 (footnote omitted).

244. 758 P.2d 968 (Wash. 1988).

245. *Id.* at 969.

246. *Id.* at 970.

247. *Id.* The court essentially identified six characteristics by which releases would be struck down:

1) the law's reluctance to permit those charged with a public duty to discharge

With respect to minors, an often asked question is whether a release executed by a minor's parent(s) is binding on the minor if he or she becomes injured and wants to bring suit. The general rule is that releases executed by a minor's parents will not be binding upon the minor.[248] This same rule applies to releases signed by the minor himself.[249]

Doyle v. College[250] is exemplary of the difficulties institutions encounter when attempting to enforce releases signed by adult parents on behalf of their minor children. In *Doyle*, a minor playing floor hockey at a summer hockey clinic sustained a serious eye injury when a plastic hockey blade broke off the end of another player's stick and struck the boy in the eye.[251] The injury left him partially blind.[252] The jury returned a verdict of $50,000 against the college where the clinic

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this duty by contract; 2) disparity in bargaining power; 3) the "importance of the service provided"; 4) whether the party "holds himself out as willing to perform this service for any member of the public who seeks it . . . ."; 5) since a release may arguably be a contract of adhesion, whether or not the party seeking the release "makes . . . provisions whereby a purchaser may pay additional reasonable fees and obtain protection against negligence"; and 6) whether the releasing party is, in essence, placed under the control of the party seeking the release, which is only limited by that party's recklessness.

Id. at 970-71.

248. *See generally* Doyle v. College, 403 A.2d 1206 (Me. 1979); Santangelo v. City of New York, 411 N.Y.S.2d 666 (N.Y. App. Div. 1978); *See also* King, *supra* note 202, at 684. Interestingly, one commentator has argued against the majority rule that invalidates an exculpatory agreement, release, or waiver, when signed by a parent on behalf of a minor, on the basis that the failure of the courts to enforce these agreements will result in a loss of volunteers, which will eventually lead to unsupervised athletic activity. *Id.* at 685. This conclusion is also based on freedom of contract principles, deterrence and reduction of accidents, as well as concepts of "fairness." *Id.* at 735, 738, 745. For an elaborate discussion on freedom (liberty) of contract, *see* Anthony S. McCaskey, Comment, *Thesis and Antithesis of Liberty of Contract, Excess in* Lochner *and* Johnson Controls, 3 Seton Hall Const. L.J. 409 (1993).

249. *See* Bjorklun, *supra* note 5, at 357 (footnote omitted). Bjorklun notes:

> [S]ince most secondary school students are minors, such a waiver would be difficult to enforce. This is not because minors do not have the power to enter into contracts; they do. However, in most states, minors can disavow a contract at any time during their minority or within a reasonable time after reaching majority unless the contract is for "necessities." Since it is unlikely that participation in athletics would be viewed as a necessity (food, shelter, clothes, etc.), the minor would disavow the statement of risk as a contract pretty much at will.

Id. See also Baker, *supra* note 235, at 669 (noting that minors who are college students are not bound by waivers because the waivers are in the nature of a contract and are therefore voidable at the election of the infant).

250. 403 A.2d 1206 (Me. 1979).

251. *Id.* at 1206. The injury shattered his glasses and damaged his retina. *Id.*

252. *Id.*

was held and against one of the college's agents.[253]

The issue in *Doyle* focused on a release and indemnification signed by both the minor's mother and father before participation in the clinic.[254] In construing these documents, the Supreme Court of Maine held that they were not releases.[255] The court reasoned that the documents must express a clear intent by the parties to release one party for negligence liability, and as the language of the documents did not express that intent, they were not releases.[256]

Most importantly, the *Doyle* court noted that a parent or guardian cannot release a child's or ward's cause of action.[257] In some jurisdictions, this same conclusion has been reached on the basis that the athlete may not have truly comprehended the nature of the risk of injury.[258]

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253. *Id.* at 1207. The defendants appealed the verdict on the issue of two documents signed by both the plaintiff's mother and father. *Id.* The defendants also appealed the issue of whether a document signed by the plaintiff's mother was a contract of indemnification. *Id.* The court reached the same result on this issue for the same reasons discussed below. *Id.*

254. *Id.* The releases in question provided:

> I understand that *neither Bowdoin College nor anyone associated with the Hockey Clinic will assume any responsibility for accidents and medical or dental expenses* incurred as a result of participation in this program. . . .I understand that I must furnish proof of health and accident insurance coverage acceptable to the College. . . . [signed] Leonard F. Doyle.
>
> I fully understand that *Bowdoin College, its employees or servants will accept no responsibility for* or on account of *any responsibility for* or on account of *any injury or damage sustained by Brian* arising out of the activities of the said THE CLINIC. *I do, therefore, agree to assume all risk of injury or damage* to the person or property of Brian arising out of the activities of the said THE CLINIC. . . . [signed] Margaret C. Doyle.

Id.

255. *Id.* at 1208.

256. *Id.* The court noted:

> The text of the executed documents falls far short of the requirement that releases absolving a defendant of liability for his own negligence must expressly spell out "with the greatest particularity" the intention of the parties contractually to extinguish negligence liability.

Id. Accord Hewitt v. Miller, 521 P.2d 244, 247 (Wash. Ct. App. 1974) (upholding validity of release on basis of document's conspicuousness in wrongful death action following diver's death during scuba diving instruction).

257. *Doyle*, 403 A.2d at 1208 n.3.

258. *See, e.g.*, Tepper v. City of New Rochelle Sch. Dist., 531 N.Y.S.2d 367, 368 (N.Y. App. Div. 1988) (holding that a jury question was presented as to whether a rookie lacrosse player had assumed the risk of injury when that player had three years of playing experience and was injured during a drill in which two players would run toward each other to get the ball, with the player causing the plaintiff's injury outweighing the plaintiff by 130 pounds).

In drafting releases, therefore, institutions should address the following factors:

(1) give parental permission for the student to participate;
(2) contain a verifying statement by a physician, licensed to practice medicine in the state, that the student is physically able to participate;
(3) secure from the parents permission to transport their child to and from contests at locations other then their own school;
(4) obtain from the parents any medical information about their child that the athletic staff would need to know;
(5) furnish the school with any additional information about the child that the parents consider to be important;
(6) ascertain whether the personal and medical information about their child should remain confidential;
(7) specify that the child adhere to all the rules, regulations, and instructions pertaining to the safety and protection of the participants and that failure to comply could exclude the child from participation;
(8) emphasize that an element of risk is associated with all athletic competition and that although the athletic staff will provide each participant with due care, the school district can not [sic] insure that their child will remain free of injury.[259]

2. Disclaimers

Essentially, a disclaimer is a disavowance of responsibility, usually for some future injury to another.[260] Disclaimers are widely used on ticket stubs at sporting events. In *Falkner v. John E. Fetzner, Inc.*,[261] for example, the court ruled on a disclaimer found on the back of a ticket to a Detroit Tigers' baseball game.[262] In holding the disclaimer void, the court found dispositive the issue of whether or not the disclaimer ade-

259. Donald H. Henderson, et al., *The Use of Exculpatory Clauses and Consent Forms by Educational Institutions*, 67 EDUC. L. REP. 13, 27 (1991) (footnotes omitted).

260. *See* Schubert, *supra* note 8, § 7.3, at 217. Disclaimers can be oral, a simple statement that one will not be responsible for someone else's safety, or written, as in the case of the carefully drafted documents supplied by the manufacturers of athletic equipment. A properly worded disclaimer may effectively eliminate a manufacturer's liability for breach of warranty, but disclaimers will not always eliminate or limit tort liability. *Id.*

261. 317 N.W.2d 337 (Mich. Ct. App. 1982) (per curiam). In *Falkner*, a lawsuit was brought by a fan after being struck by a baseball. *Id.* at 338. Following a trial on the issue of the stadium owner's negligence, the trial court directed a verdict in favor of the stadium owner on all counts except as to the plaintiff's failure to warn claim. *Id.* The jury then returned a verdict in favor of the plaintiff. *Id.* at 339. On appeal, the Michigan Court of Appeals reversed despite the fact that a question of warning was properly submitted to the jury. *Id.* The court ultimately found that the plaintiff had failed to prove causation. *Id.*

262. *Id.* at 338.

quately warned the plaintiff about the danger of being struck by a baseball.[263]

3. Exculpatory Agreements

An exculpatory agreement occurs when one expressly agrees to accept a risk of harm arising from another's conduct, which in turn may be enforceable against that individual.[264] An exculpatory agreement may be broad in scope, relieving one of all responsibility for the safety of another, or it may be narrowly drafted to cover only specific risks.[265]

Exculpatory agreements are not favored by the courts. If an agreement is ambiguous or covers a definite time, place or risk, it will not be interpreted to release a tortfeasor from liability for harm occurring at another time and place or in a different manner.[266] Further, exculpatory agreements are usually not enforced against persons not a party to them,[267] nor are the agreements likely to be effective against minors.[268]

Beyond the factors identified by the *Wagenblast* court above,[269] which are also utilized for exculpatory agreements, commentators have identified several other factors courts may consider when construing exculpatory agreements. They are: (1) whether the participation in the activity or event was voluntary; (2) whether the terms of the agreement were understood by the student; and (3) whether the agreement was capable of being modified.[270]

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263. *Id.* at 339.

264. SCHUBERT, *supra* note 8, § 7.3, at 217, 218 (citations omitted). Exculpatory agreements can either be in contractual or noncontractual terms. *Id.* § 7.3, at 217. Signs warning ball park patrons that if they sit in a certain section they do so at their own risk, or that stadium parking is at the automobile owner's risk are frequently encountered examples of noncontractual exculpatory agreements, the agreement is reached when the patron parks or sits in the section referred to in the signs or warnings. *Id.*

265. *Id.*

266. *Id.*

267. *Id.* For example, the wife of a spectator injured by a foul ball would not be precluded from suing because of a warning on her husband's ticket. *Id.*

268. *Id.* Minors may always rescind or disaffirm any exculpatory agreement they execute, and courts are not inclined to permit parents to assume risks for their child. *Id. See also* Henderson, *supra* note 259, at 27 (stating that "[a]lthough the courts have upheld the right of adults to contractually waive their right of recovery they have been reluctant to follow this rule in cases involving school children." (footnote omitted)).

269. *See supra* notes 244-247 and accompanying text (discussing the *Wagenblast* case).

270. Henderson, *supra* note 259, at 21-25. *Compare* Potter v. National Handicapped Sports, 849 F. Supp. 1407, 1409 (D. Colo. 1994) (holding that factors used to determine

D. Volunteer Statutes

Beginning in the mid-1980's, several states enacted "volunteer" statutes.[271] Essentially, these statutes provide certain persons, such as sports officials and coaches,[272] with qualified tort immunity.[273] Perhaps this immunity emanated from the doctrine of charitable immunity,[274] or else it was seen as an

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the validity of exculpatory agreements are 1) the existence of a duty to the public; 2) the nature of the service/activity performed; 3) whether the contract was entered into fairly; and 4) whether the intention of the parties is expressed in clear and unambiguous language (citation omitted)).

271. *See* Mel Narol, *Sports Participant with Limited Litigation: The Emerging Reckless Disregard Standard,* 1 SETON HALL J. SPORT L. 29, 38 (1991). State legislatures have enacted laws making the burden of proof stricter for players injured by opponents. *Id.* Some states have adopted the reckless disregard or gross negligence standard for injuries stemming from acts or omissions of volunteers in athletics, such as coaches, managers, non-profit organizations, referees and umpires. *Id.* Since 1986, several states have passed laws stating that this standard is necessary to encourage volunteer participation in sports. *Id.* Additionally, other states have either introduced or proposed volunteer laws which mirror the volunteer statutes enacted by several states. *See* ALA. HOUSE BILL NO. 173, ALA. REG. SESS. (1996); N.Y. SENATE BILL NO. 2957, N.Y. 219TH GEN. ASS., SECOND REG. SESS. (1996); OHIO HOUSE BILL NO. 350, OHIO 121ST GEN. ASS., REG. SESS. (1995-96); DEL. HOUSE BILL NO. 253, DEL. 138TH GEN. ASS. (1995); HAW. HOUSE BILL NO. 1339, HAW. 18TH STATE LEGIS. (1995); CAL. SENATE BILL NO. 1324, CAL. REG. SESS. (1993-94).

272. Team physicians have also be granted immunity in various jurisdictions by statute. See Mitten, *Team Physicians and Competitive Athletes, supra* note 127, at 159.

273. *See* Restatement (Second) of Torts, INTRODUCTORY NOTE TO CHAPTER 45A, at 392 (1979). Volunteer immunity is "conferred for reasons of policy, involving the protection of the interests of the defendant or other interests of social importance that he represents." *Id.*

274. *See generally* Matute v. Carson Long Instit., 160 F. Supp. 827 (M.D. Pa. 1958) (applying the charitable immunity defense to a mismatch claim brought by an injured football player); Ricker v. Northeastern Univ., 279 N.E.2d 671 (Mass. 1972) (applying the charitable immunity defense in a wrongful death action for negligent medical care provided by a university doctor); Bodard v. Culver-Stockton College, 471 S.W.2d 253 (Mo. 1971) (affirming the application of the charitable immunity defense to a case involving a track assistant's eye injury caused when lime used to mark lines for a track competition got into his eyes); Korpela, *Immunity of Private Schools, supra* note 20 (discussing charitable immunity doctrine). Additionally, this concept may have emanated from other types of immunity statutes. For example, some states grant certain landowners immunity from suits arising from athletic or recreational activities if unauthorized persons are conducting such activities on their land without the landowner's knowledge. Joan M. O'Brien, *The Connecticut Recreational Use Statute: Should A Municipality Be Immune From Tort Liability?*, 15 PACE L. REV. 963, 963 (1995).

In New Jersey, the tort immunity is provided by the Landowners' Liability Act, N.J. REV. STAT. ANN. §§ 2A:42A-1 to 8 (West 1987 & Supp. 1995), which provides in pertinent part:

> a. An owner, lessee or occupant of premises, whether or not posted as provided in section 23:7-7 of the Revised Statutes, and whether or not improved or maintained in a natural condition or used as part of a commercial enterprise, owes no

alternative to those coaches who could not avail themselves of sovereign immunity.[275] The states enacting volunteer statutes[276] include Arkansas,[277] Colorado,[278] Georgia,[279] Illinois,[280] Indiana,[281] Louisiana,[282] Maryland,[283] Massachusetts,[284] Mississippi,[285] Nevada,[286] New Hampshire,[287] New Jersey,[288] New

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duty to keep the premises safe for entry or use by others for sport and recreational activities, or to give warning of any hazardous condition of the land or in connection with the use of any structure or by reason of any activity on such premises to persons entering for such purposes;

b. An owner, lessee or occupant of premises who gives permission to another to enter upon such premises for a sport or recreational activity or purpose does not hereby (1) extend any assurance that the premises are safe for such purpose, or (2) constitute the person to whom permission is granted an invitee to whom a duty of care is owed or (3) assume responsibility for or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted.

N.J. REV. STAT. ANN. § 2A:42A-3 (West Supp. 1995).

There are, however, certain exceptions to this immunity:

a. For willful or malicious failure to guard, or to warn against, a dangerous condition, use, structure or activity; or

b. For injury suffered in any case where permission to engage in sport or recreational activity on the premises was granted for a consideration other than the consideration, if any, paid to said landowner by the State; or

c. For injury caused, by acts of persons to whom permission to engage in sport or recreational activity was granted, to other persons as to whom the person granting permission, or the owner, lessee or occupant of the premises, owes a duty to keep the premises safe or to warn of danger.

N.J. REV. STAT. ANN. § 2A:42A-4 (West 1987).

275. CHAMPION, *supra* note 15, § 3.6, at 72 (1990) ("A new potential barricade that might protect coaches from liability suits is to be found in statutes that protect volunteer coaches regardless of their governmental [or sovereign] connection.")

276. For an overview of the statutes and the statutory text, *see* Appendix A.

277. ARK. CODE ANN. § 16-120-102 (Michie Supp. 1993).

278. COLO. REV. STAT. ANN. § 13-21-116 (West & Supp. 1995).

279. GA. CODE ANN. § 51-1-41 (Michie Supp. 1995).

280. ILL. ANN. STAT. ch. 745, para. 80/1 (Smith-Hurd 1993).

281. IND. CODE ANN. §§ 34-4-11.8-3 to 34-4-11.8-4, 34-4-11.8-6 (West Supp. 1995).

282. LA. REV. STAT. ANN. § 9:2798 (West 1991).

283. MD. CTS. & JUD. PROC. CODE ANN. § 5-313 (1995).

284. MASS. GEN. LAWS ANN. ch. 231, §85V (West Supp. 1995).

285. MISS. CODE. ANN. § 95-9-3 (1994).

286. NEV. REV. STAT. ANN. § 41.630 (Michie 1996).

287. N.H. REV. STAT. ANN. § 508:17 (Michie Supp. 1995).

288. N.J. STAT. ANN. §§ 2A:62A-6, 2A:62A-6.1 (West Supp. 1995). New Jersey's statute was prompted "[i]n evident response to the increasing cost of liability insurance and, in some instances the unavailability of liability insurance, for volunteer athletic coaches, managers and officials of nonprofit sports teams . . . ." Byrne v. Boys Baseball League, 564 A.2d 1222, 1223 (N.J. Super. Ct. App. Div. 1989) (citation omitted) (footnote omitted). *See also* 1988 N.J. Sess. Law. Serv. c. 87 (Statement of Assembly Insurance Committee) (stating "[t]he 1986 law was originally directed toward Little League coaches."); King, *supra* note 223 at 694 n.63 (describing settlement of New Jersey case for $25,000

Mexico,[289] North Dakota,[290] Pennsylvania,[291] Rhode Island[292] and Tennessee.[293] These statutes exempt coaches from liability for tortious conduct unless it constitutes *gross negligence* or *recklessness*.[294] This standard mirrors the standard of care applicable to suits between players.[295]

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where Little League outfielder sued coach for negligence in failing to teach the player, who normally played second base, how to shield his eyes from the sun while playing the outfield); Christopher A. Terzian, Note, *Tort Liability — Athletic Coaches and Officials — Volunteers — Civil Immunity from Liability — to be codified at* N.J. STAT. ANN. § 2A:62A-6, 10 SETON HALL LEGIS. J. 332 (1987). Recently, New Jersey has been very active with respect to sentencing. *See* N.J. STAT. ANN. § 2C:44-1 (West 1995) (pertaining to tougher sentences against persons assaulting coaches).

289. N.M. STAT. ANN. § 41-12-1 (Michie 1990).

290. N.D. CEN. CODE § 32-03-46 (Supp. 1995).

291. 42 PA. CONST. STAT. ANN. § 8332.1(a) (Supp. 1995).

292. R.I. GEN. LAWS § 9-1-48 (Supp. 1994).

293. TENN. CODE ANN. §§ 62-50-201 to 62-50-203 (1990).

294. *See* KEETON, *supra* note 13, § 34, at 213, 214. Respecting recklessness:

> The usual meaning assigned to "willful," "wanton," or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences.
>
> . . . .
>
> The result is that "willful," "wanton," or "reckless" conduct tends to take on the aspect of highly unreasonable conduct, involving an extreme departure from ordinary care, in a situation where a high degree of danger is apparent.

Id.

As is clear from these definitions, the two terms are nearly synonymous and are both treated as a severe departure above and beyond the norms of "ordinary" negligence. *Id.* § 34, at 214 ("As a result there is often no clear distinction at all between such [reckless] conduct and 'gross' negligence, and the two have tended to merge and take on the same meaning, of an aggravated form of negligence, differing in quality rather than in degree from ordinary lack of care.").

295. For commentary, *see generally* Ray Yasser, *In The Heat of Competition: Tort Liability Of One Participant To Another: Why Can't Participants Be Required To Be Reasonable*, 5 SETON HALL SPORT L. J. 253 (1995). For cases, *see generally* Hackbart v. Cincinnati Bengals, Inc., 601 F.2d 516 (10th Cir.), *cert. denied*, 444 U.S. 931 (1979); Crawn v. Campo, 643 A.2d 600 (N.J. 1994); Gauvin v. Clark, 537 N.E.2d 94 (Mass. 1989); Turcotte v. Fell, 502 N.E.2d 964 (N.Y. 1986); Kabella v. Bouschelle, 672 P.2d 290 (N.M. Ct. App. 1983). *See also* Savino v. Robertson, 652 N.E.2d 1240, 1245 (Ill. App. Ct. June 30, 1995); LAW OF PROFESSIONAL AND AMATEUR SPORTS § 14.01[4], at 14-6 (Gary A. Uberstine ed., 1990); 2 STUART M. SPEISER ET AL., THE AMERICAN LAW OF TORTS § 9:43, at 1328-29 (1985); Narol, *supra* note 271, at 30; Daniel E. Lazaroff, *Torts & Sports: Participant Liability to Co-Participants for Injuries Sustained During Competition*, 7 U. MIAMI ENT. & SPORTS L. REV. 191, 195, 198 (1990); Lawrence P. Rochefort, *A Course of Action for Florida Courts to Follow When Injured Sports Participants Assert Causes of Action*, 4 U. MIAMI ENT. & SPORTS L. REV. 257, 262 (1987); Mel Narol, *Sports Torts: A Standard of Care Issue*, 134 N.J. Law. 41 (May/June 1990). *But see* Lazaroff, *Torts & Sports*, *supra*, at 213-14 (questioning propriety of recklessness standard for contact sports such as boxing, football and ice hockey).

More recently, Minnesota enacted a similar but more limited statute.[296] Seen as a progressive victory for coaches, some commentators have found the states' reaction to the sports liability dilemma through volunteer statutes as being inadequate.[297]

Moreover, despite the fact that these states have enacted volunteer statutes, certain actions, such as the negligent operation of a motor vehicle, have been exempted from the grant of

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296. MINN. STAT. ANN. § 604A.11 (West Supp. 1995). The statute provides:

Subdivision 1. Grant.

(a) No individual who provides services or assistance without compensation as an athletic coach, manager, official, physician, or certified athletic trainer for a sports team that is organized or performing under a nonprofit charter or as a physician or certified athletic trainer for a sports team or athletic event sponsored by a public or private educational institution, and no community-based, voluntary nonprofit athletic association, or any volunteer of the nonprofit athletic association, is liable for money damages to a player, participant, or spectator as a result of an individual's acts or omissions in the providing of that service or assistance whether at the scene of the event or, in the case of a physician or athletic trainer, while the player, participant, or spectator is being transported to a hospital, physician's office, or other medical facility.

(b) This section applies to organized sports competitions and practice and instruction in that sport.

(c) For purposes of this section, "compensation" does not include reimbursement for expenses.

Subd. 2. Limitation Subdivision 1 does not apply:

(1) to the extent that the acts or omissions are covered under an insurance policy issued to the entity for whom the coach, manager, official, physician, or certified athletic trainer serves;

(2) if the individual acts in a willful and wanton or reckless manner in providing the services or assistance;

(3) if the acts or omissions arise out of the operation, maintenance, or use of a motor vehicle;

(4) to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program;

(5) to a public or private educational institution for which a physician certified athletic trainer provides services; or

(6) if the individual acts in violation of federal, state, or local law.

The limitation in clause (1) constitutes a waiver of the defense of immunity to the extent of the liability stated in the policy, but has no effect on the liability of the individual beyond the coverage provided. The limitation in clause (5) does not affect the limitations on liability of a public educational institution under section 3.736 or chapter 466.

297. *See, e.g.*, King, *supra* note 202, at 706. King ultimately concludes that the various volunteer statutes are "bromidic" because of the lack of uniformity in the states enacting such legislation, the various limitations and exceptions grafted into the statutes, the difficulty in defining acts of "gross negligence," and the recognition of vicarious liability which the author claims obviates the volunteer statute. *Id.* at 706-709.

qualified immunity.[298] Thus, despite the presence of a volunteer statute, care should be exercised in transporting athletes if the responsibility has been undertaken.[299]

Adams v. Kline[300] is an example of such a case. In *Adams*, two vehicles were being used to transport a soccer team to a game when one vehicle struck another from the rear due to faulty brakes.[301] The second vehicle was overloaded by approximately 300 to 400 pounds.[302] On defendant's motion for summary judgment, the court denied the motion as to the overloading of the vehicle but dismissed other claims.[303]

In *Greenhill v. Carpenter*,[304] the mother of a deceased football player killed in an airplane crash en route to a speaking engagement with his football coach sued Memphis State University, as well as the coach, claiming that the defendants had negligently failed to insure safe travel for her son.[305] In rejecting these claims, the Tennessee Court of Appeals affirmed the trial court's dismissal of the mother's claims based on sovereign immunity.[306] However, notwithstanding the "official capacity" immunity provided by the statute, the coach may have been held negligent.

Similarly, in *Marquez v. Gomez*,[307] a coach was found not liable for wrongful death when a baseball player fell from the

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298. These states are New Jersey, North Dakota and Rhode Island. *See* Appendix A.

299. *See, e.g.*, Marquez v. Gomez, 866 P.2d 354, 359-62 (N.M. Ct. App. 1991) (affirming the grant of summary judgment in favor of a coach after a youth baseball player fell off of the back of a truck and died while the coach was transporting the players to another field, because the coach had no reason to know of the player's ignoring of the coach's safety instructions); Hanson v. Reedley Joint Union High Sch. Dist., 111 P.2d 415, 418 (Cal. Dist. Ct. App. 1941) (affirming a jury verdict in favor of a tennis player who was killed in an automobile accident by a driver selected by the player's coach because the coach did not exercise due care in permitting overcrowding of a vehicle and by selecting a driver known for reckless driving).

300. 239 A.2d 230 (Del. Super. Ct. 1968).

301. *Id.* at 232-33.

302. *Id.* at 233. The forward vehicle was driven by the team's coach and the second vehicle was driven by a player. *Id.* The player sustained injuries as a result of the accident. *Id.*

303. *Id.* at 234. One of the plaintiff's allegations concerned the defective brakes of the vehicle he was driving. *Id.* The court dismissed this claim, noting that "[a] team coach who does not own, and is not assigned the duty of inspecting the vehicle cannot be held liable for failure to inspect or test. He may be charged only with that knowledge of defects which he in fact possessed and of defects which were apparent." *Id.*

304. 718 S.W.2d 268 (Tenn. Ct. App. 1986).

305. *Id.* at 269.

306. *Id.* at 272-73.

307. 866 P.2d 354 (N.M. Ct. App. 1993).

back of a truck as players were being transported to another field.[308] The coach had given explicit instructions to players not to ride on the outside of the truck, and the coach had no reason to know of the propensity of "rowdy" behavior by his players.[309] Thus, the coach could not have taken any additional steps for their safety.[310]

E. Sovereign Immunity

Because of the vast differences in state laws, it is difficult to formulate a general rule which applies to the various laws on sovereign immunity.[311] Therefore, the particular law of the jurisdiction in question must be consulted. However, some general rules do apply in each jurisdiction.

1. General Precepts

Sovereign immunity precludes the bringing of a lawsuit against the government[312] without its consent.[313] The policy

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308. *Id.* at 357.

309. *Id.*

310. *Id.* at 361-62.

311. John P. Lenich, *One Strike and You're Out: An Overview of Negligence and High School Athletics*, 40 EDUC. L. REP. 1, 2 n.4 (1987) (citations omitted) (noting the disparities in sovereign immunity statutes). *See also* Baker, *supra* note 235, at 658-60 (1993) (discussing various approaches taken by states to the sovereign immunity doctrine).

312. *See, e.g.*, Wissel v. Ohio High Sch. Athletic Ass'n, 605 N.E.2d 458, 462 (Ohio Ct. App. 1992) (noting the importance of determining whether or not a particular entity is a governmental entity and rejecting an athletic association's sovereign immunity defense since the association did not meet the statutory definition of a "political subdivision"). *See also* Short v. Griffits, 255 S.E.2d 479, 480-81 (Va. 1979) (holding that a school board enjoined a sovereign immunity defense in a lawsuit brought by a student who fell on broken glass while running around a school's track facility but the athletic director, baseball coach and grounds supervisor hired by the board did not); Coughlon v. Iowa High Sch. Athletic Ass'n, 150 N.W.2d 660, 662 (Iowa 1967) (holding that a high school athletic association who was sued by injured spectators following the collapse of bleachers at a high school basketball tournament was not "an arm or agency of the state.").

313. *See* BLACK'S LAW DICTIONARY 1396 (6th ed. 1990). *See also* KEETON, *supra* note 13, § 131, at 1033. As a general matter, this defense can be described as follows:

> The traditional governmental immunity protects governments at all levels from legal actions. At the level of the state and national governments, this immunity is usually referred to as sovereign immunity, and it is associated with the idea that "the King can do no wrong." Though the modern state gradually replaced the individual sovereign, the idea was carried over, partly on the ground that it seemed illogical to enforce a claim against the very authority that created the claim in the first place. Although this logic no longer seems compelling, it remains true that judicial review of executive action in tort suits or otherwise presents some degree of threat to the independence of the executive and the separation of powers, and for this reason even where governmental immunity is

implication behind the doctrine is that if the public is able to tie up the government with potential lawsuits, then the government could not function when its every action would be subject to litigation. The sovereign immunity defense has been effectively used to shield school board members from claims of negligent hiring[314] and supervision by a coach after a player was struck by a baseball in the head during indoor baseball practice.[315]

Therefore, both state and federal governments may have a special defense to a suit brought by a citizen apart from the usual defenses asserted between private citizens. However, in recent years, commentators have noted that sovereign immunity has been eliminated or limited substantially in a majority of states. With a few exceptions, school districts and their employees can now be held liable for injuries.[316]

In litigation involving coaches, the public entity involved is typically a public high school or school board. Generally, school boards have been given the broad exceptions of immunity in various ways. Additionally, other governmental "actors" have been afforded such immunity. For example, one Pennsylvania court broadly interpreted the definition of an "employee" to include a high school football player who had worn the jersey of a particular school district and had represented himself by acting on behalf of that district. In *Wilson v.*

> generally abolished, there remain substantial areas of executive action that cannot be supervised in tort litigation. In addition to the immunity of government itself, officers of the government are sometimes given immunity . . . .

Id. (footnotes omitted).

314. Bruce Beezer, *School District Liability For Negligent Hiring and Retention of Unfit Employees*, 56 EDUC. L. REP. 1117, 1119 (1990).

315. *See, e.g.*, Kroft v. Vermilion Bd. of Educ., Docket No. 46303, 1986 WL 8652, *2-4 (Ohio Ct. App. Aug. 8, 1986) (holding that school board members, a superintendent and a principal were immune from liability in a negligent hiring action brought after a high school baseball player was struck in the head by a thrown baseball because these officials acted within the scope of their authority, because their actions involved discretion, and because no malice could be demonstrated by the plaintiff); Kain v. Rockridge Community Unit Sch. Dist. No. 300, 453 N.E.2d 118, 120 (Ill App. Ct. 1983) (holding a football coach and school district immune from suit which alleged negligence in permitting a high school football player to compete and become injured without having required the player to have participated in the maximum amount of practice sessions required by a high school rule). *But see* Lovitt v. Concord Sch. Dist., 228 N.W.2d 479, 481 (Mich. Ct. App. 1975) (holding a football coach and school district immune from suit from high school football players after one player died and another suffered permanent injury from heat prostration following a team practice).

316. Bjorklun, *supra* note 5, at 350.

Miladin,[317] a spectator waiting in line for refreshments was knocked over by a football player while the football player was leading his team to the locker room.[318] However, the player was not held liable for his actions because the player came within the statutory definition of an "employee" for sovereign immunity purposes.[319]

2. Varying Theories of Sovereign Immunity

States deal with sovereign immunity in various fashions. One such state, Illinois, follows a "loco parentis" model,[320] which requires proof of wilful and wanton conduct to find liability.[321] This theory allows individuals, such as coaches and teachers, to be afforded tort immunity for all matters pertaining to "discipline" and "conduct" of students.[322] However, the Illinois courts have predicated this rule on the existence of a special relationship between the teacher and the student, much like that of a parent and child. Where such a relationship does not exist or there exists a "public policy" exception,[323] liability will result upon a showing of ordinary negligence.

In *Montag v. Board of Education, School District No. 40*,[324] the Illinois Court of Appeals applied the "loco parentis" model to a gymnastics instructor after one of his students was para-

317. Wilson v. Miladin, 553 A.2d 535 (Pa. Commw. Ct. 1989).

318. *Id.* at 536.

319. *Id.* at 537. *Compare* Durham City Bd. of Educ. v. National Union Fire Ins. Co. of Pittsburgh, Pa., 426 S.E.2d 451, 454 (N.C. App. 1993) (holding that the coach who raped an eighth grade student was not an "employee" for purposes of determining coverage under the school board's liability policy since the coach acted outside of the scope of his employment).

320. ILL. ANN. STAT. ch. 122, para. 24-24 (Smith-Hurd 1995).

321. Weiss v. Collinsville Community Unit Sch. Dist., 456 N.E.2d 614, 616 (Ill. App. Ct. 1983) (holding that absent proof of wilful or wanton conduct, educators are immune from tort liability for injuries sustained during school activities). *See also* Kain v. Rockridge Community Unit Sch. Dist. #300, 453 N.E.2d 118, 119 (Ill. App. Ct. 1983) (dismissing a claim due to the insufficiency of negligence under the Illinois sovereign immunity statute).

322. ILL. ANN. STAT. ch. 122, para. 22-24 (Smith-Hurd 1995).

323. *See, e.g.*, Lynch v. Bd. of Educ. of Collinsville Community, 390 N.E.2d 526 (Ill. App. Ct. 1979). In *Lynch*, the court, in a failure to furnish proper equipment case, found that Illinois' sovereign immunity statute (requiring wilful and wanton conduct) did not apply but rather, for "public policy" reasons, ordinary negligence principles would apply. *Id.* at 531. Specifically, this "public policy" "dictate[s] against any interpretation that would relax a school district's obligation to insure that equipment provided for activities of the type of football is fit for the purpose. *Id.* For this function, the school districts are held to a duty of ordinary care." *Id.*

324. 446 N.E.2d 299 (Ill. App. Ct. 1983).

lyzed following the completion of a routine.[325] The court rejected the plaintiff's argument that the loco parentis immunity applied *strictly* to disciplinary situations.[326] Arguably, since *Montag* found immunity for a gymnastics coach's activities, this same principle would apply to coaches of other sports.[327] Additionally, under Illinois law, the immunity provided to coaches will not dissipate because the activity the coach was supervising and coaching was part of an "extracurricular activity."[328]

Oklahoma's Tort Claims Act[329] specifically exempts liability for any injury incurred in "[p]articipation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a public subdivision."[330] However, as was explained in *Standard v. Board of Education of Lawton Public Schools*,[331] the purpose of sovereign immunity is to protect the public treasury from depletion.[332] Thus, liability insurance inevitably changes this situation.[333] Hence, in a case where a political subdivision has purchased liability insurance, a school district waives its immunity only to the extent of coverage.[334] Oregon similarly follows this rule.[335]

The Texas Tort Claims Act[336] provides for an exception to sovereign immunity where a plaintiff alleges injuries arising from "some condition or some use" of property.[337] For example,

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325. *Id.* at 300.

326. *Id.* at 301-02.

327. *Id.* at 302. The *Montag* court did limit its holding to those instances involving a "student-teacher relationship." *Id.* Thus, "[t]he actions of a school board in purchasing and supplying the equipment does not come within this special relationship." *Id.* Additionally, *Montag* noted that wilful or wanton conduct would be excepted from immunity. *Id.* at 303.

328. *See* Thomas v. Chicago Bd. of Educ., 395 N.E.2d 538, 541 (Ill. 1979) (involving a football player who sued the board of education on the theory that the coaches required the player to use and wear obsolete and defective equipment).

329. OKLA. STAT. ANN. tit. 51, §§ 151-200 (West 1988 & Supp. 1996).

330. OKLA. STAT. ANN. tit. 51, § 155(20) (West Supp. 1996).

331. 673 P.2d 154 (Okla. 1983).

332. *Id.* at 156.

333. *Id.*

334. *Id.*

335. *See* Vendrell v. School Dist. No. 26C Malheur County, 360 P.2d 282, 290-91 (Or. 1961) (holding that a school district without liability insurance is immune, but if such insurance is purchased, the school district waives its immunity only to the extent of the liability insurance obtained).

336. TEX. CIV. PRAC. & REM. CODE ANN. §§ 101.001 to .109 (West 1986 & Supp. 1996).

337. *See* University of Texas-Pan Am. v. Valdez, 869 S.W.2d 446, 448-50 (Tex. Ct.

in *Smith v. University of Texas*,[338] the Texas Court of Appeals held that a track official, who was struck by a shot put during warmups of a track and field event, had stated a cause of action within the "condition or use" waiver of immunity.[339] In so holding, the court refrained from limiting the Act narrowly in its reading to require an allegation of "defective equipment."[340]

In *Nichols v. Unified School District No. 400*,[341] the Supreme Court of Kansas construed the Kansas Tort Claims Act[342] and determined that to sue a public high school, gross negligence must be shown.[343] In so holding, the court analyzed Kansas' "recreational use" exception, which requires that any injury caused by the use of public property for recreational purposes be an act of gross negligence.[344]

In contrast to the *Nichols* decision, New Jersey's Tort Claims Act[345] provides that liability for negligent supervision of a recreational facility attaches only when the public employee does so in a *negligent* manner.[346] Under New Jersey law, however, the employee must have agreed or acted to "un-

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App. 1993) (discussing the exception and limitations in a case where a baseball player crashed into the outfield wall and sustained injuries because of lack of a warning).

338. 664 S.W.2d 180 (Tex. Ct. App. 1984).

339. *Id.* at 188. The plaintiff was struck in the head during warm-ups by a shot put thrown by a participant. *Id.*

340. *Id.* The *Smith* court quoted extensively from Lowe v. Texas Tech Univ., 540 S.W.2d 297 (Tex. 1976), which involved a varsity football player's lawsuit against the university for failure to provide adequate and safe equipment. 664 S.W.2d at 298. In reviewing Texas' Tort Claims Act, the Texas Supreme Court reversed a lower court ruling holding that the player's claims were barred for lack of a waiver of sovereign immunity. *Id.* at 301.

341. 785 P.2d 986 (Kan. 1990).

342. KAN. STAT. ANN. §§ 75-6101 to 6120 (1989 & Supp. 1993).

343. *Nichols*, 785 P.2d at 988-89. A high school player claimed that his coach was negligent in ordering the team to run to the locker room from the practice field in dark and wet conditions. *Id.*

344. *Id.*

345. N.J. STAT. ANN. §§ 59:1-1 to 59:14-4 (West 1992 & Supp. 1995).

346. The New Jersey statute provides: "A public employee is not liable for the failure to provide supervision of public recreational facilities. Nothing in this section exonerates a public employee for negligence in the supervision of a public recreational facility." N.J. STAT. ANN. § 59:3-11 (West 1992). *Compare* N.J. STAT. ANN. § 59:2-7 (West 1992) (pertaining to liability of public entity and stating, in pertinent part, "[a] public entity is not liable for failure to provide supervision of public recreational facilities . . . ."). For cases defining a "public recreational facility," *see* Burroughs v. City of Atl. City, 560 A.2d 725, 732 (N.J. Super. Ct. App. Div. 1989), *certif. denied*, 569 A.2d 1345 (N.J. 1989) (holding Atlantic City's Ocean Boardwalk was a "public recreational facility" in a case where a driver became injured after he dove from the boardwalk); Kleinke v. City of Ocean City, 394 A.2d 1257, 1261 (N.J. Super. Ct. Law Div. 1978) (holding a beach is a "public recrea-

dertake" supervision.[347]

One of the most recent cases on the sovereign immunity issue is *Singerman v. Municipal Service Bureau, Inc.*[348] In *Singerman*, a coach scouting a college hockey club was injured when he was struck in the eye by a hockey puck.[349] At the time of his injury, the coach was filling in as a goalie and was not wearing the proper equipment.[350] The coach alleged that the cause of his injury was poor rink lighting, and he sued the municipal agency responsible for maintaining the rink.[351]

In reversing a grant of summary judgment for the defendants, the reviewing court discussed Michigan's "public building" exception.[352] Under this exception to immunity, the question becomes whether the building is dangerous.[353] The court found that a jury question "concerning the safety of the building" was presented and thus precluded summary judgment for the defendants.[354]

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tional facility" in a case where a beachgoer was struck and injured by a body surfer who was riding waves).

347. *See* Troth v. State, 566 A.2d 515, 523 (N.J. 1989) (in a case of a boating accident occurring on a lake which was part of a wildlife management area, the court remanded the case for further fact-finding on the issue of alleged supervision, but noted that the undertaking of supervision must not be "incidental" to another task but rather intentional); Vanchieri v. New Jersey Sports and Exposition Auth., 492 A.2d 686, 691 (N.J. Super. Ct. App. Div. 1985), *rev'd on other grounds*, 514 A.2d 1323 (N.J. 1986) (affirming a grant of summary judgment in favor of the defendant where the plaintiff was knocked down and injured by patrons committing horseplay as the plaintiff was leaving Giants Stadium following a football game on the basis that a failure to provide security did not equate to an intention to undertake supervision); Morris v. City of Jersey City, 432 A.2d 553, 555 (N.J. Super. Ct. Law Div. 1981) (holding in a case where the plaintiff became injured in an after-school basketball shooting activity that the mere presence of a school employee did not constitute an intent to supervise by the school); Law v. Newark Bd. of Educ., 417 A.2d 560, 564 (N.J. Super. Ct. Law Div. 1980) (finding that there was sufficient intent to supervise by the Newark Board of Education in a case of two boys sustaining injuries when they were run over by a fire truck at a recreational program run by the Newark Board of Education). *Compare* Sutphen v. Benthian, 397 A.2d 709, 711 (N.J. Super. Ct. App. Div. 1979) (reversing grant of summary judgment on sovereign immunity—discretionary activity—grounds in favor of school authorities where tenth grade student was struck in the eye by a hockey puck while playing in a supervised game in the school gymnasium).

348. 536 N.W.2d 547 (Mich. Ct. App. 1995).

349. *Id.* at 549.

350. *Id.*

351. *Id.* The coach also sued the municipal employees immediately responsible for the rink's maintenance. *Id.*

352. *See* MICH. COMP. LAWS ANN. § 691.1406 (West 1987).

353. 536 N.W.2d at 550. The court held that because of the defective lighting, the bureau may be liable under the public building exception to governmental immunity. *Id.*

354. *Id.*

Pennsylvania's immunity statute allows an exception to sovereign immunity if the municipality acts negligently with respect to the care, custody or control of real property.[355] However, as Pennsylvania cases have made clear, the alleged negligent act must have related to the use of the real property.[356]

Finally, California's sovereign immunity law[357] provides that public entities are immune from suit for injuries resulting from participation in a "hazardous recreational activity."[358] This provision was recently interpreted in *Acosta v. Los Angeles Unified School District*,[359] which involved an injured gymnast's claim of negligent supervision against a school district for the alleged negligence of the gymnast's coach.[360]

Following a jury verdict in favor of the plaintiff but which found that the gymnast had been engaged in a "hazardous recreational activity," the trial court directed a verdict in favor of

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355. 42 PA. CONS. STAT. ANN. §§ 8541 to 8564 (1982).

356. *See, e.g.*, Lewis v. Hatboro-Horsham Sch. Dist., 465 A.2d 1090 (Pa. Commw. Ct. 1983). In *Lewis*, a junior varsity baseball player became injured after being struck by a line drive hit by his coach during a team practice. *Id.* at 1091. Summary judgment was granted in favor of the coach and the school district and was upheld on appeal. *Id.* at 1090-91. The court held that the Pennsylvania real property exception was "to limit the old rule of absolute sovereign immunity by imposing a standard of due care on those political subdivisions who are owners or users of real property." *Id.* at 1091. *See also* Wimbish v. School Dist. of Penn Hills, 430 A.2d 710, 712 (Pa. Commw. Ct. 1981) (affirming the dismissal of a football player's claim against school district for failure to provide prompt medical attention after the player was injured).

357. CAL. GOV'T CODE §§ 810-997 (West 1995).

358. Section 815 of California's Government Code provides:

> Liability for injury generally; immunity of public entity; defenses.
>
> Except as otherwise provided by statute:
>
> (a) A public entity is not liable for any injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.
>
> (b) The liability of a public entity established by this part (commencing with § 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defense that would be available to the public entity if it were a private person.

CAL. GOV'T CODE § 815 (West 1995).

359. 37 Cal. Rptr. 2d 171 (Cal. Ct. App. 1995).

360. *Id.* at 172. The gymnast had been rendered a quadriplegic after he failed to perform a maneuver which the court described as follows:

> He [the gymnast] was practicing a new maneuver on the high bar called the front catch in which the gymnast swings forward and, at the top of his arc, lets go of the bar, performs a somersault and catches the bar on the way down. While practicing this maneuver Omar [the gymnast] missed catching the bar, fell and landed on his neck. He was rendered [a] quadriplegic.

Id. Unfortunately, the gymnast subsequently died because of his injuries. *Id.* at 172 n.1.

the school district.[361] Ultimately, the case was appealed on the issue of whether or not the gymnast was engaged in a "hazardous recreational activity" or a "school-directed" one.[362] If the former fact finding was made, then the statute's immunity applied; however, a factual finding of the latter type would result in a bar to the application of the immunity statute.[363]

The California Court of Appeals found that there was "no doubt" that the activity in question was a "school-directed" one.[364] In reaching this conclusion, the court had no problem with the fact that the activity took place during the "off-season."[365]

3. Discretionary Immunity

In some jurisdictions, public entities involved in lawsuits over injuries incurred in athletic contests are entitled to discretionary immunity.[366] The "discretionary" aspect differs from a

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361. *Id.* at 172-73.
362. *Id.*
363. *Id.* at 173-74.
364. *Acosta*, 37 Cal. Rptr. 2d at 176.
365. *Id.* The court stated:

> [W]e believe a clear distinction exists between allowing the public to use school facilities after hours, on weekends or during vacations [with the statute applying in that instance] and school-sponsored athletic practices under the supervision of school personnel after school or during the off-season.
>
> . . . .
>
> The district strenuously argues the activity in which Omar was injured was not a school-sponsored gymnastics team practice. Rather, it was part of a community recreation program open to everyone. While it is true Hamilton High School alumni and members of the community would sometimes appear at the evening gymnastics practices, the evidence showed Coach Thomas ran structured training and drills for members of the gymnastics team. Thomas testified when he was overseeing these gymnastics practices he was carrying out essentially the same kind of duties the head coach carried out when he was running the practices. Omar had been a member of the Hamilton High School gymnastics team for the past two years and intended to compete in the coming season. At the end of the previous season Omar and the head gymnastics coach discussed the maneuvers Omar would work on during the off-season, including the front catch. On the night of the accident, Omar was practicing in the Hamilton High School gym on equipment provided by the school under the supervision of a Hamilton gymnastics coach who testified it was he who suggested Omar learn the front catch maneuver. The evidence leaves no doubt Omar was engaged in a school-sponsored and supervised activity at the time of his injury.

Id.

366. KEETON, *supra* note 13, § 131, at 1039. As noted in KEETON:

> The main idea here is that certain governmental activities are legislative or executive in nature and that any judicial control of those activities, in tort suits or

"ministerial" function, with the latter resulting in liability and the former resulting in immunity. The general rule is that if the act which allegedly caused the injuries did not involve "policy making,"[367] then it is not protected by sovereign immunity.[368] Most states' tort claims acts provide for immunity for discretionary actions taken by the governmental actor.

In South Dakota, for example, its courts apply a test based on the Second Restatement of Torts to determine whether or not a particular action is discretionary or ministerial. In *Gasper v. Freidel*,[369] the court outlined several factors to be considered when determining whether or not a particular act is discretionary: (1) the nature and importance of the function that the officer is performing; (2) the extent to which passing judgment on the exercise of discretion by the officer will amount necessarily to passing judgment by the court on the conduct of a coordinate branch of government; (3) the extent to which the imposition of liability would impair the free exercise of his discretion by the officer; (4) the extent to which the ultimate financial responsibility will fall on the officer; (5) the likelihood that harm will result to members of the public if the action is taken; (6) the nature and seriousness of the type of harm that may be produced; and (7) the availability to the injured party of other remedies and other forms of relief.[370] In applying the foregoing test, the court found that the function of "conditioning student/athletes for . . . sports" was a discretionary function.[371]

> otherwise, would disrupt the balanced separation of powers of the three branches of government. Indeed, judicial review of major executive policies for "negligence" or wrongfulness might well operate to make the judiciary the final and supreme arbiter in government, not only on a constitutional level, but on all matters on which judgment might differ.

Id.

367. *See* Larson v. Independent Sch. Dist. No. 314, 289 N.W.2d 112, 121 (Minn. 1980).

368. *Id.* at 121.

369. 450 N.W.2d 226 (S.D. 1990). In *Gasper*, a lawsuit was brought by a prospective high school football player against two football coaches after the player sustained serious injuries while weight training before team tryouts. *Id.* at 230.

370. *Id.* (quoting National Bank of South Dakota v. Leir, 325 N.W.2d 845, 848 (S.D. 1982) (quoting RESTATEMENT (SECOND) OF TORTS § 895(d), cmt. f (1979))).

371. *Id.* at 232. In specifically applying the Restatement test, the court held "that to second guess . . . [the coaches'] judgment on how to supervise and train athletes would infringe on the executive branch of government. More importantly, imposition of liability would impair the free exercise of discretion." *Id.* In support of its position, the court cited to Truelove v. Wilson, 285 S.E.2d 556 (Ga. Ct. App. 1981), amongst other authority.

In *Lennon v. Petersen*,[372] a scholarship soccer player brought suit against his coach and athletic trainer for their negligent treatment of the player's injuries.[373] The player was diagnosed by the trainer with a groin strain and was treated with ice and electricity.[374] However, it was later learned that surgery was required to correct the problem, and it was determined that the player should avoid any activities that could cause a jarring of his hip bones to avoid premature arthritis as well as other physical problems.[375] The player then brought suit based upon the trainer's misdiagnosis, but the trial court ruled in favor of the defendants based on discretionary immunity.[376] The Alabama Supreme Court affirmed the judgment.[377]

Noting that a finding of a discretionary function requires "'personal deliberation, decision and judgment,'"[378] the Alabama Supreme Court found that the actions of the coach and the trainer clearly fell into the category of discretionary acts.[379] With respect to the coach, his discretion ranged from drills to the evaluation of his players' performance.[380] Similarly, the trainer's discretion ranged from ascertaining the extent of the injury and diagnosing the recommended treatment.[381] Since "all of these functions require the use of her [the trainer's] judgment and discretion, she is entitled to discretionary function immunity."[382]

A similar result was reached in *James v. Laurel School Dis-*

In *Truelove*, a wrongful death action was brought after a female soccer player was fatally injured after a soccer goal fell on her as she was tying her shoes during a physical education class. *Id.* at 557. The parents sued the school district that defended on the basis of sovereign immunity. *Id.* at 558. The court found for the defendant because there was no evidence that the defendant school district's employees had any involvement in obtaining or providing the soccer goal. *Id.* at 559-60.

372. 624 So. 2d 171 (Ala. 1993). In *Lennon*, the soccer player began complaining of a sharp pain in his hip and groin region during his first season. *Id.* at 173.

373. *Id.*

374. *Id.* This treatment was continued for some time, and when the plaintiff-player consulted a physician, the physician determined that the problem was not a groin strain but a disease which manifests itself in the hip joints. *Id.*

375. *Id.*

376. *Id.* at 172.

377. *Lennon*, 624 So. 2d at 172.

378. *Id.* at 174.

379. *Id.* at 175.

380. *Id.* at 174-75.

381. *Id.*

382. *Lennon*, 624 So. 2d at 175.

trict,[383] which involved a cheerleader's claim against her coach after the cheerleader fell during a tryout session.[384] During the performance of a "stunt," the plaintiff slipped and fell on her chin, sustaining injury.[385] In her suit against the coach, the plaintiff claimed negligence and negligent supervision.[386] Based on Delaware's Tort Claims Act,[387] the court dismissed the claim.[388]

4. Proprietary Function

The proprietary function exception differs from a governmental entity performing a public function.[389] The proprietary function exception essentially seeks to avoid governmental immunity on the theory that the entity is not acting for the public good but rather for the good of itself.[390] This particular theory has been somewhat progressive, especially when recreational activities are involved.[391]

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383. 1993 WL 81277 (Del. Super. Ct. Mar. 3, 1993).

384. *Id.* at *1-2. The tryouts were held in a gymnasium with hardwood floors. *Id.* at *1. During the tryouts, no matting was placed on the floor. *Id.*

385. *Id.* at *2. The stunt was a maneuver where one person stands on the shoulders of another. *Id.*

386. *Id.*

387. DEL. CODE ANN. tit. 10, § 4010 (1995).

388. *James*, 1993 WL 81277, at *2. The court ruled on the discretionary nature of the coach's decision not to use mats during the tryout session, and held that the coach's decision not to use mats constituted a discretionary act. *Id.* Delaware law also requires a showing of the coach's lack of good faith and failure to act in the public interest, which must be met by a gross negligence standard. *Id.* at *3. On these points, the court held for the coach. *Id.* at *5.

389. *See* Marcy v. Town of Saugus, 495 N.E.2d 569, 570 (Mass. App. Ct. 1986) (involving a claim by a 16-year-old football player who was allegedly rendered a quadriplegic as a result of an improper football tackle).

390. *See* Garza v. Edinburg Consol. Indep. Sch. Dist., 576 S.W.2d 916 (Tex. Ct. App. 1979). In *Garza*, a case involving a freshman high school football player's claim against a school district for injuries suffered while playing football, the court concluded that *as a matter of law*, a school district's interscholastic football program is a governmental function of a school district. *Id.* at 918.

391. OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 682-83 (1982). Therein, the author notes:

> Educational activities have usually been classified as governmental, and the resulting immunity of municipalities as to the operation of schools has been applied even to the repair and maintenance of school buildings and grounds . . . . But a sharp split of authority has long existed over how to categorize recreational facilities and functions. Many cases—chiefly older ones—classified recreational activities as, in general, governmental in nature. But the more recent cases have . . . recognized the analogy to private businesses and held that recreational endeavors are proprietary.

This theory was examined in *Lovitt v. Concord School District,*[392] where two high school football players suffered severe injuries from a "severe" practice, one fatally.[393] Suit was brought against the team's coach, amongst others, and the defendants moved for summary judgment based on sovereign immunity.[394] The plaintiffs' claimed that the football program was being run for profit and not as part of a governmental function.[395] However, the defendants produced evidence which showed that the school district had incurred a net operating loss for five years.[396] As a result, the plaintiffs' attempt to sidestep sovereign immunity failed.[397]

F. Civil Rights Cases

High school and college coaches may also be sued under federal civil rights legislation.[398] Although a complete treatment of civil rights litigation is beyond the scope of this Article, some general considerations can be stated. The major consideration is the complexity and difficulty of maintaining an action under § 1983.[399]

Id. (footnotes omitted).

392. 228 N.W.2d 479 (Mich. Ct. App. 1975).

393. *Id.* at 480.

394. *Id.* at 479.

395. *Id.*

396. *Id.*

397. Lovitt v. Concord Sch. Dist., 228 N.W.2d 479, 483 (Mich. Ct. App. 1975). However, with respect to the individual coaches, the court found that despite the immunity of the school district, the coaches were not immune for "personal negligence." *Id.* Thus, "[t]he negligence alleged by the plaintiffs here is personal on the part of the defendant teachers and direct in its effect on the individual injured students. The defendant teachers cannot, in the presence of these factors, clothe themselves in the governmental immunity of their school-district employer." *Id.*

398. *See* 42 U.S.C. § 1983 (1995). The statute provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Id.

399. *See, e.g.,* Graham v. National Collegiate Athletic Assoc., 804 F.2d 953 (6th Cir. 1986). In *Graham,* two students who were football players for the University of Louisville under scholarships withdrew from the University's football program. *Id.* at 954-55. The University then cancelled the players' scholarships. *Id.* at 955. The players sued the

In terms of the complexity of suing under § 1983, for example, considerable litigation has come down which has attempted to define who or what constitutes a "person" for purposes of maintaining an action under § 1983. For example, school districts are "persons,"[400] but state colleges or universi-

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University in state court and were successful in obtaining reimbursement for the tuition they had paid. *Id.* In the meantime, the players had sought remittance to the football program, however, one of the players, Stephen Graham, was kicked off the team once the University learned of the state court action. *Id.* Graham then enrolled in the University of Western Kentucky where he wanted to continue playing football, however, because of NCAA rules he was unable to do so. *Id.* Specifically, NCAA rules at that time prohibited Division I players who transferred to another Division I school from playing during the year they transferred. *Id.* Additionally, Graham was in his fifth year of eligibility and because of the implementation of the transfer rule which meant that he was ineligible for playing that year, Graham would not be able to play until his sixth year, which made him ineligible for play. *Id.* The other student, Brett Lohrke, enrolled in another university and in order to be eligible at that university, he needed a written release from the University of Louisville. *Id.* However, that release was never issued, because Lohrke's new university never requested it. *Id.* at 956.

Both students then commenced an action in the district court with Graham asserting that as a result of the University of Louisville's actions, the NCAA regulations and the university coach's actions, he was denied procedural due process, substantive due process, and equal protection under the law. *Id.* Lohrke only sought injunctive relief commanding the University of Louisville to issue the release which would allow him to be able to play football. *Id.* Lohrke's claims were ultimately found moot since the University of Louisville ultimately issued the release. *Id.* at 957. With respect to Graham's claims against the University, the district court found that Graham had no protectable right to participate in interscholastic athletics. *Id.* at 956. Additionally, the court found for the University on Eleventh Amendment grounds. *Id.* With respect to the NCAA regulations, the court also found Graham had no protectable interest, and therefore, the NCAA could not have deprived him of any civil rights under 42 U.S.C. § 1983. *Id.* at 957. On appeal to the Sixth Circuit, the court affirmed. *Id.* at 961. Specifically, the court found that one of the essential elements necessary for a § 1983 action, action under a color of state law, was not established. *Id.* at 958. With respect to Graham's claims against the University of Louisville and its coach, the court found it was more proper to characterize Graham's claim "as a claim of retaliation for the exercise of a First Amendment right. That is, Graham is claiming that he was kicked off the University football team in retaliation for the filing [of] the state court action . . . ." *Id.* at 959. Nevertheless, despite the fact that the Sixth Circuit Court of Appeals found an actionable claim under § 1983, they found that both the coach and the university were shielded from suit by the Eleventh Amendment. *Id.* Finally, the court denied individual capacity claims against the university coach since the claim was made against him in his official capacity. *Id.* at 960. Thus, *Graham* illustrates some of the various obstacles that civil rights plaintiffs encounter when suing under § 1983.

400. *See, e.g.*, Kingsville Indep. Sch. Dist. v. Cooper, 611 F.2d 1109, 1112 (5th Cir. 1980) (holding that a school district's failure to renew a high school teacher's contract for employment was actionable against the school district because it was motivated by the teacher's classroom discussions of post-Civil War American History); Keckeisen v. Indep. Sch. Dist., 509 F.2d 1062, 1065 (8th Cir.), *cert. denied*, 423 U.S. 833 (1975) (holding that a school board's policy of prohibiting employment of a husband and wife as teachers did not violate the right to marriage).

ties are not necessarily "persons."[401] Thus, special considerations may present themselves in civil rights actions as opposed to actions brought under state law. Additionally, this analysis will depend on whether or not the suit is brought in federal or state court. However, the most common difficulty plaintiffs have encountered in maintaining § 1983 actions appears to be proving, either in law or fact, a constitutionally protected interest which has been violated.[402] This has been particularly true in cases brought against coaches alleging liability for sexual harassment and interference with liberty or familial rela-

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401. For cases holding that a state university is *not* a person under § 1983, *see, e.g.*, Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989) (holding that the University of California was not a person in claim by arrestee for violation of his Fourth and Fourteenth Amendment rights following his arrest for grand theft auto by university police); Skehan v. Board of Trustees, 590 F.2d 470, 488 (3d Cir. 1978), *cert. denied*, 444 U.S. 832 (1979) (holding, for a teacher in an action for a violation of his procedural due process rights because he was terminated without a hearing that the college was not a "person" under 42 U.S.C. § 1983); Bartges v. University of N. Carolina at Charlotte, 908 F. Supp. 1312, 1332 (W.D.N.C. 1995) (holding the University of North Carolina at Charlotte was not a "person" in an action brought by a female coach for sex discrimination and unequal pay); Gross v. University of Tennessee, 448 F. Supp. 245, 247-48 (W.D. Tenn. 1978) (holding the University of Tennessee was not a "person" under 42 U.S.C. § 1983 in an action brought by former professors claiming that they had been unlawfully dismissed); Escobar v. State Univ. of NY/College at Old Westbury, 427 F. Supp. 850, 851 (E.D.N.Y. 1977) (holding, in an injunctive relief application which sought to restrain a city college from suspending a student from allegedly abusive behavior, that the State University of New York was not a "person" within the meaning of 42 U.S.C. § 1983); Hupart v. Board of Higher Educ., 420 F. Supp. 1087, 1103 (S.D.N.Y. 1976) (holding, in a reverse discrimination suit against a city college and other "public" defendants, that the public defendants were not "persons" under 42 U.S.C. § 1983) (relying in part on Monell v. Department of Social Serv., 532 F.2d 259 (2nd Cir. 1976), *rev'd*, 436 U.S. 658 (1978)). For cases holding that a university *is* a person under § 1983, *see, e.g.*, Fuchilla v. Layman, 537 A.2d 652, 657 (N.J. 1988) (affirming reversal of the dismissal of plaintiff's complaint in a sexual harrassment suit brought against the University of Medicine and Dentistry under § 1983 and finding that the university was a "person" under § 1983); Uberoi v. University of Colorado, 713 P.2d 894, 900 (Colo. 1986) (holding that the University of Colorado was a "person" under 42 U.S.C. § 1983 and therefore a dismissal of tort claims against the university by the trial court was in error). In part, the basis for a disparity in the law was the United States Supreme Court's decision in Monell v. Department of Social Serv. of the City of New York, 436 U.S. 658 (1978), which overruled the Court's prior decision in Monroe v. Pape, 365 U.S. 167 (1961), and held that municipalities and other "local government units" should be included within the definition of "persons" under § 1983 and therefore, are subject to suit under that statute. 436 U.S. at 689. *See also Uberoi*, 713 P.2d at 900 & 900 n.8 (noting the split of authority as to the legal status of municipalities and other "governmental units" prior to *Monell*).

402. *But see* Doe v. Taylor Indep. Sch. Dist., 15 F.3d 443, 451-52 (5th Cir. 1994) (finding a protectable liberty right of "bodily integrity" for a school child from molestation by a state actor in a case of sexual molestation by a coach).

tionships affected by such harassment.[403]

Although some case law has reached a different conclusion, § 1983 litigation has recently been effective in the pursuit of sexual harassment claims as well as other coaches' liability claims.[404] For example, in *Reeves v. Besonen*,[405] a coach and his high school were sued after a freshman high school football player suffered injuries during a "hazing" ritual on a team bus ride from a game.[406] The injured player claimed that his Fourth and Fourteenth Amendment rights were violated pursuant to 42 U.S.C. § 1983.[407] The court rejected these claims, as the player had failed to sustain the two-pronged test for bringing a § 1983 action.[408]

With respect to the Fourth Amendment claim, the court found no action under color of state law.[409] Additionally, the

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403. For example, in R.L.R. and C.A.R. v. Prague Publ. Sch. Dist. I-103, 838 F. Supp. 1526 (W.D. Okla. 1993), a 14-year-old basketball player, after having sexual relations with her coach, brought suit (along with her parents) alleging a violation of her liberty interest to be free from sexual harassment at a public school. *Id.* at 1528-29. The court found that no liberty interest was present to be protected under § 1983. *Id.* at 1530.

404. For a commentary on recent § 1983 claims brought for sexual harrassment, *see* Joseph Beckham, *Liability For Sexual Harassment Involving Students Under Federal Civil Rights Law*, 99 EDUC. L. REP. 689 (1995); Gail Sorenson, *Employee Sexual Harassment and Abuse of Students in Schools: Recent Developments In Federal Law*, 97 EDUC. L. REP. 997 (1995).

405. 754 F. Supp. 1135 (E.D. Mich. 1991).

406. *Id.* at 1136-38. The coach was the driver of the bus. *Id.* at 1136.

407. *Id.* at 1138. Succinctly, the player claimed his Fourth Amendment rights to be secure in his person against unreasonable seizures and his right to be free from unreasonable and excessive force had been violated. *Id.* Additionally, the player claimed a violation of his Fourteenth Amendment right not to be deprived of life, liberty, or property without due process of law. *Id.*

408. Gomez v. Toledo, 446 U.S. 635, 640 (1980). A 42 U.S.C. § 1983 action requires two elements to be proven: First, a showing that some person has deprived the plaintiff of a federal right, and second, that the person(s) who deprived the plaintiff of that right "acted under color of state law." *Id.* The *Reeves* court phrased the test in the following manner: "In order to recover under § 1983, the plaintiff must prove: 1) that he was deprived of some right, privilege, or immunity secured by the Constitution or laws of the United States; 2) by a person acting under color of state law." 754 F. Supp. at 1138-39.

409. The phrase "color of state law" essentially means that a plaintiff must prove that the person violating his or her civil rights was not a private individual or a federal official, but rather a state or local official acting pursuant to authority vested in them by state or local law. Monroe v. Pape, 365 U.S. 167, 184 (1961). A private individual may, however, be deemed to have acted under "color of state law" if that actor was under contract or was being supervised by the state to perform a state function. West v. Atkins, 487 U.S. 42, 51-52 (1988) (holding that a private physician conducting medical examinations on inmates under state contract constituted action under "color of state law."). It should be noted, however, that just because a state official is acting in his or her official capacity does not automatically assume that action under "color of state law" has taken

court rejected the player's due process claims as being beyond the reach of the Fourteenth Amendment.[410] With respect to a qualified immunity defense, the court held that the proper test was whether or not the official acted in an objectively reasonable manner considering the clearly established rules at the time of the allegedly tortious act(s).[411] Under these facts, the court found that the law respecting "excessive corporal punishment inflicted directly by state employees against students during mandatory school hours can arise to the level of a constitutional violation."[412] Nevertheless, even if a valid § 1983 action existed, the plaintiff failed to present a clearly established rule which the defendants had violated, thus rendering defendants not liable under the federal civil rights statute.[413]

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place. *See, e.g.,* Polk County v. Dodson, 454 U.S. 312, 326 (1981) (holding that a public defender, when representing indigent against state's prosecution, is said to act in a private capacity). Finally, cases of private individuals may also ultimately entail a detailed and perhaps complicated analysis of "state action." *See generally* JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW §§ 12.1 to 12.5 (4th ed. 1991); LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW §§ 18-1 to 18-7 (2nd ed. 1988).

410. 754 F. Supp. at 1140. The court held:

> It is clear to this Court that the actions of the Defendants here did not amount to a deprivation of the Plaintiff's constitutional rights. The injuries and indignities to which the Plaintiff was subjected took place at night in conjunction with the Plaintiff's voluntary participation on the school football team. There is no indication in the facts before the Court that his participation was compulsory, or that his riding the school bus on the night of October 17, 1986 amounted to "incarceration," or "involuntary commitment," or "police custody," or anything of that sort. In the absence of such State coercion, Deshaney [Deshaney v. Winnebago County Dep't of Social Serv., 489 U.S. 189 (1989)] makes clear that the Constitution imposes no duty on the state to care for the Plaintiff's safety.

Id.

411. *Id.* at 1141.

412. *Id.*

413. *See* Seamons v. Snow, 864 F. Supp. 1111 (D. Utah 1994). In *Seamons,* a high school junior backup quarterback was accosted in a lockeroom by four members of the team. *Id.* at 1115. The player was then "taped" to a wall. *Id.* Following this incident, the player was dismissed from the team and he moved from the area to reside with his uncle. *Id.* The parents of the player sued the coach, the high school, and the school district (amongst others) claiming a violation of Title IX of the United States Code and 42 U.S.C. § 1983. In rejecting the § 1983 claim, the court stated:

> Plaintiffs . . . claim that their due process rights were violated by Defendants' acts which denied Brian [the player] his advanced placement credits and participation in interscholastic athletics, and by Defendants' violation of Brian's right to attend public school in the district in which he resides, to be protected from sexual assault and harassment at school, to attend school where he can live with his family, to play on the Sky View High School football team, and to have his reputation and standing in the community protected. In order to state a substantive due process claim, Plaintiffs must assert a deprivation of interests —

In *Sorey v. Kellet*,[414] a lawsuit commenced after a University of Mississippi football player collapsed during football practice.[415] The apparent cause of the collapse was heat exhaustion, as the player had previously complained of cramps and nausea.[416] After being taken to the team training room, the player was examined by the team physician and then taken by a fellow student to the hospital.[417] Unfortunately, the player died in transit.[418] A lawsuit was commenced for negligent supervision and failure to hire competent employees under § 1983, with the coach being named as one of several defendants.[419] The court held that the physician and trainer were performing discretionary functions, and as such were entitled to qualified immunity under state law.[420] Once again, albeit for different reasons, the plaintiff was unable to prove a constitutionally protected interest.

G. Insurance Coverage

Perhaps the most "comforting" defense any coach or affiliated association may have to a lawsuit is insurance coverage. In 1992, the NCAA began offering fairly comprehensive catastrophic injury insurance.[421] Other institutions may be self-insured, while some obtain coverage through the policy maintained by a student.

With other league and sport organizations, it is popular to offer members excess accident insurance or catastrophic accident insurance.[422] In essence, both types of insurance are designed to provide coverage where the insured's primary in-

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whether property interests or liberty interests — that are protected by the Constitution. None of the above interests are constitutionally protected.

Id. at 1120.

414. 849 F.2d 960 (5th Cir. 1988).

415. *Id.* at 961-62.

416. *Id.*

417. *Id.* at 961.

418. *Id.*

419. *Sorey*, 849 F.2d at 961.

420. *Id.* at 960.

421. Baker, *supra* note 235, at 663-64.

422. Homeowners' insurance coverage may also be a consideration. Homeowners' insurance is defined as insurance "insuring individuals against any, some, or all of the risks of loss to personal dwellings or the contents thereto or the personal liability pertaining thereto." BLACK'S LAW DICTIONARY 554 (6th ed. 1990). For a sample of a typical homeowners' policy, *see* ROBERT E. KEETON & ALAN I. WIDISS, INSURANCE LAW APP. I, at 1227 (1988).

surance ends.[423]

With respect to reported cases, practitioners should be aware of cases discussing issues involving coaches and issues common to most insurance matters, such as the insurer's duty to defend and exclusions.[424]

VI. Ancillary Concerns

Beyond traditional tort negligence, coaches may also be subject to liability under other legal causes of action. For example, the advent of the AIDS virus has forced educational institutions to confront issues surrounding the medical treatment of injuries sustained by students and student-athletes.[425] Additionally, there has been a plethora of cases[426] and commentary[427] on Title IX[428] sexual harassment claims involv-

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423. *See* 8A John Alan Appleman & Jean Appleman, Insurance Law and Practice § 4909.85 (rev. perm. ed. 1981).

424. *See, e.g.,* American Fidelity Ins. Co. v. Employers Mut. Casualty Co., 593 P.2d 14, 19-23 (Kan. Ct. App. 1979) (resolving issues of the duty to defend and coverage between primary and excess insurers following claims filed by football coaches sued by their players). *See also* Industrial Indem. Co. v. Beeson, 736 P.2d 800, 802 (Ariz. Ct. App. 1987) (regarding an indemnity and contribution action between a school district's insurance carrier and a coach's carrier following an injury of a student from the use of a trampoline); Continental Casualty Co. v. Borthwick, 171 So. 2d 687, 690-91 (Fla. Dist. Ct. App. 1955) (affirming a directed verdict in favor of an insured and interpreting an "under supervision of proper authority of the school" clause in a school policy in favor of an insured in a case involving an automobile accident where the school's swim team members travelled to a swim meet).

425. For an excellent discussion on the impact of AIDS upon the sports industry, *see* Matthew J. Mitten, *AIDS and Athletics*, 3 Seton Hall J. Sport L. 5 (1993). More recently, the professional ranks have been stunned by the Tommy Morrison tragedy. *See* Steve Wieberg, *Morrison Sends Message,* USA Today, Feb. 16, 1996, at 1C; Tim Dahlberg, *Report: Morrison Tested HIV-Positive,* USA Today, Feb. 12, 1996, at 1C.

426. *See generally* Franklin v. Gwinnett County Publ. Sch., 503 U.S. 60 (1992); Doe v. Rains County Indep. Sch. Dist., 66 F.3d 1402 (5th Cir. 1995); Marquay v. Eno, 662 A.2d 272 (N.H. 1995). *Compare* Harrison v. Gore, 660 So. 2d 563, 565-66 (2nd Cir. 1995) (dealing with the sexual molestation of a former high school student by the coach while the student played on the coach's basketball team); Bratton v. Calkins, 870 P.2d 981, 982-84 (Wash. Ct. App. 1994) (discussing the plaintiff's claim against the school district for its failure to supervise and take corrective measures with respect to the softball coach's sexual relationship with a softball player).

427. For a discussion on Title IX and its impact on the sports industry, *see* Jodi Hudson, Comment, *Complying With Title IX of the Education Amendments of 1972: The Never-Ending Race to the Finish Line,* 5 Seton Hall J. Sport L. 575 (1995); Janet Judge et al., *Gender Equity in the 1990s: An Athletic Administrator's Survival Guide to Title IX and Gender Equity Compliance,* 5 Seton Hall J. Sport L. 313 (1995); John Wolohan, *Sexual Harassment of Student Athletes and the Law: A Review of the Rights Afforded Students,* 5 Seton Hall J. Sport L. 339 (1995); Joseph E. Krakora, *The Application of Title IX to School Athletic Programs,* 68 Cornell L. Rev. 222 (1983).

ing coaches.[429] Moreover, recent federal legislation, particularly the Americans With Disabilities Act,[430] has added further constraints on coaches dealing with allegedly handicapped students.[431] Finally, there have been recent cases addressing concerns such as locker room demeanor,[432] and First Amendment issues pertaining to coaches.[433]

A full examination of these issues is beyond the scope of this Article, which focuses specifically upon causes of action for injury to participants. These issues are mentioned, however, to alert coaches and practitioners of additional legal concerns beyond the traditional tort duties discussed in this Article.

VII. CONCLUSION

The foregoing material outlines the duties owed by coaches

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428. Title IX provides, in pertinent part:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a) (1990).

429. Individuals such as coaches are not subject to suit under Title IX. Seamons v. Snow, 864 F. Supp. 1111, 1116 (D. Utah 1994) (involving a locker room hazing claim against a coach and the high school). However, coaches themselves may bring Title IX actions. *See generally* Bartges v. University of N. Carolina at Charlotte, 908 F. Supp. 1312 (W.D.N.C. 1995).

430. 42 U.S.C. §§ 12101-12213 (1995). *See also* Cathy J. Jones, *College Athletes: Illness or Injury and the Decision to Return to Play*, 40 BUFFALO L. REV. 113, 189 (1992) (noting "[t]he Americans with Disabilities Act of 1990 . . . may well provide college athletes with a preexisting medical condition, who desire to return to play in the face of institutional refusal, a remedy. . . .").

431. *See generally* Ralph D. Mawdsley, *Supervisory Standard of Care For Students With Disabilities*, 80 EDUC. L. REP. 779 (1993).

432. *See, e.g.*, Dambrot v. Central Mich. Univ., 55 F.3d 1177, 1187-88 (6th Cir. 1995) (affirming the legality of a university's dismissal of a basketball coach's removal for the use of racial slurs in a locker room during a game).

433. *See generally* Gil Fried & Lisa Bradley, *Applying the First Amendment to Prayer in a Public University Locker Room: An Athlete's and Coach's Perspective*, 4 MARQ. SPORTS L.J. 301 (1994); Eugene C. Bjorklun, *School District Liability For Team Prayers*, 59 EDUC. L. REP. 7 (1990); John C. Walden, *Are Prayers at High School Football Games Constitutional?*, 39 EDUC. L. REP. 493 (1987). For caselaw, *see* Doe v. Duncanville Indep. Sch. Dist., 994 F.2d 160 (5th Cir. 1993). In *Doe*, a 12-year-old basketball player and her father sought to enjoin the school district from permitting the team to recite prayers before and after games and practices. *Id.* at 161. The prayers were initiated and conducted by the team's coaches. *Id.* at 161-63. The district court found for the student and enjoined the school from allowing its coaches and employees to lead school prayers during extra-curricular activities including sporting events. *Id.* After a permanent injunction was issued, the school district appealed to the Fifth Circuit. *Id.* at 163. The Court of Appeals for the Fifth Circuit affirmed this order. *Id.* at 168.

as well as the applicable defenses to actions alleging a breach of a duty. During the course of holding seminars on the civil liability of coaches,[434] the authors are frequently encountered with questions pertaining to anxiety coaches experience with respect to the legal exposure coaches face today. Undeniably, the legal concerns of the coach have become "part of the sport." However, as sports[435] have changed and evolved over the decades, so have the legal mechanisms by which coaches can protect themselves.

Practitioners and coaches alike should familiarize themselves with the particular duties which more or less lay out the game plan by which most coaches should conduct themselves.[436] Undeniably, one of the best defenses against coaches' liability is knowledge of the attendant risks.[437] In

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434. *See supra* note *.

435. Although reference has been made herein to "traditional" sports such as baseball, basketball, football, and hockey, the National Center for Catastrophic Sports Injuries 12th Annual Report annexed hereto at Appendix B makes clear that for other "activities" such as cheerleading (considered a "sport" by some states), involve issues regarding legal liability. Appendix B at 31-36. *See also Liability of School or School Personnel For Injury to Student Resulting From Cheerleading Activities*, 25 A.L.R. 5th 784 (1994).

436. Karns, *supra* note 9, at 485. The author notes:

> [T]here must be a renewed emphasis placed on educating those persons associated with secondary school sports regarding their potential negligence liability for athletic injuries. School superintendents are in a good position to implement such a program for athletic coaches, and state high school associations can utilize clinics and rules seminars as vehicles for making sports officials more cognizant of the consequences of their on-the-field conduct. Coaches also bear the responsibility of ensuring that players are taught proper techniques and are informed of the possible injuries that could result from failure to follow these instructions.

Id. See also John P. Lenich, *One Strike and You're Out: An Overview of Negligence and High School Athletics*, 40 EDUC. L. REP. 1, 3 (1987) (stating that "school officials must make every effort to structure and conduct their-sports related programs so as to minimize both the risk of injuries occurring in the first place and the risk of being found liable for injuries that do occur. That in turn requires some working knowledge of the basic legal claims that are generally available to injured students.").

437. *See* Larry D. Bartlett, *The Courts View of Good Conduct Rules For High School Students*, 82 EDUC. L. REP. 1087, 1088 (1993). Coaches and school district representatives often ask whether or not they may somehow insulate themselves from liability through the use of "good conduct rules." *Id.* Essentially, a good conduct rule refers to a "school rule[s] that attempt[s] to govern out-of-school conduct, as well as in-school conduct by students engaging in extracurricular activities." *Id.* However, it is doubtful that good conduct rules can assist a coach or a school district in shielding itself from tort liability, since generally good conduct rules are limited to disciplining student athletes for out-of-school conduct pertaining to either criminal activity or drug or alcohol consumption. *See* Bunger v. Iowa High Sch. Athletic Ass'n, 197 N.W.2d 555 (Iowa 1972). In

other words, coaches who are well versed in the duties they owe to their participants will refrain from conduct potentially exposing them to liability.[438] This is best accomplished through effective risk management[439] as well as understanding the

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Bunger, a school district adopted a rule which prohibited the use or transportation of alcoholic beverages. *Id.* at 557-58. An interpretation of that rule had found that the word "transportation" meant to "include knowingly being in a vehicle carrying alcoholic beverages." *See* Bartlett, *supra*, at 1089. Subsequently, a car that a 16 year old football player was riding in was stopped by police, who discovered a case of beer in the car. Although the charges were eventually dropped, school authorities learning of the incident declared the 16-year-old player ineligible based on the good conduct rule. *Bunger*, 197 N.W.2d at 564. Although the court in *Bunger* found that the school board authorities had power to adopt good conduct rules, it ruled that particular rule was impermissible on the basis that the "nexus between the school and a situation like the present one is simply too tenuous: Outside of football season, beyond the school year, no legal or even improper use of beer." *Id.* Therefore, the *Bunger* court did not rule out the ability of schools to legislate by rule making against out-of-school activities; however, it found that the particular rule in the *Bunger* case was beyond the principal scope of such rules. *Id.*

438. Arecent report illustrates the necessity of coaches refraining from outrageous conduct which may lead to liability. That report stated:

> *EXTREME MEASURES*: Two teachers at Limestone High near Peoria, Ill., lost their coaching jobs after police learned the teachers had locked three wrestlers in a room to make them lose weight before the regional tournament earlier this month. Bartonville, Ill., police found the boys, who were locked up voluntarily for a few hours Feb. 1 with nothing but a bottle to urinate in and a screwdriver to take the doors off the hinges in case of an emergency. Coach Bob Daugherty confirmed to the Peoria *Journal Star* he and assistant Tim Turner were relieved of their duties.

Extreme Measures, USA TODAY, Feb. 22, 1996, at 3C.

439. Philip Burling, *Managing Athletic Ability: An Assessment Guide*, 72 EDUC. L. REP. 503, 503-04 (1992). An effective risk management program contains the following components:

> 1. PRACTICES AND PROCEDURES: Those in authority must provide policies and procedures directing and governing all activities sponsored by their athletic departments, including intercollegiate, intramural, and recreational activities . . . .
> 2. TRAINING: Traditional ad hoc "on the job" training is no longer adequate. Some formal training should be given to all personnel, especially concerning the institution's policies and procedures . . . .
> 3. SUPERVISION: Every level of supervision must be actively involved in "looking over" rather than "overlooking" the actions of their subordinates . . . .
> 4. CORRECTIVE ACTION: When supervisors are aware that policies and procedures are not followed, the corrective action must be timely, relevant, and progressive . . . .
> 5. REVIEW AND REVISION: Administrators must use the management data available to them, including: incident reports of injuries; deficiencies on the part of the staff; inspections and audits; possible claims or lawsuits; new statutes; and even court decisions that will affect the performance of duties . . . .
> 6. LEGAL COUNSEL AND SUPPORT: To reduce the chances of lawsuits, corporation counsel must be actively involved in providing direction, reviewing policies and procedures, and giving proactive guidance to the staff . . . .

need for continuing coaching education.[440] Indeed, risk management has become a major concern for sponsors of sporting events.[441]

At all times, it is important to realize that society has placed a particular value on sporting events. In numerous cases, courts have refrained from chilling athletic competition. This rhetoric is not merely public policy in a vacuum; it is a clear intent to protect coaches as much as possible while also attempting to balance the competing interests of making sporting events available to society for entertainment as well as athletic purposes.

Therefore, anxiety should not be the initial reaction once the coach digests the foregoing material. Instead, the coach should understand that as with any other activity in society, his or her actions are governed by traditional tort principles, modified somewhat to accommodate for the unusual activity of sports. Preparation, knowledge, and anticipation of foreseeable consequences is perhaps the best mechanism any coach can use to arm him or herself in preparation for sporting events. Clearly, the coach's exposure to liability begins on the first day of the season and does not end until the team banquet following the championship game.

Id.

440. The Authors of the National Center for Catastrophic Sports Injury Research report, appended hereto as Appendix B, have unequivocally recommended the strengthening of coaching skills and practices as one method of dealing with risk management/legal liability. *See* Appendix B at 11 (commenting that football coaches must continue to stress techniques prohibiting using the head for blocking and tackling); *id.* at 12 (same); *id.* (noting soccer coaches' need to emphasize instability and danger caused by movable soccer goals); *id.* at 13 (noting need for wresting coaches to remain abreast of new techniques to protect against catastrophic injuries); *id.* at 14 (recommending hockey coaches' awareness of rules pertaining to checking from behind and the need to stress strengthening neck muscles); *id.* (stressing swimming coaches' need to prevent shallow diving techniques); *id.* at 16 (encouraging development of good risk management techniques to prevent track and field injuries caused by the discus and javelin).

441. Bernard P. Maloy, *Planning For Effective Risk Management: A Guide For Stadium and Arena Management*, 2 MARQ. SPORTS L.J. 89 (1991).

APPENDIX A
VOLUNTEER STATUTES

ARK. CODE ANN. § 16-120-102 (Michie Supp. 1993).
The Arkansas statute provides, in pertinent part:

> (a) Except as otherwise provided by this chapter, no member of any board, commission, agency, authority, or other governing body of any governmental entity . . . shall be held personally liable for damages resulting from:
>
> (1) Any negligent act or omission of an employee of the nonprofit corporation or governmental entity; or
>
> (2) Any negligent act or omission of another director or member of the governmental entity.
>
> (b) The same immunity provided by this chapter shall be extended to any athletic official during the officiating of an interscholastic, intercollegiate, or any other amateur athletic contest being conducted under the auspices of a nonprofit or governmental entity. No official shall be held personally liable in any civil action for damages to a player, participant, or spectator as a result of his acts of commission or omission arising out of officiating duties and activities. Nothing in this subsection shall be deemed to grant immunity to any person causing damage by his malicious, willful, wanton, or grossly negligent act.

COLO. REV. STAT. ANN. § 13-21-116 (West & Supp. 1995).
The Colorado statute provides, in pertinent part:

> (1) It is the intent of the general assembly to encourage the provision of services or assistance by persons on a voluntary basis to enhance the public safety rather than to allow judicial decisions to establish precedents which discourage such services or assistance to the detriment of public safety.
>
> . . . .
>
> 2.5(a) No person who performs a service or an act of assistance, with compensation or expectation of compensation, as a leader, assistant, teacher, coach, or trainer for any program organization, association, service group, educational, social, or recreational group, or nonprofit corporation serving young persons or providing sporting programs or activities for young persons shall be held liable for actions taken or omissions made in the performance of his duties except for wanton and willful acts or omissions; except that such immunity from liability shall not extend to protect such person from liability for acts or omissions which harm third persons.

GA. CODE ANN. § 51-1-41 (Michie Supp. 1995).
The Georgia statute provides:

> (a) Sports officials who officiate amateur athletic contests at any level of competition in this state shall not be liable to any person

or entity in any civil action for injuries or damages claimed to have arisen by virtue of actions or inactions related in any manner to officiating duties within the confines of the athletic facility at which the athletic contest is played.

(b) For the purposes of this Code section, the term "sports officials" means:

(1) Those individuals who serve as referees, umpires, linesmen, and those who serve in similar capacities but may be known by other titles and are duly registered with or are members of a local, state, regional, or national organization which is engaged in part in providing education and training to sports officials; and

(2) Those individuals who render service without compensation as manager, coach, instructor, or assistant manager, coach, or instructor in any system of supervised recreation established pursuant to Chapter 64 of Tile 36.

(c) Nothing in this Code section shall be deemed to grant the protection set forth in subsection (a) of this Code section to sports officials who cause injury or damage to a person or entity by actions or inactions which are intentional, willful, wanton, reckless, malicious, or grossly negligent.

ILL. ANN. STAT. ch. 745, para. 80/1 (Smith-Hurd 1993).

The Illinois statute provides, in pertinent part:

1. Manager, coach, umpire or referee negligence standard.

(a) General rule. Except as provided otherwise in this Section, no person who, without compensation and as a volunteer, renders services as a manager, coach, instructor, umpire or referee or who, without compensation and as a volunteer, assists a manager, coach, instructor, umpire or referee in a sports program of a nonprofit association, shall be liable to any person for any civil conducting or sponsoring such sports program, unless the conduct of such conducting or sponsoring such sports programs, and unless it is shown that such person did an act or omitted the doing of an act which such person by that such act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of such person fell below ordinary standards of care.

(b) Exceptions.

(1) Nothing in this Section shall be construed as affecting or modifying the liability of such person or a nonprofit association for any of the following:

. . . .

(ii) acts or omissions relating to the care and maintenance of real estate unrelated to the practice or playing areas which such persons or nonprofit associations own, possesses or control.

(2) Nothing in this Section shall be construed as affecting

> or modifying any existing legal basis for determining the liability, or any defense thereto, of any person not covered by the standard of negligence established by this Section.

IND. CODE ANN. §§ 34-4-11.8-3 to 34-4-11.8-4, 34-4-11.8-6 (West Supp. 1995).

The Indiana statute provides, in pertinent part:

> Sec. 3. As used in this chapter, "volunteer" means an individual who, without compensation, engages in or provides other personal services for a sports or leisure activity such as baseball, basketball, football, soccer, hockey, volleyball, cheerleading, or other similar sports or leisure activities involving children who are less than sixteen (16) years of age.
>
> Sec. 4. This chapter does not grant immunity from civil liability to a person who engaged in intentional, willful, wanton, or reckless behavior.
>
> . . . .
>
> Sec. 6. A volunteer is not liable for civil damages that are proximately caused by a negligent act or omission in the personal services provided by:
>
> (1) volunteer; or
>
> (2) another person selected, trained, supervised, or otherwise under the control of the volunteer;
>
> in the course of a sports or leisure activity.

LA. REV. STAT. ANN. § 9:2798 (West 1991).

The Louisiana statute provides, in pertinent part:

> A. Except as provided in Subsection B of this Section, no person shall have a cause of action against any volunteer athletic coach, manager, team physician, or sports team official for any loss or damage caused by any act or omission to act directly related to his responsibilities as a coach, manager, team physician, or official, while actively directing or participating in the sporting activities or in the practice thereof, unless the loss or damage was caused by the gross negligence of the coach, manager, team physician, or official.
>
> B. Subsection A of this Section shall not be applicable unless the volunteer athletic coach, manager, team physician, or sports team official has participated in a safety orientation and training program established by the league or team with which he is affiliated. Participation in a safety orientation and training program by a coach, manager, team physician, or sports team official may be waived by the league prior to the individual's proficiency in first aid and safety. A person who has been tested or trained, and sanctioned or admitted by a recognized league or association, shall be deemed to be in compliance with this subsection. However, compliance with the requirements of this subsection shall not be construed to create or impose on the volunteer any addi-

tional liability or higher standard of care based on participation in safety orientation and training or evidence of proficiency in first aid and safety.

MD. CTS. & JUD. PROC. CODE ANN. § 5-313 (1995).

The Maryland statute provides, in pertinent part:

(a) Definitions.

. . . .

(4) "Athletic official" means an individual who officiates, referees, or umpires an interscholastic, intercollegiate, or any other amateur athletic contest conducted by a nonprofit or governmental body.

. . . .

(d) Liability of athletic official. — (1) Except as provided in paragraph (2) of this subsection, an athletic official is not personally liable in damages in any civil action brought against the athletic official by a player, a participant, or a spectator by virtue of the athletic official's act or omission arising out of the athletic official's duties and services performed while acting in the capacity of athletic officer.

MASS. GEN. LAWS ANN. ch. 231, § 85V (West Supp. 1995).

The Massachusetts statute provides, in pertinent part:

Except as otherwise provided, in this section, no person who without compensation and to a manager or coach in a sports program of a nonprofit association, no nonprofit thereof serving without compensation shall be liable to any person for any action in tort as a result of any acts or failures to act in rendering such services or in conducting such sports programming. The immunity conferred by this section shall not apply to any acts or failures to act intentionally designed to harm or to any grossly negligent acts or failures to act which result in harm to the person. Nothing in this section shall be construed to affect or modify any existing legal basis for determining the liability, or any defense thereto of any person not covered by the immunity conferred by this section.

Nothing in this section shall be construed to affect or modify the liability of a person or nonprofit association for any of the following:

(i) acts or failures to act which are committed in the course of activities primarily commercial in nature even though carried on to obtain revenue for maintaining the sports program or revenue used for charitable purposes.

(ii) any acts or failures to act relating to the transportation of participants in a sports program or others to or from a game, event or practice.

(iii) acts or failures to act relating to the care and maintenance of real estate which such persons or nonprofit associations own, possess or control and which is used in connection

with a sports program and or any other nonprofit association activity.

MISS. CODE ANN. § 95-9-3 (1994).

The Mississippi statute provides, in pertinent part:

(1) Sports officials who officiate athletic contests at any level of competition in this state shall not be liable to any person or entity in any civil action for injuries or damages claimed to have arisen by virtue of actions or inactions related in any manner to officiating duties within the confines of the athletic facility at which the athletic contest is played.

(2) For purposes of this section, sports officials are defined as those individuals who serve as referees, umpires, linesmen and those who serve in or are members of a local, state, regional or national organization which is engaged in part in providing education and training to sports officials.

(3) Nothing in this section shall be deemed to grant the protection set forth to sports officials who cause injury or damage to a person or entity to actions or inactions which are intentional, willful, wanton, reckless, malicious or grossly negligent.

NEV. REV. STAT. ANN. § 41.630 (Michie 1996).

The Nevada statute provides:

1. A sports official who officiates a sporting event at any level of competition in this state is not liable for any civil damages as a result of any unintended act or omission, not amounting to gross negligence, by him in the execution of his officiating duties within the facility where the sporting event takes place.

2. As used in this section:

(a) "Sporting event" means any contest, game or other event involving the athletic or physical skills of amateur or professional athletes.

(b) "Sports official" means any person who serves as a referee, umpire, linesmen or in a similar capacity, whether paid or unpaid.

N.H. REV. STAT. ANN. § 508:17 (Michie Supp. 1995).

The New Hampshire statute provides in pertinent part:

I. Any volunteer of a nonprofit organization or government entity shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury to any person if:

(a) The volunteer had prior written approval from the organization to act on behalf of the organization; and

(b) The volunteer was acting in good faith and within the scope of his official functions and duties with the organization; and

(c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer.

. . . .

V. In this section:

. . . .

(c) "Volunteer" means an individual performing services for a nonprofit organization or government entity who does not receive compensation other than reimbursement for expenses actually incurred for such services. In the case of volunteer athletic coaches or sports officials, such volunteers shall possess proper certification or validation of competence in the rules, procedures, practices, and programs of the athletic activity.

N.J. STAT. ANN. §§ 2A:62A-6 and 2A:62A-6.1 (West Supp. 1995). The New Jersey Statute provides:

a. Notwithstanding any provisions of law to the contrary, no person who provides services or assistance, free of charge, except for reimbursement or expenses, as an athletic coach, manager, or official, other than a sports official accredited by a voluntary association as provided by and exempted from liability pursuant to a nonprofit or similar charter or which is a recreation department shall be liable in any civil action for damages to a player or participant or spectator as a result of his acts of commission or omission arising out of and in the course of his rendering that service or assistance.

b. The provision of subsection a. of this section shall apply to practice and instruction in that sport.

c. (1) Nothing in this section shall be deemed to grant immunity to any person causing damage by his willful, wanton, or grossly negligent act of commission or orientation and training skills program which program shall include but not be limited to injury prevention and first aid procedures and general coaching concepts.

(2) A coach, manager, or official shall be deemed to have satisfied the requirements of this subsection if the safety orientation and skills training program attended by the person has met the minimum standards established by the Governor's Council on Physical Fitness and Sports in consultation with the Bureau of Recreation within the Department of Community Affairs in accordance with rules and regulations adopted pursuant to the "Administrative Procedure Act."

d. Nothing in this section shall be deemed to grant immunity to any person causing damage as the result of his negligent operation of a motor vehicle.

e. Nothing in this section shall be deemed to grant immunity to any person for any damage caused by that person permitting a sports competition or practice to be conducted without supervision.

f. Nothing in this act shall apply to an athletic coach, manager, or official who provides services or assistance as part of a public or private educational institution's athletic program.

> Notwithstanding any provisions of law to the contrary, a person who is accredited as a sports official by a voluntary association as provided by and who serves that association or conference under the jurisdiction of the capacity of a sport official whether or not compensated for his services shall not be liable in any action for damages as a result of his acts of commission or omission arising out of and in the course of his rendering the services. Nothing in this act shall be deemed to grant immunity to any person causing damage by the willful, wanton, or grossly negligent act of commission or omission nor to any person causing damage as the result of his negligent operation of a motor vehicle.

N.M. STAT. ANN. §41-12-1 (Michie 1990).

The New Mexico statute provides:

> Any person or entity who acts without compensation and renders volunteer services as a manager, coach, athletic instructor, umpire, referee or other league official in a formally organized nonprofit sports association for persons under the age of eighteen, to the extent not otherwise covered by insurance, is not liable to any person for any civil damages as a result of any negligent acts or omissions in rendering those services or in conducting or sponsoring that sports program unless:
>
> A. the conduct of that person or entity falls substantially below the standards generally accepted and practiced in the sport in like circumstances by similar persons or similar nonprofit associations rendering those services or conducting that program;
>
> B. It was reasonably foreseeable that the person's or entity's conduct would create a substantial risk of injury or death to the person or property of another; and
>
> C. the harm complained of was not a part of the ordinary give and take common to the particular sport.

N.D. CEN. CODE § 32-03-46 (Supp. 1995).

The North Dakota statute provides:

> 1. Any person who provides services or assistance free of charge, except for reimbursement of expenses, as an athletic coach, manager, or official for a sports team which is organized or performing pursuant to a nonprofit or similar charter immune from civil liability for any act or omission result in damage or injury to a player or participant if at the time of the act or omission all the following are met:
>
> a. The person who the damage or injury was acting in good faith, in the exercise of reasonable and ordinary care, and in the scope of that person's duties for the sports team.
>
> b. The act or omission did not constitute willful misconduct or gross negligence.
>
> c. The coach, manager, or official had participated in a

safety orientation and training program established by the league or team with which the person is affiliated.

2. This section does not grant immunity to:

a. Any person causing damage as the result of the negligent operation of a motor vehicle.

b. Any person for any damage caused by that person permitting a sports competition or practice to be conducted without supervision.

c. Any athletic coach, manager, or official providing service as a part of a public or private educational institution's athletic program.

42 PA. CONST. STAT. ANN. § 8332.1(a) (Supp. 1995).

The Pennsylvania statute provides in pertinent part:

> General Rule. — Except as provided otherwise in this section, no person who, without compensation and as a volunteer, renders services as a manager, coach, instructor, umpire or referee or who, without compensation and as a volunteer, assists a manager, coach, instructor, umpire or referee in a sports program of a nonprofit association, and no nonprofit association, or any officer or employee thereof, conducting or sponsoring a sports program, shall be liable to any person for any civil damages as a result of any acts or omissions in rendering such services or in conducting or sponsoring such sports program, unless the conduct of such person or nonprofit association falls substantially below the standards generally practiced and accepted in like circumstances by similar persons or similar nonprofit associations rendering such services or conducting or sponsoring such sports programs, and unless it is shown that such person or nonprofit association did an act or omitted the doing of an act which such person or nonprofit association was under a recognized duty to do, knowing or having reason to know that such act or omission created a substantial risk of actual harm to the person or property of another. It shall be insufficient to impose liability to establish only that the conduct of such person or nonprofit association fell below ordinary standards of care.

R.I. GEN. LAWS § 9-1-48 (Supp. 1994).

The Rhode Island statue provides, in pertinent part:

> (a) Notwithstanding any provisions of law to the contrary, except as otherwise provided in subsection (c) of this section, no person, who, without compensation and as a volunteer, renders services as a manager, coach, instructor, umpire, referee or official or who without compensation and as a volunteer, assists a manager, coach, instructor, umpire, referee or official in a youth sports program organized and conducted by or under the auspices of a non-profit corporation, and no director, trustee, officer, or employee of a non-profit corporation, and non director, trustee, officer or employee of a non-profit corporation which organizes,

conducts or sponsors a youth sports program, shall be liable to any person for any civil damages as a result of any acts or omissions in the rendering of such services or assistance or in the organization, conduct or sponsorship of such youth sports program unless the acts or omissions of such person were committed in wilful, wanton or reckless disregard for the safety of the participants in such youth sports program. It shall be insufficient to impose liability upon any such person to establish only that the conduct of such person fell below ordinary standards of care.

(b) Notwithstanding any provisions of law to the contrary except as otherwise provided in subsection (c) of this section, no person who renders services as a manager, coach, instructor, umpire, referee or official or who assists a manager, coach, instructor, umpire, referee or official in an interscholastic or intramural sports program organized and conducted in accordance with and subject to the rules, regulations and jurisdiction of the Rhode Island Interscholastic League, the Committee on Junior High School Athletics, and/or the Board of Regents for Elementary and Secondary Education shall be omissions in the rendering of such services or assistance unless the acts or omissions of such person were committed in willful, wanton or reckless disregard for the safety of the participants in such interscholastic or intramural sports program.

(c) Nothing in this section shall be deemed to grant immunity to any person, corporation or to their entity who or which causes injury or damage as the result of the negligent operation of a motor vehicle.

TENN. CODE ANN. §§ 62-50-201 to 50-203 (1990).

The Tennessee statute provides:

Definitions. As used in this part, unless the context otherwise requires, "sports official" means any person who serves as referee, umpire, linesman or in any other similar capacity in supervising or administering a sports event and who is registered as a member of a local, state, regional or national organization which provides training and educational opportunities for sports officials.

Immunity from Civil Liability. A sports official who administers or supervises a sports event at any level of competition is not liable to any person or entity in any civil action for damages to a player, participant or spectator as a result of the sports official's act of commission or omission arising out of the sports official's duties or activities.

Intentional Conduct or Gross Negligence. Nothing in this part grants civil immunity to a sports official who intentionally or by gross negligence inflicts injury or damage to a person or entity.

APPENDIX B
NATIONAL CENTER FOR CATASTROPHIC SPORTS INJURY RESEARCH TWELFTH ANNUAL REPORT FALL 1982 - SPRING 1994

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INTRODUCTION

In 1931, the American Football Coaches Association initiated the First Annual Survey of Football Fatalities, and this research has been conducted at the University of North Carolina at Chapel Hill since 1965. In 1977, the National Collegiate Athletic Association initiated a National Survey of Catastrophic Football Injuries which is also conducted at the University of North Carolina. As a result of these research projects, important contributions to the sport of football have been made. Most notable have been the 1976 rule changes, the football helmet standard, improved medical care for the participants and better coaching techniques.

Due to the success of these two football projects the research was expanded to all sports for both men and women, and a National Center for Catastrophic Sports Injury Research was established. The decision to expand the research was based on the following factors:

1. Research based on reliable data is essential if progress is to be made in sports safety.
2. The paucity of information on injuries in all sports.
3. The rapid expansion and lack of injury information in women's sports.

For the purpose of this research the term catastrophic is defined as any severe injury incurred during participation in a

school/college sponsored sport. Catastrophic will be divided into the following three definitions:

1. Fatality
2. Non-Fatal - permanent severe functional disability.
3. Serious - no permanent functional disability but severe injury. An example would be a fractured cervical vertebra with no paralysis.

Sports injuries are also considered direct or indirect. The definition for direct and indirect is as follows:

Direct - Those injuries which resulted directly from participation in the skills of the sport.

Indirect - Those injuries which were caused by systemic failure as a result of exertion while participating in a sport activity or by a complication which was secondary to a non-fatal injury.

Data Collection

Data were complied with the assistance of coaches, athletic directors, executive officers of state and national athletic organizations, a national newspaper clipping service and professional associates of the researchers. Data collection would not have been possible without the support of the National Collegiate Athletic Association, the National Federation of State High School Associations and the American Football Coaches Association. Upon receiving information concerning a possible catastrophic sports injury, contact by telephone, personal letter and questionnaire was made with the injured player's coach or athletic director. Data collected included background information on the athlete (age, height, weight, experience, previous injury, etc.), accident information, immediate and post-accident medical care, type of injury and equipment involved. Autopsy reports are used when available.

In 1987, a joint endeavor was initiated with the Section on Sports Medicine of the American Association of Neurological Surgeons. The purpose of this collaboration was to enhance the collection of medical data. Dr. Robert C. Cantu, Chairman, Department of Surgery and Chief, Neurosurgery Service, Emerson Hospital, in Concord, MA, has been responsible for contacting the physician involved in each case and for collecting the medical data. Dr. Cantu is also the Past-President of the American College of Sports Medicine.

SUMMARY

FALL SPORTS (TABLES I - VIII)

As indicated in Tables I through VIII, football is associated with the greatest number of catastrophic injuries. For the 1993 football season, there was a total of 34 high school direct catastrophic injuries, which is a dramatic increase when compared to the 1991 and 1992 seasons and the highest number since 1987. College football was associated with five direct catastrophic injuries in 1993, which is a increase of one when compared to the 1992 data.

In 1990, there were no fatalities directly related to football. The 1990 football report is historic in that it is the first year since the beginning of the research, 1931, that there has not been a direct fatality in football at any level of play. This clearly illustrates that this type of data collection and constant analysis of the data is important and plays a major role in injury prevention. The 1993 data shows an increase in football direct fatalities to three at the high school level and one at the college level. These numbers are very low when one considers that there were 36 football direct fatalities in 1968.

In addition to the direct fatalities in 1993, there were also nine indirect fatalities. Eight of the indirect fatalities were at the high school level and one was at the college level. Eight of the indirect fatalities were heart related and one was associated with an asthma attack.

In addition to the fatalities, there were nine permanent paralysis cervical spine injuries in 1993. This number is also low when compared to the 25 to 30 cases every year in the early 1970's, but is higher when compared to 1991 and 1992. Eight injuries were at the high school level and one was in professional football. Football in 1993 was also associated with five subdural hematoma injuries, all at the high school level, that resulted in permanent disability.

Serious football injuries with no permanent disability accounted for 22 injuries in 1993 - eighteen in high school and four in college. High school athletes were associated with three cervical spine fractures, ten transient spinal cord injuries and five subdural hematoma injuries with full recovery. College athletes were associated with three transient spinal cord injuries and one subdural hematoma.

This increase in catastrophic football injuries illustrates the importance of data collection and being sure that the information is passed on to those responsible for conducting football programs. A return to the injury levels of the 1960's and 1970's would be detrimental to the game and its participants.

Cross country was not associated with any direct injuries but was associated with one indirect fatality at the high school level in 1993. The indirect death was associated with sudden death and involved a male athlete. For the twelve years indicated in Tables I through VIII, cross country was associated with one direct non-fatal injury and eight indirect fatalities at the high school level and one indirect fatality at the college level. All nine of the indirect injuries were heart related fatalities. Autopsy reports revealed congenital heart disease in three of these cases.

Table I shows that high school soccer had no catastrophic direct injuries in 1993 and a total of nine for the past twelve seasons. The three direct catastrophic injuries in 1992 were the highest number in the past twelve years. The three injuries involved two head and an intestinal injury. There was also four high school soccer indirect fatalities in 1993, which is the highest number since the 1986 season. In 1993, college soccer was not associated with any direct or indirect catastrophic injuries.

In 1988, field hockey was associated with its first catastrophic injury since the study began in 1982. It was listed as a serious injury at the college level. The athlete was struck by the ball after a free hit. She received a fractured skull, had surgery and has recovered from the injury. The 1993 data show no field hockey direct or indirect injuries at either the high school or college levels.

In 1992-93, high school water polo was associated with its first indirect fatality and in 1988-89 college water polo had its first indirect fatality. There have been no other injuries recorded.

In summary, high school fall sports in 1993 were associated with 34 direct catastrophic injuries, and all 34 were associated with football. Three were fatalities, 13 involved permanent disability, and 18 were considered serious. For the twelve year period 1982-1993, high school fall sports had 323 direct catastrophic injuries and 313 or 96.9% were related to football par-

ticipants. In 1993, high school fall sports were also associated with eight football indirect fatalities, one in cross country, and four in soccer for a total of thirteen indirect fatalities. For the period from 1982-1993, there was a total of 92 indirect catastrophic injuries. Ninety-one of the indirect injuries were fatalities and 69 were related to football. Two of the indirect fatalities involved females - a soccer player in 1986 and a cross country runner in 1992.

During the 1993 college fall sports season, there was a total of five direct catastrophic injuries and all five were in football. For the twelve years, 1982-1993, there was a total of 74 college direct fall sport catastrophic injuries and 72 were associated with football. There was only one indirect fatality during the fall of 1993 and it was associated with football. From 1982 through the 1993 season there was a total of 23 college fall sport indirect catastrophic fatalities. Twenty were associated with football.

High school football accounted for the greatest number of direct catastrophic injuries for the fall sports, but high school football was also associated with the greatest number of participants. There are approximately 1,500,000 high school and junior high school football players participating each year. As illustrated in Table II, the twelve year rate of direct injuries per 100,000 high school and junior high school football participants was 0.31 fatalities, 0.73 non-fatal injuries and 0.82 serious injuries. These catastrophic injury rates for football are higher than those for both cross country and soccer, but all three classifications of catastrophic football injuries have an injury rate of less than one per 100,000 participants. Table IV shows that the indirect fatality rates for high school football, soccer and cross country are similar and are also less than one per 100,000 participants. Water polo rates are high, but are based on only two year of data.

College football has approximately 75,000 participants each year and the direct injury rate per 100,000 participants is higher than both college cross country, soccer and field hockey. The rate, for the twelve year period indicated in Table VI, for college football fatalities is less than one per 100,000 participants, but the rate increases to 1.67 per 100,000 for non-fatal injuries and 5.89 per 100,000 participants for serious injuries.

Indirect fatality rates are similar in college cross country

and soccer, increase in football, with water polo being associated with the highest indirect fatality rate. Water polo has approximately 1000 participants each year (Table VIII). There was only one college female athlete receiving a catastrophic injury in a fall sport for this twelve year period of time and that was a serious injury in field hockey.

Incidence rates are based on twelve year participation figures received from the National Federation of State High School Associations and the National Collegiate Athletic Association. (Figure I)

WINTER SPORTS (TABLES IX - XVI)

As shown in Table IX, high school winter sports were associated with four direct catastrophic injuries in 1993-1994. One injury involved a serious injury to a male basketball player and the three remaining injuries were associated with wrestling. Two of the wrestling injuries involved permanent disability and the third was considered serious.

High school winter sports were also associated with nine indirect injuries during the 1993- 1994 school year (Table XI). All of the injuries were fatalities and seven were associated with basketball, one with wrestling and one with volleyball. This is the first time since the research began in 1982 that the sport of volleyball was associated with a catastrophic injury. Eight of the nine indirect deaths were heart related and one was related to an asthma attack. One of the basketball heart related deaths involved a female athlete.

College winter sports, Tables XIII - XVI, were associated with one direct catastrophic injury during the 1993-1994 season. The one injury was a non-fatal injury in gymnastics. The male athlete landed headfirst on the mat after a dismount from the parallel bars. In addition to the direct injury, college sports were also associated with one indirect fatality in the 1993-1994 school year. The indirect fatality was in basketball and was related to a viral infection.

A summary of high school winter sports, 1982- 1994, show a total of 61 direct catastrophic injuries and 63 indirect. Wrestling was associated with 30 or 49.2 percent of the direct injuries. Gymnastics was associated with ten or 16.4 percent of the direct injuries. Ice hockey was associated with eight and swimming was associated with seven direct injuries. Basket-

ball had six. Basketball accounted for the greatest number of indirect fatalities with 47 or 74.6 percent of the winter total.

College winter sports from 1982-1994 were associated with a total of 15 direct catastrophic injuries. Gymnastics was associated with five, ice hockey four, basketball three, swimming one, skiing one and wrestling one. There were also 15 indirect injuries during this time period. Ten or 66.6% were associated with basketball, two in ice hockey, two in swimming and one in skiing.

High school wrestling accounted for the greatest number of winter sport direct injuries, but the injury rate per 100,000 participants was less than one for all three injury categories. High school wrestling has approximately 241,000 participants each year. High school basketball and swimming were also associated with low direct injury rates. As shown in Table X, ice hockey and gymnastics were associated with the highest injury rates for the winter sports. Gymnastics has averaged approximately 5,200 male and 30,000 female participants during the past twelve years. Ice hockey averages 23,000 participants each year. A high percentage of the ice hockey injuries involve a player being hit by an opposing player, usually from behind, and striking the skate rink boards with the top of his/her head.

Indirect high school catastrophic injury rates, as indicated in Table XII, are all below one per 100,000 participants.

Catastrophic direct injury rates for college winter sports are higher when compared to high school figures. Gymnastics had four non-fatal and one serious injury for the past twelve years but the injury rate is 39.79 per 100,000 participants for non-fatal and serious male injuries and 5.17 per 100,000 for female non-fatal injuries. Participation figures show approximately 837 male and 1611 female gymnastic participants each year.

College ice hockey was associated with three serious and one non-fatal injury in twelve years, but the injury rate is 2.11 per 100,000 participants in non-fatal injuries and 6.32 in serious injuries. There are approximately 4000 ice hockey participants each year. Swimming non-fatal incidence rates were not as high as gymnastics or ice hockey, but could be totally eliminated if swimmers would not use the racing dive into the shallow end of pools during practice or meets. In fact there has not

been a direct injury in college swimming since the one non-fatal injury in 1982-1983.

College wrestling had only one catastrophic injury from the fall of 1982 to the spring of 1994. For this period of time there were 89,444 participants in college wrestling for an average of approximately 7,453 per year. The injury rate for this twelve year period of time was 1.12 per 100,000 participants. College skiing has approximately 515 female participants each year and the one fatality in 1989-1990 produced a twelve year injury rate of 16.16 per 100,000 participants. This was the only skiing direct fatality since the study was initiated

Injury rates for college indirect fatalities were high when compared to the high school rates. Basketball had an injury rate of 5.83 fatalities per 100,000 male participants, skiing 10.56, ice hockey 2.11 and swimming 2.11. The female indirect injury rate for basketball was 0.78 per 100,000 participants.

Spring Sports (Tables XVII - XXIV)

High school spring sports were associated with seven direct catastrophic injuries in 1994. Five of the injuries were in track, one was associated with baseball, and one in softball. The softball injury was the first since the study started in 1982-83. Four of the track direct injuries were associated with the pole vault, and one with the javelin. The baseball injury involved a coach being hit in the head with a ball during batting practice. He was not wearing a helmet but was using a screen for protection. He fractured his skull but complete recovery is expected.

There was also one indirect fatality in high school spring sports during the 1993-1994 school year and it was associated with track. The indirect track death was heart related.

College spring sports were not associated with any direct or indirect catastrophic injuries in 1994.

It should be noted that in the spring of 1994 there were a number of catastrophic baseball injuries that were not associated with high school or college baseball. They were either in baseball or softball. Two involved the head first slide. One of the injuries resulted in death and the other permanent paralysis.

From 1983 through 1994, high school spring sports were associated with 52 direct catastrophic injuries (Table XVII). Fif-

teen were listed as fatalities, 17 as catastrophic non-fatal and 20 as serious. Baseball accounted for 20, track 30, lacrosse one, and softball one. Injury rates were less than one per 100,000 participants for each sport. There were two direct injuries to females in track and one in softball. There were also 24 indirect fatalities in high school spring sports during this time span (Table XIX). Seventeen were related to track, five in baseball, one in lacrosse and one in tennis. Three of the indirect fatalities involved female track athletes.

As illustrated in Table XXI, college spring sports were associated with 13 direct catastrophic injuries from 1983 to 1994. Four of these injuries resulted in fatalities, four were listed as non-fatal and five were listed as serious. Baseball accounted for three injuries, lacrosse four and track six. Table XXIII shows that there were also six indirect fatalities in college spring sports during this time. Two indirect fatalities were associated with tennis, one was associated with track, two in baseball and one in lacrosse.

Injury rates for high school spring sports direct injuries were low as illustrated in Table XVIII. Baseball participation reveals approximately 412,000 players each year, track 829,000, and tennis 259,000. The baseball figures do not include the 251,000 softball participants each year. Lacrosse has approximately 26,000 participants each year. Injury rates, as shown in Table XX, for high school indirect injuries are also low.

College spring sports, Table XXII, are related to low injury rates for direct injuries. Men's lacrosse had two non-fatal and two serious injuries and the injury rates were slightly higher than the other sports. Participation figures reveal approximately 4,800 men and 3,000 women lacrosse players each year. The 1991 injury was to a female lacrosse player.

Rates for indirect college fatalities in baseball and track are low with lacrosse and tennis having slightly higher rates. There were two indirect tennis fatalities, one male and one female, but participation figures are low. Men average approximately 7,800 and women 7,250 participants each year. (Table XXIV)

Discussion

Football is associated with the greatest number of cata-

strophic injuries for all sports, but the incidence of injury per 100,000 participants is higher in both gymnastics and ice hockey. There have been dramatic reductions in the number of football fatalities and non-fatal catastrophic injuries since 1976 and the 1990 data illustrated a historic decrease in football fatalities to zero. This is a great accomplishment when compared to the 36 fatalities in 1968. This dramatic reduction can be directly related to data collected by the American Football Coaches Association Committee on Football Injuries (1931 - 1994) and the recommendations that were based on that data. Non-fatal football injuries, permanent disability, remained at zero for college football in 1993 and that marked the third successive year with no injuries. There was a dramatic reduction in high school football from 11 in 1990 to one in 1991. There was an increase to six in 1992 and eight in 1993. Paralysis injuries in football have seen dramatic reductions when compared to the data from the late 1960's and early 1970's, but a continued effort must be made to eliminate these injuries. In addition, there were 22 serious injuries in football in 1993 - eighteen in high school and four in college. All of the serious cases involved head or neck injuries and in a number of these cases excellent medical care saved the athlete from permanent disability or death.

Football catastrophic injuries may never be totally eliminated, but progress has been made. Emphasis should again be focused on the preventive measures that received credit for the initial reduction of injuries. The increase in 1993 is a concern to the researchers.

1. The 1976 rule change which prohibited initial contact with the head in blocking and tackling. There must be continued emphasis in this area by coaches and officials.
2. The NOCSAE football helmet standard that went into effect at the college level in 1978 and at the high school level in 1980. There should be continued research in helmet safety.
3. Improved medical care of the injured athlete. An emphasis on placing athletic trainers in all high schools and colleges. There should be a written emergency plan for catastrophic injuries both at the high school and college levels.
4. Improved coaching technique when teaching the fundamental skills of blocking and tackling. *Keeping the head out of football!*

It should be noted that since 1979, according to the Consumer Product Safety Commission, there have been 18 deaths

and 14 serious injuries to children when movable soccer goals have fallen on them. The most recent case involved a six year old boy in June 1992. A steel soccer frame fell on his head. According to the Consumer Product Safety Commission, climbing and hanging on the goals, as well as high winds, can cause the goals to tip. The Commission suggests that goals be anchored and that participants be warned not to climb on the goals. There has been one fatality in this study which involved a college athlete hanging on a soccer goal and the goal falling and striking the victim's head. A Loss Control Bulletin from K & K Insurance Group, Inc., Fort Wayne, IN, suggests the following safeguards:

1. Keep soccer goals supervised and anchored.
2. Never permit hanging or climbing on a soccer goal.
3. Always stand to the rear or side of the goal when moving it - NEVER to the front.
4. Stabilize the goal as best suits the playing surface, but in a manner that does not create other hazards to players.
5. Develop and follow a plan for periodic inspection and maintenance (e.g., dry rot, joints, hooks).
6. Advise all field maintenance persons to re-anchor the goal if moved for mowing the grass or other purposes.
7. Remove goa[ls] from fields no longer in use for the soccer program as the season progresses.
8. Secure goals well from unauthorized access when stored.
9. Educate and remind all players and adult supervisors about the past tragedies of soccer goal fatalities.

There is also a list of guidelines available for movable soccer goal safety and warning labels. To obtain a copy contact the following:

The Coalition to Promote Soccer Goal Safety
C/O Soccer Industry Council of America
200 Castlewood Drive
North Palm Beach, FL 33408

High school wrestling, gymnastics, ice hockey, baseball and track should receive close attention. Wrestling has been associated with 30 direct catastrophic injuries during the past twelve years, but the injury rate per 100,000 participants is lower than both gymnastics and ice hockey. Due to the fact that college wrestling was only associated with one catastrophic injury during this same time period, continued research should be focused on the high school level. High school wrestling coaches should be experienced in the teaching of the proper skills of wrestling and should attend coaching clinics to

keep up-dated on new teaching techniques and safety measures. They should also have experience and training in the proper conditioning of their athletes. These measures are important in all sports, but there are a number of contact sports, like wrestling, where the experience and training of the coach is of the utmost importance. Full speed wrestling in physical education classes is a questionable practice unless there is proper time for conditioning and the teaching of skills. The physical education teacher should also have expertise in the teaching of wrestling skills.

Men and women gymnastics were associated with high injury rates at both the high school and college levels. Gymnastics needs additional study at both levels of competition. Both levels have seen a dramatic participation reduction and this trend may continue with the major emphasis being in private clubs.

Ice hockey injuries are low in numbers but the injury rate per 100,000 participants is high when compared to other sports. Ice hockey catastrophic injuries occur when an athlete is struck from behind by an opponent and makes contact with the crown of his/her head and the boards surrounding the rink. The results are usually fractured cervical vertebrae with paralysis. Research in Canada has revealed high catastrophic injury rates with similar results. After an in-depth study of ice hockey catastrophic injuries in Canada from 1976 to 1983, Dr. Charles Tator has made the following recommendations concerning prevention:

1. Enforce current rules and consider new rules against pushing or checking from behind.
2. Improve strength of neck muscles.
3. Educate players concerning risk of neck injuries.
4. Continued epidemiological research.

Catastrophic injuries in swimming were all directly related to the racing dive in the shallow ends of pools. There has been a major effort by both schools and colleges to make the racing dive safer and the catastrophic injury data support that effort. There has not been a high school swimming direct catastrophic injury in the last four years or a college injury for the past 11 years. It is a fact that since the swimming community was made aware of this fact, and along with rule changes and coaches awareness, the number of direct catastrophic injuries in swimming has been reduced. The competitive racing start

has changed and now involves the swimmer getting more depth when entering the water. Practicing or starting competition in the deep end of the pool or being extremely cautious could eliminate catastrophic injuries caused by the swimmer striking his/her head on the bottom of the pool. The National Federation of State High School Associations Swimming and Diving Rules Committee voted that in pools with water depth less than three and one-half feet at the starting end, swimmers will have to start the race in the water. This rule change is a refinement of a 1991-1992 rule change and took effect in the 1992-1993 season. The new rules read that in four feet or more of water, swimmers may use a starting platform up to a maximum of 30 inches above the water. Between three and one-half and four feet, swimmers may start no higher than 18 inches above the water. Less than that, it's in the pool. In April 1995 the National Federation revised rule 2-7-2, which now states that starting platforms shall be securely attached to the deck/wall. If they are not, they shall not be used and deck or in-water starts will be required. These new rules point out the importance of constant data collection and analysis. Rules and equipment changes for safety reasons must be based on reliable injury data.

High school spring sports have been associated with low incidence rates during the past twelve years, but baseball was associated with 20 direct catastrophic injuries and track 30. A majority of the baseball injuries have been caused by the head first slide or by being struck with a thrown or batted ball. If the head first slide is going to be used, proper instruction should be involved. Proper protection for batting practice should be provided for the batting practice pitcher and he/she should always wear a helmet. This should also be true for the batting practice coach. There are always a number of non-school baseball injuries and the cause of injury is usually the same. In 1994 information was received concerning a recreational player who fractured his neck and died after sliding head first. Another case involved a college fraternity player sliding head first into home plate, fracturing a cervical vertebra, and being paralyzed.

The pole vault was associated with a majority of the fatal track injuries. There have been nine high school fatal pole vaulting injuries from 1983 to 1994. In addition to the fatali-

ties there were also six permanent disability and five serious injuries. All 20 of these accidents involved the vaulter bouncing out of or landing out of the pit area. The four pole vaulting injuries in 1994 involved two deaths, one permanent disability injury and one serious injury. All four vaulters either bounced out of the landing pit or completely missed the landing pit area. The three pole vaulting deaths in 1983 were a major concern and immediate measures were taken by the National Federation of State High School Associations. Beginning with the 1987 season all individual units in the pole vault landing area had to include a common cover or pad extending over all sections of the pit.

It should be noted that according to a May 1990 newspaper article, the New Jersey Track and Field Officials Association has received a recommendation to consider elimination of the pole vault. The crux of the opposition to the event appears to be the potential liability and also the lack of qualified coaches to teach the pole vault. Additional recommendations in the 1991 rule book: stabilize the pole-vault standards so they cannot fall into the pit, pad the standards, remove all hazards from around the pit area and control traffic along the approach. Obvious hazards like concrete or other hard materials around the pit should be eliminated. The state of Ohio has developed a program to teach proper techniques to coaches.

There have also been seven accidents in high school track involving participants being struck by a thrown discus, shot putt or javelin. In 1992 a female athlete was struck by a thrown discus in practice and died. In 1993 a track manager was struck in the neck by a javelin, but he was lucky and completely recovered from the accident. In 1994 a female track athlete was struck in the face by a javelin and will recover. Safety precautions must be stressed for these events in both practice and competitive meets with the result being the elimination of this type of accident. The National Federation of State High School Associations put a new rule in for the 1993 track season that will fence off the back and sides of the discus circle to help eliminate this type of accident. Good risk management should eliminate these type of accidents. These types of injuries are not acceptable and should never happen.

1. The one fatality in high school lacrosse during the 1987 season was associated with a player using his head to strike the opponent. He struck the opponent with the top or crown of his

> helmet. This technique is prohibited by the lacrosse rules and should be strictly enforced. Lacrosse has been a safe sport when considering the fact that high school lacrosse has only been involved with one catastrophic injury in twelve years.

College spring sports are also associated with a low injury incidence. Injury rates are slightly higher in lacrosse but the participation figures are so low that even one injury will increase the incidence rate dramatically. It is important to point out that there have been only two college lacrosse catastrophic injuries during the past eleven years and one injury was the first in women's lacrosse.

For the twelve year period from the fall of 1982 through the spring of 1994 there have been 538 direct catastrophic injuries in high school and college sports. High school sports were associated with 75 fatalities, 175 non-fatal and 186 serious injuries for a total of 436. College sports accounted for nine fatalities, 27 non-fatal and 66 serious injuries for a total of 102. During this same twelve year period of time there has been a total of 223 indirect injuries and all but two resulted in death. One hundred and seventy-nine of the indirect injuries were at the high school level and 44 were at the college level. It should be noted that high school annual athletic participation includes approximately 5,603,285 athletes (3,478,530 males and 2,124,755 females). National Collegiate Athletic Association participation includes 295,174 athletes (189,642 males and 105,532 females).

During the twelve year period from the fall of 1982 through the spring of 1994 there have been 62,099,425 high school athletes participating in the sports covered by this report. Using these participation numbers would give a high school direct catastrophic injury rate of 0.70 per 100,000 participants. If both direct and indirect injuries were combined, the injury rate would be 0.99 per 100,000. This means that approximately one high school athlete out of every 100,000 participating would receive some type of catastrophic injury. The combined fatality rate would be 0.41 per 100,000, the non-fatal rate 0.28, and the serious rate 0.30.

During this same time period there were a total of 3,360,562 college participants with a total direct catastrophic injury rate of 3.04 per 100,000 participants. If both indirect and direct injuries were combined, the injury rate would be

4.34. The combined fatality rate would be 1.55, the non-fatal rate 0.83, and the serious rate 1.96.

Female Catastrophic Injuries

There have been a total of 34 direct and 18 indirect catastrophic injuries to high school and college females from 1982-83- 1993-94, which includes cheerleading. Twenty-five of these were direct injuries at the high school level and nine at the college level. The 25 high school direct injuries included eight in gymnastics, eleven in cheerleading, two in swimming, one in basketball, two in track, and for the first time, one in softball. The 16 high school indirect fatalities included six in basketball, three in swimming, three in track, one in soccer, one in cross-country, one in volleyball and one in cheerleading. The nine college direct injuries were associated with cheerleading (5), gymnastics (1), field hockey (1), skiing (1) and lacrosse (1). The two college indirect fatalities included one in tennis and one in basketball. Catastrophic injuries to female athletes have increased over the years. As an example, in 1982-83 there was one female catastrophic injury and in 1993-94 there were seven. A major factor in this increase has been the change in cheerleading activity, which now involves gymnastic type stunts. If these cheerleading activities are not taught by a competent coach and keep increasing in difficulty, catastrophic injuries are going to be a part of cheerleading. High school cheerleading accounted for 44% of all high school direct catastrophic injuries to female athletes and 55% at the college level. Of the 34 catastrophic injuries to female athletes from 1982-83 [through] 1993-94, cheerleading was related to 16, or 47%. Read the special section on cheerleading.

Athletic administrators and coaches should place equal emphasis on injury prevention in both male and female athletes. Injury prevention recommendations are made for both male and female athletes.

Athletic catastrophic injuries may never be totally eliminated, but with reliable injury data collection systems and constant analysis of the data, these injuries can be dramatically reduced.

RECOMMENDATIONS FOR PREVENTION

1. Mandatory medical examinations and a medical history taken before allowing an athlete to participate.
2. All personnel concerned with training athletes should emphasize proper, gradual and complete physical conditioning in order to provide the athlete with optimal readiness for the rigors of the sport.
3. Every school should strive to have a team trainer who is a regular member of the faculty and is adequately prepared and qualified. There should be a written emergency procedure plan to deal with the possibility of catastrophic injuries.
4. There should be an emphasis on employing well trained athletic personnel, providing excellent facilities and securing the safest and best equipment available.
5. There should be strict enforcement of game rules and administrative regulations should be enforced to protect the health of the athlete. Coaches and school officials must support the game officials in their conduct of the athletic contests.
6. Coaches should know and have the ability to teach the proper fundamental skills of the sport. This recommendation includes all sports and not only football. The proper fundamentals of blocking and tackling should be emphasized to help reduce head and neck injuries in football. *Keep the head out of football.*
7. There should be continued safety research in athletics (rules, facilities, equipment).
8. Strict enforcement of the rules of the game by both coaches and game officials will help reduce serious injuries.
9. When an athlete has experienced or shown signs of head trauma (loss of consciousness, visual disturbance, headache, inability to walk correctly, obvious disorientation, memory loss) he/she should receive immediate medical attention and should not be allowed to return to practice or game without permission from the proper medical authorities. It is important for a physician to observe the head injured athlete for several days following the injury.
10. Athletes and their parents should be warned of the risks of injuries.
11. Coaches should not be hired if they do not have the training and experience needed to teach the skills of the sport and to properly train and develop the athletes for competition.

*** SPECIAL NOTE ***

All of the information has been thoroughly checked and the data cleaned. Some of the numbers in Tables I - XXIV have been changed due to this process. All of the data in this report now meets the stated definition of injury for high school and college sports. It is important to note that information is constantly being updated due to the fact that catastrophic injury information may not always reach the center in time to be included in the current final report.

References

1. TATOR CH, EDMONDS VE: National Survey of Spinal Injuries in Hockey Players, Canada Medical Association 1984; 130: 875-880.

CASE STUDIES

FOOTBALL/HIGH SCHOOL

A 15 year-old high school football player was injured in a game on September 8, 1993 and died on September 20, 1993. He was attempting to make a tackle in a practice drill and suffered a fracture-dislocation of a cervical vertebra. No other information was available.

A 17 year-old high school football player was injured on September 23, 1993 and died on September 30, 1993. The athlete was injured in a game but the exact activity at the time of the injury was unknown. The Medical Examiner stated that the injury was directly related to contact. He played both end and linebacker in the game and collapsed during the third quarter. Cause of death was a subdural hematoma.

A 16 year-old high school football player was injured on October 21, 1993, and died on October 29, 1993. The athlete was playing quarterback in a game. In the fourth quarter he was rolling out to pass and following release of the ball, was hit by a defender. Cause of death was cerebral trauma.

A 15 year-old high school football player had an asthma attack 15 minutes after practice and died on August 27, 1993. He passed the physical exam to participate in football.

A 14 year-old high school football player collapsed at the completion of a running drill in practice on September 9, 1993 and died the same day. His death was heart related and diag-

nosed as mitral valve prolapse. He was cleared to play football by a physician.

A 17 year-old football player collapsed during a time out of a JV football game on September 16, 1993. As he was walking off the field toward his coach he collapsed. Death was heart related. The player passed his pre-season physical.

A 16 year-old high school football player collapsed and died on the first day of football practice on August 11, 1993. He died in the hospital. He had just passed his physical exam and was standing in street clothing with a group of other athletes listening to the coach. An autopsy revealed cardiac arrhythmia.

A 15 year-old high school football player collapsed during the second quarter of a game on September 13, 1993. He was playing linebacker and collapsed after a play. Death was due to an enlarged heart.

A 16 year-old high school football player collapsed and died during an informal workout organized by the football team captains on July 13, 1993. They had just completed five 100 yard dashes. Cause of death was related to a congenital heart defect.

A 13 year-old high school football player collapsed at practice on August 25, 1993, and later died. The player had asthma problems but the asthma was unrelated to the death. Cause of death was listed as arrhythmia and deformity of the tricuspid valve.

A 16 year-old high school football player collapsed on the first day of spring practice in pads and died the same day- May 6, 1993. He collapsed after light jogging at the beginning of practice. At the time of this writing, the exact cause of death was unknown.

A 14 year-old high school football player was injured on October 22, 1993, during a game. He was injured while making a tackle from his defensive back position in the first quarter. Due to being blocked from behind just prior to tackling, the player hit the ball carrier and the ground before he could protect himself. Initial contact with the ball carrier was made with the top of the helmet and his head in the flexed or down position. The injury was a burst fracture to the fifth cervical vertebra. At the time of this report the athlete had surgery and recovery was incomplete.

A high school football player fractured his sixth cervical vertebra while making a tackle in a game on September 9, 1993. The athlete was a defensive back and made the tackle with his head hitting the ball carrier's leg. Upon contact the tackler's head was forced into a position of flexion. The player had surgery and recovery at two months post-injury was incomplete.

A 16 year-old high school football player was injured while attempting a tackle on the kick-off in a game. The accident took place during the opening kick-off in November of 1993. The injured athlete was in the pile-up after the kick-off, but the actual activity at the time of the injury was unknown. The athlete suffered a fracture of the fifth cervical vertebra, had surgery and at the time of this report is quadriplegic.

A 17 year-old high school football player was injured while making a tackle in a game scrimmage on August 20, 1993. The athlete was a defensive back attempting to tackle the quarterback. Head position was up at the time of the tackle. He received a fracture of the fifth and sixth cervical vertebrae, had surgery and recovery is incomplete. The athlete is not quadriplegic.

A 17 year-old high school football player was injured on November 6, 1993, while tackling in a game. He was playing defensive back and made the tackle with his head in a position of flexion. He fractured the fourth cervical vertebra, had surgery and at the present time is quadriplegic.

A 15 year-old junior varsity football player was participating in the first game of the year in 1993. He was tackling at the time of the injury and fractured cervical vertebrae, but no other information was available. The player was paralyzed at the time of this report.

A high school football player fractured cervical vertebrae four and five in September of 1993. No other information concerning the accident is available at this time. The player is quadriplegic.

An 18 year-old high school football player was injured in a game on September 10, 1993. He was making a tackle at the time of the injury. The only information available is that the player is quadriplegic.

A 16 year-old high school football players was injured in a junior varsity game on October 25, 1993. He was in the game

during punt coverage and after complained of dizziness. The exact cause of the injury is unknown. The player had a subdural hematoma, surgery and recovery is incomplete.

A 17 year-old high school football player was injured in a game on September 4, 1993. The athlete was playing defensive end at the time of the injury. He was blocked by an opponent, fell back and struck his head on the ground. The game was played on natural turf. Recovery is incomplete.

A 16 year-old high school football player was hit hard in a Thursday practice in August of 1993. The next day, Friday, he collapsed at practice and was taken to the hospital for surgery. The injury was diagnosed as a subdural hematoma. He had surgery for the second time on Saturday. Recovery was incomplete.

A 16 year-old high school football player was injured in practice on September 29, 1993. He complained of a headache early in practice and later collapsed. The injury was diagnosed as a subdural hematoma. Surgery was performed and recovery is incomplete. Also, the player had an initial head injury a month earlier.

An 18 year-old high school football player was injured while playing eight man football on October 15, 1993. He was a running back and was struck by an opposing player's helmet to the head. The injury was a subdural hematoma and surgery was performed. Recovery was incomplete.

COLLEGE

A 20 year-old college football player collapsed during a team meeting one day prior to the first day of practice. He collapsed on August 15, 1993, and died the same day. Cause of death was listed as hypertrophic cardio-myopathy.

SOCCER/HIGH SCHOOL

A 15 year-old high school male soccer player collapsed at practice on February 2, 1994 and died on February 3, 1994. He had a history of heart problems and was cleared to play by a physician.

A 15 year-old male high school soccer player collapsed during the second half of a game and died. Cause of death was congenital heart disease.

A 16 year-old male high school soccer player collapsed at practice on October 13, 1993. He was running wind sprints when he collapsed. Cause of death was congenital heart disease.

A 14 year-old male high school soccer player collapsed at practice and died later at the hospital. He was participating in a 15 minute conditioning run at the end of a two hour practice. He passed the athletic department medical exam and his family stated that he had no medical problems.

CROSS COUNTRY/HIGH SCHOOL

A 16 year-old male cross country runner collapsed six minutes into the start of the race. He died later at the hospital. Cause of death was heart related.

BASKETBALL/HIGH SCHOOL

An 18 year-old male basketball player collided with a teammate during a practice drill and fractured his skull. He had a full recovery.

A male high school basketball player died on the court while suffering from a severe asthma attack. No other information was available.

A 17 year-old female high school basketball player collapsed during a game and later died in the hospital. She was in the game for less than a minute when she collapsed.

A 17 year-old male basketball player collapsed during a game and later died in the hospital. Death was heart related.

A 16 year-old male high school basketball player collapsed in the locker room after a game and died later in the hospital. His grandmother stated that the player had collapsed recently but the physician found no physical problems during the examination. Cause of death was heart related.

A 17 year-old male basketball player collapsed and died during a game. He had no history of medical problems.

A 15 year-old high school basketball player died of a congenital heart problem while trying out for the school basketball team. He had a history of fainting and passed out two weeks before his death. Doctors permitted him to continue normal activity.

A 12 year-old basketball player collapsed at school basket-

ball practice and later died. Cause of death was a congenital heart defect.

COLLEGE

A 19 year-old male college basketball player died of meningococcemia, which is a viral infection.

GYMNASTICS/COLLEGE

A 20 year-old male gymnast was injured during a dismount from the parallel bars. He came up short on a double pipe dismount from the parallel bars and landed on his head. At the time of this writing his condition was unknown. The accident happened on February 5, 1994.

BASEBALL/HIGH SCHOOL

A high school baseball coach was hit in the head with a batted ball while pitching batting practice. He shattered his skull into eight pieces and spent 18 days in the hospital. He was not wearing a helmet, but had a protective screen. He did not get behind the screen in time. A full recovery is expected.

TRACK/HIGH SCHOOL

A 17 year-old female track athlete was hit in the face with a javelin on May 5, 1994. She was hit in the upper jaw area of the left side of her face. Surgeons removed the javelin and there were no major injuries. Two inches of the javelin was embedded in her jaw. It was not clear how the accident happened.

A high school pole vaulter was injured on April 13, 1994, as he was warming up for a meet. He landed on the far end of the mat and bounced striking his head on the ground. He had surgery and at this time has some disability.

A 17 year-old high school pole vaulter was injured in a meet on April 4, 1994. He died on the same day. He was attempting ten feet and partially missed the mat on landing. He had massive brain injuries.

A 15 year-old male pole vaulter died from injuries received on April 4, 1994. He was only pole vaulting about three months before the accident. As he went over the bar he missed the mat and landed head first on a concrete/asphalt runway.

He had massive brian injuries and did not regain consciousness.

A 17 year-old male pole vaulter was injured while vaulting in a meet in May 1994. He was attempting 11 feet, kicked the bar on the way down, veered to his right, brushed against the 17 foot wide pad, and crashed onto his shoulder and head on concrete. He was released from the hospital and a full recovery is expected.

A 14 year-old male track athlete collapsed in the locker room after practice and died in the hospital. Cause of death was heart related.

SOFTBALL/HIGH SCHOOL

A high school female softball player was injured in a game on April 1, 1994. She was pitching at the time and was struck in the face by a batted ball. She fractured her eye socket, had reconstructive surgery, and at the present time has blurred vision.

VOLLEYBALL/HIGH SCHOOL

A 15 year-old female volleyball player was running wind sprints in the gym when she collapsed. She later died in the hospital on December 29, 1993. Cause of death was heart related.

WRESTLING/HIGH SCHOOL

On March 31, 1994, a high school wrestler collapsed on the mat during practice. Autopsy reports revealed he had a congenital heart defect.

A high school wrestler fractured cervical vertebra during a match in January 1994. The wrestlers were in the standing position when the injured athlete was taken to the mat. He struck the mat with his head and chest with his opponent's weight on top of him. At the present time the athlete is paralyzed.

A 17 year-old wrestler fractured cervical vertebrae 4 and 5 during a match. His opponent lifted him off the mat and when he landed contact was with his head. Full recovery is expected.

A high school wrestler fractured cervical vertebra during a

match in January 1994. The wrestler was being taken down from a standing position. At the present time the athlete has paralysis.

Special Section on Cheerleading

The Consumer Product Safety Commission reported an estimated 4,954 hospital emergency room visits in 1980 caused by cheerleading injuries. By 1986 the number had increased to 6,911 and in 1994 the number increased to approximately 16,000. Experts agree that cheerleading has become far more dangerous in recent years and that the pyramid stunt, which has been involved in deaths and serious injuries, is an especially dangerous stunt.

The National Center for Catastrophic Sport Injury Research has been collecting cheerleading catastrophic injury data during the past twelve years, 1982-82 - 1993-94. Following is a case study review of the data:

1. In the early 1980's a female college cheerleader fractured her skull after falling from a human pyramid. She recovered and returned to cheerleading after several weeks in the hospital.
2. In 1983 two female college cheerleaders received concussions within a period of five days in the same gymnasium. One struck her head on the floor after falling from a pyramid and the second cheerleader struck her head on the floor after falling backward from the shoulders of a male partner.
3. In the summer of 1984 a female high school cheerleader was injured at practice when she fell from a pyramid. She was partially paralyzed.
4. A male college cheerleader was injured in a tumbling accident during a basketball game in December 1983. He fractured and dislocated several cervical vertebrae and was paralyzed. He received his injuries after diving over a mini-trampoline and several cheerleaders. The stunt is called a dive into a forward roll. He has made progress and can now walk unaided for several blocks and is able to feed himself.
5. In 1985 a female high school cheerleader was paralyzed from the chest down after attempting a back flip off the back of another cheerleader.
6. In 1985 a female college cheerleader fractured her skull after a fall from the top of a pyramid striking her head on the floor. She was in critical condition for a period of time but has made progress and is back in school. She is now involved in occupational therapy.
7. A male college cheerleader was paralyzed after a fall in

practice. He was attempting a front flip from a mini-trampoline. He dislocated several cervical vertebrae and is now quadriplegic.

8. In 1986 a female college cheerleader fell from a pyramid and was knocked unconscious after striking the floor. Her status was unknown at the time of this writing.

9. In 1986 a college female cheerleader died from injuries suffered in a cheerleading accident. She suffered multiple skull fractures and massive brain damage after falling from the top of a pyramid type stunt and striking her head on the gym floor.

10. In 1987 a 17 year-old high school cheerleader fell from a pyramid. She was tossed into the air by two other cheerleaders and was supposed to flip backwards and land of the shoulders of two other girls. Her spinal cord was not severed but she is paralyzed from the waist down.

11. During the 1987-1988 school year a female cheerleader suffered a fractured collarbone, a damaged ear drum and a basal skull fracture. She was practicing a pyramid and was six feet off the gym floor with no spotters. She has suffered partial hearing loss and has to wear special glasses for reading.

12. In January 1988 a female cheerleader fell from a pyramid and landed on her face and shoulder. She suffered a fractured collarbone and head injuries. She was in a light coma in the hospital but a complete recovery is expected.

13. In January 1989 a high school cheerleader fractured a cervical vertebra after falling from a mount in practice. She will recover with no permanent disability.

14. On July 11, 1989 a 16 year-old high school cheerleader fractured a cervical vertebra and is quadriplegic. She slipped while doing a series of back flips on damp grass.

15. On March 10, 1990 a female high school cheerleader was thrown into the air by two other cheerleaders. She fell to the floor onto her neck and was in the hospital for one week. The routine was called a basket toss. She has recovered and is back in school.

16. On March 1, 1990 a 21 year-old male college cheerleader was injured at practice. In attempting to do a back flip he hit his head against a wall. He was taken to the hospital by ambulance. He has since recovered and the injuries were not serious.

17. In June of 1991 a 15 year-old cheerleader suffered injuries to the head. She was struck in the head by her falling partner and also after striking the ground. The injury took place in a cheerleading camp. The cheerleader was taken to the hospital but her condition is not known at this time.

18. A middle school cheerleader was injured in October 1991 and died the next week. She fell from a double level cheerleading stance during practice. She hit her head on the gym floor.

19. A 20 year-old college cheerleader suffered a head injury while practicing a cheerleading stunt in which she was thrown into the air but was not caught by her teammates. She landed on

the gym floor. She was in critical condition but has been upgraded to serious and is expected to recover.

20. In May of 1992 a college cheerleader was doing a tumbling sequence when she landed on her back and fractured T-12. The practice was not supervised. There was a complete recovery.

21. A high school cheerleader was injured during a basketball game doing a back handspring tuck. She hit her head on the floor. She had surgery to remove a blood clot. Her condition is not known at this time.

22. A high school cheerleader was tossed in the air during a routine, was not caught, and fell hitting her face on the basketball floor. She remained motionless for approximately 30 minutes. She is expected to recover. The accident happened in December 1993.

23. A high school cheerleader fell and hit her head on the basketball floor while being lifted by the feet by two other cheerleaders. She was taken to the hospital for observation and is expected to recover. The accident happened in December 1993.

24. A college cheerleader was doing a tumbling run when he lost control and fell on his head. He fractured a cervical vertebra and is expected to recover. The accident happened in August 1994.

25. A college cheerleader was injured in a cheerleading competition in April 1994. She struck another cheerleader while doing a back flip and fell to the floor. She suffered a fractured cervical vertebra and is expected to recover.

Cheerleading has changed dramatically in the past twelve years and is now a pseudo-gymnastics program. A [u]niversity gymnastics coach stated that she was shocked by the types of stunts cheerleaders were attempting without proper safety precautions and qualified coaches. A number of schools, both high schools and colleges, across the country have limited the types of stunts that can be attempted by their cheerleaders. The Illinois State High School Association has banned the basket toss. The rule states, "cheerleaders cannot toss another squad member into the air during any part of a cheer, performance, routine or other activity." Illinois has already banned pyramid formations higher than two levels. As already stated in this report, high school and college cheerleaders account for almost one-half of the catastrophic injuries to female athletes.

The basic question that has to be asked is what is the role of a cheerleader? Is cheering an activity that leads the spectators in cheers or is it a sport? If the answer is to entertain the crowd and to be in competition with other cheerleading squads, then there must be safety guidelines initiated. Following are a

list of sample guidelines that may help prevent cheerleading injuries:

1. Cheerleaders should have medical examinations before they are allowed to participate. Included would be a complete medical history.
2. Cheerleaders should be trained by a qualified coach with training in gymnastics. This person should also be trained in the proper methods for spotting and other safety factors.
3. Cheerleaders should be exposed to proper conditioning programs and trained in the proper spotting techniques.
4. Cheerleaders should receive proper training before attempting gymnastic type stunts and should not attempt stunts they are not capable of completing. A qualification system demonstrating mastery of stunts is recommended.
5. Coaches should supervise all practice sessions in a safe facility.
6. Mini-trampolines and flips or falls off of pyramids should be prohibited.
7. Pyramids over two high should not be performed. Two high pyramids should not be performed without mats and other safety precautions.
8. If it is not possible to have a physician or athletic trainer at games or practice sessions, emergency procedures must be provided.
9. There should be continued research concerning safety in cheerleading.
10. When a cheerleader has experienced or shown signs of head trauma (loss of consciousness, visual disturbances, headache, inability to walk correctly, obvious disorientation, memory loss) she/he should receive immediate medical attention and should not be allowed to practice or cheer without permission from the proper medical authorities.

The days of simple cheerleading routines may be gone but there is no excuse for the number of participants being injured. If cheerleading is to be considered a sport it should be conducted within the limits of safety. North Dakota and Minnesota high school and college regulations banned the use of pyramids after the death of a cheerleader in that part of the country.

The Michigan High School Athletic Association is the second state to recognize cheerleading as a sport. West Virginia incorporated cheerleading into athletics six years ago. Michigan will have a committee define the sport and will have a state Cheerleading Tournament. Rules and regulations will now govern cheerleading and this is an important move toward a safer activity. Also, the American Association of Cheerlead-

ing Coaches and Advisors Safety Certification Program has been implemented and over 500 coaches have participated in safety certification programs. The state of Vermont has adopted a safety certification program as their standard of care and the following NCAA Athletic Conferences have also adopted the program: the Big Ten, Southwest, Southeast and the Western Athletic Conference.

According to the National Federation of State High School Associations, the primary purpose of spirit groups (cheerleaders) is to serve as support groups for the interscholastic athletic programs within the school. In January of 1993, 18 rules revisions were adopted for spirit groups. One of the major rules prohibits tumbling over, under, or through anything (people or equipment). All of the other rules were adopted to enhance the safety of the participants. Information concerning these new rules is available from Susan True, assistant director of the National Federation and editor of the high school spirit rules.

* The Tables cited throughout the Appendix have not been attached.