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A. Diane Carpenter

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NOTE AND COMMENTS

DECREASING SPORTS VIOLENCE EQUALS INCREASING OFFICIALS' LIABILITY

by A. Diane Carpenter*

I. INTRODUCTION

Webster's Dictionary defines the word sport as:

Any activity or experience that gives enjoyment or recreation; pastime diversion. Such an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules. . . .¹

A sportsman is defined as:

A person who can take loss or defeat without complaint, or victory without gloating, and who treats his opponents with fairness, generosity and courtesy.²

It appears most athletes are unaware of what a sporting event should be and what sportsmanlike conduct is supposed to be, as today's sporting events and sportsmen are a far cry from the definition and the ideal.

In the last two decades there has been increasing violence in sports and consequently, sports injuries have been on the rise.³ For example, in one single football season it is estimated that there are one million injuries at 20,000 high schools, 70,000 injuries at 900 colleges and universities and one injury per player in the National Football League.⁴

Recognition of violence in sports has led to a number of solutions to the sports-violence problem. Some of the solutions include governmental legislation,⁵ self-imposed policing,⁶ a government sports

* Editor-in-chief, Loyola Entertainment Law Journal, 1983-84.

1. Webster's New World Dictionary, College Edition, World Publishing Co., 1958.

2. *Id.*

3. American Bar Association Forum Committee on the Entertainment and Sports Industries, "Sports in the 80's, Legal and Business Challenges", May 1980, ch.5, pt. B, at 13 (hereinafter cited as ABA).

4. *Id.*

5. Sports Violence Act of 1980 (H. R. 7903) (H. R. 2263), The Sports Violence Arbitration Act of 1981 (H. R. 5079), *A Proposed Legislative Solution to the Problem of Violent Acts by Participants During Professional Sporting Events: The Sports Violence Act of 1980*, 7 U. Dayton L. Rev. 91 (1981) (hereinafter cited as *Legislative Solution*).

agency,⁷ a sports court⁸ and holding officials liable.⁹ To date, most of the solutions which have been posited have been ineffective and still other solutions have never been implemented. Consequently, violence in sports continues to increase which "results in substantial human costs in the form of injuries sustained by professional athletes".¹⁰

Although holding officials liable has been offered as one of the possible solutions for deterring violence in sports, there has never been a lawsuit where the responsible officiating crew has been named as a defendant party to the suit. This note suggests that an official's potential liability is the best solution to the sports violence problem and by implementing this solution the goal of violence-free sports can be obtained. If an official knows that he can be held legally responsible for another party's injury which occurs because of his own negligent action or his own negligent failure to act, the official will be induced to keep tighter control of the game, be more conscientious in the officiating of the game and be as knowledgeable as possible of all the rules of the game. As a result of this new stricter officiating the athletes will refrain from reckless misconduct and from reckless disregard of the rules. Their wrongful conduct will result in personal stiff fines and possible suspension, which will ultimately hurt the athlete and his team. Thus, excessively rough and unnecessary violence in sporting competition will be eliminated, resulting in fewer injuries to the athletes.

This note examines various tort theories used in previous sports injury litigation, discusses how these theories can be used in a lawsuit against an official, and explores the advantages of holding officials legally responsible for certain types of sports injuries.

II. *AVERILL V. LUTTRELL*, A BASEBALL INJURY SUIT

A. *The Application of General Negligence Theories to Averill*

Clearly, not all sports injuries require litigation. Most injuries occur naturally as part of the game as players accidentally run into each other, get hit by a ball, trip, fall or pull muscles.¹¹ These types of sports

6. Note, *Violence in Professional Sports: A Proposal for Self-Regulation*, 3 Comm/Ent 425 (1981) (hereinafter cited as *Self-Regulation*).

7. Horrow, *Violence in Professional Sports: Is it Part of the Game?*, 9 J. Legis. 1 (1982) (hereinafter cited as Horrow).

8. Note, *The Sports Court: A Private System to Deter Violence in Professional Sports*, 55 S. Cal. L. Rev. 399 (1982) (hereinafter cited as the *Sports Court*).

9. Note, *Sports Liability: Blowing the Whistle on the Referees*, 12 Pacific Law Journal 937 (1981) (hereinafter cited as *Referees*).

10. Note, *supra* note 8, at 400.

11. Note, *supra* note 8, at 401.

injuries are expected by the athletes and are an inherent risk when participating in a sport.¹² The injuries that should be litigated are those injuries that could have been avoided if the rules of the game had been adhered to and excessive violence and misconduct had not occurred.¹³

An example of excessive violence and a careless disregard for the rules can be seen in the case *Averill v. Luttrell*.¹⁴ In *Averill*, the batter in the baseball game broke his jaw and was knocked unconscious when the catcher hit him in the back of his head.¹⁵ The injured batter sued both the catcher for assault and battery and the baseball club under the theory of respondeat superior.¹⁶

An action for assault and battery is difficult for a plaintiff to prove in a sports-related suit. The plaintiff must prove that the defendant intended to both commit the act and cause the harm.¹⁷ The intent element is the most difficult to prove because "objective indications available to evaluate the mental state of the defendant participant are limited."¹⁸ The defenses of consent and assumption of risk must also be overcome. By voluntarily participating in the sport, it is assumed the player consents to physical contact required by the sport.¹⁹ However, this defense can be overcome as it is also assumed no athlete consents to malicious, violent attacks.²⁰ Similarly, when an athlete assumes the risk of injury by voluntarily playing in the game, it can never be implied that he assumed this risk due to the negligence of a third party.²¹ The *Averill* case is an example of a plaintiff who was not only successful in overcoming the defenses but also in proving the charge of assault and battery against the defendant. The trial court entered judgment in favor of the plaintiff holding the catcher liable for assault.²²

In *Averill*, the baseball club was named as a defendant under the doctrine of respondeat superior. This doctrine as well as the theory of negligent supervision has been used in sports-related suits to further

12. *Id.*

13. *Id.*

14. *Averill v. Luttrell*, 44 Tenn. Ap. 3d 56, 311 S.W.2d 812 (1957) (hereinafter cited as *Averill*.)

15. *Id.*

16. *Id.*

17. Horrow, *supra* note 7, at 7.

18. *Id.*

19. Horrow, *supra* note 7, at 7-8.

20. Note, *Sports and the Law*, 5 Okla. City U.L. Rev. 659, 670 (1980).

21. *Carabba v. Ana Cortes School District No. 103*, 72 Wash. 2d 939, 950, 435 P.2d 936, 948 (1967) (hereinafter cited as *Carabba*).

22. See *Averill*, note 14, at 1.

attach liability and to help the plaintiff reach the "deep pocket". The doctrine of respondeat superior imputes liability to an employer for the tortious acts of his employees. The theory of negligent supervision requires a showing of personal fault on the part of the employer. It must be shown that the plaintiff's injury can be traced to the employer's improper supervision of the employee.²³ In *Averill* the trial court entered a judgment against the baseball club, but on appeal the club was successful in overturning the trial court's decision.²⁴ The club successfully argued that the catcher's intentional tortious act was outside the scope of his employment.²⁵

However, the theory of a sports player committing a tortious act that is outside the scope of his employment may have been eroded by the more recent decisions in *Hackbart v. Cincinnati Bengals*²⁶ and *Tomjanovich v. Cal Sports, Inc.*²⁷ In *Hackbart*, the defendant, a Cincinnati pro-football running back, struck Hackbart, a pro-football free safety, on the back of his head for no apparent reason other than anger and frustration.²⁸ Hackbart sustained severe neck injuries and sued both the defendant and his employer, the Cincinnati Bengals, for assault and battery.²⁹ The plaintiff used the doctrine of respondeat superior to attach liability to the football club.³⁰ Two professional football coaches testified for Hackbart and admitted that they purposely tried to incite rage in the football players before a game, and "any training with respect to a responsibility or even any regard for the safety of opposing players" was not part of the coaching and training of football players.³¹ This testimony "could be construed as the basis for imputing liability to professional sport employers, . . . where teams admit to building up a player's emotional rage without regard for other players' safety, violent conduct which results in injury should be deemed to be within the scope of a player's employment."³² The District Court in *Hackbart*

23. See Note, *Tort Liability in Professional Sports*, 44 Alb. L. Rev. 696, 707-08 (1980) (hereinafter cited as *Tort Sport*).

24. See *Averill*, note 14.

25. See *Averill*, note 14.

26. *Hackbart v. Cincinnati Bengals*, 435 F. Supp. 352 (D. Colo. 1977) *rev'd*, 601 F. 2d 516 (10th Cir. 1979) *cert. denied*, 444 U.S. 931 (1979) (hereinafter cited as *Hackbart*).

27. See *Tomjanovich v. California Sports, Inc.*, No. 78-243 (S.D. Tex. Aug. 17, 1979), appeal docketed, No. 79-3889 (5th Cir. 1979), (the case was settled before the appeal was heard) (hereinafter cited as *Tomjanovich*).

28. See *Hackbart*, *supra* note 26.

29. *Id.*

30. *Id.*

31. See note, *supra* note 23, at 708.

32. *Id.*

denied recovery to the plaintiff on the basis that he assumed the risk.³³ The Tenth Circuit Court of Appeals reversed and remanded the case however, the new trial has not occurred as of this date.³⁴ Similarly, in *Tomjanovich* one professional basketball player intentionally struck another during a game which resulted in severe multiple facial and head injuries to the plaintiff, Tomjanovich.³⁵ Tomjanovich brought suit against the defendant's employer, Cal Sports, Inc., alleging both the respondeat superior doctrine and negligent supervision as theories of employer liability.³⁶ The court awarded 3.25 million dollars to Tomjanovich and held the defendant club liable for its player's misconduct and for being negligent in the supervision of its player.³⁷ Subsequently, Cal Sports, Inc. settled out of court with Tomjanovich and the jury verdict was modified only slightly.³⁸

In view of the decisions in *Hackbart* and *Tomjanovich*, it is possible that if *Averill* were decided today, the defendant baseball club could be held liable under the theories of respondeat superior or negligent supervision since the undisputed proof in *Averill* was that "the contest between the teams was keen and players as well as the fans were tense with excitement".³⁹ Perhaps this high degree of emotional excitement was incited by the manager and the coaches, knowing this type of fervor sold tickets and brought fans into the park. It is possible that the clubs could be held liable for their employees' actions if it can be shown that the clubs purposely created an emotional fervor which caused the players to act with reckless disregard for the rules of the game and the safety of others.

B. *Was the Umpire a Joint Tortfeasor in Averill?*

It appears the umpire was a joint tortfeasor in *Averill* and would have been a proper defendant since he had a duty to control the game and his negligent failure to act resulted in injury to a player with whom he had a special relationship. The sequence of events which led up to the assault in *Averill* will substantiate this argument.

Luttrell, the plaintiff, indicated that he was struck out his first time up to bat.⁴⁰ The second time at bat, with the same pitcher on the

33. See *Hackbart*, note 26.

34. *Id.*

35. See *Tomjanovich*, note 24.

36. *Id.*

37. See *ABA*, *supra* note 3, at 15.

38. *Id.*

39. See *Averill*, note 14, at 813.

40. *Id.*

mound, Luttrell consciously decided to move forward in the batter's box hoping to hit the curve or the slider before the pitch broke across home plate.⁴¹ Luttrell stepped forward in the box and had to dodge the first pitch in order to avoid getting hit by the pitch. The pitcher then yelled to Luttrell from the mound "nobody does that to me. If you do it again, I'll stick it in your ear".⁴² The pitcher was clearly referring to Luttrell's position, i.e., stepping to the front of the batter's box. Luttrell continued to remain in the front of the batter's box and had to dodge the second and third pitches to avoid injury.⁴³ On the fourth pitch, Luttrell was hit by the ball on the seat of his pants.⁴⁴ Angry, Luttrell raised his bat as if to throw it at the pitcher, but changed his mind and held on to the bat instead.⁴⁵ It was then that the catcher struck Luttrell from behind. Luttrell was removed from the field by ambulance and the umpire proceeded to throw the catcher out of the game.⁴⁶

The umpire was negligent in failing to enforce the rules of the game and he should have been held liable. It is the official's function to ensure that the game is played according to the rules.⁴⁷ The Official Baseball Rules state that a "brush back" pitch (a pitch thrown at the batter) is an illegal pitch and that a pitcher should be either warned, fined or suspended for purposely throwing a ball at a batter.⁴⁸ In this case, it seems apparent that the pitcher was going to throw an illegal pitch, since he announced his intentions from the pitching mound ("I'll stick it in your ear").⁴⁹ After the first "brush back" pitch was thrown, the umpire had a duty to take action. The pitcher and his manager should have been warned that it is illegal to throw a pitch at a batter and if the pitcher threw another close pitch he would be ejected from the game and fined. The Baseball Rules state "To pitch at a batter's head is unsportsmanlike and highly dangerous. It should be—and is—condemned by everybody. Umpires should act without hesitation in enforcement of this rule."⁵⁰ Other alternatives open to the umpire were to talk to the manager, talk to the catcher, warn the batter and generally to take charge and control the game. By failing to take any action

41. *Id.*

42. *Id.*

43. *Id.* at 814.

44. *Id.*

45. *Id.*

46. *Id.*

47. See note, *supra* note 9, at 944.

48. see *OFFICIAL BASEBALL RULES*, The Sporting News (1980) (hereinafter cited as *Baseball Rules*).

49. See Averill, note 14, at 813.

50. See *Baseball Rules*, *supra* note 47.

and by allowing the assault to occur, the umpire in *Averill* was negligent and should have been named as a joint tortfeasor.

The duty owed by an umpire to a player arises from a special relationship between a player and an umpire and is co-existent with the umpire's duty to control the game.⁵¹

The rationale for imposing a duty of control in these relationships has been that one party had both the special ability to protect the other party to the relationship and the authority to control others to ensure that protection.⁵²

The Baseball Rules give an umpire the power to control the baseball game and place him in a position of authority over the players, coaches and manager both on the field and in the dugout. This authoritative position gives the umpire actual control and imposes an affirmative duty of reasonable care to control the players for their own protection and the protection of the other participants.⁵³ In *Averill*, the umpire failed to exercise his control and failed to follow the Baseball Rules and consequently Luttrell was injured. Luttrell's injury was a foreseeable injury and but for the umpire's negligent failure to act, Luttrell's injury would not have occurred.⁵⁴

C. Holding the Umpire Liable Would Deter Sports Violence

In addition to finding that the umpire could have been held liable as a joint tortfeasor in the *Averill* case, the violence would have never occurred had the umpire acted in a reasonably prudent manner.⁵⁵ It is clear that in the *Averill* case, neither governmental legislation, a sports court, nor self-imposed policing would have prevented the assault. However, affirmative action without hesitation by the umpire arguably would have prevented the assault from occurring.

Certainly, ambitious ball clubs have no desire to curb the violence that is said to draw the fans and increase ticket sales.⁵⁶ As long as the club owners believe that violence on the field attracts the fans to the park, they will not take any strong stand to curtail the violence.⁵⁷ Similarly, club owners are in private business to make money and thus they lobby to keep the federal government from interfering in their private

51. See note, *supra* note 9, at 948.

52. *Id.* at 949.

53. *Id.*

54. See generally, W. Prosser, Handbook of the Law of Torts, § 68, (4th/ed. 1971).

55. See Carabba, note 21, at 938.

56. See note, *supra* note 8, at 405.

57. *Id.*; See note, *supra* note 6, at 435-436; See note, *supra* note 5, at 94-95.

enterprises. Therefore, it is highly unlikely that federal legislation to curb violence in sports will ever become a reality.⁵⁸ Further, a sports court may perform two functions. First, it may provide legal redress to already injured players. Second, it may act as a threatened sanction that would deter undesirable conduct. However, club penalties and legal sanctions are currently a part of the system and yet they have done little to deter violence.⁵⁹ Therefore, injuries can be avoided and violence can be deterred only by placing liability on the person who is in an authoritative position.

The theory—holding an official liable can deter violence—can be analyzed in the following manner:

- 1) When an umpire is aware that legal sanctions may be imposed on him for his failure to act or failure to control the game, the umpire will be more conscientious in his officiating of the game, be as knowledgeable as possible of the rules of the game, and keep tighter control of the players in the game.
- 2) When a player realizes that the rules of the game are to be strictly adhered to and every infraction of the rules will result in a penalty to him, which will ultimately hurt the team, a player will consciously choose to "play by the rules".
- 3) When the game is played by the rules, reckless misconduct and disregard for the rules which can and does cause injuries will be eliminated and violence will be deterred.

II. THE THEORY, HOLDING AN OFFICIAL LIABLE CAN DETER VIOLENCE, MAY APPLY TO ANY OFFICIAL IN ANY SPORTING EVENT

A. *The Willie Classen Incident, A Boxing Injury*

Although the aforementioned theory centered on the game of baseball and an umpire's potential liability, the theory is equally applicable to any official in any sporting event.

For example, Willie Classen, a professional boxer, received a fatal blow in a boxing match. He died a few days later after suffering brain injury.⁶⁰ The referee of the boxing match never considered stopping

58. See I. Sprotzer, *Violence in Professional Sports: A Need For Federal Regulation*, 86 Case & Comment 3, 8 (1981).

59. See note, *supra* note 8, at 414; see note, *supra* note 5, at 92-95.

60. See M. Narol and S. Dedopoulos, *The Official's Potential Liability For Injuries in Sporting Events*, Nat. L. J. (Sept. 6, 1982) (hereinafter cited as *Official's Potential Liability*); See M. Narol and S. Dedopoulos, *Potential Liability, A Guide to Referees' Rights*, 16 Trial 18 (March 1980).

the fight until Classen had collapsed against the ropes in the tenth round.⁶¹ The New York State Athletic Commission investigated the incident and made thirty-two recommendations in a thirty-seven page report.⁶² In the report, the referee testified that, in his opinion, Classen was "coherent and definitely able to defend himself".⁶³ Classen's opponent, Scypion, had a different opinion. In an interview with *Sports Illustrated*, Scypion stated he thought the referee should have stopped the fight after Classen went down in the ninth round.⁶⁴ The article also contained quotes from ringside observers who felt the referee should not have allowed the tenth round to begin as Classen seemed dazed and did not respond immediately to the bell for the start of the tenth round.⁶⁵

Despite the fact that officials are given wide latitude in making judgment calls, they should not be able to avoid liability if the judgment used is unreasonable. An official's judgment call should be measured against a professional standard of what other officials would do when exercising the same skill and learning and under the same or similar circumstances. This standard is analogous to the medical profession which requires a physician to exercise the same skill, learning and care as another physician would use practicing in the same community.⁶⁶ Clearly, the referee had a special relationship with both boxers in the Willie Classen incident. This special relationship placed a duty on the referee which was owed to the boxers. That duty was to exercise a reasonable standard of care to control the match and to avoid any unnecessary violence. The referee not only had the ability to protect the boxers but also had the authority to control the boxing match to ensure that protection. Here, it appears the referee breached his duty to Classen and Scypion when he allowed the tenth round to begin because in his judgment Classen was able to defend himself. Classen's injury and eventual death was a result of that judgment call and therefore that judgment call should be measured against the professional standard of what other officials would do when exercising the same skill and learning and under similar circumstances. If it was discovered through expert testimony that the professional standard had not been met, then the referee should have been liable. Moreover, it is arguable that if the referee had been aware that he could have been liable for his

61. *Id.*62. *Id.*63. *Id.*64. *Id.*65. *Id.*66. *Agnew v. City of Los Angeles*, 82 Cal. App. 2d 616, 186 P.2d 450 (1947).

actions or his failure to act, the referee would have used his authority to stop the fight earlier and the severe injuries Classen sustained may have been avoided.

*B. Cantwell v. University of Massachusetts and Kasavana,⁶⁷ A
Gymnastics Injury Suit*

Tort law serves as the basis for holding an official liable when he neglects to apply the rules of the game. Tort principles indicate that a duty arises from a special relationship and liability is incurred when that duty is breached. Consequently, when a special relationship exists a duty is owed.⁶⁸ Individuals who are in positions of authority such as a coach, assistant coach, manager or an official owe a duty to the player over whom they have authority. Thus, the duties which arise from tort law serve as the basis for holding a coach, manager, and assistant coach liable as well as any sports official.

For example, Diane Cantwell, a nationally known gymnast, was injured when she lost her grip on the uneven parallel bars and fell to the floor.⁶⁹ Cantwell brought a personal injury suit against the University of Massachusetts and the assistant coach of the gymnastic team, Kasavana, for damages. The district court dismissed the suit. The appeals court affirmed the dismissal against the University on the basis of sovereign immunity but vacated the judgment against Kasavana and remanded for further proceedings.⁷⁰ Cantwell alleged that Kasavana directed her to do an exercise on the uneven parallel bars, and it was Kasavana's responsibility to act as a "spotter" (to catch her if she fell). Cantwell further alleged that as she approached the bars Kasavana was in a position to fulfill his responsibilities but as she started to fall she "looked over and saw Kasavana standing outside of the gay wires, beyond reach".⁷¹ The appeals court remanded on the issue of whether Kasavana's conduct was misfeasance or nonfeasance and stated:

If he had, by affirmative conduct, reasonably led plaintiff to believe that he would spot her throughout her trick and in addition, she had reasonably relied thereon, a jury could find his failure to perform to be misfeasance rather than mere

67. *Cantwell v. University of Massachusetts*, 551 F. 2d 879 (1977) (hereinafter cited as *Cantwell*).

68. See Prosser, Wade and Schwartz, *Torts*, ch.6 at 440-41 (6th/ed. 1976).

69. See *Cantwell*, note 67.

70. *Id.*

71. *Id.* at 880.

nonfeasance.⁷²

Kasavana had a special relationship with Cantwell and consequently he had a duty to act as a responsible assistant coach and act as a spotter for Cantwell. Kasavana breached his duty when he failed to act as a reasonably prudent assistant coach would have acted. Thus, Cantwell fell to the floor and sustained serious injuries.

Kasavana may have been more conscientious of his duty as an assistant coach and spotter if he had been aware of the potential liability which would result if he breached that duty. If Kasavana had been aware of his potential liability he might not have breached his duty and consequently, Cantwell's injuries may have been avoided.

Finally, whatever the sporting event may be, when an official/coach is present who has the authority and duty to control the event and that duty is breached resulting in unexpected injury to the athlete, the official should be subject to suit. It is the potential liability of the official that will act as a deterrence factor to possible negligent conduct and thereby eliminate unnecessary injuries to the athletes. Suits against officials have been precluded in the past because of the lack of legal precedent and a lack of a "deep pocket".⁷³ However, today the "courts are taking a more active role in determining the rights and liabilities of sports officials and officials' associations either have obtained or are discussing obtaining liability coverage".⁷⁴ Thus, sports officials should be subject to suit in certain cases and plaintiffs should be able to recover from the officials when it is proper.

III. CONCLUSION

Violence in sports has been increasing at an alarming rate. Many solutions have been suggested on how to deter sports violence, but none of the solutions that have been implemented have been effective. A simple remedy that is both workable and fair is to hold officials liable in certain instances where the athlete's injury is the result of the official's negligent conduct. The potential liability of an official will not only act as a deterrence factor, which will discourage negligent conduct on the part of the official, but will also act to deter athletes from participating in wrongful conduct. As a result, there will be less violence in sporting events and fewer needless injuries to the athletes.

72. *Id.* at 881.

73. *See supra* note 59.

74. *Id.*

