

Viewpoints

Court of Appeal Affirms Judgment in Favor of NCAA Based on Assumption of Risk Doctrine in Case Involving Former USC Football Player



In a case that could have significant implications for the National Collegiate Athletic Association (NCAA) and former collegiate football players who suffer injuries during their college careers, the California Court of Appeal, Second District, affirmed a jury verdict in favor of the NCAA finding the assumption of risk doctrine applied to defeat Plaintiff's claims.

The case against the NCAA was brought by Alana Gee, the wife of Matthew Gee, who died in 2018 at the age of 49, allegedly from chronic traumatic encephalopathy (CTE). Plaintiff claimed the CTE was caused by hits to his head while playing linebacker for the University of Southern California football team. The NCAA asserted an assumption of risk defense and a jury returned a verdict in its favor.

Plaintiff appealed the jury's verdict, contending the assumption of risk doctrine did not apply because CTE is an "extrinsic" risk of college football subject to an ordinary duty of care, and the NCAA could have taken steps to



reduce the risk without altering the essential nature of the sport. The jury and the court of appeal disagreed, finding that repeated head hits are an inherent risk of college football and athletes assume that risk when they play the sport.

The court stated that the assumption of the risk doctrine will only apply if a plaintiff was injured by an inherent risk of the sport. Using a skiing analogy, the court noted, "knowing that a skier suffered a broken leg from a fall while skiing is not sufficient to determine whether the doctrine applies. If the skier broke his or her leg in a fall while skiing moguls, the injury was caused by a risk inherent in the sport and the doctrine applies; if the skier broke his or her leg due to a poorly maintained towrope, the doctrine does not apply. Thus, it is not the specific injury which is determinative, it is the nature of the conduct or condition which caused it."

The court of appeal's decision was published on January 10, 2025.

"An injury sustained while participating in a sport may be caused by conduct or a condition which is inherent in the sport or by conduct or a condition which is not inherent in the sport. Looking at the injury does not reveal the nature of the risk which caused it. A defendant's liability is determined by the conduct or condition which caused the injury....Here, it is undisputed that the conduct which causes CTE is repeated head hits, and head hits are an inherent risk of college football. The trial court did not err in finding that the assumption of risk doctrine applied."

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