

TORTS FROM SPORTS: NOT SO FAST, MY FRIEND

Vince Lombardi once said, "Football is not a contact sport, it's a collision sport - dancing is a contact sport." The Utah Supreme Court recently rendered a decision that held that injuries as a result of an incident that are inherent in a sport are exempt from liability in tort. In *Nixon v. Clay*, 2019 UT 32, the Court ruled that the Utah trial court was correct to dismiss an action for injuries which are inherent in a sport. This holding differs from the majority of the states which have a "contact sports" exception. Utah's rule is more expansive, yet simpler. Basically, the law in Utah now is that a participant in a sport does not have to suffer tort liability for incidental contact inherent in a sport.

Nixon v. Clay involved an incident where the Plaintiff was injured while playing basketball in a church league game. The Plaintiff was dribbling toward the basket when he pulled up to take a jumpshot and the Defendant, attempting to defend the shot, made contact with the Plaintiff's shoulder. The Plaintiff suffered a severe knee injury and brought suit against the Defendant. The Court noted that the church league games are reputed for their hard fought nature with reference to t-shirts which state, "The brawl that begins with prayer."

In rendering this decision, the Utah Supreme Court receded from the majority rule which allows a cause of action where the conduct is reckless or intentional. As the foregoing quote by Vince Lombardi illustrates, in sports like football, rugby, hockey, etc., intentional conduct is a part of the game. Thus, since these sports require intentional contact, there can be no tort liability for contact that is inherent in the sport.

The holding by the Utah Supreme Court is applicable to all injuries where contact is inherent in any sport. In ruling in this manner, the Court stated, "Contact, both permitted by the rules and sometimes contrary to the rules, is a known and accepted risk of many sports." Thus, while most contact in basketball would result in a foul, the Court found that this is an accepted risk. This expansive holding by the Court has far reaching applications to other recreational activities. The Court specifically mentioned tennis, as an example. While contact is not a regular occurrence, it is not unheard of that a participant will be struck by the tennis ball or run into their partner while playing doubles. In either case, the Court would hold that there is no tort liability.

While the Utah Supreme Court's holding in this case is limited to the participants, one can logically surmise that sports leagues, church leagues, mountain sports outfitters and organizers, and other entities sponsoring sports activities would also be immune to tort liability. Thus, in addition to any liability waivers that a participant may have executed, an organizer can point to this case to limit its exposure.

Hall & Evans handles cases throughout Utah and has an established Sports and Recreation law department.

If you have any questions about this update, please contact Thomas Farrell, farrellt@hallevans.com.

