INSURANCE LAW GLOBAL

The Sports Bulletin

2nd Edition | January 2024

insurancelawglobal.com

Insurance Law Global

@InsLawGlobal

Welcome to the 2nd Edition of The Sports Bulletin bought to you by ILG member firms.

In this edition we look at waivers and how they are applied in the USA and Australia. We also look at a parent's right in waiving a child's rights with respect to youth sports. From the Netherlands is a review of a recent KNVB arbitration tribunal decision which resulted in it handing down its first verdict in an employers' liability dispute involving a professional footballer. With many sporting associations grappling for an understanding of their responsibilities, we also look at sport governing bodies and the potential for their obligations and responsibilities to widen.

Also in this edition, our member profile is of Dave Stern, partner at Blaney McMurtry. Dave is an outstanding sports and entertainment lawyer and was recently awarded the 2023 Lexpert Rising Stars Gold Winner and was named the 2023 Lexpert "Leading Lawyer to Watch in Entertainment Law". He also a well-regarded key note speaker presenting at various universities and conferences on sports and entertainment law.

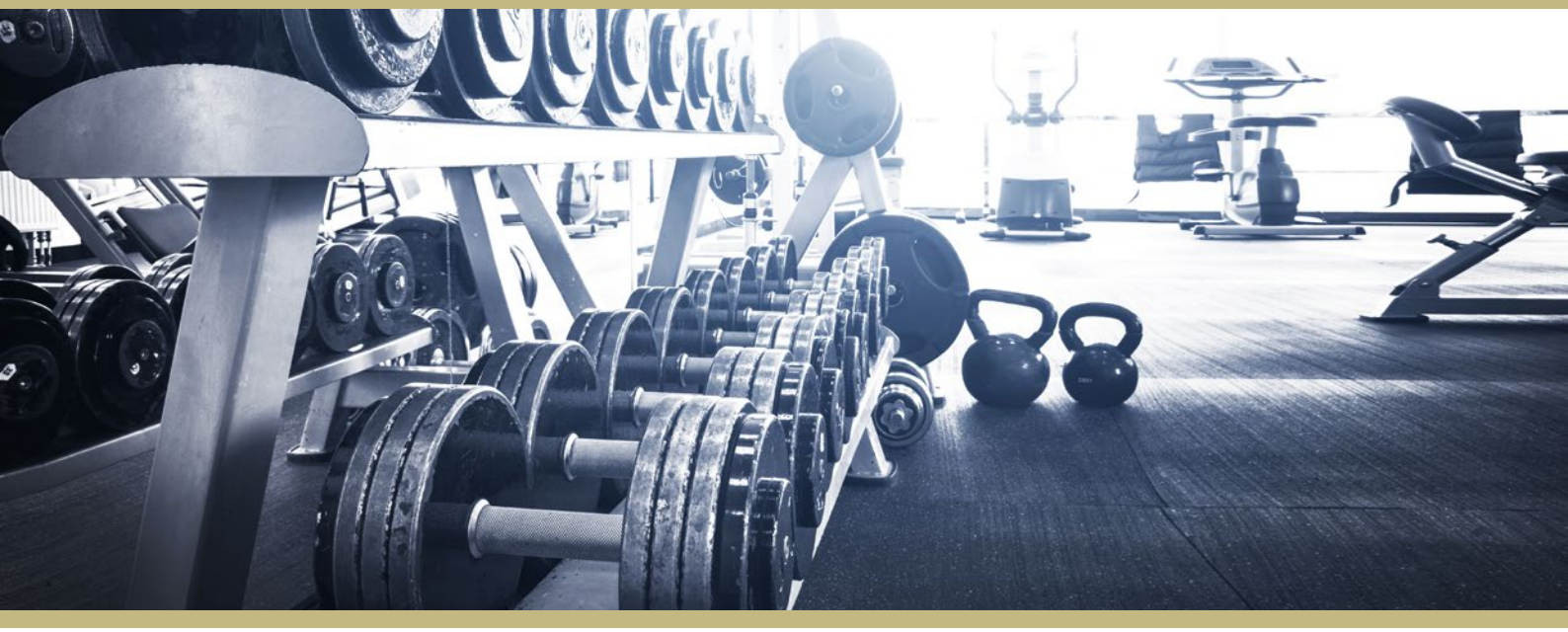
We trust you will enjoy this bulletin.

Bruce Ralston

Chair ILG Sports Law committee

Weightmans Lawyers

Table Of Contents



The stand-alone, small link to the terms and conditions page of defendant's website did not suffice to waive the plaintiff's constitutional rights.

Childs v. Fitness Int'l, LLC et al (U.S. District Court, EDPA, May 23, 2023)

The plaintiff signed a membership agreement that did not contain an arbitration provision. The defendant gym's website contained a small link to its Terms and Conditions, which contained an arbitration clause. However, there were no facts to indicate that the plaintiff agreed to the Terms and Conditions or a confirmation that she even read the Terms and Conditions when she created her online profile using the gym's app or website. Therefore, the court denied the defendant's motion to compel arbitration for this claim because it found no explicit agreement to arbitrate.

While the court acknowledged that some websites contain "browsewrap" agreements that may bind the user to terms and conditions through continual use of the website, the court commented that it often turns on whether the terms are reasonably conspicuous and not hidden in obscure places on the website. The stand-alone, small link to Terms and Conditions in this case did not suffice to waive the plaintiff's constitutional rights.

MARSHALL DENNEHEY

Contact Person

Sara Mazzolla, Esquire
Shareholder

E: SWMazzolla@mdwcg.com

By Rebecca Stevens, Carter Newell Lawyers

Waivers under the *Competition and Consumer Act 2010* in Australia - an Overview

Australia is a popular holiday destination. Our country is renowned for the wide range of outdoor activities and action sports on offer which is particularly appealing to thrill-seeking backpackers and younger travellers, as well as locals. This paper will discuss one option available to recreational service providers to limit their liability for injuries sustained by participants of recreational services, which is the execution of a liability waiver.

Relevant Legislation

For consumers who choose to participate in these recreational services, the *Australian Consumer Law,* (**ACL**) which can be found within schedule 2 of the *Competition and Consumer Act 2010* (**CCA**) offers some assurance as to the quality and safety of those services. Most relevant are the guarantees contained in sections 60 and 61.

Section 60 provides that services must be provided with due care and skill, and section 61 provides that services must be reasonably fit for the purpose that a consumer makes known to the supplier. If a service fails to meet a guarantee, a consumer has rights against the provider, who will have to provide some form of 'remedy' in order to put right the fault.

Section 64 of the ACL states that contractual terms that purports to exclude, restrict, or modify any liability of a person for failing to comply with any implied guarantee in the supply of goods and services is void.

The CCA contains a narrow exception to the general rule for recreational services. The exception is found in section 139A of the legislation, and states that a contract for the supply of recreational services is not void under section 64 only because the term excludes, restricts or modifies, or has the effect of excluding, restricting or modifying liability for death and personal injury arising from breaches of sections 60 and 61 except where the injury or death is a result of reckless conduct.

Key Elements of the waiver

The exclusion clause should be limited to liability for death or personal injury

A common error often found in liability waivers is the inclusion of property damage in the relevant waiver clause.

To comply with the relevant legislation, the liability waiver should be limited to death, physical or mental injury. Any terms in relation to property should be kept separate so that they cannot be construed as connected to the exclusion clause.

In *Motorcycling Events Group Australia Pty Ltd v Kelly*[1], the plaintiff had signed a release form stating '*the Applicant/Guardian hereby releases and indemnifies [the appellant] … from any claims or liability for death, personal injury or property damage howsoever caused as a condition of acceptance to partake in the event.'*

The court held that as the exclusion clause extended to property damage, the exception under the equivalent legislation in force before the CCA did not apply and the entire clause was rendered void.

The nature and effect of the waiver should be brought to the consumer's attention

The plaintiff in *Lormine Pty Ltd v Xuereb*[2] had signed a waiver form titled '*Release of liability, waiver of claims – express assumption of risk and indemnity agreement*' on the day of a dolphin watching cruise. The plaintiff said she had ticked and initialled the form for herself and her family members without reading the form, and she had been told the form was used to keep track of passenger numbers.

The Court of Appeal held the primary contract the parties entered into at the time the plaintiff purchased the tickets did not contain the exclusion terms, nor did the tour operator provide any notice there would be exclusion terms incorporated into the contract. The oral communications that led the signing of the form did not convey that the document was contractual or would vary the existing contract. The court held the tour operator had misrepresented the contractual impact of the form by stating that its purpose was for head count.

It is therefore imperative that consumers are made aware of the nature of the waiver as well as its contractual effect.

Express the clause carefully

The court in *Xuereb* also noted that as the exclusion clause in question expressly focused on liability arising from scuba diving, snorkelling and skin diving activities, it did not operate to exclude all injuries arising from all forms of sightseeing. The exclusion clause was therefore ineffective to exclude the tour operator's liability for the plaintiff's injury while on the ship as it was too specific.

On the other hand, courts will likely read down a waiver clause if it is too vague or ambiguous. This is consistent with the court's typical approach to interpret exclusions clauses narrowly such that any ambiguity in a clause is likely to be construed against the party seeking to enforce it.

An example of this is *Belna Pty Ltd v Irwin,*[3] whereby a gym operator unsuccessfully sought to avoid liability for a knee injury sustained by a client at the gym by relying on a clause in the membership agreement. The clause stated *'It is my expressed interest in signing this agreement, to release Fernwood Fitness Centre, its Directors, Franchises, Officers, Owners, Heirs and assigns from any and all claims for professional or general liability, which may arise as a result of my participation, whether fault may be attributed to myself or its employees.'* The court held the use of the terms '*expressed interest*' and '*release from professional or general liability*' rendered the

clause so vague and unintelligible it could not be reasonably construed as excluding liability.

In *Gowan & Hardie & Anor,*[4] a case that was decided prior to the relevant consumer law amendments coming into effect, the court upheld an exclusion clause in a parachuting centre membership contract which provided:

> '*It is a condition of admission to membership of this Centre, that this Centre, its directors, instructors, members, servants or agents are absolved from all liability howsoever arising from injury or damage howsoever caused (whether fatal or otherwise) arising out of membership of this Centre or participating in parachuting, learning to parachute, training to parachute, flying in any aircraft being used for or in connection with parachuting or in any way whatsoever due to any negligent act, breach of duty, default and/or omission on the part of this Centre, its directors, instructors, members, servants or agents'.*

The court found the exclusion clause was expressed in general terms and applicable to all possible situations and was expressed for the benefit of the parachute centre, its servants and agents. Both the parachute centre and the pilot were exempt of liability for an injury sustained by a member during a parachute landing caused by the pilot's negligence. We again note this case was determined before the relevant consumer law amendments came into effect and as such the wording of its exemption clause (including its reference to *damage*) may not be enforceable today under the CCA.

Both these cases serve to show that clauses should be worded carefully to ensure that they are specific enough not to be read down by the court but broad enough to cover all liability for personal injury or death arising out of the use of the said recreational service, so as not to

The waiver should contain a clear warning of the risk of injury

To increase the likelihood of a waiver successfully exempting the recreational service provider from liability, a waiver should identify and provide a clear warning as to the potential harm which may arise during the course of the activity.

It would be prudent, at the very least, to include at the top of the waiver a clear warning that the service being provided is dangerous and the nature of that danger (i.e. it may result in personal injury or death).

Timing of the waiver

If a court is satisfied that the contents of the liability waiver reduce or remove the service provider's liability for the injury claim, it will then look to see whether the liability waiver was properly entered into with the participant.

Every contract needs 'consideration' – that is, each party must offer something in return for the agreement of all other parties. Courts have concluded that, despite the liability waiver wording being adequate, the document did not form part of the contract when it was entered into between the service provider and the participant.

In many cases, service providers are not having the participant agree to the liability release at the time of entering the contract. If a participant pays a fee to take part in an activity, and then at some time after that a liability

waiver is given to the participant to be signed, the liability waiver does not form part of the contract. The participant had already entered into the contract. The service provider is giving no consideration for the participant entering into the liability waiver agreement. The liability waiver contract is therefore invalid.

In practice, that means the liability waiver needs to be signed by the participant at the time of paying the fee.

In *Marks v Skydive Holdings Pty Ltd*[5], the plaintiff and her tandem instructor landed heavily at the conclusion of their jump, leaving the plaintiff with a fracture to her lower spine. The skydiving provider's policy was that anyone participating in a skydive was required to become a member of the Australian Parachute Federation. The online membership application form incorporated a purported liability waiver. The skydiving provider sought to argue that the completion of the Australian Parachute Federation membership application by the plaintiff was a condition precedent to the formation of the contract between the skydiving provider and the plaintiff.

It was revealed at trial that the Australian Parachute Federation and defendant skydiving provider were separate entities. There was no evidence that the skydiving provider had reasonably drawn the plaintiff's attention to the waiver that formed part of the application form, such as by including the application in the terms and conditions referred to in the skydiving provider's booking confirmation.

The court was not satisfied that the defendant had reasonably drawn the plaintiff's attention to the waiver and concluded that the waiver did not form part of the contract, especially in circumstances where the trial judge was not satisfied that the plaintiff had read or seen the waiver as part of the membership application process.

Where the waiver fails

Although liability waivers are notoriously difficult for service providers to rely on, a liability waiver can show that a participant was aware of the risks involved in participating in the activity, even where a liability waiver does not ultimately reduce or remove the provider's liability for an injury.

There is State legislation in Australia which excludes a service provider from bearing liability if a participant in a dangerous recreational activity suffers an injury where the cause of the injury was an obvious risk. To rely on that defence, it helps if a recreational service provider gives participants a liability waiver which clearly states the risks of participating in the provided recreational activity. The waiver could serve as evidence that the risk was obvious to a reasonable person in the participant's position and therefore a waiver can still be of benefit.

[1] (2013) 303 ALR 583.

[2] [2006] NSWCA 200

[3] [2009] NSWCA 46

[4] [1991] NSWCA 126

[5] [2021] VSC 21

Carter Newell LAWYERS

Contact Person

Rebecca Stevens
Partner

E: rstevens@carternewell.com

Dave Stern - Partner

Dave Stern provides solutions for complex matters in the areas of Sports and Entertainment Law at Blaney McMurtry. In particular, Dave's practice focuses on audiovisual production, distribution and exploitation (films, television series, digital media projects), live sporting events, as well as athlete and influencer representation. He also has experience with software licensing, the protection and enforcement of intellectual property rights, athlete/player contracts, sponsorships, contests and promotions, as well as collective bargaining.

Prior to joining Blaney McMurtry he worked in the legal departments of the Oakland Raiders and Maple Leaf Sports & Entertainment Ltd. Dave is one of the recipients of the 2023 Lexpert Rising Stars award, presented to the top lawyers in Canada under the age of 40.

P: 416-596-2893 | F: 416-594-5087

Blaney McMurtry LLP

Blaney McMurtry has a long, storied, history as a leading sports law firm. From Royal Commissions to landmark cases, from complex multiparty negotiations to timely confidential advice, our lawyers build on the experience gained from decades of passionate involvement in sport.

Our sports law practitioners enthusiastically represent leagues and governing associations, players, officials and agents, in a multitude of sports-related claims. We advocate in the area of personal injury, physical and sexual assault, human rights, defamation, directors' and officers' liability, insurance benefits and internal administrative appeals, among others.

Blaneys' lawyers are moreover experienced with assisting in delicate matters of internal governance, risk management, not-for-profit designations and creative dispute resolution and have been trusted advisors for a variety of sports clientele, including those involved in hockey, football, soccer, basketball, fitness and international multi-sport games.

We also represent sports organizations (amateur and professional), professional athletes (current and retired) and start-up companies in the sports industry to assist in a variety of legal matters, such as film and television opportunities, athlete endorsements, social media marketing campaigns, contests and promotions, player contract negotiations, sponsorship agreements, corporate structuring, intellectual property rights, as well as immigration and tax-related issues.

Due to our depth of knowledge, Blaneys' sports lawyers are frequently consulted by the media to comment and advise on topical issues.

By Marshall Dennehey

Parents are Precluded from Waiving Child's Rights to Jury Trial in Pennsylvania

In order for children to be allowed to participate in youth sports and recreation activities, parents are often required to sign a waiver and release of liability agreement. Generally, when a parent signs a waiver in their own right, they contractually agree to waive all rights to sue. It has long been the law in Pennsylvania that when the parent signs a waiver for a minor, a parent cannot waive their child's personal injury claim. However, the parent can sign away the claim they personally have as a result of the child's injuries.

On March 23, 2023, the Pennsylvania Superior Court, in consolidated appeals, was tasked with deciding an issue of first impression in Pennsylvania: whether a parent's role as natural guardian entitles the parent to bind a minor child to an arbitration agreement and waive that child's right to seek redress for injuries in a court of law. *Santiago v. Philly Trampoline Park, LLC*, 2023 WL 2579193, 2023 Pa. Super. 47 (March 23, 2023).

Factually, for the child to participate in recreational facilities, the parent was required to sign a Release and Assumption of Risk Agreement. The agreement included a waiver of the child's jury right and compelled arbitration of any claims.

Typically, the court employs a two-part test to determine if it should compel arbitration. First, does a valid agreement exist. Second, is there a dispute within the scope of the agreement. When addressing if there is a valid agreement, the court applied principles that govern formation of contracts. As a general rule of contract law, only the parties to an arbitration agreement may be compelled to arbitrate. An individual cannot be required to arbitrate a dispute where such individual is not a party to the arbitration agreement. "Nevertheless, a party can be compelled to arbitrate under an agreement, even if he or she did not sign that agreement, if common law principles of agency and contract support such an obligation on his or her part." As a result, the court reviewed the law of agency when determining if the parent has the authority for the child to waive the right to a jury and compel arbitration.

The court stated that "agency cannot be inferred from mere relationships or family ties, and we do not assume agency merely because one person acts on behalf of another." Further, the court observed that children can not themselves agree to arbitrate any potential claims because it has long been the law that minors lack the capacity to contract. "As such, minors lack the capacity to grant express authority to an agent to contract on their behalves, rendering any such resulting contracts voidable."

In situations when a minor is injured, two distinct causes of action arise, "one the parents' claim for medical expenses and loss of the minor's services during minority, the other the minor's claim for pain and suffering and for losses after minority." *Hathi v. Krewstown Park Apartments*, 561 A.2d 1261, 1262 (Pa.Super. 1989). A parent may pursue his or her own cause of action with connection to the injury, but a child is prohibited from personally bringing a cause of action before reaching majority. Alternatively, a parent "has the natural and primary right to bring an action, as guardian, on behalf of his or her child," *Dengler by Dengler v. Crisman*, 516 A.2d 1231, 1234 (Pa.Super. 1986). However, the court notes that "a minor's representation is subject to the trial court's control and supervision, and it has the right in each case to determine whether the litigation is in the minor's best interests. As a result, the court stated that "an agreement executed by natural guardian purportedly on the minor's behalf without any court involvement, however, has none of the legal safeguards attendant to the appointment of a guardian of the minor's estate. Consequently, the parents in their pre-litigation state of natural guardianship lacked any authority to manage the estate of their minor children."

Therefore, the Pennsylvania Superior Court concluded that parents lack authority to bind their minor children to arbitration agreement. The court held that the parent-child relationship did not empower the signatory parents to waive their minor children's rights to have their claims resolved in a court of law.

Those who manage sports and recreational facilities should still require that adults execute waivers and releases to protect the facility from claims by the adults and as parents to minor children, although in Pennsylvania those waivers will not preclude the child's rights to sue. If the managers prefer to use the arbitration system to reduce costs, streamline a lawsuit and to avoid jury trials, they should still include arbitration clauses in their agreements. Defense attorneys need to be aware that they can arguably make a strategic decision on how to move forward with the claim of a minor and a parent because the defendant could litigate the child's claim in court and arguably move to litigate the parent's claim in arbitration. There are risks of inconsistent verdicts on liability. However, defense counsel may believe arbitration is a better forum to enforce the waiver and release, enforce any sections of the agreement that may require the parent indemnify the facility, and to potentially reduce the value of parent's claim if it is believed a jury may provide a more sympathetic verdict. Be mindful that the waiver and release can still be enforced against the parent, but the court will protect the child's rights to bring a claim before a jury.

Contact Person

Jon Cross, Esquire
Shareholder

E: JECross@mdwcg.com

By

Employer’s liability in professional football: an analysis using the Zakaria Labyad v Ajax judgment.

On 3 February 2023, the KNVB arbitration tribunal handed down its first verdict in an employer’s liability dispute. Professional footballer Labyad claimed almost €900,000 in damages from employer AFC Ajax N.V., because of a cruciate ligament injury he sustained during a football training session. The arbitration committee rejected his claim. In this case analysis, I elaborate on relevant components of duty-of-care violations by sports-related employers.

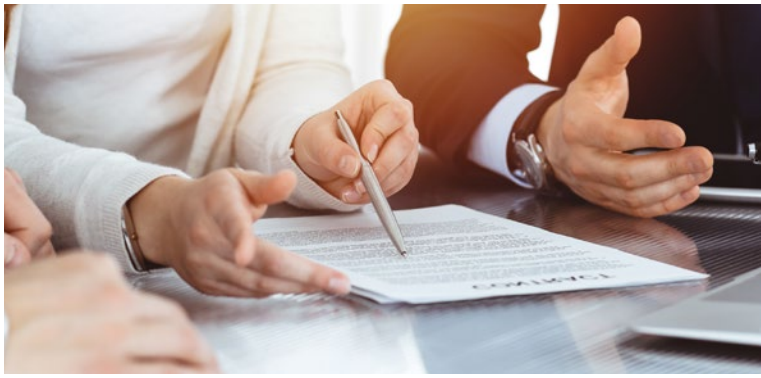
What was the situation?

Labyad participated in a training programme consisting of three rounds of leg muscle training followed by five different forms of field training. During the final training component, a “10 against 10” game form, Labyad screened the ball but sprained himself in the process and sustained a knee injury. Medical help arrived immediately after this incident, but knee surgery was necessary for optimal recovery. As a result, Labyad suffered loss of income, and had to incur (medical) expenses related to his recovery. Labyad held Ajax liable for these damages under section 7:658 of the Civil Code.

A strict duty of care for employers

Prior to assessing the claim, the arbitration panel outlines the legal framework. Under Article 7:658 of the Civil Code, an employer is liable to its employee for work-related injury, unless the employer proves that it has fulfilled its duty of care (or that there was intent or deliberate recklessness on the part of the employee). The wording of the duty of care means that the employer must set up the workplace in such a way and take such measures and give such instructions for the performance of the work as are reasonably necessary to prevent the employee from suffering injury. The wording of this article means that the employee does not have to prove that the employer has breached its duty of care. It is up to the employer to prove that it did everything reasonably possible to prevent the injury. This is a far-reaching duty of care that cannot easily be assumed to have been met. On the other hand, it does not aim to create an absolute guarantee against accidents at work. What can reasonably be expected of an employer depends on the circumstances of the case. Standards for this can be found in Working Conditions legislation, as well as in case law. Case law takes into account the nature of the work, the knowability of the possible danger, the expected inattention of the employee, the seriousness of the possible consequences and the difficulty of taking measures when determining what an employer can reasonably be expected to do.

A nuance regarding this duty of care is in order. The mere fact that some health risks are inherent in certain working conditions does not constitute a breach of the duty of care if those risks are realised. This can only be the case if the employer could and should have taken precautionary measures but failed to do so. For sports employers, this therefore means that the occurrence of an injury during working hours is not automatically the result of a breach of the employer's duty of care.



Ajax argues in the proceedings that it has complied with its duty of care by taking various measures: prior to the training, it gave an instruction on the training, it has a qualified (medical) staff, the training pitch meets the appropriate requirements, there was an adequate warm-up and a mental coach is available. In response, Labyad argues among other things, that a knee injury is a common risk among players and that Ajax should therefore have consistently and urgently instructed its players to exercise the necessary caution. He adds that this was even more true in relation to him, as he had suffered a knee injury before and, given his expiring contract, he was under pressure to perform well.

Labyad's position deserves specific attention. The view that Ajax should consistently urge its players to always be careful while playing football initially sounds contradictory to the nature of top-level sport and therefore to the nature of the work. After all, that nature involves athletes physically going to extremes to achieve their competitive goal. If you do not do that, then you cannot be an employee at a top club. Yet this position is not out of the blue. It finds support in case law from the Dutch Supreme Court. Risks that cannot be eliminated should be warned for in such a way that it is expected to trigger risk-averse behaviour. This also applies to employers, with regard to concrete risks arising from working conditions. The duty to warn does not apply to commonly known risks. Whether, and if so, what sort of injuries fall under the latter category is uncertain.

The review

The arbitration tribunal considers that Ajax took sufficient measures and thus fulfilled its duty of care. The arbitration board does not substantiate why the measures were adequate. The standards outlined above are not really elaborated, so that it is not clear how the arbitration board comes to this conclusion. The existence of a duty to warn is also not explicitly considered in the assessment. A more detailed elaboration of these issues therefore follows below.

Football is a contact sport in which the risk of injury is inherent. Minor as well as major injuries are common and every player has had one during his or her carreer. The nature of the work and the cognisability of the risk of injury should therefore weigh heavily in the scale of whether one can speak of hazardous working conditions on which the employer should reasonably have acted. Injuries of a special nature, or under specific working conditions, are more likely to constitute a breach of duty of care than injuries of a more general nature sustained during a standard training session. In the case of Labyad, who simply sprained himself, it was rightly ruled that there was no breach of duty of care. It is hard to see how Ajax could have prevented this incident, as it could have happened at any time and during any training session (or match).

The arbitration panel also concluded that Labyad did not raise any other legally relevant measures or directions that could have prevented his injury. Incidentally, one could infer from this that Ajax's duty to warn if certain risks cannot be removed is (in law) irrelevant because it cannot actually prevent the injury. I do not share that view. Not the prevention of certain injuries, but provision of sufficient information about the danger thereof (so that the employee himself will exercise more caution) is decisive for the question whether the duty to warn and thus the duty of care have been met. However, this must involve a concrete and recognisable risk that is expected to occur in a certain circumstance. Clubs would be wise to warn a player with susceptibility to a specific injury if certain activities involve an increased risk of that injury occurring. It would be going too far if clubs had to warn for every chance of an injury such that this would achieve risk-averse behaviour among players. That would imply that players would stop working altogether, as the risk of injury is inherent to the work itself. In Labyad's situation, this also apparently holds true: a previous knee injury (of a different nature) and an expiring contract did not make for specific circumstances under which Ajax should have warned and guided Labyad more concretely.

Conclusion

Sports employers have a strict duty of care towards their contract players. The sports employer should bear in mind that it must prove that this duty of care has been met. The sport-specific nature of the activities affects the scope of the duty of care. Thereby, under certain circumstances, there is also a duty to warn for specific injuries that cannot be prevented. If it is established that the club breached its duty of care, it can still free itself from liability by making it plausible that complying with the duty of care would not have prevented the injury from occurring.

ekelmans advocaten / insurance & corporate

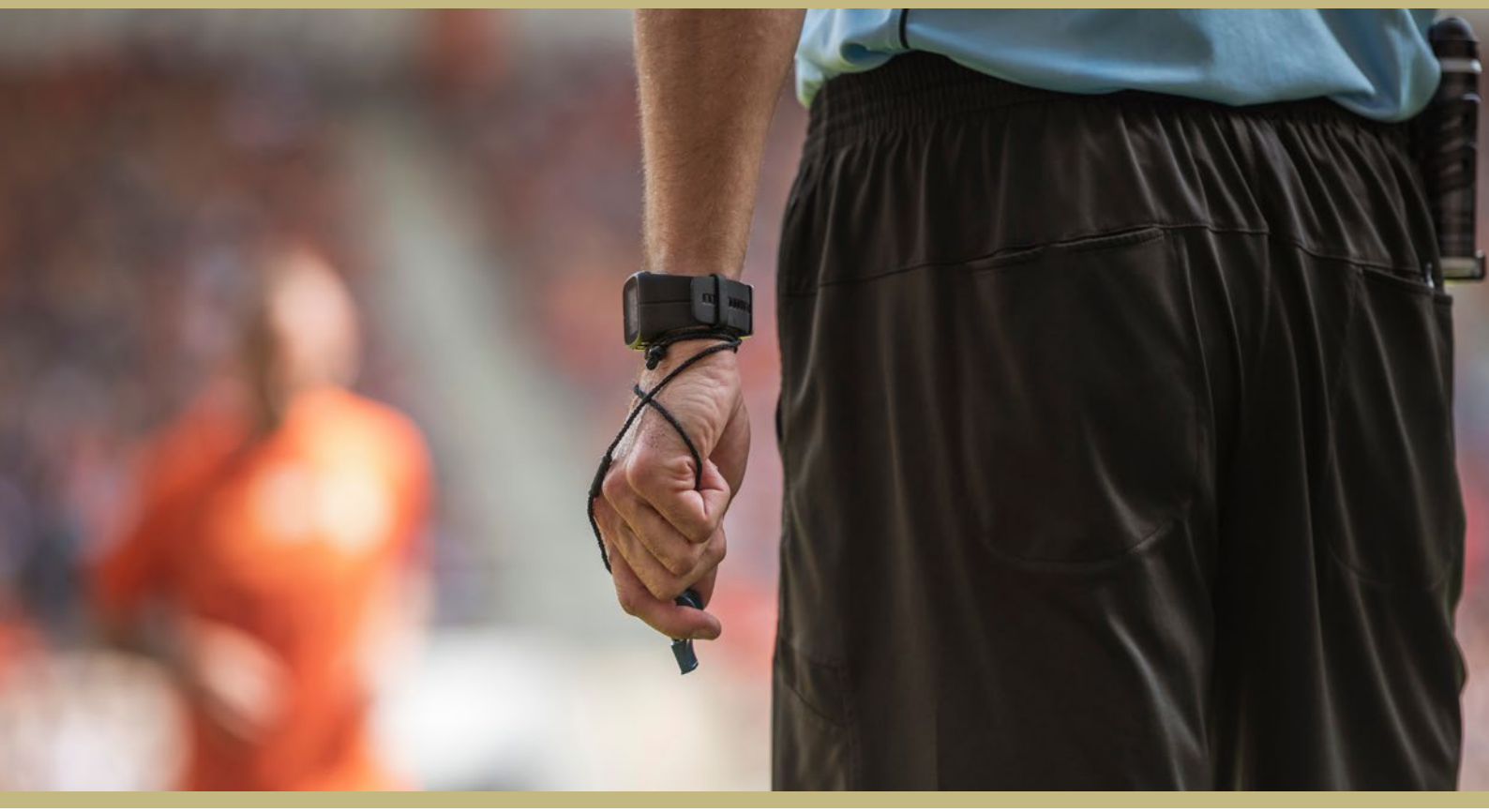
Contact Person

Mr. D.A.J. (Diederik) Hulsbergen,

Lawyer Insurance & Liability

E: hulsbergen@ekelmansadvocaten.com

By Bruce Ralston, Weightmans



Sport related Injuries– would you chose to be a referee or a governing body in the current climate?

The obligations and responsibilities of sport governing bodies have been brought into sharp relief in recent weeks. There have been the reports of the actions brought in football and both codes of rugby by former players contending injuries they sustained during their playing careers have led to neurological decline/illnesses. At the recent F1 in Las Vegas a seemingly unsecured manhole cover saw an accident involving Ferrari and remedial measures taking so long spectators had to be sent home. Given the venue it is not difficult to imagine there will be some claims made against the organisers for recompense and indeed it could have been far worse as regards the driver.

We then have the position of officials in the sport. Rugby union has seen the officials from the recent RWC Final all step back from the game and abuse on social media has been cited as a factor. On the field rugby players still broadly afford the referees respect but football? No regular spectator of the sport can pretend to be oblivious to the abuse that it so frequently targeted towards the referee. They stand alone surrounded by hostility. Fans jeer and heckle. Players shout and swear. They are abused online. They are threatened, harassed and sadly, certainly at the grassroots level on occasion assaulted. This season alone we have seen Manchester City fined for the conduct of their players when they surrounded the referee after he stopped play , the conduct of the misfiring Erling Haaland being particularly noteworthy.

Last season following criticism from the Roma coach Jose Mourhino a match referee was assaulted by Roma fans at the airport the following day.

Are we to assume that referees are made of special stuff: impervious, imperious and unaffected?

Workplace stress can be a crippling illness, and every employer has a duty of care to their employees to take reasonable steps to mitigate it. A prudent employer is expected to undertake heath surveillance and risk assessments to identify and control foreseeable risks.

In Barber v Somerset County Council *[2004] UKHL 13* the court recognised that "Stress is a subjective concept: the individual's perception that the pressures placed upon him are greater than he may be able to meet. Adverse reactions to stress are equally individual, ranging from minor physical symptoms to major mental illness."

It may be that professional referees are deemed self-employed but those at grassroots? The potential for stress never mind actual assault being suffered by a referee must be recognised as a real risk and one sports governing bodies would be wise to take seriously. It would be better to tale proactive measures now rather than have an unseemly battle in the courts down the line where the governing bodies argue they have no responsibility for the referees welfare. The authors will not hold their breath as regards football given high profile managers prefer to heap the blame for poor results on the officials as opposed to poor performance (Ange Postecoglou of Spurs being an honourable exception) but hopefully rugby can remember its traditions and address the issue.

Weightmans

Contact Person

Bruce Ralston

Partner

E: Bruce.Ralston@weightmans.com

insurancelawglobal.com

Insurance Law Global

@InsLawGlobal