INSURANCE LAW GLOBAL

The Sports Bulletin

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Welcome to the 4th Edition of The Sports Bulletin brought to you by ILG member firms.

The sporting world in 2025 continues to offer moments of brilliance, challenge, and transformation. The build-up to the 2026 FIFA World Cup is already stirring excitement across continents, while the 2025 Women's Rugby World Cup is currently captivating global audiences. At the same time, sport remains a reflection of wider society: legal, commercial, and ethical issues continue to define the headlines. From ongoing disputes over governance and financial regulation in football, to the continuing litigation around head injuries across contact sports, the intersection of law and sport is ever more visible.

As 2025 unfolds, sport is not just about the athletes and the results on the field, but also about the frameworks, legal, regulatory, and cultural, that shape the way it is played, consumed, and remembered.

In this Bulletin of the ILG Sports Group we have commentaries ranging from a landmark US$2.8 billion settlement in the US which considers the difference between amateurs and professional athletes, the key principles of the Australian Consumer Law (ACL) as they apply to sporting related activities, and the increasing question to the liability of sports organisations and sports associations in the event of injury to participants.

We trust you will find these articles of interest. The ILG Sports Group is made up by a "team" of lawyers across a number of jurisdictions who all love sport. If you have a sporting query do not hesitate to get in touch.

Bruce Ralston

Chair ILG Sports Law committee

Weightmans

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Navigating the Field: Understanding Sporting Activities and the Australian Consumer Law

Written by Partner Rebecca Stevens and Associate Sam Cooper
Carter Newell, Australia

In the dynamic world of sports, understanding the interplay between sport activities and the Australian Consumer Law (**ACL**) is crucial for organisations and providers. This article delves into the key principles of the ACL as they apply to sporting related activities, highlighting significant case law that has shaped the current legal landscape in Australia. By examining these cases, we can better understand how the Courts are applying the ACL to sporting activities and how service providers can protect themselves from potential liability.

Australian Consumer Law

The ACL provides a uniform set of rules for consumer protections across all jurisdictions in Australia. The relevant protections in relation to sporting activities include:

- The services will be rendered with due care and skill pursuant to section 60 of the ACL; and

- The services are fit for a particular purpose which are either expressly or impliedly made known pursuant to section 61 of the ACL.

The article will discuss how the Courts have applied these statutory guarantees (as well as the previous analogous provisions under the *Trade Practices Act 1974*) in respect of sporting activities.

The decision of *Wade v J Daniels Associates Pty Ltd*[1] helpfully sets out the relevant principles:

a. The phrase 'due care and skill' in section 60 of the ACL is equivalent to the common law duty to take reasonable care;

b. The particular purpose in section 61 of the ACL has been construed as a definite

1 Wade v J Daniels Associates Pty Ltd [2020] FCA 1708 at [330].

purpose that has been expressly or impliedly communicated.

Case Law

Gharibian v Propix Pty Ltd t/as Jamberoo Recreational Park [2007] NSWCA 151

The Plaintiff sustained injuries during a toboggan ride when it lost control in wet conditions. The Defendant claimed that specific instructions were provided to the Plaintiff to immediately pull the brakes should rain commence as they would otherwise cease to work. The Defendant had a system to prevent the use of toboggans in rain and provided warnings of the need to stop within 10 seconds.

The Court ultimately found the Defendant was not negligent in causing the incident. However, the question was whether materials supplied were reasonably fit for purpose. Ipp JA noted liability under the section 74(2) of the TPA (now section 61 of the ACL) is independent of negligence and does not require a finding of negligence.

The Defendant was liable on the basis the toboggan and its run were not reasonably fit for their purpose as the toboggan's brakes ceased to work in the rain and the Defendant failed to take into consideration customers, such as the Plaintiff, who may not be capable of immediately pulling the brakes should rain commence.

Kovacevic v Holldan Park Holdings Pty Ltd [2010] QDC 279

The Plaintiff sustained injuries during an exercise class after she slipped on wet floor and fractured her ankle. The Plaintiff alleged breaches under section 74(1) and 74(2) of the TPA (now section 60 and 61 of the ACL).

The Court adopted a different approach to Gharibian in determining liability. The Court found the Plaintiff, by implication, made known the purpose for which the services were required, namely, to undertake exercise in a supervised, safe and healthy manner. It found that the floor was slippery when wet and that the instructor failed to take steps to check or prevent perspiration on the floor.

The Court found the Defendant liable for breaches of both section 74(1) and 74(2) of the TPA as the Plaintiff was entitled to rely on the skill of the Defendant to prevent injury while participating in an exercise class.

Action Paintball v Clarke [2005] NSWCA 170

The Plaintiff sustained injury when he slipped and fell during heavy rain while participating in a paintball game. He alleged the game should have been called off because of the rain and he also alleged the safety goggles fogged up limiting the visibility. The Plaintiff alleged breaches under section 74(1) of the TPA (now section 61 of the ACL) stating the goggles were not fit for purpose.

The Court accepted the purpose of the goggles was eye protection in a manner which allowed a player to maintain a reasonable degree of vision. Ultimately, the Plaintiff was unsuccessful because no evidence was advanced to suggest the foggy goggles caused him to slip and it was found that the players knew the risks of playing the game in wet conditions.

Defences

In Australia, operators of recreational facilities can exclude, limit or modify their liability to customers or patrons for personal injury through exclusion of liability clauses and contractual waivers. Section 139A of the *Competition and Consumer Act 2020* (CCA) limits liability exclusions in contracts for

recreational services to “personal injury and death” only. For it to be effective the operator needs to demonstrate that the customer was aware of the exclusion of liability clause and consented to its inclusion in the contract prior to payment and that it is effectively worded for it to extend to the consequence of the operator’s negligence. It is common to see service providers attempting to exclude liability for a broad range of circumstances such as property damage or economic loss, thereby rendering the waiver ineffective.

However, section 139A(4) of the CCA provides that exclusions cannot apply if the personal injury is caused by the reckless conduct of the supplier of the services. A supplier’s conduct will be considered reckless if it involves a risk of personal injury the supplier ought reasonably to have been aware of, and despite this, engaged in the conduct without adequate justification.

In *Alameddine v Glenworth Valley Riding Pty Ltd* [2015] NSWCA 210 the Court struck out a waiver because it not only extended beyond excluding liability for injury or death but it was found to not form part of the original contract as it was signed after the online booking and payment was made. The Courts are reluctant to enforce waivers unless there is strict compliance with the rules.

Implications

Service providers must ensure that not only are the activities conducted with due care and skill and that they are fit for purpose but also the equipment supplied meets these same guarantees.

Identifying the specific purpose of the services and equipment provided is essential for service providers to take appropriate measures to protect themselves in the event of an unfortunate incident. Service providers must ensure the services and equipment are fit for their particular purpose, whether it is to facilitate safe exercise or provide safety protection. Failure to do so can result in liability under the ACL, regardless of any finding of negligence.

Whilst services providers of recreational services may exclude liability for personal injury and death through carefully drafted waivers, they must comply with strict legal requirements to be enforceable, and they will not extend to protect a provider from reckless conduct.

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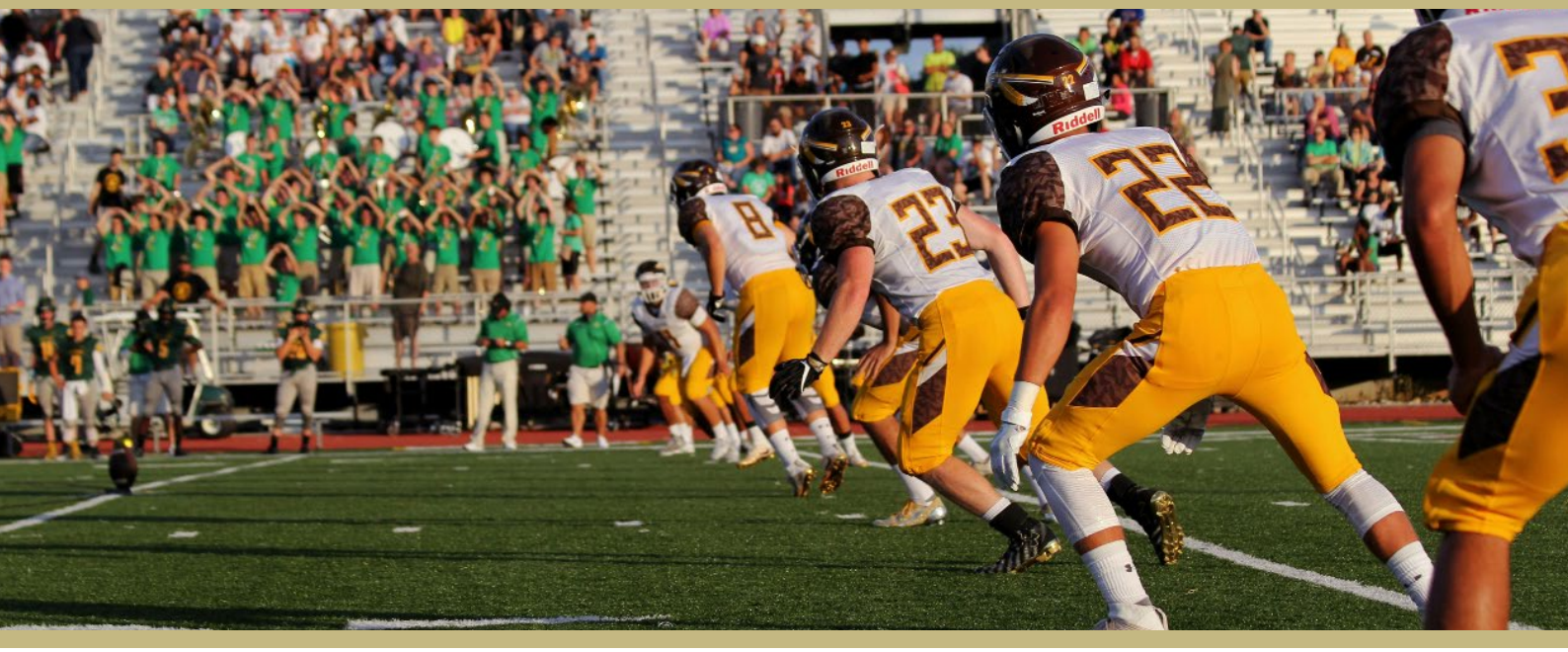


Is the Next Generation of Amateur Athletes Bringing the *House* Down?

Written by Summer Student Mitch Babec
Blaney McMurty LLP, Canada

Compensation. Regulation. Protection. Sports across the United States, Canada, and Europe have often taken distinctly different paths shaped by culture, economics, and law. A landmark US$2.8 billion settlement in the U.S. may rock the boat when it comes to classifying amateurs and professional athletes. The impact may not be limited to the U.S., either; Canada and Europe could experience some waves of change in their own sports leagues as young athletes weigh their educational or financial options with the love of the game.

2025 may well mark a new era in college athletics. The US$2.8 billion *House v. NCAA* settlement now requires the National Collegiate Athletic Association (NCAA) and its top-tier Division I conferences to pay retroactive damages beginning July 1, 2025. It also allows each Division I institution to share up to US$20.5 million per year with current athletes.[1] The agreement ultimately risks upending the NCAA's century-old model of what it means to be an amateur athlete. Student athletes may now be recognised as genuine economic players in their own right. [2]

The NCAA historically enforced strict amateurism through Bylaw 12, which banned athlete pay beyond scholarships. But the Supreme Court's 2021 *Alston* decision changed that. It ruled that overly restrictive limits violated antitrust law. This has since opened the door to state laws like California's *Fair Pay to Play Act* that recognise Name, Image, and Likeness (NIL) rights. NIL rights allow student athletes to earn income from personal publicity, including autographs, endorsements, and social media content.

1 ESPN, "Judge Grants Final Approval for *House v. NCAA* Settlement" (2025).
2 David J. Kaufman, "The Death of College Athletics: *House v. NCAA*," *Sports Litigation Alert* (11 July 2025).

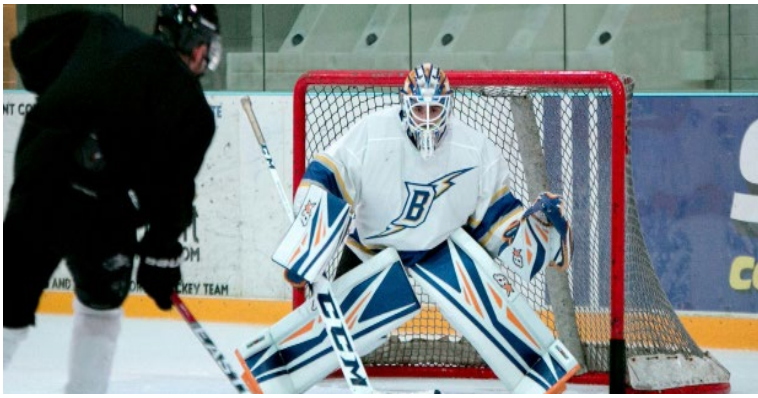
Some may say the floodgates to third-party deals have opened. It appears the *House* settlement may keep the momentum going.

Under the *House* settlement, the retroactive damages would apply to over 400,000 athletes for NIL rights.[3] Roster caps will replace scholarship limits, which could give college athletics departments a bigger say in how they allocate aid. For U.S. athletes, the *House* settlement could give these institutions the chance to put together a multi-source compensation structure where they add scholarships and outside endorsements to school-funded revenue pools. The combined effect of direct revenue sharing and third-party endorsement freedom creates a composite income structure in college sports never seen before.

This new kind of funding could complicate things. For example, the federal civil law Title IX prevents sex-based discrimination among federally funded institutions. There is already some pushback against the *House* settlement because it arguably favours men's teams. Revenue-sharing under Title IX will likely need to reflect equitable distribution across men's and women's programs.[4] For the athletes, they will experience a brave new world navigating a more complex marketplace that now demands legal, tax, and branding expertise.[5]

Up north, Canada's amateur sport system seeks to align with public policy goals like community engagement, health promotion, and excellence. Over CA$230 million annually flows through programs such as the Athlete Assistance Program and the Sport Support Program. Public money explicitly funds amateur facilities and focuses resources on grassroots and community development. The *House* settlement nonetheless threatens to put pressure on this system. U.S. colleges can now significantly outbid Canadian universities and federal stipends, as seen with top 2026 NHL prospect Gavin McKenna's reported price tag of US$700,000 to attend Penn State University next season. There is a fierce and open debate among stakeholders about whether Canadian amateur athletes should access revenue-sharing models or enhanced endorsement freedom like their NCAA counterparts.[6]

Professional leagues operating in Canada, including the National Hockey League and the Canadian Football League, already share revenue with athletes through collective bargaining agreements. The *House* settlement also serves in this context as a reminder that commercial rights can expand when not directly negotiated in university athlete contracts. Policymakers are exploring higher performance-linked stipends, hybrid-funding models that allow limited endorsements within U Sports eligibility rules, and targeted tax incentives for Canadian sponsors who are willing (or able) to match NIL offers.[7]



Across the pond in Europe and the United Kingdom, many elite athletes are classified as employees protected by national labour statutes and EU competition law. Revenue sharing is embedded in collective bargaining agreements or league regulations like UEFA's Financial Sustainability Rules. These will cap

3 Fast Company – Title IX Concerns.
4 The Guardian, June 14, 2025.
5 JD Supra, July 11, 2025.
6 Lavery, July 14, 2025.
7 Aird & Berlis LLP, June 9, 2025; U Sports, March 11, 2025.

squad costs at 70% of club revenue by the 2025 26 season.[8] While *House* has not forced immediate regulatory change, it has fanned the flames of some existing debates about competitive balance and commercial rights.

European basketball academies, for example, report that six-figure U.S. NIL offers tempt top prospects away from EuroLeague development programs.[9] Similar to Canada, clubs may have to get creative to retain talent. There is more and more chatter of *House* alongside Court of Justice of the EU rulings to illustrate rising antitrust scrutiny of sports governance on both sides of the Atlantic.[10] Structural differences in Europe do not necessarily mean that direct rule changes in Europe cannot or will not happen. *House* still offers a precedent that could influence future negotiations on roster limits, wage caps, and image rights policies.

It seems each region's legal system seeks reform in its own way. For the U.S., antitrust litigation has been a significant catalyst that questions the idea of what makes an employee. Canada seems to rely more on public policy instruments and may need to modernise amateur funding at the risk of losing emerging stars. European and UK clubs and regulators will likely continue to keep an eye on the state of antitrust laws and transatlantic talent movements as they fine-tune financial regulations.[11] Worldwide, athletes may do well with multidisciplinary advisory teams off the pitch, rink, or court to manage income streams that are more complex.

The *House* shockwave has redefined the boundaries between amateur and professional sport in the U.S. and may be sending ripples across Canada and Europe sooner rather than later. Perhaps when law, policy, and market forces all meet, athlete commercial rights can expand swiftly. And it could indeed be a swift expansion–one that eventually makes our concept of the amateur student-athlete a thing of the past.

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8 UEFA, *Club Licensing and Financial Sustainability Regulations*, July 6, 2023.
9 Sports Illustrated, June 1, 2024.
10 JD Supra, June 14, 2024.
11 Reuters, December 16, 2024.

Bruce Ralston - Partner

Bruce is a sports lawyer, specialising in the arenas of liability & risk in sport as well as governance having worked with insurers, sports governing bodies and motorsport companies in these arenas for the past 25 years or so.

His passion for virtually all sport has extended beyond participation & spectating to securing two postgraduate qualifications in sports law & governance from KCL & Birkbeck respectively. He is currently considering going for a trifecta.

He is a leading member of the Insurance Law Global Sports Group and has delivered many seminars and articles on the seemingly ever-increasing risks sport faces.

Whilst he can be trusted to deliver honest, forthright advice on the subject on which he is instructed, it is not recommended that he is asked who will win, say, the Grand National or The Open.

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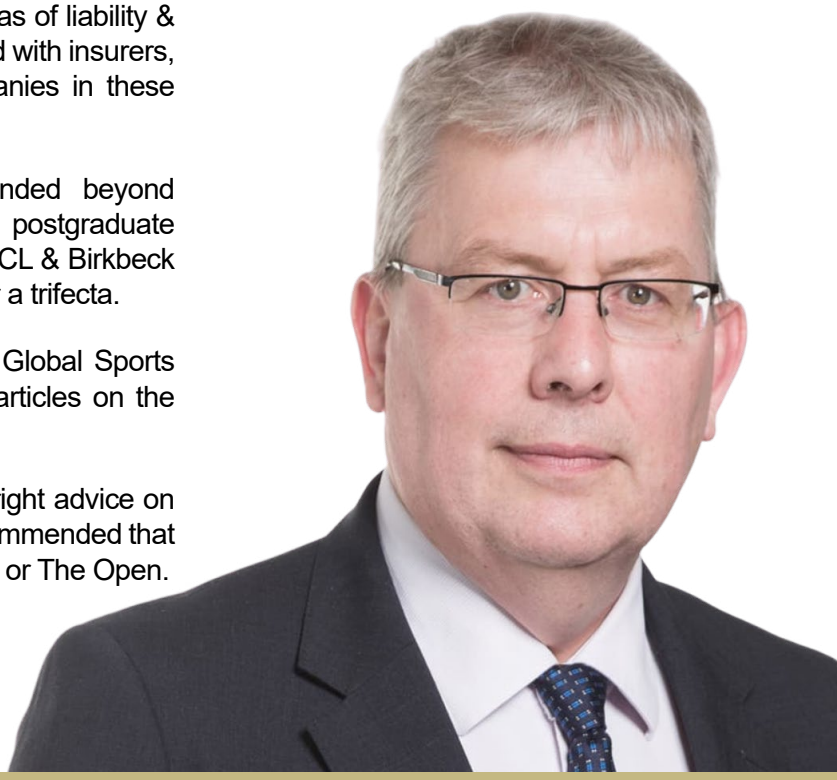

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Our national team of sports lawyers brings a wide range of skills and expertise allied with pragmatism and commercial acumen, underpinned by a passion for all sports — from Cumbrian rugby, football in Dartford through to participation at European Championship-level triathlon and motorsport.

The group is a real front runner in advising on safeguarding issues. This includes policy formulation, advising on enquiries and investigations and dealing with data protection and human rights issues, as well as liaising with agencies including the police, social services and the NSPCC.

We advise insurers, brokers and insureds (governing bodies, clubs and organisers of sport) on all aspects of liability, regulation and risk, having acted in a wide range of sports including motorsport, rugby, gymnastics, martial arts, equestrian activities, football, hockey and golf. A specialist sub-team is focused on the issue of coverage and advises on both domestic and international matters, with recent highlights including claims under a series of related policies for professional footballers in the UAE.

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Could a new case signal greater liability protection for insurers in respect policyholders carrying out desirable social activities?

Written by Partner Philip Tracey and Principal Associate Emmett Boyce
Weightmans, United Kingdom

Standard of Care, Social Action, Responsibility and Heroism Act 2015, Hetherington v Fell & Ferryhill Cycling Club

The High Court has recently handed down judgment in *Hetherington v Fell & Ferryhill Cycling Club (16 June 2025)*.

The Facts of the Case

The claim arose as a result of a collision between a cyclist, Benjamin Hetherington and a vehicle, driven by Raymond Fell. Mr Hetherington was a member of the Ferryhill Wheelers Cycling Club (The Club), an unincorporated association and was taking part in a time trial event organised by the Club.

Mr Hetherington sustained serious injuries when Mr Fell pulled out in front of him causing him to collide with the vehicle and be thrown into the road.

Mr Hetherington pursued a claim (via his father acting as litigation friend due to the severity of his injuries) against Mr Fell, who denied he had been negligent. Mr Fell, in turn brought a claim against the Club seeking a contribution and/or indemnity, "*alleging negligent risk assessment and failure to put out adequate signs and a sufficient number of marshals*."

The Compensation Act in effect requires courts to consider whether steps to meet a standard of care would prevent or discourage people from taking part in a "desirable activity". This means, in practice, that those organising such activities will not be expected to exercise a standard of care comparable to those involved in activities that would not be deemed as desirable.

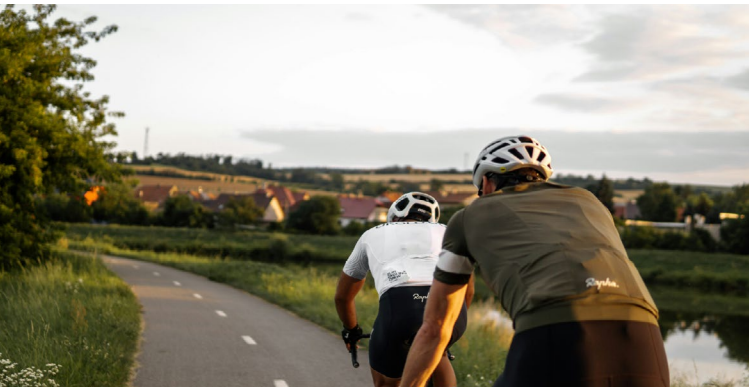
The SARH, introduced in 2015 as a clarification of the Compensation Act, requires the court to have regard for whether the allegedly negligent persons were acting for the benefit of society

and demonstrated a predominantly responsible approach towards protecting the safety or interests of others.

The court rejected the evidence of Mr Fell and noted his insurers made “a wise decision to admit 100% liability” for the accident.

In relation to Mr Fell’s claim against the Club, the court found the Club did owe a duty of care to Mr Hetherington and the other riders. The Club owed a duty when carrying out risk assessments in relation to the possibility of a collision with negligent third-party drivers.

However, the court then considered the standard of care in light of SARH and the Compensation Act. What is particularly notable was that the court had no previous case law to rely upon in respect of SARH making this the first case where the courts have sought to test the extent of the protection that the Act offers in cases such as this.



Taking SARH into consideration, the court found that the Club carried on its activities for the benefit of the cycling members of society and its members gave their time for free. Further, the cycling club was “predominately responsible” when it came to their duty of care having completed risk assessments, placed warning signs and used marshals among other measures. Therefore, the court found that the standard of care to be applied was that of a reasonable informed volunteer.

On that basis, the court found that the cycling club had discharged their duty of care to a high enough standard. The claim against the cycling club was dismissed.

Commentary

Based on the findings of the court the decision in favour of the Club is not surprising. However, it is of note that the judge was prepared to rely on SARH in support of the position that the Club had not breached any duty of care.

This is the first occasion to our knowledge that SARH has been applied to a civil claim in these circumstances. It is perhaps questionable whether that was its purpose and whether the activities of a members club were envisioned as a “desirable activity” by the drafters of the Act. Nevertheless, subject to any further appellate authority, the Hetherington case is good news for public liability insurers and a reminder of the Act’s existence and its potential to assist volunteer and charity organisations avoiding the burden of legal liability and thereby deterring volunteers from taking part.

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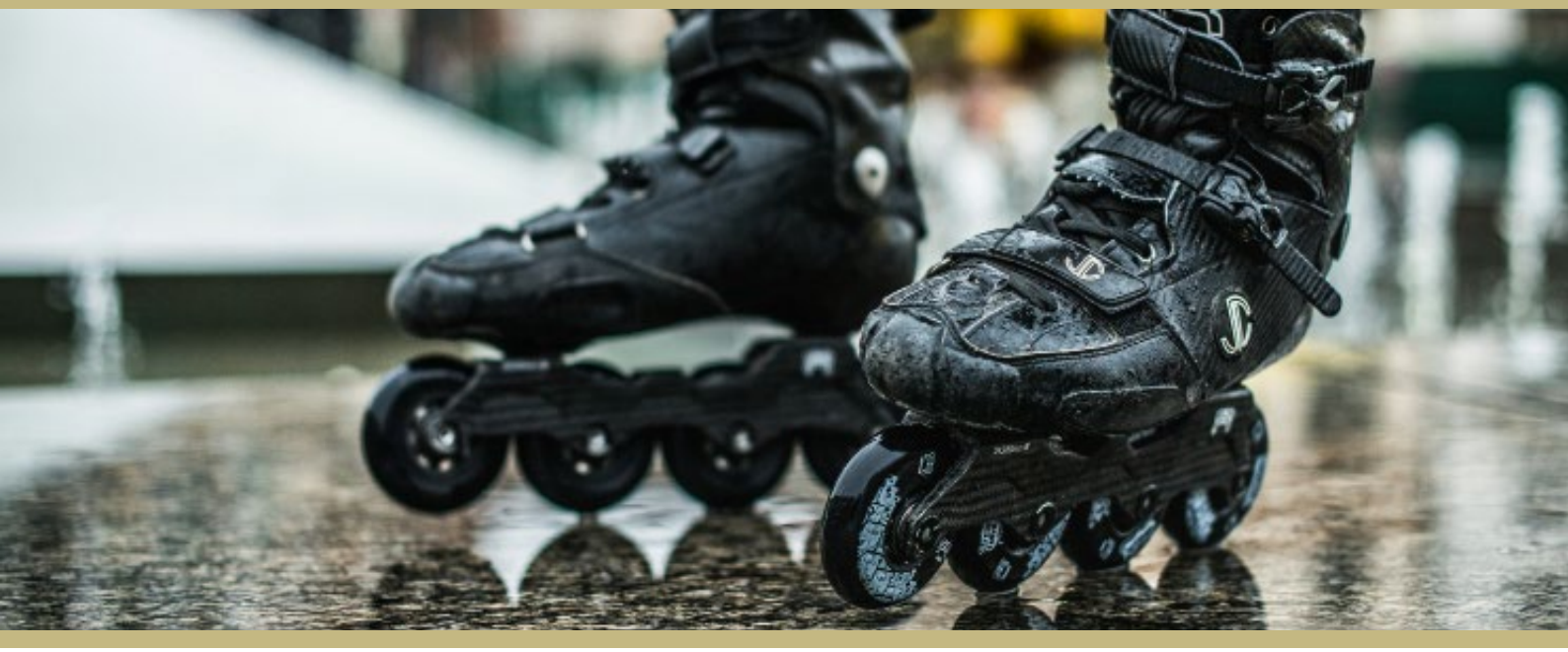


Civil liability of sports organisers and associations in case of sports injuries

Written by Lawyer Diederik Hulsbergen
Ekelmans Advocaten, Netherlands

Athletes constantly test the limits of their (and each other's) physical abilities in order to perform at their best. It is commonly known that injuries and accidents are inherent to physical competition. Because sports associations and event organisers facilitate this competition, the question arises as to what responsibilities they bear concerning participants' safety, particularly from a civil liability perspective. In Dutch case law, the liability of sports organisations and sports associations in the event of injury to participants is increasingly being called into question. In this article, I discuss a few examples from case law in which sports organisers had failed to take sufficient responsibility.

The legal basis: unlawful acts, sports and games situations, and duty of care

Under Dutch liability law, damage alone does not give rise to liability; it must result from an attributable wrongful act or breach of duty. For liability to arise, there must also be an attributable unlawful act or a breach of contractual duty of care. This may be the case when a sports organiser has created (or allowed to continue) a dangerous situation that exposes a participant to greater risks than is reasonable in the circumstances.

In Dutch case law, there is often talk of a higher threshold for (non-contractual) liability in sports and games situations, because people are aware of the risks inherent in the activity being practiced. It is established case law that participants in sports activities may be presumed to be aware of the health risks associated with sports competitions. The Supreme Court ruled: "To a certain extent, athletes can expect dangerous behavior from each other that is provoked by the game."[1]

On the same basis, one could argue that sports organisers and sports associations—given the

1 HR 28 juni 1991, ECLI:NL:HR:1991:ZC0300 *(Natrappen-arrest),* ro. 3.3.

sporting context—are less likely to be held responsible for injuries to participants. After all, participants are also aware of the risks involved in the activities in which they participate. However, case law shows that this is not the case, because the risks that materialise often arise from factors beyond the participants' own behavior. This is where the distinction between sporting risk and organisational failure arises.

The position of sports organisers

Sports organizers are often in a position of authority and (organisational) responsibility, for example for the playing field, equipment, supervision, or instruction. The responsibility that this position entails is also clearly reflected in case law.

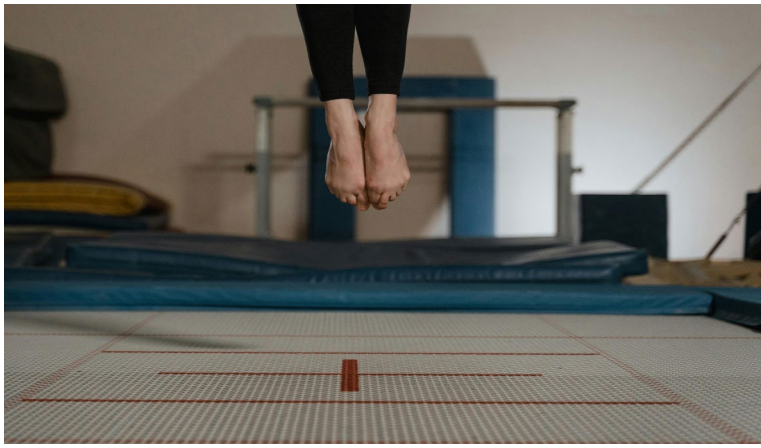
In 2005, for example, the Supreme Court held the organiser of an inline skating course liable for the serious head injury sustained by one of the participants. Although the organiser had mentioned the option to wear a helmet, it failed to sufficiently stress its importance and the risk of serious head injury without one.[2] Organisers of sports and recreational events therefore have a duty to warn participants about the risks they may encounter.

Causality is required

There must also be a causal link between a breach of the duty of care by the sports organiser and the injury sustained. If a particular injury would also have occurred if the duty to warn had been fulfilled, the organiser is not liable.

For example, the ruling of the District Court of North Holland on March 16, 2022, found that although the operator of an indoor trampoline park had acted dangerously—and therefore unlawfully—towards a visitor, it was not liable for the leg injury she sustained.[3] Here too, the operator had failed to warn participants by means of effective precautions, such as warning signs or instructional videos. Because a visitor landed upright on a Big Airbag instead of on her bottom or back, she suffered serious leg injuries. The court ruled that the operator had created an unnecessarily dangerous situation by failing to adequately warn participants that they had to land on their backs or bottoms.

However, the injured party's statement at the hearing showed that she had intended to land correctly but failed to do so, despite having observed others. The fact that she knew how to land correctly but nonetheless failed to do so, was reason for the court to rule that there was no causal link between the absence of effective warnings and instructions and the occurrence of the injury. As a result, the operator of the trampoline park was not liable after all.

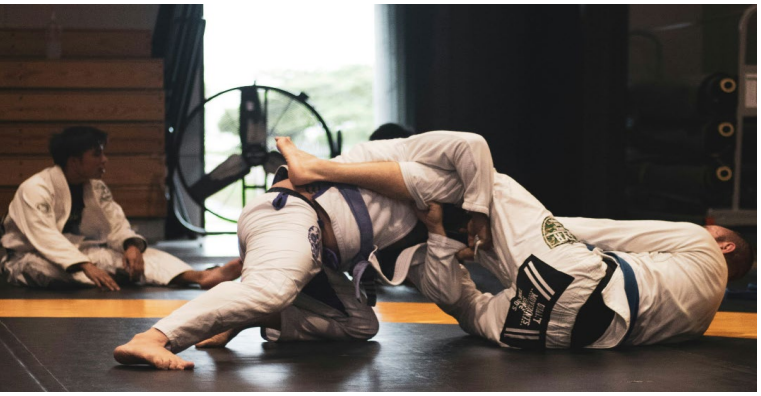


The role of sports associations: regulators and supervisors

Sports associations have a dual role: they set rules and monitor compliance, often through affiliated clubs. This regulatory function entails responsibility, especially when it comes to safety aspects. Think of rules about protective equipment (such as helmets), medical supervision, or playing field requirements. Sports associations will also have to continuously work on safety protocols based on the current state of science and practice, for example to counteract known and preventable risks. If sports associations do not sufficiently comply with their own regulations or otherwise fail to fulfill their duties of care, they may bear the financial consequences.

2 HR 25-11-2005, ECLI:NL:HR:2005:AU4042.
3 Rb. Noord-Holland 16-3-2022, ECLI:NL:RBNHO:2022:2486.

In a recent case before the Midden-Nederland District Court, the central question was whether the Dutch Judo Association (JBN) was liable for knee injury sustained by a participant during a jiu-jitsu tournament.[4] The regional tournament had different weight classes, including 85–94 kg and 94 kg+. Because there was only one participant in the highest class, JBN combined both classes. The plaintiff was not informed of this and had to fight an opponent weighing 105 kg. In doing so, he suffered serious knee injury. The court ruled that when combining weight classes, the JBN has a duty of care to inform participants. It was not the combination itself that was the problem, but the lack of communication about it. Participants can expect to be informed if they are facing a (potentially) much heavier opponent. By omitting to inform, JBN exposed the claimant to an unreasonable risk for which he was not adequately prepared, given the circumstances. There was also a causal link: the claimant had made a plausible case that he would have withdrawn if he had been warned.



Insurances

Sports clubs in the Netherlands are usually insured through collective liability insurance, often arranged by the association or umbrella organisation (such as NOC*NSF). Sports associations will generally provide various types of insurance for their member clubs, such as liability insurance, employer's liability insurance, and accident insurance.

Conclusion: caution is not optional

The civil liability of sports organisers and sports associations is becoming increasingly clear in case law. Although participants accept many risks, there is a clear and growing responsibility for those who facilitate, regulate, and organise sports. Case law shows that this responsibility is not taken lightly: negligence in safety, supervision, or communication can lead to liability.

Sport is not a risk-free activity. The law does not require absolute safety, but it does require sports organisers to take reasonable precautions against foreseeable dangers. This contrasts with the higher liability threshold that applies to participants among themselves, and emphasises the responsibility that sports organisers have. It is specifically the awareness of the risks that gives organisers and associations a duty of care to take adequate precautions.

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4 Provisional judgement: Rb. Midden-Nederland 22-5-2024: ECLI:NL:RBMNE:2024:6123. Final judgement: Rb. Midden-Nederland 13-11-2024, ECLI:NL:RBMNE:2024:6120.

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