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Primary Assumption of Risk and the Recreational Activity Doctrine

Many commentators over the years suggest American citizens have grown accustomed to blaming others for our own misfortunes. Even in the context of sporting and recreational activities, individuals injured while participating or standing nearby sporting events look to sue participants, coaches, spectators, officials, volunteers—even the very organizations that sponsor, fund, and produce the sport or recreational activity. Those involved in sports and recreational activities sue even though they either know or have reason to know and assume the risks that are inherent in all sports and recreational activities. Some courts and state legislatures have dealt with the fact of this knowledge of inherent risks by adopting legal rules that refuse to impose tort liability for negligence in sports and recreational activities. Instead, these courts and legislatures impose tort liability in the context of sports and recreational activities only when injury occurs as a result of reckless or intentional conduct.

The common law protections of many states in this area grew out of what came to be known as "the Baseball Rule." This panel discussion will visit this rule and the development of application of Primary Assumption of Risk principles to Plaintiff's making injury claims that arise out of sporting or recreational activities.

California and Ohio courts have led the way by adopting in the "Recreational Activities Doctrine." For example, in *Knight v. Jewett* the California Supreme Court noted: "The courts have concluded that vigorous participation in . . . sporting events likely would be chilled if legal liability were to be imposed on a participant on the basis of his or her ordinary careless conduct." Likewise, Ohio courts have stated the rule rather simply: "the Supreme Court of Ohio has generally held that 'where injuries are sustained in a sporting event, there is no liability for injuries caused by negligent conduct." In addition, many individual states—Wyoming for example—have attempted, with varied success, to codify such a law.

The discussion here will consider the many and varied types of activities to which this Recreational Activities Doctrine applies and will explore how the development of this doctrine can

serve to short circuit claims and litigation arising out of recreational activities. A discussion will also occur regarding an anticipated wave of concussion litigation and how these principles may help to stem that tide of expected litigation in the coming years.