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Important Legal Case Which Impacts Your Liability



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The New York State Court of Appeals has just issued a decision which will prevent camps and other recreational centers in New York State from defeating negligence claims by arguing that the plaintiff assumed risks inherent in a routine sport or activity.

This decision represents a significant change in the law in New York and places New York law in line with most other states. Prior to the Court of Appeals decision in *Trupia v Lake George Central School District* on April 6, 2010, a claim for injuries that occurred during a sporting or recreational activity was completely barred if the plaintiff knowingly and voluntarily assumed the risks inherent in the sport or activity. For example, if a camper broke an ankle sliding into second base, the law generally barred a claim for personal injuries because the injury was inherent to the game of baseball.

Trupia eliminates assumption of the risk as an absolute defense in most sports injury cases. The 12-year-old plaintiff in *Trupia* sued a summer camp for negligent supervision for injuries sustained when he slid down a banister. The court held that assumption of the risk does not apply, stating:

We do not hold that children may never assume the risks of activities, such as athletics, in which they freely and knowingly engage, either in or out of school - - only that the inference of such an assumption as a ground for exculpation may not be made in their case, or for that matter where adults are concerned, except in the context of pursuits both unusually risky and beneficial that the defendant has in some non-culpable way enabled.

Based on this decision, it appears that the doctrine of assumption of the risk is dead in cases of routine sports and recreational activities where the defendant is culpable. This change in the law increases the liability exposure of summer camps in New York by making it far more difficult to obtain early dismissal of sports injury cases. If a defendant is negligent, assumption of the risk will not bar recovery. Assumption of the risk will now apply only to activities that are unusually dangerous and only if the defendant was not negligent.

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