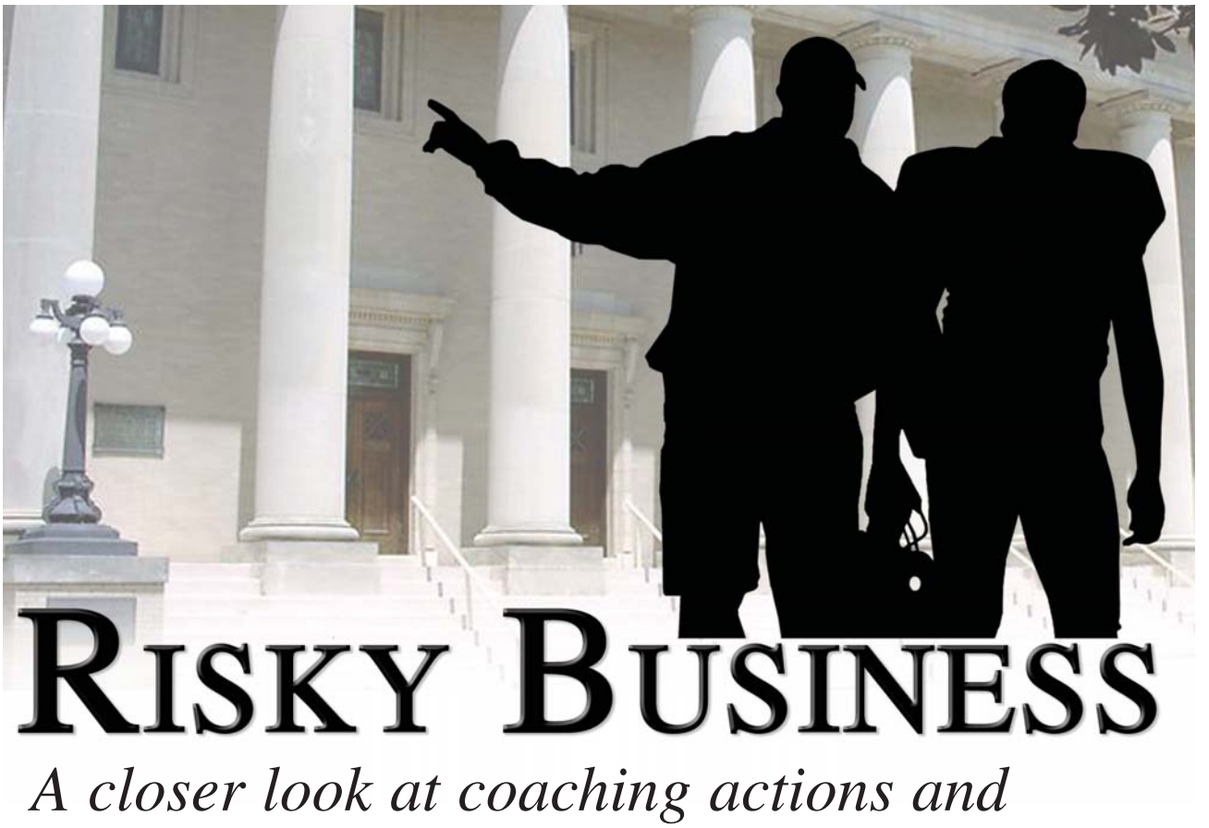
by Karin Alexander, J.D.



RISKY BUSINESS

A closer look at coaching actions and attitudes that put you at risk for a lawsuit

You're an experienced coach who follows all the safety protocols with your athletes, so you don't have to worry about injuries or being sued in a personal injury case, right? Wrong. No coach is safe. The prevalence of a "boot camp" atmosphere in training facilities across the country today is giving rise to a rash of lawsuits alleging negligence, gross negligence and even intentional misconduct by strength coaches.

While a "Do-it-because-I-said-so-and-until-you-drop" mentality might be traditional among coaches of professional teams, secondary schools and universities, this approach has now infiltrated the athletic programs of middle schools and even elementary schools. This is a mentality all athletic directors, coaches and trainers must take extreme care to avoid.

Overly aggressive coaching without appropriate measures to ensure the safety of athletes is a serious liability risk for schools and personnel in today's litigious society. There is no protection under the law for an excuse of "He didn't have to do what I told him in training," especially at the younger age levels.

Wise strength coaches will always assign daily workouts for their athletes by first carefully evaluating whether a specific athlete is at risk for an injury or even just an injury claim, keeping in mind the athlete's temperament, training and injury history, and reaction to particular training instructions.

Even with the most careful precautions, accidents can happen, but frankly, the current attitude in personal injury cases seems to be "There is no such thing as an accident!" It is clearly in the best interests of coaches and athletic directors to implement appropriate strategies so that the question of a lawsuit never arises. The following is a discussion of several actual personal injury cases that relate to this topic.

A Hot Topic

Remember the famous McDonald's hot coffee case? In Liebeck v. McDonald's, a 1994 lawsuit against the hamburger chain, the plaintiff alleged that

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McDonald's was negligent for serving her coffee that was too hot. She had placed a Styrofoam cup of coffee in her lap at a drive-through window and subsequently suffered third-degree burns from the liquid spilling onto her legs and groin when she removed the lid to add sugar and cream.

One might easily argue that since coffee is made with boiling water, anyone could reasonably expect it to be as hot as 212 degrees Fahrenheit, the temperature of boiling water. However, the jury in this case focused on the issue of how necessary it was for the coffee to be served so hot considering the potential for harm inherent in handling a liquid at such a high temperature.

Another factor in the case was the number of McDonald's customers who previously had reported similar accidents (700 such reports in the previous ten years of first- to third-degree burns), a fact that addressed the ability of McDonald's to foresee the possibility of such injuries, as well as the actions the company had taken or not taken to prevent such injuries.

The jury found that McDonald's had engaged in wanton, willful, reckless, or malicious conduct by refusing to post warnings on its coffee cups, despite being aware of the frequency and seriousness of burns due to the high temperature of the coffee, and by refusing to decrease its serving temperature.

Testimony indicated that a third-degree burn could be sustained within three seconds of contact with the skin by a liquid at approximately 200 degrees, the average temperature at which McDonald's served its coffee. So, it was an irresponsible corporate attitude that really did McDonald's in—its refusal to behave in a concerned and responsible manner towards its customers.

McDonald's argued that Ms. Liebeck's negligence in holding her coffee between her knees and removing the lid while in a car were major factors in causing the accident and her injuries. The jury, nevertheless, awarded her $2.4 million in damages.

This amount was determined by the jury's decision that Liebeck's negligence was 20 percent responsible for her injuries, and therefore a corresponding twenty-percent reduction was deducted from the original award. (This amount was further reduced by the judge, and the parties subsequently settled for an undisclosed sum prior to appeal.)

As you can see from this case, the mere fact that the plaintiff might have acted with less foresight and common sense than might reasonably be expected *did not* protect McDonald's from liability.

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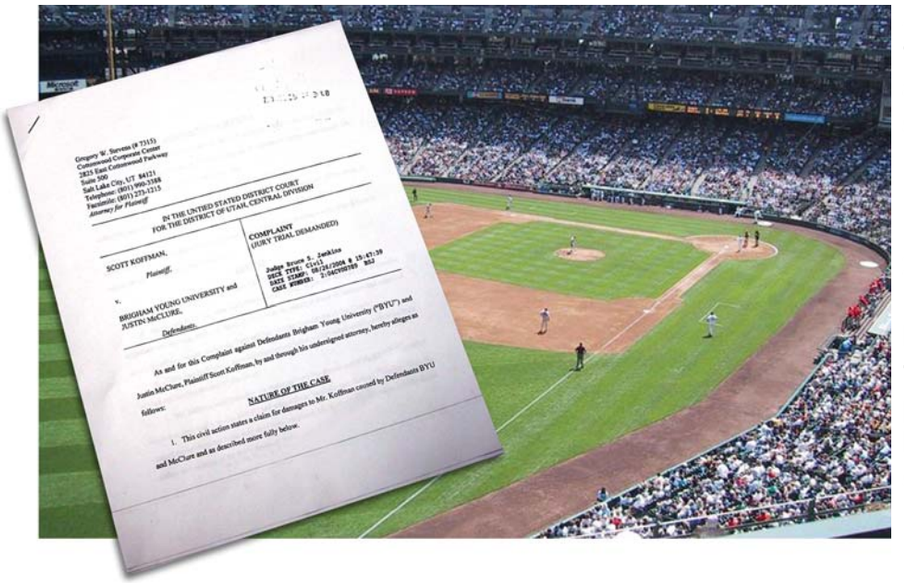
From Weightroom to Courtroom

A recent case filed in federal court in Utah has alleged misbehavior by a strength coach at Brigham Young University (BYU). This lawsuit, filed on August 6, 2004, on behalf of Scott Koffman, a former BYU baseball player, claims that the strength



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Koffman, who had turned down an offer to play professionally for the Baltimore Orioles prior to attending BYU, claims he was seriously injured when his strength coach insisted that he press excessive weight.

Specifically, the complaint states that the trainer, Justin McClure, ordered Koffman to press more weight with an elevated leg press than Koffman felt he could press with correct form. At this point, McClure allegedly insulted Koffman and insisted the athlete complete the press, saying, "You're not lifting less than I tell you." McClure then is claimed to have added another 100 pounds to the machine and to have told Koffman to lift.

The suit claims that Koffman suffered severe injury to his back and spine on the first lift. These injuries allegedly became greatly aggravated over time and despite numerous treatments. Currently, Koffman claims that he is in need of vertebrae fusion surgery, that his baseball career is finished, and that he is in constant pain as a result of the injury. He requests an award of damages of at least $9.6 million.

Of great importance in this situation is the fact that the trainer allegedly used insults and insistence, not uncommon methods in traditional training, to cow the athlete into performing a lift with which he was not comfortable and that he felt he could not perform properly. In addition, because McClure is claimed to have added an additional 100 pounds to the press *after* Koffman stated that he could not perform the lift properly, it is an act that, if the allegations are true, could only be construed as vengeful and punitive.

This attitude, again, while not unusual in training, can be the kiss of death in a liability suit, resulting in claims by the prosecution of willful, malicious behavior. This type of allegation sets the foundation for an award of punitive damages, the often truly devastating damage amounts awarded to punish defendants for their reckless disregard of their duty of care.

That the plaintiff was a grown man and could have refused to perform the lift will not be a fail-safe defense in this case or in any such cases, especially when an athlete's career, scholarship or even opportunity to play is at stake. Koffman's refusal to follow the trainer's instruction could be viewed as a basis for the trainer's future retaliation, making refusal a practical impossibility. In younger athletes, the option of refusing would be even more tenuous. [Our efforts to obtain additional details on the Koffman v. BYU case from the plaintiff's attorney, Mr. Gregory W. Stevens, were unsuccessful. The claims against BYU described above and against Mr. Justin McClure are based only on the allegations in the lawsuit, and BFS makes no representation as to their truth or falsity.]

Heavy-Handed Tactics

In another case in San Diego, a man was reported in the local newspaper to be considering a suit against a 24 Hour Fitness club, where the man claimed he had suffered broken ribs at the hands of a personal trainer who had increased his leg press weight from 70 pounds to 90 and insisted the man lift the increased weight with one leg when he had been using two. The rib injury allegedly interrupted the

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athlete's training for two months and caused him great pain.

Disregarding or misjudging an athlete's level of expertise in a training situation is a serious mistake for a coach or trainer to make. In another similar case, a club trainer in New York allegedly increased a client's weight on a machine (the type was not specified) from the athlete's typical weight to 270 pounds. The client allegedly repeatedly expressed great concern about his ability to lift that much weight.

The suit claimed that the trainer urged (merely "urged") the client to attempt the weight. The client attempted the lift and claimed he suffered injury as a result of the trainer's negligence. Although the club moved to dismiss the lawsuit based on the doctrine of "assumption of the risk" (that the client knew of the risks involved in the activity and assumed the risks and consequences of his actions when he decided to lift the weight), this motion was denied and the suit proceeded to trial.

The New York Supreme Court, in reviewing denial of that motion noted that "While it is clear that plaintiff, who was not a novice to weight training, did assume those risks ordinarily entailed by properly supervised weight training, he cannot be said to have assumed risks in excess of those usually encountered in the activity, particularly unreasonably increased risks attributable to lapses in judgment by a trainer. . . ." (Mathis v. New York Health Club).

Adding Insult to Injury

To see just how far cases of bad coaching judgment can go, let's look at yet another case, this time one in which the coach was held liable for damages suffered by an athlete due to an eating disorder that she claimed was caused by the coach's harsh treatment.

Here, a former high school basketball player, Jennifer Besler, sued her former coach based on his insistence that she lose ten pounds. She was awarded $3 million, which was later reduced to $1.5 million based on the plaintiff's failure to mitigate her damages with appropriate treatment. Additionally, the plaintiff's father was awarded $100,000 based on the jury's finding that he had been barred from speaking before a school board meeting on the issue of his daughter's treatment. The school board, which was also named as a defendant in the suit, was responsible for paying this part of the award.

As another example of the high standards being imposed on coaches and trainers, consider the case of Stacy Elston filed in 1997 against the University of Evansville. This lawsuit stated that Elston, a competitive diver in high school and a freshman member of the Evansville team competing in NCAA events, received a scholarship for diving. While a team member, Elston was under the supervision of certified athletic trainers.

The plaintiff, Elston, stated that she was injured while at a dive meet when she suffered damage to her cervical-thoracic spine, resulting in sharp pain in her neck and upper back. Elston claims she notified her trainer and the student assistant trainer of this injury after the meet and was provided with massage and ibuprofen.

Elston's pain continued through a later meet, and the trainers were again informed of her continuing pain and its increasing severity. Over the ensuing six weeks, Elston claims she received some types of physical therapy from the student trainer but

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was not examined by the head trainer or assistant trainers.

The assistant trainer allegedly continued to have her participate in diving events despite being informed of the ongoing pain and despite Elston's deteriorating performance due to such pain. The lawsuit also states that the trainer created an atmosphere of fear and intimidation, once allegedly telling her, "I know you think you are in pain but you're going to have to get used to it. Now get up there and dive!"

In tears as a result of the pain and unable to stand, Elston continued diving at the meet but was ultimately diagnosed with a non-union healed fracture which she claims ended her diving career and left her in continuous pain, with stiffness and a restricted range of motion.

In her allegations, Elston accused the assistant trainer of negligence. She also sued the university for negligence in overseeing her treatment and evaluating her condition. (Of note, the assistant trainer eventually resigned from his position, although allegedly for reasons unrelated to the lawsuit.) You can see there can be very serious repercussions when trainers ignore complaints from their top-level athletes and attribute any such complaints to a "wimp factor."

Dr. Marc Rabinoff is a professor and chair of the Department of Human Performance, Sport and Studies at Metropolitan State College of Denver, Colorado. He has been an expert witness in more than 200 lawsuits involving coaches, physical educators, equipment manufacturers, and schools. According to Dr. Rabinoff, 85 percent of injuries sustained by athletes are overuse injuries—that's right, injuries suffered as a result of too much training.

It is critical to pay attention to this fact and avoid over-training athletes, especially where there has been any indication of an injury. Timeworn approaches such as "Walk it off" and "Just keep playing" can now easily set coaches and trainers up for a liability nightmare.

A Sensible and Safe Approach to Coaching

A reasonable approach for a coach or trainer to take towards an athlete to create some protection against these types of lawsuits is to adopt the attitude of a "concerned parent." This means to listen to the athlete's complaints (of course, document and heed all complaints), and then proceed with the athlete's coaching and training as if you were a parent.

Difficult as it might be for coaches and trainers to leave the hard-line approach behind, the risks are just too great of incurring the substantial hassles and expense of a lawsuit, the potential liability, and the certain destruction of a professional reputation.

This "concerned parent" approach must be used in conjunction with common sense strategies for avoiding liability, including record keeping and evaluations, fastidious equipment maintenance, safety-sign posting, proper certification, consideration of training and athletic experience and competence, and responsible injury treatment and follow up.

The evidence overwhelmingly indicates that weight training is a safe activity when common sense standards of care are observed. Remain aware of over-training possibilities and don't dismiss your athletes' concerns about injury or overwork, tempting as it might be to push them harder to succeed.

Those athletes possessing the right mental attitude and physical abilities for great things will not fake or exaggerate injuries to get easy training time. And those athletes who are looking for an easy way out are not worth pushing hard and thereby putting yourself at risk for a career- and health-destroying liability lawsuit. To protect yourself and your career, acting in a reasonable manner under the circumstances at all times is your best insurance. BFS

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