

## JUNE 2001 NRPA LAW REVIEW

### LACK OF SAFETY INFORMATION & TRAINING FAULTED IN CHEERLEADING INJURY

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As a general rule, in determining liability for negligence, the risk reasonably to be perceived defines the legal duty to be obeyed. Accordingly, in applying this “risk/duty analysis” to a particular situation, the legal duty or responsibility to take certain safety precautions is generally commensurate with the foreseeable risk of serious injury associated with a given activity.

In the *Davidson* case described herein, the risks associated with a particularly dangerous cheerleading stunt and cheerleading activities in general were similar for both the varsity and junior varsity squads. However, as noted by the court, the level of supervision and instruction provided to these two groups was significantly different, despite the same level of risk:

In sum, the evidence showed that the varsity squad members, who were older, more skilled, and more experienced, were provided with a supervisor, were provided with safety instruction through the Universal Cheerleader Association (UCA) camps, were informed of the known risks involved in performing pyramids, and were admonished to create and abide by specific safety guidelines.

However, the JV squad members, who were younger, less skilled, and less experienced, did not have a supervisor, received no safety training, received no information regarding risks involved in performing pyramids, and were left on their own to make decisions regarding safety procedures.

Moreover, this “all or nothing” type of “double standard,” although commonplace, is indicative of an unreasonable risk which characterizes negligent misconduct under the risk/duty analysis. In stark contrast to the reasonable precautions taken for the varsity squad, the total lack of safety training and risk information provided to the junior varsity squad created an unreasonably dangerous situation which could certainly form the basis for negligence liability. Further, in light of a similar degree of risk, the level of supervision and safety instruction provided to the more experienced varsity squad provided readily available evidence of the applicable legal standard of reasonable care which should have been provided for the less skilled junior varsity squad.

#### PYRAMID SCHEME

In the case of *Davidson v. University of North Carolina at Chapel Hill*, No. COA00-16 (NC.App. 04/03/2001), plaintiff Robin Davidson was seriously injured while performing a cheerleading stunt while a member of a junior varsity cheerleading squad. The facts of the case were as follows:

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During the 1984-85 school year, Davidson was a sophomore at the University of North Carolina at Chapel Hill (defendant), and a member of the school's junior varsity cheerleading squad (the JV squad).

The university did not provide a coach for either the JV squad or the varsity squad during the 1984-85 school year. The varsity squad had an administrative advisor, Mary L. Sullivan, who worked for UNC on a part-time basis. Sullivan was responsible for uniforms, travel plans, discipline, and making sure the varsity squad members achieved a certain minimum GPA. Sullivan was not hired as a coach, and she had not received any formal training to be a coach.

Sullivan saw the JV squad members only when they practiced in the same gym as the varsity squad, but even at these times Sullivan did not actively interact with the JV squad. In fact, Davidson could not recall having ever met Sullivan.

The JV squad members, without a coach or an advisor, taught themselves how to perform stunts, and received no safety training or instruction. The squad members made decisions on their own as to when they were ready to perform certain stunts. The squad members were not provided any training in order to make such evaluations. There were no specific individuals to whom the JV squad members were supposed to report regarding injuries, or to whom the squad members were supposed to turn for help in evaluating stunts that needed improvement.

The squad received occasional guidance from the varsity cheerleaders, including the captain of the varsity squad, Robert Stallings, but the JV squad was not formally supervised by the varsity squad. Stallings testified that, as the captain of the varsity squad, he had no formal responsibilities toward the JV squad.

Up through January of 1985, UNC had not adopted guidelines regarding the experience required to join either cheerleading squad, the skill level required to perform particular stunts, or safety in general. Stallings testified that UNC "never shared with [the cheerleaders] information regarding safety and technical cheerleading skills."

UNC sent the varsity squad members to summer camps run by the Universal Cheerleaders Association (UCA) where they learned cheerleading skills and safety techniques, and where they were exposed to the UCA guidelines for cheerleading and safety. The JV squad members, however, were not sent to cheerleading camps, and the UCA guidelines were never officially adopted by UNC.

On 15 January 1985, the JV squad was warming up on the hardwood floor of Carmichael Auditorium prior to a women's basketball game. Although the squad typically used mats during practices, the squad did not use mats in Carmichael

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Auditorium during games or while warming up before games, and mats were not used on this occasion.

The JV squad had began to practice a stunt called a "two-one-chair" pyramid approximately three or four weeks before Christmas vacation. The two- one-chair pyramid typically involves two male cheerleaders standing side by side on the floor, a third male cheerleader standing on their inside shoulders with one arm extended straight up, and a female cheerleader who is lifted up to sit on the hand of the third male cheerleader.

During the warm-up, the squad attempted the two-one-chair pyramid with Davidson in the top position. Davidson reached the top of the pyramid but became unstable and began falling backward. As the pyramid leaned backward, the cheerleader holding Davidson pushed her forward and Davidson fell approximately thirteen feet. Because the pyramid had leaned backward at first, the spotters were out of position. As Davidson landed, the spotters were unable to prevent her shoulders and head from hitting the hardwood floor. Davidson suffered permanent brain damage and serious bodily injury as a result of the fall.

Davidson filed a negligence claim against UNC pursuant to the state tort claims act. The state claims commission ruled in favor UNC. In so doing, the commission found that UNC “did not owe Davidson a duty to provide coaching or faculty supervision to monitor the activities and stunts of the cheerleading squad, nor did defendant owe Davidson a duty to prohibit 2-tier pyramid stunts.” In the opinion of the commission, “[t]his absence of an affirmative duty is not only reasonable in terms of defendant's responsibilities, but also serves to protect student autonomy.” Moreover, the commission found UNC and its employees had not committed “any acts of negligence” which caused Davidson’s injuries. Davidson appealed.

### SPECIAL RELATIONSHIP?

As characterized by the appeals court, the specific issue was “whether a university has an affirmative duty of care toward a student athlete who is a member of a school-sponsored, intercollegiate team.” In order for Davidson to recover damages for negligence, the court noted that Davidson had to prove the following points:

- (1) that UNC owed Davidson a duty of care under the circumstances;
- (2) that actions or omissions by at least one of the named employees of UNC constituted a breach of that duty;
- (3) that the breach was the actual and proximate cause of Davidson's injury; and
- (4) that Davidson suffered damages.

Further, the court noted that “negligence presupposes the existence of a legal relationship between parties by which the injured party is owed a duty by the other.” Accordingly, the specific issue on appeal was whether UNC owed a duty of care to Davidson under the circumstances of this particular

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case.

As noted by the appeals court, a legal duty may arise where “a special relationship existed between the parties sufficient to impose upon the defendant a duty of care.” In particular, the court found that “special relationships are most often premised upon the existence of mutual dependance.”

Applying these principles to “the factual circumstances and policy considerations in this case,” the appeals court found sufficient evidence of mutual dependance to produce “a special relationship between the parties.” On one hand, the court found “UNC depended upon the cheerleading program for a variety of benefits,” including the JV squad cheerleading at JV basketball games, women's basketball games, and wrestling events. On the other hand, the court noted that “the cheerleaders received significant benefits from UNC as a result of participating in the cheerleading program”:

[Cheerleaders] were provided school uniforms purchased by the school. They were provided transportation by UNC, and they used university facilities and equipment for practices. Participation on the JV or varsity squad allowed the student to satisfy one hour of the school's physical education requirement.

### EXPECTATIONS OF PROTECTION?

In determining the existence of a legal duty based upon such a mutually dependent “special relationship,” the appeals court also found it “significant that UNC exerted a considerable degree of control over its cheerleaders.”

Typically, schools exert a high degree of control over many aspects of a student athlete's life. Here, UNC cheerleaders had to abide by certain standards of conduct, such as maintaining a minimum GPA and refraining from drinking alcohol in public.

According to the court, “students may have higher expectations with regard to the protection” they will receive from their school when the school “exerts significant control over students as a result of their participation in a school- sponsored athletic activity.”

Such expectations can result in the assumption by a student that, in the absence of any warning from the school that particular activities pose a significant risk, such activities have been determined to be safe. This kind of assumption may then prevent the student from making an independent assessment of the risk posed by those activities.

In this particular instance, Davidson testified “she expected UNC to look out for her, and that she expected the cheerleaders would receive sufficient training from UNC.” In so doing, however, Davidson acknowledged that “she understood that there was a risk she might fall from the top of the pyramid and that the spotters might not catch her.” Davidson, however, testified that she had “no knowledge that members of the UNC faculty and staff had expressed concern regarding the safety of

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cheerleading stunts.”

### NOTICE OF DANGER?

During the 1984-85 academic year, the cheerleading squads were the responsibility of the Office of Student Affairs. At that time, Donald Boulton was the Vice Chancellor and Dean for Student Affairs. Dean Boulton acknowledged that, prior to Davidson’s injury, he was aware that “multi-level pyramids, in the hands of people improperly prepared, were viewed as dangerous”.

[O]n 3 October 1980, the Associate Vice Chancellor for Student Affairs, James Cansler, wrote a memo to Dean Boulton expressing his concern about cheerleading safety in regard to both varsity and JV cheerleaders. Cansler recounted that four UNC cheerleaders had been injured in 1980, at least one of whom was injured when she fell from a pyramid. Cansler also stated that because cheerleaders represented the school at official athletic events and at public relations events, and because they were selected by a university sanctioned process, UNC should consider forming a special commission to study whether certain cheerleading routines were too dangerous to be permitted. No such commission was ever formed.

On 29 April 1981, Frederic Schroeder, the Director of Student Life at UNC, wrote a letter to the coach of the cheerleading squad at the time stating that multi-level pyramids should be prohibited due to the danger to participants. On 25 August 1981, and again on 18 February 1982, Schroeder wrote to the co-captains of the varsity squad expressing his concern regarding the safety of certain cheerleading stunts, including pyramids, and expressing his opinion that the varsity squad should adopt safety guidelines and should tailor the stunts each year to the particular abilities of the members of the squad.

Although Schroeder testified that he intended this information to be communicated to the JV squad by the varsity squad, the letters did not mention the JV squad, and Schroeder conceded that he did not know whether the information was, in fact, imparted to the JV squad. Dean Boulton received a copy of each of the letters mentioned above.

In addition to the safety concerns raised in this correspondence, Boulton also acknowledged that “he was aware of the growing body of concern regarding cheerleading stunts, and that he knew the ACC had banned pyramids higher than two levels at one point in 1983.”

In 1983, the Atlantic Coast Conference (ACC) adopted a policy prohibiting cheerleaders from engaging in pyramids "more than two high." Schroeder wrote a letter in October of 1983 to the Director of Athletics for UNC, asking for clarification of the phrase "more than two high" in the ACC prohibition. In response, Schroeder received a letter from the Assistant Athletic Director at UNC, stating that the ACC had NOT decided to make "any interpretations concerning cheerleaders an institutional decision,"

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and asking Schroeder and the Department of Student Life to "take charge of any future decisions with regard to the safety and well- being" of the cheerleading squads. It is not clear whether the ACC had actually rescinded the prohibition against pyramids "more than two high," or whether it had simply decided to allow the individual ACC schools to interpret this prohibition for their own squads.

### NO RECALL OF SAFETY TRAINING

Boulton testified that UNC generally provides "education on safety" for all of its students in all of their activities, and that "the University[s] responsibility for student activities is to provide them with the information that they need relative to safety." He also stated that UNC sought "to advise and educate" students in their activities and to "present this information and instruct them."

Boulton testified that the varsity cheerleaders were provided with safety instructions at the UCA summer camps, and that the varsity squad "had the opportunity to hear safety regulations from the gymnastics coach, from their advisors, from a variety of sources." However, Boulton conceded that he did not know whether the JV squad in 1984-85 received any safety instruction from the school.

When asked who would have had the responsibility of evaluating whether the JV squad members were competent to perform certain stunts, Boulton stated that he could not recall. When asked whether there was any effort on the part of UNC to enforce the UCA guideline that pyramids over two persons high should not be performed on a basketball court without the use of tumbling mats, Boulton stated, "I don't recall." Boulton also conceded that he did not know whether the JV squad received information regarding the ACC recommendations against pyramids over two levels high, or whether the JV squad was informed of Schroeder's concerns regarding pyramid stunts.

Boulton acknowledged that UNC did not take a position regarding pyramids over two persons high following the ACC ban in 1983. Boulton testified that the process of evaluating cheerleading safety guidelines did not begin until approximately January of 1984, and that no guidelines were implemented until the summer of 1985, a few months after Davidson's injury.

### DUTY OF REASONABLE CARE

Based upon such evidence, the appeals court held that UNC had an "affirmative duty, arising from the special relationship between the parties, to provide that degree of care which a reasonable and prudent person would exercise under the same or similar circumstances." Having found that UNC "did owe an affirmative duty of care to Davidson as a matter of law," the appeals court concluded that the state claims commission had erred when it failed to "make findings or conclusions as to whether any or all of the alleged omissions of defendant breached this duty of care." As a result, the appeals court reversed the decision of the state claims commission in favor of UNC and remanded (i.e., sent back) this case for further proceedings consistent with this opinion. On remand, the appeals court instructed the state

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claims commission to give “careful consideration” to the “various alleged omissions, articulated by Davidson throughout the record, which may have constituted negligence on the part of defendant.”

These omissions include, but are not necessarily limited to: failure to train in safety techniques and cheerleading skills; failure to provide a coach or supervisor; failure to provide safety equipment (including but not limited to mats); failure to evaluate the skill level of the squad members each year to determine the stunts to be performed; failure to evaluate the physical condition of the squad members before practices and games; failure to institute cheerleading guidelines; and failure to specifically prohibit pyramids above a certain height.

Further, in determining whether UNC breached its duty of reasonable care, the appeals court instructed the state claims commission to consider, among other factors, “Davidson's age, Davidson's skill level, and the age and skill level of all the JV squad members.”

In so doing, however, the appeals court noted that it had not considered whether Davidson’s claims were barred by the doctrines of contributory negligence (i.e. a failure to look out reasonably for her own safety) or assumption of risk (i.e., a voluntary encounter with a known danger). The appeals court refused to consider whether Davidson was negligent or had voluntarily encountered a known danger because “the Commission did not reach these issues” when it found UNC “had not breached a duty to Davidson.

In finding UNC owed Davidson a legal duty in this particular instance, the appeals court “emphasize[d] that our holding is based on the fact that Davidson was injured while practicing as part of a school-sponsored, intercollegiate team.” As a result, the appeals court stressed that “[o]ur holding should not be interpreted as finding a special relationship to exist between a university, college, or other secondary educational institution, and every student attending the school, or even every member of a student group, club, intramural team, or organization.” On the contrary, the appeals court agreed “with the conclusion reached by other jurisdictions addressing this issue that a university should not generally be an insurer of its students' safety, and that, therefore, the student-university relationship, standing alone, does not constitute a special relationship giving rise to a duty of care.”