

FIRST FEMALE IN FOOTBALL PROGRAM
CLAIMS NEGLIGENT FAILURE TO WARN OF RISKS

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Understandably, public park and recreation programs may have some legitimate safety concerns about allowing girls to compete against boys in contact sports.. However, as illustrated by the recent *Hammond* decision described herein, a sixteen-year-old female football player, like her male counterparts, necessarily accepted the inherent obvious risks in a contact sport. Accordingly, there was no legal duty to warn the girl about inherent and obvious risks associated with her playing football.

Generally, continued participation in contact sports despite known or obvious dangers constitutes a voluntary encounter with a known danger, i.e. assumption of risk. Assumption of risk precludes liability where the alleged negligence involved risks of injury subjectively known and appreciated by a sports participant.

BIG GIRLS DON'T CRY - THEY LITIGATE

In the case of *Hammond v. Board of Education of Carroll County*, 100 Md.App. 60, 639 A.2d 223 (1994), plaintiff Tawana Hammond, the first female high school football player in Carroll County history was injured in her team's initial scrimmage. The facts of the case were as follows:

Sixteen-year-old Tawana tried out for the Francis Scott Key High School varsity football team in the summer of 1989, prior to the beginning of her junior year in high school. Although Tawana had previously participated in a number of track events and played softball and soccer, she had never engaged in any contact sports. Tawana had watched football on television since she was six years old but did not become interested in football until her freshman year in high school; she had never observed any "really serious" injuries in these televised games, only a "twisted ankle or something." She saw a half dozen high school games during her freshman and sophomore years and saw no players hurt at those games. Tawana knew football was a "physical contact sport" and determined she wanted to play it because "it was different."

In order for a student to play sports at Francis Scott Key High School, the student and the student's parent must sign a document entitled "Francis Scott Key High School Athletic Regulations and Permission Form." Both Tawana and her father, John Hammond signed this form on June 18, 1989.

The permission form states that the student has read the school handbook and regulations and agrees to abide by them and that the parent has read them and "consents" to the child's participation in the sport. One sentence in the permission form specifically states that "we do our very best to avoid accidents, but we realize that in the

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normal course of events, some occur." In deposition, Tawana testified that she read the permission form and, in particular, this sentence before she started playing football and understood that she "could get a broken leg, or broken arm" as a result of playing varsity, tackle football.

The permission form also requires that "each participating athlete must have a special examination" by the family physician and "must be found physically fit" and "must also have parent/guardian permission to participate." Tawana submitted the required "Carroll County Public Schools Athletic Participation Health Examination Form" signed by her doctor on July 31, 1989; in it her doctor certified that she was "physically able" to compete in a list of sports, including football. Moreover, on that same date Tawana's mother, a certified nurse's aide, whose older son played football at Francis Scott Key High School until "he sprained his leg," signed the participation form. On that form, Ms. Hammond gave her "consent" for Tawana to play the several sports listed, including football. Ms. Hammond acknowledged in deposition that "injury was her biggest fear" for Tawana, i.e., "like a broken leg, or broken arms," but that she never communicated her fears to Tawana and believed Tawana "should be allowed to do whatever it was she wanted to do."

Throughout the summer of 1989, Tawana participated in the team's weight lifting program along with the other varsity football players. She was happy with the progress that she was making in her strength training and had no concerns or fears that she would not be physically strong enough to compete on the playing field. Practice began in August. On the first day of practice, which involved some contact drills, Tawana, along with the rest of the team, was instructed by the head coach, not to tackle, block or "do anything" with the neck because "you could get a neck injury." After the first practice, a meeting was conducted for the parents of the players. Tawana and both of her parents attended that meeting, at which an official gave a presentation discussing the possibility of serious injury to the neck if the head were used for blocking or tackling.

As practices continued, Tawana had no difficulty in keeping up physically with the other players on the team. On August 25, 1989, Tawana, along with the rest of the Francis Scott Key High School varsity football team, travelled to Anne Arundel County for the team's first practice scrimmage. Prior to the scrimmage, Tawana was interviewed by a television reporter and stated that "playing football is a tough sport. I do have to admit that." During the scrimmage, while carrying the ball, Tawana was tackled by a rival player and sustained multiple internal injuries including a ruptured spleen. Her spleen and part of her pancreas were removed, and she was hospitalized for some time.

In their complaint seeking \$1.25 million in compensatory damages against the defendant Board of Education of Carroll County, Tawana and her mother, Peggy Hammond, (Hammonds) alleged that "the high school authorities negligently failed to warn them of the potential risk of injury inherent in playing football." The Hammonds maintained that "if they had been so warned Tawana would not have chosen

to play football and her mother would not have permitted her to do so." The trial court granted summary judgment to the Board.

In the opinion of the trial court, the Board "had no duty to warn "of the risk of serious, disabling and catastrophic injury associated with playing on a high-school-varsity, tackle, football team." Even "if there was a duty to warn the Hammonds," the trial court found "it was satisfied." Further, the trial court concluded that "Tawana and her mother assumed the risk of injury as a matter of law." Hammond appealed.

On appeal, Tawana argued that the trial court had erred when it determined, as a matter of law, that "based on the her training, intelligence, and experience the Board owed no duty to warn the Hammonds of the risks of serious, disabling, and catastrophic injuries involved in participating in interscholastic high school football."

As noted by the appeals court, "different considerations may apply when an injury occurs during compulsory physical education classes rather than during voluntary participation in school athletic contests."

[W]hile a student usually is required to attend physical education classes and drills, a participant chooses to participate in voluntary games, and so can avoid them if he or she is weak, slow, disabled, etc.

In addition, the appeals court found no case in which minors injured while playing in school sporting events have successfully asserted that the school officials were negligent because of some failure to warn the plaintiffs of the possible dangers involved in voluntarily participating in the contact sport." On the contrary, the appeals court cited the general rule that "participants in an athletic contest accept the normal physical contact of the particular sport."

Physical contact in an athletic contest is foreseeable and expected... The playing of football is a body-contact sport. The game demands that the players come into physical contact with each other constantly, frequently with great force. The ball-carrier must be prepared to strike the ground violently. Body contacts, bruises, and clashes are inherent in the game. There is no other way to play it. No prospective player need be told that a participant in the game of football may sustain injury. That fact is self-evident...

Absent evidence of mental deficiency, and there is no claim that Tawana is not at least of average intelligence, minors are held to sufficiently appreciate the dangers inherent in the game of football, to know that football is a rough and hazardous game and that anyone playing or practicing such a game may be injured, and that fatigue, and unfortunately, injury are inherent in team competitive sports, especially football. Thus, it is common knowledge that children participating in games may injure themselves and no amount of supervision will avoid some such injuries, and the law does not make a school the insurer of the safety of pupils at play.

Under the circumstances of this case, the appeals court found that the Board "had no actual knowledge of any impending harm to Tawana, let alone any impending intentional harm."

If the Board had learned that Tawana intended to injure herself or that a rival player intended to injure or illegally hit her, then it well might have had a duty to warn Tawana and her parents. The Hammonds, however, do not even suggest that the Board had such knowledge or, indeed, that Tawana was injured because of some intentional act.

According to the appeals court, a fundamental and well-established principle in the law provides that "there is no duty to warn of obvious risks."

That principle is well established in Maryland. The Court of Appeals [i.e., state supreme court] explained more than twenty-five years ago that when a pleading alleges a danger that is "ordinary and obvious," it has not sufficiently alleged "circumstances which would require the defendants to give a warning." "there is no duty to warn someone of an obvious danger".

Applying this principle to the facts of the case, the appeals court found that "the hazard alleged--the possibility of injury to a voluntary participant in a varsity high school tackle, football game--was the normal, obvious and usual incident of the activity." As a result, the appeals court found "there was no duty on the part of the defendant to warn of this possibility." In addition, the appeals court stated that "a voluntary participant in any lawful game, sport or contest, in legal contemplation by the fact of his participation, assumes all risks incidental to the game, sport or contest which are obvious and foreseeable." The appeals court, therefore, held that "school officials have no duty to warn a student or the student's parents that serious injury might result from the student's voluntary participation on a high school varsity tackle football team."

Our holding here... does not mean that such a warning would not be a sound idea as a matter of public policy. Young men--and women--of the same age, who wish to participate in the same team contact sports, vary considerably in weight and size; unfortunately, the sport may occasionally pit the brawniest against the most slender. In view of the very serious injuries suffered by Tawana, school officials may well want to consider issuing a warning of the possibility of such injuries--even though there is no legal obligation to do so.

The Hammonds have not asserted that they were entitled to any additional warning or consideration because Tawana is a young woman and we do not suggest that there is any basis for such an argument. Moreover, there is nothing in this record to suggest that Tawana's injuries were different or more severe because of her sex...

Although she has not stated a cause of action against the Board, Tawana's injuries were serious, painful, and permanent. We regret them and sympathize with her.

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The appeals court, therefore, affirmed the summary judgment of the trial court dismissing Hammonds' negligence claims against the Board.