

Assumption of Risk Doctrine Bars New York Sports Injury Lawsuits - Part 1

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"School's Open" say the signs all over the roadways every September. "Drive Carefully," they



say.

Perhaps they should also say "**Play Carefully.**"

Every year, **students at schools get injured in sporting events** and every year their parents start lawsuits for them. More and more, though, **these cases are dismissed by trial judges without even proceeding to trial.** We've discussed assumption of risk defenses in New York injury cases before, [here](#) in the context of fights at school and skydiving and [here](#) and [here](#) in the context of golf-related accidents. We've also surveyed some unusual sports-related cases [here](#).

The **most recent New York injury cases involving these issues are discussed below**, along with another case that, while not on school grounds, involves a soccer injury that is apropos.

Floor Hockey: A high school boy was injured in a floor hockey game in physical education class when he fell over his opponent's hockey stick as they were both trying to take control of the puck.



The trial judge dismissed the case and the appeals court upheld the dismissal in [Mayer v. Gulmi](#). Plaintiff was found to have assumed the risk of falling, an incident everyone knows happens all the time in floor hockey. His claim that his opponent intentionally threw his stick at him would, if proven, have allowed the case to be presented to a jury but there was not enough reliable evidence to support that claim and avoid having the case tossed.

Wrestling: A high school wrestler contracted herpes while participating in a match against another school. The trial judge denied the motion by the two school districts to have the case dismissed without a trial but the appeals court reversed. In Farrell v. Hochhauser, it was held that the plaintiff knowingly engaged in a close contact activity (wrestling) and he therefore assumed the risk of a disease being transmitted through skin to skin contact.



Additionally, plaintiff's coach submitted an affidavit stating that before the season he:

1. gave all of his wrestlers and their parents written information about how common it is to contract herpes from wrestling (almost 30%) and
2. discussed all of this with his team and the boys' parents

While plaintiff and his father said they did not recall this information being given to them, they could not be sure it wasn't. That, the appeals judges said, was not enough to avoid dismissal of this case.

Soccer: A spectator at a soccer game was standing in the field's sideline area when she was kicked by a player who was trying to kick a ball that had rolled off the field.



The plaintiff suffered a broken ankle requiring surgery and in her lawsuit she claimed that the defendant (the athletic complex owner) should have created a buffer zone to protect sideline spectators. No, said the judge in Andrade v. Nassau County. The plaintiff assumed the risk of this injury by standing where she did when she could have watched from seats available in the stands. Case dismissed.

We will continue our review of sports injury cases and how assumption of the risk bears upon their outcome in court with our next installment that will deal with our national pastime - **baseball.**