

Fore! Court of Appeals Reaffirms Assumption of Risk

By Kevin G. Faley and Andrea M. Alonso

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Judge Cardozo defined the primary assumption of risk doctrine as based on the premise that “[o]ne who takes part in... sports accepts the dangers that inhere in it so far as they are obvious and necessary.”

The Court of Appeals in April of 2023 ruled on two cases in which assumption of risk was raised by the defendants as a complete bar to plaintiff’s claims. In these two cases—*Grady v. Chenango Valley Central School District* and *Secky v. New Paltz Central School District* 2023 NY Slip Op 02142—the high court rejected the plaintiff’s bar’s suggestion, raised in their amicus curiae brief, to abandon decades of precedent applying the doctrine and to find that under the enactment of a comparative negligence standard adopted in 1975 that assumption of risk should be treated as culpable conduct and not as a bar to a potential claim.

In *Secky v. New Paltz Central School*, supra, the plaintiff, a high school basketball player, was engaged in a coach-directed rebound drill.



Andrea M. Alonso and Kevin G. Faley

Boundary lines of the court would not apply and only major fouls would be called. Nearby bleachers had been retracted. Plaintiff was injured when he collided with another player causing him to fall into the bleachers and sustain a shoulder injury.

The court found that plaintiff’s injury was one inherent in the sport of basketball and so he assumed the risk of the injury sustained. The risk of a collision on a basketball court was found to be inherent in playing on that court, a risk plaintiff assumed. The drill did not unreasonably increase the risk of injury

inherent in the sport of basketball. Plaintiff's case was dismissed.

In *Grady*, by contrast, the court found material issues of fact that could only be resolved by a jury. Plaintiff, a varsity baseball player, was injured while participating in a fast moving intricate drill. Baseballs from two parts of the infield were thrown to two players in the same area of first base.

Coaches had placed a protective screen, seven-by-seven feet, between the regulation first base and the short first base. Plaintiff suffered a serious injury to his eye and significant vision loss when a ball bypassed the first baseman and the protective screen and struck him in the face.

The court denied defendant's summary judgment finding plaintiff raised triable questions of fact as to the whether the drill "was unique and created a dangerous condition over and above the usual dangers that are inherent in baseball." Having two balls in play was not found to be an inherent risk in traditional baseball. The presence of the seven-by-seven foot screen raised a triable issue of fact as whether it was unique and created a dangerous condition over and above the usual danger inherent to the game.

The Court of Appeals rejected the entreaty of the dissenting Judge Rivera to abandon the assumption of risk doctrine that the court "has retained despite the legislature's unequivocal abolition of contributory negligence and assumption of risk as complete defenses. The court warned that prior decisions on the subject should not be overruled unless

a "compelling justification exists for such a drastic step."

It is with this background that the court revisited the assumption of risk doctrine two years later again in two combined cases—*Katleski v. Cazenovia Golf Club, Inc.* and *Galante v. Karlis* 2025 W.L. 1108976 (2025). Both cases ruled on by the court involved the game of golf and coincidentally the incidents giving rise to the cases occurred on the same day.

In *Katleski*, supra, David Katleski was playing golf on the seventh fairway at the Cazenovia Golf Club in Madison County. He was riding in a golf cart when he was hit by an errant golf ball that had hooked hard to the left as a player teed off from the third hole. Katleski argued that the course, built in 1924, was negligently designed and he claimed the placement of the third hole tee box was dangerous due to lack of a clear sight line and a lack of a protective barrier. The tee box that was used was installed about ten years before the accident to increase the difficulty of the third hole and was predominantly used in tournaments.

The court stated that plaintiff could not meet his burden of proof merely by demonstrating that the course layout was less than safe than it ideally could have been. Rather, the plaintiff must show that the design enhanced the inherent risk of being struck by a ball beyond which is customary in the sport. Plaintiff did not rebut the club's showing that golf courses commonly lack clear visibility and barriers between holes.

The court found that there were no questions of fact as to whether the inherent risks of golf

were unreasonably enhanced by the course design. The placement of the tee box served the express purpose of increasing the difficulty of the third hole to conform with modern golf. Plaintiff's case was dismissed.

On the same day Katleski was injured, Mary Galante was 160 miles away playing golf at Elma Meadows Golf Course in Erie County, a municipal golf course. She parked her car in the parking lot, walked to the clubhouse and checked out a golf cart. She drove the cart back to the parking lot to retrieve her clubs from her car. Galante collided with a car that was exiting the lot causing her to be ejected to the pavement.

The court dismissed the affirmative defense of assumption of risk stating: "Galante was merely driving a golf cart in a parking lot at the time of her injury. Under these circumstances, the fact that the accident occurred adjacent to a designed venue for golf does not alter the analysis." She was not playing, observing, or otherwise

participating in an athletic or recreational activity when she was injured. Accordingly, plaintiff did not assume any risk associated with the game of golf and assumption of risk simply did not apply.

Cannataro, writing for the majority, clarified the scope of the important limitations of the assumption of risk doctrine: Its inapplicability to unreasonably enhanced risks (Grady) and its confinement to cases involving participation in sports and recreation (Secky).

The Court of Appeals continues to carefully circumscribe the application of the primary assumption of risk doctrine. The court will continue to apply the "limited vestige" of the doctrine in the narrow space of athletic activities. Only activities that involve unreasonably enhanced risks not inherent to the activity will escape the application of the doctrine.

Kevin G. Faley and Andrea M. Alonso are partners at the firm of *Moris Duffy Alonso Faley & Pitcoff*.