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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NAME OF PLAINTIFF,

Plaintiff,

vs.

NAME OF DEFENDANT,

Defendant.

Case No. Type Case Number

TYPE TITLE OF PLEADING

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Dated: Type Date

NAME OF LAW FIRM

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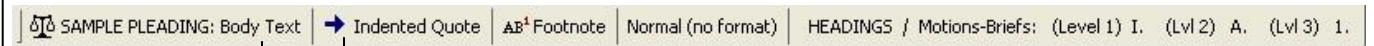
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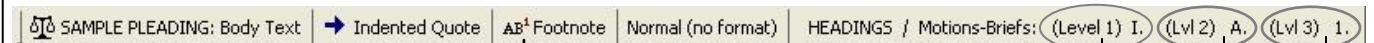
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For purposes of this case, we are dealing with the doctrine of primary assumption of risk, which applies where, by virtue of the nature of the activity and the parties' relationship to the activity, the defendant owes no legal duty to protect plaintiff from the particular risk of harm that caused the injury. Whether the defendant owes a legal duty to protect plaintiff from the particular risk of harm turns on the nature of the sport and the defendant's role in or relationship to that sport. *Id.* at 315, 317. This issue is decided by the court. *Id.* at 313.

The Court went on to summarize the general rule of liability in active sports:

Although defendants generally have no legal duty to eliminate (or protect plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have a duty not to increase the risks to a participant over and above those inherent in the sport. *Id.* at 315-16.



IV. ASSUMPTION OF RISK

In *Knight*, 3 Cal.4th 296 (and the companion case of *Ford v. Gouin* (1993) 3 Cal.4th 339, the California Supreme Court attempted to clarify the proper application of the doctrine of assumption of risk after the adoption of comparative fault principles in *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804. Secondary assumption of risk includes, "those instances in which the defendant owes a duty of care to the plaintiff but the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty." *Id.*² Recovery is denied in a "primary assumption of risk" case and is merged into the

A. The Duty Between Coparticipants.

Both *Knight* and *Gouin* involved determination of the duty owed to one another by coparticipants in a sport. The Court held that, as between coparticipants, the legal duty owed was to refrain from injuring one another intentionally or by engaging in conduct "that is so reckless as to be totally outside the range of ordinary activity involved in the sport." *Knight, supra*, at 3 Cal.4th 320; *Ford, supra*, at 3 Cal.4th 345. This is a departure from traditional negligence based liability.

B. Ascertaining What Risks Are Inherent In A Sport

Given the general rule of liability articulated in *Knight*, that there is no duty to eliminate risks inherent in a sport but that defendants have a duty not to increase the risk over and above those inherent

1. The Inadequacy Of A List Of Inherent Risks

It is not enough that a particular type of injury or accident sometimes occurs during a sport or activity. A review of cases where courts have critically analyzed the duty issues demonstrates that simply listing certain types of accidents as inherent risks does not suffice.