

APPELLATE COURT REVERSES JURY VERDICT IN FAVOR OF PLAINTIFF HOLDING PLAINTIFF ASSUMED THE RISK

Missouri - Watters Wolf Bub Hansmann

In a rare Appellate reversal and remand outright of a plaintiff's \$300,000 jury verdict, Bradley Hansmann, Travis McDonald, and Christine Lesicko were able to secure a reversal and remand of a plaintiff's verdict in the Missouri Court of Appeals – Eastern District based upon the implied primary assumption of the risk doctrine. WWBH represented a public gym that was sued by a plaintiff that was seriously injured while working out with her personal trainer in a group session while performing push presses using bar bells and pushing the weights above the participants heads. Plaintiff had performed the exercise without a problem before the injury occurred. During the exercise plaintiff felt a “pop” and fell to the ground. Plaintiff brought suit alleging failure to properly supervise the exercise and failure to properly assess plaintiff's physical condition to do the exercise before the session.

In reversing the verdict, the Court held that the doctrine of

implied primary assumption of the risk applied to the push press activity and the WWBH client owed no duty with respect to inherent risks of this sporting activity. The court went on to hold that the defendant did not increase the inherent risk by failing to do a personal physical assessment of the plaintiff before allowing her to participate since the plaintiff herself knew and understood that no such assessment was done before participating in the session. In addition, the Court dismissed plaintiffs' contention that she was not properly supervised since the plaintiff knew she was in a group activity and, as such, knew she would not be personally or individually supervised during the exercise. The Court held that the plaintiff fully comprehended the inherent risk of injury from exercising with the bar bells and the gym did not increase the inherent risk of the exercise. The trial court judgment was reversed and remanded with instructions to enter judgment in favor of the Defendant.

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