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PASSING THE BATON: TRACK SUPERSTAR MARION JONES' DUTY AND LIABILITY TO HER OLYMPIC RELAY TEAMMATES

I. INTRODUCTION

In October of 2007, millions of avid sports fanatics, track and field aficionados, and Marion Jones enthusiasts felt the pain of their hearts breaking as the gold medal track star admitted to taking performance enhancing drugs.¹ The Olympian confessed to ingesting the steroid tetrahydrogestrinone (THG or “the clear”) before the 2000 Olympic Games in Sydney, Australia.² After seven years of denial, Marion Jones pled guilty to lying to federal investigators about using the steroids and was subsequently punished by the International Association of Athletics Federations (IAAF) and the International Olympic Committee (IOC).³

The question then remains: what will happen to Jones’s Olympic relay team members (Torri Edwards, Chryste Gaines, Passion Richardson, Jearl Miles-Clark, Monique Hennagan, LaTasha Colander-Richardson, Andrea Anderson and Nanceen Perry) and their Olympic medals, standings, and diplomas?⁴ The IAAF was the first organization to take a position when it annulled Jones’s relay teams’ IAAF and Olympic results and required the relay team to return all awards and medals earned in IAAF competitions.⁵ Subsequently, the IOC disqualified Jones’s teammates from the 4x100 meter relay and 4x400 meter relay of the 2000 Olympic games and asked those athletes involved to return the medals and diplomas awarded to them.⁶

1. *Jones Pleads Guilty in Doping Case*, 19 No. 10 Andrews Ent. Indus. Litig. Rep. 9 (West 2007)

2. *Id.*

3. Press Release, International Association of Athletics Federation, IAAF Press Release on Marion Jones (November 23, 2007) (on file with author) available at <http://iaaf.org/news/newsID=42531>; Highlights of Last IOC Executive Board Meeting of the Year, International Olympics Committee (December 12, 2007) (on file with author) available at http://www.olympic.org/uk/includes/common/article_print_uk.asp?id=2428.

4. Amy Shipley, *Jones's Running Mates Told to Return Medals*, Wash. Post, April 11, 2008, at E02, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/10/AR2008041003272>.

5. Press Release, *supra* note 3; Highlights of Last IOC Executive Board Meeting of the Year, *supra* note 3.

6. Press Release, International Olympic Committee, IOC Announces More Stringent Measures in its Fight Against Doping (April 10, 2008) (on file with author) available at http://www.olympic.org/uk/includes/common/article_print_uk.asp?id=2536.

Before LaTasha Collander-Richardson's gold medal and records were annulled, she stated, "[b]ecause of the decision [Jones] chose to make, [Jones] took that decision and choice away from the rest of us. Now and forever, to some extent, whether they take the medal or do not take the medal, it's going to be tainted. The rest of us, our characters will be questioned."⁷ The chief executive of the USOC commented on the effects of doping and said, "[w]hen an athlete makes the choice to cheat, others end up paying the price, including teammates, competitors and fans."⁸ The seemingly obvious injustice of this result raises the question of whether Jones's teammates can legally recover for the loss of their Olympic medals, records, and integrity.

Jones's eight teammates are left with no records and no medals because Marion Jones violated the Olympic doping regulations. The natural question that follows is what redress, if any, is available to Jones's teammates who complied with the doping rules and competed in the events fairly and safely? Do Jones's relay mates have a cause of action against Jones based on the fact that they lost their Olympic medals, records and integrity as a result of her doping violations?

The Marion Jones steroid controversy continues, but her teammates must not be forgotten or brushed aside amidst this controversy. Jones's relay mates committed no violations yet are suffering from the repercussions of Jones's poor choices, over which they had no control. This article will discuss tort liability under the theories of negligence and recklessness, analyze such liability theories as they apply to Marion Jones and her eight teammates, and present a possible solution.

II. BACKGROUND

The IAAF Council reviewed Marion Jones's admission to taking performance enhancing drugs and confirmed the following consequences and sanctions: 1) a two-year period of ineligibility beginning October 8, 2007; 2) disqualification of Marion Jones from all competitions on or after September 1, 2000; 3) annulment of all her individual competitive results on or after September 1, 2000; 4) annulment of the results of relay teams in which she competed in IAAF competitions on or after September 1, 2000; 5) return of all awards and medals obtained in relation to abovementioned competitions; and 6) return of money awarded.⁹ The IAAF also recommended that the IOC execu-

7. *Miles-Clark Says She Might Have To Pay For Jones' Doping*, ESPN, Oct. 12, 2007, <http://sports.espn.go.com/espn/print?id=3060896&type==story>.

8. Shipley, *supra* note 4.

9. Press Release, *supra* note 3.

tive board disqualify Jones and her teammates in the women's 4x100m and 4x400m relays from the 2000 Sydney Olympics and insist on the return of medals and diplomas.¹⁰

The IOC Executive Board disqualified Jones from the 100m, 200m, 4x400m relay, 4x100m relay and long jump. In addition, at the IOC's request, Jones returned the medals won in those events.¹¹ In April 2008, the IOC Executive Board disqualified Jones's first place, gold medal, relay mates in the 4x400m relay (Jearl Miles-Clark, LaTasha Collander-Richardson, Monique Hennagan and Andrea Anderson) and third place, bronze medal, relay mates in the 4x100m relay (Chryste Gaines, Torri Edwards, Nanceen Perry and Passion Richardson).¹²

Traditionally, the IOC utilizes the Court of Arbitration for Sport (CAS) in order to arbitrate international sports disputes.¹³ CAS decides two types of disputes: commercial and disciplinary.¹⁴ Generally, doping violations fall under the disciplinary disputes category while civil liability matters fall under the commercial category.¹⁵ CAS arbitrators decide both disciplinary and commercial disputes; however, disciplinary cases are often resolved by sports authorities and only go to CAS upon an appeal.¹⁶ While the IOC provides for arbitration, an alternative avenue for Jones's relay teammates would be to pursue the matter in the United States judicial system under tort principles.

III. LIABILITY IN TORT

A. *Theories of recovery: Negligence or Recklessness?*

The courts and legislatures have struggled to find the appropriate standard of care for athletes who inflict physical injuries on another athlete during competitive sporting events. When injury to a player is involved, the decision makers are torn between what constitutes part of the game and what is the scope of the duty placed upon sporting

10. *Id.*

11. *Id.*

12. Press Release, *supra* note 6; Shipley, *Supra* note 4.

13. A. Jerome Dees, *Bring Back the Crowd? How Governing Bodies for Sports Should Provide Victims of Athlete Doping a Better Remedy*, 9 Fla. Coastal L. Rev. 179, 183 (2008) (stating that CAS was created by the IOC to decide international sporting disputes.)

14. *Id.* at 186; *see also* History of the CAS, <http://www.tas-cas.org/en/infogenerales.asp/4-3-239-1011-4-1-1/5-0-1011-3-0-0/>.

15. Dees, *supra* note 13 at 186; *see also* History of the CAS, <http://www.tas-cas.org/en/infogenerales.asp/4-3-239-1011-4-1-1/5-0-1011-3-0-0/>.

16. Dees, *supra* note 13 at 186; *see also* History of the CAS, <http://www.tas-cas.org/en/infogenerales.asp/4-3-239-1011-4-1-1/5-0-1011-3-0-0/>.

participants.¹⁷ A negligence standard was most often applied by courts in the past, but the majority of courts has recently shifted towards the adoption of a reckless disregard standard.¹⁸ The analysis of the athlete's duty to another athlete has been confined to physical injuries that result from contact or rule violations. However, the courts could use either a negligence standard or recklessness standard when determining what standard of care an athlete owes to her teammates in order to avoid an injury such as the loss of Olympic medals and records.

1. Negligence

Traditionally, state courts applied a negligence standard to determine liability in sports related tort cases.¹⁹ Under the Restatement approach, negligence is defined as:

an act which the actor as a reasonable man should recognize as involving an unreasonable risk of causing an invasion of an interest of another, or a failure to do an act which is necessary for the protection or assistance of another and which the actor is under a duty to do.²⁰

To succeed in a negligence cause of action, a plaintiff must show a duty, breach of that duty, injury or damages, and causation.²¹ Each of these requirements are evaluated and decided on a case-by-case basis.

A duty in negligence cases is an obligation to conform to a particular standard of conduct towards another person.²² A duty can be imposed through common law, statute, contract or as a matter of public policy.²³

After a duty has been established, the plaintiff must show that the defendant breached the duty owed to plaintiff. When determining if a breach has occurred, the defendant must have failed to conform to the

17. Mel Narol, *Sports Participation with Limited Litigation: The Emerging Reckless Disregard Standard*, 1 Seton Hall J. Sport L. 29 (1991).

18. Michael F. Taxin, *The Changing Evolution of Sports: Why Performance Enhancing Drug Use Should be Considered in Determining Tort Liability of Professional Athletes*, 14 Fordham Intell. Prop. Media & Ent. L.J. 817, 818 (2004). The traditional standard is a showing of mere negligence, but courts have started to adopt a reckless standard by showing "conduct is such that it is either deliberate, willful or with a reckless disregard for the safety of the other play so as to cause injury to that player."; See generally *Nabozny v. Barnhill*, 334 N.E.2d 258 (Ill. App. Ct. 1975); *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10TH Cir. 1979).

19. Taxin, *supra* note 18 at 819.

20. Restatement (Second) Torts, § 284 (1965).

21. W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS, § 30 (5TH ED. 1984).

22. KEETON ET AL., *supra* note 21 at 356.

23. Restatement (Second) Torts, § 285 (1965).

standard required of a reasonable person in a similar circumstance or situation.²⁴

Once a breach has occurred, the plaintiff must show that he has suffered an injury or damages. The plaintiff must prove that he has suffered harm “legally compensable by damages.”²⁵ Plaintiff must have suffered economic, personal or physical loss or an invasion of a protected interest such as loss of wages.²⁶ Finally, there must be “[a] reasonably close causal connection between the conduct and the resulting injury.”²⁷

In *Lestina v. West Bend Mutual Insurance Company*, the Wisconsin Supreme Court held that negligence was the appropriate standard to govern cases that involve injuries during recreational team contact sports.²⁸ In *Lestina*, the defendant slide tackled the plaintiff during a recreational soccer match, which caused the plaintiff to seriously injure his knee and leg.²⁹ The plaintiff sued the defendant under a theory of negligence asserting that his conduct was negligent and reckless.³⁰ The court stated that negligence consists of failing “to use that degree of care which would be exercised by a reasonable person under the circumstances.”³¹ To determine whether a player’s conduct was negligent, the court evaluated six material factors: 1) the sport involved, 2) the rules and regulations, 3) the generally accepted customs and practices, 4) the risks inherent in the game and those outside the game, 5) the presence of protective equipment or uniforms, and 6) the facts and circumstances of the case including player ages, skills, and knowledge of the rules and customs.³² The Wisconsin Supreme Court found that the negligence standard can consider all of the cir-

24. Keeton, *supra* note 21 at 164.

25. Restatement (Second) Torts, § 328A (1965).

26. Richard J. Hunter, Jr., *An “Insider’s” Guide to the Legal Liability of Sports Contest Officials*, 15 Marq. Sports L. Rev. 369, 379 (2005).

27. Keeton, *supra* note 21 at 165.

28. *Lestina v. West Bend Mutual Ins. Co.*, 501 N.W.2d 28, 33 (WI 1993) (*Lestina* has since been superseded by Wisconsin statute W.S.A. § 895.525, which imposes a reckless disregard standard for sport injury cases in tort).

29. *Id.* at 29.

30. *Id.*

31. *Id.* at 32.

32. *Id.* at 33; Hana R. Miura, *Lestina v. West Bend Mutual Insurance Co.: Widening the Court as a Playing Field for Negligent Participants in Recreational Team Contact Sports*, 1994 Wis. L. Rev. 1005, 1010 (1994) (stating that the 6 factors in *Lestina* were derived from Missouri case *Niemczyk v. Burleson* that also applied a negligence standard. However, the Supreme Court of Missouri reconsidered the appropriateness of negligence and held that recklessness is more appropriate but that courts will continue to apply the 6 factors. The retention of the 6 factors signified that recklessness does not differ substantially from negligence.)

cumstances of the case and is flexible to permit vigorous competition.³³

In Connecticut, the Superior Court considered whether a softball player could recover under a theory of negligence for injuries resulting from an opposing player's conduct during a game.³⁴ The Connecticut court relied on *Lestina*, and reiterated that in a non contact sport, recovery for injuries is not necessarily limited to reckless or intentional conduct.³⁵ The court stated that a person playing sports can be required to act as a reasonable person of ordinary prudence under the circumstances.³⁶

Other courts have also adopted the negligence standard in sports cases, including professional hockey, snow skiing, golf, and softball tort cases.³⁷ Applying a negligence standard in sport injury cases has become the minority position; however, certain public policy reasons support negligence as the correct standard. First, sporting events adopt certain standards and rules for a reason—they protect participants from injury and promote fairness.³⁸ Second, athletes should be held to the same reasonable standard as society at large.³⁹ And finally, a negligence standard does not infringe on vigorous participation in sports.⁴⁰ Most jurisdictions have not found these reasons persuasive, though, and the recklessness standard has emerged as the dominate standard for determining liability in sports tort cases that result in physical harm.

2. Recklessness

In increasing numbers, state and federal courts across the country have reconsidered the negligence standard and shifted the standard to recklessness, which is a higher standard of care. A majority of courts have recognized that in the sporting context, a heightened standard of care is required because contact is more prevalent and often required

33. *Lestina* at 33.

34. *Cahill v. Carella*, 648 A.2d 169, 172-73 (Conn. Super. Ct. 1994).

35. *Id.*

36. *Id.*

37. See e.g., *Babych v. McRae*, 567 A.2d 1269 (Conn. Super. Ct. 1989) (applying a negligence standard to injury in a professional hockey game); *LaVine v. Clear Creek Skiing Corp.*, 557 F.2d 730 (10th Cir. 1977) (applying negligence standard to injury in collision between skiers); *Duke's GMC Inc. v. Erksine*, 447 N.E.2d 1118 (Ind. Ct. App. 1983) (applying negligence standard to golf injury).

38. Erica K. Rosenthal, *Inside the Lines: Basing Negligence Liability in Sports for Safety-Based Rule Violations on the Level of Play*, 72 *Fordham L. Rev.* 2631, 2659 (2004).

39. *Id.*

40. *Id.*

in many sports such as football, hockey, and soccer.⁴¹ Therefore, courts have shifted the burden upward to adopt a reckless disregard standard.⁴²

The black letter law qualifies an actor's conduct as reckless disregard of another's safety "if he does an act or intentionally fails to do an act which it is his duty to the other to do, knowing or having reason to know of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent."⁴³ For instance, recklessness can result from the actor knowing or having reason to know of the facts that create a high degree of risk of physical harm to another and he deliberately continues to act or fails to act in conscious disregard to that risk.⁴⁴ Alternately, the actor may have the knowledge or reason to know of the facts but does not realize or appreciate the risk involved while a reasonable man would understand.⁴⁵ In either situation, an objective standard is applied to the actor to determine what a reasonable man in a similar situation knows or should know.⁴⁶

For example, in *Nabozny v. Barnhill*, the Illinois Appellate Court found that a player is liable for injury in tort when his conduct is deliberate, willful or with reckless disregard for the safety of another player and causes injury.⁴⁷ In *Nabozny*, the plaintiff was a goal keeper who had possession of the ball in the penalty box when the defendant ran forward and kicked the left side of the plaintiff's head, which is a violation of the soccer rules.⁴⁸ The defendant's contact caused permanent damage to the plaintiff's skull and brain.⁴⁹

The Illinois court articulated policy reasons for using a reckless disregard standard and emphasized that the law should not place "unreasonable burdens on the free and vigorous participation in sports by our youth."⁵⁰ Further, the court did not want to chill active participation in sports through the fear of litigation based on ordinary negli-

41. *Oswald v. Township High Sch.* Dist. No. 214, 406 N.E.2d 157,159 (Ill. App. Ct. 1980).

42. Mel Narol, *Sports Participation with Limited Litigation: The Emerging Reckless Disregard Standard*, 1 Seton Hall J. Sport L. 29, 30 (1991).

43. Restatement (Second) of Torts § 500 (1965).

44. Restatement (Second) of Torts § 500, cmt. (1965).

45. *Id.*

46. *Id.*

47. *Nabozny v. Barnhill*, 334 N.E.2d 258, 261 (Ill. App. Ct. 1st Dist. 1975).

48. *Id.* at 260.

49. *Id.*

50. *Id.*

gence.⁵¹ The *Nabozny* court ultimately applied a recklessness standard to find that a player has a legal duty of care to every other player to refrain from conduct proscribed by safety rules, i.e. making illegal contact with a goal tender during a soccer game.⁵² Ultimately, a player is liable for injury in a tort action when his conduct is deliberate, willful or with a reckless disregard for the safety of the other players so as to cause injury to that player, and it is a question of fact that should be decided by a jury.⁵³

In another case, *Gauvin v. Clark*, the Massachusetts Supreme Court held that participants in athletic events owe a duty to refrain from reckless misconduct towards other participants and that liability may result from injuries caused as a result of the breach of that duty.⁵⁴ In *Gauvin*, the defendant had "butt-ended" the plaintiff with his hockey stick, violating a safety rule and causing injury to the plaintiff.⁵⁵ The court reasoned that imposing liability under recklessness will decrease the need for players to seek retaliation during the game or future games.⁵⁶ Further, heightening the standard to recklessness decreases the threat of litigation based on a lower, ordinary negligence standard that might chill vigorous participation in sporting events.⁵⁷ Other jurisdictions have held athletes to this recklessness standard, for example, it has been applied anywhere from simple recreational games to professional football games including kick the can, softball games, golf, and professional football.⁵⁸

Ultimately, courts across the United States use either a negligence standard or reckless disregard standard in order to determine an athlete's liability for injury to another athlete. Consequently, it is plausible to consider extending these standards to not only physical injury but also to the injury sustained by athletes who lose records, medals and money due to the negligent and reckless acts of other athletes while on the field of play.

51. *Lestina v. West Bend Mutual Ins. Co.*, 501 N.W.2d 28, 31 (Wis. 1993) (discussing the *Nabozny* court's reasons for adopting a recklessness standard).

52. *Nabozny*, 334 N.E.2d at 261.

53. *Id.*

54. *Gauvin v. Clark*, 537 N.E.2d 94, 97 (Mass. 1989).

55. *Id.* at 95.

56. *Id.* at 97.

57. *Id.*

58. See *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir. 1979) (applying recklessness standard to injuries in professional football); *Thompson v. McNeill*, 559 N.E.2d 705 (Ohio 1990) (applying reckless disregard standard to golf); *Marchetti v. Kalish*, 559 N.E.2d 699 (Ohio 1990) (applying recklessness standard to kick then can); *Ross v. Clouser*, 637 S.W.2d 11 (Mo. 1982) (applying a recklessness standard to athletes in a softball game); *Connell v. Payne*, 814 S.W.2d 486 (Tex. App. 1991).

IV. ANALYSIS OF JONES' LIABILITY TO HER TEAMMATES

A. *Jones's Recklessness or Negligence towards Relay Mates*1. *Recklessness—Why a Reckless disregard standard should not apply in Marion Jones's case*

The majority of jurisdictions hold that an athlete in a contact sport owes a duty to fellow athletes to refrain from reckless conduct, while ordinary negligence is not enough to create liability.⁵⁹ Specifically, an athlete acts with reckless disregard of safety when she knows or has reason to know of the facts that create a high degree of risk of physical harm to another and she deliberately continues to act or fails to act in conscious disregard to that risk.⁶⁰ This reckless disregard of safety standard was meant for contact rule violations and is too high of a standard to be applied in doping rule violation cases.

Courts apply the reckless disregard standard over the ordinary negligence standard for three reasons: 1) to foster vigorous and free participation; 2) to avoid the chilling effects of the threat of litigation; and 3) to reduce the athlete's need to seek retaliation in future games.⁶¹ The courts recognize that some injuries are an inevitable result of contact sports; therefore, athletes should only be held liable for reckless conduct.⁶²

For instance, in *Gauvin v. Clark*, the Supreme Court of Massachusetts held that a player was not liable for injuries caused by his violating a safety rule where he did not act with reckless disregard of safety.⁶³ The defendant physically "butt ended" the plaintiff with a hockey stick, violating safety rules and proximately caused the plaintiff's spleen to rupture.⁶⁴ The court followed the majority of jurisdictions and adopted the reckless disregard for safety standard because hockey is a contact sport and a negligence standard would chill vigorous and active participation in sporting events for fear or threat of litigation.⁶⁵ Further, this standard "diminishes the need for players to seek retaliation during the game or future games."⁶⁶

59. See *Jaworski v. Keirnan*, 696 A.2d 332 (Conn. 1997); *Nabozny*, *supra* note 47; *Marchetti*, *supra* note 58; *Ross*, *supra* note 58; *Gauvin*, *supra* note 54 (finding that defendant must have reckless disregard for other players, mere negligence is not enough for liability).

60. Restatement (Second) of Torts § 500, cmt. (1965).

61. *Id.*

62. *Id.*

63. *Gauvin v. Clark*, 537 N.E.2d at 97.

64. *Id.* at 95.

65. *Id.* at 97.

66. *Id.* at 45.

In the cases involving physical injury, these three policy concerns are valid; however, in Marion Jones's case they are inappropriate. Contact that violates league safety rules can be accidental and inadvertent. Therefore, holding an athlete to a reckless disregard for safety standard instead of an ordinary negligence standard is valid. However, an athlete that takes illegal steroids and violates specific doping rules should not be held to this higher standard because it would not promote free and vigorous participation in sports, avoid the chilling effects of litigation, or reduce retaliation on the playing field.

First off, the IOC, USOC and IAAF have adopted strict anti-doping protocols in order to promote vigorous and active participation in a safe and fair manner. Anti-doping rules are meant to protect the individual athletes from the health risks associated with steroids and to create a natural and level playing field in competition. Holding Marion Jones to a reckless disregard of safety standard would promote unsafe, unfair and unhealthy active and vigorous participation in track and field. Subjecting Jones or any Olympic athlete to this higher standard would only encourage steroid use as long as the athlete does not recklessly disregard another's safety. Jones did not recklessly disregard her teammates' physical safety, but she did recklessly disregard her own safety and health and promoted vigorous participation fueled by illegal steroid use.

Second, imposing the higher standard of reckless disregard would chill litigation. Do athletic organizations want to turn a blind eye to athlete doping violations by creating a higher standard of proof? This is certainly a situation that athletic organizations would want to avoid. The purpose behind these regulations is to protect every athlete's health and safety, and by heightening the standard to recklessness, Jones's teammates might be less likely to bring a law suit in fear of not meeting the recklessness standard.

Finally, applying the recklessness standard in doping violation cases would not stop players from seeking retaliation for injuries that result. On the contrary, it may have the inverse effect and promote the use of performance enhancing drugs so that the athletes can compete on a "level" playing field. Athletes may then retaliate towards other athletes by taking the prohibited steroids as long as they do not disregard another athlete's safety in the process.

Holding Marion Jones to a standard of reckless disregard for another's safety is a harder burden to meet and ignores the policy behind this heightened standard. Jones acted with reckless disregard for her own personal safety and she also acted with reckless disregard to her teammates because she did not appreciate the risk of them losing their

medals as a result of her actions. A reckless disregard standard is inappropriate here because it would allow Jones to blindly or unknowingly take illegal supplements and shift liability. Jones could claim that she did not knowingly take the drugs, she did not know of the facts or the risks towards her teammates, she did not disregard the risk towards herself or teammates, and she did not recklessly disregard anyone's safety.

Ultimately, Marion Jones's teammates should not be required to show that Jones acted with a reckless disregard for their safety; instead, the courts should look to a standard of ordinary negligence. Marion Jones ingested prohibited steroids, violated doping rules, and disqualified her Olympic relay teammates records and medals. Taking prohibited steroids in itself is reckless enough conduct.

a. Why a Negligence Standard Should Apply in Marion Jones's Case

The courts that apply a negligence standard for sport related physical injuries have articulated three distinct reasons for applying an ordinary negligence standard, and this reasoning applies to Marion Jones's case. First, rules in the sporting arena are adopted for a reason—they protect participants from injury and promote fairness and safety.⁶⁷ Second, athletes should be held to the same reasonable standard as society at large.⁶⁸ And finally, a negligence standard does not infringe on the vigorous participation in sports.⁶⁹ These three reasons also support a negligence standard for doping rule violations that cause injury, and Marion Jones should therefore be held to a negligence standard and be required to act as a reasonable person in a similar circumstance.

Marion Jones is guilty of taking the performance enhancing drug THG, or "The Clear", in direct violation of Olympic doping regulations.⁷⁰ As a result of Jones's actions, the United State's Women's 4x100m and 4x400m relay teams were disqualified from the Sydney Olympics, their records were annulled and their medals were taken away.⁷¹

67. Erica K. Rosenthal, *supra* note 38.

68. *Id.*

69. *Id.*

70. Committee Recommendations, International Olympic Committee, IOC Disciplinary Commission Recommendations Regarding Ms. Marion Jones (December 12, 2007) (on file with author); Committee Decision, International Olympic Committee, IOC Executive Board Decision Regarding Ms. Marion Jones (December 12, 2007) (on file with author).

71. Committee Recommendations, *supra* note 70; Committee Decision, *supra* note 70.

The use of performance enhancing drugs is illegal for a reason; they are dangerous to an athlete's health and safety. Consequently, institutions such as the IOC, USOC and IAAF have adopted strict anti-doping rules, policies and procedures in order to protect the athletes from injury to themselves and other athletes and to promote fairness and safety across the competition.⁷² A negligence standard properly applies in doping rule violation cases because these policies and rules are adopted as the standard of care that an athlete owes to herself and fellow athletes.⁷³ A violation of these rules can be evidence of negligence.⁷⁴ Marion Jones, an Olympic athlete, was well aware of the anti-doping rules and chose to break them. She admitted to taking the performance enhancing drug, thereby risking her own health and safety and forced her eight Olympic relay teammates to compete at an unfair and unsafe advantage.

Furthermore, Marion Jones should be held to the same reasonable standard of care as society. She should not be afforded special treatment because she is an Olympian, rather, she is a role model for athletes across the world and should be held to the specific standard of care as set forth in the doping rules.

Finally, holding Jones to a negligence standard does not infringe on active and vigorous participation in sports. Anti-doping rules promote active and vigorous participation in sports but in a safe, fair and natural manner.

b. Why Marion Jones was negligent

Under the common law, to determine whether Marion Jones was negligent in violating doping rules and consequently harming her eight Olympic relay teammates, those teammates must show: duty, breach of that duty, injury or damages, and causation.⁷⁵ Specifically in sports tort cases, the court may consider the six factors enunciated in *Lestina v. West Bend Mutual Insurance Company*: 1) the sport involved, 2) the rules and regulations, 3) the generally accepted customs and practices, 4) the risks inherent in the game and those outside the game, 5) the presence of protective equipment or uniforms, and 6) the facts and

72. Press Release, International Olympic Committee, IOC Announces More Stringent Measures in its Fight Against Doping (April 10, 2008) (on file with author) available at http://www.olympic.org/uk/includes/common/article_print_uk.asp?id=2536.

73. *Duke's GMC Inc. v. Erksine*, 447 N.E.2d 1118, 1124 (Ind. Ct. App. 1983).

74. *Id.*

75. W. PAGE KEETON, PROSSER AND KEETON ON TORTS, § 30 (5TH ED. 1984).

circumstances of the case including player ages, skills, and knowledge of the rules and customs.⁷⁶

First, Jones's Olympic relay mates must show that Jones owed her relay teammates a duty to conform to a particular standard of conduct.⁷⁷ Both case law and public policy supports holding athletes to a duty of care toward other athletes while on the playing field. For example, in *Picou v. Hartford Insurance Company*, the court stated that athletes have a duty to play with sportsmanlike conduct, according to the rules of the game and with regard for other participants.⁷⁸ In *Nabozny*, an Illinois court found a legal duty to exist between athletes because all teams involved are trained and coached by competent individuals, a recognized set of rules governs the conduct of the game; a safety rule is designed to protect players from injury; and a player is to refrain from conduct proscribed by a safety rule.⁷⁹

Furthermore, the court in *Yancey v. Superior Court* found that generally, defendants have no legal duty to eliminate risks inherent in the sport itself, but they have a duty to use due care not to increase the risks to a participant over and above those inherent in the sport.⁸⁰ The *Yancey* court introduced a limited duty of care test to include 1) is careless conduct an inherent risk of the sport and 2) will the imposition of a legal duty or liability alter the nature or chill participation in the sport?⁸¹ Additionally, the court might consider the athlete's relationship to the sport and the nature of the sport involved.⁸²

According to this standard, Marion Jones also owes a duty to her running mates. Jones is an Olympic athlete that has competed in hundreds of races. Sportsmanship and regard for one's teammates are the foundation for any successful team. Jones and her running mates were trained at the Olympic level by some of the best running, dieting, and lifting coaches in the world. Jones and her relay teammates were required to follow the anti-doping policies promulgated by the IOC and IAAF and were aware of the anti-doping regulations. Specifically, all athletes are aware of the purpose behind the anti-doping rules – the safety of the athletes and to promote fair competition. Jones broke this safety rule by taking performance enhancing steroids,

76. *Lestina*, 501 N.W.2d at 33.

77. W. PAGE KEETON, PROSSER AND KEETON ON TORTS, § 30 at 356 (5TH ED. 1984).

78. *Picou v. Hartford Ins. Co.*, 558 So.2d 787,789 (La. Ct. App. 5th Cir. 1990).

79. *Nabozny*, 334 N.E.2d at 261.

80. *Yancey v. Superior Court*, 28 Cal. App. 4th 558, 33 Cal. Rptr.2d 777 (5TH Dist. 1994).

81. *Id.*

82. *Id.*

which was designed to promote safe and fair play for both Jones and her teammates.

Second, Jones's teammates must show that Jones breached this duty by failing to conform to a standard of care. Factors the court may consider when evaluating Jones's negligent conduct could include the nature of the act itself, the manner in which an act is performed or the nature of the injury.⁸³

Based on these factors, Marion Jones owed a duty of care to her relay mates to act as a reasonable athlete would act in an Olympic competition. Clearly, a reasonable athlete would comply with the anti-doping regulations not only for the safety of one's own health but to promote fairness to the competition and her teammates. In this case, Jones failed to act as a reasonable athlete. She admitted to taking "the Clear," which is a prohibited steroid and is guilty of violating doping regulations. And as a result of her poor life choices, Jones disqualified her entire team's 2000 Olympic records and medals. Further, she caused her teammates to suffer personal humiliation and pain through the entire ordeal.

Third, Jones's teammates must show injury or damages— Plaintiff must have suffered economic, personal or physical loss or an invasion of a protected interest such as loss of wages.⁸⁴ This prong is satisfied because Jones's relay mates suffered economic, personal and physical loss. After Jones admitted to violating anti-doping policies by taking prohibited substances, the IOC and IAAF disqualified Jones's relay team's records and medals in the 2000 Sydney Olympic Games.⁸⁵ Jones's teammates suffered economic loss as a result of having their medals taken away. They no longer are part of Olympic placing teams and have lost any endorsements as a result. Moreover, they suffered personal and physical loss because their integrity will always be questioned and they no longer have records or medals to show their accomplishments. And these losses are attributed to Jones's negligence in failing to follow anti-doping policies and procedures.

Fourth, Jones's teammates must show that the breach of the duty caused the injury. Jones's breach in duty was the cause in fact of her teammates' injuries. Because of Jones's negligent conduct in failing to comply with doping regulations, her teammates lost medals, records and integrity.⁸⁶ Jones's actions resulted in economic, personal and

83. Richard. J. Hunter, Jr., *An "Insider's" Guide to the Legal Liability of Sports Contest Officials*, 15 Marq. Sports L. Rev. 369, 378 (2005).

84. *Id.* at 379.

85. Press Release, *supra* note 3; Committee Decision, *supra* note 70.

86. Shipley, *supra* note 4.

physical harm to her teammates. In other words: but for Jones's conduct, her teammates would still be respected Olympians with records and medals to prove it. Jones's eight teammates have no Olympic medals, records or integrity as a direct result of Jones taking illegal performance enhancing drugs, which resulted in disqualification.

In the sporting context, a court may weigh the six factors articulated in *Lestina* in order to determine if the athlete was negligent.⁸⁷ First, the court may look at the specific game involved.⁸⁸ In this case the specific games are the 4x100 meter relay and 4x400 meter relays of the 2000 Olympic games. Second, the rules and regulations of the sport involved are explicitly outlined by the IOC, USOC and IAAF.⁸⁹ Third, the accepted customs and practices found at the Olympic level of track and field do not including doping. Fourth, the court will consider the risks inherent in the sport and those outside the sport.⁹⁰ In this case, losing medals and records is not an inherent risk of track and field, but it takes additional affirmative steps that are outside the sport context. Fifth, the courts will consider the protective equipment, but in this case they may look to the protective rules and regulations found in the anti-doping procedures.⁹¹ The sixth factor, considers the facts and circumstances of the particular case including the athlete's ages, physical attributes, skill, and knowledge of the rules and customs.⁹²

In the end, Marion Jones should be required to act as a reasonable athlete in a similar circumstance—the negligence standard. The overarching purpose of the doping rules is safety and fairness. It is against public policy to require Jones's eight relay teammates to prove a heightened standard because a recklessness standard would only support steroid use.

V. SOLUTION

A. *Professional malpractice—a negligence standard*

The ideal solution would be to institute a professional malpractice standard for the sporting arena. The Black's Law Dictionary defines malpractice as: "an instance of negligence or incompetence on the part of a professional."⁹³ And it also refers to malpractice as profes-

87. *Lestina* 501 N.W.2d at 33.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Black's Law Dictionary (8th ed. 2004).

sional negligence. Similar to a doctor or an attorney, the courts should look to professional negligence or malpractice at the Olympic level of sporting competition.⁹⁴ In Jones's case, the courts should hold her to a professional standard to act with the degree of skill and care that an Olympic athlete would use in similar circumstances.

A negligence standard is more appropriate in this case than a recklessness standard for multiple policy reasons. First, the courts should consider the general purpose for participating in the sport; second, the experience and age of the athletes; third, the impact of role models; and fourth, the importance of maintaining competition.⁹⁵ Marion Jones's purpose in competing in the 2000 Olympic Games in Sydney, Australia was not merely for recreation or educational reasons. Marion Jones was an elite athlete that competed in track and field for honor, valor, medals, records, endorsements, et cetera. Marion Jones and her eight relay teammates competed in track in field no only for the love of the competition but it was their career. Consequently, these professional athletes must all be subject to a professional negligence standard for malpractice.

Second, Marion Jones was a seasoned and experienced athlete. The 2000 Olympics was not the first time Jones had competed on the world level.⁹⁶ Jones was a respected athlete in the track and field world and did not lack experience or age. Therefore, the professional negligence or malpractice standard is appropriate.

Third, Marion Jones not only represented herself in each track and field competition, she also represented women, minorities, and the United States of America. People across the world look up to Marion Jones as an athlete and role model. She was the woman athlete of 1998.⁹⁷ She has disappointed many by taking performance enhancing drugs and violating doping rules. Olympic events are the most prestigious events in the sporting world and Olympians must be held to a standard of professional negligence.

Finally, there is a policy issue of maintaining competition. By holding Olympic athletes to a professional negligence standard, they will be liable for their actions and competition will thrive. If we held

94. *Id.* The Black's Law Dictionary defines legal malpractice as a lawyer's failure to render professional services with the skill, prudence, and diligence that an ordinary and reasonable lawyer would use under similar circumstances. It defines medical malpractice as a doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances.

95. Rosenthal, *supra* note 38 at 2663.

96. IAAF.org, Athletes Biography, <http://www.iaaf.org/athletes/athlete=62739/index.html> (last visited Dec. 3, 2008).

97. *Id.*

Olympic athletes like Marion Jones to a higher standard, society runs the risk of altering and harming competition by making it unsafe and unfair. Ultimately, the best solution is for the courts to utilize a professional negligence or malpractice standard.

VI. CONCLUSION

In conclusion, Marion Jones has not only destroyed her own integrity as a result of ingesting “the Clear,” but she has also caused her eight innocent relay teammates, Jearl Miles-Clark, LaTasha Col-lander-Richardson, Monique Hennagan and Andrea Anderson, Chryste Gaines, Torri Edwards, Nanceen Perry and Passion Richardson to lose Olympic medals, records, endorsements, and respect.⁹⁸ These eight athletes had no choice in the matter, they were unaware of Jones’s poor judgment in violating the doping rules and suffered as a result of those violations. Consequently, Jones must be held liable for her actions based on a professional negligence or malpractice standard. Holding Jones to a reckless disregard standard does not further the policy reasons for enacting anti-doping rules and does not protect safe, natural, and vigorous competition. Jones’s eight relay teammates were victims of Jones’s professional malpractice and deserve redress. Ultimately, Jones is guilty of professional malpractice because she violated a duty to her eight relay mates, caused them injury, and she must be held responsible.

*Jolyn R. Huen**

98. Committee Recommendations, *supra* note 70; *Miles-Clark Says She Might Have To Pay For Jones’ Doping*, ESPN, Oct. 12, 2007, <http://sports.espn.go.com/espn/print?id=3060896&type=story>.

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