U.S. NEGLIGENCE LAWSUITS*

(1) Employment Issues

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Seigneur v. National Fitness Institute (16)	While performing a lift on an upper torso machine (set at 90 pounds by an NFI instructor conducting an initial fitness evaluation), the plaintiff (Seigneur) felt a tearing sensation in her right shoulder. She reported this to the instructor who did not seek medical attention but had her proceed to the next machine.	Shoulder injury and pain that required surgery in which her physician attributed to the use of the upper torso machine.	Seigneur claimed (1) negligent hiring -- NFI hired an instructor who lacked sufficient training, experience, certification, and/or other qualifications even though it promoted itself as employing "degree, certified fitness…specialists" and (2) negligent instruction -- NFI instructor was negligent in having her lift 90 pounds on the upper torso machine given her health/fitness history and directing her to continue, despite her complaint of injury.	**AGAINST –** Appellate court upheld the trial court's ruling that granted the defendant's motion for summary judgment. The exculpatory language in the waiver signed by Seigneur was valid and protected the defendants from their own negligence.
Jessica H. v. Equinox Holdings, Inc., et al. (9)	While conducting personal training sessions, the plaintiff (Jessica H.) alleged that her trainer (Locaino) sexually assaulted her 12 times with the 13th and last occurrence resulting in rape. She never reported the actions to management due to embarrassment and because of a special payment arrangement (1/2 usual cost) she had with Locaino.	Sexual assault and rape.	After Locaino was fired (for reasons other than inappropriate behaviors with clients), Jessica H. filed a lawsuit against the fitness facility based on the doctrine of *respondeat superior* asserting (1) negligent supervision, and (2) negligent hiring and retention. She also filed criminal charges against Locaino.	**AGAINST –** Jessica H. was unable to show that the fitness facility had any notice of foreseeability of such incidents, which would be required to prove her negligent claims. Nothing in Locaino's background or application indicated any sexual misconduct and no complaints were made to management by clients or employees regarding any sexual misconduct. However, Jessica H.'s criminal case against Locaino continues.
York Insurance Company v. Houston Wellness Center, Inc.(20)	While using an exercise machine to develop the triceps, the plaintiff (Vandalinda) tried to release the machine using her arms as she had been instructed by a Houston employee. She alleged that the machine did not properly release causing injury to her left arm.	Injury and pain to the left arm that later required surgery.	Vandalinda filed a negligence lawsuit against the Wellness Center claiming her injury was due to improper instructions given by the Houston employee. Houston Wellness Center claimed that the insurance company had a duty to defend and indemnify them given the "commercial general liability" policy. The trial court agreed and denied the insurance company's motion for summary judgment.	**Liability Insurance Policy Issue:** FOR the Insurance Company and AGAINST the Wellness Center. The appellate court reversed the trial court's ruling based on an exclusion clause in the insurance policy that stated this insurance does not apply to "bodily injury…arising out of the rendering of or failure to render any service…advice or instruction relating to physical fitness…"

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(2) Pre-Activity Health Screening & (3) Health/Fitness Assessment

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Rostai v. Neste Enterprises (14)	During his first personal training session, the plaintiff (Rostai, who was 46 years old, overweight, and inactive) suffered a heart attack toward the end of his 60-minute session.	Heart attack	Rostai claimed that the defendants (the trainer and facility) were negligent because the trainer (1) failed to assess his health and physical condition, in particular, his cardiac risk factors prior to exercise, and (2) aggressively challenged him to perform beyond his level of physical ability and fitness even after observing him exhibiting certain signs/symptoms and (3) denied his several requests for a break throughout the session.	**AGAINST** – The court ruled that the Rostai "assumed the risks" even though the court acknowledged that the trainer was negligent, *i.e.*, did not access plaintiff's level of fitness and may have interpreted plaintiff's complaints (tiredness, shortness of breath, profuse sweating) as usual signs of physical exertion vs. signs/symptoms of a heart attack. The court also indicated that there was no evidence of *intentional* or *reckless* conduct on part of the trainer, and therefore the plaintiff assumed the risks. **NOTE:** The assumption of risk defense is usually effective in protecting defendants for injuries due to inherent risks but not negligent conduct.
Covenant Health System v. Barnett (4)	Covenant promotes its Fifth Annual Heart Symposium which included "free heart screening" to the community. During the screening, the plaintiff (Barnett) was told to step up and down on a step (14 inches high) for 3 minutes in pace with the beat of a metronome. The step was close to the wall forcing Barnett to lean back while stepping so she would not hit her head on the wall. About 2 minutes into the test, already fatigued, she lost her balance and fell, injuring her wrist. No employees were around to observe/spot her performance or to catch her when she fell or, at least, break her fall.	Shattered left wrist	In the negligence lawsuit, the Barnetts claimed that Covenant failed to have anyone available to (1) observe/supervise her as she performed the test, and (2) stop the test when she became fatigued, and (3) be close enough to prevent her fall or to have broken her fall. **Note:** In its analysis of this case, the court referred to *ACSM's Guidelines for Exercise Testing and Prescription* which calls for pre-screening/medical clearance prior to testing and for the person conducting the test to possess sufficient medical competence to evaluate the test participant and make medical judgments when a test should be discontinued, *e.g.*, signs and symptoms indicative of stopping a test.	**Health Care Liability Claim Issue:** When filing their negligent claim, the Barnetts did not file it as a health care liability claim which would require expert testimony as to the standard of care. They did not believe their claim required expert testimony, in part, because none of the employees conducting the test were doctors or nurses. However, the court disagreed with the Barnetts stating that by agreeing with them it would effectively reduce the standard of care of a heart screening from health care professional to ordinary care. The court ruled that Covenant's failure to watch and attend Barnett performing the step test breached the standard of care applicable to health care providers conducting such tests as established by *ACSM's Guidelines for Exercise Testing and Prescription.*

(3) Health/Fitness Prescription

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Capati v. Crunch Fitness International, et al. (2)	The personal trainer of the decedent, Marie Anne Capati (age 37), recommended that she take a variety of over the counter nutritional and dietary supplements including some that contained ephedra. The client was also taking prescribed medications for hypertension. While exercising at the Club, she became ill, lost consciousness and later died at the hospital of a brain hemorrhage (stroke).	Death due to brain hemorrhage (stroke)	The decedent's family filed a wrongful death lawsuit seeking $320 million in both compensatory and punitive damages claiming the trainer: (1) did not advise Capati of the possible negative health consequences of certain supplements while on hypertension medication, (2) did not possess qualifications necessary for personal training.	**SETTLED --** for over $4 million. The defendants (the trainer and Crunch Fitness) were liable for $1.75 million and other defendants were liable for the remaining amount, *e.g*., Vitamin Shoppe Industries, Inc. was liable for $2 million.
Makris v. Scandinavian Health Spa, Inc.(10)	While using the leg press during her first personal training session, the plaintiff (Makris) informed her trainer that she felt a sharp pain in her neck that radiated down her arm – the trainer told her the pain was due to upper body weakness. Makris experiences the same pain during subsequent training sessions when using the leg press and believes the trainer who told her that the pain would subside as she became stronger.	MRI revealed three herniated cervical disks	About 2 years later, after a former employee of the Spa informed Makris that her injury was caused by the conduct of the personal trainer, Makris filed a personal injury lawsuit against the defendants alleging they "rendered negligent training, monitoring, instruction, supervision, and advice."	**FOR** – The trial court granted the defendants motion for summary judgment claiming that the lawsuit was not filed within the statute of limitations. The appellate court reversed the trial court's decision and remanded to the trial court for further proceedings stating: "Before a statute of limitations begins to run, not only must the plaintiff discover that they have an injury, but the plaintiff must also discover with reasonable diligence that the defendant's wrongful conduct caused the injury."

(4) Instruction and Supervision -- General

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Thomas v. Sport City, Inc.(18)	The plaintiff (Thomas) was injured while using a hack squat machine at the defendant's facility – Sport City. He thought he had properly engaged the hook to secure the weights; however he did not and the rack of weights (180 lbs) fell fracturing his ankle and crushing his foot.	Fractured ankle and crushed foot	The plaintiff claimed that Sport City was liable for negligence because it failed to warn, supervise and instruct him on the proper use of the hack squat machine and that Capps Welding (manufacturer of the machine) was liable for a design defect. The trial court assigned comparative fault as follows: --30% to the plaintiff – negligence of the plaintiff --35% to Sport City – negligence of Sport City (failure to instruct/supervise) --35% to Capps Welding, the manufacturer of the machine – product liability (design defect in the machine) The defendants appeal.	**AGAINST** -- The appellate court stated "members of health clubs are owed a duty of reasonable care to protect them from injury on the premises" and "this duty includes a general responsibility to ensure that their members know how to use gym equipment" and that facilities have a duty to instruct their participants on the proper use of exercise equipment, warn them of any dangers/risks, and supervise them properly. However, the court ruled that Thomas did know how to use the machine; he was an experienced, sophisticated user of the machine -- he had used the machine hundreds if not thousands of times and that if he had properly secured the hook, the carriage would not have fallen. In addition, the court ruled that the plaintiff was unable to prove there was a design defect in the machine.

(4) Instruction and Supervision -- Personal Fitness Trainers

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Corrigan v. Musclemakers, Inc. (3)	The personal fitness trainer, toward the end of his first training session with the plaintiff (Corrigan), placed her on a treadmill and set it at 3.5 mph. He gave her little or no instruction on how to use the machine and then left her unattended/unsupervised. She began to drift back on the treadmill and was then thrown from the treadmill injuring her ankle.	Fractured ankle	The plaintiff, a novice who had never been on a treadmill or in a fitness facility before, claimed that her personal trainer failed to properly (1) instruct her on how to use the treadmill and its control panel, and (2) supervise her when he left her unattended.	**FOR** -- Appellate court upheld the trial court's ruling that dismissed the defendant's motion for summary judgment in favor of the plaintiff. Defendant's assumption of risk defense was ineffective due to negligent conduct of the personal trainer. The court also ruled that the defendant did not follow the operator's manual for the treadmill that states individuals need to understand its operation before using it.
Proffitt v. Global Fitness Holdings, LLC, et al. (12)	The personal fitness trainer, in the first session with the plaintiff (Proffitt), had him perform numerous bouts of strenuous exercises and directed him to continue the exercises even after signs/symptoms of overexertion and requests by Proffitt to stop. For many hours after the session, Proffitt experienced extreme pain and fatigue and after 38 hours he noticed his urine was dark brown. He went to the emergency room where he was diagnosed with Rhabdomyolysis and hospitalized for 8 days.	Rhabdomyolysis resulting in permanent injuries including 30% loss of muscle tissue in both quadriceps muscles	The plaintiff filed a negligence lawsuit against the trainer and the facility claiming the personal trainer failed to (1) assess the health/fitness status of the client, (2) provide an exercise program within client's safe fitness capacity, and (3) respond to client's complaints of fatigue during training session.	**SETTLED** – for $75,000 that included medical expenses of $20,000 and lost wages of $6,000. **Note:** Other similar lawsuits against personal trainers have also occurred. In addition, since 2007, several athletes in at least 8 different collegiate and high school athletic programs have been hospitalized with rhabdomyolysis after completing intense workouts. Jay Hoffman, president of the National Strength and Conditioning Association (NSCA) from 2009-2012, stated that this type of injury is 100% avoidable.

(4) Instruction and Supervision -- Group Exercise Leaders

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Stelluti v. Casapenn Enterprises, LLC (17)	The plaintiff (Stelluti), prior to her first spinning class, was not given any instruction on safe use of the bike. When she stood, the handlebars dislodged from the bike and she fell forward while her feet remained strapped to the bike.	Serious back and neck injuries	The plaintiff claimed the spin instructor failed to properly instruct Stelluti on safe use of the bike. The instructor did not inform her to check that the "pop pin" was fully engaged to make sure the handlebars were secure. An expert witness stated that "users should be aware of… functions and proper operation of the cycle."	**AGAINST** – New Jersey Supreme Court upholds the waiver. The waiver protected the defendants from their negligent instruction. However, two dissenting judges disagree with the majority opinion regarding the enforceability of waivers.
Santana v. Women's Workout and Weight Loss Centers, Inc. (15)	During a steps aerobics class, the plaintiff (Santana) fell while performing simultaneous exercises (stepping and arm exercises with a Dynaband) as directed by the instructor. While performing the simultaneous exercises, the participants were instructed to look straight ahead at their reflection in a mirror versus looking at their feet.	Fractured ankle requiring surgery	The plaintiff claimed that the step aerobics instructor failed to provide a safe exercise class when she created an inherently dangerous situation, as described in the testimony of an expert witness. The expert witness stated that the instructor "increased the risks over and above those inherent in the activity" when participants performed the simultaneous exercises.	**FOR** – Appellate court ruled that the assumption of risk and waiver defenses did not protect the defendants. Assumption of risk would be effective for injuries due to inherent risks only and the waiver (exculpatory language) was on the back side of the membership agreement making it inconspicuous and, therefore, unenforceable.

(5) Exercise Equipment

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Guerra v. Howard Beach Fitness Center, Inc. (7)	While using a treadmill, the participant (Guerra) was thrown off the treadmill when the tread (mat) shifted or slipped on its roller.	Severe injury to right knee that required ACL reconstruction and torn left hamstring	The plaintiff claimed the facility failed to (1) maintain the treadmill in a reasonably safe and proper condition, *e.g*., the defendant failed to provide evidence that the treadmill had been inspected, and (2) take suitable and proper precautions for the safety of persons using the exercise equipment.	**FOR** – Court denies defendant's motion for summary judgment. The assumption of risk was ineffective because the malfunctioning tread was not an appreciated or foreseeable risk inherent in exercising on a treadmill and the waiver was unenforceable due to a New York state statute that prohibits waivers.
McDonald v. The Northwestern Mutual Life Insurance Company, et al. (11)	While properly using a Valeo Exercise Ball, the participant (McDonald) falls forcefully to the ground when the ball burst suddenly and without warning.	Severe and permanent injuries	The plaintiff claimed the facility failed to (1) remove recalled exercise balls, (2) correctly inflate the balls, and (3) monitor the balls for proper inflation.	**Case is pending.** **Note:** In April 2009**,** the U.S. Consumer Product Safety Commission, in cooperation with EB Brands (manufacturer of Bally Total Fitness, Everlast, Valeo and Body Fit Fitness Balls) announced a voluntary recall of about 3 million balls due to several reports of injuries.
Barnhard v. Cybex International, Inc. (1)	While working with a patient, the plaintiff (Barnhard), a physical therapy assistant, stood next to the weight-stack side of a Cybex leg extension machine and pulled on it to stretch her arms and shoulder. The machine was not secured to the floor and it tipped over onto her breaking her neck.	Fracture neck rendering the plaintiff a quadriplegic	The plaintiff claimed that Cybex International, Inc. was negligent (the machine had design and marketing defects) and her employer (Amherst Orthopedic Physical Therapy) was negligent. The trial court (jury) awarded damages of $65.9 million and assigned comparative fault as follows: --Cybex (75%) --Amherst (20%) --Plaintiff (5%)	**FOR** – The court ruled that using the machine for stretching was foreseeable (a common misuse) even though it was not the intended purpose of the machine and therefore it could have been made safer in its design and that Cybex failed to warn (marketing defect) of the machine's tipping hazard. The amount of damages that Cybex was liable for ($49.5million) were later reduced to $44 million by an appellate court, but reduced even more in a settlement ($19.5 million) between Cybex and Barnhard.

(6) Facility Issues

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
Roer v. 150 West End Owners Corp. (13)	While using a treadmill (TM), the plaintiff (Roer) falls off of it when an exercise ball gets sucked under the belt of the TM. This causes the rear of the TM to be lifted a couple of inches which propels the machine forward several feet where it hits the wall and causes Roer to fall.	Injuries from the fall are unknown, but the facility has video surveillance of the incident	Roer claimed that the facility failed to take reasonable measures to ensure that the exercise ball would be secured. The court agreed stating that the defendant's "failure to provide storage racks…to prevent free movement of the balls…was a proximate cause of the Plaintiff's injuries."	**FOR** – The waiver did not protect the defendant from its own negligence. First, it did not contain any exculpatory language to absolve the defendant from its own negligence and second, if it had, it would have been unenforceable due to a New York state statute that prohibits the use waivers in recreation/fitness facilities where participants pay a fee.
Goynias v. Spa Health Clubs, Inc. (6)	The plaintiff (Goynias) was injured when he fell on a slippery and wet floor in the men's shower and locker area.	Neck and back pain as a result of the fall	The plaintiff claimed that the defendant negligently (1) created the condition causing the injury and (2) failed to correct the condition after actual or constructive notice of its existence.	**AGAINST –** The appellate court upheld the trial court's ruling that granted the defendant's motion for summary judgment. The plaintiff was unable to provide any evidence that the facility was negligent. It had placed non-skid mats in the area and the tile floor was textured to create a slip-resistance surface and there was no evidence that the defendant had any prior knowledge of a dangerous condition.
Xu v. Gay (19)	While jogging on a treadmill, the decedent (Ning Yan) was thrown off the back of the treadmill hitting the wall (or window ledge) which was only 2.5 feet behind him.	Severe head injury resulting in death	Xu, personal representative for the decedent Yan, filed a wrongful death lawsuit claiming the defendant facility failed to have ample clearance behind the treadmill – only 2.5 feet. An expert witness testified that there should have been 5 feet clearance to meet industry standards.	**FOR** – The appellate court, in part, upheld the trial court's ruling that granted two orders of summary judgment for the defendant -- one claim of gross negligence and one claim of ordinary negligence. The appellate court upheld the summary judgment ruling for gross negligence but not for ordinary negligence stating the "defendant's ignorance of and failure to implement these [industry] standards…establishes a case of ordinary negligence…" The court also ruled that exculpatory language within the waiver signed by the decedent was not explicit and, therefore, did not absolve the defendant from its own ordinary negligence.

(7) Emergency Action Plans

Case	Facts – What Happened	Harm/Injury to Plaintiff	Negligence Claims Against the Defendant(s)	Court's Ruling – For or Against Plaintiff and Court's Reasoning
DiGiulio v. Gran , Inc. (5)	While using a treadmill, the decedent (DiGiulio) suddenly fell off the treadmill and collapsed to the floor. An employee begins CPR and the assistant manager calls 911. The assistant manager failed to use the AED that was stored in a glass cabinet about 20 yards away from the incident.	Though paramedics restored his pulse, DiGiulio died in the hospital about 6 weeks after the incident.	The defendant failed to (1) properly train its employees about the use of the AED, (2) properly respond to DiGiulio's cardiac arrest, and (3) notify employees on how to access the AED. The defendant also violated a New York statute that requires health clubs to have an AED and an employee trained and certified on its use.	**AGAINST** – The New York statute requires health clubs to make AEDs available and encourage their use in medical emergencies, but does not impose liability on clubs for usage failures. **Note:** A different New York appellate court in *Miglino v. Bally Total Fitness of Greater New York, Inc.* ruled that the statute requires the actual use of AEDs in health clubs.
Zihlman and Zihlman v. Wichita Falls YMCA (21)	While using the exercise facility, the decedent (Thomas) suffered a sudden cardiac arrest. YMCA had an AED and trained AED/CPR personnel but no one began CPR or used the AED – EMS was contacted.	Thomas died despite efforts by EMS personnel to resuscitate her.	Daughters (Dana and Kindra Zihlman) of Thomas claim the defendants failed to (1) utilize the AED and as a consequence their mother died, (2) exercise reasonable care for the safety, protection, and first aid in the event of a medical emergency, and (3) have accessible AEDs and properly trained staff on their use.	**Case is pending.**
Hicks v. Bally Total Fitness Corp. (8)	The decedent (Mr. Hicks) suffered a sudden cardiac arrest while exercising at Bally's fitness facility. No employee began CPR or used an AED, but EMS (911) was called. Paramedics arrived about 8 minutes after the call and applied the first electric shock about 12 minutes after the call. Mr. Hicks was transported to a local hospital where he died several days later.	Cardiac arrest resulting in death	Gloria Hicks filed a wrongful death lawsuit involving three counts against the defendant: (1) Breach of Express Warranty (Bally had pledged to its members it would respond in a timely manner to any foreseeable emergency and abide by the guidelines of the American College of Sports Medicine), (2) Negligence (Bally breached its duty by failing to (a) respond to Hick's cardiac arrest, and (b) have an AED), and (3) Gross Negligence (Bally knew for 8-9 years prior that cardiac arrest killed 3 or more of its members per month).	**Case is pending.**

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