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Exploding basketball shoe enough to make risk-adverse crowd cringe

Zion Williamson, the freshman phenom from Duke, exploded onto the college basketball scene this season. While he will not be competing in next weekend's Final Four due to his team's loss to Michigan State, he has captured the country's attention this March while carrying his team to the Elite Eight in the NCAA Men's Basketball Tournament.

But an exploding Nike shoe almost cut short his season. Williamson, the projected No. 1 pick in this year's NBA draft, suffered what Duke head coach Mike Krzyzewski called a "mild knee sprain" in the opening minute of No. 1 Duke's 88-72 loss to No. 8 North Carolina in late February. His shoe malfunctioned and his foot ripped the upper part of the shoe apart from the sole, triggering the knee injury.

The fallout from the malfunctioning shoe caused Nike's stock price to drop 89 cents, indicating a \$1.1 billion market value drop resulting from Williamson's exploding shoe. The fallout for Williamson, a player some have projected will earn \$1 billion on- and off-court throughout his professional career, could have been astronomical.

Fortunately for Williamson (and the NBA teams "tanking" in the draft), the shoe malfunction caused only a mild knee sprain and he returned to the court in time to showcase his once-in-a-generation talent in the NCAA Tournament. But the potential destruction that the shoe malfunction could have caused raises the question: What legal liability, if any, could Nike have been subject to had Williamson suffered a more significant and impactful injury?

Certainly, athletes commonly suffer in-game injuries during the ordinary course of competition. But, when an injury occurs to an athlete due to the acts or omissions of third parties, civil liability may follow.

The recent resolution of NFL star Reggie Bush's lawsuit against the then-St. Louis Rams is illuminating. In November 2015, Bush — then playing for the San Francisco 49ers — ran out of bounds while returning a punt at the Edward Jones Dome. Out of bounds, he slipped on the slick concrete surface that surrounded the turf field. Bush did not have Williamson's luck — he tore his ACL, rendering him disabled for the remainder of the season.

The following January, Bush filed a lawsuit against the St. Louis stadium owners and operators as well as the Rams, alleging premises liability claims. First amended petition, *Bush v. St. Louis Regional Convention and Sports Complex Authority, et al.*, No. 1622-CC00013, 2016 WL 11295572 (Mo. Cir. Ct. Jan. 15, 2016).

Last June, a jury returned a verdict in Bush's favor against the Rams, finding the owners and operators of the stadium were 100% at fault and that Bush was entitled to \$4.95 million in compensatory damages and \$7.5 million in punitive damages.

The dangerous surface that befell Bush is tantamount to Williamson's exploded Nike. If Williamson had suffered serious injury when the shoe malfunctioned, his damages would have been extraordinary.

Williamson's alleged damages could be astronomical, for Williamson has not only been overwhelmingly predicted to be the top pick in the NBA draft but is predicted to be an endorsement machine of LeBron James'

SPORTS TORTS

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or Michael Jordan's caliber off the court.

Williamson's case would not have been new or novel. Other cases shed further light on the applicability of product liability and negligence suits in the context of defective basketball shoes.

In *Dixon v. Foot Locker Inc.*, the 4th U.S. Circuit Court of Appeals in an unpublished per curiam opinion emphasized the causation aspect of a product liability or negligence action against a basketball shoe manufacturer. See 623 Fed. App'x 594, 596 (4th Cir. 2015).

The court held that a plaintiff alleging that a defective basketball shoe caused his injury while playing basketball "must provide evidence, beyond his own unsupported inferences and speculative assertions, that would permit a fact-finder to" conclude that the shoe itself "was responsible for causing his injury." Id.

Because Williamson undoubtedly suffered his knee sprain as a direct result of his foot protruding through the bottom of his shoe, establishing causation under *Dixon* would hardly be difficult.

In *Tucker v. Nike Inc.*, the plaintiff

sued Nike (among others) because his Nike shoe "forcefully contacted" the back of [the plaintiff's] foot while his foot was stressed" as he was playing basketball. 919 F. Supp. 1192, 1193 (N.D. Ind. 1995).

The plaintiff claimed that the shoe was defective because the plastic "back tab pull" that helps the wearer put on the shoe "scraped against [his] Achilles tendon whenever his foot was" flexed and stressed, thus causing his Achilles tendon to rupture. Id.

Though disposition in the case rested on the admissibility of expert testimony, the underlying issue that the expert was tasked with analyzing was whether the alleged defective shoe was the exclusive cause of the plaintiff's injury. See id. at 1197-98; see also *Burton v. Riverboat Inn Corp.*, No. 4:12-cv-40, 2013 WL 6153231, at *2-3 (S.D. Ind. Nov. 20, 2013) (recognizing that *Tucker v. Nike Inc.* stands for the proposition that the alleged defective shoe must be the exclusive cause of the injury).

Nike would have had a difficult defense to Williamson's case, given that the shoe explosion against the Tar Heels was not the first time the Nike PG 2.5 has failed. Social media platforms are replete with complaints about Nike PG 2.5 shoes breaking at the soles.

Thankfully, the exploding shoe incident did not cause damages significant enough to necessitate a lawsuit. But, equipment manufacturers such as Nike undoubtedly have redoubled their efforts to ensure that the products they supply to teams are safe for their intended usage.

Now it is time for Williamson to explode into the world of professional basketball. It remains to be seen if he will be sponsored by Nike.