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“Meet Me Halfway”: Arm Wrestling and the Law

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“Meet Me Halfway”: Arm Wrestling and the Law

Abstract

Most law review articles are very serious, and with good reason. They discuss important, world-changing matters like the role and magnitude of executive power, the limits of Constitutional rights, the boundaries of international law, and the vagaries of civil procedure. This Article has no such world-changing or reverent pretensions; it instead takes a light-hearted view of a fairly marginal legal topic: arm wrestling. To provide a spine for the discussion, the Article leans heavily on the 1980s movie *Over the Top* – a movie about arm wrestling, trucking, and child custody - to provide examples of arm wrestling content with legal implications. As the Article develops background on the topic, it discusses types of tort liabilities likely to apply to arm wrestling, the functional import of waivers in the arm wrestling context, and the possible liabilities of third parties who host or organize arm wrestling bouts.

Keywords

arm wrestling, over the top

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Article

**“Meet Me Halfway”:
Arm Wrestling and the Law**

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Abstract

Most law review articles are very serious, and with good reason. They discuss important, world-changing matters like the role and magnitude of executive power, the limits of Constitutional rights, the boundaries of international law, and the vagaries of civil procedure. This Article has no such world-changing or reverent pretensions; it instead takes a light-hearted view of a fairly marginal legal topic: arm wrestling. To provide a spine for the discussion, the Article leans heavily on the 1980s movie *Over the Top* – a movie about arm wrestling, trucking, and child custody - to provide examples of arm wrestling content with legal implications. As the Article develops background on the topic, it discusses types of tort liabilities likely to apply to arm wrestling, the functional import of waivers in the arm wrestling context, and the possible liabilities of third parties who host or organize arm wrestling bouts. A later part of the Article confronts an employer’s possible liabilities for employees’ arm wrestling while on the job. Some discussion is even devoted to the possibility of arm wrestling against a machine. Yet lest the Article’s use of occasionally silly pronouncements and irreverent movie references mislead, the content is intended to be legally sound.

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INTRODUCTION

This Article begins near a story’s end, under blinding spotlights in a Las Vegas arena, where two men are about to lock in struggle in front of thousands of boisterous spectators. From a distance, the match would seem unfair – pitting a 300-pound five time world champion against an unknown, roughly 100 pounds lighter. The differences between the competitors do not end there. The larger man, named Bull Hurley, is brash and arrogant, generously heaping obscenities and threats on his smaller opponent, as his eyes blaze and arena lights dance and pool on the sweat coating his shaved head. The smaller man, Lincoln Hawk, is more reserved and methodical in his comportment. He utters no taunt, makes no face at his opponent; he simply rotates the bill of his trucker cap 180 degrees away from his forehead, as he always does before such bouts.

Yet for all the disparities in size and confidence confronting Hawk, the smaller man does not back down in the face of his challenge. As the struggle approaches, Hurley plants his right elbow on the table between the two competitors and fires off another harangue. Hawk, still not baited by his opponent’s taunts, places his right elbow on the table only at the urging of the referee. Once each competitor has positioned his arm, the two men lock right hands, and prepare for battle. When the signal is given, each man begins exerting as much force as he can in an attempt to pin his opponent’s right wrist to the table. These men are arm wrestling¹ - not just for

¹ In the unpublished opinion of *Jamison v. Arm World Promotions*, No. F058008, 2010 WL 3307462, at *2 (Cal. Ct. App. Aug. 24, 2010), the court defined arm wrestling as “a competitive endeavor in which two opponents exert pressure against each other’s hands to determine which competitor has

pride, but for the title of world’s greatest arm wrestler.

The match initially does not proceed well for Hawk. Hurley is able to use his Christmas ham arm to wrench Hawk’s hand into a highly disadvantageous position, close to the table’s surface and an attendant defeat. Yet at his son’s excited exhortation, Hawk musters enough strength to escape the threat and reestablish equilibrium with Hurley nearer to their starting point. With the threat of defeat not yet averted, Hawk catches a break in the match, as his hand slips free from Hurley’s grasp. This stoppage sends Hurley into a frothy rage, as the match must be restarted in the original starting position. Given Hawk’s proximity to defeat prior to the hand slip, Hurley may believe Hawk intentionally loosened his grip.² As the competitors retake their positions, their demeanors remain as they have throughout the contest – with an over-charged Hurley bouncing taunts into the blank face of Hawk. The primary differences in their second attempt at the world title are the presence of an arm wrestling strap to secure their hands, and – in addition to the insults hurled at Hawk’s face – a sucker punch delivered by Hurley as the opponents’ hands are tied.

When the second attempt at the world championship match begins, a bloodied Hawk strains against Hurley as the match oscillates between surges in each opponent’s favor. And just as things seem

greater arm strength. Each competitor must keep their elbow on the table, with the goal of forcing their opponent’s hand to touch the table.”

² Which would qualify as a foul under the rules of arm wrestling. See ARMWRESTLING RULES & REGULATIONS, Art. XII, § B, r. 21 (Am. Armsport Ass’n Rules 2012), *available at* <http://www.armsport.com/rules.htm> (last visited Feb. 25, 2014).

most dire for Hawk, his hand perilously approaching the point of defeat, Hawk is able to readjust his grip, bringing his fingers directly over the top of Hurley's. The wild claims of Hurley that have peppered the match to this point are converted to a banshee's wail, as Hawk begins an improbable comeback.

And... the narrative must end there, for its continuation would spoil the end of the movie, *Over the Top*.³ That movie features Sylvester Stallone in the role of Lincoln Hawk testing his fictional arm wrestling prowess against Hurley, portrayed by the late Rick Zumwalt, an actual five time world arm wrestling champion. Prior to the world championship match, the film chronicles Hawk's life as a trucker, and his attempt to reconnect with his estranged son over the course of a cross-country haul. During that trip, the film clarifies that when Hawk is not on the road (and even at times when he is on it), he enjoys working out and engaging in impromptu arm wrestling matches at various truck stops. (And when Hawk is not doing that, he is vaguely invested in a battle for custody of his son against the boy's maternal grandfather.)

This Article begins with a description of a scene from *Over the Top* – not just because it is a great movie⁴ – but because this Article is on the topic of arm wrestling as it intersects with the law. *Over the Top* serves a worthwhile purpose in support of this topic as the only big-budget Hollywood film to focus on arm wrestling. And as the story in *Over the Top* unfolds, a number of scenes, including the one just described – provide legally salient material that speaks to how arm wrestlers might encounter the

³ OVER THE TOP (Warner Brothers 1987).

⁴ A point some might dispute.

law.

One example of such material comes in the form of the injury that an arm wrestler might sustain during a match. For all the glory and accolades that may follow from an arm wrestling victory, the sport is not without risk of serious bodily harm.⁵ As participants wrench their arms to try to pin an opponent’s wrist, this rotational force applies potentially significant shearing and torque loads to the upper arm. Human arms are not always able to withstand such forces; as a consequence demonstrated amply by most of the case law discussed below, arm wrestling participants place themselves at risk of serious spiral fractures to the humerus. Indeed, *Over the Top* does not sugarcoat this reality, as the film dedicates several frames to an injury occurring in the lead-up to the Hurley-Hawk tournament final. With such risk of serious injury come potential costs arising out of both short-term medical treatment and long-term consequences associated with imperfectly healed injuries. From such injuries follows the question of who should bear the cost as between the victim, the victim’s opponent, or even a third party. In most real-life scenarios, it is just such a third party that will face this legal risk – where an arm wrestling injury occurs on the job or at an arm wrestling tournament, for example, the injured party may seek compensation against an employer or tournament organizer.

In its quest to provide guidance and background on the legal implications of arm wrestling in cases such as these, this Article reviews the legal

⁵ *Jamison*, 2010 WL 3307462, at *2 (“A known risk of arm wrestling is that a competitor’s arm might break under the strain of competition. Broken arms occur despite rules that govern arm wrestling in the attempt to limit injuries.”).

risks attendant on arm wrestling from a few different perspectives. Part I of the Article discusses the legal implications of arm wrestling as a general matter. This discussion includes an overview and extrapolation of general sports tort law to the arm wrestling table specifically. Primarily included in the discussion are the torts that apply to the risk of injuries sustained during a match and the possibility of mitigating such risk by resort to waivers. Part II delves into the richest source of case law on arm wrestling – the occurrence of arm wrestling in the employment setting, and the associated repercussions for workers’ compensation liability. Part III discusses yet another specific case of potential legal risk arising from arm wrestling – the match pitting an arm wrestler against a machine.

I. ARM WRESTLING AND TORT LIABILITY GENERALLY

Little is known about the invention or early history of arm wrestling. This is presumably the case due to the sport’s age, as arm wrestling requires no more than two people with arms and machismo, things that have never been in short supply in human history. Yet for the probably lengthy tradition surrounding the sport of arm wrestling, there is very little case law on the topic at all, and what case law does exist involves suits against third parties that organize, host, or employ the competitors. In other words, my search of case law has not uncovered a single published opinion arising out of a suit brought by an injured arm wrestler against an opponent. Yet the legal duties or liabilities between one arm wrestler and another represent a fundamental locus of conflict, the projection of the primordial fight into the less physical judicial forum, on which further discussion of the liabilities of non-participants may be con-

structured.

In view of the limited case law on the topic, the likely treatment of arm wrestling by courts must be predicted based on courts' treatment of torts in other athletic contexts. When torts arise between participants in the athletic context, they are typically brought under one of three theories, presented in order of decreasing level of intent: intentional tort such as assault or battery, reckless misconduct, or negligence.⁶ These causes of action are not available in all jurisdictions in the context of athletic competition. As one commentator noted, "early sports cases limited recovery to intentional torts: recovery on a negligence theory was 'out of the question.'"⁷ This parsimonious traditional view of tort law has relaxed over time. Most jurisdictions now also permit recovery for reckless misconduct, and some go so far as to permit negligence claims in the context of athletics.⁸ Ultimately, then, an arm wrestler's ability to seek relief for damages will depend on a combination of the harm claimed and whether the jurisdiction in question recognizes that type of harm in the athletics context. Yet as each of the three primary sources of tort liability will all apply to arm wrestling torts in some jurisdictions, each merits further individual discussion.

Regardless of the jurisdiction, commission of an intentional tort will give rise to liability for the

⁶ See Glenn R. Grell, Case Note, *Hackbart v. Cincinnati Bengals, Inc.*, 601 F.2d 516 (10th Cir. 1979), 84 DICK. L. REV. 753, 758-60 (1980).

⁷ *Id.* at 760.

⁸ See, e.g., *Lestina v. West Bend Mutual Insurance Co.*, 501 N.W.2d 28, 33 (Wis. 1993) (finding negligence "sufficiently flexible" to be used in a case involving an injury sustained during a recreational soccer match).

arm wrestling tortfeasor. An arm wrestler could conceivably commit an intentional infliction of emotional distress against another participant, or falsely imprison that participant, but such torts would seem highly unlikely. Taunting from one arm wrestler to another might call into question the strength, size, or value of a competitor, but it is unlikely to be so “extreme and outrageous” as to qualify as an intentional infliction of emotional distress.⁹ Nor, for that matter, is an arm wrestler likely to confine an opponent in any meaningful way during a match such that the opponent would be falsely imprisoned. Rather, the most likely intentional tort to occur during an arm wrestling match is the tort of battery. Battery traditionally requires offensive bodily contact that the defendant intended to cause.¹⁰ Beyond the gripping of hands required for an arm wrestling match, the sport of arm wrestling does not require any other contact between the competitors. Contact beyond the hand-on-hand grip satisfying the definition of battery during a match would be actionable as such.

The final scene in *Over the Top* offers a clear example of just such a battery committed during an arm wrestling match. Just as Bull Hurley and Lincoln Hawk re-engage for a second attempt at their world championship match, Hurley unexpectedly forces both his and Hawk’s hand into Hawk’s face.¹¹ This contact leads to light, almost stylized bleeding from Hawk’s nose, an indication of some degree of injury.¹² This satisfies all elements of the tort – first, the bodily contact between the interlocked hands and

⁹ RESTATEMENT (SECOND) OF TORTS § 46 (1965).

¹⁰ See, e.g., *Lambertson v. United States*, 528 F.2d 441, 444 (2d Cir. 1976).

¹¹ *OVER THE TOP* (Warner Brothers 1987).

¹² *Id.*

Hawk's face is offensive, certainly inasmuch as it injures Hawk. Additionally, Hurley intends to bring about the contact by forcing the competitors' fists into Hawk's face. This intent may be inferred from a number of sources. Hurley's incessant taunting and raging arrogance is suggestive of someone who might intentionally harm another, a suggestion only reinforced by Hawk's slip in grip which Hurley likely viewed as depriving him of victory. But the strongest indicator of Hurley's intent is the sheer improbability that such contact would ever occur outside of an intent to cause it. At the time of the offensive contact, the competitors' arms were at rest in preparation for the match, so no significant force of any kind should have been exerted at that moment. And even if the competitors were to exert a force, arm wrestling dictates that lateral force be applied between the competitors. A force of that magnitude exerted directly at an opponent under these circumstances would only occur intentionally. In view of this, Hurley could have been found liable for a battery.

Lest the probative value of another's arrogance or taunting in arm wrestling be overstated, *Over the Top* also teaches that the expression of an intent to cause serious harm is not always fulfilled in any obvious way. Throughout the film, the number of serious threats lofted at a competitor before a match is fairly striking. When an overcharged character named Smasher challenges Hawk to an impromptu arm wrestling match at some greasy spoon/truck stop, Smasher explicitly brags to Hawk, "I've got a thousand [dollars] that says I can tear your arm off."¹³ Hawk accepts the challenge, but lest he have failed to appreciate the brutish

¹³ *Id.*

nature of his opponent, Smasher loudly proclaims, “I wanna show this guy something . . . break his arm off.”¹⁴ Yet once the arm wrestling between the two begins, Smasher does nothing unusual, least of all attempt to separate Hawk’s arm from his torso. The two just arm wrestle.

That isn’t the only occasion of threatened violence at an arm wrestling table. In a documentary-style interview spliced into the tournament final footage, Bull Hurley boldly states, “I drive trucks, break arms, and arm wrestle. That’s what I love to do, and it’s what I do best.”¹⁵ In the same interview, he says of Hawk, “All I want is to try to hurt him, cripple him . . . so he never dares to try to compete against me again.”¹⁶ Yet once again, Hurley does not fulfill his violent threats nearly as well as he strings together infinitives. Outside the match’s punching incident, which does not involve a broken arm or crippled victim, Hurley’s actions simply do not align with his stated intent. Instead, threatening insults, from Hurley or any other competitor, appear part and parcel of the larger testosterone-fueled culture of arm wrestling. Such insults might help show an intent to harm, but they are far from dispositive in an case of an intentional tort.

If a defendant’s level of intent in an athletic venue does not rise to the level of an intentional tort, a plaintiff may find it necessary to allege the tort of reckless misconduct. Reckless misconduct is characterized by a harmful action where the actor “knows his act is harmful, but fails to appreciate the extent

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

of the potential harm.”¹⁷ To be found liable for reckless misconduct, the wrongdoer must recognize that the risk generated is “in excess of the risk of a negligent act.”¹⁸ In other words, reckless misconduct represents the mid-point on the scale of wrongdoer’s intent among the three tort varieties discussed here. The wrongdoer’s intent and knowledge need not be as well-formed as in the case of an intentional tort, but it must exceed that of simple negligence.

As a matter of tort liability in athletics, many – and possibly most – jurisdictions hold that a wrongdoer’s intent must at least reach the level of reckless misconduct for a plaintiff to recover.¹⁹ The policy behind this flows from cases like *Nabozny v. Barnhill*,²⁰ involving a recreational soccer player’s over-aggressive pursuit of a back-pass to the goalkeeper.²¹ After the goalkeeper had gathered the ball, the defendant struck the goalkeeper’s head, causing serious injuries.²² In order to provide lower courts a standard to assess the merits of claims like the plaintiff’s, the Illinois Appellate Court developed a standard more generally applicable to sports. While the court acknowledged that “some of the restraints of civilization must accompany every athlete onto the

¹⁷ Grell, *supra* note 6, at 760.

¹⁸ *Id.*

¹⁹ Ulysses S. Wilson, Comment, *The Standard of Care Between Coparticipants in Mixed Martial Arts: Why Recklessness Should ‘Submit’ to the Ordinary Negligence Standard*, 20 WIDENER L.J. 375, 382 (2011) (“In the overwhelming majority of jurisdictions, an injured sports participant wishing to recover damages must prove to the fact finder that the other participant’s act was reckless or intentional.”).

²⁰ *Nabozny v. Barnhill*, 334 N.E.2d 258 (Ill. App. Ct. 1975).

²¹ *Id.* at 259.

²² *Id.* at 260.

playing field,"²³ it also expressed concern about placing "unreasonable burdens on the free and vigorous participation in sports."²⁴ To strike a balance between these opposing policy objectives, the court established a test whereby:

when athletes are engaged in an athletic competition; all teams involved are trained and coached by knowledgeable personnel; a recognized set of rules governs the conduct of the competition; and a safety rule is contained therein which is primarily designed to protect players from serious injury, a player is then charged with a legal duty to every other player on the field to refrain from conduct proscribed by a safety rule.²⁵

If the use of "duty" language would seem to permit a cause of action for simple negligence, the court practically interpreted its test as concluding "that a player is liable for injury in a tort action if his conduct is such that it is either deliberate, wilful or with a reckless disregard for the safety of the other player so as to cause injury to that player."²⁶ *Barnhill*, then, requires at least reckless misconduct on the part of a defendant to permit a successful cause of action by an injured participant in applicable athletics.

"Applicable" is the operative word in the previous sentence, as courts have seen fit to reject the *Barnhill* standard where not all prongs of the test are satisfied. Take *Novak v. Virene*,²⁷ where the

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 260-61.

²⁶ *Id.* at 261.

²⁷ *Novak v. Virene*, 586 N.E.2d 578 (Ill. App. Ct. 1991).

same Illinois Appellate Court considered a claim related to a skiing accident. The court distinguished the facts in *Barnhill* from the claim before it based on the fundamentally different nature of the sports in the two cases. Where soccer involves “virtually inevitable” contact with other players, a skier “does not voluntarily submit to bodily contact with other skiers[.]”²⁸ The court did not believe that reckless misconduct was required to serve the interest in vigorous participation in skiing in the way that the *Barnhill* court required that standard of a contact-based team sport such as soccer. The *Novak* court instead permitted the application of a claim of ordinary negligence to the skiing accident before it.²⁹

Reasoning similar to the *Novak* court’s view of skiing could be applied reasonably well to arm wrestling. First, it bears mention that the *Barnhill* test’s requirement of a team sport does not apply to arm wrestling, a sport cast in the fires of individual desire and glory. And if arm wrestlers must consent to contact to their opponent’s hand and, possibly, wrist, no other contact is envisioned by the sport. From that perspective, arm wrestling resembles less contact-oriented individual sports such as skiing or running. Notably absent are the frequent and unpredictable collisions attendant on a sport like soccer or football. If presented with the question of the level of intent sufficient to support a cause of action for an arm wrestling injury, a court could conclude that ordinary negligence should suffice in that context.

With that in mind, and by way of defining a third intent standard after intentional torts and reckless misconduct, it is important to understand

²⁸ *Id.* at 580.

²⁹ *Id.*

what “negligence” means both generally and when applied to arm wrestling. Under a typical definition, negligence is “a failure to exercise the degree of care in a given situation that a reasonable person under similar circumstances would employ to protect others from harm.”³⁰ To be successful, a negligence claim must show four items: the existence of a duty between the defendant and plaintiff, a breach of that duty by the defendant, an injury sustained by the plaintiff, and a causal relationship between the defendant’s breach of duty and the plaintiff’s injury.³¹

Over the Top furnishes a few examples of the sort of duty whose breach might amount to negligence. As one example, the organizers of the championship arm wrestling tournament may owe a duty to the participants to have appropriate medical staff on hand in the event of an injury. They would equally owe a duty to provide well-constructed arm wrestling tables. The presence of qualified referees would also be part of their duty. As the film reveals, each of these duties at least appears to be satisfied.

Where legal duties seem to be satisfied at the world championship tournament, the film’s protagonist Hawk is far more content to breach duties of care towards his son, Michael. In one scene, this negligence takes the form of Hawk allowing 13-year-

³⁰ *City of Santa Barbara v. Superior Court*, 161 P.3d 1095, 1095 (Cal. 2007).

³¹ Some commentators and courts break the four-part test into five parts, which is also fine for purposes of the Article. See *generally* *Estate of French v. House*, 333 S.W.3d 546, 554 (Tenn. 2011) (noting that the elements of common law negligence include “(1) a duty of care owed by defendant to plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) an injury or loss; (4) cause in fact; and (5) proximate, or legal, cause.”).

old Michael to drive Hawk’s big rig unaided and without the niceties of training or a commercial driver’s license. In a scene more relevant to the topic at hand, Hawk forces Michael to arm wrestle an older, stronger adolescent despite Michael’s apparent arm wrestling inexperience, the opponent stridently threatening, “I’m gonna break your arm, punk.” Due to his inexperience and age, Michael is in no position to appreciate the risk of injury presented by arm wrestling, nor is he particularly able to disobey his father’s will. Had Michael sustained injury during the subsequent match (fortunately, he does not), his father would almost certainly have been negligent in allowing the injury to occur. He knowingly exposes his son to a risk of injury that only he, as the father and experienced arm-wrestler, appreciated, in breach of a duty of care for his son. His son would have been injured as the direct result of this negligence, as he would otherwise not have arm-wrestled the larger adolescent. All elements of a negligence claim would have been present.

A related cause of action for negligence might also arise in arm wrestling due to what is known as “break-arm” position.³² This position occurs when a competitor’s elbow is planted at a point outside the

³² See SITDOWN & STANDING ARMWRESTLING TECHNICAL RULES, Competition Fouls, Item 6(d), (World Armwrestling Fed’n Rules 2007), *available at* <http://www.armwrestling.com/000rulesandregulations.html> (last visited Feb. 25, 2014) (“When a competitor starts to put themselves in a “break arm” or “dangerous position”, [sic] the referee will caution the competitor loudly so that the competitor understands the caution. Referee will instruct the competitor to face their competitive arm, so as to keep the hand, arm and shoulder in a straight line. Competitors must never force their shoulder inwards, ahead of their arm or hand, towards the table.”).

frame of his or her shoulder. In other words, if a line were to be drawn directly away from the point where the elbow is planted, it would not intersect the competitor's body. In this position, the competitor is at increased risk of suffering a spiral humerus fracture. A knowledgeable arm wrestler continuing in an attempt to win a match – despite knowledge that the other participant is in “break-arm” position – could be liable for negligence if the other participant's arm does in fact break. In practice, however, this type of claim is unlikely to be successful due to the assumption of risk doctrine.

Where a plaintiff arm wrestler brings a cause of action for negligence, the assumption of risk doctrine could stand as a bar to the plaintiff's case. Assumption of risk is the “traditional belief that a participant assumes the dangers inherent in the sport and is therefore precluded from recovery from an injury caused by another participant.”³³ Under this rationale, a participant in a soccer match assumes the risk of being struck by a kicked ball during the normal course of play; a football player carrying the ball on offense assumes the risk of being tackled; therefore, an arm wrestler arguably assumes the risk of an arm injury inflicted during a typical match.

These examples generally correspond to the branch of the doctrine known as “primary assumption of risk.” Primary assumption of risk applies to “those instances in which the assumption of risk doctrine embodies a legal conclusion that there is ‘no duty’ on the part of the defendant to protect the plain-

³³ Paul Caprara, Comment, *Surf's Up: The Implications of Tort Liability in the Unregulated Sport of Surfing*, 44 CAL. W. L. REV. 557, 561 (2008).

tiff from a particular risk.”³⁴ Under a different type of assumption of risk, called “secondary assumption of risk,” the plaintiff knowingly courts a risk of harm at the hands of the defendant despite the existence of a duty between the parties.³⁵ Had the Smasher character in *Over the Top* said that he wanted to show Hawk something by negligently jostling his arm (in contrast to his original declaration that he would break Hawk’s arm, Hawk would have assumed the risk of such “jostling” under a secondary assumption of risk. Something gets lost in the translation of the taunt to negligence only, though, so it’s fairly unsurprising that Smasher did not express himself that way.

Therein lies one of the primary limits to the scope of the assumption of risk doctrine. The doctrine only applies to actions in negligence, as athletes are not generally deemed to assume the risk of another participant’s reckless misconduct or intentional tort.³⁶ Assumption of risk is also limited in its partially subjective view of the party assuming the risk. When the plaintiff skier was injured in *Seidl v. Trollhaugen, Inc.*,³⁷ the court found “no evidence that plaintiff had knowledge of that particular risk prior to the time of injury or even that she knew such a risk to be one of the ordinary inherent risks of ski-

³⁴ *Id.* at 567.

³⁵ *Id.* at 567-68.

³⁶ *Martin v. Luther*, 642 N.Y.S.2d 728, 729 (N.Y. App. Div. 1996) (“It is well established that [voluntary sports] participants may be held to have consented, by their participation, to injury-causing events which are known, apparent or reasonably foreseeable, but they are not deemed to have consented to acts which are reckless or intentional.”).

³⁷ *Seidl v. Trollhaugen, Inc.*, 232 N.W.2d 236 (Minn. 1975).

ing.”³⁸ The court did not consider what an ordinary skier would have known under the circumstances, but what the plaintiff knew. Similar thinking would limit the type of risk that a child assumes in athletics, as compared to the risk assumed by a more experienced adult.³⁹

If assumption of risk only covers negligent acts whose likelihood the plaintiff should have appreciated, protection from liability for arm wrestling injuries can be expanded somewhat if either an arm wrestler or organizer of the match compels competitors to sign a waiver prior to participation. Such a waiver effectively protected Arm World Promotions in *Jamison v. Arm World Promotions*.⁴⁰ In that case, the plaintiff Jamison sustained a spiral torque fracture during an arm wrestling tournament organized by the defendant.⁴¹ Prior to participation though, Jamison executed a waiver which stated in abbreviated form, “I hereby waive all claims against the State of Calif., Arm World Promotions (AWP), . . . Operators or Sponsors . . . for injuries that I may sustain.”⁴² The California Court of Appeal noted that waivers may effectively eliminate a legal duty if they contain language that is sufficiently “clear, unambiguous, and explicit in expressing the intent of the

³⁸ *Id.* at 241.

³⁹ Survey, *Sports Law in the State of Wisconsin*, 15 MARQ. SPORTS L. REV. 425, 437-38 (2005) (summarizing *Little v. Bay View Area Red Cats*, No. 80-1801, 1981 WL 139187 (Wis. Ct. App. June 15, 1981) for the proposition that “children lack the maturity and experience to make responsible decisions, and the jury should consider this when determining a child’s proportion of negligence.”).

⁴⁰ See *Jamison v. Arm World Promotions*, No. F058008, 2010 WL 3307462, at *6 (Cal. Ct. App. Aug. 24, 2010).

⁴¹ *Id.* at *1-2.

⁴² *Id.*

parties.”⁴³ As the language of the Arm World release was sufficiently clear,⁴⁴ it was held to release the defendant’s liability towards Jamison.

⁴³ *Id.* at *4.

⁴⁴ *Id.* at *6. As the *Jamison* court also noted, waivers are unenforceable if they implicate the public interest. This occurs when the multi-factor test set out in *Tunkl v. Regents of University of California*, 383 P.2d 441, 445 (Cal. 1963), is satisfied. The test states that “the attempted but invalid exemption involves a transaction which exhibits some or all of the following characteristics. It concerns a business of a type generally thought suitable for public regulation. The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards. As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence. Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.” *Tunkl*, 383 P.2d at 445-48. In the original *Tunkl* case, this test invalidated a waiver of negligence liability in the hospital context. It has also been applied to invalidate a waiver for injuries arising out of interscholastic sports. *Wagenblast v. Odessa School District*, 758 P.2d 968, 970 (Wash. 1988) (finding that a waiver in for participation in interscholastic athletics violated all 6 *Tunkl* factors). Discussion of the *Tunkl* test is limited to a footnote here as arm wrestling is not likely to trigger *Tunkl*. The sport of arm wrestling is simply not a necessary incident of life in the same way a hospital’s services are. Nor, to my knowledge, is arm wrestling offered as an interscholastic sport such that it would come under *Wagenblast*.

The principle that waivers may eliminate liability for simple negligence has a flip side – waivers generally cannot eliminate liability for gross negligence or intentional torts. As the Supreme Court of California noted in *City of Santa Barbara v. Superior Court*, “the vast majority of decisions state or hold that . . . agreements releasing grossly negligent conduct generally are void on the ground that public policy precludes enforcement of a release that would shelter *aggravated misconduct*.”⁴⁵ In other words, courts do not want to allow parties who show a complete lack of care for others to stand behind a piece of paper to deflect any charge of wrongdoing.

Based on the foregoing discussion, some general trends become evident in the law likely applicable to arm wrestling. First, unless a jurisdiction has established reckless misconduct as the minimum level of intent necessary to bring an athletics-based civil action, courts will likely reason that negligence, reckless misconduct, and intentional torts are all actionable in arm wrestling. Practically speaking, however, negligence will be fairly unusual and difficult to show in most arm wrestling cases, as the most common risk associated with arm wrestling – the fractured arm – will be deemed a risk assumed by a knowledgeable participant. However, slim the chance of such liability, arm wrestling participants may – and to a greater extent, arm wrestling tournament organizers will – want to obtain a clear, explicit waiver from other participants to limit their liability for negligence. Arm wrestling plaintiffs will be more likely to succeed on an intentional tort or reckless misconduct theory, provided the alleged

⁴⁵ *City of Santa Barbara v. Superior Court*, 161 P.3d 1095, 1103 (Cal. 2007).

wrongdoer’s misconduct rises to the level of such torts. Additionally, such torts will not be susceptible to protection by waiver in most jurisdictions as a violation of public policy.

II. ARM WRESTLING AT WORK

If someone really likes arm wrestling as a recreational pastime, it may only be logical for that person to want to get practice in the sport whenever possible. That could mean arm wrestling strangers in truck stops; it could mean using the intermission of a Broadway play to arm wrestle; and it certainly could mean arm wrestling at work. Nearly all published judicial opinions on arm wrestling flow from just this latter case, where an arm wrestler injured on the job seeks workers’ compensation from an employer (or employer’s insurance) for the injury. Due to the limited likelihood of success of a negligence action against an arm wrestling opponent, workers’ compensation represents the only viable outlet for liability where an arm wrestling match occurs at work. But just as a case for negligence would be hypothetically difficult for an injured arm wrestler, courts have proven practically averse to granting relief to arm wrestlers injured on the job,⁴⁶ even where that employee is traveling for work. Normally, such cases find that arm wrestling either falls under a statute expressly prohibiting recovery or remains

⁴⁶ See *Quinones v. P.C. Richard & Son*, 707 A.2d 1372, 1372 (N.J. Super. Ct. App. Div. 1998) (arm wrestling falls under the New Jersey skylarking statute, accordingly outside the scope of employment); *Saunders*, 57 Van Natta 796 (Or. Work. Comp. 2005) (arm wrestling injury excluded from workers’ compensation claim by statute); *Fitzpatrick*, 64 Van Natta 174 (Or. Work. Comp. 2012) (finding arm wrestling outside the scope of employment).

outside the scope of employment protected by workers’ compensation.

If the plot of *Over the Top* strains credibility to its breaking point, at least one case at the intersection of employment and arm wrestling lends a grain of verisimilitude to the movie. That case is *Hackney v. Tillamook Growers Co-op.*, and it actually involves trucking and arm wrestling.⁴⁷ The workers’ compensation claimant, a long distance trucker, was alternating driving shifts with his supervisor at the time of the incident giving rise to his claim.⁴⁸ During their trip, the supervisor and the claimant had an overnight layover in Jacksonville, Florida, where they initially passed the time drinking and watching football at a motel bar.⁴⁹ With alcohol in his system and examples of testosterone-fueled behavior parading before his eyes, the supervisor proposed a (fairly) predictable projection of these stimuli – by challenging the claimant to an arm wrestling match.⁵⁰ The claimant initially refused the challenge, but eventually accepted without coercion.⁵¹ During the ensuing arm wrestling match, he suffered a broken arm.⁵² The claimant sought workers’ compensation for his injuries, a claim initially denied by the Oregon Workers’ Compensation Board.⁵³

Claimant appealed the denial to the Oregon Court of Appeals, which reached the same conclusion as the Workers’ Compensation Board. The Court of

⁴⁷ *Hackney v. Tillamook Growers Co-op*, 593 P.2d 1195 (Or. Ct. App. 1979).

⁴⁸ *Id.*

⁴⁹ *Id.* at 1196.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

Appeals found the case to turn on a single issue: whether the injury occurred within the scope of the claimant's employment.⁵⁴ The Court began by acknowledging that employees engaged in travel-intensive lines of work are usually held to be within the scope of their employment throughout their travel. The nexus between the trip and the scope of employment is broken, however, where the employee makes “a distinct departure on a personal errand.”⁵⁵ The Court found just such a departure in the case before it, concluding, “the claimant's injury arose after 5 1/2 hours of delay and the consumption of ‘three or four’ beers. Claimant's arm wrestling had no relationship to his employer's business.”⁵⁶ As the arm wrestling match was outside the scope of the claimant's employment, the Workers' Compensation Board's initial denial was deemed proper.⁵⁷

At least one case has found in favor of a workers' compensation claimant in an arm wrestling-related incident occurring on the job, but the case is probably not particularly probative. In *Varela v. Fisher Roofing Co.*, the claimant Varela repeatedly challenged a co-worker to an arm wrestling match after Varela had been teased for carrying a lighter bucket than his co-workers.⁵⁸ At some point as the participants were either preparing for, or engaging in, the agreed-upon arm wrestling match, Varela slipped on a skylight and severely fractured his ankle.⁵⁹ The trial court found that Varela's injury was

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 1196-97.

⁵⁸ *Varela v. Fisher Roofing Co., Inc.*, 572 N.W.2d 780, 781 (Neb. 1998).

⁵⁹ *Id.*

sustained within the scope of his employment, a decision not reversed on appeal by either a review panel of the Worker’s Compensation Court or the Court of Appeals.⁶⁰

The Nebraska Supreme Court’s conclusion fell in line with the decisions of the lower courts. As a basis for its decision, the Court adopted the Larson & Larson test to determine the bounds of the “scope of employment.” That test finds injuries sustained on the job eligible for workers’ compensation where the deviation from employment is insubstantial and the deviation does not “measurably detract from the work.”⁶¹ The Court concluded that each of these prongs was satisfied, as “the work stoppage was of momentary duration, the injury happened at the very outset of the horseplay, this was not the sort of incident which carried a significant risk of serious injury, and the incident was a trifling matter, at least in its intention by the two employees.”⁶² In view of this, the Court concluded that workers’ compensation was properly awarded.⁶³

While breaking from the overwhelming trend of cases that have found arm wrestling on the job outside the scope of employment (and workers’ compensation protection).⁶⁴ *Varela* is probably not very significant. For one thing, the Court’s explanation of its decision places explicit reliance on some timing oddities particular to Varela’s arm wrestling bout. That bout could only be lumped in with the rest of Varela’s employment because the stoppage was mo-

⁶⁰ *Id.* at 782-83.

⁶¹ *Id.* at 783.

⁶² *Id.*

⁶³ *Id.* at 784.

⁶⁴ See *City of Santa Barbara v. Superior Court*, 161 P.3d 1095, 1103 (Cal. 2007).

mentary, and the injury occurred at the outset of the match, possibly even before the arm wrestling had commenced. According to this understanding of the facts, the incident fell close to the boundary between employment and non-employment activities; the Court simply chose to view it on the employment side of the line. Had the arm wrestling lasted longer, or even begun, for that matter, the Court likely would have been compelled by its own reasoning to reach a contrary decision.

But beyond the case’s fairly liminal set of facts, the bigger reason that the *Varela* decision should be afforded limited weight is the weakness of its analysis. As the dissent in *Varela* noted, the boundary between activities within and outside of the scope of employment coincided with the moment that Varela set his work aside to arm wrestle. As of that moment, Varela was “no longer serving his employer’s interests;” quite to the contrary, he was unequivocally contravening a written policy prohibiting “boisterous or disruptive activity in the workplace.”⁶⁵ According to the dissent, failing to treat an arm wrestling contest occurring “on a slippery roof under construction” as outside the scope of employment would render the scope of employment requirement “essentially meaningless.”⁶⁶ This reasoning is persuasive – rather than losing the forest for the trees by focusing on the fortuitous timing of the injury in relation to the extracurricular activity, the dissent recognized that the very activity of arm wrestling on a non-arm wrestling job moves the participant’s conduct outside the scope of the employment.

⁶⁵ *Varela*, 572 N.W.2d at 785 (Neb. 1998).

⁶⁶ *Id.* One may observe slippery slope logic applied to a literal slippery slope.

Given both the majority of decisions finding against arm wrestling workers’ compensation plaintiffs and the weakness of the single case to buck that majority, the employee who decides to explore his or her passion for arm wrestling at the workplace is likely doing so at his or her own risk. Unless a worker is employed to arm wrestle, that worker is not likely to be acting within the scope of employment when arm wrestling. From the perspective of employers, the risk that an arm wrestling injury’s costs fall on their shoulders may be mitigated by clear policies prohibiting such conduct. The employer should also affirmatively instruct employees not to arm wrestle on the job as soon as the employer is aware of such activities. These steps will limit the likelihood that the employer will be found to have acquiesced in the arm wrestling.⁶⁷

III. ARM WRESTLING AGAINST A MACHINE

In this penultimate Part, let’s take a short break from *Over the Top* to consider the story of John Henry, one of the classic squares in the quilt of American folklore. Inasmuch as the story is uncontested, it recounts the life of an African-American steel-driver plying his trade in support of railroad construction in the second half of 19th century.⁶⁸ The

⁶⁷ No such concerns troubled our protagonist Lincoln Hawk. As an independent, self-employed trucker, Hawk was a sort of new American cowboy, arm wrestling where he liked and answering to no one. All risk of injury, and all potential for acclaim, remained on him.

⁶⁸ See generally ROARK BRADFORD, JOHN HENRY (1931); SCOTT REYNOLDS NELSON, STEEL DRIVIN’ MAN: JOHN HENRY, THE UNTOLD STORY OF AN AMERICAN LEGEND (2008); RAMBLIN’ JACK ELLIOTT, *Ballad of John Henry*, on THE LOST TOPIC TALES: ISLE OF WIGHT 1957 (Hightone 2004); VAN MORRISON, *John Henry*, on THE PHILOSOPHER’S STONE (Polydor 1998).

task of the steel-driver consisted of hammering a steel spike into a rock face to create a hole where an explosive could be implanted for detonation. The detonation, in turn, would clear a path for further railroad bed or tunnel construction. At the time when John Henry supposedly drove steel, technology had advanced to a point where, for the first time, steel-driving could begin to be mechanized. As manual labor's grip on the steel-driving hammer weakened, John Henry was enlisted to make a final stand against mechanization, in the form of a race against a mechanical steel-driver. As the legend goes, John Henry won the race, but exerted himself so thoroughly that he died at the race's end. Poets, musicians, and novelists have subsequently latched on to the John Henry story as a fountainhead of literary inspiration.

One may wonder what the legend of John Henry has to do with arm wrestling. Well, at present, an arm wrestling enthusiast can personally enjoy a modern spin on John Henry's story – without the same risks – by testing his arm wrestling prowess against an arm wrestling machine. In this modern man versus machine combat, gone are many of the deeply symbolic and historically notable aspects of John Henry's steel-driving race, as well as questions related to the process of mythmaking, but in their place is more arm wrestling, which almost evens the overall balance.

I say "almost," because what made John Henry's legendary feat so impressive is far less applicable in the context of a modern bout against an arm wrestling machine. Where John Henry was called upon to demonstrate the value of human strength against the oncoming tide of machinery, human arm wrestling machines are making no such grand display.

And where John Henry was working at his maximum capacity to defeat the best technology available at the time, modern technology could very easily outstrip any human’s arm strength, with as little as a simple adjustment of the arm wrestling machine’s settings. In this way, challenging an arm wrestling machine does not demonstrate very much, and exposes the participant to the risk of injury due to the machine’s malfunction.

Yet an arm wrestling enthusiast might still want to accept this challenge. Perhaps that person cannot find a human participant to arm wrestle, in which case a machine could serve as a surrogate. Or maybe the arm wrestler just loves the sport so much as to want to take on all comers, be they man or machine. If these, or other reasons, drive an arm wrestler to take on a machine, this Part discusses some of the legal issues surrounding this specific class of contest.

As noted in the part on arm wrestling generally, the savvy operator of an arm wrestling machine will likely require any user of the machine to sign a waiver. A well-designed waiver can help shield the machine operator from causes of action related to the operator’s negligence.

Not all waivers disclaiming liability associated with an arm wrestling machine will be found enforceable, however. The case of *Macek v. Schooner’s Inc.*⁶⁹ is didactic on this point. In that case, the plaintiff visited a bar where an arm wrestling contest involving a machine was taking place.⁷⁰ After consulting with the machine’s operators on its safety

⁶⁹ *Macek v. Schooner’s Inc.*, 586 N.E.2d 442 (Ill. App. Ct. 1991).

⁷⁰ *Id.* at 443.

and testing its functionality, plaintiff agreed to participate in the arm wrestling contest.⁷¹ Before he was allowed to do so, however, the machine’s operators required plaintiff to sign a form broadly waiving “any and all right and claim for damages . . . for any and all injuries” sustained by plaintiff during the arm wrestling contest.⁷² The waiver then contained a representation that the person signing was in good health.⁷³ Plaintiff signed the waiver without reading it, and proceeded to take part in the contest, where he suffered a spiral fracture of his humerus and subsequent long-term impairment in the injured arm’s flexion and extension.⁷⁴ The plaintiff filed suit against the tavern and machine operators alleging breach of warranty, negligence in setting up the machine, and a claim that the machine was defective and dangerous.⁷⁵ The trial court dismissed each of these claims on the ground that the waiver released the defendants from liability for injury.⁷⁶

The Appeals Court reversed the dismissal and remanded for further consideration of the waiver’s meaning. In so doing, the Appeals Court commented that Illinois state law requires that a waiver contain “clear, explicit, and unequivocal language” to serve as an effective release.⁷⁷ Included in that rule is the further requirement that the waiver clearly articulate what activities are covered by its terms.⁷⁸ Due to its breadth, the exculpatory clause in *Macek* was

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 444.

⁷⁷ *Id.*

⁷⁸ *Id.*

found ambiguous as to its scope, an ambiguity only exacerbated by the representation of the participant's health.⁷⁹ That representation, the Appeals Court concluded, muddled the meaning of the waiver by allowing for two readings of its terms – one in which the waiver was of effect broadly and another where the waiver only applied where the participant's health caused the harm.⁸⁰ Due to this ambiguity, summary judgment was deemed inappropriate, and the case was remanded to the trial court.⁸¹

The *Macek* case provides some general guidance as to how a waiver should be structured by an operator of an arm wrestling machine. First, the waiver should disclaim any warranties made in relation to the machine, particularly including any warranties of fitness for purpose. As previously noted in Part I, the document's terms should also explain what activities are within its scope in clear, conspicuous language. But that should not be the entirety of risk-mitigation that an arm wrestling machine operator undertakes. It is fair to wonder in the *Macek* case whether the Appeals Court was persuaded by the particular facts of the case, where the operators of the machine seem to have made statements as to the machine's safety completely contrary to the machine's operation in practice. That combination of a misrepresentation and a dangerous machine only gives courts more reason to find a waiver unenforceable for one reason or another. Arm wrestling machine operators should accordingly limit any statements that they make guaranteeing the functionality of their machine, and otherwise take all reasonable

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 444-45.

steps to ensure that their machine functions properly. Exercising that level of care will increase the likelihood that a waiver exculpating the machine’s operator will be held enforceable.

Of course, as already noted, even the best drafted waivers are likely of no protection in cases where the party signing the waiver is the victim of gross negligence or an intentional tort. Surprisingly, the *Macek* court did not mention this possibility, although it is possible that the plaintiff did not raise the argument.⁸²

For lack of an enforceable waiver – or any waiver at all, the cost of harm caused by an arm wrestling machine is much more likely to fall on the arm wrestling machine operator than it would in cases of injury during a simple human-against-human arm wrestling match. While both of these activities involve fundamentally similar physical motions to demonstrate strength and earn well-deserved social approval, the insertion of a machine changes the character of the activity. No longer is an arm wrestling match a struggle subject to the unpredictable hazards of sport and the whims of Fortuna; it is instead converted into a predictable match in which the machine should produce a controlled and predictable force throughout its motion. Deviation from that predictability is no longer a strategic or random incident of human athletic struggle; it is potentially a malfunction of the machine.

Such malfunctions could serve as the basis for myriad legal causes of action. A malfunction could be the result of negligence, gross negligence, or even intentional misconduct. Anything the machine operator says related to the functionality of the machine

⁸² See *id.*

could constitute a warranty of fitness for purpose that would be breached by a subsequent malfunction. And unlike human arms, arm wrestling machines are products likely subject to standard products liability law. That could trigger a duty for the operator to warn users of the machine of any unsafe conditions. It equally could expose the machine's manufacturer and operator to claims for strict liability for any injury resulting from the machine's malfunction.

The trade-off for arm wrestlers challenging a machine, then, is an increased likelihood of recovery in the case of injury, but a different risk of injury due to potential mechanical malfunction. Arm wrestlers desirous of contending with a machine might instead choose to limit their contests to human opponents who consider themselves machines. As *Over the Top* demonstrates, there is apparently no shortage of such arm wrestlers. One participant in the world championship tournament brags, "My whole body is an engine," and then, indicating his wrestling arm, "This is the fireplug, and I'm going to light him up."⁸³ Even Hawk is not immune to such self-promotion, as he notes that turning his hat backwards before a match makes him feel "like a different person, like a truck, a machine." Such blurring of the line between man and machine may not have any basis in reality, but it does present the possibility of a simulacrum combat against a machine. And somewhere, the ghost of John Henry is either proud or completely sickened.

CONCLUSION

This Article has attempted to provide a general overview of how the law would likely treat the

⁸³ OVER THE TOP (Warner Brothers 1987).

pastime of arm wrestling. In the first part of the overview, the type of torts likely applicable in the arm wrestling context were extrapolated from the law of other areas of athletics. That investigation revealed that the legal standards applicable to arm wrestling would likely require a participant to exercise a duty of care towards an opponent. Failure to exercise such care might theoretically expose the negligent arm wrestler to liability for negligence. Practically, however, such claims are not likely to succeed where an experienced participant can be found to have assumed the risk of any injuries foreseeable in a typical match. The risk of such claims may be further mitigated by the participants' or match organizer's use of effective, unambiguous waivers. Tort liability in the world of arm wrestling may be more probable, then, in the more limited area of intentional tort and reckless misconduct. That said, these general guidelines should not be viewed as bright-line rules; tort liability for arm wrestling injuries will be dependent on both the circumstances of the case and the state laws applicable to a cause of action.

In its final two parts, the Article considered arm wrestling in two specific contexts – at the place of employment and against a machine. The liability risks for third parties in these two cases diverged. Where the third party employer would not be likely to be found liable for a claim for workers' compensation arising out of an employee's arm wrestling injury suffered while on the job, the operator of an arm wrestling machine runs much greater risks across a wider swath of torts – from products liability and breach of warranty to gross negligence and even ordinary negligence.

As a backstop to this overview, the Article has

leaned heavily on events occurring in the 1987 movie, *Over the Top*. Such reliance on a Hollywood action-drama – particularly one involving late-80s Sylvester Stallone – should be taken with more than a grain of salt. After all, this is a movie that depicts arm wrestling competitors slapping each other in the face and (apparently) drinking motor oil to prepare for a match. The motor oil drinker is even willing to extinguish a lit cigar prior to a match by eating it as a ploy to intimidate his opponent. Needless to say, a certain suspension of disbelief is in order when watching the movie, and an even greater suspension of disbelief is required when trying to generate legal analysis from such a movie. Yet the law itself has been presented here in a more serious manner, leaving the author to echo the request embedded in the title of Kenny Loggins' theme song to *Over the Top* – "meet me halfway."⁸⁴

⁸⁴ KENNY LOGGINS, *Meet Me Half Way*, on *OVER THE TOP* (CBS Records 1987).