

Sara Gras: I'm Sara Gras and this is Hearsay from the Sidelines, a show about the place where law, sports and culture intersect brought to you by Culture in Sports and Seton Hall Law School's Gaming, Hospitality, Entertainment and Sports Law program. I'm still hard at work on Season 2 of the show which will focus on the impact of the explosive growth of online sports betting. But today I'm bringing you the first of two special episodes that grew out of a very recent tragedy in the sport of CrossFit. Everyone involved in a CrossFit community has been impacted by these events, but none as much as the athletes, employees, volunteers, friends, and family who were directly involved. There is nothing that can be said to bring back what was lost, but I am offering these episodes as an effort to contribute to a broader conversation about where this sport is failing its most visible and valuable athletes and how it can hopefully move forward in a more equitable way to the benefit of all the people and businesses who rely upon it.

I should acknowledge that CrossFit has been a part of almost every day of my life for the last 7 years. I have made connections in the two CrossFit gyms I have belonged to that grew into friendships outside of the gym. When the world shut down during the COVID-19 pandemic, I leaned on my gym family and the outdoor workouts we doggedly did together for support and sanity. CrossFit has given me both physical and emotional strength. It has taught me to honor both the potential and the limitations of my body. And I honestly can't imagine ever giving it up. But I'm many steps removed from the elite group of CrossFit athletes from many different countries who compete around the world in the sport of fitness. Many of these competitions are steps along the path to qualify what I would consider the penultimate annual event in CrossFit – the CrossFit Games.

On the morning of August 8, 2024, 40 men and 40 women started a 3.5 mile run then entered Marine Creek Lake to begin an 800 m open water swim – this was the first event of the 2024 CrossFit Games. At around 7:40 am, concern began to ripple when friends and fans notice that Serbian athlete, Lazar Đukic, a favorite to win the event, had not crossed the finish line and was nowhere to be seen.

I wasn't watching the Games live that morning, but I saw a text from my husband on the way to work: "An athlete is missing at the Games." I jumped on social media with a sense of dread. Here's John Wooley, podcast host and self-described CrossFit memelord describing his experience of the hours that followed:

John Wooley: Well, it was obviously very traumatic. mean, I had planned my whole day around sitting on the couch, eating snacks and watching fitness. You know, there's always the irony of sitting around with donuts and watching other people work out. And that was kind of my plan. And I was texting friends through the whole thing. Ironically, I was sitting there texting Sean Woodland. I don't know if you know Sean, but he's kind of the voice of the CrossFit Games. And so we were in active communication from the very beginning because we were planning to do a post day recap every day during the games. And so I was kind of uncharacteristically taking notes. Like I notoriously don't plan for my own podcast, but because this one involved actual competition that needed details and names and faces and that sort of thing, I was taking notes.

And over the course of the notes noticed that, it seemed like safety protocol was lacking. Like right from the very beginning, I was messaging Sean asking, why are some of the athletes wearing hats and others aren't like they're wearing their swim caps. And it turns out that the competition required them to carry their swim caps through the entirety of the run before they got in the water. So some

of the athletes lost their caps. Other athletes were wearing them somewhere in their pockets and you know, we were just kind of discussing back and forth the danger of running in a ski cap because, you know, the heat escapes through your head and it was a hot day. And, and then I knew there'd be people getting in the water without caps on, which was also kind of odd because then you wouldn't be able to see them as well. And, as we started to watch the swim unfold, I was messaging him and saying how wide the swim lane was and how it seemed careless to me that they were allowing athletes to swim, you know, dozens, hundreds of meters off course. Like there were kind of athletes all over the place. And, and I just noted in my notes that it didn't seem the safest because they couldn't cover enough ground. but you know, like everyone else, I don't think I had a lot of concerns at the moment. I was just taking notes. Like I wasn't worried about the safety of the athletes necessarily, as much as I was just noting it didn't seem safe. never think, I mean, these, you know, these athletes are superheroes to us - it never occurs to us, "I think that they could get injured." And, as athletes started coming out, Sean messaged me and said, Hey, I think they're missing an athlete. And that's when we realized things had gone horribly, horribly wrong. And, it's hard to put into words. It's just, it's, know, initially - again, they're like superheroes to us, so it just didn't seem real. We were trying to go with like, okay, well maybe his chip timer came off and no one saw him and he's going to turn up at his hotel. You know, like that, those were our initial thoughts. And then when we realized pretty quickly that that wasn't the case, you know, those kind of hopeful feelings quickly turned to dread and it was horrifying. I mean, there's just no better word for it, you know, just an absolutely horrifying thought and moment for, for all of us. think for the entire community, I summed it up to someone earlier today, calling it a loss of innocence. And that's really what it feels like to me. Like we've, you know, had this, you know, over a decade of the games where we've watched these athletes do some of the most amazing feats of fitness, and well -deserved. And there have been plenty of close call moments over the years, but no one's, you know, nothing like this has ever happened. The fact that it actually happened gave us a real dose of reality that, you know, this is, it is just a sport and it somehow became life and death and, and, it's just not worth it.

Sara Gras: Just after 8, rescue boats entered the water. A few hours later at 11:42 am, Don Faul, the CEO of CrossFit, held a press conference and officially confirmed that an athlete had died during Event 1.<sup>1</sup> Lazar's name was not announced on the news, but all the athletes in attendance and many of the fans at home knew – Lazar Đukic was gone. Lazar was not a rookie at the Games – this year was his fourth year competing after finishing in the top 10 the previous three years. He'd placed first in the European Semifinal in 2023 and 2024.<sup>2</sup> He was a formidable, well-liked and well-known competitor. His brother, Luka, was also competing and had been in the water when Lazar's absence was first noticed by his partner, Anja. It's clear from the stories that have since been shared by his fellow athletes and friends that Lazar was a bright light – full of humor, joy, and competitive spirit. And his loss leaves the world dimmer. While the remainder of the Games events scheduled for Day 1 were cancelled, an athlete meeting was called for 4 pm that day to discuss the future of the competition. Athletes received an email at 11 pm informing them that Day 2 events

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<sup>1</sup> Robert Born, *Chronological Facts: All We Know About Lazar's Death and the Future of the CrossFit Games*, BOXROX (Aug. 9, 2024), <https://www.boxrox.com/chronological-facts-all-we-know-about-lazars-death-and-the-future-of-the-crossfit-games/>.

<sup>2</sup> CrossFit, *Lazar Đukic*, <https://games.crossfit.com/athlete/1059467> (last visited Aug. 18, 2024).

would resume the next day after a tribute to Lazar.<sup>3</sup> A few athletes immediately withdrew from competition, and others soon followed.

The outpouring of emotion that followed Lazar's death revealed a mixture of grief and anger. One of the first longer social media posts I read came from an athlete I really admire, Chandler Smith, on August 8. In addition to explaining his decision to continue competing, he paid tribute to Lazar. But the last few slides of his post grabbed my attention. He wrote:

“In the immediate aftermath of all of this I'm very frustrated. Army risk assessment worksheets have always made me very cautious around the water so it's disappointing when something that feels this avoidable occurs. Being distraught about a death can appear soft for a veteran, but there's a big difference in assumed risk with volunteer military service versus playing sports. Swimming in open water isn't 100% necessary to find the fittest on earth. It's more dangerous than other alternatives to begin with, it's doubly dangerous after a run, and it's even more dangerous in Texas heat. These concerns have been brought up by athletes before and it's sad that it takes a tragedy to validate them fully.”<sup>4</sup>

It was his choice of the phrase, “assumed risk,” that struck me. While the third-party investigation into Lazar's death is obviously still underway and the results will likely not be available any time soon, I was certain, as were many others, that there would probably be a civil suit for wrongful death filed against CrossFit by Lazar's family. I had already started to consider what evidence of negligence might be discovered in the investigation but hadn't considered assumption of risk. And from a legal standpoint, this is a pretty important question, particularly because to many people, everything about CrossFit – the fast-moving heavy weights, muscle-ups, rope climbs, handstand walks – all probably seems fairly risky.

As John Wooley describes, any long-time CrossFit participant is aware of the sports' reputation for intensity, and the amplification of that intensity as the level of competition has increased.

John Wooley: Well, I think it's part of the history. I'm not sure culture's the right word, but if you look back at the history of the company in the early days, our mascot was a clown that was puking, they literally named Pukey. And that was the mindset of CrossFit in those early days that you go as hard as you can right up to the point of failure at all times. Or at that's the way it was delivered in the gym, whether that was the way it was taught or not, I couldn't tell you. But I can tell you my experience when I started in 2011 was my coach would literally sit there and scream at me if I wasn't working to almost vomiting status. Like that was the way it was. And now in today's environment, if you even go to their website, instead of saying forging elite fitness, which used to be the tagline, now it says fitness that sticks or fitness for everyone. You know, like it's far more inclusive language. And so they're trying to soften what's going on in the gym. So people understand that you can scale workouts and that you can not work to failure and it's okay and you can you know kind of fitness at your own level and that wasn't true in those days.

Well the point to that is is that a lot of people running the games are from that old school specifically Dave Castro who you know created the games has been around from day one is you

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> Chandler Smith (@blacksmiff), INSTAGRAM (Aug. 8, 2024)

know as part of that old guard and the games have continued to get harder and harder and harder. As you would expect, we're testing fitness, right? So if you test it one year, you want to increase the test. Like it's no different than college. Like it gets harder as you go along. So there is a little bit of that, but I do think there is and certainly been prevalent mindset that, you know, to Pat's point, you know, you're working, you know, it's treated like war. You're working to the hardest possible place as opposed to making it a competition. And so I think there have certainly been moments over the years where we've all looked at it and said, man, like, why are they doing this? never thought, never obviously imagining that would come to the moment we had this weekend by any stretch of the imagination, but have certainly seen it continue to escalate in its difficulty. And to be fair to the games team, the athletes are getting better and are far more capable now than they would have been 10 years ago. So, you know, there's a little fairness to say that the game should be getting harder. The athletes are getting better, you know, but yeah, two different things. In comparison, the CrossFit Games takes that to an entirely different level.

Sara Gras: I spoke with John Weeks and Tim Carroll, long-time CrossFit coaches and affiliate owners to get their thoughts on risks in the sport and what an experienced athlete would be able to anticipate, given the reputation of the Games for featuring unknown and unknowable challenges. Here's John:

John Weeks: I do think that the games has excelled in creating these unique challenges based on the environment that's there based on the level of you know, there's a certain element of unpredictability. I think that they've done a good job of communicating certain things like this run swim event that, you know, unfortunately this happened on, like I said, this was communicated well in advance. People could actually train for this, you know, more than a month leading up to the games. They knew that this was something that were going to be tested on the stuff that tends to get announced. I think that having that component of outdoor events, offsite events, multiple different venues, that kind of thing, it does challenge the athletes in a different way. I do think that there's certainly ways to do that in a safer manner than currently has been happening. And I think that that's going to be what gets really investigated now. I don't think that the athletes necessarily want this to become this very nerfed version of fitness either, right? Like they want to be able to see what human potential is.

Sara Gras: Assumption of risk means that participants in an activity knowingly and willingly consents to the commonly appreciated risks inherent in the activity. In the context of sport, this means that no other individual or entity has a legal duty to protect the participant from these risks.<sup>5</sup> And as over a decade of competition has demonstrated, competing in the sport of CrossFit does involve some risks.

John Wooley: Well, I mean, we've seen it all over the years. I you know, I think most people would just assume that, you know, kind of your run of the mill injury is what you would expect. Like we've seen everything from torn ACLs to blood clots to, you know, wrecks on bikes, you know, that sort of thing over the years. Yeah. yeah. We've definitely seen heat exhaustion a couple of times and there have been a few near misses when it comes to people having experiences in the water as an example. I don't think to your point, I don't think anyone expects death to be part of it, but...

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<sup>5</sup> Walter T. Champion, FUNDAMENTALS OF SPORTS LAW, §8.1 Assumption of Risk.

We've seen people like last year at one of these masters events, my gym partner, Tom, who happens to be a doctor was there in medical capacity. And one of the athletes had a heart attack right in the middle of workout and Tom revived him on the floor. know, it's like, that's the reality of a sport where you're going this hard for a long period of time is that it's puts a real stress on your system. You know, we've seen, saw a guy at the games two years ago, had a stroke on the floor. Emily Rolf who finished third this year had a blood clot and had to have emergency surgery. So there's certainly some pretty big risks that come with competing that I think everyone understands are part of it. I don't think there's anyone in the community that would have expected this.

Sara Gras: And part of the reason no one would have expected this is that, despite its reputation, CrossFit competitions are not designed to be dangerous – in fact, quite the opposite. There has never been a death at the Games before. It's not a contact sport like football or MMA or boxing. Workouts are thoughtfully designed and tested. There is a huge amount of knowledge and experience that goes into setting up and executing CrossFit competitions, even local comps. Tim and John Weeks have both planned multiple competitions and I asked them to tell me more about what that process involves, what participants should expect.

John Weeks: So I think when you are registered for an event, the communication needs to be pretty consistent and early. There's definitely a level of kind of like a layering of information as you get closer to an event and specifically about like logistical things and safety there usually needs to be a very clear line of communication of in the event of X, Y, Z, this is the procedure, right? And we have a safety meeting like this, like for example, at like a national level weightlifting meet, there's a finalization of entries meeting two days before the event starts. And we go over all this stuff and it's, you know, the same stuff every meeting, but it's one of those things where you definitely need to know in the event of some sort of traumatic injury or something like that. This is what's going to happen. This is what you need to do. This is what you need to do as a coach. This is what you need to do as an athlete. And there should be a very clear understanding of like what the procedures are. And in terms of like a local event, I think that's one of the things where the more you run events, the more you recognize those things and the importance for those things. get, you get caught once without really having things in place and you realize how important it is.

Tim Carroll: So I think when it, it comes to programming for like our event, barbells and beers, do three workouts and a floater workout. Right. And, the, the, the first thing is we're looking at like, what movements are we programming? We're not just, know, like people were upset with the open this year that the first two workouts basically were five hinging movements, right? Like we're thinking, okay, are we, are we doing pushing? Are we pulling? Are we squatting? Are we hinging? Are we going overhead? How much are we up on the pull -up bar? Are we risking everyone ripping their hands open on the first workout? Is that a great idea? Safety comes in with like, how much space are we giving the two athletes? Which ways are their barbells facing? Where's the crowd gonna be? Is the crowd gonna have a child sitting on the sidelines where a barbell could bounce and hit the child? Like, there's all these little things that we're thinking about - going overhead in the same workout that you're doing burpees, maybe not the best workout. You don't want someone on the ground when there's a barbell flying around. So there's all these little things that over the course of the last 12 years that we've tried to tweak and just say, okay, are we doing the best by the athletes from giving them the most amount of room that they need, the least amount of, you know, things in the way. and then ensuring that we're not over programming one specific movement or just putting

them at risk of like, let's continue, let's crush their grip for three workouts in a row and then make them finish with like excessive amount of bar muscle ups and just see who can hang on.

Sara Gras: Just because there are risks inherent in the sport doesn't mean a competitor assumes the risk of anything and everything. An athlete would assume that this level of thought and planning was put into every competition and that safety protocols were well-established. Not every possible harm is inherent in a sport. My colleague, sports law professor and attorney, Bob Boland, elaborates on how this analysis could be applied in Lazar's case.

Bob Boland: I'm concerned that Texas will probably be an onerous jurisdiction to bring that case in, in part because it is favorable to business and it will anticipate the idea that the athlete's participation involves assumption of the risk and that the activity involved here is a competitive swimming event in open water. And that was open and obvious to the competitor when he went into the lake because it was, because it wasn't a situation where he was eaten by an alligator or bitten by a snake. but in this case, lost, lost his ability to swim and, and, and drown.

Sara Gras: Bob mentions Texas because this is where the Games took place and is the site of the injury, which makes it a likely location for a lawsuit to be filed, but this is merely us speculating. However, the law of the state where a case is filed is very important to how a negligence case will play out. I took a look at the role assumption of risk plays in Texas courts and found that it is not generally accepted as a defense to negligence.<sup>6</sup> However, there is an exception where the plaintiff explicitly assumes the risk via an oral or written waiver.<sup>7</sup> While I don't know exactly what 2024 Games competitors were asked to sign, I was able to find a liability and assumption of risk waiver for the 2016 Games online.<sup>8</sup> It does, in fact, require athletes to assume the risk inherent in CrossFit as a dangerous activity which can include death. It states:

"I understand and agree that by agreeing to this Agreement, I am assuming full responsibility for any and all risk of death, serious personal injury, temporary or permanent disability, or property loss and/or damage suffered by me or my property in connection with the CrossFit Event or while visiting, traveling to or using the Venue."

So if a similar waiver was signed by the 2024 athletes, would this mean the door to civil recovery in Lazar's case is closed? Well, not necessarily. Secondary assumption of risk may apply where injury is caused by the actions of another which increased the risk inherent in the activity.<sup>9</sup> And this, I think, is what many in the CrossFit community have been focusing on, including Tim and John.

John Weeks: I mean, I think that going into a competition really of any sort, no athlete, even though you're signing a waiver and literally signing your life away, I don't think any athlete goes into any competition thinking that's going to happen to me. Right. And I think that there's a level of trust that

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<sup>6</sup> O'CONNOR'S TEXAS CAUSES OF ACTION, Defenses & Counterclaims, Ch. 21-A § 5 (2024 ed.).

<sup>7</sup> 9B TEX. JUR. PL & PR. FORMS § 192:10 (2d ed.).

<sup>8</sup> CROSSFIT, Assumption of Risk; Waiver; and Liability Release, <https://assets.crossfit.com/pdfs/games/2016-CFG-Assumption-of-Risk-and-Waiver.pdf>

<sup>9</sup> Amanda Greer, *Extreme Sports and Extreme Liability: The Effect of Waivers of Liability in Extreme Sports*, 9 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 81, 96 (2012).

they have in the organization that's running the event that if something catastrophic happens, they're going to be able to save me. Right. And I think that that is a realistic expectation.

Tim Carroll: So going into the sport of fitness to crown the fittest person in the world, there's obviously some sort of assumption of risk there, right? But I think everyone outside of pointing the finger, it's trying to figure out how could it have been avoided, right? If it feels like a very avoidable tragedy versus just saying like, someone had like a cardiac event and they died. If it had been the other way around, they swam first and they ran second, but then they had a cardiac event on the run and they dropped dead, it would feel like we're talking about two completely different scenarios. I mean, to echo John's point about what he said before, know, that run swim event was not an unknown. I think there's video of Lazar and his brother, Luca, practicing the event. They had run through it the week before at least. And from what I heard, which I'm not sure if it's true, but Lazar was like a collegiate water polo player. So, you know, obviously that's an insanely strong swimmer. And so you'd have to assume that there's no, he's not coming into it assuming that I'm going to, you know, I'll win, lose or die. and it's like, what John said is you just, your, your reasonable expectation is that, man, if something does really go wrong, they've got the volunteers, they've got the EMTs, they've got someone there that's going to help me in that situation. And like you said, that at this level at the CrossFit Games level, how big it is, how much money is there, like a hundred percent, you would expect that kind of all those bases are covered.

Sara Gras: Unfortunately, even if a court determines there was no assumption of risk on Lazar's part, all of this year's Games athletes also very likely agreed to hold harmless everyone involved with the Games in the same agreement where they assumed the risk of injury. Now, these types of pre-accident liability waivers may be deemed unenforceable by a court. This is actually the case in Texas – but only when they waive gross negligence.<sup>10</sup> This is a pretty high bar. Essentially, the plaintiff would need to demonstrate that the defendant knew about the risk but disregarded it.<sup>11</sup> No one I spoke to thought this was the case in any aspect of the CrossFit Games. But even the fact that athletes who have no leverage and no bargaining power are asked to waive their legal rights in all but the most egregiously negligent circumstances is unsettling. And this puts the sentiments that athletes like Smith are sharing about a disregard for their well-being by the corporation who profits from their labor in a different light.

If a lawsuit is filed, CrossFit may very well settle with Lazar's family for a fair and reasonable amount. The third party investigation may result in a change to protocols around swim events or even around the Games entirely. But that will not necessarily change the underlying cultural problems that John Wooley has been commenting on for a long time. I asked him about what, specifically, he had observed.

John Wooley: It's all over the board. And a lot of us starting to unfold with this tragedy, like athletes are starting to be bolder in describing the things that they have struggled with. You know, I've seen multiple posts today alone from athletes that are complaining about, complaining is the wrong word, that are discussing that in the past they've approached CrossFit about safety concerns and have been ignored, right? And so that would be a small example, and it's not that small, but it'd be

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<sup>10</sup> *Brennan v. Kaufman*, No. 14-19-00513-CV, 2021 WL 3729257, at \*5 (Tex. App. Aug. 24, 2021).

<sup>11</sup> 53 TEX. JUR. 3D NEGLIGENCE § 105.

an example of a culture that doesn't listen to its constituents. I think that's been a common plague for them for a long period of time that they don't always seem to hear what people are telling them. Some of this is anecdotal, but some isn't.

Sara Gras: This sentiment was echoed by long-time Games athlete, Brett Fikowski, current president of the Professional Fitness Athletes' Association's athletes board. Just after the Games ended, he posted on Instagram:

“When we propose constructive feedback, the sentiment we’re left with is: ‘Don’t worry, we got this, Just trust us. We have a better understanding of this than you do.’ The problem is no one in their team has competed or coached in this sport at a high level. Also they won’t let athletes be involved in the process because everything they do has to be shrouded in mystery...It’s a pattern of behavior. It’s their repeated attitude to our concerns. We try to provide feedback. They don’t listen.”<sup>12</sup>

Sara Gras: Whether this culture of indifference is directly responsible for Lazar’s death remains to be seen. But the sense that the most public faces in the sport are not really a priority to event organizers and sponsors has been nagging me for a while, most acutely since the 2022 Games when it was made public that athletes would not make any revenue from replica jerseys bearing their names sold by Games sponsor, NOBULL, an apparel company. This was because when anyone registers to compete in the CrossFit Open, everyone, from the most elite athletes to people like me, signs a publicity release waiver relinquishing their name, image, and likeness rights in connection with the CrossFit Games.<sup>13</sup> NOBULL did reverse course on this decision and named athletes ended up receiving \$20 for each jersey sold with their name on it.<sup>14</sup> But this felt very much like an act of benevolence, rather than an admission that this type of behavior was opportunistic and predatory in a sport where very few athletes make enough money solely from competing to even cover basic expenses.

Although they are not strictly defined as professionals, there are a growing number of individuals who are trying to make a living through the sport of CrossFit, despite a lack of corporate support.

I asked Tim what it looks like to be a professional CrossFitter:

Tim Carroll: I think you see it happening younger and younger. You have kids that are like not going to college to become a professional CrossFit athlete. So I think it's, I think it's someone who's, you know, has multiple coaches, has a lifting coach, has a conditioning coach, is, you know, fully invested in their recovery, their nutrition's out. I mean, it's like everything about their life revolves around health and fitness. And it's, it's, it takes priority over things like maybe school and takes priority over things like finding a different kind of job. That to me is what the current professional cross-fitter is doing. At least at the very, very highest level, the people that are making some money off of these events.

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<sup>12</sup> Brett Fikowski (@fikowski), INSTAGRAM (Aug. 13, 2024).

<sup>13</sup> BARBEND, *Athletes Speak Out Against Not Getting Paid for Jersey Sales* (Jan. 26, 2022), <https://barbend.com/athletes-speak-out-against-not-getting-paid-for-jersey-sales/> (last visited Aug. 18, 2024).

<sup>14</sup> BARBEND, *Kara Saunders to Split NOBULL Jersey Revenue with Aussie Athletes* (July 20, 2022), <https://barbend.com/kara-saunders-to-split-nobull-jersey-revenue-with-aussie-athletes/> (last visited Aug. 18, 2024).



Sara Gras: John Wooley described the professional CrossFit athlete similarly, as someone who has committed every aspect of their life to being a competitor.

John Wooley: This is not a sport that's you know, it got enough money behind it yet where people are retiring early. Like we have a couple of athletes that are, you know, the, you know, notably Matt Frazier or Tia Claire to me, maybe Rich Froning, some of those, but, but you know, I think over the grand scheme of the sport, most of the athletes aren't making a ton of money, but I would consider them professional, A, if it is a significant income stream for them, and if, depending on the amount of time they're dedicating to it. The needs of a normal CrossFit athlete, like I'll just use myself, I'm very normal, it's four to five days a week, right? You train five days a week, take a couple of rest days, eat healthy, and you're good to go. These games athletes these days, they're training six to eight hours a day sometimes. And it's, you know, all of that isn't just training some of that's body work, right? So like they may come in the morning and do a workout and then have a midday swim and an evening workout and all of that equates to about an hour and a half to two hours worth of working out. But in between that they're, you know, going to mobility training and gymnastics training and you know, whatever. And, you know, kind of constantly in training mode working toward a goal, which is to qualify for the CrossFit Games. So I think if you're spending that kind of effort and time to compete and your goal is the CrossFit Games, I would absolutely consider you professional CrossFitter.

Sara Gras: And in order for this to be a sustainable lifestyle, many athletes need to cobble together income from a variety of sources.

John Weeks: I think a lot of these pro athletes have sponsorships from these other brands for sure. and you're seeing it more and more where, you know, it's what are they using for recovery? What are they using for nutrition? You know, what's the newest, shoe, you know, all the, all these types of things. And that's an infrastructure that didn't exist 15 years ago. And, you know, it probably opens up some financial opportunities for them outside of actual prize purses and things like that, because the reality is there's not that many competitions happening that pay out money. And even the ones that do are not paying out the type of money that can support all of these athletes full time. So they have to find other ways of supporting themselves for sure.

Sara Gras: As John highlights, other revenue streams, like brand deals and the ability to profit from their name, image, and likeness, are really important to these athletes if they really want to make CrossFit their primary job. The fact that this was not considered in the process of creating and producing merchandise with their names on it says a lot about the culture that surrounds them.

Sara Gras: Do you observe or do you think that CrossFit as a corporate entity supports and nurtures the careers of their elite professional athletes? What do you think that they do, if anything, to encourage that opportunity?

Tim Carroll: I don't feel like I have enough information to fully answer that, but from some interactions that I've had with friends who have made it further, it doesn't feel like there is that top-down cross is viewing those who are in the upper echelon that might make the games and doing them any favors or supporting them outside of just saying, hey, we're going to host this competition. Come see if you're the first.

John Weeks: Yeah, I would agree. think that those types of opportunities are largely athlete driven and they're having to kind of sink or swim on their own, which you know also begs the question of like what's the life cycle of a CrossFit Games athlete? How many of them are you know making it to the games frequently enough that they're making a name for themselves that they can create these opportunities because if they're only really on the national stage once or twice a year you know that they're going to want to sponsor this athlete and what have you. It's one of those things I feel like the plane is being built in free fall. And it's been this way really, I think since the beginning, but the infrastructure has, it's become more robust, but I think most of the legwork on that has been on the part of certain athletes have really gone out of their way to really try to create opportunities for themselves. And then maybe they've created a brand and they've brought some other athletes in underneath those umbrellas. And that's helped kind of broaden that niche for other people.

Sara Gras: And the combination of individuals who are working to build a career centered around their identity as a CrossFit Games athlete with a corporation who isn't necessarily invested in helping them build their futures means athletes lack the power to push back – against waivers that are unreasonable, business arrangements that are unfair, and workouts that are unsafe, either because of the way they are designed or the way they are executed. To say that athletes who have trained all year to get to the Games could just “walk away” if they had reservations about an event is, frankly, absurd. Yes, technically that is an available option but who would make that choice when their livelihood is on the line. This is why we have labor and employment laws – to protect individuals engaged in earning a living from exploitation and abuse – and athletes should not be any different, as Professor Boland explains.

Bob Boland: I think the idea that everybody today, in some measure, has elements of professionalism attached to their athletic participation, whether it's the value of their own name, image, and likeness, whether it's the ability to be free to use their own image and likeness in their participation, free of commercial interest by the promoter, or if they do promote the promoter, they're getting some compensation for it, or at least consideration in that model. So I think the idea that there are going to be athletes of varying degrees of professionalization, but I think every athlete today in some measure fits in the more professional model than the not professional model. And in which case, as we kind of begin to think about it from the terms of the tragedy, have certain demands they can make over the people that promote and profit from their sport.

Sara Gras: On the next episode, I'll pick up here to explore how the sport of CrossFit can move forward from this tragedy and who would be impacted if they can't.

*Hearsay from the Sidelines* is a collaboration of [Seton Hall Law School](#) and [Culture in Sports](#); All research and writing by Sara Gras; music by [Battle Flag](#); produced by Sara Gras and Dr. Jeremy Piasecki, Executive Director of Culture in Sports. Links to all available academic and primary legal sources, media, music, transcription, and other materials mentioned in this episode are available on the Hearsay from the Sidelines show page, [hearsayfromthesidelines.com](https://hearsayfromthesidelines.com). And if you like this show, check out [cultureinsports.com](https://cultureinsports.com) where you'll find more articles, shows, webinars, summits, and courses for sports leaders of all levels.