Abstract: Aims

One of the key elements for solid sports development is the risk management of accidents that are inherent in sport (Ishii, 2013). To grasp the current situation in Japan, this study examines the legal case which disputed the civil liability of the sports organizations incurred by lighting damage on a player during the game, and the preventive measures taken by the other sports organizations after the case. Considering the recent cases that require “the duty of care” to the sports organizations wider than ever, it is highly important to set up the system allows them to get prepared the civil liability for the sake of further promotion of sport in Japan. To facilitate this, the initiative of the public sectors would be desirable.

Background

As we can see the class action against the NFL regarding concussion and brain damages (Fenno, 2015), it is highly important for any sports organization to get ready for the civil liability incurred by an accident that might happen under their authorities. Otherwise, they won’t be able to contribute the sustainable sports development. It is also a crucial issue for the public sector, including the government, to pursue the promotion of sport for all. In Japan, the Basic Act on Sports (2011) defines the principles of sports policies overall in the country. Regarding the responsibility of the government to create a safe
and enjoyable environment of sport, the Act declares in its Article 8 that “the
government shall implement legislative, financial or taxation measures or other
measures necessary to implement the measures concerning sport.” In addition,
the government should aware of the importance of accident prevention as the
Article 14 outlines as follows:
The national government and local government shall endeavour to train
instructors, etc., improve sport facilities, disseminate knowledge on the
preservation and development of physical and mental health and ensure safety
in sport (including knowledge about the appropriate usage of sport goods) and
implement other necessary measures in order to prevent or contribute to the
reduction of sport accidents or other external injuries or problems caused by
sport.

Therefore, it is necessary and possible for the government to construct a
scheme which enables the providers of sport facilities, services, and activities
to get equipped in case of the accidents under their management.

Analysis
In the lawsuit a high school student sought compensation after being
severely injured by lightning strike during a soccer game, Japanese Supreme
Court recognized the negligence of his coach and the responsibility of the city
sport association who had hosted the competition (Kitamura v. Tosa High
School & Takatsuki City Sports Association, Japanese Supreme Court civil
case collection 219: 703 [2006]). While his school (i.e. the employer of the
coach) made an initial payment to cover the student’s damage, the city sport
association went bankrupt after its partial payment to his family.

Traditionally, acts of god, such as flood, lightning strike and storm, are
recognised as a defence in Japan, USA and France; there are differences in its
application between the countries. Regarding the sports-related lawsuits,
Japanese court has recognised lightning strikes as one of acts of god in
defence relatively wider when compared to USA (Maussner v. Atlantic City
Robinson 2010).

However, Kitamura was the very first case in Japan that recognises the
negligence of the sport organization regarding the damage caused by
thunderbolts during outdoor activities, it forces other sports organization for
taking a necessary action to raise the awareness of safety among their
members. For example, Japan Football Association established the guideline
for prevention of lightning accident in 2006, then set the flowchart of the game
management regarding hazardous event (lightning) in 2009.

On the other hand, the management for litigation risk of sports organization
remains unresolved. While the personal insurance for sport participations is
widely available in Japan, there is no institutional support for the sports
organizations to prepare them on the civil reliability which might be incurred by
such an accident.

Conclusion
Considering the recent cases that require “the duty of care” to the sports
organizations wider than ever, it is highly important to set up the system allows
them to get prepared the civil liability for the sake of further promotion of sport
in Japan. To facilitate this, the initiative of the public sectors would be desirable
when considering the fact that the significant part of Japanese sport
development is carried out by the small size of organizations. Learning from the best practices from other countries would be helpful. For example, New Zealand has a system to compensate all injuries comprehensively, irrespective of fault and regardless of cause. France legally requires the sports organizations to join the insurance to get ready for their civil liability when operating a sporting event.

References: