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Ben A. West

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# Tort Liability for Video Game Manufacturers: Will Shifting Public Perceptions Lead to a Change in the Law?

*Ben A. West\**

## I. INTRODUCTION

The video game industry has grown from a niche market to one that boasted revenues of nearly \$20 billion in 2009.<sup>1</sup> For over thirty years, video game manufacturers have faced controversy over the possible adverse effects that games may have on the gamers who play them. The majority of cases dealing with this issue have involved the possibility that video games contribute to the development of violent tendencies in adolescents—the highest profile of those cases being litigation resulting from the tragic shooting at Columbine High School in Colorado.<sup>2</sup> Until recently, courts almost universally held that game manufacturers were not liable for injuries to—or caused by—the individuals who play video games.<sup>3</sup> A decision by the Federal District Court of Hawaii in 2010, however, allowed the defendant game manufacturer, NCsoft, to survive a motion to dismiss in a lawsuit for negligence, gross negligence, and negligent infliction of emotional distress.<sup>4</sup> This Note will focus on the issue in *Smallwood v. NCsoft Corp.*, as to whether a video game manufacturer can be held liable for failure to warn users of a game's potentially addictive nature.<sup>5</sup> Here, the court held that the plaintiff, Craig Smallwood, had stated a claim and that NCsoft's motion to dismiss should be denied based on the physical and mental injuries alleged by Smallwood.<sup>6</sup> By allowing this claim to proceed, the court ignored the standard set by numerous other courts throughout the country, and therefore opened itself to a potential flood of future litigation.

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\* Ben A. West is a May 2012 candidate for Juris Doctor at Southern Methodist University Dedman School of Law. He would like to thank his wife for her unfailing love and support.

1. Mike Ferro, *2009 Video Game Industry Revenue Breakdown*, GAMER.BLORGE, <http://gamer.blorge.com/2010/01/16/2009-video-game-industry-revenue-breakdown/> (last visited Sept. 16, 2011).

2. *See Sanders v. Acclaim Entm't, Inc.*, 188 F. Supp. 2d 1264, 1270 (D. Colo. 2002).

3. *See James v. Meow Media, Inc.*, 300 F.3d 683 (6th Cir. 2002); *Am. Amusement Mach. Assoc. v. Kendrick*, 244 F.3d 572 (7th Cir. 2001); *Sanders v. Acclaim Entm't, Inc.*, 188 F. Supp. 2d 1264 (D. Colo. 2002).

4. *Smallwood v. NCsoft Corp.*, 730 F. Supp. 2d 1213, 1237 (D. Haw. 2010).

5. *Id.* at 1234–35.

6. *Id.* at 1236.

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## A. Factual Background

NCsoft designed and distributed the online game *Lineage II*, a fantasy massively multiplayer online role-playing game (MMORPG).<sup>7</sup> Smallwood spent over 20,000 hours playing *Lineage II* between 2004 and 2009, and described “great feelings of euphoria and satisfaction from persistent play” of the game.<sup>8</sup> As a result, he alleged psychological dependence and addiction to *Lineage II*.<sup>9</sup> In 2009, NCsoft released a new game, *Aion*, and began to promote it to gamers.<sup>10</sup> Smallwood alleged that at that time, the company began to lock players out of its older games—such as *Lineage II*—in order to increase the number of users of, and profits for, the new game.<sup>11</sup> In September 2009, Smallwood discovered that NCsoft had terminated his access without warning, only informing him that the game manufacturer’s actions were necessary because of his alleged participation in a scheme to create real-money transfers involving the game.<sup>12</sup> Smallwood denied ever having been involved in any scheme and alleges that this excuse was used as part of a “banning purge” to remove users from the old games and push them to new games such as *Aion*.<sup>13</sup> Additionally, Smallwood asserted that the game *Lineage II* included Game Masters who were supposed to ensure fairness, but nevertheless failed in this instance to enforce the rules fairly.<sup>14</sup>

Smallwood also alleged that he continued to have “a compulsive urge and need to play *Lineage II*,” and that he was never provided any warning from NCsoft of the danger of becoming addicted to the game.<sup>15</sup> As a result of the NCsoft’s alleged actions, Smallwood claimed he has suffered extreme emotional distress, including depression.<sup>16</sup> Additionally, he was unable to function independently, was hospitalized for three weeks, and now requires therapy treatment three times a week.<sup>17</sup> Smallwood alleged that if he had been aware of the unfairness of the game’s administration and that he would become addicted to it, he never would have purchased or played *Lineage II*.<sup>18</sup>

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7. *Id.* at 1217–18.

8. *Id.* at 1218.

9. *Smallwood*, 730 F. Supp. 2d at 1218.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Smallwood*, 730 F. Supp. 2d at 1218.

15. *Id.* at 1218–19.

16. *Id.*

17. *Id.*

18. *Id.*

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## B. Description of the Plaintiff's Claim

Smallwood filed the claim in the Federal District Court of Hawaii. It was brought under diversity jurisdiction because Smallwood was a Hawaiian resident, and NCsoft had a subsidiary headquartered in Texas.<sup>19</sup> Smallwood asserted multiple claims, namely: (1) misrepresentation/deceit, (2) unfair and deceptive trade practices, (3) defamation/libel/slander, (4) negligence, (5) gross negligence, (6) intentional infliction of emotional distress, (7) negligent infliction of emotional distress, and (8) punitive damages.<sup>20</sup> In claims (1) and (2), Smallwood argued that NCsoft did not run the game fairly.<sup>21</sup> Claim (3) involved allegations by the plaintiff that the defendant made false and defamatory statements about him that were published to other gamers.<sup>22</sup> Smallwood's claims (4), (5), (6), and (7) are all related to the defendant's alleged knowledge of the game's addictive nature and subsequent failure to warn the plaintiff of this addictive quality.<sup>23</sup> Finally, claim (8) was for punitive damages related to NCsoft's actions.<sup>24</sup>

## C. Procedural and Substantive History

When Smallwood filed his original complaint, the court dismissed it sua sponte for a lack of subject matter jurisdiction, because Smallwood failed to establish diversity of citizenship.<sup>25</sup> The court did grant leave to amend, and Smallwood subsequently filed an Amended Complaint.<sup>26</sup> But upon NCsoft's motion to dismiss, the court dismissed the Amended Complaint without prejudice and with leave to amend.<sup>27</sup> Smallwood then filed his Second Amended Complaint, which formed the basis of the court's opinion.<sup>28</sup> The court showed a great deal of leniency towards Smallwood's filings because he appeared pro se, thus requiring the court to provide special consideration to his filing.<sup>29</sup> But NCsoft argued that an attorney had actually ghost-written the pleadings and, therefore, not only should this special treatment should not be observed, but Smallwood's pleadings should also be struck.<sup>30</sup> The court

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19. *Smallwood*, 730 F. Supp. 2d at 1217.

20. *Id.* at 1219.

21. *Id.*

22. *Id.*

23. *Id.* at 1234–1236.

24. *Smallwood*, 730 F. Supp. 2d at 1219.

25. *Id.* at 1217.

26. *Id.*

27. *Id.*

28. *Id.*

29. *Smallwood*, 730 F. Supp. 2d at 1221.

30. *Id.* at 1222.

decided that striking the pleadings was too harsh of a penalty, but decided not to provide any special consideration for the plaintiff's pleadings.<sup>31</sup> Additionally, the court performed a choice-of-laws analysis to determine whether it should follow the law of Hawaii or Texas.<sup>32</sup> The court found that, under Hawaii law, a choice of law provision in a contract should be upheld.<sup>33</sup> But the court limited the use of Texas law to determining the software user agreement's validity and the limitation of liability it contained.<sup>34</sup> The court ruled that for all other matters, Hawaii law must govern since, the Ninth Circuit had required courts to apply Hawaii law to claims that arose under Hawaii statutory and common law.<sup>35</sup>

#### D. District Court's Holding and Rationale

The court quickly dismissed three of the claims—misrepresentation/deceit, unfair and deceptive trade practices, and intentional infliction of emotional distress—because of the lack of specificity in Smallwood's pleadings.<sup>36</sup> The court indicated that the plaintiff failed to provide the “who, what, when, and how” that the Ninth Circuit has determined is necessary for intentional-misrepresentation and unfair-trade-practices claims.<sup>37</sup> A fourth claim, punitive damages, was summarily dismissed because punitive damages cannot form an independent claim.<sup>38</sup> The court analyzed the defamation claim and found that Smallwood had established all four elements for the claim in his pleading. But since the defamation claim was based on negligence, Smallwood's damages were limited to only those specified in the software's User Agreement.<sup>39</sup> The court also found that Smallwood satisfied the elements for both negligence and gross negligence, and the court allowed those claims to proceed.<sup>40</sup> Finally, the court ruled that, while Smallwood met the elements for the claim of negligent infliction of emotional distress, he failed to establish that the act committed by NCsoft was outrageous—an element of intentional infliction of emotional distress.<sup>41</sup> In Hawaii, for conduct to meet the “outrageous” requirement, the defendant's conduct must “[ex-

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31. *Id.* at 1223.

32. *Id.* at 1225–26.

33. *Id.* at 1225.

34. *Smallwood*, 730 F. Supp. 2d at 1226.

35. *Id.*

36. *Id.* at 1230, 1232–33, 1235.

37. *Id.* at 1220 (citing *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003)).

38. *Id.* at 1236.

39. *Smallwood*, 730 F. Supp. 2d at 1234.

40. *Id.* at 1235.

41. *Id.*

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ceed] all bounds usually tolerated by decent society and [be] of a nature especially calculated to cause . . . mental distress of a very serious kind.”<sup>42</sup> Here, the court felt that Smallwood did not submit a pleading that an average member of the community would find “outrageous.”<sup>43</sup> While the court dismissed the intentional-infliction-of-emotional-distress claim, the claim for negligent infliction of emotional distress survived because the court had already found that Smallwood properly pleaded negligence.<sup>44</sup>

### E. Court’s Rationale

Reviewing the remaining viable claims, the court primarily focused on NCsoft’s alleged negligence as the catalyst for the entire suit.<sup>45</sup> The court began its analysis of the negligence claim by reviewing the elements of a negligence claim under Hawaii law.<sup>46</sup> The court specified that, under Hawaii law, liability for negligence arises when an actor who has a duty fails to comply with the required standard of care, and damage occurs to an individual because of that breach of duty.<sup>47</sup> The court then went on to say that, in order for the claim to succeed for gross negligence, Smallwood must prove NCsoft exhibited a “conscious indifference” to the possible consequences.<sup>48</sup> While NCsoft argued that the negligence and gross negligence claims were linked to Smallwood’s fraud charge, the court disagreed and found that Smallwood had provided adequate specificity in his pleadings to state a claim for negligence.<sup>49</sup> In making this determination regarding the pleading’s specificity, the court looked to Smallwood’s claims that NCsoft was negligent—or even grossly negligent—in not only the game’s design, manufacture, and promotion, but also in the company’s failure to warn of its addictive nature.<sup>50</sup> The court then pointed to Smallwood’s physical injuries—including his inability to function independently, his three-week hospitalization, and his ongoing therapy—and attributed these injuries to his inability to continue playing *Lineage II*.<sup>51</sup>

The court also followed the rationale that—in order for a plaintiff to recover for a negligent-infliction-of-emotional-distress-claim under Hawaii

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42. *Hac v. Univ. of Haw.*, 73 P.3d 46, 60 (Haw. 2003).

43. *Smallwood*, 730 F. Supp. 2d at 1235 (citing *Young v. Allstate Ins. Co.*, 198 P.3d 666, 688 (Haw. 2008)).

44. *Id.* at 1236.

45. *Id.* at 1234.

46. *Id.*

47. *Smallwood*, 730 F. Supp. 2d at 1234.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* at 1236.

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law, he must prove that a reasonable person “would be unable to adequately cope with the mental stress” of the circumstances.<sup>52</sup> The court further specified that if Smallwood were solely able to prove negligent infliction of emotional distress through negligence, then he would be allowed damages—except as limited by the User Agreement.<sup>53</sup> But if he were able to prove negligent infliction of emotional distress through gross negligence, then Smallwood’s damages would not have been limited.<sup>54</sup> By accepting Smallwood’s pleadings as adequate and allowing the claims to go to trial, the court has opened the door to tort law recognizing video game addiction as an illness that can result in an actionable claim.

#### F. Critique of Court’s Approach

By allowing Smallwood’s claims to survive the motion to dismiss, the court has given credence to the theory that video games can be addictive and, therefore, manufacturers have a duty to either warn gamers about the possibility of addiction, or face the threat of lawsuits. Hawaii law requires a product manufacturer to give appropriate warning of any known product dangers—those that an end user would not ordinarily discover.<sup>55</sup> But it is imperative that the court first determine whether a danger of addiction even exists. While many studies indicate that video game addiction *may* exist,<sup>56</sup> numerous other studies question or downplay this possibility.<sup>57</sup> In 2007, the American Medical Association delayed a decision to add “Internet/video game addiction” as a formal diagnostic disorder to the Diagnostic and Statistical Manual of Mental Disorders, primarily because of heated opposition from numerous physician members—including addiction experts—who opposed the change.<sup>58</sup> But many studies have shown that video game addiction, in particular addiction to MMORPGs, can have devastating effects on an

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52. *Smallwood*, 730 F. Supp. 2d at 1235.

53. *Id.* at 1236.

54. *Id.*

55. *Tabieros v. Clark Equip. Co.*, 944 P.2d 1279, 1313 (Haw. 1997).

56. See Marny R. Hauge & Douglas A. Gentile, presented at Society for Research in Child Development Conference: *Video Game Addiction Among Adolescents: Associations with Academic Performance and Aggression*, April 2003 (concluding that video game addiction among adolescents results in increased aggression and difficulty in school), available at <http://drdouglas.org/drpdfs/SRCD%20Video%20Game%20Addiction.pdf>.

57. Julie Steenhuisen, *Addiction Experts Say Video Games Not an Addiction*, REUTERS, June 25, 2007, available at <http://uk.reuters.com/article/idUKN2425415820070624>.

58. Katherine Noyes, *Docs Retreat from ‘Video Game Addiction’ Diagnosis*, TECHNEWSWORLD, Jun. 25, 2007, available at <http://www.technewsworld.com/story/58014.html>.

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individual's social development and mental health.<sup>59</sup> For purposes of analyzing this issue, it is helpful to consider an analogous controversy—the effects of violent video games on adolescents.

By far the greatest controversy over video games has revolved around the proliferation of violent video games and the possible effects they have on minors.<sup>60</sup> This controversy dates back to the late 1970s,<sup>61</sup> but it reached a feverish pitch following the mass shooting spree at Columbine High School in 1999.<sup>62</sup> The teenage perpetrators were avid players of *Doom* and *Duke Nukem*, two of the most violent games available at that time.<sup>63</sup> In response to the shooting, Congress scrambled to find a reason for the killers' behavior in an external source such as video games and other media.<sup>64</sup> Yet the Congressional inquiry's impact was minimal, as there was little evidence presented that any "safeguards" were needed beyond the video game rating system that already existed.<sup>65</sup>

Similar to studies questioning the addictive capabilities of video games, there have been numerous studies that focus on violent video games' ability to increase aggressive tendencies in adolescents.<sup>66</sup> While some studies have shown a possible connection, others have found no causal relationship evidence.<sup>67</sup> Many researchers point to the likelihood of a correlation between violence and video games, as opposed to a causal relationship.<sup>68</sup> Thus, prov-

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59. Dr. Mohamed K. Khan, *Emotional and Behavioral Effects, Including Addictive Potential, of Video Games 4* (Report of the Council on Science and Public Health, CSAPH Report 12-A-07, 2007), available at <http://www.ama-assn.org/ama1/pub/upload/mm/467/csaph12a07.doc>.

60. See generally Patrick Byrd, *It's All Fun and Games Until Someone Gets Hurt: The Effectiveness of Proposed Video-Game Legislation on Reducing Violence in Children*, 44 Hous. L. REV. 401 (2007) (discussing opposing viewpoints regarding video gaming and aggression); Scott Whittier, *School Shootings: Are Video Game Manufacturers Doomed to Tort Liability?*, 17 ENTMT AND SPORTS LAWYER 11 (2000) (reviewing studies conducted immediately following the Columbine school shooting).

61. Byrd, *supra* note 60, at 405.

62. See Whittier, *supra* note 60, at 11.

63. *Id.*

64. Gregory Kenyota, Note, *Thinking of the Children: The Failure of Violent Video Game Laws*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 785, 791 (2008).

65. *Id.*

66. See generally Byrd, *supra* note 60, at 410-18 (reviewing numerous studies that present arguments both supporting and refuting theory of video game play leading to aggression).

67. Kenyota, *supra* note 64, at 802; Byrd, *supra* note 60, at 412.

68. Byrd, *supra* note 60, at 413-14.

ing causation in these cases may be difficult for plaintiffs.<sup>69</sup> Consequently, courts have also been reluctant to assign liability to companies for actions taken by consumers.<sup>70</sup> In an early example of a plaintiff blaming entertainment media for the consumer's actions, the minor plaintiff in *Zamora v. Columbia Broadcasting System* alleged that he became addicted to television, and claimed that the images he saw desensitized him to violence, leading him to shoot and kill his 83-year-old neighbor.<sup>71</sup> The federal court in Florida dismissed the claim, stating that the public should have broad access to programming, and that access should not be restricted because some members of the public may be particularly sensitive.<sup>72</sup>

Similarly, in 1990 the Sixth Circuit upheld the decision by a federal district court in Kentucky by granting summary judgment for the defendant game manufacturer in a wrongful death suit involving an avid gamer who committed suicide.<sup>73</sup> Similar to the *Smallwood* case, the mother of a deceased man alleged that the defendant manufacturer was negligent because it failed to warn about the addictive nature of the game *Dungeons and Dragons*.<sup>74</sup> The plaintiff alleged that her son was so absorbed by the game that he lost touch with reality.<sup>75</sup> But the district court did not find the mother's allegations persuasive and dismissed the case partially on First Amendment grounds, stating that assessing liability on those who created content would be tantamount to "allow[ing] the freaks and misfits of society . . . (to) declare what the rest of the country can and cannot read, watch, and hear."<sup>76</sup>

Courts have routinely relied on this First Amendment protection argument to throw out claims against video game manufacturers. For instance, in Connecticut, a plaintiff—whose son was stabbed to death by one of his friends—sued a video game manufacturer for negligent and intentional infliction of emotional distress, claiming that the boy who killed her son was addicted to—and obsessed with—the game *Mortal Combat*.<sup>77</sup> The court dis-

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69. Whittier, *supra* note 60, at 14.

70. See generally William Li, *Unbaking the Adolescent Cake: The Constitutional Implications of Imposing Tort Liability on Publishers of Violent Video Games*, 45 ARIZ. L. REV. 467 (2003) (discussing cases in several different media genres in which courts have found no liability for manufacturer or producer of entertainment-related material).

71. *Zamora v. Columbia Broad. Sys.*, 480 F. Supp. 199, 200 (S.D. Fla. 1979).

72. *Id.* at 205.

73. *Watters v. TSR Inc.*, 904 F.2d 378, 384 (6th Cir. 1990).

74. *Id.* at 379-80.

75. *Id.* at 380.

76. *Watters v. TSR, Inc.*, 715 F. Supp. 819, 822 (W.D. Ky. 1989).

77. *Wilson v. Midway Games, Inc.*, 198 F. Supp. 2d 167, 170 (D. Conn. 2002).

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missed the complaint for failure to state a claim, finding that video games are a form of expression protected by the First Amendment.<sup>78</sup>

Yet some courts have been more open to the theory that video games can be harmful to individuals. For example, a federal district court in Wisconsin recently found that the state was well within its rights when it withheld access to video games from the plaintiff—a sexually violent person who was involuntarily committed to a state facility for treatment.<sup>79</sup> In reviewing the plaintiff's complaint, the court noted that video games can lead to self-isolation and lack of community involvement—both of which are detrimental to the treatment being offered at the facility.<sup>80</sup> The court concluded that, while video games are protected under the First Amendment, in this situation there was a legitimate state interest in banning them in order to better treat mentally ill patients.<sup>81</sup> This case is obviously distinguishable from Smallwood's claims, as the court's reasoning applied under a very narrow scope.<sup>82</sup>

Even if a court were to find that there was a danger of addiction with video games, it would then have to find that the person would not have been able to ordinarily discover this danger.<sup>83</sup> In this case, it is extremely unlikely that the plaintiff would have been unaware of potential risks of overuse of video games. Since the 1999 shooting at Columbine, the media has inundated the public with stories of the dangers of video games and other media.<sup>84</sup> As an avid gamer, it is extremely unlikely that Smallwood would have been totally unaware of this story and the possible ramifications it could have on his ability to play whatever games he wished.

But even if Smallwood legitimately did not know, the court must find that the danger was such that a reasonable person would not ordinarily discover it.<sup>85</sup> This would be even more difficult for the plaintiff to prove, as he would be required to show that the average person would not have discovered the possible harmful effects of video games. With the proliferation of stories for over a decade in the mainstream media about the dangers of video games, it is highly unlikely that any individual would be unaware of the

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78. *Id.* at 169.

79. *Hedgespeth v. Bartow*, No. 09-cd-246-slc, 2010 WL 2990897, at \*1 (W.D. Wisc. July 27, 2010).

80. *Id.* at \*5.

81. *Id.* at \*9.

82. *Id.*

83. *Tabieros v. Clark Equip. Co.*, 944 P.2d 1279, 1313 (Haw. 1997).

84. See generally Bonnie B. Phillips, *Virtual Violence or Virtual Apprenticeship: Justification for the Recognition of a Violent Video Game Exception to the Scope of the First Amendment Rights of Minors*, 36 *IND. L. REV.* 1385 (2003).

85. *Tabieros*, 944 P.2d at 1313.

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possible negative effects associated with extensive game play exist.<sup>86</sup> For example, when a student at Virginia Tech went on a shooting rampage in 2007, video games were quickly blamed for the shooter's aggression, even though subsequent investigations revealed absolutely no evidence that he played video games of any kind.<sup>87</sup> Video games and their possible detrimental effects have been in the news repeatedly for other issues as well, including gamer suicides,<sup>88</sup> their alleged addictive properties,<sup>89</sup> and gamer-on-gamer violence.<sup>90</sup> Further, a simple Google search for "video game addiction" yields over 1 million results,<sup>91</sup> while searches for "video game danger" and "video game violence" yield approximately 60 million<sup>92</sup> and 40 million<sup>93</sup> results, respectively. While a court might believe the argument that video games can be addictive, it would be much more difficult for the court to find that a reasonable person would not be aware of these possible dangers. Thus, the court should not allow the claim to survive a motion to dismiss.

## II. CONCLUSION

By its ruling, this court has allowed Smallwood to take his case to a jury to determine if a reasonable person would not have known about the possible danger of video game addiction.<sup>94</sup> But this subject remains open to serious debate, and allowing this plaintiff the opportunity to recover can open up the courts to additional lawsuits, which include complaints that cannot be definitively settled. The court here seems to be shifting the onus of responsibility for one's own well-being from the plaintiff to the software designer. While most courts across the country have rapidly dismissed this type of claim, the Hawaii court's opinion seems very case-specific, and the court seems to pay

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86. See generally Kenyota, *supra* note 64, at 787–96.

87. Kenyota, *supra* note 64, at 812–13.

88. David Kohn, *Addicted: Suicide Over Everquest?*, CBS NEWS (Oct. 18, 2002), available at <http://www.cbsnews.com/stories/2002/10/17/48hours/main525965.shtml>.

89. *Video Game Addiction: Is It Real?*, HARRIS INTERACTIVE (Apr. 2, 2007), <http://www.harrisinteractive.com/news/allnewsbydate.asp?NewsID=1196>.

90. Cao Li, *Death Sentence for Online Gamer*, CHINA DAILY, June 8, 2005, [http://www.chinadaily.com.cn/english/doc/2005-06/08/content\\_449494.htm](http://www.chinadaily.com.cn/english/doc/2005-06/08/content_449494.htm); Henrick Karoliszyn et al., *Anthony Maldonado, 9, Stabbed to Death Over Video Game While Visiting Family in Harlem*, NEW YORK DAILY NEWS, Jan. 3, 2010, available at [http://www.nydailynews.com/ny\\_local/2010/01/02/2010-01-02\\_new\\_jersey\\_boy\\_9\\_stabbed\\_to\\_death\\_in\\_hallway\\_of\\_harlem\\_housing\\_project\\_while\\_vis.html](http://www.nydailynews.com/ny_local/2010/01/02/2010-01-02_new_jersey_boy_9_stabbed_to_death_in_hallway_of_harlem_housing_project_while_vis.html).

91. GOOGLE, <http://www.google.com> (last visited Aug. 3, 2011).

92. *Id.*

93. *Id.*

94. *Smallwood*, 730 F. Supp. 2d at 1236.

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special attention to the fact that Smallwood had physical injuries in addition to his mental injuries. Further, allowing recovery under these circumstances could lead to future cases in which the only damages that exist are purely emotional—without corresponding physical damages. The court here has deviated from the standards set by other courts, perhaps in response to public opinion on violent media and heightened addiction awareness. Whatever the reason, the court has opened a Pandora's box of future litigation.

