

Chicago Daily Law Bulletin®

Volume 157, No. 184

Tuesday, September 20, 2011

Sporting Judgment

Class action questions NCAA's football injury policy

By Amanda Robert
Law Bulletin staff writer

As a lawyer, Joseph J. Siprut works to bring high-stakes, high-profile cases against large defendants.

Siprut, founder of Siprut P.C., a commercial litigation boutique in Chicago, said the class-action lawsuit he recently filed against the National Collegiate Athletic Association (NCAA) and NCAA Football "qualifies and then some."

The suit, filed Sept. 12 in the U.S. District Court for the Northern District of Illinois, alleges that the NCAA fails to prevent student athletes from sustaining concussions and later suffering from related conditions like early-onset dementia and Alzheimer's disease.

"It's an absolutely important cause that is not being addressed in the way that it should, and short of a lawsuit, it's unlikely the NCAA of its own volition is going to take adequate measures to address the situation," Siprut said.

In the case, Siprut represents Adrian Arrington, a 25-year-old, former Eastern Illinois University football player. He seeks class-action status on behalf of other former and current football players who sustained head injuries while playing for NCAA schools.

According to the complaint, Arrington played football at EIU from 2006 to 2009, leading the team with 48 solo tackles in 2007 and acting as team captain in 2009.

Arrington claims he sustained three concussions, and after each of those instances, the EIU team doctor allowed him to return to the field the next day. He said he experienced memory loss and seizures after the third concussion.

"At no time was Arrington coached on how to make safer tackles," the complaint alleges. "In fact, at all times the message from EIU was to 'play hard and play fast' without regard to safety and that those who did not play in that manner would be summarily cut."

Arrington sustained two other

concussions before leaving the team, he said. He dropped out of several classes after suffering from memory loss, migraines and depression, he said.

Siprut argued that the NCAA largely ignores the correlation between on-field head injuries and their debilitating effects. The NCAA passed legislation in August that requires its schools to adopt their own concussion management plans, but it comes "too late for many students who have already suffered massive injuries and been left flapping in the wind," he said.

The NCAA's new legislation also fails to protect current players, Siprut said.

"In practice, it has led to really nothing, because the individual schools are left to their own devices and have not implemented meaningful policies and procedures that can prevent or mitigate these injuries," he said.

In a statement e-mailed to the Chicago Daily Law Bulletin Tuesday, the NCAA said it was still examining the complaint, but upon initial review, believes it contains "gross misstatements."

"The NCAA has been concerned about the safety of all of its student athletes, including those playing football, throughout its history," the organization said.

The NCAA said it specifically addresses the issue of head injuries through playing rules, equipment requirements and medical best practices.

Timothy M. Whiting, founding partner of Whiting Law Group Ltd., represented a woman who suffered a brain injury after being hit by a puck at a Chicago Blackhawks game in 2002. As a result of his case, the National Hockey League implemented safety policies to prevent similar situations.

In considering the NCAA lawsuit, Whiting said it acts as an "excellent discussion-starter" on promoting safety among college football players.

When an NFL athlete suffers a concussion, they endure a series of

medical tests and need approval to go back on the field, Whiting said. The NCAA should put a similar protocol into place, he said.

"The NFL has made leaps and bounds in protecting their players, so why hasn't the NCAA?" he said. "That's a really good question, and really, the basis of this entire lawsuit."

In filing the lawsuit, Siprut plans to push the NCAA to create and implement a comprehensive plan for all schools that will minimize on-field head injuries. He also wants to receive reimbursement for medical expenses and other damages incurred by players who have already sustained these injuries.

Additionally, Siprut seeks medical monitoring to protect players who have sustained concussions but not manifested all of the symptoms of serious head injuries.

"We can keep a close eye on people who are at risk for these problems, and if and when the problems occur, they can be treated immediately," he said.

Andrew R. Klein, a professor who teaches tort law at Indiana University School of Law-Indianapolis, finds the medical monitoring claims most interesting.

"In most cases where medical monitoring has been accepted as a remedy, the context has been a toxic tort, an asbestos case or a contamination case," Klein said. "To me, the attempt to certify a class and receive medical monitoring damages, much of which would go to healthy plaintiffs, in this context is novel."

Klein pointed out that medical monitoring claims for currently healthy individuals are often considered controversial. He said that if the lawsuit faces other challenges, it could be proving the link between NCAA negligence and injuries to individual student athletes.

The case is *Adrian Arrington v. National Collegiate Athletic Association and NCAA Football*. No. 1:11-cv-06356.