Focus
Sports & Entertainment Law

The NFL and Former Players Knock Heads in Concussion Litigation

BY TODD GOLDBERG

“Kill the head, and the body will die,” shouted Greg Williams, former defensive coordinator for the New Orleans Saints, as a rally cry to the team before an NFL playoff game last January. A few months later, as a result of the so-called “bounty” scandal, the NFL banned Williams indefinitely and punished the Saints for allegedly paying bonuses to players as an incentive to injure opponents. Williams’ words are reprehensible; however, violence in football implicates a broader health concern for current and former players. According to medical researchers, because of repeated concussions, NFL players have an increased risk of Alzheimer’s and Lou Gehrig’s disease and excessive exposure to chronic traumatic encephalopathy (CTE), a neurological disorder with broad physical and mental-health symptoms, but no known treatment. CTE gained attention when Junior Seau (a retired star linebacker) shockingly committed suicide in May 2012. His devastated brain has been donated for research.

Alarming, as training methods produce larger, faster and stronger athletes, high-impact collisions between players have increased in force. While it now seems obvious that NFL players will face health consequences, former players contend that the NFL did not disclose long-term risks. Until the NFL convened a team of doctors that this duty was assumed. The NFL was named as a defendant in 2012, when Stš?€š?€œthe plaintiffs did not know what they were getting into, and didn’t understand the long-term effects of the injuries they suffered.” The NFL’s history of silence represents to be in their interests—nor a duty under the CBA. However, if the Pennsylvania court follows the holding of the Illinois court and requires the plaintiffs to return the duties, the NFL’s motion to dismiss will likely be granted.

The settlement may not be granted legal remedies, but whether or not the plaintiffs prevail in the litigation, they have already illuminated the wellness of players—past, present and future—and spurred a framework for progress. The NFL has taken notice, and recently implemented rule changes and policies to prevent and address concussion-related injuries. The NFL also made a $30 million donation to fund medical research. Moreover, the present CBA provides increased benefits to former players with the disorders associated with concussions. Hopefully, these efforts will increase the quality of NFL player post-career lives and allow current and next-generation players to avoid the same repercussions.

The Third Edition of Business and Commercial Litigation in Federal Courts has recently been published. This 11-volume series is an update of the version first published in 1999 and updated and expanded in 2005. The treatise is published by Thomson Reuters and the American Bar Association Section of Litigation, and edited by Robert Haig of Kelly, Drey & Warren in New York.

This treatise is a remarkable resource that every federal court practitioner should have. Its 12,742 pages are comprised of 130 chapters written by 251 practitioners and federal judges around the country. The Third Edition has been substantially expanded with the addition of 34 new chapters. As you would expect, many of the contributing authors have national reputations in their fields. Some of the distinguished Texas contributors include Judge David Hittner and David Beck as co-authors of the chapter on Jury Selection; Harry Ranocich on Ethical Issues in Commercial Cases; Judge Barbara Lynn is a co-author of the chapter on Request for Admissions; Stephen Susman coin-wrote Techniques for Expediting and Streamlining Litigation; and Charles Babcock is a co-author on Petition for Reimbursement of Speech. Other Texas contributors are Barry Barnett, Edward Carr, David Coale, Vincent Hess, John McElhaney, Barry McNiel, Eric Nichols and Blake Tarrant.

The authors volunteer their time to contribute and update the treatise; royalties go to the ABA Section of Litigation. The editor conservatively estimates that the authors and their law firms have invested more than 36 million dollars of billable time in working on the Treatise and its annual pocket parts, not including the time of the 22 federal district and circuit judges who contributed chapters.

The treatise is unique in its approach to the treatment of the issues faced by litigators in federal court. Approximately the first half of the chapters in the treatise deal with topics that are common to most federal cases, such as personal and subject matter jurisdiction, removal, venue, joinders, pleadings, pretrial discovery, trials, judgment and appeals. These chapters address the litigation process from the initial case evaluation stage to conclusion of the case, and include chapters on topics in Federal Practice, Alternative Dispute Resolution, International Arbitration and the Bankruptcy Code on Civil Litigation in the Federal Courts. The chapters in the second portion of the treatise address 63 different areas of substantive law that are subject of federal court litigation in commercial cases, including Securities, Patents, Trademark, Copyright, ERISA, White Collar Crime, the Foreign Corrupt Practices Act and the False Claims Act. Because this treatise has been written by judges and practitioners, most of the chapters outline the law and its implications. The chapters are exhaustive and practical, here the reader finds more comprehensive reviews of the best Practice Aids and Checklists at the conclusion of almost every chapter, and with those resources available online, the treatise is a comprehensive guide to every case involving federal law.

Scheidtfin contains a comprehensive discussion of the issues in this area, and concludes with detailed checklists for interviewing employees, investigating the hardware environment and applications and investigating backup systems and archives.

The Forms section at the conclusion of the chapter also contains case management order provisions relating to produc tion and inadvertent production issues. The treatise is worth having just for the Practice Aids, Checklists and Forms in each chapter. Plus, as noted above, the chapters are updated each year.

The Third Edition of Business and Commercial Litigation in Federal Courts is an important and comprehensive treatise. The scope and depth of its coverage of substantive law and procedure, together with its insightful analysis of strategic issues and practice aids, make it a valuable resource for a federal court litigator who can use it in virtually every case involving federal law or the federal courts.

Ray E. Green

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By TIMOTHY W. HORTON

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