

Knock Out Blows - Concussion and Sports-Related Injuries Litigation

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October 16, 2014

A 9 September 2014 article in the New York Times declared that “head trauma has become the most serious — and potentially most litigious — issue threatening all of sports.”

The public awareness and interest in the damaging nature and potential long-term consequences of head injuries, and specifically, concussions, has grown rapidly in the past few years. Beginning in 2011, plaintiffs have commenced putative class action litigations alleging damages related to concussions or other traumatic brain injuries players allegedly incurred while participating in a number of different professional or amateur organized sports. With the recent approval of a settlement agreement in the National Football League (“NFL”) litigation which included a total payout by the NFL of \$870 million; combined with similar ongoing class actions filed against significant sporting entities including the National Hockey League (“NHL”), National Collegiate Athletic Association (“NCAA”), and the Fédération Internationale de Football Association (“FIFA”), losses by policyholders related to concussions and head injuries may potentially exceed \$1 billion over a number of years.

The liability issues for the insured organizations generally relate to whether the insured was aware of the potential for injuries and failed to warn players, or in fact, profited from the danger of the sports. In certain sports, there is an inherent risk that a player will likely get hit in the head. However, athletes are arguing that the sports organizations had a duty to warn about the effects of concussions and that the NFL for example, failed to carry out its duty to disclose that concussions might cause long-term brain damage. The organizations have already begun to look to primary insurers for defense or for reimbursement of defense costs. A number of declaratory coverage litigations have been initiated and are pending in the United States. Coughlin Midlige & Garland LLP is currently actively representing a number of insurers in declaratory judgment actions related to the NFL and NHL litigations.

While the most high profile and costly case to date has been the NFL litigation, there is potential for liability and coverage implications from numerous professional, amateur, and youth sports. Given the complex and diverse nature of head and brain injuries, as well as the broad scope of potential claimants, the claims raise a number of liability and coverage issues for insurers who have issued CGL policies to sports and/or educational organizations. The following paper will provide an overview of the ongoing sports injury litigations in the United States and a discussion of the key liability and coverage issues associated therewith.

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