

# Chicago Daily Law Bulletin®

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## 2018 filled with sports legal bouts; just the start?

The curtain has closed on the NFL season after the lowest scoring Super Bowl ever played. The trade deadline approaches in an NHL and NBA in a season where the Chicago teams will probably be sellers, rather than buyers. Pitchers and catchers will report next week for MLB spring training — hope springs eternal.

This seems to be a fitting time to review the biggest sports cases of 2018: Legalized sports gambling, continued concussion litigation and the college basketball sneaker scandal have all altered the sports landscape significantly in the past year.

We update each case and look forward to the next act in 2019.

### **Murphy v. National Collegiate Athletic Association, 138 S.Ct. 1461 (2018):**

On May 14, the U.S. Supreme Court overturned the Professional and Amateur Sports Protection Act in an important states' rights opinion. Our Supreme Court held that Congress could not prohibit states from legalizing sports gambling pursuant to the Constitution's anticommandeering doctrine.

In the wake of this monumental decision, several states, including New Jersey, Delaware, West Virginia, Rhode Island, Pennsylvania and Mississippi took relatively quick action to legalize sports betting within their states. Additionally, a tribal group opened a sports book in its casino and Arkansas voters recently passed a ballot measure to legalize sports betting. At least 14 other states have taken the issue under consideration.

In Illinois, sports betting legislation was introduced and hearings were held throughout last year, but no formal vote was taken. Newly elected Gov. J.B. Pritzker has said, "We also should look at sports betting in the state," if a strong regulatory system is in place to oversee the business. It seems likely that Illinois will pass legislation legalizing sports gambling to

supplement pension and infrastructure funding.

Certainly, legalization of gambling could be a windfall for the sports leagues and the team owners. Yet, the NFL, NHL, MLB, NBA and NCAA are not real keen on 50 separate states' regulations applying to their contests.

Each has lobbied Congress for a federal bill that would include veto power for the federal government if state sports betting laws do not conform with certain minimum standards. Such a bill would undoubtedly also contain provisions regarding usage of official league data by sports betting operators and likely impose a federal excise tax. In an ideal world, such a bill would also mandate strict oversight to ensure the integrity of the games.

### **In re NFL Players' Concussion Injury Litigation, No. 2:12-md-02323 (E.D. Pa.):**

More than three years ago, U.S. District Judge Anita B. Brody certified and approved a class settlement against the NFL on behalf of retired players managing neurodegenerative disease

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years after ending their professional football careers. *In Re National Football League Players' Concussion Injury Litigation*, 307 F.R.D. 351 (E.D. Penn. 2015). To date, 766 retired players (or the estates of deceased players) have received \$614,202,708 in compensation from the league pursuant to the agreement. These actual payouts have far exceeded the preliminary estimates.

However, the claims process has not been entirely satisfactory for the 20,522 claimants registered for the settlement. In some instances, families of former players have been dismayed by the lien reimbursement provisions that permit Medicare,

### SPORTS TORTS



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other governmental payors and private insurance companies to receive a portion of a players' award. Additionally, hundreds of players remain in limbo following audits or appeals of their claims by the NFL.

Nonetheless, more than 8,000 former NFL Players have participated in the settlement's Baseline Assessment Program which allows for thorough neurological and neuropsychological workups at the league's expense. While

the final fairness hearing to determine if the settlement is fair, reasonable and adequate and to consider the request by class counsel for attorney fees and expenses and service awards for the class representatives.

The NCAA class settlement contains a carve out for individual injury or death cases against the NCAA or member institutions. Once such case is *Rose v. National Collegiate Athletic Association*, also before Lee. F. Supp. 3d \*6 (N.D. IL. 2018).

In the *Rose* case, the court denied the NCAA's 12(b)(6) motion to dismiss the plaintiffs' complaint for a violation of the statute of limitations. Id. The court held that the claims for damages related to neurodegenerative disease were not barred by a two-year limitations period because the injuries were not akin to a sudden traumatic event and the plaintiffs did not know nor should they have reasonably known of their injuries or that these injuries were wrongfully caused due to the latent nature of those injuries. Id.

Another individual case against the NCAA proceeded to trial last June. Greg Ploetz, a former football player for the University of Texas, was diagnosed with CTE after his death in 2015. His wife, Debra Hardin-Ploetz, filed suit against the NCAA on behalf of her husband's estate alleging the NCAA was responsible for her husband's death as well as his poor health throughout his adult life.

After three days of trial, the parties reached a confidential settlement. Across the country, hundreds of individual cases against the NCAA and/or its individual schools were filed in 2018. Will resolution be possible in 2019?

### **In Re National Hockey League Players' Concussion Injury Litigation, MDL, 0:14-md-02551**

The NHL's concussion injury litigation moved toward resolution in 2018. The case had been pending in the U.S. District

not perfect, the settlement has proven to be a tremendous benefit for retired NFL players dealing with the later-in-life effects of playing professional football.

### **In re NCAA Student-Athlete Concussion Litigation, No. 1:13-cv-09116 (N.D. IL)**

The NCAA has also attempted to settle its concussion litigation problems that commenced in 2014. Preliminary approval has been granted for a settlement that would support a medical monitoring program for former NCAA athletes (regardless of sport) suffering from latent brain injuries.

On February 25, U.S. District Judge John Z. Lee will conduct

Court for the District of Minnesota since 2014 where former NHL players' claims against the league were consolidated by the Judicial Panel on Multidistrict Litigation.

Toward the end of last year, a settlement proposal was advanced that includes funding for: (1) an immediate cash payment for the retired player plaintiffs; (2) neurological and neuropsychological testing; (3) additional payments for medical expenses for each individual who demonstrates cognitive/behavioral deficiencies upon examination; and (4) the establishment of a "common good" fund to support senior player pensions, emergency as-

sistance, substance abuse rehabilitation, and/or other programs to benefit the health and welfare of all former NHL players.

The deadline for players to opt into the NHL settlement proposal is Friday. But, the NHL maintains a 'walk-away' provision if all plaintiffs do not participate. So, it remains to be seen if this proposal will be the beginning of the end of these cases or the end of the beginning. 2019 will be a critical year.

***United States v. Gatto, et al., 2017 WL 7790584 (S.D.N.Y.)***

In October, a federal jury in New York returned a verdict of guilty on all counts against Jim Gatto, Merl Code and Christian

Dawkins, all accused of participating in pay-for-play schemes to influence high-profile basketball recruits to attend Kansas, Louisville and North Carolina State.

In the wake of the college basketball corruption scandal, the NCAA decided 2018 was the year to slightly alter a policy concerning student-athlete rights and allow college basketball players to attain advisory agents.

Unfortunately, for now at least, agents will not be able to negotiate licensing deals for those elite basketball players despite premier players having significant market value and despite how much revenue the schools' make off their

name, image and likeness.

Will 2019 be the year that student-athletes begin to realize a portion of those earnings? Highly unlikely. But, with additional trials scheduled for April, we have only scratched the surface on revealing the depth of the scandal.

All in all, 2018 represented a sea change in the world of sports. Increased awareness and compensation for concussion related injuries, introduction to legalized sports betting outside of Nevada and continued revelations regarding college basketball recruiting highlight the important issues that will have lasting impacts in the new year and beyond.