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NFL Players Want Claims Revived Against Helmet Co. Riddell

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Summary

More than 50 former *NFL players* face an uphill battle in trying to sway an Illinois appellate court to *revive* their *claims* that *helmet* manufacturer *Riddell* Inc. conspired with the *NFL* to misinform them of the risks of long-term brain damage in football, experts say.

Body

More than 50 former *NFL players* face an uphill battle in trying to sway an Illinois appellate court to *revive* their *claims* that *helmet* manufacturer *Riddell* Inc. conspired with the *NFL* to misinform them of the risks of long-term brain damage in football, experts say.

Even if they can prove their *claims* are timely, the former *players* face a tough challenge to prove *helmet companies* like *Riddell* can be held responsible for their brain injuries, product liability lawyers told Law360.

The *players*, who will argue their case in the Illinois Appellate Court on Wednesday afternoon, are trying to upend a lower court's determination that their *claims* were time-barred based on their participation in multidistrict litigation *against* the National Football League. They argue that their *claims* are timely because their neurodegenerative brain diseases, such as dementia and Alzheimer's, were not diagnosed until after they brought *claims against* the league in the now-settled MDL.

But even the federal judge who approved the *NFL* MDL settlement predicted *players* could have problems with the timing of future *claims*, saying a statute of limitations defense could succeed in future litigation because many of the retired athletes hadn't played football in years. That creates a steep hill for the *players* to climb to overcome the time bar, said Joseph M. Hanna of Goldberg Segalla, a partner and chair of the firm's sports and entertainment practice group.

The *NFL* MDL — and the involvement of the *players* in it — will play an enormous role in subsequent findings *against Riddell*, Hanna said in an email to Law360.

“The difference here, however, is that these players were also involved in the NFL MDL; as such, while they may have suffered additional diagnoses since they joined that suit, the question remains whether they at least had knowledge of other potentially related injuries which led them to join the NFL MDL in the first place,” Hanna said.

The ex-players contend they sustained multiple concussions while wearing Riddell helmets during games and in practice and were not told by either the company or the NFL of the long-term consequences of the injuries. In a brief to the appellate court, the 53 players say their legal actions, first brought in Cook County Circuit Court in 2016, are timely and that the two-year statute of limitations can’t start to run until they discovered their latent brain injuries.

The lower court dismissed the cases with prejudice in June 2017, siding with Riddell’s argument that by the time the former players sued the NFL in 2011, they were aware they had suffered injury and that playing professional football put them at risk for brain trauma and neurological disorders, even if the full extent of those disorders was not yet apparent.

The onus is now on the players to persuade the appellate court that the statute shouldn’t begin to run at the time the condition was inflicted upon them, Hanna said.

In support of that contention, the players cited a ruling from the Ohio Supreme Court last year that found chronic traumatic encephalopathy, or CTE, could be treated as a latent condition that develops long after an initial injury and may not reasonably be discovered until years later.

The Ohio court allowed claims of negligence and fraud to move forward on behalf of a deceased former Notre Dame football player against the university and the NCAA for failing to warn of the risks of repeated head trauma, prompting attorneys to predict more lawsuits brought by former players who haven’t hit the gridiron in decades in the hope they can clear an initial statute of limitations defense.

That case similarly centered around the “discovery rule,” which says that the statute of limitations does not start until the plaintiff is either informed by a medical authority of an injury that could lead to a claim or when the plaintiff reasonably should have been aware of such an injury.

But Riddell contends the players’ interpretation of the discovery rule would cause confusion and chaos in Illinois courts.

“Under (the players’) theory, the discovery rule restarts the limitations clock — permitting another lawsuit, and another, and another — every time a plaintiff develops a new condition or symptom stemming from the original injury,” the company said in a brief. “Plaintiffs’ radical interpretation of the discovery rule would read it out of existence.”

Beyond the statute of limitations dispute, the players could face a tough road to proving causation, said Mark S. Granger, a product liability attorney who specializes in representing sporting goods manufacturers. Granger said helmet litigation such as this is brought with unfair expectations of the companies who design the gear, especially given that the medical community still can’t say definitively how much force causes concussions.

“If anybody said, ‘This will prevent concussions, period,’ then they’ve got a problem. But that isn’t what was said,” Granger said in an interview with Law360. “They said it would reduce the risk of concussion. That’s certainly true. But if you’re going to use your head as a weapon, no helmet that anyone is going to manufacture is going to protect you.”

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In the MDL, the players alleged their concussions or head traumas were improperly diagnosed and treated and that they suffered symptoms including memory loss, dizziness, blurred vision and mood swings.

What they didn't allege was diagnosis of a latent neurodegenerative disease, according to their Illinois brief.

"Certainly, knowing that one experiences headaches is entirely distinct from being diagnosed with a neurodegenerative disease. The diagnosis controls the statute of limitations, not the symptoms," the players said.

Riddell, however, pointed to the 2012 master complaint in the NFL case, in which all MDL plaintiffs pled that they have "sustained brain injuries that are progressive and latent." The company then cited a section of the complaint stating that players who sustained repetitive head impacts while playing the game suffer injuries related to conditions such as Alzheimer's, dementia, depression and CTE.

"The record establishes that by the time he sued the NFL, at the latest, every plaintiff contended that his alleged brain injuries were 'wrongfully caused' — his own lawsuit is the proof," Riddell said.

Michael Kaplen, a brain injury attorney with De Caro & Kaplen LLP, told Law360 he thought there was viable evidence that Riddell misrepresented the extent to which its helmets could protect players, noting there could be much more to discover if the lawsuits are allowed to proceed to the discovery phase.

"It might also give us some further insight into what the NFL knew, and should have known, that has been hidden from public view," Kaplen said. "The public has a right to know about all of this. It doesn't only affect NFL players."

The oral arguments Wednesday will also include cases brought by two other athletes making similar legal arguments but who aren't part of the group of 53 players: Charles Ali, who last played for the Cleveland Browns, and Haruki Nakamura, who last played for the Carolina Panthers.

Riddell argued all complaints were time-barred because of previous action the plaintiffs brought against the NFL. The 53 players in the primary lawsuit and Ali were participants in the NFL MDL, and Nakamura pursued an insurance claim and sought disability benefits from the league after a career-ending brain injury in August 2013, according to court documents.

The players are represented by William T. Gibbs and Thomas E. Demetrio of Corboy & Demetrio PC and Brad R. Sohn of The Brad Sohn Law Firm PLLC.

Riddell is represented by Karen Kies DeGrand, Mark H. Boyle and Michael H. Adler of Donohue Brown Mathewson & Smyth LLC.

The cases are In re: Riddell Football Helmets, case number 18-0362, Charles Ali v. BRG Sports et al, case number 18-0394, and Haruki Nakamura v. BRG Sports et al, case number 18-0397, in the Appellate Court of Illinois, First Division.

--Additional reporting by Zachary Zagger. Editing by Jill Coffey and Emily Kokoll.