

Click to print or Select 'Print' in your browser menu to print this document.

Page printed from: <https://www.law.com/newyorklawjournal/2022/04/12/brain-injury-litigation-spreads-to-other-sports-after-huge-nfl-settlement-389-161625/>

Brain-Injury Litigation Spreads to Other Sports After Huge NFL Settlement

"Definitely we'll be seeing more of these cases," said Michael Kaplen, a plaintiffs attorney who teaches a law school course on brain injury.

By Charles Toutant | April 12, 2022



Frank Del Duca, Carlo Valdes, James Reed and Hakeem Abdul-Saboor of the United States during a heat at the 2022 Winter Olympics on Feb. 20, 2022, in the Yanqing district of Beijing. Photo: Dmitri Lovetsky/AP

Professional football has seen its share of litigation over brain injuries among players, but a growing number of head-injury suits are surfacing in other sports.

For instance, the U.S. Olympic and Paralympic Committee is a defendant in a suit claiming that a New Jersey man, Pavle Jovanovic, committed suicide in 2020 as a consequence of a brain injury he developed while training to be an Olympic bobsledder.

The case was removed to Trenton, New Jersey, federal court on Monday.

The suit asserts that Jovanovic developed chronic traumatic encephalopathy, or CTE, from the frequent bumps and jostling to the head that bobsledders experience. It claims he exhibited erratic behavior, alcoholism and Parkinson's-like hand tremors before hanging himself.

Link to Suicides?



Tor Hoerman of TorHoerman Law.
Courtesy photo

Much attention greeted the \$1 billion settlement the National Football League reached in 2019 concerning brain injury claims.

But some lawyers said the public is less aware of the incidence of brain injury in other sports, and the idea of seeking recovery.

Brain-injured athletes have brought other claims against entities they claim should have protected them from such injuries.

The USA Bobsled and Skeleton Federation, for instance, faces a potential class action in Los Angeles Superior Court seeking medical monitoring on behalf of California residents who competed or trained with that organization from 1983 to September 2021. The suit claims USA Bobsled knew about the risk of neurodegenerative and behavioral disorders, but failed to warn its athletes.

And in federal court in Cleveland, the U.S. Olympic Committee and USA Taekwondo face a negligence suit from Philip Ripepi, who was in training for the Olympic Taekwondo team when he suffered a brain injury inflicted by another athlete. His suit claims he was not warned that he would be training with others who are much larger than he, and that he was denied timely medical treatment after the injury.

Other plaintiffs have recovered in cases where an athlete's suicide was linked to CTE. In 2018, the family of former linebacker Junior

Seau reached a confidential settlement with the NFL after claiming he took his life as a consequence of CTE.

The link between CTE and suicide is "completely scientifically accepted. CTE from injuries to the head oftentimes leads to severe depression," said Tor Hoerman, an Edwardsville, Illinois, lawyer representing Jovanovic's family. After Jovanovic's death, his family had a sample of his brain tissue tested, which confirmed that he had CTE, said Hoerman. CTE can be diagnosed by symptoms and history, and is confirmed by testing brain tissue, he said.

'Not Just in Football'

Jovanovic is not the first Olympic bobsledder to kill himself.

Since 2013, five North American Olympic bobsledders attempted suicide, the complaint states. Four, including Jovanovic, have succeeded.

"In bobsledding, there are crashes—every bobsledder has suffered a crash. It's not the big hit, it's the repetitive brain injury. You're actually knocking your head on the side of the bobsled," Hoerman said. "It's in many sports, it's not just in football. It's not just in bobsledding. You'll see it in soccer, with all the headballs. It's not like it's severe trauma, but it's continuous," he said.

Hoerman's co-counsel are Robert Dassow of Hovde Dassow & Deets and Andrew D'Arcy and Patrick D'Arcy of D'Arcy Johnson Day in Egg Harbor Township, New Jersey.

The U.S. Olympic and Paralympic Committee is represented by Covington & Burling. Its lawyers did not respond to a request for comment.

CTE

CTE has been found in athletes whose primary exposure was through sports such as boxing, hockey, rugby, soccer, wrestling, as well as bobsledding, the suit states. At least since the 1980s, bobsledders and their coaches have normalized symptoms of brain injury and CTE by using a phrase to refer to instances when an athlete could not communicate with others or even function after a run, the suit claims.

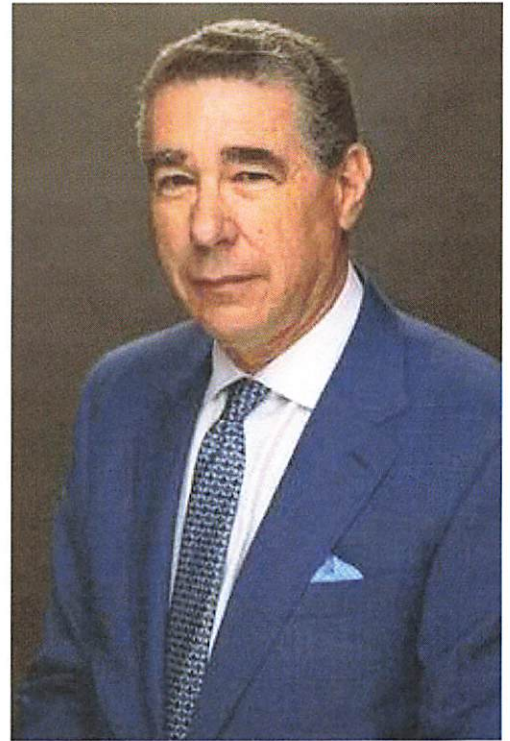
"Despite knowledge of the decades of medical science detailing the developing of traumatic brain injuries in athletes who are exposed to brain trauma and the use of 'sled head' within the sport of bobsled, defendants failed to warn and protect [Jovanovic] and the other athletes who have taken their lives as a result of a repeated head trauma. Instead, they concealed from him the risks of head trauma," the suit claims.

Defense lawyers in brain trauma litigation sometimes argue that the theory of CTE being caused by brain trauma is not reliable, said Michael Kaplen, who teaches a class on brain injury at George Washington University's law school.

Defense lawyers also argue that a particular event or series of events is not the proximate cause of CTE, and that athletes assume risk when they agree to participate in sports training, said Kaplen.

Kaplen represents plaintiffs in brain injury cases for De Caro & Kaplen in Pleasantville, New York, and is past chair of the New York State Traumatic Brain Injury Coordinating Council.

"It's a growing area of concern to people in the medical profession," he said. "It's a growing area of concern to parents. It's a growing area of concern to athletes. Definitely we'll be seeing more of these cases. We'll be seeing leagues, pros and amateurs take a close look at their safety practices and providing proper monitoring of these athletes."



Michael V. Kaplen of De Caro & Kaplen. Courtesy photo

Copyright 2022. ALM Global, LLC. All Rights Reserved.