

NCAA Concussion Injury MDL Created In Ill.

By **Andrew Scurria**

Law360, New York (December 19, 2013, 3:15 PM ET) -- The U.S. Judicial Panel on Multidistrict Litigation on Thursday combined a class action in Tennessee federal court blaming the NCAA for student-athletes' concussion injuries with a first-filed suit in Illinois, and signaled that claims against helmet manufacturers would remain divorced from the new MDL.

A six-judge panel determined that the Northern District of Illinois, where a suit brought by former Eastern Illinois University football player Adrian Arrington has been proceeding since September 2011, was more appropriate for the newly centralized case than the Southern District of Indiana, the venue urged by another group of plaintiffs who sued in Tennessee in September.

The panel took note of the potential tag-along actions pending in Florida, Georgia, Indiana, Minnesota, Missouri, South Carolina and Tennessee federal courts, and said that the number of suits and their overlapping putative classes warranted creating a centralized litigation. Moreover, all plaintiffs seek medical monitoring for putative class members, according to the order.

"Regardless of the scope of the putative classes alleged, all actions share common factual questions concerning the NCAA's knowledge of the risks of concussions in football players and its policies governing the protection of players from such injuries," the panel said. "These actions share factual questions relating to allegations against the NCAA stemming from injuries sustained while playing sports at NCAA-member institutions, including damages resulting from the permanent long-term effects of concussions."

The panel said that centralization in Illinois, where the Arrington plaintiffs has a class certification motion pending, will eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties and the judiciary.

The plaintiffs in the Tennessee suit, known as Walker, had fought against centralization in their briefing papers, arguing that the proposed medical monitoring class definition in Arrington would exclude their class representatives.

The proposed Walker class consists of former football players, but the proposed Arrington class includes athletes from seven different sports, including women. In addition, the Walker suit covers former

players in all 50 states, but the Arrington suit covers players in just 18 states, according to their brief.

But the Walker plaintiffs dropped their opposition to centralization at oral arguments, according to the order.

The JPML also handed a victory to helmet manufacturers Riddell Inc. and Kranos Corp., known as Schutt Sports, by declaring that product liability claims against them in a tag-along suit in Indiana should remain separate from the Illinois MDL.

The Indiana suit was the first from NCAA athletes to target Riddell, which is still a defendant in concussion litigation brought on behalf of NFL players. A landmark \$765 million deal extricated the league from that case in August, but did not cover Riddell.

As the manufacturers had requested, the JPML issued a conditional order separating claims against them from those against the NCAA and sending the NCAA claims to Illinois. According to the order, Riddell belonged in the centralized NFL case because the two were accused of acting in concert to conceal the long-term effects of concussion injuries, but the same wasn't true in the NCAA case.

"It seems unlikely that the products liability claims would share sufficient overlap with the common claims against the NCAA to warrant inclusion in centralized proceedings," the order said.

Riddell's counsel Paul G. Cereghini of Bowman & Brooke LLP said in a statement that the panel acted "appropriately" in keeping the helmet manufacturer claims separate.

"The JPML's ruling should discourage the filing of other baseless lawsuits against the football helmet industry," he said.

The Arrington case has been stayed pending the outcome of a mediation with the NCAA. Negotiations are being overseen by former U.S. District Judge Layn Phillips, who brokered the \$765 million NFL settlement.

The complaint was amended earlier this year to include language similar to the NFL players' suit, claiming the NCAA "unilaterally shouldered for itself a common-law duty to provide players with rules, information and best practices that protect them as much as possible from short-term and long-term health risks."

The suit argues that the NCAA negligently failed to adopt accepted best practices for proper concussion management and improperly delegated responsibility for enforcing concussion protocols to universities it knew were providing inadequate medical care.

The Arrington plaintiffs are represented by Steve Berman, Elizabeth Fegan, Daniel Kurowski and Thomas Ahlering of Hagens Berman Sobol Shapiro LLP and Joseph Sipur of Sipur PC.

The Walker plaintiffs are represented by Michael D. Hausfeld, Richard S. Lewis and Mindy B. Pava of Hausfeld LLP and the Law Offices of Gordon Ball.

Riddell is represented by Paul G. Cereghini of Bowman & Brooke LLP.

The NCAA is represented by Latham & Watkins LLP.

The case is MDL number 2492 before the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Gavin Broady and Greg Ryan. Editing by Andrew Park.

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