

Riddell Helmet Co. Looks To Strike Players' Class Claims

By Jack Newsham

Law360 (January 23, 2019, 6:24 PM EST) -- The manufacturer of Riddell football helmets asked an Illinois federal judge on Wednesday to prevent a suit by six former players from going forward as a class action, saying the injuries the players claim, the specific helmets they used, where they played and the potential mitigating factors are too different for a group remedy.

BRG Sports Inc. said Jeffrey Jones, a former high school and college defensive tackle, and five other former football players who say they wore Riddell helmets over the years couldn't possibly stand in for a class of the tens of thousands of people who have also worn such helmets. Player experiences and applicable laws differ so widely that the class allegations must be struck from their suit, the company said in its motion.

"Courts throughout the country have ... observed the facial impropriety of attempting to pursue class certification for personal injury, product liability claims — especially on a nationwide or even multistate basis," BRG argued. "Despite this abundant precedent, the plaintiffs here urge the court ... to allow them to proceed with a nationwide class spanning 50 states, the District of Columbia, and possibly even territories, involving many different models of helmets, with different designs, materials, and warnings."

The helmet maker said Jones and his fellow players are represented by the same attorneys who have filed actions by 100 other players. In those cases, BRG said, the lawyers acknowledged that the players' claims would ultimately be tried individually, but not so in the Jones case.

By their own admission, BRG said, the players were exposed to different warnings, have suffered a range of different injuries, received a range of different diagnoses and treatments, and played football over a period of decades during which the knowledge of the risk gradually evolved.

Other courts have prevented similar suits from advancing as class actions, the manufacturer said. The U.S. Supreme Court made clear in its 1997 decision in *Amchem Products Inc. v. Windsor* that personal injury claims are "likely to present significant questions, not only of damages but of liability and defenses" that apply differently to individual class members, the company argued.

A similar suit against the Riddell manufacturer was tossed on those grounds, the company noted. In 2015, an Indiana federal judge scrapped much of a personal injury suit brought by former college football players against the helmet company, striking class allegations "that it is clear even now will never come to fruition."

The company added that state product liability laws differ widely. Some states have specific laws on the books, while others adhere to common law. The defenses available to BRG also vary by state, the company noted, with states dividing fault — and damages — differently, an issue recognized by the Seventh Circuit in cases like Jones'.

"The magnitude and variety of facts requiring individualized plaintiff-by-plaintiff adjudications that are facially apparent in the [class action complaint] are staggering, as are the material variations in laws across these putative nationwide classes," the company said. "No facts uncovered in discovery would cure the fundamental and pervasive problems plaguing these class allegations."

Jones and his co-plaintiffs have also filed individual short-form complaints that include only their own allegations, and BRG has answered them. The case is coordinated with three other suits in which players' claims are being brought individually.

Paul Cereghini, who represents BRG, said in an email that the suit by Jones and the other former footballers was "not class-action material."

"The Jones plaintiffs filing [short-form complaints] is consistent with that reality — their claims are all highly individualized and unsuitable for class treatment," he wrote. "The company looks forward to defending these claims vigorously, and to defending its products and its outstanding reputation against these and other meritless attacks."

Representatives for the players did not respond to requests for comment Wednesday.

Briefing on the motion to strike is set to wrap up in early March.

The plaintiffs are represented by Benjamin Richman, Jay Edelson, Daniel Schneider and Rafey S. Balabanian of Edelson PC, and George Parker Young, Vincent P. Circelli and Kelli Walter of Circelli Walter & Young PC.

BRG is represented by Paul G. Cereghini, Robert L. Wise and Eden M. Darrell of Bowman and Brooke LLP and Mark H. Boyle of Donohue Brown Mathewson & Smyth LLC.

The case is Jones et al. v. BRG Sports Inc., case number 1:18-cv-07250, in the U.S. District Court for the Northern District of Illinois. The other cases are Freddie Adams et al. v. BRG Sports Inc., case number 1:17-cv-08972; Mark Adams et al. v. BRG Sports Inc. et al., case number 1:17-cv-08544; and Baker et al. v. BRG Sports Inc. et al., case number 1:18-cv-00129, all in the same court.

--Editing by Jack Karp.