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Sports-Related Injury Cases on the Rise in Pennsylvania

BY MAX MITCHELL

Of the Legal staff

The attorney representing the estate of Jack Hill Jr., a 21-year-old college student whose death allegedly stemmed from a sickle cell attack during a late-night basketball practice, said that if the incident had occurred several decades earlier, it might not have sparked a lawsuit.

"Years ago, people would have thought, 'What a sad situation. This man died of overexertion,'" said **Tom Kline** of Kline & Specter, who recently filed a complaint in *Hill v. Slippery Rock University*. The complaint names the university, the university health center, a nurse practitioner with the health center and the National Collegiate Athletic Association as defendants.

"There is definitely a greater public awareness of safety issues ... where high school, colleges and professional sports have come to grips, in a public way, with their responsibility for injured athletes," Kline said.

The suit alleges that Slippery Rock and the NCAA, the governing body for intercollegiate athletics, failed to have proper screening and safety procedures in place.

It is a prime example of what some attorneys see as a burgeoning area of personal injury litigation.

According to several attorneys who spoke with the Law Weekly, players injured while engaged in high school,

college and even professional sports are increasingly holding teams, schools and governing bodies liable for their injuries.

While not all attorneys agree that the number of cases is on the rise, several attorneys said technological advances, media attention and unresolved gaps in the standard of practice are fueling a boom in sports-related injury litigation.

"I would definitely say I have seen a market change in the number of sports-related injuries cases we've seen," Kline said. "It was unheard of a few years ago that a college would be responsible for putting a young athlete into a football game after being clocked. Today, it would be a clear case of liability."

According to defense attorney Steven Pachman, a partner at Montgomery McCracken Walker & Rhoads who regularly lectures to colleges and athletic director associations about risk management, the biggest issue teams face is an unsettled standard of practice.

He said concussions, particularly sustained during football games, are the most prominent subject of litigation, and theories of liability are increasingly focusing on the athletic directors and the sports organizations' implementation of safety standards.

"Because the standard of care is still unsettled, the universities are an easy target," Pachman said. "Plaintiffs lawyers are on alert for the big money-

makers. It was asbestos and now it is concussions."

Pachman noted that a simple Internet search can show the prevalence of attorneys across the country now focusing their practices on sports injuries and concussions.

A 2004 document titled "National Athletic Trainers' Association Position Statement: Management of Sport-Related Concussion" sparked the recent uptick in concussion litigation, Pachman said. The paper was the first to outline the standard of care for concussions; however, nine years after its publication, schools and governing bodies, including the NCAA, still need to work on tightening the language of their policies and making sure that the policies are properly implemented, Pachman said.

"Today, if a player is injured, the focus is who, other than the player, caused the injury," he said. "I'm not sure what's worse: not having a policy in place or having a policy in place that you're not following."

For Kline, the focus of the Hill case is on allegedly inadequate safety policies and an alleged lack of screening before the school allowed teammates to engage in high-stress practices.

Hill had allegedly never been tested for the sickle cell trait. While the suit acknowledged that Hill signed paperwork about one year before the incident indicating he did not have the disease, the pleadings argue that the defendants, among other things, failed to ask whether or not Hill had ever

been tested and failed to inform him of the risks of the sickle cell trait.

The complaint further argued that the NCAA, which had started a sickle cell screening program for Division I athletes, had not yet implemented a similar policy for Division II and Division III cases.

For those reasons, as well as allegedly inadequate treatment following the alleged sickle cell attack, Kline said he places responsibility on the school and sanctioning body.

"They become a subject of investigation and of potential lawsuits when they fail to set the correct standards," he said.

According to Kline, the advancement of medical technology has also added to the recent boom in sports-injury litigation.

He said that, particularly in cases of brain damage, advanced MRI and PET scans have not only allowed for better detection of the injury and investigation into the causes, but have also made it easier for plaintiffs attorneys to demonstrate the damages before a jury.

"It's become a less herculean task to prove cases involving head injuries," Kline said. "Twenty years ago, we would be grasping at straws as to why a youngster who was injured on the field started developing memory problems. Today, we can do PET scans to objectively document an injury."

Larry Coben of Anapol Schwartz, who represented the plaintiffs in the recent high-profile concussion class-action lawsuit involving the National Football League, said that 20 to 30 years ago, science wasn't equipped to handle acute injury cases, while today the public and the medical community are more aware of the long-term effects of chronic injuries.

Coben said he has not seen any increase in sport-related litigation, but only an increase in the media's attention to it. He said he doubted that the NFL case, which recently settled for

\$765 million, would open the floodgates for similar litigation.

"Once in a while somebody brings a lawsuit and it makes big news," he said. "The more publicity, the more people see an opportunity to follow them, but the judiciary won't be friendly to claims that aren't meritorious."

Pachman said that while speaking to schools and athletic oversight bodies, he has heard anecdotal evidence that some schools, typically Division II and III teams with smaller budgets, are worried they will need to close athletic programs in the face of increasing litigation and rising insurance premiums. He said that during his seminars he tells schools and athletic programs they need to be on red alert.

"If a school isn't prepared and doesn't have the proper safeguards, it could be a publicity nightmare. Insurance premiums could increase," he said. "It could mean the end of a sports team or an entire athletic program."

According to Andrew Brandt, director of the Jeffrey S. Moorad Center for the Study of Sports Law at Villanova University, the long-term effect of the litigation will be positive. Brandt declined to comment on whether the number of sports injury claims against the university has increased in the past few years, but he said he felt that the media, rather than any increase in the number of injuries, has had an impact on the litigation.

"We have a heightened awareness to take the injury out of the player's hands as much as possible," he said. "Athletes, they want to play through. Hopefully, we're moving out of that culture and moving into injury awareness and injury reporting."

Kline also said he hoped growth in the sports-injury area of litigation will make sports safer overall.

"Bellwether cases, like the Hill case, serve a great benefit in educating the public on issues of potential exposure," he said. "I'm sure the case will

be on the desk of all Division II and III athletic directors."