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Ohio Appellate Court Revives College Football Concussion Suit – More to Follow?

BY ANTHONY J. DRAGGA • FEBRUARY 17, 2017

On December 8, 2016, the Eighth District Court of Appeals of Ohio ruled that the widow of a former college football player can proceed in her suit against the University of Notre Dame (“Notre Dame”) and the NCAA for failure to warn of debilitating long-term dangers of repeated concussions.

Steve and Yvette Schmitz sued the NCAA and Notre Dame in October 2014, alleging the institutions had shown “reckless disregard” for player safety and failed to protect players from concussions. Steve Schmitz, who played for Notre Dame in the mid-1970s, died in February 2015. In 2012, Schmitz was diagnosed by the Cleveland Clinic with chronic traumatic encephalopathy (CTE) related to numerous concussions and that he suffered from severe memory loss and early-onset Alzheimer’s.

In the spring of 2015, the trial court dismissed the case on the grounds that Plaintiffs’ claims were time-barred, as the injuries sustained by Mr. Schmitz occurred during his playing days over 35 years prior. Yvette Schmitz appealed, arguing that the court erred in finding the complaint was time-barred.

The Appeals Court agreed, finding that the Plaintiffs’ negligence and fraud claims were arguably only ripe in 2012, when Schmitz was diagnosed with CTE. The Panel found that because the “complaint does not conclusively show on its face that the negligence and fraud claims are time-barred, we find that the trial court erred in dismissing those claims on statute of limitation grounds.” The case has been remanded back to the state trial court for further proceedings.

Client Tip: In addition to personal injury claims as in the [Schmitz](#) case outlined above, a number of class-action lawsuits have been filed in the past year against the NCAA and universities by former players over the handling of concussions by schools during their collegiate careers. In 2016, the NFL settled a similar class-action suit for \$1 billion. The NCAA, and its member schools with football programs, may be headed for a similar fate.