

Gordon & Rees Obtains Complete Defense Verdict from Allegheny County Jury in Concussion Case

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A jury issued a complete defense verdict for the firm's clients, a Pennsylvania athletic association and a Pennsylvania athletic league, in a suit filed by a former high school student and football player ("Plaintiff") alleging negligence and breach of contract in a concussion case.

It was unchallenged that the Plaintiff sustained a concussion at a Pennsylvania School District football practice in 2009 and that in recent years he has shown symptoms of anxiety, forgetfulness, depression and headaches.

However, after 10 days of testimony in Allegheny County Common Pleas Court, and four hours of deliberation, the jury did not find the school district, Athletic Association or Athletic League responsible for Plaintiff's health problems. He was seeking \$5 million in damages in pain and suffering and in future lost wages.

The Plaintiff, now 29, claimed that after sustaining a helmet-to-helmet hit in 2009 it was likely he had a concussion. However, the coaches never removed him from play and instead let him continue practicing. He did not receive medical attention for several days when his mother noticed he did not seem well. The Plaintiff said he was in concussion treatment for several months spanning two years before he was cleared.

In late 2016, the Plaintiff said he started seeing a doctor for the symptoms he was experiencing, and that doctor linked them back to the original concussion. Plaintiff's counsel claimed that the Athletic Association could have enforced rules related to immediate removal from play after a student sustains a

hit to the head, ensuring proper training of coaches in concussion protocol, and outlawing drills in the style in which the plaintiff was injured.

Dr. Bennett Omalu testified that the plaintiff had Traumatic Encephalopathy Syndrome (TES) / Chronic Traumatic Encephalopathy (CTE) and suggested the plaintiff had second impact syndrome leading to poor memory, depression, anxiety, and ADD, all of which could lead to an early death.

Further, the lawsuit cited the school district failed to provide a safe playing surface for the football team and failed to follow concussion protocol when the plaintiff was hurt.

The defense argued that there was no objective medical evidence presented at trial to link the Plaintiff's symptoms to the 2009 concussion.

In the claims against the Athletic Association and Athletic League, defense attorney Gordon & Rees partner **Andrew Kimball** said his clients are nonprofit organizations that provide guidance to high school athletes across the state. Their members include 1,500 schools and represent 350,000 students in 16 different sports. Due to the vast size of association, they must rely on high school principals to ensure student athletes are being treated appropriately.

In his closing, Kimball stated that there is no contract between the Association and students. The organization offers sports medicine guidelines that list concussion protocols — including removal from play — but they are not rules.

The two associations, Kimball told the jury, cannot be liable for negligence. “We didn’t fall below any standard of care,” he said. “I think it was the right decision,” Kimball continued. “We’ve done a lot of things over the years to keep kids safe, and that certainly has to do with concussion.”

The Athletic Association presented defense testimony that concussions resolve over a relatively short time, and that the plaintiff suffered from psychological conditions experienced by millions of people in the general population.

Since the plaintiff was injured 13 years ago, Kimball said, there has been significant progress in how high schools deal with concussions. “There have been a lot of changes since that time,” he said, noting that every coach has to be certified now. “We’ve come a long way in 13 years.”