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Duerson suit joins others in pretrial discovery process

Federal panel moves litigation to Philadelphia with NFL concussion cases; lawyer expresses his regret

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When Corboy & Demetrio PC. filed a wrongful death suit in the Daley Center for former Chicago Bear Dave Duerson's estate, the lawyers said they knew the NFL would try to combine the case with a federal concussion action involving about 3,000 plaintiffs.

The transfer became reality this month when the U.S. Judicial Panel on Multidistrict Litigation rejected Corboy & Demetrio's effort to prevent Duerson's case from heading to a Philadelphia federal court.

Now the case takes Duerson's lawyers about 760 miles away from home rather than a courtroom across the street from the law firm's office.

William T. Gibbs of Corboy & Demetrio said the transfer will slow the pace of Duerson's case.

"With over 3,000 plaintiffs, the NFL is proposing to take a deposition of every plaintiff and conduct an independent medical exam of every plaintiff. And there's only so many working days in a year," said Gibbs, who represents Duerson's estate with Thomas A.

Demetrio.

"If they were to do a deposition and medical exam every day, it still may be years and years and years until they get that discovery completed. In our case, we know what the damage is. It's un rebutted that Dave Duerson was suffering from chronic traumatic encephalopathy. And the proof is in the post-mortem examination."

The case stands out among the concussion-related suits because Duerson is one of the few athletes who is dead. He shot himself in the chest last year at age 50.

In the suit filed against the NFL and helmet-maker Riddell Inc., Duerson's estate presented a study that the Boston University School of Medicine performed on Duerson's brain. Duerson suffered from advanced brain damage that prevented him from controlling suicidal thoughts, the study concluded.

The estate alleged that football concussions caused the brain damage.

After the suit was filed in Cook County Circuit Court in February, the NFL removed the case to federal court.

Corboy & Demetrio couldn't per-



William T. Gibbs

suade Chief U.S. District Judge James F. Holderman to return the case to the Daley Center.

Holderman ruled that the NFL collective bargaining agreement, which is subject to federal jurisdiction, was in effect during some of the events alleged in the complaint.

The U.S. Judicial Panel on Multidistrict Litigation held that "while it might inconvenience some parties, transfer of a particular action often is necessary to further the expeditious resolution of the litigation taken as a whole."

On Aug. 3, the panel denied Corboy & Demetrio's attempt to stop the combination of Duerson's case with the others.

"While we would have liked to have remained separate because we believe that our allegations are vastly different and incredibly unique to our claim, I can understand why a court system wanted to control all of these claims against the NFL in one forum," Gibbs said.

Duerson's estate alleges the NFL failed to prevent, diagnose and properly treat undocumented concussions that Duerson suffered and known concussions in 1988, 1990 and 1992.

The estate alleges that the NFL failed to warn Duerson that playing through concussions would cause permanent brain damage. The estate alleges that Riddell's helmets didn't adequately protect players from concussions.

The NFL responded to Duerson's suit with a statement that it sympathizes with the family.

"The NFL has long made player safety a priority and continues to do so. Any allegation that the NFL intentionally sought to mislead players has no merit," the statement says.

After motions and discovery, Duerson's case could return to federal court in Chicago for trial, Gibbs said.

The Windy City remains the ideal forum for the Duerson family, said Timothy L. Epstein, who chairs the sports law practice group at SmithAmundsen LLC and isn't involved in the suit.

"You would have to think that Dave Duerson, being a Notre Dame graduate, a Chicago Bear, someone who's prominent in the community ... there's an interest to have a plaintiff like that gain more sympathy from a local jury," Epstein said. "I would think if I'm Bill (Gibbs), I want to be in Chicago for the trial."

Even though the transfer to Philadelphia will slow the pretrial process, Epstein said it presents an advantage for lawyers who represent the plaintiffs.

"They now have the benefit of having like-minded individuals of fellow members of the plaintiffs' class," Epstein said. "Now you have allies. ... They have co-plaintiffs who can help shoulder the burden in litigation against the large corporation."

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