

SPORTS MEDICINE

Presented by Montgomery McCracken

and the **LAW**

Bring It On: Indiana Court finds that Accidents Are Ordinary in High School Cheerleading

By Grace Wagner & Elizabeth Catalano, Esq.

The Court of Appeals of Indiana recently held that a high school could not be liable for negligence for an incident that left a student-cheerleader with a broken jaw and shattered teeth. After William Henry Harrison High School (“Harrison High School”) sophomore Isabella Reynolds suffered extensive facial injuries during a cheerleading routine gone wrong, her parents sued Harrison High School, its varsity cheerleading coach Roberta Patton, and the Tippecanoe School Corporation (“TSC”), alleging four negligence claims primarily based

on Coach Patton’s directing and supervision of the cheerleading stunt.¹ The trial court granted TSC’s summary judgment motion on all claims except Reynolds’ claim based on failure to provide proper supervision. The case eventually reached the Court of Appeals of Indiana, where the court determined that the accident occurred during the course of “ordinary cheerleading activities,” thus barring Reynolds’ claim as she had assumed the risk of her injuries. In Indiana, like many other states, injured athletes like Reynolds

1 *Tippecanoe Sch. Corp. v. Reynolds*, 187 N.E.3d 213 (Ind. Ct. App. 2022).

See **INDIANA** on Page 10

CTE Heads To The MLS – First MLS Player Diagnosed With CTE

By Tara Hessenthaler and Dylan Henry, Esq.

Researchers at the Boston University (BU) CTE Center have reported they found evidence of CTE in ex-MLS (Major League Soccer) player Scott Vermillion’s brain in a posthumous autopsy. This is a milestone discovery, as it would mark the first CTE diagnosis in the MLS. As with most CTE diagnoses, the BU CTE Center could not link the diagnosis to any one hit, but believes it is the result of repeated subconcussive blows to the head during Vermillion’s twenty-two year soccer career.

Vermillion began playing soccer at the age of five and played for the University of Virginia Cavaliers, and represented the United States on the U-17 and U-20 squads. Vermillion’s MLS career included a total of four seasons with the Kansas City Wizards, Colorado Rapids, and D.C. United. He eventually retired in 2001 after suffering a career-ending ankle injury.

As with others who have been diagnosed with CTE posthumously, Vermillion’s signs and symptoms were evident in the years after his retirement. Vermillion

See **CTE** on Page 12

IN THIS ISSUE

NCAA-DOD Grand Alliance Conference Provides Updates on Concussion Research	2
Grossly Negligent: Failing To Staff An Athletic Trainer And Failing To Pull Visibly Concussed High School Football Player Results In Major Jury Verdict Against South Carolina School District	3
SEC Names Chief Medical Advisor	4
Court Allows Former Bobsledding Athletes To Continue Racing Down The Track In CTE Lawsuit Against US Federation	5
SML Digest	6
School District May Be Liable for Negligence Independent of Coaches’ Vicarious Liability	7
Up to 80% of Athletes Who Die Suddenly Had No Symptoms or Family History of Heart Disease	8
Study Shows that 8 Percent of Athletes Have Persistent Symptoms After Contracting COVID-19	9

SPORTS MEDICINE

and the **LAW**

HOLT HACKNEY

Publisher and Managing Editor

**STEVE PACHMAN, DYLAN
HENRY, KACIE KERGIDES
and KIM SACHS**

Editors in Chief

ERIKA PEREZ

Design Editor

Please direct editorial or subscription inquiries to Hackney Publications at:

info@hackneypublications.com.

Sports Medicine and the Law is published quarterly by Hackney Publications.

Hackney Publications

Postmaster send changes to:
Hackney Publications, P.O. Box
684611, Austin, TX 78768.

Copyright © 2022 Hackney
Publications

Montgomery McCracken is the advertiser and sponsor and the views expressed here are not the firm's views.

Inquires may be directed to Steve Pachman—spachman@mmwr.com

NCAA-DOD Grand Alliance Conference Offers Concussion Research Updates

By Justin Whitaker

The fifth annual NCAA-Department of Defense Grand Alliance Concussion Conference, presented virtually April 21, featured concussion experts and researchers sharing preliminary and recently published data.

The conference, titled “A New Era of Scientific Collaboration,” was hosted by the NCAA Sport Science Institute and U.S. Department of Defense, in partnership with the Atlantic Coast Conference and the University of North Carolina, Chapel Hill.

Presenters shared updates from the NCAA-DOD Concussion Assessment, Research and Education Consortium, the largest concussion and repetitive head impact study in history, which received a \$46.65 million award in October to launch its next phase.

“We’re proud of the research gained through the NCAA-DOD Grand Alliance, including the CARE Consortium, the Mind Matters Challenge, and now the long-term CARE-SALTOS Integrated Study,” NCAA Chief Medical Officer Brian Hainline said. “Our goal is to continue to learn more about concussion and head impact exposure, which translates into valuable knowledge for the physicians and athletic trainers who are charged with providing care to student-athletes and service academy cadets.”

NCAA Chief Medical Officer Dr. Brian Hainline briefly discussed concussions and the CARE Consortium on the latest Social Series. He also addressed the COVID-19 pandemic and mental health resources in a health and safety update for college sports.

North Carolina Chancellor Kevin Guskiewicz, a neuroscientist and concussion researcher, opened the conference with a reflection on the beginnings of the

research and the importance of collaboration between NCAA member schools and the Department of Defense.

“This has all occurred through valuable partnerships and multicentered studies involving hundreds of athletic trainers, coaches, physicians, policymakers and student-athletes,” Guskiewicz said. “We do this all for the protection of their health and well-being and to improve safety for athletes at all levels of play.”

In 1996, Guskiewicz worked with Mike McCrea, professor and vice chair of research in the department of neurosurgery at the Medical College of Wisconsin, on a concussion study that was funded by the NCAA. Guskiewicz shared that he never could have imagined where the scope of research would be today. There are now thousands of study participants and data points to help inform the growing field of sport neuroscience and traumatic brain injury prevention and treatment.

Atlantic Coast Commissioner Jim Phillips echoed the importance of this initiative and the benefits for nearly 500,000 student-athletes across the country and almost 10,000 within the conference.

The NCAA-DOD Grand Alliance Concussion Conference was a free-to-attend forum to share emerging information with athletic trainers, team physicians, sports medicine clinicians and athletics health care administrators from NCAA member schools. Stakeholders from military medical facilities and others who oversee and manage sport-related concussion and repetitive head impacts also participated.

Grossly Negligent: Failing To Staff An Athletic Trainer And Failing To Pull Visibly Concussed Middle School Football Player Results In Major Jury Verdict Against South Carolina School District

By Tara Hessenthaler and
Kacie Kergides, Esq.

Pregame Xs and Os
On October 11, 2017, Sarah Wood sued the Horry County School District on behalf of her son, Logan Wood, for gross negligence and on behalf of herself for loss of services and medical expenses. The suit originates from coaches and referees' failure to pull Logan Wood after he exhibited visible signs of a concussion in an October 20, 2016 football game for North Myrtle Beach Middle School.

Blown Coverage

Logan Wood was a minor football player on the North Myrtle Beach Junior High B-team. After the buzzer sounded ending the second quarter of the October 20, 2016 away game, Logan Wood was hit by multiple players on the opposing team. Logan voiced to his teammates and coaching staff that he was having difficulty with his balance after the hit. During halftime, Logan also exhibited outward signs of confusion, loss of balance, and visual impairment.

Despite his continuing signs of head trauma, the coaches put Logan back into the game during the third quarter, where he suffered additional hits to the head. Throughout the second half of the game, Logan was seen staggering down the sidelines and attempting to continue plays after the whistle had blown. Logan's coaches never removed him from the game and North Myrtle Beach Middle School did not have an athletic trainer present to address the situation.

The Horry County School District's Procedures for Management of Sports-Related Concussion state that "any athlete

who has symptoms of a concussion and who is not stable ... is to be transported immediately to the nearest emergency department via ambulance." The District's procedure manual even lists decreasing level of consciousness, unusual drowsiness, difficulty paying attention, and mental status changes as symptoms of a concussion.

Immediately following the game, Logan Wood was diagnosed with a serious brain injury and was unable to attend school for an extended period of time due to short-term and long-term memory loss.

Sarah Wood's Two-Point Conversion

Sarah Wood, individually and as parent and natural guardian of Logan Wood, filed a lawsuit in the Horry County Court of Common Pleas against the Horry County School District. She alleged that the School District acted with gross negligence or recklessness, and that it breached the duty of care owed to Logan by failing to enforce school policies and procedures regarding concussion and head trauma protocols, failing to recognize that he had a head injury, failing to remove him from the game, and failing to give him treatment. Specifically, the complaint included an allegation that the school district was negligent, reckless, and grossly negligent in "failing to exercise slight care to provide a competent replacement trainer to stand in for the team trainer who was attending a work conference in another state during the October 20, 2016 game in which Plaintiff was injured."

At the trial, Rod Waters, a certified athletic trainer, testified for Wood about numerous violations of the standards for

acceptable and safe operations in high school and middle school sports. Current and former employees and volunteers at North Myrtle Beach Middle School also testified as to specific deficiencies in the School District's operations and management of sports related concussions. South Carolina defines gross negligence as the "intentional, conscious failure to do something which is incumbent upon one to do or the doing of a thing intentionally that one ought not to do."¹

In April 2021, the jury found the School District liable for two occurrences of gross negligence: letting Logan play football without an athletic trainer present for his team and failing to evaluate Logan for concussion symptoms.

The Horry County School District filed three post-trial motions. The judge denied the first two, but granted the motion to lower the amount of damages granted by the jury. In the end, the Court reduced the amount of damages awarded to Sarah Wood to \$625,000, pursuant to the caps on damages set out in the South Carolina Tort Claims Act.

The case is currently standing on appeal in the South Carolina Circuit Court.

Postgame Presser

Sport-related concussions and sub-concussive blows to the head are prominent issues in youth sports, as well as at the collegiate and professional levels. Many of the resources addressing concussions are delegated to the collegiate and professional levels; however, regardless of

¹ *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 331, 566 S.E.2d 536, 544 (2002) (internal quotation marks omitted).

resources, every organization, including youth sports, should have protocols and practices in place to ensure that coaches, athletic trainers, and staff are trained to take the appropriate steps when a student athlete's health and safety is at risk.

The outcome of Wood is a warning to all school districts and organizations that they could be held liable for failing to provide an athletic trainer. Whether the home or away team is responsible for ensuring that an athletic trainer is present for away games is a highly debated topic in youth through high school sports. The answer to this debate is unclear and often varies by state or school district and state specific laws and regulations. However, it is clear that courts will hold schools legally responsible, like they did to the Horry County School District, if they fail to provide an athletic trainer to travel

with their football team to an away game while the team trainer is attending another commitment.

Although there are inherent risks to sports, like football, the outcome in Wood established that courts and juries will not grace schools and organizations with immunity from liability when they are grossly negligent. The act of allowing students to compete without an athletic trainer, or other medical provider, present alone was sufficient enough to establish legal liability and gross negligence in Wood. Add in the fact that Logan Wood was allowed to continue to play when he was exhibiting obvious concussion symptoms, the Wood verdict is not surprising.

In today's society, the number of lawsuits against schools for student-athlete related injuries is increasing. Schools must protect themselves, and the lives of

young student-athletes, by implementing and following strict guidelines for such emergencies.

While the jury did not find Horry County School District grossly negligent in failing to train the coaching staff regarding post-concussive syndrome and second-impact syndrome, we anticipate that as concussion litigation continues to increase and studies on the long-term effects of concussions continue to arise, that such liability could be found. School districts could be held legally liable for failure to train coaches to exercise increased caution and care prior to putting a player back into a game, particularly in states or jurisdictions where the standard of care is ordinary negligence.

SEC Names Chief Medical Advisor

Catherine O'Neal, M.D., Associate Professor of Clinical Medicine at the LSU Health Sciences Center, has been named Chief Medical Advisor for the Southeastern Conference, SEC Commissioner Greg Sankey has announced.

Dr. O'Neal, a member of the SEC's Medical Guidance Task Force, will serve as a consultant to advise the Commissioner and Conference Office staff on medically-related matters and serve as the primary medical liaison for SEC member institutions on matters related to student-athlete health and safety.

"In this new role, Dr. O'Neal will continue to be a valuable resource for the SEC Office and our member institutions as we collaborate to provide world-class care for student-athletes and others around our athletics programs," said Sankey. "Dr. O'Neal has been a vital contributor in guiding the SEC through COVID-19 realities and throughout that process has gained the trust and respect of campus leaders."



In her role as the SEC's Chief Medical Advisor, Dr. O'Neal will be responsible for facilitating the development of conference-wide medical initiatives and standards to ensure consistent policies related to physical health, mental health and holistic wellness.

Dr. O'Neal will provide guidance to the Conference office on matters related to health and safety of student-athletes; develop and introduce medical initiatives to promote physical health, mental health and wellness; and conduct educational sessions for coaches on key topics related

to student-athlete medical care.

In addition, Dr. O'Neal will assist with educational sessions for university athletic training staff, conduct conference calls with institutional medical staffs, and participate in regular meeting of team doctors, athletics trainers and other SEC member medical contacts.

Dr. O'Neal has practiced medicine specializing in the research and treatment of infectious diseases since 2003. Throughout her career, she has held numerous clinical leadership roles focused on driving improved patient outcomes and developing zero-harm care environments. Dr. O'Neal has served on the faculty of Louisiana State University Health Sciences Center New Orleans since 2009, most recently as an Associate Professor of Clinical Medicine and Infectious Diseases. In her role, she teaches the next generation of healthcare providers as well as participates in research initiatives focused on rapid diagnostics and antibiotic utilization.

In March 2020, Dr. O’Neal was appointed Chief Medical Officer at Our Lady of the Lake Regional Medical Center in Baton Rouge. Prior to her current role, she served as the regional medical center’s Medical Director of Infection Prevention for 10 years. In addition to her leadership role, she continues an active clinical practice seeing inpatients and outpatients.

Dr. O’Neal completed medical school

and residency at Louisiana State University Health Sciences Center New Orleans and her infectious diseases fellowship at Vanderbilt University Medical Center. During her fellowship, Dr. O’Neal completed training in infection prevention. Dr. O’Neal served as co-chair of the Franciscan Missionaries of Our Lady Health System COVID-19 Clinical Task Force, a member of Governor John Bel Edwards

COVID-19 Epidemiology Task Force, the Louisiana Legislative Advisory Task Force on Economic Recovery, the Southeastern Conference (SEC) Committee on Return to Activity and Medical Guidance Task Force, and the NFL’s COVID-19 Medical Guidance Committee, providing her expert guidance to safely re-open the economy, return children to in-person learning and resume sporting events.

Court Allows Former Bobsledding Athletes To Continue Racing Down The Track In CTE Lawsuit Against US Federation

By *Kaspar Kielland, Esq.*

Former USA Bobsled and Skeleton Federation (“USABS”) members received a recent win in the “sled head / CTE / failure to warn” lawsuit against the USABS. The Los Angeles Superior Court denied USABS’s motion to dismiss a former member of the US Bobsled Olympic Team’s proposed class action against the association.

The proposed class action was commenced in September 2021 by William Person, who was a member of the US Olympic team between 1999 and 2007. Person’s action against the USABS was prompted by his noticing that many former bobsledding athletes are dealing with the consequences of what is suspected to be chronic traumatic encephalopathy (“CTE”) allegedly caused by participating in the sport. Such consequences, according to Person’s allegations, include depression, dementia and sometimes suicide. Person claims that as early as 1983, the USABS knew that head impacts and subconcussive blows are inherently associated with bobsledding, and therefore had the potential of causing serious long-term brain damage to the athletes. However, the USABS failed to advise the athletes about those risks. Person further alleges that while participating in the sport, he was suffering symptoms of “sled head,”

a condition that causes the athletes to experience headaches, fogging, and disequilibrium as a result of multiple bumpy and fast track runs. The former Olympian claims that the USABS did not medically evaluate whether or not he was still fit to practice the sport, notwithstanding having been made aware of those symptoms.

In their attempt to dismiss Person’s action, the USABS argued that bobsledding, like other extreme sports, is inherently dangerous and therefore, there is “no duty to advise of the integral risks” in such sports. The USABS argued that contrary to Person’s allegation that the USABS “controls” the sport, there was no special relationship between the athletes and the association that would trigger a duty of care. “Contrary to Plaintiff’s contention that the USABS is the gatekeeper of the sport of bobsledding, the public can access parks and facilities across the United States and Canada” to experience the sport. Furthermore, the USABS argued that there are no accepted medical and scientific evidence linking bobsledding with “sled head” symptoms and CTE, and that “sled head” is nothing but a fictional term “invented by the New York Times.”

But, at least at this stage, the Superior Court has disagreed with the USABS and allowed the proposed class-action lawsuit

to move forward. Person seeks compensation for the potential class of athletes in the form of implementing preventative measures through the creation of a fund that will pay for the monitoring of the condition and symptoms of former bobsledders. And also, remedial measures through the establishment of a court supervised compensation program for those athletes that have already been diagnosed with both neurodegenerative and behavioral brain injuries. This relief is similar to the relief sought by the class of former NFL players in *re: National Football League Players Concussion Injury Litigation* and the settlement fund, established in April 2016, and *re NCAA Student-Athlete Concussion Litigation*, established in November 2019.

The outcome of Person’s claim will be an issue for litigation, but the filing of his proposed class action lawsuit is already having a rippling effect. In January 2022, the estate of Pavle Jovanovic, another former US Olympic team bobsledder—who tragically committed suicide in 2020—filed a lawsuit against the United States Olympic and Paralympic Committee with very similar allegations to the one brought by Person in the California action. Jovanovic’s estate argues in its complaint that the Olympic Committee’s failure to warn him about “sled head,”

(i.e., the effects of repetitive concussive and sub-concussive impacts on the brain from countless track runs), led to Jovanovic's cognitive decline and ultimate suicide. The lawsuit is pending before the District Court of New Jersey, and on June 15, 2022, a summons had been issued to the International Bobsleigh and Skeleton Federation, the International Olympic Committee, and the USABS. In January 2022, the New York Times published an article covering the stories of Joe Sisson and Travis Bell, two former competitive bobsledding athletes from Wyoming who, like Person and Jovanovic, also allegedly suffered from the symptoms and consequences potentially connected to CTE and sled head.

As these cases continue to be filed, either by individual plaintiffs or by a class of plaintiffs, it is important to monitor how the courts rule or juries decide on the crucial questions of duty and breach: (1) Does this sport organization or association owe a duty of care to the athletes that participate under its umbrella? And (2) Was that duty breached by (for example) failing to warn the athletes of the risks of participation?

Recently, a Pennsylvania jury answered one of those questions in the favor of the NCAA. In the *Onyshko v. NCAA*, No. C-63-CV-201403620 (Wash. Cty. Ct. Comm. Pleas, PA), the jury decided that the NCAA did not breach a duty of care to the plaintiff, a former NCAA

football athlete. That is merely one data point, however, and as more of these cases are decided by courts and juries, all sport federations, organizations, and associations will have to consider how those decisions impact their duty of care to the class of athletes in their respective sports. Many federations consider themselves to be only ambassadors of the sports they promote. The issue that is now developing is whether their role as promoters of the sport carries with it a duty to oversee the health concerns that might arise out of each sporting event, in large part because they are deemed or believed to have the knowledge necessary to ensure the safety and health of their members.

SML Digest

NATA Position Statement: Reducing Intentional Head-First Contact Behavior In American Football Players Published In Journal Of Athletic Training

Statement is an update to 2004 Recommendations

The National Athletic Trainers' Association (NATA) has published its position statement, "Reducing Intentional Head-First Contact Behavior in American Football Players" today in the *Journal of Athletic Training*, NATA's scientific publication. The statement is an update to the 2004 position statement, "Head-Down Contact and Spearing in Tackle Football."

"It's imperative for NATA to support and fund new research in order to re-examine health care practices over the course of time and as new technology emerges," said NATA President Kathy Dieringer, EdD, LAT, ATC. "Our updated position statement provides the athletic trainer, as well as parents, athletes, coaches

and other health care professionals, with the latest recommendations and tools to reduce injuries related to intentional head-first contact."

"The original recommendations aimed to reduce behaviors that can lead to cervical spine fractures and dislocations," said the current statement's lead author, Erik E. Swartz, PhD, ATC, FNATA, professor and chair, Department of Physical Therapy and Kinesiology, University of Massachusetts Lowell. "Despite new rules and education programs, head-first contact remains common in tackle football and required a renewed focus."

Head-first contact behavior, according to the statement, refers to players initiating contact with their heads, regardless of where that impact is initiated (top or front of helmet) or what they are doing when exhibiting the head-first contact technique (tackling, blocking or carrying the ball).

"Head impacts in American football, at all levels of play, are frequent, vary in severity and pose particular risk for acute

head and neck injuries with an increasing concern that they may contribute to chronic brain injuries," added Swartz. "In the past decade, new technologies have allowed us to track and measure head-first impacts with greater accuracy."

The updated recommendations address: education and administration; skill development and behavior modification; rules and regulations; and technology and scientific research as they relate to decreasing head-first impacts in football. The statement authors recognize the role of the athletic trainer as part of a multidisciplinary team that can help implement these best practices to ensure the football players' health and safety. NATA advocates the recommendations be considered a part of an overall prevention strategy to reduce the prevalence of head-first contact in football.

Sports Law Attorney Kacie Kergides Presents on TBIs at NATA

Kacie Kergides participated in the 73rd

Annual National Athletic Trainers' Association Clinical Symposia & AT Expo where she sat on a panel discussing the legal issues surrounding concussions and traumatic brain injuries (TBIs) along with sexual misconduct liability for athletic trainers. Kacie's session, "Staying Court-side and Out of Court: What Athletic Trainers Need to Know About the Legal Process," gave a unique perspective that athletic trainers need to consider as there have been a number of lawsuits involving the standard of care put on athletic trainers

and legal implications outlining as much.

Expert Attorney Present CLE Involving Concussion Law

Join Dylan Henry and Kimberly Sachs from Montgomery, McCracken, Walker, & Rhoads LLP as they serve as speakers for a continuing legal education (CLE) program entitled Traumatic Brain Injury: Proving or Challenging the Existence and Extent of Brain Damage Using Expert Witnesses. Dylan and Kim, as well as

the other panelists, will offer guidance to attorneys proving or challenging the existence and extent of injury in TBI cases and will explore what types of experts should be engaged, what to look for in credentialing and demeanor, and strategies for establishing bias, over-reaching, or even incompetence in opposing experts. The program will take place on Thursday, September 1st, 2022, from 1:00-2:30 p.m. Eastern Time. To register, go to Stratfordpub.com or call 1-800-926-7926.

School District May Be Liable for Negligence Independent of Coaches' Vicarious Liability

By Gary Chester, Senior Writer

A basic principle of tort law and agency law is that an employer may be found vicariously liable for the negligent acts of its employees. But can a school district be held liable for the death of a student-athlete when the coaches involved are not named as defendants?

The answer is in the affirmative, according to the Washington State Court of Appeals in *Harris v. Federal Way Public Schools*, 2022 Wash. App. LEXIS 396, No. 81179-7-1 (February 28, 2022).

The Facts

Sixteen-year-old Allen Harris was participating in a summer football conditioning workout at Federal Way High School (FWHS), located about 11 miles north of Tacoma, on an 80-degree day in July 2018. Three coaches supervised the workout, but for some undisclosed reason FWHS did not have its athletic trainer present at summer workouts.

After completing three sets of sprints, Harris collapsed and experienced what appeared to be seizures. The young student-athlete had no prior medical history of seizures or head trauma.

One of the coaches called 911. The

EMTs arrived about eight minutes later. The lawsuit concerns what did not happen during those eight minutes: the coaches did not administer CPR, nor did they retrieve or use a nearby AED to try to revive Harris.

The EMTs administered CPR and used an AED before transporting Harris to a hospital, where he died approximately two hours later. The cause of death was sudden cardiac arrest.

The Allegations

Harris' parents, individually and on behalf of their son's estate, sued the school district but not the individual coaches for wrongful death. The complaint alleges that the district breached a duty of care towards Harris by failing to create a medical emergency response plan, failing to properly train its coaches, and failing to provide prompt and immediate medical attention.

The school brought a motion for summary judgment based on a two-part argument: first, since the plaintiffs did not name the coaches as defendants, their negligence cannot pass through to the school district; second, the plaintiffs are unable to prove the requisite gross negligence by the district because its coaches

exercised at least slight care.

The trial judge heard testimony from three expert witnesses in the fields of medicine and athletic training who attributed Harris' death to the negligent failure to use CPR and the nearby defibrillator. Dr. Jonathan Drezner, a professor of medicine with the University of Washington and the team physician for the Seattle Seahawks and the University of Washington Huskies, testified that the district's failure to properly train its coaches violated state and federal standards.

Dr. Drezner further testified that there was no review or rehearsal of an emergency medical response plan, and that Washington Interscholastic Activities Association training "clearly states to assume [sudden cardiac arrest] in a collapsed and unresponsive athlete with seizure-like activity" and that the coaches' misinterpretation of Allen's collapse as a seizure "led to critical delays in CPR and defibrillation."

The trial judge found that the plaintiffs had established a prima facie case of negligence and denied the motion for summary judgment. The district appealed.

The Appeal

On appeal, the district argued that since there is no vicarious liability the district

cannot be negligent under Washington law. The court rejected this argument because the state courts “have long recognized that school districts have ‘an enhanced and solemn duty’ of reasonable care to protect their students.” This duty applies to student-athletes and constitutes a separate cause of action from any potential action against a teacher or coach.

Quoting various precedents, the court explained that negligent supervision is “based on the theory that ‘such negligence on the part of the employer is a wrong [to the injured party], entirely independent of the liability of the employer under the doctrine of respondeat superior’... [and] is based on the special relationship between the employer and employee...”

The court also rejected the district’s

contention that the gross negligence standard of care that state law affords to school district employees should extend to the district. The court explained: “On its face, the plain language of the statute grants ‘any school district employee’ rendering emergency care immunity from liability unless the acts or omissions rise to ‘gross negligence’ or are willful or wanton misconduct. Because this is a derogation of the common law standard of ‘reasonable care’ that a school district owes its students, the statute must be strictly construed... The plain language of [Washington statute RCW 4.24.300(4)] applies only to school district ‘employees,’ not the school districts themselves.”

Therefore, the court concluded, a standard of ordinary care applies to a school

district, and there exists a genuine issue of material fact as to whether FWHS breached its duty of ordinary care owed to the plaintiffs’ decedent.

The Takeaway

Emergency Action Plans (EAPs) have been a well-known component of safety in sports for decades and recognizing and treating sudden cardiac arrest is a key part of EAPs.

Insurance companies, as well as attorneys for municipalities, school districts, and sports organizations, should frequently emphasize that coaches and athletic personnel must be familiar with EAPs and must periodically rehearse and practice the procedures contained in EAPs.

Up to 80% of Athletes Who Die Suddenly Had No Symptoms or Family History of Heart Disease

Recommendations on how to use gene testing to prevent sudden cardiac death in athletes and enable safe exercise were published recently in the *European Journal of Preventive Cardiology*, a journal of the European Society of Cardiology (ESC).

“Genetic testing for potentially lethal variants is more accessible than ever before and this document focuses on which athletes should be tested and when,” said author Dr. Michael Papadakis of St George’s, University of London, UK. “Sportspeople should be counselled on the potential outcomes prior to genetic testing since it could mean exclusion or restricted play.”

In most cases, clinical evaluation will dictate the need for preventive therapy such as a defibrillator and the advice on exercise and participation in competitive sports. Dr. Papadakis explained: “Even if a genetic abnormality is found, recommendations on treatment and return to play usually depend on how severe the

disease is clinically. Is it causing symptoms such as fainting? Is the heart excessively weak or thick? Can we see many irregularities of the heart rhythm (arrhythmias) and do they get worse during exercise? If the answer is ‘yes’ to any of these questions then play is likely to be curtailed in some way.”

One example is an inherited condition that can cause sudden cardiac death in athletes called hypertrophic cardiomyopathy (HCM), where the heart muscle is abnormally thick. Dr. Papadakis noted: “We used to be very conservative but now our advice is more liberal. Athletes with HCM should undergo comprehensive clinical evaluation to assess their risk of sudden cardiac death and then be offered an exercise prescription. Genetic testing in this condition does not impact management in most cases. Asymptomatic athletes judged to be at low risk can potentially participate in competitive sports after an informed discussion with their doctor. Others at higher risk may be

restricted to moderate intensity exercise. The exercise prescription should be as specific as possible and outline how often, for how long, at what intensity, and which exercise or sport is safe.”

In some cases, however, genetic testing can dictate management. One example is long QT syndrome (LQTS), which is an inherited electrical fault of the heart. Identification of different genetic subtypes (LQT 1-3) can inform the risk of arrhythmias, identify potential triggers to be avoided, and help to target medical therapies and plan exercise advice. Dr. Papadakis said: “For instance, sudden immersion in cold water is more likely to cause life-threatening arrhythmias in LQT type 1 rather than types 2 or 3, so one should be more cautious with swimmers who have the type 1 genetic subtype than runners.”

The only situation where genetic testing alone may result in exclusion from play is a heart muscle condition called arrhythmogenic cardiomyopathy

(ARVC). “Even if an athlete has no clinical evidence of the disease but has the gene for the condition, he or she should abstain from high intensity and competitive sport,” said Dr. Papadakis.² “This is because studies show that people with the gene who exercise at a high level tend to develop the disease earlier in life and tend to develop more severe disease which can cause a life-threatening arrhythmia during sport.”

Pre-test genetic counselling should be performed to discuss the implications for athletes and their family. As an example, an athlete’s mother is clinically diagnosed with ARVC and has the causal gene, the athlete is then screened and all clinical tests are normal. The athlete has two choices: 1) clinical monitoring, probably annually, to check for signs of disease; or

2) genetic testing. “The athlete needs to know that if the test is positive that may signal the end of his or her career, even if there is no clinical evidence of disease,” said Dr. Papadakis. “On the other hand, if genetic testing is refused the condition may get worse. Post-test counselling is critical given the potential psychosocial, financial and mental health implications, particularly if the athlete is excluded from play.”

For child athletes, genetic counselling in an expert paediatric centre with assistance from a child mental health specialist may be needed. Dr. Papadakis pointed out: “The psychological impact of a positive genetic test result may be significant for the child, especially if this leads to sports exclusion even in the absence of clinical disease such as in ARVC.”

In children with a clinical diagnosis of an inherited condition, genetic testing may confirm the diagnosis and in some cases help predict the risk of sudden death during sports. For example, having the gene for an electrical fault of the heart called catecholaminergic polymorphic ventricular tachycardia (CPVT) may lead to advice for preventive therapies, such as beta blockers, and dictate decisions about exercise. “This is important as CPVT predisposes to arrhythmias during exercise and can cause sudden death at a very young age,” said Dr. Papadakis. “In contrast, the timing of genetic testing in children with a family history of HCM is controversial since in the absence of clinical signs it rarely causes sudden death in childhood.”

Study Shows that 8% of Athletes Have Persistent Symptoms After Contracting COVID-19

Researchers at the University of São Paulo (USP) in Brazil analyzed data from 43 scientific articles describing the effects of COVID-19 on athletes and concluded that while the disease was asymptomatic or mild in the vast majority of cases (94%), about 8% of the subjects concerned had persistent symptoms affecting their performance and potentially preventing a return to training and competing.

The data they analyzed referred to some 11,500 athletes, including amateurs and high-performance professionals. The results are reported in an article published in the *British Journal of Sports Medicine*.

“We analyzed data from acute cases to appraise manifestations and severity, as well as persistent symptoms reported after the virus had been eliminated from the organism. This scope is more comprehensive than what has become generally known as long COVID,” said Bruno Gualano, a professor at the University of

São Paulo’s Medical School (FM-USP) and principal investigator for the study. “The article offers a real compendium on the topic and can be used as a guide by professionals who provide healthcare for athletes.”

According to the article, 74% of the athletes had symptoms during the acute stage. The most common were loss of smell and/or taste (46.8%), fever or chills (38.6%), headache (38.3%), fatigue (37.5%), and cough (28%).

Only 1.3% progressed to the severe form of the disease. This is a similar proportion to the average for the total population, Gualano noted, adding that it is harder to compare the percentage of asymptomatic cases. “Many ordinary people are infected but have such mild symptoms that they simply aren’t reported as confirmed cases. Athletes have to be examined and assessed all the time, so mild cases are diagnosed more frequently,” he said.

The most innovative findings in the study, in his view, related to what happens after the acute stage: between 3.8% and 17% of the athletes concerned (8.3% for a 95% confidence interval) had persistent symptoms, including loss of taste and/or smell (30%), cough (16%), fatigue (9%), and chest pain (8%).

“We found that 3% developed exercise intolerance,” Gualano said. “This isn’t a serious or life-threatening disorder, but in the world of sport it can be a problem. For elite athletes, any difference in preparation can determine who wins medals because competition is fierce.”

Personalized protocols

The protocols currently adopted by sports confederations typically authorize a return to activity only five or six days after the symptoms of COVID-19 disappear. In Gualano’s opinion, however, the study shows that not all athletes are fit to resume training after such a short period.

“Ideally, athletes should be carefully assessed, and if there are persistent symptoms, it may be necessary to ensure that training is light for a time, or even delay a resumption until all symptoms are resolved,” he said.

Although previous studies suggested COVID-19 heightens the risk of myocarditis (inflammation of the heart muscle due to infection) for athletes, this was not confirmed by the review. “In the studies that included a control group, we were unable to find a causal relationship between

the infection and heart problems. Possibly the athletes already had myocarditis, and it was only discovered because imaging tests were performed when they were diagnosed with COVID-19,” Gualano said. “However, the lack of evidence doesn’t mean no such relationship exists. More research needs to be done on this matter.”

Other gaps in this knowledge area should be filled by future research, Gualano added. One is the impact of omicron and its sub-variants on athletes and sports players, given that most of the

articles analyzed were produced before their emergence.

“A smaller number of athletes who come to us appear to have persistent symptoms, but we don’t know if this is due to the variant, to vaccination or to prior immunity. Nor do we know how well the vaccines in use protect people against the omicron sub-variants. We need to go on studying athletes in this new phase of the pandemic,” he said.

Indiana Court finds that Accidents Are Ordinary in HS Cheerleading’

Continued from page 1

are often unable to prevail on negligence claims where their injuries occurred while voluntarily participating in sports with inherent risks.

Reynolds’ Stunt Gone Wrong

On January 23, 2019, Reynolds (then a junior varsity cheerleader) received a text from Coach Patton asking her to join the varsity team as a substitute for the next day’s game. Delighted, Reynolds attended a portion of the varsity practice that night to run through the routine and game plan.

The varsity routine required that Reynolds be hoisted into the air and lowered back down to the ground, so the team practiced with protective mats covering the floor. Although she was not a member of the varsity squad, Reynolds was an experienced cheerleader and had already performed this stunt several times before joining the varsity practice. She was confident and ready to perform at the game after executing the routine with her stunt group two or three times. Coach Patton noted that Reynolds had run through the stunt “flawlessly” and “perfectly” and determined that she was “game ready.”

The next day at the pre-game warmup, the group practiced the stunt as they had the night before, but without any

protective mats covering the gym floor. Coach Patton stood nearby and supervised the various stunt groups. During a run through of the stunt, Reynolds was hoisted into the air, but her teammates failed to catch her and dropped her onto the gymnasium floor, breaking her jaw and most of her teeth.

Immediately after the fall, Coach Patton and the other cheerleaders scrambled to pick up Reynolds’s broken teeth. Instead of immobilizing Reynolds to prevent further injury, Coach Patton instructed her to stand up and walked her to the nearest trashcan because she was bleeding onto the gym floor. Once Reynolds’ father arrived at the school, he transported her to the emergency room. The botched stunt required Reynolds to undergo emergency surgery, continued medical treatments, and rehabilitation.

Reynolds’ Lawsuit

In September 2019, Reynolds’ parents brought an action on behalf of their daughter in the Tippecanoe County Circuit Court alleging that Harrison High School, TSC, Coach Patton, and Harrison High School Athletic Director Jerry Galema carelessly and negligently:

- failed to inspect and discover the dangerous conditions existing at the

practice;

- failed to warn Reynolds of the dangerous conditions existing at the practice when the defendants knew or should have known about them;
- failed to provide proper supervision to keep Reynolds reasonably safe under the existing conditions; and
- failed to correct the dangerous stunt at the gym when the defendants knew or should have known of the existence of the danger.

The parties agreed to dismiss Patton, Galema, and Harrison High School as defendants, leaving TSC as the sole defendant. TSC moved for summary judgment of Reynolds’ claims. In March 2021, the trial court granted TSC’s motion as to all claims except failure to provide proper supervision. TSC moved for the court to reconsider, arguing that TSC was entitled to judgment as a matter of law under Indiana law. After another denial, TSC appealed to Court of Appeals of Indiana.

Assuming the Risk on Appeal – The Pfenning Rule

The Indiana appellate court answered two questions on appeal: (1) whether Coach Patton had breached the duty of care owed to Reynolds, and (2) whether

negligent supervision could be a separate cause of action under state law.

To prevail on her claims of negligence, Reynolds needed to show that the defendants owed her a duty of care, that the defendants breached that duty, and that the breach proximately caused her injury.² While breach is typically a fact question for juries to answer, Indiana has a limited rule for negligence claims arising from ordinary sports activities. Under the Pfenning Rule, “when a sports participant injures someone while engaging in conduct ordinary in the sport—and without intent or recklessness—that participant does not breach a duty.”³ Thus, if a defendant is not found to have breached a duty under Pfenning, the plaintiff’s negligence claim fails.

Ordinary Sport Activities

Under Pfenning, “ordinary conduct” in a sport depends on an analysis of the sport generally, not an analysis of the specific activity. Ordinary conduct is defined in a broad way because judges are more likely to have general knowledge of a sport and to prevent judges from becoming “armchair quarterbacks.”⁴

TSC argued that the routine performed by the stunt group was ordinary within cheerleading and that warming up without protective mats was standard practice. TSC also cited both Reynolds and Coach Patton’s testimony that cheerleaders are regularly tossed into the air and caught by their teammates.

Reynolds countered that the circumstances surrounding her accident were anything but ordinary, specifically that “call[ing] up” a junior varsity player the day before a game, having her practice a drill only two to three times, and conducting warmups without mats or supervision

was not typical cheerleading coach behavior. Reynolds relied on testimony from two cheerleading coaches who stated that they would have conducted the warmups differently and that Coach Patton made errors in her coaching technique.

Although Reynolds provided evidence that Coach Patton’s individual actions and level of supervision were inappropriate in that instance, the appeals court held that it did not suggest that the routine was unordinary in the sport of cheerleading generally. A general analysis of cheerleading showed that both the routine and the circumstances under which it was performed were completely ordinary and that TSC had satisfied the “ordinary behavior” element of the Pfenning analysis such that Reynolds could not establish a breach of duty.

The court further held that the Pfenning rule effectively barred Reynolds’ negligent supervision claim, because once an act is deemed ordinary behavior in the sport in general, the court would not separate out actions by one participant unless they are intentional or reckless. The parties agreed that Coach Patton was neither reckless nor intentional in her coaching decisions, and therefore her actions could not be evaluated under a separate claim of negligent supervision.

Because the Pfenning rule barred Reynolds’ claims, the court did not need to consider whether the doctrine of incurred risk, or assumption of the risk, further barred her claims. Reynolds knew that she could be dropped or suffer a head injury while cheerleading, she voluntarily agreed to participate in the warmup routine when asked, and she participated despite knowing that she would be performing on a bare gym floor without any additional safety measures. Considering this, it is unlikely that Reynolds’ claims would survive an assumption of the risk defense even without Indiana’s sport-specific doctrine.⁵

⁵ *d.* at 220.

The Takeaways

Indiana is not the only state with a Pfenning rule equivalent. Many states’ courts apply a similar assumed-risk presumption or “rule” in the sports context, and especially in the contact sports context, including New Jersey, Arizona, California, Massachusetts, Michigan, Hawaii, Ohio, New York, Illinois, Maryland, and Connecticut.⁶ It’s important to know

⁶ *See, e.g.:*

Indiana: *Pfenning v. Lineman*, 947 N.E.2d 392, 403–04 (Ind. 2011) (addressing claims against a participant of a sport by examining the breach of duty—the existence of which includes asking whether harm is reasonably foreseeable—and holding that “if the conduct of [the] participant is within the range of ordinary behavior of participants in the sport, the conduct is reasonable as a matter of law and does not constitute a breach of duty”).

Arizona: *Estes v. Tripson*, 188 Ariz. 93, 95–96, 932 P.2d 1364, 1366–67 (Ariz. Ct. App. 1997).

New Jersey: *Crawn v. Campo*, 136 N.J. 494, 643 A.2d 600, 605 (1994); *Egerter v. Amato*, Docket No. HNT–L–108–04, 2006 WL 551571, *3 (N.J. Super. Law Div. 2006) (holding “[s]imple negligence does not justify judicial intervention by a coach against his charges”), *aff’d*, Docket No. A–4005–05T1, 2007 WL 1484541 (N.J. Super. App. Div. 2007), *cert. denied*, 192 N.J. 478 (2007).

Illinois: *Karas v. Strevell*, 227 Ill.2d 440, 453, 884 N.E.2d 122, 131 (2008) (“[T]he contact sports exception is an objective doctrine that defines the scope of the defendant’s duty.”).

California: *Knight v. Jewett*, 3 Cal.4th 296, 319, 834 P.2d 696, 711 (1992) (collecting cases where sports participants assumed the risk).

Colorado: *Wells v. Colorado College*, 478 F.2d 158 (10th Cir. 1973); *Laughman v. Girtakovskis*, 2015 COA 143, ¶¶ 13–14, 374 P.3d 504, 507–08.

Massachusetts: *Brandt v. Davis*, 98 Mass. App. Ct. 734, 159 N.E.3d 191 (2020), *review denied*, 486 Mass. 1111, 163 N.E.3d 384 (2021) (affirming summary judgment against university softball player who was hit in the head by teammates bat after teammate hit a softball off a tee at practice brought personal injury action against teammate alleging negligence, gross negligence, and recklessness and against head coach and university alleging gross negligence and recklessness).

Michigan

Bertin v. Mann, 502 Mich. 603, 615, 918 N.W.2d 707, 713 (2018).

Hawaii: *Yoneda v. Tom*, 110 Hawaii 367, 373, 133 P.3d 796 (2006) (“[T]he defense [of assumption of risk] applies to those injury-

² *Matter of C.G.*, 157 N.E.3d 543, 546 (Ind. Ct. App. 2020).

³ *Megenity v. Dunn*, 68 N.E.3d 1080, 1082 (Ind. 2017).

⁴ *Tippecanoe Sch. Corp. v. Reynolds*, 187 N.E.3d 213, 218 (Ind. Ct. App. 2022)

causing events which are known, apparent or reasonably foreseeable consequences of the participation[,] except for acts which are reckless or intentional.’ ”).

Ohio: *Thompson v. McNeill*, 53 Ohio St. 3d 102, 104, 559 N.E.2d 705 (1990) (“Thus a player who injures another in the course of a sporting event by conduct that is a foreseeable, customary part of the sport cannot be held liable for negligence....”), *abrogated on other grounds by Anderson v. City of Massillon*, 134 Ohio St. 3d 380, 983 N.E.2d 266 (2012); *Simmons v. Quarry Golf Club, LLC*, 2016-Ohio-525, ¶ 20, 60 N.E.3d 454 (Ohio App. 2016) (“The types of risks associated with [an] activity [for purposes of assumption of risk] are those that are foreseeable and customary risks of the ... recreational activity.’ ”).

New York: *Maddox v. City of New York*, 66 N.Y.2d 270, 278, 487 N.E.2d 553, 496 N.Y.S.2d 726 (1985) (“There is no question that the doctrine [of assumption of risk] requires not only knowledge of the injury-causing defect but also appreciation of the resultant risk.... It is not necessary to the application of assumption of risk that the injured plaintiff have foreseen the exact manner in which his or her injury occurred, so long as he or she is aware of the potential for injury of the mechanism from which the injury results.”); *McGee v. Board of Education*, 16 A.D.2d 99 (New York Appellate Division, First Department, 1962) (“Generally, the participants in an athletic event are held to have assumed the risks of injury normally associated with the sport ... Players, coaches, managers, referees and others who, in one way or another, voluntarily participate must accept the risks to which their roles expose them.”), *appeal dismissed*, 12 N.Y.2d 1100 (1963).

Maryland:

American Powerlifting Ass’n v. Cotillo, 401 Md. 658, 670, 934 A.2d 27 (2007) (“[V]

whether your state has such a rule, or otherwise how assumption of the risk is interpreted and applied by courts in your state. Even in states without sports-specific rules, assumption of the risk can still be a successful defense. Generally, “a voluntary participant in any lawful game, sport, or contest, in legal contemplation by the fact of his or her participation, assumes all risks incidental to the particular game, sport, or contest which are obvious and foreseeable.”⁷

While these rules may vary, generally, if a sports activity leading to injury is considered ordinary in the sport, and there is no intentional or reckless conduct otherwise, this doctrine blocks what may otherwise be a successful negligence claim. Performing a stunt on a gym floor and risking a fall may be ordinary in cheerleading, but other sports activities may not be so ordinary or defensible, such as punitive exercise or drills that can lead to catastrophic injury or death.

Some plaintiffs, like Reynolds, will try

oluntary participants in sports activities may be held to have consented, by their participation, to those injury-causing events which are known, apparent, or reasonably foreseeable consequences of their participation.’ ”).

Connecticut: *Intrieri v. Mileto*, 2016 WL 7661348, at *4–5 (Conn. Super. Ct. Nov. 22, 2016).

⁷ See 27A Am. Jur. 2d, Entertainment and Sports Law, § 91, p. 491.

to argue “failure to warn” to get around an assumption of risk defense – How could a player assume a risk about which they were not warned? Reynolds’ failure to warn claims failed in her case, but it is important to note that there are possibly some risks in certain sports that may not be assumed. This is seen in many of the brain-injury-from-contact-sport cases (e.g., football, hockey, rugby, etc.). Plaintiffs argue that while the risk of sustaining a concussion from participating in the sport may be inherent and foreseeable, the long-term risks associated with repetitive concussive and subconcussive blows (i.e., degenerative brain diseases) are not foreseeable and they were never warned about those risk and thus could not assume them. Like in Reynolds’ case, testimony from coaches and athletes can establish whether or not a risk is ordinary and foreseeable. Specifically with concussion and degenerative brain diseases, as society’s knowledgebase as a whole progresses, it will be interesting to see how athletes can argue assumption of the risk in regards to CTE, dementia, and other long term diseases as conversation surrounding those risks evolves and the risks themselves become more apparent.

CTE Heads To The MLS – First MLS Player Diagnosed With CTE

Continued from page 1

suffered from depression, and reported having issues with impulse control and aggression. It is unclear whether he reported any of these issues before he retired. He spent the last decade of his life withdrawing from his family and struggling with memory loss and substance abuse.

Vermillion’s father, Dave Vermillion, hopes this diagnosis will be a wake-up call to the soccer community and will lead to

the community establishing a support network and fund for former players who received head trauma or injuries during their MLS careers, which caused—or may cause—long-term neurological problems and cognitive decline (similar to the relief sought by the class of former NFL players in re: National Football League Players Concussion Injury Litigation and the settlement fund, established in April

2016, and In re NCAA Student-Athlete Concussion Litigation, established in November 2019.). The MLS Players Association also hopes that this will be a wakeup call to the league. The Association is now calling on the league to officially adopt a rule that would expand substitutions for players with concussion symptoms (currently, only five substitutions are allowed per team per game).

Beginning a twenty-month trial at the beginning of the 2021 season, the league is set to formally decide on the rule after August 31, 2022. Under the rule, teams will be permitted up to two “concussion” substitutions per match to replace players suffering from a concussion or suspected concussion, regardless of how many substitutions a team has already used. The hope is that such a rule will allow substitutions to be used in the interest of player health and safety, and will reduce the severity of concussions experienced by MLS players.

While the implementation of concussion safety-based rules is a step forward in promoting player health and safety, the death of Vermillion calls for an investigation as to the impact of CTE on professional soccer players and its relationship with repetitive concussive and sub-concussive blows in the sport. Chris Nowinski, co-founder of The Concussion Legacy, believes an investigation is necessary into how many players, both former and current, suffer or are at risk of suffering, from CTE. He stated that Vermillion’s CTE diagnosis is a time for the global soccer community to have a real conversation about the risks of heading the soccer ball, especially in the youth game. The U.S. Soccer Federation took an initiative in 2015 by announcing a protocol that players in U-11 programs and younger shall not engage in heading. There is concern, however, that such a rule may have come too late for many present-day players.

Vermillion’s diagnosis should not come as a surprise after CTE has been diagnosed and studied in overseas soccer leagues. In 2016, a British study suggested that routine heading of the ball can cause damage to brain structure and

function. In 2017, the University College of London Institute of Neurology conducted postmortem examinations on six former Premier League players who had symptoms of Alzheimer’s disease. Four of these former players were confirmed to have CTE. In response to these findings, the Football Association released new guidance for heading prior to the 2021 season. The new guidelines affected all clubs in the Premier League, EFL, Barclays Women’s Super League, FA Women’s Championship, the National League System, all grassroots football, and across the England national teams.

Vermillion may have been the first MLS player diagnosed with CTE, but he certainly will not be the last. On July 5, 2022, Bruce Murray, a former MLS player and American soccer legacy, spoke out about his expectation of a postmortem CTE diagnosis. Murray presently deals with mild dementia, but at the age of fifty-six, he has forgotten to turn off the ignition in his car, had to remind himself that his two young children were in the back seat, checked himself in at a hotel for no reason, and even lost his balance running, causing him to tumble into a tree and roll into the water. Murray was only diagnosed with two official concussions during his career, he suffered numerous subconcussive blows and even recalled that while playing in Switzerland, players were punished by having to head punted balls for two hours. He hopes that by speaking out about his experience, other former players will follow.

CTE is a concern among female soccer players as well. In 2019, the BU CTE Center announced the launch of the Soccer, Head, Impact and Neurological Effect (“SHINE”) study. The SHINE

study is a first of its kind and is recruiting twenty former soccer players to donate their brains and create the first all-female study cohort dedicated to understanding CTE. Brandi Chastain, Michelle Akers, Abby Wambach, Megan Rapinoe, and Briana Scurry have already pledged to donate their brains to the study upon death. Two-time Olympic gold medalist and 1999 World Cup Champion, Briana Scurry, is another athlete that expects CTE to be found in her brain. Scurry suffered three concussions during her career, with a career-ending one occurring in 2010. Her post-soccer life has been filled with multiple suicide attempts, constant headache pain, and even pawning off her two Olympic gold medals and the Rolex watch she received for her 100th appearance for the national team. In 2011, while commentating for ESPN on the Women’s World Cup, Scurry even struggled to remember facts and names during the broadcasts. While Scurry has now reclaimed her medals, received surgery to alleviate her constant headaches, and written a book, she hopes that telling her story will shed light on concussions and the long-term risks in soccer.

As scientific and medical researchers continue to develop our understanding of CTE (and what causes it and what it causes) and other neurodegenerative disease and as more diagnoses are made, it is likely that the MLS could face a landslide of lawsuits (individual and class action), similar to the suits filed against other major sport organizations, such as the NFL, NCAA, and RFL (Rugby Football League). We will continue to monitor CTE in MLS and provides updates.