

HS Football Concussion Injury - \$3 Million Settlement (01-27-09)

Failure by high school administrators and football coaches to pull an injured player off the field resulted in permanent brain injury for a 14-year-old freshman and ultimately a \$3 million settlement after suit was filed. John Parisi and Douglas Bradley represented the family and obtained a policy limits settlement.

On October 10, 2005, Zachary Frith suffered a concussion during a freshman football game while playing wide receiver. Despite the injury, the coaches allowed Zach to remain in the game.

The coaches and school administrator documented that Zach sustained a head injury during the game. However, Zach's parents were never notified of their son's concussion. The following week, the coaching staff allowed Zach to continue to practice and allowed him to play an entire game even though they knew of the head injury. Noticing behavioral changes in their son in the week following the game, Zach's parents had him evaluated by a local physician who diagnosed his concussion and prohibited football or other physical contact.

Zach's parents immediately notified the coach and presented the doctor's order to the school. However, the coaches continued to play Zach for another week. When Zach's mother dropped by the high school to pick Zach up for a follow-up doctor's appointment, she saw Zach on the football field practicing with the rest of the team and confronted the coaching staff. It was only then that Zach was finally kept off the field. Unfortunately, by that time Zach had developed post-concussion syndrome resulting from the initial concussion and the subsequent repeated head trauma. Plaintiffs retained a neuropsychologist specializing in traumatic brain injuries to testify that the cumulative effects of the initial concussion and subsequent blows to his head during the next two weeks resulted in post-concussion syndrome and severe permanent cognitive deficits.

Unfortunately, concussions are prevalent in football and can be especially harmful to adolescents and young adults. According to the CDC, more than 300,000 sports and recreation related traumatic brain injuries occur in the United States each year. Additionally, The New York Times has reported that since 1997 at least 50 football players in high school and younger in more than 20 states have been killed or sustained serious head injuries on the football field. Administrators, trainers, and coaches play key roles in preventing concussions. Managing them correctly can prevent serious and permanent injuries such as those suffered by Zach.

Zach should have been removed from play when initially injured and kept off the field. We established the appropriate standard of care based in part on a publication of the Department of Health and Human Services Center for Disease Control and Prevention entitled *Head's up: Concussion in High School Sports - Guide for Coaches*. The CDC publication is specifically directed to high school coaches and requires that they take the following steps: (1) remove the athlete from play; (2) ensure the athlete is evaluated by an appropriate health care professional; (3) inform the athlete's parents or guardians about the known or possible concussion and give them a fact sheet on concussions; and (4) allow the athlete to return to play only with permission from an appropriate health care professional. At trial, we would have been able to show that the administrator and coaches did not have the appropriate plan in place to ensure that concussions were correctly managed. After Zach's lawsuit was filed, Lafayette County School District adopted the action plan recommended by the CDC.

To avoid issues of sovereign immunity, suit was filed against the coaches and administrator as individuals. Although Mo. Stat. §537.610 provides a waiver of sovereign immunity if liability insurance is purchased for tort claims, the maximum that could be recovered from the school district is \$300,000.00. However, high school football coaches, teachers, and principals are not subject to sovereign immunity and are not considered public officials under Missouri law. As such, neither sovereign immunity nor official immunity applied to their actions. Because the available commercial general liability policies covered the high school football coaches and the principal individually, a total of \$3 million in insurance was available through the district to cover Zach's injuries.

We are pleased that the defendants in this case stepped forward and resolved this case without putting the family through trial. The settlement funds will provide Zach with financial security and the specialized therapy he requires.

The Facts