

## Athletic Participants Exclusions “Clear and Unambiguous” to College Lacrosse Player’s Death During Practice

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The athletic participant exclusion, although not standard, is commonly found in commercial liability policies issued to insureds with exposure to sports-related injuries. However, it is not a commonly litigated coverage defense and, as such, there is not a significant amount of case law that interprets it. This, however, may soon change in light of the recent emergence of lawsuits against sports teams and leagues regarding concussion and other sports-related injuries which first began with the lawsuits filed against the National Football League over five years ago. Sports concussion lawsuits have been described by the Insurance Journal as “one of the top emerging insurance claims” in the country.

Last week, a federal appellate court issued an unpublished opinion that interpreted two different versions of an athletic participant exclusion. In *Underwriters Safety and Claims Inc. v. Travelers et al*, No. 16-5143 (6th Cir. filed Sept. 13, 2016), the Sixth Circuit held that both versions of the exclusion clearly and unambiguously applied to a wrongful death claim against Bellarmine University for the death of one of its lacrosse players. The player had collapsed and died suddenly while running during team practice conditioning drills. The player’s estate argued that the University caused the player’s death by failing to provide him with adequate pre-participation medical screening and by failing to respond adequately when he collapsed during the practice.

Both of the University’s carriers, Travelers Insurance Company and Cincinnati Insurance Company, denied coverage for the lawsuit based on their respective athletic participants exclusions. The exclusion in the Travelers policy stated that its insurance did not apply to “bodily injury to any person engaged in athletic, exercise, or sports activities . . . .” The exclusion in the Cincinnati policy precluded coverage for “bodily injury . . . to any person while . . . practicing for or participating in any contest or exhibition of an athletic or sports nature . . . .”

The Sixth Circuit applied Kentucky law and concluded that the exclusions, based on their plain text, clearly and unambiguously applied to preclude coverage for the player’s death because he collapsed and died when he was at a Bellarmine lacrosse practice convened by the Bellarmine lacrosse coach, and while he was running timed quarter-miles with the rest of the team. Notably, the applicability of the exclusions depended on when the bodily injury occurred, not when the University’s purported negligent conduct occurred. The court rejected the argument that the plain language of the exclusions should be overlooked in favor of their purported underlying purpose of excluding injuries that are “inherent” to playing sports, or “normally encountered” in playing sports.

While a sudden heart failure during practice presents a simpler injury analysis as to when the injury occurred than does latent, progressive disease from head injuries, this Sixth Circuit opinion adds federal appellate support to a growing body of law finding that athletic participants exclusions are clear, unambiguous and enforceable for sports-related injuries that take place during games and practices. A copy of the opinion can be obtained by contacting either Mike Kassak or Luke Repici.

Mike Kassak and Luke Repici have represented insurance carriers in several coverage matters involving class action claims by athletes for concussions and other sports-related injuries from professional football, hockey and wrestling. For additional information, contact Mike Kassak (856.317.3653; [kassakm@whiteandwilliams.com](mailto:kassakm@whiteandwilliams.com)) or Luke Repici (215.864.7099; [repicil@whiteandwilliams.com](mailto:repicil@whiteandwilliams.com)).

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