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NHL concussion ruling likely means splintering of cases across jurisdictions

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A denial of class action status has been touted as a major win for the National Hockey League, but could eventually translate into hundreds – if not thousands – of individual lawsuits from players seeking care for head injuries they claim arose from the league’s long-time promotion of violence.

A federal judge in St. Paul, Minnesota, on Friday denied class action status for a lawsuit filed in 2013 with more than 100 plaintiffs and potentially 5,000 total – all claiming, per court records, “pathological and debilitating effects of brain injuries” sustained during their careers. The current and former players were seeking medical monitoring of neurological conditions they say were caused by the way the NHL encouraged players to fight one another.



“I think all industries are watching this,” said Gregg Clifton, Phoenix-based principal and co-chair of collegiate and professional sports practice with Jackson Lewis P.C.

The denial of class action status might prove difficult for each player in terms of pursuing individual claims OK, he added. “It’s much more difficult to go at it alone than with a class.”

The 46-page decision, filed in the U.S. District Court, District of Minnesota in St. Paul, Minnesota, states that “widespread differences” in state laws concerning medical monitoring would “present significant case management difficulties.”

The judge proceeded to outline major differences in state workers compensation laws, which could still provide some relief for players, according to the ruling.

“This is a procedural decision, it is not a death knell to their case,” said Mr. Clifton. “Each player would have to proceed on an individual basis (and) what’s interesting is you will have different procedural laws... in these different jurisdictions.”

Bill Gibbs, a Chicago-based partner with Geoffrion, Corboy & Demetrio P.C., one of the 16 firms listed as representing the players, said it is still too early to comment on next steps.

Charles Zimmerman of the Minneapolis office for Zimmerman Reed P.L.L.P. and another attorney for the players, told reporters Friday that the hundreds of players are prepared to try their cases individually and that it was too soon to know if there would be an appeal of the judge’s decision.

He could not be reached Tuesday.

The players have until July 27 – 14 days from the judge’s order – to appeal.

Meanwhile, the NHL disputed the assertion of plaintiffs and their experts and argued that there is no “definitive causal link” between players sustaining concussions and later developing neurological disorders and diseases, according to court documents. League officials have not commented publicly as of Tuesday and representatives could not be reached for comment.

The ruling makes it clear that differences in state laws with regards to workers compensation would nix the ability for similar class actions to proceed, according to Sam Jackson, a Nashville, Tennessee-based shareholder in the employment and labor practice with Bone McAllester Norton P.L.L.C.

“Basically what the court was saying was because each state has its own kind of process and framework... that this would be something that would be difficult (to execute),” he said. “Anybody would run into this with multiple employees in multiple areas. They would face these same challenges, as this would probably be the end of a class- or multi-district litigation.”

“What I think you are going to see (is) several smaller lawsuits” against the NHL, he said.