

La Salle University Settles Football Injury Case for \$7.5 Mil.

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Dec. 1, 2009

The Legal Intelligencer



Shanin Specter of Kline & Specter

La Salle University has agreed to pay \$7.5 million to one of its former football players who suffered severe brain damage in a game after being cleared by university personnel following a concussion he sustained in a practice one month earlier.

After months of on-and-off negotiations, the case was settled on Nov. 25 in Philadelphia Common Pleas Court, before Judge William J. Manfredi, less than a week shy of its Nov. 30 trial date.

Plaintiff Preston Plevretes was represented by Philadelphia-based Kline & Specter attorneys Shanin Specter, Michael A. Trunk, Gary Zakeosian and Charles R. Becker.

La Salle University's attorneys were Jeremy D. Mishkin, Steven E. Pachman and Carmon M. Harvey of Montgomery McCracken Walker & Rhoads in Philadelphia.

According to the plaintiff's pretrial memorandum in *Plevretes v. La Salle*, Plevretes was a linebacker for the La Salle Explorers.

On Oct. 4, 2005, Plevretes, then 19, injured his head during a practice when he was headbutted helmet-to-helmet, according to the plaintiff's memorandum.

During a game on Oct. 8, 2005, Plevretes reported to the school's athletic trainer, defendant William Gerzabek, that he was experiencing headaches whenever he was hit and that he didn't "feel right," the plaintiff's memorandum said.

"While trainer Gerzabek pulled Preston from the rest of the game, he did not perform any standardized sideline cognitive or balance testing, did not have Preston perform any exertional maneuvers to elicit further symptoms and did not refer Preston to a specialist or emergency room," the plaintiff's memorandum said.

Instead, two days later, Gerzabek recommended that Plevretes report to the university's Student Health Center, which Plevretes did that same day, the plaintiff's memorandum said.

At the health center, according to the plaintiff's memorandum, Plevretes was examined by defendant Andrea Okagawa, a nurse practitioner, to whom he complained that he had been experiencing headaches, tinnitus and dizziness since his Oct. 4 injury.

Okagawa attempted to perform a standardized mental status test, or SAC test, to determine the extent of Plevretes' head injury but, according to the plaintiff's memorandum, used an incomplete version of the test that she printed from the Internet without reading the instructions on how to properly administer the test.

"Moreover, she admits knowing that the test was specifically designed for use on the sidelines or in the locker rooms immediately following the suspected concussion, but was using the test some six days after the head trauma in Preston's case," the plaintiff's memorandum alleged.

The plaintiff's memorandum also alleged that neither Okagawa nor any of the school's athletic trainers had performed a pre-season baseline test on the football team that would have served as a pre-injury comparison.

Okagawa ultimately diagnosed Plevretes with a grade 1 concussion and told him to rest and take Tylenol for the pain, the plaintiff's memorandum said.

By Oct. 11, Plevretes was still symptomatic and returned home from college to receive a computed axial tomography, or CAT scan, at a local hospital, the plaintiff's memorandum said.

The scan came back negative and the emergency room physician told Plevretes to follow up with his physician, but did not clear him to play football, the plaintiff's memorandum said.

The next day, Plevretes returned to the Student Health Center and was again examined by Okagawa, who administered the same SAC test as she had before and declared Plevretes asymptomatic based on his report that he did not have a headache at the time, the plaintiff's memorandum said.

Okagawa failed to ask Plevretes whether he had taken any pain relievers that day that may have veiled the symptoms and did not have Plevretes perform any exertional maneuvers to elicit symptoms, the plaintiff's memorandum said.

Ultimately, Okagawa recommended that Plevretes refrain from playing football for one week, according to the plaintiff's memorandum.

Nevertheless, on Oct. 16, Gerzabek documented that Plevretes was cleared to play, the plaintiff's memorandum said.

Gerzabek testified that, in the days immediately before and after he cleared him to play, he worked with Plevretes on a step-wise exertional process, but admitted that he had no specific recollection of doing so and instead based his testimony on what he said he would normally have done in such a situation, according to the plaintiff's memorandum.

On Nov. 5, in a game against the Duquesne University Dukes, Plevretes was attempting to make a tackle during a punt return when he was blocked and fell to the ground, the plaintiff's memorandum said.

Plevretes initially appeared unconscious, but then regained consciousness and stood up before falling again and slipping into a coma, according to the plaintiff's memorandum.

He was rushed to Mercy Hospital in Pittsburgh, where doctors performed emergency surgery, which required that part of Plevretes' skull be removed because his brain had swelled so much, the plaintiff's memorandum said.

Plevretes also suffered a subdural hematoma on the right side of his brain, the plaintiff's memorandum said.

According to the plaintiff's memorandum, Dr. Robert Cantu, a neurosurgeon and expert on "Second Impact Syndrome," opined that Plevretes' catastrophic brain injury was the result of his being hit again before his original concussion had healed.

According to Specter, Duquesne University and the player who administered the Nov. 5 block were also originally named as defendants in the suit but were dropped following initial investigations.

The plaintiff's memorandum alleged that La Salle University, Gerzabek and Okagawa fell far short of the standard of care that was in place in 2005 by failing to have a written concussion protocol and relying on outdated concussion literature from the mid-1990s.

The plaintiff's memorandum also alleged the defendants failed to include a physician in either the development of a concussion protocol or Plevretes' care; failed to work under the direction of a physician; failed to educate the football team about concussion symptoms; and failed to consider Plevretes' history of multiple concussions before clearing him to play.

But La Salle, in its own pretrial memorandum, said Plevretes did not report the Oct. 4 injury until Oct. 8 and that he only reported a headache during his first visit with Okagawa, claiming he had no symptoms during his second visit with her.

The school also cited the negative CAT scan in its memorandum.

La Salle argued further in its memorandum that it did meet the standard of care for concussion management in 2005 and disputed the plaintiffs's Second Impact Syndrome theory.

"Rather, the severe hit and/or magnitude of force involved in the Nov. 5, 2005 block — and nothing more — caused Preston's injuries," the school said in its memorandum, adding that Plevretes also failed to be "forthright" with Gerzabek about his headaches and ignored the warning on his helmet about playing football with a headache.

Furthermore, the university had no duty to protect Plevretes from the inherent risks of playing football, a sport he knowingly and voluntarily engaged in, La Salle said in its memorandum.

According to the plaintiff's memorandum, Plevretes suffered permanent injuries that, in addition to traumatic brain injury, included spastic quadriparesis, dysarthria and dysphonia, severe cognitive defects, uncontrollable seizures and depression.

Plevretes' medical bills before undergoing major brain surgery to control his seizures on July 24, 2009, totaled \$1.2 million and he now requires 24-hour care estimated to cost between \$5,707,952 and \$17,118,221 during his lifetime, the plaintiff's memorandum said.

Plevretes is also permanently unable to work, resulting in an estimated lost earning capacity ranging from \$2,088,823 to \$5,579,100, according to the plaintiff's memorandum.

The plaintiff's damages experts were B.A. McGettigan, David L. Hopkins and Dr. S. Ross Noble.

Specter said that, since Plevretes' injury, La Salle, which discontinued its football program in 2007, has implemented measures for all of its sports teams to prevent similar brain injuries from occurring.

"Other colleges, high schools and professional teams around the country need to follow La Salle's lead," he said.

La Salle issued a statement confirming that the suit had been "amicably resolved without the need for a trial, sparing both sides further burdens and expense and allowing all concerned to put the litigation behind them."

"Although we were prepared to defend our position, the University does not believe that it would serve any purpose to engage in further discussion about the matter," the statement continued. "From the time of Preston's injury, the University community, led by those who know Preston and his family, have been hoping and praying for his recovery. That hasn't changed." •