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## Litigation threatens football's future

By Gregg Easterbrook  
ESPN.com



The NFL concussion lawsuit moved close to resolution last week -- see below for analysis -- but don't be deceived into thinking this settles courtroom challenges. Football remains in a legal quicksand that has the potential to drag the sport under. The big concern has never been the NFL, which has only a small number of current and retired players, and can buy its way out of any difficulty. The issue is the 3 million youth players, 1.1 million high school players and approximately 50,000 college players.

Unlike NFL players who are well-compensated and are adults when they assume risk, the overwhelming majority of football players receive nothing and are children when they assume risk. Except for those who matriculated at football factories, most football players suit up for sponsoring organizations that cannot buy their way out of problems: youth leagues, public school districts and colleges whose athletic departments lose money.



Gregg Easterbrook on ...

If youth leagues, public school districts and colleges that are already in the red on sports start paying brain-damage awards, they'll stop sponsoring football. They won't have any choice -- insurers will drop them. This, not the NFL's litigation maneuvering, is the nuclear bomb ticking in football. Consider:

A teen partially paralyzed at a Colorado football practice just won [a \\$11.5 million judgment](#) against his high school district, some school personnel and the Riddell helmet company. Last year, San Diego school district agreed to pay \$4.4 million to a man who was a teenaged high school football player when he [suffered a severe brain injury](#).

The California injury occurred in 2007, the Colorado injury in 2008. The litigation took years to reach the award stage. Since rising awareness of the harm caused by concussions began roughly five years ago, there may be many other high school football brain-harm lawsuits that started in the past five years and are now in progress. Surely, more will be filed in the future.

Sixteen-year-old Jaleel Gipson of Farmerville, La. [died in May](#) after an Oklahoma Drill at high school football practice. Louisiana allows the sadistic Oklahoma Drill, in which players bash helmets; the state also allows full-contact high school football practice year-round, meaning year-round opportunities for brain and spine harm. A week ago, Tyler Lewellen, a 16-year-old California high school football player, [died from head trauma](#); two weeks ago, a 16-year-old Georgia high school football player [died from a spinal injury sustained in a scrimmage](#).

These awful tragedies do not mean young people should not play football. Every year there are awful tragedies involving young people and cars, or young people and swimming, or young people and bicycling. Sometimes fate is simply awful. There is a roughly a one-in-a-million chance a teenager will die because of an hour of driving, compared to a roughly a one-in-six-million chance a teenage will die because of an hour of football practice or play.

When the awful tragedy is a young person's death in a car crash, often there is no third party to sue. When the awful tragedy is a football death, there are always third parties to sue. As willingness to use the courtroom increases throughout society, football-triggered lawsuits against high schools and youth leagues may rise. Sixteen-year-old Edwin Miller, a Maryland high school football player, died of heat stroke in 2009 after conditioning drills. In the immediate aftermath, his parents went out of their way to be conciliatory, including asking the team to [attend his funeral in football jerseys](#). Three years later, [they sued](#).



The most important legal issues of football focus on high school.

Adrian Arrington, a former player at Eastern Illinois University, has [sued the NCAA regarding his concussions](#). Last week, the parents of Derek Sheely, a Frostburg State University player who died in 2011 from a [second-impact concussion](#) sustained in practice, filed suit against the school and its coaches. The [legal filing](#) alleges "reckless disregard for player health," including frequent Oklahoma Drills in which players were instructed to lead with their heads, and that Sheely was sent back into practice despite a bloody bruise on his forehead and saying he felt strong head pain. These claims are allegations, not tested yet by any court. But they are deeply disturbing allegations.

The NFL's settlement offer on concussions involves an organization with billions of dollars and also involves labor law, neither of which pertain to youth, or high school players. For the youth and high school players who legally are children in the care of adults, assumption of risk does not carry the weight it does when cited by colleges or the pros. There may be many big awards coming. Awards in the millions per player harmed, not around \$50,000 per retiree as in the NFL situation (see below). No public school system, and few universities, could withstand that.

There are positive signs. Reader Ty Locke of Jersey City, N.J., writes, "My 13-year-old nephew who is entering freshman year at [Old Bridge High School in New Jersey](#) suffered a concussion in practice. I was surprised and encouraged at how far programs have come in terms of treating and diagnosing concussions, in just the decade since I played high school football in the same area. His high school mandates a five-tiered evaluation before he is able to return to full contact. For the first week my nephew was not permitted to run or work out, he was yelled at for just picking up a football. Before returning to full contact he'll need to get cleared by an independent physician outside of the school's staff. I think that's a great sign of progress."

That is indeed a great sign of progress. Will football last long enough for such progress to spread? President Barack Obama [told the New Republic](#), "If I had a son, I'd have to think long and hard before I let him play football." Brain-injury lawsuits below the level of the NFL could make this question moot, if colleges and high schools stop playing. The threat of brain harm to players is becoming well-known; the threat of concussion litigation to the sport itself may be just as real.