

**AIRROC Education Panel Summaries (March 12, 2014) – Summarized by  
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**The Latest on Concussion Liability and Sports-Related Brain Injuries**

Robin Dusek, a Partner at Freeborn & Peters updated AIRROC members on the current status of litigation arising out of brain injuries sustained by athletes, as well as, the insurance coverage actions that have been filed in response thereto. Ms. Dusek initially provided an overview of the human brain's response to a concussive trauma and what some scientists have found can result when such events take place on a repetitive basis, as they often do with athletes. More specifically, studies have shown that such events can result in chronic traumatic encephalopathy (or "CTE"), a progressive degenerative disease characterized by the destruction of brain tissue and the accumulation of "tau" protein. Ms. Dusek explored the findings of a researcher at Loyola University who issued two studies in which he concluded that (1) there is no credible scientific data to support an increase in neurological risk from playing professional football, albeit, a surprisingly high percentage of players exhibited clinically significant impairment, and (2) no cause and effect relationship has been demonstrated between CTE and concussions or participation in "contact" sports.

Ms. Dusek proceeded to provide an overview of athletes who have been diagnosed with CTE; namely those participating in football, ice hockey, WWE wrestling, baseball, and most recently, rugby and soccer. Moreover, combat veterans, race car drivers, and individuals with uncontrolled seizure disorders are similarly susceptible to concussions and presumably CTE. Conclusive CTE diagnosis is complicated by the fact that it must await post-mortem analysis, and some athletes who have taken their lives when faced with the disease appear to have purposefully avoided damaging their brains in the process in order to preserve them for scientific analysis.

Ms. Dusek then discussed lawsuits filed by athletes against the NFL, individual NFL teams, NFL team physicians, the NCAA, Riddell (a football helmet manufacturer), the NHL, the D.C. United soccer team, and high schools with sports programs. Notably, the litigations against the NFL, NHL, NCAA, and Riddell have been certified as class actions. These in turn have resulted in a multitude of insurance coverage litigation currently venued in California, New York, and a recently dismissed action in the U.S. District Court for the District of Kansas. Despite settlement of the class action against the NFL, there is no question that this will continue to provide fertile grounds for both wrongful death and insurance coverage litigation for years to come.