

INSURANCE RECOVERY FOR HEAD INJURY CLAIMS



The well-publicized settlement of head injury litigation initiated by more than 4,500 retired professional football players raises concerns for other professional sports associations, universities, and colleges — not to mention those involved in high school and youth sports programs. The retired players alleged they now suffer from various neurological and cognitive problems related to head injuries suffered while playing and that they were misled about the dangers of concussions. The settlement will cover over 18,000 retired professional football players. A broad expansion of this type of litigation to other sports and other parties could involve millions of potential claimants.

Not all organizations potentially subject to such claims have the financial wherewithal to deal with them. Responding to similar litigation could have a significant negative impact on their financial outlook. Fortunately, historic insurance assets may provide critical funding for defense and indemnity costs arising from head injury claims.

HOW COULD COVERAGE BE APPLIED?

Coverage for head injury claims may exist in the policies in effect at the time of the first alleged head injury, as well as in the policies issued after that date (up until the earlier of the plaintiff's death, diagnosis, or filing of suit). A plaintiff could allege a head injury taking place decades ago and suffering subsequent related injuries. Such allegations trigger multiple policy years and necessitate locating and analyzing numerous historical insurance policies.

In addition to the mechanics of locating and organizing coverage placed years ago, there are the complications presented by seeking to allocate claims to appropriate policy years and negotiating coverage agreements with numerous insurance companies.

Insurers may seek to challenge coverage on a number of grounds, including:

- No allegations of injury during the applicable policy period.
- No coverage based on the “expected or intended injury” exclusion.
- Lack of an “occurrence”.
- Common law “known loss” or “known risk” defenses.
- Application of self-insured retentions of deductibles.

MARSH RISK CONSULTING

MRC CAN HELP

The Complex Liability Consulting Practice of Marsh Risk Consulting (MRC) specializes in assisting affected organizations with coverage identification and application challenges.

Our services include:

INSURANCE ARCHAEOLOGY

As the burden to prove up the existence of missing policies is generally on the policyholder, the first step in pursuing insurance recovery for these claims is to locate relevant historic insurance records. Our insurance archaeology specialists have a proven track record of locating evidence of policies issued many years ago. With a wide range of contacts and access to both US and UK broker archives, we are well positioned to assist.

POLICY ANALYSIS, COVERAGE GRAPHS, ELECTRONIC ARCHIVING

Our insurance experts can provide comprehensive analysis of insurance documents and a graphical representation of the policies at issue. This analysis, along with electronic policy archiving, is delivered using our proprietary Web-accessible application — Insurance Coverage Explorer™.

ALLOCATION MODELING

Loss allocation answers the questions of what share of defense and any settlement costs each insurer should pay. We have developed a series of sophisticated models to assist clients with the assimilation of complex claim data. These models are the tools used to estimate the value of insurance assets available to offset current and potential future liabilities. Modeling is the framework for analyzing positions taken by insurers during settlement negotiations and it provides the ability to test the financial impact of legal uncertainties. Our mathematical results can be used to develop settlement strategy and support settlement demands.

FORMULATION AND IMPLEMENTATION OF INSURANCE RECOVERY STRATEGY

Our consultants advocate on behalf of our clients. We have exceptional relationships with key insurer decision makers and our experience negotiating with those insurers helps our clients achieve favorable results often without the need for costly and time-consuming litigation.

For more information about insurance recovery from head injury claims and our other solutions, contact your local Marsh or MRC representative.

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You can also learn more at www.marshriskconsulting.com.

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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