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arts lawsuits

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It in Taunton, Mass. Carter was convicted of involuntary manslaughter for prodding teen's death in July 2014. The Supreme Judicial Court upheld the verdict.

## Ity verdict upheld

upholds manslaughter verdict in prodding teen's death

Prosecutors had argued Carter

you're about to die," Carter wrote in another.

Carter's lawyers argued she can't be convicted because of her words alone, noting she wasn't with him when he killed himself and didn't provide him with the means to do it.

# \$3M sanction nixed until a hearing held

## Case surrounds allegedly forged docs in discovery

BY DAVID THOMAS  
*Law Bulletin staff writer*

The 1st District Appellate Court on Monday vacated a nearly \$3 million default judgment for discovery sanctions, finding a Cook County judge first needed to hold an evidentiary hearing.

In a February 2018 ruling, Circuit Judge Margaret A. Brennan found there was "credible evidence" that Go To Logistics Inc. forged and backdated a key contract in order to undercut breach of contract claims brought by LM Insurance Corp., its workers' compensation insurance carrier.

Ruling that Go To Logistics ignored multiple subpoenas during discovery, Brennan entered a default judgment of \$2,966,625.37.

But in its 11-page unpublished order, the appeals panel found Brennan missed a step. She was "required to support that determination with findings of fact based upon the evidence taken at an evidentiary hearing," Justice John C. Griffin wrote.

LM Insurance carried Go To Logistics' workers' comp policy from March 2013 to August 2015. In its application, the trucking business said it wasn't related to another

company, didn't have subcontractors and did not have employees working for subsidiaries.

After Go To Logistics canceled its policy, an LM Insurance audit found Go To Logistics drivers were also operating under the banner of GT Expedited. Go To Logistics and GT Expedited were owned by the same person — Tomasz Rzedzian.

The auditor found that the other company's drivers were employees of Go To Logistics and, as a result, Go To Logistics should have been paying a higher insurance premium. LM Insurance sued Go To Logistics in February 2016 to recover the difference over the length of the policy.

In court, Go To Logistics cite an agreement it struck with GT Expedited in November 2013 to hire the business as an independent contractor. The deal required GT Expedited to maintain its own workers' comp insurance, Go To argued, meaning LM was seeking premiums for drivers already covered under another policy.

LM Insurance and Go To Logistics tangled multiple times during discovery, with the plaintiff accusing the defense of withholding documents.

In May 2017, Brennan ordered Go To Logistics to pay \$500 of the plaintiff's costs as a discovery sanction.

In November 2017, LM Insurance accused Go To Logistics of doctoring and backdating its agreement with GT Expedited. The insurer said it was unable to find proof that

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# Insurer says trucking business stalled in discovery, hide back-dating

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the defendant's agreement existed before 2015.

Go To Logistics producing an affidavit from both companies' owner, Rzedzian, attesting that he signed the deal on behalf of both parties in November 2013 and denying it was a forgery.

Brennan held a hearing on LM's motion for sanctions in January

2018, but she did not hold an evidentiary hearing before issuing the sanctions order the next month.

"Clearly, matters of record alone could not support the trial court's determination that defendant engaged in the subject misconduct," Griffin wrote.

The appeals panel did not weigh in on the merits of Brennan's findings, meaning she isn't precluded from reaching the same conclusion

following an evidentiary hearing, said Christopher Keleher, who represented the defendant.

"We're happy with the opinion and happy with the fact that the appellate court recognized — that the trial court resorted to this very serious sanction, this death penalty of sanctions — without more hearings, or lesser sanctions," said Keleher, owner of Keleher Appellate Law Group LLC.

LM Insurance was represented by James T. Barnes and John C. Schmadeke of James T. Barnes P.C. They did not return a request for comment.

Justice Mary L. Mikva and Carl Anthony Walker concurred with the unpublished order.

The case is *LM Insurance Corp. v. Go To Logistics LLC*, 2019 IL App (1st) 180591-U.

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# Student-athlete question far from over and sports gambling on rise

GIBBS, FROM PAGE 4

former NFL Players have participated in the settlement's Baseline Assessment Program which allows for thorough neurological and neuropsychological workups at the league's expense. While not perfect, the settlement has proven to be a tremendous benefit for retired NFL players dealing with the later-in-life effects of playing professional football.

**In re NCAA Student-Athlete Concussion Litigation, No. 1:13-cv-09116 (N.D. IL)**

The NCAA has also attempted to settle its concussion litigation problems that commenced in 2014. Preliminary approval has been granted for a settlement that would support a medical monitoring program for former NCAA athletes (regardless of sport) suffering from latent brain injuries.

On February 25, U.S. District Judge John Z. Lee will conduct the final fairness hearing to determine if the settlement is fair, reasonable and adequate and to consider the request by class counsel for attorney fees and expenses and service awards for the class representatives.

The NCAA class settlement contains a carve out for individual injury or death cases against the NCAA or member institutions. Once such case is *Rose v. National Collegiate Athletic Association*, al-

so before Lee. F. Supp. 3d \*6 (N.D. IL 2018).

In the *Rose* case, the court denied the NCAA's 12(b)(6) motion to dismiss the plaintiffs' complaint for a violation of the statute of limitations. *Id.* The court held that the claims for damages related to neurodegenerative disease were not barred by a two-year limitations period because the injuries were not akin to a sudden traumatic event and the plaintiffs did not know nor should they have reasonably known of their injuries or that these injuries were wrongfully caused due to the latent nature of those injuries. *Id.*

Another individual case against the NCAA proceeded to trial last June. Greg Ploetz, a former football player for the University of Texas, was diagnosed with CTE after his death in 2015. His wife, Debra Hardin-Ploetz, filed suit against the NCAA on behalf of her husband's estate alleging the NCAA was responsible for her husband's death as well as his poor health throughout his adult life.

After three days of trial, the parties reached a confidential settlement. Across the country, hundreds of individual cases against the NCAA and/or its individual schools were filed in 2018. Will resolution be possible in 2019?

**In Re National Hockey League Players' Concussion Injury Litigation, MDL, 0:14-md-02551**

The NHL's concussion injury litigation moved toward resolution in 2018. The case had been pending in the U.S. District Court for the District of Minnesota since 2014 where former NHL players' claims against the league were consolidated by the Judicial Panel on Multidistrict Litigation.

Toward the end of last year, a settlement proposal was advanced that includes funding for: (1) an immediate cash payment for the retired player plaintiffs; (2) neurological and neuropsychological testing; (3) additional payments for medical expenses for each individual who demonstrates cognitive/behavioral deficiencies upon examination; and (4) the establishment of a "common good" fund to support senior player pensions, emergency assistance, substance abuse rehabilitation, and/or other programs to benefit the health and welfare of all former NHL players.

The deadline for players to opt into the NHL settlement proposal is Friday. But, the NHL maintains a 'walk-away' provision if all plaintiffs do not participate. So, it remains to be seen if this proposal will be the beginning of the end of these cases or the end of the beginning. 2019 will be a critical year.

**United States v. Gatto, et al., 2017 WL 7790584 (S.D.N.Y.)**

In October, a federal jury in New York returned a verdict of

guilty on all counts against Jim Gatto, Merl Code and Christian Dawkins, all accused of participating in pay-for-play schemes to influence high-profile basketball recruits to attend Kansas, Louisville and North Carolina State.

In the wake of the college basketball corruption scandal, the NCAA decided 2018 was the year to slightly alter a policy concerning student-athlete rights and allow college basketball players to attain advisory agents.

Unfortunately, for now at least, agents will not be able to negotiate licensing deals for those elite basketball players despite premier players having significant market value and despite how much revenue the schools' make off their name, image and likeness.

Will 2019 be the year that student-athletes begin to realize a portion of those earnings? Highly unlikely. But, with additional trials scheduled for April, we have only scratched the surface on revealing the depth of the scandal.

All in all, 2018 represented a sea change in the world of sports. Increased awareness and compensation for concussion related injuries, introduction to legalized sports betting outside of Nevada and continued revelations regarding college basketball recruiting highlight the important issues that will have lasting impacts in the new year and beyond.

## Attention Appellate Lawyers!

If you or your firm has recently been involved in an appeal of an award of money damages, the Jury Verdict Reporter would like to hear from you. Please send a copy of the Illinois appeals court decision and a brief note describing the case to: Jury Verdict Reporter, 415 N. State St., Chicago, IL 60654. Submissions will be considered for publication in future issues of the Jury Verdict Reporter's Appellate Review of Damages. We appreciate your assistance.