

IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

Civil Division

FILED
CIVIL ACTIONS BRANCH
: AUG 29 2012
: SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC

W

BRYAN NAMOFF,
Individually, and **BRYAN**
NAMOFF and NADINE NAMOFF,
as Husband and Wife
5709 Callcott Way
Alexandria, VA 22312

Plaintiffs

v.

D.C. SOCCER LLC D/B/A
D.C. UNITED
Serve: Registered Agent
CT Corporation System
1015 1th Street, N.W.
Suite 1000
Washington, D.C. 20005

and

THOMAS SOEHN
Vancouver Whitecaps FC
Suite 550 - The Landing
375 Water Street
Vancouver, British Columbia, Canada
V6B 5C6

Defendants.

0067050-12

COMPLAINT

COME NOW the Plaintiffs, Bryan Namoff, Individually, and Bryan Namoff and Nadine Namoff, as Husband and Wife, by and through their attorneys, Joseph Cammarata, Esquire, and the law firm of Chaikin, Sherman, Cammarata & Siegel, P.C., and respectfully represent as follows:

Case: 2012 CA 007050 B
00461169
Dkt: CABCP1F

FACTUAL BACKGROUND

1. This Court has jurisdiction over the within causes of action in that the incidents complained of herein occurred in the District of Columbia.

2. At all relevant times herein, Plaintiff Bryan Namoff was employed by Major League Soccer, L.L.C. ("MLS"), as a professional soccer player, and Plaintiff Nadine Namoff was the wife of Plaintiff Bryan Namoff.

3. At all relevant times herein, Defendant D.C. Soccer LLC d/b/a D.C. United ("Defendant D.C. United"), was a professional sports team licensed to do business in the District of Columbia.

4. At all relevant times herein, Christopher Annunziata, M.D. ("Dr. Annunziata") was a licensed physician practicing medicine in the District of Columbia who held himself out to the public, including players on the Defendant D.C. United team, such as Plaintiff Bryan Namoff, as a physician competent to provide healthcare services to athletes.

5. At all relevant times herein, Commonwealth Orthopaedics & Rehabilitation P.C. d/b/a Commonwealth Orthopaedics ("Commonwealth Orthopaedics"), rendered healthcare to Plaintiff Bryan Namoff through its employees, agents and/or

servants, including Dr. Annunziata, acting within the course and scope of his employment.

6. At all relevant times herein, Dr. Annunziata was designated as a team physician and practiced medicine as the agent, servant and/or employee of Defendant D.C. United in the District of Columbia, acting within the course and scope of his employment with Defendant D.C. United including treating Plaintiff Bryan Namoff in the District of Columbia.

7. At all relevant times herein, Defendant Thomas Soehn ("Defendant Soehn") was the head coach of Defendant D.C. United, and an agent, servant, and/or employee of Defendant D.C. United acting within the course and scope of his employment.

8. At all relevant times herein, Brian Goodstein ("Goodstein") was the team athletic trainer of Defendant D.C. United, and an agent, servant, and/or employee of Defendant D.C. United acting within the course and scope of his employment.

9. Beginning in 2001, Plaintiff Bryan Namoff was an employee of MLS. He played soccer for Defendant D.C. United, an entity separate from MLS.

10. Plaintiff Bryan Namoff has a life-long history with soccer. Before playing for Defendant D.C. United, Plaintiff Bryan Namoff played collegiate soccer for the Bradley University Braves. He led Bradley University to two consecutive Missouri Valley Conference finals and their first

National Collegiate Athletic Association Tournament appearance. He was named Bradley Scholar Athlete of the Week on three occasions. Plaintiff Bryan Namoff was also named to the All-Midwest Region First Team and All-Missouri Valley Conference First Team. He finished his four-year college career with 32 goals and 17 assists for a total of 81 points. He is the third-leading scorer in Bradley University history.

11. Plaintiff Bryan Namoff began playing for Defendant D.C. United as a defender in 2001. He was an important member of Defendant D.C. United's back line, playing 195 games, recording 16,045 minutes of play, and notching four goals and sixteen assists. In 2004, he was a vital part of the team leading to Defendant D.C. United's victory for the MLS Cup. In 2007, Plaintiff Bryan Namoff entered as a substitute for the U.S. Men's National Team in a 3-1 victory against Denmark. During the 2009 season, prior to his career-ending injury, Plaintiff Bryan Namoff started in twenty-six games and was off the field for only fourteen minutes and registered a career-high two goals, both of which were game winners, and four assists.

12. On or about September 9, 2009, Plaintiff Bryan Namoff sustained a hit to the head while playing in a game in the District of Columbia against the Kansas City Wizards (now called Sporting Kansas City). The hit occurred when Plaintiff

Bryan Namoff and an opponent collided causing a blow to Plaintiff's head just behind his right temple by the shoulder blade of the opponent. There was visible snapping of his neck violently back to the left. Plaintiff Bryan Namoff was able to get up on his own; however, Dr. Annunziata never left the sidelines to examine Plaintiff Bryan Namoff. Plaintiff Bryan Namoff felt lost and out of it but finished the game.

13. Following the game, in the locker room, Plaintiff Bryan Namoff told Goodstein that he did not feel right, that the lights were hazy, and that he had no peripheral vision. Goodstein retrieved Dr. Annunziata and an optometrist. Dr. Annunziata and Goodstein, or any other agent, servant, and/or employee of Commonwealth Orthopaedics and Defendant D.C. United did not assess, evaluate, and/or examine Plaintiff Bryan Namoff after the game. Goodstein told Plaintiff Nadine Namoff that Plaintiff Bryan Namoff had sustained a concussion.

14. On or about September 10, 2009, Plaintiff Bryan Namoff told Goodstein that he had a headache. Plaintiff Bryan Namoff participated in the pool/water exercises but stopped after approximately 25 minutes because he felt terrible. He had the physical symptoms of a concussion, including, headache, fatigue, and not feeling right. He told Goodstein how he was feeling and continuously advised Goodstein of his headaches.

15. Upon information and belief, Defendant Soehn was advised of Plaintiff Bryan Namoff's status and symptoms. Additionally, Defendant Soehn was involved in the decision-making process to return Plaintiff Bryan Namoff to play.

16. On September 11, 2009, Plaintiff Bryan Namoff went to the practice facility and participated in a film session. Plaintiff Bryan Namoff did not participate in the physical practice as he was still exhibiting the physical symptoms of a concussion, including, headache, fatigue, and not feeling right.

17. From September 9, 2009 up to and including September 12, 2009, Plaintiff Bryan Namoff was not assessed, evaluated, and/or examined by Dr. Annunziata and Goodstein, or any other agent, servant and/or employee of Commonwealth Orthopaedics and Defendant D.C. United prior to being allowed to return to play.

18. Additionally, despite having preseason neurocognitive testing (ImPact) from 2008, Dr. Annunziata and Goodstein, or any other agent, servant and/or employee of Commonwealth Orthopaedics and Defendant D.C. United never conducted a repeat neurocognitive test (ImPact) for comparative purposes after Plaintiff Bryan Namoff's September 9, 2009 concussive injury.

19. On or about September 12, 2009, Defendant D.C. United played against the Seattle Sounders FC in the District of

Columbia. Defendant D.C. United was down two starting defenders and the decision was made for Plaintiff Bryan Namoff to play in the game. Aside from the limited pool exercises, this game was the first time Plaintiff Bryan Namoff physically exerted himself since the September 9, 2009 game. He played the entire game against the Seattle Sounders FC. Plaintiff Bryan Namoff's reaction to the game was slow; it was the worst game of his career. Throughout the game, Plaintiff Bryan Namoff experienced and exhibited post-concussive symptoms, which were significantly exacerbated by the end of the game.

20. Following the game, Plaintiff Bryan Namoff reported to Goodstein and Dr. Annunziata that he was having difficulty focusing, that he was dizzy, that the lights were hazy, and that he did not feel right. Once again, Dr. Annunziata and Goodstein, or any other agent, servant and/or employee of Commonwealth Orthopaedics and Defendant D.C. United did not assess, evaluate, and/or examine Plaintiff Bryan Namoff. They merely stated that they would monitor him.

COUNT I

(Medical Negligence/Respondeat Superior - Personal Injury)

Plaintiffs replead and incorporate by reference herein each and every allegations set forth above, and further state as follows:

21. Defendant D.C. United selects team physicians and team trainers, such as Dr. Annunziata and Goodstein, who are responsible for advising the team and its players if a player's physical condition will adversely affect the player's performance or health. The team physicians are also responsible for advising the team and its players if a player's condition will be significantly aggravated or made permanent by continued performance.

22. At all times mentioned herein, as the team physician and team trainer responsible for making return to play decisions, Dr. Annunziata and Goodstein owed a continuing duty to Plaintiff Bryan Namoff of exercising that degree of skill, care, caution, diligence, and foresight exercised by others similarly situated in the field providing healthcare services to athletes, including but not limited to providing healthcare services in a reasonable and prudent manner with due care and regard to the health and well-being of the team's athletes, including Plaintiff Bryan Namoff.

23. Defendant D.C. United, acting by and through its agents, servants and/or employees, Dr. Annunziata and Goodstein, breached the duties of care owed to Plaintiff Bryan Namoff. The Defendant D.C. United was negligent in its management, care and treatment of Plaintiff Bryan Namoff, on

September 9, 2009 and continuing thereafter, including but not limited to the following particulars:

- a. negligent failure to follow the proper guidelines and protocols for the management and treatment of concussions and return-to-play decisions;
- b. negligent failure to conduct post-injury neurocognitive testing (ImPact) prior to making the return to play decision;
- c. negligent failure to compare and contrast preseason neurocognitive testing (ImPact) with post-injury neurocognitive testing (ImPact) prior to making the return to play decision;
- d. negligent failure to properly assess, evaluate, and/or examine Plaintiff Bryan Namoff at the time of his injuries;
- e. negligent failure to properly and safely assess, evaluate, examine and/or monitor Plaintiff Bryan Namoff after his injuries;
- f. negligent failure to properly assess, evaluate, examine, and/or follow-up with Plaintiff Bryan Namoff prior to making the return to play decision;
- g. negligent decision to permit Plaintiff Bryan Namoff to play in the September 12, 2009 game, three days after sustaining a concussion;
- h. negligent failure to timely refer Plaintiff Bryan Namoff for evaluation and treatment;
- i. Defendant D.C. United was otherwise negligent;
and
- j. other acts of negligence not specifically known at this time.

24. As a direct and proximate cause of the Defendant's aforesaid negligence, Plaintiff Bryan Namoff has suffered

serious permanent and disabling damage to his body including, but not limited to, permanent traumatic brain injury; permanent cognitive deficits and memory problems; permanent fatigue; permanent headaches; permanent vestibular problems; permanent visual motion hypersensitivity; and sleep problems; he has incurred, and will continue to incur, medical, hospital, rehabilitative, and pharmaceutical expenses in an effort to care for his injuries; he has suffered, and will in the future suffer a loss of earnings and earnings capacity; he has endured and will continue to endure pain and suffering, disability, mental impairment, emotional distress, mental anguish, humiliation, embarrassment and impairment of the enjoyment and quality of a full and complete life.

WHEREFORE, Plaintiff Bryan Namoff demands judgment of and against Defendant, D.C. Soccer LLC d/b/a D.C. United, in the full amount of Ten Million Dollars (\$10,000,000.00), plus pre-judgment interest and costs, and such other and further relief as this Court may deem just and proper.

COUNT II

(Negligence/Respondeat Superior - Personal Injury)

Plaintiffs replead and incorporate by reference herein each and every allegations set forth above, and further state as follows:

25. At all times mentioned herein, Defendant Soehn owed a continuing duty to act in a reasonable and prudent manner with due care and regard to the members of his team, including Plaintiff Bryan Namoff, to ensure the health and safety of a player, such as Plaintiff Bryan Namoff, in returning to play soccer after an injury.

26. Defendant Soehn, individually, and Defendant D.C. United, acting by and through its agent, servant and/or employee Defendant Soehn, breached the duties owed to Plaintiff Bryan Namoff. The Defendants Soehn and Defendant D.C. United were negligent inter alia:

- a. negligent failure to follow the proper guidelines and protocols for the management and treatment of concussions and return-to-play decisions;
- b. negligent failure to conduct post-injury neurocognitive testing (ImPact) prior to making the return to play decision;
- c. negligent failure to compare and contrast preseason neurocognitive testing (ImPact) with post-injury neurocognitive testing (ImPact) prior to making the return to play decision;
- d. negligent decision to permit Plaintiff Bryan Namoff to play in the September 12, 2009 game, three days after sustaining a concussion;
- e. Making the return to play decision based on Defendant D.C. United's best interests because they were down two starting defensemen and failing to make the decision on the return to play on the best interests of Plaintiff Bryan Namoff taking into consideration his health and injuries;

- f. Defendants Soehn and Defendant D.C. United were otherwise negligent, and
- g. Other acts of negligence not specifically known at this time.

27. As a direct and proximate result of Defendants' aforesaid negligence, Plaintiff Bryan Namoff suffered injuries and damages as set forth in paragraph 24 above.

WHEREFORE, Plaintiff Bryan Namoff demands judgment of and against Defendants, D.C. Soccer LLC d/b/a D.C. United, and Thomas Soehn, and each of them jointly and severally, in the full amount of Ten Million Dollars (\$10,000,000.00), plus pre-judgment interest and costs, and such other and further relief as this Court may deem just and proper.

COUNT III

(Negligent Training and Supervision and Failure to Implement/Enforce Policies and Procedures)

Plaintiffs replead and incorporate by reference herein each and every allegation set forth above and further state as follows:

28. Defendant D.C. United, acting by and through its agents, servants, and/or employees, had a continuing duty to reasonably, carefully and conscientiously implement and/or enforce, supervise and monitor the implementation of policies and procedures regarding returning a player to practice or play after sustaining a concussion, and train its employees, agents

and servants on the dangers of premature post-concussive practice or play to reasonably assure, inter alia, that decisions affecting a player after injury were made in a reasonable and prudent manner, with due care and regard for the health, safety and well being of the Plaintiff Bryan Namoff, and those similarly situated.

29. Defendant D.C. United, acting by and through its agents, servants, and/or employees, breached the duties owed to Plaintiff Bryan Namoff and was negligent by failing to implement and/or enforce return to play policies and procedures, train and supervise, as set forth above.

30. As a direct and proximate result of Defendant D.C. United's aforesaid negligent implementation and/or enforcement of return to play policies and procedures, training, and supervision, Plaintiff Bryan Namoff suffered injuries and damages, as set forth in paragraph 24, above.

WHEREFORE, Plaintiff Bryan Namoff demands judgment of and against Defendant D.C. Soccer LLC d/b/a D.C. United, in the full amount of Ten Million Dollars (\$10,000,000.00), plus pre-judgment interest and costs, and such other and further relief as this Court may deem just and proper.

COUNT IV
(Loss of Consortium)


Plaintiffs replead and incorporate by reference herein each and every allegations set forth above, and further state as follows:

31. Plaintiffs Bryan Namoff and Nadine Namoff were living together as Husband and Wife at the time of the incidents complained of herein, and as a direct and proximate result of the Defendants' aforesaid negligence, Plaintiffs have suffered the loss of society, companionship, and consortium of each other, to their great and substantial damage.

WHEREFORE, Plaintiffs Bryan Namoff and Nadine Namoff, as Husband and Wife, demand judgment of and against Defendants, D.C. Soccer LLC d/b/a D.C. United and Thomas Soehn, and each of them jointly and severally, in the full amount of Two Million Dollars (\$2,000,000.00), plus pre-judgment interest and costs, and such other relief as this Court may deem just and proper.

Respectfully submitted,

**CHAIKIN, SHERMAN, CAMMARATA
& SIEGEL, P.C.**



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