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Bucs Can't Block Ex-Kicker's \$20M Infection Suit With CBA

By Jeff Zalesin

Law360, New York (September 24, 2015, 8:17 PM ET) -- The [Tampa Bay Buccaneers](#) must face a \$20 million complaint over former placekicker Lawrence Tynes' career-ending staph infection in Florida state court, a federal judge in the state ruled Thursday, finding the case didn't rely on the [NFL's](#) collective bargaining agreement and therefore wasn't preempted.

U.S. District Judge James S. Moody Jr. granted Tynes' motion to remand the case to a state court, where the kicker will have a chance to prove the team caused his infection by keeping its training facility in unsanitary condition. The Bucs argued that the judge should instead dismiss the case under the federal Labor Management Relations Act, which preempts state-law suits over alleged violations of labor-management contracts.

"Defendant attempts to argue that Tynes' claims are essentially claims related to the medical treatment he received, an area that the CBA covers," the judge said. "A careful reading of the claims, however, quickly disposes of this argument because the claims have nothing to do with medical treatment. The gravamen of the claims is whether the facility was inadequately sanitized to prevent the spread of infection."

Judge Moody said the facts alleged in Tynes' complaint are "nearly identical" to the ones at issue in player Joe Jurevicius' infection suit against the Cleveland Browns, which was remanded from Ohio federal court to state court in 2010. The Jurevicius decision, which Tynes had cited in court papers, was "highly persuasive," the judge said.

Meanwhile, the judge said he wasn't convinced by the Bucs' argument that the Eleventh Circuit's 2010 decision in *Atwater v. NFLPA et al.* supported preemption in this case. The Atwater court found that NFL players' state law claims over losses in a Ponzi scheme were preempted because the CBA contained explicit provisions on financial planning, including one obligating the NFL to use its "best efforts" and another providing that the players themselves are ultimately responsible.

"In contrast, in this case, there is no disclaimer in the CBA regarding the conditions of a facility that narrows the scope of a team's common law duty, nor is there any analogous provision requiring the team to use its 'best efforts' to maintain a clean facility," Judge Moody said. "Simply put, there is nothing in the CBA regarding the condition of facilities."

Tynes [claimed in his April complaint](#) that he was with Buccaneers for only a month before contracting methicillin-resistant staphylococcus aureus, or MRSA, at the team's training facility.

Shortly after joining the team, Tynes had a "toenail procedure" that resulted in an open wound on his foot, according to the suit. While he was healing, he was sharing hot tubs with other team employees and players who were infected with MRSA, without prior warning from the team, the suit claimed. A

month later, his toe wound was infected, and his NFL career was over, according to the complaint.

The team allegedly had encouraged Tynes to use its facilities, saying they were the best in the business and equipped to handle the toe procedure, according to the complaint. But all the while, the team was concealing individual incidents of MRSA infection at the facility, Tynes said.

Tynes said he had to undergo three surgeries and can no longer work as an NFL kicker. He claimed he would have played football for “another six or seven additional seasons,” earning as much as \$3 million a year, “given his championship experience and accuracy.”

Tynes was set to earn \$840,000 in 2013, with a \$65,000 roster bonus if he made the team in September, according to a copy of his contract the Bucs filed with the court.

The Bucs [removed the complaint](#) to federal court in July, then [moved to dismiss it](#), arguing the claims were preempted by the LMRA because they depended on duties arising out of the CBA. The team said that by filing a since-withdrawn grievance over his injury, Tynes had effectively acknowledged that his claims were governed by the agreement.

But Tynes insisted that the team was [distorting his claims](#) in an effort to make them appear preempted. He said the grievance was not relevant to how the claims in his present complaint should be interpreted.

Thursday’s opinion did not discuss the withdrawn grievance.

Stephen F. Rosenthal, an attorney for Tynes, said the kicker was ready to pursue his claims in state court.

“This is the ruling that we had hoped for,” he said.

An attorney for the Bucs did not immediately respond to a request for comment.

Tynes is represented by Stephen F. Rosenthal and Matthew P. Weinshall of [Podhurst Orseck PA](#) and Bradford R. Sohn of The Brad Sohn Law Firm PLLC.

The Buccaneers are represented by Aram P. Megerian and David C. Borucke of [Cole Scott & Kissane PA](#), and Daniel L. Nash, Gregory W. Knopp and James E. Tysse of [Akin Gump Strauss Hauer & Feld LLP](#).

The case is Tynes v. Buccaneers Limited Partnership et al., case number [8:15-cv-01594](#), in the U.S. District Court for the Middle District of Florida.

— Additional reporting by Kat Greene and Y. Peter Kang. Editing by Ben Guilfoy.