



IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

Case: S ECI 2023 00969

No. Filed on: 14/03/2023 11:45 AM

B E T W E E N:

**JARAD MAXWELL ROOKE**

Plaintiff

- and -

**AUSTRALIAN FOOTBALL LEAGUE (ACN 004 155 211)**

Defendant

### WRIT

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Date of Document:	14 March 2023	Solicitors Code:	113394
Filed on behalf of:	The Plaintiff	Telephone:	(03) 9133 0288
Prepared by:	Margalit Injury Lawyers Suite 4, 107-111 High Street Prahran VIC 313	Ref:	21721
		Email:	info@margalitlawyers.com.au

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### TO THE DEFENDANT

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;

- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED 14 March 2023**

Prothonotary

**THIS WRIT** is to be served within one year from the date it is filed or within such further period as the Court orders.

**INDORSEMENT OF CLAIM PURSUANT TO RULE 5.04(2)(b)**

This proceeding is commenced as a representative proceeding pursuant to section 33C of the *Supreme Court Act 1986* (Vic).

*Preliminary*

1. The plaintiff brings this proceeding on his own behalf and on behalf of all other persons who:
  - (a) played as a professional player employed by one or more Australian Football League (**AFL**) Clubs between 1985 and 14 March 2023; and
  - (b) were listed players (**Players**) with affiliated AFL Clubs subject to and bound by the rules and regulations of the AFL as determined by the defendant; and
  - (c) suffered concussion in the course of training for or playing an AFL game in the AFL Competition; and
  - (d) have suffered damages by way of closed head injury caused by the head strike causing concussion or concussions; or
  - (e) are the legal personal representatives of the estates of any deceased persons who came within paragraphs (a) to (d) above.

**(group members).**
2. The plaintiff (known as Max Rooke) at all relevant times between 2001 to October 2010:
  - (a) was a listed player employed by an AFL Club, being the Geelong Football Club;
  - (b) was subject to the Rules and Regulations of the AFL as determined by the defendant through the Board of Commissioners (**AFL Commission**);
  - (c) suffered concussion in the course of his engagement by the Geelong Football Club.
3. As at the time of the commencement of this proceeding there are 7 or more group members.

*The defendant*

4. The defendant was and is a corporation capable of being sued.
5. From 1985 the defendant (formerly known as the Victorian Football League - **VFL**), pursuant to its Constitution as amended from time to time:
  - (a) conducted a national football competition (**AFL Competition**).
  - (b) was governed by the AFL Commission.
  - (c) had the power to determine the terms and conditions upon which persons may play football for clubs and upon which football matches may be played by clubs.
  - (d) had the power to make, vary and administer rules, regulations and laws relating to AFL football (together **the Rules**).
  - (e) had the power to enforce the Rules including to impose sanctions for breach of the Rules.
  - (f) had the power to grant licenses to legal entities to field a team (**AFL Clubs**) in the AFL League, and did so from time to time to affiliated Clubs including:
    - (i) Adelaide Football Club Ltd.
    - (ii) Brisbane Bears-Fitzroy Legal Club Ltd.
    - (iii) Carlton Football Club Ltd.
    - (iv) Collingwood Football Club Ltd.
    - (v) Essendon Football Club Ltd.
    - (vi) Footscray Football Club Ltd.
    - (vii) Fremantle Football Club Ltd.
    - (viii) Geelong Football Club Ltd.
    - (ix) GCFC Ltd.

- (x) Western Sydney Football Club Ltd (trading as Greater Western Sydney Football Club).
- (xi) Hawthorn Football Club Ltd.
- (xii) Melbourne Football Club Ltd.
- (xiii) North Melbourne Football Club Ltd.
- (xiv) Port Adelaide Football Club Ltd.
- (xv) Richmond Football Club Ltd.
- (xvi) Sydney Swans Ltd.
- (xvii) St Kilda Saints Football Club Ltd.
- (xviii) India Pacific Ltd (trading as West Coast Eagles).

### **Particulars**

A reference to AFL means, where applicable, a reference to VFL.

#### *The plaintiff*

6. From 2001, the plaintiff was registered with the defendant as a professional football player listed with the Geelong Football Club.
7. Between 2002 and 2010 the plaintiff trained and played 135 professional games (**Matches**) in the AFL Competition for the Geelong Football Club.
8. At all relevant times (herein being between 2001 and 2010), the plaintiff was relevantly subject to the direction and control of:
  - (a) the Geelong Football Club; and
  - (b) the defendant -

insofar as each party made, implemented, and enforces Rules, policies, and procedures relevant to the risk of concussion and cessation of play due to injury.
9. In the course of his playing career, and associated training, the plaintiff suffered concussions (**the concussions**).

### Particulars

- (i) Insofar as the plaintiff can presently say, on approximately 20 to 30 occasions, including head strikes causing unconsciousness on at least 2 occasions.
- (ii) Further particulars will be provided.

#### *Knowledge of defendant, duty of care and breach*

10. At all relevant times, and from time to time as the state of medical knowledge developed, the defendant knew or ought to have known:
- (a) of the potential long-term consequences of concussion suffered by AFL Players while training for and playing AFL football.
  - (b) of the need to make and enforce Rules reasonably designed so as to mitigate consequences of long-term injury arising from concussion.

### Particulars of knowledge

The state of medical knowledge will be subject to expert evidence.

Inter alia:

- (i) Since 1906 there has been medical concern raised that concussion mismanagement is a risk to player health and safety in American football: Edward H Nichols and Homer B Smith, 'The Physical Aspect of American Football' (1906) *Boston Medical and Surgical Journal* 1, 3 cited in Emily Harrison, 'The First Concussion Crisis: Head Injury and Evidence in Early American Football' (2014) *Journal of Public Health* 104(5).
- (ii) Since 1927 it has been known that concussion is capable of causing injury without complete resolution, with secondary degenerative changes occurring: M Osnato and V Giliberti, "Post concussion Neurosis – Traumatic Encephalitis" (1927) 18 *Archives of Neurology & Psychiatry* 181.
- (iii) Since 1976 it has been known that it would be reasonable to advise patients to cease collision sports if they have suffered two or more episodes of head injury associated with loss of consciousness or

- amnesia: ID Adams “Brain Damage in Sport” (1976) 307 *The Lancet* 585.
- (iv) Since 1980 it has been recommended or proposed that certain contact sports should mandate four weeks ineligibility after a knockout in order to avoid cumulative effects of injury: KW Lindsay et al, “Serious Head Injury in Sport” (1980) 281 *British Medical Journal* 789, 790, 791.
  - (v) Since around 1985, the Victorian Football League commenced researching the issue of concussion in football: Australian Football League (2012). AFL Responsible Approach to Concussion in the AFL Information Paper.
  - (vi) Since at least 1992, it has been known that brain injuries are one of the most catastrophic athletic injuries and that once a player has incurred a concussion there is a heightened risk of a second or further concussion: RC Cantu “Cerebral Concussion in Sport: Management and Prevention” (1992) 14(1) *Sports Medicine* 64, 70.
  - (vii) From around 1992, the AFL commenced annual injury surveillance system. The first AFL Injury Surveillance Report published in 1993 listed concussion as an injury.
  - (viii) Since at least 1993, it has been known that minor head trauma may result in long term persistent clinical symptoms and neurological, cognitive, and psychological sequelae with a potential risk of the effect of cumulative head injuries: JE Wilberger, “Minor Head Injuries in American Football Prevention of Long-Term Sequelae” (1993) 15(5) *Sports Medicine* 338, 338-339.
  - (ix) In 1994, the National Health and Medical Research Council (**NHMRC**) convened the “Head and Neck Injuries in Football” Panel and published a report, including noting evidence of long term effects from concussion, and identifying the need for sport to take proactive steps to mitigate potential harm.
  - (x) Since at least 1998 it has been known that there is a potential genetic susceptibility to Chronic Traumatic Encephalopathy (**CTE**) caused by brain injury in sports, and that a milder form of CTE could occur in sports associated with repetitive blows to the head: B Jordan, ‘Genetic Susceptibility to Brain Injury in Sports: A role for genetic testing in athletes’ (1998) 26(2) *The Physician and Sports Medicine* 25.

- (xi) In 2001, the First International Symposium on Concussion in Sport was held in Vienna (later known as the Concussion in Sport Group – **CISG**), and published the ‘Summary and Agreement Statement of the First International Conference on Concussion in Sport’ (known as the Vienna consensus) with the definition “*Sports concussion is defined as a complex pathophysiological process affecting the brain, induced by traumatic biomechanical forces*”.
  - (xii) In 2001, there was published research informing physicians of the “*important public health concern*” of “*chronic traumatic brain injury*” and the “*long-term neurologic consequences of repetitive concussive and sub-concussive blows to the brain*” as found primarily in boxing but which can “*be anticipated in other contact sports such as soccer, football, ice hockey, and the martial arts*”: MH Rabadi and BD Jordan, “The Cumulative Effect of Concussion in Sports” (2001) 11 *Clin J Sport Med* 194, 194.
  - (xiii) In 2004 the Second International Symposium on Concussion in Sport was held and released an updated consensus statement.
  - (xiv) From at least 2005 it was known that, with respect to retired National Football League (**NFL**) players, that those who had three or more concussions had a fivefold prevalence of mild cognitive impairment compared to NFL retirees with no history of concussions: Kevin M Guskiewicz et al, ‘Association between Recurrent Concussion and Late-Life Cognitive Impairment in Retired Professional Football Players’ (2005) 57 *Neurosurgery* 719, 722.
  - (xv) The 2007 AFL Annual Report noted concerns about concussive injuries at the elite level of sport.
  - (xvi) In 2008, the Third International Conference on Concussion in Sport was held and released a consensus statement.
  - (xvii) In 2008, the AFL issued its first iteration of concussion guidelines.
  - (xviii) In 2010, the AFL established an internal concussion working group.
11. At all relevant times it was reasonably foreseeable to the defendant that AFL Players were vulnerable to the injury of concussion caused by head strikes while playing AFL football.
  12. At all relevant times, the defendant had the power and ability to exercise control over:



- (a) the Rules, policies, and procedures relevant to the risk of on-field injury, head strikes, concussion, and cessation of play upon Player injury together with imposing appropriate post-concussion protocols.
- (b) Directions, policies, and procedures of AFL Clubs imposed on Players relevant to same.

### **Particulars**

- (i) The plaintiff refers to the powers of the Defendant set out in the Constitution above.
  - (ii) Further particulars of applicable policies, procedures, and Rules, as amended from time to time, relevant to the risk of on-field injury and concussion, will be provided upon discovery.
13. At all relevant times, the defendant owed AFL Players a duty to take reasonable care for their safety and to avoid exposing them to unnecessary risk of harm arising from concussion.
14. The applicable standard of care required the defendant to take reasonable steps to:
- (a) inform itself regarding the risks of concussion to players, in line with the state of medical knowledge from time to time.
  - (b) make Rules, policies, procedures, and protocols applicable to Clubs and Players reasonably designed so as to mitigate, ameliorate, and reduce the risk of long term injury arising from repetitive minor head strikes, and concussion, and to review same from time to time.
  - (c) ensure Clubs abided by the Rules, policies, and procedures in Matches, in training and in directing players.
  - (d) provide information regarding the risk of long-term injury arising from repetitive mild head strikes and concussion to Clubs and Players.
15. The defendant breached the duty owed to the plaintiff.

### **Particulars of negligence**

- (a) Failing to make and enforce Rules, policies, procedures and protocols for Players and Clubs reasonably designed in line with the state of medical

knowledge so as to mitigate, ameliorate and reduce the incidence of concussion and the consequences thereof.

- (b) Failing to adequately conduct risk assessments as to the risk of head strike and concussion injury, and to review the risk assessments from time to time.
  - (c) Failing to educate, instruct, or inform Players regarding the symptoms and risks of long term injury arising from concussion, in particular the risks associated with an early return to play.
  - (d) Failing to require, as a Rule, certification that a Player is fit to play from a properly qualified medical practitioner following a concussive episode before the Player resumes training or competition.
  - (e) Failing to enforce, and to cause affiliated Clubs to enforce, best practice medical treatment following a concussive episode.
  - (f) Failing to provide any, or any sufficient, education to Clubs or Players around concussion and management of concussion.
  - (g) Failing to require or ensure, adequately or at all, the proper monitoring of Players for signs or symptoms of concussion.
  - (h) Allowing and or failing to prevent the plaintiff from returning to play before a reasonable time of recovery after suffering a concussion.
  - (i) Failing to assess the plaintiff, adequately or at all, for concussion and the aftereffects following a head strike.
  - (j) Placing the plaintiff at an unreasonable risk of danger of long-term injury caused by concussion.
  - (k) Further particulars will be provided.
16. As a result of the breach of duty and negligence of the defendant, the plaintiff has suffered injury, loss, and damage.

#### **Particulars of injury**

- (i) Production, aggravation, exacerbation and or acceleration of closed head injury, cognitive impairment.
- (ii) Consequential and associated psychiatric injury.
- (iii) Further particulars will be provided.

#### **Particulars of loss and damage**

- (i) The plaintiff was born on 19 December 1981.
- (ii) The plaintiff has and or will incur associated medical expenses.

- (iii) The plaintiff has suffered compromise, reduction, and or diminution of the plaintiff's future earning capacity.
- (iv) Particulars of the plaintiff's loss and damage will be provided prior to trial.

*Common Questions of Law or Fact*

2. The questions of law or fact common to the claims of the plaintiff and each of the group members are:
  - (a) The state of medical knowledge regarding the risk of long-term injury from head strikes from time to time.
  - (b) What the defendant ought reasonably to have known regarding the risk of long term injury from head strikes and concussions sustained by AFL Players from time to time.
  - (c) What the defendant ought reasonably to have done regarding the risk of long term head injury from head strikes and concussions sustained by AFL Players from time to time.
  - (d) What if any risk assessments the defendant did or should have conducted relevant to the risk of long-term injury caused by concussion for Players.
  - (e) What the Rules, policies, and procedures of the defendant relevant to the risk of head strikes and concussion to Players were from time to time.
  - (f) Whether, and the extent to which, the defendant had and exercised a power to ensure that Clubs made and enforced policies and procedures, capable of reducing the risk of long-term injury caused by concussion to the plaintiff and group members.
  - (g) Whether, and the extent to which, the defendant had and exercised the power to create and enforce Rules, policies, and procedures, capable of reducing the risk of long-term injury caused by concussion to the plaintiff and group members.
  - (h) Whether the defendant owed a common law duty of care to the plaintiff as a listed Player and the group members relevant to the risk of concussion sustained while training for and playing AFL Football and if so the content of the duty.
  - (i) Whether the defendant breached any duty owed to the plaintiff and the group members.
  - (j) The principles for identifying and measuring compensable losses suffered by the plaintiff and the group members resulting from the breaches alleged.

**AND THE PLAINTIFF CLAIMS on his own behalf and on behalf of the group members:**

- A. Damages.
- B. Interest.
- C. Costs.

**Tim T Tobin**  
**Stella Gold**

*Margalit Lawyers*  

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**MARGALIT INJURY LAWYERS**  
Solicitors for the Plaintiff

1. Place of trial— Melbourne
2. Mode of trial— Judge and jury of six
3. This writ was filed— for the plaintiff by Margalit Injury Lawyers, of Suite 4, 107-111 High Street, Prahran VIC 3181
4. The address of the plaintiff is — 1/3 Moonah Place, Torquay VIC 3228
5. The address for service of the plaintiff is— Margalit Injury Lawyers, of Suite 4, 107-111 High Street, Prahran VIC 3181
6. The email address for service of the plaintiff is— [info@margalitlawyers.com.au](mailto:info@margalitlawyers.com.au)
7. The address of the defendant is— AFL House, 140 Harbour Esplanade, Docklands VIC 3008