



TCU

## TCU football: Legal experts review Listenbee, TCU case

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Kolby Listenbee's personal injury lawsuit against TCU, football coach Gary Patterson and others has created a firestorm of opinions.

A few of his former teammates have ripped Listenbee for filing the lawsuit, while others have voiced their support. Some believe Listenbee, an Arlington Bowie product, is just trying to find an excuse for what's been a failed NFL career to this point.

But experts believe this legal battle could turn into a high-stakes game for all involved.

"One of the big issues right now in all of athletics is Toradol and other injections like that which are given to players before every game when they're only supposed to be used once every three months," said Rogge Dunn, a Dallas-based attorney who successfully represented Texas Tech in the \$12.5 million wrongful termination lawsuit filed by former football coach Mike Leach in 2010.

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“This is prevalent and this lawsuit can have merit. Coaches telling kids to play through injuries, bullying kids into playing by saying, ‘You’re not tough enough. The sissy line is over there.’ It’s a real problem.”

The problem for Listenbee, though, is building a strong enough case. People following this case will likely hear the word “causation” hundreds of times.

Listenbee has to prove causation in three areas, Dunn said.

First, he has to find a medical expert to side with him that he was rushed back to the field. Listenbee sustained a pelvis injury in September 2015, but claims TCU coaches and staff didn’t give him adequate time to let the injury heal. The injury, according to Listenbee’s attorneys, should’ve been given six months to heal.

Instead, Listenbee played after three weeks.

“You’re going to need a doctor to say, ‘He should’ve sat on the sideline and been given time to allow the injury to naturally heal as opposed to rushing him back and giving him drugs to mask the pain,’ ” Dunn said.

If Listenbee makes a compelling case for this, it could become an even larger issue for TCU and Patterson. NCAA rules prohibit “knowingly providing medications to student-athletes contrary to medical licensure, commonly accepted standards of care in sports medicine practice, or state and federal law.”

The NCAA’s Sports Medicine Handbook discourages extensive use of corticosteroids and numbing agents.

The handbook states, “Injectable corticosteroids should be administered only after more conservative treatments, including nonsteroidal anti-inflammatory agents, rest, ice, ultrasound and various treatment modalities, have been exhausted. Repeated corticosteroid injections at a specific site should be done only after the consequences and benefits of the injections have been thoroughly evaluated.”

After that, Listenbee and his attorneys would need to find a medical expert who agrees permanent damage had been done with him returning too soon and that is the likely cause of why he had to undergo surgery to repair two sports hernias.

Finally, Listenbee would have to have an NFL general manager or player personnel guru state that his injuries caused him to fall in the draft. This becomes even more precarious given the number of players drafted in the NFL who go through a similar career path as Listenbee has gone through.

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In other words, it's hard to predict a prospect's success in the NFL.

"It's tough to prove causation all the way around — the injuries and that he would have made it even without them," Georgetown law professor Brad Snyder said.

Dunn agreed that the causation points are "three big hurdles he has to clear," but doesn't view it as far-fetched as others might think.

At the end of the day, Listenbee and his attorneys simply have to win over a jury. If each side has experts expressing differing opinions on the medical and NFL issues, a jury might side with Listenbee if he's able to show that TCU and Patterson bullied him to play through an injury.

Patterson already has an unfavorable past in this department. In 2010, former team physician Samuel Haraldson told the American Medical News that Patterson "verbally accosted" him when refusing to allow running back Ed Wesley back into a game with a head injury that Haraldson diagnosed as a concussion.

In his lawsuit, Listenbee paints Patterson in that sort of light too. He claims Patterson and other assistants threatened to tell NFL scouts that Listenbee's "not tough enough" to play in the NFL.

“The bullying thing could be a big plus for him (Listenbee),” Dunn said. “Let’s say it’s a close call on everything, so then the little things are what can persuade a jury. Let’s say it’s a close call for the jury, but Patterson comes across as a bully. They’re going to rule in the kid’s favor even if the kid really wasn’t rushed back too quickly just because Patterson’s a bully.

“A lawsuit is like a play or a dramatic movie where the jury is trying to figure out who the good guy is and the bad guy is. One expert says he was rushed back, one expert says he wasn’t. One says he would’ve made it in NFL, one says he wouldn’t. So the jury doesn’t know who to side with.

“But, if the one thing they know is Patterson is a jerk, or Patterson is a great granddad to these kids, that could be the determining factor. How are they going to view Patterson?”

On the flip side, Patterson and the school could poke holes in Listenbee’s case. An interview Listenbee did during his pro day at the school had him raving about the coaching staff and medical staff at TCU.

The injuries also didn’t stop Listenbee from posting the second fastest 40-yard dash time (4.39 seconds) among all wide receivers at the NFL Scouting Combine. Plus, the Buffalo Bills used a sixth-round draft pick on him in the 2016 draft and the Indianapolis Colts signed him to a reserve/future deal last month.

This has the makings of becoming a high-stakes game. TCU, Patterson and the rest of the defendants likely don’t want to settle this lawsuit and possibly open themselves up to more players suing them.

It’s not unheard of, though. The University of Illinois reached a \$250,000 settlement last spring with former offensive lineman Simon Cvijanovic. Cvijanovic said former Illini coach Tim Beckman forced him to play through knee and shoulder injuries.

That might be a better option than possibly losing in court even if TCU, Patterson and the other defendants feel strongly about their side.

As Dunn said, “The flip side is you get popped for \$1 million and now other players are like, ‘Wow, we’re going to be able to use that as a precedent when they’re acting bad again.’ It’s high stakes for TCU and coach Patterson and anybody else.”

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Kolby Listenbee was a two-sport standout at TCU. He played football and ran track. Paul Moseley - Star-Telegram

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