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## NFLer Didn't Miss Enough Plays For Policy Payout: Lloyd's

By **Ryan Boysen**

Law360 (January 31, 2019, 6:48 PM EST) -- Lloyd's of London has fired back against a suit by New England Patriots defensive end Deatrich Wise Jr. claiming he's owed \$600,000 after missing hundreds of plays due to injuries, with the insurer telling a Texas state court because Wise never missed any full games, he's not eligible for coverage.

Wise **filed his suit** in March, claiming Lloyd's had breached the terms of a policy designed to protect him from any loss of value in his capacity as an up-and-coming pro football player.

Wise sustained hand and shoulder injuries that sidelined him at several games during his last year of collegiate football in the 2016 season, which, Wise says, is why he ultimately signed with the Patriots for just \$3 million instead of substantially more. Wise said Lloyd's is obligated to make up the difference between that sum and the \$3.6 million trigger line in its policy.

In a motion for summary judgment filed Monday, however, Lloyd's said Wise had misunderstood the terms of the policy. It doesn't matter how many plays the college football star missed, Lloyd's said, only how many full games. And Wise did not miss a single full game during the 2016 season, Lloyd's said.

"The plaintiff was dressed for all of his team's games and in fact played in all of these games. Further, the plaintiff's complaint betrays his own argument," Lloyd's said. "As stated in the complaint, 'Wise participated in such games while injured, but could not physically participate in nearly half of the season's defensive plays.'"

"Even while he tried to plead that games equals plays, he could not avoid saying that games equals complete games," Lloyd's continued. "The plaintiff effectively conceded that games is not ambiguous since he could not avoid defining it as complete game."

Wise's attorney had said in a letter to the insurer that he missed 312 defensive plays during the season, a sum he asserted amounts to "5.2 games."

Lloyd's policy requires that the insured "be unable to participate for at least 28 days and in three regular and/or postseason games" to be eligible for coverage.

"The plaintiff did not satisfy the requirements under the policy, therefore Certain Underwriters [at Lloyd's] did not breach the contract," Lloyd's said.

In 2016, Wise was designated an "exceptional student-athlete" by the NCAA and was thus eligible for a policy that protects against future loss of earnings as a professional athlete due to collegiate injuries — a key factor in his decision to forgo draft eligibility, Wise said in his complaint.

Wise claimed his preseason accolades made him a likely first-round draft pick with the potential for big earnings, but that injuries to his hand and shoulder in the 2016-2017 season hurt his prospects. According to the suit, Wise's pain and physical limitations from his hand and shoulder injuries meant he played hurt for most of his final season at Arkansas. He missed a substantial number of defensive plays — the equivalent of nearly half the season, he said.

Wise was eventually drafted in the fourth round and signed a four-year deal with the Patriots worth just under \$3 million.

Neither party responded Thursday to requests for comment.

Wise is represented by Anthony L. Vitullo and Jon Azano of Fee Smith Sharp & Vitullo LLP.

Lloyd's is represented by Amy B. Boye and James M. Chambers of McDowell Hetherington LLP, and Robert M. Flannery, Alexander J. Mueller and Glenn Greenberg of Mendes & Mount LLP.

The case is *Wise v. The Professional Athlete Insurance Group PLLC et al.*, case number DC-18-03271, in the District Court of Dallas County, Texas.

--Additional reporting by Jess Krochtengel. Editing by Jay Jackson Jr.

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