

DAILY NEWS

Ex-drug program agents suing NFL

BY MICHAEL O'KEEFFE AND TERI THOMPSON
DAILY NEWS SPORTS WRITERS

Saturday, December 29th 2007, 4:00 AM

Almost 100 former NFL drug program agents claimed in a lawsuit filed Friday in Manhattan federal court that the league fired them after the IRS ruled they were employees, not independent contractors - a decision that could end up costing the NFL millions of dollars.

Comprehensive Drug Testing, the Long Beach, Calif., firm that now collects urine samples for the NFL, the NHL and Major League Baseball, also was named as a defendant in the lawsuit.

The suit, filed in the Southern District on behalf of 93 former drug agents, the men who collected 20,000 samples a year from players whose urine was later analyzed to determine if they used performance-enhancing or recreational drugs, also claims the agents were discriminated against because of their age.

The NFL abruptly terminated its army of urine collectors earlier this year following an IRS ruling that determined the agents were eligible for pension and welfare benefits and Social Security contributions they had already made.

NFL spokesman Greg Aiello said league officials had not seen the complaint and could not comment. CDT officials did not return a call for comment.

Robert J. Costello of Levy, Tolman & Costello, a New York law firm representing the DPAs, said the NFL has refused to abide by the IRS ruling, claiming that even if the DPAs were employees, the league retains the right to determine which of its employees receives benefits.

"We tried to resolve this many times with the NFL, but they kept changing their position," Costello said. "If they would have treated these guys decently, it wouldn't have come to this."

Anti-doping experts and congressional leaders have long called for the NFL to farm out its drug program to make it as independent as possible. But the league routinely dismissed those calls - NFL executives claimed their drug program was already the gold standard for American sports.

The drug agents were primarily retired police officers and FBI or DEA agents whose honesty and competence were paramount to the integrity of the league's program.

Based on interviews with DPAs and players over the last two years, the Daily News reported that the agents had discovered gaps in the NFL's drug-testing program that were easily exploited by players, including gaps in testing.

Former Mesa, Ariz., police detective Bill Richardson, a DPA assigned to the Arizona Cardinals and the lead plaintiff in the suit, told The News yesterday that the NFL's steroid program is well-managed, but that many DPAs have questions about the recreational drug program. Program officials, he said, sometimes turned a blind eye when players tried to substitute synthetic urine for their own.

"With weed and cocaine and stuff like that, there seemed to be a different set of rules," Richardson said. "They didn't like us asking questions. They were afraid of what we knew and who we talked to."

For years, the NFL paid its drug agents as independent contractors without benefits. But in 2006, DPA Thomas Lavin asked the IRS to rule on whether he was a contractor or an employee eligible for benefits. The IRS determined that Lavin and others who asked for similar rulings were employees. The NFL appealed the decision, but also decided to scrap its program and outsource collections to CDT.

The league told DPAs they could apply for jobs with CDT, but none has been hired by the California company, according to the lawsuit. The suit attributes that in part to age discrimination: When Jacksonville-based DPA William Logay told a CDT interviewer that he had grandchildren, the phone call was "quickly terminated" and his job application was rejected.

The suit also says that NFL Management Council coordinator of player benefits Mary Ann Fleming told one DPA the NFL was worried about the ages of its drug agents.

According to the lawsuit, during a conversation with a former DPA about the benefits battle, Fleming said, "You guys will be dead and buried before this is resolved."