

## The NFL Settlement -- What's the Deal?

Millions will watch the Super Bowl this Sunday. If it resembles the other NFL playoff games this year, we will see a highly charged, entertaining, competitive contest. We will also see violent, concussive head blows on virtually every play. Aided by high definition and super slow motion, we will watch as players on the receiving end of particularly spectacular knock-out hits sag lifelessly to the turf.

As part of the NFL's recent policy changes, it's likely that these concussed players will not be allowed to return to the game. For decades, the reverse was true. Players returned to games with head injuries as a matter of course while the NFL denied the link between football and cognitive, neurological or behavioral damage.

The NFL's denials became untenable as thousands of former NFL players filed individual lawsuits, as popular stars committed suicide by shooting themselves in the chest to preserve their brains for science, and as a continuing stream of these former athletes and their wives came forward to describe their lives with ALS, dementia, depression and worse.

In August, just a week before the start of football season, the NFL announced the settlement of the concussion litigation brought by its former players. This was news to attorneys who represented most of the players. They were not provided with details. A court filing a few weeks ago provided the first look at the specifics of the settlement. After review, many involved in the case, including the Judge, have questioned whether the settlement's terms are fair and reasonable. As a lawyer representing a number of former NFL players, including ex-Redskins I rooted for growing up, I find myself questioning many aspects of the deal.

First, the settlement is supposed to compensate for certain injuries that exist now or that develop over the next 65 years. Yet the settlement fund is "capped" at roughly \$700 million (which, incidentally, is approximately 10 percent of only one year's revenue for the NFL). Wisely, the Judge has questioned how approximately \$700 million can possibly cover all qualifying injuries that could be encountered by 18,000 players over 65 years. Will the money run out before many of these players develop symptoms?

Second, I worry that the settlement provides recovery for only five "Qualifying Diagnoses" even though many other conditions appear linked to concussions. For example, a diagnosis of depression (often associated with head trauma) is not a "Qualified Diagnosis."

Third, I worry we will learn that repeated head injury causes a far greater number of neurological and behavioral conditions than we currently suspect. As the brains of these former players are studied over the next six decades, will newly discovered injuries be covered by the settlement? The NFL's only concession on this point is to agree to make NFL attorneys available to discuss these scientific advances once every decade without any commitment to modify the settlement.

Fourth, I'm troubled by the NFL's promise to provide monetary awards for what is grotesquely referred to in the settlement as "Death with CTE." CTE, or Chronic Traumatic Encephalopathy, is the progressive, degenerative brain disease found in many former NFL players, including all pro linebacker Junior Seau who committed suicide. While a definitive diagnosis of CTE is generally made after death by reviewing slices of brain tissue, it seems inevitable that this disease will be diagnosed in living players. Some claim

this is already possible. But "Life with CTE" is not covered. Will the settlement as written encourage increasing numbers of depressed former players to commit suicide in an effort to prove they have CTE and gain financial benefits for their struggling families?

Fifth, I'm surprised the settlement includes only \$10 million for programs to promote safety and education relating to concussions. By comparison, one 30 second commercial during last year's Super Bowl cost \$4 million dollars. So, if the NFL wants to educate the public about the dangers of head injuries, they have set aside enough money to do so in a single 75 second Super Bowl commercial.

Finally, it is widely reported that one benefit of the settlement is that attorney fees will be paid by the NFL from a separate fund rather than from the monetary compensation awarded to the players. This reporting is inaccurate. Virtually all players who brought suit did so after signing contracts to pay their attorneys a percentage of their recovery. There is no indication that the NFL's separate legal fund will cover these payments.

As a fan, I'm looking forward to watching the Super Bowl. And it's fine with me that the owners and current players are making so much money. But are the players who built the game getting what they deserve?



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