

# Chicago Daily Law Bulletin®

Volume 159, No. 172

## 'Smart business on behalf of the NFL'

### Breaking down the \$765 million football concussion settlement

BY ROY STROM

Law Bulletin staff writer

Thomas A. Demetrio never wanted to be part of the group of more than 4,500 plaintiffs who sued the NFL for concussion-related damages in Philadelphia's federal court.

But the Corboy & Demetrio P.C. partner couldn't avoid it, and that may limit the payment to his highest-profile client.

Last week, more than 10 of the firm's clients — including the estate of former Chicago Bears safety Dave Duerson — were part of a \$765 million settlement the league struck with its retired players. The deal is pending approval from U.S. District Judge Anita B. Brody.

"We got into Philadelphia late, very late. Because we were trying to avoid it," said Demetrio, who represented Duerson and others with associate William T. Gibbs.

"Nothing against Judge Brody. Nothing against the federal court system in Pennsylvania. We just feel most comfortable on our own turf."

With some of the details for individual payments still unclear, Demetrio said he has at least one concern with the settlement.

"There's chatter that take, for example, if a player was diagnosed with (chronic traumatic encephalopathy) on autopsy, then that player's family would be entitled to up to \$4 million," Demetrio said.

"That's not right, to put a cap on what a family might be entitled to under the laws of wrongful death. ... And so, until all of that is determined, I really don't have a feel for whether or not this is, for the individual

families now, a wonderful settlement or not."

The Duerson family's case was filed in Cook County Circuit Court before the NFL moved it to Chicago's federal court. Chief U.S. District Judge James F. Holderman then transferred the case for discovery purposes to Philadelphia in August 2012.

By the time the Corboy & Demetrio lawyers were part of what Demetrio called the "bureaucratic nightmare" of multidistrict litigation, a core group of plaintiff lawyers had been named to handle the bulk of negotiations. He said he was kept "very well informed" and "treated with deference" by the negotiating group.

The core group of lawyers brokered the settlement in a mediation that was ordered by Brody after she delayed a July 22 ruling on the NFL's motion to dismiss the lawsuits.

The \$765 million settlement is not expected to include attorney fees — which would be decided later — and a class-action lawsuit against helmet-maker Riddell Inc. that was part of the multidistrict litigation was not part of the settlement.

A brain study presented as evidence in Duerson's case, conducted after the 50-year-old committed suicide by shooting himself in the chest in 2011, showed the Super Bowl-winning safety suffered from advanced brain damage known as chronic traumatic encephalopathy (CTE).

Demetrio said the settlement provided for a way to differentiate payments based on the severity of the player's injuries and said "those details have to be worked out."

He said it is unclear what the Duerson family will receive — whose lawsuit ESPN legal analyst Lester E. Munson Jr. called "potentially the most explosive of all concussion cases."

The settlement does, however, provide "what the Duerson



Thomas A. Demetrio

family always cared about," Demetrio said. "It provides for the health and safety of players going on 30, 40, even 50 years."

"The biggest legacy of this lawsuit (is) not the money. It's the education that everybody has received starting at peewee football on up. And the care that's going to be supplied these players to ensure they don't get put back into play sooner than they should."

Michael H. LeRoy, a labor and employment relations and law professor at the University of Illinois College of Law, said the settlement was "a rational effort to seek justice in a general way."

"I just think this is an incredibly complex picture," he said, referring to the difficulty in accounting for the wide-ranging severity of players' injuries.

As for the total amount of the settlement, which was portrayed as smaller than anticipated in some media reports, Demetrio said, "Even though it's a \$10 billion industry, this is not an insignificant amount of money. This is not an insult. It's not a slap in the face. It's a good faith proposal that I think is smart business on behalf of the NFL, a couple weeks before the start of the real season."

The settlement reserves \$675 million for injured players, half of which will be paid out within the



William T. Gibbs

next three years and the rest during the next 17 years, U.S. District Judge Layn Phillips, who acted as mediator, said in a news release. The fund can be increased by \$37.5 million if it does not meet the approved claims, the release says.

Players or their families "who present medical evidence of severe cognitive impairment, dementia, Alzheimer's, ALS" will be eligible for payments from the fund, the release said.

"The precise amount of compensation will be based upon the specific diagnosis, as well as other factors including age, number of seasons played in the NFL, and other relevant medical conditions," the release says.

SmithAmundsen LLC partner Timothy L. Epstein said the settlement is a "win-win" for players who will receive money sooner than otherwise expected and for the league, which might have avoided potentially damning evidence — what it knew about the long-term effects of concussions and when — that could have been found in discovery.

"It's a win for the NFL because in the player-plaintiffs' best case scenario, the NFL could have been in for well over \$1 billion, so (the settlement represents) certainly less money spent now," Epstein said.

“Are (the players) giving up potentially more money down the line? Yeah. But the people that need the money are going to be getting it sooner. ... So that’s a good thing.”

Epstein said the NFL’s settlement could have an impact on a concussion-related lawsuit filed against the NCAA in Chicago’s

federal court. That case — *Arrington v. NCAA*, filed by Joseph J. Siprut of Siprut P.C. — is seeking to certify a class of plaintiffs that includes male and female college athletes from multiple sports.

“I certainly think there’s going to be an impact of the NFL (settling) on their case, but the

prove-up on (the *Arrington*) case is much more difficult,” Epstein said. “I think that’s a difficult class to prove.”

Scott A. Andresen, chairman of The Chicago Bar Association’s Sports Law Committee, said it’s easy to criticize the size of a settlement “from the bleachers” — which was his initial reaction.

But he said the threat that the players’ injuries were to be dealt with under the league’s contract with the union could have led to a settlement.

“You have to accept there were very smart people in the room,” Andresen said, “with very smart reasons for getting to where they’re at right now.”