NFL Brain Damage Epidemic Continues

By Thomas A. Demetrio and William T. Gibbs

Over 300 lawsuits, incorporating nearly 5,000 former players as plaintiffs, have been filed against the NFL. Most cases allege negligence, fraudulent concealment and fraudulent misrepresentation regarding the NFL’s failures to protect its players from later-in-life cognitive and mental health issues and its concealment of those risks. The Judicial Panel on Multi-District Litigation has consolidated these cases, pursuant to 28 U.S.C. § 1407, in the Eastern District of Pennsylvania before the Honorable Anita B. Brody.

Brain damage in former NFL players is an epidemic that constitutes a national health crisis. Evidence of progressive, advanced brain damage, commonly referred to as Chronic Traumatic Encephalopathy (“CTE”), has been found in the neuropathological postmortem analysis of numerous former NFL football players. CTE is associated with symptoms of irritability, short-term memory loss, confusion, impaired judgment, impulse control problems, aggression, depression, heightened suicidality and progressive dementia.

While former NFL players knew that playing professional football could precipitate bum knees, aching backs, and mangled fingers, none imagined that their chosen careers would ultimately alter their essence, change their personality, or riddle their brain with forgetfulness, confusion and irritability. To ask “What’s for dinner?” two hours after eating; to change their personality, or riddle their brain with forgetfulness, confusion and irritability. To ask “What’s for dinner?” two hours after eating; to continue their chosen careers with symptoms of irritability, short-term memory loss, confusion, impaired judgment, impulse control problems, aggression, depression, heightened suicidality and progressive dementia.

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the form of a class action settlement. As such, if approved, former players will have to decide whether to partake in the settlement “as is,” opt out of the settlement or object to the settlement at a Fairness Hearing.

The current proposal targets $75 million to fund a Baseline Assessment Program (“BAP”) that will offer eligible retired NFL football players baseline neuropsychological and neurological evaluations to determine the existence and extent of any current cognitive deficits. A total of $675 million (plus, in the event of a funding shortfall, a contribution by the NFL of an additional $37.5 million) would go toward a Monetary Award Fund that will provide compensation to retired NFL football players who currently carry a “Qualifying Diagnosis” or receive one in the future.

The qualifying diagnoses consist of Alzheimer’s, dementia, ALS and/or Parkinsonism in living plaintiffs. While death with CTE is compensable, CTE in living plaintiffs is not. Notably, a retiree’s age at the time of Qualifying Diagnosis and number of years in the NFL will arbitrarily dictate the level of compensation. The proposed settlement excludes current players from any compensation and excludes the families of those who died prior to 2006. Additionally, the agreement requires players to dismiss and abandon any claims they may have against the NCAA or other football related organizations. The pending cases against Riddell—the helmet maker—will be allowed to proceed.

By structuring the settlement as a class action settlement, the proposal affects not just the 5,000 pending plaintiffs, but the entire community of nearly 20,000 living retired NFL players. Judge Brody’s initial review of the proposed settlement terms revealed a concern that “in various hypothetical scenarios, the Monetary Award Fund may lack the necessary funds to pay Monetary Awards for Qualifying Diagnoses.” Despite Proposed Class Counsel’s assurances that “economists conducted analyses to ensure that there would be sufficient funding to provide benefits to all eligible Class Members,” given the size of the Settlement Class and projected incidence rates, Judge Brody was not convinced. It was ordered that the economic and actuarial data supporting this proposition be shared with the court-appointed Special Master, Perry Golkin, to assist the court in analyzing the financial aspects of the settlement. That analysis is currently taking place.

Judge Brody’s concerns about the fairness, reasonableness and adequacy of the proposed settlement are sensible. The men suffering from these horrific injuries (and/or their families), and those players who will inevitably suffer later in life, deserve just compensation. Given the enormity of the problem, its solution cannot be trivial.

In the eight months that have passed since the proposed settlement was announced with great fanfare, very little has been accomplished.

Will Judge Brody approve this proposed settlement? Will further negotiations be required? Will a Settlement Class be certified? Will the sought-after attorneys’ fees be approved? Will many plaintiffs opt-out of the proposed settlement? Will a global settlement of these cases even be realistic?

Stay tuned...


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William T. Gibbs concentrates his personal injury practice on, among other areas, cases arising from participation in sports. His notable sports cases include litigation involving the estates of the late Chicago Bear Dave Duerson and the late New York Ranger Derek Boogaard. He also represented Hall-of-Fame White Sox player Frank Thomas in a medical malpractice case. He can be reached at WTG@CorboyDemetrio.com.