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After Super Bowl hoopla, CTE clock starts for players

Let the Super Bowl hype begin! For the next two weeks, the NFL hoopla will build toward a crescendo, culminating in the matchup between the New England Patriots and Atlanta Falcons in Super Bowl LI.

Countless interviews will be given, meaningless controversy will be created, silly and sweet commercials will be purchased and a much-anticipated halftime show will be choreographed.

Then, on Feb. 5, families and friends will gather around their pots of chili and plates of nachos to revel in the spectacle that is Super Bowl Sunday.

When the confetti clears in Houston and either Matt Ryan or Tom Brady has "gone to Disney World," this 94th NFL season will be over.

Predictably, on Monday, Feb. 6, the NFL talking heads will begin analyzing the prospects in the NFL draft and oddsmakers will launch prognostications for next year. The beat goes on.

But, what of those men that played in those previous NFL seasons? Many are unfortunately currently dealing with physical, emotional and/or mental challenges after giving their blood, sweat and tears to the league that now generates approximately \$13 billion per year.

Many more will suffer from not-yet-recognizable latent brain disease inflicted upon them during their playing days that will manifest in the future.

Feb. 6 is a monumental day for these football stars of yesteryear. The day after the 51st Super Bowl, registration begins for the NFL concussion settlement, *In re: National Football League Players' Concussion Injury Litigation*, No. 2:12-md-02323.

After years of uncertainty regarding the case and then myriad issues surrounding the settlement proposals, the die is now fully cast after the U.S. Supreme Court denied petitions for writ of certiorari to the 3rd U.S. Circuit Court of Appeals.

See *Gilchrist v. NFL, 2016 U.S. LEXIS 7559* * (U.S. Dec. 12, 2016); *Armstrong v. NFL, 2016 U.S. LEXIS 7511* (U.S. Dec. 12, 2016); *Gilchrist v. NFL, 2016 U.S. LEXIS 7559* (U.S. Dec. 12, 2016).

Registration is an important first step to qualifying for funds and benefits each retired NFL player may be entitled to as a result of the recently effectuated settlement. Indeed, if former players who feel fine today fail to register, they will be forever barred from doing so when the day comes that they no longer feel fine.

Approximately 21,000 retired NFL players, if they retired prior to July 7, 2014, will, hopefully, timely register for the significant settlement benefits the league has set aside for them. Again, if these players fail to register by Aug. 6 they will be inexorably excluded — forever.

That is the catch — only those that timely register can reap the settlement benefits. The NFL, expecting that some players will miss the deadline, predicts that 2,300 former NFL players will contract a compensable neurological disease in their lifetime, but will not participate in the settlement.

While approximately one in four retired NFL players have attorneys to ensure that the t's are crossed and the i's are dotted, the other 15,000 guys may not appreciate the urgency of the registration requirement.

Missing the deadline will have harsh outcomes. If a 30-something or 40-something former NFL player (who, presumably, does not yet know he is injured as a result years of repetitive head trauma) fails the register within 180 days, he is perpetually barred from any compensation.

So, if he is diagnosed in a decade with a neurodegenerative disease he will get nothing. Meanwhile, his teammate, if timely registered, could be entitled to as much as \$5 million. The neglectful one would be entitled to zippo if/when his cogni-

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tive health declines. His failure to register in 2017 will forever prevent him from accessing the funds set aside for him by the NFL.

Those living former players that do timely register will be entitled to a baseline assessment. These neuropsychological and neurological examinations for eligible retired players should determine their current state of cognition. If additional medical testing, counseling and/or treatment is deemed necessary, it will be provided by the NFL.

For those that deal with the realization of ALS, Alzheimer's disease, dementia or Parkinson's disease, the NFL will provide compensation at significant levels based primarily upon the type of diagnosis, the age at diagnosis and the number of seasons played.

The settlement ensures that compensation will be provided regardless of whether the player can prove that these neurodegenerative diseases were caused by playing NFL Football. One need not prove that these conditions were caused by repetitive head trauma endured during their years of playing NFL football.

Payments should begin soon. By July 6, the NFL is required to make an initial deposit of \$120 million into a trust account with additional monthly deposits to ensure a reserve of \$10 million

after the initial round of disbursements are made to the players.

In all, the NFL estimates that the settlement will cost approximately \$1 billion. Of course, if more players register, the NFL's exposure increases.

In addition to the living retirees that are in line for compensation, the families of some deceased players will be compensated. Families of those players who died prior to the settlement will be entitled to compensation if their loved one's brain demonstrated chronic traumatic encephalopathy (CTE) upon post-mortem neuropathological examination are also going to be compensated through this settlement.

Again, the settlement mandates that causation need not be proven.

Finally, the settlement dictates that the NFL invest \$10 million in education programs promoting safety and injury prevention with respect to football players, including safety-related initiatives in youth football, the education of retired players regarding the NFL's medical and disability programs and other educational programs and initiatives.

While not perfect, this settlement clearly provides significant benefits and potentially significant compensation to every living NFL player who, prior to July 7, 2014, has retired from the NFL (or any member club, including the American Football League, World League of American Football, NFL Europe League and NFL Europa League) or were formerly on any preseason, regular season or postseason roster, even if that player was only signed to a practice squad, developmental squad or taxi squad.

Every former NFL player, whether young or old, sick or healthy, rich or poor should wake up the morning after the Super Bowl and timely register.

The failure to do so could cause a Super Bowl hangover that may never go away.