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Concussion Suit

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It was just a bit over a week before the start of the regular season of the National Football League when a settlement was announced in the much anticipated concussion law suit brought by and on behalf of more than 4000 retired NFL players. The number represents about one-third of all retired NFL players.

It is being reported that the agreement will result in a payment of \$765M over twenty years. The NFL must also pay the legal fees of those players who brought the suit, and the total price to NFL will be about \$1B. There is a three tier ladder for payments connected to diagnosis of the player. The settlements place a cap of \$3M, \$4M, and \$5M for each of the three tiers. \$10M will go to medical research and a maximum of \$75M will go toward medical exams. An independent panel will determine the level of payments to players and the families of deceased players, and half of the money must be paid out in the first three years after implementation of the settlement, which is yet to be approved by the presiding judge in the case.

More important for the NFL the settlement "cannot be considered, an admission by the NFL of liability, or an admission that plaintiffs' injuries were caused by football." This offers the league some protection from new lawsuits, and means that they can continue to claim that safety has always been a top concern of the league and that the NFL had never withheld medical information from the players.

NFL executive vice-president Jeffery Pash said in a statement, "This agreement lets us help those who need it most and continue our work to make the game safer for current and future players. Commissioner Goodell and every owner gave the legal team the same direction: do the right thing for the game and for the men who played it,"

Perhaps most important of all the settlement means that the NFL will not have to reveal what it knew and when it knew it concerning concussion related brain issues.

Concussions first surfaced as an NFL issue in 2007 when former New England linebacker Ted Johnson told the *New York Times* that he believed that his severe depression and

addiction to amphetamines were the result of concussions in his playing days. Johnson's neurologist told him that at age 34 he displayed the early signs of Alzheimer's. Johnson charged that Bill Belichick, the Patriots head coach, sent him into a high impact drills four days after his concussion, even though the Patriots trainer recommended that Johnson be protected in practice.

Commissioner Goodell's responded to questions about Johnson's charges by pointing out that the NFL had a committee working on the concussion issue. He also said that under the committee's guidelines a player with a concussion would be allowed to reenter a game if he appeared to have recovered. This reentry policy ran counter to most medical guidelines of the day.

In June of 2007 the House Judiciary Subcommittee on Commercial and Administrative Law heard testimony by former NFL players about their condition, while the NFL basically denied any connection between dementia and football. A number of players testified that professional football had left them with "broken bodies, brain damage, and empty bank accounts." The lawyer for Mike Webster, former Pittsburgh Steelers Hall of Fame center, told the committee of Webster's mental illness and how he died homeless in 2002. The NFL denied any connection between these problems and football.

In 2009 the NFL adopted new rules on blocking and tackling to improve player safety. A few months later the results of a University of Michigan study in which over a thousand former players were asked if they had ever been diagnosed with dementia, Alzheimer's, or memory loss were reported. Six percent, which was five times the national average, said they had. Neither the NFL nor the NFLPA would comment on the study because of implications for disability payments.

In October of 2009 Congressional Hearings featured testimony from Gay Culverhouse, former Tampa Bay Bucs president, and several former Bucs players who detailed their struggles. At issue during these hearings was the NFL's position on concussions. Commissioner Goodell testified that the NFL had been studying the issue for fifteen years, and he claimed that this committee of doctors, scientists, and medical professionals were independent of the NFL. This committee had discredited all

the research linking football and brain diseases. House Judiciary Committee member, Congresswoman Linda Sanchez, told Goodell that he reminded her of all those from the tobacco industry who insisted that there was no link between smoking and cancer.

Following these hearings public criticism mounted and former players became more vocal and prominent in their criticism of the NFL. A month later the NFL Committee was deactivated and its members resigned. On December 20 the NFL announced a donation of \$1M to the Center for the Study of Traumatic Encephalopathy at Boston University. The NFL had finally changed its tune.

The denial had ended although apparently the ability to continue to deny has been granted to the NFL in the settlement of the lawsuit last week. My guess is that this ability to deny the connection is the most essential part of the settlement to the NFL. If Judge Anita Brody should reject this part of the settlement the NFL would likely withdraw from the agreement. We will probably never know if that is the case.

In an op-ed piece in *The New York Times* in early February of 2010, Dr. Deborah Blum of the University of Wisconsin cited an article from *The Journal of the American Medical Association* warning that in football there was a "very definite brain injury due to single or repeated blows to the head or jaw which cause multiple concussion hemorrhages. . . .The condition can no longer be ignored by the medical profession or the public." The article had appeared in 1928,

Let's hope that this settlement will not follow the fate of the 1928 article, and that this time our knowledge "can no longer be ignored by the medical profession or the public."

On Sport and Society this is Dick Crepeau reminding you that you don't have to be a good sport to be a bad loser.

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