Entertainment & Sports
California attorneys on all sides of NFL concussion deal
Mediation yields $765M settlement over brain injuries from on-field collisions
By Omar Shamout

Just days before the start of the 2013 football season, a court-appointed mediator announced Thursday that the NFL has reached a tentative $765 million settlement over concussion-related brain injuries with more than 4,500 retired players.

Layn R. Phillips, a retired federal judge now at Irell & Manella LLP in Newport Beach, led two months of mediation between the league and its players in an effort to avoid a lengthy and costly series of trials.

"Both sides recognized that it would be far more productive to get out of court and do something good for retired players with medical needs and focus on the future of the game and making it safer," Phillips said in a statement. "I would characterize it as a 'win-win.'"

Thousands of players had sought class certification from Judge Anita Brody of the Eastern District of Pennsylvania, where the multidistrict litigation was consolidated. But the NFL argued that the claims had to be arbitrated under the terms of its collective bargaining agreement with players. In July, Brody ordered the parties to explore the possibility of a compromise and said she would put off ruling on the NFL's motion to dismiss the suit until September.

Thursday's settlement will cover all players or their surviving family members who have retired as of the date when Brody grants preliminary approval to the agreement. In re:Â

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In addition to a $675 million payout, the league will also cover baseline medical costs of up to $75 million at exam sites across the country for players showing signs of severe cognitive impairments such as dementia, Alzheimer's disease or amyotrophic lateral sclerosis, known as ALS or Lou Gehrig's disease. Another $10 million will be put toward a research and education fund. The rest of the money will cover administrative costs and plaintiffs' legal fees.

Phillips said it's unlikely that more suits of a similar nature will be filed.

"The underlying theory of this lawsuit about what took place in the past would be difficult to replicate in the future," Phillips wrote. "Everyone now has a much deeper and more substantial understanding about concussions, and how to prevent and manage them. In addition, the labor law defenses asserted by the NFL would represent a very substantial barrier to asserting these kinds of claims going forward."

Because the potential dangers are now widely known, sports law expert Dan
Lazaroff said it's not surprising that only players who have retired by the time Brody approves the settlement will be included in the deal.

"Current players are in a slightly different position," said the Loyola Law School professor. "The risks are out there in the open, but they're in the position to negotiate in the collective bargaining agreement."

Several California attorneys were involved in the settlement proceedings on behalf of the plaintiffs, the NFL and NFL Properties and co-defendant Riddell Sports Group Inc., the company that manufactures player helmets.

Thomas V. Girardi, name partner at Girardi Keese in Los Angeles, served as co-lead counsel for roughly 1,800 of the former players who had blamed the league for their brain injuries. He said the agreement represents a "very fair" compromise to a "complicated case" that protects the interests of athletes who may develop symptoms of brain injuries years after they retire.

"They have their rights open, no matter how long it takes," Girardi said. "Sometimes it takes years for the trauma to manifest itself."

Ex-NFL players such as Junior Seau and lead plaintiff Ray Easterling were diagnosed with chronic traumatic encephalopathy, or CTE, after their suicides last year. Seau's family filed two wrongful death lawsuits that were consolidated with the rest of the cases in Philadelphia.

Other attorneys representing the former football players are Michael P. Lehmann of Hausfeld LLP in San Francisco, and Clifford H. Pearson of Pearson, Simon & Warshaw LLP in Sherman Oaks.

The NFL legal team includes Brad S. Karp, Theodore V. Wells Jr., Bruce Birenboim, Beth A. Wilkinson and Lynn B. Bayard of Paul, Weiss, Rifkind, Wharton & Garrison LLP and Ronald L. Olson, John W. Spiegel and John M. Rappaport of Munger, Tolles & Olson LLP.

"This settlement was not about assigning guilt or blame, but about providing compensation to the injured and making football better and safer for current and future players," Olson said.

The Riddell defendants are represented by Paul G. Cereghini, Vincent Galvin and Marion V. Mauch of Bowman and Brooke LLP.

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