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Friday, August 30, 2013

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: National Football League Players' Concussion Injury Litigation*, MD12-2323 (E.D. Penn.). Crucially, however, the NFL will admit no liability that the plaintiffs' injuries were caused by playing football. Players alleged that the NFL had concealed from them the risk of permanent brain damage.

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

Entertainment & Sports

California attorneys on all sides of NFL concussion deal

Mediation yields \$765M settlement over brain injuries from on-field collisions

Judges and Judiciary

Brown names eight new superior court judges

The appointees include Northern California's first South Asian American judge.

Mergers & Acquisitions

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

Intellectual Property

Patent attorney fees attracts U.S. Supreme Court scrutiny

The U.S. Supreme Court is currently considering whether to review two cases from the U.S. Court of Appeals for the Federal Circuit in which litigants won their respective infringement lawsuits but failed to garner attorney fees.

U.S. Court of Appeals for the 9th Circuit 9th Circuit panel upholds state law banning gay conversion therapy

California minors whose guardians believe they are gay cannot be sent to programs designed to alter their sexuality, the U.S. 9th Circuit Court of Appeals ruled Thursday in upholding a state law.

Solo and Small Firms

Donning Clients' Shoes

Randall Miller and his associates at malpractice boutique Miller LLP strive to see issues from the perspectives of those they represent.

Alternative Dispute Resolution

Gregory P. Lindstrom

Lawyers often have trouble parting with their robust practices once they choose to move into neutral work. That hasn't been the case for Gregory P. Lindstrom, who hasn't looked back after making the shift two years ago.

Labor/Employment

Through strike, unions battle for toehold in

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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fast food realm

The fast food worker strike movement arrived in California Thursday morning, as workers walked off the job at restaurants such as McDonald's, Taco Bell, and Burger King in Los Angeles and Oakland.

Health Care & Hospital Law

Obamacare may conflict with city ordinance

For employers in the city of San Francisco, the concern over Obamacare goes further - how will it work with the city's Health Care Security Ordinance? By **Amy K. Jensen**

Administrative/Regulatory

Regulations — the devil is in the details

As a recent case involving evaluations of "sexually violent predators" shows, it's important to follow procedure. By **Jeffrey Lowry and Frank Loo**

Tax

Tax opinion just might make or break the case

Does an opinion get you out of penalties if the IRS disagrees with your treatment? It depends. By **Robert W. Wood**

Litigation

Nursing home residents subject to arbitration, too?

A case filed earlier this year seeks a declaration that the Federal Arbitration Act preempts state laws allowing for nursing home residents to bring actions in court. By **John Aiello**

Judicial Profile

Christopher M. Klein

U.S. Bankruptcy Judge Eastern District of California (Sacramento)

California Supreme Court

More dissents, less bloc voting in state Supreme Court term

The state Supreme Court appears to be in greater ferment than last term, with more dissents and less bloc voting than usual.