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PRO FOOTBALL

Concussion Deal Is Challenged in Court as Insufficient

By KEN BELSON AUG. 20, 2015

According to a friend-of-the-court brief filed Thursday, the settlement between the N.F.L. and the 5,000 retired players who accused the league of hiding the dangers of concussions is flawed because it does not cover the full range of physical and psychiatric disorders linked to brain trauma.

“The settlement neither recognizes nor compensates the majority of players suffering long-term consequences of brain trauma, but merely rewards certain small, discrete groups,” Shana De Caro and Michael Kaplen, lawyers for the Brain Injury Association of America, wrote in their brief filed with the United States Court of Appeals for the Third Circuit. “The vast majority of retired football players experiencing physical, emotional and behavioral impairments following repetitive concussions remain excluded and uncompensated under settlement terms.”

The settlement, approved by a district court judge in April, is expected to be appealed by up to a dozen sets of players. Some of them have argued in their filings to the appeals court that the settlement erroneously excludes payments to players who are found to have chronic traumatic encephalopathy, or C.T.E., a degenerative brain disease associated with repeated head hits, after the settlement approval date.

Ms. De Caro and Mr. Kaplen contend that a larger flaw in the deal is the lack of payments to players who have symptoms — including mood swings, sleep disorders, vertigo, dizziness and headaches — that affect people who have sustained concussions.



The settlement includes potential payments to players with full-blown dementia or “moderate to severe cognitive impairment,” but none for players with problems related to postconcussion syndrome.

The settlement also provides the largest payments to players who were in the N.F.L. for five or more years and who are younger than 45 as a proxy for their exposure to potential head hits. Players who are older than 45 or have fewer than five years in the league receive smaller payments.

Ms. De Caro and Mr. Kaplen said this was arbitrary. “Grounding compensation upon years of N.F.L. service ignores the reality that a player can sustain a brain injury, and its permanent consequences, any time through his professional career, including preseason play or the first season,” they wrote.

No payments to retired players will be made until all appeals are exhausted.

In a statement, Christopher Seeger, the co-lead counsel for the retired players in the settlement, said he regretted that the case had been appealed because it would slow payments to sick players. Judge Anita B. Brody of United States District Court, he said, “considered objections to the settlement at the fairness hearing last November and overruled them in an extremely thorough opinion granting final approval to the settlement.”

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