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## *NCAA Avoids Adverse Verdict, Settles CTE Case Mid-Trial*

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### **Summary**

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The *National Collegiate Athletic Association* has settled a lawsuit brought by the widow of a former University of Texas football player who was posthumously found to have had CTE, deciding to put an end to a case many had viewed as a bellwether for such suits, though the association is far from out of the woods.

### **Body**

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The *National Collegiate Athletic Association* has settled a lawsuit brought by the widow of a former University of Texas football player who was posthumously found to have had CTE, deciding to put an end to a case many had viewed as a bellwether for such suits, though the association is far from out of the woods.

Plaintiff Debra Hardin-Ploetz had alleged her late husband Greg Ploetz, who passed away in 2015 at age 66 and was posthumously found to have suffered from the degenerative brain disease chronic traumatic encephalopathy, was never warned of the risks of repeated head trauma in football despite the NCAA's duty to protect its athletes.

The lawsuit was the first to go to trial out of many suits seeking to hold a league or the NCAA liable for long-term diseases allegedly stemming from head injuries suffered in sports, meaning it had the potential to show just how such claims would be viewed by a jury.

But earlier this month, only two and a half days into the trial and after a harsh opening statement and early testimony, the NCAA apparently decided it had seen enough and reached a settlement with Hardin-Ploetz for an undisclosed amount.

"It certainly looked like the plaintiffs were definitely winning," said Paul Anderson, an attorney with The Klamann Law Firm and the creator of NFLConcussionLitigation.com. "They stayed out front from the very beginning. Who knows, maybe the NCAA or its insurance companies saw the jury's reaction and it scared them."

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Anderson said the NCAA might have viewed Ploetz as a good test case given he last played for the Longhorns in the late 1960s and early 1970s. While one might successfully be able to argue the NCAA should be aware of the potential risks of head trauma in football, the farther back you go, the less scientific evidence there is to back it up.

“I suspect that is what their initial strategy was, but once they saw the light of day and the floor fell out beneath them, they realized that, ‘Oh wow, this evidence is bad,’” Anderson said.

The plaintiff’s attorneys said during opening statements they were going to lay out a case there was scientific evidence going back to the 1930s that the NCAA knew about or should have known about. One of the plaintiff’s early witnesses, Ellen Staurowsky of Drexel University’s Center for Sport Management, testified that since its founding, the NCAA put its own profits ahead of the safety of the athletes it promised to protect.

Further, Dr. Bennet Omalu — the subject of the Will Smith film "Concussion" and the author of a 2005 case study on CTE — was set to testify for Hardin-Ploetz later in the trial.

But the settlement puts an end to the Ploetz litigation, and without disclosing the amount, the impact on the wave of concussion personal injury suits against the NCAA coming down the pike will be limited.

The NCAA in 2014 agreed to provide a \$70 million medical monitoring fund to settle massive multidistrict concussion litigation brought by former college athletes. That settlement, while potentially foreclosing a class action, allows class members to file individual claims against the NCAA or their schools for damages.

With Ploetz, the NCAA had to be concerned that rulings in favor of the plaintiff might have estopped the NCAA from relitigating those issues in other personal injury cases, said attorney Michael Kaplen of De Caro & Kaplen LLP, who specializes in traumatic brain injury cases and teaches on the subject at the George Washington University Law School.

In other words, plaintiffs would have been able to argue to courts that they need not litigate issues already decided by another court, such as whether the NCAA was negligent and whether there was enough of a link between head trauma in sports and later-in-life neurodegenerative diseases to hold it liable.

“That principle of law might cause liability to attach to them in a variety of different cases because plaintiffs attorneys will be able to look to this particular case and say a jury made a decision on certain issues against the NCAA even if at the end of the day they find no causation in this particular factual circumstance between the NCAA’s conduct and the ultimate death of this man,” Kaplen said.

However, that dynamic cuts both ways.

“Keep in mind that both sides decided to settle this matter to eliminate any risk,” said Gary Wolensky, a shareholder at Buchalter PC who handles brain injury and helmet cases.

“This settlement should have no bearing on future concussion lawsuits, as the facts of each case will stand on their own,” he said. “Moreover the understanding of the medical community regarding what occurred decades ago will not change, and so I would expect several of these cases to be tried in the relatively near future.”

NCAA chief legal officer Donald Remy issued a statement saying the “settlement gives all parties the opportunity to resolve the case outside of a lengthy trial. The NCAA does not admit liability as part of the

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settlement. We will continue to defend the association vigorously in all jurisdictions where similar unwarranted individual cases are pursued. It is our hope that other plaintiffs lawyers recognize that this is one settlement in one case.”

Ploetz’s wife’s attorneys from Shrader & Associates LLP countered that the NCAA “could have admitted that repetitive head trauma causes CTE and atoned for misleading the American public and college athletes for so many decades.”

But at the end of the day, the way the case played out shows the bind the NCAA finds itself in, faced with potentially hundreds of head injury cases. It might also push the NCAA to seek some sort of larger settlement similar to the way the NFL settled claims rather than fight each one tooth and nail, Anderson said.

“The reality that these victims see is that the only way they can get justice ... is by pursuing personal injury claims against the NCAA,” Anderson said. “So I think the NCAA has locked themselves into litigating personal injury claims in perpetuity at least until they are ready to carry out their litigation strategy and go the full distance through verdict.”

--Additional reporting by Daniel Siegal. Editing by Philip Shea and Emily Kokoll.

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