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## *NHL Ends Concussion MDL With \$19M Tentative Settlement*

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### **Summary**

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The National Hockey League has agreed to pay nearly \$19 million to end multidistrict litigation brought by more than 300 retired players alleging they endured long-term problems from head trauma suffered on the ice, a deal some experts said fell short of expectations after the league put up a stiff defense.

### **Body**

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The National Hockey League has agreed to pay nearly \$19 million to end multidistrict litigation brought by more than 300 retired players alleging they endured long-term problems from head trauma suffered on the ice, a deal some experts said fell short of expectations after the league put up a stiff defense.

The NHL agreed to pay a total of \$18.9 million to settle the claims, with \$6.996 million going directly to the 318 retired players or their families, 146 who brought claims against the league and 172 who had retained counsel. The settlement includes medical testing for the players, according to the agreement, which was reached Nov. 6 but not unveiled until Monday.

If approved, the deal would provide each player with approximately \$22,000 and up to \$75,000 if the athlete tests positive for certain neurological conditions. Another \$750,000 would be set aside for further medical treatment of the players, and \$2.5 million would be put into a "common good fund" to support the health and welfare of all retired players, including those who did not participate in the multidistrict litigation.

The 318 players had sought to represent a class of about 5,000 former players trying to obtain payment for medical monitoring for all former players. They alleged many are suffering from a host of brain diseases and disorders due to the head trauma and concussions they suffered in their playing days, including dementia, Alzheimer's and chronic traumatic encephalopathy, or CTE

But Minnesota U.S. District Judge Susan Richard Nelson refused to certify the players' class action in July, finding that the claims relied on varying state laws depending on where the athletes lived and played. Since Judge Nelson's ruling, the sides had been in court-ordered mediation with retired U.S. Magistrate Judge Jeffrey J. Keyes.

Michael Kaplen

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"After class certification was denied, the case became very different, and we have then been in continued negotiations, mediation with a former federal judge, heavily since July," Charles S. Zimmerman of Zimmerman Reed LLP, one of the lead attorneys for the players, told Law360 on Tuesday.

"I think that the key ingredient of our original class action was to try to get monitoring or medical examination and treatment for all players," he said. "We could not achieve it for all players, but we achieved it for the people who stepped forward and said, 'We want to be represented.'"

A total of \$6.950 million would go toward attorneys' fees and legal costs, with about \$4 million of that going toward the extensive costs over the yearslong litigation. The attorneys have agreed not to seek any further fees from the settling plaintiffs' individual benefits.

The deal requires the players to release the NHL from their claims, except for workers compensation claims or unrelated disputes. Those who do not take the settlement will be free to continue individual personal injury claims against the league. However, the NHL may pull the deal if not enough players take part in it.

"The NHL does not acknowledge any liability for any of plaintiffs' claims in these cases," the league said in a statement Monday. "However, the parties agree that the settlement is a fair and reasonable resolution and that it is in the parties' respective best interests to receive the benefits of the settlement and to avoid the burden, risk and expense of further litigation."

While the deal leaves the door open for more individual claims against the NHL, it could put an end to most of the litigation in Minnesota that provided the most immediate threat to the league.

"I would say this is a very big victory for the NHL," said Mark Conrad, a sports law and business professor at Fordham University's Gabelli School of Business. "Ethically, I would have hoped that the league would have been more generous."

"The league fought them very aggressively, and their position was weakened by the fact that they couldn't be a class," he said. "With that all in mind, while this is not a settlement they can cheer about by any means, at least on the medical testing front, it gives them some benefit that could be tangible."

The case dates back to November 2013, when 10 former NHL players, including standout defender Gary Leeman, filed a proposed class action in D.C. federal court. The players alleged the NHL knew that head trauma like that suffered in hockey increased their risks for neurological problems, yet the league continued to promote violence in the game, including hard hits and bare-knuckle fights.

The named plaintiffs also included former left winger Dan LaCouture, centerman Bernie Nicholls, one of only five players to score 150 points in a season, forward David Christian, defenseman Reed Larson and the estate of Lazarus "Larry" Zeidel, who died in 2014 and was posthumously diagnosed with CTE.

"Personally, I was saddened by [the settlement amount]," Conrad said. "I grew up watching some of these players."

The result differs dramatically from the deal reached in a concussion class action against the National Football League. The NFL ended up reaching an uncapped settlement prior to a ruling on class certification. That deal could pay out close to \$1.5 billion to over 20,000 former players suffering from brain diseases

Attorney Michael Kaplen of De Caro & Kaplen LLP, who specializes in traumatic brain injury cases, called the amounts that could go to the NHL players "extraordinarily low."

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"What bothers me is that amount does not recognize the seriousness of this type of injury," Kaplen said. "Anyone who has a brain injury will have lifelong consequences, and this type of settlement in no way, shape or form recognizes the seriousness, and in some ways minimizes it."

The NHL gave no ground in the litigation and brought in experts to dispute the growing scientific evidence suggesting that head trauma in sports leads to long-term degenerative conditions like CTE. NHL Commissioner Gary Bettman went as far as to argue publicly that there has yet to be any established "causal link" between the two.

While the deal leaves the door open for those who choose not to settle or other retired players to bring claims individually, experts say the legal costs for doing so could be prohibitive as they would not be shared across a class and the NHL is likely to continue to fight tooth and nail.

Other head injury claims against the league have faced procedural roadblocks such as a case brought by the parents of deceased NHL player Derek Boogaard, who was posthumously diagnosed with CTE. That case was tossed, with the judge suggesting that the parents had not properly alleged the league was negligent in not disclosing the risks of head injuries.

"It was a tough battle," Zimmerman said. "I think once the class was not certified, we had a small group to represent, and I think we did a good job for them. ... I hope that the NHL going forward will be more responsive to players' health and safety, and I think this was a piece of that puzzle."

The players' co-lead counsel are attorneys from Zimmerman Reed LLP, Robbins Geller Rudman & Dowd LLP, Silverman Thompson Slutkin & White LLC and Bassford Remele.

The NHL is represented by Daniel J. Connolly, Joseph M. Price, Linda S. Svitak and Aaron D. Van Oort of Faegre Baker Daniels, John H. Beisner, Jessica D. Miller, Shepard Goldfein, Geoffrey M. Wyatt and Matthew M. Martino of Skadden Arps Slate Meagher & Flom LLP, and Joseph Baumgarten and Adam M. Lupion of Proskauer Rose LLP.

The case is In re: National Hockey League Players' Concussion Injury Litigation, case number 0:14-md-02551, in the U.S. District Court for the District of Minnesota.

--Editing by Jill Coffey and Breda Lund.

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