

The Concussion Controversy

Not unlike many other events in my life, I've found myself caught in the middle of another controversy. This one, involves individuals who are close to my heart; they are like family in my tight knit football community. My husband thinks I often look for trouble, because of my innate hatred of bullies (which I am willing to accept as a compliment); however, I think this one fell in my lap.

As a wife of a former NFL player and class member of the NFL concussion litigation, I have personally experienced the effects of repetitive brain injury in my own home. And, as an NFL disability attorney who has counseled hundreds of former players suffering from repetitive brain injury, I have had the privilege of keeping all of their stories and personal challenges confidential.

So, how do I begin? Back in 2012, when class action lawyers were calling me and likely every other attorney who represented former players to help them solicit clients in a "potential" class action suit against the NFL, for not disclosing the risks of head injury, all I wanted to do was help my clients get what they deserved. Players signed individual contingency fee agreements with these law firms fearing that if they didn't, they would have no recourse for their injuries.

Now fast forward to April of 2015 after the suit became certified as a Class Action and the Court entered a Final Order and Judgment approving the Settlement terms. At this point, there was no longer a fight with the NFL, as far as those who did not opt-out of the settlement were concerned. The NFL avoided liability for failure to disclose the risks of brain injury to their players and the trade-off was paying monetary awards for players who had developed ALS, Alzheimer's, Parkinson's and Dementia following football, and providing free baseline assessments for those who had not yet received diagnoses of brain disease.

I've always been a people's lawyer or plaintiff's lawyer, so it's difficult for me to relate to defending a Super Power such as the NFL or an insurance company; however, as a lawyer, I can relate to the mindset of avoiding admitting liability at all costs. The NFL was able to convince Class Counsel, who represents all the former players in the litigation, to accept their terms. So, the deal can't be that bad right? First, I must stress that the settlement has been approved so there is no reason to state any complaints about the settlement terms and what the NFL should have or could have done for former players. Both parties came to an agreement which included a \$112.5 Million payment by the NFL to Class Counsel for attorneys' fees generated in conjunction with legal services provided to class members in this litigation. Both parties were satisfied with the terms; otherwise, an agreement would not have been reached.

I will point out one issue I have with this settlement. From my experience, and I'm not purporting to know everything; however, a large number of former players who have not yet been diagnosed with a brain disease covered under the settlement, are in fact suffering from symptoms of Chronic Traumatic Encephelopathy (CTE). Unfortunately, CTE cannot be diagnosed in the living, but only after a player has committed suicide or died otherwise, and their brain is autopsied. So, as far as CTE is concerned, unless a player died prior to July 7, 2014 with a diagnosis of death of CTE, he is not eligible to recover under the settlement. If you are a physician in the field of neurology, I would imagine you can empathize with how difficult it will be for a former player who is exhibiting symptoms of CTE to correlate these symptoms to a diagnosis of Dementia, Alzheimer's, Parkinson's or ALS, in order to

recover an award under the settlement.

Moving on, I'd like to discuss the current controversy which involves Class Counsel, the attorneys who represent the class members in this action. This is the group of attorneys who are receiving \$112.5 Million from the NFL for their work benefitting the class as a whole, and are now petitioning the Court for another 5% from each class member's award for "future work" under the settlement. My first reaction was, "What do you mean you want another 5% on top of the \$112.5 Million you are already receiving from the NFL?" My second thought was, "Why are you taking from each players' award instead of taking from the NFL?"

What these attorneys are not so vocal about is that they are pursuing agreements they signed with players back in 2012, before the law suit became a certified class action. Some players call it "double-dipping", collecting attorneys' fees on individual retainer agreements while being paid by the NFL for the same work. I agree that in cases where Class Counsel are trying to recover on individual contingency fee agreements for work they performed as a benefit to the class, that is definitely double-dipping. However, if any of these Class Counsel performed individual work for their clients, they should be entitled to recover those fees. Having said that, would a few phone calls to an individual client updating them on the stage of the settlement, entitle them to collect on a 20%, 30%, or 40% contingency fee? To put it in perspective, I have a client who signed a contingency fee agreement with a firm in 2012. He was already diagnosed with one of the qualifying diagnoses and is entitled to a \$5Million recovery. Should a firm be permitted to recover up to \$2 Million for making a few phone calls? The basic law of contracts should be considered here. Contracts must be reasonable to be enforceable.

As of today, we are awaiting Judge Brody, the judge in this case, to help resolve certain attorney fee disputes involving Class Counsel which have been brought to her attention. She has already ordered all attorney liens to be reviewed by Magistrate Judge Strawbridge which I view as a positive sign that Judge Brody is well-aware of the enormity of controversy out there. I cannot predict how this will all play out, but I already know this settlement is history in the making. Our children, future lawyers, and politicians, will be citing this litigation for generations to come and I pray that no players will have suffered in vain.