

Chicago Tribune

Editorial: Paying for brain damage

September 1, 2013

Jim McMahon is doing better, thanks. "I still have the dementia," the former Bears quarterback said the other day. "I don't have the sharp pains. I don't have the thoughts of killing myself."

That may not sound encouraging, but for someone who suffered multiple concussions during his NFL career, it could be worse. Teammate Dave Duerson, despondent over his mental deterioration, committed suicide in 2011. An autopsy showed he suffered chronic traumatic encephalopathy, a progressive disease caused by repeated brain trauma.

They are not the only victims. More than 4,500 retired players and their families went to court accusing the NFL of hiding what it knew about the dangers football poses for the brain. On Thursday the league settled the case for a price of \$765 million. Of that, \$675 million will be used to compensate players (and families of players) who suffered brain damage. The rest will go to pay for medical exams for former players and medical research.

Skeptics say the money is a pittance for a league whose annual revenue approaches \$10 billion. It's also spread out over two decades.

But making the case stand up in court was never going to be easy. The players would have had to prove that their ailments stemmed from pro ball, not from playing in college or high school and not from substance abuse. They might have gone through years of litigation and ended up with nothing. With this deal, those who desperately need expensive care and assistance will be able to get it.

Kevin Turner, who played for Philadelphia and New England, suffers from amyotrophic lateral sclerosis and wasn't sure he'd live long enough to receive payment. "There will always be people who said there should have been more," he told The New York Times, "but they are probably not the ones with ALS and at home."

The settlement has other attractions. Players won't have to prove a connection between their cognitive deficits and their NFL experience. Anyone with documented brain damage will be entitled to payments, with the amount tied to age and years in the league.

The league's obligation could turn out to be higher than expected. Cato Institute liability expert Walter Olson says that if the fund is someday exhausted "and the NFL is still

making a mint of money, it's hard to imagine that it will not come under pressure to reopen things, and lawyers will have many theories as to why someone showing up late with brain injury can't be turned away with nothing."

The more regrettable part of the deal is that the league won't have to turn over documents revealing what it knew about the risks of the game and ways to reduce them. But who knows if anything damning would be found? In any case, George Washington University law professor John Banzhaf notes, any player could reject the settlement in favor of having his day in court, in which case this information may yet come to light. It would be educational.

The NFL has belatedly stepped up efforts to protect players. It is meting out more fines for players who lower their heads to make contact with the crown of another player's helmet. It is attempting to reduce the number of open-field tackles. But as more is learned about the significant dangers of repeated concussions, the future of football from youth leagues to the pros comes into question.

The immediate priority is compensating the casualties of professional football and lightening the grim burden of their ailments. That's reason enough to welcome the deal reached last week.