

Tom Demetrio: The defender of ex-NFL players

Story by Roy Strom • Photo Lisa Predko

Tom Demetrio is accustomed to zealously advocating for his clients. It's less often that the Corboy & Demetrio partner is fighting for a group of unnamed and unrepresented clients.

But that's just what he was doing on Nov. 19 when he stepped in front of U.S. District Judge Anita Brody in Philadelphia and eviscerated the NFL's preliminary settlement with 5,000 former players who allege they suffered brain injuries from concussions. This was the "uncapped" settlement, reached after Brody deemed a previous \$765 million pact inadequate to cover player injuries.

Demetrio used colorful language to express his displeasure with the proposed class-action settlement, calling it "unfair" and "arbitrary" and saying it allowed the NFL to conceal a fraud — what and when it knew about the dangers of concussions.

He asked Brody to consider her legacy when deciding whether it was a fair and adequate deal — even though he privately expected her to green-light it. She had not yet ruled by the time *Chicago Lawyer* went to press in mid-January; Demetrio said he would appeal an approval.

Demetrio's dozen or so clients in the case, who include the family of deceased Chicago Bears safety Dave Duerson, will likely benefit from the settlement. But, again, Demetrio wasn't necessarily arguing on their behalf.

"Let the future Dave Duersons' families be a part of this settlement," Demetrio said, referring to more players suffering from brain injuries in the future. "Let them be at the table."

He was arguing against what he considers an insidious reality.

Duerson was diagnosed with chronic traumatic encephalopathy (CTE) after he died from a self-inflicted gunshot wound to the chest. In the settlement, "death with CTE" can lead to an award of up to \$4 million for a victim's estate, although Demetrio said he is unsure what, if anything, the Duersons would recover from the settlement — it is a complicated calculation.



But only players who died with a CTE diagnosis between Jan. 1, 2006, and July 7, 2014, are eligible for the \$4 million. And there is no compensation for living players who develop CTE or many of its symptoms.

The NFL's lawyers argue that diagnosing CTE in a living person is still beyond science's grasp. Demetrio said within five years, it will be common practice — but that may not matter.

That's because the settlement says the two sides will meet in 10 years to discuss how to account for advances in science and medicine, such as being able to diagnose CTE in the living. Any changes to the settlement must be agreed upon by the NFL and players.

"We're told by really, really smart guys who have been studying this from day one that within five years we'll be able to diagnose this in the living. Why wait for another five years to maybe agree and maybe not?" Demetrio said. "I don't think that's fair for these former players."

If Demetrio was able to craft the settlement on his own, players would be covered for CTE throughout the entire 65 years of the pact. He pointed to a study that showed signs of CTE in 76 of 79 deceased NFL players studied by the Department of Veterans Affairs' brain repository in Bedford, Mass..

"That's the biggest problem," Demetrio said. "The settlement covers ALS and Parkinson's disease, but there are very few

confirmed cases of either. CTE's a big deal."

Demetrio said his appeal, if necessary, would argue that the settlement is unfair because the concerns of CTE patients were not represented by the counsel negotiating on behalf of the class. That's why, Demetrio said, he's arguing on behalf of potential clients he doesn't currently represent.

"The people I'm most concerned about are the people that today are fine," Demetrio said. "I'm as interested in the 15,000 players who are not represented right now as I am with the ones who are represented. Because the ones that aren't represented don't even know that this is not good for them." ■