

# Chicago Daily Law Bulletin.

## \$75M deal ends NCAA concussion claims suit

Litigation dating to 2011 applies to all athletes before 2016

**PATRICIA MANSON**  
pmanson@lawbulletinmedia.com

A federal judge approved a \$75 million settlement in a class-action lawsuit brought against the NCAA on behalf of student-athletes at risk of developing concussion-related symptoms.

In a written opinion this week, U.S. District Judge John Z. Lee gave final approval to a settlement calling for the NCAA to put \$70 million in a medical-monitoring fund for athletes who played on or before July 15, 2016.

That was the date Lee gave preliminary approval to the settlement.

Under the monitoring program, athletes may be screened for symptoms of persistent post-concussion syndrome and other conditions related to brain trauma once every five years until the age of 50 and then once every two years.

A medical science committee will determine whether an athlete qualifies for a medical evaluation, which will be performed at one of 33 sites in the United States.

Athletes may qualify for up to two evaluations and may seek authorization from the committee for a third.

The medical-monitoring program will last for 50 years.

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## CONCUSSION

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The settlement also requires the NCAA to pay an additional \$5 million that it would not otherwise have paid for research into concussions.

And the settlement requires the NCAA to continue implementing changes it made to its concussion-management and return-to-play policies.

The NCAA instituted many of those changes while the case was pending.

Lee awarded \$12.7 million in fees and \$750,000 in expenses to the lawyers representing the class of athletes settling the case.

The settlement class counsel include Siprut P.C. and Seattle-based Hagens Berman Sobol Shapiro LLP.

In July 2014, Lee appointed the two firms as co-lead counsel of the multidistrict litigation.

Joseph J. Siprut of Siprut and Steve W. Berman of Hagens Berman are the managing partners of their respective firms.

The procedures set out in the settlement "will save lives," Berman said in a statement.

"We are thankful to the court for granting final approval so current and former student-athletes can begin to see the settlement's benefits, improved safety measures and monumental changes to come," he said.

"Having handled college cases on behalf of college athletes whose concussions were mishandled, we have seen the lifetime devastation that results."

Also serving as settlement class counsel is Hausfeld LLP, a firm based in Washington, D.C., that was appointed by Lee as special class counsel for monitoring relief.

Settlement class counsel serving on an executive committee appointed by Lee are Zimmerman Reed PLLP, a firm based in Minneapolis; The Orlando Firm P.C. in Decatur, Ga.; and The Dugan Law Firm APLC in New Orleans.

Law firms representing athletes who objected to proposed settlements before the final settlement were awarded \$1.4 million in fees.

Those firms include Edelson P.C., Gordon Law Offices Ltd. and Clifford Law Offices P.C., all based in Chicago.

Houston-based Coats Rose P.C. also represented an objector.

The fees and expenses awarded attorneys for the settlement class and the objectors will come out of the medical-monitoring fund.

That will leave a little more than \$51 million in the fund, Lee noted.

"A comparison of total attorneys' fees to what class members actually receive results in a ratio of 22%," he wrote, "which is well below the ratios deemed reasonable by courts employing the percentage-of-recovery method."

Attorneys representing the NCAA include Mark S. Mester and Johanna M. Spellman, both of Latham & Watkins LLP.

"The measures provided through this agreement will allow qualifying student-athletes access to medical screening and evaluation to assist the student-athletes' treating physicians with their whole health care," NCAA Chief Medical Officer Brian Hainline said in a statement.

"The NCAA remains committed to identifying advancements to address head injuries in NCAA sports."

The litigation began when Adrian Arrington filed a proposed class-action suit



U.S. District Court, Northern District of Illinois  
*In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*  
MDL No. 2492, Master Docket No. 13 C 9116  
U.S. District Judge John Z. Lee

against the NCAA in federal court in Chicago in September 2011.

Arrington played football from 2006 to 2009 at Eastern Illinois University in Charleston.

The parties in the suit conducted discovery and then began settlement discussions with the help of Layn R. Phillips.

Phillips is a retired judge who served on the federal trial bench in Oklahoma City and now is with Phillips ADR Enterprises P.C. in Corona Del Mar, Calif.

Dozens of other proposed class-action suits were filed against the NCAA during this time.

In December 2013, the Judicial Panel for Multidistrict Litigation consolidated the cases and transferred them to the Northern District of Illinois for pretrial proceedings.

In December 2014, Lee rejected a proposed settlement agreement submitted by the parties.

Lee described the proposal as a "significant step" in trying to resolve the athletes' claims, but said the parties needed to address concerns about the fairness and workability of certain provisions.

The parties continued negotiations with the help of Wayne R. Andersen, a retired judge who served on the federal trial bench in Chicago and now is with JAMS.

Lee approved an amend-



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ed proposed settlement agreement on a preliminary basis in July 2016 and held a fairness hearing in February of this year.

In his opinion Monday, Lee certified the settlement class and subclasses under Federal Rule of Civil Procedure 23(b)(2) in addition to giving final approval to the settlement.

The settlement class includes all athletes who played in an NCAA-sanctioned sport at an NCAA-member institution any time through July 15, 2016.

The contact sport subclass consists of athletes who played in sports that include football, lacrosse, wrestling, ice hockey, field hockey, soccer and basketball.

The noncontact sport subclass consists of athletes who played in all other sports, including golf, baseball, softball, volleyball and track and field.

Lee issued his opinion in *In re National Collegiate Athletic Association Student-Athlete Concussion Injury Litigation*, MDL No. 2492, Master Docket No. 13 C 9116.