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Sol Weiss

Andrew Brandt

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Jeffrey S. Moorad Sports Law Journal Interview

NFL CONCUSSION LITIGATION RESOLVED: INSIDE THE
SETTLEMENT WITH PLAINTIFF'S CO-LEAD COUNSEL,
SOL WEISS

Interviewer:

Andrew Brandt

Director of the Jeffrey S. Moorad Center for the Study of Sports Law, Andrew Brandt, interviews the former NFL Players' co-lead counsel and distinguished Villanova Law School alumnus Sol Weiss, to discuss the \$765 million settlement in the NFL Concussion Litigation.¹

Andrew Brandt – This is a unique opportunity for us to have one of the co-lead counsels for the NFL concussion litigation,² which reached a historic settlement about three weeks ago. Let's give a warm welcome to a distinguished alumnus from Villanova Law School, Sol Weiss.

I want to get into it, and we have our time together to talk about the settlement and anyway that you can or are able to, I understand that this is ongoing, but maybe the first thing that we should know is, tell us how you got into this, into representing former football players and their families in this litigation against the NFL.

Sol Weiss – For years, one of my partners, Ned Erlich, had represented injured athletes for compensation claims, and Ned was on the NFLPA panel of lawyers who represent these gentlemen, and

1. For a video recording of the interview, see villanovauniversity, *NFL Litigation Resolved: Inside the Settlement*, YOUTUBE (Oct. 7, 2013), http://www.youtube.com/watch?v=we3bKushkuk&feature=share&list=UUkjYphb_7LTijg7s2u9g4Ww.

2. See, e.g., Plaintiffs' Master Administrative Class Action Complaint for Medical Monitoring and Original Class Action Complaint, at 4, *In re National Football Players' Concussion Litigation*, No. 12-3337 (E.D.P.A. 2012), 2012 WL 5212950 (2012).

not just football, hockey, baseball, basketball, soccer, and I guess it was three years ago, that my partner in Arizona, Larry Coben and I were speaking, and Larry has done a lot of helmet cases, for high school and college kids who have had terrible injuries playing football, or riding a motorcycle, or what it might be, and we started talking about the instances of concussions in the NFL. And that's our story. And we've had the fortune to have some really good players, like Jim McManson, who want to see this done right. And we did.

Andrew Brandt – Okay, let's fast forward towards, we were here together here at the school in March, talking about litigation, in our symposium out there in the commons, since then, two weeks after that, I attended the motion to dismiss by the NFL, and from that point on, at least from our perspective, we expected a decision from Judge Brody in July, but she decided not to have a decision, and to push you parties together towards what turned out to be a settlement. Take us inside that in what way you can in terms of what happened from April until August.

Sol Weiss – The issue was preemption, and those of you in law school probably know, federal preemption is a doctrine that says that you can't use a state court law in conflict with the federal law. This particular case, there is a collective bargaining agreement, and so the Labor Management Relations Act has provisions.³ And one of the provisions is that you can't bring a lawsuit that has to do with any term in the collective bargaining agreement. So the NFL's position was, "dismiss the lawsuit and force these guys into arbitration for grievances." We thought that was wrong. It was a very contentious issue. You were at the hearing. Both sides argued it very well. And it's one of those things in litigation that, damned if you do, damned if you don't, because whoever would have won, before Judge Brody, that decision would have gone to the Court of Appeals, that would have taken a couple years, and then you would end up in the Supreme Court of the United States, and so you all know, last term, the Supreme Court heard nine preemption decisions; in seven of the cases they found that the case was preempted. So the plaintiffs lost those cases. Lost their right to be in court. That process could have taken four or five years. And whatever was left of the case would then go forward, and there is a whole bunch of other defenses that the NFL had. And so, it was inconsistent with

3. Labor Management Relations (Taft-Hartley) Act, Pub. L. No. 80-101, 61 Stat. 136 (1947) (codified as amended at 29 U.S.C. §§ 401-531 (2006)).

our goal of trying to get people paid who are sick, and get them paid quickly. So we decided to talk.

Andrew Brandt – And how did those talks go initially, and then, did they speed up then right in front of the season?

Sol Weiss – I don't think the season had anything to do with it. What did have to do with it was Judge Brody, who from the time that she formed the MDL, which is multidistrict litigation, where every federal judge has to send the case that's assigned to them to Judge Brody. And her goal was to try to get the case resolved, because she knew there were cutting edge issues, like preemption. So she instructed lead counsel on both sides to begin to talk. We talked for well over a year. When things didn't go as she planned, she brought in a mediator, a retired judge, Judge Lane Phillips, and those things heated up, and we got a deal.

Andrew Brandt – Is mediation in a room, in a physical space, where you got together, and it was triangulated, with the NFL side on one side and the plaintiff on the other, or was it much more by phone, by conference call, how was it?

Sol Weiss – There were a lot of different ways and times we met, so it wasn't confined to one space or one time. What went on, we can't talk about, Judge Brody doesn't want us to speak about what actually occurred in mediation. So I can't, or I would.

Andrew Brandt – Okay.

Sol Weiss – She's the Judge.

Andrew Brandt – Well let me ask you this: How do you feel about it? What was your initial reaction to the settlement?

Sol Weiss – I was elated. Very happy for the players because we achieved what I said we were going to do in March.⁴ That is for the guys who are really hurt and their families, get them paid. And for the other players who needed testing and don't have insurance, we set up an independent way in which they can get tested for any neurological problems they may have.

Andrew Brandt – How will that work? Will that be kind of a panel, where someone presents themselves and says "this is my issue[]," and how much should I get? It just sounds very complicated.

Sol Weiss – It's really not. We're going to set up a nationwide network of qualified physicians, who will be neuropsychologists and

4. See Symposium, "Concussion Conundrum": Panels 2 & 3, – Panel 3: Concussion Injury Litigation v. NFL: Looking at Both Sides, 20 MOORAD SPORTS L.J. 347, 362-80 (2013).

neurologists, and hopefully within fifty miles of where any player lives they will go and they will get a battery of tests that our experts have designed. They will be graded on those tests and based on those tests, they will see whether they have any cognitive deficit or difficulties or injuries. And it's all objective and it's all based on science.

Andrew Brandt – Will players that join the lawsuit that have that have no current symptoms be entitled to compensation?

Sol Weiss – If they . . . If someone is thirty-five years old now, and is relatively stable, but they develop dementia, Alzheimer's disease, Parkinson's disease, ALS, they will get payment when they develop it. So the injury, so the people can come in, as soon as it's set up and approved by the court, and no appeals, for the next sixty-five years can get paid.

Andrew Brandt – Will the money run out?

Sol Weiss – I don't think so. I'm pretty sure it's not. We hired economists and actuaries and medical scientists, and we are very comfortable that there is enough money in that fund to last sixty-five years.

Andrew Brandt – So the settlement sweeps in all retired NFL Players. Is that correct? Whether they were part of the lawsuit or not?

Sol Weiss – Correct. 19,000 or so retired players.

Andrew Brandt – Each one?

Sol Weiss – Every single one of them has the opportunity to participate either in baseline testing or if they're injured and they meet the diagnosis, receive payment.

Andrew Brandt – Okay. And for that NFL, and as I'm sure you're aware, a lot of lawsuits that you settle, the defendant has no admission of liability.

Sol Weiss – I've never settled a case with a defendant in forty-one years where the defendant has admitted liability. The issue is not liability; the issue was getting compensation to the people who need it.

Andrew Brandt – What do you say to the people who say the NFL got off easy here? And you know you've seen that out there. I have, and I've dealt with those questions as well.

Sol Weiss – First of all, seven hundred sixty four million dollars is a lot of money. Second of all, we have enough money to pay the players who are hurt for sixty five years, and to have this free medical care for those who need to be tested. And if they come up ab-

normal in the testing they're going to get medical care paid for by this fund in the future. So it's not about two billion or four billion or ten billion dollars, it's about having the right amount of money to do the deal now, and not wait five or ten years for the appeals to run out.

Andrew Brandt – When do you think these players will see money? Ballpark?

Sol Weiss – Assuming there are no objections at the fairness hearing which will be in the spring of 2014, by the end of 2014 or early 2015, they will be getting payments.

Andrew Brandt – And the status you just mentioned – when is the next – and clarify if you will: Judge Brody, the presiding judge, has to for the lack of a better word, sanction this settlement, bless it, approve it?

Sol Weiss – She has to do a couple of things. We are going to put a motion in front of her, and ask her based upon the papers, to say to the public, "This looks good." You can send a notice out, I'll approve it, has all 19,000 people who can be affected receive a notice of proposed settlement, and a date for final hearing, an evidentiary hearing. At that hearing, which will be ninety or one hundred days after the notice goes out, that's when all the evidence will be brought out, the soundness of the funds, why there is enough money, the science that went behind the definition of the injuries, things like that.

Andrew Brandt – And will that be the forum where players who object to the settlement may be heard?

Sol Weiss – Correct.

Andrew Brandt – What do you anticipate that to be like? Do you anticipate numbers in the several, or the tens or hundreds, to object to the settlement at that hearing?

Sol Weiss – I really believe when people understand and see the actual documents, that there will be very few unhappy people.

Andrew Brandt – And that's the question I'm getting a lot and I'm sure you are, can they opt out of the settlement and bring their own lawsuits against the NFL?

Sol Weiss – Yes they can. And the NFL has the right to say that, if too many of them do so, the deal is off.

Andrew Brandt – Deal buster.

Sol Weiss – Correct.

Andrew Brandt – Likelihood of that event?

Sol Weiss – Not very likely.

Andrew Brandt – Remote?

Sol Weiss – I'd say remote. You have to understand, when someone opts out, they're back into the court system. They're going to face preemption, they're going to face statute of limitations, they're going to have to prove that the injury they have didn't occur while they were playing football in high school or college. It's not an easy task.

Andrew Brandt – Right. And that's what we talked about here, the issue of causation. But the causation issue, would . . . you were confident about the case.

Sol Weiss – Still am.

Andrew Brandt – Knowing the causation issues.

Sol Weiss – Absolutely.

Andrew Brandt – Realizing that in every deposition, they would say, "Didn't you play high school football, didn't you play pee-wee football, didn't you fall on the ice one year?" Those kinds of questions.

Sol Weiss – Our theory was backed by the science, is that there are links to the types of injuries you get playing football to ALS, for example. I believe that the studies show that people who have had concussions are four to six times greater to get ALS than someone in the general population. In many courts that is sufficient evidence to make out a case of something we call general causation. Now your doctor is going to have to say specifically why in your case the injuries you sustained caused your ALS. That's a different burden. For Parkinson's disease, there is also increased risk, Alzheimer's, not many people get Alzheimer's in their fifties or sixties, or late fifties or forties. There is a greater percentage football players who have been concussed who have that than the general population. That's the kind of evidence that we think will be helpful. But then again, a jury could say no.

Andrew Brandt – Right. In the master complaint, there were a lot of allegations of the NFL beyond causation. There were negligence, and misrepresentation, and fraud, and concealment. Those go away, obviously, with a settlement.

Sol Weiss – Correct. Well, the settlement is people get paid. And everyone goes into business, and you have to understand, the purpose of settlement is not to look back, it's to look forward. Resolve the claims.

Andrew Brandt – Whatever the NFL had or didn't have over the years, I assume if it went forward, you would be trying to get those documents.

Sol Weiss – Correct. But this wasn't about getting documents, this was about get people paid and compensated and tested, it's a different agenda.

Andrew Brandt – So tell us, when you told a specific client, a bunch of clients, about this, their reaction, especially those that have been suffering.

Sol Weiss – Overwhelmingly, our clients are supportive of the settlement. You have to understand, a lot of these players had a very glamorous life. They were pro athletes. They can't work. So they don't have money like they had when they were playing football, and a lot of these guys had very short careers also. So they didn't save a lot of money. Their families are destitute. I mean destitute. And I've talked to a lot of wives and kids; it's horrible. These guys have had mood changes, they're depressed, they don't know what hit them. There are days when Jim McMahon's girlfriend, Laurie, has to plug in his GPS so he gets where he needs to go when he drives. That's not good. You have other players, some of them are in homes. And they're fifty years old, they're in nursing homes. And yet, the families have to go on. So for those people, we had to get them money as quickly as possible. And it's good money. The settlement will provide really good money for those people. It will help their lives and their families, and that's what it's all about. We're not about a smoking document that the NFL hid some evidence.

Andrew Brandt – If this went forward, you mentioned then in your opening comments, two, three, four, five, six, eight, ten years of litigation

Sol Weiss – Correct. That's right. And a lot of these players who are on the fringe will just lose out. You'll have some more players committing suicide, which is a horrible thing. Riesling was alive when we brought this lawsuit, he had a horrible ten years before he committed suicide, they're hanging on every day, "What's going on, can I be helped." They need money. They need some validation that this was not in vein; that they did nothing wrong. It's really important to understand that, that's the human component.

Andrew Brandt – And you think ballpark that they'll get some compensation by this time next year? Or earlier?

Sol Weiss – No, I said the end of 2014 or the beginning of 2015, without any objectors, because the objectors will take it to the third circuit, and nothing can be distributed until we have a final order.

Andrew Brandt – Can current, and I guess future, players sue the NFL on this issue?

Sol Weiss – Not on this issue because we had to represent the retired players. The current players are protected by the union, and the union represents them. Now whether there will be changes downstream in the CBA, I don't know. And before I forget, one of the benefits we have in this settlement is that none of the benefits under the collective bargaining agreement are abrogated by the settlement. So they're separately different. So if someone is entitled to what we call "Mackey Benefits," or "88 Benefits," or "Neurocognitive Benefits" under the collective bargaining agreement, they get that in addition to what they get in this deal. And the last collective bargaining agreement had a clause that if you wanted to get the neuro benefit, you had to waive your right to sue. That's no longer valid, they can do both. That's an important piece of the settlement.

Andrew Brandt – It is. And I did not know that. Speaking of the CBA, the collective bargaining agreement done between the NFL and the NFLPA, the latter group, they've been what I think is strangely silent through all this. They represent the players, they had a one sentence kind of bland statement about the settlement. Where is the union in this, and were they involved at all in your settlement discussions or dealing with the plaintiffs?

Sol Weiss – The NFLPA was not involved in the litigation at all. As I say, they represent the present players, and the agreement is between the union and the teams.

Andrew Brandt – The CBA?

Sol Weiss – Yes. There is a tension because any benefit that the collective bargaining agreement gives to a retired player comes out of the pocket of a current player. So the union is not really keen, necessarily, ongoing one hundred percent behind the retired players, and that's the tension, and we have to represent the retired players.

Andrew Brandt – Were they involved at all?

Sol Weiss – No. Not at all.

Andrew Brandt – Not their attorneys?

Sol Weiss – Not at all.

Andrew Brandt – How many players were you working with, with your firm?

Sol Weiss – We have about 350 players.

Andrew Brandt – In the litigation?

Sol Weiss – In the litigation. That we've signed contracts with.

Andrew Brandt – And I, as I said, imagine that symptoms range from serious, even to the point of suicide, to just interested in, is it monitoring in the future? With no current symptoms?

Sol Weiss – Correct. We have some asymptomatic players. Some do not have insurance or have insurance that doesn't cover the kind of testing that they need, and they are very happy that they can get this testing that is going to cost them about three thousand dollars. A full battery of tests. And again, it's an independent organization, it's not run by the NFL, it's not run by the players union, it's run by the settlement. No input from the union and very little input from the NFL.

Andrew Brandt – So again, a player that has no symptoms now, and develops cognitive symptoms; dementia or whatever it is, ten, twenty, or even thirty years from now, will be entitled to benefits?

Sol Weiss – They will get a benefit, and the benefit will be increased by a cost of living factor from year to year to keep them on parity with the people who get payments now.

Andrew Brandt – What is your feeling about the NFL after all this? I know you are a football fan.

Sol Weiss – I will say that the NFL stepped up to the plate and did the right thing. Which is a good thing. This lawsuit, as we talked about in March, has had a lot of good effects. In hockey, in college soccer, women's field hockey, lacrosse, any sport where you can have a concussion, I think the game will be safer for all the participants, whether high school, college, semi-pro, whatever it is. And in fact, on the expressway now, there is a big sign from the Walkman Institute about concussions. So, it raised an awareness in the public, which is a good thing.

Andrew Brandt – And I will say this, that dealing with talk about football, all I hear about is how these suspensions and increased fines for these hits, they shouldn't enforce them this way because they're just trying to get the guy down, and they don't know where to hit, they don't know whether to hit low or to hit high. It's had an impact. The question I have, Saul, is, is it going to fade with the settlement? As we get further away from the settlement, will the NFL's vigilance about hits to the head fade?

Saul Weiss – I certainly hope not. And I don't think it will. You look at last year and this year, the NFL has cracked down. It's not just the NFL. It's all sports. Look at some of the Phillies that got hurt this year that got concussions. Dominic Brown, they kept him out, what? Ten days? That would never happen in the past. There is a sea change, and it's a good sea change. It doesn't mean it's the end of football. It's a great thing, football will still be around, and it'll be exciting, but they'll teach kids at a young age how to tackle properly, and not tackle with your head.

Andrew Brandt – So that leads to the question now that I get all the time, would you let your kids play football? Mine are vertically challenged so that's not an issue for me, but your kids are probably older, but-

Sol Weiss – My kids are older, I have four daughters and one son, but they're all grown, but it'd be their choice. I'll tell you this, Kevin Turner is a good example, made his oldest kid wait until he was in high school before he could play football. It was a tough thing for Kevin. Those who may remember Kevin Turner, he played with the Eagles. Kevin has ALS. It's sad to see Kevin deteriorate, at least able to walk, but the use of his hands is getting worse. He needs a full-time caretaker. And Kevin is having a hard time speaking. Yet he is out there every day supporting the settlement.

Andrew Brandt – He is.

Sol Weiss – So there are a lot of pro people, I understand that . . . I'm having a senior moment . . . the quarterback that for the New England Patriots, Tom Brady's father said that he wouldn't let his kids play football anymore. Kurt Warner won't let his kids play football. There's a number of people out there who won't let their kids play football. But I think when they have safer rules, and their kids are taught how to tackle differently, people will relent, and they'll play.

Andrew Brandt – During the lawsuit, did you hear people—people would say to me, “Don't these guys realize you hit each other in the head when you play football?”

Sol Weiss – Sure. But just because you get hit in the head doesn't mean you're going to be injured. The problem is when you get your head injured you can't go back into the game.

Andrew Brandt – Right.

Sol Weiss – And that was the culture that had to change, and that culture is changing. They used to make these guys go back in, they'd give them these smelling salts, they'd go back in. Well that's really bad. And Bob Cantu, Ann McKee, and Kristen Miskey up in

Boston, they've done a great job. And they've really demonstrated how people have to get back to baseline before they can play, before they can resume sports. And that'll save a lot of injuries later on in life.

Andrew Brandt – The problem I always said, and you can comment on this, is that we often have to protect players from themselves, and that's the worst part. Because we have this culture of playing through, and I'm sure a lot of you guys out there that play sports, you just want to play, you just don't want to be taken out of the game. So I dealt with players that bombed their baseline testing so that when they were concussed, they wouldn't look different, and in football, especially the NFL, it's a business. So you're out for two games with a concussion, you may never play again. Alex Smith, who is here tonight, what happened to him last year with the 49ers, he did the right thing, and never got his job back.

Sol Weiss – Yeah, but he is playing for the Kansas City Chiefs, he is a starting quarterback, still making a lot of money, and he preserved his brain. So he did the right thing.

Andrew Brandt – You hope more do.

Sol Weiss – That's the point.

Andrew Brandt – You hope more do, but a lot of players are looking at Alex Smith and saying what I said. He sat out, and he never got his job back. And that's an unfortunate thing that happens.

Sol Weiss – If people know the risks, and they want to take them, that's on them. This whole lawsuit, people didn't know the risks. They didn't realize there were long-term effects to their mental health when you got concussed or sub-concussed. And they went back in and played. They didn't know it. Look, people play sports, they get orthopedic injuries, those injuries limit their ability to play, so they don't play. It should be the same for mental injuries. You should be limited and not be able to play. The fact that you can run doesn't mean that you should run. And I've seen a couple shows on either 60 Minutes or Dateline, high school girls playing soccer headed the soccer ball, and they showed girls who can no longer read with these lights. They have to be in darkness because they've had a head injury from playing soccer. So their grades are down, they're mentally impaired, and they have to change the way in which they're going to live. They didn't know that before. I've seen many soccer teams letting girls, or even young kids who are not developed, head a ball. It's not a smart thing. It can be avoided, you can still play soccer and enjoy the

game. Now when you're a twenty-five year old male, and you have well developed neck muscles, you know that you head a ball from your waist forward, that's a different thing. But when kids are too young, their bodies aren't mature, they can't do it.

Andrew Brandt – And who is protecting them?

Sol Weiss – We have to protect them. The NFL had that role with these guys. They assumed the safety of the players. And if they were candid and honest about what their committees from 1994 through 1999 really found out about closed-head injuries, they might be in a different position, but they didn't. Instead, they chose to deny any causal connection between ALS or Parkinson's or dementia and playing football in the NFL.

Andrew Brandt – Beyond the lawsuit, and this may be out of your arena, do you feel the NFL has now admitted to that link?

Sol Weiss – Yes.

Andrew Brandt – Not necessarily ALS, but a link between playing football and future neurological damage.

Sol Weiss – What I can tell you is I think in 2009, Roger Goodell testified in front of Congress and denied that there was any causal connection, and they have since changed their position. So I do believe that the NFL is becoming more proactive. The NFL is doing a research program with GE on scans for about \$60 million. The NFLPA is spending \$100 million in a five year program at Harvard to study MTBI. All good things.

Andrew Brandt – On the legal front, we're in a law school, where does it go from here, in terms of, there is an NCAA litigation that is active.

Sol Weiss – There is, correct.

Andrew Brandt – Will your settlement have any impact on that? In your opinion?

Sol Weiss – Maybe tangentially, but not directly. It's a whole different circumstance. As you know, as you pointed out, the thrust of our case against the NFL was the intentional withholding of the information they developed from 1994 forward about these injuries. That was a big component of our case. The second thing is, the NFL is a single entity comprised of thirty-two teams. The NCAA has thousands of participating colleges. So I think it's a whole different setup.

Andrew Brandt – Do you give them a chance, that litigation, on the plaintiff's side, do you give them a fighting chance?

Sol Weiss – I'm not even going to go there.

Andrew Brandt – Okay. I won't make you handicap that. And then of course high schools, athletic associations, and amateur associations.

Sol Weiss – There has been a big change. I can tell you, that in the area high schools, the private schools, they are really monitoring their kids. If a kid has a closed head injury, that kid is not returning to the practice field, will not let them participate. I know this first hand; I have a trainer who happens to be at the Haverford School. And they're very very careful about the kids. And they can get some resistance from the parents, but they won't let them play.

Andrew Brandt – You know I have a sixth grader that just went through impact testing.

Sol Weiss – It's a good thing.

Andrew Brandt – It is a good thing. We have a little bit of time for some questions, I know people were hoping to ask some. If you have a question.

Audience Question – For the settlement down the road for the retirees, what kind of causation will they have to prove?

Sol Weiss – None. The beauty of the settlement is there is no proof of causation. So, whether your injuries occurred either from high school or college, that's not an issue. Just if you meet the injury definition, you get paid. Unless you've had a car wreck or a brain injury, then you get a very large deduction.

Audience Question – Does it matter if they've been playing most recently in the NFL or in the Canadian Football League?

Sol Weiss – Only the time that they've played in the NFL counts. So if you've played in the NFL for five seasons, you get a full payment, depending on your age, and a season is defined by not actually playing all season, but just being on the roster for one game. The active roster. So anybody who has five years in gets no deduction penalty. If you've played four years you get 80 percent. If you've played three years you get 60 percent. It goes down that way. On the practice squad you get half a season credit.

Andrew Brandt – So again, to clarify, you come in front of a medical decision maker, you are not going to be asked the questions we talked about, "What about playing high school; what about falling on the ice; what about a bike accident?"

Sol Weiss – Absolutely correct. So what happens in the monetary award fund is a little different. There is an administrator, and you will deliver to the administrator your records. They will look to see confirmation for the injury, the date you were diagnosed with

that injury, and then they'll see how many years you played and you'll get a tentative award. So not very complex. And there will be medical advisors around to assist the decision makers if they need it. But like I said, the definition for ALS is pretty standard, for Parkinson's it's pretty standard, Alzheimer's disease. So it's not a lot of subjectivity, it's mostly objective looking at records. That's a good question.

Andrew Brandt – Your comment that, the fund for that is not the \$765 million . . .

Sol Weiss – \$765 million. Yes.

Andrew Brandt – Will be more than enough for sixty-five years?

Sol Weiss – Correct.

Audience Question – How does the compensation for the families of players that have died work?

Sol Weiss – Well, if you died from ALS, you will get the ALS benefit at the age of your diagnosis. If you committed suicide and your brain was autopsied and you had CTE, the highest payment is \$4 million, and it would go down after a certain age. It's graded. And again you have to play five years. And I believe Alzheimer's highest payment is \$3.5 million. I think Parkinson's is around that area. ALS is the highest at \$5 million. It's a very horrible disease that has a lot of complications. And by the way, we have a program that we're doing with the government to resolve liens. So those of you who know, when you have a recovery, while the recovery may be tax free, if you received any medical care from the government or a state, they get the money back. And if you have private insurance, they may get some of the money back too, so we're having a program to resolve those for a lot less than the cost of care. That's another thing the players get.

Audience Question – You've mentioned a lot of these players have committed suicide because of the difficulties they have faced after having concussions. You've mentioned that there is medical care for players that have developed ALS and Alzheimer's. Is there anything in the settlement devoted to mental healthcare for these players who are suffering every day?

Sol Weiss – Yes. If somebody goes into the baseline assessment program and their tests come out abnormal, they have a problem but the problem is not great enough to get them paid from the injury side, they are going to get a medical benefit card, or medical benefit will allow them to get additional care. Paid for by the settlement. That's not part of the \$765 [million], that's the baseline assessment program. So yes, they will get care by qualified physicians.

Audience Question – You said current players now aren't covered, but what's covered when current players retire and they're not under the auspices of the union anymore. Are they covered or are they in a no man's land?

Sol Weiss – They will be in no-man's land because the cutoff date for retired players will be the effective date of the settlement, which is the date the court approves the deal.

Andrew Brandt – The August 30th date or the date in the future?

Sol Weiss – The date in the future.

Audience Question – Many of the players have already incurred expenses at their own to, say, get diagnosed, et cetera. Is there any retroactive payment for those [sic]?

Sol Weiss – No, but if they would get a grid award, we are going to work with their insurance company to make sure that the insurance company doesn't take an unfair amount. So that's called resolving liens. That's part of our program. Good question.

Audience Question – How did you and your team of attorneys manage the logistics of what is really an extraordinarily complex litigation [sic]?

Sol Weiss – Okay, meaning what?

Audience Question – With all the documents coming in, expert witnesses . . .

Sol Weiss – Well we, like any other group, were organized. We give assignments out to various people. And we collectively look at proposed experts. We have spoken to four or five world class neurologists. We have used Grant Iverson, who is worldwide in his scope of neuropsychology. He is working with the Department of Defense on how to treat soldiers that come back who have brain injuries from IEDs and whatever else. And other people like Grant. And they helped us understand the science.

Andrew Brandt – Did I read in the settlement that your fees, your attorneys' fees, are collectively handled by the NFL?

Sol Weiss – Correct. That is outside the settlement.

Andrew Brandt – The Plaintiffs do not pay?

Sol Weiss – The plaintiffs do not pay for the work we did to get the settlement done. Some of the players do have contracts with lawyers and they will be honored in some fashion. But the NFL is paying on top of that money. So they are paying more than \$765 [million].

Andrew Brandt – And who sets, and this is probably a sensitive question, but who sets your fee?

Sol Weiss – It will be approved by Judge Brody when we come to a resolution. I can assure you that we're still talking to the NFL and we'll get it done at a fair price.

Andrew Brandt – There will be lawyers.

Sol Weiss – Well, they have incentive, they want to get this done, and they didn't want that pool to be diluted by a lot of attorney's fees. Which it won't be. Other than those who have contracts with their lawyers, that will be worked out. In other words, some players have signed up with lawyers, and lawyers filed lawsuits for them. There are other players who don't have a lawyer, and they're going to get the same benefit. Any other questions?

Audience Question – You said, I mean, this is a multi-district litigation, with all the different attorneys involved. How difficult was it to get everybody on the same page once the settlement talks started heating up?

Sol Weiss – Well, there are two questions. Let me take it back a step. In any multi-district litigation, a court sets out a steering committee. Judge Brody appointed those people. We had regular meetings, which work was discussed, and other things were discussed. And there was a separate group that negotiated the settlement. And because Judge Brody had a gag order on, we couldn't tell the members of our committee what was going on. When two days before the settlement we got permission to talk to the steering committee, they know what you know. Nobody on the steering committees had received the actual documents that were signed. They should be produced when we file for approval.

Andrew Brandt – I know you can't talk about those negotiations, but the parties were your group of lead counsel and the NFL owners? I thought I saw Christopher Sieger talk about dealing with Jerry Jones perhaps, and were the owners the actual negotiators? Or were there actual lawyers?

Sol Weiss – I don't know actually how much I can get into that.

Andrew Brandt – Whatever you can say, or not.

Sol Weiss – What I will say is that the NFL itself had a committee of owners who interfaced with the NFL lawyers. And that's about as far as I'm going to go with that. What Chris may have said about Jerry Jones . . . he is entitled to his own opinion. Yes?

Audience Question – At both the High School and Pee-Wee level, you mention that they are trying to change the culture to min-

imize the types of hits that are going on. A lot of coaches are not knowledgeable about the techniques of tackling. Is the NFL, as what you are aware of, making that movement, or are they trying to change?

Andrew Brandt – I can answer that. I think there are all these heads-up movements around reaching out, and there are a lot of grass-roots campaigns where they are going to high schools with local stars. They go into Carolina, and Cam Newton showed up. That is a real emphasis for the NFL, to teach proper tackling techniques. That's not to say it's going to infiltrate all these high schools.

Sol Weiss – Almost every game you watch on TV now, you have a little PSA about that. The NFL is out there with present and past players trying to educate as many people as possible on safe techniques. You see them tackling this way now. Landing on . . . I guess it's a mat, to show them the right way in which to tackle. It'll be effective. Another good question, any others? Are there any questions over here?

Audience Question – I would just like to add that, what I think they miss in that heads up program is that the education about the second hit for the young children. They still go in not understanding that getting hit again [sic]. And I think the proper technique is fabulous, but being from a football family, and multiple play [sic], it's the trying to go back in and please someone when you are a younger child and not understanding that immediate second hit [sic]. And I see no advertisement, or no education about that, even in the schools with the coaches.

Sol Weiss – Well I hope schools become more outspoken, and more informed. There has been a lot of publicity about this case. It has made people more aware. And I hope it filters down.

Audience Question – I would just encourage you to use your influence.

Sol Weiss – I would agree with that.

Andrew Brandt – That's a great point, and the NFL is the beacon that everyone looks up to, and like we talked about with Alex Smith, who is ironically here tonight, the guys have to stop playing through. And that's on . . . it's not on the coaches. It's really on the team medical staff and management to separate that from coaching decisions. And I definitely think it's being done better than it was. But it's not all the way there, of course. Star players are going to be encouraged to play, you just need to make sure they are out during the time that they need to be out. There is no

mandatory time out for concussions. So you will see guys play the next week. There is nothing that says if you have a concussion, you can't play the next game. But, they advance through sport-specific training, running on the treadmill, and then of course, to doing football actions. We saw it last year here, with Vick, and McCoy, and I think that is a good thing. I think in the past we didn't have that. Now we have independent neurologists as well.

Sol Weiss – On the sidelines, which is a good thing.

Andrew Brandt – It's a very good thing.

Sol Weiss – Well, the point I would like to make to all of you who are in law school, that whether you do litigation, or you do contract work, or transactional work or whatever you do, you have to remember, you have a client. And the most important thing you can take away from this hour is that we kept the ball on the client side. It wasn't about the lawyers. You didn't see a lot of us in the news. It was all about the retired players and their story, and the difficulties they had. And our whole focus was to get the job done as fast as possible. So when people say to me, you know, "you only got 764 million dollars," I say, "I'd rather have that today than a million and a half dollars ten years down the road." So it's really about getting what you need for your client, and take that away as you graduate law school. That's a good point to remember. Any other questions about the law or anything? How the courts operate?

Andrew Brandt – Thanks, this was a fascinating hour. Thank you for coming, and let's give a warm thanks.