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# Leaked Sony Emails and the NFL's Continued Suppression of Concussion Dangers

BY [KENNETH COSTA](#) / ON OCTOBER 6, 2015

At the beginning of September, Sony Pictures Entertainment released a trailer for *Concussion*, a movie that paints a scathing picture of how representatives of the National Football League (NFL) attempted to cover-up and discredit the research of Dr. Bennet Omalu, who discovered chronic traumatic encephalopathy (CTE).

CTE is a degenerative brain disease that leads to a significant number of "neurological symptoms including risk-taking, aggression," depression, and progressive dementia. Research shows that repetitive concussions in contact sports result in the release of destructive proteins that cause widespread neurodegeneration, neuron death by apoptosis, and brain atrophy. In turn, this can lead to Alzheimer's and CTE, which "progressively rob individuals of their memory, judgment, and ability to function." Boston University researchers found CTE present "in the brains of 76 of the 79 deceased former NFL players they examined, an alarming percentage." Further research and data have estimated that "for athletes whose college sports careers began between 1956 and 2008, anywhere from 50 to 300 of them per year will be diagnosed with [CTE]."

Shortly after the release of the trailer, emails leaked from Sony showing they altered the movie to protect themselves from the NFL. The emails between Sony executives, the director, and others discuss "how to avoid antagonizing the NFL by altering the script and marketing the film more as a whistle-blower story, rather than a condemnation of football or the league." The emails also reveal that Sony worked with the help of an NFL consultant to ensure the movie would avoid "kicking the hornet's nest." Most revealing were several emails that stated "'unflattering moments for the NFL' were deleted or changed," which took "'most of the bite' out of the film" in attempts "to make the movie appear less threatening." Additionally, the film "blames individuals, not the system," which dilutes the "blatant culpability of the [NFL] for its 130 years of knowledge and denial regarding brain risk and casualty among" all players. Given the NFL's record, one sports writer suggests the timing of the leaked emails is all too convenient as the emails weaken the credibility of the film to the NFL's advantage.

This is not the only time film producers caved to fear of retaliation or pressure from the NFL. In 2013, ESPN dropped out of production with Frontline on the documentary *League of Denial*, a documentary which focuses on the NFL's "response to the dangers of head trauma," after being persuaded by the NFL to do so. In 2004, the NFL successfully pressured the Walt Disney Company, which owns ESPN, to end "a hard-hitting television series on the sports network that delivered an unsavory depiction of professional football players." Soon the new

HBO show *Ballers* may have to face similar pressures. The show depicts current and former fictional football players going through troubles with drug addiction, debauchery, and medical issues arising from taking too many hits. HBO's parent company, Time Warner, has goals of expanding its live sports coverage by purchasing a contract for Thursday night football games. However, they may have to rethink *Ballers* if they want to secure a deal with the NFL for those games.

Besides this battle on the silver screen, similar battles are being played out in court. A lawsuit against the National Football League Players Association (NFLPA), the players' union, was brought to a federal court in Missouri alleging "fraud, civil conspiracy, and negligence arising from the failure of the NFLPA to properly warn players of the risks of head trauma." The case was dismissed in August 2015 because it was not timely filed. The court found the claims were "barred by the federal Labor Management Relations Act" (LMRA), which contains a six-month deadline for suits brought under the LMRA.

Meanwhile in 2013, over 4,000 former NFL players brought more than 200 suits against the NFL over injuries related to head trauma, and accused the NFL of covering up the dangers of such injuries. The suits were collectively brought before U.S. District Judge Brody in Philadelphia. "The players claim that the league knew that concussions and other trauma could lead to long-term health problems and that it committed fraud by misrepresenting the dangers of repeated hits to the head." The suit was settled in April 2015 and was celebrated as a win for the players; however, it is anything but. The "NFL certainly wins on financial terms," only having to pay out about \$1 billion to players over the next 65 years, while their estimated annual revenue is at \$10 billion. While the case started out as concussion litigation framed as a CTE lawsuit, it progressively "transformed into a cognitive disorder settlement, all but eviscerating future awards [for] CTE." The settlement covers diseases including Alzheimer's, Parkinson's, severe dementia, and amyotrophic lateral sclerosis, none of which require "getting hit in the head." The settlement not only "forecloses any future awards for CTE," but it "is designed to limit and deny compensation to former players suffering from CTE, failing to compensate [for] the severe, life-ruining mood and behavioral symptoms associated with the disease, and only providing cash payouts to the families of players who have died and subsequently been diagnosed with the disease between" January 2006 and April 2015.

An estimated 200 players opted out of the settlement agreement in order to continue their fight against the NFL. They claim the NFL avoided the discovery process by settling, and only through the discovery process can light be shed "on what the NFL knew, and when [they] knew . . . about the long-term risks concussions posed to its players." Additionally, 90 players filed an appeal to the settlement to the U.S. Court of Appeals for the Third Circuit in mid-August stating that the settlement "neither recognizes nor compensates the majority of players suffering long-term consequences of brain trauma . . . because of how the NFL and the class attorneys have constructed [the settlement]." The brief filed states that analysis "reveals a systematic design to exclude most (players) from participation and reduce

payments to the small group who meet arbitrary criteria.” Players classify the settlement as unfairly favoring “currently injured retirees over those merely exposed to head trauma, and left a potential 19,000 players who have yet to be diagnosed with neurological diseases without a remedy.” The Third Circuit has yet to set a date for hearing the case or rendering a decision, as those who have filed an appeal have until September 30th to submit responses.

Citations:

1. Bonnie Prescott, Beth Israel Deaconess Medical Center: Scientists Develop Antibody to Treat Traumatic Brain Injury and Prevent Long-term Neurodegeneration
2. Patrick Hruby, Vice Sports: Will Smith’s ‘Concussion’ Doesn’t Have A Happy Ending, And Neither Does The Real-Life NFL
3. Ken Belson, N.Y. Times: Sony Altered ‘Concussion’ Film to Prevent N.F.L. Protests, Emails Show
4. Dave Zirin, The Nation: The NFL Must Be Loving the Misleading Sony Hacker Leaks on the Film ‘Concussion’
5. Brian Steinberg, Variety: Could HBO’s ‘Ballers’ Make Odd Bounce for Time Warner?
6. Mike Florio, NBC Sports: Concussion lawsuit against NFLPA dismissed
7. Ken Belson, N.Y. Times: A Court Test for Suits About Head Trauma
8. Philip Victor, Aljazeera America: NFL concussion lawsuit settled, but no clear winner
9. Paul Anderson, NFL Concussion Litigation: The Latest Wave
10. Travis Waldron, Think Progress: The NFL’s Concussion Settlement Is Approved, But Its Problems Are Far From Over
11. David Steele, Sporting News: NFL concussion settlement settles nothing, brain-injury group says
12. Jonathan Stempel, Reuters: Former NFL players object to concussion settlement
13. 24-7 Press Release: NFL Concussion Lawsuit Settlement Currently in the United States Court of Appeals for the Third Circuit

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