



In this Oct. 30, 2016, file photo, Kansas City Chiefs' Parker Ehinger (79) is carted off the field during the second half of an NFL football game against the Indianapolis Colts, in Indianapolis. One day after four players left the game

NFL's Latest Concussion Setback Carries Billion-Dollar Price Tag

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A judge's decision to compel the NFL to reveal its knowledge of concussion-related health risks could have far more damaging consequences for the league than whether it will have to cover a pending \$1 billion class action settlement to injured players, experts tell FOXBusiness.com.

The admittance of detrimental documents and sworn testimony to the public record would further damage the NFL's standing with fans that are already highly critical of the league's handling of the concussion epidemic. But any evidence that the league's medical experts were negligent, or that they knew the extent of brain injury risks and deliberately obscured their findings – as some former players have alleged – would open the NFL to litigation that would cost far more than \$1 billion.

"This would be a game-changer. It would be more damaging to the NFL's brand than Deflategate, Bountygate, Bullygate and all the other 'gates' combined," Daniel Wallach, an attorney at Florida law firm Becker & Poliakoff and expert on sports-related litigation, told FOXBusiness.com. "It would dominate news coverage and possibly overshadow the current NFL season."

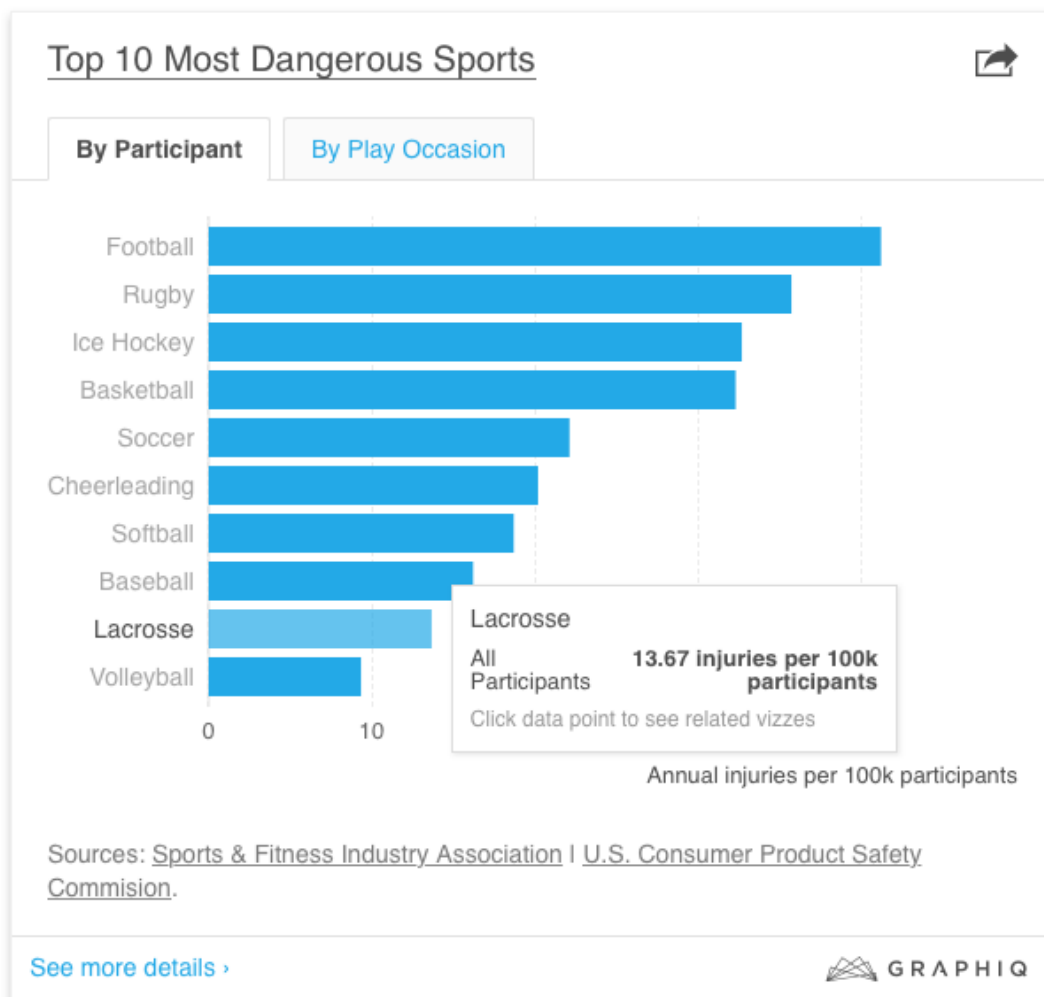
A group of insurance companies that wrote injury policies for the NFL can pursue documents and obtain written, binding statements that show whether the league's medical experts misled players about the dangers of head injuries, New York Supreme

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Court Justice Jeffrey Oing ruled Monday, according to the New York Times Opens a New Window. . The decision unfolded after the insurers balked at the NFL's request that they cover the cost of the settlement and its legal expenses.

The NFL is expected to appeal Judge Oing's decision. League representatives declined FOXBusiness.com's request for comment on this story.

At present, the NFL has agreed to pay up to \$1 billion toward damages and medical expenses for more than 5,000 former players experiencing neurological disorders like Parkinson's disease or Alzheimer's disease after their playing careers. The case is currently under appeal by the U.S. Supreme Court, delaying payouts to the players in the interim.



Most information obtained by insurers during the discovery phase is kept confidential, but some would enter the public record if the NFL and the insurance companies are

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unable to reach a settlement before a trial. Meanwhile, the dozens of ex-players who "opted out" of the \$1 billion settlement to pursue individual damages could ask other judges for access to the same data.

"The NFL's \$1 billion class action concussion settlement is being appealed to the Supreme Court, and although unlikely, it is possible that the new evidence is grounds to reopen the settlement," said Dan Werly, a sports attorney and editor-in-chief of "The White Bronco," a sports law blog. "There are also more than 150 ongoing lawsuits from ex-players who opted out of the class action who could use this information to seek millions in punitive damages."

While the NFL's insurers now have permission to access the depth of the league's knowledge on concussions risks, John Schryber, a senior partner at D.C.-based law firm Reed Smith who represents NFL players in disputes with their disability insurers, argues that most insurance companies would have done their own due diligence before partnering with the league in the first place.

"Insurance companies hold themselves out as actuarial experts: they are in the business of understanding the consequences of the risks they underwrite," Schryber said. "It has been known for many years that football players suffer concussions. Knowing that fact, any insurer underwriting that risk would have looked to their own medical experts to opine on the consequences of concussions. Indeed, the insurers very well could have known more about those serious consequences than the NFL."

Still, NFL Commissioner Roger Goodell and his deputies may determine that the danger posed by the insurance case is too great. With billions of dollars in annual revenue at stake, the NFL could chose to settle with its insurers.

"Faced with the choice between turning over potentially damaging documents, which could potentially damage its brand and further harm its relationships with players and fans, versus kicking in some amount of less than \$1 billion to make the insurance issue go away, I'm willing to bet the NFL does the latter," Wallach said. "It's the only play here."