

Hernandez had CTE; lawsuit against NFL, Patriots filed

By **Danny McDonald, Felice J. Freyer and Bob Hohler** Globe Staff September 21, 2017

The late New England Patriots star Aaron Hernandez, who committed suicide this year while serving a sentence for a murder conviction, suffered from the brain disease known as chronic traumatic encephalopathy, his lawyers and Boston University researchers disclosed Thursday.

His lawyers revealed the condition as they announced a \$20 million lawsuit against the Patriots and the NFL alleging the team and the league had failed to protect Hernandez's safety, depriving his young daughter of his companionship and love.

"Everyone, including and especially his family, is deeply troubled by this whole thing," attorney Jose Baez said at a press conference at a downtown Boston office building.

Baez said Hernandez, once a star tight end for the Patriots, suffered from advanced Stage 3 CTE. He said experts at Boston University who had examined his brain said it was the most severe case of CTE they had ever seen in a person of his age, 27, an assertion the school confirmed.

The disease is believed to occur when multiple hits to the head — including those that don't cause a concussion or produce symptoms — trigger a degenerative process that can cause troubling behavior, disturbed moods, and impaired thinking years or even decades later. The condition can be diagnosed only after death, by examining brain tissue.



Hernandez was convicted in 2015 of the June 2013 murder of Odin L. Lloyd. He was acquitted in April on charges of killing Daniel de Abreu and Safiro Furtado in Boston in July 2012.

He hanged himself five days after the acquittal inside his Shirley prison cell, where he was serving a life sentence for the Lloyd murder.

Attorneys filed the lawsuit Thursday afternoon in federal court in Boston on behalf of Hernandez's daughter, Avielle, against the New England Patriots and the National Football League.

The complaint alleges the league and the team deprived Avielle of "the love, affection, society, and companionship of her father while he was alive."

The complaint asserts the NFL and the Patriots "concealed and misrepresented the risks of repeated traumatic head impacts to NFL players," and "needlessly delayed adoption of rules and league policies related to player health and safety with regard to concussions and subconcussive head trauma."

The complaint is seeking \$20 million in damages, said George Leontire, a lawyer who filed the lawsuit.

Baez, who represented Hernandez in the double murder case for which the former Patriot was acquitted, said, "I wouldn't get involved in a lawsuit if I didn't think it was something I could win."

But some legal analysts expressed skepticism about the lawsuit.

His relatively short professional career could make it difficult for lawyers for his estate to prove that the NFL was legally negligent and thus liable in enabling the type of brain damage that Hernandez suffered, one lawyer said.

"It will be difficult to show the NFL's behavior, or failure to disclose, is the proximate cause of those injuries," said Brian Porto, a professor at Vermont Law School, who specializes in sports law.

"Presumably, they're going to argue that the NFL knew more than it disclosed about this. But it seems to me, the difficult thing is, because of his age, he wasn't in the NFL very long," he added. "He might have entered the NFL with [brain injury]. I just think it's a tough case to make."

Alan Dershowitz, who is a professor emeritus at Harvard Law, said Hernandez's lawyers will have to prove that "all of what" Hernandez did, including the Lloyd slaying and his suicide, was a product of the team's and league's negligent conduct in order to prevail in the case.

Hernandez was 23 at the time of his arrest for murder in 2013. And he had played professional football for only three seasons. Before he was drafted in 2010, he played for the University of Florida.

The Patriots, through a spokesman, declined to comment on the suit Thursday. The NFL also declined to comment.

“We have not seen a copy of the suit and cannot comment at this time,” said league spokesman Brian McCarthy in an e-mail.

Asked if he blamed Hernandez’s death on CTE, Baez said, “The presumptive answer would be yes.”

The complaint says that “suicidal impulses are recognized to be symptoms of late-stage CTE.”

Martin G. Weinberg, an experienced trial lawyer in Boston who is not associated with the case, said Thursday, “The medical evidence makes the inexplicable — committing a suicide right after an acquittal — understandable.”

Baez said attorneys who represent athletes of contact sports should consider having their clients undergo “presumptive testing” for CTE. He said he regrets not taking that step when he defended Hernandez.

Baez said Hernandez’s legal team did not think CTE factored in the killing of Lloyd, because he maintained that Hernandez was innocent of that slaying.

Douglas K. Sheff, an attorney for Lloyd’s mother, Ursula Ward, said Thursday a wrongful death lawsuit against Hernandez’s estate was ongoing, adding that he wasn’t sure how or if the CTE finding would affect that case.

“Does this new information give us anything? We don’t know yet,” he said.

Messages to the attorney representing the de Abreu and Furtado families were not returned Thursday night.

The Boston University CTE Center said in a statement that Dr. Ann McKee had examined Hernandez’s brain and found Stage 3 encephalopathy. The diagnosis was confirmed by a second neuropathologist.

McKee’s research has “demonstrated that CTE is associated with aggressiveness, explosiveness, impulsivity, depression, memory loss, and other cognitive changes,” the statement said.

Soon after Hernandez’s suicide, his lawyers had pledged to conduct a thorough, independent review of his death. The state medical examiner announced after the autopsy that Hernandez’s brain would be donated to the center, at the request of his family.

Thursday’s news conference came after a BU study, published Tuesday in the Nature magazine’s journal Translational Psychiatry, found that playing tackle football under the age of 12 exposes children to repetitive head impacts that may double their risk of developing behavioral problems and triple their chances of suffering depression later in life.

An earlier study by McKee, published in July in the Journal of the American Medical Association, found that 110 of the 111 brains of deceased NFL players that researchers analyzed had chronic traumatic encephalopathy.

McKee later acknowledged in a New York Times interview that the study had a “tremendous selection bias,” since many brains were donated specifically because the former player had showed troubling symptoms.