No. 16-283

# In The Supreme Court of the United States

SCOTT GILCHRIST AND THE ESTATE OF CARLTON CHESTER "COOKIE" GILCHRIST,

*Petitioner,*

v.

NATIONAL FOOTBALL LEAGUE, ET AL.,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit**

## REPLY BRIEF


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Former NFL player Carlton Chester "Cookie" Gilchrist died trying to speak truth to power.[1] Petitioner is carrying his mantle, and the truth is as follows.

The NFL, a group of retired NFL players, and their lawyers blindly settled a so-called "science-based" settlement without actually knowing the science. There was no adversarial discovery, much less adversarial discovery on the "science." Nor were there any *Daubert* hearings. In sum, nothing transpired that could provide the trial court with an effective grasp on how, when, and the extent to which retired NFL players manifest issues resulting from repeated head trauma over their lifetimes.

Aside from the vast disparities in the actuarial data projections between and among class members, to see the practical effects of the lack of scientific rigor underlying the settlement, this Court need look no further than lead class representative Kevin Turner.

Lawyers for Respondents presented Mr. Turner as being a class representative who had ALS, not CTE. For instance, in the Third Circuit Court of Appeals, they stated that Mr. Turner "is in desperate condition with ALS. All his life functions have been compromised." (Tr. at p. 73). As it turns out, the day before the Respondents filed their opposition to Gilchrist's Petition, it was publicly reported that Mr. Turner actually had CTE. CNN.com, "*Former NFL player Kevin Turner*

[1] *See The Cookie Gilchrist Story*, summary available at https://youtu.be/G8cKidcKOA8; *see generally* http://cookiegilchrist.com/.

*diagnosed with CTE*," http://www.cnn.com/2016/11/03/health/kevin-turner-cte-diagnosis/ (last visited Nov. 14, 2016).

Although Respondents appear to ignore the recent news about Mr. Turner, its significance is plain. Neither the trial court nor Respondents' lawyers had an adequate scientific or evidentiary grasp on the fate of the thousands of people they held in their hands. They were even laboring under a grave misapprehension as to the lead class representative, who, unbeknownst to them, had CTE. Something this unfortunate can happen in the absence of adversarial discovery and *Daubert* inquiries. Without these tools, there was no chance of obtaining rigorous assessments of the complex and diverse multitude of class members' head trauma issues throughout their respective and varying, tumultuous lifetimes. What has now been revealed about Mr. Turner further underscores that the NFL's head trauma personal injury settlement strongly offends *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), and fundamental tenets of fairness owed to the absent class members.

This Court has the opportunity to set guidelines for federal courts in connection with their duties to obtain a basic understanding of the class action settlements before them, particularly when it comes to personal injury class actions that depend upon scientific assumptions and principles. Given the conflicts and uncertainty among the circuit courts of appeals as to how, when and to what extent to apply *Daubert* to class actions, and given the lives of thousands of retired

NFL players at stake, Petitioner respectfully urges this Court to grant the petition and take this appeal.

Respectfully submitted,

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