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## Spaulding football player's injury case settled

By [Thatcher Moats](#) Times Argus Staff

MONTPELIER – A former Spaulding High School football player whose suffered a broken spine when he tried to tackle an opposing player in 2005 has reached a settlement with the Barre Supervisory Union, which he sued for negligence in a civil case filed more than two years ago.

Derek Felix, who was a 16-year-old junior when he was injured, was left paralyzed by the injury, which he sustained in his first game with the Crimson Tide.

The supervisory union was scheduled to go on trial starting Monday in Vermont Superior Court in Montpelier but the two sides had already reached a settlement.

The settlement includes a financial payment, said Felix's attorney Richard Rubin, but the terms of the settlement dictate that details of the legal agreement – including the dollar amount – remain confidential.

Rubin said the settlement is a positive outcome for Felix, who is now a quadriplegic and uses a wheelchair. Felix has limited use of his hands and is also able to move a few fingers, Rubin said in an earlier interview.

"Derek and his family are very pleased with the settlement," Rubin said on Monday.

Felix, who lives in Barre Town, did not respond to a phone message.

The Barre Supervisory Union was represented by Pietro Lynn, an attorney who works for the Vermont School Boards Insurance Trust, which is the insurance carrier for the supervisory union.

Lynn said while the school district is a public entity with public budgets, the settlement amount can remain confidential because the school's insurance company is a private nonprofit corporation.

"The supervisory union is a public entity, but its insurance carrier is not," said Lynn.

Rubin has said that the school district's insurance policy covers claims up to \$5 million.

Felix's lawsuit did not name a dollar amount. But according to Rubin, a "life care plan" developed by an expert calculates that it would cost between \$8.1 million and \$9.3 million to care for Felix for the rest of his life. The plan takes into account lost wages, and the high dollar amount is driven largely by the cost of having an attendant provide care for Felix.

Felix was new to Vermont when he joined the Spaulding High School football team late in the summer of 2005. He had just moved here from Arizona, where he played football as a freshman but not as a sophomore.

On Sept. 23, 2005, late in the fourth quarter of a game Spaulding was losing 30-7 to Brattleboro, Felix was sent onto the field to play defensive back, court records show.

When Brattleboro tried for a two-point conversion, Felix lowered his head as he attempted to tackle a Brattleboro running back and made helmet-to-helmet contact with his opponent.

The collision broke his neck.

In his claims against the Barre Supervisory Union, Felix said his coaches never taught him that putting your head down can lead to serious injury. Felix also claimed that he did not participate in 10 practices before his coaches Philip Joyal and Dennis Hill sent him into the game.

Vermont Principals Association rules require 10 practices before a student-athlete can play in a game.

Both sides agreed that Felix did not participate in 10 conventional team practices, but the Barre Supervisory Union said it met the 10-practice rule through a combination of practices and "chalk talk" sessions with coaches where Felix and coaches discussed strategy.

The number of strategy sessions, however, was in dispute.

The coaches were also negligent, Felix and Rubin claimed, because Felix was not shown a video about safe tackling that other Spaulding players watched, because Felix joined the team after the season began.

Despite the settlement, the Barre Supervisory Union has not admitted it was negligent, said Lynn.

"There has been no admission of wrongdoing," he said.

"As with any case, there are a host of factors that have to be taken into consideration," said Lynn. "I can't disclose what those were, but in the end the decision was made that it would be more sensible to resolve the case."

The supervisory union lost battles as the court case proceeded during the last two years.

A superior court judge denied most of the school district's motions for summary judgment in which Lynn argued that Felix assumed the risks of the sport; the school district has immunity because it's a government function; and the two coaches have "qualified official immunity."

Lynn appealed one of the denials of summary judgment to the Vermont Supreme Court, which declined to review the appeal.

Hill and Joyal, who are no longer coaches at the school, were accused of negligence in the complaint but not named as defendants in the lawsuit. The lawsuit names the supervisory union because Vermont law requires plaintiffs to file claims of negligence against municipalities rather than employees of municipalities. School districts are considered municipalities under Vermont law, said Rubin.

Bob Johnson, the Associate Executive Director of the Vermont Principals Association, said the injury and the lawsuit have focused the minds of athletic directors in Vermont, particularly when it comes to enforcing the 10-practice rule.

"I know the athletic directors throughout the state are very aware of this situation," said Johnson.

But at least one issue remains unsettled: the question of whether strategy sessions between coaches and players constitute a practice.

"When we think about practice, we typically think you're physically out on field and practicing," Johnson said.

But Johnson said he's "never been asked" if a meeting counts as practice.

"Theoretically, if someone's doing a classroom practice, could that count? I really don't know," he said.

Barre Supervisory Union Superintendent John Bacon was the district representative monitoring the legal matter, according to the Spaulding School Board Chairwoman Norma Malone. Bacon could not be reached for comment yesterday.

Lynn said that all sides were glad to have the case resolved and said the school district wishes Felix the best.

"I know the supervisory union wishes Derek well and hopes for the best for Derek for the rest of his life," said Lynn. "He's a wonderful young man."

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