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Eagles' Peters Settles for \$2 Mil. in Crutch Injury Case

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Case Digest Summary

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Peters sued Roll-A-Bout Corp. last year under a strict liability theory, arguing the company's scooter-like crutch device broke three weeks after Peters had surgery for a ruptured Achilles tendon. Roll-A-Bout was recently purchased by another company and no longer operates as its own entity. The \$1.93 million settlement represents the limits of Roll-A-Bout's insurance coverage, according to Peters' attorneys, Michael Trunk and Jason Pearlman of Kline & Specter.

Peters was recovering from an April 2012 surgery for a ruptured Achilles that he suffered while working out at his home the previous month. The Eagles purchased the Roll-A-Bout SW-T-500 for Peters to use during his recovery. Rather than using traditional crutches that go under the armpit, the Roll-A-Bout allows the user to place a leg on a cushioned seat and "roll about," according to the complaint in the case, *Peters v. Roll-A-Bout*.

Peters was in his kitchen using the Roll-A-Bout when the metal upright of the device allegedly broke just below the handlebars. Peters fell and ruptured his Achilles a second time, requiring a second surgery, according to the complaint.

Peters had expected to return to playing football by October or November 2012, but the second injury caused him to miss the entire season, his attorneys said. According to a statement issued on the settlement, the all-pro tackle has said he has fully recovered and plans to play in the upcoming season.

According to the complaint, the Roll-A-Bout was intended for use by people up to 500 pounds and Peters was around 340 pounds at the time of the accident. Trunk said his central argument was that the product was defective and the warning was defective in that it said the opposite of what actually occurred by stating people under 500 pounds could safely use the product. Trunk said he wasn't sure what the defense of the product was.

According to court filings, Roll-A-Bout objected to Peters's voluntary dismissal of an additional defendant, TomTaw Inc. Trunk said there were no assets to go after with TomTaw because it filed for bankruptcy shortly after the lawsuit was filed. According to Roll-A-Bout's court filing, TomTaw was the manufacturer of the part on the Roll-A-Bout that allegedly failed. Roll-A-Bout had filed a cross-claim against TomTaw, according to the filing.

In a June 2013 order, U.S. District Judge Joel H. Slomsky of the Eastern District of Pennsylvania reinstated TomTaw as a defendant but stayed the claims and cross-claims against the company pending resolution of its bankruptcy case. Now that the case has settled, Trunk said his client's lawsuit would be dismissed in its entirety.

According to Trunk, Peters's damages totaled about \$3.8 million, not including pain and suffering or medical costs. That represented the amount of his contract not paid out when he was injured. Peters had a \$7.9 million contract for last season. Because he was originally hurt off the field during a workout session, he didn't get paid in full on his contract but rather got a little more than \$4 million, Trunk said. He would have been able to earn some of the remaining contract money back had he gone back for part of last season, but the second injury allegedly caused by the Roll-A-Bout delayed that return, costing him the remainder of his contract, Trunk said.

When Roll-A-Bout went out of business and it was clear there were no other assets to go after, Trunk said the focus of the case quickly turned to recovering the full amount of Roll-A-Bout's policy limits. He said the company was underinsured and the goal was to get as much of a recovery for Peters as possible. The company's insurance policy was for \$2 million, but there was a reservation for defense fees and costs that had to be taken into consideration, Trunk said. Defense costs and fees ended up totaling about \$75,000, Trunk said.

"While the available funds are inadequate to fully compensate Jason Peters for the losses and suffering he had to endure as a result of this defective and dangerous product, he's happy to put this all behind him and focus on football," Trunk said in a statement.

Roll-A-Bout was represented by John C. Farrell and Elizabeth A. Pope of Marshall Dennehey Warner Coleman & Goggin. Farrell declined to comment on the settlement.

The parties had been scheduled Wednesday for mediation before U.S. Magistrate Judge Carol Sandra Moore Wells of the Eastern District of Pennsylvania, but they reached the settlement themselves the night before, Trunk said. The case was initially filed in the Philadelphia Court of Common Pleas but was removed to the Eastern District of Pennsylvania under diversity of jurisdiction given Roll-A-Bout was based in Delaware, Trunk said.

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