

2011 WL 6371825 (S.D.N.Y.) (Trial Pleading)
United States District Court, S.D. New York.

Harry JACOBS and his wife, Kay Jacobs; Jerome Barkum; and Tommy Mason and his wife, Karen Mason; individually and on behalf of all others similarly situated, Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE and **NFL** Properties LLC, Defendants.

No. 11 CIV 9345.
December 20, 2011.

Plaintiffs' Class Action and Individual Complaint for Damages, and Demand for Jury Trial
1. Declaratory Relief (on behalf of the Class) 2. Medical Monitoring (on behalf of the Class)
3. Negligence (on behalf of the Class and the Individual named Plaintiffs) 4. Fraud (on behalf of the Class and the Individual Named Plaintiffs) 5. Negligent Misrepresentation (on behalf of the Individual Named Plaintiffs) 6. Conspiracy (on behalf of the Individual Named Plaintiffs)

[Kellie Lerner](#) (KL-0927) [Hollis Salzman](#) (HS-5994), Labaton Sucharow LLP, 140 Broadway, New York, NY 10005, Telephone: (212) 907-0700, Facsimile: (212) 818-0477.

[Michael D. Hausfeld](#), [Richard S. Lewis](#), James J. Pizzuruso, Swathi Bojedla, Hausfeld LLP, 1700 K Street, N.W.; Ste. 650, Washington, DC 20006, Telephone: (202) 540-7200, Facsimile: (202) 540-7201.

Michael P. Lehmann, Hausfeld LLP, 44 Montgomery Street, Suite 3400, San Francisco, CA 94104, Telephone: (415) 633-1908, Facsimile: (415) 358-4980.

[Thomas V. Girardi](#), Girardi | Keese, 1126 Wilshire Boulevard, Los Angeles CA 90017, Telephone: (213) 977-0211, Facsimile: (213) 481-1554.

Sylvia Sokol, Moscone Emblidge & Sater LLP, 220 Montgomery Street, Suite 2100, San Francisco, CA 94104, Telephone: 415-362-3599, Facsimile: 415-362-2006.

[Daniel L. Warshaw](#), [Clifford H. Pearson](#), Pearson, Simon, Warshaw & Penny, LLP, 15165 Ventura Boulevard, Suite 400, Sherman Oaks, CA 91403, Telephone: (818) 788 8300, Facsimile: (818) 788 8104.

[Arthur Bailey, Sr.](#), Arthur N. Bailey Associates, Suite 4500, 111 West Second St., Jamestown, NY 14701], Telephone: (716) 483-3732, Facsimile: (716) 664-2983, Counsel for Plaintiffs and the Proposed Class.

INTRODUCTION	1
JURISDICTION AND VENUE	1
THE PARTIES	1
CLASS ACTION	6
NATURE OF N FL's BUSINESS	7
FACTUAL ALLEGATIONS	10
The Scientific Evidence On Concussions And Head Injuries And The NFL's Responses To It	10
Riddell's Involvement in the NFL's Unlawful Conduct	49
COUNT I	50
COUNT II	51
COUNT III	52
COUNT IV	55
COUNT V	57
COUNT VI	58

INTRODUCTION

1. This action is brought by former National Football League (“NFL” or “League”) players who seek declaratory and medical monitoring relief based on claims of negligence and fraud with respect to brain injuries caused by repeated traumatic brain and head impacts received during the period when they were active in professional football. These claims for relief are brought on a classwide basis on behalf of all former NFL players. The individually named Plaintiffs also seek personal injury damages for their brain injuries. The allegations herein, except as to the Plaintiffs, are based on information and belief.

JURISDICTION AND VENUE

- 2. Jurisdiction is based on 28 USC §1332.
- 3. Venue in this action is proper in this Court pursuant to 28 USC §1391.
- 4. The amount in controversy exceeds \$75,000 for the individual claims and \$5,000,000 for the class claims

THE PARTIES

5. Plaintiff Harry Jacobs (“Jacobs”) resides in Hamburg, New York. Jacobs, who is now 74 years old, played in the AFL and NFL on three teams (Boston Patriots, Buffalo Bills, and New Orleans Saints) from 1960-1970. Mr. Jacobs has suffered neurodegenerative brain disease including headaches, dizziness, loss of memory, dementia, impulse control problems, depression, fatigue, sleep problems, irritability, neck/cervical spine arthritis and numbness/tingling in the neck and cervical spine caused by repeated and chronic head impacts that he experienced during his career in the NFL. Furthermore, he is at increased risk of further latent brain disease, and is in need of diagnostic examinations and medical monitoring. He is now and has been for several years outside the collective bargaining unit (“CBU”) represented in successive collective bargaining agreements (“CBAs”) between the NFL and the union for League players, the National Football League Players Association (“NFLPA”). Mr. Jacobs's wife, Kay Jacobs, also brings a claim for loss of consortium.

6. Plaintiff Jerome Barkum (“Barkum”) resides in Dallas, Texas. Barkum, who is now 61 years old, played in the NFL his entire career with the New York Jets from 1970-1981. Mr. Barkum has suffered neurodegenerative brain disease including headaches, dizziness, loss of memory, caused by repeated and chronic head impacts that he experienced during his career in the NFL. Furthermore, he is at increased risk of further latent brain disease, and is in need of diagnostic examinations and medical monitoring. He is now and has been for several years outside the collective bargaining unit (“CBU”) represented in successive collective bargaining agreements (“CBAs”) between the NFL and the union for League players, the National Football League Players Association (“NFLPA”).

7. Plaintiff Tommy Mason (“Mason”) resides in Orange County, California. Mason, now 72 years old, played in the NFL on three teams (Minnesota Vikings, L.A. Rams, and Washington Redskins) from 1961-1972. Mr. Mason has suffered neurodegenerative brain disease, including loss of memory and symptoms of dementia, caused by repeated and chronic head impacts that he experienced during his career in the NFL. Furthermore, he is at increased risk of further latent brain disease, and is in need of diagnostic examinations and medical monitoring. He is now and has been for several years outside the collective bargaining unit (“CBU”) represented in successive collective bargaining agreements (“CBAs”) between the NFL and the union for League players, the National Football League Players Association (“NFLPA”). Mr. Mason's wife, Karen Mason, also brings a claim for loss of consortium.

8. Defendant National Football League, which maintains its offices at 280 Park Avenue, New York, New York, is an unincorporated association consisting of the 32 separately-owned and independently-operated professional football teams that

are listed below. The National Football League is engaged in interstate commerce in the business of, among other things, operating the sole major professional football league in the United States. The National Football League is not, and has not, been the employer of the Plaintiffs, who were employed during their respective careers in professional football by the independent clubs indicated above. The United States Supreme Court held last year in *American Needle, Inc. v. NFL*, 130 S. Ct. 220 1, 22 12-13 (20 10) that each team that is a member of the National Football League is a legally distinct and separate entity from both other teams and the League itself:

The **NFL** teams do not possess either the unitary decision making quality or the single aggregation of economic power characteristic of independent action. Each of the teams is a substantial, independently owned, and independently managed business. “[T]heir general corporate actions are guided or determined” by “separate corporate consciousnesses,” and “[t]heir objectives are” not “common.” ... The teams compete with one another, not only on the playing field, but to attract fans, for gate receipts and for contracts with managerial and playing personnel.

9. The 32 separately-owned and independently-operated professional football teams are:

NFL Team Owner	State of Organization	Team Name (City)
Arizona Cardinals, Inc.	Arizona	Arizona Cardinals
Atlanta Falcons Football Club LLC	Georgia	Atlanta Falcons
Baltimore Ravens Limited Partnership	Maryland	Baltimore Ravens
Buffalo Bills, Inc.	New York	Buffalo Bills
Panthers Football LLC	North Carolina	Carolina Panthers
Chicago Bears Football Club, Inc.	Delaware	Chicago Bears
Cincinnati Bengals, Inc.	Ohio	Cincinnati Bengals
Cleveland Browns LLC	Delaware	Cleveland Browns
Dallas Cowboys Football Club, Ltd.	Texas	Dallas Cowboys
Denver Broncos Football Club	Colorado	Denver Broncos
Detroit Lions, Inc.	Michigan	Detroit Lions
Green Bay Packers, Inc.	Wisconsin	Green Bay Packers
Houston NFL Holdings LP	Delaware	Houston Texans
Indianapolis Colts, Inc.	Delaware	Indianapolis Colts
Jacksonville Jaguars Ltd.	Florida	Jacksonville Jaguars
Kansas City Chiefs Football Club, Inc.	Texas	Kansas City Chiefs
Miami Dolphins, Ltd.	Florida	Miami Dolphins
Minnesota Vikings Football Club LLC	Minnesota	Minnesota Vikings
New England Patriots, LP	Delaware	New England Patriots
New Orleans Louisiana Saints LLC	Texas	New Orleans Saints
New York Football Giants, Inc.	New York	New York Giants
New York Jets Football Club, Inc.	Delaware	New York Jets
Oakland Raiders LP	California	Oakland Raiders
Philadelphia Eagles Football Club, Inc.	Delaware	Philadelphia Eagles
Pittsburgh Steelers Sports, Inc.	Pennsylvania	Pittsburgh Steelers
San Diego Chargers Football Co.	California	San Diego Chargers
San Francisco Forty Niners Ltd.	California	San Francisco 49ers
Football Northwest LLC	Washington	Seattle Seahawks
The Rams Football Company LLC	Delaware	St. Louis Rams

Buccaneers Limited Partnership	Delaware	Tampa Bay Buccaneers
Tennessee Football, Inc.	Delaware	Tennessee Titans
Washington Football Inc.	Maryland	Washington Redskins

10. Defendant **NFL** Properties, LLC, as the successor-in-interest to National Football League Properties Inc. (“**NFL** Properties”), is a limited liability company organized and existing under the laws of the State of Delaware with its headquarters in the State of New York. **NFL** Properties is engaged in, among other activities, approving, licensing and promoting equipment used by all the National Football League teams. **NFL** Properties regularly conducts business in California.

11. Defendants National Football League and **NFL** Properties shall be referred to collectively herein as the “**NFL** Defendants” or “Defendants.”

12. The **NFL** caused or contributed to the injuries and increased risks alleged herein through its acts and omissions in failing to disclose the true risks of repeated traumatic brain and head impacts in **NFL** football, and failing to take appropriate steps to prevent and mitigate repeated traumatic brain and head impacts in the **NFL** and the latent neurodegenerative disorders and diseases caused by these impacts.

13. On information and belief, Defendant **NFL** policies and decision making relevant to the conduct alleged herein, occurred primarily at its corporate offices in New York City.

14. Third parties that conspired with the **NFL** in the tortious conduct alleged herein include but are not limited to the member **NFL** clubs identified at ¶11 herein; and Riddell Inc., d.b.a. Riddell Sports Group, Inc., All American Sports Corp. d.b.a. Riddell/All American, Riddell Sports Group, Inc., Easton-Bell Sports, Inc., and Easton-Bell Sports LLC, EB Sports Corp. *CLASS ACTION*

15. Plaintiffs are representatives of a Class, as defined by [Fed R. Civ. P. 23\(b\)\(2\)](#) and bring this action with respect to declaratory relief, medical monitoring, fraud and negligence claims on behalf of themselves and a class with respect to which the **NFL** has acted or refused to act on grounds that apply generally to the class.

16. The Class is defined as:

All retired or former professional football players in the United States who were employed by any member club that was part of the association called the **NFL** but are not now salaried employees of the **NFL** or any member club.

17. Excluded from the class are those persons who fall within the definition of the CBU contained in the 2006-12 CBA or its successor, executed in 2011. Plaintiffs and members of the Class are not seeking to enforce any provision of any CBA between the League and the NFLPA, are not challenging any provision of any such CBA and are not raising claims that involve interpretation of any provision of any such CBA. Indeed, no CBA existed during the period from 1987 to 1993 and while the 2011 CBA releases claims that could have been raised in the litigation leading up to its execution, Article 3, Section 3(a) thereof states that “[f]or purposes of clarity, this release does not cover any claim by any retired player.”

18. The Class is so numerous and geographically so widely dispersed that joinder of all members is impracticable. There are questions of law and fact common to the class. Plaintiffs' claims are typical of the claims of the class that they represent and Plaintiffs will fairly and adequately protect the interests of the proposed class.

19. Questions of law and fact common to Class members predominate over any questions affecting only individual class members. These include the following:

(a) Whether Plaintiffs and the Class are entitled to the declaration of rights that they seek herein;

- (b) Whether Plaintiffs and the Class are entitled to the injunctive medical monitoring relief that they seek herein;
 - (c) Whether the Defendants have any affirmative defenses that can be litigated on a classwide basis; and
 - (d) Whether the Defendants' tortious conduct was negligent and/or fraudulent and caused members of the Class to be at risks of repeated traumatic brain and head impacts and the excess risk of latent neurodegenerative disorders and diseases, as well as the need for medical monitoring.
20. A class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

NATURE OF **NFL's BUSINESS**

21. The primary business in which the **NFL** and its member clubs are engaged is the operation of major league professional football teams and the sale of tickets and telecast rights to the public for the exhibition of the individual and collective football talents of players such as Plaintiffs.

22. The **NFL's** transactions involve collective annual expenditures and receipts in excess of \$9.3 billion. But, as Dan Greeley, CEO of Network Insights, has noted:

The **NFL** is like Procter & Gamble. There's the holding company, the core operation, but then each brand has its own team and world of revenue. Like Tide: That's a P&G product but within that there are different types of Tide and a number of people that make money from it. So the \$9.3 billion pie just scratches the surface and doesn't get into how much is spent around stadiums, merchandise, agents, all the way down to mom-and-pop shops.

23. Annually, the **NFL** redistributes upwards of \$4 billion in radio, television and digital earnings to the clubs that are part of the **NFL** association - \$125 million apiece, plus an equal share for the league - and that number shows no sign of declining. The 19 highest-rated fall television programs (and 28 of the top 30) were **NFL** games, and this year's Super Bowl was the most-watched program ever. The **NFL** earns huge amounts annually from its telecasting deals with, *inter alia*, ESPN (\$1.1 billion), DirecTV (\$1 billion), NBC (\$650 million), Fox (\$712.5 million), and CBS (\$622.5 million).

24. Companies pour money into the league's coffers for the right to associate their brands with the **NFL**. Among those making such contributions are Pepsi (\$560 million over eight years, starting in 2004) and Gatorade (\$45 million per year, plus marketing costs and free Gatorade for teams). Verizon is paying \$720 million over four years to be the league's wireless service provider. Nike paid \$1.1 billion to acquire the **NFL's** apparel sponsorship. Previous partner Reebok had been selling \$350 million annually in **NFL**-themed gear. The League has a \$1.2 billion, six-year deal with beer sponsor Anheuser-Busch, but teams still cut their own deals when it comes to pouring rights at stadiums. On September 7, 2011, it was announced that the **NFL** signed a new 10 year \$2.3 billion deal with Pepsi, which is one of the largest sponsorship deals in sports history. It encompasses a number of Pepsi brands (Pepsi, Frito-Lay, Tropicana, Quaker Oats and Gatorade). This deal, combined with a number of other new sponsorships, ticket sales projections and TV ratings mean that the **NFL** is projecting record revenues of over

25. Teams can collect \$25-\$30 million for stadium naming rights, usually on \$9.5 billion this season. 10-year deals. The largest is Reliant Energy's \$10 million per year contract with the Houston Texans. In Los Angeles, Farmers Insurance has promised \$700 million over 30 years to name a stadium for a team that doesn't exist yet.

26. Many clubs that are part of the **NFL** association own in whole or in part the stadiums in which they play, which can be a source of major commercial value, as reflected in the following chart:

STADIUM, TEAM	OPENED	PRICE (2010 DOLLARS)	% PRIVATE
New Meadowlands, NY	2010	\$1.6B	100

Cowboys Stadium, DAL	2009	\$1.15B	56
Lucas Oil Field, IND	2008	\$780M	13
U. of Phoenix Stadium, ARI	2006	\$493M	32
Lincoln Financial, PHI	2003	\$588M	65
Ford Field, DET	2002	\$504M	49
Gillette Stadium, NE	2002	\$373M	100
Reliant Stadium, HOU	2002	\$526M	39
Qwest Field, SEA	2002	\$422M	29
Invesco Field, DEN	2001	\$683M	39
Heinz Field, PIT	2001	\$312M	16

27. In 2010, more than 17 million fans passed through turnstiles operated by clubs that are part of the **NFL** association, paying anywhere from \$54.51 (Cleveland Browns) to \$117.84 (New England Patriots) for the average game ticket. Though the league will not open its books, numbers for the publicly-held Green Bay Packers (“Packers”) offer some insight into what teams reap at the ticket office and concession stands. In 2010, the Packers cleared \$60,059,646 from home and away game tickets plus private boxes. Projected over 32 teams, that’s nearly \$2 billion annually. The Packers reaped \$13 million from concessions, parking and local media in 2010, which translates to \$416 million on a league-wide basis.

FACTUAL ALLEGATIONS

*The Scientific Evidence On **Concussions** And Head Injuries And The **NFL’s** Responses To It*

28. A 2011 article in the *Journal of Sports & Entertainment Law of Harvard Law School* has summed up the consequences of **concussions** to athletes :

[F]ootball players are becoming bigger, faster, and stronger, thereby increasing the force of collisions that occur during a game and increasing the potential for serious injuries. The brain is a soft organ, surrounded by cerebrospinal fluid and protected by the tough, bony skull. Normally, the fluid around the brain serves as a protective cushion for the brain, isolating it from direct impact to the skull. When the head suffers violent impact, the brain can hit the skull, causing the brain temporarily to stop working normally. This is called a **concussion**.

More serious injuries occur after the initial **concussion**. A **concussion** causes brain cells to become depolarized and allows neurotransmitters to behave in an abnormal fashion, causing such symptoms as memory loss, nausea, and confusion. After the initial **concussion**, when the brain is not fully healed, it is very fragile and susceptible to minor accelerative forces. Thus, subsequent minor hits may cause traumatic and permanent brain injury. This is the heart of the problem: players returning to the football field before allowing their initial **concussion** to heal fully. When the player returns to the field too early, he is at risk for what is known as Second Impact Syndrome (SIS). SIS is the event that ensues when there is a subsequent brain impact before the initial **concussion** has been given time to heal. Additionally, when **concussions** occur with high frequency, a disease called Chronic Traumatic Encephalopathy (CTE) may occur in the brain. “CTE is a progressive neurodegenerative disease caused by repetitive trauma to the brain which eventually leads to dementia.” While CTE was originally diagnosed most commonly in boxers, it is now regularly found in football players. Of all sports related injuries, **concussions** are the injuries that most often go unnoticed and untreated, especially in football. (Emphasis added and footnotes omitted).

29. The following chart, excerpted from a 2010 article in the *New England Journal of Medicine* entitled “Traumatic Brain Injury - Football, Warfare And Long-Term Effects,” shows how even repetitive mild traumas can have lasting consequences:

TABLE

30. The NFL's responses to the issue of brain injuries caused to retired **NFL** players because of **concussions** or head impacts received during the period that they played professional football has been, until very recently, one of deception and denial. The **NFL** and several of the scientists it employed actively tried to conceal the extent of the problem until recently. Furthermore, the response of the League once it actually acknowledged the issue has been inadequate. The **NFL** engaged in this duplicitous course of conduct knowing full well that the health consequences of **concussions** and other traumatic head injuries would have been materially important to Plaintiffs and members of the putative Class

31. The League's disinformation campaign was spearheaded by its Mild Traumatic Brain Injury Committee ("MTBI Committee," sometimes also referred to in press reports as the "**Concussion** Committee"), which was created in 1994, and chaired from 1994 to February of 2007 by Dr. Elliott Pellman ("Pellman"), a rheumatologist who reportedly attended medical school in Guadalajara, Mexico. Dr. Pellman worked with two other scientists on the MTBI Committee - Dr. Ira Casson ("Casson"), a neurologist, and Dr. David Viano ("Viano"), a biomechanical engineer, to attempt to discredit a slew of scientific studies that linked head impacts and **concussions** received by **NFL** players to brain injuries. Casson and Viano replaced Pellman as co-chairs of the MTBI Committee in February of 2007.

32. Since 1994, the MTBI Committee had been conducting a study to determine the effect of **concussions** on the long-term health of retired **NFL** players. In a November 2007 report to Congress, **NFL** Commissioner Roger Goodell ("Goodell") said that the MTBI Committee's study was in its "initial" data collection phase and that "[w]e do not know when this study will be completed, although it is likely that a comprehensive study will require at least several years of research and analysis."

33. In October of 2006, Pellman and Viano published in *Neurological Focus* an interim report on the MTBI Committee's efforts that surveyed 12 years of data collection. The authors analyzed collected "data on mild TBIs sustained between 1996 and 2001" and concluded that:

Because a significant percentage of players returned to play in the same game [as they suffered a mild traumatic brain injury] and the overwhelming majority of players with **concussions** were kept out of football-related activities for less than 1 week, it can be concluded that mild TBIs in professional football are not serious injuries. (Emphasis added).

34. As explained further below, this conclusion was against the weight of the scientific evidence a fact that the members of the MTBI Committee well knew; it was also based on biased data collection techniques. As ESPN reported in February of 2007:

Last fall, *ESPN The Magazine* reported that Pellman was selective in his use of injury reports in reaching his conclusions and omitted large numbers of players from the league's **concussion** study. His findings also contradicted other scientific studies into the effects of **concussions**:

- In January 2005, Pellman and his colleagues wrote that returning to play after a **concussion** "does not involve significant risk of a second injury either in the same game or during the season." But a 2003 NCAA study of 2,905 college football players found just the opposite: Those who have suffered **concussions** are more susceptible to further head trauma for seven to 10 days after the injury.

- Pellman, a rheumatologist, and his group have also stated repeatedly that their work shows "no evidence of worsening injury or chronic cumulative effects of multiple [mild traumatic brain injury] in **NFL** players." But a 2003 report by the Center for the Study of Retired Athletes at the University of North Carolina found a link between multiple **concussions** and depression among former pro players with histories of **concussions**. And a 2005 follow-up study at the Center showed a connection between **concussions** and both brain impairment and Alzheimer's disease among retired **NFL** players.

35. The concerns about head injuries associated with the playing of football - and the refusal to recognize those concerns by those in charge of the game - have a long history. In February of 2010, Dr. Bennet Omalu ("Omalu"), Co-Director of the Brain

Injury Institute at West Virginia University, spoke before members of the House Judiciary Committee at a forum in Houston, Texas with regard to “Head and Other Injuries in Youth, High School, College, and Professional Football.” In his prepared testimony, he explained:

Glenn Pop Warner [1871 - 1954] founded the Pop Warner youth football league in 1929. He still remains one of the greatest football coaches in the history of American football. The single event, which necessitated the use of pads and helmets by football players took place in 1888 when the annual rules convention for the emerging sport of college football passed a rule permitting tackling below the waist.

“Football changed dramatically. Teams no longer arrayed themselves across the entire breadth of the field. Teams bunched themselves around the runner to block for him. The wedge and mass play arrived. Football became, for a time, a savage sport full of fights, brawling, even fatalities.”

In 1912, Pop Warner said: “Playing without helmets gives players more confidence, saves their heads from many hard jolts, and keeps their ears from becoming torn or sore. I do not encourage their use. I have never seen an accident to the head which was serious, but I have many times seen cases when hard bumps on the head so dazed the player receiving them that he lost his memory for a time and had to be removed from the game.”

We have known about **concussions** and the effects of **concussions** in football for over a century. Every blow to the head is dangerous. Repeated **concussions** and sub-**concussions** both have the capacity to cause permanent brain damage. During practice and during games, a single player can sustain close to one thousand or more hits to the head in only one season without any documented or reported incapacitating **concussion**. Such repeated blows over several years, no doubt, can result in permanent impairment of brain functioning especially in a child. (Emphasis added and footnotes omitted).

36. The scientific evidence on **concussions** received while playing **NFL** football and subsequent brain disease has been mounting, but for a long period, the **NFL** attempted to deny or discredit it.

37. For the period from 1931 to 2006, the National Center for Catastrophic Sport Injury Research has reported 1,006 direct and 683 indirect fatalities resulting from participation in all organized football in the United States; the annual number of indirect fatalities has remained near 9.0 per year.

38. A 1994 Ball State University survey found that “players in the 1980s suffered serious injuries and underwent operations at twice the rate of those who played in the 1950s or earlier.”

39. A study presented at the American Academy of Neurology's 52nd Annual Meeting in 2000 and authored principally by Dr. Barry Jordan, Director of the Brain Injury Program at Burke Rehabilitation Hospital in White Plains, New York, surveyed 1,094 former **NFL** players between the ages of 27 and 86 and found that: (a) more than 61% had suffered at least one **concussion** in their careers with 30% of the players having three or more and 15% having five or more; (b) 51% had been knocked unconscious more than once; (c) 73% of those injured said they were not required to sit on the sidelines after their head trauma; (d) 49% of the former players had numbness or tingling; 28% had neck or cervical spine arthritis; 31% had difficulty with memory; 16% were unable to dress themselves; and 11% were unable to feed themselves; and (e) eight suffered from Alzheimer's disease.

40. A 2001 report by Dr. Frederick Mueller that was published in the *Journal of Athlete Training* reported that a football-related fatality has occurred every year from 1945 through 1999, except for 1990. Head-related deaths accounted for 69% of football fatalities, cervical spinal injuries for 16.3%, and other injuries for 14.7%. From 1984 through 1999, 69 football head-related injuries resulted in permanent disability.

41. A series of important studies on football-related injuries emanated from the University of North Carolina (“UNC”), which were then attacked by members of the **NFL's** MTBI Committee.

42. A 2000 UNC study found that in the period between 1977 and 1998, an annual average of 13 athletes had suffered catastrophic injuries (primarily permanent paralysis) as the direct result of participation in football. The study also found that between 1977 and 1998, 200 football players received a permanent cervical cord injury, and 66 sustained a permanent cerebral injury.” As reported in *Science Daily*:

The study, published in the September-October issue of the *American Journal of Sports Medicine*, suggests that the brain is more susceptible to injury when it has not had enough time to recover from a first injury. Researchers say the finding is important because **concussions** can lead to permanent brain damage, vision impairment or even death if not managed properly.

“We believe recurrences are more likely because injured players are returning to practice and to games too quickly after blows to the head,” said Dr. Kevin M. Guskiewicz, assistant professor of exercise and sport science at UNC-CH and study leader. “Many clinicians are not following the medical guidelines that players should be symptom-free for several days before returning.” (Emphasis added).

43. A 2003 study partially authored by the aforementioned Dr, Kevin Guskiewicz (“Guskiewicz”) of UNC analyzed data from almost 2,500 retired **NFL** players and found that 263 of the retired players suffered from depression. The study found that having three or four **concussions** meant twice the risk of depression compared to never-**concussed** players and five or more **concussions** meant a nearly threefold risk.

44. In November of 2003, Guskiewicz was scheduled to appear on HBO’s “Inside the **NFL**” to discuss his research. Pellman, who was also going to be on the show, called Guskiewicz. “I had never spoken with him before, and he attacked me from the get-go,” Guskiewicz said. “He questioned whether it was in my best interest to do the show. He was a bull in a china shop.” On the program, Pellman said unequivocally, “[w]hen I look at that study, I don’t believe it.” (Emphasis added).

45. In 2005, Guskiewicz did a follow-up to his 2003 study and found that retired **NFL** players who sustained three or more **concussions** had a fivefold greater likelihood of suffering Mild Cognitive Impairment (“MCI”) than retired **NFL** players who had no history of **concussions**. Guskiewicz based his conclusions on a survey of over 2,550 former **NFL** players. Dr. Mark Lovell (“Lovell”) of the **NFL’s** MTBI Committee asserted that Guskiewicz’s study lacked “scientific rigor” and that one couldn’t tell anything from a survey.

46. “Pellman’s committee has repeatedly questioned and disagreed with the findings of researchers who didn’t come from their own injury group,” said Julian Bailes, Chairman of Neurosurgery at West Virginia University. (Emphasis added).

47. The MTBI Committee decided to respond to these types of studies by presenting *biased research* derived from its ongoing survey of retired **NFL** players. *ESPN The Magazine* described what happened:

In October 2003, Pellman and members of his committee published the first of a long-running series on **concussions** in *Neurosurgery*, a scholarly journal edited by Mike Apuzzo, the New York Giants’ neurosurgical consultant. The committee’s earliest studies used crash test dummies to reenact helmet blows. Later, the group decided to explore the ill effects of multiple **concussions**, and Pellman charged one of its members, Mark Lovell, head of the University of Pittsburgh Medical Center’s Sports Medicine **Concussion** Program, to oversee the collection and analysis of league wide data. Pellman chose Lovell because he had conducted neuropsychological tests for the Steelers as early as

1993. And in 1995, Lovell began to run the **NFL’s** neuropsychology program, which encouraged teams to gather data to help decide when to return players to games.

Using the information they would obtain, Pellman, Lovell and the committee planned to look at baseline results and identify a normal range of scores for uninjured **NFL** players. Then, comparing post injury scores to baseline data would show the effects of **concussions**. Comparing data from players with multiple **concussions** to that of all injured players would show whether **concussive** effects changed as injuries accumulated.

A lot was riding on the analysis. The committee had never imposed recommendations on team medical staffs. But this was the first study ever to analyze the brain function of **NFL** athletes. If it showed that **concussions** were significantly impairing players, the league might be forced to institute new rules for evaluating and treating head injuries. Pellman and Lovell both say they invited all teams to participate in the research (Lovell says 11 teams elected to join the study) and tried to collect as many results as they could. As Lovell puts it, "More data is always better." Several of the doctors involved, however, tell a different story. [William] Barr [a neuropsychologist at Long Island Jewish Hospital], for example, conducted 217 baseline tests from 1996 to 2001. Periodically, he forwarded results to the league, but at the time Barr learned the committee was planning to publish its results, he had sent only 149. Barr remembers finding Pellman in the Jets' training room in 2003 and saying, "Elliot, I haven't sent data for a year." According to Barr, Pellman didn't want the additional tests. "I don't want the data to be biased because I'm with the Jets," Barr recalls him saying, suggesting that additional results would skew the data because the Jets would be overrepresented in the sample. That made no sense to Barr. A scientific study should include, or at least address, all available data.

Pellman denies this conversation ever took place. "Bill Barr was a consultant for the Jets who tested individual players to help us make decisions," he says. "I did not discuss the committee's research with him." Whoever is right, the fact is the group didn't have all of Barr's data for its paper.

Barr's wasn't the only research that didn't make the cut. Over the period covered by the committee's research, Christopher Randolph, a Chicago neuropsychologist, collected baselines for 287 Bears players. He says Lovell never asked for his data, either. Nor did the committee seek complete data from John Woodard, neuropsychologist for the [Atlanta] Falcons and associate psychology professor at the Rosalind Franklin University of Medicine and Science in North Chicago. According to Woodard, in December 2003, Lovell said the league was pressuring him to compile team results. "I was asked to provide data on only **concussed** players," Woodard says. "I had data for slightly more than 200 baseline evaluations. I don't know why I was not asked for them."

In 2004, Lovell also asked Richard Naugle, consultant to the Browns and head neuropsychologist at the Cleveland Clinic, for data on just the players who had already suffered **concussions**, according to an e-mail Naugle wrote to a colleague in March 2005. Naugle declined to comment for this story, citing a confidentiality deal between his medical group and the **NFL**, but *The Magazine* has obtained a copy of that message. "I don't have that sorted out from the results of other testing," Naugle wrote of the request. "I explained that and added that if he could name players, I could send data on those individuals. I recall sending him data on two or three players ... I have a few hundred baselines."

This means Pellman, Lovell and their colleagues didn't include at least 850 baseline test results in their research—more than the 655 that ultimately made it into their 2004 *Neurosurgery* paper. At best, their numbers were incomplete. At worst, they were biased.

Pellman, Lovell and their colleagues published their sixth paper in *Neurosurgery* in December 2004. It examined baseline data on 655 players and results for 95 players who had undergone both baseline testing and post **concussion** testing. It concluded that **NFL** players did not show a decline in brain function after suffering **concussions**. Further analysis found no ill effects among those who had three or more **concussions** or who took hits to the head that kept them out for a week or more. The paper didn't explain where the players in the groups came from specifically or why certain players were included and hundreds of others were not. Neither Pellman nor Lovell has provided those details since. (Emphasis added).

48. Scientists concurred with the assessment that the MTBI Committee's research was biased and unreliable. As the *ESPN The Magazine* article noted:

The decision to publish the paper was controversial. "I highly doubt this study would have seen the light of day at this journal were it not for the subject matter of **NFL** players," says Robert Cantú, chief of neurosurgery and director of sports medicine

at Emerson Hospital in Concord, Mass., and a senior editor at Neurosurgery. “The extremely small sample size and voluntary participation suggest there was bias in choosing the sample. The findings are extremely preliminary at best, and no conclusions should be drawn from them at this time.”

One of the scientists who reviewed the committee's work is equally blunt. “They're basically trying to prepare a defense for when one of these players sues,” he says. “They are trying to say that what's done in the **NFL** is okay because in their studies, it doesn't look like bad things are happening from **concussions**. But the studies are flawed beyond belief.” (Emphasis added).

49. Guskiewicz was also quoted as saying, “[t]he data that hasn't shown up makes their work questionable industry-funded research.” (Emphasis added).

50. Pellman was not the only **NFL** hired gun peddling disinformation about head impacts or **concussions** and brain injuries. Casson and Viano of the **NFL's** MTBI Committee were playing a similar role, assisted by Lovell.

51. Between 2005 and 2007, Omalu and Dr. Robert Cantu (“Cantu”), Co-Director for the Center for the Study of Traumatic Encephalopathy (“CSTE”) at the Boston University School of Medicine (“BUSM”), examined the brain tissue of three deceased **NFL** players: (a) Mike Webster (“Webster”) of the Pittsburgh Steelers, who died of heart failure at the age of 50; (b) Terry Long (“Long”) of the Pittsburgh Steelers, who died at 45 after drinking antifreeze; and (c) Andre Waters (“Waters”) of the Philadelphia Eagles and Arizona Cardinals, who committed suicide at the age of 44. All three of these individuals suffered multiple head impacts during their respective **NFL** careers. All three exhibited symptoms of sharply deteriorated cognitive functions, paranoia, panic attacks and depression. In articles published in *Neurosurgery* in 2005 and 2006, Omalu found that Webster's and Long's respective deaths were partially caused by CTE, related to multiple **NFL concussions** suffered during their professional playing years. Cantu reached a similar conclusion as to Waters in an article published in *Neurosurgery* in 2007.

52. The following photographs, available from Brain-Pad Blog, show the contrast between a normal brain (depicted on the left) and Webster's autopsied brain (depicted on the right):

TABLE

53. In response to Omalu's article on Webster, Casson of the **NFL's** MTBI Committee wrote a letter in July of 2005 to the editor of *Neurosurgery* asking that Omalu's article be retracted.

54. In 2008, Dr. Ann McKee (“McKee”) of the CSTE at BUSM examined the brain tissue of two other deceased **NFL** players: (a) John Grimsley (“Grimsley”) of the Houston Oilers, who died of a gunshot wound at the age of 45; and (b) Tom McHale (“McHale”) of the Tampa Bay Buccaneers, Philadelphia Eagles and Miami Dolphins, who died of a drug overdose at the age of 45. McKee found that Grimsley and McHale's brain tissue exhibited indications of CTE. As she stated, “the easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of **concussions**.” (Emphasis added). She further noted that “[t]here is overwhelming evidence that [CTE] is the result of repeated sub lethal brain trauma.”

55. A *Washington Post* article published in early 2009 reported the following comments by McKee with respect to her analysis of McHale's brain:

“Is this something that happened by chance?” asked Ann McKee, a neuropathologist at Boston University pointing to pictures of McHale's brain that she said resembled that of a 72-year-old boxer. “I can tell you I've been looking at brains for 22 years, and this is not a normal part of aging. This is not a normal part of the brain.” (Emphasis added).

56. In response to McKee's studies, Casson continued his campaign of **NFL**-sponsored disinformation by characterizing each as an isolated incident from which no conclusion could be drawn and said he would wait to comment further until McKee's research was published in a peer-reviewed journal. When it was so published in 2009, Casson asserted that “there is not enough

valid, reliable or objective scientific evidence at present to determine whether... repeat head impacts in professional football result in long[-]term brain damage.” (Emphasis added).

57. The increasing controversy drew the attention of Congress. On June 23, 2007, hearings on the **NFL's** compensation of retired players were held before the Commercial and Administrative Law Subcommittee of the Judiciary Committee of the United States House of Representatives (“C&A Subcommittee”). Goodell was one of those who testified at this hearing. In follow-up responses that Goodell sent to the C&A Subcommittee in November of 2007, he continued to rely on the discredited survey research being undertaken by the MTBI Committee.

58. In response to these hearings and associated media reports, the League scheduled a **Concussion** Summit in June of 2007. Independent scientists, including Omalu, Cantu and Guskiewicz, presented their research to the League and to representatives of the NFLPA. As one contemporaneous news article reported:

“I’m not even sure we athletes know what a **concussion** is,” said safety Troy Vincent, who also is president of the **NFL** Players Association. “Outside of being knocked out, I stayed in the game.”

After a player suffers a **concussion**, his team's medical staff determines when he is fit to return to play. Studies vary on whether a quick return puts the player at risk of more severe injury.

The **NFL** commission, after reviewing five years of on-field **concussions**, found no evidence for an increase in secondary brain injuries after a **concussion**, a conclusion that has met with skepticism.

“Science is very clear that returning guys to play in the same game, or quickly within a few days, contributes to neuron loss and long-term problems,” said former pro wrestler Christopher Nowinski, who retired after repeated **concussions** and has written a book on the controversy. “With the **NFL** being both the only and most prominent voice to say it doesn't exist, it slows down acceptance and adoption of policies to reduce risk.”

While the **NFL** commission has focused on short-term effects of **concussions**, recent findings suggest players may suffer depression, dementia and other symptoms later in life. (Emphasis added).

59. The result of this conference was a complete whitewash of the problem by the **NFL**. The League issued a press release and pamphlet to players on August 14, 2007. It stated that:

Current research with professional athletes has not shown that having more than one or two **concussions** leads to permanent problems ... It is important to understand that there is no magic number for how many **concussions** is too many. (Emphasis added).

60. This act of denial and deception was consistent with the positions taken by Pellman, Casson, Lovell and Viano, as described above.

61. The **NFL's** refusals to face reality and its attempts to cover up the links between on-field **concussions** or head impacts and brain injuries are exacerbated by the way its member clubs provide medical services to top players. As one 2009 article explained:

The conflicted interests that burden many **NFL** trainers exacerbate the **NFL's concussion** problem. An emerging practice in sports medicine involves medical providers “auctioning off the right to be an **NFL** team's ‘official’ medical provider, hospital, or physician-group.” The privilege of being selected comes with the right to advertise in one's promotional materials that her group has been named the “official healthcare provider” of a particular team. “In return, the team is provided with medical care for free or at reduced cost.”

NFL players are the victims of this pay-to-play system as they receive medical care compromised by the financial interests of **NFL** trainers. It is no secret that the **NFL** is a business, and an extremely successful one at that. When trainers are intertwined with team management, their medical decisions become clouded by the number one money-making criterion in the **NFL** business: *winning*. In order for teams to maximize profit through winning games, it stands to reason that coaches and management place incredible pressure on trainers to return their most talented athletes to the playing field as soon as possible. **Concussions** might represent one of the injuries that trainers send their patient-athletes back on the field with before players are completely healed.

Former New York Jets lineman Peter Kendall efficiently articulated the conflict-ridden nature of team physicians' return-to-play decisions: "I see guys playing in games that I don't think a personal advocate would allow them to do[.] The doctor who is supposed to be looking out for you is also the same guy who may put you into a game that the team has to win. You're mixing business with medicine." Thus, in three sentences, Kendall summarized the risk involved with trainers practicing medicine under conflicted financial and medical interests.

The physician-patient dynamic of the New York Jets presents a paradigm conflict of interest. Dr. Elliot Pellman serves as *both* the Director of Medical Services for the New York Jets *and* as **NFL Concussion** Committee member. Because of Pellman's dual role, the Jets **concussion** policies and procedures have drawn heightened scrutiny from outside observers.

Pellman's management of the **concussion** Jets wide receiver Wayne Chrebet sustained on November 2, 2003 triggered significant criticism from both scientists and players. In this November 2, 2003 game against the New York Giants, Chrebet's **concussion** left him face down in an unconscious state for several minutes. Pellman elected to send Chrebet back into contact during the *same* game despite Chrebet's prolonged state of unconsciousness. Chrebet was subsequently placed on injured reserve for the remainder of the season. "Chrebet, 34, has recently acknowledged that he has bouts of depression and memory problems so severe that he cannot make the routine drive from his New Jersey home to his Long Island restaurant without a global positioning system." (Emphasis partly in original; footnotes omitted).

62. *ESPN The Magazine* reported vividly on this incident:

"There's going to be some controversy about you going back to play." Elliot Pellman looks Wayne Chrebet in the eye in the fourth quarter of a tight game, Jets vs. Giants on Nov. 2, 2003, at the Meadowlands. A knee to the back of the head knocked Chrebet stone-cold unconscious a quarter earlier, and now the Jets' team doctor is putting the wideout through a series of mental tests. Pellman knows Chrebet has suffered a **concussion**, but the player is performing adequately on standard memory exercises. "This is very important for you," the portly physician tells the local hero, as was later reported in the *New York Daily News*. "This is very important for your career." Then he asks, "Are you okay?" When Chrebet replies, "I'm fine," Pellman sends him back in.

A couple of days after Wayne Chrebet is knocked senseless by the Giants, he is sluggish and tired, and has headaches. "It was stupid, trying to get back out there," he says. "That's just me trying to convince them and myself that everything is all right." The Jets staff, including Pellman and Barr, diagnose Chrebet with post **concussion** syndrome. Ten days after the game, the Jets place Chrebet on injured reserve. Pellman makes no apologies. "Wayne returned and was fine," he tells the media. "He did not suffer additional injury. If he had suffered additional injury, his prognosis would be no different.

"Let's say I didn't allow him to return to play, and he played the following week," he continues. "The same thing could have happened. The decision about Wayne returning to play was based on scientific evaluation. As we stand now, that decision made no difference as to what's happening today.

"This decision is so that I can sleep well at night and so Wayne's wife can sleep well at night," he says about ending Chrebet's season.

“Nobody gets second-guessed.”

63. In addition, there are enormous pressures placed on **NFL** players not to report instances of **concussion**. As the same 2009 article quoted earlier explained:

When team management becomes privy to a player's **concussion** history, the team holds all leveraging power in restructuring a player's contract. Players are faced with the following Hobson's choice: (i) accept a less lucrative contract or (ii) face employment termination. Dan Morgan, former Carolina Panthers linebacker, suffered at least five **concussions** during his tenure with the Panthers. Faced with the alternative of termination, Morgan “agreed to restructure his \$2 million roster bonus into payments of \$125,000 for each game played. Beyond acknowledging the team's concerns about subsequent **concussions**, the contract gave Morgan financial incentive not to reveal any **concussion** for treatment.”

Even when a player is confident enough to disclose his **concussive** symptoms to a team trainer, he will not likely refuse a coach's orders to return to play for fear of losing his starting position in the lineup. A recent example of this situation involved the New England Patriots franchise. While playing linebacker for the Patriots in 2002, Ted Johnson sustained a severe **concussion**. After Johnson discussed his symptoms with his team trainer, the trainer advised Patriots coach Bill Belichick not to return Johnson to contact play until he became asymptomatic.

Belichick disregarded the trainer's advice by continually sending Johnson back into full contact practices. In defending his decision to return Johnson to play against the trainer's orders, Belichick said: “ ‘If [Johnson] felt so strongly that he didn't feel he was ready to practice[,] he should have told me.’ ” The flaw in Belichick's logic is that it assumes Johnson was confident enough in his job security to defy his coach's orders. If Johnson informed Belichick of his inability to return to play, he would have effectively terminated his own contract with the Patriots. (Emphasis added).

64. In November of 2008, Greg Aiello (“Aiello”) sounded a similar theme, saying to the press that “[h]undreds of thousands of people have played football and other sports without experiencing any problem of this type and there continues to be considerable debate within the medical community on the precise long-term effects of **concussions** and how they relate to other risk factors.” (Emphasis added). He neglected to mention that the debate was principally between the scientists in the pay of the League and scientists operating independently of the League.

65. The disingenuous nature of the **NFL's** position was exposed in September 10, 2009 when the University of Michigan's Institute for Social Research published a study of retired **NFL** players commissioned by the **NFL** Player Care Foundation. The study found that retired **NFL** players are diagnosed with Alzheimer's disease or similar medical conditions far more often than the national population including a rate of 19 times the normal incidence for men aged 30 through 49.

66. Despite these findings from a study that the League sponsored, the **NFL** continued to deny publicly any link between **concussions** on the playing field and dementia. A September 29, 2009 *New York Times* article reported as follows:

An **N.F.L.** spokesman, Greg Aiello, said in an e-mail message that the study did not formally diagnose dementia, that it was subject to shortcomings of telephone surveys and that “there are thousands of retired players who do not have memory problems.” “Memory disorders affect many people who never played football or other sports,” Mr. Aiello said. “We are trying to understand it as it relates to our retired players.”

As scrutiny of brain injuries in football players has escalated the past three years, with prominent professionals reporting cognitive problems and academic studies supporting a link more generally, the **N.F.L.** and its medical committee on **concussions** have steadfastly denied the existence of reliable data on the issue. The league pledged to pursue its own studies, including the one at the University of Michigan.

Dr. Ira Casson, a co-chairman of the **concussions** committee who has been the league's primary voice denying any evidence connecting **N.F.L.** football and dementia, said: "What I take from this report is there's a need for further studies to see whether or not this finding is going to pan out, if it's really there or not. I can see that the respondents believe they have been diagnosed. But the next step is to determine whether that is so."

The **N.F.L.** is conducting its own rigorous study of 120 retired players, with results expected within a few years. All neurological examinations are being conducted by Dr. Casson. (Emphasis added).

67. After the publication of the University of Michigan study, the House Judiciary Committee commenced an inquiry into "Legal Issues Relating To Football Head Injuries" and held its first hearing on October 28, 2009. Representative John Conyers ("Conyers") summarized the evidence:

There appears to be growing evidence that playing football may be linked to long-term brain damage. For example, a 2003 University of North Carolina study found that professional players who suffered multiple **concussions** were three times more likely to suffer clinical depression than the general population. A follow-up study in 2005 showed **NFL** players suffering **concussions** had five times the rate of cognitive impairment. And retired players were 37 percent more likely to suffer from Alzheimer's than the population as a whole. Earlier this year, the University of Michigan released a study that found that 6.1 percent of **NFL** players over 50 years of age reported they had received a dementia-related diagnosis—a statistic five times higher than the national average. Players age 30 through 49 showed a rate of 1.9 percent of dementia-related diagnosis 19 times that of the national average.

The National Football League is performing its own long-term study, and has largely sought to discredit these reports or some of the conclusions drawn from some of these reports. The football league described the reports as flawed.

Dr. Ira Casson, the co-chair of the **NFL's** Mild Traumatic Brain Injury Committee, denied the linkage on six separate occasions. When asked whether there was any linkage between playing football and CTE, Dr. Casson stated that it has never been scientifically, validly documented. The league said the recent University of Michigan study was flawed and that further study was necessary. The *New York Times* data released last week, was, they said, for self-promotional and lobbying purposes of the union. Given there is no consensus between the league and its players and the medical community about the causes of these cognitive disorders, it should come as no surprise there is little agreement about how to respond. (Emphasis added).

68. Representative Linda Sanchez ("Sanchez"), who had participated in the 2007 hearings mentioned earlier, was present and stated:

There are increasing studies and a body of evidence that show that there is a significant risk to individuals who suffer repeated head trauma, whether it's in the **NFL**, in professional boxing, or even high school sports, and while there are those here today who will argue against the validity of some of these studies, there appears to be a preponderance of evidence that a number of professional athletes who suffer repeated head trauma experience physical and mental decline earlier than the general population at large, and it would seem to me—and I stated this to Commissioner Goodell at the last hearing that we held that it would be better for the **NFL** and the NFLPA to be proactive in alerting its players to the risks that they face, and it's my hope that in the discussion that we have here today, the **NFL** and the NFLPA will make continued improvements in educating players on the dangers they face by playing with a **concussion**, treating those athletes appropriately who do have **concussions**, and removing the stigma that pressures players to play through the injury, and one of the most recent quotes that was heard on November 29th, 2009, was an interview during the pregame show before the Steelers' matchup with the Ravens when somebody said, basically, that he had been dinged up and got right back into the game and that, you know, just because somebody's having headaches, pretty much the quote is, you know, they need to suck it up and continue to play on, and the fact of the matter is that sucking it up and continuing to play on may mean very serious and grave consequences down the line.

Many witnesses that we have had before the Committee have testified about how the **NFL**, like it or not, influences the lower levels of football, and the actions that they take or the actions that they choose to ignore to take have significant impact on players at lower levels. The **NFL**, quite frankly, has vast resources available to its disposal to educate coaches and players and medical personnel on the proper way to handle a **concussed** player, and if they have all these resources available to them and are not addressing the problem, imagine how can we expect every high school or college to be able to properly treat a **concussed** player if that proper action isn't being taken at the very top levels of the sport? (Emphasis added).

69. Despite this overwhelming evidence, Goodell refused to answer questions of whether **NFL**-related **concussions** led to cognitive decline among retired players. The Judiciary Committee played a televised interview of Casson denying any links between **NFL** player multiple head injuries and subsequent cognitive deterioration.

70. Sanchez pressed the issue with Goodell during his testimony as follows:

Now, the question that I have for you is, I am a little concerned, and I hear the concern expressed by some of the witnesses on the panel today, that the **NFL** sort of has this kind of blanket denial or minimizing of the fact that there may be this, you know, link. And it sort of reminds me of the tobacco companies pre-1990's when they kept saying no, there is no link between smoking and damage to your health or ill health effects. And they were forced to admit that that was incorrect through a spate of litigation in the 1990's. And my question to you is wouldn't the league be better off legally, and wouldn't high school and college football players be better off, if instead of trying to minimize this issue, the league took the opposite perspective and said, look, even if there is a risk, however minuscule, that there may be this link, so we really need to jump on top of it and make kids and parents aware of this so that there isn't this sort of sense that the **NFL** is really just slow walking the issue to death by saying, well, we have been studying the issue for 15 years, we are going to maybe study it another 15 more years, when there is already non-**NFL** paid for research that suggests that there is this very high correlation with cognitive impairment? Don't you think the league, you know, would be better off legally, and that our youth might be a little bit better off in terms of knowledge, if you guys just embraced that there is research that suggests this and admitted to it? (Emphasis added).

Mr. GOODELL. Well, Congresswoman, I do believe that we have embraced the research, the medical study of this issue. As you point out--

Ms. SANCHEZ. You are talking about one study, and that is the **NFL's** study. You are not talking about the independent studies that have been conducted by other researchers. Am I correct in stating that?

Mr. GOODELL. I am not sure of your question.

Ms. SANCHEZ. There are other studies, research in dementia and CTE that show that there is a link. But again the league seems to downplay that and say, well, you know, we are conducting our own study and, you know, when we have that study completed then we will know.

Mr. GOODELL. No, I think what we are doing is because we have to a large extent driven this issue by making sure that we have medical professionals studying this issue. I am not a medical professional.

[Ms. SANCHEZ.] So my question is why are you even going through, you know, the charade of presenting the final analysis of going through this study if the determination, in my opinion, has already been made by Dr. Casson and, you know, is denied in the pamphlet that they hand out to **NFL** players?

Mr. GOODELL. Well, first let me say I do not, and I think you stated that he is the only one examining these patients and the findings. That is not correct.

Ms. SANCHEZ. He is not controlling the examinations or the findings?

Mr. GOODELL. I would not say he is controlling that at all, no.

Ms. SANCHEZ. He is participating in it, though.

Mr. GOODELL. I do not know if he is participating in the examinations. I can find that out.

Ms. SANCHEZ. And he has been a consultant to the **NFL**, is that correct?

Mr. GOODELL. He has been on our MTBI committee for several years, yes.

Ms. SANCHEZ. And some of the people who are participating in this study have other conflicts of interest. You know, one of the committee members on the **concussion** committee owns the company that makes and markets, mainly through its use by most of the **NFL** teams, the neuropsychological test that is used in the study. Isn't that true?

Mr. GOODELL. I don't know the answer to that question, but I will find out for you.

Ms. SANCHEZ. My suggestion would be, and my time has expired, but my suggestion would be that instead of having **NFL**-connected consultants and doctors, that perhaps the true findings of a truly unbiased study would be better conducted by people who have not been on the payroll or not been retained by the **NFL** in any capacity. (Emphasis added).

71. The **NFL** thereafter reacted to this barrage of criticism by having Casson and Viano, who had replaced Pellman as co-chairs of the MTBI Committee, resign by suspending that Committee's research. The League also pledged to donate a paltry \$1 million to subsidize the CSTE's research on CTE.

72. On December 2, 2009, Goodell announced an update on **concussion** guidelines for the League's players. The statement outlined several changes. First, players who sustained a **concussion** should not return to practice or game play the same day if the following signs or symptoms are present: loss of consciousness, confusion, amnesia or other memory problems, abnormal neurological exam, new and persistent headache, or any other persistent **concussion** signs. Second, if a player is held from a game, clearance for return to play should be determined by both the team physician and an independent neurological consultant. Return to play should not be considered until the athlete is asymptomatic, both at rest and with exertion, has a normal neurological exam, and has normal neuropsychological testing. The **NFL** subsequently clarified that primary sports care physicians could be treated as independent neurological consultants.

73. Aiello, the League spokesperson who had made staunch denials of the link between **concussions** and brain injury as late as September of 2009, made the following admission in a December 20, 2009 interview with a reporter for the *New York Times*:

After weeks of transforming its approach to **concussions** and its research into their long-term effects among players, the **N.F.L.** not only announced Sunday that it would support research by its most vocal critics but also conceded publicly for the first time that **concussions** can have lasting consequences.

"It's quite obvious from the medical research that's been done that **concussions** can lead to long-term problems," the league spokesman Greg Aiello said in a telephone interview. He was discussing how the league could donate \$1 million or more to the Center for the Study of Traumatic Encephalopathy at Boston University, whose discoveries of brain damage commonly associated with boxers in the brains of deceased football players were regularly discredited by the **N.F.L.**

Told that his statement was the first time any league official had publicly acknowledged any long-term effects of **concussions**, and that it contradicted past statements made by the league, its doctors and literature currently given to players, Aiello said: "We all share the same interest. That's as much as I'm going to say."

Since an Oct. 28 hearing before the House Judiciary Committee, when the league's approach to science was compared to that of the tobacco industry, the **N.F.L.** has accepted the resignations of the co-chairmen of its **concussion** committee and overhauled its policies toward **concussion** management. Players now must be cleared by brain-injury experts unaffiliated with the team, and cannot return to a game or practice in which they have shown any significant sign of **concussion**.

The second rule has since been recommended by an N.C.A.A. committee as standard policy for athletes in all sports, and will be considered by several state legislatures that have bills governing high school athletics before them.

The recent changes by the **N.F.L.** had amounted to tacit acknowledgments that it was no longer able to defend a position that conflicted with nearly all scientific understanding of head trauma.

Until recently, the league and its committee on **concussions** had consistently minimized evidence testifying to the risks of repeated brain trauma in **N.F.L.** players - from researchers like those at Boston University, to phone surveys the league itself commissioned, to demographic analysis of players known to have early-onset dementia. While discrediting such evidence, a pamphlet on **concussions** currently given to players states, "Research is currently underway to determine if there are any long-term effects of **concussion** in **N.F.L.** athletes."

That research study, conducted by the **N.F.L.'s** committee on **concussions**, was recently suspended amid strong criticism of its design and execution by outside experts, players and members of Congress.

"Mr. Aiello's statement is long overdue it's a clear sign of how the culture of football has changed in recent months," Dr. Robert Stern, a co-director of the Boston University center and its Alzheimer's Disease Clinical and Research Program, said in a telephone interview.

"There is no doubt that repetitive blows to the head result in long-term problems in the brain, including progressive dementia. With the **N.F.L.** taking these recent actions, we are finally at a point to move forward in our research and ultimately solve this important problem - for professional athletes and collegiate and youth players." (Emphasis added).

74. Despite these concessions, the problem continued unabated. 30 of 160 **NFL** players surveyed by the Associated Press in November of 2009 stated that they either failed to report or underreported **concussion** symptoms. Players admitted that they returned to play after a **concussion** feeling dazed or woozy or suffering from blurred vision.

75. In March of 2010, the MTBI Committee got a new name and new co-chairs. It was rechristened as the Head, Neck and Spine Medical Committee, and became jointly chaired by Dr. H. Hunt Batjer ("Batjer") of Northwestern Memorial Hospital and Dr. Richard Ellenbogen ("Ellemborgen") of Harborview Medical Center in Seattle. Batjer and Ellenbogen replaced Casson and Viano, who in turn had replaced Pellman.

76. In a May 2010 Congressional hearing, Representative Anthony Weiner addressed Batjer and Ellenbogen as follows: "[y]ou have years of an infected system here, [and] your job is ...to mop [it] up." (Emphasis added).

77. Batjer and Ellenbogen conceded in June of 2010 that the League's efforts with respect to **concussion** and brain injury were riddled with duplicity, conflicts of interest and shocking ineptitude. As was reported in a June 1, 2010 *New York Times* article:

They accused a fellow doctor of minimizing solid evidence of the dangers of football **concussions**. They concurred that data collected by the **N.F.L.'s** former brain-injury leadership was "infected," said that their committee should be assembled anew, and formally requested that the group's former chairman, Dr. Elliot Pellman, not speak at a conference Wednesday.

For the first time these remarks came not from outside critics of **N.F.L.** research but from those now in charge of it - Dr. H. Hunt Batjer and Dr. Richard G. Ellenbogen, prominent neurosurgeons who became co-chairmen of a new league committee

in March. One week after two members of Congress accused the doctors of sounding too much like their predecessors, and on the eve of a league-sponsored symposium in Washington held by Johns Hopkins Medicine, Batjer and Ellenbogen made clear they planned to chart a new course.

The two doctors criticized Johns Hopkins's promotional brochure for Wednesday's conference which was open only to **N.F.L.** medical personnel, other doctors and members of the United States Department of Defense - for playing down existing evidence of brain damage in retired football players.

The opening paragraph described the disease chronic traumatic encephalopathy as "now being reported in football players, although with unknown frequency." It added that these and related matters had been reported by the news media "with considerable hype around assertions of long-term harm to players from head injuries."

Batjer and Ellenbogen said that the frequency of reports of C.T.E. in players is not unknown - a Boston University research group has diagnosed it in all 12 former college and **N.F.L.** players of various ages it had tested for the condition.

"They aren't assertions or hype - they are facts," said Ellenbogen, the chief of neurological surgery at Harborview Medical Center in Seattle, who has been instrumental in drafting legislation to protect young athletes from head injuries.

He added: "Doctors were relatively ineffectual for 25 years on this issue. Then it's on the front page and everything focuses like a laser beam and things begin to change from baby steps to giant steps forward protecting kids. From a doctor-patient perspective, it's been the single best thing that has happened to this subject."

Dr. Constantine G. Lyketsos, a professor of psychiatry and behavioral sciences at Johns Hopkins who is directing Wednesday's conference, said in a telephone interview that he wrote the brochure and that the **N.F.L.** had no role with the event, other than providing financing. He defended his choice of words.

"We know of 12 cases" of C.T.E., Lyketsos said. "We don't know how many don't have it."

Regarding news media coverage of the harm caused by repeated **concussions** in football players, Lyketsos said: "There is a concern that I have that the possibility of serious long-term consequences are being overemphasized without clear evidence. It could turn out correct. It could turn out incorrect. We don't know."

He added: "I worry that it might be a disservice. That's a possibility."

The league spokesman Greg Aiello declined to comment on Lyketsos's statements, other than saying that the league has given \$1 million to the Boston University group to support its research.

The former leaders of the **N.F.L. concussion** committee generally agreed with Lyketsos, an attitude that ultimately came to the attention of Congress and led to several hearings on the subject of sports **concussions** in athletes of all ages. Batjer and Ellenbogen had a shaky debut before some frustrated members of the House Judiciary Committee during a forum in New York on May 24, but in the following days they made sure they would no longer resemble their predecessors.

The doctors said the old committee's ongoing studies on helmets and retired players' cognitive decline - whose structure and data were strongly criticized by outside experts - would not be used in any way moving forward. They said they were influenced by a comment made to them last Monday by Representative Anthony D. Weiner, Democrat of New York: "You have years of an infected system here that your job is to some degree to mop up."

"The word 'infected' hit me right between the eyes," said Ellenbogen. He and Batjer became co-chairmen of the **N.F.L.** committee in March.

Batjer added: “We all had issues with some of the methodologies described, the inherent conflict of interest that was there in many areas, that was not acceptable by any modern standards or not acceptable to us. I wouldn't put up with that, our universities wouldn't put up with that, and we don't want our professional reputations damaged by conflicts that were put upon us.”

Batjer said that he and Ellenbogen had begun reconstituting their committee from scratch. He said that six members had been selected so far, none of them holdovers from the prior regime.

The doctors so wanted to distance themselves from the past that on Monday they requested that Pellman, who was scheduled to deliver some opening remarks at the Johns Hopkins symposium, be removed from the program. Pellman was the chairman of the **N.F.L. concussion** committee from 1994 to 2007 and stayed on it until he resigned in March. He remains the league's medical director and helped with the conference's logistics.

On Tuesday, an e-mail message was distributed to conference organizers saying that Pellman would not attend the conference for family-related reasons.

“Neither Rich nor I thought he should appear to represent the **N.F.L.** in what would look like a leadership role,” Batjer said. “It's not about Elliot. It's about a complete severance from all prior relationships from that committee.” (Emphasis added).

78. As reported in a July 26, 2010 article in the *New York Times*, on June 10, 2010, the **NFL** issued a warning poster that was placed in the locker rooms of member clubs and was also turned into a pamphlet. A copy of the poster is reproduced below. It stands in stark contrast to the pamphlet issued by the League in April of 2007. This advice was never given previously by the **NFL** and was certainly not given to players who retired prior to June of 2010. As the same article went on to note:

The league's reversal is not necessarily complete. On April 30, an outside lawyer for the league, Lawrence L. Lamade, wrote a memo to the lead lawyer for the league's and union's joint disability plan, Douglas Ell, discrediting connections between football head trauma and cognitive decline. The letter, obtained by The *New York Times*, explained, “We can point to the current state of uncertainty in scientific and medical understanding” on the subject to deny players' claims that their neurological impairments are related to football. (Emphasis added).

TABLE

79. Yet even after this new warning, **NFL** players are still going out on the field after receiving a significant **concussion**. In a September 19, 2010 posting by Sam Donellon, a sports columnist on philly.com, it was noted:

A THOUSAND pardons. For the game plan, for the execution, for the ever-present “Not putting the guys in the right places” to succeed during Sunday's 27-20 loss to the Green Bay Packers.

[Philadelphia Eagles Head Coach] Andy Reid issued his familiar post-loss mea culpas yesterday, vowing to “tighten up” special teams play, execution particularly on offense, and even his play-calling.

The only thing he didn't apologize for was how, or why, two of his stars were allowed to re-enter the game after getting **concussed** Sunday afternoon at Lincoln Financial Field.

That's because in his mind, and apparently in the minds of too many still involved in the **NFL**, he and his medical staff did what it was supposed to do in the cases of Stewart Bradley and Kevin Kolb. Asked all the right questions, got all the right answers, sent both back into a game even after both had displayed, for a national audience to see, evidence of head trauma.

To wit:

Kolb lying face down for several seconds before rising slowly, grass hanging from his facemask, walking slowly from the field; Bradley bouncing up after an inadvertent knee-to-helmet hit, only to stumble back down to the ground, clearly disoriented.

That's a key word, disoriented. It's used in those famous updated guidelines the **NFL** issued last December to teams regarding **concussions** in the wake of congressional hearings and some high-profile injuries, including the repeated **concussions** to former Eagle Brian Westbrook.

"A player who suffers a **concussion** should not return to play or practice on the same day," said an **NFL** release on those guidelines, which lists among symptoms "Loss of consciousness" and "Confusion as evidenced by disorientation to person, time or place; inability to respond appropriately to questions; or inability to remember assignments or plays."

So what are we missing here? Reid said repeatedly Sunday, and again yesterday, that appropriate answers were given to questions. He said Kolb's inability to remember plays was only evident after he returned to play, and he was yanked after a three-and-out series.

But both men were clearly disoriented when they first reached their feet, and this is where we tread into the **NFL's** continued ambiguity over what it views as serious head trauma. Was Bradley's stumble due to poor balance or dizziness? The guidelines say poor balance necessitates removal, dizziness not necessarily so. But what's the difference and how the hell can anyone tell? Aren't they the same thing?

80. As another example, the **Concussion** Blog reported on Austin Collie ("Collie"), a wide receiver who played for the Indianapolis Colts in 2010. Collie suffered a **concussion** in Week 9 of the regular season and was benched in Week 10. He returned in Week 11, and was withdrawn after playing part of that game because of "worsening symptoms." He was benched in Weeks 12-14, but returned in Week 15, only to receive yet another **concussion**. As the **Concussion** Blog noted:

NFL "Policy" indicates that a player will not return from a **concussion** unless they pass all tests. Therefore if Indianapolis followed the "policy" then Collie was cleared and passed all tests by Week 11, and his first **concussion** resolved. The reports of more/worsening symptoms after 1st half of Pats game indicates that he MUST have sustained a second **concussion**. Then upon returning this week that would have meant that he cleared all tests and AGAIN sustained a **concussion**, his THIRD. Let me be clear here, you can only "aggravate" a **concussion** if you have not recovered from the first. And a player SHOULD NOT be playing with an unresolved **concussion**, by "policy"....The Colts already are spinning this one, but no matter how you look at it they either failed the "policy" or knowingly put him back into action with a **concussion**. At the very least they misreported the second. If he were returned in Week 11 and "aggravated" it then he was not properly handled the first time.

81. The plight of former **NFL** players suffering from brain injuries caused by their service in the game has continued in 2011. One example is provided by the case of Dave Duerson ("Duerson"), a former safety for the Chicago Bears and the New York Giants. After suffering months of headaches, blurred vision and deteriorating memory, Duerson committed suicide at the age of 50 on February 17, 2011. His final note asked that his brain be given to the **NFL** brain bank for evaluation.

82. On May 2, 2011, researchers at CTSE at Boston University reported that Duerson was suffering from CTE and released photographs of the autopsy of his brain. Examples of those photographs obtained from the website of CBS Chicago are reproduced below:

TABLE

83. The top row of photographs depicts three half sections of Duerson's brain that exhibit multiple areas of damage (brown coloring) in the frontal and temporal cortex, hippocampus and amygdala. The bottom row of photographs depicts microscopic images from these damaged areas, showing severe neurodegeneration. As CBS Chicago reported:

Dr. Robert Cantu, co-director of the CTSE, said at a news conference that such results normally are published first, but the Duerson family wanted them released earlier.

“It is our hope that through this research questions that go beyond our interests may be answered,” The Duerson family said in a statement. “Questions that lead to a safer game of football, from professional to Pop Warner; Questions that lead to better diagnostic tests for those alive; and Questions that lead to a cure; will all hopefully be answered.” (Emphasis added).

84. When this information was reported, DeMaurice Smith, Executive Director of the NFLPA, stated that the fact that Duerson was suffering from CTE “makes it abundantly clear what the cost of football is for the men who played and the families. It seems to me that any decision or course of action that doesn't recognize that as the truth is not only perpetuating a lie, but doing a disservice to what Dave feared and what he wanted to result from the donation of his brain to science.”

85. Another example is provided by the case of John Mackey (“Mackey”), the former tight end of the Chicago bears, who died in July of 2011 and for whom the 88 Plan described below was named. Mackey was diagnosed with frontotemporal dementia in 2007, forcing him to live full-time in an assisted living facility. The NFLPA refused to pay a disability income to him because it claimed that there was no proven direct link between brain injury and **NFL** game participation. When the 88 Plan came into being, he received payments pursuant to it, but they were far less than his family's costs. Mackey made less than a total of \$500,000 during his decade-long **NFL** career. His wife, Sylvia, had to work as a flight attendant to supplement his **NFL** pension of \$2,500 per month after they sold their California home to provide for his extensive medical care.

86. The legendary Chicago Bears player, Gale Sayers, was asked about Mackey's demise by a reporter for the *Chicago Tribune* and his response was reported as follows: “Sayers feels the **NFL** could have done more to help Mackey during his final years. ‘You know, John Mackey died at 60-something (69),’ said Sayers. ‘(The **NFL**) could have helped him more, I felt. But they didn't, and the players (NFLPA) could have helped more, and it didn't happen.’ ”

87. On information and belief, proposals have been submitted to the **NFL** MTBI Committee about **concussion** concerns and the need to do regularized testing of players. To the best of Plaintiffs' knowledge, the League has never acted on them.

88. The **NFL's** conduct stands in sharp contrast to what has been done or promulgated by other sports or medical bodies.

89. For example, Rule 4.2.14 of the World Boxing Council's Rules and Regulations states: “[b]oxers that suffered **concussion** by KO, should not participate in sparring sessions for 45 days and no less than 30 days after **concussive** trauma, including but not limited to KO's, and should not compete in a boxing match in less than 75 days.” (Emphasis added).

90. The Second International Conference on **Concussion** in Sport met in Prague in 2004 and released the following statement: “[w]hen a player shows ANY symptoms or signs of a **concussion** ... the player should not be allowed to return to play in the current game or practice ... When in doubt, sit them out!” (Emphasis added). This directive echoed the position taken by the First International Conference on **Concussion** in Sport, held in Vienna in 2001.

91. As ESPN has noted, “[a]ll standard U.S. guidelines, such as those first set by the American Academy of Neurology and the Colorado Medical Society, agree that athletes who lose consciousness should never return to play in the same game.” (Emphasis added).

92. Another example is provided by the National Collegiate Athletic Association (“NCAA”), which also recognized inexcusably late the link between head impacts and brain injuries, and which did not taking affirmative action on this until 2010. The NCAA is the subject of at least two class actions suit for this tardiness. Nevertheless, once it did act, it did so in a manner that was more decisive than the **NFL**. The NCAA's webpage on **concussion**-related resources (*see* <http://www.ncaa.org/wps/portal/ncaahome?WCM_GLOBAL_CONTEXT=/ncaa/NCAA/Academics+and+Athletes/Personal+Welfare/Health+and+Safety/Concussion>) indicates that in an educational partnership with the Centers for Disease Control and Prevention, the

NCAA has supplied each member college campus with two posters and two sets of fact sheets addressing **concussion** awareness, prevention, and management. It has issued the "NCAA Sports Medicine Handbook - Guideline on **Concussions** in the Athlete," which recommends best practices. The NCAA also requires each member college to develop a "**Concussion** Management Plan." One exemplar plan offered on the NCAA's website is the University of Georgia Athletic Association's ("UGAA") "**Concussion** Management Guidelines," which read as follows:

1. UGAA will require student-athletes to sign a statement in which student-athletes accept the responsibility for reporting their injuries and illnesses to the sports medicine staff, including signs and symptoms of **concussions** (attachment A). During the review and signing process student-athletes will watch a NCAA video on **concussions** and be provided with educational material on **concussions** (attachment B).

2. UGAA will have on file and annually update an emergency action plan (attachment C) for each athletics venue to respond to student-athlete catastrophic injuries and illnesses, including but not limited to **concussions**, heat illness, spine injury, cardiac arrest, respiratory distress (*e.g.* asthma), and sickle cell trait collapses. All athletics healthcare providers and coaches shall review and practice the plan annually. These sessions will be conducted prior to the start of the sport season... The UGAA compliance office will maintain a list of staff that have completed the requirement on file.

3. UGAA sports medicine staff members shall be empowered to determine management and return-to-play of any ill or injured student-athlete, as he or she deems appropriate. Conflicts or concerns will be forwarded to Ron Courson (director of sports medicine) and Fred Reifsteck, MD (head team physician) for remediation.

4. UGAA shall have on file a written team physician-directed **concussion** management plan (attachment D) that specifically outlines the roles of athletics healthcare staff (*e.g.*, physician, certified athletic trainer, nurse practitioner, physician assistant, neuropsychologist). In addition, the following components have been specifically identified for the collegiate environment:

a. UGAA coaches will receive a copy of the **concussion** management plan, a fact sheet on **concussions** in sport, and view a video on **concussions** annually. The UGAA compliance office will maintain a list of staff that have completed the requirement on file.

b. UGAA sports medicine staff members and other athletics healthcare providers will practice within the standards as established for their professional practice (*e.g.*, team physician, certified athletic trainer, physical therapist, nurse practitioner, physician assistant, neurologist, neuropsychologist).

c. UGAA shall record a baseline assessment for each student-athlete in the sports of baseball, basketball, cheerleading, diving, equestrian, football, gymnastics, pole vaulting, soccer, and softball, at a minimum. In addition, a baseline assessment will be recorded for student-athletes with a known history of **concussion**. The same baseline assessment tools should be used post-injury at appropriate time intervals. The baseline assessment should consist of the use of: 1) symptoms checklist, 2) standardized balance assessment (Neurocom) and 3) neuropsychological testing (computerized IMPACT test). Neuropsychological testing has been shown to be effective in the evaluation and management of **concussion**. The neuropsychological testing program should be performed in consultation with a neuropsychologist. Post injury neuropsychological test data will be interpreted by a neuropsychologist prior to return to play. Neuropsychological testing has proven to be an effective tool in assessing neurocognitive changes following **concussion** and can serve as an important component of an institution's **concussion** management plan. However, neuropsychological tests should not be used as a standalone measure to diagnose the presence or absence of a **concussion** as UGAA uses a comprehensive assessment by its sports medicine staff.

d. When a student-athlete shows any signs, symptoms or behaviors consistent with a **concussion**, the athlete will be removed from practice or competition, by either a member of the coaching staff or sports medicine staff. If removed by a coaching staff member, the coach will refer the student-athlete for evaluation by a member of the sports medicine staff. During competitions, on the field of play injuries will be under the purview of the official and playing rules of the sport. UGAA staff will follow such rules and attend to medical situations as they arise. Visiting sport team members evaluated by UGAA sports medicine staff will be managed in the same manner as UGAA student-athletes.

e. A student-athlete diagnosed with a **concussion** will be withheld from the competition or practice and not return to activity for the remainder of that day. Student-athletes that sustain a **concussion** outside of their sport will be managed in the same manner as those sustained during sport activity.

f. The student-athlete will receive serial monitoring for deterioration. Athletes will be provided with written home instructions (attachment E) upon discharge; preferably with a roommate, guardian, or someone that can follow the instructions.

g. The student-athlete will be monitored for recurrence of symptoms both from physical exertion and also mental exertion, such as reading, phone texting, computer games, watching film, athletic meetings, working on a computer, classroom work, or taking a test. Academic advisors and professors will be notified of student-athlete's **concussion**, with permission for release of information from the student-athlete.

h. The student-athlete will be evaluated by a team physician as outlined within the **concussion** management plan. Once asymptomatic and post-exertion assessments are within normal baseline limits, return to play shall follow a medically supervised stepwise process.

i. Final authority for Return-to-Play shall reside with the team physician or the physician's designee as noted in the **concussion** management flowchart.

5. UGAA will document the incident, evaluation, continued management, and clearance of the student-athlete with a **concussion**. Aggregate **concussion** numbers per sport will be reported to the Director of Athletics annually.

6. Athletics staff, student-athletes and officials will continue to emphasize that purposeful or flagrant head or neck contact in any sport should not be permitted. (Emphasis added).

93. In sum, the **NFL**, likely the richest professional sports league ever, has demonstrated a repeated unwillingness to take adequate care of retired players who are suffering from the consequences of on-field repeated and chronic head impacts incurred during their respective League careers and have made the game of professional football in this country what it is today. These players, members of the Class, are consequently at risk to neurodegenerative disorders and diseases for which medical monitoring is medically prudent and appropriate. Yet Defendants have failed to provide them with relief.

*Riddell's Involvement in the **NFL's** Unlawful Conduct*

94. Riddell is complicit in the **NFL's** misconduct.

95. Riddell manufactures helmets for use by **NFL** players. Since 1989, Riddell has been the official helmet for the League and is the only helmet manufacturer allowed to display its logo on helmets used in League games. Prior to the commencement of the 2010 season, Riddell renewed its contract with the League allowing it to continue as the **NFL's** primary helmet provider through 2014. The **NFL** has estimated that 75% of the helmets used in the League are manufactured by Riddell; Riddell estimated that the figure was 77%.

96. Riddell has long been aware of medical issues concerning **concussions**. Yet despite being the maker of the official helmet for the **NFL**, it did nothing to prevent the disinformation campaign engaged in by the League that is described in the preceding paragraphs.

97. Indeed, Riddell actively abetted the work of the **NFL's** MTBI Committee. In 1997, it became part of that Committee's project of assessing **concussions** and health consequences to **NFL** players by analyzing and reconstructing head impacts.

98. In 2006, Riddell sponsored a study that appeared in *Neurosurgery* that was co-authored by Lovell and Dr. Joe Maroon of the MTBI Committee and Dr. Mickey Collins of the University of Pittsburgh Medical Center who works closely with various **NFL** member clubs that touted Riddell's "Revolution" helmet (introduced in 2002) as reducing the incidence of **concussions** in over 2000 high school athletes in Western Pennsylvania. Cantu publicly criticized the study as being worthless.

COUNT I

Action For Declaratory Relief (On Behalf Of The Class)

99. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

100. There is a case and controversy among Plaintiffs and members of the Class on the one hand and Defendants on the other.

101. Pursuant to [28 USC §2201](#), Plaintiffs and members of the Class seek a declaration as to the following.

102. They seek a declaration that Defendants knew or reasonably should have known that the repeated traumatic brain and head impacts, as well as **concussions**, suffered by Class members while playing **NFL** football were likely to put them at excess risk to neurodegenerative disorders and diseases including but not limited to CTE, MCI, Alzheimer's disease or similar cognitive-impairing conditions.

103. Plaintiffs and members of the Class seek a declaration that Defendants had a duty to advise them of these medical risks.

104. Plaintiffs and members of the Class seek a declaration that Defendants willfully and intentionally concealed from and misled Class members concerning these medical risks.

105. Plaintiffs and members of the Class seek a declaration that Defendants thereby recklessly endangered Plaintiffs and members of the Class.

COUNT II

Action For Medical Monitoring (On Behalf Of The Class)

106. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

107. As explained above, Plaintiffs and the members of the Class experienced repeated traumatic brain and head impacts, including **concussions** during the duration of their respective **NFL** professional careers that increased their risk to neurodegenerative disorders and diseases including but not limited to CTE, MCI, Alzheimer's disease or similar cognitive-impairing conditions.

108. Defendants were fully aware of the danger of exposing their players to further injury by allowing them to play with these injuries or to play prior to the time that such injuries could heal, but until June of 2010 failed to warn players of these medical risks, and instead attempted to conceal the harmful effects of football-related **concussions** from players prior to that time. Furthermore, Defendants breached their duties of reasonable and ordinary care to the Plaintiffs and members of the Class by failing to protect their physical and mental health and failing to provide necessary and adequate safety information.

109. As a proximate result of Defendants' tortious conduct, Plaintiffs and the members of the Class have experienced an increased risk of developing serious latent neurodegenerative disorders and diseases including but not limited to CTE, MCI, Alzheimer's disease or similar cognitive-impairing conditions.

110. A monitoring procedure exists that comports with contemporary scientific principles and makes early detection of cognitive impairment possible. Such monitoring includes baseline exams, diagnostic exams, and behavioral and pharmaceutical interventions, which will prevent or mitigate the adverse consequences of the latent neurodegenerative disorders and diseases associated with the repeated traumatic brain and head impacts described herein. Furthermore, such monitoring is not available pursuant to the normal medical treatment proscribed for adult males.

111. Plaintiffs and the members of the Class therefore seek an injunction creating a Court-supervised, Defendant funded medical monitoring regime for Plaintiffs and Class members, which will facilitate the early diagnosis and adequate treatment in the event a neurodegenerative disorder or disease is diagnosed.

112. Plaintiffs and the members of the Class have no adequate remedy at law in that monetary damages alone cannot compensate them for the risk of long-term physical and economic losses due to **concussions** and sub-**concussive** injuries. Without a Court approved medical monitoring program as described herein, the Plaintiffs and the members of the Class will continue to face an unreasonable risk of injury and disability.

113. Plaintiffs and members of the Class also seek all other necessary relief in connection with this claim.

COUNT III

Action For Negligence

(On Behalf Of the Class And Individual Named Plaintiffs)

114. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

115. The **NFL** has historically assumed an independent tort duty to invoke rules that protect the health and safety of its players.

116. Throughout the history of the **NFL**, the League has purported to exercise its duty to protect the health and safety of its players by implementing rules, policies and regulations in a purported attempt to best protect its players.

117. The **NFL** breached its duty to its players, including Plaintiffs and members of the Class, to use ordinary care to protect the physical and mental health of players by implementing standardized post-**concussion** guidelines and by failing to implement mandatory rules that would prevent a player who suffered a mild traumatic brain injury from re-entering a football game or practice, without allowing adequate time to evaluate the status of the player and allow for recovery from a **concussion**.

118. Throughout the many years that the **NFL** has repeatedly established its duty to protect the health and safety of its players when known and foreseeable risks exist, until August 14, 2007, the **NFL** failed to create and implement league-wide guidelines concerning the treatment and monitoring of players who suffer a **concussive** brain injury during a game.

119. The **NFL** failed to establish any adequate guidelines or policies to protect the mental health and safety of its players. As explained above, the guidelines that the League offered in 2007 were false and misleading and failed to apprise Class members of the risks associated with on-field **concussions**, and deceive players as to the true risks that they faced.

120. The **NFL's** failure to fulfill its assumed duty to protect its players includes, but is not limited to, the following failures:

(a) Failure to institute acclimation requirements or procedures to ensure proper acclimation of the **NFL** players before they participate in practices or games;

(b) Failure to regulate and monitor practices, games, rules, equipment, and medical care so as to minimize the long-term risks associated with **concussive** brain injuries suffered by the **NFL** players, including Plaintiffs and members of the Class;

- (c) Failure to require that an adequate **concussive** brain injury history be taken of **NFL** players;
- (d) Failure to ensure accurate diagnosis and recording of **concussive** brain injury so the condition can be treated in an adequate and timely manner; and
- (e) Failure to invoke League-wide guidelines, policies, and procedures regarding the identification and treatment of **concussive** brain injury, and the return to play insofar as such matters pertain to **concussive** brain injury.

121. The **NFL** breached its assumed duty to protect the health and safety of its players by subjecting **NFL** players to an increased risk of **concussive** brain injury.

122. The **NFL** failed to provide complete, current and competent information and directions to **NFL** athletic trainers, physicians and coaches regarding **concussive** brain injuries and its prevention, symptoms, and treatment.

123. If the **NFL** would have taken the necessary steps to oversee and protect the **NFL** players, including Plaintiffs and members of the Class, by developing and implementing necessary guidelines, policies and procedures; and educating and training all persons involved with the **NFL** clubs in the recognition, prevention and treatment of **concussive** brain injuries, the **NFL** players, such as Plaintiffs and members of the Class, would not have suffered from the subject conditions or the effects of those conditions, would have recovered more rapidly, or would not have suffered long-term brain damage, including CTE, MCI, Alzheimer's disease or similar cognitive-impairing condition.

124. Under all of the above circumstances, it was foreseeable that the **NFL's** violations of its duties would cause or substantially contribute to the need for medical monitoring and personal injuries suffered by the Plaintiffs and members of the Class.

125. The **NFL** committed acts of omission and commission, which collectively and severally, constituted negligence. The League's negligence was a proximate and producing cause of the injuries and increased risk of injuries suffered by Plaintiff and members of the Class.

126. As a result of the injuries and increased risk of injuries suffered by Plaintiff and members of the Class, they are entitled to the medical monitoring relief, as alleged herein or allowed by law.

127. As a direct and proximate result of Defendants' negligent, careless and grossly negligent conduct and omissions described herein, each of the individually named Plaintiffs has suffered serious personal injury including neurocognitive brain disease, and associated damages including mental disability, loss of income, pain and suffering, emotional distress, and loss on consortium.

COUNT IV

Action For Fraud

(On Behalf of the Class and Individual Named Plaintiffs)

128. Plaintiffs repeat and reallege each of the allegations contained in the foregoing paragraphs.

129. Until June of 2010, the **NFL** made through its MTBI Committee, the statements and actions of its Commissioner and its other agents and employees material misrepresentations to its players, former players, Congress and the public at large that there was no link between **concussions** and brain injury, including CTE, MCI, Alzheimer's disease or similar cognitive-impairing conditions.

130. The persons who made the misrepresentations as agents of the **NFL** and the **NFL** knew they were false.

131. The persons who made the misrepresentations as agents of the **NFL** and the **NFL** intended to defraud Plaintiffs and members of the Class.

132. Plaintiffs and members of the Class justifiably relied on these misrepresentations to their detriment in getting care for their injuries.

133. Plaintiffs and members of the Class were damaged by these misrepresentations.

134. As a direct and proximate result of Defendants' fraudulent, careless and grossly fraudulent conduct and omissions described herein, Plaintiffs have suffered serious personal injury including neurocognitive brain disease. As a result of the injuries and increased risk of injuries suffered by Plaintiff and members of the Class, they are entitled to the medical monitoring relief, as alleged herein.

135. As a direct and proximate result of Defendants' fraudulent, careless and grossly fraudulent conduct and omissions described herein, each of the individually named Plaintiffs has suffered serious personal injury including neurocognitive brain disease, and associated damages including mental disability, loss of income, pain and suffering, emotional distress, and loss on consortium.

COUNT V

(Negligent Misrepresentation)

(On Behalf of Individual Named Plaintiffs)

136. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

137. Defendant misrepresented the dangers that **NFL** players faced in returning to action too quickly after sustaining a head injury. Defendant's MTBI Committee, through public statements which knew or should have known were misleading, published articles and issued the **concussion** pamphlet to its players, and downplayed and the long-term risks of **concussions** to **NFL** players.

138. Material misrepresentations were made by members of Defendant's committee on multiple occasions, including but not limited to testimony at congressional hearings and the "informational" pamphlet issued to players.

139. The misrepresentations included Defendant's remarks that Plaintiffs were not at an increased risk of head injury if they returned too soon to an **NFL** game or training session after suffering a head injury.

140. Defendant's material misrepresentations also included Defendant's criticism of legitimate scientific studies that illustrated the dangers and risks of head injuries.

141. Defendants made these misrepresentations and actively concealed adverse information at a time when they knew, or should have known, because of their superior position of knowledge, that Plaintiffs faced health problems if he were to return to a game too soon.

142. Defendants knew or should have known the misleading nature of these statements when they were made.

143. Defendants made misrepresentations and actively concealed information with the intention that Plaintiffs would rely on the misrepresentations or omissions in selecting their course of action.

144. As a direct and proximate result of Defendants' negligent, careless and grossly negligent conduct and omissions described herein, each of the individually named Plaintiffs has suffered serious personal injury including neurocognitive brain disease, and associated damages including mental disability, loss of income, pain and suffering, emotional distress, and loss on consortium.

COUNT VI

(Conspiracy)

(On Behalf of Individual Named Plaintiffs)

145. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

146. Defendants actively and deliberately conspired with its team members and/or independent contractors, who were directed to continuously discount and reject the casual connection between multiple **concussions** suffered while playing in the **NFL** and neurodegenerative disease.

147. This conduct between the Defendants and others was a proximate cause of the chronic injuries and damages suffered by the individual named Plaintiffs. *PRAYER FOR RELIEF*

WHEREFORE, Plaintiffs and members of the Class pray for judgment with respect to their Complaint as follows:

1. With respect to Counts I-IV, certifying the Class proposed in this Complaint pursuant to [Fed. R. Civ. P. 23\(b\)\(2\)](#);
2. With respect to Count I, granting the declaratory relief requested pursuant to [28 USC §2201](#);
3. With respect to Counts II and III, granting an injunction for the requested medical monitoring relief;
4. With respect to all counts, awarding Plaintiffs and Class members their costs and disbursements in this action, including reasonable attorneys' fees, to the extent permitted by law;
5. With respect to all counts, granting Plaintiffs and Class members such other and further relief as may be appropriate.
6. With respect to the individual personal injury claims plead in Counts III, IV, V and VI, an award of compensatory and punitive damages.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all matters so triable.

Dated: December 20, 2011

Respectfully Submitted:

<<signature>>

Kellie Lerner (KL-0927)

Hollis Salzman (HS-5994)

LABATON SUCHAROW LLP

140 Broadway

New York, NY 10005

Telephone: (212) 907-0700

Facsimile: (212) 818-0477

Michael D. Hausfeld

Richard S. Lewis

James J. Pizzuruso

Swathi Bojedla

HAUSFELD LLP

1700 K Street, N.W.; Ste. 650

Washington, DC 20006

Telephone: (202) 540-7200

Facsimile: (202) 540-7201

Michael P. Lehmann

HAUSFELD LLP

44 Montgomery Street, Suite 3400

San Francisco, CA 94104

Telephone: (415) 633-1908

Facsimile: (415) 358-4980

Thomas V. Girardi

GIRARDI | KEESE

1126 Wilshire Boulevard

Los Angeles CA 90017

Telephone: (213) 977-0211

Facsimile: (213) 481-1554

Sylvia Sokol

MOSCONE EMBLIDGE & SATER LLP

220 Montgomery Street

Suite 2100

San Francisco, CA 94104

Telephone: 415-362-3599

Facsimile: 415-362-2006

Daniel L. Warshaw

Clifford H. Pearson

PEARSON, SIMON, WARSHAW &

PENNY, LLP

15165 Ventura Boulevard, Suite 400

Sherman Oaks, CA 91403

Telephone: (818) 788 8300

Facsimile: (818) 788 8104

Arthur Bailey, Sr.

Arthur N. Bailey Associates

Suite 4500

111 West Second St.

Jamestown, NY 14701]

Telephone: (716) 483-3732

Facsimile: (716) 664-2983

Counsel for Plaintiffs and the Proposed Class

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.