

# Joe LaDou: Who Pays for Brain Injury

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Chronic traumatic encephalopathy (CTE) is a progressive and degenerative disease that causes headaches, dizziness, dementia, and depression. Recent research clearly demonstrates that multiple concussions lead to CTE, and current medical opinion holds that trauma to the head, even in the absence of diagnosed concussions, causes cognitive problems. Traumatic brain injury results from the brain hitting the interior of the skull, something that helmets have no proven ability to protect against.

Despite this knowledge and the frequency of concussions among players in the National Football League (NFL), there has been an inexcusable delay on the part of professional football to recognize and to address the problem. In the wake of nationwide controversy over a new law in California restricting access to workers comp for professional football players, more than 4,000 plaintiffs sued the NFL in a total of 80 cases. The cases, recently settled, exposed that the League has withheld evidence linking multiple concussions to CTE. A recent book, *League of Denial*, details the sordid history of how the League used its power and resources to attack independent scientists and advance its own flawed research (1).

The \$760 million settlement the NFL agreed to in August 2013 does offer significant benefits to some retirees living with dementia (cognitive impairment). Retired players will not be required to prove that they had concussions while playing in the NFL or that their current neurologic impairments were caused by concussions (2). Those with mild dementia may receive up to \$1.5 million, and if they develop progressive dementia, they could receive as much as \$1.5 million more, while former players with serious neurological disorders such as amyotrophic lateral sclerosis (ALS) will be able to receive up to \$5 million each. However, these amounts apply only to retirees who played five or more seasons, while many players will receive only the cost of medical care. Lost in all the supposed fairness of the settlement is the fact that current and future NFL players are excluded from this agreement (3). A federal judge has already rejected the proposed settlement, ruling that the figure is inadequate to compensate all the injured players.

The case of five former Kansas City Chiefs, who sued the team in December 2013 for not warning them of the long-term dangers of concussions, reflects a troubling cross-sector trend in employers' use of secrecy and dishonesty to shirk responsibility. Unprotected by workers' compensation in Missouri, the former Chiefs players sued their former employer on counts of negligence, negligent misrepresentation and fraudulent concealment. According to the plaintiffs, the Kansas City Chiefs had knowledge of the dangers of concussions, failed to disclose the risks to players, issued inaccurate and misleading information about the risks of head trauma, and fraudulently concealed accurate information about the risks from the players (5).

## **Many players excluded**

While there is broad consensus that a professional athlete who suffers head injuries during his employment with the NFL can, and should, be entitled to workers' compensation even though the diagnosis of CTE is not usually made until long after retirement (6,7), many states have specifically excluded professional athletes from statutory coverage. Moreover, the NFL's disability policy prevents many retired players from collecting compensation; the League argues that collective bargaining agreements signed with the players' union during the past 45 years govern all workplace-related injuries

(8). Even this most recent settlement agreement allows the team owners to claim that they are not at fault for the players' occupational injuries. In addition to the denial of responsibility, the League continues to refuse to make important medical studies and data publically available.

In recent years, workers' comp claims from professional athletes have risen, most notably in California where players were still able to take advantage of more liberal laws recognizing repetitive trauma injuries, but the compensated injuries were limited in number and excluded all cases of dementia. Until recently, California's workers' compensation system provided a unique opportunity for retired professional athletes in all 50 states, allowing nearly 1,000 retired players to file claims for injuries sustained often decades before — without the requirement that they play for California teams or be residents of the state. They had to participate in just one game in the state to be eligible to receive lifetime medical care for their injuries from their own teams and their insurance carriers. Realizing the potential financial consequences of the hike in claims, especially as new independent studies came out proving the connections between cumulative head trauma and life-threatening degenerative conditions, the NFL fought back hard, pushing through a recent law that limits out-of-state players from filing in California. The new bill, enacted in 2013, restricts claims to former players of the Oakland Raiders, San Francisco 49ers, San Diego Chargers and the former Los Angeles Rams.

Confusion about dementia

CTE cases are classified in four stages, the most severe of which is associated with full-blown dementia, aggression and paranoia (9). Yet even players who develop Stage 4 CTE do not have access to compensated health care in many cases, as no state has determined whether dementia is a compensable injury under workers' compensation. A number of legal hurdles stand in the way of a successful claim, including employers' willingness to withhold evidence and use past settlements to block claims. Furthermore, claimants must be able to prove a causal link between decades-old concussions and current symptoms of dementia, leaving room for the employer to argue that other life circumstances or genetic predisposition have contributed to the condition.

A California workers' compensation panel recently rejected former Dallas Cowboy Tony Dorsett's brain-injury claim. Just months later he was diagnosed with initial signs of CTE. Dorsett's claim was denied in May of 2013 when a workers' compensation judge ruled that Dorsett had agreed to an \$85,000 settlement for orthopedic injuries in 1991. A three-judge panel recently ruled that the 1991 settlement released both the Dallas Cowboys and Denver Broncos from all future claims involving virtually any body part, including the head (10).

Dementia as an occupational disease arose again in the case of Ralph Wenzel, who filed a claim in California contending that his dementia is related to his career as an NFL lineman from 1966 to 1973, playing for the Pittsburgh Steelers and the San Diego Chargers. Given that significant numbers of players could file similar claims for dementia, NFL teams and their insurers could face liability well in excess of \$100 million, giving the League strong incentive to block players' ability to file for workers' comp (11).

### **Widespread trauma**

The issue extends beyond the NFL: football is not the only source of sports injury to the brain. Ryan Freel, following a baseball career with many concussions, is the first Major League Baseball player to be diagnosed with CTE. He committed suicide in December 2012 at the age of 36. Examination of his brain tissue after death revealed that he had Stage 2 CTE, which is associated with erratic behavior and memory loss.

College and even high school football players and other athletes are at risk of CTE too. Soccer, more widespread than football amongst young athletes, uses the head as a mallet to advance the ball, creating serious risk for cumulative head trauma. Lacrosse and hockey, also popular with youth, present similar health issues as the effect of repeated hits to the head. If professional teams are not held responsible for the medical consequences of players' injuries, the chances are slim that student athletes will receive compensation for cumulative and long latency injuries.

The glamorization of violence in competitive sports has created a culture in which there is little public conscience of the occupational injuries incurred by sports players and no accountability amongst employers for compensating serious, often life-altering conditions that are directly linked to occupational causes. Employers and equipment manufacturers refuse to recognize or take accountability for the full health ramifications of head injuries. Meanwhile, the country addresses the vague issue of declining mental health primarily with drug treatment, and many health professionals are unaware that many of the afflicted are victims of head trauma occupational injuries.

There is much that can and should be done. Sports teams profit from the high-risk nature of contact sports, but balk the minute they are held responsible for the damage done to their players. Professional athletes, like all employees, have a right to workers' compensation, and all athletes, including amateurs, have a right to proper medical care and disability insurance. Publicly funded research on brain injury must begin at the earliest stages of contact sports to identify the risks to children, young adults, and professionals. All brain trauma research must be conducted and published transparently to prevent a powerful, multi-billion dollar sports industry from hiding and manipulating data essential to prevention and medical treatment. Finally, safety precautions in sports must be reassessed, and leagues at all levels of play — from grade school through universities and professional teams — need to prioritize the long-term health and safety of their players, even if this means reform of game rules and regulations.

***Joe LaDou is currently working on the fifth edition of his textbook on occupational and environmental health.***

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