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October 7, 2019

Dear Retired NFL Players and Families,

There's no earth-shattering news to report for the NFL Concussion Settlement this month. No major decisions issued (at least publicly) and no further activity in Amon Gordon's appeal to the Third Circuit.

The biggest news in the concussion settlement this month involved third party funders in general and Thrivent in particular. We also have some news regarding ongoing disability claims, and I'll dive into that in just a bit, but first I'd like to highlight a couple of feature stories.

As I said on Twitter, you're missing a big part of the Mike Webster story until you've heard it from the perspective of his son, Garrett.



## **When CTE Steals Your Dad: Garrett Remembers Mike Webster**

Covering the NFL concussion settlement litigation as it plays out, it's easy to get caught up in the dockets and the numbers. It's essential to remind ourselves that behind those figures and words are families and personal stories.

One of the individuals who was instrumental in beginning the story was former Pittsburgh Steelers offensive lineman Mike Webster through his family. Webster, who anchored the Pittsburgh offensive line through a dominant stretch of the middle and late 1970s, passed in 2002. Webster was also one of the first former NFL players to be diagnosed post-mortem with chronic traumatic encephalopathy (CTE). Witnessing most of Webster's story was his son, Garrett.

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NFL widow, Brandi Winans related the ordeal of struggling for 16 years to secure disability benefits for her late husband, Jeff. In her article, she relates the endless skirmishes on the battlefield of the NFL and its former players.

As I read Charles Dimry's story, it brought back all of the haunting memories of the 16 years We fought to get my husband Jeff's Disability.

Jeff played for Buffalo, Tampa and the Raiders from 1973-1980. Along the way, he suffered multiple injuries: Torn ACL, Torn MCL, Multiple Neck and lower back injuries, a broken foot, and crushed ankles. He also suffered from repeated hits to the head and at 30 years old, it was the last job he would ever have.

We did what everyone is supposed to do: Call your Players' Rep and file for help.

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We've covered a broad array of stories this month spanning from the NFL, to the NCAA, to the Olympics. We'll start off with some breaking news in CTE research that was just released today! Our post is reprinted with permission of Boston University.

## CTE Risk More Than Doubles after Just Three Years of Playing Football



For every year of absorbing the pounding and repeated head collisions that comes with playing American tackle football, a person's risk of developing chronic traumatic encephalopathy (CTE), a devastating neurodegenerative disease, increases by 30 percent. And for every 2.6 years of play, the risk of developing CTE doubles

These new findings from an analysis of 266 deceased former amateur and professional football players—reported in *Annals of Neurology* by a team of researchers from the Boston University CTE Center—are the first to quantify the strength of the link between playing tackle football and developing CTE.

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In keeping with the theme of brain health, one often overlooked issue concurrent with concussions and often lasting until treated is damage to the inner ear which can cause a multitude of problems, the most common of which are dizziness, ringing in the ears, and balance issues. Often these symptoms are lumped into the brain injury and left unaddressed.

While we don't yet have the ability to repair the brain from football-induced trauma, we do have the ability to correct the symptoms concurrent with it caused by vestibular damage. Dr. Girard Gianoli is one of the top vestibular specialists in the United States and in a guest article he explains how many often unaddressed symptoms can be alleviated.

## Hidden Inside the Concussion Epidemic: Inner Ear Damage



She went from specialist to specialist at some of the best medical institutions in our country looking for help with her balance problem. Many of the doctors told her that her balance problem was unrelated to the fall and head injury. The ones that did think it was related to her concussion, told her that she injured the balance portion of her brain and that she would have to learn to live with this. She went through years of physical therapy and untold number of



While attending a wedding, MW, 35 years of age, tripped, hitting her head and lacerating her forehead. Blood was everywhere. She was brought to the ER where they sewed up her forehead and diagnosed her with a concussion. Her forehead wound healed. However, she was left with horrible imbalance, vertigo, and dizziness.

treatments that did not help her balance problem. Unfortunately, she would not receive any indication that she had an inner ear problem for 35 years...

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As I mentioned previously, the most visible movement in the NFL Concussion Settlement has been by one of the funders who contracted advances for players against their settlement awards. Just to be clear, we have no fondness for predatory lending, so our legal assessment should not be construed as such. The funders did however manage to reverse most of Judge Brody's order voiding the contracts, and as such, Brody's insistence on ignoring the Third Circuit will only harm players in the long run. I explain here:

## NFL Concussion Settlement Judge Tap Dances Under Mandamus Spotlight



As the expiration of the current collective bargaining agreement between the National Football League and the NFL Players Association hurls ever closer, the suitability of the NFLPA to represent the best interests of the players at large has again been called into question.

A lawsuit challenging the PA's oversight of a disability benefits plan for former players not only demonstrates a failure on the part of the PA but the judiciary as well.

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On the Disability front, Chris Hudson is struggling in court to hold anyone -- the Plan, the NFL, or the NFLPA -- accountable for the relentless stonewalling many players experience when seeking to collect their benefits. One of the most common ploys is to approve a player at a lower level (Inactive B) and then when he presents evidence attributing his disability to his football, career, lock him into the lower category because he didn't present a new condition, but rather new evidence regarding the condition, and stating this is the only way he can present "clear and convincing evidence" to support upgrading his benefits. Both the magistrate judge and district court judge didn't seem to believe any party had a fiduciary duty to make the requirements clear to players. We explain the ruling here:

## Chris Hudson Fights to Keep His ERISA Claim Against NFLPA Alive



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Another player, **Andre Royal**, whom we reported on in June has a nearly identical claim in a different court, but all three defendants, The Bert Bell-Pete Rozelle Plan, NFL, and NFLPA have filed briefs seeking to dismiss his case citing the ruling on Chris Hudson as precedent. We'll keep you posted on developments.

Briefing has also taken place in Richard Dent's second trip to the Ninth Circuit appealing Judge Alsup's dismissal of the class action painkiller lawsuit he filed. Alsup seemed intent on not finding the NFL liable for painkiller abuse, and in a transcript prior to dismissal in the district court, seemed to make some rather far fetched arguments (in my opinion) but you never know how an appeals court will view things. Dent prevailed in his last visit to the Ninth Circuit, and hopefully will again. At any rate, here's the latest:

## Richard Dent Returns to the Ninth Circuit (Again) After District Judge Moves the Goalpost



The image of Lucy pulling the football away split seconds prior to Charlie Brown's lunging at may never be more appropriate than it is as a visual analogy for the ongoing NFL painkiller litigation.

Judge William Alsup has continually moved the goalposts in his decisions in both *Dent v. NFL* and *Evans v. Arizona Cardinals*, dismissing well-

pled allegations when the appeal of Dent's Third Amended Complaint (TAC) to the Ninth Circuit Court of Appeals, plaintiffs ask the appellate court to do one thing: require Alsup to abide by the same legal standards he holds so dear. When it suited his version of the facts, then treating those same allegations as fact later to dismiss plaintiffs' claims when they adjusted to his moves.

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We've covered a lot of NFL this month including a lawsuit filed by a current Jets player against officials for discriminating against him by refusing to permit him to wear the visor he's worn for his entire career due to visual impairment, which caused him to sustain an injury. We've also done some coverage of the Antonio Brown saga, and should soon have an article up about Vontaze Burfict's suspension, written by a fellow retired player, so be sure to check out the homepage of our site and follow the links.

Moving on to the NCAA, we've detailed why California's SB-206 is going to benefit a lot more athletes than its critics will admit.

## SB 206 Would Benefit More Athletes Than the Narrative Indicates



Somehow the narrative around SB 206, and athlete rights to the name, image, and likeness of their birthright—a right that every other American citizen takes for granted is being distorted in the media both as to what the California bill awaiting the governor's signature actually entails and the number of college athletes it would benefit.

Opportunities exist for all athletes,

and I believe there are more opportunities for enterprising athletes of all sports than the prevalent narrative supports.

Because the focus has been on top players in the revenue sports who have the potential for large endorsement deals, smaller opportunities are overlooked. Wouldn't an athlete be better off with \$10,000, or \$5,000 than nothing at all? For poorer students, this is a lot of money.

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Moving on to Olympic sports, it seems USOC has learned nothing from the Larry Nassar scandal as well as hundreds of other complaints to SafeSport of sexual abuse. As you'll see from Derek Helling's disturbing report, Sarah Hirshland, the new USOC president is following in the same footsteps as her predecessors.

## Almost a Year After Hirshland's Appointment, Little Has Changed in the USOC



In the wake of several scandals like the Larry Nassar travesty and resulting

declared the future is bright. Despite her assurances, the USOC has continued the same practices of excluding athletes from governance, paying lavish severances to disgraced executives, denying healthcare for athletes and actually waging legal battles against the very athletes it profits from.

On July 3 of this year, the US Olympic and Paralympic Committee released its 990, seemingly hoping to



coverup, changes were made at the top of the United States Olympic Committee. A line of demarcation in what was supposed to be a "new era" for the USOC was the hiring of current chief executive officer Sarah Hirshland.

When Hirshland took over in Nov. 2018, she made a **tearful promise** to listen to athletes and

bury it in the long holiday. The reasons for that hope become clear with an inspection of the document.

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If you haven't yet clicked on any of the articles, I hope you'll check them out. If you have, then you've probably noticed that our website is undergoing a redesign. I hope you'll like it and find it easier to read. If you have suggestions in that regard, please drop me a line, you can do so by simply responding to this newsletter, or you can alternately use the contact form on the website.

It's hard to believe we've completed our first quarter as a nonprofit. Time really does fly, although since we've been around before incorporating, maybe it just tends to blur. At any rate I'll soon be releasing our first financial statement (3rd Quarter 2019), and I think you'll be somewhat surprised the expense involved with delivering the stories you've come to expect from us.

I realize that many of you are waiting on settlement awards or struggling to obtain disability, but for those who are able to contribute, your donations are greatly appreciated!

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Best wishes,

Sheilla

