

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

STEPHEN DAVIS, his Wife, DEDE DAVIS)	
COREY MILLER, LANGSTON MOORE ,)	
TRAVIS WILLIAMS AND HENRY TAYLOR,)	CIVIL ACTION NO.
)	JURY TRIAL DEMANDED
)	
Plaintiffs,)	
)	
vs.)	
)	
NATIONAL FOOTBALL LEAGUE)	
)	
Defendant.)	

COMPLAINT

1. This action seeks financial compensation for the long-term chronic injuries, financial losses, expenses, and intangible losses suffered by the Plaintiffs and their spouses as a result of the Defendant’ intentional tortuous misconduct (by voluntary undertaking), negligence, fraud, and conspiracy.

2. This action arises from the pathological and debilitating effects of head injuries and concussions that have afflicted present and former professional football players in the National Football League (the “NFL”). For many decades, evidence has linked repetitive traumatic brain injury to long-term neurological problems in many sports. The NFL, as the organizer, marketer, and face of the most popular sport in the United States, in which head trauma is a regular occurrence, was aware of the evidence and the risks associated with repetitive traumatic brain injuries and concussions for decades, but deliberately ignored and actively concealed the information from the Plaintiffs and all others who participated in organized football at all levels.

3. Moreover, in or around 1994 and possibly earlier, the NFL voluntarily inserted itself into the scientific research and discussion concerning the relationship between concussions and short-term and long-term impairment of the brain. After doing so, the NFL then intentionally and fraudulently misled present and former players, and all people who reasonably rely upon the NFL's expertise about its own sport, regarding the short-term and long-term risks posed by concussions and head trauma.

4. Rather than warn players that they risked permanent brain injury if they returned to play too soon after sustaining a concussion, the NFL actively deceived players, by misrepresenting to them that concussions did not present serious, life-altering risks.

5. The NFL, through its own initiative and voluntary undertaking, created the Mild Traumatic Brain Injury Committee (the "MTBI Committee") in 1994 to research and ameliorate the impact of concussions on NFL players. Notwithstanding this purported purpose, and despite clear medical evidence that on field concussions led directly to brain injuries with tragic results for players at every level of the sport, the NFL failed to inform its current and former players of the true risks associated with such head trauma and purposefully misrepresented and/or concealed medical evidence on that issue.

6. Athletes who suffered repetitive traumatic brain injuries and/or concussion in other professional sports were restricted from playing full games or even seasons, yet NFL players who had similar trauma were regularly returned to play.

7. The NFL's active and purposeful concealment and misrepresentation of the severe neurological risks of repetitive traumatic brain injury exposed players to dangers they could have avoided had the NFL provided them with truthful and accurate

information. Many of these players have suffered brain damage and latent neurodegenerative disorders and diseases as a result of the NFL's acts and/or omissions.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and (b). All of the plaintiffs and Defendant are citizens of different states. The amount in controversy exceeds \$75,000, exclusive of interest and costs, for each Plaintiff. This matter can be tried jointly in that the Plaintiffs claims involve common questions of law and fact.

9. This Court has personal jurisdiction over the Defendant because the Defendant does business in the State of South Carolina and this judicial district, and because the Defendant derives substantial revenue from their contacts with the State of South Carolina and this judicial district.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391(a)(2) and (b)(2), because some of the acts or omission of Defendant took place in this district and division.

PARTIES

11. Plaintiff Stephen Davis and his wife Dede Davis are residents of South Carolina. Plaintiff Stephen Davis played in the NFL for the Washington Redskins, Carolina Panthers, and St. Louis Rams.

12. Plaintiff Corey Miller is a resident of South Carolina. Plaintiff Corey Miller played in the NFL for the New York Giants and Minnesota Vikings.

13. Plaintiff Langston Moore is a resident of Arizona. Plaintiff Langston Moore played in the NFL for the Cincinnati Bengals, Arizona Cardinals and Detroit Lions.

14. Plaintiff Travis Williams is a resident of Georgia. Plaintiff Travis Williams played in the NFL for the Atlanta Falcons.

15. Plaintiff Henry Taylor is a resident of South Carolina. Plaintiff Henry Taylor played in the NFL for the Detroit Lions, Atlanta Falcons, Chicago Bears, and Miami Dolphins.

16. Defendant National Football League (“NFL”) is a nonprofit, non-incorporated entity organized and existing under the laws of the State of New York, with its principal place of business at 280 Park Avenue, 15 Floor, New York, NY 10017. The National Football League is not, and has not, been the employer of Plaintiffs, who were employed by independent clubs, during their respective careers in professional football.

FACTUAL ALLEGATIONS

17. The NFL oversees America’s most popular sport, football, and acts as a trade association for 32 franchise owners. The NFL is currently comprised of 32 teams. The NFL’s average attendance per game was 67,509 in 2009.

18. The NFL governs and promotes the game of football, sets and enforces rules and league policies, and regulates team ownership. It generates revenue mostly through marketing sponsorships, licensing merchandise, and by selling national broadcasting rights to games. The teams share a percentage of the league’s overall revenue. Founded in 1920 as the American Professional Football Association, the League has been known as the NFL since 1922.

19. NFL league revenues far exceed any other sports league. Frequently surpassing \$7 billion annually, the NFL experienced its third most profitable year in 2008, earning some \$7.6 billion.

20. A *Forbes* magazine article recently stated that 19 NFL franchises are worth \$1 billion or more. Even the lowest-valued of the 32 NFL teams is worth approximately \$800 million. Over the last 15 years, the values of franchises in the NFL have gone up 500 percent.

21. According to a recent *Wall Street Journal Article*, the NFL has spent nearly \$5.5 million on lobbying firms since 2006, tripling its lobbying expenses over the previous four years. The lobbying firms “address a host of issues from player concussions to Internet gambling to cable and satellite television matters and labor issues.”

22. Owing in part to its immense financial power and monopoly status in American football, the NFL has assumed enormous influence over the research and education of football injuries to physicians, trainers, coaches, and amateur football players at all levels of the game.

23. Indeed, the website www.nflhealthandsafety.com states that USA Football, the sport’s national governing body, “is the Official Youth Football Development Partner of the NFL and the NFL Players’ Association (“NFLPA”). The independent non-profit organization leads the development of youth, high school and international amateur football. In addition, USA Football operates programs and builds resources to address key health and safety issues in partnership with leading medical organizations. The organization was endowed by the NFL and NFLPA through the NFL Youth Football Fund in 2002. USA Football stands among the leaders in youth sports concussion education, particularly for football.

THE NATURE OF HEAD INJURIES SUFFERED BY NFL PLAYERS

24. The American Association of Neurological Surgeons defines a concussion as “a clinical syndrome characterized by an immediate and transient alteration in brain function, including an alteration of mental status and level of consciousness, resulting from mechanical force or trauma.”

25. The injury generally occurs when the head either accelerates rapidly and then is stopped, or is spun rapidly. The results frequently include confusion, blurred vision, memory loss, nausea, and, sometimes, unconsciousness.

26. Dr. Wise Young, a neurosurgery professor at New York University, described concussion as follows:

Picture your brain as a hunk of Jell-O floating in a bowl – your cranium. When you get hit in the head, the bowl suddenly shifts and the Jell-O bangs against the side, then rebounds and bangs against the other side. At the same time, the Jell-O is twisted and wrenched. This smashing, jiggling, and torquing of the brain causes strains and tears, snapping blood vessels, killing brain cells (neurons) and shearing the delicate connections (axons) that link this incredibly complex cerebral telephone system. Further, [w]hen somebody is severely injured, you see breaks of the axons and nerve fibers all over the brain.

27. Medical evidence has shown that symptoms of a concussion can reappear hours or days after the injury, indicating that the injured party had not healed from the initial blow.

28. According to neurologists, once a person suffers a concussion, he is as much as four times more likely to sustain a second one. Additionally, after several concussions, a lesser blow may cause the injury, and the injured player requires more time to recover.

29. Clinical and neuropathological studies by some of the nation’s foremost experts demonstrate that multiple concussions sustained during an NFL player’s career cause severe cognitive problems such as depression and early-onset dementia.

30. Chronic Traumatic Encephalopathy (“CTE”) is a progressive degenerative disease of the brain found in athletes (and others) with a history of repetitive concussions. Conclusive studies have shown this condition to be prevalent in retired professional football players who have a history of head injury.

31. This head trauma, which includes multiple concussions, triggers progressive degeneration of the brain tissue. These changes in the brain can begin months, years, or even decades after the last concussion or end of active athletic involvement. The brain degeneration is

associated with memory loss, confusion, impaired judgment, paranoia, impulse control problems, aggression, depression, and eventually, progressive dementia.

32. Not surprisingly, the University of North Carolina's Center for the Study of Retired Athletes published survey-based papers in 2005 through 2007 that found a clear correlation between NFL football and depression, dementia, and other cognitive impairment.

33. To date, neuroanatomists have performed autopsies on 13 former NFL players who died after exhibiting signs of degenerative brain disease. Twelve of these players were found to have suffered from CTE.

THE DEFICIENT RESPONSE TO THE CONCUSSION ISSUE

34. The NFL's concussion problem is not new. In 1994, well after Riddell had partnered with the NFL to become the "official helmet of the NFL," and following the well-publicized retirements of NFL players Al Toon and Merrill Hodge, both of whom had sustained serious head injuries while playing and developed post-concussion syndrome, then-NFL Commissioner Paul Tagliabue established the Mild Traumatic Brain Injury ("MTBI") Committee to study, among other things, post-concussion syndrome in NFL players.

35. The NFL affirmatively assumed a duty to use reasonable care in the study of post-concussion syndrome, and to use reasonable care in the publication of data from the MTBI Committee's work.

36. Rather than exercising reasonable care in these duties, the NFL immediately engaged in a long-running course of negligent conduct.

37. Instead of naming a noted neurologist to chair the newly formed committee or, at least, a physician with extensive training and experience treating head injuries, Tagliabue appointed a puppet, Dr. Elliot Pellman, to this post.

38. Dr. Pellman, a rheumatologist with training in the treatment of joints and muscles, not head injuries, would go on to chair the MTBI Committee from 1994 to 2007. Dr. Pellman's leadership of this committee came under frequent harsh criticism for his deficient medical training, background, and experience to head the committee and lead its research efforts, not to mention his bias.

39. By 1994, when the NFL's committee was formed, scientists and neurologists alike were already convinced that all concussion – even seemingly mild ones – were serious injuries that permanently damage the brain, impair thinking ability and memory, and hasten the onset of mental decay and senility, especially when they are inflicted frequently.

40. The NFL's team of hand-picked experts had a different take on the issue, however. They did not find concussions to be of significant concern and felt it more than appropriate for players suffering a concussion to continue playing football during the same game in which one was suffered.

41. When asked in or about 2005 about his history of concussions, San Francisco Quarterback Steve Young admitted to six "official" concussions. His definition of an official concussion: "When you're lying on your back and they cart you off. That's an 'official' concussion."

42. With the NFL "party-line" in place minimizing the significance of concussions, players who suffered them were told not to be overly concerned, and were regularly returned to game action mere minutes after sustaining them.

43. This practice, set in motion by the MTBI Committee, was irresponsible and dangerous. A noted neurologist, Dr. Dennis Choi, a professor and head of neurology at Washington University in St. Louis, discussed in 2005 his opinion that the most pernicious

concussions are those that occur before earlier concussions have healed. “The brain has a wonderful ability to partially heal itself,” said Dr. Choi, but “[i]f you take another shot before healing has taken place, the chances of compounding the injury are very real.”

44. In 1999, the National Center for Catastrophic Sports Injury Research at the University of North Carolina in Chapel Hill conducted a study involving 18,000 collegiate and high school football players. The research showed that once a player suffered one concussion, he was three times more likely to sustain a second in the same season following the initial concussion.

45. A 2000 study, which surveyed 1,090 former NFL players, found that more than 60 percent had suffered at least one concussion, and 26 percent had suffered three or more, during their careers. Those who had sustained concussions reported more problems with memory, concentration, speech impediments, headaches, and other neurological problems than those who had not been concussed.

46. The MTBI Committee has published multiple research articles since its inception. The findings of the committee have regularly contradicted the research and experiences of neurologists who treat sports concussions, and to players who endured them.

47. For example, in the October 2004 edition of *Neurosurgery*, the MTBI Committee published a paper in which it asserted that the Committee’s research found no risk of repeated concussions in players with previous concussions and that there was no “7- to 10-day window of increased susceptibility to sustaining another concussion.”

48. In a comment to the study published in *Neurosurgery*, one doctor wrote that “[t]he article sends a message that it is acceptable to return players while still symptomatic, which

contradicts literature published over the past twenty years suggesting that athletes be returned to play only after they are asymptomatic, and in some cases for seven days.”

49. For further example, in January 2005 the Committee 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.” However, 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.”

50. In 2005, Dr. Bennet Omalu, at the time a Pittsburgh-area pathologist, studied the brain of former NFL player Mike Webster, who had recently committed suicide. Dr. Omalu determined that Webster suffered from CTE, and published his findings in the June 2005 edition of *Neurosurgery*. Three members of the NFL’s MTBI Committee – Drs. Pellman, Viano, and Casson – attacked the article and said they wanted it retracted.

51. Dr. Julian Bailes, a neurosurgeon from West Virginia University, briefed the NFL Committee on the findings of Dr. Omalu and other independent studies linking multiple NFL head injuries with cognitive decline. Dr. Bailes recalled the MTBI Committee’s reaction to his presentation: “the Committee got mad . . . we got into it. And I’m thinking, ‘This is a . . . disease in America’s most popular sport and how are its leaders responding? Alienate the scientist who found it? Refuse to accept the science coming from him?’”

52. In November 2006, Dr. Omalu studied the brain of former NFL player Andre Waters, who had died of a self-inflicted gunshot wound. The analysis of Waters’ brain tissue conducted by Dr. Omalu showed signs of CTE.

53. A November 2006 *ESPN The Magazine* article described how the MTBI Committee failed to include hundreds of neuropsychological tests done on NFL players when

studying the effects of concussions on the results of such tests. The article further revealed that Dr. Pellman had fired a neuropsychologist for the New York Jets, Dr. William Barr, after Dr. Barr voiced concern that Dr. Pellman might be picking and choosing what data to include in the Committee's research to get results that would downplay the effects of concussions.

54. Dr. Pellman stepped down as the head of the MTBI Committee in February 2007. Dr. Kevin Guskiewicz, research director of UNC's Center for the Study of Retired Athletes, said at the time that Dr. Pellman was "the wrong person to chair the committee from a scientific perspective and the right person from the league's perspective."

55. Regarding the work of Dr. Pellman, Dr. Guskiewicz stated, "[w]e found this at the high school level, the college level and the professional level, that once you had a concussion or two you are at increased risk for future concussions;" but "[Dr. Pellman] continued to say on the record that's not what they find and there's no truth to it."

56. Dr. Pellman was replaced by Drs. Ira Casson and David Viano. Dr. Casson continued to dismiss outside studies and overwhelming evidence linking dementia and other cognitive decline to brain injuries. When asked in 2007 whether concussions could lead to brain damage, dementia, or depression, Dr. Casson denied the linkage six separate times.

57. In June 2007, the NFL convened a concussion summit for team doctors and trainers. At the summit, the co-chair of the MTBI Committee, Dr. Ira Casson, told team doctors and trainers that CTE has never been scientifically documented in football players.

58. In August 2007, the NFL issued a concussion pamphlet to players. Independent scientists and neurologists were disgusted and dismayed when the following statement appeared in the pamphlet: "current research with professional athletes *has not shown* that having more

than one or two concussions leads to permanent problems if each is managed properly. It is important to understand that there is no magic number for how many concussions is too many.”

59. The concussion pamphlet clearly created player reliance. “We want to make sure all NFL players . . . *are fully informed* and take advantage of the *most up to date information* and resources as we continue to study the long-term impact on concussions.” (emphasis added). Evidently, the “most up to date information” did not include the findings of Drs. Guskiewicz, Cantu, Omalu, and Bailes indicating a causal link between multiple concussions and later life cognitive decline.

60. In 2008, the University of Michigan’s Institute for Social Research conducted a study on the health of retired players, with over 1,000 former NFL players taking part. The results of the study, which were released in 2009, reported that “Alzheimer’s disease or similar memory-related diseases appear to have been diagnosed in the league’s former players vastly more often than in the national population – including a rate of 19 times the normal rate for men ages 30 through 49.”

61. The NFL, which had commissioned the study, responded to its results by claiming that the study was incomplete. Further findings, it said, would be needed. Several experts in the field found the NFL’s reaction to be “bizarre,” noting that “they paid for the study, yet they tried to distance themselves from it.”

62. Shortly after the results from this study were released, Representative John Conyers, Jr., Chairman of the House Judiciary Committee, called for hearings on the impact of head injuries sustained by NFL players.

63. In the first hearing, in October 2009, Rep. Maxine Waters stated, “I believe you are an \$8 billion organization that has failed in your responsibility to the players. We all know

it's a dangerous sport. Players are always going to get injured. The only question is, are you going to pay for it? I know that you dearly want to hold on to your profits. I think it's the responsibility of Congress to look at your antitrust exemption and take it away.”

64. NFL Commissioner Roger Goodell testified at the hearing. He stated that “[w]e are fortunate to be the most popular spectator sport in America. In addition to our millions of fans, more than three million youngsters aged 6-14 play tackle football each year; more than one million high school players also do so and nearly seventy five thousand collegiate players as well. We must act in their best interests even if these young men never play professional football.”

65. Goodell testified that “[i]n the past 15 years, the N.F.L. has made significant investments in medical and biomedical research. All of that information has been made public, subject to thorough and on-going peer review, published in leading journals, and distributed to the N.F.L.P.A. and their medical consultants. We have been open and transparent, and have invited dialogue throughout the medical community.”

66. Also in the October hearing, NFLPA Executive Director DeMaurice Smith stated that the study was not the first study on this issue. “While this is the first N.F.L.-accepted study that demonstrated a connection between on-field injury and post career mental illness, there have been studies over the last decade highlighting that fact. Unfortunately, the N.F.L. has diminished those studies, urged the suppression of the findings and for years, moved slowly in an area where speed should have been the impetus.”

67. After the Congressional Hearings, the NFLPA called for the removal of Dr. Casson as MTBI co-chair. “Our view is that he’s a polarizing figure on this issue, and the players

certainly don't feel like he can be an impartial party on this subject," said NFLPA Assistant Executive Director George Atallah.

68. Dr. Casson and Dr. David Viano resigned as co-committee chairmen after the 2009 Congressional Hearing. Dr. Casson, as noted, came under criticism during the hearings for his "continued denials of any link among retired players between injuries sustained in professional football and heightened rates of dementia."

69. Shortly after the October 2009 hearings, the NFL announced that it would impose its most stringent rules to date on managing concussions, requiring players who exhibit any significant sign of a concussion to be removed from a game or practice and be barred from returning the same day. The league's former practice of allowing players to return when their concussion symptoms subside, a practice experienced by each and every plaintiff, has been soundly criticized for putting its players at risk.

70. In the apparent change in policy, the NFL indicated that "independent experts" would decide who returns to play and who has to sit out so their brain can heal. Not surprisingly, the "independent experts," were selected by Dr. Pellman.

71. The change contradicted past recommendations by the Committee, which had recommended as safe the league's practice of returning players after concussion. The Committee had published a paper in the journal *Neurosurgery* in 2005 that stated "[p]layers who are concussed and return to the same game have fewer initial signs and symptoms than those removed from play. Return to play does not involve a significant risk of a second injury either in the same game or during the season."

72. In December 2009, an NFL Spokesman stated that it was "quite obvious from the medical research that's been done that concussions can lead to long-term problems." This fact

had been quite obvious to virtually every person involved in the study of concussions for more than a decade with the exception of the NFL and its' so called "experts.

73. On December 17, 2009, Cincinnati Bengals wide receiver Chris Henry, 26, died after falling from the back of a pickup truck. Drs. Omalu and Bailes performed a postmortem study on Henry's brain and diagnosed Henry with CTE.

74. In January 2010, the House Judiciary Committee held further hearings on Football Player Head Injuries. Committee Chairman Rep. John Conyers, Jr. noted that "until recently, the NFL had minimized and disputed evidence linking head injuries to mental impairment in the future."

75. Dr. Casson provided oral and written testimony at the January 2010 hearings. He continued to deny the validity of other studies, stating that "[t]here is not enough valid, reliable or objective scientific evidence at present to determine whether or not repeat head impacts in professional football result in long term brain damage."

76. Rep. Linda Sanchez soundly criticized the NFL at the hearings. "I find it really ridiculous that he's saying that concussion don't cause long-term cognitive problems. I think most people you ask on the street would figure that repeated blows to the head aren't good for you." She further commented that "It seems to me that the N.F.L. has literally been dragging its feet on this issue until the past few years. Why did it take 15 years?"

77. In 2010, the NFL re-named the panel, to the "Head, Neck and Spine Medical Committee" and announced that Dr. Pellman would no longer be a member of the panel. Drs. H. Hunt Batjer and Richard G. Ellenbogen were selected to replace Drs. Casson and Viano. The two new co-chairmen selected Dr. Mitchell S. Berger to serve on the panel.

78. Under its new leadership, the Committee admitted that data collected by the NFL's former brain-injury leadership was "infected," and said that their committee should be assembled anew. Attempting to distance itself from the prior regime, the new Committee formally requested that the group's former chairman, Dr. Elliot Pellman, not speak at one of their initial conferences.

79. During a May 2010 Congressional Hearing, Congressman Anthony Weiner addressed Drs. Batjer and Ellenbogen with the following comment: "you have years of an infected system here, and your job is . . . to mop [it] up." Step one should have been for the NFL's committee to issue an adequate warning to league players about the causal link between multiple NFL concussions and cognitive decline. At one juncture during the Congressional Hearing, Rep. Weiner, infuriated by the answers he was being given by Ellenbogen chided, "You're in charge of the brains of these players!"

80. Shortly after the May 2010 hearings, Dr. Batjer was quoted as saying, "[w]e 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."

81. The NFL continued its deficient response to head injuries as the 2010 season began, and the league's concussion woes continued. In an early season game in 2010, when Philadelphia Eagles' Middle Linebacker Stewart Bradley was injured, staggered onto the field and stumbled over, it was clear he was injured.

82. Troy Aikman, the former Dallas Cowboys quarterback who had suffered multiple concussions and was analyzing the game on television, commented that "[i]t's hard to image him

coming back into this game in light of what we just saw.” But after about four minutes of real time, the Eagles sent Bradley back on the field. Bradley was soon removed from the game, this time diagnosed with a concussion.

83. In the same game, Philadelphia Eagles’ Quarterback Kevin Kolb was also sidelined by a concussion. He, too, was initially cleared to play and briefly returned to the game.

84. Recently, when legendary New York Giants’ Linebacker Harry Carson was asked about the concussion issue, he was quoted as saying: “Physically, I have aches and pains, but that comes with playing the game. But if somebody tells you neurologically you could sustain some kind of brain damage that will go with you the rest of your life. If somebody had told me that a long time ago, I don’t frankly think I would have [played].”

85. After some 16 years of essentially ignoring the issue, it appears as though the NFL has only very recently begun to take the concussion issue seriously. On October 20, 2010, in the wake of a series of dangerous and flagrant hits resulting in concussions, the NFL levied fines totaling \$175,000 on three players, James Harrison, Brandon Meriweather, and Duanta Robinson.

86. In discussing Meriweather’s helmet to helmet hit on Baltimore Ravens’ Tight End Todd Heap, NFL Executive Vice President of Football Operations Ray Anderson was quoted as saying that “in our view, the hit was flagrant and egregious. *Effective immediately*, that’s going to be looked at at a very aggressive level, which would include suspension without pay . . . What I would tell you is that if there are flagrant and egregious violations of our current rules, we will be enforcing, *effectiveimmediately*, discipline at a higher level.” (emphasis added).

87. That same day, NFL Commissioner Roger Goodell forwarded a memo to all 32 NFL teams with a message that was to be read to all players and coaches. Also forwarded to each team was a video showing “what kind of hits are against the rules.”

88. Goodell’s memo provided in part that “violations of the playing rules that unreasonably put the safety of another player in jeopardy have no place in the game, and that is especially true in the case of hits to the head and neck. Accordingly, from this point forward, you should be clear on the following points: (1) Players are expected to play within the rules. Those who do not will face increased discipline, including suspensions, starting with the first offense; (2) Coaches are expected to teach playing within the rules. Failure to do so will subject both the coach and the employing club to discipline; (3) Game officials have been directed to emphasize protecting the players from illegal and dangerous hits, and particularly from hits to the head and neck. In appropriate cases, they have the authority to eject players from a game.”

89. Two days later, a second memo was sent out to all teams by Ray Anderson providing each coach with the names of only his own players who have multiple infractions. As NFL Spokesman Greg Aiello provided, “the purpose was to provide an opportunity for the coach to give extra caution to those players to abide by the safety rules.”

90. On February 17, 2011, former Chicago Bears and New York Giants player Dave Duerson committed suicide. Only 50 at the time of his death, Duerson had suffered months of headaches, blurred vision, and faltering memory. After his death, Boston University researchers determined that Duerson was suffering from CTE.

91. In October 2011, Dr. Berger of the Head, Neck, and Spine Medical Committee announced that a new study was in the planning process. Addressing problems with the previous long-range study, a *New York Times* article noted that Dr. Berger said “There was no science in

that.” Dr. Berger further stated that “data from pervious study would not be used. We’re really moving on from that data. There’s really nothing we can do with that data in terms of how it was collected and assessed.”

92. In November 2011, the league’s injury and safety panel issued a directive telling its game officials to watch closely for concussion symptoms in players. The directive came ten days after San Diego Chargers’ Guard Kris Dielman sustained a head injury against the Jets and later had a grand mal seizure on the team’s flight home. Dielman sustained a head injury during a game on October 23, finished playing the game, and was not assessed until afterward.

93. Following a decade and a half of burying its head in the sand, the first serious actions taken to address the rampant concussion problem in the League has already had positive effects. NFL Officiating Chief Carl Johnson was quoted on NBC’s “Football Night in America,” stating that he’s “seen a change in players’ behavior in one week.”

94. Why league policy changes, accurate information sharing, strict fines, and warnings of this nature were not recommended by the NFL’s so called “expert” committee soon after its creation in 1994, or even earlier by the League and/or its “official helmet” manufacturer, is difficult to comprehend. That it took 16 years to admit that there was a problem and to take any real action to address same is willful and wanton and exhibits a reckless disregard for the safety of the players.

EQUITABLE TOLLING

95. The applicable statute of limitations is tolled because Defendant’ fraudulent concealment of the dangers and adverse effects of head injuries made it impossible for Plaintiffs to learn of the hazards to their health.

96. Plaintiffs did not become reasonably aware of the dangerous nature of, and the

unreasonable adverse side effects associated with, nor establish any provable compensable damages caused by, their head injuries prior to the date of this Complaint. The accrual of a complete cause of action relating to the cognizable physical manifestation of the injury did not exist until that time.

97. Defendant was under a continuing duty to disclose the true character, quality, and nature of the after effects of head injuries. Because of Defendant' concealment of the true character, quality, and nature of these injuries, Defendant is stopped from relying on any statute of limitations defense.

98. Defendant, in the course of its business, omitted material key facts about the effects of head injuries, which prevented Plaintiffs from discovering a link between their premature return to action and their head injuries.

CLAIMS FOR RELIEF

COUNT I NEGLIGENCE

99. Plaintiffs re-aver and re-allege all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

100. Defendant, as purveyor of safety equipment and rules for the League, owed Plaintiffs a duty to use reasonable care in researching, studying, and/or examining the dangers and risks of head injuries and/or concussions to NFL players, to inform and warn the players of such risks, and to effectuate reasonable policies and/or take other reasonable action to minimize the risks of head injuries.

101. Defendant NFL affirmatively and voluntarily established the MTBI Committee to examine the dangers and consequences of head injuries to NFL players, to report on its' findings, to provide information and guidance from its research and studies concerning concussions to

teams and players, and to make recommendations to lessen the risks of concussions. Defendant NFL is responsible for the staffing and conduct of the MTBI Committee.

102. The NFL failed to use reasonable care in the manner in which it created the MTBI Committee and in the appointment of physicians to head the Committee who were not qualified for the job.

103. The Defendant and the NFL's MTBI Committee also failed to use reasonable care in researching, studying, and/or examining the risks of head injuries and/or concussions in professional football and in downplaying and in many cases denying both the severity of such injuries and the clear link between concussions and brain damage, thereby breaching the duty to the players, including the Plaintiffs.

104. The Defendant and the NFL's MTBI Committee failed to inform, warn and/or advise the players and/or misinformed them of the risks and complications inherent in sustaining concussions, thereby breaching the duty to the players, including the Plaintiffs.

105. The Defendant and the NFL's MTBI Committee were further negligent, careless and/or grossly negligent in the following respects:

- (a) in failing to use reasonable care in overseeing, controlling and/or regulating policies and procedures of the League so as to minimize the risk of head injuries and/or concussions;
- (b) in failing to use reasonable care in the research and/or investigation of the concussion issue;
- (c) in failing to appoint a qualified physician or panel of physicians to head the aforesaid MTBI Committee;
- (d) in placing a physician in charge of the Committee whose primary motive was to appease the NFL rather than to report accurately;
- (e) in disregarding independent scientific studies which showed the risks of head injuries and/or concussions to NFL players' health;
- (f) in failing to acknowledge, either publically or to the players, the linkage between playing football and long-term brain injuries;
- (g) in failing to make and/or timely make necessary League policy changes as it pertain to intentional hits to the head, hits to the head of a defenseless player, helmet to helmet hits, and concussions in general;

- (h) in publishing misleading and erroneous findings;
- (i) in failing to issue a timely warning, through a concussion pamphlet or other means to the players concerning the causal link between concussions and later life cognitive decline;
- (j) in issuing misinformation and purposefully attempting to mislead the players through the concussion pamphlet which they issued in August 2007; in collecting and reporting upon data that was “infected” and/or not reliable;
- (k) in causing, by and through their negligent conduct and omissions, an increased risk of harm to their players;
- (l) in failing to provide competent information to teams, players, coaches, trainers, and medical personnel with respect to the significance of head injuries and/or concussions, their symptoms, and necessary and/or proper treatment of same;
- (m) and in creating a “culture” within the NFL in which concussions and their devastating effects would run rampant.

106. As a direct and proximate result of Defendant’ negligent, careless, and/or grossly negligent conduct and omissions as aforesaid, Plaintiffs have suffered serious injury, including but not limited to brain damage with a resultant loss therefrom.

107. That by reason of the foregoing negligence on the part of the said Defendant, Plaintiffs are informed and believe that their aforesaid injuries are permanent and that they will permanently suffer from the effects of their injuries, including but not limited to continuous pain and suffering and severe emotional distress.

108. That by reason of the foregoing, Plaintiffs were compelled and will be compelled in the future to require medical aid and attention, with a resultant cost therefrom.

109. That by reason of the foregoing, Plaintiffs have suffered loss of opportunity of employment and will continue to suffer such loss of opportunity in the future with a resultant loss therefrom.

COUNT II FRAUD

110. Plaintiffs re-aver and re-allege all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

111. Defendant materially misrepresented the risks faced by Plaintiffs related to head injuries. Defendant and the NFL's MTBI Committee, through misleading public statements, published articles and the concussion pamphlet issued to the players, downplayed known long-term risks of concussions to NFL players.

112. Material misrepresentations were made by members of the NFL's Committee on multiple occasions, including but not limited to testimony given at Congressional Hearings and the "informational" pamphlet which they issued to the players.

113. The material misrepresentations included 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.

114. The material misrepresentations also included criticism of legitimate scientific studies which illustrated the dangers and risks of head injuries.

115. Defendant knew the misleading nature of these statements when they were made.

116. Defendant knew, or should have known, that Plaintiffs would rely on these misrepresentations.

117. Plaintiffs relied on these misrepresentations when playing in the NFL. Had Plaintiffs known the risks to their health, they would not have agreed to jeopardize their health for the compensation paid.

118. As a direct and proximate result of Defendant's conduct, Plaintiffs have suffered physical injury, including, but not limited to, memory and cognitive problems, and have suffered multiple economic losses.

COUNT III
NEGLIGENT MISREPRESENTATION

119. Plaintiffs re-aver and re-allege all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

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

121. Material misrepresentations were made by members of the NFL's Committee on multiple occasions, including but not limited to testimony at Congressional Hearings and the "informational" pamphlet issued to players.

122. The misrepresentations included 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.

123. The material misrepresentations also included criticism of legitimate scientific studies that illustrated the dangers and risks of head injuries.

124. Defendant 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 they were to return to a game too soon.

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

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

127. As a direct and proximate result of Defendant' conduct, Plaintiffs have suffered physical injury, including but not limited to, memory and cognitive problems, and multiple economic loss.

COUNT IV CONSPIRACY

128. Plaintiffs re-aver and re-allege all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

129. Defendant actively and deliberately conspired with NFL teams and/or independent contractors, who were directed to continuously discount and reject the causal connection between multiple concussions suffered while playing in the NFL

130. This conduct between the Defendant and others caused special damage to Plaintiffs in the form of chronic injuries.

131. As a direct and proximate result of Defendant' conduct, Plaintiffs have suffered physical injury, including but not limited to, memory and cognitive problems, and multiple economic loss.

COUNT VI LOSS OF CONSORTIUM

132. Plaintiffs re-aver and re-allege all preceding paragraphs as if fully set forth herein and further allege on information and belief as follows.

133. The actions of the Defendant as described above has caused and will continue in the future to cause the spouses of those who played professional football in the NFL to be deprived of the services, society, and companionship of their husbands.

134. The actions of the Defendant as described above has caused and will continue in the future to cause the spouses of those who played professional football in the NFL to both pay for and provide the medical treatment and care needed by their husbands.

135. As a direct and proximate result of Defendant' conduct, the spouses of those who played professional football in the NFL have suffered and will continue to suffer economic loss, and have been and will continue to be deprived of the services and society of their husbands.

PRAYER FOR RELIEF

For these reasons, Plaintiffs request a judgment as follows:

Compensatory and punitive damages in an amount to be determined by a jury.

JURY DEMANDED

Plaintiffs demand atrial by jury on all matters so triable.

Respectfully Submitted this the 5th day of July, 2012.

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