

**NFLPA Response to  
Questions of October 12, 2007**

**EXHIBIT**

**A**

## NFLPA WHITE PAPER ON BENEFITS

### I. NFL/NFLPA BENEFITS OVERVIEW

- **Active Players Pay For All Benefits:** The NFL Players Association and the NFL agree in collective bargaining on the benefits to be provided. Benefit costs reduce the revenue available for active players under the Collective Bargaining Agreement ("CBA"):
  - The CBA between the Players Association and the NFL provides retirement, medical, and disability benefits to former players. The CBA allocates a percentage of the League's revenues for player salaries and player benefits (currently 60%).
  - The costs of benefits to former players come from the active players' side of the table. In other words, all of the CBA benefits, including the cost of benefits for players no longer active, reduce the amount available for salaries and benefits of active players.
  - In 2006 alone, active players gave up \$147.5 million for benefits to retired players. This means that each active player gave up approximately \$82,000 of his salary for medical, disability, and retirement benefits for former players.
  - From April 2006 to March 2007 – the active players gave up approximately:
    - \$96.5 million to fund retirement benefits for retired players;
    - \$31 million to fund medical benefits for retired players;
      - \$18 million in contributions to health reimbursement accounts
      - \$2 million to 88 Plan for Dementia
      - \$11 million for five years post-retirement fully paid health care
    - \$20 million to fund disability benefits for former players.
  - In 2005-2006, current players contributed \$39 million to fund retirement benefits for former players.

- The current \$96.5 million is a 147% increase in one year thanks to the 2006 CBA
- **The NFLPA Has Obtained Repeated and Significant Increases in Benefits for Retired Players**
  - Beginning in 1993, the NFLPA obtained significantly increased pensions for retired players four times. Pre-59ers were included in the Retirement Plan for the first time in 1993, and their benefits have since been more than tripled.
  - Significantly increased Total and Permanent Disability benefits.
  - Tripled widow and surviving children benefits.
  - Created Plan 88 (see below).

## II. **DISABILITY SYSTEM**

### A. **DISABILITY BENEFITS OVERVIEW**

- **Most Generous and Flexible Disability in Professional Sports:** The Plan offers total and partial disability benefits – T&P and Line of Duty - explained in further detail below.
  - The disability award process investigates (1) whether a player is able to work; (2) what caused the player's disability; and (3) when the disability began.
  - Vested former NFL players who become unable to work – for whatever reason – decades after they leave the game may still receive a disability benefit that serves as income replacement.
  - This is highly unusual. An employee of a corporation like IBM or General Motors does not expect to get – and does not get – disability benefits if he or she becomes unable to work decades after leaving the job.
  - The Plan also offers partial disability called "Line of Duty," which players may receive even when they are still able to work.
  - Since 1993 – when the current structure was put in place – about \$140 million has been paid to disabled players.
  - Once a disabled retired player reaches retirement age, he will begin to receive the higher of either his disability or his pension for the remainder of his life.

- **The NFLPA Is Always Working to Improve Benefits and Procedures:** Even outside of the formal collective bargaining process, the NFLPA continues to seek improvements in benefits and in the process.
  - The NFL/NFLPA recently announced an agreement that automatically grants disability benefits to eligible former players who receive social security disability benefits.
  - Because of this change, additional players will now receive NFL disability benefits, and players already receiving social security benefits will not have to be examined by a Plan doctor.
  - The NFLPA has suggested other major changes that could eliminate difficult decisions on effective dates and causation for many players, and allow the Plan to process applications faster.

## **B. DISABILITY ELIGIBILITY AND AWARD STATISTICS**

- **Eligibility and Award Statistics:** This has been considerable misinformation reported about the disability award and eligibility statistics, which we would like to clarify below:
  - From 1993 to June 2007, 42.6% of individuals who have applied for NFLPA/NFL disability benefits were awarded disability benefits of some kind. Social security is awarded at roughly 47%
  - As the table below demonstrates, 428 applicants have received disability benefits - of the 1004 who have received a final decisions - which brings the approval rate to 42.6%.
    - There are currently 317 former players who are receiving some kind of disability benefit under the Plan. Since 1993, 41 former players who were awarded disability began receiving their pension when they reached retirement age, and therefore no longer receive disability payments. The remaining players who no longer receive disability have either passed away, or no longer qualify for disability since their initial award because the benefit expired, or because the Plan has determined that they are no longer disabled.
  - Of the 1052 people who applied in this period, many were already receiving a pension or were not vested (had not played 3 or more seasons), and therefore were ineligible when they applied for disability benefits.

- Currently, there are 4900 vested (3 seasons or more) former players who are eligible to apply for disability benefits under the NFL/NFLPA plan, not 10,000, as has been reported in some media outlets.
- In addition to the 4900 vested former players who are eligible, there are currently 2100 active players who are *not* eligible to apply for disability because they are actively playing football, and are therefore not disabled.
- There are additionally close to 3000 former players who are currently receiving a pension from the NFL/NFLPA Retirement Plan, and are also therefore *not* eligible to receive disability. Since pension and disability are both "income replacement" benefits, once a player begins to receive his pension he can no longer apply for disability benefits. (This is standard, if not universal, among all employers.)

Table 1 summarizes the disability decisions of the Retirement Plan from July 1993, when the present disability categories were created to June 26, 2007.

**Table 1**

<b>Total disability applicants</b>	<b>1052</b>
Approved at initial stage <sup>(1)</sup>	358
Denied at initial stage	675
Awaiting initial decision	19
<b>Applicants Denied at Initial Stage who Appealed</b>	<b>223</b>
Approved on appeal	69
Denied on appeal	132
Appeal Pending	22
<b>Applicants Who have Sued</b>	<b>32</b>
Retirement Board Upheld	24
Retirement Board Reversed	1
Lawsuit pending	7
<b>Overall</b>	
<b>Disability applicants</b>	<b>1052</b>
Cases pending	48
Benefit approved	428
Benefit denied	576

**C. DISABILITY CATEGORIES, APPLICATION AND AWARD PROCESS**

## 1. DISABILITY CATEGORIES

- **Plan Pays Both Total and Permanent and Partial Disability Benefits:** The Retirement Plan awards both "total and permanent," ("T&P") disability benefits (meaning the retired player is unable to work) and partial disability benefits.
  - **Total and Permanent Disability - T&P:** Total and Permanent disability benefits are paid when an eligible player is unable to work, and are designed to replace income.
    - Eligible players may receive T&P benefits even when their inability to work occurs many years after a football career has ended, and even when NFL football did not cause the inability to work.
    - Once a retired player reaches retirement age (55), he will begin receiving the higher of either his disability payment or his pension for the remainder of his life.
    - Players who begin receiving their pension can not apply for disability. Both are income-replacement benefits; this is standard, if not universal, among all employers.
  - **Four Categories of Total and Permanent Disability Benefits:**
    - **Active Football: Football-related, within six months**
      - A former player receives \$224,000 per year if he becomes totally and permanently disabled due to NFL football within six months after his NFL career ends.
      - No vesting required – available to a player who plays in as little as one game.
    - **Active Non-Football: Non-football related, within six months**
      - A former player receives \$134,000 per year if he becomes totally and permanently disabled from any other cause within six months after his NFL career ends.
      - Based on a player's benefit credits, this amount could be higher.
      - No vesting required – available to a player who plays in as little as one game.
    - **Football Degenerative: Football-related, within fifteen years**

- A former player receives \$110,000 a year if he becomes totally and permanently disabled due to NFL football within 15 years after his NFL career ends.
- **Inactive: Non-football related, no time limit**
  - A former player receives a minimum of \$18,000 a year (\$21,000 for applications on and after April 1, 2007) if he becomes totally and permanently disabled and does not qualify for one of the other categories.
  - Based on a player's benefit credits, this amount could be higher.
- **NOTE: Vesting Required for Football Degenerative and Inactive T&P benefits:**
  - These two categories of disability are only available to former players who played in the NFL during at least three seasons and are therefore "vested." Generally, a player earns a season if he is paid for three or more games during that season.
- **Line of Duty Benefits ("LOD"): Partial Disability, Player may be working**
  - Partial disability benefits are paid to players who suffer a "substantial disablement." Whether a player has a substantial disablement is generally determined using the rating system created by the American Medical Association for measuring impairments.
  - LOD benefits are available to players who play in as little as one NFL game.
  - To receive "LOD" disability a player must apply within 48 months (4 years) after his NFL career ends. Partial disability benefits are paid for up to 90 months (7.5 years).
  - A player's LOD benefit equals the sum of his Benefit Credits. Therefore, a player who leaves the game today with five seasons would have a monthly LOD benefit of \$2,350 (5 seasons times \$470).

- Regardless of the number of a player's seasons, he will receive at least \$1000 per month.
- Most injuries to NFL players are orthopedic. The collective bargaining parties have adopted guidelines created by the American Medical Association to measure impairments resulting from orthopedic injuries.
  - For orthopedic impairments, using the AMA guidelines, LOD benefits are paid if the player meets any one of the following thresholds:
    - A 38% or greater loss of use of the entire lower extremity;
    - A 23% or greater loss of use of the entire upper extremity;
    - An impairment to the cervical or thoracic spine that results in a 25% or greater whole body impairment;
    - An impairment to the lumbar spine that results in a 20% or greater whole body impairment; or
    - Any combination of lower extremity, upper extremity, and spine impairments that results in a 25% or greater whole body impairment.
  - Up to three percentage points may be added to the impairment ratings of a player if he experiences excess pain.

## 2. **DISABILITY APPLICATION AND AWARD PROCEDURE**

- **Decisions Are Made By Plan Fiduciaries, Including 3 Former Players:** The Players Association and the NFL do not award or deny disability claims. Final decisions on disability benefits are made by 6 voting members of the Retirement Board – three of whom are former players – and all medical decisions are based on the medical reports of one or more neutral doctors chosen by all voting members, and all medical information submitted by the player.
- **Disability Claims are Processed as Required by Federal Law:** In compliance with federal law, the Retirement Plan gives former players every opportunity to qualify for disability benefits. The process that a player goes through is outlined as follows:
- **Application:** A player seeking disability benefits begins by completing a written application and sending it to the Plan Office in Baltimore. The Plan Office has a toll-free number that former players can call to ask questions and get forms, and also has a website for downloading forms.



- **Initial Medical Examination:** The player is then sent to a neutral, qualified physician approved by the Retirement Board for an examination. These physicians are called neutral physicians because they are appointed jointly by the Retirement Board members appointed by the Players Association and the NFL. Based on his examination, the physician provides a written report that describes the player's condition, measures impairments for purposes of LOD benefits, and addresses the player's ability to work.
- **Initial Decision:** The Disability Initial Claims Committee (the "DICC" or "Committee") makes initial decisions on disability benefit claims. It is comprised of two individuals – one appointed by the NFL and the other by the NFLPA. The Labor Department required this layer of decision making by federal law in 2002.
  - The Committee reviews the player's entire file, including all medical reports by the Plan neutral physicians and by other physicians submitted by the Player. If the Committee approves the application, disability payments begin immediately.
  - If the Committee denies the player's claim, or if the Committee is deadlocked (in which case the application is deemed denied), the player may appeal, as described below.
- **Appeal Rights:** If the Committee denies a claim, is deadlocked, or the player is dissatisfied with the Committee's decision in any way, the player may appeal to the full Retirement Board for a complete review of the claim. On appeal, the Retirement Board will review all available materials, whether or not presented to the Committee, and will give no deference to the decision of the Committee. The Retirement Board conducts a full and fair and totally independent review of all appeals.
- **Retirement Board:** The Retirement Board has six voting members – three appointed by the NFLPA, and three appointed by the NFL.
  - **NFLPA-appointed voting members:** All distinguished retired players:
    - Tom Condon played for the NFL for 11 years, and served as President of the NFLPA while he was an active player. Today, he is an attorney and a top football agent with Creative Artists Agency.
    - Jeff Van Note played for the Atlanta Falcons for 18 years, and served as President of the NFLPA while he was an active player.
    - David Duerson played in the NFL for 8 seasons, was all-Pro in four years, and won two Super Bowl rings. Mr. Duerson attended

Harvard Business School after retiring from the NFL and currently works in business.

- **NFL-appointed voting members:**
  - William Bidwill, Owner of the Arizona Cardinals
  - Clark Hunt, Owner of the Kansas City Chiefs
  - Dick Cass, President of the Baltimore Ravens
- **Second Medical Exam:** On appeal, the player is sent, as required by federal law, to one or more new neutral physicians for additional medical examination. These physicians provide written reports on the Player's condition.
- **The Retirement Board decides all appeals based on the entire record.**
  - **Resolving Deadlocks:** 3 to 3 votes – of the Retirement Board are resolved by either:
    - **Medical Advisory Physician ("MAP"):** If the dispute is over a medical issue, such as whether a player medically is substantially unable to work, either side (the player-appointed trustees or the management-appointed trustees) can send the player to one of the Plan's top, pre-approved, neutral three doctors. These doctors are called "Medical Advisory Physicians ("MAPs"), and their medical decisions are binding on the Retirement Board. This final review will almost always resolve any deadlock between voting trustees.
    - **Arbitration:** In rare cases – and this has happened only once in the last 14 years – the deadlock is resolved by arbitration between the members of the Retirement Board.
- **Players Can Appeal to Federal Court:** If a player is dissatisfied in any way with the decision of the Retirement Board, he has the right to file a lawsuit in federal court for benefits.
  - *Since 1993, the courts have upheld 96% of the Retirement Board's decisions in lawsuits filed by retired players (in 24 of 25 decided cases)*
  - This record demonstrates the care with which the Committee and the Retirement Board decide pension and disability claims.

**D. FACTS ABOUT FORMER PLAYERS WITH PUBLIC CONTROVERSIES OVER DISABILITY ISSUES**

- **Brent Boyd**
  - Mr. Boyd played professional football in the NFL from 1980-1986.
  - Mr. Boyd is receiving total and permanent disability ("T&P") benefits under the Plan's "Inactive" category, which provides a minimum of \$18,000 per year.
    - Mr. Boyd is receiving Inactive T&P benefits rather than Football Degenerative T&P benefits because the only doctor who was certain about the cause of his psychological and psychiatric problems – a neutral and renowned expert from Johns Hopkins University Medical Center - determined, to a reasonable degree of medical certainty, that Mr. Boyd's problems *could not have been caused* by Mr. Boyd's concussion in 1980.
    - Accordingly, he did not meet the standard for the highest level of payment, the football-related "Football Degenerative" T&P benefits.
  - Mr. Boyd first applied for T&P benefits in 1997; he claimed that he was unable to work due to orthopedic impairments, *never mentioning a football-related head injury in his application.*
    - After a Plan neural orthopedist opined that Mr. Boyd was capable of sales and other work, the Retirement Board denied Boyd's application.
    - Mr. Boyd did not challenge that decision by pursuing a federal court appeal.
  - Mr. Boyd reapplied in 2000; he now claimed, *for the first time*, that he was unable to work due to a psychological disorder caused by a head injury that occurred in 1980.
  - The Retirement Board referred Mr. Boyd for examination by a neurologist and a psychiatrist.
    - Both doctors indicated that Mr. Boyd was then totally and permanently disabled (i.e. substantially couldn't work) due to cognitive and psychiatric impairments. *But, both physicians also indicated in their written reports that they were uncertain what caused Mr. Boyd's disability..*
    - The player trustees wanted to award Mr. Boyd the higher Football Degenerative T&P benefit, but the management trustees would not

agree, in large part because Mr. Boyd had not claimed head injuries in his 1997 application.

- The Retirement Board awarded Mr. Boyd the Inactive T&P benefits (i.e. a minimum of \$18,000 per year where a player does not qualify for a higher category) on the basis of these reports, and agreed to further study the causation of Mr. Boyd's impairments for possible reclassification.
- To resolve the deadlock on causation, the Retirement Board referred Mr. Boyd to a pre-eminent neurologist at Johns Hopkins, Dr. Barry Gordon, who has particular expertise in memory, cognitive impairments, and head injuries.
- After an extensive examination by Dr. Gordon, which lasted well over an hour, Dr. Gordon concluded, "to a reasonable degree of medical certainty," that Mr. Boyd's impairments were *not caused by NFL Football*. Mr. Boyd and his attorneys were given repeated opportunities to provide a medical rebuttal, but never did.
- Mr. Boyd repeatedly and incorrectly claims that Dr. Gordon's assistant, who performed tests, was a linguistics student who was not trained to conduct the tests and had never conducted the tests before. The truth is that she was highly trained in giving the tests, and had administered that test on other patients over a dozen times before she administered it to Mr. Boyd. At the time of Mr. Boyd's test she had completed the course work for a Masters in Developmental Psychology at Hopkins (which she received two months later), and she still works as a consultant to John Hopkins. Her boyfriend at the time of Mr. Boyd's examination was a linguistics student.
- Based on this information, the Retirement Board concluded that Mr. Boyd did not meet the requirements for a football-related disability, and awarded him Inactive total and permanent disability benefits (the fourth T&P category, at a minimum of \$18,000 per year).
- Mr. Boyd sued the Retirement Plan in Federal District Court in San Diego. That court upheld the Board's decision and reasoning that Mr. Boyd's psychological impairments were not caused by a football-related injury, and rejected Mr. Boyd's arguments.
- Mr. Boyd then appealed to the Ninth Circuit Court of Appeals. A three judge panel unanimously affirmed the District Court's decision and upheld the findings of the Retirement Board. The Ninth Circuit rejected Mr. Boyd's claim that his psychological condition was football-related.

- **Brian DeMarco**

- Mr. DeMarco played professional football in the NFL from 1995-1999.
- Mr. DeMarco has *never* filed a claim for disability benefits, even after the Retirement Plan sent him five applications via certified mail over the past five years.
- The plan sent Mr. DeMarco disability applications in March 2002, December 2002, September 2005, August 2006, and July 2007.
- The Plan Office has never received a single disability application from Mr. DeMarco. The Plan still has three of the written, signed proofs that the application was received.
- Because Mr. DeMarco has declined to even begin the process, the Plan cannot be blamed for failing to pay disability benefits to him.
- Mr. DeMarco has claimed that he sent in the application, which was misplaced by the Plan office. This is false. As of September 2007, Mr. DeMarco has still not sent in an application for disability.

- **Conrad Dobler**

- Mr. Dobler played professional football in the NFL from 1972-1981.
- First, the Board denied Mr. Dobler's 1993 claim for T&P benefits because he was able to work at that time, despite his knee and elbow impairments. As described above, T&P benefits are reserved for former players whose impairments prevent them from being able to work.
  - Mr. Dobler applied for Total and Permanent Disability in 1993.
  - After evaluating the report of the Plan neutral physician who examined Mr. Dobler, the player trustees wanted to award him T&P disability benefits, but again the management trustees refused to do so, which left the Board deadlocked at 3 to 3.
  - As a result of this deadlock, the Board sent Mr. Dobler for an additional examination by a Medical Advisory Physician ("MAP"), whose medical determinations are final and binding on the Board.
  - The MAP determined that Mr. Dobler did not qualify for T&P benefits because he was able to work, and was in fact working. Therefore, the Board denied his application for T&P benefits.

- Second, the Board denied Mr. Dobler's 2006 claim for LOD benefits (partial disability, player may still be able to work) because his claim for those benefits was more than 2 decades late. The Plan requires that a player apply for LOD benefits within four years of leaving the game.
  - In 2006, thirteen years after his initial application and 25 years after playing football, Mr. Dobler applied for LOD benefits.
  - His application was more than 20 years late.
  - A player must apply for Line of Duty disability within four years of retiring from the NFL, and Mr. Dobler's last season was 1981.
- **Daryl Johnston**
  - Mr. Johnston played professional football in the NFL from 1989-1999.
  - Mr. Johnston's neck impairment did not meet the Plan's standards for a "substantial disablement" for line-of-duty disability ("LOD") benefits when he applied, and he therefore did not qualify to receive them.
    - Mr. Johnston applied for LOD benefits in 2001.
    - The player members of the Retirement Board wanted to award LOD benefits, and the management members refused, which left the Board deadlocked at 3 to 3.
    - As a result of this deadlock, Mr. Johnston was sent to a Medical Advisory Physician, whose medical opinion is final and binding on the Retirement Board.
    - This physician determined that Mr. Johnston did not meet the Plan's standards for LOD benefits.
- **Eugene "Mercury" Morris**
  - Mr. Morris played professional football in the NFL from 1969-1975.
  - In 1992, Mr. Morris accepted a lump sum payment of \$295,000 in return for giving up all rights to any future disability benefits.
  - Mr. Morris made this decision while represented by his attorney.
  - In spite of the settlement, Mr. Morris has repeatedly tried to set aside the settlement by filing multiple lawsuits and conducting a harassment campaign against Plan attorneys.

- Three federal courts have told Mr. Morris he is bound by the agreement and that the agreement clearly does not allow him to obtain additional benefits for disability.
- The courts have told him that another lawsuit will result in sanctions.
- **Mike Mosley**
  - Mr. Mosley played professional football in the NFL from 1981-1984.
  - After receiving Football Degenerative total and permanent disability benefits for six years (third category of T&P benefits, which pays \$110,000 per year), Mr. Mosley no longer qualified for these benefits because he became able to work. It would be unfair to disabled players to pay benefits to former players who are not disabled.
    - Mr. Mosley applied for total and permanent disability benefits in September 1998.
    - His application was approved in October 1998, and Mr. Mosley began to receive the disability benefits awarded to him.
    - In 2004, Mr. Mosley was reexamined by a Plan doctor who found that Mr. Mosley was able to work.
    - A second, neutral Plan doctor confirmed this assessment.
    - The Plan therefore terminated Mr. Mosley's benefits in October 2004.
- **Dave Pear**
  - Mr. Pear played professional football in the NFL from 1975-1980.
  - The Retirement Board denied Mr. Pear's 1983 claim for LOD benefits based on an arbitration decision finding that Mr. Pear did not meet the requirements for those benefits in effect when he applied.
    - Mr. Pear applied for LOD benefits in 1983.
    - At that time, the Retirement Board was required to determine that the player's injury caused him to leave football before it could grant LOD benefits.

- After evaluating the report of the neutral physician who examined Mr. Pear, the three player trustees wanted to award Mr. Pear the LOD benefits, but the three management trustees refused to do so.
  - As a result of this deadlock, the Board sent the issue to an arbitrator, who ultimately ruled that the injury did not cause Mr. Pear to leave football.
  - As a result of the NFLPA's successful negotiations in bargaining, this requirement for LOD benefits – that the injury must have made the player leave the game - was dropped from the Plan after the 1993 CBA.
- The Retirement Board denied Mr. Pear's 1995 claim for T&P benefits because the Board determined that he could work after evaluating the medical evidence in his file.
  - Mr. Pear applied for T&P benefits in 1995
  - The Plan doctor who examined Mr. Pear determined that he could work.
  - The Board therefore concluded that Mr. Pear did not qualify for T&P disability benefits.
- **Mike Webster**
  - Mr. Webster played professional football in the NFL from 1974-1990.
  - Mr. Webster applied for Football Degenerative T&P disability benefits (third T&P category that pays \$110,000 per year) due to head injuries in June 1999. The Board promptly and unanimously determined that Mr. Webster could not work, and that football had caused his disability.
  - Mr. Webster began to receive over \$9,000 per month, and he collected those benefits for the rest of his life. The Plan also paid an additional \$300,000 in retroactive benefits after the Board unanimously determined that he became totally and permanently disabled in 1996.
  - The only issue in dispute in Mr. Webster's case was *when* Mr. Webster became unable to work. The Retirement Board unanimously decided to pay Mr. Webster retroactively back to 1996, when the evidence showed he was first unable to work, and the Board unanimously found that football caused his inability to work.



- Mr. Webster had worked very hard to set up businesses and real estate deals after he left the NFL in 1991.
  - The Retirement Plan undertook a thorough investigation into the time of Mr. Webster's impairment, carefully reconstructing the details of Mr. Webster's life almost a decade earlier.
  - The Plan learned that in the years immediately following football, Mr. Webster set up businesses, bought property, promoted products, traveled extensively, and filed lawsuits.
  - In 1995 Mr. Webster's own attorney told him that he would not qualify for social security disability benefits because he was working.
  - Although his businesses ultimately failed, there was no indication that Mr. Webster had a serious medical impairment until he was hospitalized in September 1996.
  - *The Retirement Board unanimously decided to pay benefits retroactively to September 1996 – an award of over \$300,000 in retroactive benefits, in addition to his disability payment of over \$9,000 per month for the rest of his life.*
- The Retirement Board *never* improperly delayed payment to Mr. Webster.
- When Mr. Webster applied for T&P benefits in June 1999, the Retirement Plan awarded Football Degenerative T&P benefits within three months (at the first meeting it could do so) of his application because of the head injuries he had sustained, and Mr. Webster promptly began to receive disability payments of over \$9,000 per month.
  - It did take time to reconstruct Mr. Webster's activities in prior years – Mr. Webster's attorney requested and received additional time to make a case that Mr. Webster was totally and permanently disabled upon his retirement from NFL football in 1991.
  - The IRS then presented a tax levy based on unpaid taxes for income Mr. Webster received during 1992 and 1993, during which time Mr. Webster was claiming total and permanent disability.
  - Mr. Webster's then-attorney took many months to explain Mr. Webster's income during those years.

- Ultimately, the Estate of Mike Webster exercised its right to judicial review of the matter, and sued the Retirement Plan in the Baltimore, Maryland federal district court.
  - Through his attorney, Mr. Webster argued that he was so mentally impaired when he left football in 1991 that he could not even file an application.
  - The court determined that Mr. Webster was totally and permanently disabled as of 1991, five years earlier than the date awarded by the Retirement Board, and thus awarded his Estate additional \$2 million in retroactive disability benefits for five years and attorneys fees.
  - The Fourth Circuit Court of Appeals upheld the district court's decision on when Mr. Webster became unable to work, and the Retirement Board paid the additional disability benefits awarded by the court to the Estate of Mike Webster.
- **Delvin Williams**
    - Mr. Williams played in the NFL from 1974 to 1981
    - Mr. Williams applied for LOD benefits in 1983. The player members of the Retirement Board believed he qualified for that benefit, but the management members did not. The matter was sent to arbitration. The arbitrator said that he did not qualify.
    - Mr. Williams applied for T&P benefits in June 1995. Based on the medical evidence, at its July 20, 1995 meeting, the Retirement Board unanimously awarded Mr. Williams Football Degenerative T&P benefits starting August 1, 1995
    - Because Mr. Williams desired an effective date of July 1, 1993 for his T&P benefits, the Plan requested evidence of Mr. Williams' employment during the period between July 1, 1993 and August 1, 1995. The Plan learned the following facts:
      - According to his Social Security Administration earnings records and tax records, Mr. Williams had substantial employment earnings in most of the years after his retirement from the NFL in 1981 and up to 1995. In 1992, Mr. Williams earned \$51,583; in 1993, his income was \$52,491; in 1994, his income was \$55,839; and in seven months of working in 1995, he earned \$31,574.
      - From December 1, 1991 to December 1, 1992, Mr. Williams worked for Solem & Associates, a San Francisco public relations firm. From January 1, 1993 to April 1, 1995, Mr. Williams worked for the San Francisco Chamber of Commerce. Mr. Williams worked

for a company called Sports Lab from April 17, 1995 to July 15, 1995. During these years, Mr. Williams listed his occupation as "Executive" or "Community Relations" on his federal income tax returns.

- Based on Mr. Williams' substantial employment during the period prior to August 1, 1995, the Retirement Board denied his claim for retroactive disability benefits.
- Mr. Williams appealed, and submitted a new medical report from the doctor that examined him in 1983, in connection with Mr. Williams' unsuccessful claim for LOD benefits. This doctor stated both that Mr. Williams had been totally and permanently disabled in 1983 and that his medical condition had not changed since 1983. This doctor made these statements in 1997 even though he did not find Mr. Williams totally and permanently disabled in 1983.
- The Retirement Board found this report unconvincing, because it contradicted both that same doctor's report in 1983 and the undisputed evidence of Mr. Williams' substantial employment through 1995. The Retirement Board unanimously denied his appeal for disability benefits for periods prior to August 1995.
- In October 1998, Mr. Williams filed a class action lawsuit for retroactive disability benefits for the period from July 1993 to August 1995. He also asked the court for various other remedies arising out of alleged fiduciary breaches and unlawful amendments of the Retirement Plan and Disability Plan. His complaint was over 100 pages long.
- The district court dismissed all of the fiduciary breach and illegal plan amendment claims advanced by Mr. Williams. The court also rejected Mr. Williams' attempt to convert the case into a class action. The court, however, did award Mr. Williams an earlier effective date for his T&P benefits.
- On appeal, a three judge panel of the Ninth Circuit Court of Appeals unanimously overturned the effective date decision of the district court. The Retirement Board was completely vindicated.
- Following the Ninth Circuit's decision, the district court awarded the Retirement Plan a modest amount of attorneys' fees and costs, to be paid gradually out of the \$110,000 each year that Mr. Williams continues to receive in disability benefits.

### III. WORKERS' COMPENSATION

- **NFLPA Bargained for and obtained Workman's compensation benefits for all players and provides legal counsel to help players apply.**
  - The NFLPA has negotiated for Workers Compensation benefits to be provided to all players. Over the past 25 years the NFLPA has established a panel of qualified lawyers to help players file and pursue their claims.
    - *Workman's Compensation Benefits are in addition to disability benefits.*
    - *Workman's Compensation Benefits are paid for by current players.*
    - The NFLPA strongly advises each player to preserve his rights under Workers Compensation for life-time medical care for his football injuries.
    - The NFLPA and NFL have agreed that there is no reduction in other disability benefits when a player also receives Workers Compensation.
    - The cost of Workers Compensation comes out of the players' share of League revenues, like other health and disability benefits.

### IV. LIFETIME RETIREMENT INCOME SECURITY PLANS

#### A. LIFETIME PENSION PAYMENTS

- **Vesting:** A player needs to be vested to be eligible for retirement and for the third and fourth categories of T&P disability benefits - Football Degenerative and Inactive. Currently, a player is vested if he is plays for three or more seasons. A player receives a credited season if he is paid for three or more regular or post-season games in that season.
  - Under the 1993 collective bargaining agreement - the first collective bargaining agreement negotiated by Gene Upshaw - the vesting standard was reduced from four seasons to three seasons for all players with a season after 1992.

- Under the 1998 collective bargaining agreement, the vesting standard for all older players was reduced from five seasons to four. The effect of these changes was to provide many more players with a vested pension benefit under the Retirement Plan.
- **Benefit Credit:** Every vested player qualifies for a pension based on the sum of his "Benefit Credits," which are amounts determined by collective bargaining for each NFL season.
  - The current schedule of Benefit Credits for seasons is:
    - Before 1982 \$250
    - 1982 through 1992 \$255
    - 1993 and 1994 \$265
    - 1995 and 1996 \$315
    - 1997 \$365
    - 1998 and later seasons \$470
  - For example, a player who plays NFL football for 10 seasons beginning in 1998 is guaranteed a pension at age 55 of \$4,700 per month (\$470 x 10 seasons), which is \$56,400 per year, for the rest of his life.
  - If he takes his pension at age 65 – normal retirement age for many under Social Security – the benefit rises to \$147,711 each year for the remainder of his life.
- **Past pensions have been increased four times since 1993.**
  - For the oldest players, Benefit Credits went from \$60 prior to the 1993 CBA to the current level of \$250 due to the NFLPA's efforts in collective bargaining.
  - For current players, Benefit Credit levels went from \$150 prior to the 1993 CBA to the current level of \$470 in collective bargaining.
- **In 1993, "Pre-59ers" began to receive pensions for the first time.**
  - The Retirement Plan was created in the early 1960s. In the 1993 CBA, the NFLPA, under Mr. Upshaw, fought for these forgotten former Players who played before 1959, and won them the right for the first time to a vested pension. In CBAs after 1993, their benefit has more than tripled.
  - Before the 1993 CBA, these players were receiving a "stipend" of \$60 per season that was not guaranteed. They were bumped up to a guaranteed pension of \$80 per season in 1993. That \$80 has since increased to \$250.

- The 1993 CBA added 854 former players and 65 beneficiaries to the Retirement Plan
- **Some players receive a smaller than usual pension because they elected to take their pensions many years before retirement age**
  - Because a player who starts payments at age 45 (instead of 55) will receive benefits for more years, his age-55 benefit is actuarially reduced by more than 50% in this situation, since they will receive their pension for ten more years.
  - The option of taking Retirement Plan benefits early (prior to age 55) is no longer available to current players. The bargaining parties eliminated it 1993 because it was detrimental to retired players.
    - Because of legal requirements, the option continues to be available to all players who played a season prior to 1993.
    - Players continue to take their pensions early, even though they are warned that doing so will result in a reduction.
- **Some players receive a small pension because they elected to take a "Social Security Adjustment"**
  - Many former players voluntarily chose to front-load their retirement benefits by electing a "Social Security Adjustment" form of benefit, in which the majority of their retirement benefit is paid prior to age 62, with only a token benefit starting age 62.
  - The idea behind this concept is that Social Security benefits would make up all or part of the difference. In the 1970's, the players at that time asked for and obtained this option.
  - Electing this option dramatically reduces the retirement benefits of players when they reach 62.
- **Other Reasons Why Some Players are Receiving Smaller than Usual Pensions**
  - Some players are divorced, and must share all or a substantial part of their retirement benefit with an ex-wife.
  - Many players who complain about the size of their monthly pension benefits have at least one, and often a combination, of the factors described above reducing their monthly benefits.

**B. SECOND CAREER SAVINGS PLAN: FIRST 401(K) PLAN IN PRO SPORTS**

• **2 for 1 Match**

- Beginning in a player's second year, all *pre-tax* contributions are matched at a rate of \$2 for every \$1 a player puts in, up to \$20,000.
- Players can make pre-tax contributions up to the IRS limit (\$15,500 for 2007).
- Players who do not contribute any of their own money receive a more modest Club contribution.
- Prior to the 1993 CBA, no professional sport had a pension plan of this type. Gene's efforts in the 1993 CBA established this Plan.
- The assets of the Savings Plan have grown from \$0 in 1993 to over \$800 million.

**C. NFL PLAYER ANNUITY PROGRAM**

- In collective bargaining in 1998, Mr. Upshaw fought for and won a new defined contribution plan, the NFL Player Annuity Program. This Program also provides deferred compensation to players, as early as age 35.
- Players receive contributions based on the following schedule:
  - in their second and third years, \$5,000;
  - in their fourth year, \$55,000; and
  - in subsequent years, \$65,000.
- After the law was changed in 2006, Mr. Upshaw persuaded the NFL in the 2006 CBA to contribute most of this money in a tax-favored form.
- The total assets of the Annuity Program have grown from \$0 in 1998 to about \$340 million.

**V. HEALTH CARE BENEFITS**

- A. Five Free Years of Post-Career Medical Coverage:** After the recent 2006 CBA extension, all vested players now receive five years of free post-career medical coverage for themselves and their families.
- In a recent 12 month period, Active Players paid \$11.5 million to provide this coverage to former Players. This coverage has been improved repeatedly since the 1993 CBA.

- B. Pre-Tax Deposits Into Health Reimbursement Accounts (\$25,000 per year/\$300,000 max):** The 2006 CBA created a new plan that can be used by former players to pay for medical benefits or medical coverage after their five years of free coverage ends.
- Eligible players (playing in 2004 and after) are credited (i.e. as if deposited pre-tax into their own accounts) with accounts valued at up to \$300,000 (\$25,000 per season up to the maximum of \$300,000) that can be used exclusively to pay their medical expenses (including insurance premiums) and the medical expenses of their family members.
  - The player can use account to pay medical expenses – without paying taxes, throughout his life, and if any amounts are left over at his death, the account passes to his eligible beneficiaries.
- C. 88 Plan:** The 2006 CBA also created a new and innovative medical benefit exclusively for former Players with dementia. This plan is called the "88 Plan," in honor of former Baltimore Colts player and Hall of Fame member John Mackey, whose jersey number was 88.
- As far as we know, this is the first plan in the country that provides special benefits for employees who are afflicted with dementia, even when that dementia occurs decades after their employment has ceased.
  - In May of this year, NFLPA Executive Director Gene Upshaw and Harold Henderson of the NFL Management Council were honored by the Alzheimer's Association in New York for this achievement.
  - Although this Plan began in February 2007, it has already paid out over \$500,000 in benefits. Like all other benefits for active and former players, this cost is paid for by the active players.
  - As of mid-September 2007, the 88 Plan had received 79 applications. 15 are pending. Out of the remaining 64, 60 have been approved, an approval rate of 94%.

## **VI. OTHER CHARITABLE RETIRED PLAYER PROGRAMS**

- **Widows and Surviving Children Benefits:** Under the 2006 CBA, the NFLPA was able to triple the benefits paid to widows and surviving children of former NFL Players.
- **Players Assistance Fund:** In addition to all of the above benefits, the Players Association has long had a fund, called the "Players Assistance Fund," that provides up to \$20,000 to players in need. Last year alone the Players Assistance



Fund paid over \$1 million to 146 players in need, and provided almost \$500,000 for scholarships and grants to charities.

- **Retired Players Medical and Assistance Fund:** The NFLPA/NFL recently-formed "Alliance" to coordinate medical support services for retired players in need of care – comprised of the NFLPA Players Assistance Trust (PAT), the NFL Alumni Association's Dire Need Fund, and the Hall of Fame Enshrinee Assistance Fund. In July 2007 these groups established an initial \$7 million unified fund to pay for joint replacement surgeries and to address other financial hardships of retired players. Additional funding will be provided by current and retired players, and NFL clubs. The joint replacement surgeries will be available at no cost to retired players without insurance or with financial need. The NFLPA/NFL are in the process of identifying 10-15 medical centers across the country to provide these surgeries.

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Prior to January 1, 2002, initial decisions were made by the Retirement Board. After January 1, 2002, initial decisions are made by the Disability Initial Claims Committee, as required by a change in federal law. The Disability Initial Claims Committee has deadlocked on whether to grant a benefit 37 times.