



BRIEF:

Larry Coben Takes on the NFL

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Anapol Schwartz's Larry Coben Takes On the NFL

Imagine that you worked many years for an employer — for good pay — only to find after retirement that your job exposed you to long-term health risks, including [brain injury](#). Your former bosses protest that you were compensated well enough during your professional years that you need no additional compensation. Where do you turn?

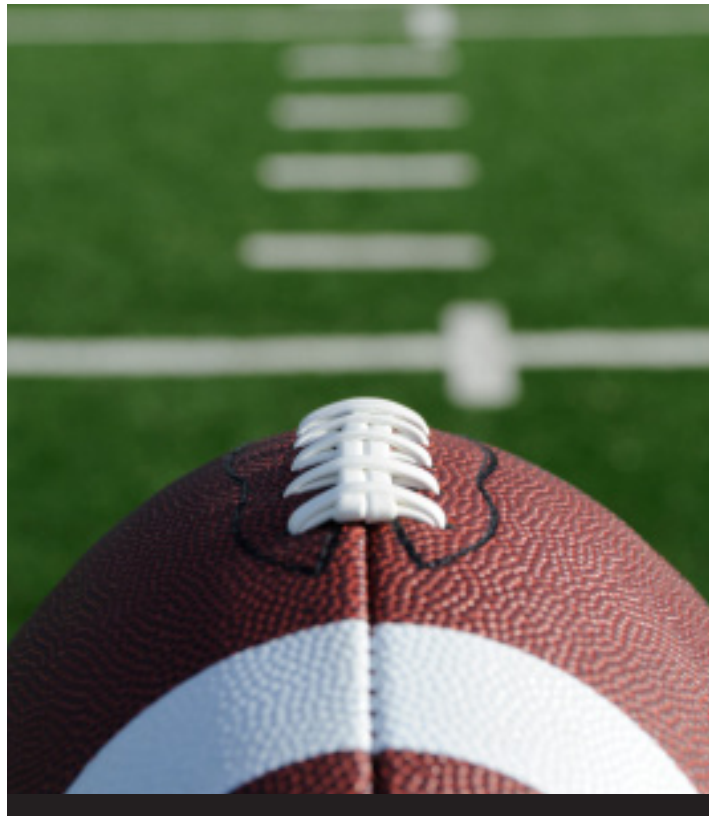
A December 2011 [New York Times story](#) considers just that issue. At stake: the future care for over a hundred retired National Football League players and their spouses, who assert in a series of lawsuits that team owners, helmet manufacturers, and the NFL itself knew about the dangers of concussions during play — or, at least, they should have known about those dangers, yet looked away.

[Larry Coben](#), an attorney with Anapol Schwartz, represents seven retirees, including famed Chicago Bears quarterback Jim McMahon. In the *New York Times* article, he makes the case against the league in stark terms: “We believe that the long-term medical complications that have been associated with multiple concussions — such as memory loss, impulse anger-control problems, disorientation, dementia — were well documented, and that factually the NFL knew or should have known of these potentially devastating neurological problems, and yet it didn’t take any active role in addressing the issue for players.”

THE SCIENCE OF HEAD TRAUMA

The Times hints that the NFL’s defense against these lawsuits will be to claim that the NFL has always placed a high emphasis on safety. The evidence of this is mixed, however. The players and their attorneys argue that the NFL rejected conventional medical advice on head trauma, and in 2007 even informed players that “Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems if each injury is treated properly.” They also claim the league’s doctors produced research — later discredited — that minimized the risks to players.

In fact, medical studies over the last decade have shown that football concussion injuries are associated with severe challenges later in life. Retired NFL players who had received concussions in their careers “reported more problems with memory, concentration, speech impediments, headaches and other neurological problems than those who had not,” as determined by a 2000 survey. A 2007 study found that multiple career concussions was linked to



depression in NFL retirees at triple the rate of uninjured players. In 2009, a study found that Alzheimer’s disease and similar memory impairments may affect former NFL players at a rate of 19 times the normal rate for men ages 30 through 49.

THE CHANGING CLIMATE OF PUBLIC OPINION

The Times report suggests that public opinion may have a huge influence on these lawsuits. Certainly the NFL would like to dismiss the suits as mere nuisances, but the potential danger to the league’s image probably makes that impossible.

Recent legal controversies dealt with arcane issues — such as merchandising and antitrust exemptions — that were unlikely to stir the passions of everyday sports fans. A parade of retired football heroes testifying how NFL neglect led to their mental disabilities would be different.

It would be a public relations disaster for the NFL. “The notion of retired players telling a jury the league is at least partly liable for their dementia and other cognitive disabilities is an entirely different matter, legal experts say, because the players’ testimonies are bound to get a sympathetic audience and cast a shadow over the league,” reports Ken Belson in the *New York Times*.

In the News

FORMER PLAYERS FILE ANOTHER CONCUSSION SUIT AGAINST NFL

www.newsworks.org

Yet another lawsuit has been filed in Philadelphia by retired pro football players against the National Football League. Nearly 200 former players are now involved in lawsuits against the league over brain injuries.

The latest suit alleges the NFL hid evidence linking concussions to permanent brain injuries. It joins at least 10 other similar suits filed across the country.

Attorney Larry Coben filed the first of these federal concussion suits in Philadelphia last year.

"They've all basically followed our approach to the lawsuit in terms of the claims," said Coben. "They pretty much mirror each other."

Coben plans to file additional lawsuits this week on behalf of deceased players believed to have died from ALS, commonly known as Lou Gehrig's disease.

"Turns out, they didn't have ALS," said Coben. "Their families donated their organs, including their brains, to the Boston University medical college. Analysis shows they suffered from what's called CTE."

That's chronic traumatic encephalopathy — a progressive, degenerative disease of the brain found in athletes with a history of repetitive brain trauma.

A judicial panel will meet to consider consolidating all of the lawsuits into one that would be argued in Philadelphia.

PLAYERS ACCUSE NFL OF NEGLIGENCE

Associated Press

PHILADELPHIA—Seven former players have sued the NFL in Philadelphia over the league's handling of concussion-related injuries, the first potential class-action lawsuit of its kind.

The players accuse the league of training players to hit with their heads, failing to properly treat them for concussions and trying to conceal for decades any links between football and brain injuries.

The plaintiffs include two-time Super Bowl champion Jim McMahon, who has said he played through five concussions but now frequently walks around "in a daze" and forgets why he entered a room.



The suit accuses the NFL of negligence and intentional misconduct in its response to the headaches, dizziness and dementia that former players have reported. The suit, filed Wednesday, seeks medical monitoring along with funds to pay for the care of injured players.

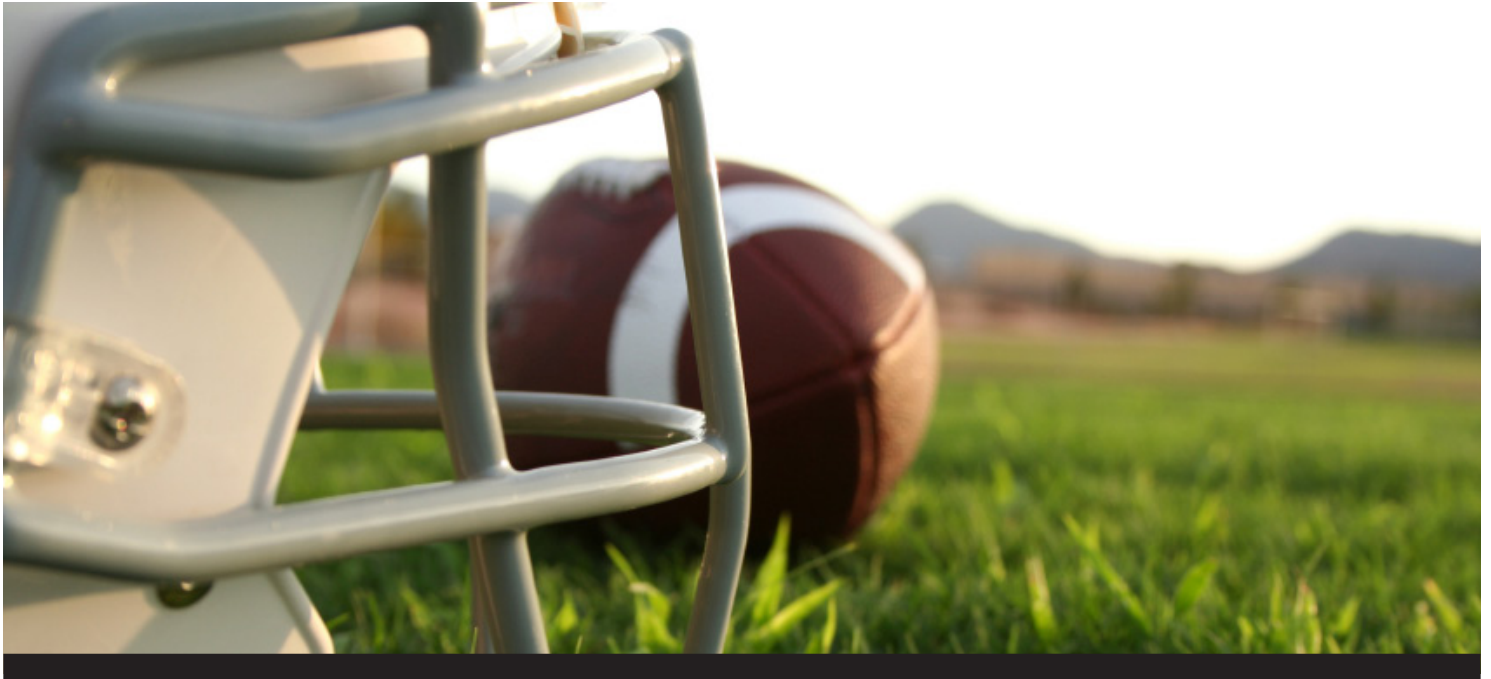
NFL spokesman Brian McCarthy said the league had not yet seen the lawsuit but would vigorously contest any such claims.

Players' lawyer Larry Coben of Philadelphia said one client may soon lose his home because of his health-related financial problems.

"The big issue, for us, is they were told for decades to lead with their heads," Coben told The Associated Press. "The NFL would never admit that there's any correlation (to later health problems)."

Seventy-five retired players sued the NFL last month in Los Angeles, alleging the league knew since the 1920s of the harmful effects of concussions, but concealed them from players, coaches, trainers and the public until June 2010. That suit also names helmet-maker Riddell, the NFL's official helmet supplier, as a defendant.

The federal suit filed in Philadelphia, though, is the first to seek class-action status and potentially include anyone who had played in the league and suffered a concussion or head injury.



“Our goal is much larger, perhaps more daunting,” said Coben, who has previously sued over brain injuries incurred in high school football.

“We have to ultimately determine how many people are in the (legal) classes. How many people from the ‘70s are experiencing this, how many people from the ‘80s, from the ‘90s? And then, what are the losses?”

The other plaintiffs include former Packers cornerback Joey Thomas, 26; Ray Easterling, 61, a 1970s-era defensive back for the Atlanta Falcons in the 1970s; and Wayne Radloff, 50, an offensive lineman for the Falcons and San Francisco 49ers in the late 1980s.

Some plaintiffs receive benefits from the league’s 88 Plan, which provides funding from the NFL and the players union to help care for players afflicted with dementia or related brain problems. However, Coben said the payments fall far short of the amount needed to replace the income of those who cannot work because of their brain injuries, or to provide the institutionalized or in-home care they need.

Radloff’s wife, Garland, wants players and their wives to know they don’t have to wait for an autopsy to learn if a player has suffered a brain injury, but can get diagnosed through advanced brain scans.

Her husband suffered one of his more devastating blows in September 1988, one that knocked him out cold and yielded the headline: “Falcons Say Radloff Had a Game to Remember, If Only He Could.”

The Radloffs, together since his playing days at the University of Georgia and married nearly 28 years, each turned 50 this year. He suffers from dementia and other problems associated with his Chronic Traumatic Encephalopathy, and can no longer hold down his post-football job in real estate.

“It is a brutal way to see somebody die, and to live with it daily and the ups and downs. It’s breaking our family’s heart,” Garland Radloff, a nursing aide who lives with her husband in Hilton Head, S.C., told The Associated Press on Thursday. She and several other wives are also named plaintiffs in the suit.

“If Wayne and I can use our situation to help others,” she said, “that is what it’s all about.”

In a sharp about-face in late 2009, the NFL has encouraged players and their families to cooperate with the Boston University Center for the Study of Traumatic Encephalopathy, which is conducting autopsies on the brains of former athletes—and finding disturbing evidence of brain damage in football players, boxers and a former NHL player. McMahon has agreed to leave his brain to the center.

The NFL also has issued new concussion guidelines and ordered that independent physicians determine when a player should return.

The other plaintiffs in the Philadelphia suit are Gerry Feehery, 51, a former Eagles center who played in the league from 1985 to 1989; Mike Furrey, 34, a wide receiver on several teams from 2003 to 2010; and Steve Kiner, 64, a linebacker with the Dallas Cowboys and others from 1970 to 1978.

RETIRED FOOTBALL PLAYERS FACE OFF AGAINST NFL

www.PA-law-blogs.com

Philadelphia Attorney, [Larry Coben](#), known for his role in many successful [TBI](#) cases filed suit against the NFL on behalf of 7 former players accusing the organization on improper treatment of concussions sustained while on the field.

In an interview with the associated press, Coben commented “The big issue, for us, is they were told for decades to lead with their heads. The NFL would never admit that there’s any correlation (to later health problems).”

The Philadelphia suit comes one month after 75 retired players filed suit in Los Angeles alleging that the NFL concealed the harmful effects of concussions from players and trainers since the 1920s.

Throughout the course of their career, players who sustained multiple concussions say they feel like they are walking around in a daze. Some have even been diagnosed with dementia.

While the NFL does offer compensation through a benefits plan, this is not enough to replace the income of those who cannot work because of their brain injuries, or to provide the institutionalized or in-home care they need, according to Coben.

While Football is a full contact sport, and players are aware of the risks that come with engaging in any type of physical activity, they are at a clear disadvantage if the severity of their injuries are intentionally concealed.

RETIRED FOOTBALL PLAYERS BATTLE NFL

www.central-pennsylvania.injuryboard.com/

A storm is starting to brew in the courts over whether the NFL intentionally withheld information from players about the health risks of the game related to concussions and other traumatic brain injuries. Since July of 2011, more than a dozen lawsuits involving 120 former players have been filed against the NFL. Anapol Schwartz’s own Larry Coben, an expert in traumatic brain injury litigation, is lead attorney for a number of retired football players who have sued the NFL.

While the League is certainly no stranger to the court system, this current round of lawsuits pits fan-favorite retired players against their former employer in a way that could really damage the NFL’s image and change the game of football. That’s the issue that a recent *New York Times* article covering the lawsuits explores.

The lawsuits brought by the players and their families put the game of football itself under the microscope, with a particular focus on how the NFL has encouraged the game to be played. As Coben expressed in previous interviews, a big issue in the litigation is



that players were told for decades to hit with their heads, all while the NFL concealed the harmful effects of concussions sustained when players did just that. Some of the lawsuits allege that this concealment went all the way to helmet manufacturers and whether the League really pushed those manufacturers to make the safest helmets possible.

The players, of course, would like their day in court in order to bring into the public light their current medical issues, which include dementia and other cognitive disabilities such as memory loss, impulse anger-control problems, and disorientation. According to the players, even though football is inherently risky, they weren’t informed about these risks when they entered the NFL, despite the fact that the NFL knew or should have known about them.

The league, of course, is worried about the show-down that might happen if any of the lawsuits make it to a jury trial. The retired players—many of whom are well known and continue to have fan support—will garner a lot of sympathy. And even though there will be challenges to proving what actually caused their current cognitive issues, the players will effectively be putting the game of football itself on trial.

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SELECTED NOTEWORTHY CASES AS LEAD COUNSEL

Walker v. Schutt Sports Sales Group, Gayson Ct., April 2000. Largest known verdict (\$12 million dollars) against a football helmet company—without any setoff—regarding spinal cord injury.

Yarusso v. Bell Helmets, Delaware Super. Ct.. First reported verdict against motorcycle helmet manufacturer regarding helmet shock attenuation design and spinal cord injury.

Peisino v. Riddell Corporation, Wilmington, Delaware. First known verdict in the nation for a football player who suffered a spinal cord injury due to helmet design/shock attenuation.]

ATTORNEY NEWS & PUBLICATIONS

For N.F.L., Concussion Suits May Be Test for Sport Itself. *New York Times*, Dec. 29, 2011.

Long way to go on youth sports safety. Philly Online, Dec. 2, 2011.

Retired Football Players Face Off Against NFL, PA-Law-Blogs.com, 08/19/2011

Players accuse NFL of negligence, ESPN, 08/19/2011

Representing the Catastrophically Injured—The Legal Intelligencer —Understanding brain and spinal cord injuries, design defects that cause them. Oct 15, 2010