Do no harm: Who should bear the costs of retired NFL players’ medical bills?

By Sally Jenkins and Rick Maese  May 9, 2013

After 24 knee operations, the National Football League’s former Man of the Year leans heavily on a crutch. When Reggie Williams pulls up his pants leg, what’s underneath looks like the trimmings from a butcher shop. His right leg is so ravaged that it’s three inches shorter than his left. Worse, it’s uninsured.

Once, Williams was the NFL’s high ideal. From 1976 to 1989 he was a spring-legged linebacker for the Cincinnati Bengals who set franchise records and played in two Super Bowls. Off the field, he was a civic-minded Dartmouth graduate who won humanitarian awards and served as a city councilman while he was still playing. He was so loyal to the game that he was a pallbearer at legendary team founder Paul Brown’s funeral. He would even be invited to apply for the job of NFL commissioner.

But now, Williams and his battered legs amount to a bill no one wants to pay. Since 2005 Williams, 58, has suffered a cascade of health problems he says stem from his 14-year football career, including multiple knee replacements and a bone infection, which he estimates have cost him hundreds of thousands of dollars out of pocket.

Williams says he is unable to qualify for most NFL disability benefits, and the Bengals — the only team for whom he played — are opposing him in a workers’ compensation claim that would provide for his medical care. These tedious battles have transformed him from a league champion into a critic. “All they’ve done is fought me on everything,” he says, “including even sending me a Band-Aid.”

Who should bear the costs of football-related medical problems that arise years after retirement? This question is at the heart of Williams’s case — and scores of others like it. The average NFL player’s career lasts just 3.9 seasons, according to the NFL Players Association’s latest figures. Studies show that one in four retirees will need a joint replacement, they suffer arthritis at five times the rate of their peers and are four times as likely to suffer neurodegenerative diseases, such as Alzheimer’s or ALS.

Critics say the NFL’s medical benefits don’t adequately address the full range of these problems. The NFL’s health insurance lasts five years after retirement — players who lasted fewer than three seasons don’t qualify for it at all — but the most serious
health consequences of a football career often don’t manifest for a decade or more.

The NFL’s disability board, jointly administered by management and the players’ union, has a denial rate of almost 60 percent. When players file for workers’ compensation for the on-the-job harm they suffered, they often find their claims opposed by their former teams. The league is currently in legal and legislative fights with at least 3,000 former players, who, like Williams, have attempted to seek reparation for their injuries by filing claims in worker-friendly states. When these claims and all other avenues for medical care are exhausted, the cost of their poor health can often fall on the taxpayer.

“First and foremost, the NFL is in the hurt business,” said Mel Owens, a former NFL player who is now a California attorney and represents Williams. “In workers’ comp they will end up paying for the players’ brains, hearts and livers, as well as orthopedic injuries, and it’s expensive. But they don’t want to pay at all.”

The NFL contends it offers benefits — many extending beyond an athlete’s employment — that are more generous than those offered in most professions. Workers’ compensation is just one of those, afforded to players by the collective bargaining agreement with NFL owners. When it opposes claims, the NFL says it is seeking to limit what would otherwise be “nearly unlimited exposure” for years-old injuries.

Owners regularly insert language in player contracts that specify claims must be filed in home states, where their costs are typically smaller and more predictable. The Redskins, for instance, try to require players to file in Virginia, where the statute of limitations is two years. In Arizona, it’s one.

“Of course you will go to the place where you can file for the best benefits,” said workers’ comp attorney Benjamin Boscolo, whose Maryland-based firm has represented hundreds of Washington Redskins and Baltimore Ravens. “But owners want them to go to places that are best for owners.”

No place is more worker-friendly than California, one of the few states that recognizes “cumulative trauma,” and allows out-of-state workers to collect benefits essentially for aggregate injuries suffered over the course of their careers. The complex issue has turned the state into an NFL labor battleground. Players have flooded California with claims in recent years, some decades old, others with only tenuous connections to the state.

In response, NFL owners (as well as those from other professional sports leagues) have worked with state lawmakers on a bill that would forbid out-of-state athletes to file there at all. The bill passed the California Assembly in April, and will be heard in the Senate this month. In addition, NFL management has sought court orders to force players to file claims only in their home-team states, where statutes of limitations would effectively eliminate their cases.

In Ohio, where Williams played, the statute of limitations is five years. But Williams’s most serious knee problems only manifested 17 years after he last played.

“What can you know about any of the long-term debilitative effects of playing football in five years?” Williams says.
Plenty of blocked claims

In the fall of 2005, Williams was so debilitated that he had both knees replaced at the Hospital for Special Surgery in New York. The procedures were paid for not by the Bengals, but by his health insurance from Disney, where he ascended to a vice president’s title. Five months later doctors discovered he had osteomyelitis, a bone infection caused by interior bacteria, which had lain dormant until uncovered by the installation of the prosthetic. The infection threatened to cost him his leg.

He’s convinced his physical ailments are a direct result of a bruising football career. “I didn’t get my knee injuries from an allergic reaction to pixie dust while working at the Disney company,” he said.

In 2007, concerned by mushrooming medical costs and the prospect of lifelong complications, Williams filed for workers’ compensation for cumulative trauma in California, where he had played 20 games — more than a season’s worth. The Bengals opposed him and have continued to block his claim over the last five years. “Mr. Williams simply brought a workers compensation action in California (20 years after he last played), and there is no jurisdiction in that state over his work injuries,” Bengals attorney Tim Peterson said in an e-mail.

Williams is one of more than 100 Bengals the Cincinnati franchise has opposed on the same grounds. “All Bengals players have full workers compensation rights in Ohio,” the team said in a statement, when asked to respond to Williams’s complaints.

The question of where an injured employee can file a claim has been the subject of worker-employer skirmishing for as long as the workers’ comp system has existed. Courts have generally held that a person who travels for a living, whether a flight attendant or a salesman or a football player, has the choice to file a claim in more than one jurisdiction if the worker had reasonable contact with those states.

Virtually every NFL team is involved in similar disputes, the volume of which has provoked the NFLPA to accuse the league of systematically opposing workers’ comp across the board. League management denies this; teams are simply trying to enforce contracts and control costs, according to Dennis Curran, the league vice president for labor litigation. “Like any employer, when you employ people, you anticipate that the benefits in the state are what you will be on the hook for,” he said.

Such efforts frustrate players and their attorneys, who say owners profit from the violence of the game to the tune of $9.5 billion in annual revenues, yet try to evade financial responsibility for the injuries that come with it. If the California legislation passes, they contend, generations of aging players, who made far less than today’s players, will be shut out of the system and thus be forced to turn to Social Security disability or Medicare.

“It’s cost shifting,” said Owens, the former player turned attorney who represents hundreds of ex-athletes. “It’s shifted to the U.S. government and Social Security. If the teams will not pay, or the insurance companies won’t pay for work-related injuries, where do the guys go?"

The cost will fall on taxpayers, according to a 2008 congressional research report on NFL disability. There are approximately 18,000 NFL alumni, and when they can’t pay for their health care it has an impact on “society as a whole,” the report said.
“Medicare has become their insurance,” said Atlanta disability attorney John Hogan.

The most serious health consequences of the game are the concussion-related cognitive decline, dementia, Parkinson’s and ALS that have prompted more than 4,000 players to sue the league. But far more prevalent are the joint replacements and debilitating arthritis — none of which typically manifests until 10 to 15 years after they stop playing. At that point, though, they are shut out of workers’ comp in most states and their NFL-provided health insurance has long ago expired.

Under their labor agreement, vested NFL players — those who played at least three seasons — are entitled to five years of medical coverage after they retire. At that point, they must figure out a way to insure their bodies, not an easy proposition given their injury history. Darryl Talley played linebacker from 1983 to 1996, appearing in four Super Bowls and two Pro Bowls as a member of the Buffalo Bills. Today at 52, he says, companies have offered him limited policies, but won’t cover his elbows, back, neck, ankles and knees that have gone through the NFL’s wringer.

“They’ll insure everything else,” Talley said, “but what the hell else is there?”

‘Held hostage by the NFL’

For Kendall Newson, it all started with one cortisone shot. He didn’t want the needle, and now he wonders if he hadn’t taken it, would he have still wound up washing cars?

His Achilles’ had been sore for days, but he was a seventh-round draft pick from 2002 clawing for a spot on the Miami Dolphins roster in 2005, and was afraid if he sat out a preseason game, he would get cut. So when team medical staff offered him the needle, the wide receiver took it. Then he ran out on the field and ruptured his Achilles’.

Newson wasn’t 100 percent by the next preseason, when he fielded a punt on a muddy field in Pittsburgh. As he caught the ball, his foot stuck in the mud. His reflexes were still slow, and he stood there defenseless as tacklers flew into him. The force of the blows separated his body from his knee, tearing up everything inside of it, the anterior cruciate ligament, the medial collateral ligament, and the patella tendon. It was a career-ender.

He was out of work with a bad Achilles’ and a shredded knee, and only a little in savings from the $150,000 he had made in salary. To make ends meet, Newson asked former teammates if he could detail their automobiles. He did shifts at a pizza parlor and as a maintenance man at a retirement home pushing a mop. But his legs were so bad that he had to quit.

He went back to his home town of Decatur, Ga., to live with his family, and read the NFLPA pamphlets on injury benefits he hadn’t bothered to look at before. He contacted workers’ compensation attorney Ed Abes, who filed a claim for him in Pennsylvania, where he had torn up his knee, and which had better benefits than Florida.

The Dolphins responded by filing a grievance and seeking an injunction from a federal judge to stop his claim, and force him back to Florida jurisdiction, where he faced narrower benefits. Newson was stunned.
“There was nothing the Dolphins could’ve asked me to do that I wouldn’t have done,” he said. “And that’s what I wanted the Dolphins to do for me.”

Despite the NFL’s insistence that teams don’t systemically fight workers’ compensation claims, lawyers in the field report continual resistance similar to that encountered by Newson. Abes, who represents several former Steelers as well as players from elsewhere said, “Every one of my cases almost without exception is hard-fought full litigation.” Boscolo, the Maryland attorney who estimates his firm has represented more than 500 former players over the last 30 years, said: “I can tell you that claims are, as a matter of practice, contested.”

Players are often shocked to discover that the team doctors and trainers who once cared for them often testify against them. That was the case with Jeff Uhlenhake, an offensive lineman for the Redskins who in 1997 suffered injuries to his ankle and knee and filed for workers’ comp in Virginia. The Redskins fought the case for five years, all the way to the state supreme court.

The team argued that Uhlenhake’s injuries resulted from “voluntary participation” in the league and he should have “automatically” expected to be injured because football is inherently dangerous. “Professional football players must accept the risk of injury if they wish to play the game,” the team argued in court filings. The Redskins made a similar contention in a workers’ comp case as recently as 2012, against Darnerian McCants.

Two Redskins trainers and two team doctors testified against Uhlenhake, who ultimately won compensation for his ankle but not his knee.

The Dolphins also fought Newson for five years to the federal level, claiming they would suffer “irreparable harm” if forced to pay Newson benefits and medical expenses in Pennsylvania. In 2011 a federal judge ruled against the team. It didn’t feel like a victory to Newson, who during the legal battle needed medical care he couldn’t afford — it took five surgeries to repair his knee — and fell into a depression.

“After a while it was like being a hostage,” he said, “held hostage by the NFL. . . . Imagine five years. You’re just miserable because you don’t know where your next — you don’t know how you’re gonna survive.”

**The NFL fights back**

The NFL contends that players are taking advantage of loopholes in state laws to collect money years after injuries occurred, which can prove enormously costly to every team owner’s bottom line. Studies suggest that in California alone, an estimated $747 million in workers’ comp benefits has been paid out to about 4,500 professional athletes since the 1980s — including as much as $85 million in 2012 alone. If owners can limit their exposure to states with a stricter statute of limitations, they stand to save millions. Athletes, league officials say, could still pursue other avenues of recourse.

NFL officials, citing confidentiality concerns, declined to discuss specific cases. Asked how retirees should pay for the cumulative toll of their profession, NFL attorney Curran said, “There are a series of other available concomitant benefits.”
the NFL’s view, workers’ compensation should not be the chief remedy. “We don’t agree that it’s their main resource post-career,” said league spokesman Greg Aiello.

Instead, NFL officials point to a number of league-funded entitlements. The most significant of these is the NFL Disability Plan, under which $75 million was paid out to 1,355 players in the last year. The league has also added new programs in response to the concussion crisis and the chorus of complaints from players facing post-career health issues. In 2007 it established a new joint replacement benefit, and a program called Plan 88 to help former players with brain-related diseases. A total of 345 players thus far have received $824,295 in aid for joint replacements, while 233 alumni have been approved for $23,043,092 in assistance with brain diseases.

“The NFL collective bargaining agreement has generous league-funded benefits in place to protect and compensate players for football related injuries, which includes injuries that manifest themselves years after the fact,” Curran said.

Former players and their advocates say those benefits don’t go nearly far enough in servicing the problems associated with the sport, given that there are approximately 18,000 former players. They also report that it is highly difficult to be approved, a complaint borne out by statistics. According to the 2008 congressional report, the NFL disability board had an initial approval rate of 34 percent. It rose slightly on appeal to 42 percent. The board is known among applicants as “the land of denial.”

Andrew Stewart knows the struggles all too well. He was a defensive lineman who played in 16 games as a rookie after being drafted in the fourth round by the Cleveland Browns in 1989. A variety of injuries — Achilles', knee and hand — quickly derailed his NFL career.

In October 2008, Stewart applied for NFL disability, and plan administrators arranged for him to visit with a neutral physician, Robert Meek, a Vancouver orthopedist. Meek submitted a four-page report in which he found Stewart to be “totally” and “permanently” disabled. But rather than fully approve him, plan administrators eventually asked another doctor, Bernard Bach, a Chicago orthopedist used by the NFL Players Retirement Fund, to weigh in.

Bach never met or spoke with Stewart, and yet after reviewing the medical file concluded in April 2010 that his injuries “would not qualify for total and permanent disability,” according to court records. The six-person retirement board also heard from Stephen Haas, the plan's medical director — another physician who had not examined Stewart — before denying Stewart’s claim.

Stewart sued in U.S. District Court and four years after making his initial claim, a judge ruled in his favor. In rendering his decision, U.S. District Court Judge William D. Quarles Jr. said “the Board arbitrarily discredited Dr. Meek's opinion” and the members “abused their discretion in denying Stewart.”

**Pain doesn’t go away**

When Reggie Williams retired in 1989, he could not have foreseen how his body would deteriorate. All he knew was that he had a bum knee, on which he had undergone multiple procedures, including microfracture surgery in 1987, performed by Bengals
doctors who drilled into his bone to repair torn cartilage, and another arthroscopy in 1993.

He filed for workers’ comp in Ohio at the time for those surgeries without a dispute from the Bengals, according to the team attorney. “All requests for medical treatment timely made in Ohio were authorized and paid for,” Peterson, the team attorney, said in an e-mail.

But with his 2005 double knee replacement, Williams’s health spiraled down. Disney insurance again paid most of his medical bills, but he spent a fortune on related expenses that weren’t covered, including moving to New York while he underwent nine operations in five months to save his leg.

By then Williams had been forced to leave his job at Disney, unable to work while coping with the chronic pain and continual health crises. With his right leg so much shorter than his left, other complications set in. By 2009, Williams’s Cobra benefits from his Disney insurance had expired. Doctors told him he would be on antibiotics for the rest of his life to fight infections and would likely have to again go under the knife. “My concern is that there is going to be another operation,” he says, “and I’m totally uninsured right now.”

Williams explored filing for NFL disability, but fell into one of its bureaucratic filters, he says. Lawyers advised him the surest route to qualifying was to first be approved for Social Security disability. After months of red tape, he says, the government rejected him on the grounds that his title at Disney qualified him as an executive, and football-related knee trauma didn’t preclude working at a desk job, despite the fact that leg pain makes it impossible for him to sit for long periods.

“As an executive in corporate America, you don’t need legs,” he says sarcastically.

His lawyer told him the rejection meant he had a poor chance of qualifying for NFL disability. In 2008, Williams instead applied to the league’s joint replacement program. He did so on the day he was discharged from the Hospital for Special Surgery, limping on crutches and in a full leg cast into the NFL offices on Park Avenue to submit his application in person. The process required some 50 pages of paperwork, he says, and took two years to process.

He finally received a letter from the league in 2010 telling him he was approved for a payment of slightly more than $5,000, a fraction of what his multiple replacements cost. Also, he needed to do more paperwork to collect it.

In disgust, Williams never bothered to finish the claim.

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