

A Federal Income Tax Perspective of the NFL Concussion Class Action Settlement

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This work sought to comprehend the tax implications for those former players of the National Football League (NFL) who are making personal injury claims against the league for expenses they endured since they retired. To achieve this objective, Section I of this paper contextualizes the concussion debate by highlighting studies of head trauma on NFL players to show the settlement of personal injury claims may not be enough with respect to the impending complex federal income tax issues some players will experience. Sections II and III interpret the Internal Revenue Code and the specific sections applicable to the former NFL players for injured parties contemplating reimbursement for past or future related medical expenses. Lastly, Section IV presents recommendations to each party (i.e., retired players and the NFL) on how to possibly revise the settlement to achieve better tax consequences.

On June 25, 2014 the National Football League (NFL), NFL Properties, and retired NFL players (along with their representatives and family members) agreed, through a class action lawsuit, to reach an uncapped settlement to pay out millions of dollars for current and potential neurological injury claims (*Turner v. Nat'l Football League*, 2014). Under the terms of the settlement, the arrangement will last for at least 65 years and cover current and future retirees who develop special neuro-cognitive problems like Amyotrophic Lateral Sclerosis (ALS- aka Lou Gehrig's disease), Alzheimer's, Parkinson's, Dementia, and Chronic Traumatic Encephalopathy (CTE) ("Federal Judge Approves," 2014). The previous settlement was identified by U.S. District Judge Anita Brody as questionable and suggested as not likely to cover all claims related to neurological illnesses (Brinson, 2014; "Federal Judge Approves," 2014). For example, the August 29th, 2013 agreement provided a rough maximum payout of \$870 million through: \$675 million to compensate former players or families of deceased players, \$75 million for baseline medical exams of former NFL players, \$10 million to fund research and education regarding cognitive related injuries, \$4 million to provide adequate notice to the claimants of the settlement terms, and \$2 million to compensate the Settlement Administrator charged with implementing the terms of the settlement ("Federal Judge Approves," 2014; Nitti, 2013).

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The remaining balance (i.e., \$112 million) to cover litigation and legal fees incurred by the plaintiffs was also heavily criticized along with the no admission of liability on the NFL's part (Nitti, 2013; Schrotenboer, 2014a). As is customary in many negligence litigation settlements (see Phillips-Bute, 2013), the new agreement contained a "No Admission of Liability or Weakness of Claim clause" (*Turner v. Nat'l Football League*, 2014). For the NFL, this clause explicitly stated the league is not admitting liability nor is it admitting that the plaintiffs' injuries were caused by the sport of football (*Turner v. Nat'l Football League*, 2014).

Before this litigation against the NFL, retired players (e.g., *Easterling v. National Football League*, 2011) sought damages in medical malpractice suits filed against individual NFL teams' physicians (Scheuerman, 2012). In addition, former NFL players filed workers compensation (i.e., National Football League Players' Concussion Injury Litigation, 2012 or *Allen v. National Football League*, 2012) claims against their former NFL teams based upon the assumption they sustained brain injury from their workplace. In July 2011, over 70 retired NFL players and their spouses (see *Maxwell v. National Football League*, 2011) also filed the first lawsuit in Los Angeles County Superior Court seeking damages from the NFL for brain injuries sustained during their professional careers (Scheuerman, 2012). Shortly thereafter, courts around the country were inundated with other individual and class action lawsuits pleading a variety of legal theories regarding the NFL's alleged liability for brain injuries (see *Brooks v. Nat'l Football League*, 2012; *Glover v. Nat'l Football League*, 2012; *Granger v. Nat'l Football League*, 2012; *Haddix v. Nat'l Football League*, 2012; *Hughes v. Nat'l Football League*, 2012; *Jackson v. Nat'l Football League*, 2012; *Jacobs v. Nat'l Football League*, 2011; *Rucker v. Nat'l Football League*, 2011; *Solt v. Nat'l Football League*, 2012; *Wooden v. Nat'l Football League*, 2012).

The number of cases and size of the requested compensation eventually grew so large that they were consolidated into a single class action case pursuant to 28 U.S.C S1407 under the United States Judicial Panel on Multidistrict Litigation. Within, the case proceeded from the filed complaint that asserted an "independent medical monitoring claim under New York law on behalf of the national class" (Scheuerman, 2012, p. 90). The master class complaint sought an "a Court-supervised NFL-funded comprehensive medical monitoring program for the Plaintiffs and the members of the Class in the form of a trust fund" (Scheuerman, 2012, p. 90). The Master Class also asserted a fraudulent concealment/negligent omission claim that sought medical monitoring as a remedy (Scheuerman, 2012). After nearly three years of legal maneuvering, the parties, with the assistance of arbitrators, reached the aforementioned settlement so that former players with cognitive injuries can now begin to receive compensation for their injuries.

The goal of this paper is not to relitigate or justify the various components of this class action lawsuit as many others have previously examined this topic (e.g., Bernstein, 2012; Gould, 2012; Hanna & Kain, 2010; LoVelle, 2012; Scheuerman, 2012). Instead, the purpose of this work is to better comprehend the tax implications (i.e., aftermath) for those former players who are making personal injury claims and the benefits the NFL received from settling the lawsuit so quickly. Under the current settlement, Section 30.14 provides "No opinion regarding the tax consequences of this Settlement Agreement to any individual Settlement Class Member" (*Turner v. Nat'l Football League*, 2014, p. 93). Further it states,

“Settlement Class Members must consult their own tax advisors regarding the tax consequences of the Settlement Agreement, including any payments provided hereunder and any tax reporting obligations they may have with respect thereto. Each Settlement Class Member’s tax obligations, and the determination thereof, are his or her sole responsibility, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member. The NFL Parties, Counsel for the NFL Parties, Class Counsel will have no liability or responsibility whatsoever for any such tax consequences resulting from payments under this Settlement Agreement. To the extent required by law, the Claims Administrator will report payments made under the Settlement Agreement to the appropriate authorities.” (pp. 94)

To achieve our objective, Section I of this paper contextualizes the concussion debate and the potential inadequacies of the settlement by highlighting studies of head trauma on NFL players and the various neurological consequences of playing professional football. Within, this section shows the settlement of such personal injury claims may not be enough with the impending complex federal income tax issues many players will likely experience following the receipt of money from a settled claim. Section II presents and interprets the Internal Revenue Code and the specific sections applicable to the former NFL players. Section III discusses the intricate federal income tax rules that apply when personal injury damages received by an injured party contemplate reimbursement for past or future related medical expenses. Lastly, Section IV presents recommendations to each party (i.e., retired players and the NFL) on how to possibly revise the settlement to achieve better tax consequences.

Section I. Literature Review: NFL Players and Head Trauma Studies

According to the NFL Head, Neck and Spine Committee’s Protocols Regarding Diagnosis and Management of Concussion, the term concussion is defined as:

“A complex pathophysiological process affecting the brain induced by biomechanical forces. Several common features that incorporate clinical, pathological and biomechanical injury constructs that may be utilized in defining the nature of a concussive head injury include

1. Concussion may be caused either by a direct blow to the head, face, neck or elsewhere on the body with an ‘impulsive’ force transmitted to the head
2. Concussion typically results in the rapid onset of transient impairment of neurologic function that resolves spontaneously. However, in some cases, symptoms and signs may evolve over a number of minutes to hours
3. Concussion may result in neuropathological changes, but the acute clinical symptoms largely reflect a functional disturbance rather than a structural injury and, as such, no abnormality is seen on standard structural neuroimaging studies

4. Concussion results in a graded set of clinical symptoms that may or may not involve loss of consciousness. Resolution of the clinical and cognitive symptoms typically follows a sequential course; however, it is important to note that, in some percentage of cases, postconcussive symptoms may be prolonged.” (National Football League, 2013, pp. 2)

When a concussion occurs athletes are shown to experience a variety of symptoms. For example headaches are reported among 83% of concussed athletes while other symptoms such as dizziness (67%) and confusion (57%) occur less (Broglia & Fort, 2012). In some cases (i.e., 10%), a loss of consciousness may result from a concussion and other cognitive functioning and motor control may be disrupted (Broglia & Fort, 2012). Furthermore, it is important to note that those who experienced a concussion are at a higher risk for experiencing another, and with multiple concussions, the recovery period may be extended along with the likelihood that more serious neurological diseases could develop (Centers for Disease Control and Prevention, 2010).

Usually, it is common for those athletes that suffer a concussion to recover quickly and fully after receiving a passing Return to Play (RTP) grade, which is calculated through a series of physiological tests involving the heart rate, blood pressure, coordination, and memory (Leddy, Baker, Kozlowski, Bisson, & Willer, 2011). Same day RTP can only be achieved by adults and under specific certain circumstances. For instance, these circumstances include the presence of a team physician experienced in concussion management and with sufficient resources, such as access to neuropsychologists, consultants, or neuroimaging, as well as access to immediate neurocognitive assessment. There is evidence that some professional football players are able to RTP more quickly without a risk of recurrence or sequelae (Pellman, Viano, Casson, Arfken, & Feuer, 2005). However, there is data that demonstrates collegiate and high school athletes allowed to RTP on the same day may demonstrate neuropsychological deficits postinjury that may not be evident immediately and capable of delayed symptoms (McCroory, et al., 2009). In this case, it is possible for inflicted to take several days or even weeks to be restored to full health.

Interestingly, a study on retired NFL players conducted by the Centers for Disease Control and Prevention (CDC) in 2010 showed “NFL players are three times as likely as the general population to die from a neurodegenerative disease such as Alzheimer’s disease or Parkinson’s disease” from the repeated head trauma they experienced as professional football players (Koebler, 2012, para. 1). Alzheimer’s is the most common cause of dementia and defined by the National Institute on Aging as “an irreversible, progressive brain disease that slowly destroys memory and thinking skills, and eventually the ability to carry out the simplest tasks” (National Institute on Aging, 2012). Studying NFL players between the ages of 30 and 49, the University of Michigan also discovered that a diagnosis of Alzheimer’s or other similar memory-related diseases is 19 times more likely than with nonfootball players (Schwarz, 2009).

With a similar objective (i.e., to study medical history of NFL players), the Center for the Study of Retired Athletes at the University of North Carolina also found evidence to support these findings. Specifically, Guskiewicz, Marshall, Bailes et al. (2005) surveyed over 2500 former players of the NFL and found players

who suffered three or more concussions were more likely to experience memory difficulties and other cognitive processing problems at a rate significantly higher than those players who did not have a concussion. Guskiewicz et al. (2005) further documented that football players inflicted with a concussion were three times more likely to experience another and develop symptoms of clinical depression.

Finally, in 2008, Boston University's Medical School and the Sports Legacy Institute developed the Center for the Study of Chronic Traumatic Encephalopathy to study CTE (Scheuerman, 2012). CTE is a progressive disease that affects an individual after repeated head trauma. Symptoms associated with CTE include: mental confusion, slowed muscular movement and speech, and tremors of the hands (Hanna & Kain, 2010). This degenerative disease cannot be diagnosed in those living with the disease; it can only be diagnosed in a brain recovered from an individual postmortem through autopsy. CTE was first discovered among athletes participating in boxing and wrestling, as well as jockeys, but in 2005 it was also found in the brains of former football players. Between 2008 and 2011, an additional 93% of brains from former professional football players demonstrated signs of CTE (Schwarz, 2011). Specifically, 50 cases of CTE were confirmed in former football players by researchers at the aforementioned Boston University. Of those 50, 33 were former players in the NFL (Fainaru-Wada, Avila, & Fainaru, 2013).

It is possible CTE served as the cause of death in many former NFL players (Hanna & Kain, 2010). Koebler (2012) further noted a variety of studies suggested that neurodegenerative diseases were the cause or at least contributed to 17 of the 334 player deaths incurred by members of the NFL that played between 1959 and 1988. Studying players of this era, Omalu, et al. (2005) identified the brain tissue of former Pittsburgh Steeler and Kansas City Chief, Mike Webster, as the first NFL player to suffer from CTE. Omalu et al. (2006) also confirmed Terry Long, another former Pittsburgh Steeler, as inflicted with CTE following his suicide. In 2007, a third case was discovered from an analysis of former Philadelphia Eagle and Arizona Cardinals safety, Andre Waters (Cantu, 2007). In all cases, Omalu et al. argued significant brain trauma was identified as the likely cause for CTE.

In terms of the NFL class action lawsuit, the plaintiff's provided information regarding complications as available within current publications or research studies and presented it was the responsibility of the NFL, under their collective bargaining agreement, to provide this information to the players to help ensure their future safety (Heitner, 2012). This research was further identified as part of the rationale for the settlement but this work promotes the settlement might not be enough because players need to know there are tax implications too when they are awarded claims regarding the treatment of these various injuries. A lack of respect for this point could prompt former NFL players to seek and receive treatment inadequate to meet their needs and prompt the use of their own personal money or that provided by the tax payers (e.g., Medicare) to support their future treatment.

II. Literature Review: Federal Income Tax Regimen

To fully understand the economic impact of a settlement, the analysis of the consequences begins with an understanding of the Internal Revenue Code. The Internal Revenue Code is the comprehensive set of federal tax statutory laws governing

the taxation of income in the United States. A taxpayer pays income tax on their annual federal taxable income, which is the difference between their gross income and applicable exclusions and deductions for the tax year (Chirelstein & Zelenak, 2012). The general rules of the Internal Revenue Code (IRC) are that all gross income is taxable unless it is specifically considered nontaxable under a statutory exclusion and nothing is deductible unless a specific statute provides for the deduction (Chirelstein & Zelenak, 2012).

As a starting point, it is important to have a foundational knowledge of what constitutes gross income. The definition of gross income found in IRC Section 61 (see Internal Revenue Service, 2013a) is extremely broad. For example, IRC Section 61 defines gross income as “all income from whatever source derived.” Such a phrase opens the door for all sources of income. This point is further supported by the U.S. Supreme Court which has held that gross income includes all clear accessions to wealth (Chirelstein & Zelenak, 2012). With respect to damages received and to personal physical injuries, there is a statutory exclusion from gross income found in IRC Section 104 (see Internal Revenue Service, 2013b). The amounts received by way of settlements should be considered taxable gross income unless the underlying claim is based upon a personal physical injury (Chirelstein & Zelenak, 2012). IRC Section 104 (a)(2) states, “Except in the case of amounts attributable to (and not in excess of) deductions allowed under Section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal physical injuries or physical sickness” (see, Internal Revenue Service, 2013c).

With respect to the receipt of damages from litigation, including settlement payments, the courts established a rule that you look to the origin of the claim to determine if the receipt of damages are gross income (Chirelstein & Zelenak, 2012). In essence, the origin of the claim doctrine seeks to establish what the taxpayer is actually recovering payments for. Once the origin of the claim has been identified, the federal income tax consequences are attached to the recovery. The same rule applies to the income tax consequences to the taxpayer making the damage payments. The characterization of costs depends upon the nature of the activities giving rise to the claim and does not depend on the consequence or result (see *Anchor Coupling Co. v. United States*, 1970; *Woodward v. Commissioner*, 1970). Therefore, in general and depending on the origin of the claim, settlement payments may or may not be considered gross income to the recipient for income tax purposes and may or may not be deductible by the person making the payments.

Clearly, the settlement with the NFL seeks to compensate the former players for personal physical injury (i.e., brain injuries) and therefore one would assume that payments to the former NFL players would be completely exempt from federal income taxation (Nitti, 2013). However, the statutory exception within IRC Section 104 for deductions allowed under IRC Section 104 can cause a fair portion of the damages award to be subject to income tax. This brings us to the last important piece of the Internal Revenue Code pertinent to the income tax treatment of payments to the plaintiffs. As discussed below, there will be winners and losers when it comes to the income tax consequences of amounts received by former NFL players under the terms of the proposed NFL settlement.

IRC Section 213 allows a deduction for medical expenses incurred in the taxable year that are not covered by insurance or otherwise for the medical care of the taxpayer, his spouse, or dependent(s) to the extent that expenses incurred exceed ten percent of adjusted gross income (Chirelstein & Zelenak, 2012; Internal Revenue Service, 2013d). For the purposes of this section, the IRC defines medical care as “amounts paid (A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, (B) for transportation primarily for and essential to medical care . . . or (C) for insurance. Additionally, the IRC stipulates that only medical expenses paid during the taxable year are taken into account, regardless of when the injury or illness leading to the expenses occurred” (Bejerea, 2013, p. 733).

If a retired NFL player is suffering from cognitive brain injuries, it is reasonable to assume that the former player has not only been incurring significant medical treatment for his injuries, he has also suffered a loss of the ability to earn other income and quite possibly used IRC Section 213 to deduct his medical expenses. Such is the case with former NFL linebacker Steve Hendrickson who suffered multiple concussions throughout his seven-year NFL career (Miller, 2014). The resulting head trauma Hendrickson experienced produced problems with his short-term memory, imposed multiple medical expenses, and thus made him unable to work and dependent on others. His only source of income now is the \$50,000 a year pension he receives from the NFL and a small disability payment from the Social Security Administration (Miller, 2014). Interestingly, the NFL six-person examination board had previously decided that Hendrickson’s injuries were “non-football related” thus he was unable to secure enhanced benefits from the NFL before the new settlement.

On the other side of the settlement equation, we should briefly identify the federal income tax consequences of the payments made by the NFL under the proposed settlement. The question of whether the payment will be a deductible litigation expense for the NFL is largely irrelevant because the league files its federal income taxes as an IRC Section 501(c)(6) trade association, which but for limited circumstances, is exempt from federal income taxation (Nitti, 2013). Like all tax exempt entities, the NFL is only required to pay federal income taxes on ‘unrelated business income’ from a trade or business that is not directly related to its tax-exempt purpose (Internal Revenue Service, 2013d; Maul, 2011). However, the individual NFL teams, which are franchised by the NFL, are subject to federal income taxes (Maul, 2011). Thus, if the NFL teams were to directly make payments under the proposed settlements, they would have to run the ‘origins of the claim’ process to determine if and when the payments could be claimed as ordinary and necessary business expenses pursuant to IRC Section 162.

III. Discussion: Relationship of Personal Injury Claims and Deductible Medical Expenses

To achieve the most tax efficient consequences from a personal physical injury settlement, it is important for both parties to understand the relationship between personal physical injury claims and deductible medical expenses. As the laws

listed previously note, settlement payments for injury claims are only deductible to the extent that they have not been previously deducted under IRC Section 213 in prior tax years.

The NFL concussion settlement is clear in that the origin of the plaintiffs' claim is injuries sustained while playing in the league (Nitti, 2013; *Turner v. Nat'l Football League*, 2014). The designation of this origin also makes it possible for the families of deceased parties to receive a payment instead of the injured party himself (Nitti, 2013; *Turner v. Nat'l Football League*, 2014). The IRS's position is that "as long as a legal action has its origin in a physical injury or physical sickness, then all damages flowing from the injury are treated as payments received on account of physical injury or physical sickness whether or not the recipient of the damages is the injured party" (Nitti, 2013, para. 11).

In instances where a settlement involves more than one claim, as is the case for a Major Class Action, there must be a determination of the amount allocable to each. Hence, in situations where lump-sum payments are made in settlements of multiple claims and differing tax consequences will result based on the allocation, an allocation is necessary and proper (Internal Revenue Service Revenue Ruling 75-230, 1975-1 C.B. 93; Internal Revenue Service Revenue Ruling 58-418, 1958-2 C.B. 18; *Srivastava v. Commissioner*, 2000). The "Monetary Award Fund" in the settlement is to be distributed to players who present medical evidence of severe cognitive impairment, Dementia, Alzheimer's, ALS, or to their families (*Turner v. Nat'l Football League*, 2014). The settlement sets maximum recoveries for those under 45 at \$5 million for ALS to \$1.5 million for early onset Dementia (*Turner v. Nat'l Football League*, 2014). All other players considered to have suffered cognitive damage will be compensated based on age and number of seasons played in the NFL. However, these players are not even responsible for proving the injury was suffered while participating in the sport of football (*Turner v. Nat'l Football League*, 2014). In essence, a kicker who was in the league the same number of years as a defensive lineman is eligible for the same payout (Nitti, 2013).

If neither of these parties has sought medical attention previously, the entire payment is nontaxable. However, the tax burden of these plaintiffs is not known until serious problems arise later down the road. Take for example, former New Orleans Saints Safety/Special Teams player, Steve Gleason. After retiring from the NFL he was diagnosed with ALS in January 2011. Since then he has incurred hundreds of thousands of medical expenses in addition to losing the ability to walk, talk, and eat on his own. Under IRC Section 104, any settlement funds awarded to Mr. Gleason under the NFL settlement will be considered taxable gross income to the extent he has claimed a deduction for the medical expenses on his previously filed income tax returns. Thus, the federal income tax regulations will prohibit Mr. Gleason and other seriously injured parties to exclude the full amount of the settlement awarded to them.

Contrast the example above to those retired players who test positive for cognitive damage according to NFL's required medical exams, qualify to receive damage awards under the terms of the current NFL settlement, but, have yet to seek medical attention for their condition. Since they have not previously claimed medical deduction under IRC Section 213 for their injuries, they will be able to exclude the full amount of their settlement payments from taxable income. In other

words, former players with the highest medical bills that would benefit the most from the settlement agreement will be taxed on their settlement payments, while other newly retired players are simply receiving tax free income.

To demonstrate this relationship with actual numbers, let us look at some hypothetical examples of plaintiffs receiving damage awards under the proposed NFL settlement. Suppose a former NFL player with cognitive brain injuries incurred \$150,000 of medical expenses for an injury sustained while in the league during the 1990s. Assume for simplicity that the player has cumulatively incurred and deducted \$100,000 of medical expenses on his tax returns from 2000 through 2011. Today, the player receives a settlement payment from the NFL for \$150,000 under the current agreement. Clearly the player is being compensated for personal physical injury; but, the way the proposed settlement is structured, \$100,000 of this payment would be considered taxable income in the year of receipt, potentially subject to a 39.6% top federal income tax rate. In the settlement there is no provision allocating any specific amounts to previously deducted medical expenses (*Turner v. Nat'l Football League*, 2014). Once again, while the injured party's tax liability increases, the NFL's tax liability is left unaffected by the payout.

To understand future medical payments we can also look at another hypothetical example. Suppose another NFL player who retired from the NFL in 2010 undergoes the required baseline medical exams as required by the settlement. Although he does not have symptoms that would have caused him to seek medical treatment since his retirement, he learns he is eligible for a \$150,000 settlement award due to the number of concussions sustained while in the league. Upon receiving this payment in 2014, he excludes the full amount from taxable income. Ten years later, the same retired player is diagnosed with ALS and incurs \$150,000 of medical expenses. The amount of the medical expenses he is eligible to deduct depends on the amount of settlement payments allocated to future medical expenses under the NFL settlement. Assuming the language of his individual settlement allocates \$100,000 to future expenses and assuming the former NFL player had Adjusted Gross Income of \$500,000 in the year he paid the medical expenses, none of the \$150,000 of medical bills would be deductible. This is because the settlement payment would be considered reimbursement for \$100,000 of the medical expenses and the remaining \$50,000 medical expenses do not exceed the 10% threshold necessary under IRC Section 213. However, if no money is specifically allocated to future medical expenses, it becomes unclear as to how much of a deduction the IRS would allow. In Internal Revenue Service Revenue Ruling 79-427 (1979-2 CB 120), the IRS ruled that any portion of an unallocated award could be allocated to future medical expenses based on "the best evidence available under the circumstances."

IV. Recommendations/Implications

As stated above damages are excludable from taxable income when a defendant compensates plaintiff(s) for medical expenses that have not been previously deducted. To decrease the tax liability of those former players that have previously deducted medical expenses, the settlement should explicitly allocate a reasonable amount to previous medical expenses. The Internal Revenue Service will typically value the allocated portion as the only amount taxable in current year income (Nitti,

2013). Going back to our example above, if the settlement allocated \$90,000 to previous medical expenses; the plaintiff's tax liability would decrease by \$10,000. This tax break would help those players who have been receiving medical attention as the settlement is finalized. The NFL also has to consider those players who will incur extensive future medical treatment. Former players who have already received a settlement cannot deduct medical expenses to the extent that the settlement expressly included a portion for future medical expenses. For this reason, the greatest tax advantage would be to allocate a reasonable amount less than the entire compensation for future medical expenses. This would help ease the financial pain of those who will not know the full extent of their injuries until years down the road, which the studies in Section I of this paper show is more likely to occur than not.

In addition to designating specific amounts of the settlement to past and future medical expenses, the league should go a step further in designating between medical claims. The NFL's baseline assessment examines are a step in the right direction for the league. However, before this league-wide policy was implemented, individual teams decided how its players would be treated after suffering a concussion. This lack of consistency across the league prompted the league to downplay the seriousness of concussions and perhaps grade players as RTP before they were medically clear (Bernstein, 2012). As stated above, the present settlement really only differentiates between the most serious cognitive injuries, then just lumps the rest of the injuries into a comprehensive category (i.e., Neurocognitive Impairment) based on a single baseline medical exam (*Turner v. Nat'l Football League*, 2014). More should be done to specify differences within the Neurocognitive Impairment categories and to recognize the studies provided in Section I of the literature review as possible places to help detail differences in cognitive and/or neurological functioning.

Next, the league should also consider basing compensation not only by number of years, but also by the position played the plaintiff and the actual documented blows to the head. There is no need to estimate that figure since the NFL has video records of all games played since the leagues inception. Although time consuming, the league could easily pay medical examiners to investigate each case on an individual basis for a more accurate understanding of the parties medical needs. Through a combination of other information collected on players (e.g., type of equipment used, physiological data provided by exercise physiologists, weather conditions, and start of game time) this could improve treatment and prevention strategies for specific positions. Lastly, we should recognize that it can take decades for players to start experiencing the adverse affects of head injuries. The league should be offering more than a one-time medical exam to determine compensation. In fact, if the league honestly wants to avoid admitting liability for the repercussions of head injuries, it should be doing everything it can from a research and development perspective to satisfy the needs of those players who have been exposed to its devastating head traumas. This means that retired players should be required to undergo a baseline assessment exam each year. The current settlement requires retired players under the age of 43 to complete a baseline assessment before their 45th birthday or within 10 years of the settlement while older retirees have to get assessed within two years of the agreement (*Turner v. Nat'l Football League*, 2014). Once they receive the assessment, the retired players are not asked to complete

another. Regular annual assessment could help the league track changes in players to assist their pursuit of the appropriate treatment plan and offer possible advice to future retirees on how to take care of themselves postretirement.

Conclusion

Given the aforementioned tax-exempt status of the NFL and the league's annual revenue streams (estimated at \$15 billion in 2013 with a goal of \$25 billion by 2027; see Schrottenboer, 2014b), it seems as though the NFL's settlement is inadequate from a tax perspective. This should be no surprise to those who understand the league's tax motives. Again, we direct your attention back to the IRC Section 501(c)(6) which provides, "no part of the net earnings of which inures to the benefit of any private shareholder of individual." Well, it seems as though that's exactly what the league does. The NFL's motive for retaining its federal tax exemption is that "it enables the NFL to function as a sort of bank for stadium deals, issuing league-back bonds to finance new stadium construction" (Delaney, 2010, p. 3). The NFL earns the majority of its money through broadcasting and licensing, which it in turn distributes to teams. These teams then pay their dues and assessments to the league, which are a tax deduction for the teams and nontaxable income for the league (Delaney, 2010). We propose this advantage positions the NFL to potentially payout more money to those players able to demonstrate they suffered serious head traumas and severe consequences for their activity as a player to redress potential tax challenges.

The NFL's most high profile lawsuit of all time has been manipulated so far as to not totally help the most severely injured parties (Nitti, 2013). Given the capped amounts of Alzheimer's, CTE, and ALS discussed above, if the NFL's settlement is not enough to cover the medical expenses, retired players will have to turn to private insurance policies or Medicaid to cover the costs of their injuries. This will impose a burden on the U.S. tax payer because Medicaid is a government-subsidized service. Although plaintiffs are eager to start receiving medical relief, they should have been reluctant to accept the deal because of the tax implications. This is in the best interest of those with the most debilitating injuries. There are many more dollars to be won here, in fact, millions more for those players who might 'opt-out' of the current settlement (Schrottenboer, 2014a; *Turner v. Nat'l Football League*, 2014). If the league wants to maintain the last bit of its nonprofit status/integrity, it is time for the NFL to offer future payments to redress prior deductions taken by past players for their football-related injuries. This will help correct and protect the damage done to its most valuable assets in addition to implementing the aforementioned precautions to shield current players from 'cooked' RTP grades. At the surface both parties would win with a new strategy; the NFL would maintain a good reputation and the players will experience a better quality of life after the game.

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