

September 15,2007

Sen. Byron Dorgan
Chairperson,
Senate Commerce, Science and Transportation Committee
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Dorgan:

My name is Delvin Williams and I am a retired professional football player. In connection with the hearings of the Senate Committee on Commerce, Science and Transportation Committee (the "Committee") on the administration of the Bert Bell - Pete Rozelle NFL Player Retirement Plan (the "Plan"), I wish to share my experience and the experience of other professional football players who are or were participants in the Plan.

Before I begin, I would like to thank you and the other members of the Committee and the other members of the Senate and of the House of Representatives for reviewing the plight of many disabled professional football players and providing a public forum for the retired disabled players of the National Football League ("NFL") to be heard.

I also wish to extend special thanks to Bruce Laird, Bernie Parish, Coach Mike Ditka, Harry Carson, and all the other coaches and players who have shared their experiences with the Plan and its administrators and law firm, with dignity and resolve. It is my hope that their efforts will ensure that the rights of other retired football players will be protected

I. Background

I played eight years as a running back in the National Football League. I was drafted by the San Francisco 49ers in 1974. I spent four years with the 49ers, three years with the Miami Dolphins and finished my professional football career with the Green Bay Packers. In 2000, I was nominated for consideration for the National Football League Hall of Fame.

After eight years, six surgeries, two concussions, broken ribs, a dislocated thumb, knee injuries and spinal injuries, as well as numerous other joint and

vertebrae injuries, my professional football career ended when I was released by the Green Bay Packers in 1981.

I understand that I am one of approximately 317 of 8000 retired NFL Players who receive football degenerative disability benefits. However, it did not come without a fight and a test in persistence. I started the application process in 1983 and was awarded a football degenerative disability benefit in July of 1995. In twelve years, I was turned down twice and lost an arbitration before I was awarded a disability pension benefit.

Many people believe that the retired football players do not need protection for their pension rights because they had made large amounts of money and have the National Football Players Union (the "Union") to protect their rights. They would be mistaken. Many of the football players in the 1970s and 1980s did not make more than \$40,000 per year. Many of them have suffered life-long paralyzing or pain-causing disabilities and have been forced to live on a basic pension of less than \$1,200 per month (which is less than the federal poverty level).

These same disabled football players helped build the National Football League (the "League") into a multi-billion dollar industry that continues to grow as a result of its anti-competitive practices that are permitted under current law. Those same anti-competitive practices have helped to permit the owners of the teams in the League with the cooperation of the Union to become wealthier and to disregard the plight of the former football players who built the League.

II. My Experiences with the Plan

A. The Plan was Amended to Provide for a New Disability Pension Benefit on September 30, 1993

In response to a court decision against the Plan, the Plan was amended effective September 30, 1993, by the Management Council (which represents the owners of the teams of the League) and the Union to provide for a new disability retirement benefits for vested players who become disabled from football activities (including from cumulative injuries rather than from a single event) prior to the later of age 45 or 12 years after their last credited season with the League.

Under Section 5.2 of the Plan, to qualify for the new disability benefit, a retired player need only show that he is "substantially prevented from or substantially unable to engage in any occupation or employment for remuneration or profit." The Plan does not require the individual to be unemployed or unable to work – only that he is "substantially prevented or unable to" work. For that purpose, the Retirement Board of the Plan, which was appointed by the Management Council and the Union to administer the Plan, relied on the opinion of physician selected by the Retirement Board.

The new pension benefit provided for a monthly benefit of \$4,000 per month. A separate disability plan provided an additional, temporary disability insurance benefit which is expected to be terminated. Without the new monthly benefit, many disabled retired players might only qualify for a pension of only \$1,200 or less per month.

B. The Retirement Board Breached Its Legal Duty to Notify Participants in the Plan of the New Disability Benefit on a Timely Basis and Denied the Benefit Claims of Participants

It is my understanding that under Section 104 of the federal Employee Retirement Income Security Act ("ERISA"), the Retirement Board was required to distribute information regarding the new disability benefit in a summary of material modification or an amended summary plan description not later than October 31, 1994. However, the Retirement Board did not distribute an amended summary plan description until sometime in November 1995 -- more than two years after the Plan was amended and more than one year of the time that the Retirement Board was required by Section 104 of ERISA to distribute the amended summary plan description.

As a result, the Retirement Board denied the benefit claims of individuals who had reached age 45 or for whom 12 years expired since their last credited season during the two year delay by the Retirement Board. Consequently, many disabled retired players were not notified of the new disability benefits under the Plan until up to one year after they were required to be notified and two years after the Plan was amended, causing them to miss the deadline to establish their right to benefits.

C. The Retirement Board Denied My Claim for Retroactive Disability Benefits Even Though the Plan's Physician Found that I Was Entitled to the Disability Benefits

The Plan states:

"Notwithstanding the above, all benefits provided by this article will be retroactive to the later of (a) the first of the month following the date of the total and permanent disability, or (b) July 1, 1993, and will be payable for life or until cessation of such total and permanent disability".

In Spring of 1995, I contacted the staff of the Retirement Board to inquire as to my pension rights. Only at that time was I notified of the new disability pension benefit. I applied for and was granted the new disability pension benefit under the Plan on July 20, 1995, effective August 1, 1995, based on the opinion of the Plan's physician, Kevin Harrington, M.D., of San Francisco, that found that I was "substantially prevented" or "substantially unable to engage in a profession" as a

result of a disability from football activities. At the time that I had applied for the benefit, I was employed. Dr. Harrington nonetheless found that I was sufficiently disabled to qualify for the disability benefit.

After being approved for the total and permanent disability benefits, I requested that my disability benefits be provided retroactive to July 1, 1993, based on the above provision of the Plan. In support of my request, I provided a new report by the Plan's designated physician, Dr. Harrington, who confirmed that based on the severity and nature of my disabilities; I had been sufficiently disabled prior to July 1, 1993, so as to qualify for the new disability benefit on July 1, 1993.

The Retirement Board ignored its own doctor's report and denied my claim for retroactive benefits for any period prior to August 1, 1995, because I had not submitted my application earlier. Had I submitted an application at any time after July 1, 1993, I would have been entitled to the retroactive disability benefit based on Dr. Harrington's opinion. However, the Retirement Board did not notify participants of the new disability pension benefit until November of 1995.

After exhausting the claims procedures of the Plan, I filed a lawsuit in 1997 to recover my entitled retroactive benefits. The District Court Judge awarded me my retroactive benefits. However, six years and \$30,000 in legal fees later, I lost on appeal in the Ninth Circuit Court of Appeals based on the case law under ERISA which gives deference to the decisions of plan administrators notwithstanding that the Retirement Board did not give me timely notice of the new disability benefits.

To add insult to injury, the Retirement Board sought to recover attorney fees from me and succeeded. The Retirement Board demanded that I pay its legal fees and court costs of \$108,897. At that time the Plan had net assets in excess of \$600,000,000. It is unheard of to ask a pension plan participant to pay attorney fees based on the breach of duties of the plan's administrator. However, I believe the \$108,897 demand was intended to punish me and to give a warning for other Plan participants not to sue for their benefits.

The District Court Judge awarded the Retirement Board \$75,000.00 to be paid in the amount of \$625 per month until 2014. Thus, my monthly disability payments were reduced to pay the Retirement Board's legal fees resulting from its failure to comply with its legal obligations under ERISA.

The total legal fees paid to the Plan's attorneys for my case was over \$1,200,000. The Retirement Board asked for over \$100,000 in attorney fees in my case. One can only wonder how much of the funds were used to defeat a beneficiary's claim. Between 1998 and 2003 \$1,200,000 would have saved some of the lives of other disabled retired players.

III. Other Retired Disabled Players

I will survive, but I feel the unfair treatment being delivered to other disabled players less fortunate than I cries out to be corrected. Many of these individuals are suffering from debilitating injuries, post-traumatic stress, and dementia after sacrificing their bodies and minds for the League.

My late friend, Neil Colzie, who played for the Miami Dolphins during the 1980s, was denied a disability pension benefit for heart, knee and back problems because the Plan's doctor thought that there must be work that he could work while on his back.

Another friend, Randy Beisler, who played for the San Francisco 49ers during the 1970s, suffered multiple head and neck trauma during his professional football career. As a result, he will sometimes become paralyzed when he turns his head and he will not know if the paralysis will end. He was denied his disability pension benefit because the Retirement Board did not accept the opinion of the Plan's own physician that given the severity and nature of his disability that he was disabled before age 45. Moreover, the Retirement Board hired a private investigator to invade Mr. Beisler's privacy to provide a report on Mr. Beisler's work activities even though Mr. Beisler had given complete information on his employment, which goes beyond normal plan administration. He needed to be employed to some degree to survive. They used that fact to deny him his benefit.

There are other retired players who are not as fortunate as I am. There are many of them who are too injured to work and some cannot even get around, such as Conrad Dobler, Willie Wood, Brent Boyd, Curt Marsh, Vic Washington, and Richard Woods. Some are so financially devastated they are literally living and dying on the streets or supported by the rest of our society, while the owners of the League with the cooperation of the Union have become richer.

IV. Who Pays the Price for the Growing Wealth of the Owners of the League?

The Executive Director of the Union, Gene Upshaw, and the League point out that they have established a medical fund to cover current or recent players. To Mr. Upshaw and the League, I say that they have not done enough. The plan does not apply to older, disabled players such as myself who must pay for expensive health care coverage like many other unemployed Americans. And, Mr. Upshaw and the League were honest, the modest medical plan would only be a drop compared to the ocean of medical bills and heartbreak that the disabled retired players and their families must bear. Many of these disabled retired players cannot find other employment and medical coverage.

With the cooperation of Mr. Upshaw and the Union, the League has become wealthier without providing for the medical needs and lifetime disabilities of the retired players.

Before the current players dismiss the plight of the disabled retired players, they should also consider that they are possibly one play away from being disabled and likely will suffer a lifetime of pain and disability after their careers end, including from concussions, arthritis, orthopedic and neurological disabilities.

The disabled retired players and I greatly appreciate the support we have received from the American public. The American public has done so even if it did know how much it has been paying for the growth and wealth of the billionaire owners of the League. The American public has made the billionaires wealthier by purchasing game tickets, paying to watch games on cable television, purchasing team merchandise and paying advertising on television.

Many of the players have had to resort to the welfare system and the Social Security system to survive. They have had to resort to the Medicare and Medicaid systems for health care costs. They have had to resort to our national health care system including the un-reimbursed public hospitals for urgent health care. Yes, we have all subsidized the growing wealth of the billionaire owners of the league in money and lives.

The league and the owners and the union must be required to provide and pay for long-term care and medical care for the disabled retired players. The league and the owners and the union must be required to ensure that the Plan be administered fairly and non-discriminatorily to provide the benefits that it was intended to provide. The Retirement Board and its staff must be held accountable for how they administer the Plan and to avoid the conflicts of interests that have resulted in the shameful treatment of the disabled retired players.

V. Specific Problems with the Administration of the Plan and the Laws in which It Operates

There have been many serious problems with the administration of the Plan and the laws that apply to the Plan.

A. Problems in the Administration

1. There is a clear record of the Retirement Board and its staff of their efforts to deny valid benefit rights of benefits to retired disabled players under the Bert Bell – Pete Rozelle NFL Retirement Plan (the “Plan”), with tragic results for many severely disabled retired players who helped to build the National Football League into a multi-billion dollar business.

2. The League is a multi-billion dollar business that has grown through its anti-competitive practices with the cooperation of the NFL Players Union (the "Union"). The actions and practices have been allowed to continue because of weaknesses in the Employee Retirement Income Security Act, which is the federal employee benefits law which regulates employee benefit plans including the Plan, and the federal Labor Management Relations Act, which regulates collective bargaining. Those weaknesses need to be addressed as discussed below.

3. There is a clear record of inconsistencies and arbitrary decisions in the administration of the disability retirement benefits under the Plan, with tragic consequences for many disabled retired players.

4. Many severely disabled retired players have had their valid disability benefit claims denied because there is no objective oversight over the actions of the Retirement Board and its staff and the members of the Retirement Board have inherent conflict of interests in their service to the participants in the Plan.

(a) Representatives on the Retirement Board who are appointed by the owners of the NFL teams recognize that denying benefits to the disabled retired players will minimize future contributions to the Plan by the NFL teams.

(b) Representatives on the Retirement Board that were appointed by the Union, have been agents of active players who do not represent retired players. If the executives of the union are more concerned with the active players who re-elect them as executives, they may not look out for the best interests of the disabled retired players. If those Union representatives are more concerned with the pay for the active players, they will also recognize that denying benefits to the disabled retired players will minimize current and future payments for their clients.

5. While the Executive Director of the Union points out that the Union has negotiated new benefits for retired players even though he does not represent them and that the active union employees have "subsidized" those benefits, he neglects to point out that the benefits are, in fact, also for the benefits of the current players and once those benefits are established that the Union has moral and legal obligation to ensure that the benefits are administered objectively and uniformly. That has not happened.

6. The Retirement Board and its staff have breached their fiduciary duties under the ERISA law.

(a) Under the ERISA law, the Retirement Board and its staff are required to act uniformly and not in an arbitrary and capricious basis in

administering the Plan. They are required by Section 404(a) of ERISA to act in the best interests of the participants in the Plan to provide them benefits or to pay reasonable administrative expenses of the Plan.

(b) The Retirement Board and its staff have violated their legal obligation under ERISA to notify Plan participants on a timely basis of their rights under the Plan, and they have used that breach to deny disabled retired players their right to benefits under the Plan. The Retirement Board and its staff failed to notify participants of their rights to a new disability benefit under the Plan more than one year after the ERISA law required the Retirement Board to give notice of the benefits. Given the time deadlines to apply for the benefits, the delay denied many disabled retired players to receive the benefits they are entitled to.

(c) The Retirement Board and its staff have not published or prescribed rules or standards for the determination of who should be eligible to receive retirement benefits under the Plan, leaving participants to guess what is required to be eligible for benefits under the Plan.

(d) The Retirement Board and its staff have acted arbitrarily and capriciously in establishing ad hoc rules for eligibility for the plan, with the effect of denying benefits to participants who are severely disabled. The Retirement Board and its staff have not applied the conditions for benefits uniformly throughout the United States. The Retirement Board and its staff rely on the opinions of the many physicians they have selected throughout the United States without providing uniform guidance on how to apply the terms of the Plan.

(e) Yet, when the Retirement Board and its staff did not want to pay benefits, they would disregard the medical opinion of their own selected physicians. That happened in my case.

(f) The Retirement Board and its staff have engaged in what can only be considered to be a campaign to prevent retired players from getting disability retirement benefits. In one case, the Retirement Board and its staff hired a private investigator to follow my friend, Randall Beisler, who had applied for a disability benefit which is unheard of in ERISA benefit cases. The private investigator, I am told, is a friend of Gene Upshaw. I was told by Mr. Beisler that the investigator misrepresented to Mr. Beisler's daughter that he was "helping" Mr. Beisler when he, in fact, was assisting the Plan in attempting to deny benefits to the retired player.

(g) The Retirement Board has paid millions of dollars to its primary outside law firm, The Groom Law Firm, and the law firms throughout the United States selected by the Groom Law Firm, to help deny the valid benefit claims of disabled retired players. In the past 5 years, the Retirement Board has paid over \$5,000,000 to the Groom Law Firm. When the Groom Law Firm fought

my claim for \$160,000 for retroactive pension benefits because the Retirement Board had not given notice of the new disability pension benefit under plan over one year past the date they were required to give notice, the law firm represented that it had incurred over \$1,200,000 to fight my claim and wanted me to pay the claim. The court required me to pay \$75,000 of the law firm's legal fees.

B. Problems with Applicable Laws

1. ERISA law gives excessive deference to plan administrator which protects actions of the Retirement Board and the staff and lawyers of the Retirement Board. As a result of the deference, the Retirement Board has prevailed in almost all of its lawsuits on legal technicalities rather than on the medical conditions of the disabled retired players.

2. There is no practical oversight over the actions of the Retirement Board and its staff because of the deference given under the ERISA law.

3. Under current federal labor laws, the Union is only obligated to represent and protect the interests of active employees. Accordingly, the Union and the Management Council of the League have not looked to protect the interests of the retired players. Instead, they have focused on the interests of the active players.

4. Once the Union and the League establish the new disability benefits, they have, in my opinion, a moral duty, and legally a fiduciary duty under ERISA to ensure that the benefits are made available fairly to eligible retirees. Unfortunately, there is not sufficient representation on the Retirement Board who has an interest in looking out for the interests of the disabled retired players or to ensure that benefits are provided uniformly and objectively and not in an arbitrary and capricious basis. There are inherent conflicts of interests of members of Retirement Board in favor of the owners of the NFL teams and the active players.

5. There has not been any consequences to the members of the Retirement Board and its staff for their violations of their fiduciary and administrative obligations under ERISA. For example, the Retirement Board should have been held accountable for not notifying retired players of changes to the Plan on a timely basis.

6. The Retirement Board and its staff have not been required to prescribe, publish or adhere to objective standards for determining the eligibility for benefits under the Plan.

7. Some states, such as Florida, do not extend workers compensation protection to professional athletes, which leaves the injured

players to rely solely on their Union to provide adequate protection for them when they become injured. The Union and the League have provided for a long-term disability plan but is conditioned upon the injured players qualifying for a disability pension benefit under the Plan. Given how the Plan as been administered, many injured players have no real long-term disability protection.

8. Health care is a national issue and the League, and other employers in high risk industries, should be required by Congress to pay for medical insurance for its players. The retired players and our society are subsidizing the billionaires in the League, with the cooperation of the Union, through the public welfare system, the Social Security system, the Medicare System and the Medicaid system.

VI. Closing Remarks

I wanted to use my case to illustrate how unfair the Plan and the current laws are to disabled players and to provide hope for those who are still fighting. I wanted to use my case to explain to the Senate and the Congress who are really for paying for the growing wealth of the owners of League with the cooperation of the Union. I am thankful to the Committee for giving me the opportunity to share my case.

One of the things that we as football players have learned is to never quit and never give up. We have all learned that if we do that, we will always be in a position to win, we will have a chance to win, and that something good will happen. That is what the benefit represents for me, and should be the same for all disabled players.

Were the Committee to be able to bring some measure of fairness to the relationship between the League and retired disabled football players and correct the problems with the laws, you would deserve and have our life-long thanks.

Respectfully,

Delvin Williams, Jr.