

**TESTIMONY OF  
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BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN  
On Behalf of  
NFL PLAYERS ASSOCIATION**

**BEFORE**

**SUBCOMMITTEE ON COMMERCIAL AND  
ADMINISTRATIVE LAW  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES**

**"The National Football League's System for Compensating Retired  
Players: An Uneven Playing Field?"**

**ON**

**June 26, 2007**

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Chairwoman Sanchez and Members of the Subcommittee:

Good afternoon. My name is Douglas Ell. I am with the Groom Law Group, and serve as Plan Counsel to the Bert Bell/Pete Rozelle NFL Player Retirement Plan ("Retirement Plan"). I have served in that position since 1994. I have been asked by the National Football League Players Association ("Players Association," or "NFLPA") to appear and testify in response to the Subcommittee's invitation to Gene Upshaw, Executive Director of the Players Association, who is out of the country and unable to attend today's hearing. The Players Association and I thank you for this opportunity to testify and provide information.

I'm very pleased to have with me Michele Yaras-Davis, who, as head of the Benefits Department of the NFLPA, has helped players get benefits for many years. I also wish to acknowledge the presence here today of David Duerson. Mr. Duerson serves, without pay, as a member of the Retirement Board, the named fiduciary of the Retirement Plan. He played 11 seasons for the Chicago Bears, New York Giants, and Arizona Cardinals, was All-Pro four years and won two Super Bowl rings. Mr. Duerson is a successful businessman and has a Master's from the Harvard Business School.

Unfortunately, a great deal of what has been said or written about the benefits available to NFL players has been wrong or misleading. I'll do my best to briefly describe the plans that provide retirement, medical, and disability benefits; the general structure of those benefits; and the process required by federal law for deciding claims for benefits. I'll also do my best to describe some of the complex federal laws that apply. As you will see, Mr. Duerson and his fellow Board members must comply with federal laws that require them to follow the terms of the Plan.

#### Player Benefits Come From Collective Bargaining

The collective bargaining agreement ("CBA") between the Players Association and the NFL provides retirement, medical, and disability benefits to former players. The CBA allocates a percentage of the League's revenues for player salaries and player benefits, and so the costs of benefits to former players come off the active players' side of the table. In other words, all of the CBA benefits, including the cost of benefits for players no longer active, reduce the amount available for salaries of active players.

In the year April 2006 to March 2007 the active players gave up approximately:

\$96.5 million to fund retirement benefits for former players;

\$31 million to fund health benefits for former players; and

\$20 million to fund disability benefits for former players.

This total, about \$147.5 million, adds up to about \$82,000 from each of the NFL's roughly 1800 full-time active players.

During collective bargaining, the Players Association and the NFL agree on the benefits to be provided – such as the formula for retirement benefits and the eligibility requirements and benefit levels for disability benefits. What many people don't appreciate, however, is that the actual decisions on benefits and the payments of benefits are made by separate legal entities. The Players Association and the NFL do not decide claims. Claims are decided by the fiduciaries of the benefit plans established by the CBA. In other words – and this is very important – when someone says that the NFL refused to pay disability benefits, or when someone writes that the Players Association rejected a disability claim, you know immediately that statement is not accurate – or perhaps that person does not know that the plans exist.

Federal law does not require employers or unions to provide retirement, medical, or disability benefits. Nevertheless, the Players Association and the NFL have agreed to maintain the following benefit plans:

<u>Retirement Benefits</u>	<u>Health Benefits</u>	<u>Disability Benefits<sup>1</sup></u>
Retirement Plan (also provides disability benefits);	NFL Players Group Insurance Plan;	Retirement Plan; and
NFL Player Second Career Savings Plan; and	NFL Player Health Reimbursement Account Plan; and	NFL Player Supplemental Disability Plan
NFL Player Annuity Program	88 Plan	

Further Information About the NFL Player Plans

Following is a summary of the key features of the NFL Player Plans listed above. We understand the Subcommittee is most interested in retirement and disability benefits, and we have provided greater detail in those areas. We believe that, in many respects, these benefits are the most generous in professional sports.

Retirement Plan

For the first six decades of organized football, and for almost 40 years after the NFL was established, there was no pension plan for NFL players. The players began efforts to organize a union as early as 1956. In 1962 the Players Association obtained its first pension agreement. This 1962 agreement established the Bert Bell NFL Player Retirement Plan – named after the NFL's second commissioner. This Plan reached back

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<sup>1</sup> Injured players are also encouraged to file claims under Workers Compensation.

only to 1959; players who left the game before 1959 (sometimes called "Pre-59er's") received no pension.

The 1970 CBA revised this Plan and created its present structure. Players receive a monthly pension based on the years that they play, not on how much they earn. In general, a player earns a "Credited Season" if he is paid for three or more games in a football season. For each Credited Season he earns a "Benefit Credit." His monthly pension at age 55 is the sum of those Benefit Credits. At retirement, pension benefits are paid to him as long as he lives – in technical terms this is called a "single life annuity." He can elect other forms of payment, such as a joint and survivor annuity where payments will continue to a surviving spouse. These choices will result in his pension being adjusted according to actuarial tables – so that it has the same "present value." For example, if he starts his pension before age 55 the monthly benefit is reduced, and if he starts his pension after age 55 it is increased. Originally, a player needed a minimum of 5 Credited Seasons to be "vested" and thus entitled to a pension.

Under the 1970 CBA, players earned a Benefit Credit of \$60 for each of their Credited Seasons from 1959 to 1965, and higher Benefit Credits in later years. At the \$60 rate, a 10-year player would earn a pension of \$600 a month beginning at age 55.

Even though age 55 was the "normal retirement age," many former players asked for the ability to receive their pension sooner. This was made possible in two ways. First, the 1970 Plan allowed players to receive a reduced pension as early as age 45. Many players did this, but the actuarial reduction for starting 10 years early was painful: a player who had earned an age 55 monthly pension of \$600 received only 45% of that,

or about \$271 a month, when he chose to start payments at age 45. Second, the Plan offered a "social security adjustment option." This option let players elect to receive the lion's share of their pension before age 62 (when social security would become available), and a token benefit of \$50 a month thereafter. For example, instead of receiving \$271 a month for life beginning at age 45, a player could use this social security adjustment option to receive about \$384 a month from age 45 up to age 62, and only \$50 a month thereafter.

The 1977 CBA reduced vesting from five years to four, so that players with only four Credited Seasons would receive a pension. Also, and again at the request of certain players, it added a third way for players to get their money earlier. It allowed them to get a lump sum "early payment benefit," or "EPB," equal to 25% of their pension, one year after leaving the NFL. This was desired by some because at that time there was no severance plan. However, for the many players who elected this "EPB," all later pension payments were smaller by 25%.

These three ways to get pension money early, and the choices made by many players,<sup>2</sup> are the primary reason why some older players are complaining about their pension. For example, take a player who earned 10 Credited Seasons from 1959 to 1968. His pension was originally \$625 a month<sup>3</sup> beginning at age 55 (if taken as a single life

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<sup>2</sup> Some players have also had a significant portion of their pension assigned to their ex-wife or ex-wives in divorce proceedings.

<sup>3</sup> He earned \$60 Benefit Credits from 1959 to 1965, \$65 Benefit Credits for 1966 and 1967, and a \$75 Benefit Credit for 1968.

annuity). However, if he elected to begin receiving his pension at age 45, his monthly benefit went down to \$282.50. Even worse, if he also elected the social security adjustment option, he would begin with a higher initial pension, but this would go down to a token payment of \$50 a month when he reached age 62.

The 1982 CBA expired in 1987. For 1987 and 1988, the owners agreed to allow continued Benefit Credits at the rate of \$150 a Credited Season. But beginning in 1989 they created their own plan, which they called the "Pete Rozelle NFL Player Retirement Plan," after the NFL's third commissioner. This Plan was similar to the Bert Bell NFL Player Retirement Plan, except that it was run totally by the owners and had no player trustees.

This was a significant change from how the original Bert Bell NFL Player Retirement Plan was managed at that time, where the union had the right to appoint three of the Plan's six voting trustees. This original plan continued to pay benefits.

The 1993 CBA may be the most important CBA for player benefits. It began the pattern, which has continued every extension since, of reaching back and improving the pension benefits of former players. For example, the \$60 Benefit Credits of 1959 – 1966 became \$80, and the \$150 Benefit Credits of 1983 - 1992 became \$210. The 1993 CBA expanded coverage to include the League's founding players – the "Pre-59er's" – with the same \$80 Benefit Credits that the 1993 CBA gave for 1959 to 1966. This extended coverage to over 700 former players who were not in the Retirement Plan until that time. Vesting was reduced; so that going forward a player needed only three Credited Seasons

to receive a pension. The two pension plans were merged together to create the present Retirement Plan after the 1993 CBA was signed.

The 1993 CBA also protected new players from what critics are calling misguided elections. Players who came into the League in that year or later are not allowed to elect a 25% EPB; they are not allowed to start their pension before age 55, and they are not allowed to elect the social security adjustment option. However, because of "anti-cutback" rules in federal law, the Retirement Plan is required to offer these choices to players who earned a Credited Season before 1993. Even today, some veterans who still have a choice elect the social security adjustment option so that they can receive the lion's share of their pension before age 62; even though they are warned, and acknowledge in writing, that they will only receive a token pension after that time.

The 1993 CBA was extended in 1998, 2002, and 2006. Each time the bargaining parties followed the 1993 model of reaching back to improve benefits for players no longer active. For example, the 1998 extension raised the lowest Benefit Credits from \$80 to \$100, the 2002 extension doubled them to \$200,<sup>4</sup> and the 2006 extension raised them to \$250. **This has allowed many former players to receive a pension in excess of their highest salary as a player.** A player with 10 Credited Seasons from 1959 to 1968, who started with a monthly benefit beginning at age 55 of \$625, now has a monthly

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<sup>4</sup> The head of the Pension Right Center, a Washington D.C. association that works to improve pensions, has been quoted as saying, "[N]obody has reached back and given a pension raise to retired workers of anything approaching this magnitude."

pension of \$2,500. The chart in Attachment 1 illustrates the history of Benefit Credits and these dramatic increases.

In 1993, 1998, 2002, and 2006 the active players were not required to forego salary so that the pensions of former players could be increased, but they did. The motto of the Players Association is "Past, Present, and Future." The following table shows the strong and repeated commitment of the active players to honor their predecessors and to help those who came before:

<u>Year</u>	<u>Total Pension Liabilities Added<sup>5</sup></u>	<u>Liabilities Added Just for Former Players</u>
1993	\$153.8 million	(unknown)
1998	\$50.2 million	\$45.4 million
2002	\$125.6 million	\$124.9 million
2006	\$233.5 million	\$214.5 million

In general, each time benefits have been increased, the checks of players already receiving benefits were increased by the same proportion as their total Benefit Credits were increased. For example, in 2002 when the oldest Benefit Credits were doubled from \$100 to \$200, the pensions of players for those seasons were exactly doubled. However, despite the repeated and enormous increases in Benefit Credits, some retired players, particularly those who voluntarily elected the "social security adjustment option," have complained. Because they elected to receive the lion's share of their pension as fast as

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<sup>5</sup> These numbers are actuarial estimates.

possible, there is not as much now to increase. Their token \$50 pension may now be about \$200 a month. However, if they had elected a single life annuity beginning at age 55, in most cases their pension would now be thousands of dollars each month.

Because of the repeated increases in benefits and thus liabilities, the Retirement Plan is somewhat under funded from an actuarial point of view. Both the Players Association and the NFL view pension funding as a priority, and full funding may occur in the next few years, at least until the next negotiated benefit increase. Even without further benefits increases, a 10-year player starting today will earn a pension of \$4,700 a month, or over \$56,000 a year, when he reaches age 55. If he waits until age 65 – a typical corporate retirement age – to begin benefits, his yearly pension will be over \$147,000. This dwarfs what he could have earned under plans of major corporations across the country for those 10 years. Of course, those players who go on to other careers may earn additional retirement benefits from those careers.

The NFL Player Retirement Plan is often contrasted with Major League Baseball's pension plan. For players who left the game some time ago, MLB's plan is somewhat richer. Baseball started earlier, thanks to the efforts of Curt Flood and others, and has historically had the better pension plan. The challenge since 1993 for NFL players has been the difficulty of playing catch up. Just as saving for retirement is much harder for people who fail to save in early years, pension funding is much harder when you get a late start. Many of the players who now complain about their pension did not view pension benefits as a priority when they were playing, and did not agree to make sacrifices in bargaining to improve either their pensions or the pensions of those who

came before them. Again, prior to 1993 there was no pension for Pre-59ers, and benefits once earned had never been increased.

The assets of the Retirement Plan are held in trust. None of its assets may ever revert to or be used by the League, the NFL Clubs, or the Players Association.

### Medical and Dental Benefits

Under the CBA, active NFL players and their families receive comprehensive group medical and dental benefits. If a player has three or more Credited Seasons and is thus "vested," he receives five years of post-career coverage after he leaves the game, at no cost to him or his family. In a recent 12 month period, this post-career coverage cost the active players \$11.5 million.

The 2006 CBA created a new plan – the NFL Player Health Reimbursement Account Plan -- that provides additional medical benefits to former players after the five free years of coverage end. Eligible players are credited with accounts that can be used to pay medical costs (including insurance premiums) for them, their spouses, and their dependents, for as long as they or their eligible beneficiary is alive.

The 2006 CBA also created a new medical benefit for players with dementia. This plan is called the "88 Plan," in honor of former Baltimore Colts player and Hall of Fame member John Mackey, whose jersey number was 88. As far as we know, this is the first plan in the country that provides special benefits for employees who are afflicted with dementia, even when that dementia occurs decades after their employment has ceased. In May of this year, NFLPA Executive Director Gene Upshaw and Harold Henderson of the

NFL Management Council were honored by the Alzheimers Association in New York for this achievement.

### Disability Benefits

Together, the Players Association and the NFL have created the most generous disability benefits in professional sports, and possibly in the entire business world. Since 1993 – when the current structure was put in place – about \$138 million has been paid to disabled players.

The Retirement Plan awards both "total and permanent," or "T&P," disability benefits and partial disability benefits. Total and Permanent disability benefits are paid to eligible players who are substantially unable to work, and for whom this condition is expected to last at least 12 months. There are four categories of T&P benefits:

Active Football -- \$224,000 a year if a player becomes totally and permanently disabled due to NFL football shortly after he stops playing.

Active Nonfootball -- \$134,000 a year if a player becomes totally and permanently disabled from any other cause shortly after he stops playing.

Football Degenerative -- \$110,000 a year if a player becomes totally and permanently disabled due to NFL football within 15 years after he stops playing.

Inactive – \$18,000 a year (\$21,000 for new applications), or, if higher, the pension the player would receive at age 55, if he becomes totally and permanently disabled and does not qualify for one of the other categories.

T&P benefits in the last two categories above are paid only to "vested" players.

What may be most unusual is that these benefits are paid even where inability to work occurs many years after a football career has ended, and even where NFL football

did not cause the inability to work. Someone who once worked for IBM or General Motors does not expect to get – and does not get – disability benefits if he or she becomes unable to work many years after leaving that employer. Yet vested former NFL players who became unable to work decades later, for whatever reason, receive a disability benefit. We think these are the most generous disability benefits ever negotiated, and possibly the most complex. In many cases the Retirement Plan has to decide whether a player is unable to work, when the inability to work occurred, and what caused the inability to work.

The Retirement Plan also pays a partial disability benefit to players who suffer a "substantial disablement." Whether a player has a substantial disablement is generally determined using the rating system created by the American Medical Association for measuring impairments. To receive this partial benefit a player must apply within 48 months after his NFL career ends. Partial disability benefits are paid for up to 90 months.

### Claims Processing

Claims for benefits are made to and processed by the plan involved. In general, the bargaining parties each appoint three voting members to each plan's governing board,<sup>6</sup> but again the Players Association and the NFL do not administer the plans or decide claims for benefits.

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<sup>6</sup> The Players Association appoints only one board member to the Group Insurance Plan.

Claims for pension and disability benefits are decided by the Retirement Plan. Mr. Duerson is one of the six voting trustees on the governing board of the Retirement Plan. Mr. Duerson and his fellow Retirement Board members do not receive, and have never received, compensation for taking on the potential personal liability of being fiduciaries under federal law, and having to decide claims for benefits.

The Retirement Plan is governed by complex federal laws, including the Employee Retirement Income Security Act, or "ERISA." The Internal Revenue Service and the Department of Labor are the primary federal agencies that interpret and oversee these laws. Both the IRS and the DOL demand that Mr. Duerson and his colleagues follow the terms of the Retirement Plan. They have to interpret the rules, but they don't get to make them up. Were they to do so – such as to award disability benefits to a player who does not qualify – they could be personally liable as a fiduciary. Also, under IRS rules, any failure to follow the terms of the Retirement Plan could result in the loss of the Retirement Plan's qualified status and the imposition of millions in taxes and penalties. These rules exist to preserve plan assets, so that money will be there to pay benefits to those who do qualify.

A player seeking disability benefits begins by completing a written application and sending it to the Plan's administration office in Baltimore. The Plan office has a toll-free number that players call to ask questions and get forms, and also has a website for downloading forms. The player is then sent to a nearby physician approved by the Retirement Board for an examination. These physicians are called neutral physicians and they provide a written report.

Disability claims are decided at the first level by a separate committee, the Disability Initial Claims Committee. Since 2002 the Department of Labor has required the existence of this separate committee. If a player is dissatisfied in any way with the decision of the Committee, he has the right to appeal to the full Retirement Board. Players who appeal are sent to a different second Neutral Physician, as required by federal law. If a player is dissatisfied in any way with the decision of the Retirement Board, he has the right to file suit in federal court.

The Plan has two ways of resolving deadlocks – 3 to 3 votes – of the Retirement Board. If the issue is medical, such as whether the player is substantially unable to work, either side can elect to send the player to one of the Plan's top three doctors – called "Medical Advisory Physicians," or MAPs – for a final decision that is binding on the Retirement Board. In rare cases – and this has happened only once in the last 14 years – the deadlock is resolved by arbitration.<sup>7</sup> But this arbitration is solely between members of the Retirement Board – the player is not a party to arbitration.

Table 1 summarizes the disability decisions of the Retirement Plan since July 1993, when the present disability categories were created.

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<sup>7</sup> A second arbitration is pending.

**Table 1**

<b>Total disability applicants</b>	<b>1052</b>
Approved at initial stage <sup>8</sup>	358
Denied at initial stage	675
Awaiting initial decision	19
<b>Applicants Denied at Initial Stage who Appealed</b>	<b>223</b>
Approved on appeal	69
Denied on appeal	132
Appeal Pending	22
<b>Applicants Who have Sued</b>	<b>32</b>
Retirement Board Upheld	24
Retirement Board Reversed	1
Lawsuit pending	7
<b>Overall Disability applicants</b>	<b>1052</b>
Cases pending	48
Benefit approved	428
Benefit denied	576

We recognize that the Subcommittee has received complaints from some former players that the system takes too long. But one man's "red tape" is another man's due process. The Department of Labor has set out how the process must work and the time periods for claims, appeals, and decisions. The Initial Claims Committee and the Retirement Board work hard to comply with these rules and apply the terms of the Plan to each application.

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<sup>8</sup> Prior to January 1, 2002, initial decisions were made by the Retirement Board. After January 1, 2002, initial decisions are made by the Disability Initial Claims Committee. The Disability Initial Claims Committee has deadlocked on whether to grant a benefit 37 times.

In many cases this process helps players qualify for disability benefits, as no doubt the Department of Labor intended it to do. Sometimes the first doctor will say that a player can work, but the second doctor disagrees and the Retirement Board grants benefits. There have even been cases where the first two neutral physicians said a player did not qualify for disability benefits, but the player was sent to a MAP for a third examination, and benefits were granted because the MAP resolved the medical issue in favor of the player. We understand some players view this process as "red tape"; but to the Retirement Board, and probably to the players who ultimately qualify, it is due process.

We agree that, in some cases, the system takes too long. The parties have been discussing what can be done to simplify and speed up the process. They recently agreed to immediately grant T&P benefits to players already receiving social security disability benefits. The benefit package for NFL players is an evolving process, and efforts are ongoing. The new 88 Plan to address the needs of players with dementia is one of many recent improvements.

You will note from the above table, if you didn't know already, that a number of players have sued the Retirement Plan, usually over disability benefits. Such large benefits – again, up to \$224,000 a year for life in some cases – may encourage players and their attorneys to file suit. Since 1993, the Retirement Board has generally succeeded in protecting the Plan in litigation, winning 24 of 25 cases. This record demonstrates the care that the Initial Claims Committee and the Retirement Board put into deciding pension and disability claims. Under federal law, the members of the Retirement Board

have a fiduciary duty to protect and defend the Plan from claims that the Retirement Board believes can not be granted.

It probably also will not surprise you to learn that some disgruntled players hide the facts when talking to reporters. I am here representing the Union, and I take no joy in criticizing our former players who still are members of the NFL family. However, one former player has repeatedly complained – and his complaints are repeatedly written up by reporters – that despite his extensive injuries the Plan refuses to admit those injuries are related to football, and the Plan refuses to pay him disability benefits. What he somehow seems to never mention is that, in 1992 while represented by an attorney, he agreed to accept a lump sum payment of \$295,000 in return for giving up all rights to disability benefits. Since then, three federal courts have told him he is bound by the agreement, and the courts have told him that another lawsuit will result in sanctions. Another player publicly badmouths the Retirement Plan yet has never filed a claim for disability benefits – even though he has been sent several applications. Another player complains that his retirement benefit is too small, but doesn't mention that he 1) choose to retire at age 45 with a 45% actuarial reduction, 2) elected the social security option providing the lion's share of his pension up front, 3) knew that he would only receive a token pension when he became 62, and 4) was ordered by a divorce court to share his pension with his ex-wife. Many a player has failed to mention that the Retirement Board had no choice but to deny his claim because a one of the Plan's top doctors found that he could work, and that decision was binding on the Retirement Board. I also wish to add that, despite what may be written, neither Gene Upshaw, nor myself, nor my firm decide

applications for disability or benefits. I do have the privilege of defending the Retirement Board in litigation.

Before concluding, I wish to note three brief points. First, the parties have negotiated for Workers Compensation benefits to be provided to all players. Over the past twenty-five years the NFLPA has established a panel of qualified lawyers to help players file and pursue their claims. The NFLPA strongly advises each player to preserve his rights under Workers Compensation for life-time medical care for his football injuries. Any player who claims that his football injuries have not been adequately addressed and that he cannot get proper medical attention who has not pursued the Workers Compensation remedy has ignored that repeated advice. The parties have also agreed that there is no reduction in other disability benefits when a player also receives Workers Compensation. The cost of Workers Compensation comes out of the players' share of League revenues, like other health and disability benefits.

Second, in addition to all of the above benefits, the Players Association has long had a fund, called the "Players Assistance Fund," that provides up to \$20,000 to players in need. Last year alone the Players Assistance Fund paid over \$1 million to 146 players in need, and provided almost \$500,000 for scholarships and grants to charities.

Finally, I would like to state for the record that many players and beneficiaries appreciate what has been done to improve benefits. I believe some of those persons are here today.

Again, on behalf of the Players Association and myself, I sincerely thank the Subcommittee for the opportunity to appear. I hope my testimony has been helpful.