Throughout the 2009 National Football League (NFL) season, fans found themselves asking why concussions garnered more attention than the games themselves. After all, NFL fans have long known that concussions represent an unfortunate and inevitable byproduct of professional football. When head injuries ended the careers of Hall of Fame quarterbacks Steve Young and Troy Aikman, sports writers treated their concussions like common career ending conditions. Why then in the fall of 2009, did media outlets like GQ,1 The New Yorker,2 Forbes,3 and 60 Minutes4 suddenly treat NFL concussions as a novel topic? The answer to this question begins with a group of medical studies dating back to 2005, and ends with a Congressional hearing held on October 28, 2009. Policy decisions made by the NFL’s internal Concussion Committee during this four-year span could potentially subject the league to Big Tobacco-like liability. However, player suits against the NFL might be of limited utility due to a number of defenses at the NFL’s disposal.

Game Changing Independent Science

Beginning in 2005, a series of clinical and neuropathological studies performed by independent scientists demonstrated that multiple NFL concussions cause cognitive problems such as depression and early-onset dementia. In response to these studies, members of the NFL Concussion Committee (NFL Committee) denied knowledge of a link between concussions and cognitive decline and claimed that several more years of research were required to reach a definitive conclusion on the issue. When the NFL Committee anticipated studies that would implicate a causal link between concussions and cognitive degeneration, it promptly published articles producing contrary findings.

Between 2005 and 2007, Dr. Bennet Omalu and Dr. Robert Cantu examined the brain tissue of various deceased NFL players (Mike Webster, Terry Long, and Andre Waters).5 All three subjects of Omalu and Cantu’s studies suffered multiple concussions during their respective NFL careers.6 Before their premature deaths, Webster, Long, and Waters presented clinical symptoms of sharply deteriorated cognitive function and psychiatric symptoms such as paranoia, panic attacks, and major depression.7 Omalu concluded that Chronic Traumatic Encephalopathy (CTE), triggered by multiple NFL concussions, represented a partial cause of their deaths.8

CTE is a neurological disorder first discovered in boxers, jockeys, and wrestlers who sustained multiple blows to the head.9 The disease presents clinically as dementia or Parkinsonism with symptoms including slight mental confusion, general slowing in muscular movement, hesitancy in speech, and tremors of the hands.10 The brain tissue of Webster, Long, and Waters demonstrated trademark neuropathological signs of CTE, including neurofibrillary tangles, neurrophil threads, and cell dropout.11

In response to Omalu’s report of CTE in Mike Webster’s brain tissue, NFL Committee members Ira Casson, Elliot Pellman, and David Viano wrote a letter in July 2005 to the editor of Neurosurgery asking that Omalu’s article be retracted.12 The subtext of the NFL’s letter to Neurosurgery was clear: “We own this field. We are not going to bow to some no-name Nigerian with some bullshit theory.”13 Omalu found delicious irony in the NFL’s letter, given that neither Casson, Pellman, nor Viano are neuropathologists. After all, “[h]ow can doctors who are not neuropathologists interpret neuropathological findings better than neuropathologists?”14 Omalu questioned the integrity of the NFL Committee.15 Not only did the NFL neglect to place one neuropathologist on the Committee, it also appointed a rheumatologist (Pellman) to chair the Committee.16

In 2005, a clinical study performed by Dr. Kevin Guskiewicz found that retired players who sustained three or more concussions in the NFL had a fivefold prevalence of Mild Cognitive Impairment (MCI) diagnosis in comparison to NFL retirees without a history of concussions.17 In reaching this finding, Guskiewicz conducted a survey of over 2,550 former NFL athletes.18 NFL Committee member Dr. Mark Lovell attacked Dr. Guskiewicz’s study by stating: “[w]e want to apply scientific rigor to this issue to make sure that we’re really getting at the underlying cause of what’s happening…. You cannot tell that from a survey.”19

In 2007, Congressional scrutiny coupled with mounting media pressure (from, for example, Alan Schwarz of The New York Times and Chris Nowinski of Sports Legacy Institute) compelled the NFL to address the long-term effects of player concussions. Consequently, the league scheduled its first league-wide Concussion Summit in June 2007. Independent scientists were invited to present their findings to team medical staffs and National Football League Players Association (NFLPA) representatives. Scientists, fans, and players were hopeful that the summit indicated a newfound willingness on the part of the NFL to revise its antiquated concussion policies. Unfortunately, the NFL’s concussion pamphlet to players issued on August 14, 2007, stated: “there is no magic number for how many concussions is too many.”20 This quote suggests that the research of independent scientists fell on unresponsive NFL ears.
In 2008, Boston University’s Dr. Ann McKee studied the brain tissue of two more deceased NFL players: John Grimsley and Tom McHale. McKee found that Grimsley and McHale’s brain tissue showed distinct signs of CTE. According to McKee, “the easiest way to decrease the incidence of CTE [in contact sport athletes] is to decrease the number of concussions.” McKee emphasized that “[t]here is overwhelming evidence that CTE is the result of repeated sublethal brain trauma.”

In response to Dr. McKee’s studies, former NFL Committee co-chair, Dr. Ira Casson, characterized each study as an isolated incident from which no conclusion could be drawn. Dr. Casson stated that he would not react to McKee’s studies until her findings appeared in a peer-reviewed scientific journal. When McKee published her work in 2009, Dr. Casson maintained that “there is not enough valid, reliable or objective scientific evidence at present to determine whether…repeat head impacts in professional football result in long[-]term brain damage.”

Watershed Congressional Hearing

The debate over the long-term effects of NFL concussions reached a boiling point in September of 2009. A University of Michigan study commissioned by the NFL found that NFL alumni are diagnosed with Alzheimer’s disease or similar memory-related diseases vastly more often than the national population—including a rate of 19 times the normal rate for men ages 30 through 49. Several weeks after the release of the Michigan study, Congress announced that it would hold a hearing to discuss “legal issues relating to football head injuries.”

On October 28, 2009, several members of House Judiciary Committee sharply criticized the NFL’s concussion policy. On at least two occasions, NFL Commissioner Roger Goodell was asked whether multiple NFL concussions contributed to the early-onset of cognitive decline. Goodell justifiably deferred to medical judgment on this question. Unfortunately, the NFL’s leading medical voice on the issue (Dr. Casson) was not present to answer this critical inquiry. However, the Judiciary Committee played an HBO Real Sports recording of Dr. Casson denying any and all potential links between multiple head injuries and later-life cognitive decline.

The most poignant moment of the hearing occurred when Representative Linda Sanchez (CA) analogized the NFL’s denial of a causal link between NFL concussions and cognitive decline to the tobacco industry’s denial of the link between cigarette consumption and ill health effects. Extending this logic further, Rep. Sanchez encouraged Commissioner Goodell to get “ahead on this issue, if only to cover [the NFL] legally.” Sanchez seemed to suggest that the NFL might avoid tobacco-like liability if the NFL Committee simply issued adequate warning to NFL players.

Subsequent Remedial Measures—Sea Change in NFL Concussion Policy

The NFL enacted several notable remedial measures in the wake of the 2009 Congressional hearing. First, Dr. Ira Casson and Dr. David Viano resigned from their respective positions as NFL Committee co-chairmen. Given that Casson and Viano spearheaded the NFL Committee’s medical studies between 2007 and 2009, the NFL suspended all work on the NFL Committee’s research. Second, the NFL partnered with one of the leading independent medical experts on CTE, The Center for the Study of Traumatic Encephalopathy (CSTE), by pledging to donate $1 million in support of its research. Third, NFL spokesperson Greg Aiello made the following watershed admission: “[i]t’s quite obvious from the medical research that’s been done that concussions…lead to long-term problems…It is important to understand that there is no magic number for how many concussions is too many.”

Legal Implications of NFL Committee Policy (2005-2009)

Since at least 2005, the NFL Committee has been on notice of independent medical studies linking multiple NFL head injuries with later-life cognitive decline. In 2007, the NFL released the following statement two months after independent scientists delivered face-to-face presentations to NFL Committee members:

Current research with professional athletes has not shown that having more than one or two concussions leads to permanent problems…. It is important to understand that there is no magic number for how many concussions is too many.

“This inaccurate and arguably misrepresentative statement to players remained unchanged until July 26, 2010.” NFL alumni might argue that the league is subject to liability as a result of its failure to provide adequate warning about the causal link between multiple NFL concussions and later-life cognitive decline. However, the NFL might rebut these claims with potential duty, causation, assumption of risk, contributory negligence, indemnification, and statute of limitations defenses.

Failure to Warn

A duty to warn arises when one should realize through special facts within one’s knowledge or a special relation-
ship that an act or omission exposes another to an unreasonable risk of harm through the conduct of a third party. The NFL has been on constructive notice of medical studies linking multiple head injuries with later-life cognitive decline since at least 2005. By fostering a misconception in the minds of players that “there is no magic number for how many concussions is too many,” the league arguably encouraged players to treat their concussive conditions with less than due care. The NFL Committee’s failure to warn players about studies linking concussions with cognitive decline exposed NFL players to an unreasonable risk of harm. Rather than considering retirement due to concussions sustained in 2005 and subsequent seasons, NFL athletes likely continued playing in reliance on the NFL’s assertion that multiple concussions cause no “permanent problems.” Thus, several players might have aggravated their concussive injuries by returning to play in reliance on the NFL’s arguably inadequate warning.

**Duty**

The NFL might argue that the NFL Committee’s mere awareness of independent studies did not by itself impose a legal duty to warn players about such studies. This argument is based on the legal distinction between action and inaction, or “misfeasance” and “non-feasance.” Absent some special relationship or special duty, the NFL would argue that it is under no affirmative duty to warn league players about the cognitive consequences of concussions such as CTE, dementia, and depression.

Courts have suggested that NFL players are employees of their respective teams, not the league. Consequently, the NFL might argue that there is no special relationship stemming from employment that would trigger an affirmative duty to warn NFL players about the long-term risks associated with NFL concussions.

Players might argue that the NFL’s voluntary creation of its internal Concussion Committee created a duty on the part of the NFL to exercise reasonable care. Once an actor begins to render voluntary assistance to a third party, the actor undertakes a duty to proceed with reasonable care when such third party relies on the actor’s assistance. The NFL assumed a duty to proceed with reasonable care in its dealings with league players when it voluntarily created its internal committee on concussions. Players relied on the information contained in the NFL’s August 14, 2007 concussion pamphlet to represent a complete and accurate synopsis of “current research” on the topic: “[w]e want to make sure all NFL players...are fully informed and take advantage of the most up-to-date information and resources as we continue to study the long-term impact of concussions.” If the NFL Committee wanted players to be “fully informed” about the “long-term impact of concussions,” why did it withhold from players the findings of Doctors Guskiewicz, Cantu, and Omalu indicating a causal link between multiple concussions and later-life cognitive decline?

**Cause**

An actor’s tortious conduct must be a factual cause of another’s physical harm in order for liability to be imposed. Conduct is a factual cause of harm when such harm would not have occurred “but for” the tortious conduct. The NFL might point to a number of causes that might have contributed to deceased NFL players’ cognitive decline. Pittsburgh Steelers’ trainer and NFL Committee member Dr. Joseph Maroon argues that steroids, drug abuse, and other substances caused the damaged brain tissue of former NFL players Webster, Long, and Waters. Similarly, when NFL Commissioner Roger Goodell was asked about the trademark signs of CTE found in (deceased NFL player) Justin Strzelczyk’s brain tissue, Goodell issued the following response: “[h]e may have had a concussion swimming…A concussion happens in a variety of different activities.”

Players might rebut this causation defense by arguing that the NFL’s failure to warn must only be one cause of their cognitive injuries. Tortious conduct by an actor need only be one of the causes of another’s harm. When there are multiple sufficient causes, each of which is sufficient to cause the plaintiff’s harm, supplementation of the “but-for” standard is appropriate. NFL players may concede that they sustained concussions “swimming” or in a variety of other contexts (e.g., high school and college football). However, if players can prove that they aggravated their cognitive injuries as a result of the NFL’s failure to warn, supplementation of the “but-for” standard is appropriate. Again, by asserting that “there is no magic number for how many concussions is too many,” players likely returned to play after sustaining two or more concussions in one NFL season. The NFL Committee’s concussion management likely caused players to aggravate their cognitive injuries.

**Assumption of Risk**

The NFL could argue that players assume the risk of all injuries inherent in professional football. Generally, participants in an athletic event are held to assume the risks of injury normally associated with the sport. However, plaintiffs must have actual knowledge of the risk at issue in order to invoke the assumption of risk doctrine. Logically, a plaintiff cannot make an intelligent choice to confront a risk if he or she lacks actual knowledge of the danger. The knowledge required in assumption of the risk analysis is actual knowledge, not constructive notice.

NFL alumni can freely concede that they had actual knowledge of risks normally associated with professional football, such as broken bones, torn ligaments, and even concussions. However, players like Brian Westbrook lacked actual knowledge of the long-term cognitive consequences of sustaining multiple NFL concussions. As Westbrook stated: “a lot of football players didn’t know, and I include myself, that if you have two-three-four concussions you’re at a higher risk of [incurring] dementia, early-onset of Alzheimer’s, [etc].”
The NFL Committee did everything within its power to deny any causal link between multiple concussions and later-life cognitive decline. DeMaurice Smith, Executive Director of the NFLPA, described this NFL Committee policy: “[u]nfortunately, the NFL…diminished [independent] studies, [and] urged the suppression of [independent] findings…for years.” Thus, the NFL Committee arguably stripped each player of his right to make an intelligent choice about the long-term risks associated with NFL concussions.

**Contributory Negligence**

Contributory negligence is the strongest argument at the NFL’s disposal in this hypothetical litigation. This common-law defense rests on the rule that there can be no recovery of damages for negligence if the injured person, by his own negligence, proximately contributed to the injury. While contributory negligence is similar to the assumption of risk doctrine, it is a separate and distinct defense. Assumption of risk involves a plaintiff’s actual knowledge of danger and intelligent acquiescence in it; whereas contributory negligence is a matter of plaintiff’s fault or departure from the standard of reasonable conduct.

The NFL could argue that players negligently contributed to their own injuries by: (i) failing to report their concussive conditions to team doctors; and (ii) returning to play before their concussion symptoms completely disappeared. The NFL’s August 14, 2007 informational pamphlet instructs players to self-report their concussion symptoms: “[i]f you…have [concussion] symptoms, you should immediately report your symptoms to your team doctors and athletic trainers.”

The 2007 pamphlet also contains the following return-to-play guidelines: “player[s] should be completely asymptomatic…before returning to play.”

Thirty of 160 NFL players surveyed by The Associated Press (AP) in November of 2009 replied that they either failed to report or underreported concussion symptoms. In conducting the study, the AP spoke with “five players on each of the 32 teams—nearly 10 percent of the league—seeking out a mix of positions and NFL experience to get a cross-section of players.” In the same AP study, players admitted that they returned to play while the following concussion symptoms persisted: “feeling ‘dazed’ or ‘woozy’ or having blurred vision.” The NFL could argue that players negligently contributed to their own cognitive injuries by failing to report “feeling ‘dazed’ or ‘woozy’ or having blurred vision,” and returning to play before becoming “completely asymptomatic.”

Players will respond by arguing that the NFL’s contractual scheme incentivizes them to withhold their concussion symptoms from team management. NFL player contracts do not guarantee player payment beyond the season in which an injury occurs. This contractual structure maximizes the risk of players incurring permanent cognitive problems because it incentivizes players to withhold their concussion symptoms and play through multiple head injuries. Dan Morgan’s concussive injuries (at least five during his tenure with Panthers) serve as a prime example of this problem. Faced with the alternative of termination, Morgan “agreed to restructure his $2-million roster bonus into payments of $125,000 for each game played. [...][This] contract gave Morgan [a] financial incentive not to reveal any concussion for treatment.”

Quarterback Derek Anderson articulates how player contracts incentivize NFL athletes to withhold injury symptoms: “[g]uys play with [injuries] they’ve got no business playing with…. [Y]our job security is not there to sit out.”

Even if players are found contributorily negligent, they could still recover damages in jurisdictions that adhere to comparative negligence principles. At common-law, a plaintiff’s contributory negligence served as a total bar to his or her recovery. However, modern-law jurisdictions find the complete-bar provision of contributory negligence to be incompatible with the more humanitarian comparative negligence mandate. Jurisdictions that adhere to a “pure comparative negligence” approach apportion damages between a negligent defendant and a contributorily negligent plaintiff, regardless of the extent to which either party’s negligence contributed to the plaintiff’s harm. In other words, a plaintiff who is 60 percent to blame for an accident could recover 40 percent of his or her losses. Thus, a jury might find a player contributorily negligent for withholding symptoms and returning to play before becoming completely asymptomatic. However, if a jury finds that the NFL is at least one percent to blame for a player’s cognitive injuries, the player can recover damages in the amount of that one percent.

**“Section 88” / Indemnification**

The “Section 88” amendment to the 2006 NFL Collective Bargaining Agreement (CBA) provides that NFL alumni may receive payment of up to $88,000 per year for their medical claims specifically “related to dementia.” “Section 88” is funded by the various NFL Clubs, and “jointly administer[ed]” by the NFLPA and the NFL. Defense attorneys might argue that a player’s acceptance of Section 88 funds indemnifies the league against any future civil liability. However, this defense is not persuasive, given that Section 88 contains no indemnification language.

**Statute of Limitations—“Discovery Rule”**

Football-related head trauma can be likened to asbestos exposure in that harm caused by both sets of dangers can take up to 20 to 40 years to manifest. Normally, a cause of action for personal injury will accrue at the time of injury, and a plaintiff will have only two to four years to file a claim based in Tort. To be fair to people with latent injuries, most states have adopted what is known as the “discovery rule.” Under this rule, a cause of action does
not accrue until plaintiffs know or reasonably should have known that they were injured as a result of the defendant’s conduct. NFL alumni should certainly be able to invoke the discovery rule if they file failure to warn claims against the NFL. Cognitive illnesses caused by multiple concussions (e.g., CTE, dementia, Alzheimer’s, and depression) represent exactly the type of latent injuries the discovery rule was intended to address.

The New NFL Committee

In March of 2010, the NFL selected prominent neurologists Dr. H. Hunt Batjer and Dr. Richard G. Ellenbogen as co-chairs of the new NFL Committee. Unlike previous committee chairs, Batjer and Ellenbogen had no previous ties to NFL teams, and they receive no compensation beyond expenses. This structure was intended to eliminate conflicts that previously jeopardized the integrity of NFL Committee findings.

Batjer spoke with brutal honesty when describing the substandard practices of former NFL Committee leaders:

We all had issues with some of the methodologies..., the inherent conflict of interest...that was not acceptable by any modern standards or not acceptable to us. I wouldn’t put up with that, our universities wouldn’t put up with that, and we don’t want our professional reputations damaged by conflicts that were put upon us.

Batjer and Ellenbogen so wanted to distance themselves from the NFL Committee of old that they forbade Dr. Elliot Pellman (former NFL Committee chair—1994 to 2007) from delivering opening remarks at the 2010 Concussion Summit.

During a May 2010 Congressional hearing, Representative Anthony Weiner (NY) addressed Batjer and Ellenbogen with the following comment: “[y]ou have years of an infected system here, [and] your job is...to mop [it] up.” A critical step in “mop[ping] up” the NFL Committee’s policy is to issue adequate warning to league players about the causal link between multiple NFL concussions and cognitive decline.

Recent Developments

On December 17, 2009, Cincinnati Bengals wide receiver Chris Henry, 26 years old, died in Charlotte, North Carolina after falling or jumping out of the back of a pick-up truck driven by his fiancée. Doctors Bennet Omalu and Julian Bailes performed the postmortem study on Henry’s brain. Omalu and Bailes discovered trademark signs of CTE in Henry’s brain tissue. Bailes stated that the head injuries Henry sustained as a result of the December 17, 2009 crash were not related to Henry’s CTE findings.

This is because trademark signs of CTE develop only over time.

Implications of the Chris Henry Findings

The significance of the Henry findings cannot be overstated. While Henry was the 22nd professional football player to be diagnosed with CTE, he represents the first player to have died with CTE while still active in the NFL. The fact that Henry developed CTE by his mid-20s raises the question of how many current NFL players might have the condition without knowing it. Bailes recalls his initial reaction to the Henry findings:

[a]s we got the results, my emotion was sad—it’s so profound.... I was surprised in a way because of his age and because he was not known as a concussion sufferer or a big hitter. Is there some lower threshold when you become at risk for this disease? I’m struggling to see if something can come out positive out of this.

The NFL responded to the Henry findings through its newest voices on NFL brain injuries, Dr. Jon Weingart and Dr. Constantine G. Lyketsos. Weingart and Lyketsos were not members of the NFL Committee. However, as consultants to the NFL, they helped direct the NFL’s 2010 Summit on Concussions held at Johns Hopkins. According to Weingart, extrapolating from a case like Henry’s would be a “big leap.” Weingart added that “[t]here’s not enough data...to think that [CTE] is something brewing in many players—there’s no data to support that statement.” Perhaps Weingart was not aware that 22 out of 23 professional football players tested for CTE were diagnosed with the condition.

Weingart’s Johns Hopkins colleague, Dr. Lyketsos, also attempted to raise ambiguity about the link between NFL head injuries and CTE. Lyketsos authored the following statement in the NFL’s 2010 Concussion Summit brochure: “[CTE is] now being reported in football players...with unknown frequency. These controversies have been picked up by the media with considerable hype around assertions of long-term harm to players from head injuries[.]”

NFL Committee co-chair, Dr. Ellenbogen, criticized the Johns Hopkins’ promotional brochure for minimizing evidence of brain damage in NFL players. Ellenbogen said that the frequency of reports of CTE in NFL players is not unknown: “[t]hey aren’t assertions or hype—they are facts.” CSTE diagnosed CTE in all 12 former college and NFL players tested for the condition. Again, Boston University’s Dr. Ann McKee emphasized that “[t]here is overwhelming evidence that [CTE] is the result of repeated sublethal brain trauma.”

NFL Finally Issues Strong Warning to League Players

On June 28, 2010, The New York Times hinted that the NFL was working with the NFLPA and Centers for Disease
Control and Prevention (CDC) on a concussion brochure worded far more strongly than the one given to players since 2007. Almost one month later, the NFL shocked the concussion study community by publicly conceding for the first time that multiple NFL head injuries can cause illnesses like “depression” and “early onset dementia.” The NFL’s new warning, made in the form of a poster, uses the following language in describing illnesses caused by multiple concussions:

“[T]raumatic brain injury can cause a wide range of short- or long term changes affecting thinking, sensation, language, or emotions.” These changes may lead to problems with memory and communication, personality changes, as well as depression and the early onset of dementia. Concussions and conditions resulting from repeated brain injury can change your life and your family’s life forever.

While this warning is at least five years overdue, the NFL deserves credit for finally embracing the findings of independent scientists. It is important to note that the term “CTE” does not appear in the league’s new poster/warning.

The NFL’s sea change in concussion policy is not yet complete. On April 30, 2010 an outside lawyer for the league, Lawrence L. Lamade, wrote a memo to the lead lawyer for the league’s and union’s joint disability plan, Douglas Ell, discrediting connections between football head trauma and cognitive decline. The letter, obtained by The New York Times, explained, “We can point to the current state of uncertainty in scientific and medical understanding” on the subject to deny players’ claims that their neurological impairments are related to football.

By “scientific uncertainty,” Lamade is likely referring to the current debate between NFL Committee doctors (Batjer and Ellenbogen) and NFL consultants (Weingart and Lyketsos). Weingart maintains that the relationship between multiple head impacts and CTE is not a proven cause and effect. Rather, he defines the relationship as “a correlation.” Weingart’s logic raises a statistical comparison to the national population. Studies performed by the nation’s foremost scientists confirm a causal link between multiple NFL concussions and later-life cognitive decline. The NFL Committee has been aware of these studies since at least 2005. Despite being on constructive and actual notice of such studies, the NFL Committee failed to issue adequate warning to league players from 2005 to 2010. NFL alumni might target the league with tobacco-like failure to warn claims in order to recover for their cognitive injuries. However, the NFL has a number of persuasive defenses at its disposal.

At the October 2009 Congressional hearing, a Congressman asked Dr. Ann McKee (Boston University—CSTE) whether professional football was too dangerous in light of the cognitive injuries caused by multiple head impacts. McKee answered this billion dollar question without blinking an eye. She calmly stated that cigarette smokers did not stop smoking as a result of tobacco litigation. Rather, smokers were faced with a conspicuous warning every time they reached for a cigarette.

Sean Morey is a Brown University graduate, recently retired NFL player, and co-chairman of the NFLPA’s brain-injury committee. Morey’s sentiments succinctly summarize the central message of this article: “[w]e have to educate the players…. The players have to have the ability to have informed consent.” The NFL’s recently issued poster does not specifically warn players against the risk of incurring CTE. However, the poster provides players with enough facts to make an informed decision about illnesses caused by multiple head injuries.

Endnotes

d&tag=related;photovideo (last visited Oct. 6, 2010).
6. See Cantu, supra note 5, at 223.
7. Id.
8. Id.
9. Id. at 223-24.
10. Id.
11. Id. at 223.
12. See Laskas, supra note 1.
13. Id.
14. Id.
15. Id.
16. Id.
18. Id. at 719-722.
23. Id. (emphasis added).
31. Id.
32. See, e.g., Alan Schwarz, Concussion Expert’s Removal is Sought, N.Y. TIMES, Nov. 20, 2009 (explaining that the NFLPA called for the removal of Dr. Casson as co-chair of the NFL Committee due to his efforts to discredit independent and league-sponsored evidence linking N.F.L. careers with heightened risk for dementia and cognitive decline). See also Alan Schwarz, N.F.L. Head Injury Study Leaders Quit, N.Y. TIMES, Nov. 24, 2009, at B11.
33. See, e.g., Alan Schwarz, N.F.L. Acknowledges Long-Term Concussion Effects, N.Y. TIMES, Dec. 20, 2009, at D1 (noting that league spokesman Greg Aiello communicated that the NFL could donate $1 million or more to CSTE). See also Alan Schwarz, N.F.L. Gives $1 Million to Brain Researchers, N.Y. TIMES, Apr. 21, 2009, at B14 (confirming the league’s official donation of $1 million to further CSTE’s research efforts).
34. See Schwarz, N.F.L. Acknowledges Long-Term Concussion Effects, supra note 33 (emphasis added).
38. See infra note 102.
41. Id.
42. See, e.g., RESTATEMENT (SECOND) OF TORTS § 314 (1965).
43. See id., cmt. c.
44. See, e.g., N. Am. Soccer League v. NFL, 670 F.2d 1249, 1252 (2d Cir. 1982).
45. See, e.g., RESTATEMENT (THIRD) OF TORTS § 42 (2005).
47. See RESTATEMENT (THIRD) OF TORTS § 26 (2002).
48. Id.
49. See Les Carpenter, Compromise Reigns at Summit on Concussions, WASH. POST, June 20, 2007, at E01.
52. Peterson v. Gray, 628 A.2d 244, 246 (N.H. 1993) (defendant’s tortious conduct must be a cause of harm, not “the” cause); see also Dedes v. Asch, 521 N.W.2d 488, 490-492 (Mich. 1994) (rejecting argument that statutory language, “the proximate cause,” meant that defendant’s conduct must be the only cause of harm); David A. Fischer, Causation in Fact on Omission Cases, 1992 UTAH L. REV. 1335, 1338 (1992) (“Clearly, however, there can never be a single cause of an event. A very complex set of circumstances must be present for any effect to occur.”).
56. See, e.g., Prosser, Law of Torts, 3rd ed.; see also RESTATEMENT (SECOND) OF TORTS § 466 (1965).
58. See Dan Rather Interview with Brian Westbrook, Brian Westbrook on Concussions and His Future in the NFL: Deleted Scenes, available at http://www.youtube.com/watch?v=W3kYWD_LEIA (last visited Oct. 8, 2010).
63. Id.
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