

# Smart's California Insurance Report

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## Pro Football Head Trauma Claims May be Heading for California

National Football League teams and their insurers are bracing for a wave of new workers' compensation claims filed by players taking advantage of California laws that have made the state a haven for injured professional athletes — no matter where a team is domiciled.

California requires a professional athlete to have played only one game within state borders to file a full claim for cumulative injuries. That means the

state is a particularly attractive forum for retired NFL players whose teams are domiciled in states such as Louisiana, where cumulative injuries are not compensable.

*"The NFL is being bombarded with cumulative trauma claims."* — New Orleans Saints

Division of Workers' Compensation records show there are currently more than 900 active injury claims filed by former players against the 29 NFL teams domiciled outside California (see table).

The claimants include Hall of Famers Earl Campbell, Carl Eller, Bruce and John Randle.

The vast majority of claims to date have involved orthopedic injuries to such body parts as knees and shoulders, with claimants routinely receiving lump-sum settlements of about \$100,000 to

\$200,000.

What may be coming is a flood of

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## Poizner Lukewarm on AZ Approach

Would Insurance Commissioner Steve Poizner consider an Arizona-type approach to illegal aliens, should he be elected governor?

Not necessarily.

Commissioner Poizner, who has made illegal immigration a key element of his campaign platform, commented that he'd have to wait and see how the Arizona law pans out before giving such a plan his stamp of approval.

The commissioner said, "We will watch closely to see how the law in Arizona is implemented and whether it produces positive results."

Before asking police to request the documents of suspected illegal immigrants, he says he'd rather try other measures first: cutting taxpayer-funded benefits, employing state resources to help secure the borders, putting an end to 'sanctuary cities,' and revoking the licenses of businesses "who knowingly hire illegal aliens."

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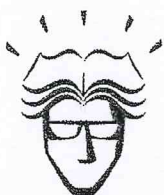
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claims by former players for dementia caused by head trauma sustained during their careers. Dementia claims would be far more expensive than those for orthopedic injuries — an additional liability for teams and their insurers of perhaps \$100 million or more.

"I would say we're dealing with a probable situation here," one neurologist recently told *The New York Times*. "You've got someone with the nature of their type of work you can reasonably say they're at greater risk for these types of events."

Some teams have tried to limit their exposure in California. The Cincinnati Bengals, for example, include language in their contracts requiring players to file claims only in Ohio — where cumulative trauma is not compensable — but those provisions have been challenged in court.

In perhaps the most radical step so far, the Super Bowl champion New Orleans Saints have lobbied for a Louisiana law that would prohibit their players from filing claims in liberal states. "The National Football League is being bombarded with cumulative trauma claims going back 35 or 40 years," Saints insurance adviser Gary Delahoussaye said. "These claims average \$150,000 to \$250,000. We are not talking about chump change here."

The one-game requirement for cumulative injury claims stems from California's protections for out-of-state workers such as truckers or flight attendants who are injured while passing through the state. Pro athletes have also chosen California as a forum for comp claims because its statute of limitations

runs from the date that an employer formally notifies an employee of the employee's right to workers' compensation rather than from the date of injury. Many NFL teams have not advised players of their rights when they were injured.

State Sen. Quentin Kopp introduced a bill to close the loophole in February 1997. SB 541 exempted any athlete employed by the four major U.S. sports leagues from the workers' comp protections of California law "unless the employee suffers a specific injury arising out of and in the course of that employment while in this state." The benefits of the athlete's collective bargaining agreement with his employer or the comp laws of the state in which his

*"We are not talking about chump change here." — New Orleans Saints*

team is domiciled would be the exclusive remedy for any other injury.

Supporters of the bill argued that the existing system encouraged forum-shopping and burdened non-California clubs with the expense of litigating in a foreign jurisdiction against players whose ties to California are tenuous. They also said athletes assumed the risk of cumulative injury in return for their high wages and generous benefits. But amid strong opposition from labor unions including the National Football League Players Association (NFLPA), SB 541 was defeated in the Senate Industrial Relations Committee on a 3-2 vote in January 1998.

With the loophole intact, retired NFL players have been flocking to

California in increasing numbers to file claims. "The last three years we've seen a tremendous spike in claims, and in particular the last two," Todd Davis, who oversees workers' compensation for the St. Louis Rams, told *The New York Times*. The Rams' workers' comp policy covering just California costs about \$1 million a year, he said.

Forty New Orleans Saints players now have active claims in California — compared to only five in 2004. Of those claims, four show a date of injury before 1990, the oldest being one filed by running back Mike Strachan in 1980. Other Saints claimants include running back Campbell, wide receiver Eric Martin and offensive lineman Kyle Turley.

Leroy Thompson, a running back for four non-California teams, recently accepted a \$120,000 lump sum to settle a claim for cumulative injuries to his "head, neck, back, spine, shoulder, hips, elbows, wrists, hands, legs, knees, ankles, feet" and other body parts.

Such cumulative injury claims have persuaded the new version of the Arena Football League to avoid California. The league's original incarnation before it ceased operations in 2008 included the Los Angeles Avengers and the San Jose SaberCats.

Now a claim filed earlier this month by the wife of former NFL lineman Ralph Wenzel at the Van Nuys office of the Workers' Compensation Appeals Board could set a precedent for dementia liability.

Dr. Eleanor Perfetto says her husband's early-onset dementia at age 67 is related to his career in the pro

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NFL. Continued

football trenches from 1966 to 1973. Her lawyer believes football head trauma, like asbestos exposure, can take 20 to 40 years to manifest itself. "Medical science has recently put those puzzle pieces together — that hitting your head over and over on the football field causes certain conditions," G. Ronald Feenberg of Rose Klein & Marias in Los Angeles said.

Researchers at the University of North Carolina, Boston University and the University of West Virginia have linked pro football careers and concussions to depression, mental decline, Alzheimer's disease and chronic traumatic encephalopathy. "What we have seen in all of these players is a trauma-induced disease," said a Boston University neurologist. "It is caused by trauma. And I don't think there is any question about what has caused the disease in these players."

Wenzel's doctors diagnosed a mild cognitive impairment in 1999 that progressed to dementia within a few years. He is now living in an assisted-living facility and his wife has become an outspoken advocate for NFL players in the dementia debate. "I think the NFL really needs to step up and take a very proactive role," Dr. Perfetto told The PBS Newshour.

Medical costs have run about \$100,000 a year since Wenzel was institutionalized in 2006. If he lives into his mid-70s, the total would reach \$1 million.

Under California law, Wenzel will have to present substantial medical evidence that his dementia is related to his employment in the NFL. "Absolutely this was work-related for Ralph," Perfetto said. "There's scientific evidence that these players who had head trauma every day in games and practice, and there are long-term neurological ramifications."

But the insurers for Wenzel's former employers — the Pittsburgh Steelers and the San Diego Chargers — are likely to

argue that there are other causes for his dementia, such as family history. In addition, population studies have estimated that roughly 1.5 percent of American men aged 65 to 69 have been diagnosed with dementia.

Meanwhile, in Louisiana the state Legislature is scheduled to debate the anti-forum-shopping bill next week. **HB 1097**, which was authored by Rep. Cameron Henry, originally applied only to professional athletes but it was amended to apply to any employee "who has been hired or is regularly employed in Louisiana" because of concerns that isolating one class of employees would be discriminatory.

At a hearing before the House Committee on Labor and Industrial Relations, former Saints tight end Ernie Conwell — who has undergone almost 20 surgeries for leg, knee and spinal injuries — spoke out against the bill. The Saints and other NFL clubs "are looking to hamstring players" with state laws limiting workers' compensation benefits, he complained.

One committee member suggested that the workers' comp venue issue should be

sorted out in the next collective bargaining agreement between NFL owners and players. But NFL representative Dennis Curran said bargaining agreements "come and go, so a state law is needed."

During the debate over **SB 541** in California, the NFLPA advocated addressing the problem through collective bargaining and also argued that eliminating most benefits for cumulative injuries would be offensive because NFL players are routinely subjected to violent physical contact and continuous trauma during games and practice sessions, and they regularly play in spite of painful injuries.

At that time, the league reported a total of 780 comp claims filed by 460 former or current players. Non-California teams accounted for 474 of the claims and 17 percent of the players filed claims in California exclusively against non-California teams.

The table on Page 8, compiled from DWC records, shows claims pending in California against non-California teams.



Head trauma incidents among NFL players may become a major workers' comp issue.





### Pro Football Workers' Comp Claims, by Team

| Team                 | # of Claims in California | Claimants Include:                              |
|----------------------|---------------------------|---|
| Arizona Cardinals    | 33                        | Neil Lomax                                      |
| Atlanta Falcons      | 31                        | Patrick Bates; Erric Pegram                     |
| Baltimore Ravens     | 25                        | Antonio Langham                                 |
| Buffalo Bills        | 29                        | Joe Cribbs; Antowain Smith                      |
| Carolina Panthers    | 20                        | Christian Fauria; Lawyer Tillman                |
| Chicago Bears        | 21                        | Curtis Conway; Erik Kramer                      |
| Cincinnati Bengals   | 30                        | Tony McGee; Reinard Wilson                      |
| Cleveland Browns     | 19                        | Errict Rhett; Lorenzo White                     |
| Dallas Cowboys       | 40                        | Tony Casillas; Kelvin Martin; Nate Newton       |
| Denver Broncos       | 50                        | Terrell Davis; Bill Romanowski; Alfred Williams |
| Detroit Lions        | 44                        | Willie Green; James Jones; Brett Perriman       |
| Green Bay Packers    | 42                        | Mark Clayton; Harry Galbreath                   |
| Houston Texans       | 17                        | Michael Boulware                                |
| Indianapolis Colts   | 28                        | Zack Crockett; Sean Dawkins                     |
| Jacksonville Jaguars | 27                        | Marco Coleman; Keenan McCardell                 |
| Kansas City Chiefs   | 50                        | Bill Maas; Chester McGlockton                   |
| Miami Dolphins       | 45                        | Mark Duper; Jim Jensen; Uwe von Schamann        |
| Minnesota Vikings    | 34                        | Anthony Carter; Carl Eller; John Randle         |
| New England Patriots | 39                        | Tedy Bruschi; Raymond Clayborn; Rodney Harrison |
| New Orleans Saints   | 42                        | Earl Campbell; Eric Martin, Kyle Turley         |
| New York Giants      | 37                        | Tony Galbreath; Tyrone Wheatley                 |
| New York Jets        | 31                        | Kerry Glenn; Eric Green                         |
| Philadelphia Eagles  | 30                        | Fred Barnett; Dorsey Levens; Roy Green          |
| Pittsburgh Steelers  | 23                        | Dermontti Dawson; Barry Foster                  |
| Seattle Seahawks     | 50                        | Brian Blades; Reggie Tongue                     |
| St. Louis Rams       | 7                         | Antonio Newson                                  |
| Tampa Bay Buccaneers | 38                        | Derrick Brooks; Alonzo Highsmith                |
| Tennessee Titans     | 14                        | Bruce Matthews; Chris Sanders                   |
| Washington Redskins  | 17                        | Tre Johnson; Alvin Walton                       |