

## APPENDIX H \ Medical Malpractice Cases Against Club Doctors<sup>a</sup>

### 1. *Butkus v. Chicago Bears, Fox*

In 1976, former Chicago Bears linebacker and Hall of Famer Dick Butkus settled a lawsuit against the Bears and their doctor Theodore Fox for \$600,000 after Butkus alleged that Fox negligently and repeatedly injected Butkus' knee with painkillers and refused to cooperate with Butkus' efforts to obtain a second opinion following a 1971 surgery.<sup>1</sup>

### 2. *Siani v. Oakland Raiders, Rosenfeld*

In 1980, former Oakland Raiders wide receiver Mike Siani settled a lawsuit against the Raiders and Raiders doctor Robert Rosenfeld for \$120,000.<sup>2</sup> Siani alleged that Rosenfeld repeatedly injected Siani's foot with painkillers to numb Siani's broken toes which eventually caused the removal of the bones from his toes.<sup>3</sup>

### 3. *Hendy v. San Diego Chargers, Losse*<sup>4</sup>

In 1988, former San Diego Chargers defensive back John Hendy sued the Chargers and club doctor Gary Losse alleging that: (1) the Chargers were negligent in their hiring and retention of Losse; (2) Losse intentionally and negligently withheld medical information from Hendy concerning the extent of Hendy's knee injury; and, (3) Losse misrepresented to Hendy that he was fit to play.<sup>5</sup> The United States Court of Appeals for the Ninth Circuit held that the Chargers' hiring obligations and Losse's duty to disclose were not controlled by the CBA and thus not preempted.<sup>6</sup> The Ninth Circuit thus remanded the case to state court for consideration of the state tort law claims.<sup>7</sup>

The case eventually reached the Supreme Court of California.<sup>8</sup> Rephrased as a "medical malpractice" claim, the Supreme Court of California held that Hendy's claims were barred by California's workers' compensation statutes.<sup>9</sup> In so doing, the Supreme Court of California relied on Hendy's allegation that Losse was an employee of the Chargers and that Hendy had not alleged any facts which

would have permitted him to amend his complaint to allege that Losse was instead an independent contractor.<sup>10</sup>

Hendy's claims against the Chargers were found to be preempted by the Labor Management Relations Act and dismissed.<sup>11</sup>

### 4. *Krueger v. San Francisco 49ers, Taylor, Millburn*

In 1988, former San Francisco 49ers offensive lineman Charlie Krueger settled a lawsuit against the 49ers and the 49ers' doctors Lloyd Taylor and Lloyd Millburn for approximately \$1.5 million.<sup>12</sup> Krueger alleged that Taylor injected Krueger's knee with painkilling injections dozens of times a season between a 1963 knee surgery and the end of Krueger's career in 1973 without informing him of the true condition of his knee.<sup>13</sup>

### 5. *Easley v. Seattle Seahawks, Scranton, Whitesel, Whitehall Laboratories*

In 1989, former Seattle Seahawks safety Kenny Easley sued the Seahawks, the Seahawks doctor Pierce Scranton, athletic trainer James Whitesel and Whitehall Laboratories, a maker of Advil.<sup>14</sup> Easley alleged that his use of Advil, as prescribed by the club doctors, caused him kidney damage which the doctors failed to treat or disclose and ultimately necessitated a transplant.<sup>15</sup> Easley settled the case for an undisclosed sum in 1991.<sup>16</sup>

### 6. *Daniels v. Seattle Seahawks, Auld*

In 1992, then-Seattle Seahawk David Daniels was treated by the Seahawks' orthopedist, Dr. Merrit Auld, for an apparent groin strain. Daniels was unable to play due to the pain and it was later determined he had a fractured rectus femoris. Daniels alleged he was never able to fully recover from his injury, contributing to the end of his career. Daniels sued Auld for medical malpractice. A Washington state court held that because Auld, like Daniels, was an employee of the Seahawks, Daniels' lawsuit was barred by Washington's workers' compensation laws.<sup>17</sup>

The result of Daniels' claims against the Seahawks is unclear.

<sup>a</sup> The cases listed here were found through searching legal and news databases or otherwise discovered during our research. This list should not be considered an exhaustive list of medical malpractice cases by NFL players against club doctors. For example, the list does not include non-published case dispositions which were not reported in the news. Additionally, we know of one case pending as of the date of publication brought by former Miami Dolphins wide receiver O.J. McDuffie. See *McDuffie v. Mills*, Docket No. 2002-014638-CA-01 (Fla. Cir. Ct.).

**7. Novak v. Lucie**

In 1999, former Jacksonville Jaguars offensive lineman Jeff Novak sued the Jaguars' doctor Stephen Lucie alleging Lucie improperly operated on him in the locker room, a non-sterile environment, resulting in a hematoma and infection in his leg.<sup>18</sup> Lucie settled the case for \$2.2 million.<sup>19</sup>

**8. Hoge v. Munsell**

In 2000, former Chicago Bears running back Merrill Hoge won a \$1.55 million jury award in a lawsuit against former Bears' doctor John Munsell.<sup>20</sup> Hoge alleged that Munsell failed to properly treat Hoge's concussions and negligently cleared Hoge to play, resulting in further injury and Hoge's forced retirement.<sup>21</sup>

**9. Stringer v. Minnesota Vikings, et al.**

In 2001, Minnesota Vikings Pro Bowl offensive tackle Korey Stringer died of complications from heat stroke after collapsing during training camp.<sup>22</sup> Stringer's family later sued the Vikings, Vikings coaches and affiliated doctors, the NFL and Riddell. Stringer's family reached undisclosed settlements with one of the three doctors involved, David Knowles,<sup>23</sup> after a Minnesota trial court determined that Dr. Knowles was an independent contractor.<sup>24</sup> The claims against the two other Vikings doctors (Sheldon Burns and David Fischer) were dismissed on the ground that they were employees of the Vikings and the claims were thus barred by workers' compensation laws.<sup>25</sup>

In 2003, a Minnesota trial court granted summary judgment<sup>b</sup> in favor of the Vikings and its coaches.<sup>26</sup> The *Stringer* case is discussed in greater detail in Chapter 3: Athletic Trainers, Chapter 7: The NFL and NFLPA, and Chapter 9: Coaches.

**10. Wilson v. Prusmack**

In 2008, former Denver Broncos linebacker Al Wilson sued the Broncos' Club doctor, Chad Prusmack, alleging that Prusmack failed to treat properly a neck injury, requiring Wilson's retirement.<sup>27</sup> Wilson commenced the action approximately one month after an arbitrator ruled his grievance against the Broncos concerning the same issue was time-barred.<sup>28</sup> In 2011, a jury found that Prusmack was not negligent.<sup>29</sup>

**11. Jurevicius v. Cleveland Browns, Figler, Miniaci<sup>30</sup>**

In 2009, Cleveland Browns wide receiver Joe Jurevicius sued the Browns and Browns' doctors (Richard Figler and Anthony Miniaci) in Ohio state court, alleging causes of

action for negligence, negligent misrepresentation, fraud, constructive fraud, breach of fiduciary duty, common law intentional tort and statutory intentional tort against the Browns. Jurevicius generally alleged that the Browns and their doctors failed to take proper precautions to prevent staph infections and lied to players about what steps the club had taken to prevent infections.<sup>31</sup> The Browns and the doctors attempted to remove the case to federal court, arguing that Jurevicius' claims were barred by the CBA.<sup>32</sup> In a March 31, 2010 decision, the United States District Court for the Northern District of Ohio determined that Jurevicius' negligence, negligent misrepresentation, fraud, common law intentional tort and statutory intentional tort claims were not preempted while the constructive fraud and breach of fiduciary duty claims were. Concerning the doctors, the Court found that the CBA did not address the alleged obligations of club doctors to warn players about the conditions at a medical facility and thus the claims were not preempted.<sup>33</sup> The lawsuit settled a few months after the Court's decision.<sup>34</sup>

**12. Jones v. Gill, Zarins**

In 2009, former New England Patriots defensive back Tebucky Jones sued Patriots doctors Tom Gill and Bertram Zarins alleging they failed to tell him that he had suffered a tear in his knee ligament during a 2006 game.<sup>35</sup> Jones claimed that the doctors' failure to inform him of his condition delayed proper treatment and caused further problems which ultimately caused the end of his career.<sup>36</sup> A jury awarded Jones \$3.75 million but the verdict was overturned by a Massachusetts judge for reasons which are unclear.<sup>37</sup>

**13. Rolle v. Brigham**

In 2014, former Baltimore Ravens cornerback Samari Rolle was awarded \$650,000 in a medical malpractice lawsuit against then-Carolina Panthers Club doctor Craig Brigham and his OrthoCarolina healthcare practice.<sup>38</sup> In September 2008, Rolle was referred to Brigham by the Ravens' doctors for spinal surgery, an area of Brigham's expertise.<sup>39</sup> Rolle alleged that Brigham cleared Rolle to return to play too soon.<sup>40</sup> Rolle required a second surgery by Andrew Dossett, the Dallas Cowboys' Spine Consultant, which, although performed properly, forced Rolle to retire.<sup>41</sup> Dossett, a member of the NFL Physicians Society, testified against Brigham, also a member of the NFL Physicians Society, at trial.<sup>42</sup>

b Summary judgment is "[a] judgment granted on a claim or defense about which there is no genuine issue of material fact and on which the movant is entitled to prevail as a matter of law." Black's Law Dictionary (9th ed. 2009).

## Endnotes

- 1 Fred Mitchell, *Butkus Recalls Battles with Docs*, Chic. Trib., Nov. 1, 2007, available at 2007 WLNR 21518086; Dick Butkus & Pat Smith, Butkus—Flesh and Blood, 227–30, 257,279–95 (1997) (describing Fox’s treatment of Butkus’ knee conditions and lawsuit).
- 2 Angelo Cataldi & Glen Macnow, *Shots for the Pain Led to Permanent Damage*, Phil. Inquirer, Jun. 21, 1989, [http://articles.philly.com/1989-06-21/sports/26105705\\_1\\_injections-cortisone-robert-rosenfeld](http://articles.philly.com/1989-06-21/sports/26105705_1_injections-cortisone-robert-rosenfeld), archived at <http://perma.cc/LFL5-2N72>.
- 3 *Id.*
- 4 F.2d 1470 (9th Cir. 1991).
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 P.2d 1, 54 Cal.3d 723 (Cal. 1991).
- 9 *Id.*
- 10 *Id.* at 743.
- 11 See *Hendy v. Losse*, 274 Cal.Rptr. 31, 33 (Cal. App. 1990).
- 12 Jennifer Lynn Woodlief, *The Trouble with Charlie: Fraudulent Concealment of Medical Information in Professional Football*, 9 SPG Ent. & Sports L. 3, 3 (1991). See also *Krueger v. San Francisco Forty Niners*, 234 Cal.Rptr. 579 (Cal.App. 1987) (ordering judgment in favor of Krueger and remanding for further proceedings).
- 13 *Id.*
- 14 Tom Farrey, *Easley Settles with Doctors, Drug Maker*, Seattle Times, Sept. 18, 1991, available at 1991 WLNR 984467; Glenn Nelson, *Courting Danger Krueger’s Advice to Easley: Put Up Fight*, Seattle Times, May 31, 1989, available at 1989 WLNR 654489.
- 15 *Id.*
- 16 Tom Farrey, *Easley Settles with Doctors, Drug Maker*, Seattle Times, Sept. 18, 1991, available at 1991 WLNR 984467.
- 17 See *Daniels v. Seattle Seahawks*, 92 Wash.App. 576 (Wash. Ct. App. 1998).
- 18 Tom Farrey, *At What Price a Player’s Pain?* ESPN (updated Nov. 4, 2002, 10:44 AM), <http://espn.go.com/gen/s/2002/0912/1431095.html>, archived at <http://perma.cc/TRN5-GQE6>.
- 19 Jason Cole, *Lawsuits Are Bad Medicine for Pro Sports Doctors*, Wash. Post, Apr. 27, 2003, available at 2003 WLNR 19263311.
- 20 Mark Fainaru-Wada & Steve Fainaru, *League of Denial: The NFL, Concussions, and the Battle for Truth* 121 (2013).
- 21 See *id.* at 41–46 (discussing treatment provided by Munsell to Hoge).
- 22 *Stringer v. Minnesota Vikings Football Club, LLC*, 705 N.W.2d 746, 748 (Minn. 2005).
- 23 See *Stringer v. Minnesota Vikings Football Club, LLC*, No. 02-415, 2003 WL 25766738 (Minn. Dist. Ct. Dec. 8, 2003) (mentioning settlement with W. David Knowles, MD and Mankato Clinic, Ltd.).
- 24 Pam Louwagie & Kevin Seifert, *Stringer Claims Against Vikings Dismissed*, Newspaper—Twin Cities (Minneapolis), Apr. 26, 2003, available at 2003 WLNR 14250471.
- 25 See Memorandum and Order, *Stringer v. Minn. Vikings Football Club, No. 02-415*, 20–23 (Minn. Dist. Ct. Apr. 25, 2003).
- 26 See Memorandum and Order, *Stringer v. Minnesota Vikings Football Club, LLC*, No. 02-415 (Minn. Dist. Ct. Apr. 25, 2003); *Stringer v. Minnesota Vikings Football Club, LLC*, No. 02-415, 2003 WL 25766738 (Minn. Dist. Ct. Dec. 8, 2003) (discussing Court’s prior order). Following Stringer’s death, the NFL now issues an annual memorandum to NFL Clubs warning them about the risks of players overheating during training camp. See, e.g., Memorandum from NFL Injury and Safety Panel (Elliott Hershman, M.D., Chairman), to General Managers, Head Coaches, Team Physicians, and Team Athletic Trainers re: 2014 Training Camps—Adverse Weather Conditions (July 11, 2014) (on file with author).
- 27 Felisa Cardona, *Jury finds doctor not negligent in advice to former Bronco Al Wilson*, Denver Post, June 17, 2011, [http://www.denverpost.com/ci\\_18296823](http://www.denverpost.com/ci_18296823), archived at <http://perma.cc/T4QV-7SBD>; *Wilson v. Prusmack*, Case # 2008CV-010376 (Col. Dist. Ct. 2008).
- 28 (Townley, Arb. Oct. 29, 2008), available as Exhibit 16 to the Declaration of Dennis L. Curran in Support of Defendant National Football League’s Motion to Dismiss Second Amended Complaint (Section 301 Preemption), *Dent v. Nat’l Football League*, 14-cv-2324 (N.D. Cal. Sep. 24, 2014), ECF No. 73.
- 29 Cardona *supra* note 27.
- 30 *Jurevicius v. Cleveland Browns Football Co. LLC*, 09-cv-1803, 2010 WL 8461220 (N.D. Ohio Mar. 31, 2010).
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 *Jurevicius Settles Lawsuit with the Browns*, ESPN (June 15, 2010, 6:37 PM), <http://sports.espn.go.com/nfl/news/story?id=5289486>, archived at <http://perma.cc/JJH7-CR37>.
- 35 Jessica Farge, *Jones Claims Pats Docs Cut Short Career*, Bos. Herald, Aug. 9, 2009, available at 2009 WLNR 15475294.
- 36 *Id.*
- 37 Bob Hohler, *Lawsuit Won’t Change Jones’s Loyalties*, Bos. Globe, Feb. 2, 2012, available at 2012 WLNR 2249010.
- 38 Erin Bacon, *Former NFL Player Wins Lawsuit Against Orthocarlina for \$650,000*, Charlotte Observer, Sept. 5, 2014, <http://www.charlotteobserver.com/2014/09/05/5152485/former-nfl-player-wins-lawsuit.html#.VFfaBWe9b2o>, archived at <http://perma.cc/98V7-4ENF>. Additional information concerning Rolle’s case was gathered from a November 3, 2014 interview with Gary Fox of Stewart Tilghman Fox Bianchi & Cain, P.A. in Miami, Florida. Fox represented Rolle in the lawsuit. The case did not include any motions to dismiss or for summary judgment. Thus, there were no court orders on the substantive legal issues discussed in this Report.
- 39 *Id.*
- 40 *Id.*
- 41 Interview with Fox, *supra* note 38.
- 42 *Id.*