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COMMUNICATIONS

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MORE TO THE STORY...

The NFL released today the following response by **JOE LOCKHART**, NFL Executive Vice President—Communications, to the *New York Times* story:

Concussions and their potential long-term effects are a serious public health problem and an important issue facing football, many other sports and our military. For that reason, the NFL has been on the front lines supporting research, changing the rules of the sport, engaging in partnerships with the military, NCAA, CDC and others, advocating for sport safety legislation and promoting concussion awareness all in an effort to make sports safer. And we will not sit on the sidelines in the face of irresponsible reporting on these important issues.

Today's *New York Times* story on the National Football League is contradicted by clear facts that refute both the thesis of the story and each of its allegations. As the *Times* itself states: "The *Times* has found no direct evidence that the league took its strategy from Big Tobacco." Despite that concession, the paper published pages of false innuendo and sheer speculation based on a mere handful of anecdotal and cursory references, twisted and contorted out of context, from a smattering of documents out of millions found on the tobacco litigation website.

The studies that are the focus of the *Times*' story used data collected between 1996 – 2001. These studies were necessarily preliminary and acknowledged that much more research was needed. Since that time, the NFL has been at the forefront of promoting and funding independent research on these complex issues. Further, the data from the Mild Traumatic Brain Injury (MTBI) Committee studies have not been used in any way by the current Head, Neck and Spine Committee in its research on player health and safety. All current policies relating to player medical care and the treatment of concussions have been carefully developed in conjunction with independent experts on our medical committees, the NFLPA, and leading bodies such as the Centers for Disease Control and Prevention (CDC).

Since being contacted about the story, the NFL provided the reporters with detailed factual evidence (running nearly 50 pages), substantively rebutting the issues raised by the paper's reporters. That information—the facts as opposed to the reporters' predetermined narrative—unequivocally refuted every accusation levied against the NFL and provided detailed, substantive responses to the reporters' questions.

Because the *Times* chose to publish despite the facts, we present them here:

THE NFL, THROUGH ITS MTBI COMMITTEE, SUPPRESSED CONCUSSION DATA AND DISTORTED CONCUSSION RESEARCH AND STANDS BY THAT RESEARCH TODAY

Research “Allegation” 1: For the last 13 years, the League has relied on the MTBI Committee research.

The Facts Prove Otherwise: The data from the MTBI Committee studies have not been used in any way by the current Head, Neck and Spine Committee in its research on player health and safety. That information is not new; in fact, the *New York Times* reported extensively about it in 2010. All of the current policies relating to player medical care and the treatment of concussions have been carefully developed in conjunction with independent experts on our medical committees, the NFLPA, and leading bodies such as the CDC. The studies that are the focus of the *Times*’ story were necessarily preliminary and acknowledged that more research was necessary. Since that time, the NFL has been at the forefront of promoting and funding independent research on these complex issues.

Research “Allegation” 2: The League suppressed data—more than 100 documented concussions that took place in the NFL from 1996-2001—and failed to disclose the incomplete nature of the data collection underlying the MTBI Committee’s studies.

The Facts Prove Otherwise: The *Times* misunderstood and misconstrued the studies and their methodology. Certain parts of the Committee’s published MTBI studies were based on a data set that drew from two separate sources—the NFL Injury Surveillance System that collected simple data regarding concussions, and a set of forms that the teams were asked to provide to the League that provided additional factual detail about each such concussion. All 30 clubs reported concussions between 1996 – 2001 through the NFL’s injury surveillance system, although one or more clubs did not report concussions in a particular season. The MTBI studies made clear that the data set they used comprised concussive events where *both* sets of information were provided because the information from the Injury Surveillance System alone was not sufficient to provide the information necessary for the study. As a result, the data set on which the MTBI studies were based was by definition smaller than the data set from the surveillance system alone because there were instances where a concussion event was reported through the surveillance system but the team did *not* provide the necessary initial and/or follow-up forms.

The studies themselves expressly noted the limitations in their work and never claimed to be based on every concussion that was reported or that occurred. The fact that not all concussions were reported is consistent with the fact that reporting was strongly encouraged by the League *but not mandated*, as the documents we provided to the *Times* showed. We nevertheless agree that these limitations could have been more clearly stated. But that alone does not give any credence to the *Times*’ claims.

The NFL provided the *Times* with extensive evidence demonstrating these facts, including the following examples of limitations from the studies themselves.

- “As with all research, there are limitations to this study.” Concussion in Professional Football: Repeat Injuries—Part 4, October 2004.
- The studies clearly acknowledge that they did not capture every concussion that occurred during the time period. “Despite efforts to ensure a standardized definition of MTBI and to increase the team physicians’ and athletic trainers’ knowledge of MTBI, it remains unclear whether the project identified all cases of MTBI during the study period.” Concussion in Professional Football: Epidemiological Features of Game Injuries and Review of the Literature: Part 3, January 2004.
- The studies acknowledge that not all clubs submitted complete data forms. “When an initial evaluation form was submitted but the follow up visit form was not, committee members contacted team athletic trainers and doctors directly to remind them to

submit the follow up forms.” Concussion in Professional Football: Repeat Injuries—Part 4, October 2004; Concussion in Professional Football: Injuries Involving 7 or More Days Out – Part 5, November 2004.

- With one exception, the studies consistently describe participation as encouraged, and not mandatory. We are not aware of any communications from the Commissioner’s office that made the reporting mandatory. The reporting of the clubs and limitations noted in the studies demonstrate that participation could not have been mandatory: “The NFL, through the Commissioner, strongly encouraged all team physicians to complete and return the project's forms whenever they examined players with head injuries.” Concussion in Professional Football: Epidemiological Features of Game Injuries and Review of the Literature: Part 3, January 2004; see *also* Concussion in Professional Football: Repeat Injuries—Part 4, October 2004; Concussion in Professional Football: Injuries Involving 7 or More Days Out – Part 5, November 2004.
- Furthermore, “[t]he committee did not distribute uniform testing instruments to the team physicians and instead left the assessment of these symptoms to the discretion of individual team physicians.” Concussion in Professional Football: Epidemiological Features of Game Injuries and Review of the Literature: Part 3, January 2004.
- The studies acknowledge that each physician or athletic trainer evaluated head injuries differently based on the then-current nascent understanding of Mild Traumatic Brain Injuries. “There was no uniform method of evaluation of concussion in this study, which will give rise to variability in assessments among the 30 teams and, on occasion, within the same team.” Concussion in Professional Football: Injuries Involving 7 or More Days Out – Part 5, November 2004.
- In addition, “[t]he well-known reluctance of professional athletes to report their injuries to medical personnel might have prevented the reporting of some MTBI cases.” Concussion in Professional Football: Epidemiological Features of Game Injuries and Review of the Literature: Part 3, January 2004.
- The studies note that MTBI symptoms were often short lived or transient and that, in addition to lack of player cooperation, there may have been unrecognized concussions. “[I]t is possible that a player could have sustained an MTBI but not have been included because of a lack of cooperation or a very transient and unrecognized episode.” Concussion in Professional Football: Injuries Involving 7 or More Days Out – Part 5, November 2004.

THE TIMES’ ALLEGED “TIES” BETWEEN THE TOBACCO INDUSTRY AND THE NFL

Alleged “Tie” 1: The NFL hired Dorothy Mitchell because of her law firm background working with the Tobacco Institute and gave her oversight of the League’s MTBI Committee.

The Facts Prove Otherwise: At her law firm, Covington & Burling in Washington, D.C., Dorothy Mitchell worked on a wide variety of matters, including employment matters for the League and a matter for the Tobacco Institute as a young associate. The NFL did not seek out Ms. Mitchell for employment or know that she had worked on any tobacco matter. As confirmed by Dennis Curran, who was Vice President and General Counsel of the NFL Management Council in 1995 when Ms. Mitchell was hired, she had not been in any way recruited by the NFL.

Mr. Curran did not know about Ms. Mitchell's tobacco-related work until told about this story. He believed she was well qualified to work on Collective Bargaining Agreement grievance matters, and hired her as Labor Relations Counsel. In 1997, she acquired additional responsibilities, including copyright protection enforcement and litigation, acting as Assistant League Secretary, and working with the MTBI Committee. She never did any work or had any association with that committee before that date.

Her responsibilities as a liaison with the MTBI Committee were legal and included preparing documents for NFL Charities, providing intellectual property advice, ensuring that the privacy of player information was maintained and communicating with the players' union. She did not discuss her tobacco-related work with the Committee; she did not direct the Committee's research or resulting studies; she did not conceal data; and she did not direct the Committee's members—many leading physicians in their fields—to follow any “tobacco industry playbook” she learned of from her days as a young lawyer in a large law firm. Her work with the Committee ended in July of 2000, when she left the NFL as a full-time employee.

Alleged “Tie” 2: There were communications between Arthur Stevens of Lorillard and Mr. Tagliabue, specifically a letter from October 1992, which suggests that the NFL relied on legal judgments related to health and safety matters from the general counsel of Lorillard.

The Facts Prove Otherwise: Commissioner Tagliabue did not know Mr. Stevens and does not recall communicating with him prior to or after the October 20 letter. There is no evidence in an extensive review of files that Mr. Tagliabue solicited the advice, reviewed the advice or acted upon the advice. Nor did anyone else at the League ever take any action regarding health issues based on advice from Lorillard or the Tobacco Institute.

Skadden Arps, the NFL's legal counsel on the matter at the time, has no recollection of any communications with Mr. Stevens or anyone else from the Tobacco industry on concussions or on the subject of the October 20, 1992 letter from Mr. Stevens. The communication at issue, as the NFL informed the *Times*, addressed issues of judicial bias and not the supposed means of suppressing scientific data.

Alleged “Tie” 3: The NFL sought lobbying help from and shared lobbyists with the Tobacco Institute.

The Facts Prove Otherwise: The NFL has worked with Covington & Burling for more than 50 years, and both the NFL and the Tobacco Institute have retained Covington & Burling at various times for lobbying services—as have any number of other companies and individuals in Washington and elsewhere. But the NFL never participated in any joint lobbying efforts with the Tobacco Institute.

Regarding health and safety, the NFL retained assistance from Covington & Burling from 2009 –

2014 for its lobbying efforts in state legislatures to pass youth concussion laws, the “Lystedt Law,” in all 50 states. Covington & Burling's work included reviewing the bills and providing legal counsel. This was a joint effort with other national organizations, including the CDC, USA Football and the United States Brain Injury Alliance.

Alleged “Tie” 4: The NFL engaged research companies criticized for their studies with the tobacco industry.

The Facts Prove Otherwise: The NFL used Stanford Research Institute (SRI) to assist it in a wide range of injury surveillance studies. In fact, one of the research studies the *Times*

alludes to was jointly commissioned by the NFL and the NFL Players Association. SRI's blue chip client list includes multiple U.S. government agencies, such as the Army Research Lab, the Department of Commerce, the Department of Defense, the Department of Education (including a study highlighted in the *New York Times* in 2009), the Department of Health & Human Services, the Department of Homeland Security, and the State Department as well as prominent associations and foundations including the Alzheimer's Association, the Bill & Melinda Gates Foundation, and the Michael J. Fox Foundation for Parkinson's Research. There is no evidence that SRI engaged in misleading or inappropriate research. Nor are there any facts suggesting that the League encouraged SRI to do so. The League is not aware of any prior work with Exponent on matters of player health and safety or concussion-related work, and has not been presented with any evidence of such work.

Alleged "Tie" 5: When Joe Browne was NFL VP of Communications, he sought advice from the President of the Tobacco Institute.

The Facts Prove Otherwise: Joe Browne built a personal relationship with Sam Chilcote while Mr. Chilcote was at the Distilled Spirits Council in the 1970s. The NFL and the Distilled Spirits Council jointly produced Public Service Announcements, and Mr. Browne and Mr. Chilcote were the point people for their respective organizations. Details of that work can be found on the DISCUS website.

Mr. Browne and Mr. Chilcote remained friendly after Mr. Chilcote left DISCUS for the Tobacco Institute in 1981. Mr. Browne contacted Mr. Chilcote in 1982 for some advice as someone he knew in Washington, D.C. about a subject completely unrelated to tobacco, concussions, or any player-related or health or safety issue. Their relationship had nothing to do with tobacco or NFL health and safety.

Alleged "Tie" 6: Neil Austrian, who served as NFL president and COO from 1991 – 2000, once ran an advertising agency that accepted tobacco clients. It was during his tenure at the NFL that the MTBI Committee was created.

The Facts Prove Otherwise: Mr. Austrian had no involvement with the MTBI Committee during his tenure at the NFL. Mr. Austrian was responsible for the business entities of the league, including NFL Enterprises, NFL Films, NFL International and NFL Properties.

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The facts, fairly read, are clear. The NFL is not the tobacco industry. It had no connection to the tobacco industry. Nor did it follow the tobacco industry playbook to conceal data to skew scientific research. The *Times* had the facts – now you do.

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