

# Mike Ditka flags NFL on its CR Gameday

League, union slow to take decisive steps for retired players  
BY DENNIS SCHAAL

**E**VERY CORPORATION CAN expect Corporate Responsibility Moments. If you're Merrill Lynch, one came with the giant mortgage write-offs and CEO Stanley O'Neal's resignation. Citigroup faced a similar scenario with the resignation of CEO Charles Prince, and recently moved Vikram Pandit into the position. If you're Mattel, you know what it feels like to be the newest Harvard Business School case study in CR and supply-chain management. If you're a veteran of Enron, Arthur Andersen or Union Carbide, you know what it's like to have your company vaporized in one swift CR Moment.

Lately, the sports world has been filled with such Moments. Major League Baseball was called before Congress on steroids use, and the Mitchell report names names. The sport's only seven-time MVP and all-time home run king Barry Bonds has been indicted on perjury and obstruction charges. France's largest sports enterprise, the Tour de France, has suffered catastrophic sponsor withdrawals after beaucoup doping scandals.

And now the National Football League's (NFL) CR Moment has arrived, and the league and union finally are responding after a couple of years of fumbling. The NFL's CR Moment revolves around its well-documented neglect—or even mistreatment—of former players concerning retirement and disability benefits.

In mid-December, after unrelenting criticism in the media and before Congress, the NFL and NFL Players Association implemented a half-dozen or so measures to streamline the disability process. They will add a medical director to a two-member initial claims committee that had no health expert on it; hire a claims specialist to help retirees decipher disability applications; conduct electronic ballots on disability appeals to speed the process; position doctors, who perform required exams, closer to applicants in major metro areas; and ease up on totally disabled players' status reviews by performing them every five years instead of three.

There are so many parallels to other industries in this NFL Moment that it serves as a case study for others at such crossroads.

One poignant moment within the NFL's CR Moment came before the Senate Committee on Commerce, Science and Transportation in September when Garrett Webster, the 23-year-old son of deceased former Pittsburgh Steelers and Kansas City Chiefs center Mike Webster, testified about the agonizing physical and mental deterioration of "the



**Mike Ditka testifies before a Senate committee in September. His support of retired players will be part of his legacy, even as he recently faced a CR Moment of his own.**

greatest dad in the world.”

“I cannot tell you what it’s like to wake up and not be able to walk to the shower without being in constant pain,” Garrett Webster said of his father, who died in 2002 at age 50. “I cannot tell you what it’s like to fear the loss of your mind and to feel it actually happening. I cannot tell you what it’s like to become a stranger even to yourself. However, what I can tell you, and what I will tell you, is what it’s like to stand by helpless, as your father’s life is turned into a constant living hell that most people would take their own lives to escape.”

A nine-time All-Pro and Hall of Fame member, Mike Webster played in 245 games from 1974 to 1991, including one six-year span when he took the battering

that came from playing every offensive down. From the multiple head injuries that ensued, Mike Webster developed brain damage, was totally disabled when he retired, but was short-changed on disability benefits by the “culpable conduct” of the NFL Retirement Plan, a federal appeals court found.

Taking up the cause of Mike Webster and other former players who face similar hardships, Mike Ditka has served as a whistleblower and compelling spokesman for his former locker-room buddies, on-field foes and older veterans. A five-time All-Pro tight end with the Chicago Bears and ex-coach (Bears and New Orleans Saints), “Da Coach” is ubiquitous these days in commercials, on ESPN as a color commentator and

analyst, and lately also in Senate and House hearing rooms or at press conferences as he throws verbal forearms at the NFL and its players association over their lack of attention to retired players.

And, with the prodding of Ditka and others, there are signs that some active players, despite the foot-dragging of their union, finally are taking up the cause of their predecessors. Kansas City Chiefs offensive tackle Kyle Turley recently pledged to contribute his Dec. 23 game check of \$25,000 to the Ditka-affiliated Gridiron Greats Assistance Fund and the lineman urged his fellow players to do likewise. The Gridiron Greats, which designated that day Gridiron Guardian Sunday, is set up to provide immediate assistance to ex-players in need, and ▶

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**Garrett Webster, the son of deceased NFL center Mike Webster, at Senate Hearing, calls on NFL Commissioner Roger Goodell to educate the public about the perils of concussions and other head injuries.**

expects other players to contribute.

Ditka claims the league's retirement board, composed of three NFL owners' representatives and three players association designees, pays disability benefits "way below the national average," when measuring the percentage of retired players receiving compensation, "in a sport called football, which is much more brutal than anything anybody else does in society."

In defense, the players association

states that from 1993 to June 2007, the Retirement Board awarded disability benefits to 42.6 percent of 1004 applicants, a mark that's not far behind the Social Security Administration, which approves "roughly 47 percent." However, Social Security only awards benefits for total disability while the NFL's approvals in theory should be much higher because it approves applications for total and partial disabilities, too.

And, the amount of NFL monies design-

nated for disability benefits is paltry. In 2006, the players received some \$4.2 billion, or 60 percent of the NFL's \$7 billion in revenues, for salaries and retirement benefits, and allotted just \$20 million, or about 0.48 percent, of their take to fund disability benefits.

So, how did this crisis develop and how have the players association and the league responded?

By some accounts, the NFL and players association were blindsided when the issue

## Players in NFL's Corporate Responsibility Moment

### Practitioners:

Roger Goodell, NFL Commissioner

Gene Upshaw, NFL Players Association Executive Director

### Providers:

Lanny Davis, Partner in Orrick, Herrick & Sutcliffe, Washington, D.C.

Cy Smith, Partner in Zuckerman Spaeder, Baltimore, Md.

### Influencers:

Mike Ditka, Hall of Fame tight end (Bears, Eagles and Cowboys), and coach (Bears and Saints)

Kyle Turley, offensive tackle, Kansas City Chiefs

Gridiron Greats Assistance Fund, Green Bay, Wis.

Garrett Webster, son of deceased Hall of Fame center Mike Webster (Steelers and Chiefs)

Charles Chandler, Reporter, the Charlotte Observer, Charlotte, N.C.

The U.S. Congress



Players association Executive Director Gene Upshaw

broke into the spotlight in early 2006. In what could be a cautionary tale for corporations in other industries, critics say the NFL and union were asleep as retirement and disability programs ran on autopilot, and didn't focus enough attention on best practices.

For its part, the NFL Players Association, which shares responsibilities with the league on retirement issues, initially reacted very defensively.

And until the recently announced measures, which emerged two years after the issue came to the fore, the NFL and the union failed to take any dramatic steps to resolve the dispute.

Like other scandals or crises, the timeline for the NFL's CR Moment started with a paperboy's morning delivery and a web headline. On Jan. 15, 2006, an article by Charles Chandler in the *Charlotte Observer* of North Carolina featured interviews with more than a dozen Hall of Famers, most of whom lambasted the NFL and the NFL Players Association about the inadequacy of their disability and retirement benefits.

They spoke of former players who were forced to take discounted early-retirement benefits and couldn't make ends meet because they were paying their own healthcare costs; ex-gridiron stars who couldn't afford the trip to Canton for Hall of Fame ceremonies; and once-greats and lesser-knowns who had no money for knee replacements or worse, and had plunged through a nonexistent safety net.

In that article, NFL Players Association

Executive Director Gene Upshaw fanned the flames. "The bottom line is I don't work for them [retired players]," Upshaw said. "They don't hire me and they can't fire me. They can complain about me all day long. They can have their opinion. But the active players have the vote. That's who pays my salary."

And, by last summer, apparently no one had told to Upshaw to soften his public stance. Talking to the *Philadelphia Daily News* in June about Joe DeLamielleure, an ex-Buffalo Bills guard and advocate for retired players, Upshaw touched off a controversy, saying: "A guy like DeLamielleure says the things he said about me. You think I'm going to invite him to dinner? No. I'm going to break his ... damn neck."

### Crisis Communications

In the interim, the players association opted to recruit a crisis communications specialist. The union tapped a savvy media point-man, attorney Lanny Davis, a partner in Orrick, Herrick & Sutcliffe. Davis, White House Special Counsel from 1996 to 1998 for President Clinton, handled campaign finance investigations, among other legal challenges, for the president, and now works for Upshaw on the former players' issue.

Taking a more reasoned tack than Upshaw and citing positions from an "NFLPA White Paper on Benefits," Davis says, "the union can only represent its members, who are current players. Notwithstanding that, Mr. Upshaw has fought for and attained substantial benefits for retired players as part of the collective bargaining agreement. It is a vocabulary issue. We can't represent retired players, but we can fight for their interests."

Many former players, of course, don't see the problem as a "vocabulary issue," but a life-and-death one.

Still, Davis argues that the players association has received lopsided criticism. For instance, Davis offers that the Gridiron Greats, a Green Bay, Wis., nonprofit organization whose board members include former players Ditka, DeLamielleure,

Willie Davis, Harry Carson, Gale Sayers and Tom Nowatzke, unfairly bash the union when it "has joint responsibility with the NFL for all of these pension programs."

### Asking Ditka

"The Gridiron Greats, very interestingly—and this would be a good question for you to ask Mr. Ditka—how come you never mention the NFL?" Davis asks. "Why do you always attack Gene Upshaw? [Ditka's] never been able really to answer that question. Or any of the players that you read about. You can ask any one of them, why do you always attack the NFLPA?"

Ditka counters that the responsibility for benefits problem lies with both the players association and the team owners, who "could make this go away."

He adds: "But, here's my problem for singling out the players association. You go back and tell him [Davis] this. These are people who paid their dues in an association or union over a period of time and represented that union as best they could as members of it, and all of a sudden when they are not capable of being contributors any more, that union turns its back on them and doesn't help them in filing claims for disability?"

In the spotlight for his bashing of the NFL and union, Ditka came in for some apparently well-deserved lumps, too, concerning his administration of a charity to benefit Hall of Fame players in need.

*USA Today* reported Dec. 6 that The



Lanny Davis, former White House Special Counsel and players association spokesman

## Tips For A Fix of Retiree Problem

**Heads—as in Gene Upshaw's or Roger Goodell's—don't need to roll to resolve the former players' issue, but by letting the story get ahead of them, the practitioners now need to make a substantial sacrifice.**

Greg Wilson, a Senior Vice President at Levick Strategic Communications in Washington, D.C., offered that perspective when asked how the parties might tackle the dispute. The firm has experience in these matters, having handled public relations strategy for Rosie O'Donnell, a prominent Order of the Catholic Church and an Enron-connected legal firm, among other clients.

Offering his views prior to the NFL and union announcing steps to streamline the disability process, Wilson argued that the league and players association had bungled this David and Goliath battle. "It is a big problem if you sit on a problem over time. Ultimately, this is not what a leader does. It is what we talk about in crisis counseling all the time. They need quick and decisive action that often involves a sacrifice."

Wilson offered additional tips, which are relevant to firms facing CR Moments outside the sports arena, too. Among Wilson's points:

- Acknowledge there is a problem, don't minimize it, and fix it. "It is important for the league and union to run to the light," Wilson says.
- Join forces, form a joint commission of all the stakeholders while involving unimpeachable big names. Wilson suggests the commission recruit a third-party, someone with the stature of George Mitchell, the former Senator from Maine, to lead the effort.
- Make a tangible sacrifice. In the retiree dispute, Wilson believes the burden most heavily will fall on the team owners to take a significant financial step to quell the issue.
- Speed is all-important. Resolve the problem in 2007, or at the latest before the Super Bowl in February. "People will forgive the NFL because they think it is a great organization," Wilson says. "But that can only take you so far."

Wilson cautions against the league's go-slow approach. "Saying you are examining best practices is like a one-yard gain or just getting back to the line of scrimmage," he says. "We're looking for the three parties—the NFL, the players association and the former players—to move on this 10 yards at a time and to be marching down the field." **D.S.**

Mike Ditka Hall of Fame Assistance Trust Fund took in \$1.3 million, spent some \$715,000 to run three charity golf events, and paid just \$57,000 to former players.

Ditka quibbles with those figures, but dissolved the trust fund within days, and said he transferred a balance of some \$600,000 to a housing program for devel-

opmentally disabled people in Chicago and to the Gridiron Greats, which is autonomous from the trust fund.

The union jumped all over that development, of course, arguing that it undercuts Ditka's criticisms.

Meanwhile, there is the perception in some quarters that Upshaw's players

association is not overly confrontational with management. After all, there is much harmony in the league's and union's approaches to the ex-players' issue.

In that regard, Davis says the players association has "no criticism of the NFL" on the retirement issue because the players' share of the NFL kitty is deter-

mined through collective bargaining.

Still, the union and NFL disagree on at least one key matter, a governance issue. The players association advocates taking control of the retirement board, which makes final decisions on disability applications, and the NFL opposes that change.

"The 3-3 split [between management and union] is consistent with federal law," Davis says. "We propose a change in federal law so that if the NFLPA is getting blamed for decisions, we might as well have control of the institution that makes the decisions."

### Ties to Upshaw

Cyril Smith of Zuckerman Spaeder in Baltimore, an attorney who helped the Mike Webster estate, his children and attorneys win about \$1.85 million in retroactive benefits and fees from the NFL Retirement Plan, expresses skepticism that merely enabling the union to fill all six seats on the retirement board would be a solution because appointees likely would have close ties to Upshaw.

Even under existing law, the union could improve the composition of the retirement board, Smith says.

"Nothing in ERISA (the Employee Retirement Income Security Act) would stop the union from naming a doctor, or a retired player without ties to the NFLPA executive director to the board," Smith says, pointing out that one of the union designees on the board, Tom Condon, is Upshaw's personal agent and negotiated his contract with the players association. "I believe, and many others believe, that retirement board members who did not answer to Upshaw would make better decisions on retirement and disability claims."

The union also wants Congress to establish standards that would enable injured workers to receive immediate medical help without losing lifetime medical coverage. Today, some players, and injured workers, are forced by their circumstances into accepting lump-sum payments, and give up their rights to lifetime medical coverage.

The players association also advocates having Congress eliminate the need for the union-management initial claims committee, which makes initial disability decisions. Both the NFL and players association blame some of the inefficiencies of the disability process on a 2002 federal law that mandated such a committee, which must analyze reports from



NFL Commissioner Roger Goodell

retirement board-appointed "neutral physicians" and other doctors within 45 days. This additional decision-making layer actually slows the process because, with a substantial number of applications initially rejected, appeals must then go up the ladder to the six-member retirement board for final decisions.

And what is the NFL's strategy for dealing with retired players?

NFL Commissioner Roger Goodell, who's been in his post for a little more than a year, has earned high marks for his zero-tolerance policy on players' off-field indiscretions, but he hadn't taken decisive action on the disability question until this month.

Instead, almost two years after shortcomings in disability benefits were disclosed, Goodell told the Senate committee in September that the league had hired consultants to recommend remedial steps.

### Richest League

The NFL is the richest professional sports league in the world, with each team worth about \$957 million on average, according to *Forbes*. But, the league,

which apparently hasn't faced any sponsor defections on the issue, isn't ready to take on more of a financial load for retirement and disability funding.

"Owners are responsibly addressing these concerns, but they are simply not in a position to absorb incremental costs," Goodell told the Senate.

NFL spokesman Greg Aiello explains that the league opposes changes to retirement board governance.

"Clubs do not believe that the needs of retired players are something for the union to solve," Aiello says. "Instead, the needs of retired players are a concern both of the clubs and the union, and of current and retired players alike. The management trustees contribute valuable business and investment insight, administrative capacity and employer perspective to the process."

In May, leading up to its CR Moment, the NFL formed an Alliance with the union, the NFL Alumni Association and the Pro Football Hall of Fame to deal with retirement issues, but the Gridiron Greats charged the Alliance lacks meaningful participation from player-activists. Meanwhile, the Alliance and team owners contributed \$17 million and selected 14 medical centers to handle joint-replacement surgeries for former players.

### Super Bowl Bruising

Ditka reportedly reacted positively to the NFL-union initiatives to streamline the disability process. But, in the interim, plans are proceeding to put more heat on the NFL and union in the week before Super Bowl XLII on Feb. 3 in Phoenix, Ariz. Former former players Gale Sayers, Jerry Kramer, Randy White, Seth Joyner and Roy Green were slated to announce a gathering of "NFL legends" that week with all donations going to former players through the Gridiron Greats.

It all boils down to a simple issue, Ditka believes: "There's right and there's wrong. Just do the right thing. Take care of these guys. Give them a chance to get their disability respectfully without jumping through hoops." **CRO**