

COVER
STORY

When the Worst Happens

AMERICA'S TOP DISABILITY INSURANCE LAWYER, FRANK N. DARRAS, ON WHY INDIVIDUAL DISABILITY INSURANCE IS A MUST FOR ATHLETES—BOTH PROFESSIONALS AND UP-AND-COMERS

It was college basketball's showcase event, the 2013 N.C.A.A. Midwest Region final, and the Louisville Cardinals were leading the Duke Blue Devils, 21-17. With six minutes left in the first half, Kevin Ware, a sophomore guard for Louisville, jumped to block a shot from the 3-point line. Rotating in the air, Ware landed with all of his weight on his right foot, only to have it buckle beneath him—he had fractured his leg.

Ware fell right in front of the Louisville bench and lay there with the split bone of his broken tibia puncturing the skin. Along the bench, his teammates recoiled in horror. On the court, players kneeled with heads in hands, reminded of how quickly a promising career could be put at risk.

Ware's injury highlights the vulnerability of student-athletes, especially top-tier players whose future earnings are often worth millions of dollars," says Frank N. Darras, disability insurance lawyer to the pros. Darras' firm, DarrasLaw, headquartered in Ontario, California, reviews more than 2,500 new disability claims each month. Darras has personally represented many

professional athletes, top tier college draftees, and team owners in disability insurance issues and litigation across the country.

"Disability insurance is a potential life source for athletes because it protects them from losing it all," he explains. "Careers and incomes are dependent on the players' health and their ability to play the game, so getting the right policy is integral to ensuring a secure financial future for themselves and their families."

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Over the past 30 years, disability insurance has become a fixture in basketball and other professional sports. One of the first major disability payouts occurred in the NFL during the mid-1980s, when a pile-up caused Washington Redskins quarterback Joe Theismann to fall with his leg twisted sideways, fracturing his tibia and ending his career at the age of 36. Following his injury,

Theismann reportedly collected \$1.4 million in insurance.

"Even though Joe Theismann had an illustrious run in the NFL and went on to a successful career in broadcasting, he could have played longer were it not for that disabling injury," Darras observes. "Disabled players with at least three seasons in the league are fully vested in the NFL's retirement plan, but the maximum pension benefit pales to even the minimum rookie salary; so for the solid veterans and bona fide stars, premature retirement means forfeiting many millions of dollars."

At DarrasLaw, Darras and his legal team advocate for football players and other athletes who are privately insured for disability, ensuring that they are fairly compensated for projected salary, signing bonuses, and likely to be earned incentives, had they stayed healthy. He advises that long-term individual disability insurance is a must for professional players, especially in the event of a suspension or lockout, when team-sponsored group insurance generally ends.

"High-stake individual disability insurance isn't just a temporary option, but should be part of every player's long-term overall insurance retirement plan," Darras says. "When purchasing disability insurance, players should always read the fine print and

make sure to include an 'own occupation' clause, so that injured players are paid their monthly benefits even if they are able to perform some other work for profit."

For college athletes, the NCAA offers a policy known as the Exceptional Student-Athlete Disability Insurance (ESDI) program. As the name implies, the policy is for those athletes who are expected to be selected in the first three rounds of their respective drafts, and it covers up to \$5 million in future earnings in the event that a student-athlete's career ends by injury while still in college. Since the program's inception two decades ago, dozens of student athletes have availed themselves of its coverage, including Texas A&M quarterback Johnny Manziel, South Carolina defensive end Jadeveon Clowney, and Alabama running back Mark Ingram.

Many private insurers have also started offering plans for student-athletes who want additional coverage. For example, Louisville quarterback Teddy Bridgewater recently obtained a \$10 million insurance policy to provide additional coverage in case of a career-ending injury. Unfortunately, as Darras points out, these policies often only cover permanent total disability, which means that in order to collect on the



PHOTO BY AMY GANTRELL

Frank N. Darras

policy, athletes would have to be unable to ever return to their sport. "With advances in modern medicine, it would be difficult for student-athletes with this type of a policy, or a policy through the ESDI program, to collect on a claim," he notes.

Indeed, when Kentucky center Nerlens Noel tore his anterior cruciate ligament in mid-February, his \$10 million insurance policy—which he had taken out through a private insurance carrier—didn't pay, because it only covered permanent total disability. Many had projected that Noel would be the No. 1 overall selection during the NBA draft in June; but when the draft took place, Noel was instead selected in the sixth spot, and he received a starting salary commensurate with that slot. "Noel wasn't covered by any loss-of-value insurance, so he wasn't protected against a drop in draft position, and as his case proved, that can be an important safeguard for future earnings," Darras explains.

For draft-eligible athletes and professional players, disability policies are a vital part of protecting their future income stream in the event of a career-ending injury. Due to the complex nature of the insurance marketplace, it's important to consult an experienced, top-rated lawyer who specializes in disability. As Darras says: "Proper planning and the right insurance is the very best way for athletes, and really everyone, to protect their families and their careers." ■

The Top 10 Mistakes in Individual Disability Insurance Claims

1 FRAUDULENT MISSTATEMENTS: Before you apply, closely review the information on your individual disability application to avoid any misinformation.

2 CONFUSION ABOUT POLICY LANGUAGE: Most policyholders don't pay close enough attention to the fine print, so be careful—carriers love

to argue that you really have a dual occupation at the onset of the claim and therefore never qualify for total disability.

3 FAILURE TO PROVIDE OCCUPATIONAL DEMANDS: Arm your treating doctors with all the information they need to answer the carrier's questions about the physical

and mental demands of your work.

4 POSTING ON SOCIAL MEDIA: Facebook and Twitter rarely reflect the realities of a disability, so know that your carrier is watching your internet activity and that positive posts about your activities will jeopardize your claim.

5 UNDERSTATING YOUR ACTIVITIES: When filing, don't use the words "always" and "never." If a policyholder says he can never drive and the carrier finds him driving, a denial letter is in the works.

6 PROVIDING MORE DOCUMENTS THAN REQUIRED: Often, carriers

will try to ask for documentation that policyholders aren't legally obligated to provide, such as tax documents. Only give what's needed and seek out an experienced disability attorney if you're uncertain about what's required.

7 EXACERBATING YOUR CONDITION DURING A FUNCTIONAL CAPACITY EVALUATION: Many policyholders push themselves to do their best during

a functional capacity evaluation, but you should only perform what can be done safely, and you should be vocal about your pain on a scale of 1-10 as the exam progresses.

8 ALLOWING YOUR DOCTOR TO SPEAK TO THE CARRIER'S ON-SITE PHYSICIAN: This is a recipe for disaster and no policy requires this step. Ask instead for the on-site physician to send your doctor

the questions in writing, so that after careful reflection, no mistakes are made.

9 FAILURE TO DISCLOSE PRE-EXISTING CONDITIONS: If your carrier can't take away your policy for fraud, and your disability began within two years after purchase, the next best carrier defense is arguing that anything you failed to disclose is a pre-existing condition.

10 DECIDING TO APPEAL WITHOUT PROPER COUNSEL: After a denial letter is sent, policyholders generally have the right to appeal. This is a difficult decision and can mean the difference between bringing a bad faith claim and giving the carrier an opportunity to fix the unreasonable claim handling. Seek a top disability lawyer to help answer this important question.