

Portfolio Media, Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Insurance Backs Up College Athletes About To Turn Pro

By **Jennifer Mandato**

Law360 (April 25, 2024, 2:01 PM EDT) -- In 2017, Jonathan Bryce Love was one of college football's top running backs. A Heisman Trophy runner-up, he was projected to be a first-round NFL draft pick, but when the time came, he declined to enter the draft.



Bryce Love, a star running back at Stanford through the 2018 season, relied on an athlete insurance policy after a serious knee injury derailed the promise of a pro career. (Photo by Michael Macor/San Francisco Chronicle via AP)

Stanford's 2017 conference championship loss to the University of Southern California had left Love feeling that he and his teammates had unfinished business. That, and a desire to earn his degree, led him to return for his senior season in 2018.

"A place like Stanford, it's hard to leave," Love told Law360.

The 2018 season, however, would end with Love tearing his ACL on the final play of his college career. Although he underwent reconstructive surgery and was selected by the Washington Redskins, now the Commanders, in the fourth round of the 2019 NFL draft, he never played in an NFL game.

Processing the abrupt derailment of a long-dreamed-of professional sports career is difficult, but in building a new life after pro football, Love leaned on a resource that is little talked about: an athlete insurance policy.

Following his fall within the draft, Love turned to the policy he procured prior to the start of the 2018 season, which was intended to cover his earnings as a potential first-round draft pick. Richard Giller, Love's attorney, helped him obtain a multimillion-dollar payout under the policy.

The payout was "a blessing," Love said, one that helped him build a foundation for his life and allowed him to secure "the fruits of his labor, if nothing else."

As college sports continue to grow — from athletes now being allowed to earn money from name, image and likeness deals to the NCAA expanding the College Football Playoff bracket for the 2024-25 season from four teams to 12 — so do the stakes for college athletes putting their bodies on the line for their sport. The football playoff expansion "changes the window for injury entirely," Giller, now with Greenspoon Marder LLP, told Law360.

College athletes, regardless of the loyalty they feel toward their schools, should obtain proper athlete insurance coverage and understand its importance in the bigger picture, Giller said. Coverage is specifically important for third- or fourth-year players that are potential first- or second-round draft picks in their respective leagues, he said.

"Get your money now" is the advice Giller said he would give to college athletes going pro. "Your anticipated number of years you're going to be able to play in the NFL, for example, is so small, so short. Get the money now, up front."

Leagues of Coverage

In an effort to lock down payment in the event of injury, a permanent total disability policy, like the one Love procured, is the baseline level of coverage for athletes. From there, policyholders can add a loss of value, or LOV, endorsement or critical injury coverage, among other benefits.

"Permanent total disability is what it sounds like," Giller said. "If you're injured and you can never play your sport again, you get a lump sum payment and it covers you 24 hours a day, seven days a week, worldwide."

There is no question of fault, no analysis; the focus of the payout is whether the injury prohibits an athlete from playing their sport, Giller explained.

From there, carriers can choose whether to offer an athlete an LOV endorsement, which insures the value of an athlete's first pro contract. Under such an endorsement, an insurance broker, sports agent and an underwriter will try and calculate where an athlete is predicted to be drafted.

"For most of the professional drafts, the positions within the draft have slotted values — predetermined contract values," Giller said.

Under an LOV endorsement, a carrier will insure around 60% of the contract, and if an athlete gets injured during the policy year, resulting in them signing a contract for less than predicted, the carrier will pay the difference between the signed contract and the insured contract, up to the policy limits.

Alternatively, critical injury benefits include predetermined payouts for specific injuries. For example, tearing an ACL guarantees an athlete a certain payment.

There's no analysis of whether the injury solely and exclusively contributed to the cause of loss; if an athlete gets a specific injury listed on the policy, the athlete gets that payout, Giller said.

The Rise of Critical Injury Coverage

David Brookbank, co-founder of risk management firm Income Protection Consultants, told Law360 he's noticed a sizable shift away from LOV endorsements and toward critical injury coverage in recent years.

Brookbank, who advises athletes on their policies, said that in 2018, he saw 80 LOV riders in the marketplace. In 2023, he saw only three, despite working with about 400 student-athletes that went pro in their respective sports.

The reasons for this drop-off are litigation and claims, with policy wording playing a pivotal role, Brookbank said.

"Not only do you have to suffer an accident that causes bodily injury or have an illness [to collect under an LOV rider]; basically, the insured has to prove that that is the sole reason they fell in the draft," he said.

That leaves a lot of gray area for insurers to question if a lower draft slot is explicitly due to the injury or illness or if an athlete just had a "bad year," Brookbank said.

With multimillion-dollar payouts on the table, Frank Darras of disability firm DarrasLaw described LOV coverage disputes as "open season."

Critical injury coverage, although newer to the insurance market, is much more straightforward, according to Giller.

Brookbank agreed that such coverage "can and does pay out," sharing that his firm now sees an estimated 20 critical injury claims per year.

As an "if-then" style policy, critical injury coverage is typically paid out within 90 to 120 days of proof of loss, so long as the injured body part isn't excluded, Brookbank said.

Another benefit to critical injury coverage is that if an athlete's injury prevented them from ever playing again, they could potentially receive a permanent total disability benefit on top of the injury coverage, Brookbank said. In contrast, you can't collect both LOV and permanent total disability benefits.

An Assist for Athletes

Love told Law360 that it wasn't until he made the decision to return to Stanford that he learned about obtaining coverage. He then spoke with his family, team staff members and others about which policy was best for him, he said.

Darras, who raised two Division I athletes of his own, agreed that athletes have to make an educated decision on who assists them with a policy application.

"Rarely do I see someone from a college or a university that's in tune with how Draconian and difficult the application is," Darras said. "Think about it: Is a college junior or senior ready to look at a 50-question, very pointed application asking about detailed health history since they fell out of the womb?"

He maintained that both athletes and colleges need counseling because "any hiccup, any discrepancy" in an application can lead an insurer to rescind the policy and avoid payment.

There are about seven carriers who actually write this form of athlete coverage, including Lloyd's of London, Brookbank said. However, every carrier's policy is different, with the same claim scenario resulting in a payout under one policy but not another, he said.

"I don't know if you want to call it the Wild West, but [the market space] was definitely disconnected," Brookbank told Law360.

Where Universities Fit In

The commodification of college athletics has added a new layer to the obligations and loyalties a college athlete contends with, experts say, most notably after the U.S. Supreme Court's 2021 ruling in *NCAA v. Alston*, which allowed student athletes to earn endorsement money through name, image and likeness, or NIL, deals.

Following that decision, Brookbank noticed a shift in the conversation around athlete coverage, he said, with many wondering if student-athletes would have enough money to pay for their own disability insurance — a notoriously high premium typically taken on by the university for top athletes.

"That's not happening," Brookbank said, "As a matter of fact, schools have stepped up and actually paid more than they ever have for disability insurance for the student-athletes who qualify."

For student-athletes looking to obtain additional coverage beyond what the school may fund, those with large endorsement deals can set up a limited liability corporation, and their disability policy is then a tax-deductible event. In other words, student-athletes can put their NIL money toward their policy, Brookbank said.

Darras added that NIL endorsements can coexist with insurance, as the endorsements can help student-athletes create a secure financial future for themselves independent of their professional athletic careers.

"If you've been planning to be an athlete, and in one second your dream is dashed, you have to pivot your whole life," he said.

Love said the NIL decision has been a "long time coming" and told Law360 he thinks the opportunity to earn money off of one's name, image and likeness is "amazing" for student-athletes.

As NIL endorsements and the NCAA continue to grow, it's become a "balancing act," Love said. College athletes, however, must do what's best for themselves as individuals, he advised.

For those who are weighing a decision similar to the one he made roughly six years ago, looking into insurance coverage is absolutely worthwhile, said Love, who was widely known as Bryce Love during his playing days. He added that he would encourage athletes to do all the research they can, connect with different people and develop an understanding of the different opportunities that exist.

"Just enjoy the journey, if nothing else," Love said. "You only get to do it once, so take advantage of the opportunity. But you'll know when you're ready, you'll know when the time is right, and just go from there."

--Editing by Aaron Pelc.