

DEWEY BALLANTINE LLP  
1950 University Avenue, Suite 500  
East Palo Alto, California 94303-2225

1 Jeannine Y. Sano (SBN: 174190)  
2 DEWEY BALLANTINE LLP  
3 1950 University Avenue, Suite 500  
4 East Palo Alto, California 94303-2225  
5 Telephone: 650 845-7000  
6 Facsimile: 650 845-7333

7 Jeffrey L. Kessler (pro hac vice)  
8 jkessler@deweyballantine.com  
9 David G. Feher (pro hac vice)  
10 Eamon O’Kelly (pro hac vice)  
11 DEWEY BALLANTINE LLP  
12 1301 Avenue of the Americas  
13 New York, New York 10019-6092  
14 Telephone: 212 259-8000  
15 Facsimile: 212 259-6333

16 Kenneth L. Steintal (pro hac vice pending)  
17 Joseph R. Wetzel (SBN: 238008)  
18 WEIL, GOTSHAL & MANGES LLP  
19 201 Redwood Shores Parkway  
20 Redwood Shores, CA 94065  
21 Telephone: (650) 802-3000  
22 Facsimile: (650) 802-3100

23 Bruce S. Meyer (pro hac vice pending)  
24 WEIL, GOTSHAL & MANGES LLP  
25 767 Fifth Avenue  
26 New York, New York 10153  
27 Telephone: (212) 310 8000  
28 Facsimile: (212) 310 8007

Attorneys for Defendant NATIONAL FOOTBALL LEAGUE PLAYERS  
INCORPORATED d/b/a PLAYERS INC, a Virginia corporation.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

BERNARD PAUL PARRISH, HERBERT ) Civil Action No. C07 0943 WHA  
ANTHONY ADDERLEY, WALTER )  
ROBERTS III on behalf of themselves and all ) Honorable William H. Alsup  
others similarly situated, )

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE PLAYERS )  
INCORPORATED d/b/a PLAYERS INC, a )  
Virginia corporation, )  
Defendant. )

**DECLARATION OF EAMON O’KELLY  
IN SUPPORT OF DEFENDANT’S  
MOTION FOR SANCTIONS**

**DECLARATION OF EAMON O'KELLY**

Eamon O'Kelly, hereby declares, under penalty of perjury, as follows:

1. I am a member of Dewey Ballantine LLP, and attorney for Defendant in this action. I submit this declaration in support of Defendant's motion for sanctions and motion for judgment on the pleadings.

2. Attached hereto as Exhibit A is a true and correct copy of an article published by New York Times entitled 2 Former NFL Players Sue over Sharing of Fees, by Alan Schwarz, dated February 15, 2007.

3. Attached hereto as Exhibit B is a true and correct copy of an article published by the Sports Business Journal entitled New Group May Seek Retired NFLers Rights, by Daniel Kaplan, dated February 26-March 4.

4. Attached hereto as Exhibit C is a true and correct copy of an article published by the Sports Business Journal entitled Retired NFLers' Delay Announcement of Group, by Daniel Kaplan, dated March 5-11.

5. Attached hereto as Exhibit D is a true and correct copy of information printed from the website <http://playersforjustice.org> as it appeared March 7, 2007.

6. Attached hereto as Exhibit E is a true and correct copy of a press release from Manatt, Phelps & Philips LLP entitled "Manatt and McKool Smith Help Retired Professional Football Players Kick Off Class-Action Lawsuit: Only 10 Percent of Those Represented by Union's Commercial Licensing Arm Receive Payments," dated February 15, 2007.

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I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Dated:

  
Eamon O'Kelly

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# EXHIBIT A

8 of 11 DOCUMENTS

Copyright 2007 The New York Times Company  
The New York Times

February 15, 2007 Thursday  
Late Edition - Final

**SECTION:** Section D; Column 1; Sports Desk; PRO FOOTBALL; Pg. 2

**LENGTH:** 776 words

**HEADLINE:** 2 Former N.F.L. Players Sue Over Sharing of Fees

**BYLINE:** By ALAN SCHWARZ

**BODY:**

Two former N.F.L. players filed a class-action lawsuit late yesterday in federal court in San Francisco against Players Inc., the licensing subsidiary of the National Football League Players Association, claiming that Players Inc. has improperly represented more than 3,500 retired players and may owe them "tens of millions of dollars" in back licensing fees.

The suit, filed by the former players Bernie Parrish and Herb Adderley in United States District Court, asserts that Players Inc. has behaved as a representative for most former N.F.L. players while distributing little money from, or information regarding, agreements with licensees like video-game manufacturers and apparel companies.

Parrish and Adderley said they were suing in part to compel Players Inc. to provide full details of all agreements with and payments to the players. Parrish, a defensive back from 1959 to 1966 with the Cleveland Browns and the Houston Oilers, said that those details had been "behind a veil of secrecy for years." The complaint includes a copy of an e-mail message from a Players Inc. officer that said \$7 million was distributed in 2005 to 358 former players, or roughly 10 percent of the retirees Players Inc. says in its literature that it represents.

"They use the retired players to benefit themselves by promoting the retired players and not compensating them for it," said Adderley, a Hall of Fame defensive back from 1961 through 1972 for the Green Bay Packers and the Dallas Cowboys.

Adderley, 67, claims to have received no money from a 2003 agreement he signed with Players Inc. to license his name for a line of Reebok products, and that his letters and telephone calls over two years to inquire about this were not returned. He said that his experience was widespread among former players.

"I couldn't turn my back on 3,500 retired N.F.L. brothers who have been mistreated, abused, by the N.F.L. Players Association and Players Inc.," Adderley said.

A spokeswoman said last night that Players Inc. would not comment until it had time to review all of the information regarding the complaint, which was filed at 7 p.m.

According to a news release from Players Inc. last month, the organization, formed in 1994, handles \$750 million in retail licensing business on behalf of all 1,800 current players as well as 3,500 retired players, generating more than \$100 million in annual revenue. While no specifics were offered, it is common industry knowledge that the vast majority of the revenue derives from the use of the names and likenesses of active players.

On its Web site, Players Inc. describes itself as "a fully integrated marketing company for active and retired N.F.L. players. These activities generate guaranteed royalties to Players Inc. and the players, in addition to providing financial support to the N.F.L.P.A."

## 2 Former N.F.L. Players Sue Over Sharing of Fees The New York Times Febr

Ronald S. Katz, the players' lead lawyer, said that Players Inc.'s claim of representing 3,500 retired players in collective marketing ventures raised the question of why only 358 received payments during 2005. He said that dozens of requests by players over several years to receive more information were ignored by Players Inc. representatives.

"Players Inc. says that they represent these 3,500 people, and I don't think there's any doubt that they're generating large amounts of revenue," Katz said. "It just cannot be true that 90 percent of our people do not deserve any money."

Katz said that by law, Players Inc. must respond to the lawsuit within 20 days, but that extensions of 30 days or more were common. He said that the case would go to trial in about 18 months, before which players could see documents and interview potential witnesses that otherwise had been unavailable.

"We're picking up a rock and seeing what's crawling underneath," Katz said.

Nick Lowery, an N.F.L. place-kicker from 1978 to 1996, said yesterday that he had not been paid for his inclusion in video games and other Players Inc. licensing deals.

"Players Inc. has a very cavalier notion that it's their money, that it's a pool that they distribute as they see fit, and not something that is a sober, fiduciary responsibility to all players," Lowery said.

The class-action lawsuit comes as N.F.L. retirees have become increasingly vocal in their dissatisfaction with what they describe as unfairly low pension payments and hard-to-satisfy standards to receive disability benefits, which are overseen by the league and the players' association. Several members of the Pro Football Hall of Fame, including Mike Ditka and Deacon Jones, have boycotted the annual induction ceremony in Canton, Ohio, in protest.

**URL:** <http://www.nytimes.com>

**GRAPHIC:** Photo: Bernie Parrish, picking off a pass in 1966 while with the Houston Oilers, is suing over licensing fees. (Photo by Robert L. Smith/WireImage.com)

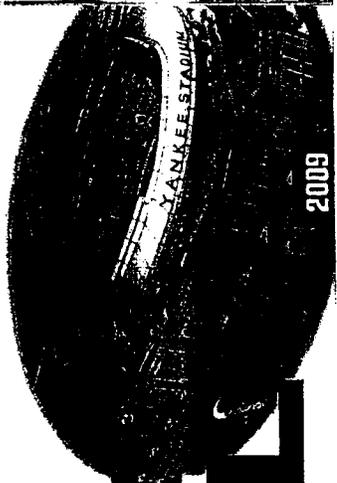
**LOAD-DATE:** February 15, 2007

# EXHIBIT B

STREET & SMITH'S

# SportsBusiness JOURNAL

WWW.SPORTSBUSINESSJOURNAL.COM  
FEBRUARY 26-MARCH 4, 2007  
VOLUME 9 ISSUE 42 • \$5.95



## New group may seek retired NFLers' rights

BY DANIEL KAPLAN

STAFF WRITER

A group forming to represent retired NFL players may want to compete with the sport's union in selling players' commercial rights once they leave the game.

The move is the latest in a sudden series of complaints by retired players that the NFL Players Association does not do enough for them. Several former players have complained about paltry disability and pension payments, and earlier this month, two former stars sued the NFLPA's marketing and licensing arm, Players Inc.

The law firm handling the suit, Manatt, Phelps & Phillips, is taking the lead in starting Retired Professional Football Players for Justice. That group is expected to formally announce its creation as early as this week at a news conference at Manatt's New York office, though that unveiling may be delayed a week or two, said Ron Katz, the Manatt lead counsel on the lawsuit.

One area the group will consider entering is representing retired players in deals with commercial interests, such as video

game and apparel companies. The lawsuit seeks class-action status on behalf of all retired players and names two, Bernard Parrish and Herb Adderley, in the complaint. The crux of the issue is that Players Inc. should be paying retired players licensing and merchandise income that it is not, Katz said.

NFLPA Executive Director Gene Upshaw said players receive licensing income for actual deals. He called the lawsuit without merit.

"What these guys are claiming is Players Inc. is making money off the retired players," Upshaw said. "If a player was generating any monies, he would get them."

**Retired players do not have to sign a licensing deal with Players Inc., though many do.**

Unlike active players, retired players do not have to sign a licensing deal with Players Inc., though many do. As a result, there could be an opening for a new group. As Upshaw pointed out, however, without rights to team and league logos, the rights of a retired player would be less valuable

than if coming from Players Inc. Katz did not disagree with that assessment.

Upshaw also answered one question in the complaint: Who holds the 21 percent ownership stake of Players Inc. not disclosed in the NFLPA's tax return. According to the NFLPA filing for the 12-month period ending Feb. 28, 2005, Players Inc. is 79 percent owned by the NFLPA. Upshaw said the remainder is owned by the union's charitable arm that funds grassroots and youth football initiatives.

According to the return, Players Inc. had income of \$4.9 million in the 2004 fiscal year.

# EXHIBIT C

# STREET & SMITH'S Sports Business JOURNAL®

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MARCH 5-11, 2007  
VOLUME 9 ISSUE 43 • \$5.99

MAR - 6 2007

## Retired NFLers delay announcement of group

BY DANIEL KAPLAN

STAFF WRITER

A group of retired NFL players seeking major changes in how the league's players union treats them has pushed back the formal announcement of the creation of an organization to work on their behalf until later next month to coincide with the NFL draft.

Retired Professional Football Players for Justice is forming in part through a lawsuit brought against the NFL Players Association's marketing and licensing arm, Players Inc. The lawsuit, which seeks class-action status to represent

all retired players, contends that Players Inc. has failed to reimburse retired players for commercial and marketing contracts signed by the union.

The union publicly has denied the charge and has asked for and received a 30-day delay in filing a formal response to the complaint, a step that is fairly typical in such cases. The response is now due, coincidentally, a day before the draft. The draft is April 28-29.

One week later, on May 4, the discovery process for the lawsuit is scheduled to begin.

The group being created, which has

launched a Web site at [www.playersforjustice.org](http://www.playersforjustice.org), also will look to lobby for changes from the union on pension and disability issues. The group originally targeted its formal debut for this month but opted to delay the announcement in hopes of capturing media attention during draft week in New York.

Two of the group's board members, Bernard Parrish and Herb Adderley, are plaintiffs in the lawsuit. A third former player, Walter Roberts, was recently added as plaintiff. Roberts was a teammate of Parrish's on the 1964 champion Cleveland Browns.

# EXHIBIT D



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**LEGAL SERVICES**

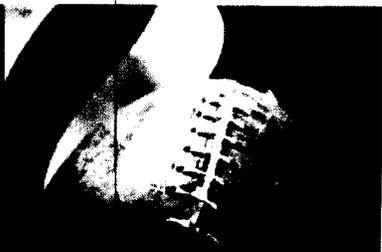
This website was created to inform former football players, fans and supporters of the actions being taken by retired players to collect what they fairly deserve, but that has not been distributed by the organizations that claim to be acting in the players' best interest.

Our first step in "righting these wrongs" has been to file a class-action lawsuit. We encourage you to read the lawsuit document so that you understand the nature of our complaints. [Read More](#)

- [Mannatt and McKool Smith Help Retired Professional Football Players Kick Off Class-Action Lawsuit](#)
- [Download the legal complaint \(pdf\)](#)

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# RETIRED PROFESSIONAL



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### ABOUT US

This website was created to inform former football players, fans and supporters of the actions being taken by retired players to collect what they fairly deserve, but that has not been distributed by the organizations that claim to be acting in the players' best interest.

Our first step in righting these wrongs has been to file a class-action lawsuit. We encourage you to read the lawsuit document so that you understand the nature of our complaints.

The second step is to make sure that everyone -- former players, fans and supporters -- come together to support this important cause. Please join our cause or contact us if you have any questions.

Finally, the third step is for the players to take control of their publicity rights, which will be marketed through a retired players licensing and retailing organization. This organization will go by the principle that 100% of its members will be paid. Stay tuned to this website for more information.

I thank you,  
Retired Professional Football Players for Justice

## **MISSION STATEMENT**

The goal of Retired Pro Football Players for Justice, a non-profit organization, is to provide an organized voice to all retired NFL players on issues such as royalties, pensions and disability payments.

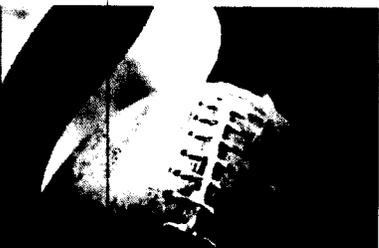
The organization will engage in activities like bringing class action lawsuits, testifying before Congress, and providing information to the media highlighting the situation of those whose former physically demanding careers have resulted in long-term damage to their health. In addition, we will establish an alternative to the current marketing and licensing system which will empower players.

The hard work that a professional football player puts in to rise to the highest athletic level should result in post-career benefits equivalent to those in any high-achieving job. Unfortunately, that is not the case and it is a problem which we will vigorously attack.

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### OUR BOARD OF DIRECTORS

**Bernie Parrish**  
Co-President

Bernie Parrish is a former defensive back who starred with the Cleveland Browns from 1959 through 1966. He led the defense of that team to a world championship in 1964. Mr. Parrish also played in two Pro Bowl games. A long-time advocate for retired players, Mr. Parrish is the author of *They Call It A Game*, an investigative autobiography of his life in the NFL. He is also the founder of the NFL Players' Union and forced the first NLRB election for the Union.



**Herb Adderley**  
Co-President

Herb Adderley is a former cornerback who played for the Green Bay Packers and the Dallas Cowboys from 1961 through 1972. He played in five Pro

Bowl games during the 1960s. Mr. Adderley also played in seven NFL championship games, including four of the first six Super Bowl games. He is one of only two players in professional football to play on six world championship teams. In 1980, Mr. Adderley was enshrined in the Pro Football Hall of Fame.



**Joe Delamelleure**  
Board Member

Selected in the first round of the 1973 draft by the Buffalo Bills, Joe Delamelleure and his offensive line mates were dubbed the "Electric Company" because they "turned the Juice loose." Behind "Joe D." O.J. Simpson became the first player to rush for more than 2,000 yards in a season. A starter from the first game of his rookie season, Joe won a string of career honors. Eight times he was selected first- or second-team All-Pro; seven times first- or second-team All-AFC, and was named to the Pro Bowl six times. He was inducted into the Pro Football Hall of Fame in 2003.

**Conrad Dobler**  
Board Member

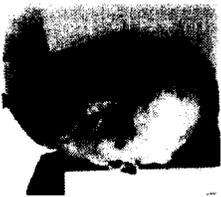
Conrad Dobler is a former offensive lineman who played for the St. Louis Cardinals, New Orleans Saints and the Buffalo Bills from 1972 to 1981. In addition, he played in three Pro Bowl games during the 1970s. He is also the author of *They Call Me Dirty*.



**Dr. Frank Ryan**  
Board Member

Frank Ryan played quarterback in the NFL for 13 years beginning in 1958, playing for the LA Rams, the Cleveland Browns, and the Washington Redskins. He was elected to three Pro-Bowl teams

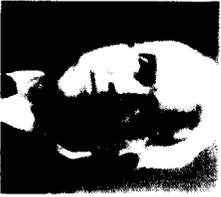
and helped lead the Cleveland Browns to their 1964 NFL Championship. Off the field, Frank received a doctorate in mathematics from Rice University in 1965 and subsequently pursued careers in government, academia, intercollegiate athletics, and the corporate world. He is committed to the goal of a fair and equitable program for retired NFL players.



**Sam Mutch**  
Secretary & Treasurer

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In addition to our officers and directors:



**Ronald Katz**  
Outside Litigation Counsel  
Manatt, Phelps & Phillips



**Lewis LeClair**  
Outside Litigation Counsel  
Manatt, Phelps & Phillips

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**POINT US**

Join our fight! As they say, the best defense is a good offense and we encourage you to join and support our drive for justice for retired NFL players.

Retired Professional Football Players for Justice is open to retired football players, as well as general supporters. To join the conversation about Players for Justice, please visit Bernice Parrish's blog.

**RETIRED PROFESSIONAL FOOTBALL PLAYERS FOR JUSTICE**

Since participation is more important than payment for our fellow retired players, dues are voluntary. In order to support our work, however, the suggested dues are \$25 to help with expenses.

**PAY DUES** 

To send donation by mail, use this [address](#) form.



Fans and the general public can show their support for Retired Professional Football Players for Justice by becoming a general sponsor with a donation of \$50. If you wish to get involved in a higher level, please contact us.

**MAKE DONATION**

To send donation by mail, use this printable form.



Online credit card payment will be available soon. However, currently, we can only accept check payments via regular mail.

Please complete and submit the appropriate membership forms above and a check payable to Retired Professional Football Players for Justice to the address on the form.

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**Manatt and McKool Smith Help Retired Professional Football Players Kick Off Class-Action Lawsuit. Read More >>**

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- **Detroit Free Press** - February 16, 2007  
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- **New York Times** - February 16, 2007  
"Sports of The Times: New Grievance Decisions Old Grievants"
- **New York Times** - February 16, 2007  
"Upstate Manhattan's Proximal: What's Behind the Property?"
- **New York Times** - February 15, 2007  
"A Hero's Big Day: Player's Star: Over's Hardday of 1990"

- **Associated Press** - February 15, 2006  
"Retirees Sue NFL Union Over Licensing"

**[REDACTED]**

**Ronald Katz**

Outside Litigation Counsel

Manatt, Phelps & Phillips

**Lewis LeClair**

Outside Litigation Counsel

Mckool Smith

**[REDACTED]**

Heather Wilson

Weber Shandwick

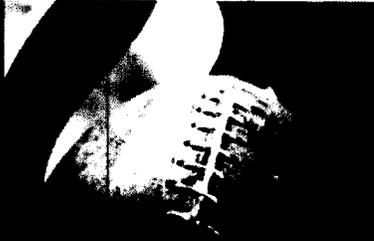
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**Manatt and McKool Smith Help Retired Professional Football  
Players Kick Off Class-Action Lawsuit**

*Only 10 percent of those represented by Union's commercial licensing  
arm receive payments*

**LOS ANGELES and PALO ALTO, CALIF., February 15, 2007** – A betrayal of trust of former All-Pro defensive back Bernard P. Parrish, Hall of Fame defensive back Herbert A. Adderley and more than 3,000 other retired football players is at the center of a class-action lawsuit filed by Manatt, Phelps and Phillips and McKool Smith late yesterday in federal court in San Francisco against Players Inc., the licensing and marketing subsidiary of the National Football League Players Association, the players' union. The retired players claim that they are owed tens of millions of dollars for licensing and other payments not made since 1994.

The lawsuit alleges breach of fiduciary duty by Players Inc. and claims that the retired athletes were not paid royalty and other payments from licensing and marketing opportunities using their names and

images. The lawsuit states that an accounting of Players Inc.'s \$750,000,000 secretive licensing business will disclose that the retired players, 90 percent of whom have received no payments, have been cheated since the day Players Inc. was formed.

"Players, Inc. has completely failed to comply with the duty of trust that it owes as the agent of these players," said Ronald S. Katz, the lead counsel for the retired players, who is a partner at Manatt.

"These players built the game before the era of big salaries. Because the pensions they receive from the Union are not enough to live on and because many of these players are disabled, they need these royalty payments just to make ends meet. Given the Players, Inc. and NFLPA documents attached to the complaint, I would not be surprised to see a congressional investigation of the Union."

Co-counsel Lewis LeClair, a partner of the McKool Smith law firm in Dallas, Texas, added, "If you purport to represent all of the players but only pay a fraction of them, that is neither fair nor legal, Players Inc. has a duty to act in the best interest of all those they represent, not to ignore the vast majority of them."

Founded in 1994, Players Inc. is responsible for marketing active and retired players through licensed products such as trading cards and video games. According to the lawsuit, the organization actively solicited retired players with promises of great benefits. The retired players claim that although Players Inc. has developed a business worth hundreds of millions of dollars by claiming to represent such a large group, 90 percent of the retired players have not shared in this benefit; because Players Inc. has refused to give the retired players useful information on its finances, they have not been able to protect themselves against the organization that was supposedly acting in their interests.

Parrish, who has been an advocate for retired players for 40 years, noted that in 2006 the U.S. Department of Labor increased the amount of information that the Players' Union had to report.

"Shortly after the players' union made that report," said Parrish, "I noted that the top four officers of Players Inc. announced their resignations. That's when I called a lawyer."

"I could not get Players Inc. to answer my phone calls," said Adderley. "I do not call that adequate representation for the hard work that I put into my football career."

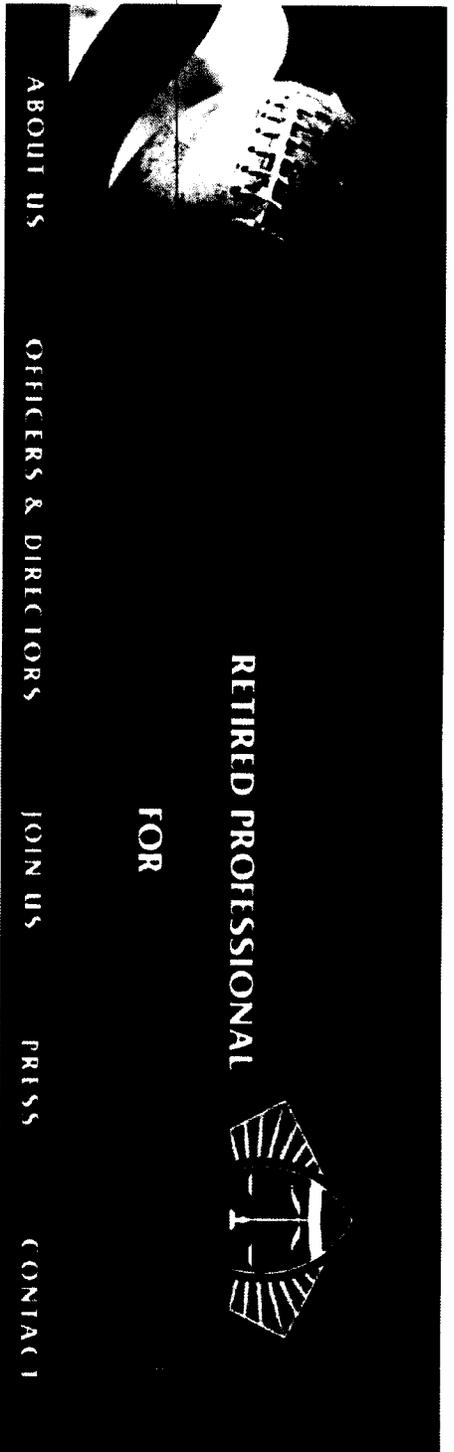
"The retired players need representation on issues like this," noted Parrish. "That gap will now be filled by a new organization that will be born out of this lawsuit, Retired Professional Football Players for Justice. We will be making an announcement about that shortly."

Parrish is a former defensive back who starred with the Cleveland Browns from 1959 through 1966. He led the defense of that team to a world championship in 1964. Adderley is a former cornerback who played for the Green Bay Packers and the Dallas Cowboys from 1961 through 1972. He played in four of the first six Super Bowl games and is one of two players in professional football to play on six world championship teams.

**About Manatt, Phelps & Phillips, LLP** Manatt, Phelps & Phillips, LLP, provides legal and consulting services to a global client base from offices in Los Angeles, Orange County, Palo Alto and Sacramento, California; New York City and Albany, New York; and Washington, D.C. Manatt includes Manatt Health Solutions, a healthcare policy and strategic business advisory group, and ManattJones Global Strategies, LLC, a wholly owned subsidiary that develops and implements strategies to expand client businesses and facilitate their effective competition in global markets. For more information, visit [www.manatt.com](http://www.manatt.com), [www.manattjones.com](http://www.manattjones.com), and [www.manatthealthsolutions.com](http://www.manatthealthsolutions.com).

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**CONTACT**

For more information about Retired Professional Football Players for Justice, please contact:

Bernie Parrish  
 Retired Professional Football Players for Justice  
 2114 Northwest 40th Terrace  
 Suite A-2  
 Gainesville, FL 32605  
 (352) 378-6348  
 bppp@playersforjustice.org

Sam Mutch  
 Retired Professional Football Players for Justice  
 2114 Northwest 40th Terrace  
 Suite A-2  
 Gainesville, FL 32605  
 sam@playersforjustice.org



*For press inquiries, please contact:*

Heather Wilson

Weber Shandwick

(310) 854-8244

hwilson@webershandwick.com

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# EXHIBIT E

**manatt**

MANATT, PHELPS & PHILLIPS, LLP

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## **Manatt And McKool Smith Help Retired Professional Football Players Kick Off Class-Action Lawsuit Only 10 Percent Of Those Represented By Union's Commercial Licensing Arm Receive Payments**

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The lawsuit alleges breach of fiduciary duty by Players Inc. and claims that the retired athletes were not paid royalty and other payments from licensing and marketing opportunities using their names and images. The lawsuit states that an accounting of Players Inc.'s \$750,000,000 secretive licensing business will disclose that the retired players, 90 percent of whom have received no payments, have been cheated since the day Players Inc. was formed.

"Players, Inc. has completely failed to comply with the duty of trust that it owes as the agent of these players," said Ronald S. Katz, the lead counsel for the retired players, who is a partner at Manatt. "These players built the game before the era of big salaries. Because the pensions they receive from the Union are not enough to live on and because many of these players are disabled, they need these royalty payments just to make ends meet. Given the Players, Inc. and NFLPA documents attached to the complaint, I would not be surprised to see a congressional investigation of the Union."

Co-counsel Lewis LeClair, a partner of the McKool Smith law firm in Dallas, Texas, added, "If you purport to represent all of the players but only pay a fraction of them, that is neither fair nor legal. Players Inc. has a duty to act in the best interest of all those they represent, not to ignore the vast majority of them."

Founded in 1994, Players Inc. is responsible for marketing active and retired players through licensed products such as trading cards and video games. According to the lawsuit, the organization actively solicited retired players with promises of great benefits. The retired players claim that although Players Inc. has developed a business worth hundreds of millions of dollars by claiming to represent such a large group, 90 percent of the retired players have not shared in this benefit; because Players Inc. has refused to give the retired players useful information on its finances, they have not been able to protect themselves against the organization that was supposedly acting in their interests.

Parrish, who has been an advocate for retired players for 40 years, noted that in 2006 the U.S. Department of Labor increased the amount of information that the Players' Union had to report.

"Shortly after the players' union made that report," said Parrish. "I noted that the top four officers of Players Inc. announced their resignations. That's when I called a lawyer."

"I could not get Players Inc. to answer my phone calls," said Adderley. "I do not call that adequate representation for the hard work that I put into my football career."

"The retired players need representation on issues like this," noted Parrish. "That gap will now be filled by a new organization that will be born out of this lawsuit, Retired Professional Football Players for Justice. We will be making an announcement about that shortly."

Parrish is a former defensive back who starred with the Cleveland Browns from 1959 through 1966. He led the defense of that team to a world championship in 1964. Adderley is a former cornerback who played for the Green Bay Packers and the Dallas Cowboys from 1961 through 1972. He played in four of the first six Super Bowl games and is one of two players in professional football to play on six world championship teams.

**ABOUT MANATT, PHELPS & PHILLIPS, LLP**

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