

EXHIBIT 5

Case No. C 07 0943 WHA

Parrish v. National Football League Players Association, et al.

Certified Copy

IN THE DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT
(SAN FRANCISCO DIVISION)

BERNARD PAUL PARRISH, HERBERT
ANTHONY ADDERLEY, and WALTER
ROBERTS, III, on behalf of
themselves and all others
similarly situated,

Plaintiffs,

v.

Civil Action
C07 0943 WHA

NATIONAL FOOTBALL LEAGUE
PLAYERS ASSOCIATION, a
Virginia Corporation, and
NATIONAL FOOTBALL LEAGUE
PLAYERS INCORPORATED, d/b/a
PLAYERS, INC., a Virginia
Corporation,

Defendants

CONFIDENTIAL VIDEOTAPED DEPOSITION OF
GENE UPSHAW

Wednesday, February 13, 2008
9:05 a.m.

Manatt, Phelps & Phillips, LLP,
One Metro Center, Suite 1100
700 12th Street, N.W., Washington, D.C.

Reported By:
Susan E. Smith, RPR, Notary Public

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1 APPEARANCES:

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18 On behalf of the Plaintiffs

19 JEFFREY L. KESSLER, ESQUIRE
20 ROY TAUB, ESQUIRE
21 DEWEY & LeBOEUF, LLP
22 1301 Avenue of the Americas
23 New York, New York 10019
24 (212) 259-7164
25 On behalf of the Defendants

21 ALSO PRESENT:

22 RICHARD BERTHELSEN, General Counsel
23 NFL Players Association
24 KEN NUZZI, Videographer
25

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1 in 2001, and I don't know if any drafts are
2 still in existence. And I don't know whether
3 there are any privileged copies that lawyers
4 are working on. But we'll take it under
5 advisement and we'll determine if there was
6 anything else.

7 MR. KATZ: Thank you.

8 Q. Does this agreement cover retired
9 players' rights in any way, as far as you
10 know?

11 A. I don't think it does.

12 Q. And on what do you base that, if
13 anything?

14 A. Because I was negotiating on
15 behalf of the active players, not the retired
16 players.

17 Q. And how did it come to pass that
18 you chose to do that? Why did you choose not
19 to negotiate on behalf of the retired players?

20 A. In this agreement or in general?

21 Q. In this agreement.

22 A. The same as in general: I don't
23 represent, didn't represent the retired
24 players in collective bargaining.

25 Q. Was this part of a collective

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1 bargaining agreement? Was Exhibit 99 part of
2 the collective bargaining agreement?

3 MR. KESSLER: Objection to the form
4 of the question.

5 Q. You may answer, sir.

6 A. This is part of an extension we
7 had in that agreement in 2001, yes. It was
8 all part of a collective bargaining agreement.

9 Q. So you believe that Exhibit 99 is
10 part of a collective bargaining agreement
11 between the National Football League and the
12 National Football League Players Association.

13 MR. KESSLER: Objection to the form
14 of the question, calls for a legal conclusion
15 which this witness is not competent to
16 testify.

17 Q. You may answer.

18 A. I'm not competent to testify. I
19 mean, seriously, I'm --

20 Q. No, I understand what you're
21 saying and I understand what Mr. Kessler is
22 saying. I'm not asking your legal opinion.
23 You're the guy who was on the point here. You
24 were negotiating it. And you've also
25 negotiated the CBA, the collective bargaining

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1 agreement?

2 A. That's correct.

3 Q. Did you believe that you were
4 doing that here, or do you believe that
5 they're unconnected, or you don't know?

6 MR. KESSLER: Objection to the form
7 of the question.

8 A. I know that as part of the
9 collective bargaining agreement extension,
10 this was incorporated as part of it, in rights
11 that we were conveying to the NFL.

12 Q. So as you sit here now, you
13 believe this is part of the collective
14 bargaining agreement?

15 A. This is not in the collective
16 bargaining agreement, if that's where you're
17 at, because this is not in it. But this was
18 part of that whole series of negotiations.

19 Q. But isn't it correct, sir, that
20 retired players have received payments
21 pursuant to this agreement, for the licensing
22 of their rights?

23 A. I'm not sure. I'm not sure if
24 they have or if they have not.

25 Q. Okay.

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1 STATE OF MARYLAND) ss
2 COUNTY OF BALTIMORE)

3
4 I, Susan Smith, RPR, a Notary Public
5 of the State of Maryland, do hereby certify
6 that the within named, GENE UPSHAW personally
7 appeared before me at the time and place
8 herein set out, and after having been duly
9 sworn by me, was interrogated by counsel.

10 I further certify that the
11 examination was recorded stenographically by
12 me, and this transcript is a true record of
13 the proceedings.

14 I further certify that the
15 stipulations contained herein were entered
16 into by counsel in my presence.

17 I further certify that I am not of
18 counsel to any of the parties, nor an employee
19 of counsel, nor related to any of the parties,
20 nor in anyway interested in the outcome of
21 this action.

22 As witness my hand and notarial seal
23 this 14th day of February, 2008.

24 My commission expires
25 November 1, 2010

Susan E. Smith

Susan E. Smith
Notary Public

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