

Exhibit 4

To the Declaration of Jason Clark

Filed Under Seal

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4

5 BERNARD PAUL PARRISH, HERBERT)
ANTHONY ADDERLEY, and WALTER)
6 ROBERTS, III, on behalf of)
themselves and all others)
7 similarly situated,)
)
8 Plaintiffs,)
)

9 vs.)

No. C07-0943-WHA

10 NATIONAL FOOTBALL LEAGUE)
PLAYERS ASSOCIATION, a)
11 Virginia corporation and)
NATIONAL FOOTBALL PLAYERS,)
12 INC., d/b/a PLAYERS, INC.,)
a Virginia,)

13)
Defendants.)
14)
15)

ORIGINAL

15

16

17 DEPOSITION OF DANIEL A. RASCHER, Ph.D.,

18 San Francisco, California

19 Friday, July 25, 2008

20

21

22

23 Reported by:

Rebecca Romano,

24 CSR No. 12546

Job No. 204032

25

1 Q And you understand you're under oath?

2 A Yes.

3 Q I'm going to ask you a series of questions.

4 If you don't understand any of those questions, please

5 let me know and I will try to make them clear to you.

6 Otherwise, I'm going to assume that the question was

7 understandable.

8 Okay?

9 A All right. I will do my best.

10 Q Okay. And if at any time you require a break

11 of any kind, just let me know. And when we get to a

12 convenient point in the questioning, I will try to give

13 you such a break.

14 Okay?

15 A Okay.

16 MR. KESSLER: I'm going to mark as Exhibit 631

17 a copy of what appears to be some regression results

18 that was just handed to me by your counsel before we

19 commenced the deposition this morning.

20 (Rascher Exhibit No. 631 was marked for

21 identification.)

22 Q (By Mr. Kessler) Dr. Rascher, could you tell

23 me what this exhibit is?

24 A This is an analysis that looks at -- it takes

25 NFL licensing rankings. So, for instance, if a team for

1 a particular year sold the most licensed products, then
2 they get a ranking of 1. The team that sold the second
3 most gets a ranking of 2, and so forth.

4 And I'm -- I'm regressing that against the --
5 so that -- so the time period is 1989 through 1996, NFL
6 data. So I'm averaging those over those -- over that
7 time period. And then I'm regressing that against the
8 handful of variables that you can see on the left-hand
9 side there.

10 And those are the -- the average number of
11 wins for those teams during that time period, the total
12 number of Super Bowl wins preceding the time period.
13 Not during the time period, but preceding the time
14 period. And then the 1990 population of each of the
15 cities or the -- I should be more clear, the -- the
16 MSAs, metropolitan statistical areas.

17 **Q When did you perform this analysis?**

18 A About a couple of weeks ago. Maybe about a
19 week ago, kinda. I was playing around with it.

20 I hadn't -- I hadn't -- I'd forgotten I had
21 this data. And I hadn't thought about it until
22 recently.

23 **Q Okay. I take it that this analysis was**
24 **completed after you did both your original report and**
25 **your supplemental report?**

1 A Yes.

2 Q Okay. And yet you are purporting to now rely
3 upon this some way in this case?

4 A I mean, yes. I mean, I didn't need it for my
5 analysis, but when it -- it came to me -- I was just
6 thinking about some research I was working on, and so
7 forth. And it came to me that I had this data, and so I
8 went and looked at it. And I just started -- you know,
9 I started reviewing it.

10 MR. KESSLER: For the record, we are going to
11 object to any admission of any testimony based on this
12 as being untimely.

13 But I will ask you questions about this,
14 nonetheless, in the event that the court would not agree
15 with that position; although, I believe it will.

16 MR. KATZ: And I will note for the record -- I
17 didn't mean to interrupt you. If you're not finished --

18 MR. KESSLER: Go ahead.

19 MR. KATZ: I would note for the record that
20 defendants produced some additional materials at the
21 beginning of Dr. Jizmagian's deposition. Mr. O'Kelly
22 produced additional materials --

23 MR. KESSLER: Yeah, but it was not material --

24 MR. KATZ: May I finish?

25 MR. KESSLER: Yes.

1 MR. KATZ: -- that Dr. Jizmagian had provided.

2 MR. KESSLER: It was not material that was not
3 fully disclosed in his report. And that's a fundamental
4 difference. But we can debate that at another time.

5 MR. KATZ: Absolutely.

6 Q (By Mr. Kessler) Let me just ask now.

7 This covers the period, you said, 1984 to '95?

8 A No. What did I say? 1989 through 1996.

9 Q Okay. So this has nothing to do with the
10 class period in this matter.

11 A That's true.

12 Q Okay. In fact, this ends seven years before
13 the class period.

14 A Okay.

15 Q Okay. And to --

16 MR. KATZ: Well, do you know what the class
17 period is?

18 THE DEPONENT: I mean, I -- I don't know the
19 beginning of the class period. So you didn't ask me a
20 question; you made a statement.

21 Q (By Mr. Kessler) Do you know when the class
22 period is in this case?

23 A I don't know when the beginning of the class
24 period is.

25 Q Okay. Let me -- okay.

1 **What basis do you have to conclude that**
2 **anything you found in this study ending in 1996 would**
3 **apply for the period 2003 going forward?**

4 A It's an analysis actually somewhat similar to
5 what Dr. Noll had produced. Or not -- I shouldn't say
6 "produced."

7 But he did an analysis back in the -- in the
8 '70s, which I think was very applicable to this -- to
9 what my analysis is and to what my opinion is, and I'm
10 just finding his analysis here.

11 Q **That's not my question, Dr. Rascher. I'm not**
12 **asking you about Dr. Noll's analysis in the '70s.**

13 I'm asking you, what's the basis for your
14 **conclusion that this study that ended in '96 would have**
15 **any applicability for the period from 2003 forward?**

16 A Well, what it shows is that events that
17 occurred in the past in the NFL, teams winning Super
18 Bowls, all the way into the future affects the -- the
19 sale of licensed merchandise.

20 Q **Okay. From where do you get the data on sales**
21 **of licensed merchandise?**

22 A I think we have a cite in here.

23 Team Licensing Business is where the data
24 originally came from.

25 Q **What is Team Licensing Business?**

1 A It's a magazine -- or, I should say, it was a
2 magazine that used to produce this information.

3 **Q Is it no longer in existence?**

4 A No longer in existence.

5 **Q Do you know where that magazine got the**
6 **information from?**

7 A That, I do not know.

8 **Q Do you have any way to verify the reliability**
9 **of that information?**

10 A I have seen other -- well, I have seen -- I've
11 seen it mentioned in many -- in the press. I have seen
12 researchers use it in -- in publications.

13 But in terms of originally knowing where they
14 got the information from, I mean, I recall that -- I
15 believe they -- they got it from NFL Properties. And --
16 and I think one of the requirements would be that NFL
17 Properties says, Well, you can't put how much money is
18 being sold by -- you know, how much licensed merchandise
19 is being sold under each team's name, but you can rank
20 them.

21 And, again, that's my recollection of this
22 data. I originally, you know, gathered this data or I
23 had an RA gather this data ten years ago.

24 **Q Since tens years ago, have you done anything**
25 **to verify the reliability of this data yourself?**

1 Q (By Mr. Kessler) You know counsel has
2 subpoena power in this case?

3 MR. KATZ: Object.

4 Q (By Mr. Kessler) Are you aware of the fact
5 that people have subpoena power in a lawsuit?

6 A Right.

7 MR. KATZ: Object.

8 Q (By Mr. Kessler) Did you ever ask counsel in
9 this case for plaintiffs to issue a subpoena to NFL
10 Properties to get any of this type of data?

11 A No, I did not. As I said, I -- I had only --
12 this only came to me in -- in the last few weeks.

13 Q Okay. Now, this data doesn't show anything
14 about -- about what fact this contributes to the
15 popularity of player licensing, licensing a player
16 images as opposed to the sale of team merchandise; is
17 that correct?

18 MR. KATZ: Object.

19 THE DEPONENT: The -- it talks about -- you
20 mean in the terms of the average -- the licensing data?

21 Q (By Mr. Kessler) Okay. The licensing data is
22 the sale of team merchandise, correct?

23 A I believe that's what it is, but --

24 Q Okay.

25 A But I don't know if the team merchandise -- I

1 don't know if it -- if it includes team merchandise
2 that -- that has, you know, the player's name on it.

3 Q You don't know one way or the other.

4 A I don't know if that --

5 Q For all you know, this could all be the sale
6 of team logo merchandise with no player names or images.

7 A That's possible, yes. I mean, as I said, I
8 don't know.

9 Q In fact, it's true, isn't it, that every
10 single reference in your report on the issue of brand
11 equity in sports only relates to the study of team brand
12 or league brand.

13 You don't have any study that examines the
14 value of a brand of particular players, a group of
15 players, do you?

16 MR. KATZ: Object.

17 THE DEPONENT: Well, a group of players -- a
18 team is a group of players.

19 Q (By Mr. Kessler) Okay. Other than the fact
20 that the team is made up of players, it's also made up
21 of coaches, correct?

22 A Correct.

23 Q It's also made up of a lot of other elements
24 that are not player-related, correct?

25 A Correct.

1 So not only to differentiate a team brand but
2 may also elevate a fan's sense of obligation to the
3 team.

4 **Q** Okay. Is this one of my questions you don't
5 understand?

6 I'm asking you --

7 MR. KATZ: Object.

8 **Q** (By Mr. Kessler) -- Dr. Rascher, to confirm
9 exactly what you just read; that every single one of the
10 studies that you relied upon, including this one, has to
11 do with a fan's obligation or affinity with a team brand
12 or obligation to team, without specifically talking
13 about players.

14 I'm correct, am I not?

15 MR. KATZ: Object.

16 THE DEPONENT: You mean, this -- this talks
17 about players.

18 MR. KATZ: You have to pause for a second.

19 THE DEPONENT: Sorry.

20 MR. KATZ: Object.

21 You can answer.

22 **Q** (By Mr. Kessler) Other than the fact that
23 players are on a team -- which I understand that. Okay?
24 Putting that aside -- okay? -- show me where, in this
25 study, this study talks about how past history or past

1 **players affects a fan's identification with or loyalty**
2 **to players in their player licensing.**

3 **Is there anything in this study that does**
4 **that?**

5 MR. KATZ: Object.

6 THE DEPONENT: I think that your premise is
7 incorrect.

8 Q (By Mr. Kessler) You don't get to argue with
9 my premise, just answer my question.

10 Okay. Is there some reason you won't answer
11 my question, sir?

12 A I'm --

13 MR. KATZ: Object. He answered your
14 question.

15 THE DEPONENT: I'm -- my analysis -- I mean,
16 it's -- I just didn't think it's relevant to -- to --
17 you don't have to look at the -- player licensing goes
18 in groups.

19 For instance, on the EA sports game, the
20 players go in there and they form a group, which is a
21 team. And so fans are -- are -- are playing the game
22 and they're playing -- pitting one team against the
23 other.

24 And so the -- even -- you know, even if there
25 are -- there are player licensing; you know, the fans

1 are buying that so they can play one team against the
2 other and see highlights of particular players, and
3 things like that.

4 Q (By Mr. Kessler) Okay. I'm not asking what
5 you think is relevant or not. Okay? I'm simply asking
6 you to confirm what I think is an undeniable fact, since
7 I read every single article you cited, I will represent
8 to you. Okay?

9 And I just want you to confirm that every
10 single article that you cite or relied upon, including
11 this one, Underwood -- but it's all of them -- it says
12 they deal with the issue of brand affinity or brand
13 development of teams or -- or nonsports entities or
14 service marks, but they don't deal directly with
15 discussing brand affinity of particular players or
16 groups of players, other than the fact that teams are on
17 players -- I mean players are on teams.

18 A Right.

19 Q Is that true?

20 MR. KATZ: Object.

21 THE DEPONENT: I mean, I would have to look at
22 each article.

23 And the reason I say that is when I -- when I
24 analyzed them, I wasn't looking for whether a fan is
25 trying to remember a particular player from the past and

1 then buy a licensed merchandise currently from that --
2 you know, based on that memory of the particular player.
3 It's the -- you know, sports is about the experience.

4 And so my analysis was to -- was to look at
5 that retired players from the past matter. In fact,
6 did -- did the retired NFL players help to make the game
7 what it is today?

8 That -- you know, that was the question that
9 was put forth to me.

10 Did retired players from the past help to make
11 the game what it is today?

12 **Q (By Mr. Kessler) Okay. So you did not**
13 **examine the issue of whether retired players in the past**
14 **helped to enhance the value of active player licensing**
15 **today, right?**

16 **You didn't look at that question.**

17 MR. KATZ: Object.

18 THE DEPONENT: Can you explain that further,
19 "active player licensing."

20 **Q (By Mr. Kessler) Okay. You understand that**
21 **most of the business of Players, Inc., is to license**
22 **active players.**

23 **You understand that?**

24 **A Yes.**

25 **Q Okay. And you understand that's where most of**

1 their revenue comes from.

2 You understand that?

3 A Yes.

4 Q Okay. You didn't do any particular study to
5 determine whether retired players contribute to the
6 value of active player licensing rights, did you?

7 MR. KATZ: Object.

8 THE DEPONENT: Not -- right. So I will agree
9 with you not in -- you know, not active player licensing
10 rights, in particular.

11 I -- as you've already stated, my analysis
12 looked at how the retired players and teams and that --
13 that whole, you know, group affected current or future
14 bottom lines, attendance and brand and -- and, you know,
15 in this case, licensed sales. Clatten (phonetic) and
16 Mill mentioned licensed sales of merchandise also.

17 Q Right. You looked at how would it
18 affect how -- how the past affected attendance, brand,
19 licensed merchandise sales and similar attributes by
20 teams, correct?

21 MR. KATZ: Object.

22 THE DEPONENT: I mean correct. Yes.

23 Q (By Mr. Kessler) Okay. Thank you.

24 And looking at your regression analysis, I
25 take it you did not do this study for this particular

1 have -- you were asked to examine the question -- I
2 think a specific question by counsel as to whether
3 retired players have helped to build the game.

4 Do you recall that?

5 A Yes.

6 Q Have you formed any opinion as to whether all
7 retired players in this class equally helped to build
8 the NFL game?

9 MR. KATZ: Object.

10 THE DEPONENT: No.

11 Q (By Mr. Kessler) Okay. In fact, it's true,
12 isn't it -- have you examined who are the class members
13 in this case?

14 A I have briefly looked at the class members in
15 this case.

16 Q Would you agree with me that the vast majority
17 of class members did little to build the NFL game?

18 MR. KATZ: Object.

19 THE DEPONENT: No. I wouldn't agree with you.

20 Q (By Mr. Kessler) Would you agree with me with
21 this? Would you agree with me that nonstarters have
22 done little to build the NFL game?

23 MR. KATZ: Object.

24 Q (By Mr. Kessler) People who never started
25 their whole NFL career.

1 MR. KATZ: Object.

2 THE DEPONENT: I mean, what do you mean by
3 "have done little"?

4 I mean, I think --

5 Q (By Mr. Kessler) Other than being -- well, do
6 you believe that everybody who has ever worked in the
7 NFL has helped build the NFL game?

8 MR. KATZ: Object.

9 THE DEPONENT: I don't have an opinion. I
10 mean, that's a really broad question. I don't have an
11 opinion on that.

12 Q (By Mr. Kessler) Well, let me -- I just want
13 to understand your analysis.

14 A Right.

15 Q Let's say one of the class members was someone
16 who never started a game and played in the NFL for two
17 years and left.

18 A Okay.

19 Q Okay. Would you believe that person has
20 contributed to the game as much as a star player, who
21 played in the league for 14 years?

22 A No.

23 MR. KATZ: Object.

24 Q (By Mr. Kessler) Okay. Would you believe
25 that that player contributed at all to building the

1 **game, other than the fact that he was an employee?**

2 MR. KATZ: Object.

3 THE DEPONENT: Well, of course. I mean, all
4 the -- the -- you know, especially in football, the
5 starters matter, the reserves matter. You know,
6 these -- especially in practice, but also to fill in if
7 someone is injured or to rotate in.

8 I mean, there's -- there's -- you know, it's
9 not just the -- it's not just the players who go to the
10 Hall of Fame. Those -- you know, I agree with you;
11 those are the ones who build the brand the most.

12 Q (By Mr. Kessler) Well, everyone matters.

13 A But everyone --

14 Q Coaches matter, right?

15 A Right.

16 Q Trainers matter.

17 A Right.

18 MR. KATZ: Object.

19 Q (By Mr. Kessler) Okay. Ticket-takers matter.

20 MR. KATZ: Object.

21 THE DEPONENT: Right.

22 Q (By Mr. Kessler) Right?

23 And people in the front office who sell
24 advertising matter.

25 A Right.

1 MR. KATZ: Object.

2 Q (By Mr. Kessler) Under that analysis,
3 everybody has helped build the game, correct?

4 MR. KATZ: Object.

5 THE DEPONENT: I mean, everyone -- yeah. I
6 mean, I would say that -- that -- yeah. I mean,
7 certainly, I imagine a ticket-taker would -- you know,
8 there's a push now in sports to really focus on customer
9 service. And so those ticket-takers are going to really
10 impact whether you have somebody come back the next
11 season, for instance.

12 Q (By Mr. Kessler) Now, in offering this
13 opinion about who build the game, what area of expertise
14 are you applying?

15 A I mean, the -- the economics of -- of the
16 sports industry. And I'm -- as I -- you know, I'm --
17 I'm doing a number of things. I'm -- I'm looking at
18 peer-reviewed published literature, and I'm looking at
19 transactions in the marketplace.

20 You know, I'm even -- I'm even taking the
21 NFLPA's own words, which are -- Doug Allen wrote that
22 the retired players built the game. I mean, he says,
23 "The retired players built the game and the union. We
24 live every day by the NFLPA's motto, past, present and
25 future."

1 economist -- you know, part of what an analyst does is
2 they look at what -- what people in the industry do.

3 Q (By Mr. Kessler) Okay. Let me just
4 understand.

5 So the things you have done is, one, you read
6 Doug Allen's statement.

7 Okay. That's one thing you've done, right?

8 A (Deponent nods head.)

9 Q Two, you have read and cited the -- the
10 literature we discussed that have to do with team brand
11 equity, correct?

12 A Correct.

13 Q Okay. Three, you produced this regression
14 analysis that talks about team merchandise sales now,
15 right?

16 A Correct.

17 Q Okay. And, four, you looked at transactions
18 in the marketplace.

19 Please tell me what the transactions are.

20 A Well, for instance -- let me not get the
21 numbers wrong.

22 So the -- the -- let me just look at the
23 footnote, if I may.

24 So there's the -- there's the -- the Hall of
25 Fame players -- again from -- coming from an e-mail that

1 I don't seem to have in front of me.

2 But there's the Hall of Fame players that --
3 that did a deal with the EA, and the EA paid money for
4 that deal. So that's an example of a transaction where
5 retired players make the game what it is today.

6 Q Okay. I understand that's a transaction where
7 Hall of Fame football players had a certain value to
8 their licensing rights and they were paid money for
9 those rights, correct?

10 A Correct.

11 Q How does that show -- the fact that their
12 rights had value as past players, how does that show any
13 connection to what value the NFL game has today as
14 opposed to just their value as retired players?

15 MR. KATZ: Object.

16 THE DEPONENT: I really don't understand.

17 Q (By Mr. Kessler) Okay. Well, I understood
18 your question was, how did the NFL -- do past players
19 contribute to the value of the NFL game today,
20 correct?

21 A Yes.

22 Q Okay. Explain to me how the fact that retired
23 players who are in the Hall of Fame have certain value
24 to their licensing rights because fans remember them
25 from the past, these Hall of Fame players, how that

1 THE DEPONENT: Sorry.

2 Studying transactions is an analysis. Have I
3 published a study, no.

4 Q (By Mr. Kessler) No, no, no, no. I'm asking
5 you -- please listen to my questions.

6 MR. KATZ: I'm going to object.

7 Q (By Mr. Kessler) My question --

8 MR. KATZ: You're arguing with the witness.

9 Q (By Mr. Kessler) My question --

10 MR. KATZ: You're criticizing his answers.
11 That's not your job.

12 Q (By Mr. Kessler) My question was not, so I'm
13 clear, did you do an analysis. Okay?

14 My question is, and I would just like to know,
15 did you do any examination of sales data of the Madden
16 game at all?

17 A No.

18 Q Okay. Now --

19 MR. KATZ: Again, I would caution the witness
20 to pause. I need a moment to object.

21 Q (By Mr. Kessler) Do you know the total amount
22 of compensation paid for the Hall of Fame players was
23 \$400,000?

24 Are you aware of that?

25 A Yes.

1 You're relying on this e-mail about the
2 \$400,000 -- right? -- to the Hall of Fame players.
3 Okay?

4 A Okay.

5 Q Other than that e-mail, do you have any other
6 information about that transaction?

7 MR. KATZ: Object.

8 THE DEPONENT: I know that the Hall of Fame
9 players received approximately 84 percent, if I am
10 correct, of the -- I would have to check, but -- of
11 the -- of the value of that licensing right.

12 Q (By Mr. Kessler) Okay. Other than those two
13 pieces of information, do you have any other information
14 about that?

15 A I mean, I've looked at how they are portrayed
16 in the game, and -- and the retired players often get,
17 you know -- appear to get a highlight, get a little bio,
18 and things like that.

19 But again, that was -- my question -- my -- my
20 opinion is on the qualitative value. It's not I'm
21 trying to quantify it. It's saying, Do the retired
22 players have value? We see a transaction; they have
23 value.

24 Q Okay. Let me ask you again.

25 How does the fact that the retired players

1 have value in themselves provide any evidence that they
2 also contribute to the value of the NFL game today?

3 MR. KATZ: Object.

4 Q (By Mr. Kessler) What is the connection?

5 MR. KATZ: Object.

6 THE DEPONENT: Roger Noll, in his analysis,
7 showed that teams from the past that had won pennants,
8 even as far back as nine years before that -- I mean,
9 Roger Noll did this -- affect the current, you know,
10 attendance which we -- which we can tie through --
11 through ticket pricing, and so forth, to -- to revenue.
12 So it goes to the bottom line.

13 Q (By Mr. Kessler) My specific question is:
14 How does the fact that the Hall of Fame players were
15 paid \$400,000 for their rights in EA show in any way
16 that those players contribute to the economic value of
17 the game today -- ticket sales, branding, licensing, any
18 other economic measure -- apart from the sale of their
19 own rights?

20 Is there any connection you have drawn -- that
21 you have drawn from that?

22 MR. KATZ: Object.

23 Q (By Mr. Kessler) That specific piece of data.

24 MR. KATZ: Object.

25 THE DEPONENT: Again, EA pays money for these

1 rights in order to, you know, sell more units of their
2 product.

3 Did I do an analysis correlating how many --
4 how much they paid versus how many extra units were
5 sold, no, I didn't.

6 Q (By Mr. Kessler) Did you know EA thought it
7 paid too much for those rights?

8 MR. KATZ: Object.

9 THE DEPONENT: I have no information on it.

10 Q (By Mr. Kessler) Do you have any information
11 about that at all?

12 MR. KATZ: Object.

13 THE DEPONENT: It seems to me that, again, not
14 EA, but that -- you know, there's -- there's evidence
15 that they may have paid less than what the market might
16 have.

17 Q (By Mr. Kessler) Let me give you a
18 hypothetical.

19 If you were to learn that EA thought it paid
20 too much for the rights and only did so as an
21 accommodation to the NFL and the NFLPA to help out the
22 retired Hall of Fame members because of its relationship
23 with active players, would that affect your analysis at
24 all --

25 MR. KATZ: Object.

1 different things.

2 Q (By Mr. Kessler) What other transactions did
3 you look at, other than the Hall of Fame transaction you
4 just mentioned?

5 MR. KATZ: Object.

6 Q (By Mr. Kessler) And I'm now going to your
7 conclusion about the retired players contributing to --
8 to what the game is today.

9 Any other transactions?

10 MR. KATZ: Object.

11 THE DEPONENT: Well, you can purchase, you
12 know, DVDs of Super Bowl highlights. You can go on
13 Websites and pit teams from the past against each other.

14 You know, the -- the -- you can watch TV games
15 from the past. Again, the media isn't going to put
16 those on unless they think that they have value.

17 You can buy retro jerseys and, you know, all
18 sorts of items that relate to the legacy or brand of --
19 of players.

20 Now, EA even includes the statistics of
21 retired players on teams, even if they don't formally
22 put that person's name in there.

23 So they -- they have spent the time -- you
24 know, they've spent the time and effort to do that, to
25 put those retired players in there.

1 bargaining.

2 **Q** **Have you studied collective bargaining in the**
3 **NFL?**

4 **A** Aspects of it, I have, yes.

5 **Q** **Are you familiar with how the players in**
6 **sports unions use active player licensing to support the**
7 **collective bargaining efforts of their unions?**

8 MR. KATZ: Object.

9 THE DEPONENT: For -- you know, in baseball,
10 right, Major League Baseball Players Association, I'm
11 familiar with -- with that they'll -- they'll set aside
12 special -- they call them special dues, but it's -- it's
13 licensing revenues. And they will use that for a number
14 of things, one of them being to support their -- their
15 collective bargaining, for instance.

16 **Q** **(By Mr. Kessler) Are you familiar, then, in**
17 **football, that one of the reasons why the union gets to**
18 **group licensing rights from active players and then**
19 **retains a percentage of that money is to support**
20 **collective bargaining efforts?**

21 **Are you familiar with that?**

22 MR. KATZ: Object.

23 THE DEPONENT: I mean, I'm familiar that they
24 take those revenues and -- and they use them to -- to
25 run their business. And so that would be --

1 Q (By Mr. Kessler) And the business --

2 A -- presumably part of their business.

3 Q And the business of the union, primary
4 business, would be collective bargaining activities as
5 opposed to the business of Players, Inc.

6 Would that be correct?

7 A For the NFL. I mean --

8 Q Yes.

9 A -- baseball will do -- you know.

10 Q Talking about for the NFL.

11 A Yes.

12 Q Okay. And have you studied at all in this
13 case whether or not the reason why a particular
14 percentage of revenue is voted on by the player
15 representatives to go to the union, whether or not
16 that's because the active players want to support their
17 union in their collective bargaining efforts?

18 Do you know anything about that?

19 MR. KATZ: Object.

20 THE DEPONENT: I haven't studied that in
21 particular. It was outside of the scope of what I was
22 asked to look at.

23 Q (By Mr. Kessler) Well, you've drawn certain
24 conclusions here where, for example, you compare the
25 percentage of licensing money paid out outside of the

1 union context with the NFLPA, correct?

2 A Can you clarify that.

3 Q Yeah.

4 You do comparisons, which we'll talk about,
5 between how much money, licensing money, the NFL pays
6 out compared to Major League Baseball Players
7 Association and the NBA Players Association. I'm
8 putting that aside.

9 You also compare the NFLPA's paying out of
10 licensing money to how licensing money is paid out
11 involving colleges, you know, other types of licensing
12 involving individuals, involving other types of sports
13 properties, involving leagues that are not unions; is
14 that correct?

15 A That's correct.

16 Q Okay. Now, my question is: Did you give any
17 consideration in your analysis as to whether the
18 difference as to how much money is retained by the NFLPA
19 -- okay? -- out of active player licensing money
20 compared to, for example, a licensing agent for a
21 college might be because of the decision by the active
22 players to support union activities that would not be
23 relevant to the licensing of a college or a non-union?

24 MR. KATZ: Object.

25 THE DEPONENT: My analysis was to look at what

1 was paid out directly to the players and then look at
2 what was customary in different aspects of sports.

3 Q (By Mr. Kessler) When you're doing something
4 customary, would you agree you should look at something
5 comparable, or else it doesn't make any economic
6 sense?

7 MR. KATZ: Object.

8 THE DEPONENT: Yes.

9 Q (By Mr. Kessler) Okay. And my question is:
10 In considering whether a sports union is comparable to
11 non-sports, to non-unions in licensing activities in
12 payouts, have you considered at all or studied whether
13 the fact that the active players want to devote some of
14 their licensing money to support the growth and strength
15 of the union makes a union non-comparable to non-unions
16 with respect to licensing?

17 MR. KATZ: Object.

18 Q (By Mr. Kessler) Have you considered that?

19 MR. KATZ: Object.

20 THE DEPONENT: So one of the -- so one of the
21 aspects was -- was for me to look at, you know, what an
22 agent charges, and then that money goes away. And then
23 the -- the licensor has that money, and what they do
24 with that money -- right? -- wasn't -- you know, wasn't
25 the focus of what I was looking at. I was looking at

1 what do these agents charge.

2 And then if you look at baseball, the baseball
3 union -- I wanted to look at the group licensing to make
4 it apples to apples, and so you look at what the
5 baseball union -- you know, and they have to run their
6 union, too. And then you look at what the football
7 union does.

8 Q (By Mr. Kessler) Okay. As I said in my
9 preface to this whole line of questions, I'm putting
10 aside now the comparisons you did with baseball and
11 basketball, which are also sports unions. Okay?

12 A Right.

13 Q So put that aside for the moment.

14 Would you agree with me that all of your other
15 comparisons of licensing agents, which are listed in
16 your report on page 10 and 11 -- okay? -- that -- on,
17 you know, 10 and 11, would you agree with me that it's
18 not an apples-to-apples comparison when looking at a
19 sports union's licensing activities versus a non-sports
20 union because there's this additional factor that the
21 union is not a mere agent, licensing agent, but also
22 performs union functions for the principals, which the
23 principals may choose to support by deciding to devote
24 licensing revenue to that union?

25 MR. KATZ: Object.

1 THE DEPONENT: So the question that was put
2 forth to me was, you know, can you compare that
3 percentage of what happens with NFLPA/PI with other
4 professional sports unions or other third licensing
5 entities.

6 And so these are not unions. You know,
7 each -- CLC does their work for college athletic
8 departments, and so forth.

9 Q (By Mr. Kessler) Well, let me ask it this
10 way.

11 MR. KATZ: He's not finished, Mr. Kessler.

12 Q (By Mr. Kessler) Finish, if you have
13 something else to say.

14 A In my analysis of -- you know, of published
15 research, again showing -- you know, shows what -- what
16 it shows, which are, you know, 20 percent licensing
17 management fee, as high as 35 percent, you know, 15
18 percent University of Kentucky, and so forth.

19 Q You agree with me, when you're doing
20 comparisons as an economist, you should try to look at
21 things that are apples-to-apples comparisons, correct?

22 A Correct.

23 Q Okay. And I guess my question is: Have you
24 made -- not what -- not what did counsel ask you to do.
25 Okay?

1 I'm asking you: Have you made any expert
2 conclusion that non-sports unions are an
3 apples-to-apples comparison to unions for the purposes
4 of looking at how they distribute their licensing
5 revenue?

6 MR. KATZ: Object.

7 THE DEPONENT: So it's -- it's not, you know,
8 most -- anytime you do an analysis evaluation on
9 anything like that, you're -- you're looking for
10 comparables, as you said.

11 Some comparables are more comparable than
12 others, but it's really a kind of shades-of-gray issue.

13 And so instead of just looking at baseball,
14 for instance, I -- I decided it was important to go out
15 there and look at all of these other situations where
16 they sell licensing rights and they -- and they charge a
17 fee for them.

18 And so, you know, to your point, you certainly
19 want to have as many -- you know, your comparables to be
20 as close as possible, but it's really shades of gray.

21 Q (By Mr. Kessler) Does that mean you do think
22 of apples to apples?

23 I just want to know --

24 A Which does?

25 Q -- one way or the other which -- I'll go

1 through each one separately, if you want.

2 Do you think the Collegiate Licensing Company
3 is an apples-to-apples comparison with the NFLPA with
4 respect to how they use licensing, how they distribute
5 licensing money?

6 Is that an apples-to-apples comparison in your
7 professional opinion?

8 MR. KATZ: Object.

9 THE DEPONENT: How they distribute it to
10 their --

11 Q (By Mr. Kessler) To their principals, because
12 one is players and the other is schools.

13 MR. KATZ: Objection.

14 THE DEPONENT: You know, they -- it's -- I
15 would -- I believe that it is a comparable. Apples to
16 apples, again, you know, it's -- people have different
17 meanings when they say that. But it's not exactly the
18 same. It is not a union, I agree with you.

19 Q (By Mr. Kessler) Well, let me ask you this:
20 Would there be anything wrong economically, from your
21 standpoint, in the principals in a union, the players,
22 deciding to give a greater percentage of the revenues to
23 their licensing agent, the union, because they want to
24 support the union activities than a college wants to
25 give to Collegiate Licensing Company because all it is

1 in general, it seems to be the same.

2 Q Okay. Now, in looking at the amount paid out,
3 you noted in baseball that their labor situation had
4 stabilized after a number of years, so they had a very
5 large payout in, I believe it was, 2007.

6 Is that correct?

7 MR. KATZ: Object.

8 THE DEPONENT: I would have to look to see
9 what the year was.

10 Q (By Mr. Kessler) Okay. But there came a year
11 when they paid it out, right?

12 A Yes.

13 Q Okay. Are you familiar with the labor
14 situation in football?

15 MR. KATZ: Object.

16 THE DEPONENT: Yes.

17 Q (By Mr. Kessler) Okay. You know that the
18 labor situation in football now is very unstable; is
19 that correct?

20 MR. KATZ: Object.

21 THE DEPONENT: Correct.

22 Q (By Mr. Kessler) Okay. You know the owners
23 have terminated the collective bargaining agreement, and
24 it's very possible there's going to be a lockout or a
25 decertification or some fight in the future.

1 **You're of that, correct?**

2 MR. KATZ: Object.

3 THE DEPONENT: Yes. I am aware of it.

4 MR. KATZ: You to have pause.

5 **Q (By Mr. Kessler) Okay. Based on your study**
6 **of sports unions -- and you wrote a chapter about**
7 **collective bargaining in sports, right?**

8 A Correct.

9 **Q So you would agree with me that there would be**
10 **an economic reason for the NFLPA not to pay out so much**
11 **of its licensing funds to the players right now --**
12 **okay? -- when they're in an economic unstable situation,**
13 **just as Major League Baseball Players Association**
14 **withheld licensing money when it was in a labor**
15 **situation of stress, correct?**

16 MR. KATZ: Object.

17 THE DEPONENT: I mean, we don't -- I don't
18 know -- you know, I was asked to look at what we see
19 over that time period that we have in my exhibit --
20 well, you know, what the payouts were to the players,
21 and so forth.

22 I mean, you -- you have a contract that says,
23 you know, how much of the shared pool licensing is going
24 to go to NFLPA and NFLPI, and the resulting amount goes
25 out to the players.

1 Now, I don't know, you know, when does that
2 change.

3 Q (By Mr. Kessler) Okay. I understand you were
4 asked by counsel to study certain things and report
5 certain data. Okay?

6 My question is: In assessing the significance
7 of the comparison, for example -- okay. If, for
8 example, in 2009 -- okay? -- there were to be a new
9 collective bargaining agreement entered into by the
10 NFLPA -- let's say for a seven-year period of time.
11 Okay? And then they were to determine to make a
12 significant payout to players of the licensing revenues
13 they had accumulated -- let's assume that that were to
14 take place now in 2009 -- you would agree with me it
15 would be relevant in your comparison, if you were
16 extending it out, to then include that total payout in
17 2009, just like you included the lump-sum payout to the
18 players of baseball when it occurred, correct?

19 MR. KATZ: Object.

20 THE DEPONENT: Right. If we extended the
21 years forward, which would be hard until we know what
22 happens, right? We extend the years backwards, we would
23 definitely want to -- want to take the shared pool
24 licensing, see what happens to it, see how much comes
25 in, see how much goes out, see how much comes in from

1 baseball, see how much goes out.

2 Q (By Mr. Kessler) And since we don't have a
3 period of labor piece to compare yet to the period of
4 labor piece in baseball that took place -- okay? -- we
5 don't really know how the two unions are going to
6 compare in terms of payout to players of licensing
7 revenue in a period of labor piece until you can look at
8 two periods of labor piece, correct?

9 MR. KATZ: Object.

10 THE DEPONENT: I mean, we don't know what the
11 future holds. And so we don't know what -- I mean, your
12 premise is what -- is that the NFLPA would do whatever
13 with its licensing revenue. I mean, I don't know what
14 they would do in the future with its -- with their
15 licensing revenue.

16 Q (By Mr. Kessler) Right. And I guess what I
17 am saying is if I hypothesized that they would pay out
18 their licensing revenue in a period of piece comparable
19 to what baseball paid out, then over a longer period of
20 time, when it got to that piece, they might look just
21 like baseball in terms of your study, right? You just
22 don't know one way or the other.

23 MR. KATZ: Object.

24 THE DEPONENT: I don't know what they would do
25 in the future, and so I don't know -- I mean, I can't --

1 I can't compare what I don't have. And so I -- you
2 know, I don't know what they would do in the future.

3 Q (By Mr. Kessler) And did you ask your counsel
4 to do any discovery depositions in this case to find out
5 what the NFLPA's plans were in terms of how they would
6 distribute money when they got to a period of labor
7 piece?

8 MR. KATZ: Object.

9 THE DEPONENT: No.

10 Q (By Mr. Kessler) Let me ask you this: Am I
11 correct, from your supplemental report, I understand you
12 are no longer relying upon your comparison with the NBA
13 Players Association because you've now concluded that
14 it's not appropriate?

15 A That's not correct.

16 MR. KESSLER: Okay. Let's mark your --

17 MR. KATZ: If you're moving on to something,
18 can we just take a short break?

19 MR. KESSLER: Sure.

20 (Recess taken.)

21 (Rascher Exhibit No. 634 was marked for
22 identification.)

23 MR. KESSLER: Back on the record.

24 Q (By Mr. Kessler) While you were out, we
25 marked as Exhibit 634 a copy of your reply report. And

1 I'm going to direct your attention to page 30 of your
2 reply report in footnote 101.

3 And I'm reading that -- it says, "Although I
4 think the NBPA is a valid comparable for other aspects
5 of this case, for example, for the fact that it shares
6 its group licensing revenues equally among all
7 participants, I agree with Dr. Noll that the NBPA is not
8 well suited for analysis of the specific question of the
9 portion of shared licensing revenues shared with
10 players."

11 Okay. So let me just focus on that part.

12 You now have changed your view that the NBPA
13 is well suited or a comparable to analyze the question
14 of this -- of this portion of shared licensing revenue
15 shared with players, correct?

16 MR. KATZ: Object.

17 Q (By Mr. Kessler) You stand by what's written
18 here.

19 A Yes.

20 Q Now, you do say in that sentence, "I think the
21 NPBA is a valid comparable for other aspects of this
22 case," and you give one example for the fact that it
23 shares its group licensing revenues equally.

24 Do you see that?

25 A Yes.

1 Q What else would you find it to be a valid
2 comparable for?

3 A Well, it's a sports union. It collects dues,
4 it engages in collective bargaining, and so forth.

5 Q But are those issues that you study -- I'm
6 sorry.

7 For opinions that you have offered, what else
8 are you using -- what are you using the NPBA for, for
9 any opinion you are offering in this case?

10 A That they distribute group licensing
11 equally.

12 Q Is that the only aspect that you are using it
13 for in your opinions?

14 MR. KATZ: Object.

15 THE DEPONENT: I believe so. Now, if I have a
16 footnote or somewhere that I've stated that, then -- but
17 as I sit here without rereading both of my reports, I
18 believe that that's the case.

19 Q (By Mr. Kessler) Okay.

20 A I'm trying to think.

21 Q Let me go back --

22 A Oh, well, there's the -- right. I mean,
23 there's the \$8,000,000 issue where it looks like the
24 NFLPA was trying to use that. So --

25 Q But you say that's not comparable to --

1 that it's a sports union like the NFLPA, but it chooses
2 not to be involved in distributing any money for retired
3 player licensing?

4 A I mean, that aspect is different about the
5 NFLPA, certainly. Again, my scope of what I was asked
6 was to look at what -- what happens in other situations.
7 And really, you know, the NFLPA is different in that
8 aspect than, say, basketball or -- or baseball.

9 Q Right. In other words, you've only looked at
10 two other sports unions, correct, to compare to the
11 NFLPA?

12 A Right. The NHL doesn't -- as far as I can
13 tell, doesn't -- which isn't surprising, doesn't submit
14 LM-2s to the Department of Labor.

15 Q Did you ask your counsel for plaintiffs to
16 seek discovery against the NHLPA to find out what they
17 do?

18 A No, I didn't.

19 Q So you don't use hockey. You don't use the
20 Arena Football League Players Association, right?

21 A No, I don't.

22 MR. KATZ: Object.

23 Q (By Mr. Kessler) You don't use the Major
24 League Soccer Players Association, correct?

25 A No, I don't.

1 Q Did you know those are also sports unions?

2 A They're smaller sports unions.

3 Q Yes. Okay.

4 And they also engage in licensing activities,
5 do you know, one way or the other?

6 A I'm very -- I know Major League Soccer is. I
7 imagine Arena Football League is.

8 Q But in any event, the only two sports unions
9 you're looking at as comparable for any issue in this
10 case is baseball and basketball, correct?

11 A Yes.

12 Q You don't look at the WMBA Players
13 Association, which is another sports union for women
14 basketball players, correct?

15 A Correct. It's -- it's another smaller -- you
16 know, it's less comparable even though it's a sports
17 union.

18 Q Okay. And so the two sports unions you have
19 picked as comparables for this case in the NFLPA, both
20 of them don't do any retired player licensing,
21 correct?

22 MR. KATZ: Object.

23 THE DEPONENT: Based on my analysis, yes.

24 Q (By Mr. Kessler) Okay. Now, are you familiar
25 with the fact that the NFLPA does do retired player

1 licensing, right?

2 A Correct.

3 Q And are you familiar with the fact that they
4 have generated a little more than \$30,000,000 during the
5 class period for different retired players in
6 licensing?

7 A Correct. The exact number, again, I don't
8 know, but --

9 Q In that ballpark?

10 A -- I believe in that ballpark.

11 Q And you are also familiar with the fact that
12 with respect to that retired player licensing --
13 okay? -- which is referred to by some people as under ad
14 hoc deals -- okay? -- that that money -- okay? -- is
15 distributed, about 97 percent, to the retired players,
16 correct?

17 In other words, it's a very, very high
18 percentage, correct?

19 MR. KATZ: Object.

20 THE DEPONENT: I'm pretty sure it's a very
21 high percentage, yes.

22 Q (By Mr. Kessler) That's a higher percentage
23 than the NBPA or the MLBPA distributes to its active
24 players, right?

25 MR. KATZ: Object.

1 THE DEPONENT: Correct.

2 Q (By Mr. Kessler) And it's a higher percentage
3 than the NFLPA distributes to its active players,
4 correct?

5 MR. KATZ: Object.

6 THE DEPONENT: Well, the NFLPA distributes
7 some ad hoc licensing money to the active players.

8 Q (By Mr. Kessler) Well, have you examined in
9 total, by taking the ad hoc money for the actives and
10 the GLR pool, what -- how the percentage compares to,
11 you know, whether -- what percentage is distributed of
12 retired player money to retired players versus active to
13 active players --

14 MR. KATZ: Object.

15 Q (By Mr. Kessler) -- by the NFLPA?

16 MR. KATZ: Object.

17 THE DEPONENT: No. My analysis was to look at
18 the shared licensing revenue. Again, it's -- it's --
19 you know, my belief that this case is about the -- the
20 retired players and the GLAs that they signed.

21 Q (By Mr. Kessler) Okay.

22 A And so I'm looking -- you know, I looked at
23 the shared licensing revenue and how it was
24 distributed.

25 Q Okay. Well, let me ask you this: When you

1 there.

2 Q (By Mr. Kessler) Okay. We --

3 A But that has --

4 Q But that has to do with the value of team
5 merchandise sales.

6 What I'm asking you again -- I want just to
7 make a clear record -- you don't offer any study or
8 examination of what impact having retired players has on
9 the revenues for selling active player rights by the
10 NFLPA or Players, Inc.?

11 MR. KATZ: Object.

12 THE DEPONENT: Right. I didn't do a study on
13 that, no.

14 Q (By Mr. Kessler) Okay. Let me go back, and I
15 want to ask you some things back about your first expert
16 report before I get back to your supplemental report.

17 You mentioned on page 3 of your report, on
18 your conclusions, on the No. 3, that group license
19 revenues are commonly divided up on an equal share
20 basis, correct?

21 A Right.

22 Q Now to reach that conclusion, the only
23 examples you have used is the Major League Baseball
24 Players Association and the National Basketball Players
25 Association and the National Baseball Hall of Fame.

1 A I thought that was a statement.

2 Q And have you done anything to check the
3 reliability of the sources of these authors?

4 MR. KATZ: Are you going to make this an
5 exhibit?

6 MR. KESSLER: Sure. Let's make it Exhibit
7 635.

8 (Rascher Exhibit No. 635 was marked for
9 identification.)

10 Q (By Mr. Kessler) I guess I'm asking: Do you
11 know what source they used for that point?

12 A They -- they cite a source at the back,
13 footnote 48.

14 Q Footnote 48 is something called "Grusd
15 Antitrust Implications."

16 Is that what it's referring to?

17 A It looks like that, yes.

18 Q Do you know what Grusd Antitrust Implications
19 is?

20 A No.

21 Q You don't know?

22 A I don't know.

23 Q Okay. And as an expert economist, wouldn't
24 you want to know what that was to determine whether or
25 not this information was at all reliable or not?

1 A I was hired by both.

2 Q You were hired by -- were you hired by the
3 marketing company?

4 A OFMA?

5 Q Yes. Who was actually a client?

6 A Right. Right. All of them interviewed me.
7 Where did my paychecks come from, I almost think would
8 say that. I think that was from the Raiders.

9 I can't actually -- I mean, it could be
10 Oakland Football Marketing Association. All -- all
11 three of them were -- you know, we -- there was -- they
12 narrowed down, apparently, eight different groups,
13 and -- they chose us. And all of them were involved in
14 the entire process.

15 So, you know, from my perspective, I wasn't
16 distinguishing --

17 Q Okay. All right. Let's move on.

18 Going back to your first report, which is 633.

19 A Uh-huh.

20 Q On page 5, you have a reference to the fact
21 that retro theme jerseys would help drive the sale of
22 NFL merchandise in 2006.

23 Do you see that?

24 A Yes.

25 Q Did you review any data as to how many jerseys

1 were sold or what volume of dollars they generated, the
2 retro jerseys?

3 A No.

4 Q Do you know if, like, retro jersey sales were,
5 you know, one-tenth the amount of current jerseys, 100th
6 the amount, 1,000th the amount?

7 Do you know anything about their relationship?

8 A I don't know the amount. Again, I wasn't --
9 that was really outside the scope of what I was asked to
10 do.

11 Q Okay. Looking at point 2 here, you reach a
12 conclusion that the NFLPA/NFLPI LM-2 documents are not
13 a -- an accurate way of determining the amount of -- of
14 licensing revenues that were distributed by the players.
15 Why don't you tell me what's wrong with using the NFL --
16 it changes, I think, between your first and second
17 report.

18 Currently, what is your opinion you're
19 offering about the LM-2s for the NFLPA and PI?

20 MR. KATZ: Object.

21 THE DEPONENT: They don't -- the LM-2s don't
22 accurately reflect the shared pool portion of the
23 licensing revenues that are generated by the NFLPA/PI.

24 Q (By Mr. Kessler) When you say they don't
25 accurately reflect the shared pool portion, do you mean

1 that they -- they are inaccurate in reflecting it, or do
2 you mean that you can't disaggregate it to determine
3 what the shared portion is?

4 MR. KATZ: Object.

5 THE DEPONENT: Right. You -- right. You
6 can't disaggregate it to determine what the -- what the
7 shared portion is.

8 Q (By Mr. Kessler) Okay. And that's because
9 you looked at the internal documents of the NFLPA and
10 you found that there was a difference in the numbers
11 that you couldn't reconcile through the LM-2s,
12 correct?

13 A Correct.

14 Q Now, you had no access to any internal
15 financial documents at Major League Baseball Players
16 Association, correct?

17 A Correct.

18 Q You had no access to any financial documents,
19 the NBA Players Association, correct?

20 A Well, you -- you just said financial
21 documents. You mean --

22 Q Internal financial documents.

23 A Not the LM-2s.

24 Q No. You have the LM-2s --

25 A Right. Right.

1 Q (By Mr. Kessler) But you said you're using it
2 to show that they only equally share.

3 A Right.

4 Q So what's your source that you're relying upon
5 that all revenue in the NBAPA is only equally shared?

6 A I cite a source, and I can't recall it at this
7 minute. I would have to -- I would have to find it.

8 Q Well, why don't you go back and tell me what
9 your source is for that.

10 A Okay.

11 Q You discussed basketball on lines 10 to 15 of
12 page 12 of your main report, but I don't see any
13 specific source, unless you can identify it, for that
14 fact.

15 MR. KATZ: So are you withdrawing the previous
16 question?

17 MR. KESSLER: No. I'm asking him what is the
18 source. He was going to look for it.

19 MR. KATZ: Right. So he's looking for it.

20 MR. KESSLER: Okay.

21 THE DEPONENT: So it's this source, Mark
22 Conrad's The Business of Sports book.

23 Q (By Mr. Kessler) This is a publication called
24 "The Business of Sports, a Primer for Journalists."

25 That's what you're relying upon?

1 A That's the title.

2 Q Okay. Is Mr. Conrad, do you know, is he an
3 economist?

4 A I believe he's actually a law professor, but
5 I'm not positive of that -- of what his role is at
6 Fordham University.

7 Q Do you know anything about the sources -- do
8 you know if Mr. Conrad had any access to the internal
9 financials of the NBAPA to determine whether or not they
10 had any unshared revenues?

11 MR. KATZ: Object.

12 THE DEPONENT: I mean, I would have to look.
13 I would have to look, I think, just to see potentially
14 what all the sources are. But I don't know, so I don't
15 know the answer to your question.

16 Q (By Mr. Kessler) I think I'm reading what you
17 are saying. This is on page --

18 MR. KATZ: Are you going to make an exhibit of
19 this, Mr. Kessler?

20 MR. KESSLER: Let's mark it, sure.

21 (Rascher Exhibit No. 636 was marked for
22 identification.)

23 MR. KATZ: It's number what?

24 THE REPORTER: 636.

25 Q (By Mr. Kessler) Where does it say here that

1 right?

2 A No, he's not.

3 Q Okay. What other source do you have for the
4 fact that the NBAPA doesn't have any licensing revenues
5 that are not shared equally?

6 A Footnote 36 in my original report. Let me
7 make sure that's what I'm looking at.

8 Q Okay. We'll take a look at that.

9 A It's right here.

10 MR. KESSLER: Why don't we mark that as the
11 next exhibit in line, please.

12 (Rascher Exhibit No. 637 was marked for
13 identification.)

14 Q (By Mr. Kessler) Okay. And what part of this
15 were you relying upon where it says that they shared --
16 that they only have shared licensing revenues?

17 A It says down here, if you can see where I am
18 pointing, "Player dues are 10,000 a year and are
19 collected from players out of their annual licensing
20 payments. The licensing revenue is split equally among
21 all union members from the last men on the bench to the
22 biggest super star."

23 Q And do you know if Mr. Lombardo had any access
24 to the financials of the NBPA to see whether there were
25 other revenues that weren't shared equally?

1 A I mean, it looks like he's citing the LM-2s.

2 Q The same document as you looked at.

3 A Right.

4 Q And from the LM-2s, you can't tell -- as you
5 determined from the NFLPA, you can't determine from
6 NFL -- from the LM-2s alone whether it's shared equally
7 or not, right?

8 A From the NFLPA LM-2s, you can.

9 Q Well, you only --

10 A I mean, there's --

11 Q You only knew that --

12 MR. KATZ: Wait. You're interrupting.

13 Q (By Mr. Kessler) I'm sorry.

14 A No, from the NFLPA's LM-2s, it's -- for
15 various reasons, they use the same terminology for two
16 different types of payments, for instance. I mean, I
17 don't know what the reasons are. It's very -- you know,
18 they will use the same word and then a dollar amount,
19 and sometimes that will be part of equally shared pool
20 payouts. Sometimes that will be an ad hoc payment.

21 For the NBA LM-2s, I'd have to look at the NBA
22 LM-2s to -- you know, I didn't put that as a footnote
23 here.

24 Q Wouldn't it be -- let me ask you this:

25 Wouldn't it be more reliable for you to have gotten,

1 A Correct.

2 Q Now, at the time you wrote your first report,
3 you erroneously believed that the deals referred to as
4 ad hoc deals did not involve six or more players, but in
5 fact now you know that they do, correct?

6 A Correct. The testimony of the 30(b)(6)
7 witness was -- led me to believe that there were
8 just those two types of deal, and then I realized that
9 there was a third type.

10 Q And now you know.

11 Do you know, for example, what percentage of
12 the ad hoc deals are actually group license deals as
13 defined as six or more players?

14 A Can you restate that or --

15 Q Do you know out of the total universe, let's
16 say, of -- let's start first with the retired player ad
17 hoc deals.

18 Do you know what percentage of those deals
19 involved six or more retired players?

20 A No, I don't.

21 Q Do you know that it's -- do you know whether
22 it's virtually all?

23 MR. KATZ: Object.

24 THE DEPONENT: That the ad hoc deals are
25 mostly group deals, you are saying that?

1 Q (By Mr. Kessler) Uh-huh.

2 A I -- I mean, I -- I have seen that in the
3 record somewhere that someone else made that
4 statement.

5 Q Do you know that the ad hoc deals have all
6 been produced in this case, the deals themselves, the
7 license agreements?

8 MR. KATZ: Object.

9 THE DEPONENT: I've looked at many of the
10 licensing agreements, but I didn't know that all of them
11 had been produced.

12 Q (By Mr. Kessler) Well, do you recall looking
13 through ad hoc deals and seeing that many of them were
14 group deals?

15 A Yes.

16 Q Okay. And that's also true, by the way, for
17 the active player category of -- of premiums and
18 promotional licensing.

19 Did you know that many of those deals are
20 group licensing deals?

21 A Yes.

22 Q And those are not equally shared, correct,
23 among the active players?

24 A The individual part of the group licensing
25 deal.

1 Q In other words, when you have, let's say, a
2 figurine deal that's in the -- not in the GLR pool, but
3 it's in the -- it's in the premium promotional
4 category -- and that involves six or more active
5 players -- that, in fact, each of the active players
6 involved ends up getting different amounts, not the same
7 amount?

8 Did you know that?

9 MR. KATZ: Object.

10 THE DEPONENT: Correct. If you're referring
11 to the TMP deal, I want --

12 Q (By Mr. Kessler) That's one example.

13 A Right. Right.

14 Q Yes.

15 A Right. The players who received, you know, an
16 ad hoc or premium portion received different amounts
17 and -- and the -- you know, the rest of the -- of that
18 TMP deal, most of that deal was -- was actually --

19 Q Right.

20 A -- equally shared pool money.

21 But yeah, there's -- there's definitely a
22 difference.

23 Q Now, when you calculated your percentage of
24 money that the union and PI retained versus how much
25 they distribute to players, you excluded all of the

1 revenues in and all of the payments out except for those
2 revenues in the GLR pool, correct?

3 MR. KATZ: Object.

4 THE DEPONENT: Right. Except for the revenues
5 that are in the pool that -- that's shared, yeah,
6 correct.

7 Q (By Mr. Kessler) And what is the rationale --
8 what is the economic rationale for not looking at those
9 other revenues and only looking at the revenues in the
10 GLR pool?

11 A I was asked to -- to look at the group
12 licensing in this case, the -- the shared pool group
13 licensing. And so the rationale was that's what I was
14 asked to look at.

15 Q So you were only supposed to be looking at --
16 you were told by counsel, "Only look at group licensing
17 revenues that are shared equally."

18 Is that true?

19 A Yes.

20 Q Okay. And so if you are only looking at group
21 licensing revenues that are shared equally and you're
22 going to compare that to something else, wouldn't you
23 only compare them to group licensing revenues that are
24 shared equally, if that's what you wanted to do, make an
25 apples to apples?

1 MR. KATZ: Object.

2 THE DEPONENT: I mean, that would be the
3 best-case comparison. You compare them to whatever the
4 nearest comps are.

5 Q (By Mr. Kessler) Well, when you deal with
6 things like collegiate licensing, the Olympics,
7 Kentucky, we all agree that none of that is shared
8 licensing, right?

9 None of it is shared group licensing, right?

10 A Correct.

11 Q So there you're taking all of the licensing
12 revenue, whether -- because it's not shared, and your
13 comparison to the Players Association and PI is only for
14 a portion of their licensing revenue, right?

15 MR. KATZ: Object.

16 THE DEPONENT: I mean, those other sources
17 were -- were -- are there to be able to -- to understand
18 what -- you know, in the sports industry, what is
19 customary for charging, you know, a licensing fee, what
20 those licensing commissions are going to be.

21 And that's -- that's the question.

22 Q (By Mr. Kessler) But in the case, for
23 example, of Olympic licensing -- okay? -- you're looking
24 at a pool of shared -- I'm sorry -- of non-shared money
25 that's given out to athletes, and you're calculating a

1 Q (By Mr. Kessler) But you used the word
2 "customary."

3 Okay. Why could it not be concluded that
4 since the NFLPA and PI have both shared revenues and
5 unshared revenues and have both this premium licensing
6 and this other licensing, while the other organizations
7 that you studied don't, why couldn't you conclude that
8 the business of the NFLPA and PI is not customary,
9 because it's not comparable to the other businesses --

10 MR. KATZ: Object.

11 Q (By Mr. Kessler) -- because it's different?

12 MR. KATZ: Object.

13 THE DEPONENT: You know, again, I was asked to
14 look at other professional sports unions and third-party
15 licensing entities and describe what's customary with
16 respect to those.

17 Q (By Mr. Kessler) Okay. Had you --

18 A So if the NFLPA, you know, does it
19 differently, then that's -- that's what they do.

20 Q Okay. You haven't reached any expert
21 conclusion that there aren't valid economic reasons for
22 the NFLPI and NFLPA to do it differently because its
23 business as a whole is a different business than what
24 you have compared it to.

25 You haven't examined that, right?

1 MR. KATZ: Object.

2 THE DEPONENT: I've just examined what they
3 actually do. I haven't tried to draw a conclusion as to
4 why they do it or that they do it, you know, that they
5 have -- have potentially cross-subsidies.

6 Q (By Mr. Kessler) Or they might have a
7 legitimate economic justification for it. You just
8 haven't examined that issue.

9 A I haven't examined that issue. It is -- you
10 know, it's one of the -- just an understanding of the
11 case. It's just that if you have a group of players or
12 a group of athletes and they -- you know, they don't --
13 they are only, you know, getting some of -- potentially
14 getting some of that -- that shared group licensing. So
15 that's what I was focused on.

16 Q Let me turn your attention now to -- back in
17 your expert report, to the \$8,000,000 transfer analysis
18 on page 7 of your report.

19 A Of the first report?

20 Q Your first report.

21 First of all, you state here that you were
22 under the belief that the increased \$8,000,000 in the
23 NBPA was a one-time charge that was not repeated.

24 Do you still believe that that's true?

25 A I believe that it varied from year to year but

1 supposed to value what it was and then they never did.

2 So, I mean, I have studied aspects of it.

3 I did not do a study that says, Let's value
4 the -- you know, the NFLPI logo. I didn't do that.

5 Q (By Mr. Kessler) Do you have any knowledge of
6 what tax law requirements are with respect to the split
7 of revenues between the Players Association, Players,
8 Inc., and the players, whether there are any tax law
9 requirements in order to avoid double-taxing of the
10 revenues?

11 Do you know anything about that issue?

12 MR. KATZ: Object.

13 THE DEPONENT: No.

14 (Recess taken.)

15 MR. KESSLER: Back on the record, please.

16 Q (By Mr. Kessler) Taking a look at page 9 of
17 your expert report. On line 7, it says, "Importantly,
18 the NFLPA allows ad hoc or premium licensing, which are
19 for licensing deals of five or fewer players."

20 And then it says, "By making this distinction,
21 the NFLPA (and other sports unions) are able to diffuse
22 the potential tension between the stars and other
23 players, allowing stars to generate, to sign individual
24 small group deals."

25 Do you see that?

1 A Yes.

2 Q Okay. Where do you understand it's recorded
3 the small group deals that the NBA Players Association
4 allows?

5 Where is that reflected in the -- in their
6 financial records, do you know?

7 A I don't know in basketball where it would
8 reflect that.

9 Q Do you know if it's in the LM-2s or not?

10 A It doesn't appear to be. It appears that all
11 of their revenues are not.

12 Q But you just don't know.

13 A Well, I mean, I have, you know, at least two
14 sources that say that their licensing revenues are
15 shared equally from the last man on the bench to the
16 biggest superstar.

17 Q Well, you're talking here about other sports
18 unions.

19 A Right.

20 Q I assume the two unions you're talking about
21 are basketball and baseball, correct?

22 Or who are the other sports unions you are
23 referring to?

24 A Well, in my -- in my reply report, as I
25 learned about how the NFLPA breaks out its licensing

1 revenue, again, I -- I really thought it was because of
2 the way that, you know, the -- the way that they write
3 about it in their -- in their LM-2. It's --

4 Q No, I understand that you have a different
5 understanding now.

6 A So I understand -- right.

7 Q But I'm talking about now. Here you wrote
8 about other sports unions allowing small group deals.

9 Do you still believe that basketball and
10 baseball allow for small group deals and individual
11 deals?

12 MR. KATZ: Object.

13 THE DEPONENT: My knowledge is that they don't
14 do them within the union. I mean, obviously, players
15 can do their own deals outside, and players can opt out,
16 occasionally, but --

17 Q (By Mr. Kessler) Okay.

18 A So again, as I updated myself in the -- in the
19 reply report, I didn't -- I didn't say that again.

20 Q Well, do you know, for example, how -- NBA
21 Properties, for example, is -- is doing the licensing
22 for the NBA Players Association, right?

23 A Right.

24 Q Do you know how -- if a -- if a sponsor wanted
25 three NBA players, how they go about doing that in the

1 **NBA?**

2 A They could go to the agents for the three
3 players, and -- I imagine, and get a deal done.

4 **Q Do you know -- could they also go through NBA**
5 **Properties, do you know?**

6 A I mean, I'm -- you know, I don't know of a
7 deal where they do that. I haven't seen a deal. I
8 imagine that they could do that, and then -- and then,
9 you know, the NBA Properties might then contact the
10 agents or the players, or something like that.

11 **Q But you just don't know.**

12 A I just haven't seen that -- that type of a
13 deal.

14 **Q In the next paragraph you say -- you cite that**
15 **the Baseball Hall of Fame has an equal share, and your**
16 **source is Marvin Miller?**

17 A Correct.

18 **Q Is Mr. Miller a member of the Baseball Hall of**
19 **Fame?**

20 A To my knowledge, he's not.

21 **Q Okay. And do you know what is the source of**
22 **his information about currently how Baseball Hall of**
23 **Fame revenues are distributed since he's not a recipient**
24 **of those revenues?**

25 A I don't know his source for that.

1 A Right.

2 Q -- and never been on a roster?

3 A Right. But what's the --

4 Q So in other words --

5 MR. KATZ: Wait a second.

6 THE DEPONENT: Can I finish?

7 Q (By Mr. Kessler) Yes.

8 A What's the analogous roster that we're talking
9 about for retired players?

10 Q There isn't one, is there?

11 A No. And so I'm saying, signing -- signing is
12 the roster. That puts you on the roster that the NFLPI
13 can go out and license. That's the roster that you're
14 on. That's the list you're on.

15 Q Okay. And what economic principle causes you
16 to conclude -- okay? -- that -- that merely signing a
17 GLA for a retired player is the equivalent to being on a
18 roster, you know, or playing in a league?

19 What -- other than saying you can do that,
20 what -- what principles says that has to be the way it's
21 done?

22 MR. KATZ: Object.

23 THE DEPONENT: I didn't state that that has to
24 be the way it's done.

25 Q (By Mr. Kessler) There would be many

1 reasonable ways to do this.

2 **Would you agree with me that way?**

3 MR. KATZ: Object.

4 THE DEPONENT: Anyone can take a pool of money
5 and divide it up in many different ways. I mean,
6 that's --

7 **Q (By Mr. Kessler) And all the ways could be**
8 **reasonable, correct? There can be many different**
9 **reasonable ways.**

10 MR. KATZ: Object.

11 THE DEPONENT: I wouldn't say all the ways
12 would be reasonable, no.

13 **Q (By Mr. Kessler) Okay. There's more than one**
14 **reasonable way, correct?**

15 MR. KATZ: Object.

16 THE DEPONENT: There would be more than one
17 reasonable way to take a pool of money and divide it up,
18 depending on -- you know, on the circumstances.

19 One reasonable way is what we see that the
20 active players do. It's divided up on an equal share
21 basis. We see it with Baseball Hall of Fame, National
22 Basketball Players Association, Major League Baseball
23 Players Association, Major League Baseball Properties.
24 Those are all --

25 **Q (By Mr. Kessler) But none of those --**

1 And so the economics is really what's --
2 what's happening, not whether they could or couldn't.

3 Q (By Mr. Kessler) I believe you have clarified
4 in your supplemental report, you are not claiming that
5 you have any opinion that the NFLPA or PI has a market
6 power in an economic sense.

7 Is that true? In the sense that it's used,
8 for example, in antitrust law or in microeconomics.

9 MR. KATZ: Object.

10 THE DEPONENT: Where are you referring to?

11 Q (By Mr. Kessler) Well, in your first report
12 you said, "This gives the NFLPA/PI market power." Okay?

13 And then in your second report, I believe you
14 said -- take a look at page 32 of your -- is that the
15 reply?

16 MR. CLARK: Yes, that's the reply.

17 Q (By Mr. Kessler) Page 32 of the reply. And I
18 believe you say here that, "My opinion is not that the
19 NFLPA has market power in a strict antitrust sense."

20 A Correct.

21 Q That's correct.

22 And when you say "strict antitrust sense,"
23 that would be under microeconomic analysis, correct?

24 MR. KATZ: Object.

25 THE DEPONENT: Industrial organization,

1 correct.

2 Q (By Mr. Kessler) Right. In fact, you have an
3 extensive background in industrial organization
4 economics, correct?

5 A Correct.

6 Q To determine market power, you'd have to
7 define a market, right?

8 A Absolutely.

9 Q You made no effort to define a relevant market
10 in this case.

11 A Absolutely. I've made no effort.

12 Q And so you've done no analysis to look at
13 cross-elasticity of demand for retired players versus
14 any other -- for NFL player licensing versus any other
15 type of licensing --

16 MR. KATZ: Object.

17 Q (By Mr. Kessler) -- correct?

18 MR. KATZ: Object.

19 THE DEPONENT: I mean, I did no
20 cross-elasticity analysis, no.

21 Q (By Mr. Kessler) I mean, for all you know,
22 because you haven't studied it, the NFLPA/NFLPI could be
23 competing in an extremely broad market in which they
24 have no market power at all in an antitrust sense.

25 MR. KATZ: Object.

1 Q That definition that it applies to any program
2 with a license and uses six or more players, that's the
3 same definition that you used in your first report,
4 isn't it?

5 A Correct.

6 Q Yes. It's the same definition that's in the
7 GLA, correct?

8 A It -- it should be.

9 Q Okay. So my question is: When you say, "I
10 have interpreted the term 'group licensing' to exclude
11 these ad hoc agreements" -- at the end -- did you really
12 mean that you are redefining the term "group licensing"
13 in a way different than it's in the GLA? Or do you just
14 mean that you have chosen, because counsel told you, to
15 only study the money in the shared GLR pool?

16 MR. KATZ: Object.

17 THE DEPONENT: Right. The -- the NFLPA
18 uses -- their terminology, to be frank, is very
19 inconsistent. And so when you look at the NFLPA's
20 spreadsheets, they will use the term "gross licensing,"
21 "licensing," "group licensing," which was part of the
22 basis, and then -- that and the 30(b)(6) witness, part
23 of the basis for my confusion on the original report.

24 So I'm using -- so I'm not redefining
25 anything. I'm saying, when I see the word "group

1 licensing" on the NFLPA spreadsheets, I know that they
2 are referring to the -- the shared pool.

3 Q (By Mr. Kessler) So what you're really saying
4 here is for the -- in using this share -- in using the
5 spreadsheets on the shared pool, you are confining your
6 analysis to the shared pool.

7 That's what you're trying to convey here,
8 right?

9 A Right. I mean, that would -- that's what I
10 was asked to look at. Sure.

11 Q That's not because you're saying that this is
12 the way group licensing should be defined for the
13 purpose of this case?

14 A Right.

15 Q For any particular purpose.

16 A I -- I don't have an opinion on that right.

17 Q And it was counsel who, in his questions to
18 you, directed you to examine the shared pool as opposed
19 to any other revenues, right?

20 A Yes.

21 Q Okay. Now, you state on page 20 of this --
22 page 20 -- no. Sorry. Page 3.

23 A I know. It looks like line 20 --

24 Q Line 20 looks like page 20.

25 Page 3 of this report, you say that,

1 "Individually negotiated ad hoc deals are an important
2 source of revenue to the NFLPA/NFLPI and to players'
3 fortunes."

4 Do you see that?

5 A Yes.

6 Q And you stand by that statement?

7 A Yes.

8 Q And that would also mean that individually
9 negotiated ad hoc deals are an important source of
10 revenue to the fortunes of retired players, right,
11 because they get some of those moneys?

12 MR. KATZ: Object.

13 THE DEPONENT: For the players who receive
14 them, yes.

15 Q (By Mr. Kessler) Yes.

16 A But the players who don't receive them,
17 obviously, they're not.

18 Q Right. And the players who receive them, to
19 your knowledge, are those whose rights were actually
20 utilized, right?

21 A Right. They have individually negotiated ad
22 hoc deals.

23 Q Right. The retired players who didn't receive
24 them are players because nobody used their name or
25 likeness.

1 **That's why they received nothing, right?**

2 MR. KATZ: Object.

3 THE DEPONENT: I mean, I calculated that they
4 didn't receive -- or how much the active players
5 received.

6 I didn't look at the ad hoc licensing deal, so
7 I don't have an opinion on whether there's some pending
8 lawsuit out there where some retired player's likeness
9 was used. I mean, I just don't know that.

10 **Q (By Mr. Kessler) You haven't studied the ad**
11 **hoc deals at all.**

12 A I haven't studied the ad hoc deals.

13 **Q Okay.**

14 A Only to try to parse them out. So I want to
15 be clear, just to get them out of the way.

16 **Q Only to exclude them.**

17 A Right.

18 **Q Other than excluding them, you haven't looked**
19 **at them.**

20 A Correct.

21 **Q Okay.**

22 A Can I clarify?

23 You say the deals, ad hoc deals. I mean, I
24 have studied the -- I'm just clarifying.

25 I studied the licenses that -- it had the

1 interference language and things -- non-interference
2 language, rather, and things like that, that -- you
3 know, that can contain partially ad hoc deals in them.
4 But I'm not trying to count the ad hoc deal revenues as
5 part of my analysis.

6 Q But you also said you haven't examined how
7 those moneys would -- I thought you said you haven't
8 examined them in other ways, other than to exclude them.

9 What other analysis --

10 A I have to think about each of the ways --

11 Q I will ask it the other way.

12 Other than to exclude the ad hoc revenues,
13 what other analysis have you done of the ad hoc deals?

14 A I mean, I -- in responding to Dr. Noll's
15 reports, I noted, for instance, that he made some --
16 some -- you know, some error, you know, a calculation
17 error in his report. I think I cited it in here.

18 So in that sense, I was looking at those.
19 But -- so that was an example of me looking at those
20 deals, but --

21 Q Other than that, is there anything you can
22 think of now?

23 A As I sit here now, I can't think of any other
24 thing.

25 Q Okay. On page 5, you added to your list of

1 A No. I -- I -- he came up with 379 of them, or
2 so forth, that -- that received payments, showing that
3 the retired players have value.

4 Now, one issue of when he looked at the other
5 ones who hadn't received NFLPI ad hoc licensing, what he
6 didn't look at is what if these players do deals outside
7 on their own, like at the local Chevy dealer. You know,
8 I'm a retired player, I go do a deal, I do a commercial.
9 You know, there's a transaction.

10 **Q Right.**

11 A Hence the retired -- that retired player has
12 value.

13 **Q Have you studied that at all, as to whether or**
14 **not any of the GLA class members who were not selected**
15 **by any licensees, whether they have individual deals**
16 **that they participated in?**

17 A I have not studied that.

18 **Q Do you have any disagree -- any reason to**
19 **disagree with this statement that there are many GLA**
20 **class members who, during the class period, have had no**
21 **licensing deals with anybody?**

22 MR. KATZ: Object.

23 **Q (By Mr. Kessler) Whether individually, or**
24 **group, or ad hoc, or anything else, do you have any**
25 **reason to disagree -- any basis to disagree with that**

1 **statement?**

2 MR. KATZ: Object.

3 THE DEPONENT: That wasn't part of what I was
4 supposed to look at.

5 And the reason I'm saying that is some of them
6 may have done deals outside. I --

7 Q (By Mr. Kessler) But you haven't examined it.

8 A No. Right. So I -- so it wasn't -- it wasn't
9 part of what I was supposed to look at.

10 Q Okay. Take a look at footnote 22, on page 10
11 of your report.

12 MR. KATZ: Can we have a break after you
13 finish this line of questioning?

14 MR. KESSLER: Sure. Yes.

15 Q (By Mr. Kessler) There's a reference here
16 that -- it says, "The articles to which I cited do speak
17 to the relevant question of brand, fan loyalty related
18 to past players, and Dr. Noll himself has cited to these
19 relevant passages. See, for example, Ross, James and
20 Vargas, in which team history, which includes retired
21 player-related elements, such as game winning plays in
22 the team's history, such as Herb Adderley's scoring of
23 the first ever defensive touchdown in a Super Bowl is
24 found to be statistically significant."

25 Do you mean to imply by this sentence that any

1 of the articles that you cited anywhere, that even one
2 of them refers to Herb Adderley's scoring of the first
3 ever defensive touchdown in a Super Bowl?

4 A No. That was my "such as."

5 Q Are you offering an opinion that that feat had
6 a statistically significant value in affecting team
7 value?

8 MR. KATZ: Object.

9 Q (By Mr. Kessler) Have you done such an
10 analysis?

11 MR. KATZ: Object.

12 THE DEPONENT: Well, I state game-winning
13 plays, and I wanted to give an example of a game-winning
14 play.

15 Q (By Mr. Kessler) I'm asking you: Do you have
16 an expert opinion that that particular play had any
17 statistically significant impact on his team's value?

18 MR. KATZ: Object.

19 THE DEPONENT: No. I haven't seen any one
20 study that, or I --

21 Q (By Mr. Kessler) And you certainly have not
22 studied that.

23 A No.

24 MR. KESSLER: We can take our break now.

25 (Recess taken.)

1 A And because the LM-2s didn't work, I have to
2 take the numbers that they begin with and say, These are
3 the shared pool -- revenues that go into shared pool.

4 So I don't know if they would -- if there was
5 ad hoc deals that had equal sharing, that if they were
6 part of the -- their official definition of the shared
7 pool, you know --

8 Q What I'm asking you, just your opinion, that
9 if there were ad hoc deals that had equal sharing but
10 were not in what's called the GLR pool as identified by
11 Mr. Eyrich -- okay? -- under your analysis, should they
12 be in or out?

13 That's all I want to know.

14 Does it matter, or is the only criteria that
15 they be in the GLR pool?

16 MR. KATZ: Object.

17 THE DEPONENT: I mean, my -- you know, I would
18 have to think about that. I was only asked to look at
19 what's in the equal shared pool. And so I'm not --

20 Q (By Mr. Kessler) Well, I'm asking you now.

21 A I know. But I -- I'd have to analyze that. I
22 mean, I have to think about that.

23 Q So that would be an important thing for you to
24 analyze before rendering an opinion in this case,
25 right?

1 MR. KATZ: Object.

2 THE DEPONENT: I mean, I was asked to look at
3 what is -- what is in the equal shared pool, not what
4 might become in the equal shared pool one day or
5 might -- you know, I was asked to look at what was in
6 the equal shared pool.

7 Q (By Mr. Kessler) I understand that you were
8 asked to look just at the GLR pool, and that's what you
9 studied.

10 A Right.

11 Q I'm asking you now as an independent
12 economist, do you have an opinion, one way or the other,
13 as to whether or not your study, for whatever your
14 study's purposes, should include any ad hoc agreements
15 that might have been equally shared even if they were
16 in -- not in that pool?

17 Or is it your view, no, I was asked to just
18 look at the GLR pool, and so that's all my study does?

19 I just want to know what your view is of what
20 your assignment and role was here.

21 A Right.

22 MR. KATZ: Object.

23 THE DEPONENT: My assignment was to look what
24 was in the GLR pool, and just -- and to see how it's --
25 it's broken out with NFLPI/NFLPA and the players.

1 I just want to know.

2 A I mean, you know, they -- they kind of average
3 in the middle. It wasn't that a whole bunch of them
4 were at one end or the either. And so I think my
5 opinion is that those are -- those are --

6 Q They are all customary.

7 A -- all customary.

8 Q They are all customary.

9 A Yeah.

10 Q Okay. That's fine.

11 A Okay.

12 Q For example, MLBPA kept approximately 38
13 percent, and that's right near the high end of your
14 customary range, right?

15 A Correct.

16 Q Okay. Page 34 of your report.

17 You discuss here some literature that you
18 reviewed about -- you call it principal/agent problems
19 within unions, correct?

20 A Correct.

21 Q Would you agree with me that the determination
22 as to whether a particular union had what you referred
23 to as a principal/agent problem, would have to be made
24 on an individual union-by-union basis?

25 A Yes.

1 Q Okay. And is it correct that you have done no
2 study in this case as to whether or not there is any
3 particular principal/agent problem within the NFLPA?

4 MR. KATZ: Object.

5 THE DEPONENT: Correct. I mean, I was --

6 Q (By Mr. Kessler) So all you're noting is --

7 MR. KATZ: Did you finish your answer?

8 THE DEPONENT: I was -- Roger Noll said
9 that -- I think he said it was facetious, which is a
10 strange term, that I was being facetious, like I was
11 being playful.

12 Anyway, he says that the concept that, you
13 know, a group of people that are self-governing -- I'm
14 not sure what term he uses -- could ever have a problem
15 where the principal, being the players, and the agent,
16 being those -- those workers in the union, could ever be
17 misaligned. He -- he threw it out the window as if it
18 were not possible.

19 And so he's written about that. I mean,
20 that's the strange part, is he's written about those
21 exact problems. And I cite many other sources I'd show.

22 I mean, an interesting source is one of them
23 that -- that did look specifically at unions and found
24 that a majority of the unions suffered from that
25 problem.

1 Now, this is -- these are Australian labor
2 unions. You know, they're not American professional
3 sports unions.

4 But I was just showing -- and the people have
5 written about it. There's entire books that talk about
6 the principal/agent problem that might exist in unions.
7 So...

8 Q (By Mr. Kessler) That's not an issue that you
9 have any particular expertise in, is it, the study of
10 governance issues within unions?

11 MR. KATZ: Object.

12 THE DEPONENT: No. I mean, I know bits and
13 pieces about various aspects, but I'm not an expert on
14 governance unions and -- I mean governance issues within
15 unions.

16 Q (By Mr. Kessler) You've never --

17 A I've never testified on it.

18 Q You've never testified on it. You've never
19 written any scholarly articles on it?

20 A No.

21 Q You've never done any economic studies of
22 it?

23 A I mean, I've read about it and --

24 Q Right.

25 A -- and I -- I even teach about it in class,

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4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California, do hereby
6 certify:

7 That the foregoing proceedings were taken
8 before me at the time and place herein set forth; that
9 any witnesses in the foregoing proceedings, prior to
10 testifying, were placed under oath; that a verbatim
11 record of the proceedings was made by me using machine
12 shorthand which was thereafter transcribed under my
13 direction; further, that the foregoing is an accurate
14 transcription thereof.

15 I further certify that I am neither
16 financially interested in the action nor a relative or
17 employee of any attorney of any of the parties.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

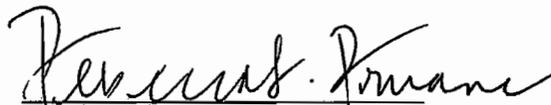
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21 Dated: July 28, 2008

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REBECCA L. ROMANO

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