

# EXHIBIT C

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\* \* \* HIGHLY CONFIDENTIAL \* \* \*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----x  
BERNARD PAUL PARRISH, et al,

Plaintiffs,

-against-

NATIONAL FOOTBALL LEAGUE PLAYERS  
ASSOCIATION, et al,

Defendants,

**HIGHLY CONFIDENTIAL**

Case No.: C07 0943 WHA  
-----x

399 Park Avenue  
New York, New York

April 4, 2008  
12:41 p.m.

Deposition of WARREN FRISS, pursuant to  
30(b)(6) Notice, before Sophie Nolan, a Notary  
Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO. LLC  
126 East 56th Street, Fifth Floor  
New York, New York 10022  
212-750-6434  
Ref: 87185B

1           reporter please swear in the witness?  
2       W A R R E N   F R I S S, called as a witness,  
3           having been first duly sworn, was  
4           examined and testified as follows:

5  
6       EXAMINATION BY

7       MR. LeCLAIR:

8           Q.     Would you state your name for the  
9       record, please, sir?

10          A.     Warren Friss.

11          Q.     Mr. Friss, are you still the vice  
12       president and entertainment general manager of  
13       the Topps Company?

14          A.     Yes.

15          Q.     How long have you worked for Topps?

16          A.     Since 1995, so almost 13 years.

17          Q.     What are your current  
18       responsibilities generally?

19          A.     I'm responsible for overseeing the  
20       entire entertainment business which we actually  
21       now call sports and entertainment. It's sports  
22       trading cards, entertainment trading cards and  
23       I'm responsible for the business.

24          Q.     Were you the person responsible for  
25       negotiating license agreements with Players,

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2                   Inc. in terms of or are -- strike that.

3                   Were you responsible for  
4                   negotiating any license agreements with the  
5                   National Football League Players Association?

6                   MR. GREENSPAN: Objection to form.

7                   MR. EBERT: You can go ahead and  
8                   answer.

9                   A. I'm not sure.

10                  Q. All right. Let me show you what  
11                  I'll have marked as Exhibit 407 which is a  
12                  declaration of Warren Friss. It's -- there are  
13                  some Bates stamped pages among the exhibits,  
14                  but they're all different so I'm not going to  
15                  read them.

16                  This is a declaration filed in this  
17                  case, Parrish versus National Football League  
18                  Players Association case number C 07 0943,  
19                  United States District Court, Northern District  
20                  of California, San Francisco Division.

21                  (Exhibit 407, declaration of Warren  
22                  Friss, marked for identification.)

23                  Q. Have you seen a copy of this  
24                  declaration, Mr. Friss?

25                  A. Yes.

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2 Q. Have you met with any -- anyone on  
3 behalf of the National Football League Players  
4 Association or Players, Inc. at any time in  
5 connection with this litigation in which we're  
6 taking the deposition?

7 A. No.

8 Q. Did you actually draft this  
9 declaration or did someone draft it for you?

10 A. Someone drafted it for me.

11 Q. Did anyone draft it for you who was  
12 not employed by Topps or your counsel?

13 A. Yes.

14 Q. Who drafted it?

15 A. It was an attorney for -- actually  
16 LeBoeuf Lamb the firm used to be, but I -- they  
17 made an initial draft, I made comments to the  
18 draft, a few rounds of comments and they  
19 ultimately finalized it.

20 Q. And how did you communicate your  
21 comments back to the lawyers at -- is it Dewey  
22 & LeBoeuf?

23 MR. GREENSPAN: Yes.

24 A. Yes.

25 Q. How did you communicate your

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2       comments back to them?

3           A.     I had some phone calls, but I can't  
4       remember whether those were -- whether I  
5       communicated comments back or I actually sent  
6       written comments back. I don't recall.

7           Q.     Do you still have a record of any  
8       of the comments that you made or of the initial  
9       draft that was sent to you?

10          A.     No.

11          Q.     Let's look at your declaration.  
12       The first paragraph of your declaration says  
13       that you have held the position of vice  
14       president and entertainment general manager of  
15       Topps since February 2005 and prior to that you  
16       were the vice president and internet business  
17       general manager and from February 2000 to June  
18       2001 you were the general counsel; is that  
19       correct?

20          A.     Yes.

21          Q.     So obviously you are a licensed  
22       lawyer; correct?

23          A.     Correct.

24                   MR. EBERT: In New York.

25          Q.     Are you -- do you still have legal

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2 responsibilities in your current job at Topps?

3 A. No.

4 Q. When you received the first draft  
5 of this declaration, did it have these exhibits  
6 attached to it?

7 A. I don't recall.

8 Q. Attached as Exhibit A to your  
9 declaration is a license agreement between  
10 Topps Company and the National Football League  
11 Players Association, effective as of March 1,  
12 2004.

13 Do you know why that specific  
14 license agreement was attached to your  
15 declaration as opposed to the one in 2000 or  
16 2007?

17 A. No.

18 Q. Did you ever -- did you ever ask  
19 anyone why that specific license agreement was  
20 chosen?

21 A. No.

22 Q. Did you ever go back at the time  
23 you were doing your declaration and compare any  
24 of the language in the other license  
25 agreements, both preceding and following the

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2 both. That's why I wasn't distinguishing, but  
3 let's look at Exhibit 407, the 2004 agreement.

4 A. Okay.

5 Q. And the last sentence of 1-A  
6 references, "Designated NFLPA license  
7 programs." You'll have to answer verbally.

8 A. I see that.

9 Q. Do you -- do you know what the  
10 meaning was of the phrase "designated" NFLPA  
11 license programs?

12 A. No.

13 Q. Even if you don't remember a  
14 specific discussion about the changes in the  
15 language of paragraph 1-A, do you recall that  
16 there was any change with respect to retired  
17 players in connection with the 2004 license  
18 agreement?

19 A. No.

20 Q. Let's go back to the first page of  
21 Exhibit 407, paragraph two of your declaration.

22 A. Okay.

23 Q. The second sentence states, "It was  
24 Topps' understanding that it did not, by virtue  
25 of the 2004 license agreement, obtain the



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2           rights of any retired players."

3                   Was that sentence one that was  
4           drafted by the Dewey LeBoeuf law firm and that  
5           you agreed with or is this a sentence that you  
6           think was changed?

7           A.       This is a sentence that I think was  
8           changed.

9           Q.       How was it changed?

10          A.       I don't --

11                   MR. GREENSPAN:  Objection to the  
12          form of the last question.

13          A.       I don't recall.

14          Q.       The next sentence says, "As to  
15          retired players, the player would have to  
16          individually designate his participation in a  
17          specific Topps program involving retired  
18          players for Topps to have his licensing  
19          rights."

20                   What did you mean by the phrase  
21          "individually designate his participation"?

22          A.       That there would have to be an  
23          agreement with the retired player that  
24          specifically authorized us to use his image.

25          Q.       Were you aware, in connection with

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2 the negotiations negotiation of this 2004  
3 license agreement, that the NFLPA had already  
4 obtained authorization from thousands of  
5 retired players?

6 MR. GREENSPAN: Objection to form.

7 A. No.

8 Q. Did you ever discuss with anyone  
9 from the NFLPA or Players, Inc. that the NFLPA  
10 had obtained a significant number of license  
11 agreements for the use of retired players'  
12 group licensing rights and that it already  
13 possessed those in its files?

14 , MR. GREENSPAN: Objection to form.

15 MR. EBERT: Objection.

16 You can answer.

17 A. No.

18 Q. Let's go back now -- turn back to  
19 page two of the license agreement in Exhibit  
20 407, Bates stamp page 6232, the grant of  
21 license provision, and there's a lot of  
22 language in this provision, but -- but,  
23 basically, if you go to the second half of 2-A,  
24 it grants a license to "The NFL players  
25 referenced in paragraph 1-A above."

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2                   Do you see that?

3           A.       Yes.

4           Q.       And did you have an understanding  
5 as to whether that language encompassed all of  
6 the players referenced in 1-A?

7           A.       Yes.

8           Q.       And did you think it referenced all  
9 players referenced in 1-A?

10          A.       Yes.

11          Q.       Including active and retired?

12                   MR. GREENSPAN:  Objection to the  
13 form.

14          A.       It would only, in my -- my  
15 recollection is that it would only reference  
16 retired players and active players to the  
17 extent that they signed the GLA.

18          Q.       And "GLA" stands for group  
19 licensing authorization?

20          A.       Yes.

21          Q.       Let's turn to page -- paragraph  
22 three on page two of your declaration.  You  
23 reference here the exhibit which is the -- the  
24 agreement with Roger Craig, which is attached  
25 as exhibit, I believe it's Exhibit B to your

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2 declaration. Yes, I think it is. Correct? Is  
3 that what you're referring to in paragraph  
4 three?

5 A. Yes.

6 MR. GREENSPAN: Objection to form.

7 A. I'm sorry, I don't believe I have  
8 Exhibits B and C.

9 Q. They may be on the back of the  
10 page. It's two-sided copies which was to save  
11 paper, but it may have been a mistake. If it's  
12 not there then --

13 A. I don't believe I have it.

14 Q. Okay. That's interesting.

15 MR. GREENSPAN: And, actually,  
16 Mr. LeClair, I was going to point out  
17 you -- previously you had asked him why  
18 it was that the 2007 license agreement  
19 wasn't attached to his declaration but,  
20 in fact, it is. It's Exhibit D. Perhaps  
21 it's missing from your copy and that was  
22 the confusion.

23 MR. LeCLAIR: I apologize, you're  
24 right. It is attached as Exhibit D.  
25 Thank you.

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2 MR. GREENSPAN: Sure.

3 Q. The -- okay, can I see that? I  
4 don't know what happened here. Let me show you  
5 Exhibit B.

6 A. Thank you.

7 Q. Exhibit B to your declaration,  
8 Mr. Friss, is dated November 9, 2004. It's a  
9 letter addressed to Roger Craig and it's signed  
10 by Seth Wyman at Players, Inc. I note that no  
11 one at Topps is an addressee or shown to be  
12 copied on this letter; is that correct?

13 A. That is correct.

14 Q. And did you nonetheless receive a  
15 copy of it?

16 A. I don't recall.

17 Q. When you referenced the document in  
18 your declaration, was it a document that was  
19 provided to you by counsel for Players, Inc. as  
20 opposed to something you got out of your own  
21 file?

22 A. I don't recall.

23 Q. Do you have a specific recollection  
24 that you even had a copy of this agreement  
25 prior to the time it was shown to you for

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2 purposes of your declaration?

3 A. I'm sorry, could you repeat the  
4 question?

5 Q. Do you have a specific recollection  
6 that you actually had this agreement between  
7 Players, Inc. and Roger Craig in your file  
8 prior to the time that it was given to you for  
9 purposes of this declaration?

10 MR. GREENSPAN: Objection to form.

11 A. No.

12 Q. Do you -- do you believe that  
13 players -- I'm sorry, strike that.

14 Do you believe that Topps is a  
15 party to this agreement?

16 MR. EBERT: Objection.

17 You can answer.

18 A. No.

19 Q. If you look at paragraph five of  
20 this agreement with Roger Craig, it's entitled  
21 "Compensation" and states, "As consideration  
22 for the grant of rights and services, Players,  
23 Inc. shall pay player \$5,000 (\$20 per  
24 autograph)."

25 Was it typical for you to agree to

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2 and services for Mr. Craig?

3 MR. LeCLAIR: Objection, form,

4 leading.

5 A. Yes.

6 Q. Do you know whether -- has Topps  
7 entered into similar individual designated  
8 deals with retired players?

9 A. Yes.

10 Q. And is it your understanding --  
11 what is your understanding as to whether those  
12 individual retired player deals contained grant  
13 of rights?

14 MR. LeCLAIR: Objection to form.

15 A. It's my understanding that they  
16 always include a grant of rights in addition to  
17 the grant of services.

18 Q. Okay. Does Topps do individual  
19 designated deals with active players?

20 A. Yes.

21 Q. What is your understanding as to  
22 whether those individually designated deals  
23 with active players contain a grant of rights?

24 A. It's my understanding that they do  
25 not.

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2 Q. Okay. Does Topps -- has -- what is  
3 your position with respect to Topps' ability to  
4 make a trading card of a retired player like  
5 Roger Craig absent an individually negotiated  
6 deal like Exhibit B to your declaration?

7 MR. LeCLAIR: Objection, form.

8 A. It's my understanding and it always  
9 has been that we cannot make a trading card  
10 unless we obtain the rights individually from  
11 that retired player which we have to do through  
12 NFLPA. We have never published a picture of a  
13 retired player without doing that.

14 Q. Okay. And I want to be very clear  
15 here that we're talking -- I want to put  
16 aside -- put aside the issue of autographs.  
17 Just focusing on Topps' right or lack of a  
18 right to make a trading card bearing a retired  
19 player's name, image statistical information,  
20 etcetera, what is Topps' position about its  
21 right to do so absent an individually  
22 negotiated deal like Exhibit B to your  
23 declaration?

24 MR. LeCLAIR: Objection to form.

25 A. No, we don't have the right to do



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2 so.

3 Q. Okay. Turning back to your  
4 declaration, paragraph four, it says, "Thus,  
5 under the 2004 license agreement, Topps  
6 acquired the group licensing rights of active  
7 NFL players only."

8 Is that consistent with your  
9 understanding today?

10 A. Yes.

11 Q. And have you ever had a different  
12 understanding about the rights that were --  
13 that Topps acquired under the 2004 license  
14 agreement?

15 A. No.

16 Q. The next sentence states, "It was  
17 my belief that any consideration paid by Topps  
18 under the 2004 license agreement was not paid  
19 for the rights of retired players."

20 Is that statement consistent with  
21 your understanding today?

22 A. Yes.

23 MR. LeCLAIR: Objection, leading.

24 A. Yes.

25 Q. And has that always been your

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2 understanding?

3 MR. LeCLAIR: Objection, leading.

4 A. Yes.

5 Q. Okay. The next paragraph it says,  
6 "The pertinent language in paragraph 1-A of  
7 another license agreement entered into between  
8 the NFLPA and Topps with an effective date of  
9 March 1, 2007, a true and accurate copy of  
10 which is attached hereto as Exhibit D, is to  
11 the same effect as the 2004 license agreement."

12 Is that an accurate statement?

13 A. Yes.

14 Q. So your understanding is that  
15 paragraph 1-A from the 2004 agreement is the  
16 same as paragraph 1-A in the 2007 agreement?

17 A. Yes. Effectively, yes.

18 Q. Okay. Before this case, had you  
19 ever focused on the individual language, the  
20 specific words, in paragraph 1-A?

21 A. I don't recall if I specifically  
22 focused on that.

23 Q. The next sentence in paragraph six  
24 of your declaration states, "It was my belief  
25 that any consideration paid by Topps under the

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2 Q. And the fact is you had no idea  
3 that Players, Inc. had already gotten rights  
4 from a large number of retired players because  
5 they didn't tell you that, did they?

6 A. I still don't know whether they  
7 have rights, so --

8 Q. So, in fact, if in 2004 and in 2007  
9 Players, Inc. had said, we've already got all  
10 of these rights, you would have been happy to  
11 get them granted in the license agreement;  
12 wouldn't you?

13 MR. GREENSPAN: Objection to form.

14 A. Yes.

15 Q. No further questions.

16 FURTHER EXAMINATION

17 BY MR. GREENSPAN:

18 Q. Was it Topps' intention to acquire  
19 the group licensing rights of retired players  
20 under the 2004 license agreement?

21 A. No.

22 Q. Was it Topps' intention to acquire  
23 the group licensing rights of retired players  
24 under the 2007 license agreement?

25 A. No.