

Volume 4

Pages 630 - 870

## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

BERNARD PAUL PARRISH, HERBERT	)	
ANTHONY ADDERLEY, WALTER ROBERTS	)	
III,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	No. C 07-0943 WHA
	)	
NATIONAL FOOTBALL LEAGUE PLAYERS	)	
ASSOCIATION and NATIONAL FOOTBALL	)	
LEAGUE PLAYERS INCORPORATED d/b/a	)	
PLAYERS INC,	)	
	)	San Francisco, California
Defendants.	)	Monday
	)	October 27, 2008

**TRANSCRIPT OF PROCEEDINGS****APPEARANCES:****For Plaintiffs:**

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(Appearances continued on next page)

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P R O C E E D I N G S

OCTOBER 27, 2008

7:30 A.M.

(The following proceedings were held in open court,  
outside the presence of the jury.)

**THE COURT:** Okay. I have a preliminary question for  
you. On the document that Electronic Arts is in the Ninth  
Circuit over, if any of you have been following that -- it's  
Trial Exhibit 80, I believe -- do the plaintiffs intend to  
introduce that into evidence?

**MR. HUMMEL:** Your Honor, at this time we do intend to  
introduce it with Mr. Linzner on Wednesday. However, I think  
we have consulted with our team, and at this point we're  
prepared to go with a redacted portion of that consistent with  
the Ninth Circuit's order.

**THE COURT:** The Ninth Circuit hasn't issued any  
order. All they did was issue a stay.

**MR. HUMMEL:** Right.

**THE COURT:** But the entire bugaboo has been -- my  
assumption, which sounds like maybe I was wrong, is that you  
wanted the jury to see that paragraph. And if that's true,  
then my view of the law is the public gets to see it.

But if you're prepared to redact it and not introduce  
it into evidence, then the whole issue becomes moot.

**MR. HUMMEL:** I actually reached out to EA last week,

1 Your Honor. I think it was on Thursday. And they sent me a  
2 version that would be acceptable to them. I need to consult,  
3 but I believe it would be acceptable.

4 In any event, it won't come in until Wednesday.

5 **THE COURT:** Well, if we're going to avoid making the  
6 Ninth Circuit do work on this, we ought to get this resolved  
7 today so we can advise the Ninth Circuit that it's moot.

8 So would you give this your attention and see if you  
9 can't get it worked out? But let's be clear on what that  
10 means. That means the jury would never see the redacted  
11 material.

12 **MR. HUMMEL:** No. That, Your Honor, we're not  
13 prepared to do. What we are prepared to do is have the jury  
14 see the unredacted version and have any display in open court  
15 be the redacted version.

16 **THE COURT:** Wait a minute. All right. I'm glad you  
17 clarified that, because you said you wanted to introduce into  
18 evidence the redacted version.

19 **MR. HUMMEL:** The publish publicly, correct.

20 **THE COURT:** All right. Let's be real clear.

21 **MR. HUMMEL:** Okay. Fair enough.

22 **THE COURT:** This is so collusive. Of course the  
23 parties -- you don't care what the public -- except for your  
24 press releases that you regularly give out, you don't care what  
25 the public learns.

1 But the Ninth Circuit has said very clearly that the  
2 parties cannot cover up the court records and keep them a  
3 secret from the public because the public has a right to look  
4 over our shoulder and see the federal system at work.

5 So the bugaboo here is that while the parties -- the  
6 parties are perfectly prepared to let the jury see more than  
7 the public, and the counsel are.

8 The Ninth Circuit has in previous cases -- the  
9 Kamakana case being the most pertinent one -- has said that  
10 that can only be done if there are compelling circumstances.  
11 Not just good cause, compelling circumstances.

12 So I'm glad we had this conversation because it has  
13 reaffirmed my belief that you did want the jury to see the  
14 paragraph in question.

15 **MR. HUMMEL:** The paragraph in question are the  
16 financial details of the license deal.

17 **THE COURT:** You want them to see that.

18 **MR. HUMMEL:** Yes. Absolutely.

19 **THE COURT:** That's what I assumed.

20 **MR. HUMMEL:** Right.

21 **THE COURT:** But Electronic Arts wants to conceal that  
22 from the public.

23 **MR. HUMMEL:** Correct.

24 **THE COURT:** And as I read the Ninth Circuit law to  
25 this date, even though you're prepared to conceal it from the

1 public so that the public cannot see the basis for the jury's  
2 decision, the Ninth Circuit has said that's bogus in the past.

3 Now, perhaps this will be an occasion for the Ninth  
4 Circuit to say: "No, we didn't really mean that."

5 All right. I think someone needs to make more clear  
6 to the Ninth Circuit -- see, you don't have -- you don't care.

7 **MR. HUMMEL:** Correct.

8 **THE COURT:** But it could be that the Ninth Circuit  
9 was on the verge of issuing an order that prevented you from  
10 using that paragraph even with the jury. Do you understand  
11 that?

12 **MR. HUMMEL:** Yes, Your Honor.

13 **THE COURT:** Because they may be under the  
14 misapprehension that you're perfectly prepared to redact that  
15 from the jury's view.

16 Now, you're making it clear to me that that's not  
17 what you want.

18 **MR. HUMMEL:** That's correct.

19 **THE COURT:** All right.

20 **MR. HUMMEL:** We will take care of that today, Your  
21 Honor.

22 **THE COURT:** Well, I think somebody ought to say to  
23 the Ninth Circuit, the plaintiff wants this -- is this  
24 important to you? Do you care? How much do you care that the  
25 jury sees that paragraph?

1           **MR. HUMMEL:** The amount of royalties is important to  
2 us, Your Honor, yes.

3           **THE COURT:** Well, that's what I assumed.

4           **MR. HUMMEL:** Yes.

5           **THE COURT:** To your theory, anyway.

6           But I think the -- your friend Electronic Arts is  
7 telling the Ninth Circuit it's not important; that it's just  
8 some sort -- all that matters to the jury is the gross amount  
9 that was paid and not the details of paragraph 6.

10           So don't come complaining to me if it turns out the  
11 Ninth Circuit sweeps broader in a mandate order than you would  
12 like.

13           All right. Thank you for that clarification. Now,  
14 telling me doesn't tell the Ninth Circuit.

15           **MR. HUMMEL:** I understand.

16           **THE COURT:** But at least you've informed me on this  
17 point.

18           All right. Now, we're going to change topics.  
19 Anything that the lawyers want to bring up today?

20           **MR. HUMMEL:** Yes, Your Honor. We have two matters we  
21 would like to raise before the jury comes in.

22           The first has to do with some exhibits that are --  
23 that the defendants notified the plaintiffs over the extended  
24 break they intend to use with Mr. Allen on their effective  
25 direct examination once Mr. Parcher is done.

1           These exhibits were clearly called for in discovery  
2 requests pursuant to paragraph 16 of your standing order.  
3 Because they were not produced in response to those discovery  
4 requests they should not be allowed in evidence. I can go into  
5 detail, if you like.

6           **THE COURT:** Of course you've got to go into detail.

7           Hand up the first exhibit that you care about, and  
8 keeping in mind as soon as all the jurors are here we are going  
9 to go ahead whether we have resolved this or not.

10          **MR. HUMMEL:** I will hand them all up, Your Honor.  
11 They are Trial Exhibit numbers 2258 through 2264.

12          **THE COURT:** I'm just going to look at them on the top  
13 then. 2259, is that it?

14          **MR. HUMMEL:** That's one of them, Your Honor.

15          **THE COURT:** All right. So explain to me why this --  
16 give me the exact document request. Hand it up to me.

17          **MR. HUMMEL:** The exact document request number was --  
18 there are two, actually. Document request number 1, which is:

19               "Documents that summarize or describe the  
20 identities and/or number of retired NFL players that the NFL  
21 represents or -- NFLPA represents or has represented or  
22 purported to represent and the years each was represented by  
23 the NFLPA."

24          The second document request is document number 4.

25          **THE COURT:** It's hard for me to follow. Do you have



1 a copy that I can --

2 **MR. HUMMEL:** I have one that I can hand up to you,  
3 Your Honor.

4 **THE COURT:** You keep a copy and let me see --

5 **MR. HUMMEL:** The one I would like the Court to focus  
6 on is actually document number 4. It's highlighted for Your  
7 Honor.

8 **THE COURT:** All right. Document request No. 4:

9 "All documents that refer to or constitute  
10 representations made by the NFLPA as to its or Players Inc's  
11 licensing or representation of retired NFL players."

12 And the response to that was:

13 "NFL objects to this on the ground  
14 'representation' is vague and ambiguous, calls for a legal  
15 conclusion, and is overly broad. Subject to and without waiver  
16 of the foregoing objections, the NFLPA will produce any  
17 documents that summarize, describe or refer to communications  
18 referring to the group licensing program for retired players,  
19 licensing or appearance opportunities available to retired  
20 players, licensees of the NFLPA and/or Players Inc, licensed  
21 retired players rights, terms of the licensing programs for  
22 retired NFL players, the performance revenues or finances of  
23 the group licensing program for retired NFL players. The NFLPA  
24 will not produce documents relating solely to administrative  
25 matters."

1 All right. I've focused on that. So explain to me  
2 now why this first document would have fallen within request  
3 No. 4.

4 **MR. HUMMEL:** Each of those documents, Your Honor,  
5 that I handed you, including the first one, are, in fact,  
6 representations made by the NFLPA to, we presume, third-party  
7 licensees regarding their representation of retired players.

8 It is squarely within the ambit of document request  
9 No. 4.

10 I assume that Mr. Kessler will say with Mr. Allen  
11 that these are marketing materials. In fact, they are  
12 marketing materials for both active and retired players.

13 But clearly they fall within No. 4. They should have  
14 been produced. They were not. And this is in effect now by  
15 labeling them trial exhibits a violation of your standing  
16 order.

17 **THE COURT:** What do you say to that, Mr. Kessler?  
18 Just focus on Exhibit 2259 at the moment.

19 **MR. KESSLER:** Yes, Your Honor. First of all, Your  
20 Honor, this objection was waived by plaintiffs because under  
21 Your Honor's standing order we exchanged exhibit lists. And  
22 they have to state, as Your Honor knows, all objections to the  
23 admissibility of documents. This was on the list.

24 The only objections they stated to the admissibility  
25 of these particular documents was authentication, which we will

1 do with the witness, and internal hearsay to the extent that it  
2 has internal hearsay.

3 So having not raised this issue of nonproduction we  
4 believe it was waived there.

5 But putting aside the waiver issue, although I think  
6 that under Your Honor's rules is dispositive on this, more  
7 importantly these documents are not representations by Players  
8 Inc, you know, as to its licensing or representation of retired  
9 players.

10 What these are is brochures on -- given to licensees  
11 about players. It's not representations about anything in any  
12 stretch of the word.

13 Okay. And it was not responsive. They easily could  
14 have asked for a request that said: "Give us marketing  
15 materials. Give us brochures. Give us materials you give to  
16 licensees." Anything about that.

17 There is no request. So they're now trying to  
18 pigeonhole it here. And what's particularly egregious, Your  
19 Honor, is Mr. Parcher, you'll recall, when he questioned  
20 Mr. Allen started shouting at the witness:

21 "Can you produce any document? Can you direct  
22 Mr. Kessler," or whatever he said now, "to go to his office  
23 over the weekend and get these documents?"

24 And he had the documents all the time. They were on  
25 our exhibit list. So he's now created -- he's overstated his

1 hand with the jury, strongly suggested to them that there are  
2 no marketing documents or brochures or anything like that.

3 The jury thinks there's nothing there. And now they  
4 want to come in and say: "Well, it's true we've had them on  
5 your exhibit list the whole time."

6 So Mr. Parcher had no basis to ask those questions  
7 under the rules of having a good faith basis for the question.  
8 And now he wants to keep the material out, even though they  
9 never asked for it. But we did produce it on our exhibit list.

10 **MR. HUMMEL:** Your Honor --

11 **THE COURT:** What do you say to all that?

12 **MR. HUMMEL:** Well, I have a lot to say.

13 Number one, we went, actually, back yesterday and  
14 checked the transcript of what Mr. Parcher said that  
15 Mr. Kessler obviously didn't read. What he said was:

16 "Do you have marketing plans for retired  
17 players?"

18 These are not marketing plans for retired players.  
19 They are marketing plans that include both actives and  
20 retirees. They do not specifically call out retired players.  
21 Mr. Kessler actually has his facts wrong.

22 As to waiver, Your Honor, I never -- and, by the way,  
23 I never in a million years thought we would have to object on a  
24 specific document that was not disclosed, because it violated  
25 your standing order.

1           Your standing order, paragraph 16, is very clear:

2           "Anything that wasn't produced pursuant to a  
3 document request is out."

4           These documents were not produced. Mr. Kessler knows  
5 that.

6           **THE COURT:** But don't I have another ground rule that  
7 says you have to identify your documents at trial ahead of  
8 time, then give the other side a chance to state its objections  
9 to those documents?

10          **MR. HUMMEL:** Yes. And the objections are specific as  
11 to hearsay, as to no foundation, as to those kinds of things.

12          But as to whether they were disclosed in discovery,  
13 Your Honor, we assumed that paragraph 16 trumped.

14          **THE COURT:** But wait a minute. You mean, you can  
15 just lie back in the weeds and spring this on Mr. Kessler the  
16 morning he's going to introduce it into evidence?

17          **MR. HUMMEL:** No, Your Honor. There's no lying back  
18 in the weeds. They disclosed what documents they are going to  
19 use with Mr. Allen over the weekend.

20          **THE COURT:** But they put it as a trial exhibit.  
21 That's what I'm -- maybe Mr. Kessler is wrong, but did he  
22 disclose -- was this disclosed as a trial exhibit up front?

23          **MR. HUMMEL:** Yes, with the exhibit list. Yes.

24          **THE COURT:** Correct. Well, then -- so you've known  
25 about this for weeks.

1           **MR. HUMMEL:** Weeks.

2           **THE COURT:** And today is the first time you're  
3 raising this objection.

4           **MR. HUMMEL:** Today is the first time after we learned  
5 that they were going to use it with Mr. Allen, that, yes, these  
6 were not disclosed pursuant to a discovery request. That's  
7 correct.

8           I don't believe that's laying in the weeds, Your  
9 Honor.

10          **THE COURT:** But why didn't you assert that discovery  
11 violation in the -- in your response to their trial exhibit  
12 list?

13          **MR. HUMMEL:** My response is only that I assumed that  
14 paragraph 16 of your discovery order trumped everything else.  
15 That if there is a trial exhibit identified that was not  
16 produced in discovery that was directly responsive they can't  
17 introduce it, period.

18          And if that's not a satisfactory explanation for Your  
19 Honor, that is the explanation.

20          **THE COURT:** I don't think I ever meant that that -- I  
21 don't think that's what I meant.

22          The purpose of identifying your objections to the  
23 trial exhibits is so that we can meet and confer ahead of time  
24 and sort it out ahead of time and not wait until the witness is  
25 on the stand, and then raise that for the first time.

1           **MR. KESSLER:** Your Honor's order is actually crystal  
2 clear in this. You specify in your order the only objections  
3 that don't have to be stated, which are 403 objections. You're  
4 very clear saying all objections are --

5           **THE COURT:** Give me the ground rule.

6           **MR. KESSLER:** -- 403.

7           **THE COURT:** I don't remember it, per se.

8           **MR. HUMMEL:** I'll show you paragraph 16, Your Honor.

9           **THE COURT:** I think our witness ought not be in the  
10 courtroom.

11           **MR. KESSLER:** Your Honor, I'll hand up your standing  
12 order.

13           **THE COURT:** Mr. Allen ought to step outside.

14 Which one do you want me to look at?

15           **MR. KESSLER:** Which order is it? Which rule? I  
16 believe it may be 26, Your Honor.

17           **MR. HUMMEL:** Your Honor, I handed you paragraph 16 of  
18 your standing order.

19           **THE COURT:** I've got it right here.

20           **MR. HUMMEL:** I highlighted it for you, Your Honor.

21           **THE COURT:** You did.

22 Well, paragraph 22. All right. Look. These  
23 guidelines for trial and final pretrial conference, paragraph  
24 22, says:

25 "As stated, FRCP 2683 disclosures regarding

1 proposed exhibits must be made at least 30 calendar days before  
2 trial. And any objections thereto must be made within 14  
3 calendar days thereafter or waived unless excused for good  
4 cause."

5 So -- then further on down -- all right. So let's  
6 look at --

7 **MR. HUMMEL:** Your Honor, my argument would be good  
8 cause exists based on paragraph 16 of your standing order.

9 **THE COURT:** Well, just a minute.

10 Well, the Federal Rule of Civil Procedure 26 is  
11 really what is at stake here. It's not my guideline. But Rule  
12 26 says that:

13 "After the trial exhibit list is served, then  
14 any objection, together with the grounds therefore, that may be  
15 made to the admissibility of materials identified under Rule  
16 2683(c). Objections not so disclosed, other than objections  
17 under 402 and 403, are waived unless excused by the Court for  
18 good cause."

19 And C is the trial exhibit list.

20 So then the question becomes whether or not the  
21 failure to produce it in discovery constitutes good cause in  
22 this case.

23 So is it conceded that this objection was not made in  
24 your written objections under Rule 26?

25 **MR. HUMMEL:** Is it conceded that we did not object on



1 the exhibit list to these exhibits because they had not been  
2 produced previously pursuant to a document request? Yes.

3 **THE COURT:** All right. So then the issue is: Is  
4 there good cause to allow a late objection?

5 You know, it is true that Mr. Parcher went on and on.  
6 I mean, he made a grandstand show out of poor Mr. Allen had to  
7 go back to the company and file through the documents, that he  
8 didn't have a single exhibit.

9 Now, it's true this is not a marketing plan, per se.  
10 But it does refer to 3500 retired NFL players that Players Inc  
11 represents.

12 **MR. KESSLER:** And, in fact, Your Honor, each of the  
13 documents that are at issue have individual retired player  
14 names even mentioned or pictures of them, et cetera.

15 So it's the opposite of what Mr. Parcher suggested.  
16 And that's why we think it would be particularly inappropriate  
17 to exclude that.

18 **THE COURT:** The argument is made that my standing  
19 ground rule on discovery, which --

20 **MR. HUMMEL:** Your Honor?

21 **THE COURT:** Yes.

22 **MR. HUMMEL:** I'm sorry. I would also like to cite  
23 the Court to Rule 37 of the Federal Rules, which does have an  
24 absolute bar to introducing documents that were not disclosed  
25 and not supplemented.

1                    "If a party fails to provide information or  
2 identify a witness as required the party is not allowed to use  
3 that information or witness to supply evidence on a motion, at  
4 a hearing or at trial."

5                    And I understand the rule about objecting to on the  
6 exhibit list. We didn't do it.

7                    As to the grandstanding show, let me make one point.  
8 Mr. Parcher asked the following question -- and I'm reading  
9 from the transcript. He says:

10                   "As we sit here today can you show the Court and  
11 the jury one single marketing plan, one single written  
12 marketing plan to market retired players?"

13                   It had nothing to do with active players.

14                   And then Your Honor actually clarified the question  
15 on page 598, line 5 through 6. You actually said:

16                   "Mr. Parcher, in there you have a good  
17 question. You have a fair point you are trying to get at. So  
18 you should go about it with less ambiguous questions, like,  
19 quote:

20                   'Can you describe any marketing plan that was  
21 directed toward the GLA for retired players?'"

22                   That was Mr. Parcher's question. To the extent you  
23 want to characterize it as a grandstand, we weren't talking  
24 about active player marketing, which is what these are. And  
25 these weren't provided in discovery, and we asked for them.

1           **MR. KESSLER:** Your Honor, he went on --

2           **THE COURT:** Are any of these photographs retired  
3 players?

4           **MR. KESSLER:** Yes, Your Honor. I have to look at  
5 each page, but I will represent to the Court that each of those  
6 documents have either the names or pictures of more than one  
7 retired player in those things.

8           **THE COURT:** All right. Look. This is easy. All  
9 right. The Court is now going to rule on this. All of these  
10 exhibits are in the same category.

11           Mr. Parcher, now you're trying to put a narrow spin  
12 on what he was asking. But the clear import of his questioning  
13 was that the NFLPA locked up all these players with these GLAs,  
14 and then put them in a drawer or something. He said put them  
15 under a bushel basket, or I forgot how he phrased it.

16           **MR. KESSLER:** Put them in a drawer.

17           **THE COURT:** Just put them in a drawer and forgot  
18 about them, and did nothing to promote these retired players.

19           Now, these documents that are going to be offered  
20 refer to -- can be construed as attempts to promote the retired  
21 and active players.

22           And Counsel is representing that there's some  
23 photographs of retired players in here. It's not a marketing  
24 plan, per se, but it is marketing.

25           So this is fairly in response to Mr. Parcher's broad

1 statement. It's true that I tried to get him to narrow it, but  
2 that was after he had laid a monumental claim before the jury.

3 I'm not going to hear any more argument on this,  
4 Mr. Parcher. Motion denied. All of these exhibits can be  
5 received.

6 **MR. HUMMEL:** Thank you, Your Honor. We have one more  
7 issue to raise, and that has to do with ad hoc agreements,  
8 which is the subject of a motion in limine. And Mr. LeClair is  
9 addressing that.

10 Thank you.

11 **THE COURT:** Very well. Let me hand this back to the  
12 clerk.

13 Okay. Go ahead.

14 **MR. LECLAIR:** Your Honor, I believe this will be real  
15 quick. As Your Honor knows, you have already excluded  
16 testimony and documents related to ad hoc agreements. The  
17 defendants have --

18 **THE COURT:** I couldn't possibly have ruled that  
19 broadly.

20 **MR. LECLAIR:** No, I'm not saying you ruled  
21 everything. I'm saying you have actually excluded certain  
22 testimony and certain documents related to ad hoc agreements.

23 The defendants have now indicated an intention to use  
24 this document, which is, in fact, a summary of all ad hoc  
25 payments made to retired members of the class. It's not money

1 we are claiming. It's not at issue in the case. It is  
2 completely irrelevant and prejudicial under Rule 402 and 403.

3 **THE COURT:** Show me the ruling that you're referring  
4 to, the ruling that I made. Where is my summary of all the  
5 rulings?

6 **MR. KESSLER:** Your Honor, it is our motion, not  
7 plaintiffs'.

8 **THE COURT:** That won't matter.

9 **MR. KESSLER:** And the motion -- no, I'm reading to  
10 you what Your Honor wrote. I'm sorry.

11 **THE COURT:** You can't win a motion and say:

12 "Well, we withdraw it now."

13 **MR. KESSLER:** No. Absolutely not, Your Honor.  
14 Defendants' motion in limine 3:

15 "Granted. Plaintiffs" -- it was only directed to  
16 plaintiffs. "Plaintiffs may not introduce evidence relating to  
17 plaintiffs' complaints about ad hoc license agreements,  
18 including, but not limited to, such evidence relating to the  
19 license agreement between Electronic Arts, the Pro Football  
20 Hall of Fame and Players Inc."

21 All we're doing, Your Honor, as you know, the jury  
22 needs to understand what ad hocs are and how the money flowed,  
23 which is something that Your Honor has spoken about the jury  
24 needs to know.

25 This is simply a compilation exhibit that summarizes

1 the payments that were made to the retired player class  
2 members. That's all.

3 Because this is on a huge computer database known as  
4 "the Raider database." There is no way for the jury to extract  
5 this information. So we simply did a compilation that lists  
6 each class member, how much they have been paid and under what  
7 license. And that's all.

8 It's simply to let the jury know how this retired  
9 player money flowed. It has nothing to do with any other  
10 issue, and it certainly is not covered by the in limine order,  
11 which has to do with their complaints about this money that  
12 they are seeking that somehow this had to do with that whole EA  
13 Hall of Fame agreement Your Honor will recall that you  
14 excluded.

15 **THE COURT:** I don't remember excluding -- did I  
16 exclude the EA Hall of Fame?

17 **MR. KESSLER:** Yes, Your Honor. You granted the  
18 motion saying --

19 **THE COURT:** It says "complaints."

20 **MR. KESSLER:** Not the -- not the agreement. I'm  
21 sorry. The complaints that it was below market, that it would  
22 confuse the jury because there's no damages claimed regarding  
23 that particular agreement.

24 And that -- you know, and you did, in fact, grant  
25 that motion finding it under 403 to be unduly prejudicial.

1           And you also, at the same time, made it clear that ad  
2 hocs could be referred to as long as we don't, in effect, go  
3 in, for example, on the EA Hall of Fame agreement and say like:

4           "Oh, look at how this is evidence of our good  
5 faith on this agreement," because you said that could open up  
6 the door.

7           We have no intention of doing that, Your Honor. We  
8 do not want to open that door because we do think it's  
9 confusing.

10           **MR. LECLAIR:** Your Honor, they have actually already  
11 opened the door. The whole purpose of this exhibit is to say:

12           "Look, we did what we were supposed to do. We  
13 did great for the retired players. We got them \$7 million."

14           We're not claiming this money as to the claim that  
15 this is the flow of the money. This is not the money at issue  
16 in the case. This is the unshared money. Our claim is about  
17 the shared money.

18           What they want to do is say:

19           "Oh, look. Okay. We didn't give you any shared  
20 money. We didn't give you one penny under the GLA. But, look,  
21 we did give you this other money, so we did good. Everything  
22 is wonderful. And we were great for the retired players."

23           At the same time they are blocking us from showing  
24 what they were really doing, which was they didn't have the  
25 interest of the retired players at heart at all.

1           **THE COURT:** How were they blocking you?

2           **MR. LECLAIR:** Because they won't let us show -- and  
3 Your Honor has excluded the very evidence of what they were  
4 doing on the EA Hall of Fame, which is one of the very payments  
5 they have on that summary. And what the evidence shows is they  
6 didn't care about the retired players. They got them an  
7 under-market payment because they wanted to keep a competitor  
8 out of the market.

9           They wanted to keep Take 2 out of the market. So  
10 they and EA got together and said:

11                   "Let's go get these retired players to block  
12 Take 2."

13           What they want to do is use this as a sword and a  
14 shield. They want to put the evidence in and say:

15                   "We were great for retired players. We got  
16 them a lot of money."

17           It's confusing to the jury, because it's not the  
18 money we're claiming at all. We're claiming the shared money.  
19 They know what's shared, and they know what's unshared.  
20 They're putting in an exhibit of the very thing that's not at  
21 issue in the case: The unshared money, which they know what it  
22 is, and we know what it is.

23           We're claiming the shared money. The flow of money  
24 that Mr. Kessler was talking about is the flow of money on the  
25 shared money. There's no dispute as to what that is. The



1 parties don't disagree about it.

2           **THE COURT:** Didn't you yourself refer to ad hoc  
3 agreements? You yourself, and Mr. Parcher in his opening  
4 statement?

5           **MR. LECLAIR:** We referred to ad hoc agreements.  
6 We've always said, Your Honor, they're entitled to say there's  
7 such a thing as ad hocs, and we admit there are ad hoc  
8 agreements for famous players.

9           What's not appropriate is to put before the jury an  
10 exhibit that says:

11                   "Here's \$7 million. And, gee, this is really  
12 what plaintiffs are claiming."

13           It's not what we're claiming at all. What we're  
14 claiming is the hundred million dollars that was shared money  
15 that they did not share.

16           **MR. KESSLER:** Your Honor --

17           **MR. LECLAIR:** That's what's at issue in the case.

18           **MR. KESSLER:** Your Honor, first of all, Mr. LeClair  
19 just made a misstatement. The EA Hall of Fame payments are not  
20 in this list.

21           Why? Because the Hall of Fame received that money  
22 and entered into deals with the players for that. That wasn't  
23 even a Players Inc arrangement.

24           So that particular one that he has so many complaints  
25 he would like to get to the jury about, even though he admits

1 it's not at issue, was a Hall of Fame arrangement. It's not in  
2 this exhibit.

3 So this exhibit does not include that. That was just  
4 wrong.

5 What Mr. Parcher has done, though, in his opening and  
6 his questions, is that the jury now knows there were ad hoc  
7 agreements. In fact, he made statements it only goes to the  
8 superstars.

9 This shows, by the way, various class members got  
10 those payments. And we have a claim of fiduciary duty here  
11 that Mr. Parcher again said to Mr. Allen:

12 "You made no efforts in marketing. You put it  
13 in the drawer."

14 We're entitled to respond to that by saying:

15 "We made great efforts in marketing."

16 But what the licensees did was they came back and  
17 said:

18 "We only want certain players."

19 And so we facilitated \$7 million in ad hoc payments  
20 for the class.

21 That negates their claim that we somehow didn't  
22 fulfill our fiduciary duties to the class. If we didn't get  
23 that money for them they could have had some claim about that.

24 The jury needs to understand this. Plus, Your Honor  
25 knows in the license agreement -- Your Honor pointed this out

1 during our in limine motions -- we have a paragraph of the  
2 agreement which they rely upon to say that retired player  
3 rights were given to EA and other licensees where we believe it  
4 is referring to these very ad hoc agreements.

5 So the jury needs to understand what the ad hoc  
6 agreements are so they could evaluate what the meaning is of  
7 the EA license and as to how these all worked together.

8 The fact that the licensees had to make these ad hocs  
9 because they didn't have retired player rights is a very  
10 important course-of-dealing argument we're going to allow.

11 So be believe that the issue clearly is relevant. It  
12 doesn't open the door to the EA Hall of Fame. And a  
13 compilation is clearly the only appropriate way to give it to  
14 the jury because, Your Honor, this is the entire database, is  
15 this box, an entire box of maybe 20,000 pages of paper, which  
16 we have here. We made it available to them to inspect.

17 **THE COURT:** When did you do that?

18 **MR. KESSLER:** Oh, way before the time exhibits were  
19 exchanged, right?

20 **MR. GREENSPAN:** Correct.

21 **MR. KESSLER:** In fact, I think the Raider database  
22 was earlier. They had that way before August, Your Honor, in  
23 terms -- and there is no dispute this is accurate, by the way.  
24 They've had the database. They never raised any concern this  
25 does anything other than take the data off of the computerized

1 database and list it. That's all it does.

2 **MR. LECLAIR:** Our objection, Your Honor, is not about  
3 that issue. It is about the relevance and 403 effect of this  
4 evidence, which is they are trying to say to the jury:

5 "We did great for the retired players. We got  
6 them \$7 million," which is confusing because it's not our  
7 claim. They know what --

8 **THE COURT:** But there are two ways to read that GLA  
9 and the EA agreement and so forth. And you're presupposing  
10 your version is correct.

11 You both are going to have to get the jury to agree  
12 with your version. And so one of the surrounding circumstances  
13 is the fact that these ad hoc agreements existed.

14 And so why isn't that -- why isn't it fair for the  
15 jury to understand more rather than understand less?

16 **MR. LECLAIR:** Your Honor, this goes to the whole  
17 effect of what the defendants did.

18 They -- they defined the world, Your Honor. There's  
19 no question that if this was group licensing as defined under  
20 the GLA it's supposed to go into an escrow account and be  
21 shared.

22 They didn't do that. They treated it as ad hoc  
23 individual agreements. So, therefore, they can't now come in  
24 and say:

25 "Oh, no, it really is group -- it really is, and

1 it's what we did under the GLA."

2 **THE COURT:** Is that your argument, Mr. Kessler?

3 **MR. KESSLER:** No. In fact, Your Honor, it is, in  
4 fact, a group deal. We believe we had the right to do it this  
5 way.

6 And we thought, Your Honor, based on what their  
7 witnesses said, as Your Honor knows, that they were going to  
8 make a claim that because it's group licensing it should have  
9 been in the escrow fund.

10 Now, they've made the choice to waive that claim, as  
11 Your Honor has noted many times, and it would have raised class  
12 issues internally and conflicts within the class. So I guess  
13 that's why they chose not to pursue that claim.

14 I'm not going to revisit that issue. But they  
15 can't -- because they chose not to do that they can't prevent  
16 us from telling the jury they should not be able to --

17 **THE COURT:** You yourself have said that under the GLA  
18 very little, maybe zero, has ever gone to the class members.

19 **MR. KESSLER:** Pursuant to the escrow arrangements.

20 Our position is, Your Honor, that these ad hoc  
21 deals -- let me make it very clear -- are group licensing  
22 because they involve six or more retired players.

23 In fact, they involve six or more sometimes retired  
24 and active players together. So it clearly meets the  
25 definition of "group licensing."

1           That is our position from day one. And that we think  
2 it's appropriate to not have used that through the escrow fund  
3 for the reasons we argued to the jury at the very beginning,  
4 because the licensees didn't want the whole group of 2,000  
5 players.

6           They would want 10, 13, 12 at a time. They would  
7 want some who had GLAs, some who didn't have GLAs. So the only  
8 way to deliver this money was to give all of it to the retired  
9 players. The jury needs to understand that.

10           You're right. The jury will either accept our  
11 explanation that that's appropriate under the GLA and that's  
12 appropriate of our good faith, or they won't do it.

13           Now, Mr. LeClair is saying, well, if we're right,  
14 that's a violation of the GLA because it should have gone to  
15 the escrow fund, but he doesn't want to make that claim.

16           **THE COURT:** Why -- how do you get around the fact  
17 that if you're going to contend that \$7 million was paid under  
18 the group licensing forms, how do you get around the fact that  
19 there never was any escrow?

20           **MR. KESSLER:** Because our belief -- again, that's a  
21 claim they're not making in the case. They could have made  
22 that claim that you just made.

23           **THE COURT:** I always hate it when the lawyers hoist  
24 the other side on their own petard.

25           **MR. KESSLER:** No. No.

1           **THE COURT:** You've got the affirmative problem --

2           **MR. KESSLER:** Okay.

3           **THE COURT:** -- that your own agreement said there was  
4 going to be an escrow, and there never was an escrow. That  
5 alone is enough to raise a big issue.

6           **MR. KESSLER:** It can certainly raise an issue. We  
7 believe the jury will understand the following: That because  
8 the licensees didn't want the whole group of players, because  
9 they would want, let's say, 15 players, 10 of whom had no GLAs  
10 and five of whom had a GLA -- so Joe Montana never signed the  
11 GLA -- that we had to do their ad hoc license agreements, which  
12 gave all the money to the players. And those who signed the  
13 GLA, like Mr. Adderley, agreed to it, thereby waiving any  
14 rights he had under the GLA.

15           Mr. Adderley, for example, made it very clear in his  
16 testimony he doesn't think that money should have gone into an  
17 escrow fund. So we think our position is well supported.  
18 That's something they can argue to the jury. Although they can  
19 argue it, they won't argue it because they waived it in this  
20 case.

21           That's not my problem they waived it. We're prepared  
22 to defend why there's no escrow account.

23           **THE COURT:** Are you saying this Exhibit 2056  
24 represents ad hoc agreements?

25           **MR. KESSLER:** It represents every payment made to

1 players through either ad hoc agreements, and it also has that  
2 Photo File one, which is the only one we paid out under the GLA  
3 under that period of time. So that's it.

4 It's all the payments made to any class members for  
5 their licensing rights. That's what it lists, how that was  
6 done.

7 It does not have the Hall of Fame agreement because  
8 we did not make those payments. The Hall of Fame made those  
9 payments. So that's not even an issue in this exhibit.

10 We have no intention of discussing that Hall of Fame  
11 agreement ever in this case.

12 **THE COURT:** Can you tell from Exhibit 2056 which  
13 agreement, whether it was ad hoc or GLA? How do you tell that?

14 **MR. LECLAIR:** It's all ad hoc, Your Honor. They  
15 title it. It's all ad hoc. That's what the title is.

16 **THE COURT:** Where is the ad hoc?

17 **MR. LECLAIR:** Very top of the document, Your Honor.

18 **THE COURT:** "Royalty from ad hoc agreements."

19 **MR. KESSLER:** Yes.

20 **MR. LECLAIR:** That's the whole vice of this, Your  
21 Honor. What they want to do is they admit they didn't treat  
22 this as group licensing. We didn't complain with that. We  
23 said:

24 "We accept your world. We want you to talk  
25 about the group licensing."



1           They didn't treat it as group licensing. Now, they  
2 want to come into court and say:

3           "Oh, look. Here's all these agreements. We did  
4 all this wonderful group licensing for you."

5           But it's not even at issue. They decided the world.  
6 They said it's not group licensing because they said -- you  
7 know, what they did, Your Honor? They treated 35 or fewer as  
8 ad hoc.

9           Mr. Allen's already testified to that. They treated  
10 it as ad hoc. And we said:

11           "Okay. We accept your world. We'll accept that  
12 you treated 35 or fewer as ad hoc, and we're not going to  
13 complain about it."

14           **MR. KESSLER:** Your Honor --

15           **MR. LECLAIR:** But what's not fair -- excuse me. Let  
16 me finish.

17           What's not fair, Your Honor, is they can't now come  
18 in and say:

19           "Oh, all this under 35 is actually group  
20 licensing, and we did wonderful for you guys."

21           **THE COURT:** Why wouldn't you be down on your knees  
22 praying that they would do such a thing so you could expose  
23 them as frauds if they are going to take such an argument?

24           Look. This is easy. I am going to allow this in.  
25 And here's why. Both sides want the jury to decide, and both

1 sides on different occasions -- you for the GLA, and you for  
2 the EA agreement -- are requesting and have been allowed to put  
3 in intent, subjective intent at the time, in addition to all of  
4 the surrounding circumstances.

5 Now, the surrounding circumstances do include the  
6 overall financial arrangements between the NFLPA and players,  
7 as well as retired players. And for that matter we veered off  
8 into the active players.

9 So -- and ad hoc agreements were mentioned by both  
10 sides in their opening statements. So it is part of the case  
11 and part of the surrounding circumstances for the jury to  
12 understand these ad hoc agreements and what light they shed on  
13 what the parties reasonably expected out of these GLA  
14 agreements.

15 Now, Mr. LeClair, you are right. At the end of the  
16 day whatever rights they got under the GLA should not be  
17 forfeited just because of some other money they got paid. In  
18 other words, if there was a violation of the GLA there ought to  
19 be a recovery.

20 But the problem is in order to understand the GLA in  
21 the first place you need to understand the -- the jury needs to  
22 understand the surrounding circumstances at the time these GLAs  
23 were entered into.

24 And one of the surrounding circumstances is this  
25 alternative way in which some money was gotten, royalty money,

1 was gotten under these ad hoc agreements.

2           So you lawyers are excellent lawyers. I think you're  
3 able to make these points reasonably clear to the jury. I  
4 don't think there's going to be any misuse or confusion. These  
5 are matters of argument.

6           So the objection to 2056 is denied.

7           **MR. LECLAIR:** Your Honor, then we should be permitted  
8 to ask Mr. Allen about the Hall of Fame agreement, because if  
9 they're going to put in these ad hoc agreements and say, "We  
10 did good on behalf of retired players. We did the best we  
11 could. We got this money for them," which is the very purpose  
12 of putting this in, we should be able to show fairly they  
13 weren't working in the best interests of retired players.

14           If the ad hoc agreements come in, the surrounding  
15 circumstances of the ad hoc agreements must come in.

16           **THE COURT:** Here's what we will do on that. Maybe  
17 you're right. Maybe you're not. We'll hear further argument  
18 on this. And we will only get to that on redirect, anyway, or  
19 effectively the recross.

20           I don't want you to get into the Hall of Fame until  
21 after the witness is tendered to Mr. Kessler, and then  
22 depending on how Exhibit 2056 is used -- you're going to use  
23 this with him?

24           **MR. KESSLER:** I will, Your Honor.

25           **THE COURT:** Then maybe that opens the door to the

1 Hall of Fame. I want to hear your proffer on that.

2 So I'm not saying no to that, and I'm not saying yes  
3 to it yet. But it's now time to bring in our jury.

4 **MR. KESSLER:** Your Honor, one 30-second issue. We  
5 can do it at the next break, if Your Honor prefers.

6 **THE COURT:** Let's do it at the next break.

7 **MR. LECLAIR:** I was just going to hand up a  
8 deposition, one final deposition, Your Honor.

9 Thank you.

10 **THE COURT:** Can we now resume with the witness? Are  
11 we ready to go with the witness?

12 Let's bring in our jury.

13 Welcome back. Please have a seat. I'll remind you  
14 you're still under oath.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** How much longer on direct?

17 **MR. PARCHER:** No more than half an hour. If I can do  
18 less, I'll do it. I'll give it a shot.

19 (Thereupon, the Jury returned to the courtroom.)

20 **THE COURT:** Welcome back, and have a seat. Hope you  
21 all had a great, long time off. And just to refresh your  
22 memory, we have on the stand Mr. Doug Allen. And he was on  
23 examination by Mr. Parcher.

24 Mr. Parcher says he has about half an hour more of  
25 questions for Mr. Allen. And then it will be turned over to

1 Mr. Kessler for questions.

2 And you will remember that Mr. Allen used to be a  
3 high-ranking official at the NFLPA, as well as Players Inc. So  
4 I hope that helps put your mind back to where we were a few  
5 days ago.

6 And Mr. Parcher, with that I will allow you to  
7 continue on.

8 **MR. PARCHER:** Thank you very much, Your Honor.

9 (Thereupon, **Mr. Doug Allen** resumed the stand and was  
10 examined further on Direct Examination by Mr. Parcher as  
11 follows:)

12 **DIRECT EXAMINATION RESUMED**

13 **BY MR. PARCHER:**

14 **Q.** Good morning, Mr. Allen.

15 **A.** Good morning, Mr. Parcher.

16 **MR. PARCHER:** What I would like to put on the screen  
17 is Exhibit 125, please.

18 (Document displayed.)

19 **MR. PARCHER:** And we'll turn it to page -- to  
20 paragraph 5(a).

21 **BY MR. PARCHER::**

22 **Q.** Mr. Allen, you recall, I'm sure, this is the agreement  
23 between the NFLPA, Players Association and Players Inc. You  
24 understand what we're looking up at up there, right?

25 **A.** Yes, I do.

1 Q. And paragraph 5(a) is the paragraph that talks about  
2 37 percent going to the players, correct?

3 A. That's correct.

4 Q. And I believe you said on Wednesday that's the active  
5 players?

6 A. That's right.

7 MR. PARCHER: Now, let's take a look at Exhibit 91,  
8 please. Withdrawn. You can't put that on the board yet.

9 Sorry, Your Honor.

10 BY MR. PARCHER::

11 Q. Would you mind taking a look, Mr. Allen, at Exhibit 91?  
12 Do you have it there, or do you need me to help you along a  
13 little bit?

14 A. I've got it.

15 Q. If you could take a look at page 2. Do you see the  
16 signature there by Doug Allen, president?

17 A. I do.

18 MR. PARCHER: I move 91 into evidence, Your Honor,  
19 please.

20 THE COURT: Any objection?

21 MR. KESSLER: No objection, Your Honor.

22 THE COURT: 91 is received.

23 (Trial Exhibit 91 received in evidence.)

24 MR. PARCHER: Thank you. We'll put it on the board,  
25 please.

1 Put it up so the jury can see, if you can.

2 (Document displayed.)

3 **BY MR. PARCHER:**

4 **Q.** All set, Mr. Allen?

5 **A.** Yes. Thank you.

6 **Q.** Now, 91, up on the screen, is an amendment to the NFLPA  
7 Players Inc licensing agreement, correct?

8 **A.** That's correct.

9 **MR. KESSLER:** Your Honor, objection. It's referring  
10 to a different agreement than the '94 agreement he just  
11 referred to, if you look at the first line.

12 **THE COURT:** Mr. Parcher, do you need to reframe your  
13 question?

14 **MR. PARCHER:** I don't think so, but I'll -- I'll  
15 bring that out if it will make it easier.

16 **THE COURT:** Overruled. Please make it clear.

17 **MR. PARCHER:** It will make it easier.

18 **BY MR. PARCHER:**

19 **Q.** The first PA/PI agreement, which I just showed on the  
20 screen a moment ago, was the 1994 agreement, correct?

21 **A.** That's correct.

22 **Q.** And that contained the 37 percent in paragraph 5(a),  
23 correct?

24 **A.** Yes.

25 **Q.** That 37 percent never changed up until 2006? We'll talk

1 about whether it changed at all in 2006. But that 37 percent  
2 never changed in the 2000 agreement, did it? Remained the  
3 same? Up to this point.

4 **A.** Yes.

5 **Q.** Okay. Thank you.

6 Now, so let me say it in a different way. The fact  
7 that the union, PA and PI shared 63 percent remained the same  
8 from '94 until the document that I'm going to question you  
9 about in 2006, right?

10 **A.** Uhm, I -- that sounds right. I'm not -- you know, I'm  
11 trying to remember the circumstances and the dates. But I  
12 think so.

13 **Q.** You have no reason as you sit here today to think that  
14 you, that Players Inc and Players Association ever took less  
15 than 63 percent, do you, as their share?

16 **A.** I'm sorry. I'm trying to be precise, and I'm not -- I  
17 didn't get the whole question.

18 **Q.** As you sit on the witness stand today you have no reason  
19 to think that between 1994 and 2006, Players Inc and the  
20 Players Association ever revised their share so that they took  
21 less than 63 percent, do you?

22 **A.** Well, there was --

23 **Q.** Could you just say "yes" or "no"?

24 **A.** I really can't without explaining it.

25 **THE COURT:** All right. Go ahead and explain.



1           **THE WITNESS:** There was a modification in the  
2 arrangement as a result of advice from tax counsel that had  
3 some of the money that would have in the past gone through  
4 Players Inc, and then to -- from licensees, and then to the  
5 Players Association as a result of the licensing agreement  
6 after a certain point went directly -- some of that money went  
7 directly to the Players Association. I won't get into all the  
8 reasons.

9 **BY MR. PARCHER:**

10 **Q.** Players Association meaning the union?

11 **A.** Yes.

12 **Q.** Right.

13 **A.** But the essential division that was arrived at as a result  
14 of the valuation remained the same.

15 **Q.** Okay. I'm just trying to establish, sir, that basically  
16 63 percent to the defendants and 37 percent to the active  
17 players was written in in 1994, and it continued up to 2006,  
18 correct?

19 **A.** That's correct.

20 **Q.** Thank you.

21           Now, turning to this amendment. In this -- well,  
22 first, you signed this agreement on behalf of Players Inc,  
23 right?

24 **A.** That's correct.

25 **Q.** And there's a second signature there.

1           **MR. PARCHER:** If we can look at the signature page  
2 for just a moment.

3           (Document displayed.)

4 **BY MR. PARCHER:**

5 **Q.** Do you recognize that as Gene Upshaw's signature?

6 **A.** I do.

7 **Q.** So that Gene Upshaw and you negotiated with Gene Upshaw  
8 and you to make this amendment, right?

9 **A.** These changes were made as a result of advice from tax  
10 counsel. And I executed the agreement on behalf of Players  
11 Inc, and Mr. Upshaw executed the agreement on behalf of the  
12 Players Association.

13 **Q.** I would ask you, sir, just to answer "yes" or "no" if you  
14 can answer "yes" or "no," please.

15           The fact is that you and Upshaw who were the 1 and 2  
16 in the union and 1 and 2 in Players Inc are the persons who  
17 signed and negotiated -- and agreed upon this agreement, right?

18           **MR. KESSLER:** Compound, Your Honor.

19           **THE WITNESS:** We each signed this agreement --

20           **THE COURT:** Overruled.

21           Go ahead and answer, please.

22           **THE WITNESS:** We each signed this agreement, yes.

23 **BY MR. PARCHER:**

24 **Q.** Now, if you'll turn, if you will, to paragraph 2(e) on  
25 this agreement, on the second page.

1           **MR. PARCHER:** If we can blow it up a little bit,  
2 please, so the jury can see it.

3           (Document displayed.)

4 **BY MR. PARCHER:**

5 **Q.** The fact is that the purpose of this agreement, this  
6 amendment, sir, was to allocate an additional \$8 million to the  
7 NFLPA and PI, Players Inc, correct?

8           Yes or no, please.

9 **A.** I want to make sure I'm familiar with it before answering  
10 the question.

11           Could you repeat the question for me?

12 **Q.** Yes. The fact is we're looking at 2(e). It says:

13           "Notwithstanding the other provisions in this  
14 Section 4, \$8 million of the amount described in Section 4A  
15 shall be paid out of the licensing revenue depository account  
16 established" -- I can't read whether that word is "to" or  
17 "for" -- "to disburse amounts payable to the NFLPA and Players  
18 Inc, with the depository account paying 60 percent of such  
19 amount to the NFLPA and 40 percent of such amount to Players  
20 Inc."

21           You see that, right?

22 **A.** Yes.

23 **Q.** Would you agree, sir, is this a correct statement: Is the  
24 purpose of this amendment or a purpose of this amendment was to  
25 allocate an additional \$8 million above and beyond the

1 63 percent to the NFLPA and PI, correct?

2 **A.** Yes.

3 **Q.** So that this amendment entitled you to keep an additional  
4 \$8 million over and above the 63 percent, right? Yes or no,  
5 please.

6 **A.** Yes.

7 **Q.** Now I'll turn your attention, if I can, back to Exhibit  
8 28 --

9 **MR. PARCHER:** Which is already in evidence, Your  
10 Honor. That's the EA license agreement.

11 **THE COURT:** Which one?

12 **MR. PARCHER:** 28. Two-eight.

13 **THE COURT:** Two-eight. All right.

14 Go ahead.

15 **MR. PARCHER:** Right.

16 **THE COURT:** No, 28 I don't have in evidence.

17 **MR. PARCHER:** No?

18 **THE COURT:** Do you have it in evidence, Dawn?

19 **THE CLERK:** I do, on October 22nd.

20 **THE COURT:** All right.

21 **MR. PARCHER:** Did we do it --

22 **THE COURT:** Sorry. My clerk said it is in evidence.  
23 I was mistaken.

24 Go ahead.

25 **MR. PARCHER:** Now, I'm questioning my own memory

1 here. I thought we did it on Wednesday.

2 **THE COURT:** It's in. Go ahead.

3 **MR. PARCHER:** Thank you.

4 So let's go up a little bit, if we can, to the  
5 introductory paragraph. Go up more. That's right.

6 (Document displayed.)

7 **BY MR. PARCHER:**

8 **Q.** Now, you see there the last sentence of the introductory  
9 paragraph:

10 "This agreement shall be effective as of  
11 March 1, 2005"?

12 **A.** Yes, I do.

13 **Q.** So that's when this license agreement actually took  
14 effect, right?

15 **A.** Yes.

16 **Q.** Just to be clear for -- I'm sure the Court understands,  
17 but just to be clear for the jury, by "the license agreement"  
18 we're talking about the license between Electronic Arts and  
19 Players Inc, related to name and likeness images?

20 **A.** Are you asking me if --

21 **Q.** No, I'm just trying to establish so that everybody knows  
22 what document we're talking about.

23 **A.** The license agreement's between Electronic Arts and  
24 National Football League Players Incorporated.

25 **Q.** Now, turn -- on your exhibit, turn -- just go down the

1 page. Still on page 1, up to section 1(a).

2 **A.** All right.

3 **Q.** Let's get that on the board.

4 Have you had a chance to look at it, sir?

5 **A.** Yes.

6 **Q.** Is it correct that the second sentence of 1(a), which  
7 references, quote:

8 "Players, including, but not limited to, retired  
9 players who have not entered into such group licensing  
10 authorization, but who nevertheless authorized PI to represent  
11 such players."

12 Do you see that there, that sentence?

13 **A.** I couldn't find where you were beginning to read. I'm  
14 sorry.

15 **Q.** Oh, my.

16 **A.** I'm looking at the document, not up at the --

17 **Q.** Okay. So what can I do?

18 **A.** I got it. I got it.

19 **Q.** Shall I say it again?

20 **A.** Yes, please. Thank you.

21 **Q.** Okay. Fine.

22 Isn't it correct that the second sentence of this  
23 paragraph 1(a), which is up on the screen, which references:

24 "Players, including, but not limited to retired  
25 players, who have entered into such group licensing

1 authorization, but who nevertheless authorized PI to represent  
2 such players."

3           Isn't it correct that that sentence includes retired  
4 players who signed GLAs that are different than the standard  
5 form or the form attached to the EA agreement as Exhibit A?  
6 Yes or no?

7           **MR. KESSLER:** Objection, Your Honor. That question  
8 is compound, confusing and self-contradictory internally in the  
9 question.

10           **THE COURT:** Overruled.

11           Please answer.

12 **BY MR. PARCHER:**

13 **Q.** Yes or no, sir? Doesn't that include retired players who  
14 signed GLAs different than the standard or the referenced form  
15 attached to the Electronic Arts agreement as Exhibit A? Or  
16 attachment A, I should say.

17 **A.** I believe the answer is yes, but I'm a little confused by  
18 the question.

19           **THE COURT:** Well, this is important enough that I  
20 want the witness to explain anything that he wishes to explain  
21 in that answer. So, please, take your time and give any  
22 explanation that you would like.

23           **THE WITNESS:** The Players Inc on occasion secures  
24 authorization from players who -- who -- including retired  
25 players, who have not entered into the group licensing

1 authorizations referred to above which are either attachment A  
2 or contained in paragraph 4(b) of the NFL player contract, but  
3 who despite that fact have authorized Players Inc to represent  
4 them for designated license programs.

5 **BY MR. PARCHER:**

6 **Q.** So are you acknowledging, sir, that that sentence includes  
7 retired players who signed GLAs different than the standard  
8 form or the form attached to the EA agreement as attachment A  
9 or Exhibit A?

10 Are you acknowledging that, yes or no?

11 **MR. KESSLER:** Objection to the form of that question.

12 **THE COURT:** Overruled.

13 Please answer.

14 **THE WITNESS:** Yes, with respect to what it asks about  
15 in this -- or what it refers to in this sentence, yes.

16 **BY MR. PARCHER:**

17 **Q.** Well, I don't know. I can't tell whether you're  
18 qualifying your answer or you're not qualifying your answer.

19 Yes or no, does that sentence include retired players  
20 who signed GLAs different than the standard form attached to  
21 the EA agreement as attachment A?

22 **A.** Well, yes, because retired players do not sign attachment  
23 A or paragraph 4(b).

24 **Q.** So it does include retired players who signed group  
25 licensing agreements, not attachment A. It does include those



1 players, right?

2 **A.** It could.

3 **Q.** Does it or doesn't it? Not it could or would or it  
4 should. Doesn't it or doesn't it, sir?

5 **A.** It depends.

6 **Q.** Okay.

7 **MR. PARCHER:** I would ask to play a video from the  
8 deposition, Your Honor. May I?

9 **THE COURT:** Fine.

10 **MR. PARCHER:** Thank you. I'm just asking.

11 **THE COURT:** What's the page and line?

12 **MR. PARCHER:** It's page 205, line 25, to page 206 to  
13 line 7.

14 **THE COURT:** Any objection?

15 **MR. KESSLER:** Not to playing that.

16 **THE COURT:** Go ahead. Play the --

17 (Videotaped deposition played in open court as  
18 follows:)

19 **"QUESTION:** The last sentence which talks  
20 about authorization for inclusion in Players  
21 Inc licensing program for players including  
22 but not limited to retired players, does that  
23 reference retired players who signed GLAs  
24 different than the standard form attached to  
25 the -- to this license agreement?

1                   **"ANSWER:** I believe so."

2 **BY MR. PARCHER:**

3 **Q.** Turning now, sir, to paragraph 2(a) of this same document,  
4 Exhibit 28, the EA agreement.

5                   Have you got it there, sir?

6 **A.** Yes, I do.

7 **Q.** Is it correct, Mr. Allen, that the grant of a license in  
8 paragraph 2(a) includes the grant of the retired players who  
9 have given authorization to Players Inc to represent such  
10 players for designated -- for designated Players Inc license  
11 programs?

12 **A.** No.

13                   **MR. PARCHER:** Okay. I'd ask to read a deposition  
14 into evidence, Your Honor.

15                   **THE COURT:** Go ahead.

16                   **MR. PARCHER:** Thank you.

17 I'm referring now to page 208, lines 11 through 22.

18                   **THE COURT:** Are you going to read it or play it?

19                   **MR. PARCHER:** Read it.

20                   **THE COURT:** All right.

21 Any objection?

22                   **MR. KESSLER:** I'd like to read it, Your Honor, first.  
23 It's not impeachment, Your Honor.

24                   **THE COURT:** Was the --

25                   **MR. KESSLER:** The testimony is consistent. The

1 witness is just reading the language of the GLA in the answer.

2 **THE COURT:** Why isn't that correct?

3 **MR. PARCHER:** Because he just said "no" in response  
4 to the question and --

5 **MR. KESSLER:** It's --

6 **MR. PARCHER:** Excuse me, Mr. Kessler. You had your  
7 turn.

8 Because the witness just said "no" in response to the  
9 precise question that's going to be put to him in his  
10 deposition. In the deposition he references the language and  
11 never quibbles with it. He never argues with it. He never  
12 says "no." He never says it doesn't mean that.

13 **MR. KESSLER:** Your Honor, it's not the precise  
14 question that he asked. It's a different question, the  
15 transcript will reflect. The witness answered that question,  
16 and this question is not impeachment of it.

17 **THE COURT:** Well, whether it is or not, it will be  
18 for the jury to decide.

19 Please go ahead. Overruled.

20 **MR. PARCHER:** "Question," the last sentence --

21 **THE COURT:** What page are you on?

22 **MR. PARCHER:** Just bear with me a second, Your Honor.  
23 It's page 208/11, starting with 11. Goes down to 22.

24 **THE COURT:** Read it exactly.

25 **MR. PARCHER:** Right, right. I was reading the wrong

1 words.

2           **"QUESTION:** And I'm asking you your  
3 understanding as the president of Players Inc  
4 and the signatory of this agreement, isn't it  
5 a fact that the grant of license includes the  
6 grant of the retired players who have given  
7 authorization to Players Inc to represent  
8 such players for designated Players Inc  
9 license programs?

10           **"ANSWER:** 'It includes retired players who  
11 have not entered into such'" -- quote: 'It  
12 includes retired players who have not entered  
13 into such group licensing authorizations but  
14 who nevertheless authorized Players Inc to  
15 represent such players for designated Players  
16 Inc license programs,'" period, end quote.

17           **MR. KESSLER:** Your Honor, it's a quotation, just for  
18 the record, of the license language that was read. I just want  
19 the jury to understand that since he didn't display it.

20           **MR. PARCHER:** Your Honor, please, may I just say  
21 something?

22           **THE COURT:** Is this a quote from the GLA?

23           **MR. PARCHER:** This is. Yes, it is.

24           **THE COURT:** Why shouldn't that be made clear?

25           **MR. PARCHER:** He can make -- counsel can make it

1 clear all he wants. I -- on Wednesday, I don't want to make a  
2 big deal of this, but listened to a lot of speaking objections.  
3 Finally, we spoke up and said: "Please don't do that." And  
4 Your Honor said: "Don't do that."

5 Now, we are getting a speaking objection. Counsel  
6 has already said he's going to have two hours of direct  
7 examination. He can bring out anything he wants.

8 I just object to the way he interrupts my flow to  
9 make his point.

10 **THE COURT:** But this -- some of what you say may be  
11 legitimate. But in this case I think it is a fair point to  
12 bring to the jury's attention that this answer has quotations  
13 marks around it, which is unusual. And apparently that's  
14 because the witness was reading the answer in its entirety, was  
15 reading the language of the document.

16 **MR. PARCHER:** That's correct. And, indeed, Your  
17 Honor -- sorry to interrupt. Didn't mean to.

18 **THE COURT:** Let's just make that clear to the jury.

19 **MR. PARCHER:** Indeed, Your Honor. I thought I did  
20 make myself very clear because I started to go, and then I  
21 stopped and I read "quote" and I read "end quote" into the  
22 record to the witness.

23 **THE COURT:** You did. But I'm positive the jury has  
24 no idea what it means if it's in quotes.

25 **MR. PARCHER:** Okay. Fair enough.

1           **THE COURT:** All we're doing is letting them know.  
2 You did do that, and I thank you for the attempt to clarify it.

3           All right. Let's move on.

4           **MR. PARCHER:** Thank you. Thank you.

5           **THE COURT:** No speaking objections.

6           **MR. PARCHER:** Thank you, Your Honor.

7           **THE COURT:** I agree with that. No speaking  
8 objections.

9           **MR. PARCHER:** Thank you, Your Honor.

10           What is a speaking objection? Well, a regular  
11 objection is "hearsay, ambiguous, compound, lacks -- states  
12 facts not in evidence."

13           Those are the objections that lawyers are supposed to  
14 make. Every now and then a lawyer stands up and makes a speech  
15 like they're in Congress or something.

16           And there are reasons why we don't allow that,  
17 because -- I won't go into all the reasons. But speaking  
18 objections are frowned upon. And if it continues I'll get into  
19 more reasons why they're frowned upon.

20           This applies to both sides. No speaking objections  
21 whenever your witness is on the stand.

22           **MR. PARCHER:** Haven't made one yet.

23           **THE COURT:** We'll see when they get on the stand.

24           **MR. PARCHER:** Right.

25           **THE COURT:** All right. Go ahead.

1           **MR. PARCHER:** Yes, sir. We'll turn to another topic  
2 now.

3 **BY MR. PARCHER:**

4 **Q.** Back to the Electronic Arts agreement, Exhibit 28 that we  
5 referenced before. I'd ask you to turn your attention --

6           **MR. PARCHER:** I would ask to put on the screen, too,  
7 to paragraph 6(a) of Exhibit 28, which is on page 3.

8           (Document displayed.)

9 **BY MR. PARCHER:**

10 **Q.** The reason I pause, sir, is I'm trying to give you an  
11 opportunity to read it.

12 **A.** Appreciate that.

13 **Q.** I didn't want to ask you a question and you didn't have a  
14 chance to read it. Just give me a nod when you're ready to go  
15 to bat.

16           Only on 6(a), sir.

17 **A.** Okay.

18 **Q.** Okay. Is it correct that the \$25 million royalty amount  
19 referenced under this license agreement was by far the largest  
20 amount of royalty paid by any licensee to PI up to that time?

21 **A.** Yes.

22 **Q.** Is it correct that it was many, many millions of dollars  
23 more than had ever been paid to PI up to that time?

24 **A.** Do you mean by an individual licensee?

25 **Q.** Of course by an individual licensee.

1   **A.**    Yes.

2   **Q.**    Right.  Now, turn to paragraph 6 (c), if you will.  Same  
3 document.

4   **A.**    All right.

5   **Q.**    Is it correct that all of the \$25 million is guaranteed  
6 and paid -- excuse me -- is guaranteed and paid by  
7 Electronic Arts no matter what use they make of the players, or  
8 whether they use any players at all?

9                Yes or no, sir?

10   **A.**    Yes.

11   **Q.**    Speak up a little.

12   **A.**    I'm sorry.

13   **Q.**    Louder.

14   **A.**    Yes.  Yes.

15   **Q.**    "Yes" is the answer.

16                Now, it's further correct that when the \$25 million  
17 goes to Players Inc, since you contend this is an active player  
18 document, the money goes to all active players, even those  
19 players if their names and likenesses weren't used, right?

20                **THE COURT:**  Can you rephrase that?

21                **MR. PARCHER:**  Yes.

22                **THE COURT:**  It had a false start, and I just didn't  
23 get it.

24                **MR. PARCHER:**  Right.

25                **THE COURT:**  Please ask again.



1 **BY MR. PARCHER::**

2 **Q.** Right. Okay. When that \$25 --

3 **MR. PARCHER:** In fact, I'll withdraw that. I don't  
4 need to go into that.

5 **BY MR. PARCHER::**

6 **Q.** Let's turn to another document, which is Exhibit 506.

7 **A.** All right.

8 (Document displayed.)

9 **BY MR. PARCHER:**

10 **Q.** Do you have that there in front of you, sir?

11 **A.** Yes, I do.

12 **Q.** Now, that's a revised retired player group licensing  
13 agreement, isn't it?

14 **A.** I don't know what you mean by "revised."

15 **Q.** Well, the language --

16 **MR. PARCHER:** Well, let's just withdraw that.

17 **BY MR. PARCHER::**

18 **Q.** This -- this document, Exhibit -- let me just say it  
19 right.

20 Am I correct in saying that shortly after the EA  
21 agreement became effective on March 1st, 2005, Players Inc  
22 began to work on changing the language -- language of the  
23 retired players GLA?

24 **A.** I don't recall the dates, and they weren't connected to  
25 each other. I don't recall -- this document was revised over

1 time. I don't recall the dates with any specificity as to when  
2 that happened.

3 But it was not done with reference to any particular  
4 license agreement.

5 **Q.** I would appreciate you just answering my question. The  
6 answer is you don't know whether shortly after March 1st, 2005  
7 you, you and your organization, began working on a revised  
8 group licensing agreement for your players?

9 Is that your testimony, yes or no?

10 **A.** I don't recall when that happened with any specificity.

11 **Q.** All right. Who is Corinne Beavers?

12 **A.** She's an employee of the NFL Players Association.

13 **Q.** I would ask you to turn to Exhibit 54, sir. Have you got  
14 it in front of you?

15 Go ahead. Take your time.

16 Are you ready?

17 **A.** Yes.

18 **MR. PARCHER:** Before I move to introduce 54 into  
19 evidence, let me just orient -- say to the Court and jury,  
20 focusing on the jury, to where I'm at in my questioning.

21 **BY MR. PARCHER:**

22 **Q.** The \$25 million payment which became effective on  
23 March 1st, 2005, from EA to Players Inc, that was a huge  
24 increase from anything you had gotten from them before, right?  
25 Huge.

1 **A.** It was a significant increase, yes.

2 **Q.** You want to use the word "significant"? You won't give me  
3 "huge"? Yes or no, sir?

4 **A.** I don't remember what it was, and what it went to  
5 precisely.

6 **Q.** But it was quite a lot of money, right?

7 **A.** Yes.

8 **Q.** Now, Exhibit 54 is a letter from Corinne Beavers to you,  
9 is it not?

10 **A.** I think it was an e-mail, but, yes.

11 **Q.** Well, right. It's correspondence between she --

12 **A.** That's right.

13 **Q.** -- your employee and you.

14 **MR. PARCHER:** I will move its admission, Your Honor.  
15 It's 54.

16 **THE COURT:** Any objection?

17 **MR. KESSLER:** No, Your Honor.

18 **THE COURT:** 54 is received.

19 Thank you.

20 (Trial Exhibit 54 received in evidence.)

21 **MR. PARCHER:** I would like to put that up on the  
22 board. Blow it up a little more. Thank you.

23 (Document displayed.)

24 **BY MR. PARCHER:**

25 **Q.** This is Corinne to you.

1 "Hi, Doug."

2 That's you, right?

3 **A.** Yes.

4 **Q.** "Have you had a chance to look at/revise the retired  
5 players GLA? I want to have the new one ready to use at  
6 convention. There are 113 guys attending that we need to get  
7 to sign (82 with expired GLAs and 31 who have never had one).  
8 Muneer is going to sit at registration with us and have them  
9 sign. Thanks."

10 Do you see that?

11 **A.** I do.

12 **Q.** Does that refresh your recollection that certainly by May  
13 of 2005, a month and a half or so after receiving \$25 million  
14 from Electronic Arts, you began work on revising the retired  
15 players GLA, yes or no?

16 **A.** Yes.

17 **Q.** And the fact is you did begin work on revising the retired  
18 players GLA shortly after the 25 million bucks became  
19 effective, right? I'm saying "bucks." I should say "dollars."

20 Yes or no.

21 **A.** Yes.

22 **Q.** Now, let's take a look at 506, again, please. That is the  
23 retired players' revised GLA.

24 You began using that revised -- I'm sorry. Wait  
25 until it's on the board. I'm not paying close attention.

1           **MR. PARCHER:** Exhibit number?

2           Exhibit number is 506?

3           **THE CLERK:** 506 is not in evidence.

4           **MR. PARCHER:** It's not in? Oh, my. Oh, my.

5 **BY MR. PARCHER::**

6 **Q.** Take a look at 506.

7           **THE COURT:** You asked him about it, but never moved  
8 it in.

9           **MR. PARCHER:** My mistake.

10          **THE COURT:** Any objection to 506?

11          **MR. KESSLER:** No objection.

12          **MR. PARCHER:** Thank you. Sorry about that.

13          Ahead of myself.

14          (Trial Exhibit 506 received in evidence.)

15          (Document displayed.)

16 **BY MR. PARCHER:**

17 **Q.** You began using this new or revised player, retired  
18 players GLA form. Players Inc began using it in 2005, correct?

19 **A.** I -- I don't know exactly when that happened.

20 **Q.** Well, you know that Corinne is telling you to take a look  
21 at it -- this is Exhibit 54 -- in -- in May because she wants  
22 to get it ready for a convention, right?

23 **A.** I have no idea whether that happened or not, whether there  
24 was a change that was made for that convention or not.

25 **Q.** As you sit here today, do you have any reason to doubt

1 that in 2005, a few months after you, Players Inc, received  
2 \$25 million, the huge increase, you put into operation a  
3 revised retired player GLA?

4 **A.** I don't remember when that happened with any specificity.

5 **Q.** You think it might not have happened in 2005?

6 **A.** I don't remember.

7 **Q.** You have no indication at all?

8 **A.** I don't remember when that happened.

9 **Q.** Turning your attention to the document itself. We'll go  
10 to the second paragraph, please.

11 "In consideration for this assignment." What  
12 you changed in the language, first, you removed all the  
13 language about the creation of the escrow account. It doesn't  
14 exist there anymore, does it?

15 **A.** There's no language about an escrow account.

16 **Q.** You removed it, didn't you?

17 **A.** Not me personally, but the -- the group of us that were  
18 working on this, yes.

19 **Q.** Well, wait a minute. In the group of you that were  
20 working on it, you were the number one guy, weren't you?

21 **A.** Uhm, I don't argue with you about that. Yes.

22 **Q.** Right. So you're not distancing yourself from the removal  
23 of the escrow account. You were amongst the significant people  
24 that said:

25 "Let's get the escrow account out of here. Now

1 we've got 25 million bucks. Now let's get the escrow account  
2 out of here and give them -- 'them' the retired fellows -- a  
3 revised GLA"?

4 **MR. KESSLER:** Objection compound.

5 **THE WITNESS:** No, that's not at all what happened.

6 **THE COURT:** It is a argumentative, but the witness  
7 has said: No, it didn't happen that way.

8 Overruled. Go ahead.

9 **MR. PARCHER:** Yes, sir.

10 **THE COURT:** Go ahead.

11 **BY MR. PARCHER:**

12 **Q.** In any event, that's what occurred. A few months after  
13 the \$25 million you -- "Players Inc," we'll say. I know you're  
14 not comfortable saying "you" -- Players Inc removed the escrow  
15 account. You can explain it at some other point, but the  
16 answer is "yes," isn't it?

17 **A.** This document is an NFL Players Association document.

18 **Q.** Okay. NFLPA removed the escrow account, correct?

19 **A.** That language came out of this agreement.

20 **Q.** Thank you.

21 **A.** That's correct.

22 **Q.** Secondly --

23 **MR. PARCHER:** Can we put -- is it possible to put up  
24 on the board 110, which is already in evidence -- that's the  
25 old GLA, Your Honor -- at the same time as we have 506 up

1 there.

2 (Document displayed.)

3 If you can highlight paragraph 5 of the old GLA.

4 **THE WITNESS:** Do you have that, that I could look at  
5 here?

6 **BY MR. PARCHER:**

7 **Q.** I'm sorry?

8 **A.** Do you have it, that I could look at? It's hard for me to  
9 see.

10 **THE COURT:** Do you have a copy of the --

11 **MR. PARCHER:** Of the old GLA, I do.

12 **THE COURT:** I prefer you use the actual court copy.

13 **MR. PARCHER:** I'll give him mine. Your Honor has it.

14 **THE COURT:** This time you can do it. But I like it  
15 whenever the witness works with the original exhibits. But go  
16 ahead.

17 **MR. PARCHER:** I thought those were on there from  
18 Wednesday. I didn't agree that they get taken.

19 It's in evidence, Judge. It's not a new document.

20 **THE WITNESS:** I have it. I just didn't know --

21 **MR. PARCHER:** We questioned him about it on --

22 **THE COURT:** Let's have him read the -- work off of  
23 the exhibit.

24 **MR. PARCHER:** Yes, sir. Yes, sir.

25 **THE WITNESS:** Thank you.



1           **THE COURT:** All right. We have them on the screen  
2 side by side. And your question is going to be about the  
3 paragraph you've highlighted.

4           **MR. PARCHER:** That's correct.

5           **THE COURT:** "It is further understood."

6 **BY MR. PARCHER:**

7 **Q.** Are you with me? Are you ready to go, Mr. Allen?

8 **A.** Yes.

9 **Q.** Now, we've established that the escrow account referred to  
10 in what we'll call "the old GLA," has been removed.

11           Now I'm questioning you about -- about another  
12 change. You removed the language about dividing the money  
13 between the player and eligible NFLPA members who have signed a  
14 group licensing authorization form, correct? That's removed.

15           You don't find that in the new -- in the new revised  
16 GLA.

17 **A.** That's correct.

18 **Q.** Thank you.

19           In the second paragraph --

20           **MR. PARCHER:** You can take off the old one now,  
21 please. Take off 110.

22 **BY MR. PARCHER:**

23 **Q.** In the second paragraph of the new GLA, Exhibit 506, do  
24 you see the language that:

25           "The NFLPA agrees to use its best efforts to

1 promote the use of NFL player images in group licensing  
2 programs, to provide group licensing opportunities to all NFL  
3 players," et cetera?

4 Do you see that?

5 **A.** I do.

6 **Q.** The reference to "NFL players" in this paragraph of the  
7 new GLA includes retired players, right?

8 **A.** I was reading it carefully. Now, I've lost the question.  
9 I apologize.

10 **Q.** The reference to "NFL players," I think it's not  
11 rhetorical, but -- okay. I don't want to make a speech.

12 The reference to "NFL players" in paragraph 2 of the  
13 new GLA includes retired players, correct?

14 **A.** Yes.

15 **Q.** Thank you.

16 Now, you put into the new GLA "best efforts."

17 You see that, right?

18 **A.** I see the words "best efforts."

19 **Q.** Right. But the truth is, is it not, that Players Inc  
20 always made its best efforts to promote the retired players,  
21 correct? You always did your best?

22 **A.** Uhm, yes.

23 **Q.** All right. Next topic.

24 **MR. PARCHER:** Almost done, Judge.

25 **THE COURT:** Before you leave this, though, I want to

1 ask a question that may be clarifying. This is for counsel.

2 In our lawsuit, is it the old GLA or the new GLA that  
3 the class is trying to enforce?

4 **MR. PARCHER:** I believe the answer is both.

5 **MR. KESSLER:** Your Honor, that's --

6 **MR. PARCHER:** I'm wrong? No, that's wrong. It's the  
7 old one. It's the old one.

8 **MR. KESSLER:** The class was certified --

9 **MR. PARCHER:** It's the old one. We're not wrong.

10 (Counsel speaking simultaneously, which was not  
11 reportable.)

12 (Reporter interrupts.)

13 **MR. PARCHER:** I'm sorry.

14 **MR. KESSLER:** I'm sorry.

15 I said it's only the old GLA that is the subject of  
16 this lawsuit. There's no claim at all concerning this new GLA.

17 **THE COURT:** Do you agree with that?

18 **MR. KATZ:** That's correct.

19 **THE COURT:** Mr. Katz agrees with that. All right.

20 So now you might be over there wondering well, then,  
21 why are we getting into the new GLA? And the reason is  
22 sometimes is helpful to get into -- because you're going -- in  
23 this case you're going to get to see a lot of what are known in  
24 the law as the surrounding circumstances.

25 So the new GLA is a circumstance that you can

1 consider even though it's not the specific document that is  
2 being sued on in this case. That's point number 1.

3 All right. Point number 2 that I want you to be  
4 aware of is you have seen references to the EA agreement,  
5 right?

6 When you go into the jury room to decide this case  
7 you're going to have to decide: What does the EA agreement  
8 mean and require, and who does it cover?

9 And you're also going to have to decide the meaning  
10 of the GLA in some respects. And maybe even some other  
11 third-party license agreements before this is all over.

12 So you -- I want you to be -- you've heard this  
13 before, but let's reminds you. It's a new week. At the end of  
14 the day the contract interpretation of both the GLA, the old  
15 one, and the EA agreement, and maybe some other license  
16 agreements we haven't heard about, is going to be for you to  
17 figure out how they fit together and how they -- what their  
18 meanings are, and what rights and obligations they create and  
19 who they cover and so forth.

20 So as you hear the evidence, I want you to be  
21 thinking: At the end of the trial you're going to have to make  
22 those decisions.

23 So that's my heads-up to you as we start a new week.

24 All right, Mr. Parcher, you're just about done,  
25 right?

1           **MR. PARCHER:** I'm more than on the final turn.

2           **THE COURT:** You go ahead. Finish up, and then we're  
3 going to have our break.

4           **MR. PARCHER:** Thank you. I'll be as quick as I can,  
5 Judge.

6 **BY MR. PARCHER:**

7 **Q.** Tell the Court and the jury who's LaShun Lawson?

8 **A.** LaShun Lawson was a Players Inc employee.

9           **MR. PARCHER:** I move -- I move into evidence Exhibit  
10 1320, which has been the subject of quite a bit of discussion  
11 here. It's a letter from LaShun.

12           **THE COURT:** Any objection?

13           **MR. KESSLER:** Which exhibit, please?

14           **MR. PARCHER:** 1320.

15           **MR. KESSLER:** The correct exhibit, Your Honor, is  
16 1183. I do not understand this.

17           **MR. PARCHER:** No.

18           **MR. KESSLER:** Maybe I'm wrong.

19           **THE COURT:** He is entitled to move in whatever number  
20 he wants to move in.

21           **MR. PARCHER:** A rare event, Your Honor.

22           **MR. KESSLER:** It's correct, Your Honor. No  
23 objection.

24           **MR. PARCHER:** A rare event, Your Honor. I want to  
25 say it, okay?

1           **THE COURT:** 1320 is received.

2           **MR. KESSLER:** Thank you, Your Honor.

3           (Trial Exhibit 1320 received in evidence.)

4           **MR. PARCHER:** That is correct. All right.

5           (Document displayed.)

6 **BY MR. PARCHER:**

7 **Q.** So take a look at 1320, if you will. Let's get to the  
8 last sentence of paragraph 1, if we can.

9 **A.** Can I read it? It's short.

10 **Q.** Sure. I'm just trying to get myself set here so we don't  
11 waste anybody's time.

12           **MR. PARCHER:** Judge, I said I would be done in a  
13 minute. It is true. But I just want to go back for 30  
14 seconds, not three hours, 30 seconds.

15 **BY MR. PARCHER:**

16 **Q.** I'm going to take you back to someplace else for just a  
17 minute, Mr. Allen. Is that okay?

18 **A.** I'm sorry. I was reading.

19 **Q.** I know. It's all on me. All on me. Just go back to the  
20 EA, the new GLA for a minute.

21           When you changed the retired players GLA, did you  
22 inform retired players that you had just signed a new  
23 Electronic Arts agreement with a \$25 million guarantee? Yes or  
24 no?

25 **A.** We certainly -- I can't answer that "yes" or "no." I

1 don't recall the precise time of the circumstances in which we  
2 informed them.

3 **Q.** Let's just see, quickly. You didn't put it into the GLA  
4 that you just received?

5 **A.** No.

6 **Q.** The \$25 million. You didn't write a letter when you  
7 enclosed the GLA to the retired players that you had just  
8 received \$25 million?

9 **A.** No.

10 **Q.** Let's go back to where we were. I'm sorry about that  
11 question. I forgot to ask you the question.

12 In the last sentence --

13 **MR. PARCHER:** Can you get it up a little better so  
14 the jury can see it?

15 (Document displayed.)

16 **BY MR. PARCHER:**

17 **Q.** I'm on paragraph 1 of the last sentence:

18 "Hence, any and all players not listed in  
19 attachment A or B cannot be represented in Madden 2002 with the  
20 number that the player actually wore, and must be scrambled."

21 Do you see that?

22 **A.** I do.

23 **Q.** So in the last paragraph, amongst other things, Players  
24 Inc told Electronic Arts that the images of the retired  
25 football players, unless they were on Exhibit A and Exhibit B,

1 must be scrambled, correct?

2 Yes or no?

3 **A.** One more time. Could you repeat the question?

4 **Q.** Do you want me to repeat the question?

5 **A.** Please.

6 **Q.** It is correct that in the last sentence of -- in the last  
7 sentence of paragraph 1, amongst other things, Players Inc told  
8 Electronic Arts that the images of retired football players,  
9 those not on A or B, must be scrambled, correct? Says so right  
10 there.

11 **A.** With respect to those players in the clause that talks  
12 about -- well, that precedes that.

13 **Q.** Excuse me. Is the answer "yes" or "no"?

14 **A.** With that explanation, the answer is "yes."

15 **Q.** The retired players who signed retired player GLAs, if  
16 their names weren't on attachment A and weren't on attachment  
17 or Exhibit B, their names and likenesses must be scrambled,  
18 right?

19 **A.** I don't believe that there were any players that would --

20 **Q.** Excuse me?

21 **A.** I don't believe that -- that a player who had done that  
22 would be in that circumstance. I think that's logically  
23 inconsistent.

24 **Q.** Just could you just answer my question?

25 **THE COURT:** Well, what's unclear even to me and maybe



1 to the jury is what is attachment A and what is attachment B?

2 **MR. PARCHER:** Attachment A, according --

3 **THE COURT:** Let's get the witness to explain.

4 Do you know what it is?

5 **MR. PARCHER:** It has already been asked and answered  
6 on Wednesday.

7 **THE COURT:** I don't remember it being asked and  
8 answered. What is A and what is B? He has already answered  
9 that?

10 **MR. PARCHER:** Yes, sir.

11 **THE COURT:** I don't remember that.

12 **MR. PARCHER:** We have to go back. I have to take  
13 time to do it.

14 **THE COURT:** That was done on Wednesday?

15 **MR. PARCHER:** Yeah. I could just say what it is.

16 **BY MR. PARCHER:**

17 **Q.** You do agree Exhibit A --

18 **MR. PARCHER:** I'll shoot it in, yes?

19 **THE COURT:** Go ahead.

20 **MR. PARCHER:** Thank you.

21 **BY MR. PARCHER:**

22 **Q.** Exhibit A is what you claim is all the active players.  
23 That's attachment A. It's the form of an active players group  
24 licensing agreement?

25 **MR. KESSLER:** Your Honor, objection. Counsel is

1 confusing the agreement of EA in 2005 with this agreement from  
2 2000. They are completely different attachments.

3 **MR. PARCHER:** If your Honor pleases.

4 **MR. KESSLER:** Completely different. He should show  
5 the attachments, and the witness can answer the question.

6 **MR. PARCHER:** If your Honor pleases.

7 **MR. KESSLER:** Misstates facts in evidence.

8 **MR. PARCHER:** If your Honor pleases. I will do  
9 whatever Your Honor directs me, obviously.

10 Not only is he mischaracterizing improperly what I'm  
11 doing, but he's doing a speaking objection three minutes after  
12 you said "no speaking objections."

13 **THE COURT:** No, this time it's okay, because he's  
14 getting at the point I was asking about.

15 It says, "The addendum that was signed last July was  
16 a 3-year agreement." And then, it refers to attachments A and  
17 B, I guess, to that agreement.

18 Now, I don't remember that agreement. Is that --  
19 which agreement is that?

20 **MR. PARCHER:** That agreement --

21 **THE COURT:** Is that the EA agreement that you  
22 referred to earlier?

23 **MR. PARCHER:** No. The agreement I referred to  
24 earlier is a 2004 agreement. There was a whole series of EA  
25 agreements.

1           **THE COURT:** Which one is that referring, to a July  
2 agreement last July? Which one was that?

3           **MR. PARCHER:** Would have been either 2002 or before.

4           **MR. KESSLER:** No, Your Honor. It's 2000.

5           **MR. PARCHER:** I said "2002 or before." That includes  
6 2000.

7           **THE COURT:** Pull that out, and let's see what the  
8 attachments A and B of that are.

9           **MR. PARCHER:** Okay. Well, I don't have it handy. It  
10 will take a minute to do that.

11           **THE COURT:** Here's what we're going to do, to give  
12 you a chance.

13           We're going to take our break a moment early, and  
14 give you a chance to sort that out.

15           This is -- I know both sides have placed some  
16 importance on this particular letter.

17           **MR. PARCHER:** Yes, sir.

18           **THE COURT:** So let's be clear what attachment A and  
19 attachment B are.

20           **MR. PARCHER:** Yes, sir.

21           **THE COURT:** So let's do our homework in the meantime  
22 and have it all teed up and ready to go when we come back.

23           We'll take a 15-minute recess.

24           Please remember the admonition.

25           (Jury in recess.)

1           (The following proceedings were held in open court,  
2           outside the presence of the jury.)

3           **THE COURT:** All right. Anything you need me for?

4           **MR. KESSLER:** Your Honor, I just had an issue. We  
5 have a witness, Steven Byrd, who is the executive vice  
6 president of STATS, Inc., who we have disclosed and intend to  
7 call in our case.

8           Because of the way in which the schedule was playing  
9 out, it appears now that because of Mr. Byrd's vacation he  
10 cannot be here next Monday, Tuesday, Wednesday, Thursday.

11           And I'm concerned that my case will neither start  
12 before Friday, when he also can't be here, and it will end  
13 before his vacation ends.

14           So what I've suggested, Your Honor, is either that we  
15 be permitted to take a trial deposition of him, because he's  
16 available this week. We could do it in one afternoon. And it  
17 won't take more than one hour. We have -- we're going to have  
18 about a half hour of very important direct with him, and they  
19 can have cross-examination. Or we call him out of order during  
20 their case, before Thursday of this week.

21           Plaintiffs have refused both alternatives, and I  
22 would like the Court's permission to do either one.

23           **THE COURT:** I'm going to allow you at least the  
24 deposition, and I prefer the jury hear it live. I don't know  
25 why the plaintiffs --

1 Is it true you won't agree to this?

2 **MR. HUMMEL:** Yes, Your Honor.

3 **THE COURT:** Why won't you agree to this?

4 **MR. HUMMEL:** Because the time for depositions is  
5 over. If they needed to preserve his testimony --

6 **THE COURT:** Then it's going to interrupt your case.  
7 You can call him out of turn on a day convenient to you.  
8 That's unreasonable, Mr. Hummel.

9 You're going to have the same problem and need some  
10 courtesy from them. This happens in all trials, and we're  
11 going to allow it.

12 How many more instances do you have?

13 **MR. KESSLER:** This is the only one we have, Your  
14 Honor.

15 **THE COURT:** All right. You work out when it's least  
16 disruptive to the plaintiffs' case, and you can call him this  
17 week.

18 **MR. HUMMEL:** Thank you, Your Honor.

19 **MR. KESSLER:** Very good, Your Honor. Thank you.

20 **MR. KATZ:** Your Honor, I wanted to clarify one small  
21 point.

22 **THE COURT:** Sure.

23 **MR. KATZ:** Your Honor mentioned very early on today  
24 about plaintiffs regularly issuing press releases. We issued  
25 one press release in February 2007, Your Honor. That was it.

1           **THE COURT:** I stand corrected. Thank you.

2           (Recess taken from 9:09 to 9:27 a.m.)

3           **THE COURT:** Okay. Please be seated.

4           **MR. PARCHER:** Can I say an administerial thing,  
5 Judge?

6           **THE COURT:** Sure.

7           **MR. PARCHER:** Nothing of any great drama. So the  
8 2000 -- yes?

9           **THE COURT:** Go ahead.

10          **MR. PARCHER:** The 2000 EA is not -- was never on any  
11 exhibit list, so nobody has a copy of a 2000 EA. This is what  
12 you were asking for right at the break.

13          Nobody has Exhibit A. But -- 2000 EA. But I'm told  
14 that what Exhibit A is, by Mr. Kessler, and our side seems to  
15 agree, is substantially all of the active players.

16          In other words, if there was 1800, there's either  
17 1800 or 1790, or something like that. You know, it's an active  
18 player list.

19          And Exhibit B, which is called an "addendum," I do  
20 have here. This is -- it's Exhibit 24. I'm telling Your Honor  
21 this so it's not herky-jerky when we begin.

22          **THE COURT:** Exhibit B is --

23          **MR. PARCHER:** Well, there is no Exhibit A and B.  
24 Start with that.

25          **THE COURT:** All right. There's no attachment. Do

1 you have attachment B?

2 **MR. PARCHER:** The second attachment.

3 **THE COURT:** B.

4 **MR. PARCHER:** It's not called "B." It's called  
5 "addendum." But that's what it is.

6 **MR. KESSLER:** Your Honor, if I could maybe add some  
7 clarity here.

8 We do have the 2000 EA agreement. That, in fact, is  
9 an exhibit.

10 With respect to the attachments, neither side had  
11 marked attachment A as an exhibit to it. We agree it's a  
12 list -- it's the long list of individual names of active  
13 players. But no one had marked attachment A with respect to  
14 that.

15 Attachment B is actually in the form of an addendum  
16 that was done listing the retired players. So it's not called  
17 "B," but it was an addendum, and we agree with that.

18 **MR. PARCHER:** Excuse me. I'll hand this up, if Your  
19 Honor wants to read it. But saying it is a list of retired  
20 players is a total distortion of reality.

21 I haven't counted the number, but it lists  
22 approximately 100 players and does not list approximately 2,000  
23 players, assuming it was 2100 back at that time, or more.

24 So it's not a list of retired players. It's a  
25 list of -- I don't want to use the word "handful." I haven't

1 counted the number. Take a look and you'll see what I mean in  
2 one second.

3 **MR. KESSLER:** Your Honor, it's a list of the retired  
4 players that EA agreed to pay for a license.

5 **MR. PARCHER:** That's a different point.

6 **THE COURT:** Look. This is -- is there a stipulation  
7 on this of any type?

8 **MR. KESSLER:** No, there's not, Your Honor.

9 **THE COURT:** Then, you have to do it the traditional  
10 way. I allow you latitude, but the Rules of Evidence  
11 ultimately cover here.

12 If you don't have attachment A or if you don't have  
13 attachment B, you've got to go with what the witness can  
14 remember. But I am not -- I'm not here to force some version  
15 of facts down the throats of one side or the other.

16 **MR. KESSLER:** We can -- we'll discuss it with  
17 plaintiffs after court, and see if we can agree to a stip or  
18 not.

19 **THE COURT:** Now is the time. We've got the witness  
20 here.

21 **MR. PARCHER:** Your Honor, before we go forward, it's  
22 not the biggest point in the world. But counsel is saying that  
23 Exhibit A is a list of all the active players. He's  
24 acknowledging that.

25 **MR. KESSLER:** No, Your Honor, I'm not.



1           **MR. PARCHER:** You're not acknowledging it?

2           **MR. KESSLER:** No, I'm not acknowledging that. Let me  
3 be very clear what I'm saying, instead of counsel stating it,  
4 because there seems to be a difference.

5           What I understand attachment A to be is a list of all  
6 the active players who were licensed under the agreement.  
7 That's not all active players because there are some active  
8 players who never gave their rights to the union.

9           And so it would be less than all the active players.  
10 It would be those who were licensed.

11           Exhibit B -- which was never done as B, it was done  
12 as an addendum -- is a list of those specific retired players  
13 who were licensed by EA under this specific agreement because  
14 they identified those players they wanted. Those rights were  
15 secured. They were put on. It was an ad hoc addition. And  
16 they were paid that money.

17           So both of those are only the list -- they're two  
18 separate things. But they're the list of players who were  
19 licensed under the agreement.

20           **THE COURT:** Look, I will give permission to amend the  
21 trial exhibit list to put in Attachments A and B. If you have  
22 them here in the courtroom, and you can do that, great.

23           **MR. PARCHER:** I have B.

24           **THE COURT:** I don't know why I'm getting all this  
25 explanation other than, look, I can't -- I can't glide over the

1 Rules of Evidence. Either you get it out of the mouth of this  
2 witness or you put it into an exhibit or whatever. But I can't  
3 force some version of the facts down the throat of the jury  
4 when you two can't even agree on it.

5 **MR. PARCHER:** Would you give me just one minute?

6 **THE COURT:** All right.

7 **MR. PARCHER:** Maybe I can get through it. Maybe I  
8 can't.

9 Okay. I'm not going to -- can I report to the Court  
10 or just hold my own counsel here?

11 What we're going to try to do -- try to move it  
12 along, right -- is I'm not going to refer to Exhibit A at this  
13 point in time. Although, I don't think it's a controversial  
14 document. We'll do it with Berthelsen.

15 Exhibit B or the addendum, as it's now correctly  
16 called, I'll put in through this witness, if I can, and then  
17 I'll go on to my one or two questions.

18 **THE COURT:** All right. Do it the best you can, and  
19 I'll rule on the evidentiary rulings the best I can.

20 **MR. PARCHER:** Okay. Thank you.

21 **THE COURT:** Let's bring the jury back.

22 **THE CLERK:** Okay.

23 (Thereupon, the jury returned to the courtroom.)

24 **THE COURT:** Welcome back. Have a seat.

25 Mr. Parcher, please continue.

1                   **MR. PARCHER:** Thank you, Your Honor.

2                   **BY MR. PARCHER:**

3                   **Q.** Do you have Exhibit 24 in your portfolio there, sir?

4                   **A.** Yes, I do.

5                   **Q.** Okay. Do you recognize Exhibit 24? I called it  
6 inadvertently "Exhibit B." But do you recognize it as the  
7 addendum or the second attachment to the 2000 EA agreement  
8 between EA and Players Inc?

9                   **THE COURT:** Mr. Allen, can you answer the question?

10                   **THE WITNESS:** I'm struggling with -- I believe the  
11 answer is "yes," but I'm struggling with why it's effective in  
12 '98. I'm trying to recall that.

13                   **BY MR. PARCHER:**

14                   **Q.** I'm sorry. I didn't hear that sentence.

15                   **THE COURT:** Please repeat what you just said.

16                   **THE WITNESS:** I said I was struggling with the  
17 March 1, '98 date. But -- and you were asking me whether this  
18 was an addendum to the 2000 Electronic Arts agreement with  
19 Players Inc? Is that correct?

20                   **BY MR. PARCHER:**

21                   **Q.** Yeah.

22                   **A.** Uhm --

23                   **Q.** If you don't know, you don't know.

24                   **THE COURT:** Do you know the answer?

25                   **THE WITNESS:** Uhm, I don't -- I believe the answer to

1 that question is "yes," but I'm struggling with why the  
2 effective date is March 1, 1998, because that would appear to  
3 be consistent with an agreement that was arrived at or it was  
4 pending.

5 **BY MR. PARCHER:**

6 **Q.** So let's move to --

7 **A.** So I think the answer to that question is "yes," but I  
8 don't know why --

9 **THE COURT:** With that exception, does it look like  
10 the addendum?

11 **THE WITNESS:** Yes.

12 **THE COURT:** Go ahead.

13 **MR. PARCHER:** Let's put it up on the screen, please.  
14 We won't even bother to do that.

15 **THE COURT:** It's not in evidence yet.

16 **MR. PARCHER:** Oh, move it into evidence, please.

17 **THE COURT:** 24 is received unless there's an  
18 objection.

19 **MR. KESSLER:** No objection.

20 **THE COURT:** Received.

21 (Trial Exhibit 24 received in evidence.)

22 **BY MR. PARCHER:**

23 **Q.** Now, this -- this -- I'm calling it "addendum," I called  
24 it "Exhibit B" before, but I mean the same thing.

25 This document, this document is a list -- I didn't

1 count the number -- but it's a list of approximately a hundred  
2 or so, more or less, retired -- retired players whom this  
3 letter is not directing to be scrambled, right?

4 **A.** Uhm --

5 **MR. KESSLER:** Objection.

6 **THE WITNESS:** Can I get the letter in front of me?  
7 Is that all right?

8 **BY MR. PARCHER:**

9 **Q.** Do what?

10 **A.** Can I get the letter in front of me? I don't have it. I  
11 was looking at Exhibit 24.

12 **Q.** Sure.

13 **THE COURT:** Let's break that question down, first.  
14 The first part is: This addendum, Exhibit 24, concerns retired  
15 players; is that true?

16 **THE WITNESS:** That's correct.

17 **THE COURT:** And as to those players, this letter from  
18 Ms. Lawson was saying that they did not have to scramble their  
19 names and identities, correct?

20 **THE WITNESS:** That's right.

21 **BY MR. PARCHER::**

22 **Q.** Without holding you or me to the number, because I did it  
23 very quickly during the break, more or less there's  
24 approximately a hundred names on there. Do you see it?

25 I'm not quibbling about the number.

1 **A.** I haven't counted it. I haven't counted them, but I don't  
2 have any reason to believe it's not in that neighborhood.

3 **Q.** Right. Right. But you'll agree that at the time that  
4 LaShun wrote this letter -- LaShun Lawson wrote this letter --  
5 there were approximately 2,000 or so, more or less, retired  
6 players that had signed GLAs, right?

7 **MR. KESSLER:** Objection, Your Honor. This is  
8 pre-statute period, so we don't know --

9 **THE COURT:** It doesn't matter. It's background.  
10 Overruled.

11 **MR. KESSLER:** Okay.

12 **THE COURT:** Were there roughly that 2,000 retired  
13 players at that time frame?

14 **THE WITNESS:** Don't remember the precise number, but  
15 that sounds about right.

16 **BY MR. PARCHER:**

17 **Q.** Right. Right. And with respect to those players that are  
18 not on the addendum or B, LaShun Lawson was telling  
19 Electronic Arts -- or put it this way, PI was telling  
20 Electronic Arts: Scramble those players' names and likenesses.

21 "The names must be scrambled." Those are the last  
22 three words of the last sentence of this exhibit, correct?

23 **A.** The -- the number of the player has to be scrambled,  
24 according to this letter.

25 **Q.** Well, how about the name and likeness:

1 "And must be scrambled"?

2 **A.** No, it says --

3 **Q.** Not?

4 **A.** I'm just reading from it. It says the number that the  
5 player actually wore.

6 **Q.** "Hence, any and all players not listed in Attachment A or  
7 B cannot be represented in Madden 2002 with the number that the  
8 player actually wore, comma, and must be scrambled."

9 Are you saying that LaShun Lawson isn't telling  
10 Electronic Arts or PI isn't telling Electronic Arts to scramble  
11 the names and likenesses to those retired players who signed  
12 GLA that are not on Exhibit B or the addendum; is that your  
13 testimony?

14 **A.** Scrambling refers to not using the player's number because  
15 that would be identified by the consumer with that player. And  
16 using another number that would represent another player.

17 **Q.** So it would be all right for them to use the person's name  
18 and likeness. They could put on the jersey --

19 **A.** No. They wouldn't do that anyway.

20 **Q.** Excuse me. I didn't ask you whether they would do it  
21 anyway. I'm asking you to answer my question.

22 So are you saying to this Court and jury that LaShun  
23 Lawson isn't telling them:

24 "Scramble the names and likenesses of these  
25 people"?

1 Yes or no, sir?

2 **A.** I believe that what she's telling them is not to use their  
3 identities.

4 **Q.** Which includes a person's name and likeness. If you see  
5 my face, then you haven't scrambled my identity, have you?

6 Yes or no, sir?

7 **A.** Yes. Well, assuming that -- that the face you're talking  
8 about is recognizable as you. If it's someone else's face, as  
9 is -- as was typically the case in these games in this period,  
10 it -- it -- the -- the face of the player was not, uhm -- was  
11 not the same as the player -- was not like a photograph, in  
12 other words.

13 **Q.** From the time that LaShun, more or less, not identical,  
14 but from the time LaShun Lawson wrote this letter until the  
15 present time, a retired player who signed a GLA, his name and  
16 likeness -- never mind just his number -- has never appeared in  
17 the Madden games; isn't that correct?

18 **A.** That -- I --

19 **Q.** Yes or no?

20 **A.** I'm -- I'm trying to follow the question, Mr. Parcher.  
21 And I'm -- I'm listening carefully. But I'm getting confused.

22 Could you repeat the question?

23 **Q.** Yes. From the time, more or less -- I'm not saying the  
24 exact moment -- but more or less from the time that LaShun  
25 Lawson wrote this letter, to the present time, a retired GLA



1 who was on a vintage team, his name and likeness has been  
2 obliterated. It's not shown, correct?

3 **A.** I think that's correct. But without going back and  
4 reviewing the games I couldn't be -- I couldn't remember.

5 **MR. PARCHER:** I have no further questions of this  
6 witness.

7 **THE COURT:** All right. Let's go to Mr. Kessler.

8 **MR. KESSLER:** Thank you, Your Honor. It will just  
9 take me one minute to get set up here.

10 **CROSS EXAMINATION**

11 **BY MR. KESSLER:**

12 **Q.** Good morning, Mr. Allen.

13 **A.** Good morning.

14 **Q.** Mr. Allen, we're going to cover some of the same subjects  
15 that Mr. Parcher has covered with you, but I'm going to try to  
16 do them in some overall order. So let's start at the  
17 beginning, if we can.

18 Mr. Allen, have you ever been a football player?

19 **A.** Yes, I have.

20 **Q.** Would you explain to the jury, please, your career as a  
21 college football player, first?

22 **A.** I was a linebacker for Penn State University and played  
23 from '69 to '73. And, uhm -- the '73 season was my last year  
24 on the team.

25 **Q.** When you finished your career at -- what college was it?

1 I'm sorry, maybe you stated it.

2 **A.** Pennsylvania State University.

3 **Q.** How were your teams those years?

4 **A.** Pretty good.

5 **Q.** Okay.

6 **A.** We lost five games the three seasons that I played.

7 **Q.** When you finished your time as a college football player,  
8 did you graduate from college?

9 **A.** Yes, I did.

10 **Q.** And were you then drafted by any National Football League  
11 team?

12 **A.** Yes. I was drafted by the Buffalo Bills in the second  
13 round of the 1974 draft.

14 **Q.** And how many years did you play in the NFL?

15 **A.** Two seasons.

16 **Q.** Okay. And what happened after those two seasons?

17 **A.** I -- in -- in preseason in my third season I, uhm, retired  
18 from the National Football League and took another job.

19 **Q.** So are you a retired NFL player?

20 **A.** I am, indeed.

21 **Q.** And how would you describe your accomplishments during  
22 your career when you were an NFL player those two years?

23 **A.** Limited. Uhm, I started much of the time I was there. I  
24 was the rookie of the year my rookie season for the Buffalo  
25 Bills, but I was not somebody who was an All Pro or a

1 particularly well-regarded player. I certainly wasn't  
2 somebody -- I was a journeyman player.

3 Q. Mr. Allen, are you familiar from your career as to the --  
4 what the average career is of an NFL player?

5 A. I am.

6 Q. Tell the jury, typically, what's an average career like?

7 A. It's a little more than three years. Typically, it's  
8 about three years.

9 Q. Okay. Are there players who sign NFL player contracts who  
10 never make a team?

11 A. Uhm, certainly. There are lots of players who sign and  
12 try out and don't make the team.

13 Q. Are there NFL players who make a team who play one year?

14 A. Yes, there are. Quite a few, actually.

15 Q. Are there NFL players who play less than one year their  
16 entire career?

17 A. Sure. They might make the team for a while and then be  
18 cut and not play that season.

19 Q. Now, from the standpoint of signing a retired player group  
20 licensing authorization, are all those different kinds of  
21 players allowed to sign retired player GLAs?

22 A. Absolutely.

23 Q. So if a player signed an NFL player contract and never  
24 played a game, could he have signed one?

25 A. Yes. And did.

1 Q. And somebody like you could have signed one?

2 A. I did, yes.

3 Q. In fact, did you sign one? You did?

4 A. Yes.

5 Q. Now, after you left the NFL what did you do next with your  
6 life, your career?

7 A. Uhm, I -- when I retired from the NFL, I went to work for  
8 the AFLCIO using my college degree, and was the regional  
9 director for their committee on political education.

10 I covered New York and New Jersey for the AFLCIO.

11 Q. How many years did you work -- well, first, tell the jury.  
12 I'm sure many of them know this, but just in case one doesn't,  
13 what is the AFLCIO?

14 A. It's the American Federation of Labor and Congress and  
15 Industrial Organizations. It's the federation of labor unions  
16 at the national level. It's an organization of the national  
17 labor unions.

18 Q. How long were you with the AFLCIO?

19 A. About six or seven years.

20 Q. Following those six or seven years, what was your next  
21 position?

22 A. I joined the staff of the NFL Players Association as  
23 assistant to the executive director.

24 Q. And what year was that?

25 A. That was in 1982.

1 Q. Okay. And when you joined the NFLPA in 1982, was there  
2 already player licensing activities going on at the union?

3 A. Yes.

4 Q. And in 1982 -- well, I'll come back to that. Let me keep  
5 going with your career.

6 What were your first responsibilities in your job?

7 A. Primarily it was to communicate with players on the teams  
8 in the locker room, to go to team meetings to make sure the  
9 players knew what was happening and to get their input and to  
10 deal with the issues that were going on on that team. That  
11 position has evolved over time and continues to this day.

12 I mean, there are people who do that at the union to  
13 this day.

14 Q. When did Mr. Upshaw become the executive director of the  
15 NFLPA? Which year, do you recall?

16 A. In the summer of 1983, I think.

17 Q. So the year after you joined?

18 A. Yes.

19 Q. And how many years did you stay at the NFL Players  
20 Association, from 1982 until when?

21 A. January of 2007. So 25 years.

22 Q. And during the time you were at the NFL Players  
23 Association for that 25-year period, what other position did  
24 you hold at the Players Association?

25 A. Well, at the Players Association I was -- there was a --

1 there was a 3-year period during which I, with a lot of other  
2 people at the NFLPA, organized the USFL Players Association,  
3 and I served as its executive director for three years.

4 When I came back to the staff of the NFLPA, I came  
5 back as assistant executive director, and I had that position  
6 for about 20 years.

7 **Q.** Okay. And in that 20-year period of time, just briefly  
8 describe to the jury what were your responsibilities as the  
9 assistant executive director at the National Football League  
10 Players Association?

11 **A.** I had a number of departments in the organization that  
12 reported directly to me. I got involved in the membership  
13 services area in the pension end in dealing with the pension  
14 plan and retirement benefits part of the association,  
15 negotiating that and administering that with staff that  
16 reported to me.

17 I was responsible for the drug and alcohol program  
18 that the union jointly administered with the league. And the  
19 communications department reported to me as some examples of --  
20 I was also part of the team that negotiated the collective  
21 bargaining agreements. And I particularly concentrated in that  
22 area on licensing and pension and the benefits.

23 **Q.** Again, could you briefly explain to the jury -- again,  
24 many of them may know this -- what is the NFLPA?

25 **A.** The National Football League Players Association is the

1 union that represents the players in the National Football  
2 League and negotiates a collective bargaining agreement that  
3 covers the bargaining unit for wages, hours and working  
4 conditions.

5           So minimum compensation and the terms and conditions  
6 of employment are negotiated in that agreement.

7           And then, the union is responsible for administering  
8 and enforcing that agreement as part of its responsibilities.  
9 And it's governed by a board of directors of active players who  
10 are elected by their teammates to be the board of directors.

11 **Q.** Now, you mentioned earlier that when you arrived at the  
12 NFLPA in 1982, it already was engaged in some player licensing,  
13 correct?

14 **A.** Yes.

15 **Q.** Now, was that active player licensing?

16 **A.** Yes.

17 **Q.** With respect to the active player licensing back in 1982,  
18 in that period of time, the revenues that were generated from  
19 that licensing, where did it go?

20 **A.** It went to the operation of the union.

21 **Q.** 100 percent?

22 **A.** A hundred percent.

23 **Q.** Now, why -- who decided that a hundred -- 100 percent of  
24 the active player licensing money in those days would go to run  
25 the union? Who decided that?

1 **A.** The Board of Player Representatives.

2 **Q.** Okay. Explain to the jury, please, what is the Board of  
3 Player Representatives?

4 **A.** The Board of Player Representatives is a group of players  
5 who are elected by their teammates, active players who are  
6 elected by their teammates. Generally, there's a player  
7 representative and an alternative player representative. And  
8 the alternate represents the team when the player  
9 representative is unavailable.

10 And that is the governing body of the union. It's  
11 the board of directors. Each team elects its representatives,  
12 and then they sit together as a board of directors and hold  
13 meetings and make decisions that -- that determine the policy  
14 and the finances and the -- the collective bargaining proposals  
15 that the union is going to advance, for example.

16 **Q.** So each team elects a player representative to the board  
17 of player reps?

18 **A.** Yes.

19 **Q.** Does the board of player reps have authority to hire and  
20 fire the executive director?

21 **A.** It does, yes.

22 **Q.** So the executive director, like Mr. Upshaw, who does he --  
23 who did he work for when he was at the union?

24 **A.** He was accountable to the Board of Player Representatives.  
25 They were responsible. Under the constitution, they had the



1 authority to hire and fire the executive director.

2 **Q.** Now, at the time, why did the Board of Player  
3 Representatives use all the active player licensing money to  
4 run the union? Why not give it to the players, the active  
5 players?

6 **MR. PARCHER:** Object to that, Your Honor. That would  
7 necessitate some discussion between the players'  
8 representatives and this witness. The best evidence rule  
9 applies. There has been no production of minutes and, also,  
10 there has been no foundation.

11 **THE COURT:** Well, the witness can state why -- what  
12 the board said after he came on to the -- to the NFLPA. But he  
13 cannot purport to say what happened before that. He wasn't  
14 even present.

15 **MR. KESSLER:** I wouldn't ask that. Your Honor, let  
16 me ask this.

17 **BY MR. KESSLER::**

18 **Q.** Did you attend --

19 **MR. PARCHER:** Best evidence.

20 **THE COURT:** Wait. Mr. Parcher, what? The best  
21 evidence is overruled.

22 **MR. PARCHER:** Okay. How about hearsay?

23 **THE COURT:** You don't have to have the best evidence.  
24 You can have alternate evidence. There are many ways to skin a  
25 cat.

1           **MR. PARCHER:** The alternative would be hearsay, would  
2 it not, Your Honor?

3           **THE COURT:** No, it wouldn't necessarily be hearsay,  
4 if the board stated the reason. If the question is phrased in  
5 terms of the stated reason if he was present and heard it  
6 stated that would be admissible.

7 **BY MR. KESSLER:**

8 **Q.** Did you attend the annual meeting of the board of player  
9 reps every year from 1982 until you left the Players  
10 Association in 2006?

11 **A.** Well, I attended meetings when I was a player rep, while I  
12 was playing. But I also attended meetings when I was on the  
13 staff. As part of my responsibilities, I attended every player  
14 representative meeting.

15 **Q.** So you attended every -- let's break it up. You attended  
16 every player rep meeting while you were a staff member?

17 **A.** Yes.

18 **Q.** And you also attended some player rep meetings earlier,  
19 when you were a player rep?

20 **A.** Yes. I was the alternate player representative for the  
21 Buffalo Bills while I played.

22 **Q.** At those meetings, did the board of player reps indicate  
23 why they were -- did he discuss why they were giving the money  
24 to the union as opposed to giving it to active players?

25           **THE COURT:** Well, to be more precise, did they state

1 a reason? Did not did they indicate, but did they state a  
2 reason?

3 **THE WITNESS:** Yes.

4 **BY MR. KESSLER:**

5 **Q.** What was that reason?

6 **A.** That the amount of money was best spent on union  
7 operations that would benefit the greatest number of players  
8 given the amount of licensing that there was and the -- and the  
9 resource that was available to help keep dues down.

10 **Q.** Now, this money that was devoted to run the union a  
11 hundred percent, was any of that retired player money?

12 **A.** No.

13 **Q.** Now, Mr. Allen, did there come a time when Players Inc was  
14 created?

15 **A.** Yes.

16 **Q.** Okay. Could you describe to the jury the circumstances  
17 that led to the creation of Players Inc and when that occurred?

18 **A.** Well, the -- the union and the league got into a number of  
19 collective bargaining battles and litigation battles. And it  
20 was clear that licensing was the way that the union was funding  
21 the -- its -- its resources in dealing with those battles with  
22 the league on behalf of the players.

23 And one of the things that the league tried to do  
24 was -- was pull active players away from the -- the licensing  
25 program by saying:

1                    "We can do all sorts of things for you. We can  
2 put you on the television. We can give you appearances and  
3 endorsements. And the union, which is doing licensing, can't  
4 do any of that."

5                    So players came to us and said:

6                    "Why can't we do that?"

7                    And the answer was:

8                    "Our tax counsel told us as a not-for-profit  
9 there were certain things we could do."

10                   We could license, for instance, trading cards and get  
11 royalties for doing that. But all those other things players  
12 wanted us to do we couldn't do as a not-for-profit tax exempt  
13 union.

14                   And if we were going to do those things we had to  
15 create a separate entity. And on the advice of tax counsel we  
16 structured -- after doing evaluation that would tell us what  
17 the appropriate relationship between that company and the union  
18 should be, we created Players Inc so that it could do the kinds  
19 of things the players said they wanted us to do for them.

20                   **MR. KESSLER:** Your Honor, may I approach the witness  
21 and give him an exhibit? Thank you.

22 **BY MR. KESSLER:**

23 **Q.** I have handed you, Mr. Allen, a copy of Trial Exhibit  
24 2047.

25                   **MR. KESSLER:** Is this already in evidence?

1           **MR. GREENSPAN:** I don't believe so.

2           **MR. KESSLER:** No? Okay.

3 **BY MR. KESSLER:**

4 **Q.** Do you recognize what Exhibit 2047 is, Mr. Allen?

5 **A.** It's an active player GLA.

6           **MR. KESSLER:** Your Honor, I would move Trial Exhibit  
7 2047 into evidence.

8           **MR. PARCHER:** No objection.

9           **THE COURT:** Received.

10           (Trial Exhibit 2047 received in evidence.)

11           **MR. KESSLER:** Could we display it, please?

12           (Document displayed.)

13           **MR. KESSLER:** If we could start out by looking at --  
14 to my pointer. Sorry.

15           If we could start by blowing up, Lauren, Attachment  
16 A, all the way through the first paragraph.

17 **BY MR. KESSLER:**

18 **Q.** Do you know why it's listed as attachment A, this exhibit?  
19 Do you know what this was an attachment to?

20 **A.** It was typically an attachment to a license agreement  
21 between either the NFLPA or Players Inc and the licensee.

22 **Q.** So in an agreement like the EA agreement that was shown to  
23 you during your examination, when it would refer to the players  
24 who signed an attachment A, did that have anything to do with  
25 this document?

1   **A.**   Uhm, yes.  This was the document that was referred to.

2   **Q.**   Okay.  And this document, Attachment A, NFL Players  
3 Association Group Licensing Assignment, is this the GLA that  
4 was signed by active players or retired players?

5   **A.**   This is the GLA that was signed by active players.

6   **Q.**   Okay.  So would retired players sign this after they left  
7 the NFL?

8   **A.**   No.

9   **Q.**   Okay.  Let me -- by the way, if you look at the second  
10 line here it says there is an exclusive right.  Do you see that  
11 in the second line?

12   **A.**   Yes, I do.

13   **Q.**   Was the active player GLA exclusive?

14   **A.**   Yes.

15   **Q.**   Now, did you use the same or a different form for retired  
16 player licensing?

17   **A.**   It was a different form.

18   **Q.**   With respect to active player -- well, let me ask you a  
19 question now -- I'll withdraw it -- about retired player  
20 licensing.

21               Was retired player licensing money ever used to fund  
22 the operations of the union the way the active player money was  
23 used?

24   **A.**   No, it never was.

25   **Q.**   Okay.  So do you have an understanding of why the union

1 started retired player licensing?

2 **A.** Yes.

3 **Q.** Why did the union start retired player licensing?

4 **A.** For a number of reasons. One was to -- to try to create,  
5 based on the active player model, opportunities for retired  
6 players to be involved in group licensing and to be involved in  
7 endorsements or making appearances or participating in events  
8 or being on television programs, so that there would be -- we  
9 could try to provide the opportunity for retired players to  
10 earn some money.

11 And we could also give them exposure to the  
12 marketplace and try to develop the kind of program for them  
13 that we had developed for active players.

14 **Q.** Now, was Mr. Upshaw a retired player?

15 **A.** Yes.

16 **Q.** Hall of Fame player?

17 **A.** He was a little more famous than I was.

18 **Q.** Was Mr. Upshaw involved in the decision to start retired  
19 player licensing?

20 **A.** Very much involved.

21 **Q.** Now, other than attachment A, do you recall there was  
22 another way that active players could sign up for GLA rights?

23 **A.** Yes.

24 **MR. KESSLER:** Your Honor, if I may I approach.  
25

1 **BY MR. KESSLER:**

2 **Q.** Mr. Allen, I've handed you a copy of Trial Exhibit 1281.  
3 Do you recognize what this is?

4 **A.** It's a form NFL player contract.

5 **Q.** Okay. And when you say "form," does that have any  
6 relationship to the contracts used in the NFL?

7 **A.** Yes. This is by agreement between the union and the  
8 league, the form of the player contract between the player and  
9 the team that provided for his playing services.

10 **Q.** Well, would anybody but an active player ever sign this  
11 contract?

12 **A.** No. By definition, this is for somebody who is actively  
13 employed by an NFL team and playing for them.

14 **Q.** So it couldn't be a retired player?

15 **A.** No.

16 **Q.** Okay.

17 **MR. KESSLER:** Your Honor, I would move into evidence  
18 Trial Exhibit 1281.

19 **MR. PARCHER:** No objection.

20 **THE COURT:** All right. Received.

21 (Trial Exhibit 1281 received in evidence.)

22 (Document displayed.)

23 **BY MR. KESSLER:**

24 **Q.** Mr. Allen, I direct your attention to paragraph 4(b) of  
25 this agreement, if you can.



1 Are you familiar with 4(b)?

2 **A.** Just make sure I look at it.

3 **MR. KESSLER:** Lauren, maybe we can put the next page  
4 so you can display both sections together, if it's possible to  
5 do that. I don't know if it's possible.

6 Both the start of B and the completion.

7 (Document displayed.)

8 **BY MR. KESSLER:**

9 **Q.** Mr. Allen, are you familiar with 4(b)?

10 **A.** No, I'm just finishing reading it.

11 **Q.** Please.

12 **A.** Yes, I am.

13 **Q.** Okay. Could you explain what 4(b) is of the NFL player  
14 contract that says:

15 "Player hereby assigns to the NFLPA and its  
16 licensing affiliates, if any, the exclusive right to use and to  
17 grant to persons, firms, or corporations, collectively  
18 licensees, the right to use his name, signature, facsimile,  
19 voice, picture, photograph, likeness and/or biographical  
20 information in group licensing programs."

21 What is this paragraph?

22 **A.** This is a mechanism as a matter of convenience and within  
23 the player contract the player can provide his rights -- it's  
24 an alternative way to provide his rights to the GLA, but it  
25 accomplishes essentially the same thing. It provides the union

1 with active player group licensing rights.

2 **Q.** And this, again, this was only active players?

3 **A.** Yes.

4 **Q.** So just to conclude on active player licensing, there are  
5 two ways an active player could assign its rights, its group  
6 licensing rights: One through the attachment A form and one  
7 through the paragraph 4(b) of the NFL player contract; is that  
8 correct?

9 **A.** Yes.

10 **Q.** Now, with respect to retired players you testified it was  
11 different. If you could look at Trial Exhibit 110. I think  
12 it's before you in the stack that Mr. Parcher covered.

13 (Document displayed.)

14 What is Trial Exhibit 110?

15 **A.** Get it out, first. It is a retired player group licensing  
16 authorization form.

17 **MR. KESSLER:** Could we blow up, Lauren, please, just  
18 the top and title through the first paragraph? If we can do  
19 that.

20 (Document displayed.)

21 **BY MR. KESSLER:**

22 **Q.** Now, would any active players ever sign this retired  
23 player group licensing form?

24 **A.** No.

25 **Q.** And let me ask you a question about that. Are you

1 familiar with accounts of monies at the union and Players Inc  
2 referred to as the "gross licensing revenue pool"?

3 **A.** Yes.

4 **Q.** Was that sometimes referred to as the "GLR pool"?

5 **A.** Yes.

6 **Q.** And did that pool have any money from retired player  
7 licensing in it?

8 **A.** No.

9 **Q.** Okay. Explain to the jury what type of money went into  
10 this GLR pool.

11 **A.** It was money that was generated by licensing active  
12 players and paid by licensees to Players Inc under a license  
13 agreement between the NFLPA and Players Inc.

14 **Q.** Now, we heard Mr. Parcher ask you questions about the  
15 63 percent that went to the union and Players Inc. Do you  
16 recall that?

17 **A.** Yes.

18 **Q.** Well, first, let's break that down. What percentage went  
19 to Players Inc, the licensing agent?

20 **A.** 23 percent.

21 **Q.** Okay. So the licensing agent didn't get 63 percent, did  
22 it?

23 **A.** No.

24 **Q.** Okay. What was the number it got? How much did it get?

25 **A.** 23 percent.

1 Q. Okay. And was that 23 percent of what?

2 A. It was 23 percent of the, uhm, the gross licensing revenue  
3 as defined in the agreement between Players Inc and the NFLPA.

4 Q. Was that the money in the GLR pool?

5 A. Yes.

6 Q. And was that active player money or retired player money?

7 A. It was all active player money.

8 Q. Okay. And the union, what percentage of the active player  
9 GLR pool did the union get?

10 A. 40 percent.

11 Q. Now, what I asked you earlier about originally the union  
12 got a hundred percent of that money, correct?

13 A. That's right.

14 Q. Okay. So when the decision -- well, who made the decision  
15 to reduce the 100 percent of the active player money given to  
16 the union down to 40 percent?

17 A. The Board of Player Representatives, the governing body of  
18 the union.

19 Q. Did you attend that meeting when that was decided?

20 A. Yes.

21 Q. Okay. And it was also -- was it also decided at that time  
22 to give 37 percent to the active players?

23 A. Yes.

24 Q. Okay. And who made that decision?

25 A. The governing body of the union, the Board of Player

1 Representatives.

2 **Q.** Okay. The decision wasn't made by you and Mr. Upshaw in  
3 some secret back room?

4 **A.** No. We didn't have the authority to do that without  
5 the -- uhm, the -- uhm, decision of the board of directors.

6 **Q.** Was this presented to the board of directors at a player  
7 rep meeting?

8 **A.** Yes.

9 **Q.** Was it voted on by the members the at a board of player  
10 reps meeting?

11 **A.** Yes.

12 **Q.** Now, with respect to this retired player group licensing  
13 form, it says:

14 "Retired Player Group Licensing Authorization  
15 Form."

16 And it talks about:

17 "The undersigned hereby authorizes the National  
18 Football League Players Association, NFLPA, and its licensing  
19 affiliates the non-exclusive right to use his name, signature,"  
20 et cetera, "in the NFLPA retired player group licensing  
21 program."

22 Do you see that?

23 **A.** Yes.

24 **Q.** Now, previously we looked at the active player licensing  
25 was ex-exclusive, correct?

1 **A.** Yes.

2 **Q.** Why were the non- -- why were the retired players only  
3 asked here to give up non-exclusive rights?

4 **A.** Because it was our experience that the really well-known  
5 retired players either were unwilling to sign a GLA at all or  
6 were unwilling to sign one that was exclusive.

7 **Q.** Now, since this was non-exclusive did signing this form  
8 prevent a retired player from signing group licensing with  
9 anybody else?

10 **MR. PARCHER:** Objection.

11 **THE COURT:** What's the objection?

12 **MR. PARCHER:** Calls for a legal conclusion.

13 **THE COURT:** Well, but so many of these questions  
14 about what the contract meant are going to be decided by the  
15 jury. However, you can -- the ground rule is you can get into  
16 the -- what he -- his thought process was at the time.

17 But as the question is phrased, it's just -- it does  
18 call for a legal conclusion.

19 **MR. KESSLER:** Very good, Your Honor. I'll rephrase.

20 **THE COURT:** I'll let you pursue this, but you've got  
21 to use the ground rules we agreed upon earlier.

22 **MR. KESSLER:** Very good, Your Honor.

23 **BY MR. KESSLER:**

24 **Q.** During the time this retired player GLA was in effect, did  
25 you have an understanding as to how it was applied and

1 implemented during that period?

2 **A.** Yes.

3 **Q.** And the way in which it was applied and implemented, did  
4 it prevent retired players from signing up for group licensing  
5 with anybody else?

6 **A.** No.

7 **Q.** Did it prevent them from marketing themselves  
8 individually?

9 **A.** No.

10 **Q.** Okay. Did it cost the retired players anything to sign  
11 this form?

12 **A.** No.

13 **Q.** Okay. Did they have to be a member of the union to sign  
14 this form?

15 **A.** No.

16 **Q.** Okay. Were there retired players who signed GLAs who were  
17 not even members of the NFLPA?

18 **A.** Yes.

19 **Q.** Did it have any cost at all to them that you could think  
20 of?

21 **A.** No.

22 **Q.** Did they have to do anything but sign their name?

23 **A.** No.

24 **Q.** Now, let's take a look, if we can, at the bottom  
25 paragraph.

1           There's a reference here to:

2                       "It is further understood that the monies  
3 generated by such licensing of retired player group rights will  
4 be divided between the player and an escrow account."

5           I want to stop there for a moment.

6           Did you have an understanding of this form for the  
7 years it was in effect?

8   **A.**    Yes.

9   **Q.**    Did you know how it was implemented?

10   **A.**    Yes.

11   **Q.**    Okay. Mr. Allen, under this form were retired players  
12 going to receive any money from active player licensing?

13   **A.**    No.

14   **Q.**    What type of money would the retired players receive under  
15 this form?

16   **A.**    Uhm, money that would have been generated by a license  
17 that was the result of providing all of the retired player  
18 group licensing authorization form players to sign one in  
19 return for payment, for the right to use any or all of them.

20           **MR. PARCHER:** If Your Honor please, I'm objecting  
21 only to make it clear this witness is saying today that that  
22 was his state of mind then.

23           Other than that, there's no evidence whatsoever that  
24 that was the case.

25           **MR. KESSLER:** Your Honor, we're getting --



1           **THE COURT:** We're here today because --

2           **MR. PARCHER:** I just wanted to be clear.

3           (Counsel and the Court speaking simultaneously, which  
4           was not reportable.)

5           **THE COURT:** I have previously said that the lawyers  
6           can ask questions of all the witnesses who were involved in the  
7           negotiations and administration of various contracts, what  
8           their actual subjective understanding was back at the time in  
9           question.

10           As long as the questions are addressed to that time  
11           period, it's okay.

12           **MR. PARCHER:** My point is, Your Honor --

13           **MR. KESSLER:** Your Honor, I think we are now in a  
14           speaking objection. I think you've ruled.

15           **THE COURT:** Let's hear. What is your point?

16           **MR. PARCHER:** That since we all know no money came  
17           in, it's difficult to understand --

18           **MR. KESSLER:** Your Honor -- this is argument, Your  
19           Honor.

20           **MR. PARCHER:** Well, I don't --

21           **THE COURT:** Sounds like a speaking objection to me.

22           **MR. PARCHER:** I didn't even get a chance to --

23           **THE COURT:** Be that as it may, regardless of whether  
24           money came in, the people who were involved with the program  
25           back at the time are entitled to state, if it's true, of

1 course, what their understanding was at the time.

2 **MR. PARCHER:** Thank you. Okay.

3 **THE COURT:** So that objection is overruled.

4 **MR. KESSLER:** Thank you, Your Honor.

5 **BY MR. KESSLER:**

6 **Q.** Mr. Allen, the word "retired player group rights," did you  
7 have an understanding of what that meant at the time?

8 **A.** Yes.

9 **Q.** Did that include any active player group rights?

10 **A.** No.

11 **Q.** Now, Mr. Allen, you got asked questions, you recall, by  
12 counsel, and you spoke about retired player conventions. Do  
13 you recall that?

14 **A.** Yes.

15 **Q.** We're going to do a little bit on this, but just right now  
16 explain to the jury: What are the retired player conventions?

17 **A.** That was a meeting that's been held for a number of years  
18 annually to which all retired player members of the NFLPA are  
19 invited. And each chapter typically sends a contingent to --  
20 there's about 35 chapters around the country sends a contingent  
21 to one place for a meeting to talk about issues important to  
22 retired players, and hear presentations about things the union  
23 is involved in and the things that Players Inc's involved in.

24 There's an opportunity for players to ask questions,  
25 to make comments in both large groups and small groups. And it

1 happens on an annual basis.

2 **Q.** And I think you testified under Mr. Parcher's questions  
3 that you made presentations at those retired player conventions  
4 about the retired player licensing program, correct?

5 **A.** Yes. I did it as well as other people.

6 **Q.** Okay. And so sometimes you made the presentation.  
7 Sometimes someone on your staff did?

8 **A.** Under my direction, but yes.

9 **Q.** By the way, I didn't ask this, but did you have a position  
10 at Players Inc, also?

11 **A.** Yes.

12 **Q.** What was your position at Players Inc?

13 **A.** I served as the president of Players Inc.

14 **Q.** Okay. And were you the first president when it was  
15 created?

16 **A.** Yes.

17 **Q.** And did you serve in that position until you left in 2006?

18 **A.** Yes, I did.

19 **Q.** Okay. And during these presentations to the retired  
20 players at their conventions, was the program for retired  
21 players explained?

22 **A.** Yes.

23 **Q.** Okay. And were the retired players told at these  
24 conventions whether or not they would receive money from  
25 retired player licensing or active player licensing? Was that

1 all explained to them?

2 **A.** Very carefully.

3 **Q.** Prior to this lawsuit, had you ever heard, for the entire  
4 time that you were the president of Players Inc, did you ever  
5 hear even one retired player suggest to you that they thought  
6 they would get active player licensing money because they  
7 signed a retired player GLA?

8 **A.** No. They understood that -- that -- that the active  
9 players' money was to be divided among active players.

10 **MR. PARCHER:** Objection.

11 **THE COURT:** All right. The witness is purporting to  
12 tell us what other people understood. That's inadmissible.  
13 That's sustained, and the jury will disregard that.

14 But the "yes" part of the answer -- no, I mean the  
15 "no" part of the answer will stand.

16 **BY MR. KESSLER:**

17 **Q.** Okay. Just to make it clear to the jury, just answer that  
18 part of the question. Okay?

19 Did any retired player ever, during the 20 years you  
20 were president -- you were at the NFLPA and during all the  
21 years you were president of Players Inc, did any retired player  
22 ever say to you that he thought he was entitled to active  
23 player licensing money, some share, because he signed the  
24 retired player GLA?

25 **A.** No.

1 Q. Now, Mr. Allen, there's also a discussion here about the  
2 money that was generated, will be divided between the player  
3 and an escrow account. Okay.

4 And I'm going to come back to that later in our  
5 examination. Just briefly now, because the jury may have some  
6 questions about this, was there an escrow account ever created?

7 A. No.

8 Q. Why not?

9 A. Uhm, the simple answer to that is there was no money  
10 generated to create it with.

11 Q. Well, couldn't you just create an empty account and have  
12 no money in it?

13 A. Didn't seem to be a lot of point to that. The -- the  
14 reason the escrow account was not created is because we didn't  
15 have a license agreement that paid for the rights that would  
16 have been divided among all of the retired players who signed  
17 GLAs because we couldn't convince somebody to take all of those  
18 players and pay for them, because too many of them were players  
19 like me that didn't have a market value in that -- in that  
20 context.

21 The licensees wanted particular well-known players,  
22 and they wanted to choose which ones. They weren't interested  
23 in paying something to get everybody.

24 Q. Well, Mr. Allen, you were an NFL player. Are you saying  
25 that no one has ever asked to license your name and image on a

1 product or a T-shirt or a trading card since you've retired or  
2 anything like that?

3 **A.** Regrettably, no.

4 **Q.** Were you surprised by that?

5 **A.** Uhm, no.

6 **Q.** Why not?

7 **A.** Because I realized that there was a big difference between  
8 me and Joe Namath or Jim Brown, people that are icons of the  
9 sport, and have an enduring iconic legacy. I wasn't one of  
10 those players. I was a journeyman player who after I left  
11 people forgot about. My family knew I played. My friends knew  
12 I played.

13 But I was not somebody you would recognize on the  
14 street or whose name you would remember.

15 **Q.** Now, you signed one of these retired player GLAs, correct?

16 **A.** I did.

17 **Q.** Did you ever get any money from an escrow account under  
18 this retired player GLA?

19 **A.** No.

20 **Q.** Now, Mr. Allen, you got asked questions by plaintiffs'  
21 counsel about the eligibility requirements for all eligible  
22 NFLPA members. Do you see that?

23 **A.** Yes.

24 **Q.** And I want to ask you about this so that the jury can  
25 understand this.

1           For the GLR pool, again to remind the jury, what  
2 money was in that pool, active or retired player money?

3 **A.**   Active player only.

4 **Q.**   Okay. For the GLR pool, were there eligibility criteria  
5 set as to which active players would receive that money?

6 **A.**   Yes.

7 **Q.**   Okay. Now, did those eligibility criteria for the GLR  
8 pool have anything to do with what would be the eligibility  
9 criteria for the escrow account if one was set up?

10 **A.**   No. Absolutely not. They were completely separate  
11 activities.

12 **Q.**   They were completely separate, but they both used the word  
13 "eligible"?

14 **A.**   But that was with reference to the retired player group  
15 licensing, not with respect to -- not with respect to active  
16 player licensing.

17 **Q.**   So for this retired player group licensing, and the escrow  
18 account, if there had been money put in it, would there be new  
19 eligibility requirements?

20 **A.**   Yes.

21 **Q.**   Okay. And who would share in this money if it was  
22 generated? Would it be active players or retired players or  
23 both?

24 **A.**   It would be only retired players who would share this  
25 money.

1 Q. Okay. Is there any doubt about this in your mind?

2 THE COURT: Wait. That's a present day -- please.

3 MR. KESSLER: Please, Your Honor, I'm sorry.

4 Withdraw.

5 THE COURT: If he didn't have all these thoughts back  
6 at the time he shouldn't be talking about it.

7 MR. KESSLER: Yes.

8 THE COURT: He has got to be testifying about the way  
9 he thought of it back at the time these deals were being  
10 entered into, not coming in and explaining how it's been put  
11 together now. I'm not saying -- we have got just a very clear  
12 line that we need to adhere to.

13 So rephrase that question.

14 And I need to caution the witness: If this wasn't in  
15 your mind back at the time as to how you understood that it  
16 worked, then the answer is you don't remember or you don't  
17 recall. Or "I didn't have any such view."

18 So when you are telling us how you thought it worked,  
19 it's important that you actually did have those thoughts back  
20 then.

21 THE WITNESS: I understand.

22 THE COURT: Keep that in mind.

23 MR. KESSLER: I apologize, Your Honor.

24 THE WITNESS: I understand, Your Honor. Thank you.

25



1 **BY MR. KESSLER:**

2 **Q.** Mr. Allen, so we are very, very clear --

3 **MR. PARCHER:** Your Honor, just to clarify it, that  
4 it's important that here in 2008 he say what his memory -- that  
5 he has a memory today of what was in his mind then, and we'll  
6 see whether any evidence comes out of that.

7 **THE COURT:** We're not going to go through that drill  
8 with every single question.

9 But you can only testify to what was in your mind and  
10 your intention and understanding back at the time in question.  
11 And, of course, that presupposes you can even remember that far  
12 back on that particular point.

13 So that's the ground rule.

14 **BY MR. KESSLER:**

15 **Q.** Let's be very clear. We'll focus for a moment on the  
16 period between 2004 and 2006, when you left, since that's the  
17 period that's at issue here.

18 During that period of time, 2004-2006, did you have  
19 an understanding about what retired player group rights meant?

20 **A.** Yes.

21 **Q.** And did that include any active players in your  
22 understanding then?

23 **A.** Absolutely not.

24 **Q.** Did you have an understanding back between 2004 and 2006  
25 as to what "eligibility requirements" meant?

1   **A.**    You mean, on this -- on this form here (indicating)?

2   **Q.**    Did you understand both what they meant for the GLR pool  
3   at that time and what it meant for this form?

4   **A.**    Yes, I did.

5   **Q.**    And were they the same or different?

6   **A.**    Different.

7   **Q.**    Okay.  In your understanding then, how were they  
8   different?

9   **A.**    The -- well, to start with, the retired players, there  
10   wasn't -- those eligibility rules were, uhm, to be established  
11   if there was an escrow account.  There was not an escrow  
12   account because there was no money to fund it with.

13                So it was not an issue that was decided with any --  
14   with any degree of detail.

15                For the active players, because there was a  
16   considerable amount of money generated by active player  
17   licensing that went into the pool that was divided up the way  
18   we talked about earlier, it was necessary for the board of  
19   player reps because there was some money to be divided by the  
20   active players to determine what those eligibility rules would  
21   be.  So they determined some time ago that the money would be  
22   divided equally.

23                The portion of it that was to be distributed to  
24   players on an equal share basis would be divided among players  
25   essentially who were either on the last game roster of a season

1 or the first game roster of the following season.

2           So that the rookies could get picked up and be  
3 eligible for money. Because if they made the team they were  
4 part of the group that was being licensed.

5 **Q.** Mr. Allen, we'll come back to explain the criteria to the  
6 jury a little bit later.

7           I just want to get clear now, at that time did you  
8 have an understanding, would the eligibility criteria for the  
9 GLR pool involving active players apply under the retired  
10 player GLA?

11 **A.** No. They were two different things.

12 **Q.** Finally, I would just like to show the second paragraph of  
13 the retired player GLA. Mr. Parcher asked you about this  
14 reference to the fact that "group licensing programs are  
15 defined as programs in which a licensee utilizes a total of six  
16 or more present or former NFL player images."

17           Do you see that?

18 **A.** Yes.

19 **Q.** I would like you to tell the jury: Did you have an  
20 understanding of what this portion of the form meant at the  
21 time it was implemented in 2004 to 2006?

22 **A.** Yes.

23 **Q.** Did this paragraph indicate to you, in your understanding  
24 in any way, that active player licensing would be included in  
25 this form and paid to retired players?

1 **A.** No.

2 **Q.** Why not?

3 **A.** Because this was a form that dealt with retired player  
4 group licensing. And there were circumstances where companies  
5 would use active player rights and would use some retired  
6 players that they got rights to on an ad hoc basis for the same  
7 products.

8 But they were dealt with -- they were dealt with  
9 completely differently.

10 **Q.** So under this paragraph could you combine former and  
11 current players?

12 **A.** Who?

13 **Q.** Could a licensee in a group license program combine  
14 retired and active players?

15 **A.** Uhm, yes.

16 **Q.** Okay. Now, does this paragraph tell you anything about  
17 how and when retired players will get paid?

18 **A.** No.

19 **Q.** Which paragraph does that?

20 **MR. PARCHER:** That assumes a set of facts that's not  
21 in evidence, Your Honor. The question would be "if any."

22 **THE WITNESS:** On this form --

23 **THE COURT:** Well, that's a good point. The "if any"  
24 should have been in there.

25 Go ahead and answer.

1           **THE WITNESS:** Could you repeat the question, please?

2 **BY MR. KESSLER:**

3 **Q.** Which paragraph tells you how monies would be paid, if  
4 any, in this form?

5 **A.** I don't think -- I don't think --

6 **Q.** Let me rephrase the question.

7           Which is the paragraph in the GLA that talks about  
8 payment?

9 **A.** The next to the last paragraph.

10 **Q.** Okay. That would be the -- if we could show that one.  
11 "It is further understood" paragraph?

12 **A.** Yes.

13 **Q.** And in the "further understood" paragraph, which  
14 references retired player group rights, is this any mention of  
15 active player group rights in that payment paragraph?

16 **A.** Absolutely none.

17           **THE COURT:** Before you leave that, may I ask a  
18 question?

19           **MR. KESSLER:** Please.

20           **THE COURT:** After you finished.

21           **MR. KESSLER:** I'm finished with this document.

22           **THE COURT:** Leave those two paragraphs up there. I  
23 have a question.

24           (Document displayed.)

25           Now, it may pertain to both of these paragraphs. I'm

1 asking for your intent back at the time, if you had one. So it  
2 may be the answer is you don't know.

3 But the first question is, let's say you had a  
4 situation where you had six retired NFL players, and you -- a  
5 company like the football card manufacturing company licensed  
6 those, their images, for whatever reason.

7 Let's just say they had six of your people that you  
8 had signed up for GLAs.

9 Would that have been -- what did you understand that  
10 would have triggered by way of rights under this agreement?

11 **THE WITNESS:** Uhm, I think, if I understood your  
12 question correctly, the answer is it wouldn't have triggered  
13 rights under this agreement because the trading card companies  
14 didn't utilize this mechanism for the grant of rights.

15 There was a negotiation with each player as to what  
16 their willingness to participate in the program was and how  
17 much they were going to get paid to participate. Otherwise,  
18 they weren't going to participate.

19 It was individually -- in other words, it was  
20 individually negotiated with each player because that was  
21 the -- the players that they wanted were only willing to do it  
22 on that basis.

23 **THE COURT:** Well, I'm --

24 **THE WITNESS:** And the licensee was not willing to pay  
25 to have access to the broad group. They weren't interested in

1 the broad group. They were only interested in the really  
2 well-known players who -- who would negotiate separate terms  
3 that would define what they would have to do, what was  
4 provided, and how much they would get paid.

5 **THE COURT:** Well, I meant to make this a hypothetical  
6 as to how you understood back at the time that it would have  
7 worked.

8 So if a -- if you -- if a licensee like the baseball  
9 card company had come to you at Players Inc and said:

10 "We want to use the following six people on  
11 cards," and it just happened that you had a GLA from each of  
12 those, and they were all retired, so it was not the entire  
13 group of 2000. It was just six people. Would that -- did you  
14 have any understanding one way or the other back then as to  
15 whether or not that would have triggered any rights under the  
16 GLA?

17 **THE WITNESS:** No, for the reasons I just stated, that  
18 the -- the card companies were not interested in that kind of a  
19 grant of rights. They wanted the right to pick and choose  
20 which players that they got and to pick and choose what the  
21 terms of that player's involvement would be.

22 So they weren't interested in doing retired players  
23 on a group basis where -- where everybody would be treated  
24 exactly the same way and they would pay an amount of money that  
25 would not involve that kind of negotiation.

1           **THE COURT:** But, the example that I'm giving you is  
2 one where the company has already picked out -- they have  
3 picked, and they've already chosen, and they come to the  
4 Players Inc and asked for the rights to a group. And the group  
5 is six. And it just happens to be that in every case you have  
6 a signed GLA. And you're saying that the GLA would not be  
7 triggered by that?

8           **THE WITNESS:** No, because the -- the other players  
9 would have -- it would have been treating them differently than  
10 we treated the other players they were securing the rights to.  
11 And they weren't interested in -- in licensing players that  
12 way. They wanted the right to say "yes" or "no" to each one,  
13 and not be committed to using a particular number or a  
14 particular group.

15           **THE COURT:** Well --

16           **THE WITNESS:** They didn't want to pick -- they didn't  
17 want to choose from among the group. They wanted to deal with  
18 the list of specific players one at a time.

19           **THE COURT:** All right. Let me ask a last question,  
20 then.

21           When you were entering into these GLA agreements back  
22 at the time in question, how did you envision at the time that  
23 any monies would ever come to the retired GLA players pursuant  
24 to this agreement?

25           **THE WITNESS:** We were hoping that we could convince



1 somebody to do that. But --

2 **THE COURT:** Do what?

3 **THE WITNESS:** To pay a -- an amount of money that  
4 would be in return for the right to use all of the players that  
5 we had signed to retired players group licensing authorization  
6 forms. But nobody was willing to do it that way.

7 We kept trying to find different mechanisms to  
8 accomplish that, unsuccessfully. In the meantime, we provided  
9 a lot of opportunities for players to be involved in television  
10 and special events, to attend hospitality events, to -- and to  
11 be involved in individually-negotiated agreements with trading  
12 card companies, et cetera.

13 So we were able to put a lot of players into  
14 circumstances where they could make money. But we couldn't  
15 convince anyone to pay for the large group, of which I was  
16 part, because they weren't interested in players like me. We  
17 didn't have enough marketplace value.

18 And they took a very different view of the broad  
19 group of active players. They had a reason why they wanted all  
20 of the active players that did not apply to retired players.

21 **THE COURT:** But just so I can -- and so it's clear to  
22 the Court and jury, you're saying that it was your  
23 understanding back then that GLA rights for retired players  
24 would only arise in the event that a third-party licensee like  
25 Electronic Arts agreed to license the entire stable of several

1 thousand retired player images?

2 Is that what you understood?

3 **THE WITNESS:** That they would -- they would pay a  
4 single price for the right to -- not knowing who they were  
5 going to be from -- you know, as time changed, to pick from  
6 that pool and be -- and that be the -- the universe of players  
7 that they had to select from.

8 They weren't willing to pay us to do that, given the  
9 quality and the mix of players that were in that group.

10 They wanted the right to say:

11 "We'll tell you which players we're interested in  
12 and if you can get them to agree, that's fine. But we're  
13 not" --

14 **THE COURT:** Mr. Allen, I'm asking: Did you  
15 understand then that it was all or nothing, that the -- that  
16 the GLA kicked in only if the third-party licensee agreed to  
17 license on a blanket basis the entire group of retired GLA  
18 people you had on GLAs? Is that your --

19 **THE WITNESS:** I'm confused.

20 **THE COURT:** I think you can say "yes" or "no" to  
21 that.

22 **THE WITNESS:** Can you repeat the question?

23 **THE COURT:** I will.

24 Are you saying it was your view back at the time,  
25 that the GLA would only kick in for retired players in the

1 event that a third party like EA agreed to license the entire  
2 stable of retired players who had signed up under the GLA?

3 **THE WITNESS:** Yes.

4 **THE COURT:** All right.

5 **BY MR. KESSLER:**

6 **Q.** Mr. Allen, if I could follow up on that. First of all,  
7 the programs you just testified about in response to the  
8 Judge's question, in which EA or trading card companies wanted  
9 small groups of individual retired players, is that what we've  
10 been referring to as "ad hoc licensing"?

11 **A.** Yes.

12 **Q.** Now, was ad hoc licensing explained to the retired players  
13 at the retired player conventions?

14 **A.** Absolutely.

15 **Q.** Was information given out about that ad hoc licensing  
16 program?

17 **A.** Yes.

18 **Q.** Again, during the period of time that you were there, were  
19 the retired players told that in these small groups ad hoc  
20 licenses were used, not the retired player GLAs?

21 **A.** Yes.

22 **Q.** Now, Mr. Allen, let me ask you about active player  
23 licensing, because you said -- withdrawn.

24 You said you had a hope that you'd convince the  
25 licensees to license the whole stable of retired players.

1           In active player licensing were you able to convince  
2 the licensees to license the whole stable of active player  
3 licenses?

4   **A.**   Yes.

5   **Q.**   Is that true in the EA agreement?

6   **A.**   Yes.

7   **Q.**   Is that true in the trading card agreements?

8   **A.**   Yes.

9   **Q.**   Is that true in most of the active player agreements that  
10 went into the GLR pool?

11   **A.**   Yes.

12   **Q.**   Now, why were licensees willing to license all -- why did  
13 they want to license -- withdraw it.

14           Did licensees tell you they wanted all the active  
15 players?

16   **A.**   Yes.

17   **Q.**   Why?

18   **A.**   Because they needed to be in a position to -- to -- to use  
19 any active player who became famous. And it wasn't always  
20 clear who that was going to be. A first round pick might get  
21 hurt and not play.

22           An undrafted rookie who barely makes the team and is  
23 the third-string running back might get to play, if the first  
24 two are injured, and all of a sudden -- and this happens fairly  
25 routinely -- becomes a productive player. Might even go to the

1 pro bowl. The team might win and be in the playoffs or go to  
2 the Super Bowl.

3           They don't have that undrafted -- if we don't have  
4 that undrafted rookie and they don't have access to all of the  
5 players they could possibly want to use, then they -- that's --  
6 that is the basis upon which they pay the royalties. So  
7 they're sure that if somebody becomes a very popular and  
8 well-known player in a hurry -- and it happens very fast --  
9 that they have access.

10           The other side of that is a player who may have been  
11 famous at one point and then becomes a backup and doesn't play.  
12 And people sort of forget about them. And then, there's an  
13 injury. They get a chance to go in. All of a sudden they're  
14 productive again.

15           This year in Tampa Bay a player like Jeff Garcia, the  
16 quarterback, would be a good example.

17           So they have to be able -- they don't want to have to  
18 wait and see if we can go get somebody, because they need to  
19 know -- because typically the products rejuvenate every year  
20 with the new rosters.

21           Every year there's a new roster of players. So for  
22 trading cards or video games that's the core. That's the basis  
23 upon which they build a product, is the ability to put the new  
24 players in and the players that are producing and famous now in  
25 the product and make sure they don't have to worry about

1 whether we have to go ask somebody and get them.

2           **THE COURT:** All right. Now, the -- that was a very  
3 long answer. And it's okay to have two or three sentence  
4 answer. But I think we've got -- you've got to try to limit  
5 your answers to shorter, more concise, because there's a  
6 tendency to veer off into other subjects.

7           So keep that in minds as you frame your questions,  
8 Mr. Kessler.

9           **MR. KESSLER:** I will, Your Honor. I'm also trying  
10 not to be leading. So --

11           **THE WITNESS:** Yes, Your Honor.

12           **MR. KESSLER:** But I'll try to direct him to specific  
13 pieces.

14           **THE COURT:** You can try harder to be nonleading.

15           **MR. KATZ:** Thank you. Okay.

16           **THE COURT:** Because many of your questions are  
17 leading and there's been no objection.

18           **MR. KESSLER:** Okay.

19 **BY MR. KESSLER:**

20 **Q.** Mr. Allen, could you make that same argument that you  
21 testified about, that the -- for active players, that the  
22 licensees would need them because they get the whole group.  
23 They don't know who would be playing. Could you make that  
24 argument for retired players?

25 **A.** No.

1 Q. Why not?

2 A. Because retired players like me are as famous or  
3 non-famous as they are going to get. And the players that have  
4 great careers, like Jim Brown or Joe Namath, or take your pick,  
5 they are as famous as they are going to get.

6 It's not a question of whether somebody is going to  
7 pop up and all of a sudden be a really well-known player. They  
8 either are or they aren't.

9 There's not that uncertainty. They know that I'm not  
10 marketable. They know that Jim Brown is. They want Jim Brown.  
11 They don't want me. That doesn't change.

12 Q. Now, Mr. Allen, for the active players, did you have all  
13 or almost all the active players?

14 A. Yes.

15 Q. Do you recall about what percentage of the league signed  
16 GLAs when you were there from, let's say, 2004 to 2006?

17 A. Essentially all.

18 Q. Were there always like maybe one or two who didn't sign?

19 A. There were sometimes -- it took a while to get the rookies  
20 signed up. It might take a little bit of time to do that. But  
21 with a couple of exceptions, in terms of established players,  
22 essentially all.

23 Q. Occasionally, one wouldn't sign, like Mr. LaVar Arrington,  
24 remember?

25 A. Yes, I do. There was occasionally one who refused to

1 sign. But it was very rare.

2 **Q.** Now, for the retired players, were you able to convince  
3 most of the star retired players to sign the retired player  
4 GLA?

5 **A.** No.

6 **Q.** You mentioned Joe Namath. Did Joe Namath sign the retired  
7 player GLA?

8 **A.** No.

9 **Q.** You mentioned Jim Brown. Did Jim Brown sign the retired  
10 player GLA?

11 **A.** No.

12 **Q.** You mentioned, I think, Joe Montana at one point.

13 Did Joe Montana sign the retired player GLA?

14 **A.** No.

15 **Q.** Did the failure or the unwillingness of the star retired  
16 players to sign the retired player GLA have any impact on your  
17 ability to convince licensees whether to license the whole  
18 group?

19 **A.** Yes.

20 **Q.** What was the impact?

21 **A.** They weren't interested in a group that didn't include the  
22 high-profile celebrity players that they knew would be  
23 marketable in their products.

24 **Q.** Would you have liked to have gotten those star players to  
25 sign the retired player GLAs?



1   **A.**    Sure.

2   **Q.**    Did you try to do that?

3   **A.**    Yes.

4               **MR. KESSLER:**  Now, I would like to now approach the  
5 witness, Your Honor, if I may.

6               **THE COURT:**  Go ahead.

7   **BY MR. KESSLER:**

8   **Q.**    Let me show you a trial exhibit that's been marked as  
9 1164-1.  Okay?

10              And you'll see this is five different retired player  
11 GLAs.  Do you see that, Mr. Allen?

12   **A.**    I'm sorry.  I was looking at it.  Could you repeat the  
13 question?

14   **Q.**    Yes.  You'll see that that exhibit on the first page has a  
15 retired player GLA with some handwriting on it?

16   **A.**    Yes.

17   **Q.**    The second page is a letter from an attorney attaching  
18 another retired player GLA with some handwriting on it.  Do you  
19 see that?

20   **A.**    I do.

21   **Q.**    The third and fourth page are also retired player GLAs  
22 with some handwriting on it.

23   **A.**    Yes.

24   **Q.**    Okay.  Mr. Allen, during the course of your signing up  
25 retired players for GLAs, did players sometimes change the

1 provisions of the retired player GLA before signing it?

2 **A.** Yes.

3 **Q.** Okay. Did they sometimes have lawyers send you letters  
4 about the retired player GLA?

5 **A.** Yes.

6 **Q.** Okay. So when Mr. Parcher asked you or suggested in his  
7 questions that players never tried to negotiate or never  
8 negotiated this, was that true of all retired players?

9 **A.** No.

10 **MR. KESSLER:** Your Honor, I would like to move into  
11 evidence Trial Exhibit 1164-1.

12 **THE COURT:** Any objection?

13 **MR. KESSLER:** No objection whatsoever.

14 **THE COURT:** 1164-1.

15 (Trial Exhibit 1164-1 received in evidence.)

16 (Document displayed.)

17 **BY MR. KESSLER:**

18 **Q.** If you look at the first page of this, at the handwriting  
19 on the form it says:

20 "I am declining the offer in all forms, parts  
21 and phases. Lynn Swann of Swann, Inc."

22 Do you know who Mr. Lynn Swann is?

23 **A.** Yes.

24 **Q.** Who is Mr. Lynn Swann?

25 **A.** He was a wide receiver for the Pittsburgh Steelers during

1 the years when they won four Super Bowls.

2 **Q.** And did Mr. Lynn Swann, after he received the retired  
3 player authorization form, did he decline? Do you remember if  
4 he declined to sign it?

5 **A.** I do. And he did.

6 **Q.** Okay. Take a look at the second page of this exhibit.  
7 This is a letter, if you'll see, from a Mr. Morrall, which  
8 says:

9 "Dear Sirs: Please find enclosed my client's  
10 authorization form to participate in the non-exclusive  
11 licensing program for the NFL retired player group licensing  
12 program. Please allow my language, initialed by Mr. Morrall,  
13 to reflect that he may participate in other licensing projects.  
14 Please contact me if this is not the case."

15 Do you see that?

16 **A.** Yes.

17 **Q.** And then, there's a form attached. If you go to the next  
18 page, and you'll see there's a bunch of handwriting.

19 **MR. KESSLER:** If we could blow that up, too, the  
20 signature, if we can.

21 (Document displayed.)

22 Just do that. Get it all on.

23 **BY MR. KESSLER::**

24 **Q.** Was this handwriting added by Mr. Earl Morrall's attorney  
25 to the retired player form?

1   **A.**   Uhm, I don't know.

2   **Q.**   Okay.  You don't know one way or the other.  Okay.

3                Would you tell the jury who Earl Morrall was?

4   **A.**   He was a very well-known quarterback for the Miami  
5 Dolphins, who took the Dolphins to the Super Bowl, as I recall.  
6 And he played a long time.

7   **Q.**   And let me direct your attention to the next document, if  
8 I can.  And you'll see there's handwriting on this form, as  
9 well, added.

10               (Document displayed.)

11               It says:

12               "Will exclude any alcohol or nicotine products."

13               Do you see that?

14   **A.**   Yes.

15   **Q.**   And do you recall some players would say:

16               "Okay, I'll sign the form, but I want some  
17 products excluded"?

18   **A.**   Yes.

19   **Q.**   Okay.  And this would be one of them?

20   **A.**   Yes.

21   **Q.**   And for the last one, if we can, you'll see this was an  
22 older form that had the word "exclusive."

23               Was there a time when the retired player group  
24 licensing form had exclusive rights?

25   **A.**   Yes.

1 Q. And was that changed?

2 A. Yes, it was.

3 Q. Was it changed to non-exclusive? I think you testified to  
4 that.

5 A. Yes. We changed "exclusive" to "non-exclusive."

6 Q. Now, this is a form where someone wrote:

7 "I cut the word 'exclusive' since I do some  
8 things on my own."

9 Do you see that?

10 A. I do.

11 Q. So when you had the exclusive form did some retired  
12 players say:

13 "I'm going to take that out"?

14 A. It did.

15 Q. Did that affect your decision as to whether to change the  
16 form?

17 A. Yes, the number of players that objected to signing it  
18 because it was exclusive led us to change the language to  
19 non-exclusive.

20 Q. Now, I would like, Mr. Allen, to turn to a new subject.

21 Which is you were asked some questions about Trial  
22 Exhibit 125, which is the agreement between the Players  
23 Association and Players Inc, dated the 9th day of May, 1994. I  
24 just want to go through that date.

25 We're going to refer to this as the "1994 agreement,"

1 Mr. Allen?

2 **A.** All right.

3 **Q.** Because later there's a 2000 agreement that I want to  
4 refer to, also.

5 **A.** All right.

6 **Q.** Now, you got asked by counsel:

7 "Is this the agreement that set the division of  
8 23 percent to Players Inc, 40 percent to the union and  
9 37 percent to the players?"

10 Do you recall?

11 **A.** Let me look at it, and I'll tell you.

12 **Q.** Sure. I can direct your attention to the paragraph if  
13 that will help you.

14 **A.** Yes, it is.

15 **Q.** Okay. And you testified earlier that that was decided  
16 ultimately by the Board of Player Representatives, correct?

17 **A.** Yes.

18 **Q.** Now, take a look, if you can, on page 5 of this agreement.  
19 Actually, go back paragraph 4 on page 4. This comes under the  
20 subject of royalties.

21 Do you see that?

22 **A.** I do.

23 **Q.** Now, look at page 5. And there's a definition here of the  
24 term "gross licensing revenues."

25 **A.** Yes.

1 Q. Now, these are the revenues that were being divided up,  
2 37/23/40; is that correct?

3 A. Yes.

4 Q. Was any of this retired player money?

5 A. No.

6 Q. What money was it?

7 A. Active player money.

8 Q. Now, there's also a reference here, Counsel showed you, on  
9 page 7. If you look at the bottom, on page 7C, this is in  
10 section 5(c), to setting eligibility requirements. Do you see  
11 that?

12 A. Yes.

13 Q. Now, were these the eligibility requirements for the  
14 active player money or the retired player money, or both? What  
15 were they?

16 A. Active player only.

17 Q. Have anything at all to do with retired players?

18 A. No.

19 Q. Okay.

20 MR. KESSLER: Your Honor, I would like to approach  
21 the witness, please.

22 THE COURT: Go ahead.

23 BY MR. KESSLER:

24 Q. I'm going to show you, Mr. Allen, a copy of Exhibit 93.

25 Do you recognize what Trial Exhibit 93 is?

1 Yes, Trial Exhibit 93?

2 **A.** Yes, I do.

3 **Q.** What is 93, first? Just describe it generally.

4 **A.** It's the opinion from Duff & Phelps relating to the  
5 valuation of the rights that were being dealt with in the  
6 license agreement between the NFLPA and Players Inc after  
7 Players Inc's inception in 1994.

8 **Q.** What is -- or what was Duff & Phelps in '94, '95? What  
9 was that group?

10 **A.** They were a company that did independent valuations for  
11 businesses so that there would be an opportunity to have an  
12 arm's-length valuation placed on the terms of a business  
13 transaction.

14 **MR. KESSLER:** Okay. Your Honor, I move into evidence  
15 Exhibit 93.

16 **MR. PARCHER:** No objection.

17 **THE COURT:** Received.

18 (Trial Exhibit 93 received in evidence.)

19 **BY MR. KESSLER:**

20 **Q.** So we can look here on Duff & Phelps' stationery. It  
21 says:

22 "Dear Doug: Enclosed is our signed opinion  
23 relating to our analysis of licensing operations. It has been  
24 a pleasure working with you on this engagement."

25 Do you see that? Who was Mr. Cooper?



1 **A.** He was the lead partner who was responsible for the team  
2 that did this valuation for Duff & Phelps.

3 **Q.** Now, in this report did Duff & Phelps review the  
4 37 percent of the GLR pool that was going to active players?

5 **A.** Yes.

6 **Q.** And did they give an opinion on that?

7 **A.** Yes.

8 **Q.** What opinion did they give?

9 **A.** That it was a reasonable and appropriate percentage based  
10 on marketplace conditions.

11 **Q.** Okay.

12 **A.** And the value of the -- the terms that were being  
13 exchanged.

14 **Q.** Did they review the 40 percent that was being given to the  
15 NFLPA?

16 **A.** Yes.

17 **Q.** And what opinion did they give on that?

18 **A.** It was appropriate, given the nature of their relationship  
19 that it was a reasonable and defensible -- an appropriate  
20 percentage.

21 **Q.** Did they review the 23 percent that was given to Players  
22 Inc?

23 **A.** Yes.

24 **Q.** And what opinion did they have on that?

25 **A.** Based on what Players Inc was going to be doing and was

1 doing, it was -- it was an appropriate amount of money to  
2 retain in Players Inc for the -- to cover the cost of doing  
3 what Players Inc was going to be doing.

4 **Q.** Was the Duff & Phelps' opinions made available to the  
5 board of -- active board of player reps when they considered  
6 this issue?

7 **A.** Yes.

8 **Q.** And did the board of player reps then take any action on  
9 these percentages?

10 **A.** Yes.

11 **Q.** What did the board of -- active board of player reps do?

12 **A.** They adopted them.

13 **Q.** Now, subsequently, Mr. Allen, did the Internal Revenue  
14 Service ever look at these percentage splits?

15 **A.** Yes.

16 **MR. PARCER:** Objection.

17 **THE COURT:** Sorry? Was there an objection?

18 **MR. PARCER:** Yes, sir.

19 **THE COURT:** Sustained. We're not going to get --  
20 you're trying to say the Internal Revenue somehow blessed the  
21 percentage split?

22 **MR. KESSLER:** Your Honor, I will make a proffer that  
23 they reviewed the arm's-length nature of the transactions which  
24 is something they put in issue for tax reasons, and concluded  
25 they were arm's-length.

1           **THE COURT:** Not going to be allowed. We're not going  
2 to get into whether the Internal Revenue Service did their job  
3 or didn't do their job right.

4           Please disregard that, ladies and gentlemen.

5           **MR. KESSLER:** Very good, Your Honor.

6 **BY MR. KESSLER::**

7 **Q.** Mr. Allen, let me move on to the 2000 agreement.

8           **MR. KESSLER:** Your Honor, if I may approach.

9           **THE COURT:** Go ahead.

10 **BY MR. KESSLER:**

11 **Q.** I'm going to show you Exhibit 95.

12           Mr. Allen, do you recognize Trial Exhibit 95?

13 **A.** Yes.

14 **Q.** Okay. And tell the jury what Trial Exhibit 95 is.

15 **A.** It's a -- an agreement between the National Football  
16 League Players Association and Players Inc.

17 **Q.** Now, did this agreement also have to do with the  
18 percentages that were divided up between the Players  
19 Association, Players Inc and the players out of the GLR pool?

20 **A.** Yes.

21           **MR. KESSLER:** Your Honor, I would move into evidence  
22 Trial Exhibit 95.

23           **MR. PARCHER:** No objection.

24           **THE COURT:** Received.

25

1 (Trial Exhibit 95 received in evidence.)

2 **BY MR. KESSLER:**

3 **Q.** If you take a look, Mr. Allen, first, on page 3 of this,  
4 4(a).

5 **MR. KESSLER:** Just the bottom, if we can, please,  
6 Lauren, just the (a) part.

7 **BY MR. KESSLER:**

8 **Q.** It says:

9 "Gross licensing revenue shall exclude any  
10 revenues derived from the following."

11 Do you see that?

12 **A.** I do.

13 **Q.** Was this identifying what revenues were subject to the  
14 division between -- of the 40 percent, the 23 percent and the  
15 37 percent?

16 **A.** Uhm, no. It was identifying those that weren't.

17 **Q.** Okay. I'm sorry. Thank you.

18 This was saying what's not included?

19 **A.** Correct.

20 **Q.** So it says "shall exclude those revenues"?

21 **A.** Right.

22 **Q.** And one of the things that excluded, if you look at number  
23 5, it says:

24 "Amounts received by retired players pursuant to  
25 group licensing assignments or group licensing rights."

1           Mr. Allen, was any of the retired player money that  
2 was generated, whether it was through an ad hoc license  
3 agreement or whether, if you ever were successful, if you ever  
4 achieved the full license under the GLAs, was any of that money  
5 going to be in the GLR pool under your understanding at the  
6 time?

7           **MR. PARCHER:** Objection, Your Honor. Assumes a set  
8 of facts not in evidence here. The evidence is that not one  
9 single penny of group licensing money was ever put in. So he's  
10 saying:

11                     "If it was, what would you do?"

12           The fact is that it wasn't. Never was.

13           **MR. KESSLER:** Your Honor, I'm asking --

14           **MR. PARCHER:** Under his definition --

15           **THE COURT:** That's a speaking objection. That's a  
16 speaking objection.

17           **MR. PARCHER:** Yes, sir.

18           **THE COURT:** Overruled.

19           **MR. KESSLER:** Thank you.

20 **BY MR. KESSLER:**

21 **Q.** Mr. Allen, should I repeat the question?

22 **A.** Please.

23 **Q.** I'm focusing on the GLR pool. In the GLR pool, the gross  
24 licensing revenue pool, in your understanding, was any kind of  
25 retired player money going to be in that pool?

1   **A.**   No.

2   **Q.**   Was there any ad hoc money in that pool?

3   **A.**   No.

4   **Q.**   If there was any money generated from the mass licensing  
5 of GLA signees, would it have gone into that pool?

6   **A.**   You mean, retired or active?

7   **Q.**   Retired only.

8   **A.**   No.

9   **Q.**   Okay. Was that something that was explained to retired  
10 players at conventions?

11   **A.**   Yes.

12   **Q.**   Now, Mr. Allen, do you recall in 2000 why this agreement  
13 was necessary, why this 2000 agreement was necessary?

14   **A.**   I think so.

15   **Q.**   Could you explain to the jury why?

16   **A.**   Well, the -- there was a recommendation from our outside  
17 counsel, particularly our tax counsel, that -- that we change  
18 the structure of the relationship between Players Inc and the  
19 NFLPA so that some of the money that was generated would be  
20 subject to a license agreement between the union and a licensee  
21 and go directly to the union.

22           And it would be the most passive licenses, the  
23 licenses for which there was not much more than the providing  
24 of rights and then the payment of royalties.

25           And the trading card companies were the best examples

1 of that. So with the trading card companies it was established  
2 that there would be a license directly between the trading card  
3 company and the NFLPA for the player rights. And that the  
4 Players Inc would service that with a service agreement  
5 separately.

6 That was a model that was based on -- my  
7 understanding at the time was that was a model that was based  
8 on -- and the reason it was recommended to us was because it  
9 had been successfully done by the AARP, because the AARP had a  
10 for-profit insurance affiliate. And this is the way they had  
11 structured it in accordance with a dispute they'd had with the  
12 IRS. That's how they had resolved it.

13 **Q.** Mr. Allen, this change in structure having passive  
14 agreements going to the NFLPA and sort of changing the way you  
15 got there, did it change the 40/23/37 split?

16 **A.** Not essentially. It just meant that you had to put the  
17 two things together. You had to put the money going into the  
18 NFLPA together with the money going to the -- through Players  
19 Inc, and you ended up with the same result. But instead of  
20 having it go all through Players Inc, some of it went directly  
21 to the union.

22 It didn't change the essential split, but it did --  
23 because the money wasn't coming to Players Inc, so the formula  
24 between Players Inc and the PA had to be different. But then  
25 when you added back in the money that was going in the PA, you

1 ended up essentially with the same result. PA got what it got.  
2 Players got what they got. And Players Inc got what it got.

3 And it was consistent with the Duff & Phelps  
4 valuation. And the way it had originally been set up, it was  
5 just two streams instead of one.

6 **Q.** Was this presented at the Board of Player Representatives'  
7 annual meeting?

8 **A.** Yes.

9 **Q.** And the did the Board of Player Representatives approve  
10 this?

11 **A.** Yes.

12 **Q.** And you mentioned tax counsel. Was that Mr. Steve Saxon?

13 **A.** Yes.

14 **Q.** Now, I would next like you to take a look at Trial Exhibit  
15 2046. I believe you should have that in front of you.

16 This was shown to you by counsel in your examination.

17 **A.** I don't have it yet. There's a lot of them here.

18 **MR. KESSLER:** Can I approach, Your Honor, and help  
19 the witness find it?

20 **THE COURT:** Go ahead.

21 **BY MR. KESSLER:**

22 **Q.** Here it is.

23 **A.** Sorry.

24 **Q.** It's okay. It's a big state.

25 **THE COURT:** It's not in evidence.



1           **MR. KESSLER:** It's already in evidence, Your Honor.

2           **THE CLERK:** Which number?

3           **MR. KESSLER:** 2046 was moved into evidence earlier by  
4 plaintiffs.

5           **MR. PARCHER:** Just a second, Mr. Kessler, so I can  
6 get a copy of.

7           **THE COURT:** True. 2046 is in evidence.

8 **BY MR. KESSLER:**

9 **Q.** Now, Mr. Allen, do you recognize what 2046 was? What is  
10 TouchBack?

11 **A.** TouchBack was a newsletter that was produced by the NFL  
12 Players Association for retired players, although active  
13 players and others got it, as well.

14 **Q.** Now, was this sent out -- who was this sent out to on your  
15 mailing list?

16 **A.** Well, its primarily audience was retired players who were  
17 members of the NFLPA.

18 **Q.** If you take a look at the top here.

19           **MR. KESSLER:** You if you could blow that up, Lauren.  
20 No. No. The little heading in the box there.

21           See that? Yes.

22           (Document displayed.)

23 **BY MR. KESSLER:**

24 **Q.** This was a publication for retired NFL players, correct?

25 **A.** That's right.

1 Q. And did you sometimes use this publication to discuss  
2 group licensing?

3 A. Yes.

4 Q. Okay. Now, there's a reference to -- you mentioned the  
5 retired Players Association. What is that?

6 A. It's a -- it's not a separate entity. It's a way to think  
7 about the retired player membership of the NFLPA.

8 Q. Okay. Are there some retired player members?

9 A. Yes.

10 Q. Are they in the same category or different category from  
11 active members?

12 A. They're a different category.

13 Q. Do you recall what retired player dues are?

14 A. Uhm, I -- I think I'm right on this. Well, when I was  
15 there they went -- for a long time they were \$50 a year, and  
16 then they went to a hundred dollars.

17 Q. And do you know if their other \$50 was rebated back out of  
18 the hundred?

19 A. Some of the dues money was rebated to chapters so that the  
20 chapters would have funds to operate at a local level based on  
21 the number of players that were members who were part of their  
22 geographic chapter area. So some of it was.

23 Q. The active players, did they just pay \$50 in dues?

24 A. No.

25 Q. Do you recall what they paid during that period of time?

1   **A.**   \$10,000 a year.

2   **Q.**   Okay. Now, if you could take a look at -- this is the  
3 same article Mr. Parcher showed you, the group licensing  
4 essential article.

5           And let me show you the other page of this article  
6 which he didn't cover with you.

7           And if you take a look at page -- the last page of  
8 this, you'll see --

9           **MR. KESSLER:** If we can blow this up, Lauren. This  
10 whole box, just the box.

11           (Document displayed.)

12 **BY MR. KESSLER:**

13 **Q.**   It states that -- let me get this list. It says:

14           "Players Inc also receives a royalty for the  
15 inclusion of active players based on the wholesale price of  
16 games."

17 **A.**   Mr. Kessler, I'm not sure where you are.

18 **Q.**   Can you find it in yours, Mr. Allen?

19 **A.**   I've got it.

20 **Q.**   And it says:

21           "The royalty is split. 40 percent goes to the  
22 NFLPA to offset its operating expenses. 23 percent goes to  
23 Players Inc to offset its operating expenses. And 37 percent  
24 is divided equally among more than 2,000 eligible active  
25 players each year.

1 Do you see that?

2 **A.** Yes.

3 **Q.** So were the retired players told in their publication that  
4 this split of royalties for the inclusion in these video games  
5 only went to active players?

6 **A.** Yes, they were.

7 **Q.** And it then says:

8 "Hundreds of retired players benefited directly  
9 from the fees paid by Players Inc for using their names and  
10 images in video games."

11 Did that refer to ad hoc agreements?

12 **A.** Yes, it did.

13 **Q.** And then, it says:

14 "But all retired players benefit from the  
15 royalties paid by Players Inc to the NFLPA. For example, the  
16 NFLPA's retired players department and benefits department  
17 combined cost the NFLPA approximately 1.5 million per year, but  
18 total dues paid by retired players equal only about \$175,000  
19 annually. The NFLPA's representation of retired players is  
20 funded mostly by royalties from Players Inc's licensing program  
21 involving current players. This representation has delivered  
22 amazing gains in player pensions, especially over the past 10  
23 years."

24 Mr. Allen, my question here is: Is this information  
25 you gave to retired players?

1 **A.** Yes.

2 **Q.** And did you tell retired players this was a reason that it  
3 was good to support the union?

4 **A.** Yes.

5 **Q.** And did you tell them this was a reason it was a good idea  
6 to sign retired player GLAs?

7 **A.** We absolutely did.

8 **Q.** Now, I would like you to take a look next at Trial Exhibit  
9 91 that should be before you. Do you see it, Mr. Allen?

10 **A.** Hold on a second.

11 **Q.** It was the amendment.

12 Counsel showed you this document this morning.

13 **MR. KESSLER:** If you, Lauren, could blow up the top  
14 of it. Not just that, but through the "whereas" clause.

15 **THE WITNESS:** Wait a minute, Mr. Kessler.

16 **BY MR. KESSLER:**

17 **Q.** Don't have it?

18 **A.** Took me a while to find it. Sorry.

19 **Q.** I'm sorry. I got you out of order.

20 **A.** I got it now.

21 **Q.** Okay.

22 **A.** Yes.

23 **Q.** This was the amendment Counsel asked you about this  
24 morning. And this is an amendment in this first paragraph to  
25 the agreement that was entered into 2000, the 2000 agreement,

1 correct?

2 **A.** Yes.

3 **Q.** This wasn't the '94 agreement that counsel for  
4 plaintiffs -- this was not an amendment to the '94 agreement  
5 counsel was talking about?

6 **A.** Yeah. This was an amendment to the 2000 agreement.

7 **Q.** And this is the agreement that spoke about on the second  
8 page, if you take a look, about taking \$8 million and moving  
9 it? If you look at the last paragraph here, this E:

10 "Notwithstanding the other provisions of this  
11 section, \$8 million of the amount described in 4(a) shall be  
12 paid out of the licensing revenue depository account  
13 established to disburse amounts payable to the NFLPA and  
14 Players Inc with the depository account paying 60 percent of  
15 such amount to the NFLPA and 40 percent to Players Inc,"  
16 correct?

17 **A.** Yes.

18 **Q.** Do you see that? I'm going to ask you questions.

19 **A.** Yes.

20 **Q.** Now, prior to this amendment, the NFLPA received  
21 40 percent of the amount in those accounts, correct?

22 **A.** Yes.

23 **Q.** And Players Inc received 23 percent of the amounts in  
24 those accounts, correct?

25 **A.** Correct.

1 Q. So am I correct that by moving the \$8 million out 60/40,  
2 the only difference is increasing the NFLPA's share of this  
3 \$8 million from 40 to 60, and the Players Inc's share from 23  
4 to 40, correct?

5 A. Yes.

6 Q. And the total reduction of the GLR pool wasn't \$8 million  
7 in terms of the players' share, it was about 2.8 million,  
8 correct?

9 A. Yes.

10 Q. And why was this change made?

11 A. In accordance with the agreement, it was made to reflect  
12 changing market conditions. With respect to the amount of  
13 money that was being generated by virtue of an NFL sponsorship  
14 agreement. And because of the increased value of the logo that  
15 had been utilized in -- in thousands of ways, on television  
16 commercials and on product packaging, the Players Inc logo, NFL  
17 players, the value of that logo, which is owned by the NFL  
18 Players Association and not by Players Inc. And that value  
19 didn't really exist when the company was created because all of  
20 those commercials and all of that exposure hadn't happened.

21 By the time you get a few years later and you've had  
22 all that exposure, that logo had value. And this helped  
23 recognize those changing market conditions.

24 Q. You said you got advice on this from tax counsel?

25 A. Yes.

1 Q. Now, was this change disclosed to the active board of  
2 player reps?

3 A. Absolutely.

4 Q. And was it approved by the active board of player reps?

5 A. Yes, it was.

6 Q. And, Mr. Allen, the money that was moved, was this any  
7 retired player money?

8 A. Not a dollar.

9 Q. So it was all active player money?

10 A. Yes.

11 THE COURT: All right. Are we going to a new topic?

12 MR. KESSLER: We are, Your Honor.

13 THE COURT: Time for a 15-minute break. Please  
14 remember the admonition.

15 THE CLERK: All rise.

16 (Jury in recess.)

17 (The following proceedings were held in open court,  
18 outside the presence of the jury.)

19 THE COURT: Mr. Allen, you can step down, too. 15  
20 minute break.

21 Anything the lawyers need me for?

22 MR. KESSLER: Not at this moment, Your Honor.

23 THE COURT: Thank you. We'll take 15 minutes.

24 (Recess taken from 11:17 to 11:35 a.m.)

25 MR. LECLAIR: Judge, I have one question before the



1 jury comes in.

2           Could we get an instruction that Mr. Allen was not in  
3 the class, since he said he signed the GLA? He's excluded from  
4 the class. I don't want there to be confusion about that  
5 issue.

6           **THE COURT:** What do you mean he's excluded?

7           **MR. LECLAIR:** By the definition.

8           **MR. KESSLER:** He signed the GLA, but they proposed a  
9 definition not to include anybody who was an employee of the  
10 union at the time.

11          **THE COURT:** You both agree to this?

12          **MR. KESSLER:** He's not a class member --

13          **THE COURT:** All right.

14          **MR. KESSLER:** -- because of that fact.

15          **THE COURT:** All right. I'll tell the jury that he's  
16 not a class member.

17          **MR. KESSLER:** But I would appreciate that you would  
18 tell them the only reason he's not is because plaintiffs  
19 proposed to exclude employees. In other words, it was just  
20 their proposed definition. He otherwise would be.

21          **THE COURT:** Let's bring in our jury.

22          **THE CLERK:** Okay.

23               (Thereupon, the Jury returned to the courtroom.)

24          **THE COURT:** Welcome back. Have a seat, everyone.

25               The lawyers have asked me to clarify one thing. And

1 that is, our witness, Mr. Allen, even though he's a retired  
2 former football player, he is -- by the way we define the class  
3 in this case, it excludes former employees who worked for the  
4 NFLPA. Because then they would be on both sides of the  
5 problem.

6 So he is not a member of the class. He is a retired  
7 football player, but he is not a member of the class. The  
8 lawyers both wanted me to explain that to you.

9 Go ahead, Mr. Kessler.

10 **BY MR. KESSLER:**

11 **Q.** Mr. Allen, even though you're not a class member, did you  
12 sign the same retired player form as the class members?

13 **A.** Yes.

14 **Q.** Mr. Allen, I took the opportunity at the break to place  
15 before you a few exhibits we're going to go through.

16 If you look at Trial Exhibit 2247, should be on top.

17 **A.** Yes.

18 **Q.** Okay.

19 **MR. KESSLER:** Your Honor, I would move 2247 into  
20 evidence.

21 **THE COURT:** Any objection?

22 **MR. KESSLER:** It's the minutes from the board of  
23 players meeting.

24 **THE COURT:** Any objection?

25 **MR. PARCHER:** I'm not familiar with it, Your Honor.

1           **THE COURT:** All right. Hearing no objection, it's  
2 received.

3           Was notice given of 2247?

4           **MR. KESSLER:** I don't believe there's any objection  
5 to it, Your Honor, even on their list. But I don't know.

6           **THE COURT:** Any objection to 2247?

7           **MR. PARCHER:** I think -- first of all, I think it's  
8 hearsay.

9           **THE COURT:** All right.

10          **MR. PARCHER:** And, secondly, authentication,  
11 accuracy, completeness of statement.

12          **THE COURT:** It's not in evidence. You'll have to lay  
13 the foundation for 2247.

14 **BY MR. KESSLER:**

15 **Q.** Mr. Allen, do you recognize this exhibit?

16 **A.** I do.

17 **Q.** Could you explain to the jury what this exhibit is.

18 **A.** It's a copy of minutes of the NFLPA Board of Player  
19 Directors' meeting March 18 through the 20th, 1991, in Hawaii.

20 **Q.** Did you attend this meeting?

21 **A.** I did.

22 **Q.** Do you remember this resolution being voted upon and  
23 adopted?

24 **A.** Yes, I do.

25          **MR. KESSLER:** Your Honor, I move its admission.

1           **THE COURT:** May I see it?

2           Are these minutes adopted by the board?

3           **THE WITNESS:** Yes.

4           **THE COURT:** All right. The objection is overruled.

5           The purpose of this minutes is to set forth a  
6 resolution. That's like proving up what a contract is. It's  
7 not hearsay at all. These are minutes of the -- minutes that  
8 set forth what the resolution was that was adopted by the  
9 board.

10           The objection is overruled. Exhibit 2247 is in  
11 evidence.

12           (Trial Exhibit 2247 received in evidence.)

13           (Document displayed.)

14 **BY MR. KESSLER:**

15 **Q.** Mr. Allen, this was at the March 18 to 20, 1991 meeting of  
16 the Board of Player Directors' meeting; is that correct?

17 **A.** That's correct.

18 **Q.** And you attended that meeting?

19 **A.** Yes, I did.

20 **Q.** If we could look down now at the resolution, please. It  
21 says:

22           "The board then discussed who should be regarded  
23 as a participating player in the group licensing program."

24           Let me stop there. You were present for that  
25 discussion?

1   **A.**    I was.

2   **Q.**    Okay.  And this resolution involved active player  
3   licensing or retired player licensing?

4   **A.**    Active player licensing.

5   **Q.**    It says:

6                    "After extensive discussion Dave Duerson moved  
7   that such a participating player should be eligible if he was  
8   on the injured reserve or active list of a club at the end of  
9   the 1989 season or was on the regular season roster at the  
10  beginning of the 1990 season.  He expanded this motion to also  
11  include any player who signed the group licensing authorization  
12  and was on the developmental squad at the end of the 1989  
13  season, and also any practice squad player who signed a group  
14  licensing authorization and was on the practice squad roster at  
15  the beginning of the 1990 season."

16                   Then it says:

17                   "The motion was seconded by Gary Reasons and  
18  after extensive discussion was passed unanimously."

19                   Did that vote take place, Mr. Allen?

20  **A.**    Yes.

21  **Q.**    Did this set the eligibility criteria for the GLR pool?

22  **A.**    Yes.

23  **Q.**    Okay.  And it says:

24                   "When further questions were raised after the  
25  vote, Dave Duerson amended his motion to empower the executive

1 committee, the NFLPA executive committee, to make the final  
2 decision on qualifying participants within the general  
3 parameters of the motion as passed."

4 Who is the NFLPA executive committee?

5 **A.** The NFLPA executive committee is a group of ten players  
6 who are elected by the Board of Player Representatives to act  
7 in their stead in between board meetings, with delegated  
8 authority from the board.

9 **Q.** And so those are active players, elected from the player  
10 board meeting?

11 **A.** Yes.

12 **Q.** Okay. And, Mr. Allen, I would now like you to take a look  
13 together at Exhibit 96A, 96B, 96C, and 96D. Those four, if we  
14 can.

15 **MR. KESSLER:** I'm sorry, Your Honor. I read you the  
16 wrong things. The official numbers are 1307, 1308, 1309 and  
17 1310. They were renumbered pursuant to Your Honor's rules. So  
18 it's 1307 through 1310.

19 **THE COURT:** Any objection? Oh, wait. Haven't moved  
20 them yet. I jumped ahead. Go ahead. Just showing --

21 **MR. PARCER:** No objection.

22 **THE COURT:** Just showing them to the witness, right?

23 **MR. PARCER:** No objection.

24 **THE COURT:** All right. All four are received.

25 (Trial Exhibits 1307, 1308, 1309 and 1310 received in

1 evidence.)

2 **BY MR. KESSLER:**

3 **Q.** Mr. Allen, if you could describe to the jury -- we're not  
4 going to go through each one individually, but what are these  
5 documents?

6 **A.** These are the protocols that govern the -- the royalty  
7 eligibility rules for payment during various seasons.

8 **Q.** Okay.

9 **MR. KESSLER:** Could we put up 1307, so we go through  
10 one of them. If we could just do it from equal share through  
11 the first through number 4, if we can.

12 (Document displayed.)

13 **BY MR. KESSLER:**

14 **Q.** This is the rules for the 2003 season; is that correct?

15 **A.** Yes.

16 **Q.** Now, again, to be very clear, did these rules have  
17 anything at all to do with retired player money?

18 **A.** Nothing whatsoever.

19 **Q.** Okay. Whose money was involved here?

20 **A.** Active player.

21 **Q.** And it says:

22 "In order for a player to be considered eligible  
23 he must have appeared on the last game roster of the 2002  
24 season and/or must have appeared on the first game roster of  
25 the 2003 season. Provided the player meets these roster

1 requirements, his status must have been" -- and then it says --  
2 "A, IR, PS, PUP/FI."

3 What is all that about?

4 **A.** Those are categories of active players: Active, injured  
5 reserved, physical unable to perform, football injury, and  
6 practice squad.

7 **Q.** Those are different categories of active players that the  
8 NFL characterizes?

9 **A.** Yes.

10 **Q.** None of them are retired players?

11 **A.** No.

12 **Q.** And then it says:

13 "And he must have signed the GLA effective  
14 during the 2003 season or have agreed to participate in a  
15 licensing program for the 2003 season, or was used in a  
16 licensing product for the 2003 season."

17 Do you see that?

18 **A.** Yes.

19 **Q.** Now, Mr. Allen, is it true that under these -- under these  
20 criteria, if an active player signed the GLA but was not on the  
21 roster, the last game or the first game, he would get nothing?

22 **A.** That's right.

23 **Q.** Okay. So the mere fact that an active player signed the  
24 GLA didn't give him any share of the pool, did it?

25 **A.** No, it did not.



1 Q. And did practice squad players get -- what is the practice  
2 squad? Tell the jury.

3 A. The practice squad is a group of players who practice but  
4 do not play. And they -- they are employed under different  
5 contracts. And if they become a player who plays, they have to  
6 change their contract and become an active roster player.

7 But they're -- they're available to participate in  
8 practice for a -- for an amount of money that's below the  
9 minimum that an active player would get.

10 Q. If you take a look now at the note.

11 MR. KESSLER: If we can go down to the paragraph that  
12 begins, "Note." If we can blow that up, Lauren. Next to last  
13 paragraph, "Note."

14 (Document displayed.)

15 BY MR. KESSLER:

16 Q. It says:

17 "Players who meet the above criteria with only  
18 the status of PS receive a reduced amount of 1,000."

19 What is "PS"?

20 A. Practice squad, the group I just described.

21 Q. So they would not get an equal share, just a thousand?

22 A. That's correct.

23 Q. Okay. Now, was any retired player money given to any of  
24 these players, to any active players under this criteria?

25 A. No, none.

1 Q. Now, by the way, Mr. Allen, on your examination by  
2 plaintiffs' counsel you got asked some questions about this and  
3 you referred to programs involving active players of 35 or  
4 less?

5 A. Yes.

6 Q. Okay. In active player group licensing, if it involves 35  
7 or less active players, does that money go into the GLR pool?

8 A. No.

9 Q. Okay. Where does the money for the smaller, active player  
10 programs go?

11 A. It's divided among the players who participate, whatever  
12 the -- whatever the proceeds are from the royalties.

13 Q. So it doesn't go into the GLR pool for these equal shares?

14 A. No.

15 Q. It goes just to the players whose rights are used?

16 A. Yes.

17 Q. How would you compare that, if at all, to the retired  
18 player ad hoc licensing program?

19 A. It's very similar. It's essentially the same arrangement.

20 Q. Could you explain that to the jury?

21 A. Well, the player is paid based on the -- the royalty of  
22 the particular item that he is associated with. It usually  
23 involves one player per team. And there are only 32 teams.

24 So it's generally a product that is limited in terms  
25 of the players that are involved. And they typically are the

1 most well-known players.

2           And at that level, with a number as small as it is,  
3 it was decided a long time ago by the board of player reps that  
4 that would be the appropriate way to divide up the money.

5 **Q.** Now, was -- were these decisions by the active players to  
6 divide up the active player money in the GLR pool, were they  
7 kept secret from the retired players in any way?

8 **A.** No.

9 **Q.** Did you discuss them at your conventions with retired  
10 players?

11 **A.** Uhm, yes. And many of the retired players were also  
12 active players who became retired players, so they were  
13 familiar with how this process worked once they become -- they  
14 became retired players.

15           So we not only explained it to the retired players,  
16 but every year there would be retiring players who would join  
17 their group who would have understood exactly how it worked  
18 from the active side. So it was not a circumstance where  
19 people were confused.

20 **Q.** So in this case the period we're looking at is 2004 to  
21 2007. In 2004, would some of the retired players that year  
22 have been active players the previous year?

23 **A.** Yes.

24 **Q.** And would that also be true in 2005 or 2006, there's a new  
25 group of retired players every year?

1 **A.** Every year.

2 **Q.** Okay. And they would previously have been active players?

3 **A.** Yes.

4 **Q.** And they would have -- would they have known how the  
5 active player licensing money was being distributed?

6 **A.** Sure.

7 **Q.** Let me show you next -- it should be up there -- Trial  
8 Exhibit 23. It was previously shown to you by plaintiffs'  
9 counsel.

10 **A.** Yes.

11 **Q.** Do you recall --

12 **MR. KESSLER:** Go to the top, please.

13 (Document displayed.)

14 **BY MR. KESSLER:**

15 **Q.** -- that this was a letter, I believe, was identified that  
16 you sent out to retired players in the fall of 19 -- in the  
17 fall of 2003; is that correct?

18 **A.** 2003.

19 **Q.** 2003. Okay. And take a look at the second paragraph of  
20 this letter.

21 Was this letter sent to all the retired players on  
22 your mailing list?

23 **A.** Yes.

24 **Q.** Okay. And in this letter you wrote:

25 "Hundreds of retired players have received

1 payments from Players Inc for these activities."

2 What activities were you referring to here?

3 You can read the previous paragraph, if you need to  
4 look at that.

5 **A.** The -- the activities referred to are, uhm, being included  
6 in products, personal appearances, autograph signings,  
7 inclusion on the Internet site and participation in events.

8 **Q.** And was it true that hundreds of retired players  
9 participated in those ad hoc programs and benefited personally  
10 from that?

11 **A.** Yes.

12 **Q.** Okay. And then, it says:

13 "But every retired NFL player has benefited  
14 from Players Inc's creation. How? Because 40 percent of  
15 Players Inc's operating revenue is paid to the NFLPA as a  
16 royalty for the active player name and image rights secured by  
17 the NFLPA and licensed to Players Inc."

18 And this information was given to all the retired  
19 players who received this, right?

20 **A.** Yes.

21 **Q.** Then, it says:

22 "This allows the NFLPA to provide extensive  
23 services and benefits to retired players in return for modest  
24 player dues of \$50 per year."

25 And, Mr. Allen, you got asked about this phrase:

1                    "We live every day by the NFLPA's motto: Past,  
2 Present and Future."

3                    Do you see that?

4     **A.**     Yes, I do.

5     **Q.**     In your experience in the more than 25 years you were at  
6 the NFLPA and Players Inc, did the union and Players Inc live  
7 by that model?

8     **A.**     Absolutely. Every day.

9                    One of the -- one of the axioms of being in this  
10 league is that you're going to -- the one thing you know is if  
11 you're an active player you're going to be a retired player.  
12 And there's a continuum.

13                   And we have a real rich and great tradition in our  
14 union of -- of looking out for each other and not forgetting  
15 where we came from and making sure that the rookies learn that  
16 lesson when they come into this league; that they didn't fall  
17 out of the sky. That there are some giants that went before  
18 them, and we have a responsibility to them. And that's one of  
19 the reasons we had a retired players licensing program.

20     **Q.**     Mr. Allen, did the retired players ever attend the active  
21 player meetings, the annual meetings at which these votes took  
22 place?

23     **A.**     Yes.

24     **Q.**     Please explain to the jury who was invited and who  
25 attended.

1 **A.** The retired player chapters would at the convention elect  
2 a steering committee of experienced retired players who were  
3 active in retired players' affairs with the association.

4 And the Players Association, active players would  
5 invite representatives of that steering committee, usually  
6 three or four, to come to every player rep meeting, the board  
7 of player reps' annual meeting, and participate fully.

8 They got to go to every meeting. They were there for  
9 ever discussion, the breakout sessions, as well as the general  
10 sessions.

11 And so they were full participants in the meeting.  
12 So they got all of the information and the documents that were  
13 distributed. And the reports on licensing and the reports on  
14 our finances were part of what they were there to -- to  
15 observe.

16 **Q.** So these representatives of the retired players who  
17 elected as their steering committee, did they have full access  
18 to any votes that took place dividing up the active player  
19 money?

20 **A.** Yes. They didn't vote themselves, but they were there and  
21 observing and participating in the discussion and aware of all  
22 of the votes that took place.

23 **Q.** Could they ask any questions they had?

24 **A.** Yes. They had complete access to the floor.

25 **Q.** Was the ad hoc licensing for retired players discussed at

1 those meetings?

2 **A.** Absolutely.

3 **Q.** Were reports generated of which retired players got ad hoc  
4 payments?

5 **A.** Yes.

6 **Q.** And was that made available to those retired player  
7 representatives?

8 **A.** Yes.

9 **Q.** If they had any questions, could they have asked?

10 **A.** Yes.

11 **Q.** Now, Mr. Allen, you got asked some questions from  
12 plaintiffs' counsel -- withdrawn.

13 During opening it was suggested that Players Inc and  
14 NFLPA made zero efforts to promote or market retired players.  
15 Was that true?

16 **A.** No.

17 **Q.** Okay. Did you personally make efforts to promote and  
18 market retired players?

19 **A.** Yes.

20 **Q.** Did your staff ever make such efforts?

21 **A.** Yes. And I made it a point to make sure they did.

22 **Q.** Okay. Were any documents produced to promote active and  
23 retired players?

24 **A.** Yes.

25 **Q.** Okay. All right. Mr. Allen, I would like to --



1           **MR. KESSLER:** Your Honor, if I may approach.

2           **BY MR. KESSLER:**

3           **Q.** -- give you a copy of Trial Exhibit 2262 and 2259.

4                   I ask you to first look at Trial Exhibit 2262. And  
5 if you could identify what this is.

6           **A.** It is a advertising supplement about Players Inc and --  
7 and its activities that was in the Sports Business Journal.

8           **Q.** Did Players Inc pay to have this put into the Sports  
9 Business Journal?

10          **A.** Yes.

11          **Q.** Okay. What is the audience of the Sports Business  
12 Journal? If you could explain that, what that is to the jury.  
13 They probably have not read that publication.

14                  **MR. PARCHER:** Your Honor, can I interrupt just a  
15 minute? In this document and several of the others it would be  
16 nice if counsel would tell us what the date is on the  
17 documents. There is no date on the documents themselves.

18                  **THE COURT:** Counsel, you should let the witness  
19 testify.

20                  **MR. KESSLER:** Yes.

21                  **MR. PARCHER:** Yes.

22          **BY MR. KESSLER:**

23          **Q.** Take a look at the top left-hand corner of the very first  
24 page, Mr. Allen.

25          **A.** Yes.

1 Q. Is there a date on it?

2 A. There is.

3 Q. What is the date? Please tell the jury.

4 A. September 1 through 7, 2003.

5 Q. Thank you. Okay.

6 Now, I think my question pending was: What was the  
7 Sports Business Journal that you put this materials in?

8 A. It was a trade publication that most people in the  
9 business of sports read. Agents, everybody associated --  
10 Players' Associations, players and club executives and league  
11 executives all -- it was essentially the business Bible of  
12 sports.

13 Q. Would licensees and possible licensees read that  
14 publication?

15 A. Absolutely.

16 Q. Okay. And in this -- what was the purpose of having a  
17 supplement like this?

18 A. To promote Players Inc and everything that it was doing  
19 and was involved in.

20 Q. Okay.

21 MR. KESSLER: Your Honor, I move Trial Exhibit 2262  
22 into evidence.

23 MR. PARCHER: We've already had that argument earlier  
24 in the day. Your Honor knows our reasoning.

25 THE COURT: You have no further objection, so 2262 is

1 received in evidence.

2 (Trial Exhibit 2262 received in evidence.)

3 (Document displayed.)

4 **MR. KESSLER:** Your Honor, I would like to ask you --  
5 I'm sorry.

6 **BY MR. KESSLER:**

7 **Q.** Mr. Allen, I would like to ask you to look at the second  
8 page of the supplement.

9 **A.** Yes.

10 **Q.** If you look at this box.

11 **MR. KESSLER:** If we could blow that up, please,  
12 Lauren.

13 **BY MR. KESSLER:**

14 **Q.** On the very first page after you open this it refers to  
15 two players who are quoted: Mr. Emmitt Smith of the Arizona  
16 Cardinals, and Mr. Sterling Sharpe, former Greenbay Packer,  
17 current ESPN broadcaster.

18 Was he an active or retired player?

19 **A.** Retired.

20 **Q.** And was it your practice to include retired players in  
21 promotional things like this?

22 **A.** Yes.

23 **Q.** Okay. Was this done routinely and regularly by you?

24 **A.** Regularly.

25 **Q.** Okay. And is Mr. Sharpe in this picture?

1   **A.**    Yes, he is.

2   **Q.**    Take a look, if you can, Mr. Allen --

3   **A.**    He's the one on the left.

4   **Q.**    Thank you.  This one here (indicating)?

5   **A.**    Yes.

6   **Q.**    Okay.  If you take a look at the page 8(a) of this on the  
7 bottom.  See if you can find the right one.  They are not  
8 terribly well-numbered.

9           It's that one.  Yes.

10           You can look up here and see which one I'm talking  
11 about.

12   **A.**    Yes.

13   **Q.**    It has this nice picture.

14   **A.**    Yes.

15   **Q.**    Take a look at the right-hand side.

16           **MR. KESSLER:**  If you can blow that up.

17           (Document displayed.)

18   **BY MR. KESSLER:**

19   **Q.**    This talks about the 989 Sports NFL QuarterBack Challenge.  
20 Was this a program run by Players Inc?

21   **A.**    Yes.

22   **Q.**    And did it involve all -- well, did it involve any retired  
23 players?

24   **A.**    Uhm --

25   **Q.**    Take a look at the second paragraph.

1   **A.**   Typically it did.   Yes.

2   **Q.**   I'll direct your attention, for example, where it says:

3                   "Former players Bobby Brister, Boomer Esiason,  
4 Jim Kelly and Warren Moon."

5                   Were they active or retired players at this time?

6   **A.**   Retired.

7   **Q.**   If you take a look at page 12A of this exhibit.

8                   That's not 12A.  It has the -- that's it.

9                   (Document displayed.)

10                  Could you identify for the jury who's featured in  
11 this photograph on the right-hand side?

12   **A.**   Former Dallas Cowboy player, retired player Darrell  
13 Johnston.

14   **Q.**   And was he a retired player?

15   **A.**   Yes.

16   **Q.**   And what is was Players Inc Radio?

17   **A.**   It was an interview show that Players Inc produced and got  
18 aired on the radio.  And he was a host of that show.

19   **Q.**   Okay.  I would now like you, Mr. Allen, if you can, to  
20 turn attention to the next exhibit I handed to you, which was  
21 Trial Exhibit 2259.

22   **A.**   Yes.

23   **Q.**   Do you recognize this exhibit?

24   **A.**   Yes.

25   **Q.**   What is this, please?

1 **A.** It is marketing material from Players Inc.

2 **Q.** Now, who would you give this marketing material to as a  
3 normal business practice?

4 **A.** Uhm, it would go out to players, the licensees, sponsors,  
5 prospective licensees and prospective sponsors, the National  
6 Football League, the press. It would be widely circulated.

7 **MR. KESSLER:** Your Honor, I move into evidence Trial  
8 Exhibit 2259.

9 **MR. PARCHER:** No new objection, Your Honor.

10 **THE COURT:** All right. Received.

11 Thank you.

12 (Trial Exhibit 2259 received in evidence.)

13 (Document displayed.)

14 **BY MR. KESSLER:**

15 **Q.** And this one was prepared or circulated in September of  
16 '06. Is that what this top date indicates?

17 **A.** And I don't remember whether I mentioned this or not, but  
18 this went out to every player, as well.

19 **Q.** Okay.

20 **A.** I'm sorry.

21 **Q.** Okay. Was this -- it says "09/06." Does that mean it was  
22 the September '06 edition of this?

23 **A.** Yes.

24 **Q.** And did you have editions periodically of this?

25 **A.** Yes.

1 Q. And did the editions typically include just active  
2 players, or were there also retired players in them?

3 A. There were also retired players on a regular basis.

4 Q. Uhm, by the way, what is this logo that's on the top here?

5 A. That's a form of the Players Inc logo that has existed  
6 from the inception of Players Inc.

7 Q. Is that one of the logos you're referring to that gained  
8 value so, therefore, required the \$8 million reallocation?

9 A. Yes.

10 Q. And was this logo seen in television advertising?

11 A. Regularly.

12 Q. Mr. Allen, going back to the page, if we can, the  
13 left-hand paragraph. On the very first page it talks about the  
14 following:

15 "Among the players taking their helmets off for  
16 the shoot were Steven Jackson, Anthony Munoz, Hall of Fame,  
17 Donovan McNabb," et cetera.

18 Were any of these retired players?

19 A. Yes. Anthony Munoz.

20 Q. Okay.

21 A. That's him in the upper right-hand corner.

22 Q. Right there (indicating)?

23 A. Yes.

24 Q. Okay. Taking a look, Mr. Allen, at the next page of this  
25 exhibit, there's a reference --

1           **MR. KESSLER:** If we could blow up the bottom segment,  
2 Lauren.

3           (Document displayed.)

4 **BY MR. KESSLER:**

5 **Q.** In number 4 there's a reference to Archie Manning, Hall of  
6 Fame. Okay? There's a reference in number 8 to Herman Moore,  
7 retired.

8           There's a reference in number 11 to --

9           **MR. KESSLER:** If you can go to the other side of  
10 this.

11           (Document displayed.)

12 **BY MR. KESSLER:**

13 **Q.** Number 11, Brian Mitchell retired, and Gary Clark,  
14 retired.

15           Were these retired NFL players who were mentioned and  
16 featured?

17 **A.** Yes.

18 **Q.** And, finally, looking at the last page of this document,  
19 is there's a reference --

20           **MR. KESSLER:** If we can blow up this part right here  
21 (indicating).

22           (Document displayed.)

23 **BY MR. KESSLER:**

24 **Q.** -- to Joe Searles, Dan Upperco, Walter Beach, and James  
25 Chambers.



1           Were these retired players?

2   **A.**    Yes.

3   **Q.**    Now, is this the same Walter Beach who's going to be  
4   testifying in this case?

5   **A.**    I believe so.

6   **Q.**    Okay.  So Mr. Beach was a player who you included in your  
7   promotional materials; is that correct?

8   **A.**    Yes.

9   **Q.**    Mr. Allen, I'm finished with this document now.

10           **MR. KESSLER:**  I'd now like to, Your Honor, approach  
11   and hand the witness three more documents.

12           **THE COURT:**  All right.  Go ahead.

13   **BY MR. KESSLER:**

14   **Q.**    Take a look, first, Mr. Allen, at Trial Exhibit 2307.  And  
15   do you recognize what this document is?

16   **A.**    Yes.

17   **Q.**    Explain to the jury what these monthly reports were.

18   **A.**    They were monthly activity reports by someone senior in  
19   Players Inc -- in this case from me to the chairman -- about  
20   what was going on in terms of the company's activities.

21   **Q.**    Were you required by Mr. Upshaw to produce these on a  
22   monthly basis during some period of time?

23   **A.**    Yes.

24   **Q.**    And were they routinely part of your business records?

25   **A.**    Yes.

1 **Q.** Did you regularly use and rely upon them in your business?

2 **A.** Yes.

3 **MR. KESSLER:** Your Honor, I would move into evidence  
4 Trial Exhibit 2307.

5 **MR. PARCHER:** I'll object Your Honor. These are all  
6 about ad hocs and are all hearsay.

7 **THE COURT:** 2307?

8 **MR. KESSLER:** Your Honor, I believe it's a business  
9 record.

10 **THE COURT:** Let me see the document.  
11 Which is the part that's relevant?

12 **MR. KESSLER:** Your Honor, we're going to point out  
13 different references to retired players. So apparel, on the  
14 first page, we're going to talk about that. And then I have  
15 some other references.

16 Each month there are references to retired player  
17 efforts.

18 **THE COURT:** What was the purpose of this memorandum?

19 **MR. KESSLER:** Mr. Allen, the judge said you should  
20 address that.

21 **THE WITNESS:** I'm sorry, Your Honor.

22 **THE COURT:** What was the purpose of the memorandum?

23 **THE WITNESS:** It was to memorialize the activity of  
24 the organization as a way to create a business record that we  
25 could all, uhm, keep track of. And it was also directed from

1 the chairman of the company to be something that we do on a  
2 regular basis.

3 **THE COURT:** Who prepared this memorandum?

4 **THE WITNESS:** I did.

5 **THE COURT:** And did you prepare one like this every  
6 month?

7 **THE WITNESS:** Uhm, for several months. There were  
8 periods of time when someone else in the company did it. In  
9 this period of time I was doing it. I was always -- it was  
10 always something that I was -- that I received and was aware of  
11 and could comment on, but it was not always prepared by me and  
12 from me.

13 There was a period of time when it was on a regular  
14 monthly basis.

15 **THE COURT:** All right. The objection is overruled.  
16 The business records exception would cover that document.

17 So what's the Exhibit number?

18 **MR. KESSLER:** This is Trial Exhibit 2307, Your Honor.

19 **THE COURT:** All right. That's received.

20 (Trial Exhibit 2307 received in evidence.)

21 **BY MR. KESSLER:**

22 **Q.** You'll see, Mr. Allen, the first paragraph says -- so the  
23 jury can see who it's from, this particular report was prepared  
24 from you to Mr. Upshaw, correct?

25 **A.** That's correct.

1 Q. Now, I believe some months this was prepared by Pat Allen;  
2 is that correct?

3 A. That's correct.

4 Q. And did Ms. Allen report to you at Players Inc?

5 A. Yes.

6 Q. So did she prepare those reports also under your  
7 supervision?

8 A. Yes.

9 Q. Okay. If you take a look at the first category,  
10 "apparel," it says:

11 "Continued to sign retired players for Reebok  
12 and Fathead."

13 Could you explain to the jury what that referred to?

14 A. It was referring in the case of Reebok to jerseys of  
15 retired players and to Fathead for wall decals that stick on  
16 the wall for retired players.

17 Q. Was this an ad hoc licensing program?

18 A. Yes, it was.

19 Q. Okay. Who selected which retired players would be  
20 included in the Reebok and Fathead programs?

21 A. In Reebok's case, Reebok did. And n the Fathead company  
22 case, Fathead.

23 Q. Were Fathead and Reebok willing to license all of the 2000  
24 GLA players?

25 A. No.

1 Q. What were they willing to do?

2 A. They were willing to give us a list of players. That if  
3 we could get the player to agree to participate, they would --  
4 they would provide them compensation. And they were done on a  
5 one off basis.

6 Q. Now, when Fathead or Reebok would ask for the list of  
7 players, would you have all those players signed to retired  
8 player GLAs?

9 A. No.

10 Q. So what would you do?

11 A. We would talk to the players. Or if they were well-known  
12 enough, sometimes their marketing representatives or agents,  
13 and -- and their marketing representatives or agents and ask  
14 them to participate, and then work out an agreement with them.

15 Q. If they didn't have a marketing representative would you  
16 do it with them directly?

17 A. Yes.

18 Q. Now, when money was generated from these type of programs  
19 for the retired players, was any of the money used to fund the  
20 union?

21 A. No.

22 Q. Did Players Inc charge 23 percent, the way they charged  
23 23 percent for the active player money?

24 A. No.

25 Q. Do you recall what you charged for these types of

1 programs?

2 **A.** Usually, it would be nothing or a de minimus amount.

3 There were occasionally -- there were some times occasionally

4 when it might be a little bit more than that. But,

5 collectively, because it was so often we didn't take anything

6 out. It was a very small amount of money.

7 **Q.** Collectively did you take less than 1 percent?

8 **A.** Yes.

9 **Q.** Okay. So for active player money in the GLR pool Players  
10 Inc took a 23 percent administrative fee, correct?

11 **A.** Yes.

12 **Q.** And the active players voted to put 40 percent to fund the  
13 union, correct?

14 **A.** Right.

15 **Q.** For this retired player money, how much did Players Inc  
16 take out of it?

17 **A.** Sometimes nothing. Overall, about 1 percent.

18 **Q.** Was any of it given to fund the union?

19 **A.** No.

20 **MR. PARCHER:** If Your Honor please, I object to the  
21 characterization of "retired player money."

22 These are ad hocs. This is not part of the group  
23 licensing of retired player agreements, which is the focus of  
24 this case.

25 He's mixing apples and oranges as if he is equating

1 the same, and treating it as if he's asking one question.

2 **MR. KESSLER:** Your Honor, he's -- it's argumentative.

3 And I believe it's appropriate questions here. I'm  
4 happy to talk to what this money is.

5 **THE COURT:** Let me explain to the jury. The  
6 objection is overruled. But you are hearing -- the heart of  
7 this case is the GLA. I've told you that several times.

8 Both sides have gone into things that go beyond the  
9 GLA, surrounding circumstances. Right now we're talking about  
10 ad hoc agreements.

11 Those ad hoc agreements are not the GLA. But it's a  
12 surrounding circumstance, so you can get a better feel for  
13 the -- you, the jury, can get a better feel for the overall  
14 structure into which this GLA fits.

15 Then, later it's going to be up to you to decide what  
16 weight you give this business to the ad hocs. So there's a  
17 point there that Mr. Parcher is making. There's some validity  
18 to it.

19 But, on the other hand, you've heard a lot from both  
20 sides that are way off of the GLA.

21 This is off the GLA. Maybe even way off. But I'm  
22 going to allow it in, anyway, for you to evaluate in deciding  
23 whether or not the GLA has been violated.

24 All right. Go ahead.  
25

1 **BY MR. KESSLER:**

2 **Q.** Mr. Allen, these programs, these ad hoc programs that were  
3 done for retired players, did they frequently involve six or  
4 more retired and active players?

5 **A.** Yes.

6 **Q.** Okay. So it was six or more group licensing in those  
7 programs?

8 **A.** Yes.

9 **Q.** Now, when you were making efforts to promote group  
10 licensing for retired players, would you have liked to have  
11 gotten the licensees to license all the retired players?

12 **A.** Yes.

13 **Q.** And to do that under your retired player GLA?

14 **A.** Yes.

15 **Q.** Were you able to do that?

16 **A.** No.

17 **Q.** Why not?

18 **A.** Because for the reasons that I explained earlier, they  
19 didn't have the same view of the collective of retired players.  
20 They -- there were particular players they wanted, and they  
21 didn't have the uncertainty that somebody that they didn't  
22 think they wanted, like me -- they knew they didn't want me --  
23 would somehow later on become someone they did want.

24           Once I was out of the calculus there was no reason  
25 for them to negotiate with us to bring me back in, or any



1 player like me who played a couple of years and wasn't  
2 well-known.

3           They wanted particular players. And sometimes very  
4 particular. I mean, it wasn't just someone who was well-known,  
5 but someone who was a superstar.

6           So they knew what they wanted from their own market  
7 research, and they weren't interested in the collective, the  
8 way they were with active players, because then it was more  
9 about having the replenished group that's on a team roster  
10 every year to make sure they're current.

11           They didn't have that issue with retired players.

12 **Q.** Mr. Allen, let me direct your attention next to Trial  
13 Exhibit 2291, which should be in front of you.

14           Do you recognize this exhibit?

15 **A.** Yes.

16 **Q.** And was this another one of those monthly reports  
17 prepared?

18 **A.** Yes.

19 **Q.** And was this one prepared by Pat Allen?

20 **A.** Yes, it was.

21 **Q.** Was she working under your supervision?

22 **A.** Yes.

23           **MR. KESSLER:** Your Honor, I move in Trial Exhibit  
24 2291.

25           **MR. PARCHER:** Same objection, except that this is the

1 wife of the witness.

2 **THE COURT:** 2291?

3 **MR. KESSLER:** Yes, Your Honor.

4 **MR. PARCHER:** Yes, sir.

5 **THE COURT:** All right. Let's see that one.

6 Well, was this prepared under the same protocol that  
7 you described earlier?

8 **THE WITNESS:** Yes, Your Honor.

9 **THE COURT:** Objection is overruled. 2291 is  
10 received.

11 (Trial Exhibit 2291 received in evidence.)

12 **BY MR. KESSLER:**

13 **Q.** Mr. Allen, since it was raised by plaintiffs' counsel was  
14 Pat Allen someone who you married after you met her at Players  
15 Inc?

16 **A.** Yes, she was and she is.

17 **Q.** She might object to my asking if she worked under your  
18 direction, but I hope I didn't get you in any trouble on that  
19 issue.

20 **A.** No. No, we resolved that a long time ago.

21 **Q.** Okay. So --

22 **THE COURT:** If so, you got yourself in trouble. You  
23 didn't get the witness in trouble.

24 **MR. KESSLER:** That's true, Your Honor.

25 **THE COURT:** You're the one that framed the question.

1           **MR. KESSLER:** You're right, Your Honor. It's my  
2 fault.

3           **THE COURT:** She can blame you.

4 **BY MR. KESSLER:**

5 **Q.** Let's look at "Apparel" in this category. It says here: "

6           "Had a conference call with Reebok and Player  
7 Marketing about new retired player deals and the transition of  
8 Mitchell & Ness into our program."

9           Do you know what that referred to?

10 **A.** Yes.

11 **Q.** What did that refer to?

12 **A.** Mitchell & Ness made what were called throwback jerseys.  
13 They were stylized jerseys of retired players that were modeled  
14 on the actual jerseys those players wore with their name and  
15 number, so that people would identify them with those old time  
16 jerseys.

17           They were being -- they were being subsumed into the  
18 Reebok program. So there was a transition going on, where  
19 Mitchell & Ness jerseys would now become Reebok jerseys.

20 **Q.** And if you turn your attention to page 2 of this document,  
21 there's a reference under "player marketing" -- we can do that.

22           (Document displayed.)

23           It talks about, under number 4:

24           "Worked with 16W to get the four legends: Moon,  
25 Esiason, Cunningham, and Kelly for QVC."

1 Do you see that?

2 **A.** No.

3 **Q.** Sorry. Under "Player Marketing," the fourth bullet,  
4 Mr. Allen?

5 **A.** Yes.

6 **Q.** Do you know what that refers to?

7 **A.** Yes. That is talking about working with a marketing  
8 company that represented quarterbacks to get them to  
9 participate in a QuarterBack Challenge.

10 **Q.** Were those retired player quarterbacks?

11 **A.** Yes. All four of them.

12 **Q.** Finally, on the last page of this document, under "Trading  
13 Card and Collectibles," it says in the third bullet:

14 "Began clearing retired players for McFarlane  
15 products."

16 What did that refer to?

17 **A.** McFarlane is a company that makes figurines, lifelike  
18 representations of players in uniform in various poses. They  
19 also do superhero figurines, as well, and figurines in other  
20 sports.

21 This was getting retired players to agree to be in  
22 that product line.

23 **Q.** Mr. Allen, I would now like --

24 **MR. KESSLER:** If I may approach, Your Honor.  
25

1 **BY MR. KESSLER::**

2 **Q.** -- hand you a copy of Exhibits 2295 and 2056?

3 **MR. KESSLER:** May I approach, Your Honor?

4 **THE COURT:** Go ahead.

5 **BY MR. KESSLER:**

6 **Q.** First, Mr. Allen, I'm going to ask you: Do you know what  
7 the Raider database was?

8 **A.** Yes.

9 **Q.** Tell the jury what the Raider database was.

10 **A.** It was the -- the -- the customized database that the NFL  
11 Players Association and Players Inc had created to keep track  
12 of players and money, among other things.

13 It was the database that we used at the NFLPA and  
14 Players Inc.

15 **Q.** Okay. Take a look at Trial Exhibit 23 -- I'm sorry, 2226.  
16 It may be renumbered 2395. Sorry, 2395.

17 **A.** 2395.

18 **Q.** Do you recognize this? This is a printout from part of  
19 the Raider database.

20 **A.** This is a report that uses Raider as the database from  
21 which the information is derived.

22 **Q.** Okay. So let's --

23 **MR. KESSLER:** Your Honor, I move this piece of the  
24 Raider database into evidence. I think Your Honor has already  
25 ruled on this.

1           **THE COURT:** 2395? This doesn't have 2395.

2           **MR. KESSLER:** The judge's copy doesn't say -- it  
3 originally --

4           **THE COURT:** 2393.

5           **MR. KESSLER:** Well, is it 2393 or 95? I'm sorry,  
6 Lauren?

7           **MS. CAPLAN:** It is, Your Honor. It was an exhibit  
8 that was created after --

9           **MR. KESSLER:** Which is the correct number?

10          **MS. CAPLAN:** 2395.

11          **MR. KESSLER:** 2395, Your Honor, is the correct  
12 number.

13          **MR. PARCHER:** I think you've ruled on that.

14          **MR. KESSLER:** I think it was already decided, but the  
15 Court needs to see it.

16                 This, Your Honor, is a piece of the Raider database.

17          **THE COURT:** This doesn't look like the thing I saw  
18 this morning.

19          **MR. KESSLER:** No, Your Honor. That's going to come  
20 next. This is an actual printout for one player, to explain it  
21 to the jury.

22          **THE COURT:** Well --

23          **MR. PARCHER:** Since we are not going to object to it  
24 any further. You already --

25          **THE COURT:** I was only ruling on the summary and the

1 general theory of possible relevance. But if you're not  
2 objecting on hearsay or other grounds --

3 **MR. PARCHER:** Well, if you say you haven't focused on  
4 his point yet, well, then please continue.

5 **THE COURT:** I'm assuming that the business records  
6 foundation could ultimately be laid for this document. I don't  
7 know that for certain. But I didn't rule on that this morning.

8 **MR. KESSLER:** Your Honor, I'm happy to lay it, if you  
9 like. But I don't think there is any contest that this is a  
10 business record.

11 **THE COURT:** All the other objections I made this  
12 morning I'm going to overrule for the reasons I stated. If you  
13 want to speed things up and let this sail in. Otherwise, fine.  
14 I did not rule on the hearsay problem.

15 **MR. PARCHER:** On the representation that it's a  
16 business record --

17 **THE COURT:** 2395.

18 **MR. PARCHER:** -- apply over my old objections.

19 **THE COURT:** Thank you for your cooperation.

20 2395 is received.

21 (Trial Exhibit 2395 received in evidence.)

22 **MR. KESSLER:** Thank you, Mr. Parcher. I appreciate  
23 it.

24 **MR. PARCHER:** You're welcome, Mr. Kessler.  
25

1 **BY MR. KESSLER:**

2 **Q.** Taking a look at the top of this, this says, "Player Herb  
3 Adderley."

4 Would that be the same Herb Adderley who is the  
5 plaintiff in this case?

6 **A.** Yes.

7 **Q.** Okay. Is this a report that you maintain on the database  
8 that you can just cull out for any particular player?

9 **A.** Yes.

10 **Q.** What does this show regarding Mr. Adderley when it says  
11 "player amount"?

12 **A.** I'm sorry. Where are you?

13 **Q.** It says "player amount."

14 **A.** \$6,800.

15 **Q.** Okay. Thank you.

16 Is that money Mr. Adderley received?

17 **A.** Yes.

18 **Q.** Okay. Now, let me direct your attention to 2056.

19 **MR. KESSLER:** Your Honor, this is the document we did  
20 discuss. And I would move in as the compilation of all the  
21 data in the Raider database for retired players who are class  
22 members.

23 **THE COURT:** Well, you've got to have testimony to  
24 back that up.

25 **MR. KESSLER:** Okay.



1 **BY MR. KESSLER:**

2 **Q.** Mr. Allen, does the Raider database maintain information  
3 on the payments made to all retired players?

4 **A.** Yes.

5 **Q.** Okay. And looking through this exhibit, do you recognize  
6 this as the type of information that is maintained in that  
7 Raider database?

8 **A.** Yes.

9 **Q.** And is the Raider database something that was used as a  
10 business record by the NFLPA and Players Inc?

11 **A.** Yes.

12 **Q.** Was it maintained in the ordinary course of business?

13 **A.** Yes.

14 **MR. KESSLER:** Your Honor, I move in the exhibit.

15 **THE COURT:** Any objection?

16 **MR. PARCHER:** I would like to know whether the  
17 witness supervised the preparation of this document.

18 **THE COURT:** That's a good question.

19 **MR. KESSLER:** Your Honor, he did not. And the rule  
20 on 1006 doesn't require that the witness be the one who  
21 supervised it, because counsel had a chance to check its  
22 accuracy, which is what 1006 requires.

23 And they had no objection to its accuracy.

24 **THE COURT:** It doesn't say one way or the other. But  
25 I'm not -- if you don't have anyone's say-so but yours, then

1 it's a compilation.

2           **MR. KESSLER:** Your Honor, what the case law requires,  
3 I believe -- and we can discuss it now -- is that you make the  
4 underlying records available to the opposing counsel, which we  
5 did.

6           Then, they can check the accuracy and raise any  
7 problems with accuracy. They found it to be completely  
8 accurate.

9           **THE COURT:** I will let you bring in whoever it is  
10 that actually did the compilation. And if it shows that they  
11 went about this in a reasonable manner. The rule doesn't say  
12 what you're telling me now.

13           Maybe there's case law that does, but I don't have  
14 that in front of me.

15           **MR. KESSLER:** Your Honor, I will present you with  
16 case law later which shows if they would like to call that  
17 person they're free to do so, but that we don't have to call  
18 the person.

19           It's more that we can identify who it is, and they  
20 can call the person if, necessary.

21           **THE COURT:** Doesn't sound quite like the normal  
22 procedure.

23           **MR. KESSLER:** I believe for compilations that is, in  
24 fact, how it is, Your Honor.

25           **THE COURT:** Well, I can't just take your word for

1 that.

2 **MR. KESSLER:** Okay.

3 **THE COURT:** So I don't say you're wrong. Right now  
4 you don't have -- you ought to have either this -- if this  
5 witness didn't do it -- on your representation you will be able  
6 to do that, I will let you connect up -- go ahead and ask  
7 your -- without it coming into evidence you can ask the  
8 substantive questions were you going to ask about this.

9 **MR. KESSLER:** Thank you.

10 **BY MR. KESSLER:**

11 **Q.** Mr. Allen, did the union maintain a record of how much was  
12 paid to the retired players through various licensing  
13 agreements?

14 **A.** Yes.

15 **Q.** Okay. And would that include both retired players who  
16 signed GLAs and those who did not sign GLAs?

17 **A.** Yes.

18 **Q.** Okay. And Mr. Allen, do you know, was the amount paid to  
19 retired players who signed GLAs in the millions of dollars?

20 **A.** In the tens of millions of dollars over time.

21 **Q.** If I were to focus on the period of 2000 --

22 **A.** I might have misheard that. Could you --

23 **Q.** Let me say it again.

24 First, to all retired players, whether they signed  
25 GLAs or not, would it be in the tens of millions of dollars?

1 **A.** Yes.

2 **Q.** Okay. Focusing just on those who signed GLAs and focusing  
3 on the period 2004 to 2007, would GLA class members in this  
4 case have received millions of dollars through the ad hoc  
5 licensing agreements?

6 **A.** Absolutely.

7 **Q.** And do you know if it was a little bit more than  
8 \$7 million?

9 **A.** I do.

10 **Q.** What's your information on that?

11 **A.** Uhm, I -- I've seen the documentation of that. And I  
12 have -- I have a general knowledge of what was generated during  
13 that period of time.

14 **Q.** And how much was it?

15 **A.** Around \$7 million.

16 **Q.** Okay.

17 **MR. KESSLER:** Your Honor, I'll hold this subsequently  
18 and not move to admit it now. I take it Your Honor would  
19 prefer that.

20 **THE COURT:** We can sort it out later through a  
21 different witness.

22 All right. Go ahead.

23 **BY MR. KESSLER:**

24 **Q.** Okay. Mr. Allen, you were asked a question by Mr. Parcher  
25 about the changes that were made in the retired player group

1 licensing authorization form, the removal of the escrow  
2 language. Do you recall that?

3 **A.** Yes.

4 **Q.** Did those changes have anything at all to do with the EA  
5 agreement?

6 **A.** No.

7 **Q.** Did it have anything to do with the \$25 million paid per  
8 year by EA?

9 **A.** Absolutely not.

10 **Q.** That \$25 million per year for EA, was that active player  
11 money or retired player money?

12 **A.** Active player money.

13 **Q.** I'd now like to show you, Mr. Allen, I believe we have up  
14 there Exhibit 29, which is the EA, one of the EA agreements.

15 **A.** Mr. Kessler, it's going to take me a second to find it.

16 **Q.** Okay. I'm sorry.

17 **A.** 2029.

18 **Q.** Wait. I have one. I have one.

19 **A.** I'm getting a pretty big pile here.

20 Thank you.

21 **Q.** Actually, this is not the one Mr. Parcher showed you. The  
22 one he showed you was 28. So let me make sure you have both of  
23 them, because I believe the language is the same.

24 **A.** Let's put that aside.

25 **Q.** 28 and 29 (indicating).

1 **A.** That's yours.

2 **Q.** That's mine.

3 Do you recognize --

4 **A.** Mr. Kessler, hold on just a minute.

5 **Q.** Okay.

6 **A.** I'm afraid these are going to fall over. Is that all  
7 right? Thank you.

8 **Q.** Look at Exhibit 29 first, which is the one Mr. Parcher  
9 didn't show you. Do you recognize that?

10 **A.** Yes.

11 **Q.** Okay. And what is Exhibit 29, please?

12 **A.** It's an agreement between Players Inc and Electronic Arts,  
13 effective as of March 1, '04, dated 31, January, '05.

14 **MR. KESSLER:** Your Honor, I move into evidence  
15 Exhibit 29.

16 **THE COURT:** Any objection?

17 **MR. PARCHER:** No.

18 **THE COURT:** Is this subject to the Ninth Circuit  
19 thing? I thought that was 80. I just want to be clear.

20 **MR. GREENSPAN:** No.

21 **MR. KESSLER:** This one is not. This one is not.

22 **THE COURT:** All right. 29 is received.

23 (Trial Exhibit 29 received in evidence.)

24 **BY MR. KESSLER:**

25 **Q.** And this agreement was entered into:

1 "Shall be effective on March 1, 2004"; is that  
2 correct?

3 **A.** That's correct.

4 **Q.** Now, I would also like you to look at -- do you know, the  
5 next agreement, Exhibit 28, that Mr. Parcher showed you, did  
6 they have the same grant of rights in both agreements, both EA  
7 agreements?

8 **A.** Yes.

9 **Q.** Okay. And it's true, isn't it, that this same grant of  
10 license language appears in many of Players Inc's license  
11 agreements?

12 **A.** That's correct.

13 **Q.** This was sort of a format you utilized; is that correct?

14 **A.** Correct.

15 **Q.** And at the time that this licensing format --

16 **MR. PARCHER:** Objection. This is all leading.

17 **THE COURT:** These are very leading questions.

18 **MR. PARCHER:** You know, I --

19 **THE COURT:** Sustained.

20 **MR. PARCHER:** I've held my fire in the interest of  
21 time and all that, but there's moments.

22 **THE COURT:** It's okay to lead on something that's  
23 preliminary. But when you get to anything that's substantive,  
24 you must ask a "how, what, who" question.

25 **MR. KESSLER:** I apologize, Your Honor.

1           **THE COURT:** Instead of just a question where all the  
2 witness has to do is say: "Yes, yes, yes."

3           **MR. KESSLER:** I'm trying to move it along, Your  
4 Honor.

5           **THE COURT:** It's okay to lead on preliminary matters.

6 **BY MR. KESSLER:**

7 **Q.** Mr. Allen, so I asked a question there. Okay. Was this  
8 language used in more than one agreement?

9 **A.** Yes.

10 **Q.** Who developed this language?

11 **A.** It developed over time in negotiations with licensees, and  
12 was typical of the language that Players Inc had in its  
13 agreements with licensees.

14 **Q.** Okay. And the language I'm referring to is the  
15 representation language in Section 1(a) and (b), just so the  
16 jury is clear.

17           And then, the granting language that appears right  
18 below it. That's the language you're referring to?

19 **A.** Yes.

20 **Q.** Okay. Mr. Allen, during the time all these license  
21 agreements were in effect with this language, did you have an  
22 understanding at the time as to whether or not this language  
23 granted retired player rights?

24 **A.** Yes, I did.

25 **Q.** And what was your understanding at the time?



1 **A.** That they did not, that the payments made under this  
2 license was for active player rights.

3 **Q.** Okay. And was that sometimes discussed in the  
4 negotiations with licensees?

5 **A.** Yes.

6 **Q.** Okay. And in any of these agreements where the license  
7 had this language that's been shown in the EA agreement, were  
8 the licensees able to use retired player rights without having  
9 some new agreements?

10 **MR. PARCHER:** Is the question --

11 **THE COURT:** As phrased it calls for a legal  
12 conclusion.

13 **BY MR. KESSLER:**

14 **Q.** Okay. What was your understanding at the time that you  
15 negotiated each of these agreements? Did the licensees have  
16 the right to use retired players without entering into a new  
17 agreement?

18 **A.** Uhm, no.

19 **Q.** Okay.

20 **A.** They would, uhm, tell us if they wanted to use somebody,  
21 and we would see if we could get them.

22 **Q.** Okay. Now, Mr. Allen, during the time you negotiated  
23 these agreements -- take EA, for example -- in your  
24 negotiations with EA for the Exhibit 28 and 29, was EA willing  
25 to pay additional money to get the rights to all of your

1 retired players?

2 **A.** No.

3 **Q.** The money that EA did pay, the \$25 million, whose rights  
4 were those for, in your understanding in the negotiations?

5 **A.** They were only for active player rights. They did not  
6 involve retired players.

7 **Q.** Now, if EA had gotten retired player rights, if they had  
8 gotten that, hypothetically, as plaintiffs contend, would EA  
9 have then been authorized to use the name and picture of the  
10 retired players who had been licensed?

11 **A.** If there had been a license that gave them rights to all  
12 the players collectively?

13 **Q.** Yes.

14 **A.** Yes.

15 **Q.** But did they ever do that?

16 **A.** No.

17 **Q.** Now, let me direct your attention to the actual language.  
18 Take a look at the granting language.

19 (Document displayed.)

20 It says:

21 "Upon the terms and conditions hereinafter set  
22 forth, Players Inc hereby grants to licensee and licensee  
23 hereby accepts the non-exclusive right, license and privilege  
24 of utilizing the trademarks and names of Players Inc, which may  
25 be amended from time to time by Players Inc, and the names,

1 likenesses (including without elimination) numbers, pictures,  
2 photographs, voices, facsimile signatures and/or biographical  
3 information (hereinafter identity) of the NFL players  
4 referenced in paragraph 1(a) above."

5 Now, Mr. Allen, I want to focus your attention on the  
6 words "the NFL players," okay?

7 At the time you personally negotiated these  
8 agreements, did you have an understanding of what was referred  
9 to by "the NFL players" referenced in paragraph 1(a) above.

10 **A.** Yes.

11 **Q.** Would you please tell your jury that understanding?

12 **A.** It was referring to the active players who had provided  
13 the active player GLA, or had signed the same rights to the  
14 NFLPA in paragraph 4(b) of the NFL player contract.

15 **Q.** Let me direct your attention to now the representation  
16 paragraph 1(a) above. Is there anything in that language that  
17 you understood described what you just testified to the jury?

18 **A.** I missed the question, Mr. Kessler.

19 **Q.** I'm now going to paragraph 1(a) above.

20 **A.** Right.

21 **Q.** You just testified what you thought "the NFL players"  
22 referred to?

23 **A.** Yes.

24 **Q.** Is there any language in paragraph 1(a) above which you  
25 believe reflected your understanding?

1 **A.** Yes.

2 **Q.** What language is that?

3 **A.** The first sentence.

4 **Q.** Could you explain to the jury how that reflects your  
5 understanding?

6 **A.** Because it says that Players Inc is the licensing  
7 affiliate of the NFLPA, and that the NFLPA has been duly  
8 appointed and acts on behalf of football players in the  
9 National Football League who have entered into a group  
10 licensing authorization, either in the form attached hereto as  
11 attachment A, which is the active player group licensing  
12 assignment, or to the assignment contained in paragraph 4(b) of  
13 the NFL player contract, which has been assigned to Players  
14 Inc.

15 And since those are the only two ways to do this, it  
16 follows that active players are the only ones involved.

17 **Q.** And it then goes on to say:

18 "And in such capacity" -- the capacity just  
19 described -- "Players Inc has the right to negotiate this  
20 contract and the right to grant rights and licenses described  
21 herein."

22 **A.** Right.

23 **Q.** Now, looking at the players who signed attachment A in  
24 paragraph 4(b), could that be any retired players?

25 **MR. PARCHER:** I assume the question --

1           **MR. KESSLER:**   I --

2           **MR. PARCHER:**   It's not a law professor up there or a  
3   disinterested --

4                   (Counsel speaking simultaneously, which was not  
5                   reportable.)

6           **MR. KESSLER:**   I don't need a speaking objection, Your  
7   Honor.

8           **THE COURT:**   Sustained.   Please re-ask it.

9   **BY MR. KESSLER:**

10   **Q.**   Mr. Allen, at the time you negotiated this language, okay,  
11   in your understanding at the time, was attachment A, at  
12   paragraph 4(b), a retired player form?

13   **A.**   No.

14   **Q.**   What was it?

15   **A.**   It was two -- it was the two ways that active players  
16   could provide their group licensing rights through the GLA as  
17   active players to the NFLPA, and then through the NFLPA to  
18   Players Inc.

19   **Q.**   And, in fact, was that active player form attached to the  
20   agreement as attachment A?

21   **A.**   Yes.

22   **Q.**   Is that the same exhibit that you discussed at the  
23   beginning of our testimony?

24   **A.**   Yes.

25   **Q.**   Okay.   Now, it's been contended that this license also

1 grants rights in the second sentence of paragraph 1(a), which  
2 reads:

3 "Licensee acknowledges that Players Inc also on  
4 occasion secures authorization for inclusion in Players Inc  
5 from players, including but not limited to retired players, who  
6 have not entered into such group licensing authorization, but  
7 who nevertheless authorized Players Inc to represent such  
8 players for designated Players Inc license programs."

9 Now, Mr. Allen, at the time you negotiated this  
10 language did you have an understanding of what this referred  
11 to?

12 **A.** Yes, I did.

13 **Q.** What did this refer to in your understanding at the time?

14 **A.** This was alerting the licensee to the fact that Players  
15 Inc could ask players to participate in certain programs if  
16 they hadn't signed -- hadn't entered into such group licensing  
17 authorization, either attachment A or paragraph 4(b), which  
18 were active player authorizations.

19 If they hadn't done that, then this was an  
20 acknowledgment that we could go out and ask them and try to get  
21 them, and that the licensee was -- was acknowledging that we  
22 were involved in that activity. And we would try, if they gave  
23 us a request, to see if we could get the player to agree.

24 **Q.** Did this have anything to do with ad hoc license  
25 agreements?

1 **A.** Yes. This was essentially a description of the fact that  
2 we would try to secure ad hoc agreements if they were  
3 interested in particular players.

4 **Q.** Now, when you do an ad hoc license agreement for retired  
5 players, is that for designated programs?

6 **A.** Yes.

7 **Q.** When you do a retired player GLA, is there anything to  
8 make that just for designated programs?

9 **A.** No.

10 **Q.** Mr. Allen, I would like to show you next Trial Exhibit  
11 2094.

12 **MR. KESSLER:** If I may approach, Your Honor.

13 **THE COURT:** Go ahead.

14 **BY MR. KESSLER:**

15 **Q.** Mr. Allen, do you recognize what this document is?

16 **A.** Give me a second, Mr. Kessler.

17 **Q.** Please.

18 **A.** Okay.

19 **Q.** Do you recognize this?

20 **A.** Yes, I do.

21 **Q.** What is this? Please tell the jury.

22 **A.** This is a contract between Electronic Arts and Players Inc  
23 with regard to a retired player named Joe Greene.

24 **MR. KESSLER:** Your Honor, I would like to move into  
25 evidence Trial Exhibit 2094.

1           **MR. PARCHER:** No objection.

2           **THE COURT:** Received.

3           (Trial Exhibit 2094 received in evidence.)

4           **MR. KESSLER:** If you could plea, Lauren, show the  
5 top, who this is to and from.

6           Further down, thanks.

7           (Document displayed.)

8 **BY MR. KESSLER:**

9 **Q.** This is to Mr. Joel Linzner. Who is Mr. Joel Linzner?

10 **A.** It's been a while, but I think his title is Senior Vice  
11 President of Business Affairs for EA.

12 **Q.** Is he the person you negotiated with the EA license  
13 agreements that are at issue here?

14 **A.** Yes.

15 **Q.** Now, this is in June 14, 2004. This would have been  
16 during the period -- was this during the period of time when  
17 Exhibit 29 was in effect?

18 **A.** I don't remember.

19 **Q.** Without going back, was it during the period of time when  
20 one of the two EA agreements was in effect?

21 **A.** Yes.

22 **Q.** Now, let's take a look at grant of rights, if we can.

23           Now, who was this agreement between?

24 **A.** This agreement was between Electronic Arts and Players  
25 Inc.



1 Q. And was Mr. Greene also a party to this?

2 A. I don't think he was.

3 Q. Describe how it would work. How would you secure  
4 Mr. Greene's rights for this?

5 A. We would get the rights from Joe Greene to license EA in  
6 this manner. So first, Joe Greene would agree to this. And  
7 then, we would provide these rights through this mechanism to  
8 EA.

9 Q. Now, it says here:

10 "Grant of rights. Players Inc grants company  
11 the right, but not the obligation, to use player's name,  
12 likeness, image and biographical information in company's video  
13 game with a current working title 'NFL Street 2,' or the same  
14 or substantially similar video game if the company changes the  
15 title of its NFL Street 2 video game."

16 Now, if Players Inc had already granted the retired  
17 player rights to Mr. Greene through its license agreement,  
18 would it have to do it again here?

19 A. No.

20 Q. Did EA pay additional money for Mr. Greene's rights here?

21 A. Yes.

22 Q. And who was that money eventually given to?

23 A. Joe Greene.

24 Q. The player himself?

25 A. Yes.

1 Q. It then says:

2 "Company shall also have the right to market  
3 player's in-game image under the same guidelines that are  
4 granted to company for group licensing active player rights  
5 through the license agreement with Players Inc."

6 Do you see that?

7 A. Yes.

8 Q. What license agreement is that referring to?

9 A. The one we were just looking at.

10 Q. Exhibits 28 or 29?

11 A. Yes.

12 Q. Okay. And that's being referred to by EA as the licensing  
13 for active player rights agreements?

14 A. Yes.

15 Q. Mr. Allen, let me show you next a copy of Trial Exhibit --

16 MR. PARCHER: Could we repeat that question, Judge?  
17 I missed it.

18 Sorry to do that to you.

19 THE COURT: What do you want?

20 MR. PARCHER: I just missed the question. I missed  
21 the question and heard the answer.

22 Could he just repeat it?

23 THE COURT: The question was:

24 "And that's being referring to by EA as the  
25 licensing for active player rights

1           agreements?

2           **"ANSWER:**   Yes."

3           **MR. PARCHER:**   This is a PA license, not an EA  
4 license.

5           **THE COURT:**   EA, what does that mean?

6           **MR. PARCHER:**   NFLPA.   NFLPA, one of the defendants.  
7 He said it as if it's EA.   Oh, I'm speaking --

8           **THE COURT:**   Cross-examination.   The witness has  
9 answered in the way that he has.   If you think that's  
10 inaccurate, you can take it up whenever you examine again.

11           **MR. PARCHER:**   Yes, sir.

12 **BY MR. KESSLER:**

13 **Q.**   Mr. Allen, was Electronic Arts a party to this license  
14 agreement?

15 **A.**   To the one that is 2094?

16 **Q.**   Yes.

17 **A.**   Yes, they were.

18 **Q.**   Was it signed by Mr. Linzner of Electronic Arts?

19 **A.**   This isn't a signed copy, but it is -- it is typical of  
20 the memorialization of these agreements.

21 **Q.**   Okay.   I would now like to hand you --

22           **MR. KESSLER:**   If I may approach, Your Honor.   Exhibit  
23 2089 and, also, 2092 I'm going to hand to the witness.

24           **THE COURT:**   Go ahead.

25

1 **BY MR. KESSLER:**

2 **Q.** First, before you look at that, Mr. Allen, okay? Did you  
3 have a license agreement with the Upper Deck Company?

4 **A.** Yes.

5 **Q.** And did the Upper Deck license agreement use similar  
6 language to the EA agreements?

7 **A.** In many respects, yes.

8 **Q.** What products does Upper Deck make, in case the jury  
9 doesn't know?

10 **A.** They make trading cards. They come in packs and have  
11 players' pictures on them.

12 **Q.** Did you negotiate those agreements with Upper Deck?

13 **A.** Yes, I did.

14 **Q.** Did you have an understanding at the time you negotiated  
15 the Upper Deck agreements, did they include -- did they grant  
16 active player rights, retired player rights or both?

17 **A.** Active player rights only.

18 **Q.** No retired player rights?

19 **A.** No.

20 **Q.** Okay. Let me direct your attention now to Trial Exhibit  
21 2089. Do you recognize what this is, Mr. Allen?

22 **A.** Yes.

23 **Q.** What is this?

24 **A.** It is a -- it's -- when I said that Players Inc had an  
25 agreement with Joe Greene, this was the one between Players Inc

1 and the company that reflected that. This is an example of an  
2 agreement between Players Inc and the player.

3 **Q.** Which player was this agreement with?

4 **A.** Herb Adderley.

5 **Q.** Is that the same Mr. Adderley who's a plaintiff in this  
6 case?

7 **A.** Yes.

8 **MR. KESSLER:** Your Honor, I move into evidence Trial  
9 Exhibit 2089.

10 **MR. PARCHER:** What's the number, 2089?

11 **MR. KESSLER:** Yes.

12 **THE COURT:** Any objection?

13 **MR. PARCHER:** I haven't seen it, but I can't imagine  
14 that we would.

15 **THE COURT:** Received.

16 (Trial Exhibit 2089 received in evidence.)

17 (Document displayed.)

18 **BY MR. KESSLER:**

19 **Q.** If you take a look at the top of this, this is dated  
20 August 15, 2005 to Mr. Herb Adderley.

21 And it says:

22 "Dear Herb: Thank you for agreeing to  
23 participate in the Players Inc player marketing program. The  
24 purpose of this letter agreement is to set forth the  
25 understanding which has been reached between you, Herb

1 Adderley, player and National Football League Players  
2 Incorporated," it says, "with regard to the Upper Deck Company.  
3 Our understanding is set forth in the following numbered  
4 paragraphs."

5 First, Mr. Allen, I would ask you to -- at the time  
6 this was entered into, August 15, 2005, was there a license  
7 with Upper Deck more generally between Players Inc and Upper  
8 Deck?

9 **A.** Yes.

10 **Q.** And did that grant any player rights?

11 **A.** Yes.

12 **Q.** Did it grant any retired player rights?

13 **A.** No.

14 **Q.** What kind of rights did it grant?

15 **A.** Active player rights.

16 **Q.** Taking a look at the grant of rights, it says:

17 "Player agrees that Players Inc shall grant  
18 company the right, but not the obligation, to produce trading  
19 cards bearing player's name, likeness, image and biographical  
20 information to insert into its 2005 football products. The  
21 rights shall be granted on a non-exclusive basis by Players  
22 Inc, which engages player on an independent contractor basis."

23 Do you see that?

24 **A.** Yes.

25 **Q.** Now, if Mr. Adderley's rights had already been granted to

1 Upper Deck in your license agreement, would there be any reason  
2 to enter into this agreement?

3 **A.** No, none.

4 **MR. PARCHER:** Same objection.

5 **BY MR. KESSLER:**

6 **Q.** Now, did Mr. Adderley agree to this license agreement?

7 **A.** Yes.

8 **Q.** Take a look under "Compensation."

9 It says:

10 "As consideration for the grant of rights and  
11 services, Players Inc shall pay player \$3,820, 400 [sic] per  
12 autograph. Payment for each shipment of cards will be made to  
13 player within two weeks after signed cards are received by  
14 company."

15 Who got this company in this agreement, ultimately?

16 **A.** Herb Adderley.

17 **Q.** Take a look at next Trial Exhibit 2092.

18 One thing before we go from this one, the date on  
19 this is August 15, 2005, okay?

20 **A.** Yes.

21 **Q.** I now want to direct your attention to 2092, trial  
22 exhibit.

23 **MR. KESSLER:** Don't put it up yet.

24 **BY MR. KESSLER: :**

25 **Q.** Do you recognize this as an ad hoc agreement?

1 **A.** Which one?

2 **Q.** 2000 -- 2092, now.

3 **A.** 2092.

4 **Q.** It's with Mr. Vernand, Morency or Morency. Do you see  
5 that, "care of Robert Bailey"?

6 **A.** Yes.

7 **Q.** Mr. Allen, do you recognize this as being another ad hoc  
8 license?

9 **A.** Yes.

10 **Q.** Now, Mr. Allen, this one is with an active player; is that  
11 correct?

12 **A.** Yes.

13 **MR. KESSLER:** Your Honor, I move into evidence Trial  
14 Exhibit 2092.

15 **MR. PARCHER:** No objection.

16 **THE COURT:** 2092 is received.

17 (Trial Exhibit 2092 received in evidence.)

18 **BY MR. KESSLER:**

19 **Q.** And if you look, it has the same date as Mr. Adderley's  
20 ad hoc license, correct?

21 **A.** Correct.

22 **Q.** Now, in this one for the active player, is there any grant  
23 of rights provision you see?

24 **A.** No, none.

25 **Q.** Okay. Now, why would it be, in your understanding at the



1 time in 2005, would the retired player, Mr. Adderley, have a  
2 grant of rights provision while the active player, Mr. Morency  
3 did not have a grant of rights provision?

4 **A.** Because Mr. Morency's rights had already been provided by  
5 virtue of the license agreement between Players Inc and --  
6 and -- or the NFLPA and the Upper Deck Company.

7 Those rights were already provided. So it wasn't  
8 necessary to deal with the grant of rights. This -- what's  
9 dealt with in here is the particular services that are provided  
10 by the player.

11 **Q.** What services was Mr. Morency providing that he wasn't --  
12 that he was being compensated for, as opposed to granting his  
13 rights?

14 **A.** He was being compensated for signing a certain number of  
15 trading cards or stickers or other products that were made by  
16 Upper Deck.

17 **Q.** Okay.

18 Mr. Allen, during the period of time between 2004 and  
19 2005 -- we're finished with that exhibit -- did you negotiate  
20 the Topps license agreements?

21 **A.** Yes.

22 **Q.** Did you have an understanding at the time as to whether  
23 those license agreements granted any active player rights?

24 **A.** Yes.

25 **Q.** Okay. Did it grant active or retired player rights?

1 **A.** Active player only.

2 **Q.** Did it grant any retired player rights at all?

3 **A.** No.

4 **Q.** Let me show you next --

5 **THE COURT:** You have about two more minutes, and then  
6 we're going to break for the day.

7 **MR. KESSLER:** I'll do one more exhibit, Your Honor.

8 **MR. PARCHER:** Has he offered that into evidence?

9 **MR. KESSLER:** Which one? Oh, I didn't offer that?  
10 I'm sorry. I thought I already did.

11 **MR. PARCHER:** Topps.

12 **MR. KESSLER:** No, I'm not going to take the time.

13 **THE COURT:** What's the number? 2092 is in evidence.

14 **MR. KESSLER:** That is in evidence. The one I showed  
15 Your Honor is in evidence.

16 **MR. PARCHER:** If Your Honor pleases, Counsel is  
17 questioning about Topps, and now he's not putting it in  
18 evidence.

19 **MR. KESSLER:** I have no objection to it being put in  
20 evidence. I just don't want to waste the witness's time. It's  
21 the same language. I don't want to go through it right now.  
22 But plaintiffs' counsel can do it. I'll move the Topps  
23 agreement into evidence.

24 **MR. PARCHER:** If you stipulate to the same language,  
25 it's okay.

1           **MR. KESSLER:** No.

2           **THE COURT:** Just move it in. What is the exhibit?

3           **MR. KESSLER:** The Topps license agreement -- I don't  
4 know if I even have that here.

5           Does anybody have the Topps license agreement?

6           **THE COURT:** Let's not guess at it. Sorry. I thought  
7 you had it right there. Let's move on.

8           **MR. KESSLER:** Oh, Trial Exhibit 36. It's the Topps  
9 license agreement, Your Honor.

10          **THE COURT:** All right.

11          **MR. KESSLER:** 36 and, also, 394 are two different  
12 Topps license exhibits.

13          **THE COURT:** All right. Both are received.

14          **MR. KESSLER:** Thank you.

15          **THE COURT:** 36 and 294 [sic].

16          (Trial Exhibit 36 received in evidence.)

17          **MR. KESSLER:** Maybe, Your Honor -- I don't want to go  
18 over my time. Maybe we should stop at this point.

19          **THE COURT:** 294. There is no 294 in here. It jumps  
20 from --

21          **MR. KESSLER:** 394, Your Honor.

22          **THE COURT:** 394. 394. Just a minute.

23          **MR. KESSLER:** Your Honor, should I try to use the  
24 last five minutes?

25          **THE COURT:** No. We don't even have that much. 394

1 is received.

2 (Trial Exhibit 394 received in evidence.)

3 **THE COURT:** Mr. Allen, the magic hour is here. It's  
4 time to say to you please come back tomorrow at 7:30 a.m.  
5 We'll try to finish you up tomorrow.

6 I know this is a burden on you, but you -- both sides  
7 have a lot of questions to ask you.

8 **MR. KESSLER:** I apologize to Mr. Allen. I know he  
9 has a very busy schedule.

10 **THE COURT:** All right. Can't do anything about it.  
11 Okay. We'll see all of our jurors back -- oh, you wanted to  
12 know whether or not you could take home your notepads and read  
13 them at home. It's okay with me if it's okay with the lawyers.

14 Is it okay with everyone? Okay with that?

15 **MR. KESSLER:** I have no objection, Your Honor.

16 **MR. PARCHER:** I think the jurors should do what they  
17 would like to do.

18 **THE COURT:** All right. You can take them home, but  
19 don't share them with anyone. Don't say to your loved one,  
20 "Hey, look at the doodle I made in court today." Don't read  
21 anything to others. You can read it silently to yourself and  
22 refresh your memory. That would be okay. Then, of course,  
23 remember to bring your notepad back.

24 All right. Again, remember my admonition. No  
25 talking with anyone about the case. We'll see you back here --

1 and no listening to the news reports and the like.

2 We'll see you back here tomorrow at 7:45.

3 **THE CLERK:** All rise.

4 (Jury excused.)

5 (The following proceedings were held in open court,  
6 outside the presence of the jury.)

7 **THE COURT:** Be seated everyone. All right. Anything  
8 you need me for before we break for the day?

9 Mr. Allen, you can step down. We don't need to  
10 detain you today.

11 **MR. HUMMEL:** Your Honor --

12 **THE COURT:** When did I say I would hold that  
13 evidentiary hearing?

14 **MR. HUMMEL:** Tomorrow afternoon at 3 o'clock, I  
15 believe.

16 **THE COURT:** 3 o'clock tomorrow afternoon?

17 **MR. HUMMEL:** Right.

18 **THE COURT:** All right.

19 **MR. HUMMEL:** We'll have Mr. Rhee here.

20 **THE COURT:** Who?

21 **MR. HUMMEL:** Mr. Rhee. He is the witness on that.

22 **THE COURT:** All right. I don't even remember the  
23 issue anymore. I'm sure you'll refresh my memory.

24 What else do we need to do today?

25 **MR. HUMMEL:** Your Honor, I was going to say, though,

1 we both now have compilations and maybe we could handle both  
2 compilations at the same time, if that witness would be  
3 available.

4 We just have the issue of the compilation of the  
5 ad hoc money. If you don't want to, we can have the Rhee  
6 hearing tomorrow.

7 **MR. KESSLER:** I think, Your Honor, it's entirely  
8 different. They want to present the witness that we think was  
9 undisclosed, and present expert testimony.

10 We're just offering the compilation. And we will  
11 provide Your Honor with authority that we don't have to offer  
12 any witness. They're free to call one. But you precisely  
13 don't get --

14 **THE COURT:** This boggles my mind that some lawyer can  
15 stand up and say, "Here's a compilation and we don't have to  
16 have a witness for it."

17 **MR. KESSLER:** The reason is, Your Honor, the  
18 following:

19 First, the underlying documents must be admissible.  
20 So the Raider database, there's no dispute, is admissible, the  
21 entire 20,000-page database.

22 Second, because the other side gets to check it, and  
23 if they find any inaccuracy in the summary, they could object  
24 or call to Your Honor's attention, and it must be corrected.

25 **THE COURT:** That puts the burden on the other side.

1 And, normally, the burden is on the proponent.

2 **MR. KESSLER:** That's just the way 1006 is done.

3 **THE COURT:** Get me the case law that says that.

4 **MR. KESSLER:** I will, Your Honor.

5 **THE COURT:** I'm surprised to hear that. If that's  
6 true, then why shouldn't I just let their thing sail in, and  
7 you have to show problems with it?

8 **MR. KESSLER:** The difference in their compilation, to  
9 remind Your Honor, is, first of all, they want witness  
10 testimony which we believe was undisclosed in expert.

11 More profoundly, theirs is not simply taking data out  
12 of an underlying exhibit and summarizing it. What theirs does  
13 is it makes judgments. Five percent difference in height and  
14 weight is something that this witness decided to classify as  
15 constituting a scrambled player.

16 In other words, there were expert judgments that have  
17 nothing to do with summarizing the material in there. But what  
18 1006 allows, and the case law is clear on this as well, is  
19 simply to summarize pieces of information in the underlying  
20 admissible documents.

21 It's to make it easy for the jury because the jury  
22 can't go into the database and print it out.

23 It is not to avoid having an expert say 5 percent is  
24 the relevant test. Or if you do a sample, to say this is the  
25 proper sampling technique.

1           **THE COURT:** All right. I'm going to do this one step  
2 at a time. Your witness was -- what was his name?

3           **MR. HUMMEL:** Mr. Rhee, Peter Rhee, R-H-E-E.

4           **THE COURT:** All right. Let's have him here at  
5 3 o'clock tomorrow, and we'll do the evidentiary hearing on  
6 him.

7           I'm not saying whether or not you need to have an  
8 evidentiary hearing or prove up your -- I will have to read  
9 your authority that you can place the burden on the other side  
10 to object to your -- show flaws in your compilations.

11          **MR. KESSLER:** Very good, Your Honor. We will.

12          I would say that if they were flaws, they would get  
13 resolved by the Court. In other words, they don't have to show  
14 it in the hearing. It's part of the admissibility  
15 determination. They said: These are wrong data. They would  
16 show that it would have to be corrected before it went to the  
17 jury. We agree with that.

18          But what they don't need is a witness to describe  
19 that, "I physically went through the database and took this  
20 information out," because they have the database. They can  
21 check it themselves.

22          **THE COURT:** There's a difference between the Ninth  
23 Circuit saying that a judge could dispense with a witness  
24 versus must dispense with a witness.

25          **MR. KESSLER:** Understood.



1           **THE COURT:** I don't know what authority you've got.  
2           All right. So what's next?

3           **MR. HUMMEL:** Your Honor, I'll simply comment with one  
4 sentence. And that is that the law of this Circuit -- and I've  
5 been through many trials in the Ninth Circuit -- when you offer  
6 a 1006 summary, you put on the witness who actually supervised  
7 or performed the summary. That's my understanding. It's  
8 invariably been the case.

9           **THE COURT:** That would be my normal view.

10          **MR. HUMMEL:** Right.

11          **THE COURT:** I may be wrong.

12          **MR. HUMMEL:** So, Your Honor, we've actually cited  
13 cases to that effect in our motion in limine number 6  
14 opposition.

15                 Two -- actually one issue, Your Honor. We now have a  
16 bit of a witness logjam. I just want to alert the Court to  
17 that.

18                 We've been, I think, very cooperative in providing,  
19 on an ongoing basis with Mr. Kessler, our sort of rolling idea  
20 of what witnesses are going next. And we have that idea.

21                 We have two sort of immovable objects tomorrow, and  
22 now we have a third, which is Mr. Allen.

23                 We have a witness who is now coming from Baltimore  
24 for the second time, to testify tomorrow. He is our client,  
25 Mr. Laird. He's flying across the country. We thought we

1 would get him on last week. He needs to go on and off,  
2 tomorrow because he has employment in Baltimore.

3 Pat Allen is employed in Los Angeles. Or I guess she  
4 is not employed. She lives in Los Angeles and is flying up.  
5 We told them we would put her on tomorrow.

6 I would respectfully request, Your Honor, that we  
7 finish Mr. Allen and then be allowed to put on Mr. Laird next.

8 I don't know. I haven't had a chance to talk with  
9 Mr. Kessler about when --

10 **THE COURT:** What's wrong with that?

11 **MR. KESSLER:** As long as Ms. Allen goes tomorrow.  
12 Because what happened, Your Honor, while they have given us  
13 information, they've changed Ms. Allen's -- the time she would  
14 come -- she's a third party -- three or four different times  
15 just in the last week. I finally said to them: She must know,  
16 to plan her life, which day.

17 And they said they would call her -- and I have this  
18 in an exchange, Your Honor. They said, "We will call her  
19 Tuesday or we won't call her at all."

20 And I told that to Ms. Allen, and she relied on it.  
21 So she's already -- I expect her to be here --

22 **THE COURT:** Well, look. You've had a very long  
23 cross-examination of this witness. How much longer do you  
24 need?

25 **MR. KESSLER:** I need, with this witness, probably

1 about 15, 20 minutes, and I'm done.

2 **THE COURT:** How much do you have on redirect?

3 **MR. HUMMEL:** You know, Your Honor, we haven't had a  
4 chance to confer. I don't know. I expect it to be short. I  
5 did -- I personally told Mr. Kessler we would get Ms. Allen on  
6 tomorrow. And that was the agreement.

7 Things change in a trial. This witness went much  
8 longer. All I'm saying to Mr. Kessler is, we have a witness  
9 flying out from Baltimore for the second time.

10 **THE COURT:** I can't do anything about it. We're  
11 going to stop at 1 o'clock. I have a criminal calendar  
12 tomorrow afternoon. I have no choice in the matter.

13 Both sides here have been beating to death items with  
14 argumentative questions, preparatory comments, speaking  
15 objections. So you are wasting time on your own. Both sides  
16 are guilty.

17 So what can I do? What do you want me to do, say one  
18 person is not going to be called?

19 **MR. HUMMEL:** I'm advising the Court, Your Honor, that  
20 we have to put on Mr. Laird tomorrow. He's coming from  
21 Baltimore.

22 We will make every effort we possibly can to get  
23 Ms. Allen on and off tomorrow.

24 **MR. KESSLER:** And our view would be, Your Honor,  
25 simply, if she gets off or on tomorrow --

1           **THE COURT:** Here's the answer: How much do you have  
2 on redirect on Mr. Allen?

3           **MR. PARCHER:** It's not an answerable question until  
4 we talk it out. I can say assure you we are going to try to do  
5 it as quickly as we can.

6           **THE COURT:** How about 15 minutes?

7           **MR. PARCHER:** No, Your Honor. Then that put in --  
8 may be the smart thing to do, which of course the answer will  
9 become yes.

10           But they have put in two and a half hours worth of  
11 what he put in, of his understanding or whatever, we may --

12           **THE COURT:** You had him on the stand for more than  
13 two and a half hours.

14           **MR. PARCHER:** Of course. He is the key witness in  
15 the case.

16           **THE COURT:** Well, then is --

17           **MR. PARCHER:** He's the man. He's their spokesman.

18           **THE COURT:** I think, yeah. But I would say 15  
19 minutes more for Mr. Kessler and 30 minutes for you ought to be  
20 enough.

21           **MR. PARCHER:** I would hope so. I'm going to sure  
22 try.

23           **THE COURT:** Let me say this. After that -- I'm  
24 thinking about this -- I'm going to say to the jury, "This has  
25 gone on too long. We've got other witnesses. Mr. Allen is

1 going to have to come back." Or we strike all of his  
2 testimony.

3 So -- but if you have these other witnesses who have  
4 just got to go on, then we'll put them on. Interrupt Allen  
5 and -- but this -- let me tell you both something.

6 You've all lived with this for a while, but this jury  
7 is sitting here thinking: "My God, all those witnesses they  
8 read out to us and we're only on the second witness. This is  
9 terrible." They're going to start tuning out any day.

10 **MR. PARCHER:** I agree with you.

11 **THE COURT:** You lawyers better get down to the  
12 business of putting this case -- the background is all clear  
13 now -- bang bang bang, one point after another, sit down, move  
14 to the next witness.

15 **MR. PARCHER:** I agree.

16 **THE COURT:** Pretend that you're a prosecutor for the  
17 United States Attorney's Office.

18 **MR. KESSLER:** I can tell your Honor, we have very  
19 little examination of Ms. Allen planned. So if they -- if they  
20 can --

21 **THE COURT:** I'm not going to hold them to Tuesday or  
22 nothing. I don't care how much -- she could be having a trip  
23 to Paris planned. If they want her in the case, she's going to  
24 come. So you are relieved from that agreement. You can call  
25 her on Wednesday, Thursday or Friday. I don't care.

1           Look. This is too important. We're not going to  
2 hold them to that agreement.

3           **MR. KESSLER:** I agree. But in all due respect, it's  
4 her 60th birthday party. She has 50 people invited in  
5 Washington, D.C., the next day. So I would suggest the  
6 following, because we don't mind this. If she can't testify  
7 tomorrow, we'll bring her back next week in our case and they  
8 can call her in our case.

9           Just like you were accommodating us, they --

10          **THE COURT:** Then the Rule 50 gets --

11          (Counsel and the Court speaking simultaneously, which  
12 was not reportable.)

13          **MR. KESSLER:** But she can't do it after tomorrow.

14          (Reporter interrupts.)

15          **MR. KESSLER:** So that what we'll do is, if you can't  
16 do it tomorrow, okay, you'll tell us whether we should send her  
17 home now.

18          **MR. HUMMEL:** No, we want her here tomorrow.

19          **MR. KESSLER:** If you can't do it tomorrow, she'll  
20 come back the following week. As long as she can go to her  
21 60th birthday party with 50 people, I think that's fair.

22          **MR. HUMMEL:** Of course. That's fine.

23          **THE COURT:** When is the party?

24          **MR. FEHER:** I just know she's flying out immediately  
25 on the 4 o'clock plane.

1           **MR. DOUG ALLEN:** I'm not invited, Your Honor. I  
2 think the party is Thursday.

3           **MR. KESSLER:** Thursday.

4           **MR. DOUG ALLEN:** I'm not positive about that. I'm --  
5 my schedule is so tight, I can't go.

6           **THE COURT:** She can go to the party. And if we don't  
7 get her testimony, we'll bring her back next week.

8           But that goofs up the Rule 50 because at the end of  
9 the case we haven't heard all the plaintiffs' case yet.

10          **MR. KESSLER:** We understand, Your Honor.

11          **THE COURT:** Anything more today?

12          **MR. HUMMEL:** No, Your Honor.

13          **THE COURT:** See you at 7:30.

14          **MR. HUMMEL:** Thank you very much, Your Honor.

15          (Thereupon, this trial was continued until Tuesday,  
16 October 28, 2008 at 7:30 o'clock a.m.)

17                               - - - -

18                               **CERTIFICATE OF REPORTER**

19           I certify that the foregoing is a correct transcript  
20 from the record of proceedings in the above-entitled matter.

21   DATE:   Monday, October 27, 2008

22                               s/b Katherine Powell Sullivan  
23                               \_\_\_\_\_

24           Katherine Powell Sullivan, CSR #5812, RPR, CRR  
25                               U.S. Court Reporter

**I N D E X****PLAINTIFF WITNESSES**

DOUG ALLEN (RESUMED)

DIRECT EXAMINATION (RESUMED) BY MR. PARCHER PAGE 666

CROSS EXAMINATION BY MR. KESSLER PAGE 718

**EXHIBITS INTO EVIDENCE**

91 PAGE 667

54 PAGE 688

506 PAGE 690

1320 PAGE 699

24 PAGE 713

2047 PAGE 730

1281 PAGE 733

1164-1 PAGE 769

93 PAGE 773

95 PAGE 777

2247 PAGE 793

1307 PAGE 795

1308 PAGE 795

1309 PAGE 795

1310 PAGE 795

2262 PAGE 808

(Exhibits continued on next page.)



**EXHIBITS INTO EVIDENCE** (continued)

2259 PAGE 811

2307 PAGE 816

2291 PAGE 823

2395 PAGE 828

29 PAGE 835

2094 PAGE 845

2089 PAGE 850

2092 PAGE 853

36 PAGE 856

394 PAGE 857