

Volume 5

Pages 871 - 1112

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,)
)
Defendants.)

San Francisco, California
Tuesday
October 28, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

MANATT, PHELPS & PHILLIPS
1001 Page Mill Road, Building 2
Palo Alto, California 94304

**BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.**

MANATT, PHELPS & PHILLIPS
7 Times Square
New York City, New York 10036

BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 West Olympic Boulevard
Los Angeles, California 90064

BY: CHAD HUMMEL, ESQ.

(Appearances continued on next page)

APPEARANCES CONTINUED:

Also for Plaintiffs:

MCKOOL SMITH
300 Crescent Court
Suite 1500
Dallas, Texas 75201

BY: LEWIS T. LECLAIR, ESQ.
JILL ADLER NAYLOR, ESQ.
ANTHONY GARZA, ESQ.
BRETT CHARHON, ESQ.

For Defendants:

DEWEY & LEBOEUF
1301 Avenue of the Americas
New York City, New York 10019-6092

BY: JEFFREY L. KESSLER, ESQ.
DAVID GREENSPAN, ESQ.
DAVID G. FEHER, ESQ.
ROY TAUB, ESQ.
MOLLY DONOVAN, ESQ.
JASON CLARK, ESQ.

WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153-0119

BY: BRUCE S. MEYER, ESQ.

Reported By:

Katherine Powell Sullivan, CSR # 5812
Official Reporter - U.S. District Court

P R O C E E D I N G S

OCTOBER 28, 2008

7:30 A.M.

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

THE COURT: Good morning.

All right. What can I do for you this morning before
the jury comes in?

MR. KESSLER: Your Honor, to give you a happy report,
we worked something out.

THE COURT: I don't believe it. My heart.

MR. KESSLER: We've agreed, Your Honor, that Mr. Rhee
will not testify, so we do not need any hearing about that.

We've also agreed to stipulate to the admissibility
of a revised compilation that Mr. Rhee was involved in, that
plaintiffs have prepared. And we've agreed on what that will
say.

THE COURT: This is on the scattered -- not
scattered. What's the --

MR. HUMMEL: Scrambled.

THE COURT: Players.

MR. KESSLER: What is the new trial exhibit number?

MR. HUMMEL: What was it? 1240.

MR. KESSLER: 1240. So the new version of 1240 will
be stipulated to on admissibility. And plaintiffs, in turn,

1 have agreed that they will stipulate to the admissibility of
2 the compilation we discussed yesterday, 2056. So we do not
3 have to get to the issue that Your Honor wanted briefed as to
4 whether or not we had to produce a witness. And there will be
5 no witness necessary for either compilation.

6 **THE COURT:** Well, I congratulate both sides.

7 Is all that true?

8 **MR. HUMMEL:** That's true.

9 **MR. KESSLER:** Your Honor, I guess I should move in
10 1256 when the jury is back. Then, I will do that.

11 **THE COURT:** All right. Possibly Dawn took it, my
12 list. Oh.

13 **MR. HUMMEL:** So what that means for the Court's
14 calendar is there is no hearing this afternoon.

15 **THE COURT:** That's wonderful news. Thank you.

16 Okay. Anything else?

17 **MR. KATZ:** One other small point, Your Honor. And
18 that is Your Honor ordered yesterday that Mr. Byrd will appear
19 out of order on Thursday. And I wanted to confirm with Your
20 Honor that we may question him beyond the scope of his direct.

21 **THE COURT:** Well, sure. Why not?

22 **MR. KESSLER:** Well, Your Honor, they didn't list him
23 as a witness. So I think -- I don't --

24 **THE COURT:** Well, look. Once he's here --

25 **MR. KESSLER:** In other words, he was never a witness

1 in their case. They don't have him under subpoena. So he
2 never was going to be here in their case. He would have come
3 in our case, and they would have been limited by the normal
4 rule to whatever we raised they could certainly cover in their
5 cross. But not new subjects, I believe.

6 **THE COURT:** What is the subject you want to get into?

7 **MR. KATZ:** Well, I don't know, Your Honor. But if
8 the problem is he hasn't been subpoenaed we will subpoena him
9 for our rebuttal case.

10 **THE COURT:** I would let them bring him back in
11 rebuttal.

12 **MR. KESSLER:** It's fine.

13 **THE COURT:** All right. Within reason. Just a rule
14 of reason, you can go beyond the scope of the direct. But I
15 can't give you a blank check without knowing what subject you
16 want to get into.

17 But within reason you can go beyond the scope of the
18 direct.

19 **MR. KATZ:** Again, I don't -- I'm not in the game -- I
20 think given what Your Honor is ruling, as a belt and suspenders
21 thing, I will probably subpoena him, too, just to make sure.

22 **THE COURT:** Fine. Go ahead. We'll just have to see
23 how it plays out.

24 Okay. What else?

25 **MR. HUMMEL:** Your Honor, I should inform the Court we

1 had our oral argument with the Ninth Circuit yesterday about
2 the EA exhibit. They took it under submission. I advised the
3 Court that we intended to call the EA witness, Mr. Linzner,
4 tomorrow morning, first thing.

5 If there is no ruling, the stay remains in effect, is
6 my understanding. So I just wanted to advise the Court that we
7 argued. Mr. Kessler and I both appeared telephonically for the
8 hearing.

9 **THE COURT:** All right. Thank you.

10 I have a suggestion. I would like for you to get
11 me -- you did exactly what I said, but the words are so small
12 on chronology that I'm afraid it's not serving its purpose.

13 So either we got to put it a lot closer -- then that
14 would block the view of the people in the seating area -- or we
15 need a little, small handout.

16 I would like for you to get a handout, one for each
17 juror, so that they can have that as a ready reference point.
18 Can you do that?

19 **MR. KESSLER:** We can do that.

20 **MR. HUMMEL:** We'll do that, Your Honor.

21 **MR. KESSLER:** By tomorrow is no problem.

22 **THE COURT:** Thank you.

23 Now, I'll raise this as an idea, and that is to let
24 each side give the jury one document to have in the jury box
25 with them. In other words, maybe the player GLA. So then they

1 could be looking at it. Because that's the document they need
2 to construe.

3 What do you think? Each side could pick out one
4 document.

5 Of course, in the jury room they're going to get all
6 the documents, but I'm talking about during -- as the trial is
7 underway. Kind of like a witness -- a jury notebook, but
8 limited in -- I don't generally like notebooks, because they
9 have too much information.

10 **MR. HUMMEL:** I think it's an excellent idea, Your
11 Honor. We'll think about it, confer with the other side. And
12 maybe there are a couple of documents they could have in a
13 small pamphlet that the sides could agree on.

14 **THE COURT:** I'm only talking about two.

15 **MR. HUMMEL:** Right.

16 **THE COURT:** Talking about each side gets to pick one
17 document.

18 **MR. HUMMEL:** All right.

19 **THE COURT:** Think about it, and let me know tomorrow.

20 **MR. KESSLER:** That's fine, Your Honor. We'll confer
21 with counsel about that.

22 **THE COURT:** All right. What else would you like to
23 go over this morning?

24 **MR. KESSLER:** I think that's all we have, Your Honor,
25 this morning.

1 **MR. HUMMEL:** Ready.

2 **THE COURT:** All right. Let me see if the jury is
3 present. If they are, we will get started now.

4 (Pause.)

5 (Discussion held off the record.)

6 (Thereupon, the jury entered the courtroom.)

7 **THE COURT:** Welcome back, and have a seat.

8 I will give you a couple of heads-up items here.
9 We're going to try to get a copy of that chronology that's over
10 there, that timeline. We're going to try to get you a little
11 handout version so you can have it in your lap and be able to
12 consult it.

13 I think it's a little small and hard to read. So the
14 lawyers did exactly what I wanted, but the print's too small.
15 You have to have superpowers to be able to focus in on that.

16 And we're going to make it easier for you. So that
17 will come tomorrow, just as a heads-up.

18 Now, the other thing is our witness is back now and
19 we will -- I don't want you to get discouraged over how long
20 this witness is on the stand. Some witnesses are longer and
21 others are shorter. And I promise you the lawyers are under
22 strict time limits. And when the time comes, the iron curtain
23 comes down, and the stop talking ceases. And then, you go
24 decide the case.

25 So they are spending their time and allocating their

1 time as they think it's most important for your
2 decision-making. So bear with us on this. It's -- the lawyers
3 know the case much better than I do, and they will use the time
4 accordingly.

5 So I'm sure we are going to start getting after, soon
6 today, to other witnesses.

7 Okay. Now, where were we? We were, Mr. Kessler, you
8 still are taking the witness, right?

9 **MR. KESSLER:** Yes, I am, Your Honor.

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

11 **MR. KESSLER:** Thank you.

12 Your Honor, just before I start I would move into
13 evidence, as we discussed before the jury came in, Trial
14 Exhibit 2056, to which there is no longer any objection.

15 **THE COURT:** 1056 [sic] received.

16 (Trial Exhibit 2056 received in evidence.)

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

18 (Thereupon, **Mr. Doug Allen** resumed the stand and was
19 examined further on Cross Examination by Mr. Kessler as
20 follows:)

21 **CROSS EXAMINATION RESUMED**

22 **BY MR. KESSLER:**

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

24 **A.** Good morning.

25 **Q.** We just have a little bit more to go together.

1 Mr. Allen, when we broke yesterday we were discussing
2 the Topps license agreements.

3 **MR. KESSLER:** And I believe, Your Honor, we moved
4 into evidence Trial Exhibit 36 and 394.

5 **THE COURT:** 36, yes. 394, yes.

6 **MR. KESSLER:** Very good, Your Honor.

7 May I approach the witness?

8 **THE COURT:** Please.

9 **BY MR. KESSLER:**

10 **Q.** I would like you to take a look, Mr. Allen, at Trial
11 Exhibit 36.

12 **A.** All right.

13 **MR. KESSLER:** If we can display that, please.

14 (Document displayed.)

15 **BY MR. KESSLER:**

16 **Q.** Is this the Topps agreement?

17 **A.** This is a license agreement between The Topps Company and
18 the National Football League Players Association.

19 **Q.** Okay. Were you the lead negotiator for Players Inc or the
20 National Football League Players Association --

21 **A.** Yes.

22 **Q.** -- with respect to the Topps agreements?

23 **A.** Yes, I was.

24 **Q.** And at the time that you negotiated the Topps agreements,
25 did you have an understanding of what its terms meant?

1 **A.** Yes.

2 **Q.** Tell the jury what kind of products Topps makes, in case
3 they don't know.

4 **A.** They make primarily player trading cards, which are --
5 come in a pack and are collectable and have pictures of players
6 and biographical information about their careers on the cards.

7 **Q.** Now, at the time you entered into the Topps agreements,
8 both of them that were entered into during this period, did you
9 have an understanding as to whether or not active player rights
10 were granted in the agreement, retired player rights or both?

11 **A.** Just active player rights.

12 **Q.** There were no retired player rights granted?

13 **A.** That's correct.

14 **Q.** Mr. Allen, let me show you some language in the Topps
15 agreement. First, if we can look at B.

16 It discusses -- I'm sorry. Not B. A. I'm sorry.
17 1(a), "Representations." It says here that the:

18 "NFLPA represents that the NFLPA has been duly
19 appointed and is acting on behalf of the active and retired
20 football players of the National Football League who have
21 entered into a group licensing assignment, either in the form
22 attached hereto as attachment A, or through the assignment
23 contained in paragraph 4(b) of the NFL player contract, and
24 that in such capacity NFLPA has the right to grant rights and
25 licenses described herein."

1 Do you see that?

2 **A.** Yes, I do.

3 **Q.** Now, that language is a little bit different from the
4 language in the EA agreement and some of the other agreements
5 we discussed; is that correct?

6 **A.** Yes, it is.

7 **Q.** Now, my question is: There is a reference to retired
8 football players in this language. What was your understanding
9 at the time of when a retired football player could sign a
10 group licensing assignment in the form attached hereto as
11 attachment A or paragraph 4(b)?

12 **A.** Because attachment A is something only an active player
13 could sign, and obviously paragraph 4(b) of the player contract
14 would be with the club for playing services is something only
15 an active player could sign, this was referring to a player who
16 retired while those rights were still in effect, but had signed
17 them as an active player.

18 **Q.** So this would all be active player GLAs, attachment A and
19 paragraph 4(b) of the NFL player contract?

20 **A.** That's correct.

21 **Q.** And explain to the jury again, because this is a little
22 bit confusing, even to me, how could -- let me ask it this way.
23 Once a player retires, can that player ever sign attachment A
24 or paragraph 4(b) of the NFL player contract?

25 **A.** No. That's only for a player who's actively playing at

1 the time that they sign.

2 **Q.** So how would a retired player ever have signed an active
3 player GLA?

4 **A.** Well, they are for a period of time. And if in the
5 meantime that player retired, those rights would continue. The
6 document itself has a time limit on it, and those rights would
7 continue. But the player would be effectively retired.

8 It might be a player who retires in mid-season. It
9 might be a player who makes the team, and then retires. It
10 might be a player who retires at the end of the season before
11 the playoffs.

12 There's a lot of circumstances where a player could,
13 as an active player, suddenly retire. Sometimes it's an injury
14 that ends his career. Sometimes he just makes the decision not
15 to play anymore.

16 **Q.** What was the typical length of an active player GLA?

17 **A.** Three years.

18 **Q.** Just to be clear: Were any rights granted in the Topps
19 agreement under retired player GLAs?

20 **A.** No.

21 **MR. PARCHER:** Excuse me. Objection, Your Honor.

22 Today he could say --

23 **THE COURT:** Sustained.

24 **BY MR. KESSLER:**

25 **Q.** I'm sorry.

1 **MR. PARCHER:** Way back then is for the jury to
2 determine.

3 **BY MR. KESSLER:**

4 **Q.** At the time of the Topps agreements. Let's go in 2004,
5 2005, 2006.

6 **A.** Okay.

7 **Q.** Did you have an understanding of what the Topps agreements
8 made?

9 **A.** Yes.

10 **Q.** Meant. Sorry.

11 At that time did those agreements in your
12 understanding convey any retired player rights under the
13 retired player GLA?

14 **A.** No, none.

15 **Q.** Let me ask you next to take a look at -- it should be in
16 front of you, Trial Exhibit 2125.

17 **MR. KESSLER:** Don't put it up yet.

18 **BY MR. KESSLER::**

19 **Q.** Do you recognize what this is?

20 **A.** Uhm, yes.

21 **Q.** And please tell the jury, what is this document?

22 **A.** It is a -- an agreement between a player, retired player,
23 Roger Craig, and the National Football League Players
24 Incorporated or Players Inc, with regards to the Topps Company.

25 **Q.** Okay.

1 **MR. KESSLER:** Your Honor, I move into evidence Trial
2 Exhibit 2125.

3 **MR. PARCHER:** No objection.

4 **THE COURT:** Give me the number again. 2125.

5 **MR. KESSLER:** 2125.

6 **THE COURT:** Very well. Received.

7 (Trial Exhibit 2125 received in evidence.)

8 **MR. KESSLER:** And let's, if you can, blow up the top
9 of this.

10 Thank you, Lauren.

11 (Document displayed.)

12 **BY MR. KESSLER:**

13 **Q.** This is to Mr. Roger Craig. And it's "Re: The Topps
14 Company."

15 And it says:

16 "Dear Roger: Thank you for agreeing to
17 participate in the Players Inc player marketing program. The
18 purpose of this letter agreement is to set forth the
19 understanding which has been reached between you, Roger Craig,
20 the National Football League Players Incorporated with regard
21 to the Topps Company."

22 Was Mr. Craig a retired player?

23 **A.** Yes.

24 **Q.** Okay. Let's take a look now, if we can, at the grant of
25 rights. It says:

1 "Grant of rights. Player agrees that Players Inc
2 shall grant company the right, but not the obligation, to
3 produce trading cards bearing player's name, likeness, image
4 and biographical information to insert into its 2004 and 2005
5 football products."

6 Then, it says:

7 "The rights shall be granted on a non-exclusive
8 basis."

9 If the Topps agreement conveyed retired player rights
10 as plaintiffs contend, would there be any reason for Topps to
11 enter into these types of ad hoc agreements for retired
12 players?

13 **MR. PARCHER:** Excuse me, Your Honor. I'm going to
14 object. It's a confusing and misleading question. This
15 document --

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

17 **MR. PARCHER:** This document is a document between the
18 union and the player. This is not a document between the
19 player and -- and The Topps Company. And the question suggests
20 otherwise.

21 **MR. KESSLER:** Your Honor, I've gone through the
22 language of the agreement. And I said it's between the player
23 and NFLPA.

24 **THE COURT:** The jury understands the context. The
25 objection is overruled.

1 Please ask the question again.

2 **MR. KESSLER:** Thank you.

3 **BY MR. KESSLER:**

4 **Q.** Mr. Allen, would there be any reason to enter into a
5 separate ad hoc license agreement with the retired player,
6 granting rights if the rights had already been granted to
7 Topps?

8 **A.** No.

9 **MR. PARCHER:** Objection. Speculation.

10 **THE COURT:** It's an argumentative question, but both
11 sides have made -- asked questions sort of this type, so I'm
12 going to allow it.

13 Overruled.

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

15 **BY MR. KESSLER:**

16 **Q.** Take a look now on compensation. It says:

17 "As consideration for the grant of rights and
18 services, Players Inc shall pay player \$5,000, \$20 per
19 autograph."

20 Was that money given to the retired player?

21 **A.** You mean, to Roger Craig?

22 **Q.** Yes.

23 **A.** Yes. All of it.

24 **Q.** Now, did Topps pay this additional money to get the rights
25 of Roger Craig to Players Inc?

1 **A.** Yes.

2 **Q.** Okay. So Players Inc didn't pay this --

3 **MR. KESSLER:** Withdrawn.

4 **BY MR. KESSLER: :**

5 **Q.** Why would Topps pay additional money for retired players
6 if it already had the rights, as plaintiffs contend?

7 **MR. PARCHER:** Objection.

8 **THE COURT:** That is argumentative.

9 **MR. KESSLER:** Okay.

10 **THE COURT:** Sustained.

11 **BY MR. KESSLER:**

12 **Q.** Did you discuss with Topps in the negotiations paying this
13 additional money for retired player rights?

14 **A.** Yes.

15 **Q.** Okay. And was Topps willing to do so?

16 **A.** For particular players that they chose, yes.

17 **Q.** Was Topps ever willing to take a license to the whole mass
18 group of retired player GLAs?

19 **MR. PARCHER:** Objection. That assumes a set of facts
20 not in evidence, which is that Mr. Allen brought the subject
21 up.

22 **THE COURT:** As phrased, the objection is sustained.

23 **BY MR. KESSLER:**

24 **Q.** Were there discussions about Topps possibly taking the
25 whole mass of rights?

1 **A.** Yes.

2 **Q.** Were they willing to do so in those discussions?

3 **A.** No.

4 **Q.** I'm now going to turn to another subject, Mr. Allen.

5 **MR. KESSLER:** Your Honor, may I approach?

6 **THE COURT:** Go ahead.

7 **BY MR. KESSLER:**

8 **Q.** Mr. Allen, could you please look at the exhibit I have
9 just given you, which is Trial Exhibit 1100?

10 Mr. Allen, do you recognize this agreement?

11 **A.** Yes.

12 **Q.** And what is this agreement?

13 **A.** It is a license agreement between RC2 brands, Inc. and the
14 National Football League Players Incorporated or Players Inc.

15 **MR. KESSLER:** Okay. Your Honor, I move into evidence
16 Trial Exhibit 1109.

17 **MR. PARCHER:** No objection, Your Honor.

18 **THE COURT:** 1109 is received.

19 **MR. HUMMEL:** 1100?

20 **MR. KESSLER:** I'm sorry. 1100. Sorry. Misspoke.

21 **THE COURT:** 1100 is received. Not 1109.

22 (Trial Exhibit 1100 received in evidence.)

23 **BY MR. KESSLER:**

24 **Q.** Now, this agreement, if you look at number 1, contains the
25 same -- does it contain the same language as the EA agreement

1 language that we reviewed, this language here (indicating)?

2 **A.** Let me read it first, please.

3 Yes.

4 **Q.** Now, explain to the jury what type of products were being
5 licensed in this agreement.

6 **A.** Draft pick trading cards and inserted memorabilia.

7 **Q.** Explain to the jury what is a draft pick trading card
8 product?

9 **A.** That's a card of a player who is selected to be on an NFL
10 team out of college. Each team gets to select a college player
11 in turn, and there are rounds of the draft. So each team picks
12 in order. It's determined by how they finish the season, picks
13 the college player it wants. So they go through a first round,
14 second round and third round.

15 So when I said I was the second round pick of the
16 Buffalo Bills in '74, that meant they had been through the
17 first round, came back and got to choose again. So I was the
18 second player they picked, as an example.

19 This is a license for trading cards of those college
20 players while they're draft picks and before they have played
21 their first season.

22 **Q.** Are these commonly referred to as "rookie cards"?

23 **A.** Yes.

24 **Q.** Now, when you have a rookie card product, is it just the
25 rookies that year?

1 **A.** Yes.

2 **Q.** So it wouldn't show rookies from previous years, or would
3 it?

4 **A.** Uhm, no.

5 **Q.** Okay. Now, did you have an understanding, a
6 contemporaneous understanding in this agreement as to whether
7 any retired player rights were granted in this rookie card
8 deal?

9 **A.** Yes, I did.

10 **Q.** Were there any?

11 **A.** No.

12 **Q.** Mr. Allen, you are familiar with rookie card products; is
13 that correct?

14 **A.** Yes.

15 **Q.** Has any rookie card product in history ever used a retired
16 player for any reason?

17 **A.** No, because it would be -- they would be mutually
18 exclusive. By definition, if you're a drafted rookie you
19 haven't played yet. You're not a retired player. You haven't
20 even made the team yet.

21 **Q.** You're familiar with fantasy football products?

22 **A.** Yes.

23 **Q.** Did Players Inc license a number of fantasy football
24 products?

25 **A.** Yes.

1 Q. Okay. Was one of them STATS?

2 A. I believe so, yes.

3 Q. Could you explain to the jury what a fantasy football card
4 product is?

5 A. Well, they weren't card products.

6 Q. I'm sorry. What a fantasy football product is.

7 A. The football fans in a fantasy game choose the players
8 they want to assemble from various teams to be on their fantasy
9 team. So they pick the wide receiver they think will be the
10 best. They pick the quarterback they think will do best.

11 They can come from two different teams, so it really
12 becomes your fantasy team. That's another way for people to
13 enjoy professional football. And it's been a very popular
14 enterprise.

15 And the rights to use the player's name and image in
16 those fantasy games has been licensed by Players Inc, the
17 NFLPA, to various companies that make their software or their
18 fantasy game product available to consumers and to fans.

19 **MR. KESSLER:** Your Honor, and I apologize. We're
20 having trouble finding the court copy of Trial Exhibit 1109,
21 which is the STATS agreement. But I would like to hand up
22 another copy to the witness now if that's all right.

23 **THE COURT:** You can use a copy.

24 **MR. KESSLER:** Thank you, Your Honor.
25

1 **BY MR. KESSLER:**

2 **Q.** Do you recognize what is Trial Exhibit 1109?

3 **A.** Yes.

4 **Q.** What is it?

5 **A.** It's a license agreement between STATS LLC, limited
6 liability corporation, and National Football League Players
7 Incorporated, or Players Inc.

8 **Q.** Is this a fantasy football license as you've just
9 described to the jury?

10 **A.** Yes. It's a license agreement for fantasy football game
11 distributed over the Internet.

12 **MR. KESSLER:** Your Honor, I would move into evidence
13 Trial Exhibit 1109.

14 **MR. PARCHER:** No objection, Your Honor.

15 **THE COURT:** Thank you.

16 Received.

17 (Trial Exhibit 1109 received in evidence.)

18 **BY MR. KESSLER:**

19 **Q.** And, Mr. Allen, I'm now displaying the STATS fantasy
20 football license. Does this also have the same language as
21 appears in the EA agreement?

22 **MR. PARCHER:** I'm sorry. I didn't hear that last
23 question, Your Honor.

24 Do you mind repeating it?

25

1 **BY MR. KESSLER:**

2 **Q.** Does this have the same language as appears in the EA
3 agreement?

4 **A.** Yes, it does.

5 **Q.** Okay. Now, did you have a contemporaneous understanding
6 of the STATS fantasy football license as to whether or not it
7 granted any rights to retired players as opposed to active
8 players?

9 **A.** Yes.

10 **Q.** And what was your contemporaneous understanding?

11 **A.** It granted rights to active players, not retired players.

12 **Q.** Based on your -- well, let me understand. In fantasy
13 football, do the players look at the results of an NFL game
14 every week and see how the statistics change for the players?

15 **A.** If you are participating in a fantasy game, and you had
16 your fantasy team, the way you -- the way you competed against
17 people who had other fantasy teams was how well your players
18 did week-to-week during the season.

19 So, by definition, all of your players have to be
20 active players, because it's a competition through the season.
21 It's another way to enjoy the football season. You assemble
22 your players, and then how they do delivers points to your
23 fantasy team. And they're from all different teams.

24 So if the quarterback does very well that week, you
25 get points. If your running back gets hurt and doesn't play,

1 you lose points. And you're competing with other people who
2 have assembled other players on their fantasy team.

3 But, by definition, all of the players you are using
4 to do that with are active players who are playing during the
5 season, not retired players. It wouldn't do you any good to
6 have a fantasy team with players, say, from my era, because
7 everything they have done has been done.

8 We can't compete. There can't be any uncertainty as
9 to how they will do next week, and there can't be any
10 competition.

11 That's why fantasy only involves active players.

12 **Q.** So based on your knowledge of fantasy football products,
13 do fantasy football products have any use at all for retired
14 players?

15 **A.** No.

16 **Q.** Okay. I would now like to turn to another subject which
17 is the NFL sponsorship agreement.

18 **MR. KESSLER:** Your Honor, if I may approach.

19 **THE COURT:** All right.

20 **BY MR. KESSLER:**

21 **Q.** Mr. Allen, take a look at Exhibit 99 first, and tell me if
22 you recognize what that is.

23 **A.** Yes, I do.

24 **Q.** What is this document?

25 **A.** It's a sponsorship agreement between NFL Properties, which

1 is a subsidiary company of the National Football League, and
2 Players Inc.

3 **MR. KESSLER:** Your Honor, I move into evidence Trial
4 Exhibit 99.

5 **MR. PARCHER:** No objection.

6 **THE COURT:** Thank you.

7 Received.

8 (Trial Exhibit 99 received in evidence.)

9 **MR. KESSLER:** If we could display that, please.

10 (Document displayed.)

11 **BY MR. KESSLER:**

12 **Q.** Now, first, let's make clear who this agreement is
13 between. This is an agreement between NFL Properties first; is
14 that correct?

15 **A.** Yes.

16 **Q.** And NFL Properties is a licensing company of the National
17 Football League; is that right?

18 **A.** It -- yes. It represents the teams, the ownership of the
19 teams in the league.

20 **Q.** So if I could divide the world up, that represents the
21 owners, correct?

22 **A.** Correct.

23 **Q.** You represent the players, correct?

24 **A.** That's right. That's right.

25 **Q.** And the other party to this agreement was Players Inc,

1 correct?

2 **A.** Uhm, that's correct.

3 **Q.** Let's take a look at the first page of this document, if
4 we can.

5 And in the very first page under "sponsorship terms,"
6 it says:

7 "In exchange for the annual sponsorship payment
8 as set forth below, NFL Properties shall acquire group player
9 licensing rights as defined in the CBA and the exclusive use of
10 Players Inc's name and logo, for all corporate
11 sponsorships/endorsements, including official designations
12 using the Players Inc name and logo, and the agreement of
13 Players Inc not to grant any Players Inc or NFL players
14 corporate sponsorships/endorsements, including official
15 designations using either such terms."

16 Then it says:

17 "For the 2000, 2001, 2002 and 2003 NFL seasons."

18 This agreement was subsequently extended; is that
19 correct?

20 **A.** That's correct.

21 **Q.** So it covered the period going through the time you were
22 there in 2006?

23 **A.** That's right.

24 **Q.** Now, the group player licensing rights say:

25 "As are defined in the CBA."

1 Do you see that, Mr. Allen?

2 **A.** Yes.

3 **Q.** What is the CBA?

4 **A.** The CBA is the collective bargaining agreement, which is
5 the agreement between the union, the NFL Players Association
6 and National Football League that governs all of the wages,
7 hours and working conditions and terms of employment for NFL
8 players.

9 **Q.** Okay. The group player licensing rights defined in the
10 CBA, is that defining rights for active players, retired
11 players, or both?

12 **A.** Just active players.

13 **Q.** Okay. Is that a reference to 4(b) of the NFL player
14 contract?

15 **A.** Yes.

16 **Q.** So did the sponsorship agreement grant any retired player
17 rights to the NFL Properties?

18 **A.** None.

19 **Q.** What type of player rights did it grant?

20 **A.** Active player rights.

21 **Q.** Now, Mr. Allen, let me direct your attention also to page
22 7 of this document, number 14. It has on the bottom --

23 **MR. KESSLER:** It's the next page, please. Thank you.

24 Start at 14.

25 (Document displayed.)

1 **BY MR. KESSLER::**

2 **Q.** It says:

3 "During each year of the agreement, on behalf
4 of NFL sponsors, Players Inc will pay at least 25 percent of
5 the annual sponsorship payment, the active usage credit
6 directly to active NFL players."

7 Was there any agreement to pay any money to retired
8 NFL players under this agreement?

9 **A.** No.

10 **Q.** Now, Mr. Allen, with respect to the fantasy football
11 license we discussed, the draft rookie contract, rookie card
12 contract we discussed, the NFL sponsorship money we discussed,
13 did that all go into the GLR pool?

14 **A.** Yes.

15 **Q.** Okay. And, again, to remind the jury, that group
16 licensing revenue pool was that active player money or retired
17 player money?

18 **A.** All of it was active player money.

19 **Q.** Okay. Now, I'd like to take a look at a document that
20 plaintiffs' counsel showed you, which is Exhibit 12. It's
21 already in evidence.

22 (Document displayed.)

23 **MR. KESSLER:** We can blow this up and remind the jury
24 about this document.

25

1 **BY MR. KESSLER:**

2 **Q.** You recall plaintiffs' counsel asked you about this
3 meeting with NFLPA contract advisors, which was about the NFL
4 sponsorship agreement and its effect on club sponsorships and
5 agent obligations, as we just discussed.

6 First of all, the NFLPA contract advisors, could you
7 explain to the jury who are the NFLPA contract advisors?

8 **A.** NFLPA contract advisors are agents who represent the
9 players in negotiating their player contract with the club. So
10 if I'm hiring someone to be a defensive end, that player's
11 agent would negotiate with someone from the club on the terms
12 of that contract, how much that player would get paid and how
13 long the contract would be for.

14 And the union, the NFL Players Association, regulates
15 those agents. They are essentially extensions of the union.
16 And they're called "NFLPA contract advisors."

17 But they represent the player in their negotiations
18 with the club to be an active player.

19 **Q.** Okay. So, first of all, there may have been some
20 confusion about this. Do NFLPA contract advisors represent
21 licensees?

22 **A.** No. They represent players.

23 **Q.** Okay. And do they represent active players?

24 **A.** The reason they are at that seminar is because they are
25 certified by the union to represent active players in

1 negotiations with the NFL teams.

2 **Q.** Is this a required seminar that active player agents have
3 to attend?

4 **A.** It is.

5 **Q.** And, again, so the jury can have some context in case
6 they've seen it, is this somebody like Jerry Maguire,
7 essentially?

8 **A.** That's a fictionalized portrayal, but, yes.

9 **Q.** Now, when you were talking to these active player agents
10 about the NFL sponsorship agreement, why were you talking to
11 them? What was the purpose of this meeting?

12 **A.** It was to show them how we were describing this
13 sponsorship agreement and its effect on the NFL, the teams and
14 Players Inc with respect to how players would be utilized in
15 sponsorships in -- in the programs of sponsors of the NFL,
16 companies that had paid to be sponsors of the NFL.

17 And, for example, to make sure they understood the
18 protocols that would govern that 25 percent that Players Inc
19 was required to spend on player services as part of this
20 agreement.

21 **Q.** Take a look at page -- it's 667, page 7 of the document.
22 It's 662 on the bottom. If we could look at category A.

23 It says:

24 "The use of NFL players that is free for
25 sponsors."

1 And then it says:

2 "Premiums: There will be no charge for sponsors
3 for use of active NFL players depicted equally in prominence."

4 Do you see that?

5 Okay. Did this have --

6 **A.** I'm not finding it. I'm looking at two places at once.
7 I'm sorry.

8 **Q.** Category A. Do you see the reference to the "use of
9 active NFL players"?

10 **A.** I do.

11 **Q.** Was this entire meeting and discussion about active NFL
12 players, retired players, or both?

13 **A.** It was about active players.

14 **MR. PARCHER:** I'm going to object.

15 Could you repeat the question, please?

16 **BY MR. KESSLER:**

17 **Q.** What type of players was this meeting about?

18 **A.** Active players.

19 **Q.** Thank you.

20 I'm now going to turn -- oh, one question. Despite
21 the fact that the agreement was about granting active player
22 rights to the NFL sponsorship agreement, were you able
23 sometimes to find some sponsorship payments for retired
24 players?

25 **A.** Yes.

1 Q. Explain to the jury how that worked.

2 A. Uhm, there were, uhm, circumstances where a particular
3 sponsor wanted to use -- and we encouraged them to use retired
4 players.

5 If they were an NFL sponsor they -- the league worked
6 out with us a circumstance where the money that was paid by the
7 sponsor through Players Inc to the retired player would count
8 against this usage credit. That helped the sponsor, it helped
9 the league, and it helped Players Inc. And it provided an
10 opportunity for a retired player to do something and be
11 compensated for it.

12 So on an ad hoc basis we worked that out.

13 Q. I would now like to turn to my final subject of the
14 questions that I have for you, Mr. Allen.

15 MR. KESSLER: If I may approach, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. KESSLER:

18 Q. The final subject I'm going to ask you about, Mr. Allen,
19 is this issue of so-called scrambling of images by EA.

20 First of all, just to remind the jury of your
21 testimony yesterday --

22 MR. PARCHER: If Your Honor pleases, I would
23 appreciate if Mr. Kessler would ask a question, and we would
24 get an answer.

25 THE COURT: I agree with that, but both sides need to

1 do this. No speeches.

2 **MR. KESSLER:** Okay.

3 **BY MR. KESSLER:**

4 **Q.** Did you have a contemporaneous understanding of what the
5 EA grant -- what the grant of rights were to EA under its
6 license agreements?

7 **MR. PARCHER:** Objection. Asked and answered already.

8 **MR. KESSLER:** Your Honor, what I'm trying to do --

9 **THE COURT:** It's preliminary to a line of questions.

10 Overruled.

11 Go ahead.

12 **MR. KESSLER:** Thank you.

13 **THE WITNESS:** Could you repeat the question?

14 **BY MR. KESSLER:**

15 **Q.** Yes. Did you have a contemporaneous understanding of what
16 player rights were granted to EA in its license agreements?

17 **A.** Yes.

18 **Q.** And was it -- what type of player rights were granted?

19 **A.** Active player rights.

20 **Q.** Were any retired player rights granted?

21 **A.** No.

22 **Q.** Now, were there times in history when EA negotiated to get
23 some retired player rights?

24 **A.** Certainly.

25 **Q.** Okay. I would like you to take a look at Trial Exhibit

1 2062. And I'll ask you if you recognize what this document is.
2 Make sure you're looking at 2062.

3 No, you're looking at the wrong one, Mr. Allen. It
4 should be labeled on the folder.

5 **A.** Okay. Yes.

6 **Q.** Do you recognize what Trial Exhibit 2062 is?

7 **MR. PARCHER:** Just a second, Mr. Kessler.

8 **MR. KESSLER:** Let's wait for Mr. Parcher. Yes.

9 **THE WITNESS:** I do.

10 **BY MR. KESSLER:**

11 **Q.** And what is Trial Exhibit 2062?

12 **A.** It's a license agreement between Electronic Arts
13 Incorporated and the National Football League Players
14 Incorporated or Players Inc.

15 **MR. KESSLER:** Your Honor, I move into evidence 2062.

16 **THE COURT:** 2062. Any objection?

17 Hearing none, received.

18 (Trial Exhibit 2062 received in evidence.)

19 **BY MR. KESSLER:**

20 **Q.** Now --

21 **MR. PARCHER:** Your Honor, just give me a moment. I
22 didn't mean not to respond. I was looking at the document.

23 **THE COURT:** Let's take it off the screen for a
24 moment.

25 **MR. PARCHER:** Just a second.

1 **THE COURT:** Go ahead. Take your time.

2 **MR. PARCHER:** I have no objection.

3 **THE COURT:** Thank you. 2062 received.

4 **BY MR. KESSLER:**

5 **Q.** Take a look at the top of this exhibit. It says:

6 "This is an agreement made and entered into this
7 20th day of January, 2000, by and between Electronic Arts."

8 And then, it's with the National Football League
9 Players Incorporated.

10 And this agreement was effective as of March 1, 1998?
11 Do you see that, Mr. Allen?

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

13 **Q.** By the way, was that a practice that sometimes happened
14 where you would enter into an agreement in one year, 2000, and
15 you would make it retroactively effective to an earlier time?

16 **A.** Yes. We had a continuing relationship with some
17 companies, and it would take a while sometimes to finish the
18 negotiations and sign the agreement. But it would be
19 retroactive so that all of the periods of time would be covered
20 by it.

21 **Q.** Okay. Now, this older agreement from this period had a
22 grant of license, if you look, which had a specific list
23 attached.

24 It says:

25 "Upon the terms and conditions hereinafter set

1 forth above Players Inc hereby grants to licensee and licensee
2 accepts the non-exclusive right, license and privilege of
3 utilizing the trademarks and names of Players Inc."

4 And then, it says:

5 "The identity of the NFL players listed in
6 attachment B."

7 Do you see that?

8 **A.** I do.

9 **Q.** An older period of time, was it sometimes typical to just
10 list the players that were going to be licensed?

11 **A.** Yes.

12 **Q.** Now, did there come a time when EA wanted to license
13 specific retired players with respect to this period of time?

14 **MR. PARCHER:** Objection. Speculation.

15 **THE COURT:** Well, you can answer with respect to
16 whether they asked to do so. Whether they wanted to do so is
17 an inference.

18 With that caveat, go ahead and answer.

19 **BY MR. KESSLER:**

20 **Q.** Going back to this period of time in 2002, 2001, 2002,
21 going in that period right now, did you have any discussions
22 with EA as to whether it wanted to use any retired players?

23 **A.** Yes.

24 **Q.** What do you recall about those discussions?

25 **A.** Well, we were encouraging them to use retired players.

1 And they ultimately agreed to use certain players that they
2 selected as players that they thought were appropriate to be in
3 their game.

4 **Q.** Were they -- did you try to encourage them to use more
5 retired players?

6 **A.** Yes.

7 **Q.** Okay. Were they willing to use more?

8 **A.** No.

9 **Q.** What did EA say they were willing to do?

10 **A.** They were willing to pay a certain amount of money to --
11 to Players Inc and select a certain limited number of players
12 in return for that money.

13 **Q.** Okay. Take a look now at Trial Exhibit 24, already in
14 evidence. It should be in front of you. It's another folder.

15 **MR. KESSLER:** If we could blow up, Lauren, the whole
16 beginning of that, through "the payments."

17 (Document displayed.)

18 **BY MR. KESSLER:**

19 **Q.** Is this an addendum to the license agreement that we just
20 have been looking at, the 2000 agreement that was effective in
21 1998?

22 **A.** Yes.

23 **Q.** Okay. And it says that here:

24 "The following paragraphs of the license
25 agreement between Electronic Arts and Players Inc effective

1 March 1, 1998 shall be amended and added to only as follows."

2 And then, it says:

3 "Identity, as defined in paragraph 2, also shall
4 apply to retired NFL players listed in attachment C hereto."

5 Now, what is this referring to?

6 **A.** This is a grant of license for certain retired players who
7 were listed in a document that's referred to in this first
8 page.

9 **MR. KESSLER:** If we could look, Lauren, at the next
10 paragraph, "Royalty Payment."

11 (Document displayed.)

12 **BY MR. KESSLER:**

13 **Q.** It says:

14 "For the additional rights granted by this
15 addendum, separate from and in addition to the other guarantees
16 and payments specified in such paragraph 6, licensee shall pay
17 to Players Inc the following amounts on the dates listed."

18 And then, it has:

19 "150,000, 150, 150,000."

20 Do you see that, sir?

21 **A.** I do.

22 **Q.** Now, did you have a contemporaneous understanding as to
23 why was EA paying additional money for these retired player
24 rights?

25 **A.** Because the -- the agreement referred to didn't provide

1 retired player rights. In order to get them there had to be
2 another agreement which dealt with them.

3 **Q.** Take a look now at the first page of the attachment.

4 Is this then a list of the retired players who were
5 granted under this addendum?

6 **A.** Yes, it is.

7 **Q.** Okay. Finally, Mr. Allen, I would like you to take a look
8 at Trial Exhibit 1320. It should already be in evidence.
9 Maybe I didn't put that in front of you.

10 It should be in your stack.

11 **A.** Yes, it is.

12 **Q.** Thank you.

13 Now, this was a document you were shown during your
14 examination by plaintiffs' counsel. Let's just remind the jury
15 what this is.

16 This was the May 31st, 2001 letter to Jeremy
17 Strausser of Electronic Arts. And if we could show who it's
18 from on the bottom. This was from LaShun Lawson.

19 Remind the jury who is LaShun Lawson?

20 **A.** She was assistant vice president for multimedia for
21 Players Inc.

22 **Q.** And did she ultimately report to you at this time in May
23 of 2001?

24 **A.** Well, ultimately. Not as a direct report, but, yes.

25 **Q.** As an indirect report?

1 **A.** Yes.

2 **Q.** Okay. Let me focus your attention now on the language.

3 It says:

4 "The following is a detailed explanation of the
5 approved use of retired players for the upcoming video games
6 per our discussion. The addendum that was signed last July was
7 a three year agreement that granted Electronic Arts the right
8 to use the names [sic] and identities of the players listed in
9 attachments A and B (both documents were sent with the
10 addendum)."

11 Now, that reference to attachments A and B, was that
12 a reference to Exhibit 24, Trial Exhibit 24, the list of
13 players, retired players we looked at?

14 **A.** Yes.

15 **Q.** It says:

16 "For all retired players that are not listed in
17 either attachments A or B, their identity must be altered so
18 that it cannot be recognized."

19 Now, did you have a contemporaneous understanding
20 when this was going on why EA had to alter the identity of
21 retired players who were not listed in the addendum?

22 **MR. PARCHER:** Excuse me, Your Honor. I just want a
23 clarification of the question: Do you have an understanding of
24 why EA needed it?

25 I assume it was his opinion, is what he thinks was on

1 his mind.

2 **THE COURT:** The question was in terms of
3 contemporaneous understanding back then.

4 **MR. KESSLER:** Yes.

5 **MR. PARCHER:** His understanding -- his understanding
6 of his thinking back then.

7 **MR. KESSLER:** Players Inc's thinking.

8 **BY MR. KESSLER:**

9 **Q.** Did you have a contemporaneous understanding of what
10 Players Inc was telling EA this?

11 **MR. PARCHER:** That wasn't the question. It was why
12 EA --

13 **THE COURT:** Well, that's true.

14 **MR. KESSLER:** Okay.

15 **THE COURT:** Why don't you rephrase the question in
16 terms of why it was that the defendant was making this
17 statement back at the time.

18 **BY MR. KESSLER:**

19 **Q.** Did you have a contemporaneous understanding of why
20 Players Inc was making this statement to EA at that time?

21 **A.** Yes.

22 **Q.** Why was Players Inc doing that?

23 **A.** It was pointing out that there were only certain retired
24 players who were licensed by Players Inc for utilization in the
25 EA game, and that the identities -- we weren't providing them

1 with permission to use the identities of retired players that
2 weren't included in that grant of rights.

3 **Q.** In the last sentence it says:

4 "Hence, any and all players not listed in
5 attachments A or B cannot be represented in Madden 2002 with
6 the number that the player actually wore."

7 Was it Players Inc's position at that time that
8 unless you pay for the retired player you shouldn't use their
9 number?

10 **A.** That's correct.

11 **Q.** Now, would Players Inc -- did you have an understanding at
12 that time, if EA had been willing to pay for more retired
13 players, would Players Inc have granted those rights?

14 **MR. PARCHER:** Objection.

15 **THE WITNESS:** Sure.

16 **THE COURT:** Wait.

17 What's the objection?

18 **MR. PARCHER:** He's just speculating as to what EA
19 would or would not -- EA would or wouldn't have done.

20 I don't want to make a speaking objection here. I
21 have to save it for my time. But -- okay. I'm going to let it
22 go at that, because I'll be speaking if I --

23 **THE COURT:** Well, it is, and I'm going to give a word
24 of caution.

25 This is a speculative answer: If this, then would

1 you have done that?

2 You can see how that calls for a degree of
3 speculation.

4 Ordinarily, I would sustain the objection. The
5 problem is that both sides have injected some degree of
6 speculation about what would have happened if this had
7 happened. So I'm going to allow you to hear it, but with that
8 word of caution that there's a degree of speculation. And here
9 we are in litigation. So you should take into account the
10 caveat.

11 Go ahead.

12 **BY MR. KESSLER:**

13 **Q.** Mr. Allen, if EA had asked you for additional retired
14 player rights at that time, would Players Inc have granted
15 those rights?

16 **A.** Sure.

17 **Q.** Did you make it clear at that time to EA that you would
18 try to give them any retired rights they were willing to pay
19 for?

20 **A.** Yes.

21 **Q.** Now, looking at the bottom paragraph, it says:

22 "Along those same lines, the only active
23 players that can be included in the licensed product are those
24 who have given their licensing rights to Players Inc.
25 Substituting a player's name with their Jersey number is not

1 acceptable. If a player has not given his rights to Players
2 Inc, his identity as defined above cannot be used within the
3 game."

4 Now, was it correct that at this time there were a
5 few active players who had not given you rights?

6 **A.** There was one that I can think of.

7 **Q.** Who was the one you can think of?

8 **A.** The linebacker for the Washington Redskins named LaVar
9 Arrington.

10 **Q.** Okay. And so in this -- it was Players Inc's position at
11 the time, according -- do you remember, was it Players Inc's
12 position at the time, to EA, that they'd have to scramble
13 Mr. Arrington because they -- you didn't have the rights there
14 either to give?

15 **A.** Yes. They couldn't -- they couldn't show LaVar Arrington,
16 as I recall, on the -- in the game.

17 **Q.** So how would you summarize what Players Inc's position was
18 back at this time about why images should be altered or
19 scrambled?

20 **A.** So that they wouldn't be utilizing the identities of
21 players that they didn't have the rights to use. In this case
22 the -- they did have the rights to use players that we had
23 provided them the right to use, but for those that they didn't
24 have those rights they shouldn't use their identities.

25 **Q.** Now, Mr. Allen, when money was paid under the addendum,

1 the \$150,000 a year for the retired player rights, what did you
2 do with that money?

3 **A.** We paid it out to that list of players who were utilized
4 in the game.

5 **Q.** So the retired players got all that money?

6 **A.** All of it.

7 **Q.** None of it -- was any of it given to the active players?

8 **A.** No.

9 **Q.** Was any of it put into the GLR pool?

10 **A.** No.

11 **Q.** Now, Mr. Allen, since this time in 2002 -- I think this
12 letter was -- 2001, May of 2001, has Players Inc had any
13 control over whether or not EA would choose to put scrambled
14 images of players in their classic games?

15 **A.** I'm not sure I understand the question.

16 **Q.** Okay. There's been claims in this case that in 2002, '3,
17 '4, '5, '6, that there are classic games in the EA video games
18 in which the players -- there's no name, there's no image.
19 It's scrambled. Were you aware of that?

20 **A.** Yes.

21 **Q.** Are you familiar with those game products, generally?

22 **A.** Generally.

23 **Q.** Okay. Who decides whether to include those classic games
24 with those scrambled images? Is it Players Inc or EA?

25 **A.** EA.

1 **Q.** Does Players Inc, in your -- did Players Inc, in the
2 period 2002 to 2006, have any ability to stop EA from having
3 games with scrambled images and no names and no likenesses?

4 **A.** No.

5 **MR. PARCHER:** Objection.

6 **THE COURT:** Wait a minute.

7 Well, what's the objection?

8 **MR. PARCHER:** It calls for a legal conclusion.

9 **MR. KESSLER:** Your Honor has actually already
10 instructed the jury that there's no claim about that. I'm just
11 confirming with the witness that it was their understanding
12 they had no legal right with respect to these --

13 **THE COURT:** You can ask him if he thought they had
14 any legal right, but the way the question was phrased was: Did
15 they have any ability?

16 **BY MR. KESSLER:**

17 **Q.** Was it your understanding at the time, did you have any
18 legal right to stop EA from including classic games that had --
19 that had players, but no names, no pictures, no images, no
20 number?

21 **THE COURT:** No. Why don't you instead -- you're
22 asking him for a legal conclusion.

23 Why don't you ask him whether or not he ever
24 considered any such thing?

25 **MR. KESSLER:** Okay.

1 **THE COURT:** I think that would be a better question.

2 **BY MR. KESSLER:**

3 **Q.** Did you ever consider whether you had any such legal
4 claim?

5 **A.** Did we ever consider that? Yes.

6 **Q.** And did you conclude that you had any legal claim to
7 assert?

8 **A.** We concluded that we did not.

9 **MR. KESSLER:** Thank you, Mr. Allen.

10 Your Honor, I have no further questions for the
11 witness at this time.

12 **THE COURT:** One thing you said wasn't clear on this.
13 Can you put that document that we just had up on the
14 screen?

15 (Document displayed.)

16 This thing you referred to as the "addendum," what is
17 this exhibit number?

18 **MR. KESSLER:** This one, Your Honor, is 1320. 1320.

19 **THE COURT:** All right. You referred to these
20 attachments A and B, and I got confused on which -- were
21 retired players in any way involved in either A or B?

22 **THE WITNESS:** Yes.

23 **THE COURT:** And how were they involved, and how many
24 were involved?

25 **THE WITNESS:** I think that was -- I believe that that

1 was listing retired players who were the subject of the
2 addendum.

3 **THE COURT:** Are A and B in evidence?

4 **MR. KESSLER:** No, Your Honor. These are attachments
5 not to the agreement. Your Honor may be confusing this with
6 attachment A to the license agreements.

7 **THE COURT:** Well, how is the jury supposed to figure
8 out, is it five retired players, 5,000 retired players?

9 **MR. KESSLER:** Your Honor, we put in Trial Exhibit 24.
10 I'll ask the witness again, lists the players. That's what I
11 think --

12 **THE COURT:** 24?

13 **MR. KESSLER:** Yeah.

14 Could we put up 24, and I'll ask the witness?

15 (Document displayed.)

16 **BY MR. KESSLER:**

17 **Q.** Mr. Allen, let's show each of the pages, if we can.

18 **A.** Wait a minute.

19 **MR. KESSLER:** This is the first page of the list.
20 The whole list, Lauren. That's fine.

21 And then, show the next page. And then, the next
22 page, please. And then the next page.

23 (Document pages displayed.)

24 Thank you.

25

1 **BY MR. KESSLER:**

2 **Q.** Mr. Allen, is this the list of the retired players you
3 understood were granted in the addendum?

4 **A.** Yes.

5 **Q.** Is this the list of retired players that was referred to
6 as attachments A and B in the Trial Exhibit 1320 as you
7 understand it?

8 **A.** Yes.

9 **THE COURT:** Have you counted up the number on there?

10 **MR. KESSLER:** I have not counted, Your Honor.

11 It's --

12 **THE COURT:** Anybody counted it? It looks like about
13 a hundred players.

14 **MR. KESSLER:** It's a little more than a hundred, Your
15 Honor.

16 **THE COURT:** Okay. And I have one other question for
17 the witness.

18 Was -- these hundred retired players on that
19 particular addendum, was that one of these so-called "ad hoc"
20 deals?

21 **THE WITNESS:** Yes.

22 **BY MR. KESSLER:**

23 **Q.** And were those players paid all that money?

24 **A.** Yes.

25 **Q.** And I should also ask you, Mr. Allen, looking at this

1 list, did many of these players not sign retired player GLAs?

2 **A.** Yes.

3 **THE COURT:** All right. I think I understand it now.

4 Okay.

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

6 **THE COURT:** Mr. Parcher, your turn.

7 **MR. PARCHER:** Thank you.

8 I would like to put that exhibit back up, if it's not
9 inconvenient.

10 (Document displayed.)

11 **REDIRECT EXAMINATION**

12 **BY MR. PARCHER:**

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

14 **A.** Good morning.

15 **Q.** Let me understand something now. EA has a game called the
16 Madden game, correct?

17 **A.** Yes.

18 **Q.** The Madden game has approximately 147 vintage teams on it,
19 correct?

20 **A.** I don't know the exact number, but --

21 **Q.** Well, more or less. It has well over a hundred vintage
22 teams.

23 **THE COURT:** He didn't ask for the exact number. He
24 asked for an approximate number.

25 Is that about right?

1 **THE WITNESS:** That sounds right to me.

2 **BY MR. PARCHER:**

3 **Q.** At some point in time, EA is in the process of using the
4 names and likenesses of the players, of the actual players,
5 retired players, who are on those vintage teams, and LaShun
6 intervenes, correct?

7 **A.** Uhm --

8 **Q.** Yes or no, sir?

9 **A.** One more time.

10 **THE COURT:** Why don't you break it into two parts?

11 **BY MR. PARCHER:**

12 **Q.** At some point in time, Electronic Arts is apparently in
13 the process of beginning to use or wanting to use the names and
14 likenesses of the retired players who are members of the
15 vintage teams, correct?

16 **A.** Yes.

17 **Q.** Many of those people signed group licensing retired
18 agreements, correct?

19 **A.** Some, yes.

20 **Q.** Quite a few, yes?

21 **A.** I don't remember what the percentage was.

22 **Q.** No idea at all?

23 **A.** No.

24 **Q.** Right. No recollection today about what your recollection
25 was then as it's been in the consistent case with Mr. Kessler,

1 where you remember today what was on your mind then?

2 **MR. KESSLER:** Objection, Your Honor, to the form --

3 **THE COURT:** It's a fair question. Overruled.

4 Please answer.

5 **THE WITNESS:** Uhm, I -- my answers to Mr. Kessler

6 were based on my understanding at the time. I just meant

7 that -- certainly there were some that were and some that

8 weren't. I just don't remember, and I don't think I ever

9 testified to a precise number.

10 **BY MR. PARCHER:**

11 **Q.** But this particular one you don't remember, correct? As

12 you sit here today, you don't remember?

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

14 **MR. KESSLER:** Objection.

15 **THE WITNESS:** "This particular one" I don't remember

16 what? I didn't understand the question.

17 **THE COURT:** He's asking this: Of the 147 teams -- is

18 that what you said, roughly?

19 **MR. PARCHER:** Yeah.

20 **THE COURT:** Roughly 147 teams with all retired

21 players, can you give us any rough estimate of how many of

22 those people would have had retired GLAs?

23 **MR. PARCHER:** Right.

24 **THE WITNESS:** No. I would be speculating. Some.

25

1 **BY MR. PARCHER:**

2 **Q.** Well, you had approximately 2,000 some-odd, at that point
3 in time, GLA retirees, right? Approximately?

4 **A.** That's right.

5 **Q.** Right. And considering that there are 147 vintage teams
6 with approximately how many players per team?

7 **A.** Be about 50.

8 **Q.** So 50 players times 147, whatever the number is. I'm
9 not the best mathematician in the world.

10 **THE COURT:** Would be about 7,000.

11 **BY MR. PARCHER:**

12 **Q.** About 7,000 players, would there be a pretty reasonable
13 chance that quite a few of the 2,000 some odd were amongst
14 those 7,000 players?

15 **A.** Some, but I don't know how many.

16 **Q.** Okay. Fine.

17 Now, and you have -- "you," meaning PI and NFLPA,
18 whichever, right -- you have an option at that point in time as
19 to how could conduct yourself given this situation where there
20 may be a usage of the names and likenesses of the retired
21 players who signed GLAs in this Madden game, correct? You have
22 options as to what to do?

23 **A.** I guess. I'm not sure what you mean by "options."

24 **Q.** Well, you could -- you could -- you could take a
25 particular course of conduct, like LaShun's letter, or you

1 might have had other things that you might have considered
2 doing?

3 **THE COURT:** You've got to be more specific with that.
4 Other things. Why don't you suggest other things.

5 **BY MR. PARCHER:**

6 **Q.** Yes. You could have said to Electronic Arts, have you
7 not:

8 "I'm delighted that you want to use the names
9 and likenesses of my retired players, finally. I'll make it
10 part of your license for the \$25 million you're giving me."

11 You could have said that, right?

12 **MR. KESSLER:** Objection, Your Honor. This is at a
13 time that had nothing to do with that \$25 million, seven years
14 later.

15 **BY MR. PARCHER:**

16 **Q.** For whatever amount of money they were paying, you could
17 have said to them:

18 "Rather than scrambling the identities of my
19 players, since I'm trying every way I can to get them some
20 royalties, I'll make them part of the license."

21 You could have said that, couldn't you?

22 **A.** I don't --

23 **Q.** Yes or no?

24 **A.** No.

25 **Q.** You couldn't have said that to them?

1 **A.** No. There wasn't -- there wouldn't have been any money to
2 pay for that.

3 **Q.** Excuse me. Excuse me.

4 If the retired -- if Electronic Arts wanted to use
5 the names and likenesses of retired players in their vintage
6 games, and you had not stopped them, then you would have had to
7 taken the share of your 63 percent and given some of that
8 63 percent to the retired players, wouldn't you?

9 **A.** No.

10 **Q.** And the reason for that is that's not how you interpret
11 the GLA, right? The way you interpret the GLA is it would have
12 to be all 2,062 players, or else no retired player is entitled
13 to group licensing money, correct?

14 **A.** Could you repeat that question?

15 **Q.** Yes.

16 **MR. PARCHER:** Please read it back.

17 (The question was read by the reporter as follows:)

18 **"QUESTION:** And the reason for that is that's
19 not how you interpret the GLA, right? The
20 way you interpret the GLA is it would have to
21 be all 2,062 players, or else no retired
22 player is entitled to group licensing money,
23 correct?"

24 **BY MR. PARCHER:**

25 **Q.** Yes or no, sir?

1 **A.** I don't think I can answer that question "yes" or "no."

2 **Q.** Okay.

3 **THE COURT:** Before you leave this subject, I have a
4 related question. And it may be one that's on the mind of the
5 jury. And since you asked so many questions that are
6 argumentative, I -- let me try a less argumentative question.

7 I think this is a fair question to ask you. And it
8 goes like this: Rather than telling EA that they had to
9 scramble the identities, did you consider offering EA a license
10 to at least those retired players for whom you had the GLA?

11 **THE WITNESS:** Yes.

12 **THE COURT:** And did you do that?

13 **THE WITNESS:** Yes.

14 **THE COURT:** Is that in writing?

15 **THE WITNESS:** It was in the discussions about what
16 the arrangement was going to be.

17 **THE COURT:** Was it in writing?

18 **THE WITNESS:** I don't believe so.

19 **THE COURT:** Is there any document anywhere that backs
20 up what you just said?

21 **THE WITNESS:** I -- without searching the files, I
22 don't know. But I remember having those discussions.

23 **THE COURT:** All right. Fair enough.

24 **MR. PARCHER:** I would add an addendum to Your Honor's
25 question, if I --

1 **THE COURT:** Fine. Go ahead.

2 **BY MR. PARCHER:**

3 **Q.** If I may. Did you consider for the license fee that was
4 already being paid, rather than scrambling the identities of
5 the retired players, just adding them to your EA license? No
6 extra money charged to EA. Did you consider that? Yes or no?

7 **A.** Uhm, sure.

8 **Q.** And you rejected that as an option?

9 **A.** Because I didn't think I had the authority to spend the
10 active player money on retired players under the agreements we
11 had and the rules.

12 **Q.** Excuse me. You're telling the Court and the jury that you
13 used your best efforts on behalf of these retired players,
14 correct?

15 **A.** Yes.

16 **Q.** And you're telling the Court and the jury that you didn't
17 feel you had any conflict between your best efforts for retired
18 players and protecting the active players, correct? Yes or no?
19 You said that, didn't you?

20 **A.** Yes.

21 **Q.** Right. And you're telling this Court and this jury that
22 you, meaning the defendants, have 63 -- at least 63 percent of
23 the money, at least 63 percent of the money that you defendants
24 retained after you give the active players 37 percent, aren't
25 you?

1 **A.** Of the active player money.

2 **Q.** You're giving them 37 percent, and you're keeping
3 63 percent amongst yourselves, correct?

4 **A.** The union --

5 **Q.** Please, could you just say "yes" or "no"?

6 **A.** I'm explaining.

7 **Q.** I don't think it requires an explanation, with all
8 respect, sir.

9 **A.** Some of the money went to the union, some of the money
10 went to the marketing company.

11 **Q.** But you still had quite a bit of a percentage from the
12 63 percent that you retained, didn't you?

13 **A.** I don't know what -- I have explained that 40 percent of
14 the -- of the active player money went to the union, and
15 37 percent went to the players, and 23 percent was retained by
16 the company.

17 **Q.** Thank you, sir.

18 Now, of that 63 percent did it ever occur to you that
19 if you were doing your best for these retired players, that you
20 could have allowed Electronic Arts to put out their video game
21 without scrambling their names and paid them their share of the
22 money? Not from the 37 percent of the actives, but from the
23 63 percent that you retained. Yes or no?

24 **A.** The -- the percentages were a function of an agreement
25 that was approved by the board of player reps. I didn't have

1 the authority to pick and choose how I would apply those
2 percentages.

3 **Q.** I'm not talking about applying percentages. You had the
4 ability. When a dollar came in from Electronic Arts, you had
5 the ability to take some of that money, if their names weren't
6 scrambled, and give it to these retired players, didn't you?

7 **A.** I didn't have that ability.

8 **Q.** You didn't? What precluded you from doing that?

9 **A.** The board of player reps that had -- the agreement had
10 described the terms, the valuation had described the
11 percentages, and the board of player reps had authorized
12 certain things to happen. And I was bound to abide by that
13 authorization.

14 **Q.** Did you ever say to yourself:

15 "These poor, retired players, since 19--" --

16 **MR. KESSLER:** Your Honor, this is argumentative.
17 It's not any questions anymore on facts.

18 **THE COURT:** Sustained. Sustained.

19 **BY MR. PARCHER:**

20 **Q.** Did you ever say to yourself:

21 "These retired players have never received one
22 single penny."

23 **MR. KESSLER:** It's asked and answered and
24 argumentative, Your Honor.

25 **MR. PARCHER:** Excuse me. I'm sorry, Your Honor.

1 This got opened way up on direct examination.

2 **THE COURT:** The argument is sustained. I mean, the
3 objection is sustained on this line of questions. This is
4 degenerating into just -- just final jury argument.

5 It's okay to have a jury argument. I encourage it.
6 But it should come at the end of the case.

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

8 **BY MR. PARCHER:**

9 **Q.** You -- you suggest that the writing -- LaShun's writing of
10 this letter represented your best efforts to help the retired
11 players to receive monies under their GLAs. Is that your
12 position?

13 **A.** Yes.

14 **Q.** Okay. I'd like to show you Trial Exhibit 53.

15 **MR. HUMMEL:** May I approach, Your Honor?

16 **THE COURT:** Go ahead.

17 **MR. HUMMEL:** Thank you.

18 **THE WITNESS:** Thank you.

19 (Document displayed.)

20 **BY MR. PARCHER:**

21 **Q.** Are you looking at it, Mr. Allen?

22 **A.** Uhm, yes.

23 **Q.** This is a letter from Corinne Beavers, who you identified
24 the other day as working for the defendants, to -- to you and
25 other people, correct?

1 **A.** Yes.

2 **MR. PARCHER:** I'll move its admission, Your Honor.

3 **MR. KESSLER:** No objection.

4 **THE COURT:** 53 is received.

5 (Trial Exhibit 53 received in evidence.)

6 **BY MR. PARCHER:**

7 **Q.** Yesterday you testified, sir, about the revenues in the
8 GLRD, the group licensing revenue depository account. Do you
9 remember that testimony?

10 **A.** I do.

11 **Q.** Please look at Exhibit 95 to the 2000 agreement between
12 the NFLPA and Players Inc.

13 **A.** We're not looking at 53. I had that in front of me. I'm
14 sorry. What exhibit do you want me to look at?

15 **MR. PARCHER:** Oh. It's 95.

16 **THE COURT:** Okay.

17 **MR. PARCHER:** Just moving the blackboard, Your Honor.
18 Is that all right? Thank you.

19 **MR. HUMMEL:** I can speed this up, Your Honor, if I
20 may approach with 95.

21 **THE WITNESS:** Sure.

22 **THE COURT:** Fine. Go right ahead.

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

24 **MR. KATZ:** Your Honor, where would you like to place
25 this?

1 **THE COURT:** What are you doing?

2 **MR. KATZ:** He's going to be writing on it.

3 **THE COURT:** Who is, the witness or --

4 **MR. PARCHER:** Me.

5 **MR. KATZ:** Mr. Parcher.

6 **THE COURT:** Well, where do you want it to be? Where
7 would you like it?

8 **MR. PARCHER:** I would have been happy with it right
9 back there.

10 **THE COURT:** You put it wherever you think the jury --
11 it's seen and convenient for you.

12 **MR. PARCHER:** I'm not much of an artist. My wife is,
13 but I'm not much of an artist.

14 **MR. KATZ:** Is that okay?

15 **THE COURT:** That's fine. You've got to write big
16 enough so the jury can see whatever you put on it.

17 **MR. PARCHER:** I'll do the best I can. I'm not trying
18 to be Picasso, just trying to sketch a little something on
19 there.

20 **BY MR. PARCHER:**

21 **Q.** Okay. Please direct your attention to paragraph 4(a)v.
22 It's highlighted up there.

23 (Document displayed.)

24 Number v is what we're referring to. So it's (a),
25 and then down to v. Do you see it?

1 **A.** Yes.

2 **Q.** You're with me, right?

3 **A.** Yes.

4 **Q.** Right. Which discusses the fact that excluded from gross
5 licensing revenue is amounts received by retired players
6 pursuant to group licensing assignment or group licensing
7 rights. Do you see that?

8 **A.** I do.

9 **Q.** That clause in the first instance is something that was
10 negotiated between the Players Association and Players Inc,
11 correct?

12 **THE COURT:** I'm confused. Maybe the jury is. What
13 document are we even looking at?

14 **MR. PARCHER:** We're looking -- we're looking --

15 **THE COURT:** What exhibit number is it?

16 **MR. PARCHER:** We're looking at Exhibit 95.

17 **THE COURT:** 95. And what does the front page look
18 like?

19 **MR. PARCHER:** I just pulled that page, so I'll have
20 to -- I believe it's the 2000 -- it's the 2000 PA/PI agreement.

21 **THE COURT:** So this is between the Players
22 Association and --

23 **MR. PARCHER:** Players Inc.

24 **THE COURT:** Oh, I see. Players Inc.

25 **MR. PARCHER:** Right.

1 **THE COURT:** All right. In 2000. All right. So then
2 go to the --

3 **MR. PARCHER:** Back to --

4 **THE COURT:** Back to where you were.

5 **MR. PARCHER:** Back to 4 -- back to the paragraph.

6 **BY MR. PARCHER:**

7 **Q.** Now, that provision, "Excluding amounts received by
8 retired players pursuant to group licensing assignments of
9 group licensing rights" is something that was negotiated or
10 decided upon, in the first instance, by you and Mr. Upshaw to
11 put that clause in there, right?

12 **A.** On advice of tax counsel, yes.

13 **Q.** The tax counsel advised you to cut the retired players out
14 completely; is that what your position is, and you went along
15 with it?

16 **A.** It was--

17 **Q.** Yes or no, sir?

18 **A.** The answer to that is yes.

19 **Q.** So you and Mr. Upshaw, and your tax counsel, whoever he or
20 she may be, decided amongst yourselves to just remove any --
21 any monies at all that were received by retired players, to not
22 put it into the pool, right? That was your decision? "Your"
23 being the three of you.

24 **A.** Well, there were others involved in that decision, but
25 yes.

1 Q. But initially it was the three of you?

2 A. Yes.

3 Q. And then, you went up to your board, and with your advice
4 and the advice of your counsel, who was also their counsel,
5 they went along with it, right?

6 A. They authorized this agreement.

7 Q. I understand. Based on the recommendation of the head of
8 the union and the number two person in the union, and the
9 general counsel of the union, correct?

10 A. Well, I wasn't referring to the general counsel when I
11 said "tax counsel." But, yes.

12 Q. But also the general counsel's part of the thing?

13 A. Yes.

14 Q. Your lawyer, your lawyer is also the players' lawyer?

15 A. I don't have a lawyer.

16 Q. Your company's lawyer at the time, is also the players'
17 lawyer?

18 A. Yes.

19 Q. I mean, they're not bringing -- they're not bringing in
20 independent counsel of their own. They're relying on the
21 union's lawyer for advice, correct?

22 A. The "they" in that sentence?

23 Q. Is the so-called persons who ratified what you and
24 Mr. Upshaw and your tax counsel decide.

25 A. You mean, the Board of Player Representatives?

1 Q. Yes.

2 A. The Board of Player Representatives had access to outside
3 as well as in-house counsel.

4 Q. Excuse me. But they take the advice of the inside counsel
5 in this situation, right? They didn't go and hire somebody and
6 say "what should we do," did they?

7 A. Actually, they heard presentations from outside counsel
8 about these matters.

9 Q. Are you saying that outside counsel advised the players to
10 accept this paragraph v here? Is that your testimony?

11 A. No. I'm saying this agreement was subject to advice by
12 outside counsel given to the board of player reps.

13 Q. Now, please tell the jury -- oh. Am I correct in saying
14 that this exclusion wasn't negotiated with or agreed to by
15 retired players who had signed GLAs?

16 A. No, it wasn't.

17 Q. And would you -- would you tell the jury again, so that
18 everybody is clear, what is "gross licensing revenue"?

19 A. It is the -- it is the money that is related to the
20 license or sublicense of the license rights pursuant to the
21 terms of this agreement. And this particular section is the
22 things that are excluded from gross licensing revenues.

23 Q. Okay. And please tell the jury, again, what is the GLRD,
24 or gross licensing revenue depository?

25 A. I'm not sure what you're referring to.

1 Q. Just tell them what it is.

2 A. I don't recall.

3 Q. What a GLRD is?

4 A. I know what gross licensing revenue is. I don't recall
5 what the gross licensing revenue depository was, without
6 refreshing my recollection.

7 Q. Well, I'll refresh your recollection. I'm assuming that
8 when you use the words "gross licensing revenue depository"
9 what you're talking about is the money that comes in from the
10 gross licensing revenue pool.

11 A. If you're looking at a document --

12 MR. KESSLER: Your Honor, now we're getting into
13 Counsel testifying. The witness doesn't know what it is.

14 THE COURT: The witness has never used the term
15 "depository."

16 MR. KESSLER: Yes.

17 THE COURT: You're the one using it. Maybe you have
18 got some document somewhere, where the witness used it.

19 MR. PARCHER: Well --

20 THE COURT: I -- Mr. Kessler is right on this.

21 MR. PARCHER: I don't think this is a controversial
22 question.

23 THE COURT: Well, if you've got a document where
24 depository --

25 MR. PARCHER: Leave out the word "depository." Fine.

1 That's fine with me. Let me cross it out of my little
2 artist...

3 **BY MR. PARCHER:**

4 **Q.** When a dollar comes in from a company such as
5 Electronic Arts, Mr. Allen -- sorry to be standing so far away
6 from you. Don't really know where to put this.

7 When a dollar comes in, 37 percent goes to the
8 actives, and 63 percent is kept by PA, NFLPA, and PI, correct?

9 **A.** No.

10 **Q.** No?

11 **A.** No.

12 **Q.** What happens?

13 **A.** 23 percent is kept by Players Inc, and 40 percent is kept
14 by the Players Association separately.

15 **Q.** Okay. All I'm saying, I'm combining the two for purposes
16 of my question. The combination of PA and PI is 63 percent,
17 right?

18 **A.** That's correct.

19 **Q.** That's all I'm saying about that. I'm not quibbling here.

20 Now, when the 37 percent is distributed to the active
21 players -- if everybody can read my writing. "Active."

22 When the 37 percent is distributed to the active
23 players, the active players share and share that 37 percent.
24 Regardless of whether their names or likenesses were used on a
25 particular license, they get their share, right?

1 **A.** Correct.

2 **Q.** And the retirees, my clients, get zero, correct?

3 **A.** Get zero from what?

4 **Q.** My retirees --

5 **A.** You mean, out of the gross licensing --

6 **Q.** -- out of the gross licensing agreements.

7 **A.** Do you mean out of gross licensing revenues?

8 **Q.** Yes. Correct.

9 **A.** That's right.

10 **Q.** Now, suppose, just suppose -- I know you don't agree with
11 this -- but just suppose that the jury were to decide that the
12 Electronic Arts agreements granted the rights to retired --
13 granted the rights to retired players. Just assume that. I
14 know you don't agree with that. But just assume that that's
15 what the jury concluded. They didn't agree with you, they came
16 to a different conclusion.

17 Then, it's true that a share of the money of the
18 gross licensing revenue would be due to the retired players,
19 correct?

20 **MR. KESSLER:** Your Honor, inadmissible question for a
21 fact witness. It's argument, closing argument or expert
22 testimony.

23 **MR. PARCHER:** This is a question from my 8-year-old
24 grandson, not for a tax expert.

25 **THE COURT:** I don't know about your 8-year-old

1 grandson.

2 **MR. PARCHER:** Ti Diego is his name.

3 **THE COURT:** Given that both sides -- Mr. Kessler, you
4 asked questions of this character. I'm going to let the same
5 kind of questions, hypothetical questions be -- within reason,
6 be allowed.

7 So the jury has got to understand this is a
8 hypothetical situation. But in order to illustrate the point
9 that Mr. Parcher is trying to make I'm going to allow the
10 question.

11 **MR. PARCHER:** Thank you so much, Your Honor.

12 **THE COURT:** All right. What is the question?

13 **BY MR. PARCHER:**

14 **Q.** Hypothetically -- since it is a jury question, I
15 believe -- hypothetically, the jury has concluded, Mr. Allen,
16 that when EA sends over its \$25 million it's for active and
17 retired -- and such retired players that have signed the group
18 licensing agreement.

19 Then you would agree that when the money goes over to
20 the GLR, it's not fair any longer, it's not right any longer
21 for the retirees to get nothing, because it turns out they were
22 part of that license, right?

23 **A.** Are you asking me whether that would be fair? I am not --
24 I'm trying to understand the question. There was a -- there
25 was a preface to that, and I'm trying to understand the precise

1 nature of the question.

2 **THE COURT:** Okay. Fairness doesn't matter.

3 What matters -- well, I don't know. Fairness matters
4 in some abstract sense. But we're talking about whatever the
5 contract provides.

6 **MR. PARCHER:** Right.

7 **BY MR. PARCHER:**

8 **Q.** It would be required of you -- what would happen in your
9 understanding, your understanding, if it turned out that when
10 EA paid \$25 million, that the retired players who signed the
11 group licensing agreement were part of that license, they would
12 be entitled to a part of the \$25 million, wouldn't they? Yes
13 or no?

14 **A.** No.

15 **Q.** In other words, if the retired players -- your
16 understanding is that if the retired players were actually --
17 who signed group licenses were actually licensed to
18 Electronic Arts, nevertheless they would be entitled to nothing
19 of the \$25 million? Just yes or no.

20 **A.** I don't know.

21 **Q.** It's entirely possible that they might be entitled to
22 nothing? Yes or no?

23 **A.** I don't know.

24 **Q.** Well, "don't know" means that it's possible that they
25 would have been entitled to nothing.

1 **A.** No, it means I don't know.

2 **Q.** Okay.

3 Did it ever enter into your consideration that if you
4 said to Electronic Arts, when they wanted to use the names and
5 likenesses of the retired players who had signed the vintage
6 games, did it ever occur to you that you could have said --
7 that you could have said to them:

8 "Take it as part -- don't scramble their names
9 and likenesses. We're not going to tell you to do that. Just
10 put it in, and we'll then give the retired players a share of
11 the \$25 million"?

12 Did that ever enter into your consideration? Yes or
13 no?

14 **A.** Sure.

15 **Q.** And you rejected it?

16 **A.** I didn't reject it. I didn't have the authority to agree
17 to that. It wasn't the arrangement that had been authorized by
18 the active board of player reps.

19 **Q.** And you never went to them and said:

20 "This isn't right, fellows. At this moment in
21 time EA actually really does want to use these retired players.
22 They've got vintage games. And unless we're going to remove
23 their identity, unless we are going to take Herb Adderley and
24 all the others, all 2100 of them out of existence, like they
25 didn't play and they don't exist" --

1 **THE COURT:** Mr. Parcher, this is a jury speech.
2 Please.

3 **MR. PARCHER:** Yes.

4 **THE COURT:** Save that for the closing argument.

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

6 **BY MR. PARCHER:**

7 **Q.** In any event, it didn't enter into your consideration to
8 talk to whoever was in charge of you, along with Mr. Upshaw and
9 your general counsel, and say to them:

10 "The right thing to do here would be to put --
11 would be not to scramble these names," correct?

12 **A.** We discussed that.

13 **Q.** And -- in writing?

14 **A.** I don't know. I mean, I had the conversations with -- at
15 board of player rep meetings with players.

16 **Q.** Right. But you don't have any writing to that effect, do
17 you?

18 **A.** I have no idea.

19 **Q.** Okay. And it's rejected. It was rejected, right?

20 **A.** That did not happen.

21 **Q.** Okay. And it's nevertheless your position, one, that you
22 did your best for the retirees?

23 **A.** That's right.

24 **Q.** And, two, that you had no conflict between the actives and
25 the retirees?

1 **A.** That's true.

2 **Q.** Okay. Let's turn to the Duff & Phelps exhibit, if we may,
3 Exhibit 93.

4 **A.** 93?

5 **Q.** Before we get to that -- oh, sorry. Go ahead and pull it.
6 I want to ask you this, sir: Did you ever favor the interests
7 of the licensees over the interests of the players that you
8 represented? Yes or no?

9 **A.** No.

10 **Q.** Okay. Let's go to 93, if you will.

11 93, page 6. Let's establish what it is we're talking
12 about.

13 This is what you called, when your lawyer was
14 questioning you, the independent appraisal, where an
15 independent body of accountants said good for the 63/37 split,
16 right?

17 **A.** No.

18 **Q.** That's not what the Duff & Phelps report is?

19 **A.** No, it doesn't say that. It says 37 percent to the active
20 players, 23 percent to the for-profit entity, Players Inc, and
21 40 percent to the NFL Players Association.

22 **Q.** I don't understand something. I use the number 63 between
23 you and PA and PI. That is 40/23, isn't it? 63 percent --

24 **A.** Yes.

25 **Q.** -- to PA/PI?

1 **A.** The math, that is correct. You asked me if it was in the
2 Duff & Phelps report. I was just pointing out that the Duff &
3 Phelps report analyzed a split between active player share,
4 union retention, and company retention.

5 **Q.** I'd like to highlight the language of -- this is in the
6 section on page 6, called "player royalties." And it's the
7 one, two, three, four, five, six, seven, eighth --

8 **A.** I'm not there yet. Give me one second, please.

9 Thank you.

10 **Q.** It's going to get highlighted up there. Begins with "This
11 judgment."

12 Do you see that? Just read the sentence for a
13 minute. Take your time.

14 **MR. PARCHER:** Keep going. Down to the word
15 "Payments," right.

16 (Document displayed.)

17 **THE WITNESS:** Okay.

18 **BY MR. PARCHER:**

19 **Q.** Now, first of all, let me understand something. These
20 independent accountants, Duff & Phelps, were hired by Players
21 Inc and the NFLPA, right?

22 **A.** That's correct.

23 **Q.** They weren't hired by some independent blue ribbon panel
24 who selected them for their objectivity, right?

25 **A.** They were not hired by a blue ribbon panel.

1 Q. Right. They were hired by the defendants, right, who
2 had -- who had determined amongst themselves that 63 percent
3 would be kept by them, 37 percent would be given to the
4 players. And now you were hiring somebody to see if they would
5 say "good" for what you had decided or not, right?

6 Yes or no, sir?

7 A. No, that's not exactly how it worked.

8 Q. No? You weren't -- you weren't hiring them to examine the
9 decision that you and Mr. Upshaw had made? Isn't that why you
10 called it a so-called "independent third party"?

11 A. We -- we asked them to advise us on the appropriate split.

12 Q. But you had already determined 37 percent, first, and then
13 you went out and got the independent advisors, correct?

14 A. I believe that we -- we suggested to them that we had --
15 that we had arrived at a tentative conclusion, but we were
16 interested in knowing from them both whether they had an
17 alternative suggestion and whether they thought the tentative
18 conclusion that we had drawn was appropriate.

19 Q. Do you have a writing where that's what you said to them?

20 A. No. I was there when I said that to them.

21 Q. Right. But you don't have a writing, just in case
22 somebody were to say, "Gee" --

23 A. I have no idea. This was 13, 14 years ago.

24 Q. Okay. But one thing, you have no idea what the situation
25 was 13 or 14 years ago?

1 **A.** I'm sorry?

2 **Q.** You have no idea what the situation was 13 or 14 years
3 ago?

4 **A.** Sure I do. You asked me if there was a piece of paper
5 that said that on it. And I said without searching -- I meant
6 without searching the file, I don't know.

7 **Q.** Okay. In any event, the independent Duff & Phelps knew
8 when you hired them that 37 percent was your tentative number,
9 subject to their approval, right?

10 **A.** That's essentially correct.

11 **Q.** Yes. And Duff & Phelps was paid a substantial amount of
12 money for their opinion?

13 **A.** They were paid their fee.

14 **Q.** I understand. Was that substantial or was it a dollar and
15 a quarter or something like that?

16 **A.** It was -- they are an independent firm with a very -- at
17 the time, with a very established relationship.

18 **Q.** Excuse me, sir?

19 **A.** Established reputation. And they were paid what the
20 marketplace value for that work was.

21 **Q.** Which was a substantial fee?

22 **A.** I don't remember the amount.

23 **Q.** Okay. But it was substantial. Don't you? You remember
24 that.

25 **A.** If you would tell me what you mean by "substantial." It

1 was a significant number.

2 **Q.** Whatever you mean by "substantial." Was it substantial?

3 **THE COURT:** No. No. Move to a new topic.

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

5 **THE COURT:** We are wasting the time of the jury.

6 **MR. PARCHER:** I'm --

7 **THE COURT:** Let's bring it to a close.

8 **MR. PARCHER:** Here we go. Here we go.

9 **BY MR. PARCHER: :**

10 **Q.** Now, the Duff & Phelps said:

11 "This judgment balances the business need to pay
12 players sufficient amounts to motivate their continued granting
13 of group licensing rights to the NFLPA and indirectly to
14 Players Inc, with the desire not to make excessive payments."

15 So aren't they saying to you:

16 Looking at that 37 percent, we think that you're
17 paying them no more than you have to so that they -- so that
18 they'll continue to be motivated to sign GLRs, and you don't
19 need to pay them one penny more. These guys will do it for
20 37 percent. You don't have to give them 40, 50, 60, 70, 80 or
21 90.

22 Isn't that what Duff & Phelps, the independent
23 accountants that you hired and paid, isn't that what they say
24 in that sentence?

25 **A.** I wouldn't put it that way.

1 Q. No? Okay.

2 THE COURT: We're going to need to take a break, and
3 I would like to finish this witness before the break.

4 MR. PARCHER: I think I can. I think I can. Give me
5 a moment.

6 THE COURT: The court reporter needs a break. She's
7 telling me she needs a break, so please bring it to a close.

8 MR. PARCHER: Okay. Give me just a moment.

9 THE COURT: Are you going to have any redirect?

10 MR. KESSLER: One minute, Your Honor. I will stay to
11 my minute.

12 MR. PARCHER: I guess we need to take break, Your
13 Honor.

14 THE COURT: All right. 15-minute recess. Please
15 remember the admonition.

16 THE CLERK: All rise.

17 (Thereupon, the jury left the courtroom.)

18 THE COURT: The witness can take a 15-minute break.
19 Anything the lawyers need me for?

20 MR. KESSLER: No, Your Honor.

21 MR. PARCHER: No, Your Honor.

22 (Recess taken from 9:18 to 9:37 a.m.)

23 THE COURT: Thank you. Be seated, please.

24 Mr. Parcher.

25 MR. PARCHER: Yes, Your Honor. Two or three

1 questions. I know it's hard to believe. Two or three
2 questions, and I'm done.

3 **THE COURT:** I'll do this. I'll go one, two, three.
4 See if you can really do it.

5 **MR. PARCHER:** Okay. Okay. My wife is in the
6 courtroom, so I'll give it my best shot.

7 **THE COURT:** Where is she?

8 **MR. PARCHER:** Joycie.

9 **THE COURT:** Ms. Parcher, how are you?

10 **MR. PARCHER:** It's her birthday. It's her birthday,
11 so...

12 **BY MR. PARCHER:**

13 **Q.** Mr. Allen, very briefly, sir. Turn your attention to the
14 two -- I'm calling them "brochures" now; is that right, the two
15 brochures?

16 **A.** Sure.

17 **Q.** If you have a better word. I don't mean to be limiting.
18 One is 2262 and one is 2259.

19 **A.** 20 --

20 **Q.** 2262?

21 **A.** I've got a lot of them.

22 **Q.** I'll just show you.

23 **MR. PARCHER:** May I approach, Your Honor?

24 **THE WITNESS:** That might be quicker.

25 **MR. PARCHER:** Thanks.

1 **BY MR. PARCHER:**

2 **Q.** You have these in there, don't you?

3 **A.** Somewhere.

4 **MR. PARCHER:** Oh, my.

5 **MR. HUMMEL:** I have an extra set, Your Honor. May I,
6 to save time?

7 **THE COURT:** Sure.

8 **MR. HUMMEL:** 2262.

9 **THE COURT:** These are in evidence already?

10 **MR. PARCHER:** Yes, they are. Mr. Kessler put them
11 in, Your Honor.

12 **BY MR. PARCHER:**

13 **Q.** Ready?

14 **A.** Yes.

15 **Q.** Now, neither of these documents mentioned that you were
16 trying to license the rights of all 2,062 players as part of
17 the same package, correct?

18 **A.** Without reading them, I don't -- I don't know. But that
19 sounds correct.

20 **Q.** Yes. And it's also true that none of these documents
21 addresses retired players only, correct?

22 **A.** Uhm, that's correct.

23 **MR. PARCHER:** I have no further questions of this
24 witness. Two.

25 **THE COURT:** You did what you said you were going to

1 do. Thank you.

2 **MR. PARCHER:** Yes, sir. I am a man of my word, sir.

3 (Laughter)

4 **THE COURT:** Thank you. Go ahead.

5 **MR. KESSLER:** Your Honor, let's see if I can do that.

6 **REXCROSS EXAMINATION**

7 **BY MR. KESSLER:**

8 **Q.** This chart over here, the 63 percent, the 37 percent --
9 sorry. Withdrawn.

10 This chart, the 40 percent to the union, the
11 23 percent to PI, which Mr. Parcher aggregates as 63 percent,
12 and the 37 percent to the active players, that circle, is any
13 of that money retired player money?

14 **A.** No.

15 **Q.** What money is that?

16 **A.** That's the active player licensing money.

17 **Q.** Okay. Mr. Parcher put up an exhibit that said that
18 retired player money was excluded from this circle. Do you
19 recall that from the GLR pool?

20 **A.** Yes.

21 **Q.** Now, where did any retired player money go?

22 **A.** To the retired players.

23 **Q.** If -- when it goes to the retired players, does any of
24 this go to the Players Association?

25 **A.** No.

1 Q. Does any of it go to the active players?

2 A. No.

3 Q. So is it better or worse for the retired players to stay
4 out of the GLR pool for their money?

5 MR. PARCHER: Objection.

6 THE WITNESS: Well --

7 THE COURT: Overruled.

8 THE WITNESS: It's better because they get all of it.

9 BY MR. KESSLER:

10 Q. They get all of it if it's out of the GLR pool?

11 A. Right.

12 Q. And that's what the agreement did?

13 A. Correct.

14 Q. Now, you also got asked a question about the ESPN and the
15 \$25 million payment. First of all, the \$25 million payment
16 was --

17 MR. GREENSPAN: EA.

18 BY MR. KESSLER:

19 Q. The EA payment --

20 THE COURT: You said "ESPN."

21 THE WITNESS: You said "ESPN."

22 MR. KESSLER: Excuse me.

23 THE COURT: Start all over. I think you misspoke,
24 and it's kind of confusing.

25 Start all over with a fresh question.

1 **MR. KESSLER:** Sorry. I apologize. Trying to go too
2 quickly.

3 **BY MR. KESSLER:**

4 **Q.** The EA license agreements, there is a minimum royalty
5 payment in 2006-2007, that period of time, of \$25 million per
6 year, correct?

7 **A.** Yes.

8 **Q.** Was that agreed to for active player rights, retired
9 player rights or both?

10 **A.** Just active player rights.

11 **Q.** Did you discuss with EA whether they would be willing to
12 pay any additional money for all the retired player rights?

13 **A.** Yes.

14 **Q.** Were they willing to do that?

15 **A.** Absolutely not.

16 **Q.** Mr. Parcher suggested you could give away the rights of
17 the retired players for free to EA just by saying:

18 "Don't pay me anymore. Include them in the 25."

19 Mr. Allen, if you gave away retired player rights for
20 free to a licensee, would you have any money to give to the
21 retired players?

22 **A.** No.

23 **Q.** Mr. Allen, if you gave away the retired player rights to
24 EA for free, would any licensee in the future ever pay for
25 something you gave away for free?

1 **A.** No.

2 **Q.** Thank you, Mr. Allen. I have no further questions.

3 **MR. PARCHER:** At the risk of an historic first, I
4 have no questions of this witness.

5 **THE COURT:** Thank you. Just one second.

6 Before the witness is excused, I want to make sure I
7 didn't goof up on a document. I said 1056 was received in
8 evidence, but Dawn is asking whether or not it was supposed to
9 be a different number.

10 **MR. KESSLER:** Your Honor, I don't know which one of
11 us goofed up, so I'll take responsibility. But it was 2056.
12 2056.

13 **THE COURT:** 2056?

14 **MR. KESSLER:** Yes, not 1056. That's the compilation.

15 **THE COURT:** 2056. All right. I allowed in 1056, so
16 that's out. Back to not being admitted. And 2056 is the one
17 that's received.

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

19 **THE COURT:** All right. May the witness be excused
20 and discharged, not subject to recall?

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

22 **MR. KESSLER:** Yes, Your Honor.

23 **THE COURT:** All right. You're free to go. You are
24 not subject to recall.

25 Thank you, Mr. Allen.

1 **THE WITNESS:** Thank you, Your Honor.

2 **THE COURT:** Next witness.

3 **MR. HUMMEL:** Your Honor, plaintiffs call Bruce Laird.

4 **THE COURT:** Bruce Laird.

5 Does our camera work?

6 **THE CLERK:** Yes, it should be working.

7 **THE COURT:** Do what?

8 **THE CLERK:** It should be working.

9 **THE COURT:** All right.

10 Are you Mr. Laird?

11 **THE WITNESS:** Yes.

12 **THE COURT:** Please come forward. If you would stand
13 there and raise your right hand, we'll swear you in now.

14 (Thereupon, the witness was sworn.)

15 **THE WITNESS:** I do.

16 **THE CLERK:** Thank you. Can you please be seated on
17 the witness stand.

18 **THE COURT:** Make yourself comfortable. And we need
19 to take your photograph so they can be displayed during the
20 closing arguments so the jury can remember who was who.

21 Did it work?

22 **THE CLERK:** Yeah, a little blurry just because I
23 moved. Let me try it one more time, to make sure.

24 **THE WITNESS:** Do you want to get my good side?

25 **THE CLERK:** Sure. Thank you. Okay. Perfect.

1 facility, locally in the Baltimore area.

2 **Q.** Mr. Laird, are you a former NFL player?

3 **A.** Yes, I am.

4 **Q.** You're retired?

5 **A.** Yes, I am.

6 **Q.** What years did you play in the NFL?

7 **A.** 1972 to '81, as a Baltimore Colt; 1982 to '83 as a San
8 Diego Charger; and then, I went on to play in the USFL -- not
9 with the NFL, but the USFL -- in '83 and '84.

10 **Q.** So the Colts and the Chargers in the NFL; is that right?

11 **A.** Yes, sir.

12 **Q.** What position did you play?

13 **A.** I played strong safety.

14 **Q.** Is strong safety an offense or defensive position?

15 **A.** It's a defensive position.

16 **Q.** Could you briefly describe for the jury what the strong
17 safety's responsibilities are in the game?

18 **A.** Yes. Strong safety more than likely always goes to the
19 strength of the formation. So if there's a tight end and two
20 wide receivers and two backs in the game, I would line up on
21 the side of the tight end.

22 If there was two wide receivers, and they were on the
23 same side, I would probably go to the two wide receivers' side,
24 which is considered the strength of the formation.

25 My job typically had -- I had to take care of run

1 support first, and then play pass. So I was a little bit of a
2 tweener between the running game and the passing game.

3 And also in our system the strong safety called out
4 defenses to our group in the backfield and our linebackers.

5 So I was like a team captain.

6 **Q.** And would you -- would you characterize that position as a
7 defensive back?

8 **A.** Yes.

9 **Q.** So Mr. Adderley here was a cornerback. He's also a
10 defensive back, but a different position, right?

11 **A.** Yes, he was.

12 **Q.** His job generally was what, generally, as a cornerback?

13 **A.** Those gentlemen were told to clamp down the wide
14 receivers.

15 In Herb's situation, he would probably be put on the
16 best receiver that team had, and his job was to make sure he
17 didn't hurt us.

18 **Q.** All right. Now, when were you playing for the Baltimore
19 Colts from 1972 to 1982 -- nine years with the same team,
20 right?

21 **A.** Ten.

22 **Q.** Ten years. Ten seasons.

23 Did you have a number?

24 **A.** Yes.

25 **Q.** What was your number?

1 **A.** Number 40, for all ten years.

2 **Q.** Was there a particular Baltimore Colts team that had more
3 success than others?

4 **A.** 1975, 1976 and 1977. We were division champions.

5 **Q.** Focus on the 1977 team. Did that have any particular fame
6 in the Baltimore area, the 1977 Colts team?

7 **A.** Yes, it did. I think we had one of our finest years. I
8 think we finished 11 and 3. There were 14 games in that
9 season. And we hosted the first division playoffs in Baltimore
10 at Memorial Stadium in 1977, to the Oakland Raiders.

11 **Q.** And did you win that game?

12 **A.** No, unfortunately we did not.

13 **Q.** Did you have a good game?

14 **A.** Had a heck of a game.

15 **Q.** But as they used to say, if you don't win the game, it
16 doesn't matter, right?

17 **A.** No.

18 **Q.** Okay. So --

19 **A.** I still look at the film, and it still doesn't change. We
20 still lost the game.

21 **Q.** And you played in that game the Oakland Raiders, which is
22 a local team here, right?

23 **A.** Yes.

24 **Q.** They had a famous quarterback on that team, right?

25 **A.** Ken Stabler.

1 Q. Did you make an interception in that game?

2 A. Yes, I did.

3 Q. Now, coming into the pros, you came in out of college,
4 right?

5 A. Yes, sir.

6 Q. Where did you go to college?

7 A. American International College.

8 Q. And they have a football team?

9 A. I get asked that a lot. Yes, they did.

10 Q. Were you drafted out of college?

11 A. Yes, I was.

12 Q. And how does the draft work, generally, for the ladies and
13 gentlemen of the jury?

14 A. From what I understood, that was the only way you could
15 get into the league, unless you become a free agent. Teams,
16 because of the way they finished in the league, have a draft
17 choice schedule. And then, you're picked.

18 It will go like the worst team, which could be
19 Cincinnati Bengals this year. If they finish the way they're
20 playing, they'll probably get their first pick in the draft.
21 And then it goes each team after that.

22 I was the sixth-round pick, approximately 168th
23 player taken.

24 Q. 168th player out of college that year, which was 1970 --

25 A. '72.

1 Q. '72.

2 All right. And were you ever selected as an All Pro?

3 A. Yes, I was.

4 Q. What does that mean?

5 A. That means that by your peers and the coaching staff at
6 that time -- it's changed now -- but your peers, which is all
7 professional football players, usually by position, and their
8 coaching staff will pick players that they deem are the best of
9 the best.

10 Q. So let me ask you this: Did the Colts over the years have
11 a special relationship with the City of Baltimore?

12 A. Oh, incredible.

13 Q. Can you describe that for the jury?

14 A. Uhm, it would be like grandparents and fathers and sons
15 going to games. There would be talk about you could never get
16 a ticket to a Colt game unless someone had passed away and
17 given it to you. We probably had the largest sellouts for
18 years and years over 12 years of sellout game in, game out.

19 The love affair with the Baltimore Colts started in
20 1958, which is the greatest game ever played. Started in that
21 year and continued in '59, and right on through up until
22 probably the mid '70s.

23 Q. And when you first joined the Colts, they had a pretty
24 famous quarterback on the team, right?

25 A. Yes, sir.

1 Q. Who was that?

2 A. John Unitas.

3 Q. And John Unitas is now, unfortunately, deceased. But can
4 you describe what Mr. Unitas meant to the City of Baltimore?

5 A. Uhm, icon. Almost, you know, he was idolized there. He
6 played --

7 MR. KESSLER: Your Honor, I just have an objection to
8 relevance. Mr. Unitas is not a class member. I don't
9 understand how this connects to anything.

10 MR. HUMMEL: He has made an issue of famous players
11 versus nonfamous players, Your Honor.

12 THE COURT: All right. Overruled.
13 Please go ahead.

14 THE WITNESS: And he made his home in the Baltimore
15 area and stayed there and raised his family, went to church.
16 You know, had everything. Was part of the Baltimore community.

17 BY MR. HUMMEL:

18 Q. Mr. Unitas was a very famous player in Baltimore, right?

19 A. No doubt.

20 Q. And throughout the entire NFL, right?

21 A. Absolutely.

22 Q. In fact, he transcended the NFL, didn't he?

23 A. Absolutely.

24 Q. So on the same team when you came in and Mr. Unitas was
25 this quarterback, were there third-string tackles?

1 **A.** Yes, sir.

2 **Q.** Were there guys who just weren't known?

3 **A.** Yes, sir.

4 **Q.** And, I mean, not known even in Baltimore, maybe?

5 **A.** Probably not.

6 **Q.** And during the time that you were an active player, did
7 you understand that licensing revenues were divided among
8 players?

9 **A.** I wasn't really sure about the licensing revenues. I did
10 have an understanding that when we signed on as union members
11 we gave the union the right to use our images for the trading
12 card situation.

13 **Q.** Right. And when those funds were divided at the time, if
14 they were -- were they divided at the time?

15 **A.** I'm not really sure.

16 **Q.** Okay.

17 **A.** I would assume they were.

18 **Q.** Okay.

19 **A.** But I don't know in what detail.

20 **Q.** Did the third string tackle on a group license get paid
21 the same as a Johnny Unitas?

22 **A.** I wouldn't know, because I don't know where those funds
23 went.

24 **Q.** Okay. The league or the union didn't tell you how those
25 were divided?

1 **A.** Not really.

2 **Q.** Okay. So you -- you were a member of the union when you
3 were an active player, right?

4 **A.** Yes, I was.

5 **Q.** And are you currently a member of the NFLPA?

6 **A.** Yes, I am.

7 **Q.** All right. How is it that a retired player is a member of
8 the NFLPA?

9 **A.** They started a division in 1984 for retired players, and
10 have a retired players class. I think there's five members of
11 the union have full-time jobs dealing with retired players'
12 issues.

13 **Q.** And you're one of those players who over the years has
14 dealt with retired player issues since you've been retired?

15 **A.** Yes, I have.

16 **Q.** And do you pay dues to be a member?

17 **A.** Yes, we do.

18 **Q.** Are you what's called a card-carrying member of the NFLPA?

19 **A.** Yes, I am.

20 **Q.** Is there, in fact, a card?

21 **A.** Yes, there is.

22 **Q.** Do you have it?

23 **A.** Yeah. Keep it with me all the time. I get 10 percent off
24 on Hertz.

25 (Laughter)

1 Here it is.

2 **BY MR. HUMMEL:**

3 **Q.** What's it say?

4 **A.** Excuse me. I have to use these cheaters every once in a
5 while now that I've gotten a little older.

6 "National Football League Players Association member.
7 Bruce Laird. Expiration date."

8 Nice card.

9 **Q.** Does it say anything on the bottom?

10 **A.** "Past, Present and Future." I expire 4/2/09.

11 **Q.** What does that mean to you, sir, "Past, Present and
12 Future"?

13 **A.** Well, it means that the union is going to take care of
14 everything from the past, great history of our game; to the
15 present, the active players; and for the future of the game and
16 the players.

17 **Q.** All right. So put the card aside for a minute, sir, and
18 let me ask you about the time that you were an active player.

19 Did you have any special role with the -- within the
20 union as an active player?

21 **A.** Well, my time as an active player, myself and my family
22 went through two strikes. We went on strike in 1974. And we
23 also went on strike in 1982. Both of those times I put my
24 career and family on the line in not getting paid to strike for
25 what our union believed.

1 And so I was very much a part of the union in my
2 playing days.

3 **Q.** Did you have a special role in representing the Colts with
4 the union at any point?

5 **A.** In 1981, I was elected player representative for the
6 Baltimore Colts.

7 **Q.** What is a player representative?

8 **A.** It's called the board of active player reps. There's 32
9 of them, so each team has one. And at the time we didn't have
10 32 teams. We were 28. And it was 28 player reps and an
11 alternate player rep, another gentleman that was voted in. And
12 in my years that probably wasn't a very good position to have.

13 It's a lot different in the '70s and '80 than it is
14 now. Player reps sometimes didn't have a long stay at the team
15 you were with at the time.

16 **Q.** When -- your job was to act as effectively an interface
17 between the union and the team; is that right?

18 **MR. KESSLER:** Objection. Leading, Your Honor.

19 **THE COURT:** Well, that is leading, but that sounds
20 preliminary enough.

21 So try not to lead. But you can lead on preliminary
22 matters, but not on anything that's of importance to the case.

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

24 **THE WITNESS:** Uhm, I would say I was their
25 representative. In other words, I would get input from our

1 players, and then be the conduit between our players and what
2 they're looking for and what the union wants to do or how they
3 want to present it, and so on and so forth.

4 **BY MR. HUMMEL:**

5 **Q.** And when you were a player rep, did you go to any
6 meetings?

7 **A.** Yes, I did.

8 **Q.** Could you describe what those meetings were?

9 **A.** Player rep meetings for the board of player reps were held
10 at a very nice location. We always went to Hawaii. We went
11 out there for five to seven days. Can't remember quite -- I
12 think it was five -- yeah, five or seven days.

13 I attended as a player rep. I was only a player rep
14 for two years. I attended two of those meetings in Maui or one
15 of the islands, in 1981 and 1982.

16 **Q.** And at those meetings, can you describe, generally
17 speaking, what happened?

18 **A.** Uhm, those meetings were a combination of work and
19 enjoyment. We worked from 8:00 in the morning until 12:00.
20 And then, after that it was either golf, tennis, pool, or
21 cocktail parties, dinners.

22 **Q.** And when you say you "worked," what was the work that was
23 done?

24 **A.** Well, the work was we would sit in the meetings, and the
25 union would present certain -- certain agenda items.

1 Obviously, in 1981 we were very -- it was very
2 stressful because we were thinking about going on strike. So
3 we were talking about strike issues, mostly. You know: "Can
4 we stay together? What should be our issue?"

5 Our issue in 1982, ladies and gentlemen, was
6 percentage of the gross revenues, which was unheard of. In
7 fact, it was called socialism back then. But right now that's
8 what the league has done. The league presents 60 percent of
9 their gross revenues to active players.

10 In '82 we struck on that. For the most part we also
11 wanted free agency, some other items. But that was the part
12 that we were dealing with in 1981 and '82.

13 **MR. KESSLER:** Your Honor, I am going to have to
14 continue. Relevance, the jury's time, talking about strikes in
15 '82.

16 **THE COURT:** What's the relevance?

17 **MR. HUMMEL:** I'll tie it up in one question, Your
18 Honor.

19 **THE COURT:** All right. Overruled.

20 **MR. HUMMEL:** Thank you.

21 **THE COURT:** Go ahead.

22 **BY MR. HUMMEL:**

23 **Q.** Did you consider yourself a union man?

24 **A.** Absolutely.

25 **Q.** What does that mean to you, to be a union man?

1 **A.** Part of the brotherhood. Part of the group. It wasn't
2 just the stars. I mean, you know, the union represented all
3 football players. All of us.

4 **Q.** Did you have any power vis-a-vis the league or the owners
5 if you didn't band together?

6 **A.** Not much. Again, it was a different era, a different
7 time. It was very difficult to fight the monopoly of the NFL
8 owners.

9 **Q.** All right. And at some point, sir, you retired, right?

10 **A.** Yes, sir, I did.

11 **Q.** Okay. And what was the reason you retired?

12 **A.** Age.

13 **Q.** Okay. Look, if you would, please, at Exhibit 1224.
14 There's a stack in front of you, and the labels are on the
15 Manila folder.

16 **A.** 1224?

17 **Q.** 1224.

18 **A.** Okay.

19 **Q.** Do you recognize that document, Mr. Laird?

20 **A.** Yes.

21 **Q.** Is your signature on the document?

22 **A.** Yes, it is.

23 **Q.** Can you tell the ladies and gentlemen of the jury what it
24 is?

25 **A.** It is an NFL Players Association retired players group

1 licensing form.

2 **MR. HUMMEL:** Your Honor, move 1224.

3 **MR. KESSLER:** No objection.

4 **THE COURT:** Received.

5 (Trial Exhibit 1224 received in evidence.)

6 **MR. HUMMEL:** Could I have 1224 displayed, please?

7 (Document displayed.)

8 **BY MR. HUMMEL:**

9 **Q.** Mr. Laird, 1224 is a contract that you received from the
10 league; is that right?

11 **A.** Yes, it is.

12 **Q.** Can you describe how you received it?

13 **A.** Uhm, got it through the mail.

14 **Q.** Was there any letter with it, do you recall?

15 **A.** I do not recall if there was a letter with it. But I -- I
16 get a lot of TouchBacks. They're our weekly -- or not
17 weekly -- monthly or quarterly newspapers about retired players
18 and other things going on.

19 **Q.** You decided to sign this form, right?

20 **A.** Yes.

21 **Q.** Can I ask you why?

22 **A.** Well, it looked like it was a contract between the NFLPA
23 and retired and active players that there was some group
24 licensing agreements that could be had. We would share in the
25 revenues.

1 Q. What did you think you were providing to the NFLPA when
2 you signed this?

3 A. I was providing my image and who I am as a football
4 player.

5 Q. Was there anything of value, other than that, that you
6 understood you were giving them?

7 A. Oh, absolutely.

8 Q. What's that?

9 A. Well, my heart and soul as a player, and the fact that I
10 was giving them the right to be my agent.

11 Q. What does the retired player group licensing authorization
12 mean to you?

13 A. Just exactly as it states, group licensing authorization.

14 Q. Did you have any understanding that other retired players
15 would be signing this, as well?

16 A. Oh, absolutely.

17 Q. How did you form that understanding?

18 A. Well, because we had talked about it occasionally, and we
19 gathered together as retired players in Baltimore, so --

20 Q. Did you have any understanding, one way or the other,
21 about whether having a number of retired players sign these
22 forms conferred a benefit on the union?

23 A. I would just assume it would. Just like anything, power
24 in numbers.

25 Q. At the time, what -- did you think that at the time, power

1 in numbers?

2 **A.** Probably not right away, no.

3 **Q.** Okay. Did you -- did you come to understand at some
4 point, as you were in the program, that there was power in
5 numbers for these group licensing forms signed in the
6 thousands?

7 **A.** Oh, absolutely.

8 **MR. KESSLER:** Objection, Your Honor. It's leading,
9 and he said he didn't have any understanding at the time.

10 **THE COURT:** It is leading. Please don't lead the
11 witness on important matters.

12 Both sides have done a lot of leading. Mr. Kessler
13 has done the same thing.

14 And you on the jury can take into account -- if all
15 the lawyer is doing is asking a question and expecting the
16 witness to say "yes, yes, yes, yes," then take that into
17 account in evaluating the strength of the testimony.

18 This goes to both sides. The ground rule here is
19 it's okay to speed things along and lead unless you get up to
20 the important parts. Then, you should say: "What happened
21 next?"

22 Let's hear from the witness as opposed to the lawyer
23 testifying.

24 **MR. HUMMEL:** Fair enough, Your Honor, appreciate it.

25 **THE COURT:** Both sides need to learn this and move

1 the right way.

2 **MR. KESSLER:** Your Honor, if I may, maybe you should
3 explain to the jury leading on cross and direct, because they
4 may be confused about that.

5 **THE COURT:** All right. That's a fair point. I know.
6 I am going to make that point.

7 Please have a seat, Mr. Parcher.

8 Whenever the witness is friendly to the lawyer, like
9 in this case Mr. Laird is called by this side. He's a member
10 of the class. He's affiliated with the lawyer who's asking the
11 questions. That's when you're not supposed to lead, because
12 there's too big a risk that the lawyer will just tell --
13 basically lead the witness into saying whatever the lawyer
14 wants. That's why we have a rule against leading.

15 Whenever it's on cross-examination, though, there is
16 no such -- there is no such friendship involved or identity or
17 affiliation. And, in fact, we encourage the lawyers to ask
18 leading questions so that they can zero in on the point that
19 they're trying to make and see if the witness will admit it.

20 Now, a little further wrinkle I've got to give is
21 when Mr. Parcher was asking questions of Mr. Allen, he was
22 adverse to Mr. Allen, so it's perfectly okay for him to lead
23 then. It was not okay for Mr. Kessler to lead that witness
24 except on preliminary matters.

25 But so few objections were ever made on this point.

1 But I'm tell you on the jury that if you hear a bunch of
2 leading questions you ought to step back and ask yourself:
3 Who's really testifying here? Is it the witness or is it the
4 lawyer?

5 A leading question is one that suggests the answer.
6 So I'm urging the lawyers -- there's a lot more leading going
7 on in this trial than most trials.

8 I want you to try -- this witness right here is a
9 very able person. He doesn't need to be led. He can testify
10 without the benefit of leading.

11 It's okay to lead on preliminary matters, even when
12 it's your witness.

13 All right. Go ahead.

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

15 **BY MR. HUMMEL:**

16 **Q.** Mr. Laird, did you have an understanding of what "group"
17 meant in this document?

18 **A.** Yes.

19 **Q.** What was your understanding?

20 **A.** Six or more, present or former.

21 **MR. HUMMEL:** And if you could highlight that second
22 paragraph, please.

23 **THE COURT:** I would blow it up so the jury can see it
24 better. There we go.

25 (Document displayed.)

1 **BY MR. HUMMEL:**

2 **Q.** Your understanding was as set forth in the contract?

3 **A.** Yes, sir.

4 **Q.** Now, after you retired did you ever attend any retired
5 player conventions?

6 **A.** Yes, I did.

7 **Q.** Can you describe what a retired player convention is?

8 **A.** Retired players convention, again, started after 1984.
9 The union would gather retired players at certain locations,
10 usually one part of the country one year, one part the other
11 year. Some nice places, very nice resorts. And they would
12 talk about some of, you know, the retired players' issues.

13 I went to one in June of 2004, in Las Vegas, Nevada.
14 And I went there for the sole purpose of John Mackey.

15 **Q.** At these retired player conventions, did Doug Allen ever
16 speak?

17 **A.** Yes.

18 **Q.** At any time in these retired player conventions did Doug
19 Allen ever inform retired players that the GLA would only kick
20 in if a third-party licensee agreed to license on a blanket
21 basis the entire group?

22 **MR. KESSLER:** Your Honor, objection. Lack of
23 foundation. The witness only attended one convention. He can
24 only answer to that one convention.

25 **MR. HUMMEL:** That's a speaking objection, Your Honor.

1 **THE COURT:** Just a second. Would you give this to
2 Mr. Katz, please?

3 Mr. Katz, are you feeling all right?

4 **MR. KATZ:** No, it's just an allergy, Your Honor.
5 Nothing contagious.

6 **THE COURT:** You are coughing, and I want you to be
7 comfortable and not distract our jury.

8 **MR. KATZ:** Sorry.

9 **THE COURT:** All right. The objection is overruled.
10 The witness can answer within the scope of whatever
11 he was. He went to one meeting, and maybe he remembers
12 everything. Maybe he remembers part of it. Whatever he -- but
13 the -- it's a fair question, since Mr. Allen testified on this
14 very point.

15 So let's hear what this witness has to say on that.

16 **MR. HUMMEL:** Just to refresh the jury's recollection,
17 I'll repeat the question, Your Honor.

18 **THE COURT:** Fine. Go ahead.

19 **BY MR. HUMMEL:**

20 **Q.** Did Mr. Allen, at any of these conventions you attended,
21 ever say to you that this GLA would only kick in if a
22 third-party licensee agreed to license on a blanket basis the
23 entire group?

24 **A.** No.

25 **Q.** Did you ever hear that from any source within the union,

1 Mr. Upshaw, Mr. Allen, any other union representative, that
2 this GLA would only kick in if a third-party licensee agreed to
3 license on a blanket basis the entire group?

4 **A.** No.

5 **Q.** Did you have frequent interaction outside of the
6 convention context with union representatives?

7 **A.** Yes.

8 **Q.** Who?

9 **A.** From Doug Allen down to D. Becker, down to some of the
10 staff. I was the either president or vice president of the
11 retired players chapter in Baltimore from 1987 until present.

12 **Q.** And in all of those interactions, 20 some years of
13 interactions, did anyone ever tell you that?

14 **A.** No.

15 **Q.** Did you understand what you were signing?

16 **A.** Yes.

17 **Q.** Did you have an expectation one way or the other if you
18 would be paid?

19 **A.** Well, I was hoping if a deal ever got struck and there was
20 monies, that we would be paid.

21 **Q.** Did you have an understanding when you signed this
22 agreement of what the phrase "present or former NFL player
23 images" meant?

24 **A.** Yes.

25 **Q.** What was your understanding?

1 **A.** Active or retired players, present or former.

2 **Q.** So did you have an understanding when you signed this
3 agreement about what would trigger an obligation for the union
4 to pay?

5 **A.** If they struck some type of deal for active or former
6 players to license us, then we would get paid.

7 **Q.** Did you draft this document?

8 **A.** No, sir.

9 **Q.** Did you negotiate it?

10 **A.** No, sir.

11 **Q.** Did anyone from the union ever instruct you or advise you
12 you better hire a lawyer?

13 **A.** No, sir.

14 **Q.** When you signed this document, did you send it back in?

15 **A.** Yes, sir.

16 **Q.** Did you retain any control at all?

17 **A.** No. Well, what does "control" mean?

18 **Q.** Do you have an understanding of the word "control"?

19 **A.** In what context?

20 **Q.** Well, when you sent this letter back in, did you retain
21 any control over what the union could or couldn't do?

22 **A.** Oh, no.

23 **Q.** Did you have a mind-set about what the union was going to
24 do on your behalf under this agreement?

25 **A.** I assumed they're acting as an agent for active and

1 retired players, and they were going to try to get deals for
2 us, and we would get paid.

3 **Q.** What do you mean by the word "agent"?

4 **A.** Well, usually when we do things as even active or retired
5 players, sometimes you have agents that work on your behalf to
6 get you either speaking engagements, motivational speaking or
7 other things. And the agent takes a percentage of the -- of
8 the monies, and you get paid the rest.

9 **Q.** And is that how you thought of the NFLPA in connection
10 with this deal?

11 **A.** Yes.

12 **Q.** They would be acting on your behalf?

13 **A.** Yes.

14 **Q.** In connection with what, specifically?

15 **A.** I have no idea.

16 **Q.** Well, was it in connection with something other than
17 licenses?

18 **MR. KESSLER:** Objection, leading.

19 **THE WITNESS:** I'm not sure.

20 **BY MR. HUMMEL:**

21 **Q.** Okay.

22 **THE COURT:** Well, the witness doesn't know, so
23 overruled.

24 Go ahead.

25

1 **BY MR. HUMMEL:**

2 **Q.** Did you have an understanding of whether you had any --
3 retained any veto rights?

4 **A.** No.

5 **Q.** Now, did you ever come to learn in your interaction in the
6 retired player events that you attended, that -- did you ever
7 hear the phrase "ad hoc agreement"?

8 **A.** Not really.

9 **Q.** Did you ever understand that famous players could strike
10 separate deals?

11 **A.** Oh, absolutely.

12 **Q.** All right.

13 **A.** I didn't know that's what's called "an ad hoc."

14 **Q.** What did you call it?

15 **A.** They had a deal.

16 **Q.** Okay. And can you explain how that worked? What's your
17 understanding of how that worked?

18 **A.** Well, I live in -- I live in Baltimore, Maryland. And
19 I've had the pleasure to play with three Hall of Famers. And
20 all of those guys have separate deals.

21 They could have a deal with a car company. They
22 could have a deal with other entities. They could have a deal
23 with Budweiser Beer, Coors Beer. You know, they are all
24 separate deals. We all have our own separate entities.

25 **Q.** Is that group licensing in your understanding within the

1 meaning of this GLA?

2 **A.** No.

3 **Q.** Okay. Now, when you attended these retired player
4 conventions, did you have interaction with Gene Upshaw?

5 **A.** Gene spoke. I also attended a chapter presidents' meeting
6 in October, 2005, where both Gene Upshaw and Doug Allen spoke.

7 And he would kind of give the address to the union,
8 so to speak. And usually at those things he would address some
9 retired players' issues a little bit.

10 **Q.** Did Mr. Allen have any special role in connection with
11 retired player programs?

12 **A.** It was my understanding that Mr. Allen ran retired players
13 for Mr. Upshaw.

14 **Q.** So at these retired player conventions did Mr. Allen play
15 a special role?

16 **A.** Yes. After -- after Mr. Upshaw's address to the union or,
17 you know, introduction speech, however you want to call it,
18 Doug Allen ran the meeting, and Gene Upshaw left.

19 **Q.** And then, Doug Allen would do what?

20 **A.** Conduct the rest of the meeting.

21 **Q.** With respect to what topics?

22 **A.** Anything and everything. Mostly, you know, if we're there
23 it's retired players' issues.

24 **Q.** Did Mr. Allen after these speeches ever make himself
25 available for questions?

1 **A.** Yes, you could ask him questions.

2 **Q.** And how generally did Mr. Allen react to questions that
3 were asked of him?

4 **A.** He didn't like them.

5 **Q.** Why?

6 **A.** He didn't like when I asked him questions.

7 **Q.** How did he respond?

8 **A.** Like: "Why are you asking me this? Don't you know that
9 the union is working for you? And that Gene Upshaw is a
10 retired player, and we have many retired players at the union
11 that work for you? Why do you keep asking me these questions?"

12 **Q.** How did you react to this?

13 **A.** I kept asking him questions. I wanted him to answer.

14 **Q.** Did you over the course of time at these retired player
15 conventions discuss Mr. Allen with other retired players?

16 **A.** Oh, many times.

17 **Q.** Okay. And in those discussions --

18 **MR. KESSLER:** Your Honor, this is going to be
19 hearsay.

20 **MR. HUMMEL:** It's 608, Your Honor.

21 **THE COURT:** 608?

22 **MR. HUMMEL:** This is foundational for a 608 question.

23 **THE COURT:** Let me see.

24 Well, before we go down this path I'm going to have
25 to do this out of the presence of the jury. And I don't want

1 to interrupt the jury, so can you move on to something else and
2 we'll save this until the break?

3 **MR. HUMMEL:** I will, Your Honor.

4 **BY MR. HUMMEL:**

5 **Q.** So we were talking about Mr. Allen's comments to the
6 retired players at these conventions.

7 **A.** Yes.

8 **Q.** Okay. Did he, at these conventions, ever explain group
9 licensing programs for retired players?

10 **A.** Not in great detail. He would mention there was group
11 licensing agreements.

12 **Q.** Did he ever at these conventions tell retired players over
13 and over again that:

14 "You're not eligible, but sign this GLA,
15 anyway"?

16 **MR. KESSLER:** Objection, Your Honor. I don't know
17 which conventions we're talking about.

18 **MR. HUMMEL:** That's a speaking objection, Your Honor.
19 At any of the ones he attended.

20 **THE COURT:** Overruled.

21 Please answer.

22 **THE WITNESS:** No.

23 **BY MR. HUMMEL:**

24 **Q.** Did you ever hear from any source that the union --
25 union's position was:

1 "You, Mr.-Retired-Player-who-signed-a-GLA, are
2 not eligible, but sign the GLA anyway"?

3 **A.** No.

4 **Q.** Would that have made any sense to you?

5 **A.** No.

6 **Q.** In any of the conventions that you attended, where you
7 spoke with Doug Allen, did he ever say words to the effect:

8 "Never mind what the contract says, don't think
9 you're going to get any share of the money, because we don't
10 seem to be able to get you into the license business"?

11 **A.** No.

12 **Q.** He never said anything like that?

13 **A.** No.

14 **Q.** Did he ever say why he wanted retired players to sign the
15 GLAs?

16 **A.** No. He didn't like to answer questions. No.

17 **Q.** Did you ever ask?

18 **A.** No.

19 **Q.** Did you ever inquire as to why all these thousands of
20 players are signing GLAs?

21 **A.** We didn't really know if there was an issue until after
22 2004.

23 **Q.** And what happened after 2004?

24 **A.** There were some things that came out regarding retired
25 players in the union.

1 Q. What?

2 A. There was a memo written by Gene Upshaw to retired
3 players, telling us: We are not union members; you have no
4 vote; you cannot hire; you cannot fire; and you have no legal
5 stance in this matter.

6 MR. KESSLER: Your Honor, I don't believe what he's
7 testifying to -- first of all, I believe what he is testifying
8 to is precluded by your in limine rulings, and I don't think it
9 has anything to do with licensing in this case, Your Honor.

10 MR. HUMMEL: Your Honor, he put in the TouchBack
11 exhibit and highlighted it and read it to the jury yesterday,
12 which is on this issue.

13 MR. KESSLER: No, Your Honor.

14 MR. HUMMEL: You did highlight it.

15 MR. KESSLER: The TouchBack exhibit?

16 MR. HUMMEL: Yes.

17 MR. KESSLER: That's not contained in the TouchBack
18 exhibit.

19 THE COURT: Look, we're not going to get off into
20 collective bargaining. The objection is sustained.

21 MR. HUMMEL: Fair enough, Your Honor.

22 MR. KESSLER: Thank you, Your Honor.

23 BY MR. HUMMEL:

24 Q. Did Mr. Allen, at a retired player convention, ever
25 explain to you that licensing was coming in for active players

1 only and that you would have no entitlement to a GLR pool?

2 **A.** No.

3 **Q.** Let me mark as next in order or have you look at Exhibit
4 1225.

5 Do you recognize 1225, sir?

6 **A.** Yes.

7 **Q.** Is your signature on it?

8 **A.** Yes.

9 **Q.** And is it another retired player group licensing
10 authorization form?

11 **A.** Yes, it is.

12 **MR. HUMMEL:** Your Honor, move 1225.

13 **MR. KESSLER:** No objection.

14 **THE COURT:** Received.

15 (Trial Exhibit 1225 received in evidence.)

16 **MR. HUMMEL:** Can I display 1225, please?

17 (Document displayed.)

18 **BY MR. HUMMEL:**

19 **Q.** Is this another form that you received?

20 **A.** Yes, it is.

21 **Q.** And why did you sign it?

22 **A.** Because I thought I would still have a shot at licensing
23 monies if it came to fruition.

24 **Q.** Did you have an understanding of what the phrase "group
25 licensing" meant here?

1 **A.** Yes, I did.

2 **Q.** If the NFLPA used your image in a way that was offensive
3 to you, did you think you had any rights under this agreement?

4 **A.** Probably.

5 **Q.** Okay. What did you have an understanding?

6 **A.** Well, if I didn't like the sponsor maybe I would have
7 something to say about it.

8 **Q.** Did you think if they had done something that was
9 offensive to you, you could quit the program?

10 **A.** I assumed I could.

11 **Q.** Did you understand at this point when you signed this
12 agreement -- by the way, what's the date of it?

13 **A.** This is January, 2004.

14 **Q.** And it was effective through what date?

15 **A.** I'm not sure.

16 **Q.** If you look right above your signature.

17 **A.** Oh, to December, 2006. I'm sorry, yeah.

18 **Q.** Okay. As of this date, January 5, 2004, had you learned
19 whether or not other retired players had signed this?

20 **A.** Yes.

21 **Q.** Did you ever learn how many signed it?

22 **A.** Not the actual number, no.

23 **Q.** Did you have an understanding, was it ten or 50 or more?

24 **A.** It was in the hundreds.

25 **Q.** In the hundreds. That was your understanding?

1 **A.** Yes, sir.

2 **Q.** Did you have any -- and just as in the last agreement, how
3 did you view the NFLPA's role vis-a-vis you and the group in
4 connection with licensing programs? How did you think about
5 it?

6 Do you understand the question?

7 **A.** No.

8 **Q.** All right. So you signed this document, right? And
9 you're giving them what?

10 **A.** The right to act as my agent. I'm giving them my image as
11 a professional football player.

12 **Q.** And did you think they were going to do anything with that
13 right?

14 **A.** I assumed so. Why would they ask me to sign something?

15 **Q.** All right. And what did you expect them to do?

16 **A.** I expected them to market retired and active players in
17 the group licensing agreement.

18 **Q.** As your what?

19 **A.** As my representative, my agent, whatever you want to call
20 them.

21 **Q.** Now, did Mr. Allen, at any of these retired player
22 conventions, ever report to the retired players on royalties
23 that were being received by the union?

24 **A.** No.

25 **Q.** From licensing programs?

1 **A.** Not that I'm aware of. He may have mentioned a broad
2 figure.

3 **Q.** Did he ever, prior to the time that this lawsuit was
4 filed, show you, or to your knowledge any other retired player,
5 any license agreements that the NFLPA entered into for
6 licensing rights?

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

8 **THE COURT:** What?

9 **MR. KESSLER:** Objection, Your Honor, to the form of
10 the question. Both leading and lack of foundation "for other
11 players."

12 **MR. HUMMEL:** It's not leading, Your Honor. I'm not
13 suggesting the answer.

14 **THE COURT:** Well, it comes close to suggesting an
15 answer, but it sounds preliminary enough. I'll overrule the
16 objection.

17 **THE WITNESS:** The question again, please?

18 **MR. HUMMEL:** Could I ask to have it read back, Your
19 Honor?

20 (The question was read by the reporter as follows:)

21 **"QUESTION:** Did he ever, prior to the time
22 that this lawsuit was filed, show you, or to
23 your knowledge any other retired player, any
24 license agreements that the NFLPA entered
25 into for licensing rights?"

1 **THE WITNESS:** I had no idea what a license agreement
2 was, or the numbers, no.

3 **BY MR. HUMMEL:**

4 **Q.** Did Mr. Allen or any other union representative, to your
5 knowledge, ever report to the retired players whether or not a
6 license agreement had been entered into that included six or
7 more present or former NFL players?

8 **A.** No.

9 **Q.** Now, outside of the convention context --

10 **A.** Yes.

11 **Q.** -- did you have separate discussions involving retired
12 player rights, with Mr. Upshaw, Mr. Allen or any other
13 representative of the union?

14 **A.** Regarding rights?

15 **Q.** Yes.

16 **A.** No.

17 **Q.** So what you learned about licensing rights, how did you
18 learn it?

19 **A.** I basically learned it about when this trial was coming
20 up.

21 **Q.** Okay. Did you ever discuss licenses with any
22 representative of the union?

23 **A.** The only thing I got into was in October of -- October of
24 2005 at a chapter presidents' meeting that was held in
25 Baltimore, Maryland.

1 This is a meeting where all chapter presidents or
2 officers of each chapter -- I believe there's 31 or 32 around
3 the country -- they are called NFLPA retired chapters -- where
4 those things were discussed. Mr. Allen was running the
5 meeting, and I asked him about retired players' revenues and
6 licensing.

7 **Q.** What was the response?

8 **A.** He responded that -- I believe it was 375 retired players
9 received in excess of \$7 million. But he did not specify that
10 it came under GLAs or what I now know is ad hocs.

11 Obviously, now that I understand this about ad hocs,
12 he was referring to the ad hoc agreement.

13 **Q.** He wasn't referring, in your understanding, to the group
14 licensing?

15 **A.** We thought he was.

16 **Q.** But he wasn't, right?

17 **A.** But he wasn't, no.

18 **MR. HUMMEL:** Your Honor, permission to read Request
19 for Admission No. 19, and the response.

20 **THE COURT:** Any objection?

21 **MR. KESSLER:** I'm sorry. I don't know what he's
22 referring to.

23 **MR. HUMMEL:** The defendants' response to Request for
24 Admission No. 19.

25 **THE COURT:** Show it to counsel so he can see what

1 you're going to read.

2 **MR. KESSLER:** No objection.

3 **THE COURT:** All right. Before you read it, I need to
4 tell the jury what a request for admission is.

5 Remember I told you about depositions? Before the
6 trial the lawyers can take depositions. Another thing that
7 lawyers can do is to send out questions and ask the other side
8 to admit them. So they might say: "Please admit that ABC is
9 true." And the other side can either say "admit" or "deny."
10 It's like "yes" or "no." And then those are under oath.

11 In this case now we are going to hear one of those
12 that was sent out by Mr. Hummel's side to Mr. Kessler's side.

13 And I assume the answer is, it was admitted, right?

14 **MR. HUMMEL:** Correct.

15 **THE COURT:** All right. So read the exact Request for
16 Admission, and then read the exact admission.

17 **MR. HUMMEL:** "Request for Admission No. 19: Admit
18 that Gene Upshaw has said in reference to licensing of images
19 of the retired players, quote, 'We could have the greatest dog
20 food in the world, but if the dogs don't like it, we can't sell
21 it.'

22 "Response to request for admission number 19:
23 Request No. 19 is admitted."

24 **THE COURT:** All right. So that's now evidence in the
25 case. Even though you heard that from a lawyer, I will tell

1 you this is an exception. It is evidence because it was deemed
2 admitted by the other side. It's like a stipulation.

3 Okay. Next question.

4 **BY MR. HUMMEL:**

5 **Q.** Mr. Laird, I would like you to look at Trial Exhibit No.
6 2370.

7 **A.** 23?

8 **Q.** 2370.

9 **A.** Okay.

10 **Q.** Do you have it handy?

11 **A.** I don't have it here, I don't think, unless I'm missing
12 it.

13 **THE COURT:** Mr. Hummel, please help the witness find
14 it.

15 **MR. HUMMEL:** I will, Your Honor.

16 Thank you. Handing the witness exhibit --

17 **THE WITNESS:** Oh, here it is.

18 **MR. HUMMEL:** Got it?

19 **THE WITNESS:** Yes, sir.

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

21 **BY MR. HUMMEL:**

22 **Q.** Do you recognize Exhibit 2370, sir?

23 **A.** Yes.

24 **Q.** Is this a document you had in your files?

25 **A.** Yes, it is.

1 **Q.** What is it?

2 **A.** It's the NFLPA's constitution.

3 **MR. HUMMEL:** Move Exhibit 2370, Your Honor.

4 **MR. KESSLER:** Your Honor, my objection here is based
5 on 403 and Your Honor's prior ruling that there's no claims
6 here based on rights as members in a union.

7 As Your Honor knows, that claim is not in this case.
8 You already instructed the jury.

9 Therefore, this is about retired player membership.
10 It has no relevance in this case, Your Honor.

11 **THE COURT:** What is the relevance?

12 **MR. HUMMEL:** Your Honor, the issue goes to trust,
13 why he signed the GLA.

14 **MR. KESSLER:** Your Honor, I don't believe that's
15 relevant. It's exactly your 403 ruling.

16 **MR. HUMMEL:** No, it's not.

17 **MR. KESSLER:** Exactly.

18 **MR. HUMMEL:** No, it's not, Your Honor. This is the
19 reason he signed the GLA was he was a union man, trusted his
20 union, had the Constitution in his files. I would like to ask
21 him about it, Your Honor. Won't take more than a minute.

22 **MR. KESSLER:** I object for the reasons stated and
23 your prior rulings under 403.

24 **THE COURT:** I don't remember the prior ruling very
25 well, Mr. Kessler, so I'm going to allow this in evidence.

1 But I'm going to say to the jury, this case is about
2 a contract and what it means. It's called "the GLA." This is
3 not a generalized grievance against the union.

4 I don't know where Counsel is going with this, but I
5 caution you not to try and turn -- I'm talking to the jury
6 now -- not to try to turn this into: Is the union good for
7 members or bad for members?

8 At the end of the day you've got to construe that
9 contract of what rights that were there. If the rights weren't
10 there, then it doesn't matter how much trust there was, the
11 plaintiffs lose. If.

12 On the other hand, if the contract rights were there,
13 it could be the other way. So what matters is the contract
14 rights. It doesn't matter whether this was a good, bad or
15 indifferent union in terms of representing the players in their
16 collective bargaining.

17 So I am giving counsel some latitude on this, but
18 there is a risk of confusion to you, the members of the jury.

19 Now, Mr. Hummel, I think you -- I'm going to let you
20 do this, but I think it's important to stick to the GLA and
21 what it meant, not why he signed it, but what he -- what a
22 reasonable interpretation of the words on the paper would mean.

23 **MR. HUMMEL:** I understand, Your Honor.

24 **THE COURT:** All right. So that's what you got to
25 decide, ladies and gentlemen. Again, what the words on the

1 paper mean.

2 **BY MR. HUMMEL:**

3 **Q.** Mr. Laird, you kept this document in your files?

4 **A.** Yes.

5 **Q.** Why?

6 **A.** It was some paperwork that I had had, and I had wanted to
7 keep it just in case I had some issues.

8 **Q.** All right. Did you think, sir, when you signed the GLA,
9 that your union would not say what it meant?

10 **MR. KESSLER:** Objection, Your Honor.

11 **THE WITNESS:** Of course not.

12 **BY MR. HUMMEL:**

13 **Q.** Now, in the constitution that you kept in your files, and
14 in your general dealings with your union over the years as an
15 active player, did you trust your union?

16 **A.** Yes.

17 **Q.** I'd like you to look, sir, at Defendants' Exhibit 2392.

18 Do you have 2392 in front of you?

19 **A.** I have a letter --

20 **Q.** Do you have it, 2392?

21 **A.** Yes.

22 **Q.** Do you have it?

23 **A.** Sitting right on top.

24 **Q.** Can you tell me, Mr. Laird, what 2392 is?

25 **A.** It's a football card of me.

1 Q. Okay.

2 MR. HUMMEL: Your Honor, move Exhibit 2392.

3 MR. KESSLER: No objection.

4 THE COURT: 2392.

5 MR. HUMMEL: 2392.

6 THE COURT: Received.

7 (Trial Exhibit 2392 received in evidence.)

8 MR. HUMMEL: Can we blow that up?

9 BY MR. HUMMEL:

10 Q. Now, Mr. Laird, that's you, right?

11 A. Yes.

12 Q. That's number 40 for the Baltimore Colts, right?

13 A. Yes.

14 Q. And it says you're a safety. Is that what the "S" means
15 down below?

16 A. Yes.

17 Q. If you look in the upper right-hand corner, there is a
18 word?

19 A. Yes.

20 Q. What is that?

21 A. "Topps."

22 Q. Is that a company?

23 A. I believe so.

24 Q. When you were an active player had you entered into an
25 agreement under your understanding with that company?

1 **A.** I believe the union did.

2 **Q.** On your behalf?

3 **A.** My assumption would be yes.

4 **Q.** Okay. And so you understood at that time when were you an
5 active player, did you not, that the union was acting on your
6 behalf?

7 **A.** Yes.

8 **MR. KESSLER:** Objection. Leading, Your Honor.

9 **MR. HUMMEL:** I apologize. It's preparatory.

10 **THE COURT:** Of course. You're leading like crazy.

11 **MR. HUMMEL:** All right.

12 **THE COURT:** Can't you ask a nonleading question?

13 **MR. HUMMEL:** Yes, I can, Your Honor. I will.

14 **THE COURT:** Try to do your best to ask nonleading
15 questions.

16 **MR. HUMMEL:** I will, Your Honor.

17 **BY MR. HUMMEL:**

18 **Q.** What did you understand Topps to be?

19 **A.** Trading card company, I guess. Card company. Like
20 bubblegum, you know.

21 **Q.** And could you look at the next -- at the back of the card?

22 **A.** Yeah.

23 **Q.** What's listed on the back of the card?

24 **A.** It's my name, my position. I guess I was card number 326.
25 Talked about my height, six one; weight, 194; the esteemed

1 university that I went to, American International College;
2 drafted in the sixth round, 1972. When I was born, and my
3 hometown, and my stats.

4 **Q.** On the left-hand column it says "year." What does that
5 represent?

6 **A.** That was the -- probably the year of this card, if you're
7 referring to the very bottom, '78, '79, '80.

8 **Q.** All the teams listed there next to the team Colts, what
9 does that mean?

10 **A.** Those are my years of service.

11 **Q.** And then it has other statistics, including interceptions,
12 kickoffs and punts, right?

13 **A.** Yes.

14 **Q.** All right.

15 **THE COURT:** You said, but I don't remember, can we
16 tell what year this card was printed?

17 **BY MR. HUMMEL:**

18 **Q.** Can you tell, Mr. Laird?

19 **THE COURT:** Maybe you know.

20 **THE WITNESS:** Judge, it's hard sometimes. It may
21 have been my picture from the prior year, that goes on the card
22 that has the following year.

23 I can tell you from a rookie card and some other
24 cards, but I'm going to assume this is 1980. This is my
25 picture in 1980.

1 **MR. KESSLER:** Your Honor, actually, there is an NFLPA
2 copyright date on the bottom left, next to the NFLPA logo. I
3 think it says "1981," if I can read it from here.

4 **THE COURT:** I can't read it, but I'll take your word
5 for it.

6 Is that true, Counsel?

7 **MR. HUMMEL:** Yes.

8 **THE COURT:** Do you see that?

9 **THE WITNESS:** So my assumption, Your Honor, would be
10 my 1980 picture.

11 **THE COURT:** Okay.

12 **THE WITNESS:** So I was in uniform in 1980.

13 **BY MR. HUMMEL:**

14 **Q.** Were those statistics on the card accurate?

15 **A.** Yes. Thank God I got out of kickoffs and punts.

16 **Q.** Why do you say that?

17 **A.** It's a tough business.

18 You notice, Judge, I didn't do any of that.

19 **THE COURT:** All right.

20 **BY MR. HUMMEL:**

21 **Q.** Did there come a time, sir, when you understood that your
22 number, height and weight was being used in any product?

23 **MR. KESSLER:** Objection. Leading.

24 **THE COURT:** This is preliminary. Overruled.

25 Please answer.

1 **THE WITNESS:** Yes.

2 **BY MR. HUMMEL:**

3 **Q.** Can you describe for the jury and His Honor how you came
4 to learn that?

5 **A.** I have three sons. And one of my -- my middle son's
6 buddies was playing the John Madden game and said:

7 "Your old man was on a game."

8 **Q.** Okay. When did that occur?

9 **A.** I have no idea. I mean, a year ago, two years ago.
10 Something -- something like that. Months ago.

11 **Q.** What do you recall precisely that was said?

12 **A.** He just said that you can --

13 **MR. KESSLER:** Objection, Your Honor. It's hearsay.

14 **THE COURT:** What?

15 **MR. KESSLER:** It's hearsay.

16 **MR. HUMMEL:** Goes to state of mind, Your Honor.

17 **THE COURT:** TSA?

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

19 **THE COURT:** Oh, hearsay.

20 **MR. KESSLER:** I'm sorry. He just asked: What did he
21 say?

22 **THE COURT:** Well, true. But it sounds like a
23 spontaneous utterance. Overruled.

24 Please answer.

25 (Laughter)

1 **THE WITNESS:** He just said he was playing the John
2 Madden game, and the 1977 Colts were on there: "And I was
3 playing the Colts versus some other team and saw your, quote,
4 'old man' on the Madden game."

5 **BY MR. HUMMEL:**

6 **Q.** Look, if you would, sir, at Trial Exhibit No. 1301.

7 **A.** Is that the screen saver? 1301?

8 **Q.** 1301.

9 **A.** There has to be a better way.

10 **THE COURT:** Would you help the witness find --

11 **MR. HUMMEL:** I will, Your Honor. Handing the witness
12 1301.

13 **BY MR. HUMMEL:**

14 **Q.** Now, Mr. Laird, did you, after this lawsuit was filed,
15 look at the Madden games?

16 **A.** No. I don't play video games.

17 **Q.** Were you shown the Madden games in connection with this
18 lawsuit?

19 **A.** Yes.

20 **Q.** All right. And did you go through and find the player
21 management function in the Madden games?

22 **A.** I was shown it, yes.

23 **Q.** Right. And Exhibit 1301, do you recognize what these are?

24 **A.** Yes.

25 **Q.** What are they?

1 **A.** Called screen savers, or something, for the game.

2 **Q.** All right.

3 **MR. HUMMEL:** Your Honor, move Exhibit 1301.

4 **MR. KESSLER:** No objection.

5 **THE COURT:** Received.

6 (Trial Exhibit 1301 received in evidence.)

7 **BY MR. HUMMEL:**

8 **Q.** Exhibit 1301, Mr. Laird, I'll show the first page of this.

9 This is from the 2003 Madden game.

10 **MR. HUMMEL:** I'll represent to the Court, which is in
11 evidence by stipulation.

12 **BY MR. HUMMEL::**

13 **Q.** Mr. Laird, do you see a number on here, associated with
14 you?

15 **A.** Yes, I do.

16 **Q.** What number is that?

17 **A.** 40, strong safety.

18 **Q.** Was that your playing number?

19 **A.** Yes, sir, it was.

20 **Q.** Do you see your name on this document anywhere?

21 **A.** No.

22 **Q.** Do you see your position listed here?

23 **A.** Yes.

24 **Q.** Do you see your height?

25 **A.** Yes.

1 Q. Do you see your weight?

2 A. Yes.

3 Q. Are they matches of when you played for the 1977 Colts?

4 A. Yes. Salary was about right, too.

5 Q. Now, I'd ask you to look at Exhibit No. 1245-3, if that's
6 up there.

7 A. Yes.

8 Q. Do you have that in front of you, sir?

9 A. Yes, I do.

10 Q. And do you recognize this as a screen shot from the Madden
11 game?

12 A. Yes.

13 Q. Were you shown this in the context of this case?

14 A. I don't think I was shown this one, with the 49ers on it.

15 Q. Would you look at the second page of Exhibit 1245? It's
16 actually 1245-4.

17 A. Yes.

18 Q. Now, this is a screen shot from the Madden game that you
19 were shown in this case, right?

20 A. Yes.

21 Q. Okay.

22 MR. HUMMEL: Your Honor, it's part of an exhibit in
23 evidence, 1245, the Madden game. Permission to display.

24 THE COURT: It's in evidence? Fine. Go ahead.

25 MR. HUMMEL: Thank you, Your Honor.

1 1245-4, please.

2 (Document displayed)

3 **BY MR. HUMMEL:**

4 **Q.** Is this a screen shot in the Madden game?

5 **A.** Yes.

6 **Q.** What team is that?

7 **A.** Uhm, '77, it would be the Baltimore Colts versus the
8 San Francisco 49ers.

9 **Q.** Do you see a player represented in that -- in that game
10 that wears your number?

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

12 **Q.** What position is he playing there on the field?

13 **A.** Uhm, if the ball is correct and that quarterback is under
14 the center, he's at the tight end position on the strong side
15 of the formation, opposite number -- from 79 over to the left.
16 I don't know his number. 85, it could have been.

17 **Q.** Wait. Do you see the position there that number 40 is
18 playing?

19 **A.** Yes.

20 **Q.** Offense or defense?

21 **A.** Defense.

22 **Q.** What position on defense?

23 **A.** That would be the strong safety position.

24 **Q.** So that -- and you can tell by looking at this screen shot
25 where that player -- what position that player is, right?

1 **A.** Yes, I can.

2 **Q.** Was there any other player on the Baltimore Colts with the
3 number 40 who played strong safety in 1977, other than you?

4 **A.** No, not for ten years.

5 **Q.** And did you -- do you know your guys on defense? Do you
6 know who they were?

7 **A.** Absolutely.

8 **Q.** All right. So you could go through this game, could you
9 not, and identify the players?

10 **A.** Yes, I could.

11 **Q.** What position is this guy up here on the -- on the left
12 side in the white?

13 **THE COURT:** Use the pointer, please, the 1842
14 technology.

15 **MR. HUMMEL:** It's perfect for me, actually.

16 **THE COURT:** Never fails.

17 (Laughter.)

18 **BY MR. HUMMEL::**

19 **Q.** This guy, what position is he playing?

20 **A.** He's left defensive end. That's Fred Cook, number 72.

21 **Q.** He had a name, uhm?

22 **A.** Yes, sir, Fred Cook.

23 **Q.** All right. And how about this guy? What position is this
24 guy playing?

25 **A.** Right now he's a strong backer, but he's in an over

1 position. That's Tom Macleod.

2 **Q.** Who was that on the Colts, Tom Macleod?

3 **A.** Number 52.

4 **Q.** He had name?

5 **A.** Tom Macleod.

6 **Q.** And you could go through and identify every person on this
7 defense, right?

8 **A.** Yes. The one next to Fred Cook was Joe Orman, because he
9 was a defensive tackle from Syracuse.

10 **Q.** Your name doesn't appear on your jersey there, does it?

11 **A.** No, it does not.

12 **Q.** Did you ever give the NFLPA permission to instruct EA to
13 scramble your name?

14 **A.** No, sir.

15 **MR. HUMMEL:** Your Honor, I need a sidebar on the
16 issue of 608. That's all I have left.

17 **THE COURT:** What I would recommend we do is go ahead
18 with the cross-examination, and then after cross-examination
19 you can reopen to get back into this. That way we won't have
20 to have two breaks.

21 **MR. HUMMEL:** I will, Your Honor.

22 Nothing further.

23 **THE COURT:** Thank you.

24 So you're done except for that?

25 **MR. KESSLER:** Would you like your instrument?

1 **A.** Yes.

2 **Q.** And were you being truthful to the jury when you made
3 those statements?

4 **A.** Yes, I was.

5 **Q.** Now, Mr. Laird, you were a player representative in 1981
6 and 1982, correct?

7 **A.** 1981 and '82.

8 **Q.** Okay. And you attended -- as a member of the board of
9 active player representatives, you attended meetings in Hawaii.
10 And at that meetings the licensing program was discussed,
11 correct?

12 **A.** Probably was.

13 **Q.** And at those meetings that you attended, okay, you were
14 told in no uncertain terms that what was recommended --

15 **MR. HUMMEL:** Objection, hearsay, Your Honor.

16 **THE COURT:** Sorry, what?

17 **MR. HUMMEL:** Hearsay.

18 **THE COURT:** Overruled. The reason it's overruled is
19 you went into these meetings and what was or was not said.
20 And, also, what was or was not said, even though it's an
21 out-of-court unsworn statement, the witness can testify to it
22 from his firsthand knowledge. And it's proving up the nature
23 of the transaction.

24 **MR. KESSLER:** Okay.

25 **THE COURT:** So it's not hearsay at all. Overruled.

1 Please answer.

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

3 **BY MR. KESSLER:**

4 **Q.** You were told in no uncertain terms that the licensing
5 money was going 100 percent to the union to support for a
6 possible strike, for other possible union activities, correct?

7 **A.** Could be.

8 **Q.** Not "could be," sir. That's what you were told. Do you
9 remember that now?

10 **A.** Could be.

11 **Q.** Let me read to you from your deposition, sir.

12 **THE COURT:** Page and line, please.

13 **MR. KESSLER:** It's going to be the transcript, Your
14 Honor. I believe it's 131 to 132.

15 Actually, it starts at 130, Your Honor.

16 **THE COURT:** Mine skips from 129 to 141, for some
17 reason.

18 **MR. KESSLER:** I'm sorry, Your Honor. Could we please
19 hand up another copy?

20 David, could you do that, please?

21 **THE CLERK:** Here, Counsel. Thank you.

22 **THE COURT:** 131?

23 **MR. KESSLER:** Yes. I'm going to start on page 130,
24 Your Honor, line 20. I'm going to read through most of the
25 next page as well. Starting on line -- there's a series of

1 questions.

2 **MR. HUMMEL:** Your Honor, I object. It's not
3 impeaching. It's not inconsistent.

4 **MR. KESSLER:** It is, Your Honor.

5 **THE COURT:** Just one second. 130 what?

6 **MR. KESSLER:** I'm reading from line 12 on 130, and
7 all the way through line 8 on 131. And in particular, Your
8 Honor, I would call your attention to lines 4 to 8, when he
9 says: "I do remember this."

10 **MR. HUMMEL:** It's a different question, Your Honor,
11 than what he asked. It's not impeaching.

12 **THE COURT:** Well, but he's a class member, so I think
13 he's a party to the case. So the Court is going to allow you
14 to read this.

15 I'm not necessarily saying this impeaches anything.
16 I don't see the phrase "in no uncertain terms" anywhere.

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

18 **THE COURT:** Is that just you embellishing?

19 **MR. KESSLER:** Your Honor, this was a follow-up
20 question, not the "no uncertain terms" question. This was a
21 question I asked him about whether he knew that the money was
22 being used for union activities like the strike and operations
23 at that time.

24 That's what I'm reading about, Your Honor.

25 **THE COURT:** All right. Go ahead and read it.

1 **MR. KESSLER:** Okay.

2 **"QUESTION:** You don't believe any of the
3 NFLPA's licenses ever used your image on any
4 trading card since you retired?

5 **"ANSWER:** Correct.

6 **"QUESTION:** Now, look at page 2, the back.
7 You will see in the left 'National Football
8 League Players Association'?

9 **"ANSWER:** Yeah.

10 **"QUESTION:** Is that what used to be the Fat
11 football logo? Does that refresh your
12 recollection that your trading cards were
13 licensed under an NFLPA licensing program?

14 **"ANSWER:** Yeah.

15 **"QUESTION:** And do you recall that you, as an
16 active player representative, voted what to
17 do with that money?

18 **"ANSWER:** I do remember this because we
19 needed money. We needed money forever,
20 forever-and-a-day when I was playing from the
21 first strike in 1974 to 1982, but I don't
22 remember the rest of it."

23 **BY MR. KESSLER:**

24 **Q.** Mr. Laird --

25 **A.** Okay.

1 Q. -- do you now recall that -- do you now remember that when
2 you were an active player rep --

3 MR. HUMMEL: Your Honor? Your Honor? In interest of
4 fairness, under the rule of completeness, I'd ask that he read
5 lines 9 through 14, as well.

6 MR. KESSLER: I would be happy to do that.

7 THE COURT: All right. Go ahead.

8 MR. KESSLER: (Reading)

9 "QUESTION: "When you were an active player
10 rep, did you vote to give any of this
11 licensing money to retired players?"

12 "ANSWER: I don't think it ever came up. I
13 don't think it was voted one way or the
14 other, active or retired."

15 BY MR. KESSLER:

16 Q. Mr. Laird, does that now refresh -- let me ask it a
17 different way.

18 Do you now have a refreshed recollection that you
19 knew when you were an active player rep what was decided was to
20 give all the licensing money to the union for its operations?

21 A. The only licensing I was aware of was football cards.

22 Q. Yes.

23 A. And as union members we sign off our rights to the
24 football cards.

25 Q. And was all that money given 100 percent to union

1 operations?

2 **A.** I have no idea.

3 **Q.** Okay. Is it --

4 **A.** My assumption would be probably yes.

5 **Q.** Probably yes?

6 **A.** That's an assumption. I have no idea where the money
7 went.

8 **MR. HUMMEL:** Motion to strike, Your Honor. It's
9 speculation.

10 **THE COURT:** He says he doesn't have any idea so the
11 jury can evaluate that.

12 Go ahead.

13 **BY MR. KESSLER:**

14 **Q.** Now, when you were a union rep, you had power to make
15 resolutions, proposals, correct?

16 **A.** Yes.

17 **Q.** In fact, sometimes you made resolutions and proposals as a
18 player rep, correct?

19 **A.** I believe I did.

20 **Q.** Yes. Did you ever propose, as an active player rep back
21 when you were an active player rep, to take the licensing money
22 for the active players and give any part of it to retired
23 players?

24 **MR. HUMMEL:** Objection. Relevance.

25 **THE WITNESS:** Retired players were never an issue.

1 **THE COURT:** Wait. It may or may not have much
2 relevance, but Mr. Parcher drew his diagram over there. I can
3 still see it as an ever-present reminder. And the question
4 pending is relevant to the diagram.

5 **THE WITNESS:** I'll answer -- the union never
6 mentioned retired players.

7 **BY MR. KESSLER:**

8 **Q.** Sir, you never made such a proposal, correct?

9 **A.** My -- me, personally?

10 **Q.** Yes.

11 **A.** No.

12 **Q.** And it's also true that no active player ever proposed,
13 when you were on the board, to give the active player money to
14 the retired players, correct?

15 **A.** What do you mean by "active player money"?

16 **Q.** Money from active player licensing of trading cards.

17 **A.** No.

18 **Q.** And, in fact, the reason that you recall that that was
19 done is because the union needed the money to carry on the
20 fight it was having with the owners, correct?

21 **A.** Yes.

22 **Q.** Okay. Now, sir, it's equally true, is it not, that in
23 2005 and '6, the NFLPA was having a fight with the NFL owners;
24 is that correct?

25 **A.** No, it's not. 2005 and '6?

1 Q. You didn't know that in 2005 and '6 there were collective
2 bargaining negotiations going on with the owners?

3 A. No. The last CBA in my recollection was signed in 2002.

4 Q. Okay. Sir, you -- okay. So you didn't know that in 2006
5 there was a major extension of the collective bargaining
6 agreements?

7 THE COURT: Wait a minute.

8 MR. HUMMEL: Is he testifying, Your Honor?

9 THE COURT: Ladies and gentlemen, did I tell you the
10 first thing -- please, these lawyers are not under oath. And
11 it's so dangerous to hear questions like that because then
12 you'll go back there and think that somebody out here testified
13 to that effect.

14 Please don't ask questions like that when you know
15 the witness --

16 MR. KESSLER: I'll ask it differently, Your Honor.

17 BY MR. KESSLER:

18 Q. If the union was negotiating for a new collective
19 bargaining agreement in 2006, just as you were in 1981-'82, do
20 you think then it would be proper for the board of player reps
21 to use their money for union operations from licensing, just
22 like you decided to do in '81-'82?

23 MR. HUMMEL: Objection, Your Honor.

24 THE COURT: I'll allow the question.

25 Please answer.

1 **THE WITNESS:** For their licensing?

2 **BY MR. KESSLER:**

3 **Q.** Yes.

4 **A.** Yes.

5 **Q.** Thank you.

6 Now, Mr. Laird, you also testified that when you
7 signed the retired player group licensing authorization, you
8 had an expectation that you would be paid money if six or more
9 active players were used; is that true?

10 **A.** Former or active.

11 **Q.** It could have been all active, right?

12 **A.** Yes.

13 **Q.** Okay. Now, you first signed your group licensing
14 authorization as a retired player in 2000, correct?

15 **A.** Yes, I believe so.

16 **Q.** And you signed another one again in 2003, correct?

17 **A.** No. 2004.

18 **Q.** 2004. Thank you, sir.

19 From 2000 to 2004, you didn't receive any money from
20 licensing under your group player -- under your GLA, correct?

21 **A.** No, I did not receive any funds.

22 **Q.** Okay. But you knew during that time from 2000 to 2004
23 that the union was licensing active players, right? You knew
24 that?

25 **A.** Sure.

1 Q. Okay. You knew there were trading cards with active
2 players, right?

3 A. There has been trading cards ever since I have been in the
4 league.

5 Q. Right. And you knew there was apparel with active
6 players' names?

7 A. That's from the league.

8 Q. You didn't know --

9 A. Apparel is from the league, sir.

10 Q. How about jersey names? Did you know there were jersey
11 names?

12 A. It's from the league.

13 Q. You didn't know the union licenses active player names on
14 jerseys?

15 A. No, sir. I thought it was the league through Reebok.

16 Q. Okay. You knew there were trading cards, at least. We'll
17 start with that, right?

18 A. That I can tell you.

19 Q. You knew there were video games out there, correct?

20 A. I heard of video games.

21 Q. And you knew -- you didn't just hear of it. You knew
22 there was a Madden game that had NFL players, right?

23 A. Yeah, I heard about it, right.

24 Q. Okay. And despite the fact that you knew there was this
25 active player licensing and you knew that you didn't receive

1 any money, okay, you signed another retired player GLA in 2004,
2 correct?

3 **A.** Yes.

4 **Q.** And it's also true that you never once asked anyone in the
5 union:

6 "Where's the money I should get from active
7 player licensing" during that period, right?

8 **A.** I don't care about active player licensing. You keep
9 asking me about active player licensing.

10 **Q.** You don't care about it. Did you know in this -- in this
11 case, aren't you seeking money if it's just active player
12 licensing?

13 **MR. HUMMEL:** Objection, Your Honor?

14 **THE WITNESS:** If they signed the GLA, yes, sir.

15 **MR. HUMMEL:** Objection, Your Honor. There is no
16 foundation he knows what the allegations are.

17 **THE COURT:** Well, that's true. The witness can't be
18 expected to know what the lawyers are contending for or not
19 contending for. You can ask what this witness is contending
20 for or what he understood at the time.

21 You can't try to get him to read the mind of the
22 lawyers.

23 **MR. KESSLER:** Okay.

24 **BY MR. KESSLER:**

25 **Q.** Sir, are you telling the jury that you think you should

1 get paid money under your retired player GLA if it's just
2 active player licensing, more than six active players?

3 **A.** Yes.

4 **Q.** Okay. So my question then is: If that were true --
5 withdrawn.

6 My question is: The entire time from 2000 until
7 after this lawsuit was filed, you never once complained to any
8 union official:

9 "Why am I not receiving money from active player
10 licensing," correct?

11 **A.** Correct.

12 **Q.** And you never once -- you, sir, were president of the
13 Baltimore chapter of the retired players association?

14 **A.** Correct.

15 **Q.** You never once told any other retired player that:

16 "We should be getting money from active player
17 licensing," correct?

18 **A.** From active player licensing?

19 **Q.** Yes.

20 **A.** Correct.

21 **Q.** You never once told anyone in the universe for that entire
22 period of time from 2007 -- excuse me. You never once told
23 anybody in the universe from 2000 until after this lawsuit was
24 filed, anybody, that you were owed money from active player
25 licensing, correct?

1 **A.** Correct.

2 **Q.** Okay. Now, it's also true, is it not, sir, that at the
3 time you signed your retired player GLA, your expectation is
4 that you would never receive any licensing money from trading
5 cards?

6 **A.** Probably so. Probably so.

7 **Q.** Not "probably so." That was your memory at that time,
8 correct?

9 **A.** Probably so then, yes.

10 **Q.** Yes, correct?

11 **A.** Correct, yes.

12 **Q.** In fact, your expectation was you would not receive any
13 money from any product category that existed in 2000.

14 **A.** I didn't even -- why would I think that?

15 **MR. KESSLER:** Your Honor, I would like to read in
16 deposition testimony.

17 **THE COURT:** Page and line, please.

18 **MR. KESSLER:** I would first -- first like to look at
19 page -- start out first with page 156, lines 21 to 24. This
20 was actually a question by counsel for plaintiffs.

21 **"QUESTION:** And you testified that a few
22 moments ago that the GLA would only apply to
23 new programs going forward?

24 **"ANSWER:** That was my belief."

25 Then, I would like to read --

1 **MR. HUMMEL:** Your Honor, under the rule of
2 completeness, again, I would like you to continue on with the
3 question and the next answer.

4 **THE COURT:** Fine. Read the next question and answer.

5 **MR. KESSLER:** Question from his counsel:

6 "Is that belief based on anything.

7 **"ANSWER:** Yes, my belief based on that we
8 never signed -- I believe we did when we were
9 active, as being NFLPA members, active
10 players, we signed something to allow them to
11 use our images for the Topps cards."

12 Okay. Going on now, Your Honor --

13 **MR. HUMMEL:** Your Honor, there is one more question
14 and one more answer.

15 **MR. KESSLER:** I think, Your Honor, he should come
16 back at this point. I read the next question and answer.

17 **THE COURT:** Go ahead and read the next question and
18 answer.

19 **MR. KESSLER:** Okay.

20 "I'm asking you" -- this was his counsel --

21 "whether there is anything in these
22 agreements, 1224 and 1225, which leads you to
23 believe that it had to be new programs?

24 **"ANSWER:** Not really."

25 Now going on, Your Honor, line 19. Now, I'm

1 questioning.

2 **MR. HUMMEL:** What page?

3 **MR. KESSLER:** Same page.

4 "Both those were your beliefs at the time you
5 signed the GLAs, right?

6 **"ANSWER:** Regarding Topp cards?

7 **"QUESTION:** Regarding Topps. And it was also
8 your belief that it would have to be new
9 programs previously in existence" --

10 **THE COURT:** No, "not previously in existence."

11 **MR. KESSLER:** Sorry, Your Honor.

12 **"QUESTION:** "And it was also your belief that
13 it would have to be new programs not
14 previously in existence at the time you
15 signed the GLA. That was your belief?

16 **"ANSWER:** Yes."

17 **BY MR. KESSLER:**

18 **Q.** Now, Mr. Laird, it was your belief at the time you signed
19 your GLA that you would not receive any money from any program
20 unless it was a new program not previously in existence?

21 That's true, isn't it?

22 **A.** About Topps cards, yes.

23 **Q.** Okay. It is also true for any other program not
24 previously in existence, isn't that true?

25 **A.** Not really. I only knew of one program. As a player from

1 1982 to 19 -- 1972 to 1983 there was only one program that
2 active players knew about. Okay. And that's the trading
3 cards. There was no other thing in existence.

4 The only recollection I can have, the only thing I
5 can talk to you about, Mr. Kessler, is the Topps trading cards.

6 I have no idea about what other programs there are
7 out there.

8 **Q.** You don't recall that you also believed that, for example,
9 about Upper Deck?

10 **A.** Topps, Upper Deck, what's the difference?

11 **Q.** They are two different trading card companies.

12 **A.** Well, they're trading cards, sir. I'm referring, again,
13 to trading cards. That's all I know about, is trading cards.

14 **Q.** So let's start with that. You agree with me that your
15 expectation when you signed the GLA is you would never receive
16 anything for any trading card license?

17 **A.** I've retired. Are they going to run new trading cards for
18 retired players, sir?

19 **MR. KESSLER:** Your Honor, could I --

20 **THE WITNESS:** That's the only thing that could make
21 me think that --

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

23 **THE WITNESS:** -- Topps ---

24 **MR. KESSLER:** -- can I get a "yes" or "no" answer,
25 please?

1 **THE WITNESS:** Judge --

2 (Laughter)

3 **THE COURT:** Ask the question again.

4 **MR. KESSLER:** Okay.

5 **BY MR. KESSLER: :**

6 **Q.** At the time you signed your GLAs -- yes or no, sir,
7 please, yes or no -- it was your belief you would never get any
8 licensing money for any trading card, whether it was Topps,
9 Upper Deck or any other trading card company.

10 **A.** I was retired.

11 **MR. KESSLER:** Your Honor?

12 **THE WITNESS:** I was retired.

13 **THE COURT:** Wait. I think you can answer "yes" or
14 "no" to that.

15 **THE WITNESS:** No. I'm retired. If they do retired
16 trading cards. I want to know: Is there a retired trading
17 card program?

18 **THE COURT:** Can you answer the question "yes" or
19 "no"?

20 **THE WITNESS:** No.

21 **BY MR. KESSLER:**

22 **Q.** That was not your belief?

23 **A.** State the question again. Now you got me confused.

24 **Q.** I'm not trying to confuse you, sir.

25 **A.** Yes, you are.

1 (Laughter)

2 **Q.** No, I'm not.

3 **A.** Yes, you are.

4 **THE COURT:** Let's not start arguing.

5 **BY MR. KESSLER:**

6 **Q.** Sir, at the time you signed the GLA, it was your belief at
7 that time that you would never receive any licensing money from
8 trading cards, whether it was Topps, Upper Deck or any other
9 company?

10 **A.** Yes.

11 **Q.** Thank you.

12 **A.** Thank you.

13 **Q.** And it was also true if that you didn't believe you would
14 receive it from any other program, correct?

15 **A.** No.

16 **Q.** I direct your attention now to a different portion of your
17 transcript, page 154.

18 **THE COURT:** Go ahead. Page and line.

19 **MR. KESSLER:** Okay. Starting at -- let me just see.
20 Maybe it's -- okay. Let's go -- sorry, Your Honor. Wrong cite
21 here.

22 Oh. Yes. Your Honor, starting at page 154, from 23,
23 going to line 8 on page 155.

24 **"QUESTION:** So your understanding when you
25 signed this, it would have nothing to do with

1 Topps, nothing to do with Upper Deck, nothing
2 to do with other trading cards, right?

3 **"ANSWER:** Yeah.

4 **"QUESTION:** So it would have to be a new
5 category that had never dealt with prior to
6 2000?

7 **"ANSWER:** Yes."

8 **THE WITNESS:** Have to be a new category with Topps.
9 I've already said not Topps, not Upper Deck. You keep asking
10 me about trading cards.

11 I retired 25 years ago, sir.

12 **BY MR. KESSLER:**

13 **Q.** When I -- your deposition took place on September 24th,
14 2008?

15 **A.** I believe so.

16 **Q.** Not 25 years ago, right?

17 **A.** You're asking me about trading cards.

18 **Q.** Okay. And your questions --

19 **A.** I continue to ask me --

20 **Q.** Let me ask you, sir, do you not remember what you thought
21 when you signed your GLA in 2004?

22 **A.** I just testified it was not about Topps or Upper Deck
23 trading cards.

24 **Q.** Now, is it also true, Mr. Laird, that from when you
25 retired in '82 -- was it '82 or '83?

1 **A.** '86.

2 **Q.** You retired in '86?

3 **A.** Yes, sir.

4 **Q.** Okay.

5 **A.** From professional football.

6 **Q.** I apologize.

7 When you retired in '86, from that moment until 2000,
8 when you first signed a retired player GLA, you never had one
9 license entered into for your name or likeness on any product
10 or merchandise, correct?

11 **A.** No.

12 **Q.** Okay. And so prior to signing a retired player GLA, you
13 had no licensing deals?

14 **A.** No.

15 **Q.** Okay. And is it also true that since you stopped signing
16 retired player GLAs after your second one expired, that you've
17 had no licensing deals, correct?

18 **A.** Correct.

19 **Q.** Okay. And to your knowledge, no one has ever used your
20 name or likeness in any product since you've been a retired
21 player?

22 **A.** To my knowledge.

23 **Q.** Yes. Now, you mentioned Mr. Unitas. You'd agree with me
24 Mr. Unitas was -- unfortunately, he's not with us anymore --
25 but he was a much more famous and well-known NFL player than

1 you, correct?

2 **A.** Uhm, yeah --

3 **Q.** Okay.

4 **A.** -- though, not Baltimore.

5 (Laughter)

6 **Q.** Okay. I'm sure you would agree that the licensing rights
7 of Mr. Unitas, or someone like him, you would expect to be a
8 lot more valuable than the licensing rights for you?

9 **A.** What's the agreement?

10 **Q.** No. I'm sorry, sir. My question is -- I'll rephrase it.
11 I don't want to single you out. You or Mr. Allen. You know
12 Mr. Allen?

13 **A.** Who?

14 **Q.** Doug Allen.

15 **A.** Yes.

16 **Q.** You know he was a retired player, right?

17 **A.** Yes.

18 **Q.** His rights aren't worth very much, are they, as a retired
19 player?

20 **A.** Yes.

21 **Q.** So for people like you and Mr. Allen --

22 **A.** Excuse me?

23 **Q.** I said for individuals like you and Mr. Allen, who are
24 retired players whose rights are not worth very much --

25 **A.** I take objection to that. My rights are worth a darn lot.

1 Are you comparing me to Mr. Allen?

2 **MR. KESSLER:** Your Honor, he is making a speech. I
3 direct the witness --

4 **THE COURT:** He never admitted that his rights weren't
5 worth much. That's you talking.

6 **MR. KESSLER:** Okay.

7 **THE COURT:** That's for the jury to decide. You drew
8 the comparison with Mr. Allen, not the witness.

9 **BY MR. KESSLER:**

10 **Q.** Do you agree your rights are worth less than Mr. Unitas'
11 rights?

12 **A.** Monetarily, yes.

13 **Q.** Okay. So you understand my questions are now about money,
14 okay? For players -- strike that.

15 Do you agree with me that there are many, many
16 retired players whose licensing rights are worth nothing?

17 **A.** I wouldn't say "nothing."

18 **Q.** How about a retired player who never played one game?
19 Would you agree that that person's rights are worth nothing?

20 **A.** I wouldn't say "nothing," sir. I'd say we would have a
21 hard time getting a deal. Are you saying "nothing"? He's not
22 worth nothing?

23 **Q.** Well, if they never played one game, do you think someone
24 would want to put them in a football card or product if they
25 never played one game?

1 **A.** They would be probably in a football card.

2 **Q.** You think so? As a retired player?

3 **A.** There is no retired player football cards, sir, unless you
4 know something I don't. I don't believe there was ever a
5 retired football program.

6 Is there a retired football program?

7 **Q.** I'd like you -- sir, I know you're trying your best as a
8 witness, but could you please try to answer my questions?

9 **A.** I'm sorry.

10 **Q.** Please. My question is, take a video game. Do you think
11 any individual game company would want to use a retired player
12 image of a player who never played a game?

13 **A.** Well, there's 11 of us. So if it's a football team, yeah,
14 maybe they wouldn't.

15 **Q.** He never was on a roster.

16 **A.** Probably not.

17 **Q.** Okay. I'm talking --

18 **A.** Probably not.

19 **Q.** You know there are retired players who signed GLAs who
20 never made a roster, never?

21 **A.** No.

22 **Q.** Did you know that?

23 **A.** No.

24 **Q.** You didn't know that?

25 **A.** No, sir.

1 Q. Did you know there were retired players who made a roster
2 for two or three games, signed the GLA, but were never on the
3 team again? Did you know that?

4 A. Sir, I'll help you with -- I don't know other than five or
5 six of the retired players that signed GLAs. The union never
6 gave us a list of who signed GLAs.

7 Q. You never asked for that list, did you?

8 A. No.

9 Q. Now --

10 **THE COURT:** We are going to have to take our break.
11 I think we've reached the magic point. And I need to spend at
12 least five extra minutes with the lawyers.

13 So it will be a 20-minute break this time. Please
14 remember the admonition.

15 **THE CLERK:** All rise.

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

18 **THE COURT:** All right. Everyone be seated, including
19 our witness.

20 Mr. Hummel, please come up. The jury is not present.
21 Ask the questions. I want to hear your line of questions and
22 the answers under oath before -- under 608.

23 **MR. HUMMEL:** I'll do my best to approximate it. I
24 don't have them scripted, so let me just ask him the questions.

25 **THE COURT:** I don't need an offer of proof. We've

1 got the witness right here. Let's see what he would say.

2 **VOIR DIRE EXAMINATION**

3 **BY MR. HUMMEL:**

4 **Q.** Mr. Laird, you attended these retired player gatherings,
5 correct?

6 **A.** Yes.

7 **Q.** And at those retired player gatherings, Doug Allen was
8 present, as well?

9 **A.** Yes.

10 **Q.** And you had communications with other retired players
11 about Doug Allen, correct?

12 **A.** Yes.

13 **Q.** And you had conversations with other retired players about
14 Doug Allen and statements that he made, correct?

15 **A.** Yes.

16 **Q.** Did you through those conversations form an opinion about
17 the reputation that Mr. Allen had for credibility with respect
18 to retired player license programs?

19 **A.** Yes.

20 **Q.** What was that opinion?

21 **A.** That Doug Allen was just going to do whatever Doug Allen
22 is going to do.

23 **Q.** No. The precise question is: Did you form an opinion --
24 did Doug Allen have a reputation among retired players for
25 being truthful or untruthful?

1 **A.** Mostly untruthful.

2 **MR. HUMMEL:** That's the line of questions, Your
3 Honor. And it's plainly allowed under rule 608.

4 **MR. KESSLER:** Your Honor, I don't think there's any
5 basis for that under 608 with respect to this. 608 generally
6 applies where they can cite a specific history of: This was a
7 statement made. We discovered it was untruthful. Therefore,
8 that person has a reputation for untruthfulness.

9 This is innuendo by unnamed players that's they're
10 just casting aspersions on the witness.

11 **MR. HUMMEL:** Actually, Your Honor, Mr. Kessler is
12 exactly wrong. 404(b) would preclude specific instances of
13 prior bad conduct.

14 608 allows testimony on a foundation where he talked
15 to retired players of a reputation for truthfulness or
16 untruthfulness.

17 And then he's free in his case, at that point when
18 that door is opened, to call a witness to testify as to the,
19 quote, truthful character of Doug Allen.

20 That's how it works, in my opinion.

21 **MR. KESSLER:** Your Honor, this is a sideshow. He has
22 to have more than a foundation. I don't believe this witness
23 could even identify the names of the players who stated this.

24 **MR. HUMMEL:** That would be the subject of cross, Your
25 Honor. That goes to weight, not admissibility.

1 **THE COURT:** The Court is going to exclude this under
2 608, because of 403 considerations.

3 The foundation for what the witness testified to may
4 be -- is thin. It may be enough to be sustained under 608(a).

5 But this is very weak character evidence. And if it
6 does not warrant the time that this is going to consume.

7 So there's plenty of ways to attack Mr. Allen without
8 asking this witness to go out on a limb and so forth. So that
9 would only invite -- it would just wind up being a donnybrook,
10 and too much time would be consumed under it.

11 Under 403, this line of questions is going to be
12 excluded.

13 **MR. HUMMEL:** Okay, Your Honor.

14 **THE COURT:** We will take our break.

15 **MR. KATZ:** Your Honor, can we just make it clear that
16 no one is to speak to Mr. Allen, for everybody in the
17 courtroom.

18 **MR. HUMMEL:** Mr. Laird?

19 **MR. KATZ:** Mr. Laird. Excuse me.

20 **THE COURT:** Well, he's on examination.

21 **MR. KATZ:** Right. Just so everyone hears, Your
22 Honor.

23 **THE COURT:** So you should not be talking to the
24 lawyers. I wouldn't expect that you would, but the ground rule
25 here is when the witness is on the stand during breaks you

1 don't go and talk to the lawyers, all right?

2 **MR. PARCHER:** Your Honor, just a very brief point.

3 **THE COURT:** Yeah.

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

5 I believe inadvertently, but I don't want to be
6 presumptuous, when the-retired-players-don't-vote subject came
7 up, Your Honor said: We're not going to get into collective
8 bargaining here.

9 Where Your Honor previously had ruled, I think it was
10 when I was -- when I was on --

11 **THE COURT:** Yes.

12 **MR. PARCHER:** That that was going to be for the jury
13 to decide whether he was referring to collective bargaining,
14 whether his remarks were limited -- Upshaw's remarks were
15 limited to collective bargaining, or whether they went beyond
16 that.

17 And I don't think -- I could be wrong, but I don't
18 think Your Honor was intending to change that expression when
19 you said what you said.

20 **THE COURT:** I don't know what you're talking about.

21 **MR. PARCHER:** Okay.

22 **THE COURT:** What you just said is so vague and
23 ambiguous, I don't have a clue.

24 **MR. PARCHER:** I'll say it again. I'll say it again,
25 and I'll make it clear.

1 Pardon me? I don't think we need to.

2 **THE COURT:** What are you getting at?

3 **MR. PARCHER:** I'll make it clearer, Your Honor.

4 There was a quote of Gene Upshaw's --

5 **THE COURT:** Right.

6 **MR. PARCHER:** -- about retirees, that he wasn't -- he
7 doesn't represent them, and they don't vote.

8 There was a whole colloquy before Your Honor where
9 Mr. --

10 **THE COURT:** I do remember that, yes.

11 **MR. PARCHER:** -- where Mr. Kessler was claiming that
12 those remarks were limited to collective bargaining.

13 Your Honor took a look at it at that time and said:
14 No, that's going to be -- at least this is my recollection. I
15 don't have a transcript -- that's going to be for the jury to
16 decide. I'm not going to decide whether he was limiting his
17 remarks or whether it went beyond that.

18 Today, when the subject of retirees don't vote came
19 up through Mr. -- through Mr. Hummel, Your Honor said:
20 We're not going to get into anything about collective
21 bargaining.

22 And I don't think Your Honor was focused on the
23 information that I'm giving you now, when --

24 **THE COURT:** What information?

25 **MR. PARCHER:** That Your Honor had already said you're

1 not going to make that decision; that you're going to leave it
2 up to a jury.

3 **THE COURT:** What I have been trying to say is this
4 generalized grievance that the union has done a poor job -- do
5 you need a cough drop?

6 **THE WITNESS:** Yes, sir. Thank you.

7 You got the good ones?

8 **THE COURT:** This is all I've got.

9 **THE WITNESS:** Thank you, sir.

10 **THE COURT:** I hope that helps some.

11 Those of you who follow this sport can realize that
12 there is a general controversy between the retired players and
13 the union over pension benefits and retirement and health
14 benefits.

15 And maybe the union has done a crummy job on now,
16 past and future, but that's a different issue.

17 **MR. PARCHER:** Correct. Agreed.

18 **THE COURT:** And our issue here is this GLA, just the
19 GLA. And so I've been trying to focus on the GLA and allow
20 just enough other evidence from these other transactions to
21 shed some light on the extrinsic circumstances surrounding the
22 GLA.

23 **MR. PARCHER:** Right.

24 **THE COURT:** Both sides have been given a fair amount
25 of latitude on that. And I'm not sure what you're getting at

1 here. I don't know what motion you're making or whether you're
2 just making another speech.

3 **MR. PARCHER:** I'm not making a speech, Your Honor.

4 **THE COURT:** What is it you're asking me to do?

5 **MR. PARCHER:** I'm respectfully calling to Your
6 Honor's attention that perhaps inadvertently you suggested that
7 the-retired-players-don't-vote remark was limited to the
8 context of collective bargaining.

9 That's what Your Honor said. Whereas, a few days ago
10 Your Honor had said: I'm not going to decide that. That will
11 be for a jury to determine.

12 **THE COURT:** They don't vote.

13 **MR. PARCHER:** They don't vote, but was that remark
14 limited to a collective bargaining type of speech or was that
15 a -- a statement that related to the retired players generally?

16 **THE COURT:** What did I rule when this motion in
17 limine came up? Did I exclude the comment or not?

18 **MR. PARCHER:** I don't believe you did. I believe you
19 said: I'm not going to decide that. I'm going to leave it.

20 I don't know whether there was a motion in limine or
21 not.

22 **MR. HUMMEL:** I have the order, Your Honor.

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

24 **MR. PARCHER:** I don't know why I'm not being clear.
25 Maybe somebody can say it better than I can.

1 **THE COURT:** You know, I'm sorry. I hope I'm not -- I
2 hope the Appellate Court will read this transcript and ask
3 themselves what is it that Mr. Parcher is specifically asking
4 me to do?

5 I haven't got a clue. Are you asking to put
6 something in evidence?

7 **MR. PARCHER:** No. I'm asking Your Honor to
8 reconsider a remark that I believe you spontaneously made that
9 seemed to link the Upshaw comment about not -- retirees don't
10 vote, to collective bargaining and, therefore put it out of the
11 case rather than leaving it to their consideration.

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

13 **MR. PARCHER:** Excuse me, please. Let me finish.

14 **THE COURT:** I'm not going to say anything more on
15 this subject to the jury now.

16 If you want to propose a jury instruction that I
17 could give either soon or later, I will be happy to consider
18 it.

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

20 **THE COURT:** Please put it in writing and give my your
21 points and authorities so I can understand the context.

22 But I am confused as to what you're getting at.

23 **MR. PARCHER:** Okay. It has to be me, then. I'll try
24 to be clearer in writing.

25 **THE COURT:** Take 15 minutes.

1 (Recess taken from 11:24 to 11:39 a.m.)

2 **MR. KESSLER:** Your Honor, one quick preliminary
3 subject.

4 **THE COURT:** All right.

5 **MR. KESSLER:** Pat Allen is here, Your Honor, and you
6 recall she will either testify today or next week.

7 What I told Mr. LeClair if we start her at noon,
8 okay, which we might do, I have about 10 or 15 more minutes --
9 I don't know what they're going to do -- then we should try to
10 get her on.

11 But if it ends up being later than noon, then since
12 she cannot complete tomorrow, she would have to come back next
13 week. And they should go to their next witness, Mr. Beach, who
14 is in the courtroom, so there isn't that interruption for the
15 jury and that period of time.

16 And the witness, she won't come back then, as Your
17 Honor ruled yesterday.

18 **THE COURT:** Whose witness is she?

19 **MR. LECLAIR:** She's our witness.

20 **MR. KESSLER:** She's their witness.

21 **THE COURT:** What do you want me to do?

22 **MR. LECLAIR:** Our request is, we've requested to call
23 her, and that we call her whenever she comes up. If she
24 finishes, she finishes. If she doesn't, we'll accommodate her
25 request to go to her birthday party, and she'll come back next

1 week to finish.

2 **THE COURT:** When are we going to finish with the
3 witness on the stand?

4 **MR. KESSLER:** Oh, no. We're going to finish this
5 witness now. I have about 10 or 15 more minutes with him and
6 I'm done. This may not be an issue.

7 It depends on how long they go on redirect with
8 Mr. Laird.

9 **THE COURT:** Well, look. I would rather not interrupt
10 her testimony. So if we can't -- in your judgment we can't get
11 her on and off, then skip her for now and go to the next
12 witness so that we don't have the long hiatus.

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

14 **THE COURT:** All right. Okay.

15 Before we bring in the jury, the court reporter has
16 told me, Mr. Kessler, she's having trouble with you because you
17 interrupt the witness.

18 So you are speaking over -- you're not the only one
19 who has done this -- but right now you're the one that's
20 causing the trouble. So you have to stop.

21 **MR. KESSLER:** I will, Your Honor. I think in this
22 particular witness he's both interrupting me and I may be
23 interrupting him. So it may be both sides. But I understand
24 the problem, and I will be careful.

25 **MR. LECLAIR:** Your Honor, because of some logistical

1 issues we have, we did not think we would get to Beach. Would
2 it be all right, instead of calling Beach, who we are not ready
3 to call from an exhibit standpoint, could we read the
4 deposition of Mr. Eyrich to finish out the day?

5 That's because we just did not expect --

6 **MR. KESSLER:** I have no objection to that.

7 **THE COURT:** If you're ready to go, do that.

8 **MR. LECLAIR:** We'll be ready.

9 **THE COURT:** Somebody is hacking and coughing.

10 **MR. KATZ:** It's just me, Your Honor. It's just an
11 allergy. It's nothing contagious.

12 **THE COURT:** I know, but germs are going everywhere.
13 Be mindful. The rest of us are trying to keep well.

14 **MR. KATZ:** Yes, Your Honor.

15 **THE COURT:** Let's bring in our jury, and continue on.
16 Where is our witness?

17 **THE WITNESS:** Right here, Your Honor.

18 **THE COURT:** Bring in our jury. You lawyers must know
19 that anytime there is a videotape deposition even for
20 impeachment the court reporter does not take it down. You know
21 that. That's the ground rule.

22 So if you want a record of it, you've got to somehow
23 agree to put in the record what it was or give us the page and
24 line number at the time so that there will be a record of it.

25 **THE CLERK:** All rise.

1 **THE COURT:** Usually, the lawyers can agree on it.
2 It's not a problem.

3 Please, come right in.

4 (Thereupon, the jury enters the courtroom.)

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

6 I'm going to ask the witness and lawyers on both
7 sides to try not to step on each other's questions and answers,
8 so we get clear-cut questions, no interruption, clear-cut
9 answer, no interruption. And that way it will be easier for us
10 all to follow, including the court reporter.

11 Please go ahead, Mr. Kessler.

12 **RE CROSS EXAMINATION (RESUMED)**

13 **BY MR. KESSLER:**

14 **Q.** Mr. Laird, you were asked some questions by counsel for
15 plaintiffs about retired player conventions. Do you recall
16 that?

17 **A.** Yes.

18 **Q.** And I believe you testified you only attended one retired
19 player convention since you've been a retired player, correct?

20 **A.** I believe so, yes.

21 **Q.** So you have no idea at what Mr. Allen may or may not have
22 said about retired player licensing at all of the retired
23 player conventions that you did not attend?

24 **A.** Not me personally, no.

25 **Q.** Okay. And it's also true, isn't it, that other people

1 speak about retired player licensing at retired player
2 conventions besides Mr. Allen from the union? Did you know
3 that?

4 **A.** I think Mr. Allen does most of it.

5 **Q.** Well, you've only attended one convention, sir, so how do
6 you know what happens at the other conventions?

7 **A.** I talk to the other chapter presidents.

8 **Q.** Okay. Is it your understanding Mr. Allen is the one who
9 ordinarily speaks?

10 **A.** Most of the time, yes.

11 **Q.** And you have no idea from any personal knowledge what he
12 has said at those other conventions?

13 **A.** Personally, no.

14 **Q.** Now, you also testified, Mr. Laird, that you did attend a
15 meeting of chapter presidents of the retired players
16 association in Baltimore in 2004. Is that correct, or --

17 **A.** I believe it's 2005. I believe the date was October.

18 **Q.** Was it 2006, actually?

19 **A.** It could have been.

20 **Q.** 2006? Okay.

21 **A.** Could have been.

22 **Q.** Let me show you a document that may refresh your
23 recollection.

24 **MR. KESSLER:** Do we have Trial Exhibit 2362? Is it
25 in my stack here somewhere? It's not up here. I don't think

1 we've handed it up.

2 Thank you. Okay.

3 May I approach the witness, Your Honor?

4 **THE COURT:** Please.

5 **BY MR. KESSLER:**

6 **Q.** And do you recall this e-mail exchange between you and
7 Mr. Allen?

8 **A.** Yes.

9 **Q.** And this e-mail exchange was in October of 2006, correct?

10 **A.** Yes.

11 **Q.** Now, does that refresh your recollection that the meeting
12 of the chapter presidents you attended in Baltimore was in
13 October of 2006?

14 **A.** Yes, not 2005.

15 **Q.** Okay. Now, you told the jury on the questioning from your
16 counsel that when Mr. Allen gave you a list of more than 300
17 retired players who received about \$7 million in revenues, that
18 you assumed that was group licensing revenue under the GLAs you
19 signed, the retired player GLAs, and not ad hoc agreements,
20 correct? That's what you told the jury?

21 **A.** I don't recall that.

22 **Q.** Okay. Well, let me clarify this. When Mr. Allen showed
23 you a list of more than 300 players --

24 **A.** He never showed me a list, sir.

25 **Q.** When he sent to you the list --

1 **A.** He never sent me a list of the names.

2 **Q.** You don't recall that in Baltimore Mr. Allen either
3 displayed or showed the list of the 857 payments to 358 retired
4 players totaling \$7,061,000?

5 **A.** No, sir, there was never a list presented.

6 **Q.** Did he tell you that there were 857 payments to 358
7 retired players, totaling 7,061,000?

8 **A.** Now you have it right.

9 **Q.** Okay. I just want to understand. When I was sitting
10 down, I thought I heard you tell the jury that you did not
11 think those were ad hoc licenses. You assumed it must be
12 retired player group licensing.

13 Wasn't that what you told the jury?

14 **A.** I don't I spoke about this to the jury. The only thing I
15 mentioned is that Doug Allen spoke about giving certain amount
16 of players' money, retired players.

17 **Q.** Okay. If you don't -- you may not recall exactly what you
18 said.

19 **A.** Right.

20 **Q.** I know it's hard to be there. So let me just ask you now.
21 When Mr. Allen told you at this meeting that there were -- in
22 2006, that there were payments to 358 retired players in one
23 year, in one year, totaling 7,061,150, did you understand that
24 to be ad hoc licensing?

25 **A.** I never knew what ad hoc was at the time.

1 Q. Did you think it was group licensing?

2 A. I thought it was licensing.

3 Q. Well, in terms of your retired player GLA, you testified a
4 lot about what you thought was group licensing. Do you recall
5 that?

6 A. Yes, sir.

7 Q. Did you think this was group licensing at the time?

8 A. Yes.

9 Q. Okay. So you just told the jury you thought that was
10 group licensing, correct?

11 A. Probably, yeah.

12 Q. Okay. And what Mr. Allen told you is that that money was
13 given out to the individual 358 players, correct?

14 MR. HUMMEL: Objection, Your Honor. Misstates the
15 document which he has not put in evidence.

16 THE COURT: Well, the -- whether it misstates it or
17 not is -- this is not -- his question is not anchored in any
18 document. So if the information is not correct, the witness
19 can say so.

20 Overruled. Please answer.

21 BY MR. KESSLER:

22 Q. Okay. Mr. Allen told you the payments were made to
23 individual retired players, 358, correct?

24 A. Yes.

25 Q. And you knew you were not one of those 358 players because

1 you didn't get any payment, right?

2 **A.** Correct.

3 **Q.** And when you heard this information at the convention, you
4 didn't tell anyone from the union, Mr. Allen or any retired
5 player:

6 "Wait a minute. This is group licensing as I
7 understand it. Where's my payment? Where's my -- where's my
8 check?"

9 You didn't say that, did you?

10 **A.** No. I assumed I was not part of the 358 players.

11 **Q.** In other words, you thought the only players who should
12 get paid were those players whose rights were used, correct?

13 **A.** I assumed I was not part of the 358 players, yes.

14 **Q.** But what you mean by that is your understanding in 2006 is
15 that if your rights were used, so you would be one of the 358,
16 you would get money?

17 **A.** Yes.

18 **Q.** And if your rights weren't used, you didn't get money
19 because they didn't use your rights. That was your
20 understanding, correct?

21 **A.** Yes.

22 **Q.** And you never told Mr. Allen that there was something
23 wrong with that, correct?

24 **A.** No. I didn't get around to it.

25 **Q.** You also -- not that you didn't get around to it. You

1 didn't believe there was anything wrong with it.

2 **A.** No, I didn't get around to it.

3 **Q.** Well, you did communicate to Mr. Allen --

4 **MR. KESSLER:** I would like to move into evidence,
5 Your Honor, this exchange between Mr. Allen and Mr. Laird,
6 Trial Exhibit 2362.

7 **THE COURT:** Any objection?

8 **MR. HUMMEL:** 2362? No objection.

9 **THE COURT:** Thank you. Received.

10 (Trial Exhibit 2362 received in evidence.)

11 (Document displayed.)

12 **BY MR. KESSLER:**

13 **Q.** This is a series of e-mails. Like these e-mails work, we
14 have to start at the second page first, and work our way up the
15 chain, if you will.

16 So let's go, first, to the bottom of the chain. And
17 the first e-mail is from you, sent to Qiana Thomas and other
18 people at the NFL Players Association, correct?

19 **A.** Yes.

20 **Q.** You said:

21 "Qiana, as a member of the NFL" -- I think you
22 meant NFLPA. Not the R, right? That's just a typo?

23 **A.** No, it's an R.

24 **Q.** Oh, I'm sorry. Retired. You are correct, sir. I
25 apologize.

1 You said:

2 "As a member of the NFL Retired Players
3 Association ..."

4 That was different, in your mind, from the NFLPA,
5 correct?

6 **A.** It's a subsidiary.

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

8 **A.** Subsidiary. Subsidiary.

9 **Q.** I see. Okay.

10 "As a member of the NFLRPA, I am requesting the
11 information that Doug Allen said was available to us at the
12 chapter meeting, the names and amounts of money that Players
13 Inc has given to the retired players. Second request."

14 Then, let's look on the next page, if we can. It
15 says:

16 "Bruce: I will call and discuss" -- let's see
17 who it's from, first so we can say.

18 This is from Doug Allen, correct, to you? Right?

19 **A.** Yes.

20 **Q.** And he said:

21 "Bruce: I will call you and discuss any
22 questions you have. But, as I said at the Baltimore meeting,
23 the specifics of individual deals are often confidential and
24 the list is not for publication or circulation. I would be
25 glad to give you the range of payments overall and how many

1 opportunities particular players had when we speak if you are
2 interested. Any progress with Andre?"

3 And that seems to be another issue.

4 Mr. Allen was telling you, was he not, that these
5 were individual deals, correct?

6 **A.** No.

7 **Q.** Okay.

8 **A.** You can assume he was telling me that, but he doesn't say
9 it.

10 **Q.** Well, when he said in the second line:

11 "The specifics of individual deals," you didn't
12 understand an individual meant "individual"?

13 **A.** No, not really.

14 **Q.** Okay. Looking at the next -- the next one, your response,
15 saying:

16 "That is exactly" -- I'm sorry. I may have left
17 one out. Did I leave one out in the middle? Okay.

18 (Document displayed.)

19 Is there some -- okay.

20 "Thanks." This is your response. "It would be
21 nice to know which guys out of the 3500 that the NFLPA said are
22 part of the Players Inc program take part in programs and the
23 total of monies that is given to retired guys."

24 Now, Mr. Laird, when you wrote this you clearly
25 understood that the players who were being paid were those who

1 were getting deals and not everybody who signed the GLA, right;
2 you understood that?

3 **A.** No, it's not correct. It's not correct.

4 I asked him, out of what they put on the Web site,
5 out of the 3500 players they said are part of Players Inc's
6 programs. Part of Players Inc programs. I was absolutely
7 specifying "part of Players Inc programs." Those were my
8 words.

9 **Q.** Okay.

10 **A.** And Doug Allen's response to me was:

11 "Here's the list. I'm not going to give you the
12 names. There's 358 players, 857 guys."

13 And he told me in a conversation that I had with him,
14 just to clarify for you, that the amounts were from 500 to
15 \$250,000.

16 **Q.** Let's look to the next response from Mr. Allen. It says:

17 "That is exactly what we gave you in Baltimore.
18 That was the total list of retired players paid last year and
19 the total amount paid. 857 payments to 358 players totaling
20 7,061,150. It was the second line on the list we passed out."

21 Now, he passed out a list at the meeting, right?

22 **A.** As my first e-mail said, I didn't stay long enough at the
23 meeting. I may have missed the list.

24 **Q.** Okay. What you're now telling the jury is not that there
25 wasn't a list provided, but perhaps you left early and wasn't

1 there when he passed out the list of the players.

2 **A.** That could have been. But we've never -- I was never
3 given a list. I asked for the list.

4 **Q.** Okay. Well, if you were at the meeting and stayed for the
5 whole meeting you would have gotten whatever was passed out,
6 right?

7 **A.** Possibly.

8 **Q.** Okay. And Mr. Laird, if you thought there should have
9 been money paid not to 358 players, but should have been paid
10 to all 2,000 players who signed retired player GLAs, you didn't
11 say anything about that, did you, to Mr. Allen, in these
12 e-mails?

13 **A.** I wasn't thinking about the GLAs, sir, at the time. This
14 was in 2006. I was asking about retired players' benefits --

15 **Q.** Okay.

16 **A.** -- out of the Players Inc program.

17 **Q.** You know --

18 **A.** So I'm supposed to get back and say:

19 "Oh, I remember I signed a GLA, and I'm supposed
20 to get paid" to my union?

21 **Q.** Sir, you signed the GLA, I believe, once in April 19,
22 2000, and then again July 5th, 2004. Are you saying that the
23 retired player GLA was so unimportant to you, you didn't even
24 remember you signed it when you were discussing licensing with
25 Mr. Allen? Is that your testimony?

1 **A.** Of course I remember signing it. It wasn't -- it wasn't
2 on my mind about the exact wording of the GLA.

3 **Q.** Okay. Mr. Laird, let me move on to another subject.

4 It's correct, isn't it, you've testified you got the
5 GLA in the mail. You signed it, put a stamp on it and sent it
6 in, correct?

7 **A.** Or it could have been a self-addressed envelope back to
8 them.

9 **Q.** So it may not even have cost you a stamp, right?

10 **A.** Could have been.

11 **Q.** And you didn't have to -- you didn't have to pay anything
12 to sign the GLA, right?

13 **A.** No.

14 **Q.** The GLA you signed, the second one in 2004, was
15 non-exclusive, right?

16 **A.** I don't know. You'd have to show it to me.

17 **Q.** You don't recall?

18 **A.** No.

19 **MR. KESSLER:** Could we put up the second retired
20 player GLA?

21 This is Trial Exhibit 12 -- what is it, 25?

22 **BY MR. KESSLER::**

23 **Q.** And if you look at the first line, you'll see it says
24 "non-exclusive."

25 (Document displayed.)

1 Does that refresh your recollection, sir?

2 **A.** Yes, I see "non-exclusive."

3 **Q.** So by signing this and maybe putting it in a
4 self-addressed envelope, you didn't -- you were still free to
5 do a deal with anyone else you wanted to do a deal with,
6 correct?

7 **A.** Sure.

8 **Q.** You didn't give up anything by signing this, except that
9 if an opportunity was found for you, then the Players
10 Association would give you that, and you benefited from it,
11 right?

12 **A.** I gave up my rights to them, yes.

13 **Q.** Right. You gave up your rights, but you didn't give it up
14 exclusively. You gave them the right to find any opportunities
15 they could find for you, right?

16 **A.** Correct.

17 **Q.** And if they found no opportunities for you, you weren't
18 expecting anything, right?

19 **A.** Not if they didn't find anything, no.

20 **Q.** I would now like to move on to -- you mentioned that
21 you -- you used the word "agent." You thought of the NFLPA as
22 your agent. Do you remember that testimony?

23 **A.** Yes.

24 **Q.** Now, when were you an active player did you have an agent?

25 **A.** Yes.

1 Q. Okay. And when you had an agent, you signed an agency
2 agreement, right?

3 A. Yes.

4 Q. And that said they were going to be your agent, right?

5 A. In some words to that effect. I can't remember --

6 Q. Right. The retired player GLAs you signed said nothing
7 about the NFLPA being your agent, correct?

8 A. Not in words.

9 Q. Well, not in words or in any other substance, if you look
10 at the paper, right? There was no reference to agent?

11 A. Not in words.

12 Q. Okay. Was there something else other than words in the
13 authorization form that told you it was an agent?

14 A. I was giving them my rights to use my image in my playing
15 days for licensing. So that to me is what agents do.

16 Q. That's the only basis of your testimony to the jury you
17 thought this was an agency?

18 A. Yeah.

19 Q. But you also testified to the jury you had absolutely no
20 control over what they did with those rights, correct?

21 A. No.

22 Q. You had no control over the licensing business of Players
23 Inc?

24 A. I've never even seen a licensing agreement with Players
25 Inc.

1 Q. So you had no control, yes?

2 A. Yes.

3 Q. Thank you. All right.

4 Now, you also mentioned that -- that you -- I guess
5 your son had a conversation with someone else who said:

6 "I saw your dad in the Madden game."

7 Do you recall that?

8 A. Yes.

9 Q. Who was the conversation with? I just couldn't hear --

10 A. One of my son's friends.

11 Q. One of your son's friends. And this conversation took
12 place in what year?

13 A. I don't know. It was a while ago.

14 Q. Okay. Was it -- was it in the last two or three years?

15 A. Probably so.

16 Q. Okay. It was after -- later than 2003, correct?

17 A. I would assume so, yes.

18 Q. Okay. Now, your counsel showed you a version of the
19 Madden game in 2003 that had your number. You said that was
20 your number, 40, I think it was, right?

21 A. Yes.

22 Q. Okay. Now, you know, sir, that after 2003 your number
23 never appears. It's a different number, right?

24 A. I was told that, yes.

25 Q. Okay. So the only year your number ever appeared was

1 2003, correct?

2 **A.** To the best of my knowledge.

3 **Q.** Did you know that this case is about 2004 to 2007?

4 **A.** Not really.

5 **Q.** Okay. So during 2004 to 2007, Madden never used even your
6 number, correct?

7 **A.** I don't know. I guess not.

8 **Q.** Okay. And they didn't use your name and they didn't use
9 your image, correct?

10 **A.** Well, they used my image when they used: Six-one, 198,
11 six years in the league, and 27 years old.

12 **Q.** They didn't use your picture or your name?

13 **A.** That's correct.

14 **Q.** They didn't use your number after 2003?

15 **A.** Correct.

16 **Q.** Okay. Now, are you saying that your son's friend knew
17 what your weight was when you played football or your height?

18 **A.** No.

19 **Q.** Okay. So he couldn't have gotten any information from
20 that, right?

21 **A.** Right.

22 **Q.** Okay. And it didn't have your number, correct?

23 **A.** I don't know what game he was playing, sir.

24 **Q.** If it was after '03, he didn't have your number, correct?

25 **A.** I don't know what game he was playing.

1 Q. So is it your testimony simply that just because you were
2 on that team, you know you were on that team, right?

3 A. Everybody knows I'm on that team.

4 Q. Okay. Well, do you think young -- well, do you think --
5 do you know who buys video games today?

6 A. Probably young people.

7 Q. Yeah. Do you think all the young people remember, with
8 all due respect, sir, who was on your team in different
9 positions, especially if it wasn't a superstar like Mr. Unitas?

10 MR. HUMMEL: Objection. Speculation, Your Honor.

11 THE WITNESS: In and around Baltimore.

12 THE COURT: Isn't it just argument?

13 MR. KESSLER: Okay, Your Honor.

14 THE COURT: Save that for closing argument.

15 MR. KESSLER: Okay. Very good.

16 BY MR. KESSLER:

17 Q. Now, you speak a lot to retired players, sir, because
18 you're a chapter president, correct?

19 A. Correct.

20 Q. And it's true, isn't it, that you never heard one retired
21 player say that they expected to get paid under a GLA if their
22 rights were not licensed and used?

23 You never heard that.

24 MR. HUMMEL: Objection. Compound, Your Honor.

25 THE WITNESS: I don't recall. I'm not understanding.

1 **THE COURT:** Wait. I think it's -- I'm going to
2 overrule the objection.

3 If you understand the question, please answer.

4 **THE WITNESS:** Could you restate the question again?

5 **BY MR. KESSLER:**

6 **Q.** When you talked to retired players about licensing -- you
7 did that sometimes, correct?

8 **A.** Very limitedly.

9 **Q.** Okay. But at the times you did, did any retired player
10 ever say to you:

11 "I should get paid even if they don't use my
12 rights"?

13 **A.** No.

14 **Q.** Did any retired player say to you:

15 "I should get paid" -- this is before this
16 lawsuit now, my question. Did any retired player before this
17 lawsuit ever say to you:

18 "I should get paid out of active licensing"?

19 **A.** No. GLAs weren't even brought up.

20 **MR. KESSLER:** Now, can you put up the retired player
21 GLA again for just one moment.

22 1225, I think.

23 (Document displayed.)

24 **BY MR. KESSLER:**

25 **Q.** It's correct, isn't it, that you didn't have a clue as to

1 how you would receive money under this retired player GLA when
2 you signed it; is that correct?

3 **A.** Correct.

4 **Q.** Not a clue at all?

5 **A.** Not a clue.

6 **MR. KESSLER:** Thank you. I have no further
7 questions.

8 **THE COURT:** All right. Redirect.

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

10 Could I have Exhibit 1225 on the board, please.

11 (Document displayed.)

12 **REDIRECT EXAMINATION**

13 **BY MR. HUMMEL:**

14 **Q.** Mr. Laird, calling your attention to the third to last
15 paragraph of Exhibit 1225 -- I'm sorry, the next one. Starts:

16 "If the undersigned player's inclusion."

17 Did you read that when you signed this agreement,
18 sir?

19 **A.** I'm sure I did.

20 **MR. HUMMEL:** It's not a paragraph that's been focused
21 on very much, Your Honor, so I would like to read it into the
22 record.

23 **THE COURT:** Go ahead.

24 **MR. HUMMEL:** "If the undersigned player's inclusion
25 in a particular NFLPA program will conflict with an individual

1 exclusive endorsement agreement, and the player provides the
2 NFLPA with timely notice of that conflict, the NFLPA agrees to
3 exclude the player from that particular program."

4 **BY MR. HUMMEL:**

5 **Q.** What did you understand that paragraph to mean?

6 **A.** That if I had a conflict with a particular situation,
7 i.e., I'm sure, sponsorship or program or marketing, that all
8 I'd have to do was give timely notice to the NFLPA, and they'll
9 exclude me from this particular GLA, or this particular
10 program, whatever that program is.

11 **Q.** So Mr. Kessler asked you a question where he said -- he
12 said, his words -- "absolutely no control."

13 Did this paragraph, in your mind, give you any
14 control?

15 **MR. KESSLER:** Objection, Your Honor. This is
16 leading.

17 **THE WITNESS:** Yeah --

18 **THE COURT:** It is leading. Please ask it a different
19 way.

20 **BY MR. HUMMEL:**

21 **Q.** What did this paragraph mean to you in terms of control
22 you had or didn't have?

23 **A.** It meant if I had some conflicts I could give them writing
24 and be excluded from the program.

25 **Q.** One more question.

1 **MR. HUMMEL:** If you could call up the second
2 paragraph there. That one.

3 (Document displayed.)

4 **BY MR. HUMMEL:**

5 **Q.** Mr. Kessler asked you about conversations you had with
6 retired players and representatives of the union. I just want
7 to ask you one more time: Did anyone ever tell you that "six
8 or more present or former" didn't really mean that?

9 **A.** No.

10 **Q.** Now, Mr. Kessler seems to think it's important that you
11 didn't complain.

12 **MR. KESSLER:** Your Honor, I move --

13 **BY MR. HUMMEL:**

14 **Q.** Why didn't you complain?

15 **MR. KESSLER:** I move to strike. He's arguing
16 about --

17 **THE COURT:** Sustained.

18 **MR. HUMMEL:** Fair enough.

19 **BY MR. HUMMEL:**

20 **Q.** Why didn't you complain when you didn't receive money?

21 **A.** Because I trusted the union would do a program, and if we
22 had a program we would get paid. I don't need the money.

23 **Q.** And Mr. Laird, Mr. Kessler asked you about some testimony
24 you gave in your deposition, which was under oath, right?

25 **A.** Right.

1 **MR. HUMMEL:** I apologize for leading. That's a
2 preparatory question.

3 **THE COURT:** That's all right. It's preliminary.

4 **BY MR. HUMMEL:**

5 **Q.** And you were sworn to tell the truth in your deposition,
6 right?

7 **A.** Yes.

8 **Q.** And did you intend to tell the truth in your deposition?

9 **A.** Absolutely.

10 **Q.** Now, when you were talking about Topps and Upper Deck and
11 he was asking you questions in your deposition about that, what
12 was in your mind?

13 **A.** When I was an active player that's all I knew about was
14 Topps or Upper Deck. So I was referring to them as an active
15 player.

16 **Q.** Did you know anything about other licenses that the NFLPA
17 either did or didn't enter into for retired players?

18 **A.** We were never told a thing about that.

19 **Q.** All right. So now let's go to Exhibit 2362, and put this
20 on the board. It's the e-mail exchange between you and
21 Mr. Allen.

22 While you're getting it out, Mr. Laird, did you have
23 a sense of whether or not Mr. Allen was agitated with you for
24 sending these e-mails?

25 **MR. KESSLER:** Objection, Your Honor.

1 **THE COURT:** Calls for speculation. Sustained.

2 **BY MR. HUMMEL:**

3 **Q.** Well, you wrote to him in the first line --

4 **MR. HUMMEL:** If you could just --

5 **THE WITNESS:** The same one.

6 **BY MR. HUMMEL:**

7 **Q.** No, first line at the very top.

8 "Doug," you wrote this, right?

9 **A.** Yes.

10 **Q.** "You're cute when you're mad."

11 **A.** Yes.

12 **Q.** What did you mean by that?

13 **A.** Well, because Doug gets very aggravated and very intense
14 and very argumentative and absolutely downright ornery when you
15 ask him questions.

16 **Q.** So now let's go to the second page of the exhibit, which
17 is actually your first e-mail, your initial inquiry. Who is
18 Qiana?

19 **A.** She is works for the NFLPA.

20 **Q.** And what were you intending to ask? This is an e-mail you
21 wrote, right?

22 **A.** Yes.

23 **Q.** What were you intending to ask? What did you want to
24 know?

25 **A.** I wanted to know about the -- the retired players' monies

1 that were generated by Players Inc to retired players.

2 **Q.** Did you, in your mind, have any distinction between
3 "ad hoc" and "group" when you wrote this?

4 **A.** Sir, I didn't even know what an ad hoc agreement was until
5 two months or six weeks before this trial.

6 **Q.** Fair enough. So now let's go to the next e-mail,
7 Mr. Allen's response to you, which is on the next page. It's
8 actually on the first page of the exhibit at the bottom.

9 **MR. HUMMEL:** No, very bottom.

10 (Document displayed.)

11 And this, just for the record, is dated October 25,
12 2006.

13 **BY MR. HUMMEL::**

14 **Q.** Mr. Allen writes to you the following:

15 "I will call you and discuss any questions you
16 have, but as I said at the Baltimore meeting, the specifics of
17 individual deals are often confidential, and the list is not
18 for publication or circulation."

19 You asked for information. How did you interpret
20 this response?

21 **A.** That I couldn't get the list of the names or the amounts,
22 because it wasn't for publication or circulation.

23 **Q.** Did you ever get the list from Mr. Allen?

24 **A.** No, sir, I did not.

25 **Q.** Look, if you would, at the next e-mail in the chain, right

1 there. You responded to him, right?

2 **A.** Yes.

3 **Q.** And you said:

4 "Thanks. It would be nice to know which guys
5 out of the 3500 that the NFLPA said are part of the Players Inc
6 program take part in programs and the total of monies that is
7 given to retired players," [sic] right?

8 **A.** Yeah.

9 **Q.** Where did you get that number, 3500?

10 **A.** Came from the NFLPA's publication and Web site.

11 **Q.** They were holding out that number?

12 **A.** Yes.

13 **Q.** And were you drawing a distinction here about ad hocs
14 versus the group?

15 **A.** Sir, at the time of this e-mail I wasn't even, you know,
16 thinking about the -- those things. I just wanted to know what
17 was going on with retired players.

18 **Q.** Did Mr. Allen respond to this e-mail? I guess he did.
19 It's in the next one up, right?

20 **A.** Yeah. Says: What don't you understand, or something.

21 **Q.** He writes to you:

22 "857 payments to 358 players totaling
23 \$7 million."

24 Did you know if those were ad hoc deals or group
25 licensing money?

1 **A.** No idea what it was.

2 **Q.** Did you know what licenses were involved in those
3 payments?

4 **A.** No, sir.

5 **Q.** Did he ever show you those licenses?

6 **A.** No, sir.

7 **Q.** Did he ever give you an accounting for how that was
8 calculated?

9 **A.** No, sir.

10 **Q.** In --

11 **MR. HUMMEL:** I'm done with this exhibit.

12 **BY MR. HUMMEL:**

13 **Q.** In the Madden game, when your son's friend came up to you
14 and said, "Your dad's in the game," was there any other strong
15 safety for the 1977 Baltimore Colts other than you?

16 **A.** No, sir. I played all 15 games. Started and completed
17 every one.

18 **Q.** Including the playoff game, right?

19 **A.** Yes.

20 **MR. HUMMEL:** Your Honor, I have nothing further.

21 **MR. KESSLER:** Very briefly, Your Honor.

22 **REXCROSS EXAMINATION**

23 **BY MR. KESSLER:**

24 **Q.** Going back to Exhibit 2362, that your counsel just took
25 you through.

1 In this exhibit, sir, Mr. Allen was telling you that
2 he gave out the list of the players in Baltimore, and it turns
3 out you left the meeting early so maybe you didn't get it,
4 correct?

5 **A.** It could be.

6 **Q.** Yes?

7 **A.** I don't know if he ever gave it out.

8 **Q.** After you got this did you ever talk to other people at
9 the meeting and ask to see the list, if maybe they got it?

10 **A.** No, I did not.

11 **Q.** What you did know, sir, is that you were not one of the
12 358 players who got any money because you would know if you got
13 money, right?

14 **A.** Right.

15 **Q.** And you never wrote back to Mr. Allen, when you were
16 telling him he was cute when he was angry, you never wrote back
17 and said:

18 "By the way, where's the money I should be
19 getting under my retired player GLA?"

20 Never said that, right?

21 **A.** I never asked for any money, no.

22 **Q.** Okay. In fact, Mr. Laird, there's no discussion in any of
23 this e-mail asking at all about payment from active player
24 licensing. The subject is not there at all?

25 **A.** No.

1 **MR. KESSLER:** I'm fine. Thank you, Mr. Laird. We're
2 finished.

3 **THE COURT:** All right. May the witness be excused?

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

5 **THE COURT:** May the witness be excused and discharged
6 not subject to recall?

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

8 **THE COURT:** Mr. Kessler, may the witness be excused
9 not subject --

10 **MR. KESSLER:** Oh, yes, Your Honor. I'm sorry, yes.

11 **THE COURT:** All right. Mr. Bruce Laird, number 40.

12 **THE WITNESS:** Or 37, 62, 48. Whatever you want to
13 call me, sir.

14 **THE COURT:** Thank you, sir. You're free to go.
15 Thank you for coming.

16 All right. Time for the next witness.

17 **MS. NAYLOR:** Your Honor, we call Walter Beach.

18 **THE COURT:** Is this by deposition?

19 **MS. NAYLOR:** No, Your Honor.

20 **MR. LECLAIR:** Your Honor, I'm sorry. I confused you
21 by saying that, but we got the exhibits straight so we are able
22 to call Mr. Beach now.

23 **THE COURT:** That's fine. Walter Beach.

24 You must be Mr. Walter Beach.

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Welcome. Please raise your right hand.
2 We will swear you in.

3 (Thereupon, the witness was sworn.)

4 **THE WITNESS:** Yes.

5 **THE CLERK:** Thank you. Be seated.

6 **THE COURT:** May we take your picture for closing
7 arguments? Have a seat. We try to take pictures so the jury
8 can be reminded of who was who.

9 **THE WITNESS:** Okay.

10 **THE CLERK:** Thank you.

11 WALTER BEACH, III,

12 called as a witness for the Plaintiff herein, having been first
13 duly sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 **BY MS. NAYLOR:**

16 **Q.** Good morning.

17 **A.** Good morning.

18 **MS. NAYLOR:** And, ladies and gentlemen, my name is
19 Jill Naylor. And I'm here with the plaintiffs.

20 **THE COURT:** Ms. Naylor, I'm going to ask you to pull
21 that microphone so it gets your voice better.

22 I'll say the same thing to the witness. It's
23 important that the jury hear every word.

24 All right. Go ahead.

25

1 **BY MS. NAYLOR:**

2 **Q.** Mr. Beach, could you please state your name.

3 **A.** Walter Beach, III.

4 **Q.** And are you a retired NFL football player?

5 **A.** Yes.

6 **Q.** And, sir, are you married?

7 **A.** Yes.

8 **Q.** Is your wife here with you today?

9 **A.** Yes, she is.

10 **MS. NAYLOR:** Can we ask her to stand?

11 **THE COURT:** Welcome to the court.

12 **MRS. BEACH:** Thank you.

13 **THE COURT:** All right.

14 **BY MS. NAYLOR:**

15 **Q.** Mr. Beach, do you have children and grandchildren?

16 **A.** Five children, four grandchildren, and three
17 great-grandchildren.

18 **Q.** Where were you born?

19 **A.** In Pontiac, Michigan.

20 **Q.** And where do you currently reside?

21 **A.** Macungie, Pennsylvania.

22 **Q.** Could you tell us a little about your football career?
23 When did you start playing professional football?

24 **A.** Started playing professional football in 1960.

25 **Q.** Okay. And who did you play for in 1960?

1 **A.** Uhm, the Boston Patriots in the American Football League,
2 and then the Cleveland Browns in the National Football League.

3 **Q.** Okay. Were you drafted out of college?

4 **A.** Yes.

5 **Q.** And where did you go to college?

6 **A.** Central Michigan University.

7 **Q.** Okay. And you mentioned that in 1960 you started with the
8 Boston Patriots?

9 **A.** Uhm, yes.

10 **Q.** Is that an AFL team?

11 **A.** At that particular time. I was drafted by the -- the
12 Oakland Raiders in the American Football League. I was drafted
13 by the New York Giants in the National Football League. And I
14 was drafted by the Hamilton Tiger-Cats in the Canadian Football
15 League.

16 **Q.** Okay. But you began with which team?

17 **A.** Uhm, I began with the New York Giants. I was released by
18 the New York Giants. And then, I went to the Boston Patriots.

19 **Q.** Okay. And the Boston Patriots are an AFL team or an NFL
20 team?

21 **A.** They were an AFL team at that time.

22 **Q.** What position did you play with the Boston Patriots?

23 **A.** At that time I was an offensive running back.

24 **Q.** Okay. And what year did you begin playing with the
25 Cleveland Browns?

1 **A.** In 1963.

2 **Q.** Okay. And with the Cleveland Browns, what position did
3 you play with them?

4 **A.** I was a defensive cornerback.

5 **Q.** Okay. Was that also called a halfback at that time?

6 **A.** Uhm, yes. Halfback, defensive cornerbacks. I think the
7 terms were synonymous or interchangeable.

8 **Q.** Okay. And was that your position all four years with the
9 Cleveland Browns?

10 **A.** That's correct.

11 **Q.** What was your number with the Cleveland Browns?

12 **A.** 49.

13 **Q.** And how much salary did you earn as a pro football player?

14 **A.** Well, as a professional football player I never made over
15 \$30,000 a year. And it's kind of different in today's -- by
16 today's standards. But -- and that's about it.

17 **Q.** And for the 1963 to '66, when you were with the Cleveland
18 Browns, was that a typical salary for a football player?

19 **MR. KESSLER:** Your Honor, I don't think this is
20 relevant, what active players were making then.

21 **THE COURT:** What's the relevance?

22 **MS. NAYLOR:** It's background information, Your Honor.

23 **THE COURT:** Sustained.

24 **BY MS. NAYLOR:**

25 **Q.** In the off season when you played football, did you have a

1 job?

2 **A.** Yes. In off season I was a school teacher. I was a
3 fourth grade school teacher in Pontiac, Michigan, Bagley
4 Elementary School, the same elementary school that I attended.

5 **Q.** And when you were with the Cleveland Browns, did you win
6 any championships?

7 **A.** Uhm, in 1964 we were the world champions. And in 1965 we
8 lost the championship game to Herb Adderley, Greenbay Packers.

9 **Q.** And for those of us who don't know a lot about football is
10 the world championship the same as the Super Bowl?

11 **A.** Yes. It would probably be the same.

12 **Q.** Okay. Were you known for any particular football skills
13 when you played with the Browns?

14 **A.** Well, I -- the skills were it was a skill position.
15 Defensive cornerback is probably a skilled position.

16 **Q.** What year did you retire from football?

17 **A.** 1966.

18 **Q.** And can you tell the jury a little about your career since
19 then?

20 **A.** Uhm, after -- after retiring from the National Football
21 League I was a -- the youth coordinator for the City of
22 Cleveland. Carl B. Stokes was the mayor, and I was the youth
23 coordinator.

24 After that, my next employment situation was in New
25 York City. I was an assistant principal at an alternative

1 school, alternative education.

2 From that I was the director of -- executive director
3 of the Greater YMCA of New York as the -- as a trainer and
4 diagnostic program.

5 From that particular place I went to -- I have a --
6 I've had a lot of different employments.

7 I was at the Department of Corrections. I was the
8 training director for the Department of Corrections for New
9 York City.

10 From that I was the chief of recreation for the
11 Borough of Brooklyn in New York. And after that, I'm presently
12 the executive director for Amer-I-Can of New York, the eastern
13 region.

14 **Q.** I think you mentioned you were the director of an
15 alternative school. Can you tell us what that is?

16 **A.** Yeah. They call it ACE, an Alternative Concept in
17 Education.

18 That's basically individuals in the public school
19 system who are having difficulty in making adjustments into the
20 traditional school. They get those individuals, and they send
21 them to a specific class, and we try to make some -- some
22 adjustments happen, make some adjustments about their attitudes
23 toward school and toward education.

24 **Q.** You mentioned you're currently with Amer-I-Can?

25 **A.** Yeah, the Amer-I-Can Foundation for Social Change is an

1 organization that was created by Jim Brown. And Jim Brown is
2 the national director. And I'm the eastern executive director
3 on the eastern coast.

4 **Q.** And have you gone to school during this time?

5 **A.** Well, uhm, my -- my education is basically I graduated
6 from Central Michigan High School in Pontiac, Michigan. And
7 from there I went into the Air Force. And in the Air Force I
8 was a cryptographer and a clerk typist.

9 Got out of the military, went to Central Michigan
10 University. And while I was playing football, I took a couple
11 of courses at John Marshall Law School.

12 From there, I went to Yale Law School, where I
13 attended Yale Law School for two years. And I'm presently in
14 the theological seminary.

15 **Q.** And you say you went to law school for a couple of years.
16 Are you a lawyer?

17 **A.** No. No, I'm not a lawyer.

18 **Q.** Okay. When you played football, Mr. Beach, were you a
19 member of the union?

20 **A.** Yes.

21 **Q.** And have you maintained that membership over the years?

22 **A.** I believe so, most of the -- most of the time. I get that
23 information. My wife usually handles it and sends the checks
24 out, take care of it.

25 **Q.** In your opinion, what role does the union serve?

1 **A.** Well, the union --

2 **MR. KESSLER:** Object to the question. I don't think
3 it's relevant.

4 **THE COURT:** Too overbroad. Sustained.

5 **BY MS. NAYLOR:**

6 **Q.** Why have you maintained your membership in the union, sir?

7 **A.** Well, the union has -- is a benefit. It supports and help
8 the players that belong to the union. And I've never been
9 anything but pleased for what they were trying to do, most of
10 the time, because I don't think any particular union has
11 members that accept or think that everything they do is
12 correct.

13 **Q.** Let's talk for a minute about the GLA. You have some
14 documents in front of you there. And can you pull out Exhibit
15 640?

16 **A.** 640?

17 **Q.** Yes.

18 **A.** Don't see no 640.

19 **THE COURT:** Counsel, would you help the witness,
20 please.

21 **THE WITNESS:** Okay. Here's 640. I'm sorry. Yes, I
22 have it.

23 **BY MS. NAYLOR:**

24 **Q.** Can you identify this document for the Court?

25 **A.** Yes. It's the NFL Players Association Retired Player

1 Group Licensing Authorization Form.

2 **Q.** Is that your signature on there?

3 **A.** Yes, it is.

4 **MS. NAYLOR:** Your Honor, I move to admit this
5 exhibit.

6 **MR. KESSLER:** No objection, Your Honor.

7 **THE COURT:** What was the number, again?

8 **MS. NAYLOR:** 640.

9 **THE COURT:** Very well. That's received.

10 (Trial Exhibit 640 received in evidence.)

11 (Document displayed.)

12 **BY MS. NAYLOR:**

13 **Q.** Mr. Beach, do you remember when you first received this
14 document?

15 **A.** What I say, yes, sometime before December 26, 1996.

16 **Q.** Do you remember how you received it?

17 **A.** Through the mail.

18 **MR. KESSLER:** Oh, Your Honor, they put in a version
19 with the witness's Social Security number. I don't think he
20 wants that in evidence, Your Honor.

21 We should agree to redact that. In fact, I think
22 California law would also require that.

23 **THE COURT:** Let's take the Social Security number off
24 the screen.

25 Do we have a version that we can put up that doesn't

1 have that? Can we just use the Elmo for this?

2 **MS. NAYLOR:** Or just a piece of tape. I can redact
3 it.

4 **MR. KESSLER:** I just want to protect the witness.

5 **MS. NAYLOR:** Thank you. Thank you.

6 **THE COURT:** Let's move the --

7 **MR. KESSLER:** Then, you can put it right on the Elmo
8 over there. It should display it.

9 **MS. NAYLOR:** I'm going to need another copy.

10 (Discussion held off the record.)

11 **THE COURT:** You can zoom in or zoom out.

12 **MS. NAYLOR:** I need some technical assistance.

13 **THE COURT:** Or you can do it as it is. It's pretty
14 good.

15 **MR. KESSLER:** I think just zoom out and get the whole
16 document, if she wants that.

17 Right. There you go.

18 **MS. NAYLOR:** Thank you.

19 **THE COURT:** Go ahead.

20 **MS. NAYLOR:** Thank you.

21 **BY MS. NAYLOR:**

22 **Q.** Mr. Beach, what did you understand Exhibit 640 to be?

23 **A.** Uhm, my understanding that it was a contract with the NFL
24 Players Association that the union had sent to me.

25 **Q.** What did you think this accomplished?

1 **A.** Well, I thought that what it was saying that I was to
2 provide my -- my image to a group licensing program as defined
3 in paragraph 2. And that for participating in this particular
4 program, the -- the union would provide marketing on behalf of
5 the group of six or more, and then receive particular
6 compensations and put it in an escrow account. And that escrow
7 account would divide the monies between the players.

8 **Q.** Before you received this in the mail from the union, had
9 you tried to market your own image?

10 **A.** No.

11 **Q.** Why not?

12 **A.** Uhm, I was just not interested in marketing my image, you
13 know, as an ex-football player. I played football. I
14 appreciated it. And then, I was moving on in my life to do
15 some other things.

16 **Q.** Did you still get requests for autographs?

17 **A.** Constantly get requests from time to time when people -- I
18 meet them or see them or get cards or pictures to sign, and I
19 send them back.

20 **Q.** Is that current today or --

21 **A.** No, that's been -- that's been current -- it's current
22 today. I get cards and pictures in the mail. And from the
23 Cleveland Browns' office they forward it to me, I sign them and
24 send them back to wherever they should be.

25 **Q.** Do you charge for that?

1 **A.** Of course not.

2 **Q.** And do people still recognize you as a retired player?

3 **A.** Uhm, I believe so. Yesterday I came into the courtroom,
4 and a gentleman asked me where was my Super Bowl ring. That
5 was just yesterday.

6 I'm still recognized by people who are interested in
7 the game.

8 **Q.** So you believe that your image as a retired player has
9 value?

10 **A.** Of course.

11 **Q.** And you talked about on Exhibit 40 -- I think you pointed
12 us to the second paragraph.

13 **A.** Yes, the second paragraph in the -- the second paragraph
14 is a group licensing program. And it defines the fact that six
15 or more present or former NFL players are part of this here --
16 this agreement.

17 **Q.** What does that mean to you, that language?

18 **A.** That language means the group -- that if there's any six
19 or more present or -- present or former players' images in
20 conjunction with -- or the products that are sold at retail or
21 used as promotion and premium items, that I was part of that
22 group.

23 **Q.** Did you negotiate this contract with the union?

24 **A.** No.

25 **Q.** Those aren't your words?

1 **A.** No. No, it's not my words.

2 **Q.** What -- what did you understand that you were giving to
3 the union of value in exchange for this agreement?

4 **A.** Uhm, my image. My image as a professional football player
5 was what they were requesting. And that's what I was
6 providing.

7 **Q.** And what was the significance of this back to you, if any,
8 that this was a group agreement?

9 **A.** Well, the fact that it was -- what was significant to me
10 was that it meant that any group of six or more individual
11 football players would -- I would benefit. And I was delighted
12 to participate in this particular agreement.

13 **Q.** Did anyone ever tell you there was a different definition
14 of "group licensing," other than what is up here, the "six or
15 more present or former NFL players"?

16 **A.** No, no.

17 **Q.** Did you believe that active players were a part of this
18 agreement?

19 **A.** Of course. It says "six or more present."

20 "Present" means active to me. Present.

21 **Q.** Did anyone ever tell you that active players were not a
22 part of the definition of "group licensing" under paragraph 2?

23 **A.** No.

24 **Q.** Did you believe you were automatically entitled to receive
25 money just because you signed this contract?

1 **A.** No, not just because I signed the contract. I was
2 automatic -- I believe that I was automatically to receive
3 money with reference to the group licensing agreement. Not
4 just because I signed it. But if I signed it, and it was used,
5 I thought I was entitled to monies.

6 **Q.** Did you expect the union to make an affirmative effort to
7 market you as a part of this group?

8 **MR. KESSLER:** Your Honor, leading.

9 **THE COURT:** Sustained. It's leading.

10 **BY MS. NAYLOR:**

11 **Q.** What did you expect from the union, if anything?

12 **A.** Well, my -- my belief was that these particular documents,
13 the GLA, would probably be collected by the union, and then the
14 union would take those and market it through -- through a third
15 party.

16 **Q.** And if the union was able to sell a group license of six
17 or more present or active players, but they didn't use your
18 image, in particular, did you think you were entitled to share
19 in the money?

20 **A.** Yes.

21 **Q.** And what led you to believe that?

22 **A.** Because it says it's a collective -- it's a group
23 licensing agreement. It doesn't mean me, per se. There's
24 nothing in that that says that. It says I must be part -- I
25 could be part of the group or any six current or former players

1 would be part of this collective agreement.

2 **Q.** How did you think the union was going to divide the money?

3 **A.** Well, I didn't know in specifics how they were going to
4 divide the money. But in the contract it says monies that's
5 generated would be divided between the players. And -- oh, I
6 can look up there, sure.

7 Between the players such monies would be -- it would
8 just be divided, and then an escrow account would be
9 established. And then, all eligible NFL players, members who
10 have signed that licensing group agreement would benefit from
11 it.

12 That was my understanding of it.

13 **Q.** Okay. You've just read from paragraph --

14 **A.** I think it's paragraph 5.

15 **Q.** -- 5 of the agreement?

16 **A.** Uh-huh. That's correct.

17 **Q.** Okay. Did you have questions about this agreement?

18 **A.** Yes, I did.

19 **Q.** Is that what is written on the bottom left-hand corner
20 there of Exhibit 640? Is that your handwriting?

21 **A.** Yes, it is.

22 **Q.** Can we look at these one at a time?

23 **A.** Yes.

24 **Q.** Can you read for the jury what the first question is that
25 you sent to the union?

1 **A.** The first question is:

2 "I'm getting paid at what rate?"

3 **Q.** And what did you mean by that question?

4 **A.** Well, I wanted to know what would be the rate of pay once
5 the union had had a successful negotiation with a third party.

6 **Q.** And what is the second question that you wrote there?

7 **A.** The second question is: "When?"

8 And at what time after -- when we would he get the
9 monies. That was basically it. That was my concern.

10 **Q.** What is your third question?

11 **A.** "What method of accounting to the players?"

12 I wanted to know what they were going to do to let
13 those members who had signed this, what was going to be the
14 accounting or how they was going to make us aware of what was
15 going on.

16 **Q.** Your fourth question to the union?

17 **A.** Next one is: "What course of action, if not paid?"

18 **Q.** And it looks like you have a comment here at the bottom?

19 **A.** Yeah, the comment at the bottom was "would better clarify
20 agreement."

21 I just thought it would be better if the agreement
22 was clarified and not so vague and convoluted.

23 **Q.** So that we're understanding, did you write these questions
24 on the agreement, and then sign it and return it?

25 **A.** That's correct, uh-huh.

1 **Q.** Did you hear back from the union --

2 **A.** No.

3 **Q.** -- on your questions?

4 **A.** No.

5 **Q.** Did you ever receive any licensing money from this
6 agreement?

7 **A.** No.

8 **Q.** Why would you sign an agreement where you had so many
9 questions?

10 **MR. KESSLER:** Your Honor, could I get just a
11 direction that this particular agreement being displayed is not
12 the one that's inside the statute of limitations or the period?
13 And Counsel is asking questions about the older agreement, as
14 opposed to the one he signed ten years later.

15 I think that could be confusing to the jury.

16 **MS. NAYLOR:** Your Honor, we're going to follow up
17 with the current agreement, which is identical except for one
18 word.

19 **MR. KESSLER:** And the questions, Your Honor, were
20 about payments under this agreement. It's not an issue in the
21 case.

22 **THE COURT:** What was your question, Ms. Naylor?

23 **MS. NAYLOR:** The last question I don't even --

24 **THE COURT:** Something about "why would you do"
25 something?

1 **MS. NAYLOR:** "Why would you" -- can you read it back?
2 I'm sorry.

3 (The reporter read the pending question as follows:)

4 **"QUESTION:** Why would you sign an agreement
5 where you had so many questions?"

6 **THE COURT:** All right. The Court will overrule the
7 objection, and the jury is clear-cut on what the timeline is.
8 Go ahead and answer the question.

9 **THE WITNESS:** Okay. The reason that I had -- I had
10 some questions. And I thought that by returning it with the
11 questions I would get some clarity. But by signing it
12 immediately and sending it on I had no reason not to. I
13 trusted the union. I had faith in them. They sent the
14 document out.

15 And I thought the document was sent to me so that I
16 could benefit from whatever -- from whatever efforts they were
17 going to put forward.

18 **BY MS. NAYLOR:**

19 **Q.** And did there come a time when you signed a second GLA?

20 **A.** Yes.

21 **Q.** Can you turn to Exhibit 639, please?

22 **A.** All right. 639, yes.

23 **Q.** Can you identify that document, please?

24 **A.** It's "retired players group licensing authorization form."

25 **Q.** And is that your signature on that document?

1 **A.** Yes, it is.

2 **MS. NAYLOR:** Your Honor, we move to admit 639,
3 please.

4 **MR. KESSLER:** No objection, Your Honor.

5 **THE COURT:** Thank you. Received.

6 (Trial Exhibit 639 received in evidence.)

7 (Document displayed.)

8 **MS. NAYLOR:** This one is redacted.

9 **BY MS. NAYLOR:**

10 **Q.** What date did you sign this, Mr. Beach?

11 **A.** 5/23/03.

12 **Q.** And can you see above your signature there what date it
13 expires?

14 **A.** Yes. It expires December 31st, 2006.

15 **Q.** Did you -- how did you receive this second GLA?

16 **A.** Through the mail, same way that I did the first.

17 **Q.** And did you find the terms of the second GLA to be nearly
18 identical to the first one we just discussed?

19 **A.** Uhm, it is identical, with the exception in the first
20 paragraph. The first paragraph where it talks about
21 "non-exclusive rights."

22 In the former document it was an exclusive rights.

23 **Q.** Did that have any significance to you?

24 **A.** No, in theory it had no significance to me. I didn't
25 intend to market myself personally, anyway, so it didn't matter

1 whether there was an exclusive right or non-exclusive right.

2 **Q.** And just like the first GLA we talked about, the first
3 paragraph authorizes the NFLPA to license your image. Is that
4 correct?

5 **A.** That's correct.

6 **Q.** And the second GLA contains the same definition as the
7 first GLA, doesn't it, a group licensing programs?

8 **MR. KESSLER:** Your Honor, we're leading now.

9 **THE COURT:** It is. But I guess this is preliminary,
10 so overruled.

11 Try not to lead on anything of importance.

12 **MS. NAYLOR:** Thank you, Your Honor.

13 **BY MS. NAYLOR:**

14 **Q.** Just like the first one, can you read the second paragraph
15 to us, please?

16 **A.** "Group licensing programs are defined as programs in which
17 the licensee utilizes a total of six or more present or former
18 NFL player images in conjunction with or on the products that
19 are sold at retail or used as promotional or premium items."

20 **Q.** So from 1996, when you signed the first one, to 2006 when
21 the second one expired, that definition never changed, did it?

22 **A.** That's correct.

23 **Q.** And does this second GLA contain the same language
24 regarding how royalties would be divided?

25 **A.** On paragraph 5? Yes. In paragraph 5.

1 "It is further understood that the monies
2 generated by such a licensing of retired player group rights
3 will be divided between the players and an escrow account for
4 all group license contracts entered into."

5 I'm sorry.

6 **Q.** I don't think you read that exactly right.

7 **A.** I dropped down a line. Let me start from the beginning.

8 "It is further understood that the monies
9 generated by such licensing of retired player group rights will
10 be divided between the players and an escrow account for all
11 eligible NFLPA members who have signed the group's licensing
12 authorization form."

13 **Q.** So from 1996 to 2006, that paragraph, the language never
14 changed?

15 **A.** That's correct.

16 **Q.** Did you ever receive any licensing money from the union in
17 connection with this second GLA?

18 **A.** No.

19 **Q.** Did you ever receive an accounting from the union?

20 **A.** No.

21 **Q.** Mr. Beach, after you signed the GLA, what control, if any,
22 did you have over the union's ability to license your rights to
23 third parties?

24 **A.** Well, the control that -- that I think that we all had is
25 that in -- and I think it's the third paragraph -- I'm sorry,

1 fourth paragraph:

2 "If the undersigned players' inclusion in a
3 particular NFL player program will conflict with an
4 individual's exclusive endorsement agreements and the players
5 provides the NFLPA with a timely notice of that conflict," if
6 there was something that conflicts with it, if they were -- I
7 had given my image, and they were probably -- if they used my
8 image for something in reference to alcohol or something that I
9 didn't -- that would be in conflict with my personal, then I
10 would have the opportunity to say that I wouldn't want to
11 participate.

12 **Q.** Did you believe you had the right to revoke this GLA, as
13 well?

14 **A.** That's correct.

15 **Q.** Did you ever complain to the union that they hadn't sent
16 you a check or any reports or accounting on the GLAs?

17 **A.** No.

18 **Q.** Why not?

19 **A.** Uhm, as I -- as I said earlier, I -- when I left football,
20 I left football. I was fortunate and blessed. I was glad to
21 receive the GLAs. And as I received the GLAs, I sent it back.
22 But I didn't -- I didn't have a lot of contact with the -- with
23 the league or to that nature. So I was about doing other
24 things.

25 **Q.** Did anything under the GLA that you're aware of obligate

1 you to call the union and ask for your money?

2 **A.** No. There's no specific requirement for me to perform
3 anything in this particular GLA document.

4 **Q.** Did you believe that if the union owed you money it would
5 pay you?

6 **A.** I did. Of course I did.

7 **Q.** Have you heard the term "ad hoc agreement"?

8 **A.** Yes, I've heard the term "ad hoc agreement."

9 **Q.** What is your understanding of that term?

10 **A.** My understanding of the term "ad hoc agreement" is that if
11 individuals, what they consider to be marquee or premium
12 players have specific contracts with a third party, the union
13 would support that.

14 Ad hoc had nothing to do with me, per se, because I
15 was never involved in any aspect of marketing myself.

16 **Q.** So do you understand that some retired players are more
17 famous than you?

18 **A.** My dear friend Jim Brown is more famous than I am.

19 **Q.** And are you aware that certain retired players have signed
20 the individual or ad hoc agreements?

21 **A.** I've -- I've -- I've witnessed that.

22 **Q.** Are you claiming any of their money under those
23 agreements?

24 **A.** Of course not, no.

25 **Q.** Do you think they should share it with you?

1 **A.** No.

2 **Q.** Have you seen any license agreement other than the GLA?

3 **A.** No, I haven't.

4 **Q.** I want to talk to you a minute about the Madden games,
5 which you'll find in front of you.

6 **THE COURT:** You have about eight minutes to go.

7 **MS. NAYLOR:** I see that.

8 **THE COURT:** Be aware of the time.

9 **MS. NAYLOR:** Thank you. Exhibit 1245 is already
10 admitted into evidence, Your Honor. It's the 2003 Madden game.

11 **BY MS. NAYLOR:**

12 **Q.** Mr. Beach, are you familiar with the Madden football video
13 games?

14 **A.** Yes.

15 **Q.** And how are you familiar with them?

16 **A.** Uhm, my -- my first involvement with the -- with the
17 Madden games was my nephew called me from Chicago, and my wife
18 answered the phone. And she said that her -- our nephew wanted
19 to talk to me about he was playing the Madden games.

20 And BJ asked me did I play professional football with
21 the '65 Cleveland Browns. And I said I did.

22 And he said:

23 "Well, I see a picture of you on the '65 Browns."

24 I said: "A picture?"

25 And he said: "Well, it's something like that kind of

1 look like you. I don't know if it's a picture or not."

2 And he asked me some questions. And he asked me was
3 the information on the card, the Madden games, the screen, was
4 me. That's what he said.

5 And I told him I thought that it was me. Although, I
6 hadn't seen it at that time. I hadn't seen a Madden game.

7 **Q.** Have you had occasion since then to see a Madden game?

8 **A.** I've had occasion to see the Madden games as it was shown
9 to me by -- by the attorneys.

10 **Q.** Can you turn to the exhibit 1245-1?

11 **A.** Yes, I got it.

12 **Q.** Do you recognize that as a screen shot of the Madden game?

13 **A.** Yes. It says "Team Select shot of the Madden games."

14 **THE COURT:** You have on the screen something
15 different than the witness is looking at. Is that in evidence?

16 **MS. NAYLOR:** It's part of the Madden game that's in
17 evidence, Your Honor.

18 **THE COURT:** Okay.

19 **BY MS. NAYLOR:**

20 **Q.** Could you tell the jury what they're looking at here?

21 **A.** It says "Team Select." And it's an image of the '65
22 Browns, and the '89 49ers.

23 **Q.** And you were on the '65 Browns; isn't that correct?

24 **A.** Yes, that's correct.

25 **Q.** And could you go to 1245-7?

1 **A.** 1245-7. Yes.

2 **Q.** Can you tell the jury what we're looking at here?

3 **A.** It's a depth chart, and it's still the depth chart of the
4 Cleveland Browns, the 1965 Cleveland Browns.

5 **Q.** Is a depth chart a football term?

6 **A.** Yes.

7 **Q.** And what does it mean?

8 **A.** Basically it means they have what they consider maybe two
9 or three teams. The first team is the starters. And the
10 second team and third team. So depth chart just means which
11 team you're on.

12 **Q.** And is this a depth chart for the cornerback position of
13 the '65 Browns?

14 **A.** Yes, it is.

15 **Q.** Is that the position you played for the '65 Browns?

16 **A.** That's correct.

17 **Q.** And was your officially reported height at that time six
18 feet?

19 **A.** Correct.

20 **Q.** And is that what we see up here in the Madden game?

21 **A.** Yes.

22 **Q.** And was your officially reported weight at that time 185?

23 **A.** Yes.

24 **Q.** Is that what we see up here on the Madden game?

25 **A.** That's correct.

1 Q. And was your age at that time 30?

2 A. That's correct.

3 Q. And you were two years pro?

4 A. That's correct.

5 MS. NAYLOR: Could you also highlight the position up
6 there?

7 Thank you.

8 BY MS. NAYLOR:

9 Q. I want to take a look at your football card, quickly,
10 which is Exhibit -- I'm sorry, Exhibit 644. And if you could
11 identify this for the Court.

12 A. Yes. This is -- this is a playing card that -- that I'm
13 still receiving today. We get -- I get in the mail playing
14 cards. I sign them, send them back.

15 MS. NAYLOR: Your Honor, I move to admit Exhibit 644.

16 MR. KESSLER: No objection.

17 THE COURT: Received.

18 (Trial Exhibit 644 received in evidence.)

19 (Document displayed.)

20 MS. NAYLOR: I wonder if we could enlarge that.

21 Thank you.

22 (Document displayed.)

23 BY MS. NAYLOR:

24 Q. Is that you there in the picture?

25 A. Yes.

1 Q. And can you tell us, on the playing card, what your
2 reported height is?

3 A. The reported height is six feet.

4 Q. Get this a little bigger.

5 And if you go to the top, this is when you were with
6 the Cleveland Browns, correct?

7 A. That's correct.

8 Q. And the position says "halfback"?

9 A. Well, that's the defensive cornerback. Halfback. They're
10 interchangeable. The term is interchangeable.

11 Q. Okay.

12 A. On offense they say halfback. On defense they say
13 cornerback.

14 Q. And your weight on this card?

15 A. 185 pounds.

16 Q. And your age?

17 A. Reported 30.

18 MS. NAYLOR: So if we can pull up the comparison
19 chart.

20 (Document displayed.)

21 BY MS. NAYLOR:

22 Q. This the depth chart that we had admitted into evidence a
23 few minutes ago that you described, and your playing card; is
24 that correct?

25 A. That's correct.

1 Q. And the team on both is the '65 Browns. Your position is
2 the halfback or cornerback --

3 A. Cornerback, that's correct.

4 Q. -- position. And the height is six feet and six feet.
5 And the weight is 185 and 185; is that correct?

6 A. That's correct.

7 Q. Can you turn to Exhibit 1245-8 and 1245-9.

8 A. Yes.

9 Q. And can you describe what these are?

10 A. 1245 -- 1245-8 is a picture of a Madden screen game that
11 would show the team closest at the bottom, the San Francisco
12 49ers. And the defensive team would be the Cleveland Browns on
13 the other side.

14 Q. Which -- where is the cornerback position?

15 A. To the extreme left where it says number "33."

16 Q. Was that your number?

17 A. No, that was not my number.

18 Q. Can we go to Exhibit 1245-9.

19 A. Okay. 1240-9. Yes.

20 Q. And can you describe what we're seeing here?

21 A. That would be just the reverse of what we saw in the
22 earlier picture. That would be the right cornerback. That
23 would have been me in 1965 with the Cleveland Browns.

24 Q. Okay. They didn't use your number here. How do you know
25 it's you?

1 **A.** Well, in 1965 the right cornerback had to be me. I mean,
2 I don't know -- they can use any number they want. They can
3 use any picture they want. But that's me.

4 **Q.** You're the only --

5 **A.** If that's what they're trying to say, the 1964 Cleveland
6 Browns was. I was the right cornerback. They can use a
7 picture, a number. They can use a gorilla, if they want to. I
8 was the one who was actually playing.

9 **MS. NAYLOR:** And can we turn to Exhibit 1263, which
10 is the Madden 2007 game, which has already been admitted, Your
11 Honor.

12 **THE COURT:** This will be the last exhibit because
13 we're at 1 o'clock.

14 **THE WITNESS:** Which number is that?

15 **BY MS. NAYLOR:**

16 **Q.** 1263.

17 **A.** 1263.

18 **Q.** 1263-1.

19 **A.** Yes.

20 (Document displayed.)

21 **Q.** Can you describe what this screen shot is?

22 **A.** It's an -- under Madden game it just says it's a video
23 screen shot of the Browns '65 team and the 49ers team.

24 **Q.** And you were on that team, the '65 Browns, correct?

25 **A.** That's correct. I was on the '65 Browns.

1 Q. And on 1263-7?

2 A. Yes, 12 -- right.

3 Q. Is that the cornerback position of the '65 Browns in that
4 game?

5 A. Yeah. That's what this is representing, the cornerback.

6 Q. Is that your officially reported height, the six feet?

7 A. That's correct.

8 Q. And your age at 30?

9 A. That's correct.

10 Q. Your weight 185?

11 A. That's the official.

12 Q. Your years pro, two?

13 A. Two, right.

14 Q. Did you receive any money from these Madden games, sir?

15 A. No.

16 Q. Did anybody call you from the union and ask if you would
17 have been willing to be in this game?

18 A. No.

19 Q. Would you have been willing to be in this game?

20 A. Of course.

21 Q. And do you believe they should have scrambled your
22 identity?

23 A. No.

24 MR. KESSLER: Objection, Your Honor.

25 THE COURT: Why is that relevant? I've already told

1 the jury there is no claim in this case by the class that EA
2 violated anybody's rights by scrambling. There are other
3 claims in this case, but that's not it.

4 So why is that relevant?

5 **MS. NAYLOR:** Well, the relevance is that he just
6 testified that he would be willing to be part of this game.

7 **MR. KESSLER:** That wasn't the question she was
8 asking, Your Honor.

9 **THE COURT:** Well, we're not going to allow that
10 question and answer.

11 We need to keep straight what is an issue in the case
12 and what's not an issue. Scrambling isn't part of this case.
13 But scrambling is -- no one is contending in this case that the
14 players' rights were violated by scrambling their identities
15 and numbers and so forth.

16 **MS. NAYLOR:** I think I can rephrase.

17 **THE COURT:** That's not the issue in the case. I
18 don't want the jury to get confused over what the issue is in
19 the case. I'll let you ask a new question.

20 **BY MS. NAYLOR:**

21 **Q.** Do you think the union should have permitted your identity
22 to be scrambled when they had your GLA?

23 **MR. KESSLER:** Your Honor, I think it's the same kind
24 of an issue.

25 **THE COURT:** Well, the -- you can ask a somewhat

1 different question. You can ask: What, if anything, do you
2 think the union should have done with respect to the Madden
3 game?

4 That I will allow you to ask.

5 **MS. NAYLOR:** Thank you, Your Honor.

6 **BY MS. NAYLOR:**

7 **Q.** What, if anything, do you think the union should have done
8 with respect to the Madden game?

9 **A.** I think the union should have put my image on the Madden
10 game, if they were definitely dealing with the 1965 Cleveland
11 Browns on the right corner.

12 **MS. NAYLOR:** Okay. Thank you, Your Honor.

13 **THE COURT:** Are you done with your entire
14 examination, or have you got more tomorrow?

15 **MS. NAYLOR:** I'm done.

16 **THE COURT:** All right. So we'll start with the
17 cross-examination -- yes.

18 **MS. NAYLOR:** Can we clarify for the jury what the
19 issue is with the scrambling and fiduciary duty claims that we
20 have?

21 **MR. KESSLER:** Your Honor, I think that's appropriate
22 for the final instructions in this case.

23 **THE COURT:** We don't need to do that now. We're
24 going to take our break. Please remember the admonition.
25 We'll see you back here tomorrow morning.

1 **THE CLERK:** All rise.

2 (Thereupon, the jury was excused.)

3 **THE COURT:** Okay. Mr. Beach, we must ask you to come
4 back in the morning, 7:30. Can you do that?

5 **THE WITNESS:** Yes, sir.

6 **THE COURT:** Great. We'll see you back here. You're
7 free to go now. The lawyers want me to say you're not supposed
8 to talk to either side because you're on examination now.

9 **THE WITNESS:** Okay.

10 **THE COURT:** All right. They can -- they can help you
11 with hotel arrangements and where to go to dinner and that kind
12 of thing, but they're not supposed to talk to you about the
13 case.

14 **THE WITNESS:** That's correct.

15 **THE COURT:** All right. Thank you.

16 Anything you want me for?

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

18 **THE COURT:** Go ahead.

19 **MR. HUMMEL:** Actually, we just told the jury that
20 Mr. Beach would be tendered for cross tomorrow morning. We
21 have a stipulation among the parties, I believe, that
22 Mr. Linzner from EA, a third party, is to testify first
23 thing --

24 **THE COURT:** Well, then, Mr. Beach, don't leave yet.
25 You may not need to be here.

1 **MR. KESSLER:** He needs to be here, Your Honor.

2 **MR. HUMMEL:** He does.

3 **MR. KESSLER:** I think -- if they want to accommodate
4 Mr. Linzner and put him on first --

5 **THE COURT:** Oh, you mean you're going to do Mr. Beach
6 later?

7 **MR. HUMMEL:** Your Honor, it's not that we are
8 accommodating -- there is a three -- a tripartite stipulation
9 that Mr. Linzner will come tomorrow morning and testify.

10 **MR. KESSLER:** There is no problem with that. I don't
11 recall if the stip said he would interrupt a witness testimony.

12 **MR. HUMMEL:** It does not.

13 **MR. KESSLER:** Yeah. So my understanding is we should
14 finish Mr. -- you know, in other words --

15 **THE COURT:** What are you asking me to do?

16 **MR. HUMMEL:** I'm asking you to allow us to call
17 Mr. Linzner out of order because of what I understood was an
18 agreement between the parties that he would be called --

19 **THE COURT:** Why is Mr. Linzner so important?

20 **MR. HUMMEL:** He's not to us, Your Honor. In fact,
21 he's affiliated with them.

22 **THE COURT:** Let's finish Mr. Beach, and then call
23 Mr. Linzner.

24 **MR. HUMMEL:** That's fine, Your Honor.

25 **THE COURT:** What's wrong with that?

1 **MR. KESSLER:** I have no problem with that. I won't
2 be that long with Mr. Beach. I think we should finish with
3 him.

4 **THE COURT:** Let's finish Mr. Beach, unless Mr.
5 Linzner is saying: "I just got to get on an airplane and fly
6 to Japan."

7 **MR. KESSLER:** No, Mr. Linzner simply said tomorrow is
8 his only day, and that was the agreement. We'll get him in
9 easily tomorrow.

10 **THE COURT:** We'll finish Beach, then we'll go to
11 Linzner.

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

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

14 **THE COURT:** I may be off by a few numbers, but I have
15 plaintiff has used 466 minutes, and the defendants have used
16 327 minutes.

17 You'll have to do the math to figure out how many
18 hours that translates --

19 **MR. KESSLER:** Challenging us with the math, Your
20 Honor, but thank you.

21 **THE COURT:** All right. So see you in the morning,
22 7:30.

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

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

25 **THE COURT:** I will have criminal calendar in about 45

1 minutes in here, so I will need your tables. But you can leave
2 everything else.

3 **MR. KESSLER:** Okay. Thank you.

4 **MR. KATZ:** Thank you.

5 (Thereupon, this trial was continued until Wednesday,
6 October 29, 2008 at 7:30 o'clock a.m.)

7

8

9

10 **CERTIFICATE OF REPORTER**

11 I certify that the foregoing is a correct transcript
12 from the record of proceedings in the above-entitled matter.

13 DATE: Tuesday, October 28, 2008.

14

15 s/b Katherine Powell Sullivan

16

17

18

19 Katherine Powell Sullivan, CSR #5812, RPR, CRR
20 U.S. Court Reporter

21

22

23

24

25

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25**PLAINTIFFS' WITNESSES****PAGE****VOL.**

ALLEN, DOUG

Cross Examination Resumed by Mr. Kessler

879

5

Redirect Examination by Mr. Parcher

921

5

Recross Examination by Mr. Kessler

953

5

LAIRD, BRUCE

Direct Examination by Mr. Hummel

958

5

Cross Examination by Mr. Kessler

1010

5

Voir Dire Examination by Mr. Hummel

1035

5

Redirect Examination by Mr. Hummel

1064

5

Recross Examination by Mr. Kessler

1071

5

BEACH, III, WALTER

Direct Examination by Ms. Naylor

1074

5

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
2056			879	5
2125			885	5
1100			889	5
1109			893	5
99			896	5
2062			905	5
53			932	5
1224			972	5
1225			988	5
2392			999	5
1301			1005	5
2362			1052	5
640			1082	5
639			1092	5
644			1100	5

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25