

EXHIBIT B

1 instructions about that.

2 But there's going to be no evidence to overcome these
3 critical facts.

4 You know, I remember as a little boy -- I also happen
5 to be a New Yorker, if you haven't noticed it. So you are
6 subjected to two New Yorkers here. I apologize for that.

7 But my grandmother used to tell me when I was a
8 little boy:

9 "No good deed goes unpunished."

10 That's what this case is. You saw the references to,
11 "Past, Present and Future." The NFLPA tried to do things for
12 its retired players. It's true.

13 Mr. Upshaw, who's been attacked, Mr. Upshaw is not
14 with us, has been attacked, is a former NFL player.

15 Mr. Allen who has been attacked, is a former NFL
16 player. They believe what was written there: "Past, Present
17 and Future."

18 So they went out and they tried to find some
19 licensing for retired players, to help them out.

20 By the way, the evidence will show the basketball
21 players' union doesn't do retired player licensing. The
22 baseball players' union doesn't do retired player licensing.

23 Only the football players' union, led by Mr. Upshaw
24 and Mr. Allen at the time, said:

25 "Let's try to find some opportunities for these

1 guys."

2 So what happened to them for that good deed in
3 generating \$7 million for the class -- and by the way,
4 \$30 million for retired players altogether -- this lawsuit.
5 That's their punishment.

6 Talk about fairness. That's not right.

7 What I want to talk mostly about is the evidence. I
8 don't want you hearing just my argument here. Just give me --
9 if you bear with me for one second, there's one thing I have to
10 do before I do the evidence.

11 I have to introduce you to the people who will be
12 helping me here today, presenting this. But you need to know
13 them.

14 First of all, David Feher, seated right there, and
15 Bruce Meyer, and Jason Clark and Molly Donovan and David
16 Greenspan, these are all lawyers who will be helping me present
17 the evidence to you. So I want you to know who they are, and
18 you will see them.

19 The most important person is Lauren Kaplan, who is
20 responsible for everything you see on the screen. She's a
21 great paralegal in our law firm and is going to law school next
22 year. We're very proud of Lauren's contribution in this case.

23 I also want to introduce you to the representatives
24 of our client. You may remember this from voir dire, but I
25 think just to see them again, Mr. Berthelsen, Richard

1 The evidence will show -- not me -- that in active
2 players and trading cards, for example, the licensees want all
3 the active players. Why?

4 Because they don't know which active player will play
5 in the game, who will get hurt, who will not be a star, who
6 will not be a star. They are active. It changes every day.
7 They are active players.

8 We had hoped we could sell retired players that way.
9 Take all of our retired players, like you take all of their
10 active players. Video games the same thing. They pay for all
11 the active players. They want the names of all the players.
12 They didn't want that.

13 Why? Because retired players, they're not active.
14 They're retired. Therefore, they know many, many of them have
15 no value at all. Some of them have value.

16 Why should they pay for everyone? Is that our fault?
17 We would love if they would pay for that. We would give them
18 the money, as we do for all the retired player licensing.

19 If we could get more, we would give it to them. But
20 that's what the marketplace demanded, so there was no money for
21 the escrow account.

22 The next item was that all the licensing money was
23 paid to the GLA class members. We gave them all the money,
24 kept 1 percent. 1 percent administrative fee. There was no
25 money for the escrow account.

1 Mr. Upshaw was a Hall of Fame player, the evidence
2 will show, who was dedicated to retired players, who came up
3 with the idea of retired player program because he wanted to
4 help retired players.

5 Actually, he was a great player in the Bay Area. If
6 you are an Oakland Raiders fan, you might have heard of him, or
7 even just if you live in the Bay Area.

8 These attacks are unprincipled, and the evidence
9 won't support that. They won't support them.

10 You heard about the percentages. That was active
11 player money, and the active players decided.

12 Moreover, what counsel didn't tell you, there was an
13 outside consultant called Duff & Phelps. Duff & Phelps. Duff
14 & Phelps was an advisory group who said that 37 percent was the
15 correct number, who said that the splits were justified. You
16 didn't hear that.

17 And the Internal Revenue Service, you will hear
18 evidence, audited this to make sure: Well, are these splits
19 fair? And it passed the IRS. And, believe me, if you can pass
20 the IRS, you're okay, okay?

21 That's what they're claiming, is a breach of
22 fiduciary duty. That's what he said was despicable. All
23 right?

24 I don't think there was any basis for that kind of
25 language or for that kind of a claim about Mr. Upshaw or about

1 Do you see that?

2 **A.** Yes.

3 **Q.** So were the retired players told in their publication that
4 this split of royalties for the inclusion in these video games
5 only went to active players?

6 **A.** Yes, they were.

7 **Q.** And it then says:

8 "Hundreds of retired players benefited directly
9 from the fees paid by Players Inc for using their names and
10 images in video games."

11 Did that refer to ad hoc agreements?

12 **A.** Yes, it did.

13 **Q.** And then, it says:

14 "But all retired players benefit from the
15 royalties paid by Players Inc to the NFLPA. For example, the
16 NFLPA's retired players department and benefits department
17 combined cost the NFLPA approximately 1.5 million per year, but
18 total dues paid by retired players equal only about \$175,000
19 annually. The NFLPA's representation of retired players is
20 funded mostly by royalties from Players Inc's licensing program
21 involving current players. This representation has delivered
22 amazing gains in player pensions, especially over the past 10
23 years."

24 Mr. Allen, my question here is: Is this information
25 you gave to retired players?

1 A. Yes.

2 Q. And did you tell retired players this was a reason that it
3 was good to support the union?

4 A. Yes.

5 Q. And did you tell them this was a reason it was a good idea
6 to sign retired player GLAs?

7 A. We absolutely did.

8 Q. Now, I would like you to take a look next at Trial Exhibit
9 91 that should be before you. Do you see it, Mr. Allen?

10 A. Hold on a second.

11 Q. It was the amendment.

12 Counsel showed you this document this morning.

13 **MR. KESSLER:** If you, Lauren, could blow up the top
14 of it. Not just that, but through the "whereas" clause.

15 **THE WITNESS:** Wait a minute, Mr. Kessler.

16 **BY MR. KESSLER:**

17 Q. Don't have it?

18 A. Took me a while to find it. Sorry.

19 Q. I'm sorry. I got you out of order.

20 A. I got it now.

21 Q. Okay.

22 A. Yes.

23 Q. This was the amendment Counsel asked you about this
24 morning. And this is an amendment in this first paragraph to
25 the agreement that was entered into 2000, the 2000 agreement,

1 payments from Players Inc for these activities."

2 What activities were you referring to here?

3 You can read the previous paragraph, if you need to
4 look at that.

5 **A.** The -- the activities referred to are, uhm, being included
6 in products, personal appearances, autograph signings,
7 inclusion on the Internet site and participation in events.

8 **Q.** And was it true that hundreds of retired players
9 participated in those ad hoc programs and benefited personally
10 from that?

11 **A.** Yes.

12 **Q.** Okay. And then, it says:

13 "But every retired NFL player has benefited
14 from Players Inc's creation. How? Because 40 percent of
15 Players Inc's operating revenue is paid to the NFLPA as a
16 royalty for the active player name and image rights secured by
17 the NFLPA and licensed to Players Inc."

18 And this information was given to all the retired
19 players who received this, right?

20 **A.** Yes.

21 **Q.** Then, it says:

22 "This allows the NFLPA to provide extensive
23 services and benefits to retired players in return for modest
24 player dues of \$50 per year."

25 And, Mr. Allen, you got asked about this phrase:

1 "We live every day by the NFLPA's motto: Past,
2 Present and Future."

3 Do you see that?

4 **A.** Yes, I do.

5 **Q.** In your experience in the more than 25 years you were at
6 the NFLPA and Players Inc, did the union and Players Inc live
7 by that model?

8 **A.** Absolutely. Every day.

9 One of the -- one of the axioms of being in this
10 league is that you're going to -- the one thing you know is if
11 you're an active player you're going to be a retired player.
12 And there's a continuum.

13 And we have a real rich and great tradition in our
14 union of -- of looking out for each other and not forgetting
15 where we came from and making sure that the rookies learn that
16 lesson when they come into this league; that they didn't fall
17 out of the sky. That there are some giants that went before
18 them, and we have a responsibility to them. And that's one of
19 the reasons we had a retired players licensing program.

20 **Q.** Mr. Allen, did the retired players ever attend the active
21 player meetings, the annual meetings at which these votes took
22 place?

23 **A.** Yes.

24 **Q.** Please explain to the jury who was invited and who
25 attended.

1 that.

2 **MR. KESSLER:** Okay.

3 **THE COURT:** So I don't say you're wrong. Right now
4 you don't have -- you ought to have either this -- if this
5 witness didn't do it -- on your representation you will be able
6 to do that, I will let you connect up -- go ahead and ask
7 your -- without it coming into evidence you can ask the
8 substantive questions were you going to ask about this.

9 **MR. KESSLER:** Thank you.

10 **BY MR. KESSLER:**

11 **Q.** Mr. Allen, did the union maintain a record of how much was
12 paid to the retired players through various licensing
13 agreements?

14 **A.** Yes.

15 **Q.** Okay. And would that include both retired players who
16 signed GLAs and those who did not sign GLAs?

17 **A.** Yes.

18 **Q.** Okay. And Mr. Allen, do you know, was the amount paid to
19 retired players who signed GLAs in the millions of dollars?

20 **A.** In the tens of millions of dollars over time.

21 **Q.** If I were to focus on the period of 2000 --

22 **A.** I might have misheard that. Could you --

23 **Q.** Let me say it again.

24 First, to all retired players, whether they signed
25 GLAs or not, would it be in the tens of millions of dollars?

1 **A.** Yes.

2 **Q.** Okay. Focusing just on those who signed GLAs and focusing
3 on the period 2004 to 2007, would GLA class members in this
4 case have received millions of dollars through the ad hoc
5 licensing agreements?

6 **A.** Absolutely.

7 **Q.** And do you know if it was a little bit more than
8 \$7 million?

9 **A.** I do.

10 **Q.** What's your information on that?

11 **A.** Uhm, I -- I've seen the documentation of that. And I
12 have -- I have a general knowledge of what was generated during
13 that period of time.

14 **Q.** And how much was it?

15 **A.** Around \$7 million.

16 **Q.** Okay.

17 **MR. KESSLER:** Your Honor, I'll hold this subsequently
18 and not move to admit it now. I take it Your Honor would
19 prefer that.

20 **THE COURT:** We can sort it out later through a
21 different witness.

22 All right. Go ahead.

23 **BY MR. KESSLER:**

24 **Q.** Okay. Mr. Allen, you were asked a question by Mr. Parcher
25 about the changes that were made in the retired player group