

VOLUME 6

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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

WEDNESDAY

OCTOBER 29, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES :

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P R O C E E D I N G S

OCTOBER 29, 2008

7:30 A.M.

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT,
OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: GOOD MORNING. PLEASE BE SEATED.

ANY ISSUES FOR ME THIS MORNING?

MR. KESSLER: JUST SOME HOUSEKEEPING.

THE COURT: GO AHEAD.

MR. KESSLER: YOUR HONOR ASKED US TO PREPARE JURY
HANDOUTS OF THE CHARTS. WE'VE DONE THAT. I DON'T KNOW HOW
YOUR HONOR WANTS TO GIVE IT TO THE JURY, BUT WE HAVE THAT.

THE COURT: HAVE BOTH SIDES LOOKED AT IT?

MR. KESSLER: YES, I THINK YOU'VE LOOKED AT THESE.
THESE ARE JUST --

THE COURT: DAWN, PUT THESE ON THE JURORS' CHAIRS
AND --

MR. KESSLER: AND WE'VE --

(SIMULTANEOUS COLLOQUY; NOT REPORTABLE.)

THE COURT: YOU'VE GOT TO LET -- THE COURT REPORTER
CAN'T DO TWO THINGS AT ONCE, MR. KESSLER. YOU HAVE TO WAIT
UNTIL I FINISH.

DAWN, WOULD YOU PLEASE PUT ON THE CHAIR THE TIMELINE
MR. KESSLER HAS.

THE CLERK: ALL RIGHT.

1 **MR. KESSLER:** AND WE ALSO WITH THAT EACH HAVE
2 SELECTED ONE DOCUMENT. WHY DON'T WE ALSO HAND THAT TO DAWN,
3 AND SHE CAN PUT THAT DOWN AT THE SAME TIME?

4 **THE COURT:** THAT'S FINE. LET ME SAY THIS TO THE
5 LAWYERS: HAVE THE LAWYERS LOOKED AT THE DOCUMENTS, EACH AND
6 EVERY COPY, TO MAKE SURE ITS IT'S OKAY? HAVE BOTH SIDES LOOKED
7 AT EVERY SINGLE DOCUMENT?

8 **MR. KESSLER:** WE'VE TRUSTED EACH OTHER, YOUR HONOR --

9 **THE COURT:** THAT'S A MISTAKE.

10 **MR. KESSLER:** -- BUT IF YOU WANT US TO, WE WILL.

11 **THE COURT:** DON'T TRUST. VERIFY.

12 **MR. KESSLER:** OKAY.

13 **THE COURT:** LET ME TELL YOU WHY.

14 WE DID THIS IN ONE OTHER CASE. IT TURNED OUT THAT
15 ONE OF THE LAWYERS' LEGAL ASSISTANTS HAD GOOFED UP. AND THE
16 LAWYERS THEN WANTED TO SUBSTITUTE, AND THE ANSWER WAS NO,
17 BECAUSE BY THAT POINT THE JURORS HAD MADE NOTES ON IT.

18 AND, IN FACT, I THINK IT HAD A STRAY PAGE THAT DIDN'T
19 BELONG THERE. AND ONE SIDE THOUGHT THEY HAD BEEN BAMBOOZLED BY
20 THE OTHER SIDE. PROBABLY THEY WERE.

21 BUT I WOULD NOT LET THEM CHANGE IT, BECAUSE I'M
22 TELLING YOU NOW WHATEVER YOU -- YOU'VE GOT TO MAKE SURE THAT
23 YOU AGREE IT'S GOING INTO THE JURY BOX. FROM THAT POINT ON YOU
24 WILL NEVER SEE IT AGAIN.

25 **MR. KESSLER:** OKAY. WE WILL CHECK WITH EACH OTHER

1 NOW BEFORE HANDING IT TO DAWN.

2 **THE COURT:** FINE.

3 **MR. KESSLER:** FINALLY, YOUR HONOR, SINCE WE ARE
4 GETTING, YOUR HONOR, CLOSE TO OUR CASE WE HAVE BEEN INFORMED BY
5 PLAINTIFFS WE MIGHT BE ABLE TO START ON FRIDAY. IT'S UNCLEAR.
6 WE HAVE DESIGNATIONS FOR ONE WITNESS, MR. ADAM ZUCKER.

7 YOUR HONOR, HAS ACTUALLY ALREADY SEEN ZUCKER BECAUSE
8 HE WAS ORIGINALLY PROPOSED AS TO BE READ OR PLAYED BY
9 PLAINTIFFS.

10 THEY'VE DECIDED NOT TO READ OR PLAY HIM, SO WE'RE NOW
11 PROPOSING TO --

12 **THE COURT:** IS HE THE ONE WHO HAD THE ALL THE LEADING
13 QUESTIONS?

14 **MR. KESSLER:** NO, THAT WAS MR. FRISS. THAT WAS
15 MR. FRISS.

16 **THE COURT:** OKAY. HAND IT UP TO DAWN, AND I'LL GET
17 AT IT.

18 **MR. KESSLER:** WE MADE IT CLEAR AS TO EACH DESIGNATION
19 WHICH PARTY IT IS. AND WHAT I'D ALSO CALL YOUR HONOR'S
20 ATTENTION TO, JUST BECAUSE IT'S A BIT UNUSUAL, MOST OF THE
21 OBJECTIONS IN THIS DEPOSITION ARE BY PLAINTIFFS TO THEIR OWN
22 QUESTIONS. AND WE DON'T THINK ANY OF THAT IS APPROPRIATE TO
23 THE FORM OF THEIR OWN QUESTIONS.

24 BUT YOUR HONOR WILL SEE THAT WITH RESPECT TO THAT.

25 **THE COURT:** ALL RIGHT. IT MIGHT MAKE A DIFFERENCE.

1 I'LL HAVE TO LOOK AT EACH QUESTION IN EACH CONTEXT.

2 ALL RIGHT.

3 **MR. KATZ:** YOUR HONOR, I HAVE A POINT.

4 **THE COURT:** SURE. GO AHEAD.

5 **MR. KATZ:** YOUR HONOR, WILL RECALL DURING THE MOTIONS
6 IN LIMINE THAT YOU MADE A MOTION -- WE WERE TALKING ABOUT THIS
7 ORGANIZATION OF RETIRED PLAYERS FOR JUSTICE, AND YOU SAID IF
8 THEY BROUGHT IT UP, IF THEY OPENED THE DOOR WITH RESPECT TO
9 PENSIONS AND DISABILITIES THAT WE COULD TALK ABOUT THAT.

10 WHAT HAPPENED THE OTHER DAY IS THAT THEY SUBMITTED
11 AND WAS ADMITTED THE TOUCHBACK MAGAZINE, WHICH IS EXHIBIT 2046.

12 ACTUALLY, MR. KESSLER READ THIS PORTION TO THE JURY,
13 WHICH I WILL NOW READ TO YOUR HONOR. AND THIS IS THE DOCUMENT
14 THAT THEY'RE GIVING TO THE JURY.

15 IT SAYS, AMONG OTHER THINGS:

16 "THE NFLPA'S REPRESENTATION OF RETIRED PLAYERS
17 IS FUNDED MOSTLY BY ROYALTIES FROM PLAYERS INC LICENSING
18 PROGRAMS INVOLVING CURRENT PLAYERS. THIS REPRESENTATION HAS
19 DELIVERED AMAZING GAINS IN PLAYER PENSIONS, ESPECIALLY OVER THE
20 PAST TEN YEARS. DURING THE LAST COLLECTIVE BARGAINING
21 AGREEMENT EXTENSION, FOR EXAMPLE, ALL PLAYER BENEFIT CREDITS
22 PRIOR TO 1977 INCREASED TO A MINIMUM OF \$200 PER MONTH."

23 I DO, THEREFORE, SEEK LEAVE OF THE COURT TO QUESTION
24 MR. ADDERLEY ABOUT HIS PENSION SINCE THEY HAVE OPENED THE DOOR
25 ON THAT.

1 **MR. KESSLER:** YOUR HONOR, THE ACTUAL RECORD IS AS
2 FOLLOWS: PLAINTIFFS PUT THAT DOCUMENT INTO EVIDENCE WITH
3 MR. ALLEN. THEY ALSO USED THAT DOCUMENT IN THEIR OPENING WITH
4 THE JURY. I DID NOT READ TO THE JURY -- WHEN I QUESTIONED
5 MR. ALLEN ABOUT IT AFTER THEY PUT THE DOCUMENT INTO EVIDENCE, I
6 DID NOT MOVE IT IN. THEY MOVED IT INTO EVIDENCE.

7 I DID NOT READ TO MR. ALLEN THE PORTION HE JUST NOTED
8 ABOUT GAINS IN PENSIONS. I READ TO HIM THE PART THAT ACTIVE
9 PLAYER LICENSING IS USED TO SUPPORT RETIRED PLAYER DEPARTMENT,
10 WHICH IT IS, BECAUSE THEY'VE SOMEHOW MADE THE ARGUMENT THAT
11 THERE'S SOMETHING WRONG AS TO HOW ACTIVE PLAYER LICENSING IS
12 DONE.

13 **THE COURT:** WHY DO YOU WANT THAT DOCUMENT TO BE THE
14 ONE DOCUMENT YOU GIVE TO THE JURY?

15 **MR. KESSLER:** BECAUSE, YOUR HONOR, THEY ON THEIR
16 FIDUCIARY DUTY CLAIM, OKAY, THEY MAKE A BIG ARGUMENT THAT THE
17 RETIRED PLAYERS DID NOT KNOW HOW THE REVENUE WAS SPLIT OF
18 23 PERCENT, 40 PERCENT, 37 PERCENT WITH RESPECT TO THE GLR
19 POOL.

20 THEY ALSO MAKE A BIG ARGUMENT THAT THE RETIRED
21 PLAYERS DID NOT KNOW THAT EVEN THOUGH THEY ALL SIGNED GLR'S,
22 THAT INDIVIDUAL RETIRED PLAYERS IN GROUPS WERE RECEIVING THAT
23 MONEY. HUNDREDS OF PLAYERS WERE RECEIVING IT, BUT IT WAS NOT
24 GOING TO ALL THE RETIRED PLAYERS.

25 THEY ALSO ARGUE THAT THE RETIRED PLAYERS DIDN'T KNOW

1 THAT THE EA AGREEMENT DID NOT COVER THEIR RIGHTS.

2 ALL OF THAT INFORMATION IS CONTAINED IN THIS ISSUE OF
3 TOUCHBACK, WHICH WAS GIVEN TO ALL THE RETIRED PLAYERS. SO IT'S
4 A CRITICAL PART OF SHOWING TO US -- IT'S A DOCUMENT THAT SHOWS
5 ALL THIS INFORMATION WAS GIVEN TO THE RETIRED PLAYERS. WE DO
6 NOT MENTION THE TWO SENTENCES THAT MR. -- AND, IN FACT, IF YOUR
7 HONOR WANTS US TO REDACT OUT THOSE SENTENCES ABOUT GAINS IN
8 PENSIONS, I'M HAPPY TO REDACT THEM OUT. I NEVER READ THEM IN,
9 AND I HAVE NO INTEREST IN REFERRING TO THEM.

10 **MR. KATZ:** MAY I RESPOND, YOUR HONOR?

11 **THE COURT:** GO AHEAD.

12 **MR. KATZ:** MR. KESSLER DID READ THEM IN, CONTRARY TO
13 WHAT HE JUST SAID, ON PAGE 785 OF THE TRANSCRIPT FROM
14 OCTOBER 27TH, HE QUOTES THE LANGUAGE THAT I JUST READ.

15 I'LL SHOW THAT TO MR. KESSLER.

16 WE DID NOT USE THAT PORTION OF THE DOCUMENT, AND IT'S
17 TOO LATE NOW. IT'S IN.

18 **MR. KESSLER:** I READ ONE OF THE SENTENCES HE READ,
19 NOT THE OTHERS.

20 BUT IN ANY EVENT, YOUR HONOR, I GUESS I DIDN'T RECALL
21 THAT ONE SENTENCE. I'M HAPPY TO HAVE THAT ONE PART REDACTED
22 OUT.

23 **MR. KATZ:** IT'S TOO LATE, YOUR HONOR.

24 **MR. KESSLER:** THAT ONE SENTENCE --

25 **THE COURT:** IT'S IN EVIDENCE. IT'S IN EVIDENCE

1 ALREADY. I DON'T SEE -- BUT MAYBE I SHOULDN'T DRAW SPECIAL
2 ATTENTION TO IT. WHAT IS THE OTHER DOCUMENT THAT THE OTHER
3 SIDE WANTS TO PUT INTO THE --

4 **MR. KESSLER:** THE RETIRED PLAYER GLA.

5 **MR. HUMMEL:** THE GLA.

6 **MR. KATZ:** THE GLA, WHICH IS WHAT THIS CASE IS ALL
7 ABOUT.

8 **THE COURT:** THAT DOCUMENT SHOULD DEFINITELY BE PART
9 OF IT. BUT, LOOK, I'M GOING TO HOLD OFF ON LETTING ANYTHING
10 EXCEPT THE TIMELINE GO INTO THE JURY BOX, UNTIL I CAN SORT THIS
11 PROBLEM OUT.

12 WHEN IS MR. ADDERLEY GOING TO TESTIFY?

13 **MR. KATZ:** THIS MORNING, YOUR HONOR. HE'S THE THIRD
14 WITNESS SCHEDULED THIS MORNING, PROBABLY AFTER THE FIRST BREAK,
15 BEFORE THE SECOND BREAK.

16 **THE COURT:** WHAT WAS THE SENTENCE -- HAND UP WHAT IT
17 WAS THAT MR. KESSLER QUOTED.

18 **MR. KESSLER:** I'LL HAND IT UP, YOUR HONOR.

19 **THE COURT:** GIVE IT TO DAWN.

20 **MR. KATZ:** AND IT WAS ON THE BOARD. AND HE
21 HIGHLIGHTED IT. AND HE HIGHLIGHTED IT.

22 **MR. KESSLER:** AND, YOUR HONOR, I NOTE THEY PUT THE
23 DOCUMENT INTO EVIDENCE. WE DID NOT. SO THE DOCUMENT WAS IN
24 EVIDENCE BY THEM.

25 **THE COURT:** WHO DESIGNATED THE DOCUMENT?

1 **MR. KESSLER:** THEY -- THEY -- THEY USED IT IN THEIR
2 OPENING ARGUMENT AS PLAINTIFFS, AND THEY MOVED IT INTO
3 EVIDENCE.

4 **THE COURT:** WHO PUT IT ON THEIR EXHIBIT LIST?

5 **MR. KESSLER:** WE BOTH DID, YOUR HONOR.

6 **MR. KATZ:** I DON'T KNOW IF THAT'S TRUE, YOUR HONOR.

7 **MR. HUMMEL:** THAT'S TRUE.

8 **MR. KESSLER:** I'M VERY SURE IT'S TRUE.

9 **MR. KATZ:** YOU WERE VERY SURE YOU DIDN'T READ IT IN,
10 BUT YOU WERE WRONG.

11 **MR. KESSLER:** BUT I JUST TOLD I WAS SURE ABOUT THIS.

12 **MR. KATZ:** YOU'RE SURE ABOUT EVERYTHING. THAT'S YOUR
13 PROBLEM.

14 **THE COURT:** WAIT. WAIT. WAIT. PLEASE. PLEASE.
15 PLEASE. PLEASE.

16 MR. KATZ, WHAT WAS THE SENTENCE?

17 **MR. KATZ:** "AMAZING INCREASES IN THE PENSIONS."

18 MR. ADDERLEY'S WENT FROM \$120 A MONTH TO \$175 A
19 MONTH. THAT WAS HIS AMAZING INCREASE.

20 **THE COURT:** HERE IS WHAT I'M GOING TO ALLOW. ONE
21 QUESTION. AND HERE'S THE FORMAT OF THE QUESTION.

22 AND THIS IS TO MR. ADDERLEY. AND THIS IS BECAUSE YOU
23 DID READ IT, MR. KESSLER.

24 YOU CAN QUOTE THE WAY -- THE FORM OF THE QUESTION
25 WILL BE AS FOLLOWS.

1 YOU CAN SAY: MR. KESSLER PUT UP ON THE SCREEN AND
2 READ FROM THE -- WHAT WAS IT CALLED?

3 **MR. KESSLER:** TOUCHBACK.

4 **THE COURT:** -- TOUCHBACK, THIS SENTENCE. THE LAST
5 TWO SENTENCES IN THE QUOTE THAT STARTS WITH THE:

6 "THE NFLPA'S REPRESENTATION OF VARIOUS -- OF
7 RETIRED PLAYERS IS FUNDED MOSTLY BY ROYALTIES," ET CETERA.
8 "THIS REPRESENTATION HAS DELIVERED AMAZING GAINS IN PLAYER
9 PENSIONS, ESPECIALLY OVER THE PAST TEN YEARS."

10 YOU CAN QUOTE THAT. AND THEN, YOU CAN SAY:

11 "MR. ADDERLEY, HAVE YOU HAD AMAZING GAINS IN
12 YOUR PENSIONS OVER THE LAST TWO YEARS?"

13 AND HE WILL HAVE TO GIVE WHATEVER IS THE TRUTHFUL
14 ANSWER, AND THEN MOVE ON TO SOMETHING ELSE.

15 **MR. KESSLER:** YOUR HONOR --

16 **MR. KATZ:** IF THAT'S THE CASE, YOUR HONOR, I THINK WE
17 WOULD WANT TO REDACT IT.

18 **THE COURT:** WHY?

19 **MR. KATZ:** IT'S TOO LIMITING, YOUR HONOR, BECAUSE THE
20 TRUTH OF THE MATTER IS HIS PENSION IS RIDICULOUS.

21 **THE COURT:** WELL, THEN, HE CAN SAY:

22 "IT'S RIDICULOUS."

23 **MR. KATZ:** NO, YOU SAID HE CAN'T.

24 **THE COURT:** LISTEN TO WHAT I SAID. YOU CAN SAY:

25 "READ THIS ABOUT THE AMAZING GAINS."

1 AND THEN SAY:

2 "MR. ADDERLEY, HAVE YOU HAD AMAZING GAINS --
3 WHAT IS YOUR PENSION, AND HAVE YOU HAD AMAZING GAINS?"

4 PRESUMABLY HE IS GOING TO SAY:

5 "MY PENSION IS TERRIBLE, AND I HAVE NOT HAD
6 AMAZING GAINS."

7 **MR. KATZ:** WELL, CAN HE SAY WHAT HIS PENSION IS?

8 **THE COURT:** YES, HE CAN SAY WHAT HIS PENSION IS.

9 **MR. KATZ:** AS LONG AS HE CAN SAY WHAT HIS PENSION IS
10 AND THAT HE DOESN'T THINK IT'S AN AMAZING --

11 **THE COURT:** I THINK THAT'S A FAIR RESPONSE TO WHAT
12 MR. KESSLER READ TO THE JURY.

13 **MR. KESSLER:** YOUR HONOR --

14 **THE COURT:** YES.

15 **MR. KESSLER:** -- IF I MAY. THE PROBLEM I HAVE WITH
16 THAT IS THAT THE REASON MR. ADDERLEY'S PENSION IS THE WAY IT
17 IS -- AND IT'S EXACTLY WHAT WE WANTED TO KEEP FROM THE JURY --
18 IS MR. ADDERLEY MADE AN ELECTION TO TAKE HIS PENSION EARLY, AND
19 HE VOLUNTARILY REDUCED THE AMOUNT OF HIS PENSION BY AN ENORMOUS
20 AMOUNT OF MONEY, CONTRARY TO UNION ADVICE.

21 SO WHAT THE JURY WOULD HEAR --

22 **THE COURT:** THEN, YOU CAN BRING THAT UP.

23 **MR. KESSLER:** THANK YOU, YOUR HONOR.

24 **THE COURT:** ON CROSS-EXAMINATION.

25 **MR. KESSLER:** THANK YOU, YOUR HONOR.

1 **THE COURT:** I MAY, IF I FEEL IT'S WARRANTED -- I WANT
2 TO PUT YOU BOTH ON NOTICE I MAY TELL THE JURY WHEN THIS COMES
3 OUT THAT IN THE COURT'S JUDGMENT THIS IS IRRELEVANT, BECAUSE I
4 DO THINK IT'S IRRELEVANT.

5 **MR. KATZ:** YOUR HONOR, WE DID NOT BRING IT UP.

6 **THE COURT:** I KNOW YOU DIDN'T. BUT SINCE IT WAS
7 BROUGHT UP I THINK YOU'VE GOT REASONABLE LATITUDE, PUT YOUR
8 POINT OF VIEW IN ON SOMETHING THAT IS IRRELEVANT.

9 BUT THE OTHER SIDE READ THIS TO THE JURY, SO I THINK
10 FAIRNESS REQUIRES THAT YOU GET TO SAY WHAT I SAID YOU COULD
11 SAY.

12 BUT THIS HAS SUCH A RISK OF CONFUSING THE JURY ON THE
13 GLA ISSUE. IT DOESN'T MATTER IF HE GETS ZERO PENSION. ZERO.
14 THE ISSUES HERE CONCERN THE GLA, THE FIDUCIARY DUTY AND THE --
15 ONLY AS IT PERTAINS TO THE GLA AND THE BREACH OF CONTRACT.

16 **MR. KATZ:** I AGREE, YOUR HONOR. THAT'S WHY I DID NOT
17 BRING THIS UP.

18 **THE COURT:** THANK YOU FOR BEING A GOOD CITIZEN.

19 (LAUGHTER)

20 I'M GIVING YOU SOME LATITUDE.

21 **MR. KATZ:** I GET IT. I GET IT, YOUR HONOR.

22 **THE COURT:** BUT PLEASE DON'T ABUSE IT NOW.

23 AND THE WAY TO TEE THIS UP --

24 **MR. KATZ:** THAT'S WHY I BROUGHT IT UP NOW, YOUR
25 HONOR.

1 **THE COURT:** -- IS YOU READ THOSE TWO SENTENCES.
2 HERE. GIVE IT TO ME SO I CAN CIRCLE THE TWO SENTENCES.

3 **MR. KATZ:** I BROUGHT IT UP NOW SO THERE WOULDN'T BE
4 ANY SURPRISES FOR YOUR HONOR.

5 **THE COURT:** THANK YOU. YOU DID RIGHT. THANK YOU.
6 WHAT'S NEXT?

7 **MR. HUMMEL:** YOUR HONOR, THE ONE DOCUMENT WE DID WANT
8 TO GO TO THE JURY WAS THE GLA. I DON'T THINK THERE'S ANY
9 OBJECTION TO THAT.

10 **THE COURT:** I WANT TO DO IT AT THE SAME TIME.

11 **MR. HUMMEL:** I UNDERSTAND.

12 **THE COURT:** SO LET'S -- DO YOU STILL WANT THE -- I'M
13 NOT GOING TO REDACT IT OUT. SO I WILL LET YOU PUT IN THE --
14 PUT THAT --

15 **MR. KESSLER:** TOUCHBACK.

16 **THE COURT:** HERE'S WHAT I THINK WE SHOULD DO,
17 MR. KATZ.

18 TOUCHBACK CAN GO TO THE JURY BOX, BECAUSE IT'S
19 ALREADY IN EVIDENCE. GLA GOES INTO THE JURY BOX. AND YOU GET
20 TO ASK THE LINE OF QUESTIONS, ONE OR TWO QUESTIONS THAT I JUST
21 STATED.

22 **MR. KESSLER:** AND I HAVE NO --

23 **THE COURT:** EVERYONE OKAY WITH THAT?

24 **MR. KESSLER:** YES, AND I THINK YOUR HONOR GIVING THE
25 INSTRUCTION IT'S TOTALLY IRRELEVANT IS TOTALLY APPROPRIATE.

1 **THE COURT:** I'M NOT NECESSARILY GOING TO MAKE THAT.
2 THAT'S THE WAY I FEEL, BUT I HAVE TO SEE HOW IT COMES OUT
3 BEFORE I START INTERJECTING HERE.

4 **MR. KATZ:** I'M PERFECTLY HAPPY WITH HIM
5 CROSS-EXAMINING TO HIS HEART'S CONTENT, BECAUSE THE REASON THIS
6 PENSION IS BAD IS THAT IT'S BAD. IT'S THE WORST PENSION IN
7 HISTORY.

8 (LAUGHTER)

9 **THE COURT:** BE AWARE THAT I HAVE TO GIVE REASONABLE
10 REDIRECT. SO MR. KATZ CAN, WITHIN THE SCOPE OF HIS QUESTIONS,
11 HE CAN THEN --

12 **MR. KESSLER:** SURE.

13 **MR. KATZ:** LET HIM TAKE HIS BEST SHOT, YOUR HONOR.
14 THAT'S WHAT I SAY.

15 **MR. HUMMEL:** I WANT TO HAND UP THE GLA AND THE
16 TOUCHBACK THING.

17 **THE COURT:** BOTH SIDES LET IT GO IN TO THE JURY BOX.

18 **MR. KESSLER:** THE JUDGE JUST ASKED US TO VERIFY.

19 **THE COURT:** VERIFY, AND THEN IT WILL GO. BUT CAN WE
20 AT LEAST PUT THE TIMELINE ON THE CHAIRS?

21 **MR. KESSLER:** YES. HERE'S THE TIMELINE. THERE'S NO
22 DISPUTE ABOUT THAT.

23 **THE COURT:** PUT THOSE OUT, DAWN.

24 **MR. HUMMEL:** I CAN DO IT.

25 **THE COURT:** MR. HUMMEL, THANK YOU.

1 **MS. NAYLOR:** YOUR HONOR, I HAVE SOME TRULY
2 HOUSEKEEPING MATTERS.

3 WE HAVE A REDACTED --

4 **THE COURT:** ARE YOU SUGGESTING THAT THESE LAWYERS
5 REALLY NEVER HAVE --

6 **MS. NAYLOR:** I'M SUGGESTING THAT, YOUR HONOR.

7 **THE COURT:** THEY ALWAYS CALL IT THAT, AND HOPE I
8 AGREE IMMEDIATELY.

9 **MS. NAYLOR:** WE HAVE A REDACTED GLA FOR WALTER BEACH
10 THAT CAME UP YESTERDAY.

11 **THE COURT:** ON THE SOCIAL SECURITY NUMBER?

12 **MS. NAYLOR:** YES, FOR TRIAL EXHIBIT 640.

13 **THE COURT:** EXCELLENT. GOOD.

14 **MS. NAYLOR:** AND I WOULD ALSO LIKE TO MOVE INTO
15 EVIDENCE 1245-7, 1245-8, 1245-9, AND 1263-7, WHICH ARE ALREADY
16 ADMITTED AS PART OF THE GAME, BUT WE WANTED THEM ADMITTED
17 SEPARATELY.

18 **THE COURT:** I'M SORRY. I WAS LOOKING AT THE
19 TIMELINE. I HAVE TO GET MY LIST OUT. 12 WHAT?

20 **MS. NAYLOR:** 1245-7 -- THESE ARE ALL SCREEN SHOTS
21 FROM THE MADDEN GAME.

22 **THE COURT:** 12 --

23 **MS. NAYLOR:** 1245-7.

24 **THE COURT:** 1245-7. WELL, I HAVE A NOTE HERE THAT
25 EVERY SINGLE PAGE IS IN.

1 **MS. NAYLOR:** THEY'RE IN AS A PART OF THE GAME, BUT WE
2 WOULD LIKE THEM ADMITTED SEPARATELY, AS WELL, FOR CONVENIENCE
3 OF THE JURY.

4 **THE COURT:** I MISUNDERSTOOD, BECAUSE I STOPPED
5 PUTTING DOWN ALL THE --

6 **MS. NAYLOR:** ALL THE DASHES?

7 **THE COURT:** -- ALL THE DASHES. BUT IF YOU TELL ME
8 THE ONES YOU WANT IN I WILL --

9 **MS. NAYLOR:** WE PUT IN SOME YESTERDAY. AND THESE ARE
10 ADDITIONAL.

11 **THE COURT:** GIVE IT TO ME AGAIN.

12 **MS. NAYLOR:** 1245-7.

13 **THE COURT:** 1245-7.

14 **MS. NAYLOR:** 1247-8.

15 **THE COURT:** 8. HERE ARE THE ONES I PUT DOWN BEFORE I
16 STOPPED MAKING NOTES ON 1245. DASH 1, DASH 2, DASH 4, DASH 8.

17 NOW, YOU'RE TELLING ME I --

18 **MS. NAYLOR:** DASH 7.

19 **THE COURT:** DASH 7. WHAT ELSE?

20 **MS. NAYLOR:** DASH 9.

21 **THE COURT:** DASH 9.

22 **MS. NAYLOR:** AND 1263-7.

23 **THE COURT:** WAIT. ARE YOU FINISHED WITH 1245?

24 **MS. NAYLOR:** YES.

25 **THE COURT:** ALL OF THOSE ARE RECEIVED.

1 **MR. LECLAIR:** YOUR HONOR, JUST SO THE RECORD IS
2 CLEAR -- I'M SORRY. 1245-1 AND 2 WERE ADMITTED ALREADY. SO
3 THOSE ARE ALREADY IN EVIDENCE SEPARATELY.

4 **THE COURT:** I HAVE THEM IN EVIDENCE BUT --

5 **MS. NAYLOR:** AND 1263-7.

6 **THE COURT:** -- SINCE YOU TOLD ME THE WHOLE THING WAS
7 IN I STOPPED TAKING NOTES.

8 WHAT WAS THE OTHER ONE? 12 WHAT?

9 **MS. NAYLOR:** 1263-7.

10 **THE COURT:** JUST A MINUTE. 1263-7 IS ALSO IN.

11 WHAT ELSE?

12 (TRIAL EXHIBITS 1245-7, 1245-8, 1245-9, AND 1263-7
13 RECEIVED IN EVIDENCE.)

14 **MS. NAYLOR:** AND 2370.

15 **THE COURT:** WHAT?

16 **MS. NAYLOR:** 2370.

17 **THE COURT:** 2370.

18 **MR. KESSLER:** NO, YOUR HONOR. WE OBJECTED TO THAT.
19 THAT WAS THE CONSTITUTION. THAT'S NOT PART OF THIS, I DON'T
20 THINK.

21 **THE COURT:** THAT WAS NEVER MOVED INTO EVIDENCE.

22 **MR. KESSLER:** CORRECT, YOUR HONOR.

23 **MR. HUMMEL:** I DID NOT, YOUR HONOR, BUT A FOUNDATION
24 WAS LAID, AND I WOULD HAVE MOVED IT. IT CAME FROM HIS FILES.
25 IT IS THE CONSTITUTION, AND YOU ALLOWED QUESTIONING ABOUT IT.

1 I WOULD HAVE MOVED IT IN. I SIMPLY NEGLECTED TO DO SO.

2 **MR. KESSLER:** YOUR HONOR, WE'D OBJECT UNDER 403.
3 THIS IS THE DOCUMENT THAT HE KEPT IN HIS FILES THAT HE WAS
4 ARGUING HAD SUCH TRUST IN THE UNION. YOUR HONOR WAS FORCED TO
5 GIVE AN INSTRUCTION THAT THAT'S NOT THE ISSUE TO THE JURY
6 BECAUSE OF THE CONFUSION. I DON'T THINK THIS DOCUMENT BELONGS
7 IN EVIDENCE.

8 **THE COURT:** WHY IS THAT RELEVANT?

9 **MR. HUMMEL:** BECAUSE IT'S ONE OF THE REASONS HE
10 SIGNED THE GLA, WHICH MR. KESSLER HAS PUT IN ISSUE IN THIS CASE
11 AS TO THESE PEOPLE DIDN'T BELIEVE THEY WERE GOING TO GET
12 ANYTHING OUT OF THIS GLA'S, AND THEY TRUSTED THE UNION.

13 IT'S A CENTRAL PIECE OF THE CASE, YOUR HONOR, AND
14 THAT'S BEEN THE UNION'S MANTRA FROM DAY ONE.

15 **THE COURT:** WHAT IS IN THE CONSTITUTION THAT COULD
16 POSSIBLY CAUSE THEM TO TRUST THE UNION?

17 **MR. HUMMEL:** IF YOU LOOK, YOUR HONOR, AT THE BATES
18 PAGE 1242:

19 "PAY HOMAGE TO OUR PREDECESSORS FOR THEIR
20 COURAGE, SACRIFICE AND VISION."

21 IT IS THE FABRIC OF THIS UNION THAT THEY SUPPORT THE
22 RETIRED PLAYERS. AND THAT'S PART OF THE REASON MR. LAIRD
23 TESTIFIED HE SIGNED THE GLA. IT'S PART OF THE REASON
24 MR. MCNEIL TESTIFIED HE SIGNED THE GLA.

25 IT IS A CENTERPIECE OF THIS CASE AS TO WHEN THEY

1 RECEIVED SOMETHING FROM THEIR UNION IN THE MAIL, THEY THOUGHT
2 THE UNION HAD THEIR BACK.

3 IN FACT, THE EVIDENCE HAS SHOWN, AND WILL CONTINUE TO
4 SHOW, THEY DIDN'T. THIS IS FROM MR. LAIRD'S FILES, AND A
5 FOUNDATION WAS LAID, YOUR HONOR.

6 IT IS CENTRALLY RELEVANT TO THE REASON WHY THEY
7 SIGNED THE GLA AND THE UNDERSTANDING THEY HAD OF THE GLA WHEN
8 THEY SIGNED IT.

9 **MR. KESSLER:** YOUR HONOR HAS ALREADY RULED ON TWO
10 THINGS. ONE, THERE ARE ONLY TWO CLAIMS IN THIS CASE. THE
11 BREACH OF CONTRACT, WHICH HAS NOTHING TO DO WITH THIS,
12 OBVIOUSLY, AS YOUR HONOR HAS NOTED MANY TIMES, EITHER BREACHED
13 OR DIDN'T BREACHED. AND THE BREACH OF FIDUCIARY DUTY, WHICH
14 YOUR HONOR SPECIFICALLY RULED ONLY STEMS FROM THE GLA, NOT
15 THEIR RELATIONSHIP WITH THE UNION.

16 IN FACT, MANY OF THESE CLASS MEMBERS ARE NOT MEMBERS
17 OF THE UNION. THEY HAVE THREE OF THEM WHO ARE. MOST OF THEM
18 WERE NOT DUES-PAYING MEMBERS.

19 SO TO CONFUSE THE JURY ABOUT THIS ISSUE THAT SOMEHOW
20 THERE'S SOME DUTY ARISING OUT OF THE CONSTITUTION IS NOT AN
21 ISSUE IN THIS CASE.

22 SECOND OF ALL --

23 **THE COURT:** HOW MANY MEMBERS OF THE CLASS WERE
24 MEMBERS OF THE UNION WHO SIGNED THE GLA?

25 **MR. KESSLER:** I DON'T KNOW THE NUMBER, YOUR HONOR,

1 BUT IT'S FAR LESS THAN A HUNDRED PERCENT.

2 **THE COURT:** IS IT MORE THAN HALF?

3 **MR. LECLAIR:** YOUR HONOR, ACTUALLY, THE EVIDENCE ON
4 THIS IS GOING TO BE THAT THERE IS -- IN THEIR PUBLICLY-FILED
5 DOCUMENTS THEY DEFINE "RETIRED MEMBERS" AS PEOPLE WHO HAVE BEEN
6 IN THE NATIONAL FOOTBALL LEAGUE.

7 SO THE JURY IS GOING TO HAVE TO DECIDE EXACTLY WHAT
8 "MEMBERSHIP IN THE UNION" MEANS BECAUSE OF THE WAY THEY DEFINE
9 IT, NOT THE WAY WE --

10 **THE COURT:** RIGHT NOW THIS IS EXCLUDED, BUT I'LL LET
11 YOU DO A BRIEF.

12 I WANT TO SAY SOMETHING TO THE PLAINTIFFS HERE. YOU
13 HAVE SOME GOOD POINTS IN THIS CASE. AND A LOT OF THEM ARE
14 GETTING BURIED IN DRIBBLE. THAT GLA, THERE'S A LOT OF PROBLEMS
15 WITH THAT GLA. BUT YOU ARE RUNNING AWAY FROM IT. YOU ARE
16 RUNNING TO THE CONSTITUTION. YOU'RE RUNNING TO THE 63 -- THAT
17 THING OVER THERE, THEIR PRESENT REMINDER, WHICH TO MY MIND HAS
18 NOTHING TO DO WITH THIS CASE. IT'S CONFUSING THE JURY.

19 AND I DON'T SEE THIS BEING MUCH -- IF YOUR CASE COMES
20 DOWN TO "PAY HOMAGE TO OUR FORMER PLAYERS," YOU'RE GOING TO
21 LOSE.

22 **MR. HUMMEL:** IT CERTAINLY DOESN'T COME DOWN TO THAT,
23 YOUR HONOR, BUT IT IS ABSOLUTELY IS A PART OF THE FABRIC OF
24 THIS CASE.

25 **THE COURT:** WAS EVERY SINGLE MEMBER OF THE CLASS A

1 UNION MEMBER WHEN THEY SIGNED? IF NOT, IT'S NOT A COMMON
2 ISSUE. SO I'M NOT GOING TO RULE IT OUT PERMANENTLY. I'M JUST
3 GOING TO SAY YOU'RE GOING TO HAVE TO BRIEF THIS. I WANT GOOD
4 BRIEFING ON THIS. AND I DON'T WANT PLATITUDES AND A JURY
5 ARGUMENT.

6 DON'T TELL ME IT'S CENTRAL TO THE CASE.

7 **MR. HUMMEL:** I DIDN'T TELL YOU IT'S CENTRAL. I
8 SAID --

9 **THE COURT:** YOU SAID IT WAS CENTRAL TO YOUR CASE. IF
10 THAT'S THE TRUTH, YOU MIGHT AS ROLL THIS CASE UP AND GO HOME
11 NOW. YOUR CASE -- YOU'VE GOT STRONGER POINTS TO MAKE THAN
12 THAT. BUT MOST OF THE TIME YOU'RE NOT MAKING THEM.

13 **MR. HUMMEL:** I UNDERSTAND, YOUR HONOR.

14 **THE COURT:** IF I WAS ON YOUR SIDE I WOULD BE SAYING:
15 "WHERE IS THE ESCROW? AND WHAT WAS THE POINT OF
16 EVER ENTERING INTO THESE AGREEMENTS IF NOT ONE PENNY WAS EVER
17 GOING TO BE PAID UNDER THEM?"

18 **MR. HUMMEL:** OH, WE INTEND TO SAY THAT.

19 **THE COURT:** THAT'S A GOOD POINT TO MAKE.

20 **MR. HUMMEL:** WE'LL MAKE IT.

21 **THE COURT:** NOW, MR. KESSLER'S GOT SOME GOOD POINTS,
22 TOO, BUT YOU HAVEN'T MADE THAT POINT ABOUT ONE TIME IN THIS
23 WHOLE CASE.

24 I DON'T THINK THE JURY HAS GOTTEN THAT.

25 **MR. HUMMEL:** ALL RIGHT, YOUR HONOR.

1 **THE COURT:** I THINK YOU GUYS ARE -- THAT THING OVER
2 THERE WHICH LOOKS LIKE A JIGSAW PUZZLE, THAT THE GLR, WHATEVER
3 IT IS -- NOT -- THAT MR. PARCHER PUT UP THERE IS A MASTERPIECE
4 OF CONFUSION.

5 SO I FEEL THAT THIS CASE IS -- YOU'VE GOT TO TRY THE
6 CASE THE WAY YOU WANT TO WITHIN THE RULES OF REASON AND
7 EVIDENCE. THAT'S YOUR -- BUT I'M SAYING TO THE NINTH CIRCUIT
8 WHEN THEY READ THIS TRANSCRIPT LATER, I DON'T SEE THE UNION
9 CONSTITUTION AS BEING A CENTERPIECE OF THIS CASE.

10 **MR. HUMMEL:** I DIDN'T MEAN TO IMPLY IT WAS A
11 CENTERPIECE, YOUR HONOR.

12 **THE COURT:** THIS IS NOT A 301 ACTION. THIS IS
13 SOMETHING TO DO WITH A SINGLE CONTRACT THAT APPLIES TO ALL
14 MEMBERS OF THE CLASS.

15 SO -- BUT I'M NOT MAKING A FINAL RULING ON IT. YOU
16 CAN BRIEF IT.

17 **MR. HUMMEL:** I UNDERSTAND, YOUR HONOR.

18 **THE COURT:** PLEASE GIVE ME YOUR BRIEFS ON THIS BY
19 TOMORROW WHEN WE ADJOURN.

20 **MR. HUMMEL:** YOUR HONOR --

21 **THE COURT:** YOU'VE GOT TONS OF LAWYERS ON BOTH SIDES.
22 YES.

23 **MR. HUMMEL:** WE'LL DO OUR BEST.

24 I DO ACTUALLY HAVE SOME OTHER BUSINESS BEFORE WE
25 START, AND I KNOW YOU WANT TO START.

1 MR. KATZ, DO YOU WANT TO SAY SOMETHING?

2 **THE COURT:** WHAT ELSE?

3 **MR. KATZ:** I HAD JUST ONE POINT ON THAT. IT CAME UP
4 AT THE END OF THE DAY AND HAS COME UP SEVERAL TIMES, YOUR
5 HONOR.

6 I JUST WANT TO STATE, FOR CLARITY, OUR POSITION ON
7 THE FIDUCIARY DUTY ISSUE, BECAUSE OFTEN WE FOCUS ON THE
8 CONTRACT. THERE IS A FIDUCIARY DUTY CLAIM AND HOW THE
9 SCRAMBLING RELATES TO THAT.

10 THE -- IT IS ABSOLUTELY CORRECT THAT WE ARE -- WE
11 HAVE NOT CONTENDED THAT THEY HAVE VIOLATED THE INTELLECTUAL
12 PROPERTY RIGHTS OF THE PLAYERS BECAUSE OF THE SCRAMBLING. OUR
13 CONTENTION IS THAT THEY HAVE VIOLATED THE FIDUCIARY DUTY
14 RIGHTS.

15 AND WE BELIEVE THAT AT SOME APPROPRIATE POINT WE
16 WOULD REQUEST YOUR HONOR TO MAKE AN INSTRUCTION TO THE JURY
17 WITH THOSE TWO SIDES IN IT.

18 **THE COURT:** THAT'S A FAIR POINT. I THINK WE SHOULD
19 FAIRLY PLACE THE ACTUAL CONTENTION BEFORE THE JURY. YOU CAN
20 HAND UP SOME VERSION THAT YOU WOULD LIKE ME TO READ TO THE
21 JURY, AND I WOULD BE HAPPY TO ENTERTAIN IT.

22 **MR. KATZ:** OKAY. WE WILL DO THAT TOMORROW MORNING,
23 YOUR HONOR.

24 **THE COURT:** YOU'VE GOT IT MAKE IT CLEAR IN THE FINAL
25 JURY INSTRUCTIONS, AS WELL. I'M WORKING ON THOSE EVERY DAY.

1 I HAVE A DIFFERENT QUESTION THAT RELATES TO THIS
2 POINT. AND I DON'T WANT TO SAY ANYTHING MORE THAN THIS:

3 WHEN MR. ALLEN WAS ON THE STAND, HE MADE VARIOUS
4 STATEMENTS, AND I WOULD LIKE FOR SOMEBODY TO COLLECT THEM FOR
5 ME BECAUSE THEY COULD RELATE TO A PRIOR RULING THAT I MADE.

6 HE SAID THAT HE HAD SPECIFICALLY PROPOSED TO THE --
7 TO THE PEOPLE THAT DID THE MADDEN GAME -- WHO WAS THAT, EA?

8 **MR. HUMMEL:** YES.

9 **MR. KATZ:** YES.

10 **THE COURT:** THAT HE HAD SPECIFICALLY PROPOSED THAT
11 THE -- THAT EA LICENSE --

12 **MR. HUMMEL:** YOUR HONOR, I THINK WE MIGHT HAVE A
13 WITNESS IN THE COURTROOM TO WHICH THIS RELATES, AND IT'S
14 IMPORTANT THAT THAT WITNESS BE EXCLUDED.

15 **THE COURT:** WHO IS THAT?

16 **UNIDENTIFIED SPEAKER:** NO, YOUR HONOR. I AM AN
17 IN-HOUSE LAWYER WITH ELECTRONIC ARTS.

18 **MR. HUMMEL:** I WOULD ASK THAT THAT IN-HOUSE LAWYER
19 BE EXCUSED, BECAUSE IT'S CRITICAL TO THE CROSS-EXAMINATION OF
20 MR. LINZNER.

21 **THE COURT:** PLEASE STEP OUTSIDE.

22 **MR. KATZ:** YOU WERE SAYING THAT MR. ALLEN TESTIFIED
23 THAT HE PROPOSED TO EA.

24 **THE COURT:** OH, YEAH. HE PROPOSED TO EA, AND THAT EA
25 SAID THAT THEY WERE NOT INTERESTED.

1 NOW, PLEASE, I THINK HE SAID IT TWICE, BUT I WOULD
2 LIKE TO HAVE THE EXACT CONTEXT. AND I'D LIKE FOR THE LAWYERS
3 TO GIVE ME WHAT HE SAID ON THAT SUBJECT.

4 **MR. HUMMEL:** WE WILL, YOUR HONOR.

5 **MR. KATZ:** YES, YOUR HONOR.

6 **MR. KESSLER:** OKAY.

7 **MR. KATZ:** AND YOUR HONOR ASKED HIM WHETHER THERE WAS
8 ANY WRITING TO BACK IT UP, AND HE SAID "NO."

9 **THE COURT:** YES, BUT I WOULD LIKE TO KNOW WHETHER HE
10 SAID THAT ON OCCASION OTHER THAN WHEN I ASKED THE QUESTION.

11 AND, BY THE WAY, WHEN YOU'RE MAKING YOUR JURY
12 ARGUMENTS, NOBODY CAN SAY:

13 "AND THE JUDGE ASKED THIS QUESTION."

14 DON'T DO THAT. YOU CAN SAY HE WAS ASKED THE
15 QUESTION. I DON'T WANT SOMEBODY PUTTING EXTRA WEIGHT ON THE
16 FACT THAT I ASKED THE QUESTION.

17 **MR. KESSLER:** WELL, CERTAINLY, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. SO, IN OTHER WORDS, IN YOUR
19 CLOSING ARGUMENTS, MR. PARCHER, DON'T SAY:

20 "AND THE JUDGE ASKED THIS," BECAUSE YOU'RE JUST
21 TRYING TO HIKE THE QUESTION UP BY THE FACT THAT THE JUDGE ASKED
22 IT. YOU CAN SAY:

23 "HE WAS ASKED THE QUESTION, AND HERE'S THE
24 ANSWER HE GAVE."

25 I KNOW -- I KNOW MR. PARCHER, BUT IT'S NOT FAIR.

1 **MR. PARCHER:** ONE THING'S FOR SURE. YOU'RE IN
2 CHARGE.

3 **THE COURT:** I DON'T WANT MY QUESTIONS TO GET ANY MORE
4 WEIGHT THAN THE QUESTIONS ASKED BY THE LAWYERS.

5 **MR. KESSLER:** YOUR HONOR, IF THEY'RE GOING TO PROPOSE
6 AN INSTRUCTION ABOUT THE EA BREACH OF FIDUCIARY DUTY CLAIM,
7 OKAY, WHAT I WOULD REQUEST IS THEY ALSO EXPLAIN IN THAT
8 INSTRUCTION WHAT THEIR CLAIM IS.

9 BECAUSE THE REASON I'M STATING THAT IS NOT JUST STATE
10 THAT THEY CLAIM SCRAMBLING IS A BREACH OF FIDUCIARY DUTY,
11 BECAUSE WHAT THEY'VE DONE IS THEY'VE ARGUED EVERY POSSIBLE
12 VARIATION.

13 THEY'VE ARGUED COMMITTING THE SCRAMBLING IS A BREACH
14 OF FIDUCIARY DUTY. THEY'VE ARGUED WE EITHER SHOULD HAVE JUST
15 GIVEN THEM THE RIGHTS -- IN OTHER WORDS, WE SHOULD HAVE
16 GIVEN THEM THE RIGHTS FOR FREE TO THE RETIRED PLAYERS; IT WAS A
17 BREACH OF FIDUCIARY DUTY NOT TO DO THAT. OR THEY ALREADY HAD
18 THE RIGHTS, AND THAT WE WERE TELLING THEM TO SCRAMBLE.

19 I WOULD LIKE TO KNOW, WHAT IS THEIR CLAIM?

20 **THE COURT:** THERE ARE THREE POSSIBLE VARIATIONS THAT
21 HAVE OCCURRED TO ME. I DON'T KNOW WHICH ONE THE PLAINTIFFS
22 WILL -- ONE IS THAT THEY SHOULD HAVE AFFIRMATIVELY -- BY "THEY"
23 I MEAN -- BY "THEY" I MEAN DEFENDANTS SHOULD HAVE PROPOSED TO
24 EA, WHENEVER THEY WERE DOING THE MADDEN GAME, AFFIRMATIVELY
25 PROPOSED:

1 "HEY, WE NEED ALL THESE RETIRED PLAYERS. WE GOT
2 THESE 2,000 PEOPLE SIGNED UP. WHY DON'T WE MAKE ANOTHER DEAL
3 WITH YOU USING GLA'S?"

4 THAT WOULD BE ALTERNATIVE ONE.

5 ALTERNATIVE TWO WOULD BE DO AD HOCS, I GUESS, SO THAT
6 THE PARTICULAR PLAYERS -- YOU COULD DO AD HOCS.

7 ANOTHER ALTERNATIVE WOULD BE TO GIVE IT AWAY, TO JUST
8 DEEM IT AS IF IT WAS UNDER THE EXISTING AGREEMENTS.

9 AND ANOTHER ALTERNATIVE WOULD BE WHAT YOU'VE
10 CONTENTED FOR, SCRAMBLE, THEREBY PROTECT THE -- HOLD LEVERAGE
11 OVER THE EA. YOU'RE GOING TO SCRAMBLE UNLESS YOU GET THESE
12 INDIVIDUAL RIGHTS, AND THERE WAS A FOURTH ONE YOU MENTIONED,
13 AND I LOST TRACK OF.

14 **MR. KESSLER:** I DON'T KNOW WHAT THE CLAIM IS.

15 **THE COURT:** IT MAY BE THEY'VE GOT MORE THAN ONE.
16 MAYBE THEY'RE NOT LOCKED INTO ONE. I WON'T -- THIS COULD BE
17 SORTED OUT WHENEVER I SEE --

18 **MR. KESSLER:** I WOULD JUST BE CONCERNED THAT YOUR
19 HONOR NOT DO ANYTHING TO THE JURY TO SUGGEST THAT THE COURT
20 THINKS ANY OF THOSE ARE VIABLE. THAT WOULD BE MY CLAIM --

21 **THE COURT:** I WILL MAKE IT VERY CLEAR THIS IS UP TO
22 THE JURY TO SORT OUT WHAT THESE VARIOUS DUTIES WERE.

23 **MR. KESSLER:** OKAY.

24 **THE COURT:** BUT WHAT BOTHERS ME IS MR. HUMMEL, AND
25 THE IDEA THAT YOU CAN WAIVE THE CONSTITUTION OF THE UNION

1 AROUND AND SAY:

2 "THIS IS WHERE THE FIDUCIARY DUTY COMES FROM."

3 **MR. KESSLER:** RIGHT. THE BROTHERHOOD CLAIM, YOUR
4 HONOR.

5 **THE COURT:** I FEEL THAT THAT IS -- THAT SOUNDS SO
6 MUCH LIKE A 301-TYPE CASE THAT -- SO I'VE ALREADY SAID -- I'M
7 NOT MAKING A RULING. I'M JUST SAYING I'M VERY CONCERNED ABOUT
8 THAT, AND YOU'RE GOING TO GET A CHANCE TO BRIEF IT.

9 THANK YOU.

10 OKAY.

11 **MR. HUMMEL:** WE HAVE ONE MORE THING, YOUR HONOR.

12 **THE COURT:** GO AHEAD.

13 **MR. HUMMEL:** IT HAS TO DO WITH THE NINTH CIRCUIT.
14 DID YOUR HONOR SEE THE NINTH CIRCUIT'S OPINION?

15 **THE COURT:** I WAS TOLD ABOUT IT. I DID NOT READ IT.
16 HERE IS THE THING. I'M GOING TO REDACT THE PUBLIC VERSION.
17 WE'LL PUT UNDER SEAL THE FULL VERSION.

18 **MR. HUMMEL:** SO IN THE PUBLIC QUESTIONING ABOUT THE
19 DOCUMENT --

20 **THE COURT:** I THINK WE'VE GOT TO CLEAR THE COURTROOM.
21 SEE, THIS IS WHAT YOU SHOULD HAVE BROUGHT TO THE -- SEE, I'M
22 NOT ABLE TO APPEAR IN FRONT OF THE NINTH CIRCUIT. BUT WHEN
23 THIS COMES UP I'M GOING TO ASK EVERYBODY OUT THERE TO BE
24 EXCUSED.

25 **MR. HUMMEL:** YOUR HONOR --

1 **THE COURT:** AND WHEN IT'S ARGUED IN CLOSING ARGUMENT
2 THE SAME THING.

3 **MR. HUMMEL:** OKAY, YOUR HONOR. I UNDERSTAND.

4 **THE COURT:** YOU SHOULD HAVE APPEARED AND MADE THIS
5 POINT.

6 **MR. HUMMEL:** I DID.

7 **THE COURT:** YOU SAID -- DID YOU SPECIFICALLY BRING UP
8 CLEARING THE COURTROOM?

9 **MR. HUMMEL:** NO, WHAT I DID --

10 **THE COURT:** WHY NOT? THAT'S THE WHOLE THING THAT
11 BOTHERED ME FROM DAY ONE.

12 **MR. HUMMEL:** YOUR HONOR, I RAISED IT WITH YOU, THE
13 COMPROMISE THAT THE --

14 **THE COURT:** I'M NOT THE NINTH CIRCUIT.

15 **MR. HUMMEL:** I RAISED IT WITH THE NINTH CIRCUIT. I
16 RAISED EXACTLY --

17 **THE COURT:** THEY DIDN'T ADDRESS IT, DID THEY?

18 **MR. HUMMEL:** THEY DIDN'T ADDRESS CLEARING THE
19 COURTROOM, NO.

20 **THE COURT:** BUT HOW ELSE CAN I DEAL WITH IT? I'M
21 GOING -- I'M GOING TO NOW ERR ON THE SIDE OF DOING WHAT THE
22 NINTH CIRCUIT WANTS, EVEN THOUGH I THINK IT'S WRONG.

23 **MR. HUMMEL:** I UNDERSTAND.

24 **THE COURT:** I THINK THAT THEY MADE A MISTAKE. BUT
25 THEY ARE APPELLATE JUDGES. THEY ARE NOT DOWN HERE TRYING TO

1 TRY A CASE. BUT I'M BOUND TO APPLY WHAT THEY WANT TO DO.

2 SO I'M GOING TO ERR ON THE SIDE. EVERYONE WHO IS NOT
3 A PARTY TO THE CASE -- THE CLASS MEMBERS CAN STAY, BECAUSE I
4 GUESS THEY'RE PARTIES TO THE CASE. BUT THE -- ANYBODY ELSE WHO
5 IS JUST A MEMBER OF THE PUBLIC, A THIRD PARTY, WHATEVER,
6 THEY'RE GOING TO HAVE TO BE EXCUSED.

7 **MR. HUMMEL:** ALL RIGHT, YOUR HONOR.

8 **THE COURT:** IF A MEMBER OF THE PRESS IS HERE, WE'RE
9 GOING TO HAVE TO SAY, BECAUSE YOU, THE PLAINTIFF, WANT TO USE A
10 DOCUMENT THE NINTH CIRCUIT WANTS, WE'RE GOING TO HAVE TO ASK
11 THEM TO LEAVE.

12 **MR. HUMMEL:** CORRECT.

13 **THE COURT:** MAYBE YOU CAN THINK OF A WAY TO -- THAT
14 MEANS ANYBODY WHO IS NOT A CLASS -- I DON'T KNOW WHO ALL THESE
15 PEOPLE ARE OVER HERE FOR THE DEFENDANT, BUT IF YOU'RE NOT A
16 CLASS -- IF YOU'RE NOT A CORPORATE REPRESENTATIVE YOU'RE GOING
17 TO BE EXCUSED.

18 **MR. KESSLER:** YOUR HONOR, THEY ARE THE TWO
19 REPRESENTATIVES.

20 **THE COURT:** THEY WILL GET TO STAY.

21 **MR. KESSLER:** THE ONE QUESTION I WOULD ASK, I ASSUME
22 EA'S INSIDE COUNSEL CAN STAY BECAUSE THEY KNOW THE INFORMATION.

23 **THE COURT:** IF EVERYONE WERE TO STIPULATE, INCLUDING
24 EA, I MIGHT AGREE TO THAT. BUT THE PRESS IS GOING TO HAVE TO
25 GO. ANY OTHER MEMBER OF THE PUBLIC IS GOING TO HAVE TO GO.

1 ANY COMPETITORS ARE GOING TO HAVE TO GO. JUST
2 INTERESTED MEMBER OF THE PUBLIC, I THINK, IS GOING TO HAVE TO
3 BE EXCUSED. AND WE WILL HAVE TO INTERRUPT THE PROCEEDINGS FOR
4 ME TO MAKE SURE THAT THAT'S THE CASE, BECAUSE I CAN'T TAKE THE
5 WORD OF THE LAWYERS.

6 WE DON'T -- I'LL HAVE TO ASK EACH MEMBER OUT THERE:
7 "ARE YOU -- WHAT IS YOUR BUSINESS FOR BEING HERE
8 TODAY?"

9 THAT'S GOING TO TAKE TIME OUT OF THE CLOSING
10 ARGUMENTS.

11 SO I URGE YOU TO THINK OF A WAY TO DEAL WITH THAT SO
12 YOU DON'T EVEN BRING IT UP IN THE CLOSING ARGUMENTS.

13 **MR. HUMMEL:** WE WILL DO THAT, YOUR HONOR.

14 **THE COURT:** AND IN QUESTIONING.

15 **MR. HUMMEL:** THANK YOU.

16 **THE COURT:** ALL RIGHT.

17 AND THE COURT REPORTER IS GOING TO HAVE TO SEAL THAT
18 PORTION OF THE TRANSCRIPT.

19 I GUESS WE'VE RUN OUT OF POINTS TO BRING UP. WHO IS
20 OUR WITNESS?

21 **MS. NAYLOR:** WALTER BEACH.

22 **THE COURT:** LET'S BRING BACK MR. BEACH, AND LET'S
23 BRING IN THE JURY.

24 **MR. KESSLER:** YOUR HONOR, I'M GOING TO GIVE MR. BEACH
25 A COPY OF HIS DEPOSITION TRANSCRIPT BECAUSE HE'LL NEED IT FOR

1 CROSS-EXAMINATION.

2 **THE COURT:** FINE.

3 (THEREUPON, THE JURY RETURNED TO THE COURTROOM.)

4 **THE COURT:** WELCOME BACK. HAVE A SEAT. HOW IS
5 EVERYBODY THIS MORNING?

6 GOOD?

7 (THEREUPON, THE JURORS RESPOND AFFIRMATIVELY.)

8 **THE COURT:** WE HAVE A PRESENT FOR YOU. THE ONE-PAGE
9 TIMELINE. IT IS A COPY OF WHAT'S OVER THERE ON THE BOARD. WE
10 WANTED TO MAKE SURE THAT YOU -- IT'S A LITTLE BIGGER THAN I HAD
11 THOUGHT. MAYBE YOU WILL BE ABLE TO FOLD IT UP AND STICK IT IN
12 YOUR -- STICK IT IN YOUR STENO PADS. THAT'S UP TO YOU.

13 WHETHER YOU WANT TO USE IT OR NOT, YOU JUST DECIDE.
14 IF IT'S NOT USEFUL TO YOU, YOU CAN TOSS IT OUT.

15 YOU CAN TAKE NOTES ON IT. WE'RE NOT GOING TO ASK FOR
16 IT BACK. YOU CAN DO WHATEVER YOU WANT WITH THIS. JUST TREAT
17 IT AS PART OF YOUR NOTEPAD. AND AT THE END OF THE CASE WE WILL
18 SHRED IT AND NOT LOOK AT ALL THE NOTES AND DOODLES THAT YOU
19 MADE ON THE PIECE OF PAPER.

20 I WANT TO EMPHASIZE AGAIN THE EVIDENCE IN THE CASE IS
21 WHAT THE WITNESSES SAY AND THE EXHIBITS SAY AND THE
22 STIPULATIONS, OF COURSE.

23 YOU HEAR MANY THINGS THAT THE LAWYERS SAY. YOU HEAR
24 THEM MORE THAN ME ON BOTH SIDES. NONE OF THAT IS EVIDENCE.
25 NONE OF IT. ZERO.

1 AND I THINK ONE OF THE GREATEST DANGERS IN A TRIAL IS
2 THAT THESE LAWYERS, EVEN THOUGH THEY'RE ACTING IN PERFECTLY
3 GOOD FAITH BECAUSE THEY'VE GOT TO GET UP AND SAY THINGS, THEY
4 ARE DOING THEIR BEST. ONE OF THE GREAT DANGERS IS YOU WILL
5 MISTAKE SOMETHING THEY SAY FOR EVIDENCE, AND IT'S NOT. IT'S
6 NOT.

7 SO A LOT OF THE THINGS THAT THE LAWYERS SOMETIMES SAY
8 ARE HOTLY CONTESTED. THEY'RE NOT STIPULATED TO. AND IT WOULD
9 BE A MISTAKE FOR YOU TO THINK THAT BECAUSE A LAWYER SAYS IT, IT
10 MUST BE TRUE.

11 MAYBE THEY GOT A GOOD FAITH BASIS FOR WHAT THEY'RE
12 SAYING, BUT THERE'S ALSO A GOOD FAITH BASIS FOR THE OTHER VIEW.
13 THAT'S WHY WE'RE HAVING A TRIAL, FOR YOU TO SORT IT OUT. BUT
14 THAT'S GOT TO BE BASED ON WHAT THE WITNESSES SAY UNDER OATH IN
15 CROSS-EXAMINATION.

16 OKAY. AS WELL AS, OF COURSE, THE DOCUMENTS.

17 SO I JUST NEED TO REMIND YOU ABOUT THAT EVERY NOW AND
18 THEN, THAT AS YOU HEAR WHAT'S GOING ON HERE IN THE COURTROOM,
19 THAT YOU SAY TO YOURSELF:

20 "OH, THAT'S JUST THE LAWYER TALKING. MAYBE IT'S
21 TRUE. MAYBE IT'S NOT TRUE."

22 AND THEN REMEMBER, KEEP SEPARATE WHAT THE WITNESS IS
23 SAYING.

24 NOW, I FORGOT WHERE WE WERE. HAVE WE FINISHED THE
25 DIRECT?

1 **MS. NAYLOR:** YES, YOUR HONOR.

2 **THE COURT:** NOW, THE DIRECT EXAMINATION HAS NOW BEEN
3 FINISHED OF MR. BEACH. AND MR. BEACH IS NOW GOING TO BE
4 CROSS-EXAMINED BY WHO?

5 MR. KESSLER?

6 GO AHEAD, MR. KESSLER.

7 **MR. KESSLER:** THANK YOU, YOUR HONOR.

8 **WALTER BEACH, III,**

9 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING BEEN
10 PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED FURTHER AS
11 FOLLOWS:

12 **CROSS EXAMINATION**

13 **BY MR. KESSLER:**

14 **Q.** GOOD MORNING, MR. BEACH.

15 **A.** GOOD MORNING.

16 **Q.** MR. BEACH, I BELIEVE IT'S CORRECT THAT YOU ATTENDED THREE
17 YEARS OF LAW SCHOOL.

18 **A.** THAT'S NOT CORRECT.

19 **Q.** OKAY. WELL, LET ME UNDERSTAND THEN --

20 **THE COURT:** I THINK HE SAID TWO YEARS AT YALE LAW
21 SCHOOL, CORRECT?

22 **THE WITNESS:** TWO YEARS.

23 **BY MR. KESSLER:**

24 **Q.** YOU HAD TWO YEARS OF YALE LAW SCHOOL.

25 **A.** THAT'S CORRECT.

1 Q. BUT I THOUGHT YOU ALSO SAID YOU ATTENDED JOHN MARSHALL LAW
2 SCHOOL.

3 A. YES, I SAID AT NIGHT, WHEN I WAS PLAYING PROFESSIONAL
4 FOOTBALL. I WENT TO NIGHT SCHOOL WITH MR. MCNEIL AND JOHN
5 BROWN. I THINK WE WENT THERE FOR MAYBE TWO COURSES.

6 Q. OKAY. SO FIRST YOU ATTENDED SOME NIGHT LAW SCHOOL AT JOHN
7 MARSHALL, AND THEN YOU ATTENDED TWO YEARS AT YALE LAW SCHOOL.
8 IS THAT FAIR?

9 A. THAT'S CORRECT.

10 Q. SO IS IT FAIR TO SAY YOU'VE HAD SOME GOOD LEGAL TRAINING?
11 I KNOW YOU'RE NOT A LAWYER, BUT YOU'VE HAD GOOD LEGAL TRAINING.
12 WOULD YOU AGREE WITH THAT? CORRECT?

13 A. PROVIDED AT BOTH THOSE INSTITUTIONS, CORRECT.

14 Q. YES. OKAY. AND SO, GENERALLY SPEAKING, YOU WOULD HAVE
15 LEARNED IN LAW SCHOOL HOW TO LOOK AT CONTRACTS, HOW TO
16 UNDERSTAND CONTRACTS. IS THAT FAIR?

17 A. WELL, TO THE EXTENT THAT I UNDERSTOOD THIS CONTRACT, YES.

18 Q. OKAY.

19 A. I MEAN, IF IT COULD HAVE BEEN ANY COMPLICATED, I'M NOT
20 CERTAIN THAT I WOULD HAVE UNDERSTOOD THAT.

21 Q. OKAY. AND, IN FACT, I BELIEVE YOUR WIFE IS ALSO -- IS AN
22 ATTORNEY; IS THAT CORRECT?

23 A. UHM, YES. AND MY WIFE IS AN ATTORNEY.

24 Q. AND DID YOU EVER CONFER WITH HER ABOUT THE RETIRED PLAYER
25 GLA THAT YOU SIGNED?

1 **A.** LIKE I SAID, ON THE FIRST ONE --

2 **MS. NAYLOR:** OBJECTION, YOUR HONOR. I THINK THAT
3 THERE'S A PRIVILEGE THERE.

4 **THE COURT:** WELL, WE CAN FIND OUT -- YOU CAN EITHER
5 SAY "YES" OR "NO" TO THAT. DON'T TELL US WHAT WAS SAID YET.
6 LET'S FIND OUT IF YOU DID HAVE --

7 **THE WITNESS:** YES.

8 **THE COURT:** -- A CONVERSATION WITH YOUR WIFE ABOUT
9 THE MEANING OF THE GLA BEFORE YOU SIGNED IT.

10 AFTER YOU SIGNED IT IS NOT SO RELEVANT, BUT BEFORE
11 YOU SIGNED IT.

12 **THE WITNESS:** YES.

13 **MR. KESSLER:** I WON'T ASK THE CONTENT, YOUR HONOR.

14 **BY MR. KESSLER:**

15 **Q.** YOU WOULD CLAIM A PRIVILEGE IF I ASKED WHAT YOU DISCUSSED
16 WITH YOUR WIFE?

17 **A.** YES.

18 **Q.** OKAY. ALL RIGHT. BUT YOU DID DISCUSS WITH YOUR WIFE, AN
19 ATTORNEY, THE GLA BEFORE YOU SIGNED IT?

20 **A.** I'M NOT TRYING -- MY WIFE IS THE LOVE OF MY LIFE, THE
21 LIGHT OF MY LIFE, SO I'VE DISCUSSED EVERYTHING WITH HER.

22 **Q.** SURE. I UNDERSTAND THAT, SIR.

23 NOW, MR. BEACH -- AND I KNOW YOU ARE UP HERE
24 TESTIFYING, AND YOU'RE DOING YOUR BEST TO TELL THE TRUTH, SIR,
25 CORRECT?

1 **A.** I TOOK AN OATH. OF COURSE, I'M TELLING THE TRUTH.

2 **Q.** I RESPECT THAT, SIR.

3 NOW, YESTERDAY YOU WERE ASKED THE FOLLOWING QUESTIONS
4 BY YOUR COUNSEL. I'M ACTUALLY READING FROM THE EXACT WORDS IN
5 THE TRANSCRIPT. THE QUESTION WAS:

6 "DO YOU STILL GET REQUESTS FOR AUTOGRAPHS?"

7 AND YOUR ANSWER WAS:

8 "CONSTANTLY GET REQUESTS FROM TIME TO TIME, WHEN
9 PEOPLE -- I MEET THEM OR SEE THEM OR GET CARDS OR PICTURES TO
10 SIGN, AND I SEND THEM BACK."

11 THEN, THE QUESTION FROM YOUR COUNSEL IS:

12 "IS THAT CURRENT TODAY OR -- NO, THAT'S BEEN --
13 THAT'S BEEN CURRENT. IT'S CURRENT TODAY."

14 DO YOU RECALL TESTIFYING TO THAT YESTERDAY?

15 **A.** YES.

16 **Q.** I'D LIKE YOU, MR. BEACH, TO TAKE A LOOK AT YOUR DEPOSITION
17 THAT'S IN FRONT OF YOU. AND SPECIFICALLY PAGE 62. IF YOU CAN
18 LOOK AT THAT.

19 **A.** RIGHT.

20 **Q.** OKAY. AND I'LL DIRECT YOUR ATTENTION, FIRST, TO LINE 10:

21 **"QUESTION:** ON A REGULAR BASIS DO YOU HAVE
22 KIDS OR PEOPLE COME UP TO YOU FOR AUTOGRAPHS,
23 THINGS LIKE THAT?

24 **"ANSWER:** NO. NO. NOT ON A REGULAR BASIS AT

25 ALL."

1 NOW, MR. BEACH, I WOULD ALSO LIKE TO DIRECT YOUR
2 ATTENTION TO THE LINE 2 OF THIS DEPOSITION.

3 **A.** LINE 2?

4 **THE COURT:** LINE 2 OR PAGE 2?

5 **MR. KESSLER:** PAGE 62, LINE 2, SAME PAGE:

6 "NOTORIETY IN TERMS OF AFTER THE DEPOSITION
7 TODAY YOU AND BRETT, YOU WENT DOWNSTAIRS TO GET SOME COFFEE,
8 GET SOMETHING TO EAT. THERE'S 50 PEOPLE IN THE RESTAURANT.
9 HOW MANY OF THESE PEOPLE ARE GOING TO RECOGNIZE YOU?

10 **"ANSWER:** ZERO."

11 **BY MR. KESSLER::**

12 **Q.** NOW, MR. BEACH --

13 **MS. NAYLOR:** YOUR HONOR? YOUR HONOR, I OBJECT. THIS
14 IS NOT IMPEACHMENT. IT'S NOT AT INCONSISTENT WITH HIS
15 TESTIMONY, WHICH WAS:

16 "DO PEOPLE REQUEST AUTOGRAPHS FROM YOU," WHICH HE
17 GETS IN THE MAIL.

18 AND MR. KESSLER IS TALKING ABOUT PEOPLE APPROACHING
19 HIM FOR AUTOGRAPHS. IT'S APPLES AND ORANGES.

20 **MR. KESSLER:** YOUR HONOR, THE FIRST TESTIMONY WAS
21 DIRECTLY INCONSISTENT, AND THE SECOND, I'M PERMITTED TO READ IN
22 AS --

23 **THE COURT:** I'M NOT GOING TO DISTURB IT. BUT IF
24 THERE HAD BEEN AN OBJECTION -- IF YOU HAD BEEN FASTER ON YOUR
25 FEET, I WOULD HAVE SUSTAINED IT.

1 SEE, THIS IS THE LAWYER TESTIFYING. HE SAID:

2 "THERE'S 50 PEOPLE IN THE RESTAURANT."

3 THAT'S PART OF THE QUESTION. THERE'S NO TESTIMONY
4 THAT THERE WAS 50 PEOPLE IN THE RESTAURANT. THAT WAS JUST THE
5 LAWYER -- WHO WAS ASKING THESE QUESTIONS? WAS THAT YOU,
6 MR. KESSLER?

7 **MR. KESSLER:** NO, YOUR HONOR.

8 **THE COURT:** WHOEVER ASKED THE QUESTION, HE JUST --
9 LOOK, FOR ALL I KNOW THERE WAS 20 PEOPLE. THERE MIGHT HAVE
10 BEEN THREE PEOPLE.

11 SO HOW MANY OF THESE PEOPLE ARE GOING TO RECOGNIZE --
12 ALL RIGHT. SO THE JURY -- THIS IS A GREAT EXAMPLE OF THE
13 LAWYER TESTIFYING. YOU TAKE THAT INTO ACCOUNT IN EVALUATING
14 IT.

15 BUT ON THE POINT YOU'RE MAKING, THE COURT DISAGREES.
16 THIS IS CLOSE ENOUGH TO BEING INCONSISTENT WITH THE TESTIMONY
17 GIVEN ON DIRECT, THAT IT'S UP TO THE JURY TO EVALUATE WHETHER
18 OR NOT THIS -- THE EXTENT TO WHICH THIS IMPEACHES.

19 **MS. NAYLOR:** THANK YOU, YOUR HONOR.

20 **BY MR. KESSLER:**

21 **Q.** LET ME GO TO THE FIRST QUOTE THAT I READ, WHEN IT SAID:

22 "ON A REGULAR BASIS, DO YOU HAVE KIDS OR PEOPLE
23 COME UP TO YOU FOR AUTOGRAPHS, THINGS LIKE THAT?"

24 AND YOU SAID: "NO."

25 THAT'S TRUE, ISN'T IT? YOU DON'T HAVE PEOPLE

1 REGULARLY COME UP TO YOU FOR AUTOGRAPHS, CORRECT?

2 **A.** THAT'S TRUE.

3 **Q.** OKAY. NOW, MR. BEACH, IT'S ALSO CORRECT, IS IT NOT, THAT
4 YOU BELIEVE THAT THE RIGHT -- THE VALUE OF A RETIRED PLAYER'S
5 IMAGE COULD VARY DEPENDING ON WHO THAT RETIRED PLAYER IS?

6 **A.** I AGREE WITH THAT.

7 **Q.** SO, FOR EXAMPLE, IF IT WAS STAR PLAYERS THEY MAY HAVE A
8 HIGHER VALUE TO THEIR RIGHTS THAN, LET'S SAY, A PLAYER WHO
9 PLAYED IN ONE GAME?

10 **A.** I DON'T KNOW EXACTLY -- I'M NOT CERTAIN ABOUT WHAT YOU'RE
11 TRYING TO SAY.

12 **Q.** OKAY. I'LL REPHRASE IT.

13 **A.** PLEASE.

14 **Q.** I'LL REPHRASE IT.

15 WOULD YOU AGREE THAT A STAR RETIRED FOOTBALL PLAYER,
16 SOMEONE LIKE A JIM BROWN, I KNOW IS A FRIEND OF YOURS --

17 **A.** RIGHT.

18 **Q.** -- THAT HIS RIGHTS TO HIS NAME AND IMAGE WOULD BE WORTH A
19 LOT MORE MONEY THAN SOMEBODY ON THE TEAM WHO ONLY PLAYED TWO
20 GAMES AND THEN WAS CUT AND NEVER PLAYED IN THE NFL AGAIN.
21 THAT'S TRUE, ISN'T IT?

22 **A.** I DON'T UNDERSTAND WHAT THAT'S GOT TO DO WITH THIS GLA.
23 IF JIM BROWN SIGNED THIS GLA, AND I SIGNED --

24 **Q.** MR. BEACH, I DON'T WANT TO INTERRUPT YOU, BUT --

25 **A.** I MEAN, I DON'T UNDERSTAND.

1 Q. I WOULD JUST LIKE YOU, PLEASE -- I'M GOING TO TRY MY BEST
2 TO ASK MY QUESTIONS VERY CLEARLY, SIR. IF YOU DON'T UNDERSTAND
3 THEM, PLEASE TELL ME YOU DON'T UNDERSTAND THEM.

4 A. THAT'S WHAT I JUST SAID. I DON'T UNDERSTAND.

5 Q. BUT THE RELEVANCE OF THE QUESTION WILL BE DECIDED BY THE
6 JURY. SO LET ME PLEASE ASK MY QUESTIONS.

7 A. THE JURY WON'T DECIDE MY UNDERSTANDING. I WAS JUST
8 RESPONDING TO YOU THAT I TOLD YOU I DIDN'T UNDERSTAND.

9 Q. LET'S TRY AGAIN.

10 A. YES.

11 Q. LET'S TRY TO WORK WITH EACH OTHER.

12 A. PLEASE.

13 **THE COURT:** PLEASE DON'T TALK OVER EACH OTHER. NO
14 ARGUMENTS. THE COURT REPORTER CAN'T TAKE DOWN TWO PEOPLE AT
15 ONCE.

16 **THE WITNESS:** I'M SORRY.

17 **THE COURT:** ASK A QUESTION, AND THEN PAUSE, AND THEN
18 YOU CAN ANSWER. AND THEN, YOU PAUSE AND ASK A QUESTION SO THAT
19 YOU DON'T TALK OVER EACH OTHER.

20 **BY MR. KESSLER:**

21 Q. MR. BEACH, IS IT CORRECT THAT IT IS YOUR UNDERSTANDING
22 THAT A RETIRED PLAYER WHO WAS A STAR, LIKE JIM BROWN, WOULD
23 HAVE MUCH MORE VALUABLE RIGHTS IN HIS NAME AND IMAGE THAN A
24 RETIRED PLAYER WHO JUST PLAYED A FEW GAMES AND WAS CUT AND
25 NEVER PLAYED IN THE NFL AGAIN?

1 YES OR NO, IF YOU CAN, PLEASE?

2 **A.** I CAN'T ANSWER THAT "YES" OR "NO."

3 **Q.** THEN, ANSWER THE QUESTION AS BEST AS YOU CAN.

4 **A.** JIM BROWN'S VALUE IS BASED ON HIS IDENTITY AND HIS IMAGE.
5 WALTER BEACH'S VALUE IS BASED ON MY VALUE THAT I HAVE TO MY
6 IMAGE. NOW, WHAT FANS AND SPECTATORS VIEW HIS VALUE MORE THAN
7 ME THAT HAS NOTHING TO DO WITH IT.

8 BUT IF A JIM BROWN PLAYS ON A PROFESSIONAL FOOTBALL
9 TEAM WITH A WALTER BEACH, AND WE PART OF A TEAM THERE IS NO
10 VALUE THAT HE HAS THAT IS GREATER THAN MINE; OTHERWISE, I
11 WOULDN'T BE ON THE TEAM.

12 I WOULDN'T BE PLAYING FOOTBALL IF I DIDN'T HAVE A
13 VALUE TO THE FOOTBALL PLAYERS.

14 CLEVELAND BROWNS ASSIGNED A VALUE TO ME. IT MAY NOT
15 BE THE SAME VALUE THAT THEY ASSIGNED TO JIM BROWN, BUT JIM
16 BROWN DON'T PLAY FOOTBALL BY HIMSELF.

17 **Q.** MR. BEACH, MY QUESTION WAS ABOUT THE ECONOMIC VALUE OF THE
18 NAME. BUT LET ME READ TO YOU FROM YOUR DEPOSITION AGAIN, PAGE
19 66, PLEASE.

20 **A.** OKAY.

21 **THE COURT:** WAIT, WAIT. BEFORE YOU READ IT, ANY
22 OBJECTION?

23 WHAT IS THE PAGE IS LINE NUMBER?

24 **MR. KESSLER:** 66, YOUR HONOR, 8 TO 17.

25 **THE COURT:** ALL RIGHT. PAUSE AND SEE IF THERE'S AN

1 OBJECTION.

2 ANY OBJECTION?

3 HEARING NONE, GO AHEAD AND READ IT.

4 **MS. NAYLOR:** YOUR HONOR?

5 **THE COURT:** YOU HAVE TO BE FAST ON YOUR FEET.

6 **MS. NAYLOR:** I'M SORRY. IT'S A DIFFERENT QUESTION

7 THAN WHAT HE'S CURRENTLY ASKED.

8 **THE COURT:** OVERRULED.

9 PLEASE READ IT.

10 **MR. KESSLER:** LINE 8:

11 **"QUESTION:** AND WE'RE GOING TO GO THROUGH THE

12 GLA AT LENGTH, BUT PUTTING THE GLA ASIDE, DO

13 YOU AGREE THAT JIM BROWN, THE NAME AND IMAGE

14 RIGHTS OF JIM BROWN, ARE MORE VALUABLE TO A

15 VIDEO GAME COMPANY OR A TRADING CARD COMPANY

16 THAN WALTER BEACH'S NAME AND IMAGE RIGHTS?

17 **"ANSWER:** I WOULDN'T HAVE ANY PROBLEM

18 AGREEING TO THAT."

19 **THE WITNESS:** AND I STILL STAND BY THAT. I DON'T

20 HAVE ANY PROBLEM AGREEING TO THAT.

21 **BY MR. KESSLER:**

22 **Q.** THAT WAS MY QUESTION, SIR. THANK YOU.

23 **A.** BUT THAT --

24 **MR. KESSLER:** I DON'T HAVE ANOTHER QUESTION.

25 **THE COURT:** DON'T ARGUE. MAYBE THAT WASN'T. THAT'S

1 UP TO THE JURY TO DECIDE IF YOU REWORDED THE QUESTION IN A
2 DIFFERENT WAY. MAYBE IT WAS, MAYBE IT'S NOT.

3 LET'S NOT ARGUE ABOUT IT. LET'S MOVE ON.

4 **BY MR. KESSLER:**

5 **Q.** NOW, MR. BEACH, IT'S TRUE THAT YOU HAVE ATTENDED SOME
6 RETIRED PLAYER CONVENTIONS?

7 **A.** THAT'S CORRECT.

8 **Q.** OKAY. AND AT THE RETIRED PLAYER CONVENTIONS, YOU KNOW
9 THERE ARE SOME BUSINESS MEETINGS FOR THE RETIRED PLAYERS; IS
10 THAT CORRECT?

11 **A.** YES, THAT'S CORRECT.

12 **Q.** AND THERE ARE ALSO SOME SOCIAL EVENTS, PARTIES AND OTHER
13 THINGS FOR THE PLAYERS, CORRECT?

14 **A.** THOSE ARE THE ONES I ATTENDED, YES.

15 **Q.** AND, MR. BEACH, IT'S CORRECT THAT THERE WERE LICENSING
16 MEETINGS AT THE RETIRED PLAYER CONVENTIONS, BUT YOU DON'T KNOW
17 WHAT HAPPENED AT THOSE MEETINGS BECAUSE BASICALLY YOU WOULD
18 ONLY GO TO THE PARTIES; IS THAT CORRECT?

19 **A.** THAT'S CORRECT.

20 **Q.** OKAY. AND, IN FACT, WHEN YOU WENT TO THE RETIRED PLAYER
21 CONVENTION, EVEN THOUGH THERE WAS INFORMATION AVAILABLE ABOUT
22 THE GROUP LICENSING PROGRAM AT BUSINESS MEETINGS, YOU CHOSE TO
23 GO TO THE PARTIES, AND YOU THOUGHT THE CONVENTION WAS YOU WOULD
24 GO TO THE PARTIES AND YOUR WIFE WOULD GO SHOPPING, AND IT WAS A
25 GOOD TIME, RIGHT?

1 **A.** THAT'S CORRECT.

2 **Q.** OKAY. AND WHEN YOU WERE AT THESE RETIRED PLAYER
3 CONVENTIONS, EVEN THOUGH YOU COULD HAVE GONE TO THE BUSINESS
4 MEETING AND ASKED QUESTIONS ABOUT YOUR RETIRED PLAYER
5 LICENSING, YOU JUST NEVER DID SO.

6 **MS. NAYLOR:** OBJECTION, YOUR HONOR. THERE'S NO
7 FOUNDATION FOR THAT.

8 **THE COURT:** WELL, HE'S ASKING. YOU CAN ASK THE
9 QUESTION IF IT'S TRUE; AGREE WITH IT, IF IT'S NOT TRUE, THEN
10 SAY "NO."

11 DO YOU WANT THE QUESTION BACK?

12 **THE WITNESS:** PLEASE.

13 **BY MR. KESSLER:**

14 **Q.** I'LL ASK IT AGAIN, SIR.

15 **A.** UH-HUH.

16 **Q.** AT THE RETIRED PLAYER CONVENTIONS YOU COULD HAVE GONE TO
17 THE BUSINESS MEETINGS ABOUT LICENSING AND ASKED QUESTIONS OF
18 THE UNION ABOUT YOUR GLA, BUT YOU NEVER DID SO.

19 **A.** THAT'S CORRECT.

20 **MS. NAYLOR:** OBJECTION.

21 **THE COURT:** OVERRULED.

22 GO AHEAD.

23 **BY MR. KESSLER:**

24 **Q.** AND, IN FACT, SIR, IN THE WHOLE HISTORY OF TIMES FROM WHEN
25 YOU FIRST SIGNED YOUR FIRST GLA, WHICH I BELIEVE WAS IN 1996;

1 IS THAT RIGHT?

2 **A.** THAT'S CORRECT.

3 **Q.** YOU NEVER ASKED ONE QUESTION ABOUT RETIRED PLAYER
4 LICENSING TO ANY UNION OFFICIAL AT ANY TIME.

5 **A.** THAT'S NOT CORRECT.

6 **MS. NAYLOR:** OBJECTION. THAT MISCHARACTERIZES HIS
7 TESTIMONY.

8 **BY MR. KESSLER:**

9 **Q.** I WOULD ASK YOU TO PLEASE LOOK --

10 **THE COURT:** WAIT. NO. THE WITNESS -- I DON'T
11 UNDERSTAND THAT OBJECTION. COUNSEL IS ENTITLED TO ASK LEADING
12 QUESTIONS. AND IF THE WITNESS AGREES TO IT, THEN THAT IS
13 EVIDENCE THE JURY CAN CONSIDER.

14 AND IF THE WITNESS -- WHY DO YOU STAND UP AND SAY
15 THAT MISCHARACTERIZES HIS TESTIMONY?

16 **MS. NAYLOR:** IT'S EXACTLY THE OPPOSITE OF THE
17 TESTIMONY.

18 **THE COURT:** THEN, THE WITNESS CAN SAY THAT. THAT'S
19 NOT -- THE QUESTION THAT MR. KESSLER WAS ASKED WAS NOT IN ANY
20 WAY MISCHARACTERIZING -- HE WASN'T ATTEMPTING TO CHARACTERIZE
21 ANY PRIOR TESTIMONY.

22 IT WAS SOMETHING LIKE:

23 "YOU NEVER ASKED ONE QUESTION ABOUT RETIRED
24 PLAYER LICENSING TO ANY UNION OFFICIAL AT ANY TIME."

25 AND IF THE WITNESS THINKS THAT'S NOT TRUE, HE CAN SAY

1 IT'S NOT TRUE.

2 **THE WITNESS:** I THOUGHT THAT'S WHAT I SAID. I SAID
3 THAT'S INCORRECT.

4 **BY MR. KESSLER:**

5 **Q.** OKAY. LET ME DIRECT YOUR ATTENTION, SIR, TO PAGE 89 OF
6 YOUR DEPOSITION.

7 **MR. KESSLER:** AND I'D LIKE TO READ, YOUR HONOR, FROM
8 LINE 22 TO LINE 25.

9 **THE COURT:** JUST A MINUTE. ANY OBJECTION TO 89? SAY
10 IT AGAIN.

11 **MR. KESSLER:** ACTUALLY, I'LL READ FROM 18 TO 25.

12 **THE COURT:** ANY OBJECTION?

13 **MS. NAYLOR:** NO OBJECTION.

14 **THE COURT:** ALL RIGHT. GO AHEAD.

15 **MR. KESSLER:** LINE 18:

16 **"QUESTION:** DID YOU EVER ASK ANY QUESTIONS
17 ABOUT YOUR GLA OR ABOUT LICENSING AT THESE
18 CONVENTIONS?

19 **"ANSWER:** NO.

20 **"QUESTION:** AND YOU NEVER ASKED QUESTIONS
21 ABOUT YOUR GLA OR LICENSING TO THE NFLPA AT
22 ANY OTHER TIME?

23 **"ANSWER:** NO."

24 **BY MR. KESSLER: :**

25 **Q.** THAT'S YOUR TESTIMONY, SIR, RIGHT?

1 A. THAT'S CORRECT.

2 Q. MR. BEACH, IT'S ALSO TRUE THAT YOU NEVER COMPLAINED TO
3 ANYONE AT THE UNION THAT YOU WEREN'T RECEIVING MONEY UNDER YOUR
4 RETIRED PLAYER GLA, CORRECT?

5 A. THAT'S CORRECT.

6 Q. YOU NEVER COMPLAINED SINCE 1999 TO ANY FRIEND ABOUT THAT,
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. YOU NEVER COMPLAINED ABOUT IT TO ANYBODY IN THE WORLD?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND YOU -- IT'S ALSO CORRECT THAT THE WHOLE ISSUE
12 OF RETIRED PLAYER LICENSING WAS NOT THAT SIGNIFICANT TO YOU?

13 A. THAT'S CORRECT.

14 Q. OKAY. AND, MR. BEACH, IT'S ALSO TRUE YOU NEVER MADE ANY
15 EFFORTS TO MARKET YOURSELF SINCE YOUR RETIREMENT AS AN NFL
16 PLAYER, CORRECT?

17 A. THAT'S CORRECT.

18 Q. AND, IN FACT, YOU HAD NO DESIRE TO MARKET YOURSELF AS A
19 RETIRED PLAYER FOR ANY PURPOSE. THAT IS CORRECT, ISN'T IT?

20 A. THAT'S CORRECT.

21 Q. AND IT'S ALSO CORRECT, SIR, AGAIN IN ALL DUE RESPECT, YOU
22 YOURSELF HAVE CHARACTERIZED YOURSELF, YOUR CAREER AS BASICALLY
23 BEING AN AVERAGE PLAYER, CORRECT?

24 A. THAT'S CORRECT.

25 Q. NOW, I WOULD LIKE TO ASK YOU NOW, SIR, ABOUT YOUR RETIRED

1 PLAYER GLA.

2 **MR. KESSLER:** IF WE COULD PUT UP FIRST EXHIBIT 640,
3 WHICH IS ALREADY IN EVIDENCE.

4 (DOCUMENT DISPLAYED.)

5 **BY MR. KESSLER:**

6 **Q.** YOU SHOULD HAVE THAT IN FRONT OF YOU, SIR. YOU SHOULD SEE
7 IN ONE OF THOSE FOLDERS TRIAL EXHIBIT 640.

8 IF YOU HAVE TROUBLE WITH IT, I'LL FIND IT FOR YOU.

9 **A.** I HAVE IT.

10 **Q.** THANK YOU.

11 AND THIS WAS THE RETIRED PLAYER GLA REVIEWED BY YOUR
12 COUNSEL.

13 **MR. KESSLER:** AND IF WE COULD SHOW FROM THE BOTTOM
14 DOWN.

15 THANK YOU, LAUREN.

16 **BY MR. KESSLER:**

17 **Q.** THIS IS THE ONE THAT YOU SIGNED FIRST, IN DECEMBER 26,
18 1996; IS THAT CORRECT?

19 **A.** THAT'S CORRECT.

20 **Q.** AND THAT'S WHEN YOU WROTE DOWN THESE QUESTIONS ABOUT
21 GETTING PAID AT WHAT RATE, WHEN, WHAT METHOD OF ACCOUNTING, ET
22 CETERA, RIGHT?

23 **A.** THAT'S RIGHT.

24 **Q.** AND SINCE 1996, DID YOU EVER DO ANYTHING TO PURSUE THE
25 ANSWERS TO THESE QUESTIONS?

1 **A.** UHM, I NEVER THOUGHT THAT THIS DOCUMENT REQUIRED ME TO DO
2 THAT.

3 **Q.** OKAY. SO THE ANSWER WOULD BE YOU NEVER DID THAT, SIR?

4 **A.** THAT'S CORRECT.

5 **Q.** AND DESPITE THE FACT THAT YOU HAD THESE QUESTIONS AND YOU
6 WERE A LAWYER --

7 **MR. KESSLER:** SORRY. WITHDRAWN.

8 **BY MR. KESSLER::**

9 **Q.** YOU HAD LEGAL TRAINING, AND YOU HAD THESE QUESTIONS,
10 CORRECT?

11 **A.** UHM, THE QUESTIONS -- I HAD THOSE QUESTIONS BRIEFLY, YES.

12 **Q.** YES. AND YET IN 2003 --

13 **MR. KESSLER:** IS THAT RIGHT? OKAY. THE JURY NOW HAS
14 THAT IN FRONT OF THEM IN THEIR LITTLE CHARTS.

15 **BY MR. KESSLER:**

16 **Q.** IN 2003, SEVEN YEARS LATER, YOU SIGNED ANOTHER RETIRED
17 PLAYER GLA, CORRECT?

18 **A.** THAT'S CORRECT.

19 **Q.** AND YOU STILL HAD THOSE QUESTIONS, BUT YOU HAD NO PROBLEM
20 SIGNING IT, RIGHT?

21 **A.** I HAD NO PROBLEM SIGNING IT BECAUSE, AS I DEALT WITH THE
22 PARTICULAR DOCUMENT I THOUGHT THAT THE DOCUMENT SAID THAT THE
23 UNION WAS GOING TO TAKE CARE OF THAT ASPECT OF IT. SO I JUST
24 TRUSTED, RELIED ON THEM.

25 **WHEN I DIDN'T RECEIVE ANYTHING IT WASN'T THAT**

1 IMPORTANT TO ME. I DIDN'T PURSUE IT.

2 Q. AND, IN FACT, SIR, IT DIDN'T COST YOU ANYTHING TO SIGN THE
3 DOCUMENT, RIGHT?

4 A. WHAT DO YOU MEAN IT DIDN'T COST ME ANYTHING?

5 Q. YOU DIDN'T PAY ANY MONEY?

6 A. IT TOOK MY IDENTITY, RIGHT?

7 Q. OKAY.

8 A. MY LIFE, MY IDENTITY IS TIED UP. I GIVE YOU MY IDENTITY
9 IN THE --

10 Q. MR. BEACH?

11 A. NO, NO, NO, NO, NO.

12 Q. THE UNION NEVER USED YOUR IDENTITY WITHOUT PAYING YOU,
13 RIGHT?

14 A. I NEVER GOT PAID. I DON'T KNOW WHETHER THEY USED IT OR
15 NOT.

16 Q. BUT YOU HAVE NO KNOWLEDGE THAT THEY EVER USED YOUR
17 IDENTITY ANYWHERE, DO YOU, SIR?

18 A. WELL, IN RETROSPECT I DO. I DIDN'T INITIALLY.

19 Q. WELL --

20 A. BUT I DO BELIEVE THAT MY IMAGE WAS USED IN THE MADDEN
21 GAMES. MY IMAGE IS IN THE CARDS. YOU TOOK MY IDENTITY, AND
22 YOU SAID I HAVE VALUE.

23 Q. MR. BEACH, YOU'RE TALKING ABOUT THE MADDEN GAME.

24 OTHER THAN THE MADDEN GAME -- LET'S PUT THAT ASIDE
25 FOR ONE MOMENT -- YOU DON'T KNOW OF ANY PRODUCT SINCE YOU'VE

1 RETIRED THAT USES YOUR NAME OR IMAGE WITHOUT PAYING YOU, RIGHT?

2 **A.** NO, NO.

3 **Q.** YOU DON'T KNOW OF ANY?

4 **A.** NO.

5 **Q.** AND WITH RESPECT TO THE MADDEN GAME, THEY DON'T USE YOUR
6 NAME, DO THEY, SIR?

7 **A.** I DIDN'T SAY MY NAME.

8 **Q.** OKAY. THEY DON'T USE A PICTURE OF YOUR FACE, DO THEY,
9 SIR?

10 **A.** I DIDN'T SAY MY FACE.

11 **Q.** IN FACT, SINCE 2004, THEY DON'T EVEN USE YOUR NUMBER, DO
12 THEY, SIR?

13 **A.** THEY USE A MADDEN GAME THAT THEY USE A VINTAGE 1965
14 CLEVELAND BROWNS, AND THERE IS A CORNERBACK ON THE 1965. THAT
15 WAS ME. THAT WAS MY IMAGE. AND THAT IS WHAT I THOUGHT I WAS
16 GIVING TO THE UNION SO THAT THEY WOULD MARKET.

17 **Q.** MR. BEACH, AND YOU'VE HAD SOME LEGAL TRAINING. YOU KNOW
18 THAT THERE'S NO LEGAL CLAIM TO STOP EA FROM JUST HAVING AN
19 IMAGE OF A PLAYER WITH NO NAME AND NO NUMBER. YOU KNOW THAT,
20 DON'T YOU, SIR?

21 **A.** I'M NOT DEALING WITH EA. I'M DEALING WITH THE UNION AND
22 THE GLA. I'M NOT DEALING WITH -- I'M NOT DEALING WITH NO
23 THIRD-PARTY PEOPLE. I DON'T EVEN KNOW WHAT THEY DO WITH THE
24 THIRD-PARTY PEOPLE.

25 I DON'T KNOW IF THEY DO WHAT THEY SAY OR ANYTHING.

1 ALL I KNOW IS I GAVE THEM THE OPPORTUNITY TO USE THAT IMAGE IN
2 CONJUNCTION WITH SIX OTHER RETIRED OR CURRENT BALLPLAYERS.

3 THAT'S ALL I KNOW.

4 Q. LET'S LOOK AT THE LANGUAGE OF THE GLA, IF WE CAN.

5 AND LOOK AT THE BOTTOM PARAGRAPH.

6 A. RIGHT.

7 Q. OKAY. YOU WOULD AGREE WITH ME, SIR, THAT THIS IS THE
8 PARAGRAPH THAT TALKS ABOUT WHEN AND HOW RETIRED PLAYERS WHO
9 SIGN THIS WOULD GET PAID, RIGHT?

10 A. THAT'S CORRECT.

11 Q. OKAY. THE OTHER PARAGRAPHS DON'T TALK ABOUT MONEY AT ALL,
12 RIGHT?

13 A. THAT'S CORRECT.

14 Q. OKAY. SO LOOKING AT THE MONEY PARAGRAPH, IT SAYS:

15 "IT IS FURTHER UNDERSTOOD THAT THE MONIES
16 GENERATED BY SUCH LICENSING OF RETIRED PLAYER GROUP RIGHTS."

17 DO YOU SEE THAT, SIR?

18 A. THAT'S CORRECT.

19 Q. THERE'S NO REFERENCE IN THIS PARAGRAPH ANYWHERE TO THE
20 WORD "ACTIVE PLAYERS" OR "PRESENT PLAYERS" OR ANYTHING BUT
21 "RETIRED PLAYERS," RIGHT?

22 A. THE FIFTH PARAGRAPH IS CAPTURED IN THE SECOND PARAGRAPH
23 WHEN THEY DEFINE IN THE GROUP LICENSE AGREEMENT WHO IT IS.
24 THAT INCLUDES THE CURRENT AND PAST PLAYERS.

25 **THE COURT:** ALL RIGHT. HELP THE JURY UNDERSTAND THE

1 TESTIMONY.

2 CAN YOU DO THAT SPLIT SCREEN THERE WHERE YOU PUT BOTH
3 PARAGRAPHS ON THE SCREEN?

4 **MR. KESSLER:** SURE. PUT THAT PARAGRAPH THERE.

5 (DOCUMENT DISPLAYED.)

6 **BY MR. KESSLER:**

7 **Q.** NOW, WHAT I WOULD LIKE TO ASK YOU, SIR -- I'LL GET TO THE
8 OTHER PARAGRAPH, OKAY, IF YOU BEAR WITH ME.

9 **A.** SURE.

10 **Q.** IN THIS PARAGRAPH, THE MONEY PARAGRAPH, THERE'S NO
11 REFERENCE TO "PRESENT PLAYERS," CORRECT? THERE'S NO WORD ABOUT
12 THAT.

13 **A.** NO, I SEE NO WORD ABOUT "PRESENT PLAYERS" IN THAT
14 SENTENCE.

15 **Q.** OKAY. WHAT -- THE ONLY THING THAT'S REFERRED TO IN THE
16 MONEY PARAGRAPH IS THE MONIES GENERATED BY SUCH LICENSING OF
17 RETIRED PLAYER GROUP RIGHTS, RIGHT? THAT'S ALL THAT'S IN THAT
18 PARAGRAPH.

19 **A.** NO, THAT'S NOT ALL THAT'S IN THE PARAGRAPH. THAT'S ALL
20 YOU HIGHLIGHTED.

21 **Q.** OKAY. WELL --

22 **A.** YOU HAVE TO READ THE ENTIRE PARAGRAPH.

23 **Q.** OKAY. LOOK AT THE ENTIRE PARAGRAPH FROM "IT" UNTIL
24 "SERVICES."

25 **A.** RIGHT.

1 Q. IS THERE ANY WORD MENTIONING "ACTIVE PLAYERS"?

2 A. ACTIVE PLAYERS? IN MY INTERPRETATION OF THAT "ACTIVE
3 PLAYERS" WOULD BE THE ELIGIBLE NFLPA MEMBERS.

4 Q. OKAY. NOW, SIR, DO YOU HAVE ANY PERSONAL KNOWLEDGE OF
5 HOW -- WHAT THE ELIGIBLE MEMBERS WOULD BE UNDER THIS AGREEMENT?
6 ANY PERSONAL KNOWLEDGE?

7 HOW DO YOU KNOW WHO'S ELIGIBLE, SIR? DO YOU HAVE ANY
8 PERSONAL KNOWLEDGE OF THAT?

9 A. WELL, IF I READ THE SENTENCE AND THE PARAGRAPH THAT WOULD
10 TELL ME WHO WAS ELIGIBLE.

11 Q. OKAY. IT'S -- IT SAYS --

12 A. IT'S OBVIOUS -- I'M SORRY. IT'S OBVIOUS THAT IT'S NOT THE
13 RETIRED PLAYERS, BECAUSE YOU MENTIONED THE RETIRED PLAYERS.

14 Q. OKAY.

15 A. SO THE NEXT SENTENCE, WHEN IT SAYS:

16 "AN ESCROW ACCOUNT FOR ALL ELIGIBLE NFLPA
17 MEMBERS" WOULD, IN MY UNDERSTANDING, WOULD HAVE TO BE THE
18 ACTIVE PLAYERS.

19 Q. OKAY. WHAT I'M GOING TO ASK YOU, SIR, ABOUT YOUR PERSONAL
20 KNOWLEDGE, AT THE TIME THAT YOU SIGNED THIS, BACK IN 1996,
21 OKAY? DID YOU HAVE ANY KNOWLEDGE OF WHAT THE ELIGIBILITY
22 REQUIREMENTS WERE UNDER THIS FORM? ANY KNOWLEDGE AT ALL,
23 PERSONAL KNOWLEDGE?

24 A. NO, I HAVE NO PERSONAL KNOWLEDGE ABOUT WHAT THE
25 ELIGIBILITY -- I JUST USED MY UNDERSTANDING OF WHAT THE

1 SENTENCE --

2 Q. SIR, DID YOU BELIEVE WHEN YOU SIGNED THIS THAT THE PEOPLE
3 WHO WERE GOING TO GET THE MONEY WOULD JUST BE THE ACTIVE
4 PLAYERS?

5 A. NO.

6 Q. OKAY. RIGHT. YOU BELIEVED THE PEOPLE WHO WOULD GET THE
7 MONEY WOULD BE -- IT WOULD BE DIVIDED BETWEEN THE RETIRED
8 PLAYER, RIGHT?

9 A. UH-HUH.

10 Q. AND THE ELIGIBLE PLAYERS WHO WOULD BE THE RETIRED PLAYERS,
11 RIGHT? THAT'S WHAT YOU THOUGHT?

12 A. WOW. I DON'T WANT TO BE -- YOU CAN'T TELL ME WHAT I
13 THOUGHT.

14 Q. OKAY, SIR. I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH.

15 A. NO, I KNOW THAT. NO, THAT'S NOT WHAT I THOUGHT.

16 Q. OKAY. I'M GOING TO ASK YOU. LET ME ASK YOU: DID YOU
17 THINK -- THAT'S OKAY.

18 SO WHEN YOU SIGNED THIS -- TELL ME IF I HAVE IT
19 RIGHT -- YOU THOUGHT YOU WERE AGREEING THAT THIS MONEY WOULD GO
20 TO THE ACTIVE PLAYERS?

21 A. I THOUGHT IT WOULD BE DIVIDED BETWEEN THE CURRENT AND
22 FUTURE PLAYERS. WHICH WOULD HAVE BEEN -- CURRENT WOULD HAVE
23 BEEN THE ACTIVE PLAYERS, THAT'S CORRECT.

24 Q. OKAY. SO YOU THOUGHT THE RETIRED PLAYERS WOULD GET SOME,
25 AND THE ACTIVE PLAYERS WOULD GET SOME?

1 **A.** THAT'S CORRECT.

2 **Q.** AND THAT'S HOW THE MONEY WOULD BE DIVIDED, YOU THOUGHT?

3 **A.** WELL, I DIDN'T KNOW EXACTLY WHAT FORMULA WOULD BE USED TO
4 DIVIDE IT, BUT I THOUGHT THAT THAT'S -- THAT'S -- THAT WAS MY
5 INTERPRETATION OF IT.

6 **Q.** OKAY. AND THAT TALKS ABOUT HOW THE MONEY WILL BE DIVIDED
7 BETWEEN THE PLAYER AND AN ESCROW ACCOUNT FOR ALL ELIGIBLE NFLPA
8 MEMBERS, AND YOU THOUGHT THAT WOULD BE ACTIVE AND RETIRED,
9 RIGHT?

10 **A.** THAT'S WHAT I THOUGHT.

11 **Q.** OKAY. BUT THE MONEY WE'RE TALKING ABOUT, THE MONEY THAT
12 WOULD BE DIVIDED, WOULD BE THE MONEY GENERATED BY LICENSING OF
13 RETIRED PLAYER GROUP RIGHTS, CORRECT?

14 **A.** RETIRED PLAYER GROUP RIGHTS AS WELL AS A COMBINATION OF
15 CURRENT PLAYER GROUP RIGHTS.

16 **Q.** OKAY. WELL, THAT'S WHAT I WANT TO ASK YOU, SIR.

17 WHEN IT TALKS ABOUT THE MONEY GENERATED BY SUCH
18 LICENSING OF RETIRED PLAYER GROUP RIGHTS, IN THIS PARAGRAPH IT
19 DOESN'T REFER TO MONEY GENERATED BY COMBINING WITH ACTIVE
20 PLAYERS IN THIS PARAGRAPH, RIGHT?

21 **A.** WELL, UHM, IF I READ THE PARAGRAPH, IT -- IT -- THE
22 ELIGIBLE NFLPA MEMBERS, WHICH I THOUGHT WERE THE ACTIVE
23 PLAYERS.

24 SO THE PARAGRAPH -- THE PARAGRAPH IS NOT AS IMPORTANT
25 AS THE SENTENCE. THE SENTENCE SAYS:

1 "AND AN ESCROW ACCOUNT FOR ALL ELIGIBLE NFL
2 MEMBERS." "AND" IS -- I WAS JUST A FOURTH-GRADE TEACHER.
3 "AND" IS A CONJUNCTION. SO IN THE ASPECT OF IT COMBINES THE
4 ELIGIBLE PLAYERS AND THE RETIRED PLAYERS. THAT'S JUST MY
5 UNDERSTANDING.

6 Q. OKAY. I UNDERSTAND THAT.

7 AND YOU REMEMBER, SITTING HERE TODAY, THAT WAS YOUR
8 UNDERSTANDING IN 1996, 12 YEARS AGO?

9 A. I WAS JUST AS INTELLIGENT THEN AS I AM TODAY.

10 Q. NO, THAT'S NOT MY QUESTION, SIR.

11 A. THAT'S AN INSULT TO ME.

12 Q. OKAY.

13 A. THAT'S THE WAY I SAW IT THEN.

14 Q. I JUST WANT TO BE SURE I UNDERSTAND MY QUESTION.

15 A. I DID.

16 Q. AS YOU'RE SITTING HERE TODAY, YOU HAVE A MEMORY OF WHAT
17 WAS IN YOUR MIND ABOUT THIS ISSUE 12 YEARS AGO?

18 A. OF COURSE.

19 Q. EVEN THOUGH YOU TESTIFIED THAT THIS WHOLE ISSUE WAS NOT
20 VERY SIGNIFICANT TO YOU, RIGHT?

21 A. UHM, THAT'S CORRECT.

22 Q. OKAY. AND, IN FACT, YOU HAD NO DESIRE TO LICENSE YOUR
23 RIGHTS, YOU TESTIFIED, CORRECT?

24 A. THAT'S RIGHT.

25 Q. OKAY. NOW, BUT ISN'T IT TRUE, SIR -- AND, AGAIN, I'M

1 CALLING, IN PART, ON YOUR LEGAL TRAINING -- THAT THE DIVIDED
2 PART TALKS ABOUT HOW THE MONEY IS DIVIDED. IT'S THE FIRST PART
3 OF THE SENTENCE THAT TALKS ABOUT WHAT MONEY WOULD BE DIVIDED.
4 AND THAT FIRST PART ONLY TALKS ABOUT RETIRED PLAYER RIGHTS;
5 ISN'T THAT TRUE, THE LANGUAGE?

6 **A.** THE SENTENCE SAYS THAT -- TO ME, THAT THE MEMBERS WHO ARE
7 ACTIVE, AND THE MEMBERS WHO ARE RETIRED ARE PART OF THAT
8 SENTENCE. IT'S NOTHING THAT SEPARATES THAT AND EXCLUDES THE
9 RETIRED FROM THE ACTIVE. NOT AS I UNDERSTAND THAT.

10 **Q.** OKAY. OKAY.

11 SO YOU THOUGHT, YOU'RE TELLING THE JURY, BACK IN
12 1996, THAT IF IT WAS JUST ACTIVE PLAYER TRADING CARDS, YOU
13 WOULD GET MONEY FOR THAT, SOME MONEY, RIGHT? THAT'S YOUR
14 BELIEF?

15 **A.** IF THEY -- ACCORDING TO THIS DOCUMENT, IF IT WERE JUST
16 ACTIVE PLAYERS IN THIS GLA, SIX OR MORE, I WOULD BE ENTITLED TO
17 COMPENSATION.

18 **Q.** AND THAT WAS YOUR BELIEF STARTING 12 YEARS AGO IN 1996?

19 **A.** YES, IT WAS.

20 **Q.** AND YOU KNEW THERE WERE ACTIVE PLAYER TRADING CARDS EVERY
21 YEAR, RIGHT?

22 **A.** THAT'S CORRECT.

23 **Q.** YOU KNEW THERE WERE OTHER PRODUCTS LIKE VIDEO GAMES EVERY
24 YEAR WITH ACTIVE PLAYER NAMES, RIGHT?

25 **A.** THAT'S CORRECT.

1 Q. AND NOT ONCE, NOT ONCE IN THAT 12-YEAR PERIOD OF TIME DID
2 YOU EVER SAY TO ANYONE IN THE ENTIRE UNIVERSE:

3 "HOW COME I'M NOT GETTING A CHECK?"

4 A. WELL, LET ME TELL YOU WHY.

5 THE COURT: WAIT.

6 BY MR. KESSLER:

7 Q. ANSWER "YES" OR "NO."

8 THE COURT: FIRST, IS IT TRUE THAT YOU NEVER
9 COMPLAINED?

10 THE WITNESS: YES.

11 BY MR. KESSLER:

12 Q. THAT'S MY QUESTION, SIR. LET ME NOW MOVE ON.

13 NOW, IT'S ALSO TRUE, SIR, YOU KNEW -- LET'S MOVE ON
14 TO YOUR NEXT GLA, IF WE CAN. TRIAL EXHIBIT 639.

15 (DOCUMENT DISPLAYED.)

16 YOU KNEW -- SORRY. LET'S JUST SHOW THE BOTTOM OF
17 THIS.

18 YOU SIGNED THE -- THE SECOND GLA ON MAY 23, 2003,
19 CORRECT?

20 A. THAT'S CORRECT.

21 Q. OKAY. AND THE LANGUAGE OF THIS GLA, THIS BOTTOM
22 PARAGRAPH, IS THE SAME AS THE LANGUAGE YOU SIGNED -- YOU SIGNED
23 IN 1996, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND YOU HAD THE SAME UNDERSTANDING, CORRECT?

1 A. THAT'S CORRECT.

2 Q. TAKE A LOOK AT THE TOP PARAGRAPH, IF WE CAN.

3 THIS GLA SAYS IT'S NON-EXCLUSIVE. DO YOU SEE THAT,
4 SIR?

5 A. UH-HUH.

6 Q. NOW, YOU KNEW WITH YOUR LEGAL TRAINING THAT MEANT THAT YOU
7 COULD DO WHATEVER YOU WANTED ON YOUR OWN IN LICENSING, EVEN
8 AFTER SIGNING THIS, RIGHT?

9 A. RIGHT.

10 Q. NOW, IT'S CORRECT, ISN'T IT, SIR, THAT WHEN YOU SIGNED
11 THIS GLA, YOU HAD NO IDEA HOW THE MONEY WOULD EVER BE DIVIDED?

12 A. I NEVER HAD ANY IDEA. I NEVER HAD COMMUNICATIONS WITH
13 ANYBODY IN REFERENCE TO THIS GLA.

14 Q. BUT I'M SAYING WHEN YOU SIGNED THE GLA, YOU HAD NO IDEA
15 HOW THE MONEY WOULD BE DIVIDED?

16 A. THAT'S CORRECT.

17 Q. WASN'T IMPORTANT TO YOU.

18 A. WAS WHAT IMPORTANT TO ME?

19 Q. IT WAS NOT IMPORTANT TO YOU HOW THE MONEY WOULD BE
20 DIVIDED. THAT WAS YOUR VIEW AT THE TIME, RIGHT?

21 A. NO, IN REFERENCE TO THE GLA, IF THERE WAS MONIES IT WOULD
22 ALWAYS BE IMPORTANT TO ME HOW IT'S DIVIDED.

23 Q. ISN'T IT TRUE, SIR, THAT YOU SAID YOU DIDN'T CARE HOW THE
24 MONEY WAS DIVIDED?

25 A. I DON'T EVER RECALL SAYING THAT.

1 Q. OKAY.

2 LET ME ASK YOU THIS: IS IT TRUE THAT -- TWO SEPARATE
3 POINTS: ONE, YOU DIDN'T KNOW HOW THE MONEY WOULD BE DIVIDED.
4 THAT'S FAIR.

5 A. THAT'S RIGHT.

6 Q. AND IT'S ALSO TRUE YOU DIDN'T CARE ANYTHING ABOUT WHETHER
7 THERE WOULD BE AN ESCROW ACCOUNT OR NOT. YOU DIDN'T CARE.

8 A. NO, I DIDN'T REALLY CARE WHETHER THERE WAS AN ESCROW
9 ACCOUNT OR NOT. I DIDN'T KNOW WHAT -- I MEAN, ESCROW ACCOUNT
10 BY PUTTING -- I JUST THOUGHT THEY WOULD GET MONEY, AND PUT IT
11 IN AN ESCROW ACCOUNT. IF THEY PUT IT IN ANOTHER ACCOUNT, IT
12 WOULDN'T MATTER TO ME.

13 Q. DIDN'T MATTER TO YOU ONE WAY OR THE OTHER IF THERE WAS
14 SUCH AN ACCOUNT.

15 A. THAT'S CORRECT.

16 Q. OKAY.

17 NOW, IT'S ALSO TRUE, SIR, THAT YOUR UNDERSTANDING AT
18 THE TIME WAS IF THERE WAS NO MONEY GENERATED FROM THIS RETIRED
19 PLAYER GLA, THEN YOU WOULD GET NOTHING.

20 A. OF COURSE.

21 Q. OKAY. YOU ALSO UNDERSTOOD, SIR, IF THERE WAS NO MONEY
22 GENERATED FROM THE SPECIFIC RIGHTS THAT YOU GRANTED, YOU WOULD
23 GET NOTHING.

24 A. THAT'S CORRECT.

25 Q. OKAY. AND THE ONLY RIGHTS THAT YOU GRANTED WAS YOUR NAME

1 AND IMAGE. YOU COULDN'T GRANT SOMEBODY ELSE'S RIGHTS, RIGHT?

2 **A.** NO, THAT'S NOT CORRECT.

3 **Q.** WELL, YOU COULD ONLY -- LET ME ASK IT THIS WAY: YOU ONLY
4 COULD GRANT YOUR OWN RIGHTS. YOU COULDN'T GRANT MR. JIM
5 BROWN'S RIGHTS, COULD YOU?

6 **A.** IT'S A COLLECTIVE GRANTING. IT SAYS "GROUP LICENSING." SO
7 I WASN'T THERE AS AN INDIVIDUAL. I WAS PART OF A GROUP.

8 **Q.** I UNDERSTAND THAT, SIR. WHAT I'M ASKING IS -- THIS IS MY
9 QUESTION: YOUR POWER TO GRANT RIGHTS, YOUR OWN INDIVIDUAL
10 POWER, SIR?

11 **A.** YES.

12 **Q.** YOU COULD ONLY SPEAK FOR YOURSELF AS TO WHAT YOU WOULD
13 GRANT, RIGHT?

14 **A.** OF COURSE, RIGHT.

15 **Q.** RIGHT. OKAY.

16 NOW, I'D LIKE TO SHOW YOU, SIR, NEXT, A COPY OF TRIAL
17 EXHIBIT 2046. IT SHOULD BE IN FRONT OF YOU.

18 AND DO YOU RECOGNIZE THIS, SIR, AS AN ISSUE OF THE
19 TOUCHBACK MAGAZINE WHICH WAS SENT OUT TO RETIRED PLAYERS?

20 **A.** THIS WAS SHOWN TO ME IN A DEPOSITION.

21 **Q.** YES. BUT, SIR, YOU DID RECEIVE TOUCHBACK MAGAZINES,
22 CORRECT?

23 **A.** YES, I RECEIVED TOUCHBACK MAGAZINES. AND MY WIFE READS
24 THEM. I DON'T READ THEM.

25 **Q.** WELL, IN FACT, SIR, IT'S TRUE, ISN'T IT, WHAT YOU DID WITH

1 THE TOUCHBACK MAGAZINES IS YOU THREW THEM IN THE GARBAGE CAN,
2 RIGHT?

3 **A.** AFTER SHE READ THEM AND HAD SOME DISCUSSION ABOUT THE --
4 THE EVENTS THAT -- OR PLAYERS THAT SHE WANTED TO KNOW THE NAME
5 OF, OR WHAT THEY DID.

6 **Q.** SO IF THERE WAS INFORMATION HERE -- LET'S LOOK, FOR
7 EXAMPLE, IF WE CAN, ON PAGE -- THE LAST PAGE OF THIS DOCUMENT.

8 **A.** UH-HUH.

9 **MR. KESSLER:** IF WE CAN, PLEASE, LAUREN.

10 (DOCUMENT DISPLAYED.)

11 **BY MR. KESSLER:**

12 **Q.** IF THERE WAS INFORMATION HERE ABOUT HOW HUNDREDS OF
13 RETIRED PLAYERS WERE GETTING LICENSING MONEY, EVEN THOUGH YOU
14 WERE NOT GETTING LICENSING MONEY, YOUR WIFE WOULD KNOW ABOUT
15 THAT BECAUSE SHE READ THE MAGAZINE, RIGHT?

16 **A.** YOU'D HAVE TO ASK HER.

17 **Q.** OKAY. BUT --

18 **A.** THE FIRST TIME THAT THIS WAS BROUGHT TO MY ATTENTION WAS
19 IN THE DEPOSITION. AND AS IT WAS BROUGHT TO MY ATTENTION IN
20 THE DEPOSITION, I SAID THAT I HAD NOT SEEN THIS PARTICULAR
21 DOCUMENT BECAUSE I DON'T LOOK AT THE TOUCHDOWN (SIC) THINGS
22 PRECISELY, BECAUSE IT SAYS "A GREAT TIME HAD AT THE CONVENTION,
23 ANNUAL" -- AND THAT'S WHAT I GO THERE FOR. THAT'S WHAT I DO.
24 AND I DON'T PAY THAT MUCH ATTENTION TO IT.

25 **Q.** WHAT YOU SAID, SIR, IS YOU THROW THESE IN THE GARBAGE CAN

1 WITHOUT READING THEM, RIGHT?

2 **A.** WELL, BASICALLY THAT.

3 **Q.** OKAY.

4 **A.** I MEAN, TO BE PRECISE, I MAY NOT HAVE GOTTEN ONE AND JUST
5 THREW IT IN THE GARBAGE CAN. BUT BASICALLY, I DON'T PAY THAT
6 MUCH ATTENTION TO TOUCHBACK.

7 **Q.** THAT'S FINE, SIR. I UNDERSTAND THAT. I'M SAYING ARE YOU
8 SUGGESTING THAT YOUR WIFE DID READ THEM SO SHE WOULD HAVE
9 RECEIVED THIS INFORMATION AND DISCUSSED IT WITH YOU? I JUST
10 WANT TO KNOW YES OR NO?

11 **A.** DID SHE -- DOES SHE KNOW ABOUT THIS INFORMATION?

12 **Q.** YES.

13 **A.** I DON'T KNOW.

14 **Q.** OKAY.

15 **A.** IT MAY NOT BE ONE OF THE TOUCHDOWNS (SIC) THAT SHE LOOKED
16 AT.

17 **Q.** OKAY.

18 **A.** BUT IF THAT'S THE WAY YOU'RE GOING TO COMMUNICATE TO ME
19 ABOUT MY LICENSE AGREEMENT, THROUGH A TOUCHDOWN (SIC), YOU GAVE
20 ME A GLA, AND NOW YOU SAY:

21 "I WILL TELL YOU WHAT YOUR SITUATION IS WHEN
22 YOU SEE THE TOUCHDOWN" (SIC).

23 THAT DON'T MAKE SENSE.

24 **Q.** SIR, YOU SIGNED YOUR FIRST GLA IN 1996, CORRECT?

25 **A.** THAT'S CORRECT.

1 Q. AND THEN, YOU SIGNED ANOTHER ONE IN 2003, CORRECT?

2 A. THAT'S CORRECT.

3 Q. AND THE WAY IN WHICH THE NFLPA COMMUNICATES WITH RETIRED
4 PLAYERS IS BY SENDING THEM PUBLICATIONS FOR RETIRED PLAYERS
5 LIKE TOUCHDOWN (SIC); THAT'S CORRECT, ISN'T IT?

6 A. I DON'T KNOW IF THEY SEND THAT TO ALL PLAYERS.

7 Q. WELL, YOU GOT IT.

8 A. I GOT IT, BUT I DIDN'T READ IT. SO IT WAS MY OBLIGATION
9 TO READ IT TO FIND OUT WHAT MY -- THIS GLA WAS -- HOW IT WAS
10 GOING TO IMPACT ME? I MUST READ ALL TOUCHDOWNS (SIC) TO
11 FOLLOW -- OR TOUCHBACKS TO FIND OUT HOW I'M GOING TO RECEIVE
12 SOME COMPENSATION?

13 AND THERE'S 2,000 INDIVIDUALS IN THIS CASE.

14 Q. THE REASON, SIR, YOU DIDN'T READ TOUCHBACK IS BECAUSE THE
15 WHOLE ISSUE OF LICENSING WAS NOT REAL SERIOUS TO YOU; IS THAT
16 TRUE?

17 A. THAT'S CORRECT.

18 Q. OKAY. NOW, IT'S ALSO TRUE, MR. BEACH, AT THE TIME YOU
19 SIGNED YOUR GLA, YOUR UNDERSTANDING WOULD BE YOU WOULD NOT GET
20 ANY ACTIVE PLAYER MONEY IF THE ACTIVE PLAYER SIGNED A DIFFERENT
21 KIND OF DOCUMENT, CORRECT?

22 THAT WAS YOUR UNDERSTANDING.

23 A. IF YOU COULD ASK ME A QUESTION. WHAT YOU'VE DONE AGAIN IS
24 TELL ME WHAT MY UNDERSTANDING IS. JUST ASK ME A QUESTION. I
25 WILL RESPOND TO IT. YOU DON'T KNOW WHAT MY UNDERSTANDING IS.

1 Q. I'M REQUIRED TO ASK WHAT YOUR UNDERSTANDING IS. SO PLEASE
2 BEAR WITH ME. I APOLOGIZE, BUT THAT'S THE WAY THE COURT WOULD
3 LIKE US TO ASK THE QUESTIONS.

4 YOUR UNDERSTANDING, SIR, THAT'S IMPORTANT TO THIS
5 JURY.

6 A. I'M SORRY.

7 Q. SO IT'S TRUE, ISN'T IT, THAT YOUR UNDERSTANDING AT THE
8 TIME YOU SIGNED THE GLA WAS THAT IF THE ACTIVE PLAYERS DIDN'T
9 SIGN THIS TYPE OF A FORM WITH AN ESCROW ACCOUNT, BUT SIGNED
10 SOME OTHER KIND OF FORM, THAT YOU WOULD NOT BE ENTITLED -- NOT
11 BE ENTITLED -- TO ANY REVENUE GENERATED BY ACTIVE PLAYER
12 LICENSING? THAT WAS YOUR UNDERSTANDING?

13 A. THAT'S CORRECT. THAT'S MY UNDERSTANDING.

14 Q. AND YOU DON'T KNOW WHAT FORMS THE ACTIVE PLAYERS SIGNED,
15 RIGHT?

16 A. I HAVE NO IDEA WHAT FORMS THE ACTIVE PLAYERS SIGNED,
17 BECAUSE OF THE FACT I BELONG TO A UNION. AND I DIDN'T KNOW
18 THAT THE UNION HAD SEPARATED ACTIVE PLAYERS FROM RETIRED
19 PLAYERS, BECAUSE UNION -- THAT'S ANTITHETICAL TO "UNION."

20 Q. NOW, MR. BEACH, IT'S ALSO TRUE THAT IT WAS YOUR
21 UNDERSTANDING WHEN YOU HAD YOUR GLA'S, THAT YOU HAD NO CONTROL
22 OVER DEFENDANTS' LICENSING OPERATIONS.

23 THAT'S TRUE, RIGHT?

24 A. AGAIN, THAT'S NOT TRUE.

25 Q. OKAY. LET'S TAKE A LOOK, PLEASE, AT YOUR DEPOSITION

1 TRANSCRIPT, 113.

2 **MR. KESSLER:** LINES 3 TO 7, YOUR HONOR.

3 **MS. NAYLOR:** NO OBJECTION.

4 **THE COURT:** GO AHEAD.

5 **MR. KESSLER:** OKAY.

6 **"QUESTION:** MR. BEACH, DO YOU BELIEVE YOU
7 HAVE ANY CONTROL OVER DEFENDANTS' LICENSING
8 OPERATIONS?

9 **"ANSWER:** OH, NO. I DON'T HAVE ANY CONTROL
10 ABOUT THAT."

11 **THE WITNESS:** THAT'S CORRECT. THAT'S WHAT I SAID.

12 **BY MR. KESSLER:**

13 **Q.** I'M SORRY. I MISUNDERSTOOD YOU. THAT'S CORRECT TESTIMONY
14 THAT YOU DON'T HAVE CONTROL?

15 **A.** THAT'S CORRECT TESTIMONY. BUT WHAT IT DOESN'T DEAL WITH
16 IS I THOUGHT YOU WERE TALKING ABOUT OPERATIONS OF THE -- OF
17 THE -- THE UNION'S EVERYDAY OPERATION: FAX MACHINES, SENDING
18 OUT NOTICES.

19 THAT'S WHY I RESPONDED TO IT THAT WAY. THAT'S WHAT I
20 THOUGHT YOU WERE TALKING ABOUT. I DIDN'T KNOW YOU WAS TALKING
21 ABOUT THE ASPECT OF THE GLA IN TERMS OF HAVING ANY KIND OF
22 IMPACT. I DEFINITELY WOULD HAVE IMPACT ON THE GLA.

23 **Q.** WELL, SIR, YOU TESTIFIED ON YOUR COUNSEL'S EXAMINATION YOU
24 THOUGHT THERE WERE TWO THINGS YOU HAD -- YOU HAD THE RIGHT TO
25 DO, I BELIEVE. ONE THING YOU SAID IS YOU COULD REVOKE THE GLA,

1 CORRECT?

2 YOU TESTIFIED TO THAT?

3 **A.** THAT'S WHAT I --

4 **Q.** OKAY. TAKE A LOOK AGAIN AT THE GLA.

5 **MR. KESSLER:** IF WE COULD PUT THAT BACK UP, PLEASE.

6 LET'S GO TO TRIAL EXHIBIT -- WHAT IS IT, 630 --

7 **MR. GREENSPAN:** 639.

8 **MR. KESSLER:** 639.

9 (DOCUMENT DISPLAYED.)

10 **BY MR. KESSLER::**

11 **Q.** AND, SIR, I'D ASK YOU, GIVEN YOUR LEGAL TRAINING, THERE'S

12 NOTHING HERE IN THE GLA THAT SAYS IT CAN BE REVOKED. IT JUST

13 HAS A STATED TERM, IF YOU TAKE A LOOK AT THE BOTTOM, PLEASE --

14 **MR. KESSLER:** LAUREN, WHERE STATED TERM IS, VERY

15 BOTTOM.

16 THANK YOU.

17 (DOCUMENT DISPLAYED.)

18 **BY MR. KESSLER::**

19 **Q.** IT HAS A STATED TERM UNTIL DECEMBER 31ST, 2006. THERE IS

20 NO LANGUAGE THAT SAYS YOU HAVE ANY RIGHT TO REVOKE BEFORE THAT,

21 DOES IT?

22 **A.** THIS IS -- IN THE FOURTH PARAGRAPH IT SAYS:

23 "IF THE UNDERSIGNED PLAYER'S INCLUSION IN A

24 PARTICULAR NFLPA PROGRAM WILL CONFLICT WITH AN INDIVIDUAL'S

25 EXCLUSIVE ENDORSEMENT AGREEMENT, AND THE PLAYER PROVIDES THE

1 NFLPA WITH A TIMELY NOTICE OF THAT CONFLICT, THE NFLPA AGREES
2 TO EXCLUDE THE PLAYER FROM THAT PARTICULAR PROGRAM."

3 Q. OKAY.

4 A. SO THAT MEANS THAT IF YOU'RE GOING TO -- IF THERE IS
5 SOMETHING THAT I HAD A CONFLICT WITH, I COULD -- I WAS GOING TO
6 BE EXCLUDED FROM IT. AGAIN, I'M CONFUSED.

7 Q. I DON'T WANT TO CONFUSE YOU, SIR. I'LL ASK YOU ABOUT THAT
8 PARAGRAPH.

9 MR. KESSLER: LEAVE THAT PARAGRAPH UP, LAUREN,
10 BECAUSE I WANT TO ASK ABOUT IT.

11 (DOCUMENT DISPLAYED.)

12 BY MR. KESSLER:

13 Q. IT SAYS -- BUT I WANT FIRST WANT TO ASK YOU: THIS
14 PARAGRAPH DOESN'T GIVE YOU THE RIGHT TO REVOKE THE WHOLE
15 AGREEMENT, RIGHT? IT SAYS YOU COULD BE EXCLUDED FROM A
16 PARTICULAR PROGRAM, RIGHT?

17 A. THAT'S CORRECT.

18 Q. OKAY. SO I JUST WANT TO BE CLEAR FOR THE JURY. YOU DON'T
19 THINK THERE'S ANYTHING THAT GIVES YOU THE RIGHT TO REVOKE THE
20 WHOLE AUTHORIZATION?

21 A. NO, NO, NOT THE WHOLE --

22 Q. OKAY. OKAY. NOW, LET'S FOCUS ON THIS.

23 IT SAYS:

24 "IF THE UNDERSIGNED PLAYER'S INCLUSION IN A
25 PARTICULAR NFLPA PROGRAM WILL CONFLICT WITH AN INDIVIDUAL

1 EXCLUSIVE ENDORSEMENT AGREEMENT."

2 NOW, SIR, YOU HAD NO ENDORSEMENT AGREEMENTS, RIGHT?

3 **A.** I DIDN'T KNOW. I -- I WAS COMPLETELY IN THE DARK. IF
4 THERE ARE ANY AGREEMENTS, THE UNION -- I GAVE THE UNION THE
5 RIGHT TO USE MY IMAGE, AND I ASSUMED THE UNION WAS MY AGENT.
6 SO I DON'T KNOW WHAT THEY WERE DOING. I HAVE NO IDEA.

7 **Q.** SIR, I APPRECIATE YOUR TESTIMONY. JUST PLEASE BEAR WITH
8 ME, AND TRY TO ANSWER MY QUESTION.

9 MY QUESTION, SIR, IS: THIS IS TALKING ABOUT HERE
10 THAT IF THE UNDERSIGNED PLAYER'S INCLUSION IN A PARTICULAR
11 NFLPA PROGRAM -- THAT'S THE UNION, RIGHT? NFLPA -- WILL
12 CONFLICT WITH AN INDIVIDUAL EXCLUSIVE ENDORSEMENT AGREEMENT,
13 AND THE PLAYER PROVIDES THE NFLPA WITH TIMELY NOTICE OF THAT
14 CONFLICT, THE NFLPA AGREES TO EXCLUDE THE PLAYER FROM THAT
15 PARTICULAR PROGRAM.

16 NOW, THAT MEANS, SIR, DOES IT NOT -- OR IT WAS YOUR
17 UNDERSTANDING, SIR, WITH YOUR LEGAL TRAINING -- THAT IF YOU HAD
18 AN INDIVIDUAL EXCLUSIVE ENDORSEMENT PROGRAM, LIKE YOU HAD AN
19 EXCLUSIVE DEAL WITH, ON YOUR OWN, WITH, LET'S SAY, A TOY
20 COMPANY TO MAKE A FIGURE OF YOU, AND THAT CONFLICTED WITH AN
21 NFLPA PROGRAM, AND YOU GAVE NOTICE, THEN YOU COULD BE EXCLUDED.
22 THAT WAS YOUR UNDERSTANDING, RIGHT?

23 **A.** THAT WAS PART OF MY UNDERSTANDING.

24 **Q.** RIGHT. AND MY QUESTION WAS: YOU HAD NO INDIVIDUAL
25 ENDORSEMENT AGREEMENTS THAT YOU EVER NEGOTIATED FOR YOURSELF.

1 NONE.

2 **A.** I VIEWED THE --

3 **Q.** SIR, I'M NOT ASKING YOU --

4 **THE COURT:** HE'S ENTITLED TO GET A DIRECT ANSWER --

5 **THE WITNESS:** I AM SORRY, SIR.

6 **THE COURT:** -- TO THE QUESTION OF WHETHER OR NOT YOU

7 HAD ANY INDIVIDUAL ENDORSEMENT AGREEMENTS.

8 **THE WITNESS:** NO, I HAD NO INDIVIDUAL ENDORSEMENT

9 AGREEMENT.

10 **BY MR. KESSLER:**

11 **Q.** RIGHT. SO YOU DIDN'T HAVE THEM EXCLUSIVE OR

12 NON-EXCLUSIVE. YOU DIDN'T HAVE ANY, RIGHT?

13 **A.** I DON'T KNOW.

14 **Q.** NO, YOU KNOW WHAT AGREEMENTS YOU HAD INDIVIDUALLY.

15 **A.** RIGHT. I KNOW THAT.

16 **Q.** AND YOU HAD NONE.

17 **A.** I HAD NONE.

18 **Q.** THANK YOU. THAT WAS MY QUESTION, SIR.

19 NOW, FINALLY, SIR, I JUST WANT TO UNDERSTAND YOUR

20 POSITION WITH RESPECT TO EA, OKAY?

21 YOU KNOW IN THE EA GAME, AS WE DISCUSSED, THEY DON'T

22 USE YOUR NAME, AND THEY DON'T USE YOUR PICTURE, AND THEY DON'T

23 USE YOUR NUMBER SINCE 2003, CORRECT? YOU KNOW THAT?

24 **A.** YES.

25 **Q.** OKAY. IS IT YOUR BELIEF THAT THE NFLPA SHOULD HAVE GIVEN

1 AWAY YOUR NAME FOR FREE TO EA?

2 **A.** NO.

3 **MR. KESSLER:** THANK YOU, SIR.

4 I HAVE NO FURTHER QUESTIONS.

5 **THE COURT:** ALL RIGHT. WILL YOU FINISH THE REDIRECT
6 RIGHT NOW?

7 **MS. NAYLOR:** YOUR HONOR, WE HAVE NO REDIRECT.

8 **THE COURT:** THANK YOU.

9 **MS. NAYLOR:** YOU'RE WELCOME.

10 **THE COURT:** THEN, MAY THE WITNESS BE EXCUSED AND
11 DISCHARGED, NOT SUBJECT TO RECALL?

12 **MS. NAYLOR:** YES.

13 **MR. KESSLER:** NO, YOUR HONOR, NOT SUBJECT TO RECALL.

14 **THE COURT:** ALL RIGHT. MR. BEACH, YOU'RE FREE TO GO.
15 THANK YOU FOR COMING.

16 **THE WITNESS:** THANK YOU.

17 **THE COURT:** OKAY. CAN WE GET STARTED ON OUR NEXT
18 WITNESS BEFORE WE TAKE A BREAK? WE'RE GOING TO TAKE A BREAK IN
19 ABOUT 15 MINUTES.

20 **MR. HUMMEL:** YES, YOUR HONOR.

21 **THE COURT:** ALL RIGHT. SO CAN WE ALL GO ANOTHER 15
22 MINUTES?

23 (JURY RESPONDED AFFIRMATIVELY.)

24 **THE COURT:** EXCELLENT. WE WILL START WITH OUR NEXT
25 WITNESS.

1 **MR. HUMMEL:** YOUR HONOR, PLAINTIFFS CALL JOEL
2 LINZNER.

3 **THE COURT:** JOEL LINZNER.

4 **MR. HUMMEL:** FROM EA SPORTS.

5 **THE COURT:** ALL RIGHT. ARE YOU MR. LINZNER?

6 **THE WITNESS:** I AM, SIR.

7 **THE COURT:** WELCOME. PLEASE RAISE YOUR RIGHT HAND.
8 IF YOU STAND THERE THE CLERK WILL SWEAR YOU IN.

9 (THEREUPON, THE WITNESS WAS SWORN.)

10 **THE WITNESS:** YES, MA'AM.

11 **THE CLERK:** OKAY. THANK YOU. PLEASE BE SEATED.

12 PLEASE SAY THE YOUR FULL NAME FOR THE RECORD.

13 CAN YOU PLEASE STATE YOUR NAME FOR THE RECORD?

14 **THE WITNESS:** MY NAME IS JOEL LAURENCE,
15 L-A-U-R-E-N-C-E, LINZNER, L-I-N-Z-N-E-R.

16 **THE COURT:** ALL RIGHT. WE WOULD LIKE TO TAKE YOUR
17 PICTURE TO BE USED IN THE CLOSING ARGUMENTS. IS THAT OKAY?

18 **THE WITNESS:** IF THAT'S STANDARD PROCEDURE, THEN
19 SURE.

20 **THE COURT:** WELL, THAT'S WHAT WE DO WITH EVERYONE
21 ELSE.

22 **THE WITNESS:** OKAY.

23 **THE CLERK:** YOU CAN BE SEATED.

24 **THE WITNESS:** BE SEATED?

25 **THE COURT:** THIS IS SO THE JURY CAN BE REMINDED WHO

1 THE WITNESSES WERE IN THE CLOSING ARGUMENTS.

2 **THE CLERK:** OKAY. GOOD. THANK YOU.

3 **THE COURT:** ALL RIGHT. THANK YOU. I'LL ASK YOU TO
4 SPEAK INTO THE MIC SO THAT YOUR VOICE GETS PICKED UP ENOUGH SO
5 THAT EVERYONE ON THE JURY CAN HEAR.

6 AND GO RIGHT AHEAD, MR. HUMMEL.

7 **MR. HUMMEL:** THANK YOU VERY MUCH, YOUR HONOR.

8 **THE WITNESS:** I'M SORRY. MR. HUMMEL?

9 **JOEL LINZNER,**

10 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING BEEN
11 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

12 **DIRECT EXAMINATION**

13 BY MR. HUMMEL:

14 **Q.** CORRECT. MY NAME IS CHAD HUMMEL.

15 **A.** THANK YOU.

16 **Q.** I REPRESENT THE PLAINTIFFS IN THIS CASE, MR. LINZNER.

17 YOU AND I HAVE NEVER MET BEFORE, HAVE WE?

18 **A.** I DON'T RECALL MEETING YOU.

19 **Q.** WE HAVE NEVER SPOKEN?

20 **A.** NOT THAT I KNOW OF, NO.

21 **Q.** WE HAVEN'T WORKED TOGETHER IN ANY WAY TO PREPARE YOUR
22 TESTIMONY FOR THIS CASE, CORRECT?

23 **A.** NOT AT ALL.

24 **Q.** ALL RIGHT.

25 **THE COURT:** MR. LINZNER, MAY I ASK YOU TO MOVE THE

1 MIC? IT'S NOT CATCHING YOUR VOICE WELL ENOUGH.

2 THANK YOU.

3 **BY MR. HUMMEL::**

4 **Q.** MR. LINZNER, YOU WORK FOR WHAT COMPANY?

5 **A.** ELECTRONIC ARTS, INC.

6 **Q.** ELECTRONIC ARTS, INC.

7 IS THAT SOMETIMES KNOWN AS "EA"?

8 **A.** YES, IT IS.

9 **Q.** ALL RIGHT. NOW, YOU'RE NOT APPEARING HERE TODAY
10 VOLUNTARILY; IS THAT RIGHT?

11 **A.** WELL, I WAS SUBPOENAED, IF THAT'S WHAT YOU MEAN.

12 **Q.** RIGHT. WE'VE ISSUED A SUBPOENA FOR YOU TO COME AND
13 TESTIFY FOR THE JURY; IS THAT RIGHT?

14 **A.** I BELIEVE I WAS SUBPOENAED BY THE PLAINTIFFS, YES.

15 **Q.** AND A SUBPOENA IS, AS YOU UNDERSTAND IT -- YOU'RE A
16 LAWYER, RIGHT?

17 **A.** I AM.

18 **Q.** AND YOU GRADUATED FROM A LAW SCHOOL HERE IN THE BAY AREA?

19 **A.** BEST LAW SCHOOL IN THE BAY AREA.

20 **Q.** WHAT'S THAT ONE?

21 **A.** UNIVERSITY OF CALIFORNIA AT BERKELEY.

22 **Q.** THAT'S BOALT HALL?

23 **A.** YES, SIR.

24 **Q.** AND YOU PRACTICED LAW FOR A NUMBER OF YEARS AFTER YOU
25 GRADUATED, RIGHT?

1 A. YES, I DID.

2 Q. AND WERE YOU A LITIGATOR?

3 A. I WAS.

4 Q. DID YOU TRY CASES?

5 A. I DID.

6 Q. SO YOU UNDERSTAND THIS PROCESS PRETTY WELL.

7 A. VERY WELL.

8 Q. AND IN 1999, YOU LEFT THE PRACTICE OF LAW, RIGHT?

9 A. I DID.

10 Q. AND YOU JOINED WHAT COMPANY?

11 A. ELECTRONIC ARTS, INC.

12 Q. AND WHAT POSITION DID YOU ASSUME WHEN YOU JOINED -- IF I

13 SAY "EA" TODAY WILL YOU UNDERSTAND THAT WE'RE TALKING ABOUT THE

14 SAME COMPANY?

15 A. YES. I USUALLY REFER TO IT AS "EA" MYSELF.

16 Q. OKAY. LET'S CALL IT "EA", THEN, FOR SHORT.

17 YOU JOINED EA IN WHAT CAPACITY?

18 A. I JOINED AS VICE PRESIDENT OF WORLDWIDE BUSINESS AFFAIRS.

19 Q. ALL RIGHT. BUSINESS AFFAIRS. CAN YOU TELL THE LADIES AND

20 GENTLEMEN OF THE JURY AND THE COURT WHAT "BUSINESS AFFAIRS" IS?

21 A. WELL, CERTAINLY. IN DIFFERENT COMPANIES "BUSINESS

22 AFFAIRS" CAN MEAN DIFFERENT THINGS. BUT AT EA AT THE TIME THAT

23 I JOINED, THE RESPONSIBILITY FOR BUSINESS AFFAIRS INCLUDED THE

24 LICENSING END OF ALL OF THE CONTENT WE USED FOR OUR GAMES. SO,

25 FOR EXAMPLE, IF WE WANTED TO LICENSE IN THE JAMES BOND PROPERTY

1 TO MAKE JAMES BOND GAMES OR IF WE WANTED TO LICENSE IN MUSIC OR
2 IF WE WANTED TO LICENSE IN THE NFL OR PLAYERS INC RIGHTS, THAT
3 ALL FELL WITHIN THE AMBIT OF BUSINESS AFFAIRS, ALONG WITH SOME
4 OTHER RESPONSIBILITIES, WHICH I'M HAPPY TO GO INTO, IF YOU
5 LIKE.

6 Q. NO. YOUR JOB WAS ESSENTIALLY TO ACQUIRE CONTENT FOR USE
7 IN EA'S VIDEO GAMES; IS THAT RIGHT?

8 A. THAT WAS ONE OF THE FUNCTIONS OF BUSINESS AFFAIRS WAS THE
9 LICENSING CONTENT FOR USE IN OUR GAMES, YES.

10 Q. AND THAT'S WHAT WE'RE GOING TO BE TALKING ABOUT MOST OF
11 THE MORNING TODAY, ABOUT LICENSING, AND, IN PARTICULAR,
12 LICENSING RIGHTS FROM THE DEFENDANTS, PLAYERS INC AND THE
13 NFLPA, OKAY?

14 A. OKAY.

15 Q. NOW, ARE YOU AWARE, SIR, THAT PREVIOUSLY IN THIS CASE YOU
16 FILED A -- YOU SUBMITTED A DECLARATION?

17 A. I THINK I SUBMITTED TWO, BUT, YES.

18 Q. YOU SUBMITTED TWO. OKAY.

19 AND WHO ASKED YOU FOR THOSE DECLARATIONS?

20 A. THE DEFENDANTS.

21 Q. THE DEFENDANTS DID.

22 A. (NODS HEAD).

23 Q. THE UNION AND PA DID.

24 NOW, DID THEY PAY YOU FOR THAT?

25 A. NO.

1 Q. YOU DID THAT VOLUNTARILY?

2 A. WELL, THE ONE WAS AROUND A PROTECTIVE ORDER, WHICH WE
3 WANTED.

4 Q. I UNDERSTAND.

5 A. THERE WERE CERTAIN CONFIDENTIAL INFORMATION THAT HAD TO BE
6 COVERED WITHIN THE AMBIT OF THE COURT'S' PROTECTIVE ORDER.

7 Q. FAIR ENOUGH.

8 A. I SUBMITTED A DECLARATION ON THAT. AND THEN, I SUBMITTED
9 ANOTHER DECLARATION THAT HAD SEVERAL DOCUMENTS ATTACHED.

10 Q. AND THE PREVIOUS DECLARATION THAT YOU JUST REFERENCED WAS
11 SUBMITTED IN OCTOBER, 2007; IS THAT RIGHT?

12 A. I DON'T REMEMBER THE DATES, SIR.

13 MR. HUMMEL: YOUR HONOR, PERMISSION TO APPROACH TO
14 REFRESH RECOLLECTION.

15 THE COURT: FINE.

16 MR. HUMMEL: THANK YOU.

17 BY MR. HUMMEL::

18 Q. I'VE JUST HANDED YOU, MR. LINZNER, A COPY OF YOUR
19 DECLARATION YOU SUBMITTED IN THE CASE. CAN YOU LOOK ON THE
20 LAST PAGE AND SEE IF THAT REFRESHES YOUR RECOLLECTION AS TO
21 WHEN YOU SUBMITTED THAT DECLARATION?

22 A. WELL, IT DOESN'T REFRESH MY RECOLLECTION, BUT I SEE THE
23 DATE.

24 Q. COULD YOU READ THAT DATE FOR THE JURY, PLEASE?

25 A. OCTOBER 5, 2007.

1 Q. AND WHO APPROACHED YOU? WHO APPROACHED YOU TO PROVIDE
2 THAT DECLARATION?

3 A. WHO? YOU MEAN, THE NAME OF THE INDIVIDUAL?

4 Q. OR THE PARTY. WAS IT THE PLAINTIFFS?

5 A. NO. I SAID IT WAS THE DEFENDANT.

6 Q. RIGHT. SO YOU COOPERATED WITH THE DEFENDANT IN PROVIDING
7 A DECLARATION VOLUNTARILY IN THIS CASE; IS THAT RIGHT?

8 A. YES.

9 Q. OKAY. AND YOU CERTAINLY STAND BY, UNDER PENALTY OF
10 PERJURY, WHAT YOU WROTE IN THAT DECLARATION, RIGHT?

11 A. DO YOU WANT ME TO READ IT THROUGH AGAIN SO THAT I --
12 CERTAINLY AT THE TIME I SIGNED IT I BELIEVED IT WAS TRUE.

13 Q. OKAY. FAIR ENOUGH. THAT'S ALL I WANT TO KNOW.

14 NOW, DID YOU, IN CONNECTION WITH YOUR TESTIMONY HERE
15 TODAY, WORK WITH ANY OF THE DEFENDANTS' LAWYERS?

16 A. NO, SIR.

17 Q. NO? OKAY.

18 YOU DIDN'T MEET WITH ANY OF THEM ABOUT THE CASE?

19 A. NO, SIR.

20 Q. HAVE YOU EVER MET WITH ANY OF THEM ABOUT THE CASE?

21 A. I MET MR. FEHER AT MY DEPOSITION, BUT THAT'S THE ONLY
22 TIME, OTHER THAN GENE UPSHAW'S MEMORIAL, I THINK I'VE EVER SEEN
23 HIM.

24 Q. JUST SO WE'RE CLEAR, WITH RESPECT TO YOUR DECLARATION, WHO
25 WROTE IT?

1 **A.** AS I RECALL THE DECLARATION, THERE WAS A DRAFT THAT CAME
2 IN. WE HAVE A LAWYER THAT WORKS AT EA WHO HAD WORKED ON IT, AS
3 WELL. SUBMITTED IT TO ME. I HAD A LOT OF CHANGES I WANTED TO
4 MAKE TO MAKE SURE IT WAS ACCURATE, BASED ON MY KNOWLEDGE AND
5 UNDERSTANDING. MADE THE CHANGES.

6 **Q.** FAIR ENOUGH.

7 **A.** AND FINALIZED IT.

8 **Q.** WHEN THAT DRAFT CAME IN -- THAT'S AN INITIAL VERSION OF A
9 DECLARATION -- WHERE DID IT COME FROM?

10 **A.** WELL, I GOT IT THROUGH MY IN-HOUSE COUNSEL.

11 **Q.** DO YOU KNOW WHERE YOUR IN-HOUSE COUNSEL GOT IT?

12 **A.** I COULD MAKE CERTAIN ASSUMPTIONS, BUT I AM NOT SURE YOU
13 WANT ME TO DO THAT.

14 **Q.** NO.

15 DO YOU KNOW WITH WHETHER YOUR IN-HOUSE COUNSEL GOT IT
16 FROM THE DEFENDANTS' COUNSEL?

17 **A.** NO.

18 **Q.** YOU DON'T KNOW. OKAY.

19 DO YOU KNOW IF YOUR IN-HOUSE COUNSEL WROTE IT?

20 **A.** WELL, IT'S THE FLIP SIDE OF THE SAME QUESTION.

21 **Q.** YOU DON'T --

22 **A.** I'M NOT SURE IF HE WROTE IT.

23 **Q.** ALL RIGHT. WHAT IS THE BUSINESS OF EA?

24 **A.** EA -- EXCUSE ME. IS THERE SOME --

25 **THE COURT:** PLEASE HELP YOURSELF TO SOME WATER.

1 THERE SHOULD BE PLENTY OF IT IN THE PITCHER.

2 **THE WITNESS:** EA IS IN THE BUSINESS OF DEVELOPING,
3 PUBLISHING AND SELLING VIDEO GAMES, ONLINE GAMES AND
4 MERCHANDISING AROUND THOSE GAMES.

5 **BY MR. HUMMEL:**

6 **Q.** IS ONE OF THOSE GAMES THE MADDEN GAME?

7 **A.** MADDEN NFL GAME, YES.

8 **Q.** MADDEN NFL GAME. AND, IN FACT, THAT'S BEEN A VERY
9 SUCCESSFUL GAME FOR EA, CORRECT?

10 **A.** YES, OVER 20 YEARS.

11 **Q.** 20 YEARS. IN FACT, THE 2009 VERSION WAS THE 20TH
12 ANNIVERSARY EDITION, RIGHT?

13 **A.** IT'S THE 20TH OF THE MADDEN NFL SERIES, THAT'S CORRECT.

14 **Q.** RIGHT. AND YOU CHOSE TO PUT ON THE COVER OF THAT A
15 RETIRED PLAYER AT THE TIME, RIGHT?

16 **A.** UHM, WELL, BRETT FAVRE AT THE TIME WE DECIDED TO PUT HIM
17 ON THE COVER WAS NOT RETIRED, HAD NOT ANNOUNCED HIS RETIREMENT.

18 HE SUBSEQUENTLY ANNOUNCED HIS RETIREMENT. WE THOUGHT
19 ABOUT REPLACING HIM TO HAVE AN ACTIVE PLAYER. BUT THE
20 LOGISTICS OF MAKING THE PACKAGES ARE KIND OF COMPLICATED, AND
21 WE DECIDED TO STAY WITH BRETT FAVRE. AND I THINK AS MOST
22 PEOPLE SUBSEQUENTLY KNOW, HE REVOKED HIS RETIREMENT AND IS
23 CURRENTLY AN ACTIVE PLAYER WITH THE NEW YORK JETS.

24 **Q.** IS IT CORRECT THAT IN THE EA MADDEN GAME, EA STRIVES TO
25 PUT OUT AN AUTHENTIC FOOTBALL EXPERIENCE FOR VIDEO GAME

1 PLAYERS?

2 **A.** YES.

3 **Q.** AND, IN FACT, THE MADDEN GAME HAS BEEN SO SUCCESSFUL THAT
4 UPON THE RELEASE OF THE GAME THIS YEAR THERE WAS SOMETHING
5 CALLED "MADDEN PALOOZA," RIGHT?

6 **A.** WELL, WE PUT ON SOMETHING LIKE MADDEN PALOOZA THIS YEAR.
7 WE PUT ON OTHER EVENTS IN PAST YEARS. NOT BECAUSE THE GAME WAS
8 SO SUCCESSFUL, BUT TO TRY TO KEEP THE GAME SUCCESSFUL BY HAVING
9 A BIG PR LAUNCH EVENT SO THAT THE PUBLIC, AS A WHOLE,
10 CELEBRATES THE LAUNCH OF THE GAME AND LOOKS FORWARD TO ITS
11 RELEASE.

12 **Q.** ISN'T IT ALSO TRUE THAT THERE AS BEEN AN ENTIRE TELEVISION
13 PROGRAM CREATED AROUND THE MADDEN GAME?

14 **A.** ESPN HAS BEEN AIRING A SHOW CALLED "MADDEN CHALLENGE," I
15 THINK, FOR THE LAST THREE YEARS.

16 **Q.** IS IT CALLED "MADDEN NATION" OR "MADDEN CHALLENGE"?

17 **A.** MADDEN NATION. I'M SORRY.

18 **Q.** MADDEN NATION.

19 **A.** MADDEN NATION, YES. MADDEN CHALLENGE IS A SERIES OF
20 TOURNAMENTS THAT WE HOLD AT DIFFERENT CITIES AROUND THE
21 COUNTRY.

22 **Q.** SO THERE'S A BIG COMING-OUT PARTY, A TELEVISION PROGRAM,
23 AND A SERIES OF EVENTS AROUND THE COUNTRY TO LAUNCH THE GAME?

24 **A.** NO. THERE'S -- TWO OF THOSE ARE RIGHT. THERE'S A BIG
25 LAUNCH PARTY.

1 THE TELEVISION SHOW, MADDEN NATION, USUALLY FOLLOWS
2 THE LAUNCH BY SOME PERIOD OF TIME. AND THE MADDEN CHALLENGE,
3 WHICH IS A SERIES OF TOURNAMENTS, LIVE TOURNAMENTS, FOLLOWS THE
4 LAUNCH BY WEEKS, IF NOT MONTHS.

5 **Q.** AND THE MADDEN GAME OVER THE YEARS HAS BEEN A SIGNIFICANT
6 FINANCIAL SUCCESS FOR EA, CORRECT?

7 **A.** IT HAS BEEN A SUCCESSFUL GAME, YES, SIR.

8 **Q.** ALL RIGHT. NOW, THERE ARE VARIOUS FEATURES IN THE MADDEN
9 GAME. ONE OF THEM I'M GOING TO FOCUS ON THIS MORNING IS THE
10 VINTAGE OR HISTORIC TEAM FEATURE.

11 ARE YOU FAMILIAR WITH THAT?

12 **A.** I THINK THEY HAVE THAT -- I'M NOT TERRIBLY FAMILIAR WITH
13 THE FEATURES IN ALL OF THE VARIOUS ITERATIONS OF THE MADDEN NFL
14 GAME.

15 I'VE BEEN AT EA SINCE '99, SO THERE WOULD HAVE BEEN
16 TEN ITERATIONS OF THAT GAME. AND I AM NOT FAMILIAR WITH WHAT'S
17 IN EACH OF THOSE VERSIONS OF MADDEN NFL.

18 **Q.** AND I'M NOT ASKING THAT. WHAT I'M ASKING IS A SIMPLER
19 QUESTION, WHICH IS SORT OF 20,000-FOOT.

20 ARE YOU AWARE THAT THERE IS A FEATURE IN THE MADDEN
21 GAME THAT HAS HISTORIC TEAMS?

22 **A.** WELL, I KNOW IN SOME VERSIONS OF MADDEN WE HAVE HAD
23 HISTORIC TEAMS. I DON'T KNOW IF THAT'S IN EVERY VERSION OF
24 MADDEN.

25 **Q.** OKAY. AND CAN YOU DESCRIBE FOR THE JURY WHAT THE HISTORIC

1 TEAM FEATURE IS?

2 **A.** NOT VERY WELL. I KNOW -- AGAIN, IT'S DIFFERENT IN
3 DIFFERENT YEARS, MR. HUMMEL, SO I'M NOT SURE THAT ONE ANSWER
4 WILL -- YOU KNOW, WILL EXPLAIN THAT.

5 THE GAME GROWS AND CHANGES EVERY YEAR. THAT'S WHY WE
6 GET -- ARE ABLE TO GET PEOPLE TO BUY IT EVERY YEAR. THERE'S
7 DIFFERENT FEATURES IN IT FROM MADDEN '01, '02, '03 AND '04, ET
8 CETERA.

9 AND THEY DON'T HAVE THE SAME FEATURES IN EVERY YEAR.
10 AND EVEN WHEN THEY HAVE FEATURES THAT ARE COMPARABLE, THEY'RE
11 DIFFERENT. SO I CAN'T -- I DON'T KNOW HOW TO ANSWER YOUR
12 QUESTION.

13 **Q.** I'M ONLY FOCUSING ON THE HISTORIC GAME FEATURE. ARE YOU
14 AWARE THAT THAT EXISTED IN SOME VERSIONS OF THE MADDEN GAME
15 OVER THE YEARS?

16 **A.** YES, SIR.

17 **Q.** AND IS THAT A FEATURE BY WHICH A GAME PLAYER COULD CHOOSE,
18 FOR EXAMPLE, TO BE THE 1989 49ERS, AND AN OPPONENT COULD BE THE
19 1985 BEARS OR THE 1965 BROWNS?

20 **A.** AS FAR AS I'M AWARE THERE WERE SOME VERSIONS OF THE GAME
21 IN THE EARLY 21ST CENTURY, LIKE 2001 VERSION, 2002, WHERE THE
22 KIND OF FEATURE YOU DESCRIBED WAS AVAILABLE.

23 **Q.** ALL RIGHT. LET ME SHOW YOU WHAT --

24 **MR. HUMMEL:** YOUR HONOR, I BELIEVE IS STIPULATED INTO
25 EVIDENCE AS EXHIBIT 1239.

1 BY MR. HUMMEL::

2

3 MR. HUMMEL:

4 Q. YOU ACTUALLY HAVE A STACK IN FRONT OF YOU.

5 A. 1239?

6 Q. 1239.

7 MR. HUMMEL: IF I COULD HAVE -- 1239, YOUR HONOR, I
8 BELIEVE WAS STIPULATED IN.

9 MR. FEHER: NO OBJECTION.

10 THE COURT: 1239 IS RECEIVED.

11 (TRIAL EXHIBIT 1239 RECEIVED IN EVIDENCE)

12 MR. HUMMEL:

13 Q. ALL RIGHT. MR. LINZNER, I'M NOT ASKING YOU IF YOU'VE SEEN
14 THIS DOCUMENT BEFORE. I TRUST YOU HAVE NOT.

15 BUT WE'VE ACTUALLY DONE A STUDY OF THE HISTORIC TEAMS
16 THAT APPEAR IN VARIOUS VERSIONS OF THE MADDEN GAME.

17 AND IF YOU COULD, FOR EXAMPLE, IN THE '03 MADDEN
18 GAME, THOSE ARE THE TEAMS AND THE YEARS THAT THEY APPEARED.

19 DO YOU HAVE ANY REASON TO DOUBT THAT THOSE HISTORIC
20 TEAMS APPEAR IN THAT VERSION?

21 A. I DON'T KNOW ONE WAY OR ANOTHER WHETHER THESE TEAMS
22 APPEAR.

23 Q. WHO AT EA IS IN CHARGE OF DECIDING WHAT HISTORIC TEAMS GO
24 IN THE GAME?

25 A. WELL, IT'S ACTUALLY A TEAM DECISION. THE TEAM THAT

1 BUILDS, DEVELOPS THE MADDEN NFL GAME IS BASED IN ORLANDO,
2 FLORIDA, A STUDIO THAT WE CALL TIBURON. AND THEY HAVE BEEN
3 BUILDING THE MADDEN NFL GAME FOR THE ENTIRETY OF MY CAREER AT
4 EA.

5 AND THE IDENTITY OF MEMBERS OF THAT TEAM, THE
6 PRODUCERS, THE EXECUTIVE PRODUCER CHANGES OVER TIME. AND EVERY
7 YEAR THE PEOPLE THAT MAKE THE GAME AND THE PEOPLE THAT MARKET
8 THE GAME DECIDE WHAT TO DO TO MAKE NEXT YEAR'S ITERATION OF THE
9 GAME DIFFERENT THAN THE PRIOR YEAR'S ITERATION OF THE GAME.

10 AND THOSE ARE THE PEOPLE WHO ARE BEST -- WOULD HAVE
11 BEEN BEST ABLE TO ANSWER QUESTIONS ABOUT WHETHER THE 1989 49ERS
12 WERE IN MADDEN NFL '03.

13 I'M SURE YOU HAD AN OPPORTUNITY TO DEPOSE THEM,
14 SUBPOENA THEM, IF IT WAS IMPORTANT.

15 **Q.** AND ONE OF THOSE MEN IS JEREMY STRAUSSER; IS THAT RIGHT?

16 **A.** JEREMY STRAUSSER IS A PRODUCER AT TIBURON AND HAS BEEN
17 WITH THE COMPANY AS FAR AS -- I THINK AS LONG AS I HAVE, AT
18 LEAST.

19 **Q.** AND IS HE ONE OF THE PEOPLE THAT'S RESPONSIBLE FOR THIS
20 DECISION?

21 **A.** WELL, AGAIN, OVER THE TEN YEARS HIS RESPONSIBILITIES HAVE
22 CHANGED. THERE WOULD HAVE BEEN TIMES WHEN JEREMY WAS A
23 PRODUCER FOR THE MADDEN NFL GAME. I THINK MOST RECENTLY HE
24 WORKED ON THE HEAD COACH GAME, HEAD COACH, NFL HEAD COACH.

25 **Q.** SO TELL ME HOW THIS WORKS. SO YOU'VE GOT A GUY IN FLORIDA

1 WHO'S DECIDING WHAT FEATURES HE WANTS IN A PARTICULAR YEAR FOR
2 THE GAME, RIGHT?

3 **A.** WELL, NO, THAT'S NOT RIGHT.

4 **Q.** OR A TEAM?

5 **A.** THERE AS 'S A TEAM.

6 **Q.** A TEAM. FINE. THERE'S A TEAM IN FLORIDA THAT'S DECIDING
7 WHAT FEATURES THEY WANT IN A GAME FOR A PARTICULAR YEAR, RIGHT?

8 **A.** YES.

9 **Q.** AND THEN, THEY COME TO YOU AND THEY SAY:

10 "WE NEED TO GET -- WE NEED TO ACQUIRE THE RIGHTS.
11 YOU, HEAD OF BUSINESS AFFAIRS, AS A LAWYER, GO GET US THE
12 RIGHTS TO USE THIS STUFF," RIGHT?

13 THAT'S HOW IT WORKS?

14 **A.** WELL, IF THEY FEEL THEY NEED ADDITIONAL RIGHTS THEY COME
15 TO US AND ASK THE BUSINESS AFFAIRS GROUP TO GO OUT AND
16 NEGOTIATE FOR THE RIGHT TO USE WHATEVER ADDITIONAL PROPERTIES
17 THEY WANT FOR THAT YEAR'S ITERATION OF THE GAME.

18 **Q.** OKAY. SO IF YOU COULD TURN TO THE LAST PAGE OF THIS
19 EXHIBIT, NUMBER 1239, PLEASE?

20 **MR. HUMMEL:** AND BLOW THAT UP.

21 **MR. HUMMEL:**

22 **Q.** AGAIN, THIS IS A STUDY -- IT'S NOT IN DISPUTE IN THE
23 CASE -- THE HISTORIC NFL TEAMS FEATURED IN THE 2007 MADDEN
24 VERSION.

25 AND THIS HAPPENS TO BE FOR THE XBOX PLATFORM, ALL

1 RIGHT? YOU HAVE NO REASON TO DISPUTE THIS. AND IT'S AGREED BY
2 THE PARTIES, OKAY?

3 **THE COURT:** LET'S MAKE SURE. IS IT AGREED BY THE
4 PARTIES?

5 **MR. KESSLER:** YOUR HONOR, WE STIPULATED TO THE
6 ADMISSIBILITY OF THIS EXHIBIT. WHAT MR. HUMMEL SAYS ABOUT THE
7 EXHIBIT IS OBVIOUSLY NOT STIPULATED TO. BUT THE EXHIBIT
8 ITSELF, WE AGREE, IS IN EVIDENCE.

9 **MR. HUMMEL:** THE STIPULATION IS THAT IT'S AN ACCURATE
10 SUMMARY OF WHAT'S IN THE GAME, YOUR HONOR. THAT'S WHY IT CAME
11 IN.

12 **THE COURT:** READ ME THE SIGNED STIPULATION.

13 **MR. HUMMEL:** THERE IS NO SIGNED STIPULATION, YOUR
14 HONOR. WE HAD THIS DEBATE AT THE MOTION IN LIMINE STAGE.

15 **THE COURT:** MR. KESSLER, STATE WHAT IT IS THAT IS THE
16 STIPULATION.

17 **MR. KESSLER:** WE AGREED THIS COULD BE ADMITTED AS A
18 COMPILATION EXHIBIT WITHOUT OBJECTION TO US. THAT WAS THE
19 AGREEMENT.

20 **THE COURT:** WELL, FOR THE MOMENT, I WILL ADVISE THE
21 JURY THAT WHAT MR. HUMMEL HAS SAID IS NOT EVIDENCE. THE ONLY
22 STIPULATION THAT I KNOW OF IS WHAT MR. KESSLER JUST SAID.

23 NOW, IF THERE'S MORE SOMEWHERE ON THE RECORD THAT I
24 DON'T REMEMBER, WE'LL DEAL WITH THAT LATER. BUT THIS FALLS
25 INTO THE CATEGORY OF THE LAWYER TESTIFYING AGAIN. I'M NOT

1 SAYING MR. HUMMEL HAS DONE ANYTHING WRONG. BUT WE HAVE TO
2 SORT -- WE -- I CANNOT MAKE ANYONE STIPULATE TO ANYTHING THEY
3 DON'T WANT TO STIPULATE TO.

4 SO RIGHT NOW THIS IS A DOCUMENT THAT IS IN EVIDENCE,
5 AND YOU'RE ENTITLED TO CONSIDER IT. BUT THERE HAS BEEN NO
6 TESTIMONY GIVEN TO YOU ABOUT THE MANNER OF ITS COMPILATION OR
7 WHO DID WHAT, OR WHETHER THE INFORMATION IN THERE IS ACCURATE.

8 IT IS TRUE THAT MR. KESSLER STIPULATED THAT THIS
9 COULD GO INTO EVIDENCE.

10 AND I ASK THE PLAINTIFFS' COUNSEL IF YOU THINK YOU
11 NEED TO BRING A WITNESS TO EXPLAIN WHAT IT -- HOW IT WAS
12 COMPILED, YOU'RE FREE TO DO THAT.

13 **MR. HUMMEL:** WE MAY NOW DO THAT, YOUR HONOR.

14 **THE COURT:** BUT I CANNOT REQUIRE SOMEBODY TO
15 STIPULATE TO SOMETHING THEY DON'T WANT TO STIPULATE TO.

16 **MR. HUMMEL:** ALL RIGHT.

17 **MR. HUMMEL:**

18 **Q.** NOW, MR. LINZNER --

19 **A.** YES, SIR.

20 **Q.** -- YOU'VE NEVER SEEN THIS BEFORE, RIGHT?

21 **A.** CORRECT.

22 **Q.** BUT IF YOU FOCUS ON THE UPPER RIGHT-HAND CORNER OF WHAT'S
23 UP ON THE CHART HERE WHERE IT SAYS --

24 **A.** SAME AS WHAT'S HERE, RIGHT?

25 **Q.** RIGHT. YOU HAVE ONE TO LOOK AT THAT'S LIVE. IT SAYS

1 "XBOX." DO YOU SEE THAT?

2 **A.** I DO.

3 **Q.** IS THAT ONE OF THE PLATFORMS FOR WHICH EA MANUFACTURES
4 VIDEO GAMES?

5 **A.** IN 2006, WHICH IS THE DATE THAT MADDEN NFL '07 WOULD HAVE
6 BEEN RELEASED. XBOX WAS A PLATFORM WHICH WE WERE MAKING GAMES
7 FOR.

8 **Q.** AND YOU MAKE GAMES FOR OTHER PLATFORMS LIKE PLAYSTATION,
9 RIGHT?

10 **A.** WELL, WE -- IF YOU GO BACK IN THE 2000 TO 2005 TIME FRAME
11 WE MADE THEM FOR THE PLAYSTATION AND SUBSEQUENTLY THE
12 PLAYSTATION 2 AND NOW THE PLAYSTATION 3.

13 **Q.** RIGHT. AND ANOTHER PLATFORM IS A PC, RIGHT?

14 **A.** PC IS A PERSONAL COMPUTER, AND IN THE PAST WE HAVE MADE
15 MADDEN NFL FOR THE PERSONAL COMPUTER.

16 **Q.** AND THERE WAS ANOTHER IN THE PAST PLATFORM CALLED THE
17 "GAMECUBE," MADE BY NINTENDO, RIGHT?

18 **A.** THAT'S CORRECT.

19 **Q.** AND THERE WAS ANOTHER PLATFORM MORE RECENT CALLED "THE
20 WII," W-I-I?

21 **A.** YES, THAT'S CORRECT.

22 **Q.** AND THAT'S ALSO A NINTENDO PRODUCT?

23 **A.** THAT IS A NINTENDO PLATFORM, YES, VERY SUCCESSFUL.

24 **Q.** AND YOU MAKE MADDEN ALSO FOR SOMETHING CALLED THE "PSP,"
25 RIGHT?

1 **A.** I DON'T KNOW IF WE DID THAT THIS YEAR, BUT WE HAVE DONE
2 THAT IN YEARS PAST, YES.

3 **Q.** AND THE PSP IS MADE BY SONY, AND IT'S A PORTABLE PLATFORM,
4 RIGHT?

5 **A.** "PSP" STANDS FOR "PLAYSTATION PORTABLE."

6 **Q.** PORTABLE. OKAY. THANKS.

7 SO ALL OF THESE PLATFORMS OVER TIME HAVE BEEN
8 UTILIZED BY EA IN TERMS OF MAKING THE MADDEN GAME FOR THEM,
9 RIGHT?

10 **A.** YEAH. WE ARE -- TECHNICALLY, WE'RE THE LICENSEES OF SONY
11 OR NINTENDO OR MICROSOFT, AND WE LICENSE IN THEIR TECHNOLOGY
12 AND THEIR TRADEMARKS, JUST LIKE WE LICENSE IN THE RIGHTS OF THE
13 NFL AND PLAYERS INC, AND WE MAKE THE GAME THAT WE THEN PUBLISH
14 ON THE THEIR PARTICULAR PLATFORMS.

15 **Q.** OKAY. AND I THINK YOU SAID THAT A NEW EDITION OF MADDEN
16 COMES OUT EVERY YEAR FOR 20 YEARS; IS THAT RIGHT?

17 **A.** WELL, CERTAINLY, THAT'S FOR THE LAST TEN YEARS. I'M NOT
18 EXACTLY SURE THE SCHEDULE. I THINK THERE WAS ONE YEAR IN THE
19 FIRST TEN YEARS WHERE WE WERE LATE.

20 SO IT WOULDN'T -- YOU KNOW, TECHNICALLY WHAT WOULD
21 HAVE HAPPENED WAS THERE WOULD HAVE BEEN TWO IN ONE CALENDAR
22 YEAR.

23 **Q.** ALL RIGHT. AND FOR EACH OF THOSE YEARS, THE MADDEN GAME
24 FEATURES THE ACTIVE -- THE THEN CURRENT NFL TEAMS, RIGHT?
25 THAT'S THE IDEA?

1 **A.** YEAH. EVERY YEAR OF THE MADDEN GAME WE UPDATE THE ROSTERS
2 TO REFLECT AS CLOSELY AS WE CAN THE ROSTERS OF EACH NFL TEAM AS
3 OF THE DATE WE LOCKED THE GAME.

4 **Q.** RIGHT.

5 **A.** WE LOCK THE GAME BEFORE THE SEASON STARTS, SO YOU CAN'T BE
6 SURE OF THE FINAL ROSTERS, BUT WE DO OUR BEST.

7 **Q.** SO IF A PLAYER IS TRADED, FOR EXAMPLE, DURING THE SEASON,
8 THAT PLAYER WILL STILL SHOW UP ON HIS OLD TEAM IN THAT LOCKED
9 VERSION, RIGHT?

10 **A.** AS IT'S WRITTEN ON THE CODE, YES. I MEAN, THESE DAYS
11 BECAUSE A LOT OF THE GAMES CAN CONNECT ONLINE, YOU CAN ACTUALLY
12 SHOW THE PLAYER ON HIS NEW TEAM IN HIS NEW UNIFORM, IF THE
13 USER, THE CONSUMER OF THE GAME HAS CONNECTED TO THE PROPRIETARY
14 NETWORKS OF THE CONSOLE COMPANY.

15 **Q.** AND THAT'S BECAUSE YOU WANT TO MAKE THE GAME AS AUTHENTIC
16 AS POSSIBLE FOR THE PLAYERS, RIGHT?

17 **A.** FOR THE CONSUMER.

18 **Q.** RIGHT.

19 **A.** YES, WE TRY TO MAKE THE GAME AUTHENTIC.

20 **Q.** NOW, FOR THOSE VERSIONS OF THE MADDEN GAME THAT HAD
21 HISTORIC TEAMS -- AND HERE'S ONE IN MADDEN '07 WHICH, AS YOU
22 SAID, WAS RELEASED IN '06 -- WAS IT THE GOAL OF EA TO MAKE
23 THOSE HISTORIC TEAMS AUTHENTIC?

24 **A.** I DON'T KNOW. I DIDN'T KNOW THAT WE HAD THESE -- THE
25 REPRESENTATION IS ALL THESE TEAMS FOR THESE DATES ARE IN MADDEN

1 NFL '07, AND I DON'T KNOW THAT. I HAVE NEVER PLAYED MADDEN NFL
2 '07.

3 Q. YOU NEVER PLAYED IT?

4 A. NO. I'M OF AN AGE WHERE VIDEO GAMES WEREN'T PART OF MY
5 ENTERTAINMENT PORTFOLIO, AND I NEVER REALLY LEARNED TO PLAY
6 THEM. THEY ARE HARD TO PLAY.

7 Q. DO YOU HAVE KIDS?

8 A. I DO.

9 Q. DO THE KIDS PLAY?

10 A. MY SON USED TO PLAY WHEN HE WAS IN HIGH SCHOOL, BUT HE'S
11 25 NOW. HE DOESN'T LIVE AT HOME.

12 Q. IN YOUR VIEW, WOULD EA PUT OUT A PRODUCT FOR A FEATURE IN
13 THE MADDEN GAME THAT WAS DESIGNED TO BE INAUTHENTIC?

14 A. DESIGNED TO BE -- YOU KNOW, WE TRY TO BE AUTHENTIC WITHIN
15 THE GRANT OF RIGHTS THAT WE RECEIVE. NOW, WHEN WE SAY
16 "AUTHENTIC" NONE OF THESE THINGS -- THESE ARE VIRTUAL
17 EXPERIENCES. THEY ARE NOT -- THEY'RE NOT REAL. AND WE
18 SOMETIMES TWEAK THE GAME PLAY TO MAKE IT MORE FUN, IN ADDITION
19 TO TRY AND HAVE ALL OF THE REAL TEAMS AND LOGOS AND PLAYERS.

20 Q. BUT YOU ARE --

21 **MR. HUMMEL:** AND, YOUR HONOR, MAYBE THIS IS THE LAST
22 QUESTION BEFORE THE BREAK OR LAST TWO, AND THEN I'LL MOVE TO
23 ANOTHER TOPIC.

24 **BY MR. HUMMEL:**

25 Q. YOU ARE AWARE THAT THE MADDEN GAME FROM TIME TO TIME IN

1 THE 2000'S HAD HISTORIC TEAMS, CORRECT?

2 **A.** YES.

3 **Q.** AND YOU ARE AWARE THAT THOSE HISTORIC TEAMS ATTEMPTED TO
4 SIMULATE FOOTBALL PLAY OF THOSE HISTORIC TEAMS IN A VIDEO GAME
5 CONCEPT, CORRECT?

6 **A.** UHM, TO SOME DEGREE. I MEAN, I KNOW AT LEAST THE TIME
7 WHEN I WAS JUST STARTING AT EA AND I WAS A LITTLE MORE FAMILIAR
8 WITH WHAT WE WERE -- IN DOING THE MADDEN NFL GAMES, BECAUSE
9 THAT WAS MY SOLE RESPONSIBILITY, UNLIKE TODAY.

10 YOU KNOW, I KNOW THAT WE, YOU KNOW, TRIED FOR SOME OF
11 THESE HISTORIC TEAMS -- AND YOU MENTIONED THE 49ERS IN 1989,
12 BECAUSE I'M A 49ERS FAN THAT RINGS TRUE TO ME -- THAT WE TRIED
13 TO LICENSE CERTAIN PLAYERS FROM THAT TEAM, EVEN THOUGH THEY ARE
14 NO LONGER ACTIVE IN THE NFL.

15 AND WE WERE SUCCESSFUL IN GETTING THE RIGHTS TO
16 CERTAIN PLAYERS. LIKE, I HAPPEN TO JUST RECALL HARRIS BARTON,
17 BECAUSE I WAS ABLE TO MEET HARRIS BARTON AT ONE TIME, AND WAS
18 VERY IMPRESSED BY HIM.

19 BUT WE WEREN'T ABLE AND DIDN'T ATTEMPT TO LICENSE ALL
20 OF THE PLAYERS FROM THAT TEAM. SO WE KNEW THAT, YOU KNOW, YOU
21 CAN'T -- YOU COULDN'T GET THE RIGHTS TO EVERYBODY, OR AT LEAST
22 WE DIDN'T THINK WE COULD GET THE RIGHTS TO EVERYBODY. AND WE
23 TRIED TO GET THE RIGHTS TO PLAYERS THAT WERE SORT OF MORE
24 NOTEWORTHY.

25 **MR. HUMMEL:** THIS IS A GOOD TIME FOR A BREAK, YOUR

1 HONOR.

2 **THE COURT:** PLEASE REMEMBER THE ADMONITION. WE'LL
3 TAKE A 15-MINUTE RECESS.

4 **THE WITNESS:** 15 MINUTES, YOUR HONOR?

5 **THE COURT:** YES.

6 **THE CLERK:** ALL RISE.

7 (THEREUPON, THE JURY LEFT THE COURTROOM.)

8 **THE COURT:** ONE MOMENT, MR. LINZNER.

9 WOULD YOU MIND GETTING THE DOOR, MR. LINZNER?

10 WE HAVE A GROUND RULE THAT WHILE THE WITNESS IS ON
11 THE STAND THERE IS NO TALKING TO THE LAWYERS BY THE WITNESS.

12 **THE WITNESS:** SURE.

13 **THE COURT:** ALL RIGHT. WE'LL SEE YOU BACK HERE IN 15
14 MINUTES.

15 **MR. HUMMEL:** YOUR HONOR, COULD I RAISE ONE THING,
16 VERY BRIEFLY? THE FOUNDATION -- AND WE WANT TO AVOID CALLING
17 MR. RHEE TO TESTIFY ABOUT THIS. BUT BY STIPULATING TO THE
18 ADMISSIBILITY OF THE SUMMARY, THE DEFENDANTS ARE STIPULATING
19 UNDER THE CASE LAW IN WEINSTEIN'S EVIDENCE -- AND I CAN CITE
20 YOUR HONOR TO CHAPTER AND VERSE -- THAT THE SUMMARY ACCURATELY
21 REFLECTS THE UNDERLYING DOCUMENTS.

22 THERE IS NO DISPUTE ABOUT THAT.

23 FOR MR. KESSLER TO HAVE DONE THAT WAS UNFAIR, QUITE
24 HONESTLY. AND IF I HAD KNOWN THAT THERE WAS -- WELL, YOU CAN
25 SHRUG ALL YOU WANT. IT WAS UNFAIR.

1 **THE COURT:** LOOK, I'M GOING TO LET YOU CALL MR. RHEE.
2 IS THAT HIS NAME?

3 **MR. HUMMEL:** YES.

4 **THE COURT:** YOU CAN CALL HIM AND GO THROUGH IT, IF
5 YOU WANT. YOU'RE PROBABLY RIGHT. BUT THIS WAS NOT PART OF THE
6 STIPULATION, AND I DO NOT GET INTO THE BUSINESS OF CONSTRUING
7 STIPULATIONS. I'VE LEARNED THE HARD WAY YOU CAN'T DO THAT.

8 SO YOU SHOULD HAVE WORKED THIS OUT BETTER BEFOREHAND.

9 **MR. KESSLER:** WHAT'S IRONIC, YOUR HONOR, IS WE MADE A
10 DIFFERENT AGREEMENT ABOUT THE OTHER COMPILATION, WHICH WAS THE
11 SUBJECT OF THE RHEE POSSIBLE TESTIMONY.

12 THEY NEVER EVEN ASKED FOR ANYTHING ON THIS ONE, OTHER
13 THAN THAT WE AGREE IT'S ADMISSIBLE, WHICH WE DID.

14 SO FOR HIM TO SAY IT'S UNFAIR -- AND, MR. HUMMEL, YOU
15 DIDN'T HAVE THE DISCUSSIONS WITH US. SO IT'S UNFAIR FOR YOU TO
16 MISCHARACTERIZE WHAT WE DISCUSSED ABOUT THIS.

17 **THE COURT:** YOU TWO DON'T GET INTO AN ARGUMENT. IN
18 TRIAL, THE LAWYERS ARE NEVER SUPPOSED TO TALK TO EACH OTHER
19 WHILE THE TRIAL IS UNDERWAY. NEVER. YOU ONLY ADDRESS THE
20 COURT AND THE JURY.

21 **MR. KESSLER:** I'M SORRY, YOUR HONOR. I APOLOGIZE.

22 **THE COURT:** BECAUSE, OTHERWISE, YOU GET INTO
23 FISTFIGHTS.

24 **MR. PARCHER:** THAT'S RIGHT. THAT'S RIGHT, YOUR
25 HONOR.

1 **MR. KESSLER:** NEVER HAPPENED.

2 **THE COURT:** OUTSIDE OF COURT YOU CAN BE CORDIAL AND
3 HAVE A DRINK AND STIPULATE AND HAVE A FISTFIGHT, IF YOU WANT.
4 BUT IN COURT -- SO THE SOLUTION IS --

5 **MR. HUMMEL:** CAN I ASK --

6 **THE COURT:** YOU MAY ASK ALL THE QUESTIONS YOU WANT
7 BECAUSE I HAVE NO DOUBT MR. RHEE WILL COME IN AND LAY THE
8 FOUNDATION.

9 **MR. HUMMEL:** RIGHT.

10 **THE COURT:** I'M NOT ASSUMING THAT IT'S ALL TRUE, BUT
11 YOU CAN CONNECT IT UP LATER.

12 YOUR WITNESS, YOUR FOUNDATIONAL WITNESS CAN BE
13 BROUGHT IN TO SOME SOLVE THIS PROBLEM.

14 **MR. HUMMEL:** YOUR HONOR, MAY I ASK ON THE RECORD FOR
15 A STIPULATION THAT THE EXHIBIT I JUST SHOWED ACCURATELY
16 REFLECTS THE UNDERLYING DOCUMENTS?

17 **THE COURT:** ALL RIGHT.

18 MR. KESSLER, WILL YOU SO STIPULATE?

19 **MR. KESSLER:** HERE'S THE ISSUE. I DON'T THINK I
20 COULD SO STIPULATE. WE ARE NOT CHALLENGING THE ACCURACY OF IT,
21 SO WE'RE NOT OBJECTING TO ADMISSIBILITY. BUT WE HAVEN'T
22 FRANKLY TAKEN THE TIME TO EXAMINE THESE HUNDREDS OF DIFFERENT
23 REFERENCES THEY MAKE TO -- IN OTHER WORDS, WE'RE NOT
24 CHALLENGING IT. BUT WE CAN'T VERIFY IT, EITHER. THAT'S -- AND
25 WE SHOULDN'T BE REQUIRED TO VERIFY IT, BECAUSE IT'S NOT

1 IMPORTANT TO OUR CASE. WE DON'T WANT TO DO THAT WORK TO VERIFY
2 IT.

3 SO WE AGREED NOT TO CHALLENGE ITS ADMISSIBILITY. AND
4 I'M NOT OBJECTING TO FOUNDATION. HE CAN ASK THE WITNESS
5 WHATEVER QUESTIONS HE WANTS. BUT THIS WITNESS CAN'T PROVE UP
6 ITS ACCURACY, AND WE'RE NOT --

7 **THE COURT:** I THINK IT WOULD ACTUALLY BE BETTER FOR
8 THE JURY TO UNDERSTAND WHAT THIS IS. WHETHER YOU BRING IN THE
9 GUY WHO PREPARED IT -- AND YOU CAN DO IT IN FIVE MINUTES. YOU
10 COULD HAVE HIM ON AND OFF THE STAND.

11 **MR. HUMMEL:** I'LL DO IT, YOUR HONOR.

12 **THE COURT:** I THINK THAT'S -- BECAUSE, OTHERWISE,
13 YOU'RE JUST THROWING THIS ON THE LAP OF THE JURY. AND I TOLD
14 THEM SO MANY TIMES WHAT THE LAWYERS SAY IS NOT EVIDENCE. IT'S
15 BETTER OFF IF THEY UNDERSTAND AT LEAST A FIVE-MINUTE DIRECT HOW
16 IT WAS PREPARED.

17 **MR. HUMMEL:** OKAY. THANK YOU, YOUR HONOR.

18 **THE COURT:** THANK YOU.

19 TAKE 15 MINUTES.

20 (RECESS TAKEN FROM 9:30 TO 9:48 A.M.)

21 **THE COURT:** DAWN, WE'RE ALL SET. PLEASE BRING IN THE
22 JURY.

23 (THEREUPON, THE JURY RETURNED TO THE COURTROOM.)

24 **THE COURT:** WELCOME BACK. HAVE A SEAT.

25 **MR. HUMMEL,** YOU MAY CONTINUE.

1 **MR. HUMMEL:** YES. THANK YOU VERY MUCH, LADIES AND
2 GENTLEMEN OF THE JURY.

3 WOULD YOU GIVE ME THAT SCREEN SHOT, PLEASE?

4 (DOCUMENT DISPLAYED.)

5 **BY MR. HUMMEL:**

6 **Q.** MR. LINZNER, RIGHT BEFORE THE BREAK YOU TESTIFIED THAT YOU
7 WERE AWARE THAT FOR VERSIONS OF THE MADDEN GAME, YOU IN THE
8 BUSINESS AFFAIRS GROUP, ACQUIRED THE RIGHTS FOR ACTIVE PLAYERS,
9 CORRECT? ACTIVE NFL PLAYERS?

10 **A.** YES.

11 **Q.** AND YOU ACQUIRED THOSE ACTIVE RIGHTS AS A GROUP, CORRECT?

12 **A.** CORRECT. FOR ACTIVE NFL PLAYERS, THAT'S CORRECT.

13 **Q.** YOU ACQUIRED THOSE AS A GROUP, CORRECT?

14 **A.** YES. THAT WAS WHAT OUR LICENSE WAS.

15 **Q.** OKAY. AND FOR THE SAME VERSIONS OF THE GAME YOU ALSO
16 ACQUIRED THE RIGHTS TO RETIRED PLAYERS, CORRECT?

17 **A.** WELL, TO THE BEST OF MY KNOWLEDGE. FOR SOME VERSIONS OF
18 THE GAME, THAT'S CORRECT.

19 **Q.** THAT'S CORRECT. SO FOR THOSE VERSIONS OF THE GAME, THAT
20 WAS A PRODUCT THAT UTILIZED MORE THAN SIX PRESENT AND FORMER
21 PLAYERS, CORRECT?

22 **A.** WELL, THERE'S CERTAINLY MORE THAN SIX CURRENT PLAYERS.

23 **Q.** RIGHT.

24 **A.** AND IT'S HARD TO HAVE A TEAM WITH ONLY SIX PLAYERS. SO
25 YOU NEED MORE THAN SIX PLAYERS.

1 Q. RIGHT. SO MY QUESTION IS: IS THE MADDEN VIDEO GAME A
2 PRODUCT THAT UTILIZED SIX OR MORE PRESENT OR FORMER PLAYERS
3 WHERE YOU ACQUIRED THE RIGHTS TO THOSE RETIRED PLAYERS?

4 A. WELL, CERTAINLY, EVERY VERSION OF THE GAME USES MORE THAN
5 SIX THEN CURRENT NFL PLAYERS.

6 Q. RIGHT.

7 A. I TOLD YOU BEFORE I'M NOT SURE IF RETIRED PLAYERS WERE IN
8 EVERY VERSION OF THE GAME. SO -- BECAUSE I DON'T KNOW THAT, I
9 CAN'T ANSWER WHETHER THERE'S MORE THAN SIX RETIRED PLAYERS IN
10 THAT VERSION OF THE GAME.

11 Q. THAT'S NOT --

12 A. BUT TO FINISH THE THOUGHT, I'M AWARE THAT THERE ARE MORE
13 THAN SIX RETIRED PLAYERS IN VARIOUS VERSIONS OF THE GAME.

14 Q. RIGHT. IN THOSE VERSIONS THAT HAVE MORE THAN SIX RETIRED
15 PLAYERS, OKAY? THOSE ARE THE VERSIONS I'M TALKING ABOUT, WHERE
16 YOU KNOW THAT HAPPENED.

17 A. YES, SIR.

18 Q. IS IT TRUE THAT FOR THOSE GAMES EA UTILIZED SIX OR MORE
19 PRESENT OR FORMER PLAYERS?

20 A. I THINK I JUST ANSWERED THAT.

21 Q. YES OR NO?

22 A. IN EVERY GAME WE USED SIX OR MORE CURRENT PLAYERS.

23 Q. I UNDERSTAND THAT.

24 A. FOR THOSE GAMES WHICH I'M AWARE OF WHERE WE USED FORMER OR
25 RETIRED PLAYERS, IN EVERY INSTANCE WHERE WE DID SO I BELIEVE WE

1 USED SIX OR MORE.

2 **Q.** RIGHT. SO MY QUESTION IS: FOR THOSE INSTANCES, YES OR
3 NO, WHERE YOU USED SIX OR MORE RETIRED PLAYERS, DID YOU ALSO
4 USE SIX OR MORE PRESENT PLAYERS, SO THAT IN THOSE VERSIONS
5 THERE WERE SIX OR MORE PRESENT OR FORMER NFL PLAYERS?

6 **A.** I THINK I'VE ANSWERED THAT. IF YOU'RE ASKING -- BECAUSE
7 EVERY VERSION OF THE GAME HAD AT LEAST SIX CURRENT PLAYERS, FOR
8 THOSE VERSIONS OF THE GAME I'M AWARE ALSO HAD RETIRED PLAYERS
9 WITH SIX OR MORE, YES, THEY ALSO HAD SIX OR MORE CURRENT
10 PLAYERS, BECAUSE EVERY VERSION OF THE GAME HAS SIX OR MORE
11 CURRENT PLAYERS.

12 **Q.** OKAY. NOW, LET'S TALK ABOUT THE CONTRACTS, BECAUSE I
13 THINK YOU MENTIONED THE CONTRACTS.

14 **A.** YES, SIR.

15 **Q.** IS IT TRUE, SIR, THAT THE LEAGUE -- WELL, NOT THE
16 LEAGUE -- THE UNION, IN YOUR EXPERIENCE, WHEN YOU START
17 NEGOTIATING A CONTRACT, THEY SEND OVER CERTAIN FORM LANGUAGE?

18 **A.** WELL, NO. TYPICALLY, THEY DON'T SEND OVER LANGUAGE UNTIL
19 WE'VE AGREED ON THE TERMS OF THE LICENSE.

20 **Q.** THE PROCESS DOESN'T START, SIR, WITH THEM SENDING OVER
21 FORM LANGUAGE FOR A LICENSE?

22 **A.** NO. TYPICALLY -- AGAIN, WE'VE HAD A SERIES OF LICENSES
23 WITH PLAYERS INC. ALL OF THEM HAVE BEEN MORE OR LESS THE SAME
24 FORM. SO WE'RE NOT STARTING FROM SCRATCH FOR EVERY TERM.

25 AND TYPICALLY WE'RE JUST NEGOTIATING OVER THE TERMS

1 THAT ARE CHANGING. AND WE USE THE FORMER LICENSE AS A BASE,
2 AND WE UPDATE IT AS NECESSARY.

3 Q. IS IT TRUE THAT THE LANGUAGE OF WHAT ULTIMATELY BECOMES
4 THE CONTRACT STARTS WITH PLAYERS INC?

5 A. AS I SAID, THERE'S A SERIES OF LICENSES. THE FORM OF THE
6 LICENSE COMES FROM PLAYERS INC. THE FIRST LICENSE STARTED
7 BEFORE I ARRIVED AT EA. WE USED THAT AS A BASE FOR THE LICENSE
8 AGREEMENT THAT I FIRST NEGOTIATED AND SIGNED.

9 Q. I'D LIKE TO ASK YOU TO LOOK, PLEASE, AT EXHIBIT NO. 24.

10 MR. HUMMEL: WHICH IS IN EVIDENCE, YOUR HONOR.

11 THE WITNESS: YES, SIR.

12 BY MR. HUMMEL:

13 Q. DO YOU RECOGNIZE THIS DOCUMENT, SIR?

14 A. I DO.

15 Q. AND WHAT IS IT?

16 A. WELL, THIS WAS AN AMENDMENT OR ADDENDUM TO ONE OF OUR
17 LICENSE AGREEMENTS WHEREBY WE OBTAINED THE RIGHTS TO A NUMBER
18 OF RETIRED NFL PLAYERS, APPROXIMATELY 150 OR 200 OF THEM, OR
19 SO, FOR INCLUSION IN CERTAIN EDITIONS OF THE MADDEN NFL GAME IN
20 EXCHANGE FOR A PAYMENT OF \$150,000 FOR EACH OF THE THREE YEARS
21 THE AGREEMENT WAS IN EFFECT.

22 Q. AND IF YOU COULD GO TO THE SECOND PAGE OF THAT AGREEMENT,
23 PLEASE.

24 A. YES, SIR.

25

1 Q. THAT'S THE FIRST PAGE OF THE LIST OF THOSE PLAYERS?

2 A. THE LAST NAME. I THINK IT'S IN ALPHABETICAL ORDER.

3 Q. THE REASON YOU ACQUIRED THE RIGHTS TO THESE PLAYERS WAS
4 THAT SO RETIRED PLAYERS COULD BE USED IN THE MADDEN FOOTBALL
5 GAME, RIGHT?

6 A. WELL, THIS IS AN EXAMPLE OF WHAT YOU WERE ASKING ABOUT
7 PREVIOUSLY, WHERE THERE AS WAS A POINT IN TIME FOR THE MADDEN
8 NFL '01 GAME, I BELIEVE IT WAS, WHICH WOULD HAVE BEEN RELEASED
9 IN 2000, WHERE THE TEAM, THE STUDIO TEAM DOWN IN ORLANDO WANTED
10 TO INCLUDE A NEW FEATURE THAT WOULD HAVE HAD SOME OF THESE
11 HISTORIC TEAMS AND RETIRED PLAYERS? AND THEY WANTED TO
12 ACTUALLY OBTAIN THE RIGHTS OF A SPECIFIC LIST OF RETIRED
13 PLAYERS TO INCLUDE IN THAT FEATURE.

14 AND PLAYERS INC ACTED AS THE PROCUREMENT AGENT, AS IT
15 WERE, TO GO OUT AND GET THE RIGHTS TO THE PLAYERS THAT ARE
16 LISTED HERE ON THIS EXHIBIT.

17 AND WE HAD GIVEN THEM A LIST OF NAMES OF WHO WE
18 WANTED. WE GAVE THEM SORT OF A MINIMUM. I FORGET HOW BIG THE
19 LIST WAS, BUT LET'S JUST ASSUME IT WAS LIKE 250 NAMES.

20 WE SAID WE NEEDED AT LEAST 80 PERCENT OR SO OF THESE
21 PLAYERS TO MAKE THE FEATURE WORTHWHILE. AND PLAYERS INC WAS
22 ABLE TO GET A SUFFICIENTLY HIGH PERCENTAGE AT THE VARIOUS
23 POSITIONS THAT WE WENT FORWARD WITH THE DEAL AND LICENSED THE
24 RETIRED PLAYERS THAT YOU SEE ATTACHED TO THIS DOCUMENT FOR THE
25 FEE THAT YOU SEE ON THE FIRST PAGE OF THE DOCUMENT.

1 Q. COULD I ASK YOU TO LOOK, PLEASE, AT EXHIBIT NUMBER 65?

2 A. YES, SIR.

3 Q. IS EXHIBIT 65 A COPY OF A LICENSE BETWEEN EA AND PLAYERS
4 INC?

5 A. UHM, I ASSUME THE BATES NUMBERS ON THE BOTTOM MEANS IT
6 CAME FROM OUR FILE?

7 Q. CORRECT.

8 A. YES, THAT'S MY SIGNATURE ON THE 13TH PAGE.

9 MR. HUMMEL: MOVE EXHIBIT 65, YOUR HONOR.

10 MR. FEHER: NO OBJECTION.

11 THE COURT: 65 IS RECEIVED.

12 (TRIAL EXHIBIT 65 RECEIVED IN EVIDENCE.)

13 BY MR. HUMMEL:

14 Q. MR. LINZNER, ON THE VERY FIRST PAGE, FIRST PARAGRAPH, JUST
15 SO THERE'S NO CONFUSION HERE, THE AGREEMENT, IT SAYS, IS MADE
16 AND ENTERED INTO "THIS 31ST DAY OF JANUARY, 2005."

17 I THINK THAT'S A TYPO, BECAUSE AT THE BOTTOM IT SAYS:

18 "THE AGREEMENT SHALL BE EFFECTIVE AS OF MARCH 1,
19 2004"; IS THAT RIGHT?

20 A. WELL, YOU SAID SEVERAL THINGS. IT DOES SAY "THE 31ST OF
21 JANUARY." IT DOES SAY THE EFFECTIVE DATE, BUT I DON'T THINK
22 THAT'S A TYPO NECESSARILY.

23 Q. SO YOU THINK YOU ENTERED INTO AN AGREEMENT IN JANUARY 2005
24 THAT WAS EFFECTIVE MARCH 1, 2004?

25 A. APPARENTLY.

1 Q. OKAY. NOW, WOULD YOU LOOK AT PARAGRAPH 6 OF THIS ON PAGE
2 3? "ROYALTY PAYMENT."

3 DO YOU HAVE THAT IN FRONT OF YOU, SIR?

4 A. YES, SIR.

5 Q. AND IS THERE A GUARANTEED MINIMUM ROYALTY PAYMENT IN THIS
6 AGREEMENT?

7 A. YES, SIR.

8 Q. WHAT'S THE AMOUNT?

9 A. DOES THAT COME INTO EVIDENCE, YOUR HONOR? JUST STATING
10 THE AMOUNTS OF THE GUARANTEES?

11 MR. HUMMEL: THIS IS NOT THE EXHIBIT THAT WAS THE
12 SUBJECT OF THE ORDER.

13 THE COURT: IT WAS IN EXHIBIT NO. 80.

14 MR. HUMMEL: 80.

15 THE COURT: IS THAT THE ONLY ONE -- AM I CORRECT
16 THAT'S THE ONLY ONE THAT WAS MOVED ON?

17 MR. HUMMEL: CORRECT, YOUR HONOR.

18 THE COURT: WHICH EXHIBIT ARE WE ON NOW?

19 MR. HUMMEL: 65.

20 THE COURT: THEN, THE -- THAT'S ALREADY BEEN RECEIVED
21 IN EVIDENCE ALREADY, RIGHT?

22 MR. HUMMEL: CORRECT.

23 THE COURT: DIDN'T I JUST MOVE THIS --

24 MR. HUMMEL: YES, YOU DID.

25 MR. FEHER: IT'S FINE, YOUR HONOR. IT'S FOR A PRIOR

1 TIME PERIOD.

2 **THE COURT:** ALL RIGHT. THIS IS ALL --

3 **THE WITNESS:** GO AHEAD?

4 **THE COURT:** THIS IS ALL SUBJECT TO PUBLIC TESTIMONY.

5 **THE WITNESS:** OKAY. PARAGRAPH 6, AS YOU CAN READ
6 THERE FOR YOURSELF, SAYS THE LICENSEE, WHICH IN THIS CASE IS
7 EA, AGREED TO PAY PLAYERS INC, WHICH IN THIS CASE IS THE
8 LICENSOR, A GUARANTEED MINIMUM ROYALTY OF \$500.000 FOR THE
9 RIGHTS THAT WERE GRANTED.

10 **BY MR. HUMMEL:**

11 **Q.** \$500,000 GUARANTEED MINIMUM ROYALTY FOR AN AGREEMENT
12 EFFECTIVE MARCH 1, 2004, CORRECT?

13 **A.** YES.

14 **Q.** OKAY. AND THEN, IF YOU LOOK BACK AT PAGE ONE OF THE
15 AGREEMENT --

16 **A.** YES.

17 **Q.** -- "GRANT OF LICENSE," THE FIRST SENTENCE READS:

18 "UPON THE TERMS AND CONDITIONS HEREINAFTER SET
19 FORTH, PLAYERS INC HEREBY GRANTS TO LICENSEE AND LICENSEE
20 HEREBY ACCEPTS THE NON-EXCLUSIVE RIGHT TO LICENSE."

21 THIS WAS A NON-EXCLUSIVE AGREEMENT, RIGHT?

22 **A.** IT WAS A NON-EXCLUSIVE LICENSE, THAT'S CORRECT.

23 **Q.** CAN YOU EXPLAIN TO THE JURY WHAT THAT MEANS, THE
24 "NON-EXCLUSIVE" PART OF THAT SENTENCE?

25 **A.** AT THIS POINT IN TIME FOR THE PERIOD EFFECTIVE MARCH,

1 2004, PLAYERS INC WAS LICENSING THE RIGHTS OF NFL PLAYERS TO
2 MULTIPLE VIDEO GAME COMPANIES.

3 SO EA WAS ONE OF THEM. SONY WAS ONE OF THEM. I
4 BELIEVE, PERHAPS, MICROSOFT WAS ONE OF THEM AT THAT TIME. SAGO
5 WAS ONE OF THEM. SO -- ATARI WAS ONE OF THEM -- THERE WERE
6 MULTIPLE VIDEO GAME LICENSEES WHO WERE PROCURING THE RIGHTS FOR
7 THE RIGHT TO USE THE PLAYERS. AND, LIKEWISE, THE NFL ALSO
8 GRANTED LICENSES TO THOSE VARIOUS COMPANIES ON A NON-EXCLUSIVE
9 BASIS.

10 Q. NOW, COULD I ASK YOU TO LOOK AT EXHIBIT 67, PLEASE?

11 A. YES, SIR.

12 Q. IS THIS AN AGREEMENT THAT REPLACED EXHIBITS -- EXHIBIT 65?
13 THIS IS EFFECTIVE MARCH 1, 2005, CORRECT?

14 A. WELL, IT WAS EFFECTIVE AFTER EXHIBIT 65 EXPIRED.

15 Q. CORRECT. AND IF YOU LOOK AT PAGE 15 YOU'LL SEE YOUR
16 SIGNATURE ON THIS AGREEMENT BETWEEN PLAYERS INC AND EA.

17 A. YES, IT'S MY SIGNATURE AND MY PRINTING.

18 MR. HUMMEL: YOUR HONOR, MOVE 67.

19 THE COURT: RECEIVED.

20 (TRIAL EXHIBIT 67 RECEIVED IN EVIDENCE.)

21 MR. HUMMEL: THANK YOU.

22 BY MR. HUMMEL:

23 Q. NOW, COULD YOU LOOK AT THE GRANT OF LICENSE UNDER
24 PARAGRAPH 2 AT THE BOTTOM OF THIS EXHIBIT, SIR?

25 A. YES, SIR.

1 Q. THERE'S A BIG DIFFERENCE BETWEEN THIS AGREEMENT AND THE
2 ONE BEFORE, IS THERE NOT?

3 A. THERE'S -- THERE IS A BIG DIFFERENCE BETWEEN THIS
4 AGREEMENT AND THE ONE BEFORE THAT, YES.

5 Q. AND WHAT'S THAT?

6 A. A COUPLE BIG DIFFERENCES.

7 Q. WHAT'S THE DIFFERENCE BETWEEN PARAGRAPH 2 OF THIS
8 AGREEMENT AND PARAGRAPH 2 OF THE PRIOR AGREEMENT, WHICH WAS ONE
9 YEAR BEFORE?

10 A. WELL, THERE'S PROBABLY MORE THAN ONE DIFFERENCE. BUT THE
11 PRIMARY DIFFERENCE --

12 Q. JUST IN PARAGRAPH 2.

13 A. EXCUSE ME?

14 Q. JUST IN PARAGRAPH 2.

15 A. AS I SAID, THERE MAY BE MULTIPLE DIFFERENCES IN PARAGRAPH
16 2, BUT I THINK THE ONE YOU ARE FOCUSING ON IN THE SECOND LINE
17 WAS THIS WAS AN EXCLUSIVE LICENSE FOR VARIOUS GENRES OF GAMES
18 ON THE ENUMERATED PLATFORMS.

19 Q. AND THIS WAS AN EXCLUSIVE LICENSE AS OPPOSED TO THE PRIOR
20 ONE WHICH WAS NON-EXCLUSIVE, RIGHT?

21 A. FOR CERTAIN GENRES, THAT'S CORRECT.

22 Q. NOW, LET'S LOOK AT WHAT THAT WAS WORTH TO EA. TURN ON
23 PAGE 3, PARAGRAPH 6.

24 A. YES, I REMEMBER THIS.

25 Q. THE MINIMUM ROYALTY GOES FROM \$500,000 TO \$25 MILLION,

1 CORRECT?

2 **A.** THAT'S CORRECT.

3 **Q.** AND THAT'S A GUARANTEED PAYMENT TO PLAYERS INC, REGARDLESS
4 OF WHETHER YOU ACTUALLY USED THE RIGHTS CONFERRED BY THIS
5 AGREEMENT, CORRECT?

6 **A.** IF WE DIDN'T PUBLISH A GAME IN ANY GIVEN YEAR WE STILL HAD
7 TO PAY THE MINIMUM GUARANTEE, THAT'S CORRECT.

8 **Q.** RIGHT. SO EVEN IF AN ACTIVE PLAYER WASN'T USED PURSUANT
9 TO THIS LICENSE YOU STILL HAD TO PAY, RIGHT?

10 **A.** AND A SINGLE ACTIVE PLAYER.

11 **Q.** YOU HAD TO PAY THIS REGARDLESS OF WHAT YOU USED, RIGHT?

12 **A.** WELL, NO, THAT'S NOT RIGHT. THIS WAS THE MINIMUM
13 GUARANTEE PER YEAR, WHETHER WE PUBLISHED A GAME OR MULTIPLE
14 GAMES, BECAUSE IF YOU READ THROUGH THE LICENSE, SIR, YOU'LL SEE
15 IT CALLS FOR PUBLISHING MULTIPLE GAMES THAT WOULD UTILIZE THE
16 RIGHTS OF THE PLAYERS INC MEMBERS FOR EACH YEAR THAT THE
17 LICENSE IS IN EFFECT.

18 AND, YOU KNOW, WHAT THE MINIMUM GUARANTEE DOES IS
19 IT'S PROTECTION FOR THE LICENSOR THE OPPORTUNITY COST BY
20 GRANTING THE RIGHTS ON AN EXCLUSIVE BASIS TO ONE COMPANY. THEY
21 WANT TO MAKE SURE THAT THEY ARE GOING TO GET PAID EVEN IF THAT
22 COMPANY DOESN'T PUBLISH THE GAMES IT'S SUPPOSED TO.

23 **Q.** ALL RIGHT.

24 **A.** SO IT'S TYPICAL IN LICENSES LIKE THIS TO HAVE A MINIMUM
25 GUARANTEE THAT'S PAYABLE WHETHER YOU PUBLISH GAMES OR NOT.

1 Q. THIS WAS PROTECTION TO PI?

2 A. FOR THE LICENSORS, CORRECT.

3 Q. WAS THERE ANYTHING IN THESE AGREEMENTS THAT REQUIRED YOU
4 TO USE ANY PARTICULAR PLAYER IMAGE?

5 A. ANY PARTICULAR PLAYER?

6 Q. YEAH.

7 A. NO.

8 Q. OKAY. AND, IN FACT, EA PAID THESE MINIMUM AMOUNTS TO PI,
9 CORRECT?

10 A. WE CERTAINLY DID.

11 Q. DID?

12 A. DID. WE CERTAINLY DID.

13 Q. ONCE YOU PAID THOSE MINIMUM AMOUNTS, \$25 MILLION PER YEAR
14 GUARANTEED, DID YOU CARE HOW THE DEFENDANTS ALLOCATED THE MONEY
15 INTERNALLY?

16 A. WE WERE NOT PARTY TO HOW THEY ALLOCATED THE MONEY THAT
17 THEY RECEIVED FROM US FOR THE INDIVIDUAL GAME RIGHTS.

18 Q. I UNDERSTAND YOU WEREN'T PARTY TO IT. DID YOU CARE?

19 A. I'M NOT SURE I CARED. I NEVER GAVE IT MUCH THOUGHT SO --

20 Q. OKAY. SO YOU DIDN'T CARE IF, FOR EXAMPLE, A PORTION OF IT
21 WENT TO PI, RIGHT?

22 A. PI?

23 **MR. FEHER:** YOUR HONOR, OBJECTION. THIS IS ARGUMENT.

24 BY MR. HUMMEL:

25 Q. PLAYERS INC.

1 **A.** NO. WE UNDERSTOOD THAT PLAYERS INC --

2 **THE COURT:** OBJECTION'S OVERRULED.

3 GO AHEAD. ANSWER THE QUESTION.

4 **THE WITNESS:** I'M SORRY, YOUR HONOR. WE UNDERSTOOD
5 THAT PLAYERS INC, LIKE ALL THE PLAYER ASSOCIATIONS WITH THE
6 DIFFERENT SPORTS OPERATE MORE OR LESS THE SAME WAY.

7 THEY RETAINED A CERTAIN PERCENTAGE OF THEIR LICENSING
8 MONIES FOR THE OPERATIONS OF THEIR LICENSING ARMS. AND SOME OF
9 THE PLAYERS ASSOCIATIONS ACTUALLY RETAINED LARGE PORTIONS OF
10 THOSE FUNDS TO OPERATE AS SORT OF A STRIKE FUND IN CASE THEY
11 HAVE A LABOR PROBLEM.

12 **BY MR. HUMMEL:**

13 **Q.** THAT'S NOT WHAT I'M ASKING.

14 **A.** I THOUGHT THAT'S WHAT YOU WERE ASKING.

15 **Q.** DID YOU, EA, CARE IF THEY DID THAT OR NOT?

16 **A.** NO.

17 **Q.** SO YOU THOUGHT YOU WERE PAYING MONEY TO ACQUIRE RIGHTS,
18 AND THAT'S WHAT YOU CARED ABOUT, RIGHT?

19 **A.** WELL, I THOUGHT THAT WE WERE GUARANTEEING A CERTAIN AMOUNT
20 OF MONEY WHICH WAS VERY SIZABLE, PLUS A RUNNING ROYALTY IF THAT
21 GUARANTEE WAS RECOUPED TO SECURE THE RIGHTS OF ACTIVE NFL
22 PLAYERS TO USE IN SEVERAL NFL-BRANDED GAMES THAT WE WERE
23 DEVELOPING AND PUBLISHING ON AN ANNUAL BASIS.

24 **Q.** OKAY. AND YOU PAID -- YOU AGREED TO PAY THIS MINIMUM
25 ROYALTY OF \$25 MILLION A YEAR FOR AN EXCLUSIVE THAT RAN THROUGH

1 WHAT PERIOD OF TIME?

2 **A.** FIVE YEARS.

3 **Q.** FIVE YEARS. AND THEN, YOU RECENTLY OBTAINED AN EXTENSION
4 OF THAT FIVE-YEAR EXCLUSIVE, RIGHT?

5 **A.** WELL, IF YOU SAY 2006 IS RECENT, YEAH. I THINK IT WAS IN
6 2006 OR SO.

7 **Q.** COULD YOU --

8 **A.** IT WAS A COUPLE OF YEARS AGO.

9 **Q.** COULD YOU LOOK AT EXHIBIT 80, PLEASE?

10 **THE COURT:** 80 IS THE ONE THAT WE HAVE THE ISSUE
11 WITH.

12 **MR. HUMMEL:** I DON'T INTEND TO TOUCH ANY --

13 **THE COURT:** ALL RIGHT. SO IF YOU DO NOT GET INTO
14 PARAGRAPH -- WHAT IS IT, IS 6?

15 **MR. HUMMEL:** 6.

16 **THE COURT:** 6, WITHOUT RAISING IT WITH ME FIRST.

17 **BY MR. HUMMEL:**

18 **Q.** IS THIS A SIMILAR LICENSE BETWEEN EA AND PLAYERS INC THAT
19 YOU SIGNED?

20 **A.** EXHIBIT 6 IS AN EXTENSION OF EXHIBIT 67.

21 **Q.** EXHIBIT 80.

22 **A.** EXCUSE ME. EXHIBIT 80. I'M SORRY. IS AN EXTENSION OF
23 TRIAL EXHIBIT 67, THAT WAS ENTERED INTO IN JANUARY 2006.
24 THAT'S WHAT I SAID.

25 **MR. HUMMEL:** YOUR HONOR, I WOULD MOVE EXHIBIT 80. WE

1 DON'T INTEND TO PUBLISH IT AT THIS TIME.

2 **THE COURT:** ANY OBJECTION?

3 **MR. FEHER:** NO, YOUR HONOR. SO LONG AS IT'S SUBJECT
4 TO THE PRIOR RULINGS.

5 **THE COURT:** ALL RIGHT. THE EXHIBIT 80 IS RECEIVED.
6 ULTIMATELY THE JURY WILL SEE ALL OF EXHIBIT 80. BUT WE HAVE
7 SOME PROTECTIVE GUIDELINES WE HAVE TO FOLLOW IF IT'S USED HERE
8 IN THE COURTROOM.

9 KEEP THOSE IN MIND, MR. HUMMEL.

10 **MR. HUMMEL:** I WILL, YOUR HONOR.

11 (TRIAL EXHIBIT 80 RECEIVED IN EVIDENCE)

12 **BY MR. HUMMEL:**

13 **Q.** DID EXHIBIT 80 EXTEND THE TERM OF THE EXCLUSIVE, YES OR
14 NO?

15 **A.** EXHIBIT 80 DID EXTEND THE TERM OF THE EXCLUSIVE.

16 **Q.** FOR HOW MANY YEARS?

17 **A.** THREE YEARS, I BELIEVE.

18 **Q.** SO YOU HAVE AN EXCLUSIVE NOW WITH PI THROUGH WHAT YEAR?

19 **A.** MAY I REFER TO THE DOCUMENT?

20 **Q.** YES.

21 **A.** THROUGH FEBRUARY -- IT'S AN EXCLUSIVE FOR CERTAIN GENRES
22 OF INTERACTIVE GAMES.

23 **Q.** OKAY.

24 **A.** NOT FOR OTHERS. BUT IT GOES THROUGH FEBRUARY 2013.

25 **Q.** NOW, GOING BACK, IF YOU WOULD, TO EXHIBIT NO. -- I GUESS

1 IT'S 67 -- WHICH IS THE FIRST TIME YOU AGREED TO PAY A
2 \$25 MILLION MINIMUM; IS THAT RIGHT?

3 **A.** EXHIBIT 67 IS WHEN WE FIRST AGREED TO PAY THAT GUARANTEE,
4 YES.

5 **Q.** OKAY. NOW, WHEN YOU SIGNED THIS AGREEMENT, YOU HAD AN
6 UNDERSTANDING, DID YOU NOT, OF WHAT -- WHAT LICENSE RIGHTS WERE
7 BEING CONFERRED, CORRECT?

8 **A.** I ABSOLUTELY DID, YES.

9 **Q.** AND IT'S YOUR POSITION, IS IT NOT, THAT ACTIVE PLAYER
10 RIGHTS WERE BEING CONFERRED, RIGHT?

11 **A.** ABSOLUTELY. WE WERE GETTING THE RIGHTS TO THEN ACTIVE NFL
12 PLAYERS, WHICH WAS CHANGING ON AN ANNUAL BASIS.

13 **Q.** OKAY. SO NOTWITHSTANDING THE FACT THAT PARAGRAPH 1(A)
14 REFERENCES RETIRED PLAYERS, IT WAS YOUR UNDERSTANDING THAT
15 THOSE RIGHTS WERE NOT BEING CONFERRED BY THIS AGREEMENT; IS
16 THAT YOUR TESTIMONY?

17 **A.** WELL, MY TESTIMONY IS THAT THE -- THE FOOTBALL PLAYERS
18 THAT WE WERE LICENSING UNDER EXHIBIT 67 WERE THEN ACTIVE NFL
19 PLAYERS THAT WOULD CHANGE ON AN ANNUAL BASIS AS NEW PLAYERS
20 CAME INTO THE LEAGUE AND OTHER PLAYERS LEFT THE LEAGUE.

21 **Q.** MY QUESTION --

22 **A.** AND I'LL FINISH.

23 **Q.** SURE.

24 **A.** AND THE FACT THAT THERE IS A REFERENCE TO RETIRED PLAYERS
25 IN THE SECOND SENTENCE OF PARAGRAPH 1(A) JUST REFERS TO THE

1 FACT THAT THERE ARE OTHER PROGRAMS THAT WE WOULD ENGAGE IN FROM
2 TIME TO TIME, SUCH AS EXHIBIT 24 THAT YOU SHOWED ME EARLIER.

3 Q. RIGHT.

4 A. THAT WE WOULD PAY ADDITIONAL MONEY FOR.

5 Q. AND YOU DID THAT, RIGHT?

6 A. WE DID THAT ON SEVERAL OCCASIONS.

7 Q. AND WHEN YOU DID THAT FOR THOSE PRODUCTS, THOSE PRODUCTS
8 UTILIZED SIX OR MORE PRESENT OR FORMER NFL PLAYERS, CORRECT?

9 A. I THINK THAT'S THE SAME QUESTION THAT WE JUST HAD THE
10 GO-ROUND.

11 EVERY PRODUCT HAD AT LEAST SIX NFL ACTIVE PLAYERS.

12 Q. SURE.

13 A. AND AS FAR AS I'M AWARE EVERY TIME WE USED FORMER NFL
14 PLAYERS WE USED AT LEAST SIX, BUT FREQUENTLY LICENSED THEM
15 INDIVIDUALLY, NOT AS A GROUP.

16 Q. BUT YOU UNDERSTOOD THAT EXHIBIT 67 WAS A GROUP LICENSE,
17 RIGHT?

18 A. FOR ACTIVE NFL PLAYERS.

19 Q. YES OR NO, WAS IT A GROUP LICENSE? JUST ANSWER THE
20 QUESTION.

21 A. I JUST ANSWERED YOU. FOR ACTIVE NFL PLAYERS IT WAS A
22 GROUP LICENSE FOR THOSE THAT WERE CURRENT PLAYERS IN THE NFL.
23 OTHERWISE -- YEAH --

24 MR. HUMMEL: YOUR HONOR, I WOULD LIKE AN ADMONITION
25 ON THE YES OR NO, PLEASE.

1 **THE COURT:** I THINK HE'S FAIRLY ANSWERED THE
2 QUESTION.

3 **MR. HUMMEL:** FAIR ENOUGH.

4 **THE COURT:** THE DIFFERENCE BETWEEN YOU IS MERE
5 ARGUMENT.

6 **MR. HUMMEL:** OKAY. FAIR ENOUGH.

7 **BY MR. HUMMEL:**

8 **Q.** NOW, WITH RESPECT TO ACTIVE PLAYERS -- LET ME SHOW YOU --
9 LET ME JUST TAKE AN EXAMPLE. EXHIBIT 1246.

10 **MR. HUMMEL:** 1246 IS ALREADY STIPULATED INTO
11 EVIDENCE, YOUR HONOR, SO I WOULD MOVE IT NOW.

12 **MR. FEHER:** NO OBJECTION.

13 **THE COURT:** RECEIVED.

14 (TRIAL EXHIBIT 1246 RECEIVED IN EVIDENCE.)

15 **MR. HUMMEL:** COULD I PUT UP THE FRONT COVER OF
16 EXHIBIT 1246, PLEASE?

17 OKAY. IT'S A BLACK AND WHITE COVER. I APOLOGIZE.

18 **BY MR. HUMMEL:**

19 **Q.** COULD YOU SHOW THE JURY WHAT IT IS? THAT'S ACTUALLY THE
20 MADDEN GAME, RIGHT, IN THE PACKAGE IT COMES IN THE STORE?

21 **A.** WELL, THIS IS THE -- THIS IS ONE VERSION OF MADDEN NFL
22 2004 FOR THE PLAYSTATION 2 AS RESOLD PROBABLY AT GAMESTOP ON A
23 USED BASIS FOR 99 CENTS. IT DIDN'T SELL FOR THE 99 CENTS WHEN
24 WE OFFERED IT INITIALLY.

25 **Q.** WE COULDN'T FIND IT WHEN WE WERE TRYING TO GET IT INTO

1 THIS TRIAL. IT WASN'T A 99 CENT PRODUCT, RIGHT? THIS IS A
2 RECENT --

3 **A.** IT'S NOT A 99 CENT PRODUCT.

4 **Q.** OKAY. AND I'M NOT GOING TO GET INTO HOW MUCH IT COSTS.
5 IT DOESN'T MATTER TO ME.

6 ALL I WANT TO DO IS FOCUS ON THIS. IF YOU LOOK ON
7 THE COVER OF THIS MADDEN GAME, THERE'S A -- THERE'S A THEN
8 ACTIVE -- ACTUALLY IS A THEN ACTIVE NFL PLAYER. THAT'S MICHAEL
9 VIC, RIGHT?

10 **A.** THIS IS MICHAEL VIC, AND AT THIS TIME HE WAS AN ACTIVE NFL
11 PLAYER.

12 **Q.** RIGHT. HE SUBSEQUENTLY HAD SOME TROUBLE WITH THE LAW, AND
13 HE'S IN CUSTODY, RIGHT?

14 **MR. FEHER:** OBJECTION, YOUR HONOR. THAT'S NOT
15 RELEVANT.

16 **MR. HUMMEL:** YOU'RE RIGHT. I'LL WITHDRAW IT.

17 **BY MR. HUMMEL:**

18 **Q.** BUT HE IS NOT CURRENTLY AN ACTIVE NFL PLAYER?

19 **A.** HE IS NOT CURRENTLY AN ACTIVE NFL PLAYER.

20 **Q.** BUT AT THE TIME HE WAS, RIGHT?

21 **A.** THAT'S CORRECT.

22 **Q.** OKAY. AND DID YOU HAVE TO OBTAIN A SEPARATE AGREEMENT
23 WITH MICHAEL VIC TO PUT HIM ON THE COVER?

24 **A.** WE OBTAINED A SEPARATE AGREEMENT WITH MICHAEL VIC AND PAID
25 HIM INCREMENTAL AMOUNTS FOR TWO THINGS.

1 Q. YES.

2 A. TO BE ON COVER.

3 Q. RIGHT.

4 A. AND TO PERFORM SERVICES FOR US IN CONNECTION WITH THE
5 LAUNCH OF THE GAME, THE TV COMMERCIAL, ET CETERA.

6 Q. RIGHT. SO HERE YOU HAVE AN ACTIVE NFL PLAYER FOR WHOM YOU
7 HAD THE RIGHTS BECAUSE OF THE GROUP LICENSE, BUT YOU WENT OUT
8 AND YOU SIGNED A SEPARATE AGREEMENT WITH MICHAEL VIC SO THAT
9 YOU COULD PUT HIM ON THE COVER, RIGHT?

10 A. NO, THAT'S NOT CORRECT.

11 Q. OKAY. WHAT HAPPENED?

12 A. OUR GROUP LICENSE FOR ALL ACTIVE NFL PLAYERS REQUIRES US
13 TO USE THEM IN GROUPS OF SIX OR MORE.

14 Q. OKAY.

15 A. AND IT DOESN'T PERMIT US TO TAKE ONE PLAYER AND USE HIM AS
16 AN ENDORSER. SO WE HAVE TO ENTER INTO A SEPARATE AGREEMENT AS
17 WE DID UNFORTUNATELY WITH MICHAEL VIC, WHO HAD SOME PROBLEMS
18 SUBSEQUENTLY.

19 Q. RIGHT.

20 A. TO BE THE ENDORSER OF THE GAME AND TO PERFORM SERVICES FOR
21 US. BUT THAT'S SEPARATE FROM THE GROUP LICENSE THAT WE SIGNED
22 WITH PLAYERS INC TO HAVE ALL OF THE PLAYERS IN THE VIDEO GAME.

23 Q. SO HE'S A HIGHLIGHTED PLAYER?

24 A. IT'S FREQUENTLY CALLED A "HIGHLIGHT AGREEMENT," IF THAT'S
25 WHAT YOU'RE REFERRING TO, YES.

1 Q. THAT'S WHAT I'M TALKING ABOUT. OKAY.

2 AND HE GETS PAID ABOVE AND BEYOND WHAT HE WOULD GET
3 FOR THE GROUP LICENSE RIGHTS, CORRECT?

4 A. THAT'S CORRECT.

5 Q. OKAY. SO HAVE YOU EVER HEARD THE PHRASE "AD HOC
6 AGREEMENT"?

7 A. ONLY IN THE DEPOSITION. MR. KATZ USED IT.

8 Q. ALL RIGHT. THIS IS MR. KATZ RIGHT HERE (INDICATING). YOU
9 MET HIM BEFORE?

10 A. YES.

11 Q. ALL RIGHT. SO THIS IS A SITUATION WHERE HE -- MR. VIC
12 SIGNED A SEPARATE AGREEMENT. NOW, WAS THAT NEGOTIATED BY PI?

13 A. THE -- PI. THE HIGHLIGHT AGREEMENTS THAT WE HAVE ARE
14 OBTAINED WITH THE HELP OF PLAYERS INC. BUT WE HAVE SOMEBODY ON
15 STAFF AT EA WHO WORKS FOR EA.

16 Q. OKAY.

17 A. WHO FREQUENTLY MAKES CONTACTS TO FIND A PLAYER AND HIS
18 AGENT WHO ARE INTERESTED IN BEING ON THE COVER AND IS WILLING
19 TO PERFORM THE PR SERVICES THAT WE WANT AND BE IN THE TV
20 COMMERCIALS AND IS FAMILIAR WITH THE GAME.

21 Q. FAIR ENOUGH. SO HERE'S MY QUESTION. WHEN WE'RE TALKING
22 ABOUT EXHIBIT 67, WHICH IS THE GROUP LICENSE?

23 A. YES, SIR.

24 Q. YOU DON'T HAVE TO LOOK AT LOOK IT, BUT THE JURY KNOWS WHAT
25 IT IS.

1 YOU'RE PAYING GROUP MONEY, CORRECT? IT'S MONEY FOR
2 THE RIGHTS TO A GROUP.

3 **A.** WE PAID FOR THE RIGHTS TO USE ALL ACTIVE NFL PLAYERS AS A
4 GROUP --

5 **Q.** AS A GROUP.

6 **A.** -- IN OUR GAMES, YES.

7 **Q.** AND WHEN YOU PAID MICHAEL VIC, THAT'S NOT SHARED MONEY,
8 RIGHT? THAT'S NOT GROUP MONEY.

9 **A.** THE MONEY THAT WE PAID TO MICHAEL VIC UNDER HIS HIGHLIGHT
10 AGREEMENT, TO THE BEST OF MY KNOWLEDGE, IS NOT SHARED WITH THE
11 OTHER 1400, 1500 ACTIVE PLAYERS.

12 **Q.** SO YOU HAVE GROUP MONEY AND YOU HAVE -- WHICH I WILL CALL
13 SHARED MONEY. AND YOU UNDERSTOOD THAT, RIGHT?

14 **A.** THE WAY WE LOOK AT IT IS WE HAVE A GROUP LICENSE.

15 **Q.** RIGHT.

16 **A.** AND THEN, WE HAVE A HIGHLIGHT AGREEMENT, WHICH IS IN THE
17 NATURE OF AN ENDORSEMENT.

18 **Q.** AND MONEY FROM EA FLOWS FROM BOTH, RIGHT?

19 **A.** WE PAY FOR BOTH HIGHLIGHT PLAYERS, AS WELL AS THE GROUP
20 LICENSE.

21 **Q.** FAIR ENOUGH. AND THAT'S FOR ACTIVE PLAYERS, RIGHT?

22 MICHAEL VIC WAS ACTIVE AT THAT TIME?

23 **A.** YEAH, THE HIGHLIGHT AGREEMENT -- WE HAVE ON OCCASION DONE
24 AGREEMENTS WITH FORMER PLAYERS WHO HAVE PERFORMED SERVICES FOR
25 US.

1 Q. FOR EXAMPLE, LET'S ALSO THROW UP 1257, JUST TO MAKE THE
2 POINT.

3 A. 1257.

4 MR. HUMMEL: WHICH IS IN EVIDENCE, YOUR HONOR. AND I
5 WOULD LIKE TO SO MOVE IT IF IT'S NOT IT.

6 AGAIN, WE'VE GOT THE USED STICKER. IGNORE THAT.

7 THE WITNESS: THIS WAS DOLLAR 99.

8 BY MR. HUMMEL:

9 Q. THIS WAS 4.99 USED. BUT THIS IS THE MADDEN '06 GAME THAT
10 ALSO HAS AN ACTIVE PLAYER ON THE PLAYER, DONOVAN MCNABB, RIGHT?

11 A. DONOVAN MCNABB WAS AND REMAINS AN ACTIVE NFL PLAYER.

12 Q. AND THERE WAS A HIGHLIGHT AGREEMENT WITH DONOVAN MCNABB,
13 RIGHT?

14 THE COURT: 1257 IS NOT YET IN EVIDENCE.

15 MR. HUMMEL: CAN I MOVE IT SO, YOUR HONOR?

16 THE COURT: ANY OBJECTION?

17 MR. FEHER: NO OBJECTION.

18 THE COURT: RECEIVED.

19 (TRIAL EXHIBIT 1257 RECEIVED IN EVIDENCE.)

20 BY MR. HUMMEL:

21 Q. ALL RIGHT. DO YOU HAVE A HIGHLIGHT AGREEMENT WITH DONOVAN
22 MCNABB?

23 A. WELL, WE DID FOR MADDEN NFL '06.

24 Q. OKAY.

25 A. HE WAS IN A TV COMMERCIAL.

1 Q. DID PLAYERS INC ASSIST YOU IN PROCURING THOSE RIGHTS FROM
2 MR. MCNABB?

3 A. THE PAPERWORK GOES THROUGH PLAYERS INC, AS I SAID. WE
4 HAVE AN EMPLOYEE AT EA WHOSE JOB IT IS -- HIS TITLE IS DIRECTOR
5 OF ATHLETE RELATIONS, AND HE DOES A LOT OF THE WORK TO PROCURE
6 THE COVER ATHLETES.

7 Q. FOR THOSE TIMES THAT YOU PROCURED THE RIGHTS TO RETIRED
8 PLAYERS WHEN THEY WERE AT THAT TIME RETIRED, IS IT TRUE THAT EA
9 WANTED TO PRODUCE, MARKET AND SELL A GAME THAT FEATURED CURRENT
10 NFL PLAYERS AND RETIRED PLAYERS?

11 A. I'M SORRY, MA'AM. COULD YOU READ THAT BACK.

12 (THE REPORTER READ THE PENDING QUESTION AS FOLLOWS:

13 "QUESTION: FOR THOSE TIMES THAT YOU PROCURED
14 THE RIGHTS TO RETIRED PLAYERS WHEN THEY WERE
15 AT THAT TIME RETIRED, IS IT TRUE THAT EA
16 WANTED TO PRODUCE, MARKET AND SELL A GAME
17 THAT FEATURED CURRENT NFL PLAYERS AND RETIRED
18 PLAYERS?")

19 THE WITNESS: YES, THAT'S CORRECT.

20 BY MR. HUMMEL:

21 Q. AND FOR THOSE TIMES THAT YOU WANTED TO ADD FEATURES AROUND
22 HISTORIC NFL TEAMS, YOU WORKED WITH PLAYERS INC TO SECURE THE
23 RIGHTS TO THE IDENTITIES OF RETIRED PLAYERS FOR THOSE FEATURES.

24 A. WELL, I -- I'M HESITATING BECAUSE I'M MORE FAMILIAR WITH
25 THE GAMES LIKE THE CONTRACT WE LOOKED AT, EXHIBIT 26.

1 I RECALL THAT WHEN WE WANTED TO USE SOME HISTORIC
2 TEAMS, WE WANTED SPECIFIC RETIRED PLAYERS TO POPULATE THOSE
3 TEAMS. AND WE DID WORK WITH PLAYERS INC TO HELP US OBTAIN THE
4 RIGHTS TO THOSE RETIRED PLAYERS IN THOSE INSTANCES.

5 Q. ALL RIGHT. AND IN THOSE INSTANCES YOU PAID ADDITIONAL
6 FEES FOR THOSE RIGHTS?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND IS IT ALSO TRUE THAT AS A RESULT OF YOUR
9 DESIRE TO FEATURE RETIRED PLAYERS YOU ENTERED INTO A HALL OF
10 FAME AGREEMENT?

11 MR. FEHER: OBJECTION, YOUR HONOR.

12 MR. KESSLER: YOUR HONOR, THIS IS SUBJECT TO YOUR
13 PRECLUSION ORDER.

14 THE COURT: IT IS, ISN'T IT?

15 MR. HUMMEL: NO, YOUR HONOR, IT'S NOT. THIS IS IN
16 HIS DECLARATION. IT'S PART OF THE "USE OF PRESENT OR FORMER
17 PLAYERS IN A GAME."

18 I'M NOT TALKING ABOUT THAT PARTICULAR SET OF E-MAILS
19 THAT WE'VE ADDRESSED OR THE VALUE OF THAT DEAL OR WHY IT
20 HAPPENED. BUT THIS GOES TO THE CENTERPIECE OF THE GLA.

21 THE COURT: CAN WE GO TO SOMETHING ELSE, AND THEN
22 DEAL WITH THIS LATER?

23 HOW CLOSE TO THE END OF YOUR EXAMINATION ARE YOU?

24 MR. HUMMEL: NOT SO CLOSE.

25 THE COURT: WELL, THEN, WHY DON'T WE SKIP THIS FOR

1 NOW, AND THEN I'LL TAKE IT UP WHEN WE SEND THE JURY OUT FOR A
2 BREAK?

3 **MR. HUMMEL:** OKAY. CAN I ASK ONE QUESTION ON THIS
4 TOPIC?

5 **THE COURT:** I DON'T KNOW WHAT THE QUESTION IS.

6 **BY MR. HUMMEL:**

7 **Q.** COULD YOU LOOK AT EXHIBIT 1268?

8 **A.** I'M GETTING LOST HERE. IS THAT IN THIS STACK HERE?

9 **Q.** I THINK IT IS.

10 **MR. HUMMEL:** AGAIN, THERE IS NO OBJECTION TO THIS
11 EXHIBIT, YOUR HONOR.

12 **BY MR. HUMMEL:**

13 **Q.** WHAT IS THAT GAME, SIR?

14 **A.** THIS ONE HERE (INDICATING)?

15 **Q.** NO, 1268. I'M SORRY. WHAT'S THAT IT SAYS?

16 **A.** YEAH.

17 **Q.** ALL RIGHT. IF YOU WOULD LOOK AT THE BOARD, AND WE'LL GET
18 1268 IN FRONT OF YOU. SOMETHING IS IN THE WRONG READ WELL
19 THERE.

20 THIS WAS A GAME THAT WAS MARKETED BY EA. DO YOU
21 RECOGNIZE IT?

22 **A.** I DO.

23 **Q.** WHAT IS IT?

24 **A.** THAT PARTICULAR COVER IS --

25 **MR. KESSLER:** YOUR HONOR, IT'S NOT IN EVIDENCE.

1 **MR. HUMMEL:** THERE'S NO OBJECTION.

2 **THE COURT:** IS THERE ANY OBJECTION TO 1268?

3 **MR. KESSLER:** WELL, WE HAVE AN OBJECTION, YOUR HONOR,
4 TO THE ORDER, TO THE ENTIRE SUBJECT THE HALL OF FAME EDITION.
5 THAT'S WHAT HE'S PUTTING IN.

6 **MR. HUMMEL:** THAT HAS NOTHING TO DO WITH THE ORDER.

7 **THE COURT:** WELL, I DON'T REMEMBER IT WELL ENOUGH, TO
8 BE HONEST. SO LET'S TAKE IT DOWN UNTIL I CAN SORT IT OUT.

9 **MR. HUMMEL:** THIS WAS A DOCUMENT THAT WAS STIPULATED
10 IN BY THE PLAINTIFFS -- BY THE DEFENDANTS.

11 **THE COURT:** MAYBE.

12 **MR. HUMMEL:** ALL RIGHT.

13 **THE COURT:** I'M NOT SAYING YOU DID ANYTHING WRONG.

14 THE JURY SHOULD UNDERSTAND BEFORE THE TRIAL STARTS
15 EACH SIDE GIVES ME QUITE A NUMBER OF THINGS THEY WANT TO KEEP
16 OUT OF EVIDENCE. BOTH SIDES DO IT. AND SOME OF THOSE ARE
17 GRANTED. ONE OF THESE HAD TO DO WITH THE HALL OF FAME. I
18 REMEMBER THAT MUCH. I DON'T REMEMBER THE DETAILS OF THE RULING
19 ANYMORE.

20 I HAVE TO GO BACK AND LOOK AT A LOT OF PAPERWORK TO
21 COME UP TO SPEED ON THAT AGAIN. SO I NEED TO GET -- REFRESH MY
22 MEMORY ON -- OUT OF DOZENS OF MOTIONS, TO MAKE SURE I DON'T
23 CONTRADICT MYSELF.

24 I'M NOT SUGGESTING ANYBODY HAS DONE A THING WRONG
25 HERE. PLEASE DON'T -- I JUST WANT TO BE MORE ORDERLY ABOUT IT

1 THAN I CAN DO ON THE FLY.

2 MR. KATZ, WHY ARE YOU RISING?

3 **MR. KATZ:** I JUST WANTED TO INFORM YOUR HONOR THAT ON
4 THE OTHER SUBJECT RELATING TO THE MOTION IN LIMINE, THERE WAS
5 SOMETHING FILED THIS MORNING, JUST FOR YOUR HONOR'S
6 INFORMATION.

7 **THE COURT:** I HAVEN'T SEEN THAT AT ALL.

8 SEE, OVERNIGHT THEY FILE PAPERS AND EXPECT ME TO HAVE
9 READ EVERYTHING BY THE TIME I GET TO WORK. AND I TRY MY BEST,
10 BUT -- SEE HOW MANY LAWYERS THERE ARE OUT THERE? THERE'S ONLY
11 ONE OF ME.

12 ALL RIGHT. MR. HUMMEL, CAN YOU COVER SOMETHING ELSE?

13 **MR. HUMMEL:** YES, YOUR HONOR.

14 **THE COURT:** AND COME BACK TO THE HALL OF FAME AFTER
15 WE MAKE OUR RULING?

16 **MR. HUMMEL:** I WILL.

17 **BY MR. HUMMEL:**

18 **Q.** WITHOUT REFERENCE TO THE HALL OF FAME, IT IS TRUE THAT --
19 THAT EA WORKED WITH PI TO ACQUIRE THE RIGHTS OVER TIME TO
20 RETIRED PLAYERS; IS THAT RIGHT?

21 **A.** FOR DIFFERENT VERSIONS OF THE GAME, WE HAVE IN THE PAST
22 WORKED WITH PLAYERS INC TO OBTAIN THE RIGHTS FOR FORMER NFL
23 PLAYERS TO PUT IN VARIOUS EDITIONS OF BOTH MADDEN NFL AND NFL
24 STREET.

25 **MR. HUMMEL:** COULD I HAVE EXHIBIT 110 DISPLAYED, YOUR

1 HONOR?

2 BY MR. HUMMEL:

3 Q. AND 110 SHOULD BE IN FRONT OF YOU, MR. LINZNER.

4 A. I DON'T SEE IT.

5 (DOCUMENT DISPLAYED.)

6 IT GOES FROM 79 AND 80?

7 HERE IT IS.

8 Q. DO YOU HAVE 110?

9 A. YEAH, I DO.

10 Q. HAVE YOU EVER SEEN THAT DOCUMENT BEFORE THIS LITIGATION
11 STARTED?

12 A. I'M NOT SURE I'VE EVER SEEN THIS DOCUMENT BEFORE, PERIOD.

13 Q. NEVER SEEN IT BEFORE? IT'S A RETIRED PLAYER GROUP
14 LICENSING AUTHORIZATION FORM. DID ANYONE FROM PI EVER SHOW YOU
15 A GLA?

16 A. A GLA?

17 Q. YES, SIR.

18 A. THERE WAS A GLA ATTACHED TO OUR FORMS OF LICENSE.

19 Q. CORRECT. AND YOU UNDERSTOOD THAT TO BE A GLA THAT APPLIED
20 TO ACTIVE PLAYERS, RIGHT?

21 A. THAT'S CORRECT.

22 Q. DID ANYONE FROM PI -- NOW, LET ME ASK YOU THIS. DID YOU
23 NEGOTIATE WITH DOUG ALLEN?

24 A. I DID.

25 Q. AND WITH ANYBODY ELSE FROM PI?

1 A. YES, SIR.

2 Q. CLAY WALKER?

3 A. YES, SIR.

4 Q. ANYBODY ELSE?

5 A. GENE UPSHAW.

6 Q. GENE UPSHAW. ALL RIGHT.

7 A. LASHUN LAWSON SOMETIMES.

8 Q. NOW, DID ANY OF THOSE PEOPLE EVER SHOW YOU A GLA?

9 A. A GLA?

10 Q. THIS RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORM,
11 REGARDLESS OF WHETHER IT WAS SIGNED OR UNSIGNED.

12 A. I DON'T RECALL SEEING THIS BEFORE.

13 Q. DID THEY EVER GIVE YOU A LIST OF RETIRED NFL PLAYERS WHO
14 HAD SIGNED RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORMS?

15 A. NOT THAT I RECALL.

16 Q. DID ANY OF THOSE INDIVIDUALS OFFER EA A LICENSE TO THOSE
17 RETIRED PLAYERS WHO HAD SIGNED GLA -- THAT IS RETIRED PLAYER
18 GROUP LICENSING AUTHORIZATION FORMS?

19 A. I'M SORRY. COULD YOU REPEAT THAT, MA'AM?

20 MR. HUMMEL: COULD I HAVE THAT ONE READ BACK, PLEASE?

21

22 (THE REPORTER READ THE PENDING QUESTION AS FOLLOWS:

23 "QUESTION: DID ANY OF THOSE INDIVIDUALS

24 OFFER EA A LICENSE TO THOSE RETIRED PLAYERS

25 WHO HAD SIGNED GLA -- THAT IS RETIRED PLAYER

1 GROUP LICENSING AUTHORIZATION FORMS?")

2 **THE WITNESS:** THAT'S NOT TYPICALLY THE WAY IT WORKS.
3 WE WOULD TYPICALLY TELL THEM WHICH PLAYERS WE WERE INTERESTED
4 IN, AND THEN THEY WOULD ENDEAVOR TO GET THE RIGHTS TO THE
5 PLAYERS WE WERE INTERESTED IN.

6 **BY MR. HUMMEL:**

7 **Q.** I UNDERSTAND THAT. I'M ASKING YOU A DIFFERENT QUESTION,
8 AND IT'S IMPORTANT ON THIS ONE THAT WE BE AS PRECISE AS
9 POSSIBLE.

10 **A.** OKAY.

11 **Q.** DID ANY OF THE INDIVIDUALS FROM PI THAT YOU REFERENCED,
12 INCLUDING DOUG ALLEN, EVER OFFER EA A LICENSE TO AT LEAST THOSE
13 RETIRED PLAYERS FOR WHOM THEY HAD OBTAINED A RETIRED GROUP
14 AUTHORIZATION FORM?

15 **A.** EVERYBODY THAT OBTAINED A FORM?

16 **Q.** YES.

17 **A.** I DIDN'T KNOW -- I DIDN'T HAVE -- LIKE I SAID BEFORE, I
18 DON'T THINK I EVER GOT A LIST OF EVERYBODY THAT THEY HAD A
19 FORM. SO I DON'T THINK THEY -- YOU KNOW, IF THEY WOULD HAVE
20 OFFERED IT THEY WOULD HAVE SUPPLIED ME WITH A LIST.

21 **Q.** AND THEY NEVER DID THAT?

22 **A.** I WASN'T REALLY INTERESTED IN THAT, THOUGH.

23 **Q.** THAT'S NOT MY QUESTION.

24 **A.** I DON'T RECALL THEM EVER GIVING ME THAT LIST OR OFFERING
25 ME THAT LIST.

1 Q. DID THEY EVER SAY TO YOU THAT:

2 "WE HAVE 2100 RETIRED PLAYERS WHO HAVE SIGNED
3 RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORMS, AND WE
4 WOULD LIKE YOU TO TAKE A LICENSE TO THOSE GUYS"?

5 A. NO.

6 Q. DID THEY EVER TRY TO MARKET THOSE TO YOU?

7 A. YES.

8 Q. WHAT DID THEY SAY?

9 A. THEY SAID IF -- YOU KNOW, THEY'D ASK US IF WE WERE
10 INTERESTED IN USING FORMER NFL PLAYERS, RETIRED PLAYERS. AND
11 ON THOSE OCCASIONS WHEN WE WERE INTERESTED, WHICH WE WERE ON
12 SEVERAL OCCASIONS, THEY HELPED US LICENSE THEM. AND WE
13 NEGOTIATED A SEPARATE CHARGE FOR THAT.

14 Q. OKAY. BUT DID THEY EVER IN THOSE DISCUSSIONS REFERENCE A
15 LIST OF GLA MEMBERS THAT THEY HAD SIGNED UP?

16 A. THEY HAD REFERENCED THAT THERE WERE CERTAIN PLAYERS THAT
17 THEY HAD SIGNED UP AND OTHER PLAYERS WHO DID NOT WANT TO WORK
18 WITH PLAYERS INC. --

19 Q. DID THEY OFFER --

20 A. -- AND --

21 **MR. FEHER:** YOUR HONOR, THE WITNESS SHOULD BE ALLOWED
22 TO FINISH HIS ANSWER.

23 **THE COURT:** PLEASE FINISH YOUR ANSWER.

24 **THE WITNESS:** THANK YOU, SIR.

25 AND IN SOME OF THOSE INSTANCES WHERE THERE'S CERTAIN

1 HIGH-PROFILE PLAYERS THAT WE WANTED, THEY WOULD GO OUT AND TRY
2 AND CONVINCED THE AGENTS OR THE PLAYERS THEMSELVES TO ALLOW US
3 TO USE THE RIGHTS.

4 AND THEY MADE EFFORTS AT VARIOUS TIMES TO OBTAIN THE
5 RIGHTS OF THE PLAYERS WE TOLD THEM WE WANTED. THEY WEREN'T
6 ALWAYS SUCCESSFUL, BUT THEY DID MAKE THE EFFORT.

7 **BY MR. HUMMEL:**

8 **Q.** AGAIN, I'M ASKING YOU A VERY SPECIFIC QUESTION BECAUSE IT
9 RELATES TO TESTIMONY THAT WAS PREVIOUSLY GIVEN IN THIS CASE.

10 **A.** OKAY.

11 **Q.** DID MR. ALLEN EVER OFFER YOU A GROUP LICENSE FOR EVERY
12 PLAYER THAT SIGNED A RETIRED PLAYER GROUP LICENSING
13 AUTHORIZATION FORM?

14 **A.** NOT THAT I RECALL.

15 **Q.** BUT YOU UNDERSTOOD, DID YOU NOT, THAT CERTAIN NFL PLAYERS,
16 RETIRED NFL PLAYERS, HAD SIGNED GROUP LICENSING AUTHORIZATION
17 FORMS?

18 **A.** WELL, I KNEW THAT PLAYERS INC HAD OBTAINED THE ABILITY TO
19 LICENSE US THE RIGHTS TO SOME RETIRED PLAYERS THROUGH ONE OF A
20 VARIETY OF MECHANISMS. WHETHER IT WAS A GROUP LICENSING
21 AUTHORIZATION FORM OR THE SETTLEMENT OF THE OLD QUARTERBACK
22 CLUB LITIGATION OR INDIVIDUAL AGREEMENTS, IT DIDN'T REALLY
23 MATTER TO US.

24 YOU KNOW, THEY STOOD BEHIND THE RIGHTS THAT THEY
25 LICENSED TO US. WE USED THOSE RIGHTS. WE NEVER -- WITH ONE

1 SMALL EXCEPTION, WE NEVER REALLY HAD ANY ISSUES WITH THEM. AND
2 THEY WERE ABLE TO LICENSE US ENOUGH OF THE RETIRED PLAYERS THAT
3 WE NEEDED TO DO THE FEATURES THAT WE HAD IN OUR GAMES.

4 Q. IS IT TRUE THAT YOU UNDERSTOOD THAT, IN EFFECT, THE NFL
5 PI, PLAYERS INC, WAS ACTING AS A SORT OF AGENT FOR RETIRED
6 PLAYERS IN DEALING WITH YOU?

7 A. YEAH, THEY WERE AN AGENT OR MIDDLEMAN TO -- BETWEEN THE
8 RETIRED PLAYERS AND US TO LICENSE THE RIGHTS OF THOSE RETIRED
9 PLAYERS.

10 Q. IS IT TRUE THAT YOU UNDERSTOOD THAT THEY ACTED AS A SORT
11 OF AGENT TO GET MERCHANDISING OR LICENSING DEALS FOR RETIRED
12 PLAYERS?

13 A. WELL, AT LEAST WITH RESPECT TO US THEY DID. I DON'T KNOW
14 ABOUT OTHER ENTITIES.

15 Q. WITH RESPECT TO YOU THAT'S HOW YOU UNDERSTOOD IT?

16 A. THEY HAD A PROVISION IN THEIR AGREEMENT THAT IF WE WANTED
17 THE RIGHTS TO RETIRED PLAYERS OR UPCOMING PLAYERS, FOR THAT
18 MATTER, WE WOULD WORK THROUGH THEM TO DO THAT.

19 Q. IS IT TRUE, SIR, THAT IN YOUR VIEW, IN FACT, THE NFLPA AND
20 PLAYERS INC NEVER EVEN TRIED TO GET EA TO ADD MORE RETIRED
21 PLAYERS IN A GAME?

22 A. NO.

23 Q. THAT'S NOT TRUE?

24 A. NO.

25 Q. IS IT TRUE, THOUGH, THAT EA SELECTS WHICH PLAYERS IT

1 WANTS?

2 **A.** YES.

3 **Q.** BUT -- AND IS IT TRUE THAT ONCE EA MAKES THAT SELECTION,
4 ISN'T IT TRUE THAT THE NFLPA AND PI NEVER ATTEMPTED -- NEVER
5 EVEN TRIED TO GET EA TO ADD MORE RETIRED PLAYERS IN THE GAME?

6 **A.** TRY THAT AGAIN.

7 **Q.** SURE. SO YOU MAKE THE SELECTION. THAT I UNDERSTAND.

8 **A.** YES.

9 **Q.** AND AFTER YOU, EA, MADE THE SELECTION, ISN'T IT TRUE THAT
10 YOU NEVER EVEN TRIED TO GET EA TO ADD MORE RETIRED PLAYERS FOR
11 THE GAME?

12 **A.** YOU MEAN, THE PLAYERS INC NEVER TRIED?

13 **Q.** YES, YES.

14 **A.** I DON'T THINK THAT'S TRUE.

15 **MR. HUMMEL:** OKAY.

16 YOUR HONOR, PERMISSION TO READ GENE UPSHAW'S
17 DEPOSITION, PAGE 29, LINES 9 THROUGH 17.

18 **THE COURT:** DO I HAVE THAT UP HERE?

19 **MR. HUMMEL:** YOU HAVE IT, YOUR HONOR.

20 **THE WITNESS:** MAYBE I CAN HELP. MOST OF THOSE
21 DECISIONS WOULD HAVE BEEN MADE DOWN AT THE TEAM.

22 **MR. HUMMEL:** THERE'S NO QUESTION.

23 **THE WITNESS:** IN OTHER WORDS --

24 **THE COURT:** LET US DO THIS ONE STEP AT A TIME.

25 WHAT IS THE PAGE, AGAIN? 29.

1 **MR. HUMMEL:** PAGE 29, LINES 9 THROUGH 17. DEPOSITION
2 TESTIMONY OF GENE UPSHAW GIVEN FEBRUARY 13, 2008.

3 **THE COURT:** WELL, THIS IS PARTY -- PARTY TESTIMONY.
4 UNDER RULE 32 IT CAN BE USED. IT'S OKAY FOR YOU TO READ THIS.
5 ANY OBJECTION?

6 **MR. FEHER:** NO, YOUR HONOR.

7 **THE COURT:** ALL RIGHT. GO AHEAD.

8 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

9 STARTING AT LINE 9:

10 **"QUESTION:** WHEN, FOR EXAMPLE, EA DESIGNATES
11 A GROUP, DO YOU NEGOTIATE WITH THEM ABOUT
12 WHAT INDIVIDUALS ARE GOING TO BE INCLUDED?

13 **"ANSWER:** NO. IT'S THEIR DESIGNATION. EA
14 DESIGNATES, NOT THE NFLPA, NOT PLAYERS INC.
15 WE DON'T PICK. WE DON'T PICK WHO THEY WANT.

16 **"QUESTION:** SO YOU DON'T TRY TO ADD MORE OR
17 ANYTHING LIKE THAT?

18 **"ANSWER:** IT'S THEIR COMPANY. NOT OURS."

19 **BY MR. HUMMEL:**

20 **Q.** NOW, ISN'T IT TRUE, MR. LINZNER, THAT YOU'RE AWARE THAT
21 FROM TIME TO TIME EA REACHED OUT TO INCLUDE MORE RETIRED PLAYER
22 DATA IN A GAME THAN PLAYERS INC WOULD ALLOW YOU TO USE?

23 **A.** I'M NOT SURE I UNDERSTAND YOUR QUESTION, SIR.

24 **Q.** WELL, ISN'T IT TRUE THAT OVER THE YEARS YOU'RE AWARE OF
25 TIMES WHEN EA WANTED TO USE MORE RETIRED PLAYER INFORMATION IN

1 THE MADDEN GAME THAN YOU WOULD ALLOW -- THAN THEY WOULD ALLOW?

2 A. I DON'T KNOW WHAT YOU'RE TALKING ABOUT.

3 Q. YOU'RE NOT FOLLOWING?

4 A. NOT AT ALL.

5 Q. LET'S LOOK AT EXHIBIT 1320, WHICH IS IN EVIDENCE.

6 (DOCUMENT DISPLAYED.)

7 A. 1320.

8 Q. I COULD JUST ASK YOU, SIR, YOU SAID YOU KNOW WHO JEREMY
9 STRAUSSER IS, RIGHT?

10 A. STRAUSSER, YES.

11 Q. STRAUSSER? HE'S AN EMPLOYEE OF ELECTRONIC ARTS?

12 A. JEREMY STRAUSSER IS AN EMPLOYEE OF ELECTRONIC ARTS.

13 Q. AND HE WAS AS OF MAY 31, 2001?

14 A. YES. AS FAR AS I RECALL HE WAS, YES.

15 Q. AND YOU KNOW WHO LASHUN, L-A-S-H-U-N, IS?

16 A. I DO.

17 Q. AT THE TIME WAS SHE AN EMPLOYEE AT PLAYERS INC?

18 A. SHE WAS.

19 Q. HAVE YOU EVER SEEN THIS LETTER BEFORE?

20 A. I HAVE.

21 Q. YOU HAVE. ALL RIGHT.

22 A. I JUST SAW IT IN CONNECTION WITH THIS TRIAL.

23 Q. OKAY. WERE YOU AWARE, AS OF MAY 31, 2001, THAT PI WAS

24 INSTRUCTING ELECTRONIC ARTS TO "SCRAMBLE" -- THAT'S

25 MS. LAWSON'S WORD IN THE FIRST PARAGRAPH -- RETIRED PLAYERS IN

1 THE GAME FOR WHOM YOU DID NOT HAVE RIGHTS PURSUANT TO
2 ATTACHMENTS A AND B?

3 **A.** NO. FOR ANY PLAYER FOR WHOM WE DID NOT HAVE THE RIGHTS WE
4 WEREN'T GOING TO EXERCISE THOSE RIGHTS. SO WHAT WE TYPICALLY
5 DID, NOT JUST IN A FOOTBALL GAME, BUT IN OTHER GAMES, IF WE
6 DON'T HAVE THE RIGHTS TO A PLAYER WE DON'T USE THEIR NAMES, WE
7 DON'T USE THEIR IMAGE, WE DON'T USE THEIR PHOTOGRAPH, AND WE
8 DON'T USE THEIR DATE OF BIRTH, THAT KIND OF THING, THEIR
9 BIOGRAPHY.

10 SOMETIMES WE DON'T USE THE NUMBER, EITHER. PLAYERS
11 INC WAS PARTICULARLY SENSITIVE ABOUT THE NUMBERS. SO THEY
12 DIDN'T TELL US TO SCRAMBLE NAMES.

13 IT'S A QUESTION OF: IF YOU DON'T HAVE THE RIGHTS,
14 YOU CAN'T EXERCISE --

15 **Q.** WAIT A MINUTE. MS. LAWSON IS TELLING YOU THEY MUST BE
16 SCRAMBLED, RIGHT?

17 **A.** MS. LAWSON WAS CONFIRMING THAT THEY DIDN'T WANT US TO USE
18 THE NUMBERS, PRIMARILY.

19 **Q.** DID SHE OR DID SHE NOT WRITE THEY MUST BE SCRAMBLED? YES
20 OR NO?

21 **A.** YOU CAN READ THE LETTER. I'M TELLING YOU BECAUSE I
22 REMEMBER THIS.

23 **Q.** OKAY. YOU REMEMBER. GOOD.

24 **A.** I REMEMBER THIS.

25 **Q.** GOOD.

1 **A.** THAT IF WE DIDN'T HAVE THE RIGHTS TO PLAYERS, FOR RETIRED
2 PLAYERS, WE WEREN'T GOING TO USE THEIR IDENTITIES.

3 **Q.** OKAY. BUT YOU DID USE THEIR HEIGHTS, RIGHT?

4 **A.** I DON'T KNOW IF WE USED THE HEIGHTS OF INDIVIDUAL PLAYERS
5 OR NOT, BUT THE IDENTITIES --

6 **Q.** YOU DID USE THEIR WEIGHTS, RIGHT?

7 **A.** DON'T KNOW.

8 **Q.** YOU DID USE THE YEARS THEY WERE IN THE LEAGUE, RIGHT?

9 **A.** DON'T KNOW THAT, EITHER.

10 **Q.** YOU DID USE THEIR POSITIONS, RIGHT?

11 **A.** WE DIDN'T USE THEIR NAMES. WE DIDN'T USE THEIR IMAGES.
12 WE DIDN'T USE THEIR PHOTOGRAPHS.

13 **Q.** NOW, THERE'S NO CONTENTION --

14 **MR. FEHER:** YOUR HONOR --

15 **THE WITNESS:** IN THIS INSTANCE WE MADE STEPS TO NOT
16 USE THE NUMBERS, EITHER, BECAUSE THAT WAS SOMETHING THAT WAS
17 SENSITIVE FOR PLAYERS INC.

18 **BY MR. HUMMEL:**

19 **Q.** LET ME BE REALLY CLEAR.

20 **A.** OKAY.

21 **Q.** WE'RE NOT ALLEGING IN THIS CASE THAT EA VIOLATED ANY
22 INTELLECTUAL PROPERTY RIGHTS OF THESE PLAYERS. WE'RE NOT.

23 **A.** THAT'S WHAT WE TRY TO AVOID DOING.

24 **Q.** THAT'S NOT THIS CASE, RIGHT?

25 **MR. HUMMEL:** BUT NOW COULD I HAVE THE SCREEN SHOT ON

1 THE SCREEN, PLEASE?

2 (DOCUMENT DISPLAYED.)

3 **BY MR. HUMMEL :**

4 **Q.** THIS IS A SCREEN SHOT FROM THE MADDEN GAME WHERE THE 65
5 CLEVELAND BROWNS THAT ARE ON DEFENSE THERE ARE PLAYING YOUR 89
6 49ERS, RIGHT?

7 **A.** OKAY.

8 **Q.** OKAY. WHO WAS THE QUARTERBACK OF THAT TEAM?

9 **A.** I THINK IT WAS JOE MONTANA.

10 **Q.** IT WAS JOE MONTANA, RIGHT? AND IT DOESN'T EVEN USE --

11 **MR. HUMMEL:** CAN YOU BLOW IT UP?

12 (DOCUMENT DISPLAYED.)

13 **BY MR. HUMMEL:**

14 **Q.** WHAT WAS JOE MONTANA'S NUMBER?

15 **A.** IN SAN FRANCISCO IT WAS 16.

16 **Q.** RIGHT. DOES THAT SAY "16" OR "19"? YOU CAN'T REALLY READ
17 IT, CAN YOU?

18 **A.** CAN'T REALLY READ IT.

19 **Q.** ALL RIGHT. YOU KNOW HE WAS THE QUARTERBACK, RIGHT?

20 **A.** THAT'S RIGHT.

21 **Q.** AND YOU SAY YOU KNOW HARRIS BARTON?

22 **A.** I MET HARRIS BARTON. I DON'T KNOW HARRIS BARTON.

23 **Q.** WHAT POSITION DID HE PLAY?

24 **A.** EITHER LEFT OR RIGHT TACKLE. HE WAS A TACKLE.

25 **Q.** DID YOU HAVE THE RIGHTS TO USE HARRIS BARTON IN THIS GAME?

1 A. WHICH EDITION OF THE GAME IS THIS?

2 Q. ANY EDITION?

3 A. YEAH, HE WAS LISTED ON EXHIBIT 24, I THINK. LOOKING AT
4 EXHIBIT 24.

5 Q. 24?

6 A. YEAH, FIFTH NAME.

7 Q. HOW LONG DID THAT AGREEMENT LAST?

8 A. THREE YEARS.

9 Q. THREE YEARS. SO AS OF 2003 YOU NO LONGER HAD HIS RIGHT,
10 THE RIGHTS TO USE HIM, RIGHT?

11 A. I THINK THIS COVERED 2003.

12 Q. '5? 2005?

13 A. NO, IT WOULD HAVE BEEN OVER BY 2005.

14 Q. OKAY. SO DO YOU KNOW WHETHER IN THE 2007 EDITION OF
15 MADDEN 89 49ERS WERE A HISTORIC TEAM?

16 A. I DON'T KNOW.

17 Q. YOU DON'T KNOW.

18 AND DID YOU HAVE THE RIGHTS TO USE EVERY SINGLE
19 MEMBER OF THESE 49ERS ON THAT TEAM IN THAT EDITION?

20 A. I'M SORRY. REPEAT THAT?

21 Q. DID YOU HAVE THE RIGHTS TO USE EVERY SINGLE --

22 A. YOU SAID THIS WASN'T ABOUT -- YOU WEREN'T CLAIMING WE
23 VIOLATED ANYBODY'S RIGHTS.

24 Q. RIGHT. I'M NOT. LET ME PUT IT THIS WAY. DID YOU ACQUIRE
25 THE RIGHTS FROM THE DEFENDANTS TO USE EVERY SINGLE ONE OF THE

1 MEMBERS OF THAT 89 49ER TEAM?

2 **MR. FEHER:** OBJECTION TO FORM, YOUR HONOR.

3 THE QUESTION WHEN HE IS REFERRING TO THE "MEMBERS,"
4 IT'S COMPLETELY UNCLEAR WHAT HE'S REFERRING TO.

5 **THE WITNESS:** I CAN'T SEE --

6 **THE COURT:** I THINK WHAT HE'S ASKING IS, DID YOU GET
7 FOR THE REAL -- WHAT'S THE YEAR, '89?

8 **MR. HUMMEL:** YEAH, 89 49ERS.

9 **THE COURT:** FOR THE REAL 89 49ERS, WE COULD GO BACK
10 AND LOOK IN THE SPORTS BOOKS AND FIGURE OUT JOE MONTANA AND
11 ROGER CRAIG. HE'S ASKING: DID YOU HAVE THE RIGHTS TO USE
12 THEIR ACTUAL IMAGES? IS THAT YOUR QUESTION?

13 **MR. HUMMEL:** YES, SIR.

14 **THE COURT:** FOR THOSE ACTUAL PEOPLE.

15 **THE WITNESS:** AGAIN, I DON'T RECALL RIGHT NOW
16 WHETHER -- IF WE DID FOR ANY OF THEM. AND IF WE DIDN'T HAVE
17 THE RIGHTS, IT WAS OUR PRACTICE NOT TO USE THE NAMES OR IMAGES
18 OF THOSE PLAYERS.

19 **BY MR. HUMMEL:**

20 **Q.** I UNDERSTAND. AND TO BE CLEAR, THIS IS NOT A CASE AGAINST
21 EA. SO MY QUESTION IS THIS: DID THE DEFENDANTS, WHO KNEW
22 ABOUT THIS, COME TO YOU AND SAY:

23 "WE HAVE 2100 RETIRED GUYS UNDER LICENSE. WE'RE
24 GOING TO GIVE YOU THOSE 2100 GUYS UNDER LICENSE SO YOU CAN HAVE
25 AT LEAST SOME OF THEM IN THE GAME"?

1 DID THEY TO THAT?

2 **A.** I THINK I TOLD YOU BEFORE THAT THEY DIDN'T COME TO US AND
3 SAY:

4 "HERE'S A LIST OF 2100 GUYS."

5 **Q.** THEY DIDN'T DO THAT.

6 AND WHAT LASHUN LAWSON WROTE TO YOU WAS "SCRAMBLE,"
7 RIGHT?

8 WAS THAT YOUR WORD OR HERS?

9 **A.** I THINK IT WAS USED BY US BEFORE SHE PUT IT IN HER LETTER.

10 **Q.** WHAT DID "SCRAMBLE" MEAN?

11 **A.** CHANGE THE NUMBER.

12 **Q.** THAT'S ALL, CHANGE THE NUMBER?

13 **A.** YEAH.

14 **Q.** DIDN'T MEAN DON'T USE THEIR NAME?

15 **A.** WE ALREADY KNEW WE WERE NOT GOING TO USE THEIR NAME. WHAT
16 I TOLD YOU WAS THAT PLAYERS INC IS PARTICULARLY SENSITIVE ON
17 THE ISSUE OF PLAYER NUMBERS. THE LEAGUE GRANTS US THE RIGHT TO
18 THE JERSEYS, INCLUDING THE NUMBERS. BUT IT'S A LITTLE BIT OF
19 AN INTERMURAL BATTLE BETWEEN THE PLAYERS ASSOCIATION AND THE
20 LEAGUE WHO ACTUALLY HAS THE RIGHT THE NUMBERS.

21 AND DISCRETION BEING THE BETTER PART OF VALOR, AS THE
22 LICENSEE IN THE MIDDLE OF THE NFL AND THE PLAYERS ASSOCIATION,
23 WE CHOSE NEVER TO FIGHT THEM ABOUT THAT SAYING:

24 "WELL, WAIT A SECOND. THE LEAGUE GIVES US THE
25 RIGHT TO THESE JERSEYS, AND PART OF THE JERSEY IS THE NUMBER."

1 AND WE JUST DECIDED NOT TO ARGUE WITH THEM OVER THAT.

2 **Q.** OKAY. AND ISN'T IT TRUE THAT LASHUN LAWSON WAS TELLING EA
3 IN 2001:

4 "IF YOU DON'T HAVE THE RIGHTS, YOU HAVE TO
5 SCRAMBLE"?

6 **A.** THE NUMBER.

7 **Q.** SCRAMBLE. IT DOESN'T SAY THE NUMBER.

8 **A.** I'M TELLING YOU WHAT I UNDERSTOOD. THEY DIDN'T WANT US TO
9 USE THE NUMBER OF THE PLAYER.

10 **Q.** RIGHT.

11 **A.** WE WEREN'T NECESSARILY CONCEDED THAT WE DIDN'T HAVE THE
12 RIGHT TO USE THE NUMBER FROM THE JERSEY THAT THE NFL GRANTED US
13 THE RIGHTS TO. BUT I THINK FOR THE MOST PART WE WENT ALONG
14 WITH THEIR REQUEST NOT TO USE THE NUMBER OF JOE MONTANA AND
15 NUMBER 16.

16 **Q.** AND YOU DID THAT, RIGHT?

17 **A.** THAT WAS OUR PRACTICE.

18 **Q.** OKAY.

19 **A.** IF WE DID NOT HAVE THE RIGHTS TO JOE MONTANA. SO IF WE
20 HAD LICENSED JOE'S RIGHTS WE WOULD USE HIS PHOTO AND HIS JERSEY
21 NUMBER AND HIS BIOGRAPHICAL INFORMATION, ET CETERA.

22 **Q.** AND INSTEAD OF SAYING "IT MUST BE SCRAMBLED," THEY DIDN'T
23 COME TO YOU IN 2001, '2, '3, '4, '5, '6, '7, AND SAY:

24 "WE HAVE THIS GROUP OF GUYS UNDER LICENSE. TAKE
25 THEM"?

1 **A.** FOR HOW MUCH EXTRA?

2 **Q.** NO EXTRA.

3 **A.** THEY NEVER OFFERED US THE LIST OF 2100 GUYS. WE'VE SAID
4 THAT A COUPLE OF TIMES.

5 **Q.** OKAY. AND, IN FACT, IN -- LET ME GET THE DATE RIGHT --
6 2005, IN JUNE, JEREMY STRAUSSER REACHED OUT TO LASHUN LAWSON
7 AGAIN AND WANTED TO USE RETIRED PLAYER DATA IN THE MADDEN GAME
8 AGAIN, RIGHT?

9 **A.** I'M NOT SURE.

10 **Q.** LOOK AT EXHIBIT 1184.

11 **MR. HUMMEL:** YOUR HONOR, IN A REDACTED FORM THIS
12 DOCUMENT HAS BEEN ADMITTED.

13 **THE WITNESS:** HOLD ON A SECOND.

14 **MR. HUMMEL:** HASN'T BEEN ADMITTED YET, BUT I'LL OFFER
15 IT NOW.

16 **MR. FEHER:** MAY I HAVE A MOMENT, YOUR HONOR?

17 **THE COURT:** 1184, IS THIS THE E-MAIL CHAIN THAT WE
18 DISCUSSED EARLIER?

19 **MR. HUMMEL:** YES, SIR.

20 **THE COURT:** DOES IT CONFORM TO THE COURT'S RULING?

21 **MR. HUMMEL:** YES, IT DOES.

22 **THE COURT:** IS THERE ANY OBJECTION?

23 **MR. KESSLER:** IF THEY'VE REDACTED THE MATERIAL THAT'S
24 NOT ADMISSIBLE, THEN IT'S FINE.

25 **THE COURT:** ALL RIGHT. WITH THAT REPRESENTATION,

1 1184 IS RECEIVED.

2 (TRIAL EXHIBIT 1184 RECEIVED IN EVIDENCE.)

3 **BY MR. HUMMEL:**

4 **Q.** DO YOU HAVE EXHIBIT 1184, SIR?

5 **A.** YES, I'M READING IT.

6 **Q.** YOU'RE NOT SHOWN AS A COPY ON THIS, BUT I WOULD LIKE TO
7 TURN TO THE SECOND TO LAST PAGE OF THE EXHIBIT.

8 **MR. FEHER:** YOUR HONOR, JUST ONE QUESTION, PLEASE. I
9 BELIEVE THIS DOCUMENT WASN'T LISTED BY THE PLAINTIFFS AS A
10 DOCUMENT TO BE USED IN THIS EXAMINATION.

11 **MR. HUMMEL:** IT'S CROSS-EXAMINATION, YOUR HONOR.

12 **MR. FEHER:** IT VIOLATES THE RULES. UNDER THE RULES
13 THE PLAINTIFFS HAVE KNOWN THAT THIS WITNESS WAS GOING TO BE
14 HERE FOR THIS PURPOSE, AND ALL DOCUMENTS SHOULD HAVE BEEN
15 LISTED. THIS IS A COMPLETE SURPRISE.

16 **THE COURT:** WHY IS THIS CROSS-EXAMINATION?

17 **MR. HUMMEL:** BECAUSE THIS IS AN 811 (C) WITNESS, YOUR
18 HONOR.

19 **THE COURT:** HE'S NOT AFFILIATED WITH THE OTHER SIDE.

20 **MR. HUMMEL:** THAT'S NOT THE WORD. THE RULE IS HE'S
21 IDENTIFIED WITH.

22 **MR. FEHER:** IF THAT'S THE POINT --

23 **THE COURT:** THAT POINT IS WRONG, BUT I WILL ALLOW YOU
24 TO USE IT, ANYWAY.

25 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

1 **BY MR. HUMMEL:**

2 **Q.** ALL RIGHT. IF YOU LOOK AT THE JEREMY -- FROM JEREMY
3 STRAUSSER, THE FIRST E-MAIL IN THAT CHAIN, DATED --

4 **MR. HUMMEL:** BOTTOM OF THE PAGE.

5 (DOCUMENT DISPLAYED.)

6 **BY MR. HUMMEL:**

7 **Q.** NOW, YOU'RE NOT SHOWN AS A COPY OF THAT, SIR.

8 **A.** CAN I READ THROUGH IT?

9 **THE COURT:** THE COURT IS GOING TO ALLOW YOU TO PURSUE
10 THIS, BUT ORDINARILY WE DON'T ALLOW YOU TO DISPLAY UP THERE
11 E-MAILS THAT THE WITNESS NEVER GOT.

12 **MR. HUMMEL:** I UNDERSTAND YOUR HONOR.

13 **THE COURT:** SO AT SOME POINT IT'S YOUR OBLIGATION TO
14 CONNECT HIM UP WITH HAVING PERSONAL KNOWLEDGE OF WHATEVER IT IS
15 YOU ARE SHOWING. OTHERWISE, IT'S JUST AN OCCASION FOR
16 ARGUMENT.

17 **MR. FEHER:** YOUR HONOR, THIS HASN'T BEEN MOVED INTO
18 EVIDENCE. AND I DO BELIEVE THERE IS HEARSAY IN THIS DOCUMENT
19 APART FROM THE EARLIER RULING.

20 **MR. HUMMEL:** WE'VE DEALT WITH THAT, YOUR HONOR.

21 **THE COURT:** WE HAVE DEALT WITH THAT COUNSEL. IT'S
22 OVERRULED, AND WITH THE REDACTIONS IT'S IN EVIDENCE.

23 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

24 I WILL LINK THIS UP.

25 **THE COURT:** THE POINT I'M GETTING AT IS A DIFFERENT

1 ONE. WE HAVE THIS WITNESS HERE TO GIVE US THE FACTUAL
2 INFORMATION HE CAN GIVE US. SO I'M EXPECTING YOU TO CONNECT
3 HIM UP WITH THIS E-MAIL CHAIN SOMEHOW.

4 **MR. HUMMEL:** I WILL, YOUR HONOR. I'LL TRY.

5 **THE COURT:** ALL RIGHT.

6 **BY MR. HUMMEL:**

7 **Q.** MR. LINZNER.

8 **A.** YES, SIR.

9 **Q.** JEREMY STRAUSSER WAS AN EMPLOYEE IN 2005, OF EA, AND
10 LASHUN LAWSON WAS AN EMPLOYEE OF PLAYERS INC, RIGHT?

11 **A.** IN 2005, YES.

12 **Q.** OKAY. WERE YOU AWARE OF THE FACT THAT THE -- IN THAT TIME
13 FRAME EA WAS DESIGNING A FEATURE IN MADDEN WHERE THERE WILL BE
14 A LIVING RECORD BOOK WITH ALL THE PRESET NFL RECORDS BY GAME,
15 SEASON AND CAREER?

16 WERE YOU AWARE OF THAT?

17 **A.** I RECALL THAT THEY WERE THINKING OF INCLUDING THAT IN A
18 MADDEN GAME AT SOME POINT IN TIME. I DON'T REMEMBER THE DATE,
19 BUT I DO RECALL THAT THERE WAS A CONSIDERATION GIVEN TO HAVING
20 A RECORD BOOK FEATURE.

21 **Q.** AND DO YOU RECALL THAT EA REACHED OUT TO PLAYERS INC TO
22 GET THEIR VIEWS ON WHETHER THAT WOULD BE OKAY?

23 **A.** WELL, YEAH, WE REACHED OUT TO PLAYERS INC TO CONFIRM THAT
24 THEY THOUGHT THAT WE DID NOT NEED A LICENSE FOR THIS PARTICULAR
25 FEATURE BECAUSE ALL WE WANTED TO INCLUDE WAS FACTUAL

1 INFORMATION, YOU KNOW, DAN MORENO THREW 49 TOUCHDOWN PASSES IN
2 1998, OR WHATEVER IT WAS.

3 Q. RIGHT. RIGHT.

4 AND SO MR. STRAUSSER WAS REACHING OUT HERE TO LASHUN
5 LAWSON, RIGHT?

6 A. YES. THAT'S WHAT IT APPEARS TO BE.

7 Q. AND HE WROTE ON BEHALF OF EA, YOUR COMPANY, IN THE SECOND
8 PARAGRAPH:

9 "I KNOW THAT PLAYERS INC DOESN'T WANT US TO
10 INCLUDE ANY RETIRED PLAYERS IN THE GAME."

11 HOW DID HE KNOW THAT?

12 MR. FEHER: OBJECTION, YOUR HONOR. THERE IS NO
13 FOUNDATION.

14 THE COURT: SUSTAINED.

15 BY MR. HUMMEL:

16 Q. DID YOU KNOW THAT?

17 A. THAT'S NOT CORRECT.

18 Q. SO THAT'S AN INCORRECT STATEMENT IN THE E-MAIL?

19 A. THAT'S CORRECT.

20 Q. ALL RIGHT.

21 A. IT'S CORRECT THAT IT'S AN INCORRECT STATEMENT.

22 Q. OKAY.

23 A. THEY -- WHAT THEY WANTED, THEY WANTED US TO INCLUDE
24 RETIRED PLAYERS IN THE GAME, BUT THEY WANTED US TO PAY EXTRA
25 FOR IT. FOR THIS PARTICULAR FEATURE WE WERE OF THE OPINION

1 THAT BECAUSE IT WAS FACTUAL INFORMATION IT WAS SORT OF PUBLIC
2 DOMAIN INFORMATION. WE DIDN'T NEED A SEPARATE LICENSE FROM DAN
3 MARINO IN THAT EXAMPLE I JUST GAVE TO INCLUDE FACTUAL
4 INFORMATION THAT HE HELD THE RECORD FOR MOST TOUCHDOWN PASSES.

5 **Q.** THEY WANTED YOU TO PAY EXTRA FOR THAT INFORMATION, RIGHT?

6 **A.** THEY THOUGHT THAT WE SHOULDN'T USE THE NAMES OR THE STATS
7 OF THOSE PLAYERS UNLESS WE SECURED SEPARATE LICENSES, AND WE
8 PAID SEPARATELY.

9 **Q.** NOT TO BE REPETITIVE, BUT IN THE CONTEXT OF THIS DIALOGUE
10 THAT WAS OCCURRING IN 2005, ISN'T IT CORRECT THAT NO ONE FROM
11 PLAYERS INC EVER TOLD YOU OR MR. STRAUSSER, TO YOUR KNOWLEDGE:

12 "WE'VE GOT 2100 RETIRED PLAYERS UNDER A GROUP
13 LICENSE, AND YOU COULD USE THEIR STATS"?

14 **A.** WE ONLY WANTED THE STATS OF LIKE, AN EXAMPLE, DAN MARINO,
15 WHO HAD THE RECORD FOR THE MOST TOUCHDOWN PASSES. BUT IT IS
16 BEING REPETITIVE. I TOLD YOU THEY NEVER GAVE US A LIST OF 2100
17 PLAYERS THAT THEY REPRESENTED.

18 **Q.** SO IN THIS CONTEXT WHEN YOU'RE REACHING OUT YET AGAIN THEY
19 SAID "NO," RIGHT, WITHOUT AN EXTRA FEE?

20 **A.** WITHOUT AN EXTRA FEE. IF WE WERE WILLING TO PAY FEES, YOU
21 KNOW, FOR THE DAN MARINO RECORD OR THE WALTER PAYTON RECORD OR,
22 YOU KNOW, LAWRENCE TAYLOR, AND THE SACK RECORD, WHATEVER IT MAY
23 BE, THEY WOULD HAVE ENDEAVORED TO TRY AND SECURE THE RIGHTS TO
24 THOSE PLAYERS FOR THE FEE THAT WE COULD NEGOTIATE.

25 **Q.** BUT YOU DIDN'T KNOW WHETHER WITHIN THAT GROUP OF 2100 GUYS

1 WHO SIGNED RETIRED PLAYER GROUP AUTHORIZATION FORMS THERE MIGHT
2 HAVE BEEN SOME RIGHTS THAT YOU ACTUALLY WANTED TO USE, RIGHT?

3 **A.** WE DIDN'T KNOW WHO -- I'VE TOLD YOU SEVERAL TIMES -- I'M
4 SURE THE JURY'S HEARD IT BY NOW -- THEY DID NOT GIVE US A LIST
5 OF 2100 PLAYERS.

6 WE TYPICALLY WOULD TELL THEM WHO WE WANTED, AND THEY
7 WOULD TRY AND GET THEM.

8 **MR. HUMMEL:** ONE MOMENT, YOUR HONOR.

9 NOTHING FURTHER AT THIS TIME, YOUR HONOR.

10 **THE COURT:** TAKE A BREAK SO I CAN DEAL WITH THE HALL
11 OF FAME ISSUE. THIS TIME IT WILL BE 20 MINUTES.

12 **THE CLERK:** ALL RISE.

13 (THEREUPON, THE JURY LEFT THE COURTROOM.)

14 **THE WITNESS:** DO YOU NEED ME FOR THIS, YOUR HONOR?

15 **THE COURT:** DO I NEED THE WITNESS FOR THIS?

16 **MR. KESSLER:** I DON'T THINK SO, YOUR HONOR.

17 **MR. HUMMEL:** NO, YOUR HONOR.

18 **THE COURT:** WHY DON'T YOU STEP OUT AND TAKE YOUR
19 20-MINUTE BREAK, TOO?

20 THANK YOU, MR. LINZNER.

21 DO YOU STILL WANT TO GO INTO THE HALL OF FAME?

22 **MR. HUMMEL:** YES, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. WELL, THEN, HERE IS WHAT MY
24 NOTES FROM THE -- EVERYONE ELSE HAVE A SEAT.

25 DO YOU WANT MR. LINZNER HERE OR NOT?

1 **MR. HUMMEL:** NOT.

2 **THE COURT:** NOT. ALL RIGHT. YOU'LL NEED TO STEP
3 OUTSIDE, THEN.

4 **THE WITNESS:** THANK YOU, YOUR HONOR.

5 **THE COURT:** ON DEFENDANTS' MOTION IN LIMINE NUMBER 3,
6 THE STIPULATED LANGUAGE YOU GAVE ME IS THIS WAS GRANTED.

7 "PLAINTIFFS MAY NOT INTRODUCE EVIDENCE RELATING TO
8 PLAINTIFFS' COMPLAINTS ABOUT AD HOC AGREEMENTS, INCLUDING BUT
9 NOT LIMITED TO SUCH EVIDENCE RELATING TO THE LICENSE AGREEMENT
10 BETWEEN ELECTRONIC ARTS, THE PRO FOOTBALL HALL OF FAME AND
11 PLAYERS INC."

12 SO THIS WAS -- THIS WAS, IN MY MEMORY OF IT, GETTING
13 AT COMPLAINTS, NOT -- IT WAS NOT A BLANKET RULING THAT THE HALL
14 OF FAME WAS OUT OF THE CASE.

15 IT WAS EXCLUDING THE COMPLAINTS. ISN'T THAT THE WAY
16 IT CAME DOWN?

17 **MR. KESSLER:** YES, YOUR HONOR. I BELIEVE THE PURPOSE
18 OF INTRODUCING THIS WITH THE WITNESS WAS TO COMPLAIN ABOUT THE
19 BEHAVIOR OF PLAYERS INC IN CONNECTION WITH THE LICENSING OF
20 THAT AGREEMENT. THERE ARE SEVERAL DIFFERENT POSSIBLE
21 COMPLAINTS.

22 THEY HAVE ONE SET OF COMPLAINTS, YOUR HONOR KNOWS,
23 REGARDING THE PRICES THAT WERE PAID. AND THAT'S DEFINITELY
24 COVERED BY THIS EXCLUSION.

25 AND THEN, THEY HAD OTHER COMPLAINTS, WHICH I THINK

1 THEY WERE TRYING TO ELICIT ABOUT:

2 "WELL, HOW DID -- WHAT DID THEY OFFER FOR YOU
3 FOR THIS GAME?"

4 THIS GAME, THE PROBLEM IS, YOUR HONOR, IS THAT IT WAS
5 AN AD HOC LICENSE. THEY CONCEDE IT WAS AN AD HOC LICENSE.
6 THEY'RE CLAIMING NO INJURY OR DAMAGES FROM THE AD HOC LICENSE.

7 AND THE REASON YOUR HONOR EXCLUDED IT BECAUSE IT
8 WOULD CONFUSE THE JURY THAT THERE WAS, IN FACT, GOING TO BE
9 SOME CLAIM FOR THE BEHAVIOR REGARDING AN AD HOC LICENSE LIKE
10 THE HALL OF FAME GAME.

11 **THE COURT:** LET'S SEE. WHAT IS THE -- WHAT IS THE
12 PROFFER THAT THIS WITNESS, MR. LINZNER -- WHAT EVIDENCE DO YOU
13 EXPECT TO GET OUT OF HIM AND FOR WHAT PURPOSE ON THE SUBJECT OF
14 THE HALL OF FAME?

15 **MR. HUMMEL:** WELL, YOUR HONOR, I WAS SIMPLY GOING TO
16 ESTABLISH THAT EA PUBLISHED A GAME, UTILIZED A GAME THAT HAD
17 SIX OR MORE RETIRED FORMER NFL PLAYERS.

18 THAT'S A PRODUCT THAT OUR CONTENTION IS FALLS WITHIN
19 THE DEFINITION OF THE GLA LICENSE. AND THEY DID IT REPEATEDLY
20 WITH THE HISTORIC TEAMS AND WITH THE GROUP.

21 **MR. KESSLER:** AND, YOUR HONOR, THEY'VE ALREADY
22 ESTABLISHED THROUGH MR. LINZNER THAT WHEN THEY DID DO AD HOC
23 AGREEMENTS FOR RETIRED PLAYERS, THAT THERE WERE RETIRED PLAYERS
24 AND ACTIVE PLAYERS IN THE GAME.

25 THIS EA HALL OF FAME GAME IS BEFORE THE STATUTE OF

1 LIMITATIONS PERIOD. SO THEY'VE ALREADY ESTABLISHED THE
2 ARGUMENT HE MADE OR THAT HE WANTS TO MAKE THAT THERE WERE BOTH
3 RETIRED AND ACTIVE PLAYERS WHEN THEY LICENSED THE RETIRED
4 PLAYERS DURING THE LIMITATIONS PERIOD. HE DOESN'T HAVE TO GO
5 INTO THE PRELIMITATIONS PERIOD TO DO THAT.

6 **MR. LECLAIR:** YOUR HONOR, THAT'S JUST TOTALLY
7 INCORRECT. I DON'T KNOW WHAT MR. KESSLER IS TALKING ABOUT.
8 IT'S ENTIRELY WITHIN THE STATUTE OF LIMITATIONS.

9 **MR. KESSLER:** I'M SORRY. I THOUGHT IT WAS THE OTHER
10 ONE. I APOLOGIZE. IT IS IN THE LIMITATIONS PERIOD.

11 I GUESS MY POINT THEN IS THEY HAVE ALREADY
12 ESTABLISHED THAT WITH RESPECT TO OTHER GAMES. IF THAT'S THE
13 SOLE PURPOSE, HE'S ALREADY ESTABLISHED THAT.

14 IF THAT'S THE SOLE QUESTION, THEN I PROBABLY DON'T
15 HAVE SUCH AN OBJECTION. MY PROBLEM IS I CERTAINLY DON'T WANT
16 TO OPEN THE DOOR TO ANYTHING ABOUT THEIR COMPLAINTS, ABOUT THE
17 BELOW MARKET -- ALLEGED BELOW MARKET PRICES OR ANY OF THOSE
18 OTHER THINGS WHICH IS NOT A SUBJECT OF THIS CASE.

19 **THE COURT:** ARE YOU GOING TO GET INTO THAT?

20 **MR. HUMMEL:** NOT WITH THIS WITNESS.

21 **MR. LECLAIR:** NOT WITH THIS WITNESS. BUT, YOUR
22 HONOR, WE DID FILE A BRIEF THIS MORNING AND WE DO HAVE A
23 WITNESS TOMORROW TO WHICH THAT EVIDENCE WILL APPLY.

24 SO WE WOULD LIKE TO HAVE THAT ISSUE RESOLVED. BUT IT
25 DOESN'T HAVE TO BE RESOLVED FOR THIS WITNESS.

1 **THE COURT:** AGAIN, MR. HUMMEL, WHAT ARE THE POINTS
2 YOU WANT TO MAKE WITH MR. LINZNER ON THE HALL OF FAME?

3 **MR. HUMMEL:** THAT THIS WAS A GAME THAT EA
4 MANUFACTURED AND SOLD THAT UTILIZED SIX OR MORE PRESENT OR
5 FORMER PLAYERS. AND IT WAS PURSUANT TO A GROUP LICENSE.

6 **MR. KESSLER:** WELL, IT CERTAINLY WAS NOT PURSUANT TO
7 A GROUP LICENSE IF HE MEANS THE GROUP LICENSES THAT RETIRED
8 PLAYERS SIGNED.

9 **MR. HUMMEL:** IT DOESN'T SAY THAT. HE KEEPS WANTING
10 TO TRUMP OUR ARGUMENT OR DEFEND HIS CASE BASED ON LANGUAGE
11 THAT'S NOT IN THE GLA.

12 WE'RE ENTITLED TO PUT ON A CASE BASED ON THE LANGUAGE
13 OF THE GLA. THAT'S WHAT I'M DOING.

14 **THE COURT:** ALL RIGHT. YOU CAN ASK THE LINE OF
15 QUESTIONS THAT YOU SAID THAT YOU WANT --

16 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

17 **THE COURT:** -- TO ASK.

18 **MR. KESSLER:** MY ONLY REMAINING OBJECTION IS HE
19 SHOULDN'T BE QUESTIONING THIS WITNESS ABOUT THE MEANING OF
20 GROUP LICENSE, BECAUSE HE'S TRYING TO INPUT THAT TO THE GLA.
21 AND THIS WITNESS HAS ALREADY TESTIFIED HE'S NEVER EVEN SEEN THE
22 GLA. SO HE COULD OFFER NO TESTIMONY ABOUT WHETHER IT'S A GROUP
23 LICENSE OR NOT WITH RESPECT TO THE GLA.

24 **THE COURT:** THIS WITNESS IS VERY CAPABLE OF DEFENDING
25 HIMSELF.

1 **MR. HUMMEL:** QUITE.

2 **THE COURT:** AND MAKING ALL PROPER DISTINCTIONS.

3 **MR. KESSLER:** OKAY.

4 **THE COURT:** AND I DON'T THINK THAT MR. HUMMEL, AS
5 GOOD A LAWYER AS HE IS, IS GOING TO PULL THE WOOL OVER THE EYES
6 OF MR. LINZNER.

7 SO THE LINE OF QUESTIONS IS GOING TO BE ALLOWED. AND
8 I'LL HAVE TO DIG OUT -- MY LAW CLERK HAS ARRIVED. THEY TELL ME
9 THAT THEY HAVE FILED SOME BRIEFS OVERNIGHT. I DID NOT SEE
10 THOSE.

11 **MR. KESSLER:** WE DIDN'T SEE IT, EITHER.

12 **MR. HUMMEL:** IT WAS JUST FILED THIS MORNING.

13 **MR. KATZ:** IT WAS THIS MORNING, YOUR HONOR.

14 **MR. KESSLER:** AFTER WE GOT TO COURT.

15 **THE COURT:** ANYWAY, WE NEED TO DIG THOSE OUT. I
16 DON'T KNOW WHAT MR. LECLAIR IS TALKING ABOUT, BUT I'LL SEE IF I
17 CAN'T FIGURE IT OUT. OKAY.

18 TAKE A 15-MINUTE BREAK.

19 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

20 (RECESS TAKEN FROM 10:55 TO 11:14 A.M.)

21 **THE COURT:** BEFORE WE BRING IN THE JURY, MR. KESSLER,
22 WOULD YOU RESPOND TO THIS BY 5:00 P.M. TODAY, THIS LETTER DATED
23 OCTOBER 29TH?

24 **MR. KESSLER:** YES, YOUR HONOR, WE WILL DO SO.

25 **THE COURT:** ALL RIGHT. WE'LL ARGUE THIS FIRST THING

1 IN THE MORNING.

2 ALL RIGHT. BRING IN THE JURY.

3 **MR. KESSLER:** THERE'S ONE BRIEF ISSUE BECAUSE WE WERE
4 HANDED TODAY IN COURT A DOCUMENT, TRIAL EXHIBIT 1164-2. I
5 ASSUME THE REASON WE WERE HANDED THIS IS BECAUSE THAT
6 PLAINTIFFS WANTED TO TRY TO USE THIS PERHAPS FOR MR. ADDERLEY
7 BECAUSE IT WAS NOT USED FOR MR. LINZNER, BUT WE'RE NOT GOING TO
8 HAVE ANOTHER BREAK.

9 WE HAD NO PRIOR NOTICE OF THIS DOCUMENT UNDER THE
10 COURT'S RULES. IT'S A GLA SIGNED BY MR. JOE GREENE, WHICH
11 MR. ADDERLEY, OF COURSE, NEVER HAD POSSESSION OF. AND IT HAS
12 HANDWRITING ABOUT "HOF," WHICH I ASSUME IS THE HALL OF FAME.
13 AND MR. ADDERLEY WOULDN'T EVEN KNOW WHAT THAT HANDWRITING IS.
14 SO I DON'T THINK IT'S APPROPRIATE FOR THIS DOCUMENT TO BE
15 INTRODUCED WITH ANY WITNESS TODAY, BUT I DON'T KNOW WHAT
16 PURPOSE THEY GAVE IT TO ME.

17 **MR. KATZ:** IT HAS NOTHING TO DO WITH MR. ADDERLEY'S
18 EXAMINATION, YOUR HONOR.

19 **MR. HUMMEL:** IT MIGHT HAVE SOMETHING TO DO WITH
20 MR. LINZNER'S RECROSS. AND WE GAVE THEM NOTICE TODAY.

21 **THE COURT:** ALL RIGHT.

22 **MR. KESSLER:** CAN I OBJECT, THEN, BECAUSE WE HAD NO
23 NOTICE OF THIS UNDER THE COURT'S RULES, OF THIS DOCUMENT?

24 **THE COURT:** WELL, IF IT'S ON RECROSS --

25 **MR. HUMMEL:** RIGHT.

1 **THE COURT:** -- IT WOULD BE ANOTHER MATTER.

2 **MR. KESSLER:** OKAY.

3 **THE COURT:** WE HAVE TO WAIT AND SEE HOW THE
4 INTERVENING EXAMINATION GOES.

5 CAN WE NOW BRING BACK THE JURY?

6 **MR. HUMMEL:** YOUR HONOR, WHILE WE'RE DOING THAT, I
7 JUST WANT TO INFORM YOU THE HARD COPY OF THE HALL OF FAME GAME
8 IS AT OUR OFFICE. IT WAS INADVERTENTLY NOT PUT IN THE RIGHT
9 READ WELL. SO IF I COULD DISPLAY THIS ON THE PODIUM?

10 **THE COURT:** ALL RIGHT.

11 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

12 (THEREUPON, THE JURY RETURNED.)

13 **THE CLERK:** ALL RISE.

14 **THE COURT:** WELCOME BACK. HAVE A SEAT.

15 MR. HUMMEL, YOU MAY CONTINUE.

16 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

17 LADIES AND GENTLEMEN, MR. LINZNER.

18 COULD I HAVE DISPLAYED EXHIBIT 1268, PLEASE?

19 (DOCUMENT DISPLAYED.)

20 **BY MR. HUMMEL:**

21 **Q.** MR. LINZNER, THIS IS A PRODUCT THAT EA MARKETED, CORRECT?

22 **A.** YES. CAN I SEE THE HARD COPY?

23 **Q.** OH, SURE.

24 **A.** I CAN'T SEE THE YEAR.

25 **Q.** SORRY.

1 A. YES, SIR.

2 Q. CAN YOU SEE THE YEAR ON THAT ONE?

3 A. YEAH. IT SAYS "MADDEN NFL '07." IT'S HARD TO SEE, BUT TO
4 THE RIGHT OF THE NFL SHIELD THERE'S NUMBERS THAT SAY "'07."

5 Q. IT'S THE HALL OF FAME EDITION. WHAT DOES THAT MEAN?

6 A. JOHN MADDEN WHO OBVIOUSLY OUR GAME IS NAMED AFTER IS A
7 FAMOUS COACH FOR THE OAKLAND RAIDERS AND NOW A VERY FAMOUS
8 FOOTBALL ANNOUNCER. HE WAS ADMITTED INTO THE NFL HALL OF FAME
9 IN 2006.

10 SO WE COMMEMORATED, CELEBRATED HIS ENTRY INTO THE
11 HALL OF FAME WITH A SPECIAL MADDEN NFL HALL OF FAME EDITION.

12 Q. DID THAT EDITION ALSO CONTAIN HALL OF FAME TEAMS?

13 A. I DON'T -- I -- HALL OF FAME? THERE'S NO SUCH THING AS A
14 HALL OF FAME TEAM.

15 Q. I UNDERSTAND. BUT DID MADDEN -- DID EA IN THE MADDEN GAME
16 CREATE HALL OF FAME TEAMS THAT COULD PLAY AGAINST EACH OTHER?

17 A. I DON'T KNOW.

18 Q. YOU DON'T KNOW?

19 A. NO.

20 Q. DID YOU EVER ACQUIRE THE RIGHTS TO RETIRED PLAYERS FROM
21 THE HALL OF FAME?

22 A. WE DID A DEAL WITH THE HALL OF FAME THAT INCLUDED THE
23 RIGHTS TO HALL OF FAME MEMBERS.

24 Q. RIGHT.

25 A. THAT CONSENTED TO IT. AND WHO HADN'T LICENSED THEIR

1 RIGHTS OUT EXCLUSIVELY TO SOMEONE ELSE IN THE INTERIM. I DON'T
2 THINK THEY WERE HALL OF FAME TEAMS. THEY WERE PLAYERS THAT YOU
3 COULD USE IN THE GAME SOMEHOW.

4 Q. WASN'T THERE IN THIS VERSION AN AFC ALL STAR TEAM MADE UP
5 OF HALL OF FAME PLAYERS VERSUS AN NFC ALL STAR TEAM?

6 A. I DON'T KNOW.

7 Q. YOU DON'T KNOW. ALL RIGHT.

8 AND DID PLAYERS INC HAVE ANY ROLE IN NEGOTIATING YOUR
9 DEAL WITH THE HALL OF FAME?

10 A. YES, THEY DID.

11 Q. THEY DID. ALL RIGHT.

12 AND THOSE WERE ALL RETIRED PLAYERS AT THE TIME,
13 CORRECT?

14 A. WELL, BY DEFINITION, YOU CAN'T BE IN THE HALL OF FAME
15 UNLESS YOU'VE RETIRED.

16 Q. SO THE ANSWER IS "YES"?

17 A. YES.

18 Q. SO ONE MORE EXHIBIT, NUMBER 1240.

19 THE COURT: 1268, YOU DIDN'T MOVE THAT INTO EVIDENCE.

20 MR. HUMMEL: MAY I MOVE IT NOW?

21 THE COURT: ANY OBJECTION TO 1268?

22 MR. FEHER: NO, YOUR HONOR.

23 THE COURT: RECEIVED.

24 (TRIAL EXHIBIT 1268 RECEIVED IN EVIDENCE)

25 THE WITNESS: MR. HUMMEL? YOU WANT THIS BACK?

1 **THE COURT:** ALL RIGHT. NOW, WHAT WAS THE OTHER ONE?

2 **MR. HUMMEL:** THIS ONE IS 1240.

3 **BY MR. HUMMEL:**

4 **Q.** ALL RIGHT, SO MR. LINZNER THIS IS NOT A DOCUMENT YOU'VE
5 EVER SEEN BEFORE, I TAKE IT, CORRECT?

6 **A.** I DON'T RECALL EVER SEEING THIS BEFORE.

7 **Q.** IT'S A COMPILATION THAT WAS PREPARED BY THE PLAINTIFFS IN
8 THIS CASE.

9 YOUR HONOR, I THINK THERE'S A STIPULATION THAT IT'S
10 ADMISSIBLE IN ITS CURRENT FORM?

11 **MR. KESSLER:** ABSOLUTELY.

12 **MR. FEHER:** YES, YOUR HONOR.

13 **THE COURT:** RECEIVED.

14 (TRIAL EXHIBIT 1240 RECEIVED IN EVIDENCE)

15 **MR. HUMMEL:** CAN WE DISPLAY THE FIRST PAGE OF THIS
16 SUMMARY, PLEASE.

17 THANK YOU, YOUR HONOR.

18 (DOCUMENT DISPLAYED.)

19 **BY MR. HUMMEL:**

20 **Q.** THIS IS A COMPILATION OF SAMPLES OF RETIRED NFL PLAYER
21 CLASS MEMBERS WHOM PLAINTIFFS CONTEND ARE IN CERTAIN VERSIONS
22 OF EA'S MADDEN VIDEO GAME.

23 MY QUESTION TO YOU IS THIS, SIR: DID YOU EVER IN
24 YOUR ROLE, OR TO YOUR KNOWLEDGE DID ANYONE IN EA EVER UNDERTAKE
25 TO DETERMINE WHICH RETIRED PLAYERS WHO HAD SIGNED GROUP

1 LICENSING AUTHORIZATION FORMS WITH THE DEFENDANTS WERE DEPICTED
2 IN SOME FASHION IN EA'S MADDEN GAME?

3 **A.** I THINK I'VE TOLD YOU AT LEAST THREE OR FOUR TIMES I NEVER
4 GOT A LIST OF ALL THE RETIRED PLAYERS WHO HAD SIGNED GLA'S, OR
5 TO MY KNOWLEDGE ANYONE ELSE AT EA. SO I DON'T KNOW HOW THAT
6 COULD HAVE BEEN DONE.

7 **MR. HUMMEL:** NO FURTHER QUESTIONS, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. CROSS-EXAMINATION.

9 **MR. FEHER:** YES, YOUR HONOR.

10 GOOD MORNING. MEMBERS OF THE JURY, YOU HAVEN'T MET
11 ME YET. I'M DAVID FEHER.

12 **THE COURT:** SAME YOUR NAME AGAIN.

13 **MR. FEHER:** DAVID FEHER, F-E-H-E-R.

14 **THE COURT:** F-E --

15 **MR. FEHER:** H-E-R.

16 **THE COURT:** THANK YOU.

17 ADJUST THE MIC SO WE WILL ALL HEAR YOU. AND GO RIGHT
18 AHEAD.

19 **CROSS EXAMINATION**

20 **BY MR. FEHER:**

21 **Q.** GOOD MORNING, MR. LINZNER.

22 **A.** GOOD MORNING, MR. FEHER.

23 **Q.** APART FROM YOUR DEPOSITION AND BRIEFLY SEEING YOU AT
24 MR. UPSHAW'S MEMORIAL SERVICE, HAVE WE EVER MET?

25 **A.** THOSE ARE THE ONLY TWO TIMES I THINK I HAVE EVER SEEN YOU.

1 Q. JUST GOING TO A FEW CLEANUP POINTS THAT MR. HUMMEL WENT
2 OVER, DID MR. ALLEN -- WELL, ACTUALLY LET ME LAY ONE PREDICATE.

3 FROM 1999 ON, IS IT FAIR TO SAY THAT YOU WERE THE
4 CHIEF NEGOTIATOR ON BEHALF OF EA WITH PLAYERS INC RELATING TO
5 THE LICENSING MATTERS?

6 A. CERTAINLY WITH THE MAIN LICENSE AGREEMENT WITH PLAYERS
7 INC, YES.

8 Q. AND DURING YOUR NEGOTIATIONS WITH PLAYERS INC, DID DOUG
9 ALLEN REPEATEDLY MAKE IT CLEAR TO YOU THAT IN ADDITION TO ANY
10 PLAYERS AS TO WHICH EA EXPRESSED INTEREST, THAT PLAYERS INC
11 ALSO HELD RIGHTS TO ADDITIONAL PLAYERS?

12 MR. HUMMEL: OBJECTION. LEADING, YOUR HONOR.

13 MR. FEHER: HE'S NOT MY WITNESS, YOUR HONOR. HE'S A
14 THIRD PARTY.

15 THE COURT: HE IS A THIRD-PARTY WITNESS. OBJECTION
16 OVERRULED.

17 NOW, THAT'S WITHOUT PREJUDICE -- IF I THINK THIS GETS
18 OUT OF HAND --

19 MR. FEHER: I UNDERSTAND.

20 MR. CHARHON: AND THERE'S TOO MUCH LEADING, I'M GOING
21 TO INTERVENE, ANYWAY. BUT FOR THE TIME BEING, OKAY.

22 MR. FEHER: I UNDERSTAND, YOUR HONOR.

23 THE WITNESS: I'VE LOST THE QUESTION.

24 BY MR. FEHER:

25 Q. THAT'S ALL RIGHT.

1 DID MR. ALLEN INDICATE TO YOU REPEATEDLY IN YOUR
2 NEGOTIATIONS THAT IN ADDITION TO THE PLAYERS THAT EA INDICATED
3 THAT THEY WERE INTERESTED IN, THAT PLAYERS INC ALSO HELD RIGHTS
4 TO ADDITIONAL PLAYERS?

5 **A.** I MEAN, THE QUESTION IS HARD TO ANSWER BECAUSE YOU'RE
6 TIMING IT IN THE NEGOTIATIONS OVER THE LICENSE AS OPPOSED TO
7 OTHER TIMES WHEN THE LICENSE WAS IN EXISTENCE.

8 **Q.** AT ANY TIME DURING THE PERIOD?

9 **A.** SO IF WE'RE TALKING ABOUT ANYTIME DURING THE PERIOD, THERE
10 WERE SEVERAL OCCASIONS WHEN VARIOUS MEMBERS OF PLAYERS INC,
11 WHETHER IT WAS MR. ALLEN OR MR. WALKER OR MS. LAWSON, YOU KNOW,
12 TOLD ME PERSONALLY THAT THEY COULD PROCURE THE RIGHTS OR
13 ALREADY HAD THE RIGHTS OF CERTAIN PLAYERS IF WE WANTED TO USE
14 THEM IN OUR VIDEO GAMES.

15 AND THERE WAS A PROVISION IN SOME LATER VERSIONS OF
16 THE LICENSE AGREEMENT THAT REQUIRED US TO INITIALLY GO THROUGH
17 PLAYERS INC IF, IN FACT, WE WANTED TO LICENSE THE RIGHTS TO
18 RETIRED PLAYERS.

19 **Q.** AND YOU UNDERSTOOD AT THE TIME THAT THOSE ADDITIONAL
20 PLAYERS, THAT PLAYERS INC HAD RIGHTS TO THOSE PLAYERS EITHER
21 THROUGH A GLA OR SOME OTHER AUTHORIZATION?

22 **MR. HUMMEL:** OBJECTION, LEADING.

23 **THE COURT:** HERE'S THE THING. I'M GOING TO SAY TO
24 THE JURY: ORDINARILY YOU CAN'T LEAD, EXCEPT ON
25 CROSS-EXAMINATION. NOW, COUNSEL IS LEADING. AND THIS IS

1 CROSS-EXAMINATION.

2 I'M GOING TO ALLOW HIM TO LEAD, BUT YOU SHOULD TAKE
3 INTO ACCOUNT THE FACT THAT THESE ARE LEADING QUESTIONS. AND
4 YOU GIVE IT SUCH WEIGHT AS YOU THINK IT DESERVES GIVEN THE FACT
5 THAT COUNSEL WILL NOT ASK A NONLEADING QUESTION.

6 I URGE YOU TO ASK A NONLEADING QUESTION. YOU HAVE
7 THE RIGHT TO ASK A LEADING QUESTION ON CROSS, BUT WHEN ALL YOU
8 WANT THE WITNESS TO DO IS SAY "YES, YES, YES," YOU ARE THE ONE
9 THAT'S TESTIFYING, AND NOT THE WITNESS.

10 **MR. FEHER:** YOUR HONOR, I WAS JUST TRYING TO DEAL
11 WITH A FEW CLEANUP QUESTIONS, INITIALLY.

12 **THE COURT:** IT DIDN'T SOUND LIKE CLEANUP TO ME. IT
13 SOUNDED LIKE THESE WERE IMPORTANT POINTS. I URGE YOU NOT TO
14 LEAD THE WITNESS.

15 I WANT THE WITNESS TO BE THE ONE THAT'S TESTIFYING,
16 NOT THE LAWYERS. NOW, MIND YOU BOTH SIDES HAVE DONE THIS.
17 BOTH SIDES HAVE DONE IT.

18 SO YOU TAKE INTO ACCOUNT MY ADMONITION. IT'S GOING
19 TO MEAN A LOT MORE IF WE HEAR THE WITNESS SAY IT ON HIS OWN
20 THAN IF YOU SAY IT.

21 **MR. FEHER:** I UNDERSTAND, YOUR HONOR.

22 **BY MR. FEHER:**

23 **Q.** MR. LINZNER, CAN YOU JUST TELL US WHAT UNDERSTANDING YOU
24 HAD DURING THIS PERIOD OF TIME AS TO WHAT ADDITIONAL
25 AUTHORIZATIONS PLAYERS INC MAY HAVE HAD AS TO OTHER PLAYERS?

1 A. WITH RESPECT TO RETIRED PLAYERS?

2 Q. YES, RETIRED PLAYERS.

3 A. THERE WAS -- WE UNDERSTOOD THAT SOME OF THEM HAD SIGNED,
4 YOU KNOW, WHAT HAS BEEN CALLED "GLA'S," WHICH IS AN ACRONYM
5 THAT CAN MEAN DIFFERENT THINGS AT DIFFERENT TIMES. BUT
6 BASICALLY THAT THERE WAS SOME WRITTEN MECHANISM WHEREBY RETIRED
7 PLAYERS HAD CONVEYED THEIR RIGHTS, THEIR PUBLICITY RIGHTS TO
8 PLAYERS INC TO RELICENSE TO COMPANIES LIKE EA.

9 AND WHETHER IT WAS A GLA, I RECALL THERE WAS A WHOLE
10 GROUP OF PLAYERS WHO HAD BEEN A MEMBER OF WHAT WAS THEN CALLED
11 "THE QUARTERBACK CLUB," WHICH WAS AN ENTITY THAT WAS SET UP BY
12 SOME PLAYERS IN CONJUNCTION WITH NFL PROPERTIES THAT WAS
13 EFFECTIVELY COMPETING WITH PLAYERS INC IN THE MERCHANDISING OF
14 PLAYERS' RIGHTS.

15 AND IN LITIGATION BETWEEN THE NFL AND THE NFL PLAYERS
16 ASSOCIATION WHETHER THAT WAS APPROPRIATE UNDER THE COLLECTIVE
17 BARGAINING AGREEMENT THEY HAD -- I DON'T WANT TO GET TOO
18 INVOLVED, BUT THERE WAS A SETTLEMENT IN THAT CASE. AND AS PART
19 OF THAT SETTLEMENT WE WERE ABLE TO LICENSE THROUGH PLAYERS INC
20 THE RIGHTS TO MEMBERS OF THE QUARTERBACK CLUB.

21 SO THAT'S A SECOND WAY WE GOT RIGHTS TO RETIRED
22 PLAYERS.

23 AS I UNDERSTAND IT, THERE WERE SOME AGREEMENTS THAT
24 WERE JUST DONE ON AN AGREEMENT-BY-AGREEMENT BASIS THAT PLAYERS
25 INC WOULD SUBMIT TO EITHER THE AGENT OR THE LAWYER OR THE

1 RETIRED PLAYER HIMSELF THE OPPORTUNITY, AND LET THEM DECIDE
2 WHETHER OR NOT THEY WANTED TO PARTICIPATE.

3 Q. OKAY.

4 A. SO THROUGH THOSE THREE DIFFERENT MECHANISMS WE COULD
5 PROCURE THE RIGHTS TO RETIRED PLAYERS.

6 Q. DID YOU CARE ESPECIALLY ONE WAY OR THE OTHER AS TO WHAT
7 THE MECHANISM WAS?

8 A. NOT AT ALL. THE QUARTERBACK CLUB THING WAS KIND OF
9 INTERESTING POLITICALLY. BUT OTHER THAN BEING INTERESTING IN
10 TERMS OF THE POLITICS BETWEEN THE LEAGUE AND THE PLAYERS
11 ASSOCIATION, THE ANSWER IS NO.

12 Q. WHAT DISCUSSION DID YOU HAVE, IF ANY, WITH MR. ALLEN OR
13 OTHERS AT PLAYERS INC AS TO HOW THE PROCESS OF SELECTING
14 PLAYERS WHO WOULD BE LICENSED BY EA AS TO HOW THAT WOULD BE
15 RUN?

16 A. WELL, AS I SAID DURING MY PREVIOUS TESTIMONY, WE HAVE A
17 TEAM DOWN AT ORLANDO. THEIR JOB IS EVERY YEAR TO COME UP WITH
18 A NEW ITERATION OF THE GAME TO INCLUDE SOME NEW FEATURES OR
19 IMPROVE UPON PREVIOUS FEATURES SO PEOPLE WILL BUY THE GAME YET
20 AGAIN.

21 AND THEY COME UP -- THE TEAM IS RESPONSIBLE FOR
22 COMING UP WITH IDEAS ON WHAT FEATURES TO INCLUDE. AND WHEN
23 THEY'VE WANTED TO USE RETIRED PLAYERS, WHETHER IT WAS IN MADDEN
24 OR IN NFL STREET OR COACHES IN THE HEAD COACH GAME, THEN THEY
25 COME UP WITH A LIST OF PLAYERS THAT THEY WOULD LIKE -- RETIRED

1 PLAYERS THAT THEY WOULD LIKE TO INCLUDE. AND WE WOULD THEN SET
2 OUT TRYING TO ACQUIRE THE RIGHTS TO THOSE PLAYERS AND NEGOTIATE
3 THE AMOUNT WE WOULD PAY INCREMENTALLY FOR THOSE RETIRED PLAYER
4 RIGHTS.

5 AND, TYPICALLY, WE WOULD SET OUT WHO WE WERE
6 INTERESTED IN OBTAINING FOR THE GAMES AND, YOU KNOW, PLAYERS
7 INC WOULD TELL US THAT THEY WERE ABLE TO GET, YOU KNOW, CERTAIN
8 PERCENTAGE OF THEM. IF THEY WEREN'T ABLE TO PROCURE THE RIGHTS
9 WE WOULD THEN MAKE OUR OWN EFFORT BY GOING TO THE AGENT OR THE
10 ATHLETE, OR SOMETIMES IT'S AN ESTATE, A LAWYER, AND TRY TO DO
11 WITH THAT OURSELVES. AND --

12 **THE COURT:** I HATE TO INTERRUPT, BUT THESE ARE
13 GETTING TO BE VERY LONG ANSWERS. SO WE'RE VEERING OFF
14 GENERALLY RELATING TO THE TOPIC.

15 TRY TO LIMIT YOUR ANSWERS TO LIKE FIVE SENTENCES, AT
16 MOST.

17 **THE WITNESS:** WILL DO, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. AND THEN, THAT GIVES EVERYONE
19 A CHANCE TO KNOW WHERE WE ARE IN THE DISCUSSION, AND THEY CAN
20 MAKE OBJECTIONS IF THEY WANT.

21 FRESH QUESTION, PLEASE.

22 **BY MR. FEHER:**

23 **Q.** MR. LINZNER, WAS EA EVER INTERESTED DURING THIS PERIOD OF
24 TIME IN ENTERING INTO A BLANKET LICENSE WITH PLAYERS INC
25 COVERING ALL PLAYERS FOR WHOM PLAYERS INC HAD AUTHORIZATION,

1 RETIRED PLAYERS?

2 **A.** DO YOU MEAN A BLANKET LICENSE FOR RETIRED PLAYERS? IS
3 THAT THE QUESTION?

4 **Q.** BLANKET LICENSE, ALL RETIRED PLAYERS FOR WHOM PLAYERS INC
5 HAD AUTHORIZATION.

6 **A.** I DON'T RECALL EVER INVESTIGATING THAT POSSIBILITY.

7 **Q.** YOU NEVER EXPRESSED ANY INTEREST IN THAT TO PLAYERS INC?

8 **A.** NO.

9 **Q.** OKAY. AND DO YOU HAVE ANY UNDERSTANDING -- DID YOU HAVE
10 ANY UNDERSTANDING DURING THIS PERIOD OF TIME AS TO WHETHER EA
11 WOULD EVER BE INTERESTED IN LICENSING RIGHTS WITH RESPECT TO
12 RETIRED PLAYERS ALONG THE LINES OF DOUG ALLEN WHO ONLY PLAYED A
13 COUPLE OF SEASONS IN THE NFL AND WHO WERE NOT MORE PROMINENT
14 THAN THAT?

15 WAS EA EVER INTERESTED IN THAT KIND OF LICENSE?

16 **A.** I'M SORRY. I DON'T UNDERSTAND THE QUESTION.

17 **THE COURT:** YOU HAVE TO ASK QUESTIONS THAT ARE 12
18 WORDS OR LESS. IF YOU ASK AN ENTIRE PARAGRAPH NO ONE CAN
19 FOLLOW YOU.

20 SIMPLE, STRAIGHTFORWARD.

21 **MR. FEHER:** OKAY.

22 **THE COURT:** SHORT.

23 **BY MR. FEHER:**

24 **Q.** WAS EA EVER INTERESTED, DURING THIS PERIOD OF TIME, IN
25 LICENSING THE RIGHTS TO RETIRED PLAYERS WHO WERE NOT STARS?

1 **THE COURT:** GOOD QUESTION.

2 THANK YOU.

3 **MR. FEHER:** YOU'RE WELCOME, YOUR HONOR.

4 **THE WITNESS:** AGAIN, THE TEAM DOWN IN ORLANDO WOULD
5 DECIDE WHICH PLAYERS THEY WERE INTERESTED IN LICENSING. BUT
6 BASED ON MY DISCUSSIONS WITH THEM, AND MY UNDERSTANDING IS
7 TYPICALLY WE WANTED WELL-KNOWN PLAYERS WHO WOULD BE OF INTEREST
8 TO OUR CONSUMERS.

9 **BY MR. FEHER:**

10 **Q.** OKAY. THANK YOU, MR. LINZNER.

11 LET'S GO BACK TO THE BEGINNING A LITTLE BIT ON THIS.

12 ACTUALLY, I'D LIKE TO DIRECT YOUR ATTENTION TO --
13 THIS HASN'T BEEN ADMITTED INTO EVIDENCE YET. IT'S TRIAL
14 EXHIBIT NO. 26. IT'S A LICENSE AGREEMENT DATED JUNE 18, 2001.

15 HAVE YOU GOT THAT, MR. LINZNER?

16 **THE COURT:** IS THERE ANY OBJECTION TO 26?

17 **MR. HUMMEL:** NO, YOUR HONOR.

18 **THE COURT:** RECEIVED.

19 (TRIAL EXHIBIT 26 RECEIVED IN EVIDENCE.)

20 **MR. FEHER:** LET'S DISPLAY ACTUALLY THE FIRST AND
21 SECOND PAGE ON THE SCREEN, IF THAT'S OKAY.

22 (DOCUMENT DISPLAYED.)

23 **THE COURT:** KEEP YOUR VOICE UP, NOW.

24 **MR. FEHER:** OKAY. THANK YOU.

25

1 **BY MR. FEHER:**

2 **Q.** MR. LINZNER, COULD YOU JUST TELL US, BRIEFLY, AS TO WHAT
3 THIS DOCUMENT IS?

4 **A.** WELL, THIS SEEMS TO BE ONE OF THE LICENSE AGREEMENTS THAT
5 EA ENTERED INTO WITH PLAYERS INC FOR THE RIGHT TO ACQUIRE THE
6 NFL PLAYERS ON SPECIFIED PLATFORMS FOR VIDEO GAMES.

7 **Q.** JUST TO BE CLEAR AS TO THE TIME PERIOD --

8 **MR. FEHER:** COULD YOU PLEASE BLOW UP THE TERM
9 PARAGRAPH 5, ON THE NEXT PAGE?

10 THERE YOU GO.

11 (DOCUMENT DISPLAYED.)

12 **BY MR. FEHER:**

13 **Q.** NOW, MR. LINZNER, COULD YOU JUST LOOK AT THAT PARAGRAPH
14 AND TELL US WHAT TIME PERIOD YOU BELIEVE THIS LICENSE AGREEMENT
15 COVERED?

16 **A.** WELL, IT STARTS MARCH 1, 2001. AND WITH THE SORT OF
17 AUTOMATIC EXTENSION IF WE GAVE NOTICE IT WENT THROUGH
18 FEBRUARY 29, 2004.

19 **Q.** LET'S GO BACK TO THE FIRST PAGE UNDER PARAGRAPH 2 AT THE
20 BOTTOM UNDER "GRANT OF LICENSE."

21 **A.** YES, SIR.

22 **Q.** DO YOU SEE THAT LANGUAGE? I WOULD ACTUALLY LIKE TO READ
23 INTO THE RECORD BRIEFLY THE LANGUAGE AT THE TOP.

24 IT SAYS:

25 "UPON THE TERMS AND CONDITIONS HEREINAFTER SET

1 FORTH, PLAYERS INC HEREBY GRANTS TO LICENSEE AND LICENSEE
2 HEREBY ACCEPTS THE NON-EXCLUSIVE RIGHT, LICENSE AND PRIVILEGE
3 OF UTILIZING THE TRADEMARKS AND NAMES OF PLAYERS INC WHICH MAY
4 BE AMENDED FROM TIME TO TIME BY PLAYERS INC, AND THE NAMES
5 LIKENESSES, (INCLUDING WITHOUT LIMITATIONS), PICTURES,
6 PHOTOGRAPHS, VOICES, FACSIMILE SIGNATURES" --

7 **THE COURT:** NOT SO FAST. SLOW DOWN. THE COURT
8 REPORTER HAS GOT TO GET IT. THE JURY HAS GOT TO FOLLOW. THIS
9 IS NOT DICTATION. THIS IS A TRIAL.

10 PLEASE, YOU SHOULD SLOW DOWN WHEN YOU'RE READING
11 THINGS. NEVER SPEED UP.

12 **MR. FEHER:** OKAY.

13 **THE COURT:** YOU'RE NOT THE FIRST ONE. EVERYONE DOES
14 IT.

15 BUT YOU SLOW DOWN WHEN YOU WANT EVERYONE TO FOLLOW
16 IT.

17 ALL RIGHT.

18 **MR. FEHER:** OKAY.

19 **THE COURT:** ALL RIGHT.

20 **MR. FEHER:** "FACSIMILE SIGNATURES, AND/OR
21 BIOGRAPHICAL INFORMATION (HEREINAFTER "IDENTITY") OF THE NFL
22 PLAYERS LISTED IN ATTACHMENT B."

23 **BY MR. FEHER:**

24 **Q.** DO YOU SEE THAT LANGUAGE?

25 **A.** I DO.

1 Q. MR. LINZNER, DO YOU HAVE ANY UNDERSTANDING AS TO WHETHER
2 ANY OF THE PLAYERS FOR THIS LICENSE LISTED IN ATTACHMENT B WERE
3 RETIRED PLAYERS?

4 MR. HUMMEL: OBJECTION, YOUR HONOR. HE'S ASKING FOR
5 HIS PRESENT UNDERSTANDING.

6 BY MR. FEHER:

7 Q. DID YOU HAVE ANY UNDERSTANDING DURING THE TIME THAT YOU
8 NEGOTIATED THIS CONTRACT AND IT WAS IN EFFECT AS TO WHETHER
9 THIS COVERED ACTIVE OR RETIRED PLAYERS?

10 A. THE ANSWER TO THAT QUESTION IS THE -- MY UNDERSTANDING AT
11 THE TIME I NEGOTIATED AND SIGNED THIS LICENSE AGREEMENT WAS
12 THAT IT COVERED ACTIVE NFL PLAYERS AS THEY MAY CHANGE FROM YEAR
13 TO YEAR, SEASON TO SEASON.

14 Q. ACTIVE ONLY?

15 A. ACTIVE.

16 Q. OKAY. NOW, LET'S MOVE ON.

17 AFTER FEBRUARY 29TH, 2004, WHICH IS THE LAST POSSIBLE
18 DATE REFERENCED ON THIS DOCUMENT, DID THE CONTRACTUAL
19 RELATIONSHIP BETWEEN EA AND PLAYERS INC END?

20 A. NO.

21 Q. AND HOW DID IT CONTINUE CONTRACTUALLY AS OF THAT TIME
22 THROUGH THE REMAINDER OF 2004, TO THE BEST OF YOUR
23 RECOLLECTION?

24 A. EVENTUALLY WE ENTERED INTO A NEW LICENSE.

25 Q. DID THERE COME A TIME TOWARD THE END OF 2004, ON OR AROUND

1 DECEMBER, WHERE YOU ENTERED INTO NEGOTIATIONS ABOUT THE
2 SPECIFIC TERMS OF A FURTHER EXTENSION OF THESE ARRANGEMENTS?

3 **A.** YES.

4 **Q.** I WOULD ACTUALLY LIKE TO DIRECT YOUR ATTENTION TO TRIAL
5 EXHIBIT NO. 69. IT'S NOT IN EVIDENCE YET. IT'S A LETTER DATED
6 DECEMBER 7, 2004.

7 **A.** YES.

8 **Q.** MR. LINZNER, CAN YOU IDENTIFY THIS DOCUMENT?

9 **A.** I BELIEVE THIS IS A -- ONE OF SEVERAL PROPOSALS WE SENT TO
10 PLAYERS INC THROUGH CLAY WALKER, AS I RECALL, THROUGH E-MAIL
11 THAT WAS PART OF THE NEGOTIATION PROCESS FOR THE LICENSE THAT
12 MR. HUMMEL SHOWED ME, THE EXCLUSIVE LICENSE.

13 **MR. FEHER:** YOUR HONOR, I WOULD LIKE TO MOVE THIS
14 DOCUMENT INTO EVIDENCE.

15 **THE COURT:** THE EXHIBIT NUMBER IS WHAT?

16 **MR. FEHER:** IT'S 69.

17 **THE COURT:** ANY OBJECTION?

18 **MR. HUMMEL:** NO OBJECTION.

19 **THE COURT:** RECEIVED.

20 (TRIAL EXHIBIT 69 RECEIVED IN EVIDENCE.)

21 **MR. FEHER:** ACTUALLY, AT THE BEGINNING I WOULD LIKE
22 TO FOCUS ON THE VERY FIRST PARAGRAPH, LAUREN. COULD YOU BLOW
23 THAT UP, PLEASE?

24 (DOCUMENT DISPLAYED.)

25

1 **BY MR. FEHER:**

2 **Q.** IS SAYS -- AND THIS IS A LETTER DATED DECEMBER 7, 2004:

3 "DEAR CLAY: I AM CONFIRMING THE TERMS WE HAVE
4 ORALLY AGREED UPON FOR ELECTRONIC ARTS TO ACQUIRE THE EXCLUSIVE
5 RIGHTS TO USE THE LICENSED PROPERTY AS DEFINED BELOW IN
6 CONNECTION WITH THE LICENSED USES AS DEFINED BELOW FOR FIVE
7 YEARS, AS WELL AS CERTAIN NON-EXCLUSIVE RIGHTS."

8 DOES THAT REFRESH YOUR RECOLLECTION, MR. LINZNER, AS
9 TO WHAT THIS DOCUMENT WAS ABOUT?

10 **A.** I DON'T NEED TO REFRESH MY RECOLLECTION. I REMEMBER THIS
11 PERIOD QUITE WELL.

12 **Q.** COULD YOU TELL US WHAT WAS GOING ON WITH RESPECT TO THIS
13 PARTICULAR DOCUMENT FIRST?

14 **A.** WELL, AS I SAID, THERE WERE A SERIES OF PROPOSALS THAT WE
15 HAD MADE TO PLAYERS INC FOR EXCLUSIVE RIGHTS FOR CERTAIN GENRES
16 OF VIDEO GAMES. AND THE QUESTION IS: WHAT WAS GOING ON AT
17 THIS POINT IN TIME?

18 **Q.** WHAT IS THIS DOCUMENT ABOUT IN CONNECTION WITH THE
19 DISCUSSIONS THAT WERE GOING ON? I WOULD JUST LIKE YOU TO
20 EXPLAIN TO THE JURY AS TO THE SIGNIFICANCE, IF ANY, OF THIS
21 PARTICULAR LETTER THAT IS ADDRESSED TO MR. WALKER.

22 **A.** ALL RIGHT. I'LL TRY TO KEEP IT TO FIVE SENTENCES OR LESS.

23 THE NFL HAD DETERMINED THAT IT WANTED TO PROCEED IN
24 THE VIDEO GAME BUSINESS ON AN EXCLUSIVE BASIS. THE PLAYERS
25 ASSOCIATION, PLAYERS INC, WAS WILLING TO GO ALONG WITH THE SAME

1 DIRECTION AS THE NFL.

2 AND THERE WERE MULTIPLE BIDS FROM MULTIPLE COMPANIES
3 TO OBTAIN THOSE RIGHTS ON AN EXCLUSIVE BASIS.

4 THIS LETTER IS ONE IN THE SERIES THAT WE MADE TO
5 PLAYERS INC SO THAT WE COULD COMBINE THE RIGHTS OF NFL
6 PROPERTIES AND PLAYERS INC TO KEEP MAKING MADDEN NFL VIDEO
7 GAMES AND OTHER GAMES.

8 **Q.** DID THIS LETTER CONFIRM THE TERMS THAT WERE ORALLY AGREED
9 UPON THAT DAY?

10 **A.** THERE WERE A SERIES OF LETTERS. BASICALLY, WE WERE IN
11 A -- AS I SAID, THEY KEPT RATCHETING UP THE NUMBER. I THINK
12 THIS WAS THE LAST IN THE SERIES --

13 **Q.** OKAY.

14 **A.** -- WHEREBY THEY TOLD US IF WE AGREED TO PAY THIS AMOUNT IN
15 GUARANTEE, AND SOME OF THE OTHER TERMS, THEN THEY WOULD
16 COMPLETE THE LICENSE AND SIGN THE AGREEMENT MR. HUMMEL SHOWED
17 ME.

18 **MR. FEHER:** LAUREN, COULD YOU GO BLOW UP THE
19 PARAGRAPH THAT SAYS "LICENSED PROPERTY."

20 LITTLE HIGHER. THERE YOU GO.

21 **BY MR. FEHER:**

22 **Q.** IT SAYS:

23 "LICENSED PROPERTY: AS DESCRIBED IN PARAGRAPHS 1
24 (A) AND 2 (A) OF OUR CURRENT AGREEMENT, I.E. THE TRADEMARKS AND
25 NAMES OF PLAYERS INC, AS WELL AS THE NAMES, LIKENESSES,

1 PICTURES, PHOTOGRAPHS, VOICES, FACSIMILE SIGNATURES, AND
2 BIOGRAPHICAL INFORMATION OF THE NFL PLAYERS: ONE, WHO HAVE
3 SIGNED THE GROUP LICENSING ASSIGNMENT FORM ASSIGNING THEIR
4 IMAGE OR IDENTITY RIGHTS TO PLAYERS INC; OR, TWO, WHO ASSIGN
5 THOSE RIGHTS TO PLAYERS INC IN THE STANDARD NFL PLAYERS
6 CONTRACT."

7 DO YOU SEE THAT LANGUAGE?

8 **A.** I DO.

9 **Q.** OKAY. AND WHAT WAS YOUR UNDERSTANDING AT THE TIME THIS
10 DOCUMENT WAS AUTHORED AS TO WHAT THAT'S DESCRIBING IN TERMS OF
11 ACTIVE VERSUS RETIRED PLAYERS?

12 **A.** WE WERE MAKING A PROPOSAL FOR ACTIVE NFL PLAYERS ON A
13 SEASON-BY-SEASON BASIS.

14 **Q.** AND NO RETIRED PLAYERS?

15 **A.** RETIRED PLAYERS, I DID NOT INTEND TO INCLUDE FORMER NFL
16 PLAYERS, RETIRED PLAYERS IN THE LICENSED PROPERTY. I WROTE
17 THIS DOCUMENT MYSELF.

18 **MR. FEHER:** OKAY.

19 LAUREN, CAN YOU ACTUALLY TAKE THE BLOWUP BACK? AND
20 IF YOU CAN ACTUALLY GO BACK TO THE PRIOR EXHIBIT.

21 **THE WITNESS:** TO 26?

22 **MR. FEHER:** IT'S THE '01.

23 YES, 26. CAN YOU JUST BLOW UP THE REPRESENTATION
24 PAGE?

25 WELL, THE FIRST PARAGRAPH IS FINE.

1 MOVE THAT TO THE RIGHT, AND THEN BLOW UP IN THE
2 LETTER AGREEMENT THE LICENSED PRODUCT LANGUAGE.

3 (DOCUMENT DISPLAYED.)

4 **BY MR. FEHER:**

5 **Q.** THE LICENSED PROPERTY LANGUAGE AT THE BOTTOM, THAT'S FROM
6 YOUR -- THE LETTER AGREEMENT WHEN YOU CLOSED THE DEAL ON THE
7 NEW ARRANGEMENT WITH \$25 MILLION, CORRECT? THE ONE AT THE
8 BOTTOM.

9 **A.** FROM EXHIBIT 69?

10 **Q.** YES.

11 **A.** YES.

12 **Q.** AND THE CONTRACT THAT'S ABOVE, THE LANGUAGE IN THE
13 CONTRACT ABOVE, THAT'S THE CONTRACT THAT WAS CURRENTLY IN
14 PLACE, EITHER FORMALLY OR INFORMALLY BETWEEN PLAYERS INC AND EA
15 AT THE TIME THAT WAS NEGOTIATED?

16 **A.** WELL, IT WAS THE LAST SIGNED LICENSE AGREEMENT.

17 **Q.** OKAY. AND SO WHERE IT SAYS:

18 "AS DESCRIBED IN PARAGRAPHS 1 (A) AND 2 (A)" OF
19 THE LETTER THAT YOU SENT, YOU WERE REFERRING TO THE LANGUAGE UP
20 ABOVE, CORRECT?

21 **A.** IN FACT, THAT'S WHERE I CRIBBED THIS FROM.

22 **Q.** AND WHERE YOU CRIBBED IT FROM, YOU ONLY INCLUDED THE FIRST
23 SENTENCE OF PARAGRAPH 1 (A), CORRECT? YOU DIDN'T INCLUDE
24 ANYTHING FROM THE SECOND SENTENCE.

25 **A.** NO. IT READS WHAT IT READS. YEAH, IT'S WHAT I DID IS I

1 CRIBBED THE PORTION OF WHERE WE WERE GETTING THE IDENTITY
2 RIGHTS FROM THE NFL PLAYERS.

3 **Q.** OKAY. SO AT THE TIME YOU DID THIS DEAL, WHAT WAS YOUR
4 UNDERSTANDING AS TO WHETHER THE SECOND SENTENCE IN 1 (A) DID IN
5 TERMS OF CONVEYING OR NOT CONVEYING ANY KIND OF RIGHTS?

6 **A.** AS I THINK I TOLD MR. HUMMEL, WHAT WE UNDERSTOOD IS THAT
7 ON OCCASION AS IT SAYS THERE IN THE SECOND SENTENCE IF WE
8 WANTED TO GO OUT AND SECURE RETIRED PLAYERS, THEN WE COULD WORK
9 WITH PLAYERS INC TO DO SO. AND, ON OCCASION, WE DID SO.

10 **Q.** OKAY. THE SECOND SENTENCE WAS NOT INTENDED TO CONVEY ANY
11 RIGHTS, IN YOUR MIND, WHEN YOU NEGOTIATED THIS IN PARAGRAPH 1
12 (A)?

13 **A.** I'M SORRY. COULD YOU SAY THAT AGAIN?

14 **Q.** I WAS JUST SAYING IN TERMS OF THE SECOND SENTENCE IN
15 PARAGRAPH 1 (A), WAS IT EVER INTENDED, IN YOUR MIND, AT THE
16 TIME ANY OF THESE NEGOTIATIONS OCCURRED, TO CONVEY ANY KIND OF
17 RETIRED PLAYER RIGHTS THROUGH THESE MAIN LICENSE AGREEMENTS?

18 **A.** RETIRED PLAYERS?

19 **Q.** YES.

20 **A.** I'M SORRY. I'M HAVING TROUBLE.

21 **Q.** LET ME RESTATE IT SO IT'S CLEAR.

22 WAS THE SECOND SENTENCE EVER INTENDED BY YOU AS THE
23 CHIEF NEGOTIATOR OF EA, THE SECOND SENTENCE IN PARAGRAPH 1 (A),
24 TO CONVEY ANY PLAYER RIGHTS OF ANY KIND?

25 **A.** 1 (A) IS NOT A CONVEYANCE PARAGRAPH. IT'S JUST THE

1 REPRESENTATION, RIGHT? THE GRANT IS IN PARAGRAPH 2, RIGHT?

2 Q. OKAY.

3 A. BUT TO ANSWER YOUR QUESTION MORE DIRECTLY, WE DID NOT
4 INTEND THROUGH EXHIBIT 26 TO SECURE THE RIGHTS TO RETIRED
5 PLAYERS FOR THE AMOUNTS OF MONEY THAT IS REFLECTED IN EXHIBIT
6 26. WE HAD THE ABILITY TO GO TO PLAYERS INC AND ASK THEM TO
7 HELP US GET RETIRED PLAYERS FOR FEATURES IN OUR GAME FOR
8 ADDITIONAL SUMS OF MONEY.

9 Q. OKAY. AND THAT WAS REFLECTED IN THE FINAL LANGUAGE WHEN
10 THE 2004 AGREEMENT WAS FORMALIZED? MR. HUMMEL SHOWED IT TO
11 YOU.

12 A. WHAT WAS REFLECTED?

13 Q. THAT'S FINE. I'LL STATE A DIFFERENT QUESTION. I THINK
14 WE'VE ALREADY COVERED IT.

15 DURING YOUR TESTIMONY THROUGH MR. HUMMEL, HE MADE
16 REFERENCE TO A PRIOR CONTRACT THAT SPOKE OF \$500,000 A YEAR IN
17 FIXED PAYMENTS FROM EA TO PLAYERS INC.

18 THIS WAS THE CONTRACT THAT COVERED THE PERIOD FROM
19 MARCH 1ST, 2004, THEREAFTER FOR A BRIEF PERIOD OF TIME. DO YOU
20 RECALL THAT DISCUSSION?

21 A. I REMEMBER HE SHOWED ME THE LICENSE AGREEMENT THAT WAS
22 DATED IN JANUARY THAT WAS EFFECTIVE MARCH OF THE PRIOR YEAR.

23 BUT IT'S NOT CORRECT THAT IT WAS A FIXED PAYMENT.
24 THAT WAS A MINIMUM GUARANTEE.

25 Q. THAT ACTUALLY JUST LEADS ME TO THE BASIC QUESTION, WHICH

1 IS: WHEN YOU ADD IN ROYALTIES THAT EA WAS PAYING, JUST
2 APPROXIMATELY HOW MUCH WAS EA PAYING UNDER THAT PRIOR CONTRACT
3 THAT WAS STILL A NON-EXCLUSIVE?

4 **A.** WELL, IT WAS MILLIONS OF DOLLARS. THAT WAS A FUNCTION
5 OF -- ROYALTIES ARE A FUNCTION OF NET REVENUE, WHICH IS HOW
6 MANY GAMES WE SELL.

7 AND IN DIFFERENT YEARS, THE -- YOU KNOW, THE MADDEN
8 NFL GAME WOULD SELL, FORTUNATELY FOR US, GENERALLY INCREASING
9 AMOUNTS OVER TIME. BUT WE ALSO INTRODUCED A GAME LIKE NFL
10 STREET OR NFL STREET 2, SO IN CERTAIN YEARS THERE WOULD BE
11 SPIKES, BECAUSE WE WOULD HAVE A SECOND GAME THAT WOULD GENERATE
12 EVEN MORE REVENUE THAT WOULD LEAD TO EVEN MORE ROYALTY.

13 **Q.** IN TERMS OF THE NEW CONTRACT AT THE END OF 2004 AND THEN
14 FORMALIZED AT THE BEGINNING OF '05, WITH A \$25 MILLION MINIMUM
15 GUARANTEE, WHY WAS EA WILLING AT THAT TIME TO ENTER INTO A NEW
16 CONTRACT WITH A MINIMUM GUARANTEE AT THAT LEVEL?

17 **A.** WELL, THE BUSINESS WAS PROFITABLE FOR US. IF THE QUESTION
18 IS: WHY DID WE WANT TO PAY A 25 MILLION GUARANTEE? THE ANSWER
19 IS: WE DIDN'T.

20 BUT IT WAS EITHER BID -- BID FOR THE RIGHTS OR LOSE A
21 FRANCHISE THAT WAS YEAR-IN-YEAR-OUT OUR NUMBER ONE TITLE IN
22 NORTH AMERICA.

23 **MR. FEHER:** JUST FOR THE RECORD, LET'S PUT UP,
24 LAUREN, IF YOU COULD 28, TRIAL EXHIBIT 28.

25 **THE WITNESS:** 28.

1 (DOCUMENT DISPLAYED.)

2 **BY MR. FEHER:**

3 **Q.** COULD YOU JUST BRIEFLY TELL THE JURY WHAT THIS IS. JUST
4 VERY BRIEFLY.

5 **A.** APPEARS TO BE ANOTHER LICENSE AGREEMENT.

6 **Q.** IS THIS THE FINAL SIGNED AGREEMENT ON THE \$25 MILLION
7 CONTRACT YOU ENTERED INTO, MINIMUM?

8 **A.** LET ME LOOK AT THIS A SECOND.

9 DIDN'T MR. HUMMEL SHOW ME THIS?

10 **Q.** YES, HE DID.

11 **A.** OKAY. YES. THAT'S MY SIGNATURE. I RECALL DOING THIS IN
12 DECEMBER OF 2004.

13 **Q.** JUST SO THE RECORD IS CLEAR, BECAUSE WE'VE LOOKED AT SOME
14 OTHER DOCUMENTS, DOES THIS CONTRACT IN ANY WAY, SHAPE OR FORM
15 COVER RETIRED PLAYERS IN ANY WAY?

16 **MR. HUMMEL:** OBJECTION, YOUR HONOR. THAT VIOLATES
17 THE ORDER REGARDING CONTEMPORANEOUS INTENT.

18 **MR. FEHER:** I'LL REPHRASE IT. THAT'S FAIR.

19 **BY MR. FEHER:**

20 **Q.** AT THE TIME THIS WAS ENTERED INTO, DID YOU HAVE ANY
21 UNDERSTANDING AS TO WHETHER THIS AGREEMENT COVERED RETIRED
22 PLAYERS IN ANY WAY IN TERMS OF CONVEYING RETIRED PLAYER RIGHTS?

23 **A.** MY INTENT WHEN I NEGOTIATED AND SIGNED THIS AGREEMENT WAS
24 THAT WE WERE LICENSING THE RIGHTS TO THEN ACTIVE NFL PLAYERS ON
25 A SEASON-BY-SEASON BASIS ON THE CONDITIONS AND FOR THE AMOUNTS

1 THAT ARE SET FORTH IN THE DOCUMENT.

2 IT COVERED ACTIVE PLAYERS AT ANY GIVEN YEAR, WHICH
3 WERE CHANGING FROM YEAR TO YEAR.

4 **Q.** AT THE TIME YOU NEGOTIATED THIS, DID YOU CONSIDER ANY
5 PORTION AT ALL OF THE \$25 MILLION MINIMUM GUARANTEE TO BE
6 ATTRIBUTABLE IN ANY WAY TO RETIRED PLAYERS?

7 **A.** NO.

8 **Q.** VERY BRIEFLY, IF YOU GO TO THE GRANT OF LICENSE PARAGRAPH
9 IN 2 (A).

10 **A.** IN 28?

11 **Q.** IN 2 (A), YES, THAT EXHIBIT. AT THE VERY BOTTOM WHERE IT
12 REFERS TO "THE NFL PLAYERS REFERENCED IN PARAGRAPH 1 (A)
13 ABOVE," DO YOU SEE THAT LANGUAGE?

14 **A.** ARE YOU TALKING ABOUT THE LAST LINE ON PAGE 1 WHERE IT
15 SAYS "NFL PLAYERS"?

16 **Q.** YES, THAT PARTICULAR LANGUAGE.

17 **A.** OKAY. WHAT'S THE QUESTION?

18 **Q.** DID YOU HAVE ANY UNDERSTANDING AT THE TIME THIS AGREEMENT
19 WAS NEGOTIATED AS TO WHAT THIS REFERRED TO, "THE NFL PLAYERS,"
20 IN TERMS OF ACTIVE VERSUS RETIRED?

21 **A.** NFL PLAYERS ARE THE PLAYERS ACTIVELY PLAYING IN THE NFL.
22 AND THAT'S WHAT I UNDERSTOOD AT THE TIME, AND THAT'S WHAT THE
23 INTENDED LICENSE THROUGH EXHIBIT 28 WAS, WAS THE RIGHTS TO
24 ACTIVE NFL PLAYERS.

25 **Q.** UHM --

1 **A.** RETIRED PLAYERS, WE DID SEPARATE LICENSES.

2 **Q.** DID YOU HAVE ANY KNOWLEDGE AT THE TIME THESE CONTRACTS
3 WERE NEGOTIATED AS TO WHETHER OR NOT THE AUTHORIZATIONS THAT
4 PLAYERS INC SIGNED WITH RETIRED PLAYERS, WHETHER THOSE WERE
5 EXCLUSIVE OR NON-EXCLUSIVE ARRANGEMENTS?

6 **A.** I THINK FOR THE MOST PART WHEN WE HAD LICENSED RETIRED
7 PLAYERS THROUGH PLAYERS INC IN THE PAST WE HAD UNDERSTOOD IT
8 WAS NON-EXCLUSIVE.

9 **Q.** OKAY. AND WHEN YOU DID THE DEAL IN -- AT THE END OF
10 DECEMBER, 2004, FORMALIZED SHORTLY THEREAFTER, THE ONE WITH THE
11 \$25 MILLION MINIMUM GUARANTEE, THAT WAS -- WAS THAT -- THAT WAS
12 AN EXCLUSIVE DEAL, CORRECT? YOU ALREADY TESTIFIED AS TO THAT.

13 **A.** WHAT I TESTIFIED WAS IT WAS EXCLUSIVE FOR CERTAIN GENRES
14 OF GAMES.

15 **Q.** OKAY. TO BE CLEAR.

16 DID YOU HAVE AT THE TIME THAT CONTRACT WAS NEGOTIATED
17 ANY UNDERSTANDING AS TO WHETHER OR NOT IT WOULD EVEN BE
18 CONCEIVABLY POSSIBLE TO COVER WITHIN THAT EXCLUSIVE CONTRACT
19 RETIRED PLAYER RIGHTS WHICH WOULD BE NON-EXCLUSIVE?

20 **THE COURT:** I DON'T UNDERSTAND THAT QUESTION.

21 **MR. FEHER:** I'M SORRY. LET ME REPHRASE.

22 **BY MR. FEHER:**

23 **Q.** YOU UNDERSTOOD AT THE TIME -- LET ME ACTUALLY GO BACK AND
24 SAY THIS DIFFERENTLY.

25 IN TERMS OF RETIRED PLAYER NFL RIGHTS, RETIRED PLAYER

1 RIGHTS THAT PLAYERS INC HAS, YOU UNDERSTAND THAT THOSE ARE
2 NON-EXCLUSIVE, CORRECT?

3 **A.** I JUST TOLD YOU.

4 **Q.** YES.

5 **A.** IN MY EXPERIENCE WHEN WE HAD LICENSED RETIRED PLAYERS
6 THROUGH THE NFL, IT WAS MY UNDERSTANDING THAT IT WAS ON A
7 NON-EXCLUSIVE BASIS.

8 **Q.** OKAY. ISN'T IT A FACT THAT VARIOUS RETIRED PLAYERS HAVE
9 LICENSED THEIR RIGHTS TO OTHER GAMES THAT ARE IN COMPETITION
10 WITH EA?

11 **A.** AS FAR AS I'M AWARE, YES.

12 **Q.** DO YOU KNOW WHAT GAME OR GAMES THOSE ARE?

13 **A.** WHAT POINT IN TIME? THERE'S -- IF YOU GO BACK TO --

14 **Q.** FROM THE TIME YOU HAVE HAD EXCLUSIVE ARRANGEMENTS WITH
15 PLAYERS INC.

16 **A.** YES. SINCE THE -- THE EXCLUSIVE LICENSE BECAME EFFECTIVE
17 MARCH 1ST OF 2005.

18 **Q.** RIGHT.

19 **A.** AND SUBSEQUENT TO THAT OTHER VIDEO GAME COMPANIES HAD MADE
20 VIDEO GAMES THAT INCLUDE THE RIGHTS TO RETIRED NFL PLAYERS IN
21 THEIR GAMES.

22 **Q.** OKAY. AND --

23 **A.** I THINK THAT'S WHAT YOU'RE ASKING.

24 **Q.** IT WAS. IT WAS.

25 **A.** OKAY. THANK YOU.

1 Q. AND THOSE GAMES ARE IN COMPETITION WITH YOU USING -- WELL,
2 ACTUALLY I'LL JUST DROP IT AND MOVE ON, BECAUSE I THINK THAT
3 INVOLVES SOME THINGS THAT YOU WOULDN'T NECESSARILY HAVE
4 PERSONAL KNOWLEDGE OF.

5 IF, AS PLAINTIFFS CONTEND, OKAY, RETIRED PLAYERS WERE
6 COVERED BY THE EXCLUSIVE CONTRACT THAT EA DID WITH PLAYERS INC,
7 BEGINNING ON THAT DATE IN MARCH 2005, WOULD, IN YOUR
8 UNDERSTANDING, THOSE RETIRED PLAYERS BE ABLE TO GO OUT AND SIGN
9 WITH OTHER COMPANIES, SUCH AS TAKE 2, AND IN COMPETITION WITH
10 EA?

11 A. TAKE 2 IS ONE OF THE VIDEO GAME COMPANIES THAT DID MAKE A
12 VIDEO GAME AFTER MARCH 2005 THAT FEATURED RETIRED NFL PLAYERS.
13 AND THE ANSWER TO YOUR QUESTION IS: IF ANY OF THE PLAYERS THEY
14 USED IN THAT GAME HAD BEEN ONE OF THE 2100 PLAYERS THAT
15 MR. HUMMEL REFERRED TO, AND THEY SOMEHOW HAD GRANTED EXCLUSIVE
16 RIGHTS THROUGH ONE OF THE CONTRACTS -- AND THIS IS GETTING
17 CONVOLUTED, BUT I THINK THE QUESTION WAS A LITTLE CONVOLUTED --
18 THEN THEY WOULDN'T HAVE BEEN ABLE TO LICENSE THEIR RIGHTS
19 SEPARATELY TO TAKE 2.

20 Q. I APOLOGIZE. IT'S THE CONTENTION OF THE PLAINTIFFS.

21 A. IT'S NOT THAT HARD. YEAH.

22 Q. DOES EA SELL ANY FANTASY FOOTBALL GAMES?

23 A. WE OFFER FANTASY FOOTBALL. FANTASY FOOTBALL IS OFTEN
24 ADVERTISING-SUPPORTED AS OPPOSED TO SOLD.

25 Q. OKAY. AND DID YOU -- DID EA EVER ENTER INTO A FANTASY

1 FOOTBALL LICENSE WITH PLAYERS INC?

2 **A.** WE HAVE HAD SEVERAL FANTASY FOOTBALL LICENSES --

3 **Q.** OKAY. I WOULD LIKE YOU TO LOOK AT TRIAL EXHIBIT NO. 79,
4 PLEASE. IT'S NOT IN EVIDENCE YET.

5 **A.** 79?

6 **Q.** YES.

7 **A.** I HAVE IT.

8 **Q.** OKAY. COULD YOU JUST TELL US, BRIEFLY, WHAT THIS DOCUMENT
9 IS? IDENTIFY IT.

10 **A.** THIS IS ONE OF THE LICENSE AGREEMENTS THAT EA HAD WITH
11 PLAYERS INC, SIGNED BY ME, DATED AUGUST, 2005.

12 AND AS I LOOK DOWN IN PARAGRAPH 2, THIS IS FOR
13 FANTASY GAMES WHICH PLAYERS INC ALWAYS WANTED TO LICENSE
14 SEPARATELY FROM VIDEO GAMES.

15 **MR. FEHER:** OKAY. YOUR HONOR, I MOVE THIS INTO
16 EVIDENCE.

17 **MR. HUMMEL:** NO OBJECTION.

18 **THE COURT:** THE NUMBER IS WHAT?

19 **MR. FEHER:** 79, YOUR HONOR.

20 **THE COURT:** RECEIVED.

21 (TRIAL EXHIBIT 79 RECEIVED IN EVIDENCE.)

22 **MR. FEHER:** LAUREN, COULD YOU DISPLAY THE VERY FIRST
23 PARAGRAPH? ACTUALLY, I APOLOGIZE, I MEAN THE REPRESENTATIONS
24 PARAGRAPH.

25 (DOCUMENT DISPLAYED.)

1 **BY MR. FEHER:**

2 **Q.** NOW, MR. LINZNER, IS IT FAIR TO SAY THAT THIS IS THE EXACT
3 REPRESENTATION LANGUAGE THAT IS IN THE MAIN CONTRACT WE'VE BEEN
4 GOING OVER?

5 **A.** NO. I DON'T WANT TO COMPARE IT WORD FOR WORD, BUT I
6 BELIEVE IT'S THE SAME LANGUAGE IN PARAGRAPH 1 (A) OF THIS AS
7 WE'VE SEEN IN SOME OTHER AGREEMENTS.

8 **Q.** OKAY. AND THIS IS STRUCTURALLY IS BROKEN DOWN IN THE
9 FIRST SENTENCE REFERRING TO THE ACTIVE PLAYER RIGHTS, AND THEN
10 THE SECOND SENTENCE INCLUDING, AS YOU'VE ALREADY TESTIFIED,
11 SOME MENTION OF RETIRED PLAYERS, CORRECT?

12 **A.** YES.

13 **Q.** NOW, CAN YOU JUST TELL ME, AT THE TIME YOU NEGOTIATED THIS
14 AGREEMENT, AS TO WHETHER EA WAS ENTERING INTO -- LET ME
15 REPHRASE THAT.

16 AT THE TIME YOU NEGOTIATED THIS AGREEMENT, DID YOU
17 HAVE ANY UNDERSTANDING AS TO WHETHER ANY RETIRED PLAYER RIGHTS
18 WERE BEING GRANTED IN ANY WAY, SHAPE OR FORM UNDER THIS FANTASY
19 FOOTBALL LICENSE?

20 **A.** YES, I DO.

21 **Q.** AND WHAT WAS YOUR UNDERSTANDING AT THAT TIME?

22 **A.** WELL, MY UNDERSTANDING IS THAT THROUGH THE LICENSE
23 AGREEMENT FOR FANTASY, WE WERE SECURING ONLY THE RIGHTS TO
24 ACTIVE NFL PLAYERS BECAUSE RETIRED PLAYERS CANNOT PARTICIPATE
25 IN FANTASY.

1 IN OTHER WORDS, FANTASY GAMES DEPEND UPON THE
2 REAL-LIFE RESULTS OF ACTIVE PLAYERS IN REAL-LIFE GAMES DURING
3 THE NFL SEASON.

4 I DON'T KNOW, YOUR HONOR, IF THE JURY WANTS TO KNOW
5 HOW FANTASY GAMES WORK.

6 **THE COURT:** IF YOU KNOW HOW THEY WORK, TAKE A COUPLE
7 OF SENTENCES AND EXPLAIN IT.

8 **THE WITNESS:** SURE. SO FANTASY GAMES BASICALLY
9 CONSUMERS BECOME THE OWNERS OF THE TEAM. AND THEY PLAY WITH
10 THEIR FRIENDS OR, YOU KNOW, THEY CAN ACTUALLY PLAY WITH
11 STRANGERS ONLINE.

12 WHAT THEY DO IS THEY DRAFT PLAYERS, GENERALLY SKILLED
13 PLAYERS. YOU CAN DRAFT LIKE FRANK GORE, FROM THE 49ERS, OR YOU
14 CAN DRAFT PAYTON MANNING FROM THE INDIANAPOLIS COLTS AND YOU
15 DRAFT VARIOUS PLAYERS. AND YOU GET POINTS DEPENDING UPON HOW
16 MANY YARDS THEY GET OR HOW MANY PASSES THEY COMPLETE OR HOW
17 MUCH TOUCHDOWNS THEY SCORE OR WHETHER THEY KICK FIELD GOALS OR
18 IF A DEFENSE INTERCEPTS PASSES.

19 BUT THE POINT IS THE SCORING IN A FANTASY LEAGUE
20 DEPENDS UPON THE PERFORMANCE OF REAL-LIFE PLAYERS IN REAL NFL
21 GAMES. AND RETIRED PLAYERS ARE NEVER PART OF THE EQUATION
22 BECAUSE THEY DON'T PLAY REAL NFL GAMES ON A CURRENT BASIS.

23 SO WHEN WE DID EXHIBIT 79, WE WERE LICENSING THE
24 RIGHTS TO ACTIVE NFL PLAYERS, BECAUSE THAT'S THE ONLY THING --
25 ANYTHING ELSE WOULD BE NONSENSICAL FOR PURPOSES OF FANTASY.

1 **BY MR. FEHER:**

2 **Q.** DID DOUG ALLEN AND OTHERS AT PLAYERS INC MAKE EFFORTS TO
3 PROMOTE RETIRED PLAYERS TO EA?

4 **MR. HUMMEL:** OBJECTION. FOUNDATION. SPECULATION.

5 **BY MR. FEHER::**

6 **Q.** TO YOUR KNOWLEDGE.

7 **THE COURT:** WELL, THERE WAS ALREADY SOME QUESTION
8 ABOUT THIS ON THE OTHER EXAMINATION, SO WITHIN THE SCOPE OF
9 YOUR ACTUAL KNOWLEDGE YOU CAN GIVE FIRSTHAND TESTIMONY ON THIS
10 POINT.

11 **THE WITNESS:** DOUG ALLEN AND OTHER EXECUTIVES AT
12 PLAYERS INC FREQUENTLY ENCOURAGED US TO LICENSE THE RIGHTS TO
13 RETIRED NFL PLAYERS THROUGH THEM, IF, INDEED, WE WANTED SUCH
14 FEATURES IN OUR GAME.

15 **BY MR. FEHER:**

16 **Q.** AND --

17 **A.** GAMES, I SHOULD SAY.

18 **Q.** DID THEY ENCOURAGE YOU TO USE PLAYERS THAT YOU INITIALLY
19 DIDN'T EXPRESS INTEREST IN?

20 **A.** WELL, AND THAT WOULD HAVE BEEN HANDLED MORE AT A TEAM
21 LEVEL. THERE WAS A TEAM DOWN IN ORLANDO WHO WOULD COME UP WITH
22 A LIST OF PLAYERS THAT IT WANTED FOR THE PARTICULAR GAME.

23 AND, YOU KNOW, AT SOME LEVEL THE BACK AND FORTH OVER
24 WHO PLAYERS INC COULD ACQUIRE THE RIGHTS FOR AND WHO COULD BE
25 BETTER SUBSTITUTES IF WE HAD A CRITICAL MASS OF PLAYERS

1 SUFFICIENT TO HAVE THE FEATURE BE ATTRACTIVE, THAT WAS HANDLED
2 MORE AT THE TEAM LEVEL AND, YOU KNOW, THE PLAYERS INC LEVEL.

3 I WOULD NOT TYPICALLY GET INVOLVED AND SAY:

4 "WELL, OKAY, YOU CAN'T GET JOE MONTANA, BUT HOW
5 ABOUT STEVE YOUNG," FOR EXAMPLE.

6 **BY MR. FEHER:**

7 **Q.** BUT DURING THIS WHOLE PERIOD DID YOU EVER HAVE ANY SENSE
8 THAT DOUG ALLEN AND OTHERS AT PLAYERS INC WEREN'T TRYING TO
9 PROMOTE RETIRED PLAYERS TO EA?

10 **A.** NO. IN FACT, THEY DID LICENSE US RETIRED PLAYERS ON MANY
11 OCCASIONS.

12 **Q.** LET'S ACTUALLY TALK ABOUT THAT BRIEFLY. HOW DID THAT WORK
13 STRUCTURALLY? WHEN YOU LICENSED ADDITIONAL PLAYERS HOW WOULD
14 THAT WORK PROCESS-WISE?

15 **A.** IT WORKED DIFFERENTLY IN DIFFERENT WAYS. THE ONE EXHIBIT
16 MR. HUMMEL SHOWED ME WE ACTUALLY ENTERED INTO A GROUP LICENSING
17 AGREEMENT. WHICH NUMBER WAS IT? 26 OR SOMETHING. WHERE THERE
18 WAS ENUMERATED PLAYERS, WHICH HARRIS BARTON WAS ONE. AND WE
19 PAID A SET AMOUNT, AND WE HAD THE RIGHTS TO USE THAT GROUP OF
20 PLAYERS.

21 WAS IT 24?

22 **Q.** IT'S 24.

23 **A.** AND THEN ON -- I RECALL THERE WAS A DIFFERENT KIND OF GAME
24 THAT WE HAD THAT'S CALLED "NFL STREET." NFL STREET 2 IN
25 PARTICULAR. NFL STREET IS NOT LIKE MADDEN.

1 IT'S AN ARCADE-STYLE GAME WHERE THERE'S NOT REAL
2 PHYSICS. PEOPLE CAN JUMP REALLY HIGH. THEY CAN DO THINGS THAT
3 AREN'T POSSIBLE IN THE REAL WORLD.

4 AND WE WANTED TO INCLUDE PLAYERS THAT HAD A LOT --
5 RETIRED PLAYERS THAT HAD A LOT OF PERSONALITY AND MIGHT BE
6 WELL-KNOWN TO OUR USER BASE.

7 SO WE LICENSED THROUGH PLAYERS INC RETIRED PLAYERS
8 LIKE WILLIAM PERRY, BO JACKSON, PLAYERS THAT HAD -- WERE
9 WELL-KNOWN AND HAD BIG PERSONALITIES.

10 **Q.** OKAY. AND WHEN YOU MADE THOSE ARRANGEMENTS FOR RETIRED
11 PLAYERS, TO YOUR RECOLLECTION WERE THERE SEPARATE GRANTS OF
12 RIGHTS TO COVER THOSE RETIRED PLAYERS?

13 **A.** MY UNDERSTANDING BASED ON THE DOCUMENTS I'VE SEEN IS THAT
14 THERE WERE SEPARATE AUTHORIZATIONS TO USE THOSE RETIRED PLAYER
15 RIGHTS BOTH IN GAME AND/OR FOR MARKETING FOR, YOU KNOW, SET
16 AMOUNTS OF MONEY.

17 **Q.** OKAY. AND EA PAID ADDITIONAL AMOUNTS OF MONIES TO SECURE
18 THESE RIGHTS?

19 **A.** WE DID.

20 **Q.** OKAY. IF EA ALREADY HAD THE RIGHTS TO RETIRED PLAYERS
21 THROUGH THE MAIN LICENSE AGREEMENTS AS PLAINTIFFS CONTEND,
22 WOULD YOU EVER HAVE PAID AN ADDITIONAL PENNY TO SECURE THOSE
23 ADDITIONAL RIGHTS?

24 **A.** I DON'T KNOW ABOUT WHAT PLAINTIFFS CONTEND, BUT OBVIOUSLY
25 I WOULDN'T PAY EXTRA FOR RIGHTS THAT I ALREADY HAD.

1 Q. JUST VERY BRIEFLY ON THE SCRAMBLING ISSUE.

2 AT ANY POINT IN TIME DID YOU HAVE AN UNDERSTANDING AS
3 TO WHETHER EA NEEDED THE LICENSE FROM ANYONE TO USE THE AVATARS
4 THAT WERE DISPLAYED IN THOSE GAMES?

5 A. I DON'T KNOW WHAT YOU MEAN "AVATARS." I KNOW WHAT AN
6 AVATAR IS. THAT'S NOT WHAT WE USE IN OUR GAME.

7 A. HOW WOULD YOU DESCRIBE WHAT YOU USE IN YOUR GAME?

8 A. PLAYER MODELS.

9 Q. PLAYER MODELS? OKAY. AND THOSE PLAYER MODELS --

10 A. AVATARS ARE MORE OF AN ONLINE CONCEPT.

11 Q. WERE THOSE PLAYER MODELS INTENDED SO THAT THEY WOULD NOT
12 BE RECOGNIZABLE AS ANY PARTICULAR PLAYER?

13 A. AT WHAT POINT IN TIME? THERE'S A POINT IN TIME WHEN NO
14 PLAYERS WERE RECOGNIZABLE. THE TECHNOLOGY WAS SUCH, AND
15 DEPENDING ON THE PLATFORM IT WAS IMPOSSIBLE TO RECOGNIZE A
16 PLAYER.

17 Q. RIGHT.

18 A. THE PHOTOREALISM WASN'T GOOD ENOUGH. IT WAS ONLY MORE
19 RECENTLY THAT YOU ACTUALLY CAN SEE ANYBODY, TIGER WOODS OR A
20 PLAYER AND SEE THAT, YEAH, THAT'S TIGER WOODS.

21 Q. LET ME REPHRASE IT DIFFERENTLY.

22 WHEN, FOR EXAMPLE, YOU'D HAVE A PARTICULAR VINTAGE
23 TEAM, AND THERE WOULD BE A PLAYER LISTED, WITHOUT A PICTURE OF
24 THE ACTUAL PLAYER AND WITHOUT THE NAME OF THE ACTUAL PLAYER,
25 BUT THERE WOULD BE A HEIGHT AND A WEIGHT GIVEN FOR THOSE

1 PLAYERS, DID YOU EVER BELIEVE AT ANY TIME THAT YOU NEEDED A
2 LICENSE FROM ANYONE IN ORDER TO DISPLAY THOSE HEIGHTS AND
3 WEIGHTS?

4 **A.** IT WAS OUR BELIEF THAT WE DID NOT NEED A LICENSE TO LIST A
5 HEIGHT OR A WEIGHT FROM WHATEVER SOURCE BOOK THAT WOULD BE.
6 THAT WASN'T A MISAPPROPRIATION OF A PLAYER IDENTITY AS
7 APPARENTLY MR. HUMMEL --

8 **Q.** OKAY. IN TERMS OF THE VINTAGE GAMES EA DOES --

9 **A.** VINTAGE TEAMS?

10 **Q.** VINTAGE TEAMS. THE GAMES WITH VINTAGE TEAMS THAT USE THE
11 MARKS AND NAME OF THE CHICAGO BEARS OR THE SAN FRANCISCO 49ERS,
12 DO YOU PAY ANYONE FOR THE RIGHT TO USE ANY INTELLECTUAL
13 PROPERTY IN THOSE GAMES?

14 **A.** YES.

15 **Q.** WHO DO YOU PAY?

16 **A.** NFL PROPERTIES. THEY CONVEY TO US THE RIGHTS NOT ONLY THE
17 LOGOS AND UNIFORMS OF THE TEAMS CURRENTLY, BUT THE RIGHTS GOING
18 BACKWARD IN TIME THAT THEY STILL CONTROL.

19 **Q.** AND SO WHEN YOU SAY "THE CHICAGO BEARS FROM 1985," AND
20 THEN USE THE TEAM UNIFORMS IN THE GAME, WAS IT YOUR
21 UNDERSTANDING THAT YOU COULD ONLY DO THAT BECAUSE YOU
22 SEPARATELY HAD A LICENSE WITH AND PAID MONEY TO THE NFL?

23 **A.** NO. IF I DIDN'T HAVE AN NFL LICENSE I WOULD NOT BE ABLE
24 TO DO THAT.

25 **Q.** THEY WOULD COME AFTER YOU, RIGHT?

1 **A.** WELL, YES, THEY WOULD.

2 **Q.** OKAY.

3 **MR. FEHER:** NOTHING FURTHER, YOUR HONOR, AT THIS
4 TIME.

5 **THE COURT:** ALL RIGHT. THANK YOU.
6 ANY FURTHER EXAMINATION, MR. HUMMEL?

7 **MR. HUMMEL:** YES, YOUR HONOR.

8 **REDIRECT EXAMINATION**

9 **BY MR. HUMMEL:**

10 **Q.** MR. LINZNER, YOU'RE A LAWYER, RIGHT?

11 **A.** I AM.

12 **Q.** CAN YOU TELL THE LADIES AND GENTLEMEN WHY YOU HAVE YOUR
13 LAWYER IN THE COURTROOM?

14 **A.** HE WORKS FOR ME IN MY LEGAL DEPARTMENT.

15 **MR. FEHER:** OBJECTION, YOUR HONOR. THAT'S AN
16 IMPROPER QUESTION.

17 **THE COURT:** WHAT?

18 **MR. HUMMEL:** WHY HE HAS A LAWYER IN THE COURTROOM.
19 GOES TO BIAS.

20 **THE COURT:** WHY IS THAT RELEVANT?

21 **MR. HUMMEL:** GOES TO BIAS, YOUR HONOR.

22 **THE WITNESS:** BIAS?

23 **MR. FEHER:** OBJECTION, YOUR HONOR.

24 **THE COURT:** GO AHEAD AND ANSWER THE QUESTION.

25 **THE WITNESS:** IS IT WHY DID I HAVE MY LAWYER HERE?

1 **THE COURT:** WHY IS A LAWYER HERE FOR EA?

2 **THE WITNESS:** HE'S INTERESTED IN MY TESTIMONY. I'M A
3 SENIOR EXECUTIVE AT THE COMPANY. IT'S TYPICALLY THAT WE -- IF
4 WE DO TESTIFY, JUST AS THE DEPOSITION, HE ATTENDED THE
5 DEPOSITION. IN FACT, HE REPRESENTED ME AT THE DEPOSITION.

6 **BY MR. HUMMEL:**

7 **Q.** IS HE REPRESENTING YOU HERE?

8 **A.** I DON'T THINK I NEED REPRESENTATION HERE.

9 **Q.** THAT'S NOT MY QUESTION. IS HE?

10 **A.** I HAVEN'T ASKED HIM TO REPRESENT ME, BUT I AM A SENIOR
11 EXECUTIVE OF THE COMPANY, AND HE IS A LAWYER FOR THE COMPANY,
12 SO I GUESS BY DEFINITION HE'S REPRESENTING ME.

13 **Q.** WITHOUT GETTING INTO WHAT HE SAID TO YOU, DID HE PREPARE
14 YOU FOR YOUR TESTIMONY TODAY?

15 **A.** WE REVIEWED A BUNCH OF DOCUMENTS SO THAT WE WOULDN'T WASTE
16 THE COURT OR THE JURY'S TIME.

17 **Q.** I UNDERSTAND.

18 **A.** HE GAVE ME A LIST -- NOT A LIST, A BOOKLET OF THE
19 DOCUMENTS WE HAD PRODUCED PURSUANT TO YOUR SUBPOENA AND THE --
20 SOME OF THE THINGS THAT HAD BEEN MARKED AS TRIAL EXHIBITS, SO I
21 WOULD BE MORE FAMILIAR WITH THEM AND NOT WASTE TIME READING
22 THROUGH THEM WHILE SITTING HERE.

23 **Q.** I APPRECIATE THAT.

24 DO YOU KNOW WHO PREPARED THAT BOOKLET OF DOCUMENTS
25 THAT YOUR LAWYER WOULD WORK THROUGH WITH YOU TO PREPARE FOR

1 YOUR TESTIMONY?

2 **MR. FEHER:** OBJECTION.

3 **THE WITNESS:** I BELIEVE HE DID.

4 **BY MR. HUMMEL:**

5 **Q.** PARDON ME?

6 **A.** I BELIEVE HE DID.

7 **Q.** DO YOU KNOW IF THE DEFENDANTS' LAWYERS SENT DOCUMENTS FOR
8 HIM TO PREP YOU WITH?

9 **A.** WE HAD TO GET THE TRIAL EXHIBITS FROM SOMEBODY.

10 **Q.** SO YOU GOT THEM FROM WHOM?

11 **A.** I GOT THEM FROM MY LAWYER, MR. SHOTS.

12 **Q.** RIGHT. AND MR. SHOTS GOT THEM FROM WHOM?

13 **A.** I DON'T REALLY KNOW.

14 **Q.** NOT FROM US, RIGHT?

15 **A.** YOU TELL ME.

16 **Q.** NOT FROM US.

17 **A.** THAT'S INSULTING.

18 **Q.** BUT YOU CONTEND --

19 **A.** I AM INSULTED.

20 **Q.** I'M SORRY YOU'RE INSULTED.

21 **A.** RIGHT.

22 **Q.** YOU PREPARED TO FOR YOUR TESTIMONY HERE TODAY, RIGHT?

23 **A.** I REVIEWED THE EXHIBITS WHICH YOU SHOWED ME SO THAT I
24 WOULDN'T WASTE YOUR TIME OR THE JURY'S. WOULD YOU RATHER I
25 WASTED THE TIME?

1 Q. NO.

2 A. THANK YOU.

3 Q. NOW, LET'S TALK ABOUT YOUR PRODUCT. YOU SAID YOU WANTED
4 TO HAVE AN AUTHENTIC VIDEO GAME FOOTBALL EXPERIENCE, RIGHT?

5 A. MADDEN NFL.

6 Q. MADDEN, YES. IS THAT CORRECT?

7 A. MADDEN NFL SEEKS TO BE A SIMULATION OF NFL FOOTBALL.

8 Q. ALL RIGHT. AND TO HAVE AN AUTHENTIC FOOTBALL VIDEO GAME
9 EXPERIENCE, YOU HAVE TO HAVE A WHOLE TEAM, RIGHT?

10 A. A WHOLE TEAM?

11 Q. TO PLAY A SIMULATED VIDEO GAME, YOU CAN'T HAVE A
12 QUARTERBACK, A FAMOUS QUARTERBACK AND FAMOUS RUNNING BACK. YOU
13 HAVE TO HAVE A WHOLE TEAM, RIGHT?

14 A. ACTUALLY, WHAT YOU NEED IS ALL 32 TEAMS IN THE NFL.

15 Q. OKAY. AND IF YOU WANT TO HAVE HISTORIC TEAMS YOU HAVE TO
16 HAVE ALL THE MEMBERS OF THOSE HISTORIC TEAMS TO PLAY IN THE
17 GAME?

18 A. WELL, THAT'S NOT THE PART ABOUT BEING AUTHENTIC. WHAT
19 MAKES MADDEN A YEAR-IN-YEAR-OUT TOP SELLER IS THAT IT PRESENTS
20 THE TEAMS OF THE NFL WITH CURRENT ROSTERS. THEY UPDATE THE
21 UNIFORMS, NEW STADIUMS AND UPDATED STATS FOR THOSE ACTIVE
22 PLAYERS.

23 Q. NOW, I'M ONLY ASKING YOU ABOUT HISTORIC TEAMS, WHICH
24 YOU'VE TESTIFIED ARE IN THE GAME, RIGHT?

25 A. YES, SIR.

1 Q. AS TO HISTORIC TEAMS, DID YOU WANT THEM TO BE AUTHENTIC,
2 YES OR NO?

3 A. NO.

4 Q. YOU DIDN'T CARE?

5 A. NOT THAT WE DIDN'T CARE. WE DIDN'T HAVE THE RIGHTS TO
6 MAKE THEM AUTHENTIC OR THE RESOURCES TO PUT THE EFFORT INTO
7 MAKING THOSE SIMULATIONS AS REALISTIC AS WE DO FOR THE 32
8 ACTIVE TEAMS.

9 Q. SOMEBODY TOOK THE EFFORT, SIR, TO FIGURE OUT
10 MR. ADDERLEY'S HEIGHT AND WEIGHT, RIGHT? AND THEY PUT IT IN
11 THE GAME, RIGHT?

12 A. WELL, WHAT THEY -- I DON'T KNOW HOW THEY FIGURED IT OUT,
13 BUT THEY PROBABLY TOOK SOME SOURCE FROM SOMEWHERE OF PLAYERS,
14 RETIRED -- WHAT YOU CALL THE HISTORIC TEAMS OR CLASSIC TEAMS,
15 AND THEY JUST LISTED HEIGHTS AND WEIGHTS.

16 Q. AND THEY TOOK MR. MCNEIL'S HEIGHT AND WEIGHT, CLIFTON
17 MCNEIL, WHO TESTIFIED IN THIS TRIAL, WHO WAS A GREAT WIDE
18 RECEIVER FOR THE CLEVELAND BROWNS. THEY WENT -- YOUR GUYS WENT
19 AND LOOKED UP HIS HEIGHT AND WEIGHT AND HOW MANY YEARS HE WAS
20 IN THE LEAGUE, AND WHAT HIS POSITION WAS, AND THEY PUT IT IN
21 THE GAME, RIGHT?

22 A. I DON'T KNOW IF THAT'S IN THE GAME. I DON'T KNOW
23 MR. MCNEIL OR WHETHER HE'S INCLUDED IN THE GAME.

24 Q. WHY WOULD THEY DO THAT IF THEY DIDN'T WANT IT TO BE
25 AUTHENTIC?

1 WHY WOULD THEY USE HERB ADDERLEY'S HEIGHT AND WEIGHT
2 (INDICATING), GREAT QUARTERBACK FOR THE GREENBAY PACKERS. WHY
3 WOULD THEY DO IT?

4 **MR. FEHER:** OBJECTION, YOUR HONOR. THIS IS PURE
5 CLOSING ARGUMENT.

6 **BY MR. HUMMEL:**

7 **Q.** WHY WOULD THEY DO IT?

8 **THE COURT:** ALL RIGHT. GO AHEAD.

9 IF YOU CAN ANSWER, PLEASE ANSWER.

10 **THE WITNESS:** I DON'T KNOW.

11 **BY MR. HUMMEL:**

12 **Q.** REALLY?

13 **A.** REALLY.

14 (LAUGHTER)

15 **Q.** UHM.

16 NOW, LET'S TALK ABOUT THAT EXCLUSIVE LICENSE THAT
17 MR. FEHER WANTED TO TALK ABOUT.

18 YOU WANTED THAT EXCLUSIVE LICENSE, DID YOU NOT, TO
19 TAKE COMPETITION OUT OF THE MARKETPLACE?

20 YOU WANTED TO REMOVE TAKE 2 AS A COMPETITOR OF EA'S
21 IN MARKETING A PROFESSIONAL FOOTBALL SIMULATION GAME. HE
22 TALKED ABOUT TAKE 2. WHO IS TAKE 2?

23 **A.** TAKE 2 IS ANOTHER VIDEO GAME PUBLISHER.

24 **Q.** AND THEY HAD A PRO FOOTBALL GAME IN THE MARKETPLACE,
25 DIDN'T THEY, PRIOR TO THE TIME YOU ENTERED INTO THIS EXCLUSIVE

1 LICENSE?

2 **A.** ACTUALLY, THEY DID NOT.

3 **Q.** THEY HAD A GAME, DIDN'T THEY? IT WAS CALLED "MADDEN" --

4 IT WAS NOT CALLED "MADDEN"; IT WAS CALLED 2K, CORRECT?

5 **A.** THAT WAS BY SAGO.

6 **Q.** BUT IT WAS 2K, RIGHT?

7 **A.** THAT'S NOT TAKE 2. IT WAS THE 2K BRAND THAT WAS OWNED BY

8 SAGO AT THE TIME.

9 **Q.** WASN'T TAKE 2 INVOLVED?

10 **A.** TAKE 2 STARTED TO GET INVOLVED WITH SAGO AS SAGO WAS
11 GETTING OUT OF THE SPORTS BUSINESS AROUND THAT PERIOD OF TIME.

12 **Q.** AND THAT \$25 MILLION THAT YOU PAID TO THESE GUYS, THE
13 DEFENDANTS IN THIS CASE, GAVE YOU AN EXCLUSIVE TO THE PLAYERS
14 SO THAT TAKE 2 COULDN'T USE THEM ANYMORE, RIGHT?

15 **A.** WELL, ON CERTAIN GENRES OF GAMES WE BID AGAINST TAKE 2 FOR
16 AN EXCLUSIVE LICENSE, AND WE THOUGHT IT WAS MORE ADVANTAGEOUS
17 FOR OUR BUSINESS THAT WE ACQUIRE THE EXCLUSIVE LICENSE RATHER
18 THAN LET TAKE 2 TAKE THE EXCLUSIVE LICENSE.

19 **Q.** WAS THE HALL OF FAME AN EXCLUSIVE LICENSE?

20 **A.** WAS THE HALL OF FAME AN EXCLUSIVE LICENSE?

21 **Q.** YEAH. YOU LICENSED FROM THE HALL OF FAME ALL THE RIGHTS
22 TO THE HALL OF FAME RETIRED PLAYERS. WAS THAT EXCLUSIVE?

23 **A.** NO, NOT FOR THE RETIRED PLAYERS THAT ARE IN THE HALL OF
24 FAME.

25 **Q.** FOR THE HALL OF FAME?

1 A. WELL, FOR THE HALL OF FAME TRADEMARKS.

2 Q. RIGHT.

3 A. JUST THE HALL OF FAME TRADEMARKS, I BELIEVE WE

4 SUBSEQUENTLY ENTERED INTO AN EXCLUSIVE LICENSE FOR THE HALL OF

5 FAME TRADEMARKS BUT NOT AN EXCLUSIVE RIGHT FOR THE HALL OF FAME

6 PLAYERS, BECAUSE, IN FACT, MANY OF THOSE PLAYERS WERE IN OTHER

7 GAMES.

8 Q. LET'S TALK ABOUT FANTASY FOOTBALL.

9 A. OKAY.

10 Q. MR. FEHER TALKED ABOUT A LICENSE FOR FANTASY FOOTBALL.

11 AND YOU DID LICENSE THE ACTIVE PLAYERS AS A GROUP FOR FANTASY

12 FOOTBALL PRODUCTS; IS THAT RIGHT?

13 A. WE DID.

14 Q. ALL RIGHT. NOW, AND THAT WOULD BE ALL ACTIVE PLAYERS?

15 A. YES.

16 Q. IN A FANTASY GAME DO YOU DRAFT AN OFFENSIVE LINEMAN?

17 A. GENERALLY NOT.

18 Q. DO YOU DRAFT A DEFENSIVE LINEMAN?

19 A. GENERALLY NOT.

20 Q. SO YOU DRAFT THE SKILLED POSITION PLAYERS BECAUSE THOSE

21 ARE THE ONES THAT SCORE POINTS, RIGHT?

22 A. IN A FANTASY GAME, THAT'S CORRECT.

23 Q. RIGHT. AND YOU PAID A LUMP SUM TO THE DEFENDANTS FOR THE

24 RIGHTS FOR ALL PLAYERS, RIGHT?

25 A. WELL, IT WAS PART OF THE GROUP LICENSE APPROACH.

1 Q. RIGHT.

2 A. SO, YES. SO WE GOT THE RIGHT FOR FANTASY TO ALL THE
3 PLAYERS, AND THEN THE DIFFERENT LEAGUES COULD DRAFT PLAYERS
4 HOWEVER THEIR RULES PROVIDED.

5 Q. DID YOU KNOW HOW THOSE FUNDS WOULD BE DIVIDED AMONG THE
6 ACTIVE PLAYERS?

7 A. NO.

8 Q. WOULD AN OFFENSIVE LINEMAN WHO WOULD NEVER BE USED IN A
9 FANTASY GAME, WOULD HE GET A SHARE OF THAT MONEY, DO YOU KNOW?

10 A. I DON'T KNOW.

11 Q. YOU DON'T KNOW. OKAY. NOW, I THINK MR. FEHER SAID OR
12 ASKED YOU A QUESTION ABOUT WHETHER DOUG ALLEN PROMOTED RETIRED
13 PLAYERS TO YOU FROM TIME TO TIME, RIGHT?

14 A. I RECALL THE QUESTION MR. FEHER ASKED, YES.

15 Q. AND YOU SAID YES, HE DID PROMOTE RETIRED PLAYERS?

16 A. THAT'S NOT EXACTLY WHAT I SAID. I SAID MR. ALLEN AND
17 OTHERS AT PLAYERS INC UPON OCCASION OFFERED TO OBTAIN THE
18 RIGHTS TO RETIRED PLAYERS WHEN WE WERE INTERESTED IN PROCURING
19 THEM.

20 Q. THAT'S FAIR ENOUGH.

21 DID HE ACTUALLY EVER PROMOTE SPECIFICALLY RETIRED
22 PLAYERS WHO HAD SIGNED GLA'S AS OPPOSED TO RETIRED PLAYERS,
23 GENERALLY?

24 A. COULD YOU REPEAT THAT, PLEASE?

25 Q. I CAN DO IT AGAIN. LET ME MAKE IT CLEAR.

1 YOU NOW KNOW BECAUSE OF THIS CASE THERE'S A GROUP,
2 2100, REPRESENTED BY MR. ADDERLEY HERE WHO WAS A HALL OF FAME
3 CORNERBACK FOR THE GREENBAY PACKERS.

4 **A.** I WAS A FAN OF MR. ADDERLEY. HE WAS A GOOD PLAYER.

5 **Q.** AND YOU UNDERSTAND THAT HE REPRESENTS A CLASS OF 2100
6 PEOPLE, FORMER PRO FOOTBALL PLAYERS, WHO ARE NOW RETIRED WHO
7 SIGNED GLA'S.

8 THE QUESTION THAT I HAVE FOR YOU IS: DID MR. ALLEN,
9 OR ANYONE ELSE AT PLAYERS INC, AS OPPOSED TO MARKETING RETIRED
10 PLAYERS, MARKET TO YOU RETIRED PLAYERS LIKE MR. ADDERLEY AND
11 OTHERS WHO HAD SIGNED GLA'S?

12 **A.** I THINK I ANSWERED THIS BEFORE WHEN YOU ASKED ME IF THEY
13 EVER SHOWED ME A LIST OF 2100 PLAYERS. AND THINK I'VE SAID
14 SEVERAL TIMES THEY DID NOT.

15 **Q.** OKAY.

16 **THE COURT:** NO, HE IS ASKING YOU A DIFFERENT
17 QUESTION. HE'S SAYING DID ANYONE -- DID MR. ALLEN OR ANYONE
18 OVER AT NFPLA ATTEMPT TO INTEREST YOU IN LICENSING PEOPLE WHO
19 HAD THE -- WHO HAD SIGNED GLA'S, WHETHER OR NOT THEY EVER GAVE
20 YOU A LIST?

21 **THE WITNESS:** WELL, THEY -- THEY DID TELL ME -- TO
22 ANSWER YOUR HONOR'S QUESTION, THEY DID TELL ME, FOR EXAMPLE,
23 THAT FIRST EXHIBIT THAT MR. HUMMEL SHOWED ME THAT THEY HAD
24 OBTAINED THE RIGHTS TO SOME OF THESE PLAYERS WHO HAD ALREADY
25 SIGNED GLA'S, AND THEY WOULD GO OUT AND TRY AND GET MORE, WHICH

1 THEY DID.

2 AND THAT'S WHY WE -- THE LIST OF 150, 200 ATTACHED TO
3 THAT EXHIBIT 26 OR 8 --

4 **BY MR. HUMMEL:**

5 **Q.** 24.

6 **A.** 24.

7 **Q.** RIGHT.

8 **A.** THAT YOU SHOWED ME. SO THEY DID TELL US THAT THEY HAD
9 SOME PLAYERS, RETIRED PLAYERS THAT HAD ALREADY SIGNED; THAT
10 THEY WOULD MAKE AN EFFORT TO GO OUT AND GET MORE.

11 AND AS FAR AS I KNOW THEY WERE SUCCESSFUL, IN PART
12 NOT IN WHOLE, FOR GETTING THE PLAYERS THAT WE HAD LISTED AS
13 WANTING FOR THOSE FEATURES.

14 **MR. HUMMEL:** I'M SORRY, YOUR HONOR. I WANT TO ASK
15 HIM A QUESTION. IS THAT OKAY?

16 **THE COURT:** GO AHEAD. I'M -- YOU WERE NOT ASKING
17 ABOUT A LIST. YOU WHY ASKING ABOUT THE GLA.

18 **MR. HUMMEL:** RIGHT.

19 **THE COURT:** WHICH IS NOT NECESSARILY THE SAME THING.
20 AND THAT POINT WAS GETTING CONFUSED.

21 SO GO AHEAD AND ASK MORE QUESTIONS.

22 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

23 **BY MR. HUMMEL:**

24 **Q.** I'M NOT ASKING YOU ABOUT A LIST NOW. I'M ASKING YOU ABOUT
25 WHETHER MR. ALLEN, OR ANYONE ELSE AT PLAYERS INC, EVER CAME TO

1 YOU AND SAID:

2 "WE'VE GOT THIS GROUP OF RETIRED PLAYERS WHO HAVE
3 SIGNED GLA'S. TAKE THEM. TAKE THE GUY SPECIFICALLY WHO SIGNED
4 THE GLA'S."

5 **A.** NO, NOT IN THAT WAY.

6 **Q.** OKAY.

7 **A.** WHAT I SAID WAS THAT THEY TOLD US THAT THEY HAD SOME GUYS
8 WHO HAD SIGN GLA'S. IF WE WANTED OTHERS FOR WHOM THEY DID NOT
9 HAVE AUTHORIZATION THEY WOULD TRY AND GO GET THEM.

10 AND, IN FACT --

11 **THE COURT:** WAIT. TRY AND GO GET THEM VIA OTHER
12 GLA'S?

13 **THE WITNESS:** YES.

14 **THE COURT:** I WANT TO JUST BE CLEAR ON THIS POINT,
15 BECAUSE YOU PHRASED THE QUESTION AS ALL OR NOTHING.

16 DID MR. ALLEN EVER SAY:

17 "WE'VE GOT THIS GROUP OF GUYS ON GLA'S, AND TRY
18 TO PROMOTE SOME OR ALL OF THEM THROUGH YOUR ORGANIZATION?"
19 THROUGH THE GLA.

20 **THE WITNESS:** THE ANSWER TO YOUR HONOR'S QUESTION
21 WOULD BE "YES" ON SOME OF THEM. WE DIDN'T WANT ALL OF THEM.
22 YOU'VE GOT TO UNDERSTAND, THERE'S LIKE 1400 PLAYERS EVERY YEAR
23 IN THE NFL. YOU GO BACK DECADES. YOU KNOW HOW MANY PEOPLE
24 WE'RE TALKING ABOUT, POTENTIALLY?

25 AND SOME OF THEM HAD SIGNED GLA'S WITH PLAYERS INC.

1 THIS IS WHAT I UNDERSTOOD, BASED ON WHAT THEY TOLD ME.

2 SOME OF THEM HAD SIGNED, BUT NOT ALL OF THEM HAD. SO
3 IF WE SHOWED INTEREST IN, FOR EXAMPLE, WALTER PAYTON. MAYBE HE
4 HADN'T SIGNED A GLA. SO THEY WOULD GO TO MR. PAYTON'S ESTATE
5 OR HIS WIFE OR WHOEVER IS CONTROLLING HIS RIGHTS AT THIS POINT
6 IN TIME AFTER HE DIED, AND THEY WOULD SAY:

7 "DO YOU WANT TO PARTICIPATE? SIGN THIS GLA OR
8 SOME OTHER AUTHORIZATION."

9 AND, YOU KNOW, WE EITHER COULD OR COULD NOT GET
10 MR. PAYTON IN THE GAME.

11 **THE COURT:** YOU MAY ASK MORE QUESTIONS ON THIS. I
12 THINK THE -- GO AHEAD. PURSUE IT, IF YOU WANT.

13 **BY MR. HUMMEL:**

14 **Q.** MR. LINZNER, YOU DIDN'T EVEN KNOW BACK WHEN YOUR
15 DEPOSITION WAS TAKEN -- IN FACT, UP UNTIL TODAY -- WHAT A GLA
16 WAS, RIGHT?

17 **A.** WELL, NO, I DID. I UNDERSTOOD IT WAS CALLED LIKE A
18 GENERAL LICENSING AGREEMENT. BUT WHATEVER WORDS YOU WANT TO
19 USE FOR THE ACRONYM --

20 **Q.** YES.

21 **A.** -- I KNEW WHAT THE CONCEPT WAS. AGAIN, EVEN IN THE
22 AGREEMENTS THEY HAVE TWO DIFFERENT DESCRIPTIONS OF THAT
23 ACRONYM, AS MR. KATZ SHOWED ME. THAT, YOU KNOW, ONE TIME IT'S
24 DEFINED AS "GROUP LICENSING AUTHORIZATION." ANOTHER TIME IT'S
25 DEFINED AS "GROUP LICENSING ASSIGNMENT." AND WHETHER IT'S A

1 GENERAL LICENSING AGREEMENT, WHICH IS THE TERM I USED IN MY
2 DEPOSITION, I ALWAYS UNDERSTOOD IT WAS A MECHANISM BY WHICH WE
3 OBTAINED GROUP LICENSING RIGHTS TO NFL PLAYERS.

4 **Q.** NOW, I'M GOING TO ASK YOU ONE FINAL SORT OF SERIES OF
5 QUESTIONS ON THIS TOPIC.

6 YOU'VE SAID THAT YOU WANTED AN AUTHENTIC GAME. AND I
7 GUESS I ASKED IF YOU YOU WANTED THE HISTORIC TEAMS TO BE AS
8 AUTHENTIC AS POSSIBLE WITHIN THE GRANT OF LICENSES YOU THOUGHT
9 YOU HAD, OKAY?

10 **A.** YES.

11 **Q.** NOW, ASSUME FOR A MOMENT THAT, IN FACT, YOU COULD READ THE
12 LICENSE THAT YOU GOT, THAT YOU NEGOTIATED, AS CONVEYING THE
13 RIGHTS TO RETIRED PLAYERS WHO HAD SIGNED GLA'S. THERE WOULD
14 HAVE BEEN NO HARM TO YOU, NO HARM TO EA, IF PI HAD SIMPLY
15 SAID --

16 **MR. FEHER:** OBJECTION, YOUR HONOR --

17 **BY MR. HUMMEL:**

18 **Q.** -- "WE CONVEYED THE RIGHTS," CORRECT? YOU COULD HAVE USED
19 THEM FOR NO ADDITIONAL COST TO YOU?

20 **MR. FEHER:** YOUR HONOR, THIS IS CLOSING ARGUMENT.

21 **MR. HUMMEL:** IT'S A QUESTION.

22 **THE COURT:** LET'S HEAR THE QUESTION. I LOST TRACK OF
23 THE QUESTION.

24 BUT DON'T ANSWER UNTIL I HEAR THE OBJECTION.

25 **MR. HUMMEL:** SURE.

1 **THE COURT:** START OVER.

2 **MR. HUMMEL:** SURE.

3 **BY MR. HUMMEL:**

4 **Q.** THE QUESTION IS THIS: ASSUME THAT THE LICENSE GRANT
5 ACTUALLY DOES, BY TECHNICAL LANGUAGE THAT YOU AND I AS LAWYERS
6 MIGHT UNDERSTAND, DOES CONVEY THE RIGHTS TO RETIRED PLAYERS
7 THAT SIGNED GLA'S --

8 **THE COURT:** WHICH GRANT?

9 **MR. HUMMEL:** THE GRANT OF LICENSE IN THE EA LICENSE
10 THAT WE'VE BEEN TALKING ABOUT, PARAGRAPHS 1 AND 2.

11 **BY MR. HUMMEL:**

12 **Q.** JUST ASSUME THAT.

13 **THE COURT:** FOR THE SAKE OF ARGUMENT.

14 **MR. HUMMEL:** FOR THE SAKE OF ARGUMENT.

15 **THE COURT:** HE'S TESTIFIED THE OPPOSITE.

16 **MR. HUMMEL:** NO, HE HAS TESTIFIED AS TO WHAT HE
17 THOUGHT HE WAS GETTING. BUT THAT'S FINE, YOUR HONOR.

18 **BY MR. HUMMEL:**

19 **Q.** ASSUME FOR THE SAKE OF OF ARGUMENT, ASSUME YOU GOT IT.
20 COULD YOU HAVE USED 2100 RETIRED PLAYERS IN A HISTORIC GAME TO
21 MAKE THE GAME MORE AUTHENTIC IF YOU HAD THEIR NAMES,
22 LIKENESSES, JERSEY NUMBERS, ET CETERA?

23 COULD YOU HAVE USED MR. ADDERLEY'S IMAGE TO MAKE IT
24 MORE AUTHENTIC WHEN YOU WANT TO PLAY THE GREENBAY PACKERS IN A
25 HISTORIC GAME?

1 **A.** WHEN?

2 MAY I ANSWER, YOUR HONOR.

3 **THE COURT:** ANY OBJECTION?

4 **MR. FEHER:** IT'S ARGUMENTATIVE, YOUR HONOR.

5 **THE COURT:** NO, IT'S NOT. I'M GOING TO ALLOW THE
6 QUESTION.

7 I'M CONFUSED, THOUGH, MYSELF. ARE YOU TALKING ABOUT
8 THE HISTORICAL TEAMS OR ARE YOU TALKING ABOUT THE CURRENT
9 TEAMS?

10 **MR. HUMMEL:** HISTORICAL TEAMS, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. WELL, THEN, I TAKE BACK WHAT
12 I SAID EARLIER. I MISUNDERSTOOD THE PURPORT OF YOUR QUESTION.
13 I DON'T REMEMBER WHAT THE WITNESS SAID.

14 I'M NOT SAYING HE TESTIFIED TO THE OPPOSITE. IT'S UP
15 TO HIM TO TESTIFY.

16 IF YOU UNDERSTAND THE QUESTION, PLEASE ANSWER.

17 **THE WITNESS:** THE WAY I UNDERSTAND THE QUESTION,
18 MR. HUMMEL IS ASKING ME IF I HAD GOTTEN THE RIGHTS, FOR
19 EXAMPLE, TO MR. ADDERLEY --

20 **BY MR. HUMMEL:**

21 **Q.** YEAH.

22 **A.** -- THROUGH -- ASSUMING CONTRARY TO WHAT I TESTIFIED THAT
23 MR. ADDERLEY'S RIGHTS WERE CONVEYED IN THE GENERAL LICENSING
24 AGREEMENT, COULD I HAVE USED HIS RIGHTS FOR NO ADDITIONAL
25 CHARGE?

1 AND THE ANSWER WOULD BE "YES," IF IT WAS CONVEYED IN
2 THAT --

3 **Q.** YOU COULD HAVE USED IT, RIGHT, FOR NO ADDITIONAL CHARGE?

4 **A.** I JUST SAID THAT. ASSUMING THAT IT WAS PART OF THE
5 LICENSE AGREEMENT, CONTRARY TO WHAT I UNDERSTOOD AND INTENDED,
6 THEN, YES. IF HE HAD GIVEN ME HIS RIGHTS, THEN WE WOULD BE
7 ABLE TO USE HIS RIGHTS.

8 **Q.** AND THAT WOULD BE TRUE FOR THE 2100 RETIRED PLAYERS IN THE
9 CLASS, RIGHT? YOU COULD HAVE USED THEM?

10 **MR. FEHER:** YOUR HONOR --

11 **THE COURT:** THE PHRASE "COULD HAVE USED" IS
12 AMBIGUOUS. DOES THAT MEAN:

13 "SURE, IT WOULD HAVE BEEN FINE TO HAVE THEM. WE
14 COULD HAVE PUT THEM TO USE"? OR DOES IT MEAN LEGALLY HE COULD
15 HAVE USED IT?

16 **MR. HUMMEL:** THE FIRST. THE FIRST.

17 **BY MR. HUMMEL:**

18 **Q.** IT WOULD HAVE BEEN FINE TO HAVE. YOU COULD HAVE USED THEM
19 AS A BUSINESS.

20 **A.** I UNDERSTOOD MORE LIKE THE JUDGE THAT LEGALLY YOU COULD
21 HAVE.

22 **Q.** I'M PUTTING LAW ASIDE FOR THE TIME BEING. COULD YOU AS A
23 BUSINESS HAVE IMAGINED USING MR. ADDERLEY TO MAKE THE GAME MORE
24 AUTHENTIC?

25 **A.** IN FACT, WE DID USE MR. ADDERLEY, AND WE LICENSED HIS

1 RIGHTS SEPARATELY, AND WE PAID HIM SEPARATELY.

2 Q. BUT I'M TALKING ABOUT THE GROUP LICENSE GRANT.

3 A. WELL, AGAIN --

4 THE COURT: I THINK THIS HAS GOTTEN TO BE TO THE
5 POINT OF ARGUMENT, AND I'M GOING TO SUSTAIN THE OBJECTION.

6 MR. HUMMEL: ALL RIGHT, YOUR HONOR. I DON'T HAVE
7 ANYTHING FURTHER.

8 THE COURT: ANYTHING MORE?

9 MR. FEHER: YES.

10 RECROSS EXAMINATION

11 BY MR. FEHER:

12 Q. MR. LINZNER, AT THE TIME YOU DID ALL OF THESE NEGOTIATIONS
13 AND DEALS YOU UNDERSTOOD THAT IT WAS ACTIVE PLAYERS ONLY,
14 RIGHT?

15 A. NO, THAT'S TOO -- I MEAN THERE WERE TIMES WE, NEGOTIATED
16 SPECIFICALLY FOR RETIRED PLAYERS.

17 Q. OKAY.

18 A. THAT WAS NOT ACTIVE PLAYERS ONLY. BUT WE, WHEN WE WANTED
19 RETIRED PLAYERS, WE HAD SEPARATE DOCUMENTATION. WE PAID
20 SEPARATE AMOUNTS OF MONEY.

21 Q. LEAVING THE SEPARATE ASIDE IN TERMS OF THE MAIN LICENSE
22 AGREEMENTS, YOU UNDERSTOOD THE MAIN LICENSE AGREEMENTS ONLY
23 COVERED ACTIVE PLAYERS, CORRECT?

24 A. I BELIEVE I TESTIFIED THAT EACH OF THE AGREEMENTS BOTH YOU
25 AND MR. HUMMEL SHOWED ME WHEN WE WERE LICENSING FOR 25 MILLION

1 OR A MILLION OR WHATEVER IT WAS, THOSE RIGHTS THAT WERE BEING
2 CONVEYED WERE FOR ACTIVE PLAYERS ON A YEAR-BY-YEAR BASIS.

3 **Q.** AND ALL OF THE MONEY THAT YOU PAID TO PLAYERS INC UNDER
4 THOSE AGREEMENTS WERE PAID FOR ACTIVE PLAYERS ONLY, CORRECT?

5 **A.** THE RIGHTS TO THE LICENSING, YES, THAT'S WHAT WE WERE
6 PAYING FOR.

7 **Q.** IF HYPOTHETICALLY -- WELL, IN TERMS OF GETTING ADDITIONAL
8 RIGHTS FOR NO ADDITIONAL MONEY, IN YOUR EXPERIENCE AS A GENERAL
9 MATTER, DO YOU GET ADDITIONAL RIGHTS FOR NO ADDITIONAL MONEY?

10 DO YOU GET THINGS FOR FREE IN YOUR NEGOTIATIONS?

11 **A.** MR. FEHER, IN OUR GAMES, FOR EXAMPLE, WE HAVE -- WE SHOW
12 THE WILSON FOOTBALL GRANT. WILSON IS THE MAKE OF THE OFFICIAL
13 FOOTBALL IN THE NFL.

14 WE GIVE A CERTAIN AMOUNT OF EXPOSURE IN RETURN,
15 RATHER THAN PAYING FOR THAT LINE -- PAYING FOR THOSE RIGHTS.

16 SO WE DON'T PAY WILSON, BUT WE DO GIVE THEM CERTAIN
17 EXPOSURE IN THE GAME. YOU CAN SEE SOME OF THE -- ON THE COVER
18 OF THE GAME YOU CAN SEE IT'S A WILSON FOOTBALL.

19 **Q.** RIGHT.

20 **A.** THEY LIKE THAT, GENERALLY.

21 SO JUST LIKE REEBOK, YOU CAN SEE THE REEBOK SYMBOL ON
22 THE COVER OF THE GAME. WE DON'T PAY REEBOK SEPARATELY, BUT WE
23 DO GIVE THEM PROMOTIONAL BENEFITS. IT'S KIND OF LIKE AN
24 IN-KIND EXCHANGE.

25 **Q.** WOULD YOU HAVE PAID ADDITIONAL MONEY FOR THE RETIRED

1 PLAYERS YOU WEREN'T INTERESTED IN?

2 **A.** IF THEY HAD NO VALUE TO US IN THE GAME FOR WHATEVER
3 REASON, THEN WE WOULDN'T HAVE PAID ADDITIONAL MONEY FOR THAT.

4 **Q.** OKAY.

5 **A.** WHEN WE HAVE BEEN INTERESTED IN RETIRED PLAYERS FOR THE
6 GAME, WE HAVE PAID THEM ADDITIONAL MONEY.

7 **Q.** DID PLAYERS INC PROMOTE RETIRED PLAYERS, GENERALLY, TO EA?

8 **A.** I DON'T -- THEY DID PROMOTE THE OPPORTUNITY ON SEVERAL
9 OCCASIONS TO LICENSE RETIRED PLAYERS FOR SPECIFIC GAMES.

10 **Q.** OKAY. IN TERMS OF THIS HEIGHT AND WEIGHT QUESTION, DO YOU
11 HAVE ANY REASON TO BELIEVE THAT ANY OF THE CONSUMERS OF YOUR
12 GAMES --

13 **THE COURT:** MR. PARCHER, I THINK IN THE INTEREST OF
14 OF THE JURY BEING ABLE TO PAY ATTENTION, WHEN YOU'RE SITTING
15 THAT CLOSE TO THE JURY BOX, WHICH I PREFER YOU NOT DO, I DON'T
16 THINK IT'S APPROPRIATE FOR YOU TO BE HAVING CONVERSATIONS THAT
17 THE JURORS CAN HEAR.

18 **MR. PARCHER:** SORRY ABOUT THAT.

19 **THE COURT:** I WANT THE JURY TO DISREGARD ANYTHING YOU
20 MIGHT HAVE HEARD MR. HUMMEL SAY AND MR. PARCHER SAY.

21 GO AHEAD.

22 **BY MR. FEHER:**

23 **Q.** MR. LINZNER, DO YOU HAVE ANY REASON TO BELIEVE THAT
24 CONSUMERS OF YOUR GAME EITHER CARE OR KNOW ABOUT THE HEIGHT AND
25 THE WEIGHT OF RETIRED PLAYERS SUCH AS MR. ADDERLEY?

1 **A.** I DON'T KNOW. I MEAN, I DON'T BELIEVE THEY WOULD CARE
2 ABOUT HEIGHT AND WEIGHT, BUT I'VE NEVER LOOKED AT THE QUESTION
3 AND STUDIED IT OR SEEN ANY INFORMATION ON IT.

4 **Q.** HAS ANYONE AT YOUR COMPANY EVER TOLD YOU CONSUMERS CARE
5 ABOUT HEIGHT OR WEIGHT?

6 **A.** NO.

7 **MR. FEHER:** I THINK THAT'S IT, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. ANYTHING MORE, MR. HUMMEL?

9 **MR. HUMMEL:** NO, YOUR HONOR.

10 **THE COURT:** ALL RIGHT. IS THERE ANY NEED FOR US TO
11 RETAIN THIS WITNESS IN LIGHT OF THE OTHER ISSUE THAT YOU RAISED
12 WITH ME EARLIER ABOUT THE MOTION YOU WANT ME TO HEAR AT 7:30 IN
13 THE MORNING?

14 **MR. HUMMEL:** YOUR HONOR, I THINK THAT ALTHOUGH
15 THERE'S A STIPULATION WE WOULD LIKE TO BE HEARD ON THAT SO
16 WE'LL TAKE IT OUTSIDE THE PRESENCE.

17 **THE COURT:** ALL RIGHT. WELL, I -- I'M ASKING BECAUSE
18 I NEED TO EITHER DISCHARGE THIS WITNESS FROM THE SUBPOENA OR
19 NOT. DO YOU WANT TO DISCHARGE HIM FROM THE SUBPOENA OR NOT?

20 **MR. HUMMEL:** MAY I HAVE A MOMENT, YOUR HONOR?

21 **THE COURT:** YEAH.

22 **MR. HUMMEL:** WE WILL DISCHARGE HIM, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. DO YOU WANT TO RETAIN HIM?

24 **MR. KESSLER:** NO, YOUR HONOR.

25 **MR. FEHER:** NO, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. MR. LINZNER, YOU'RE
2 DISCHARGED FROM THE SUBPOENA. YOU CAN GO TO A BUSINESS TRIP TO
3 SINGAPORE.

4 **THE WITNESS:** THANK YOU, YOUR HONOR.

5 **THE COURT:** IF THESE LAWYERS NEED YOU BACK IT'S THEIR
6 PROBLEM. YOU WILL NOT HAVE TO COME BACK. THANK YOU FOR YOUR
7 APPEARANCE.

8 **THE WITNESS:** THANK YOU, YOUR HONOR.

9 **THE COURT:** BE SURE TO LEAVE BEHIND ALL THE DOCUMENTS
10 THAT BELONG TO US AND TAKE WITH YOU ANYTHING THAT YOU BROUGHT.

11 **THE WITNESS:** THANK YOU.

12 **THE COURT:** THANK YOU.

13 ALL RIGHT. WE'RE NOW MOVING TO THE NEXT WITNESS.

14 **MR. HUMMEL:** YOUR HONOR, PLAINTIFFS CALL PETER RHEE.

15 **THE COURT:** WHO?

16 **MR. HUMMEL:** PETER RHEE.

17 **THE COURT:** ALL RIGHT. GO RIGHT AHEAD.

18 **MR. KESSLER:** YOUR HONOR, I KNOW YOU JUST ALLOWED
19 MR. RHEE TO TESTIFY. WE HAVE NO PROBLEM WITH THAT. BUT WE
20 ALSO HAD NO NOTICE HE WAS GOING TO BE ON TODAY.

21 **THE COURT:** WELL, IN LIGHT OF THE WAY THIS UNFOLDED,
22 I'M GOING TO ALLOW IT ANYWAY, BECAUSE OF THE SNAFU ON THE
23 SUPPOSED STIPULATION.

24 **MR. KESSLER:** OKAY.

25 **THE COURT:** SO YOU'VE GOT SEVEN LAWYERS OVER THERE.

1 YOU'LL JUST HAVE TO DEAL WITH IT.

2 ARE YOU MR. RHEE?

3 **THE WITNESS:** YES, SIR.

4 **THE COURT:** RAISE YOUR RIGHT HAND AND WE WILL SWEAR
5 YOU IN.

6 (THEREUPON, THE WITNESS WAS SWORN.)

7 **THE WITNESS:** I DO.

8 **THE CLERK:** OKAY. THANK YOU. WITNESS STAND.

9 **THE COURT:** HAVE A SEAT AND STATE YOUR NAME.

10 CAN WE TAKE YOUR PICTURE SO THAT WE CAN PUT YOU UP ON
11 THE SCREEN DURING THE CLOSING ARGUMENTS?

12 **THE WITNESS:** MY NAME IS PETER RHEE.

13 **THE COURT:** GREAT. WE'RE GOING TO TAKE YOUR PICTURE.

14 OKAY. ALL RIGHT. WE WILL REMEMBER THAT ONE.

15 GO AHEAD MR. HUMMEL.

16 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

17 **PETER RHEE,**

18 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING BEEN

19 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

20 **DIRECT EXAMINATION**

21 **BY MR. HUMMEL:**

22 **Q.** AND I THINK IT SHOULD BE UP THERE, BUT IF YOU COULD TRY TO
23 FIND EXHIBIT 1239. WHICH I KNOW IT'S A BIG STACK.

24 (COUNSEL ASSISTS THE WITNESS.)

25 HAVE IT?

1 A. YEAH.

2 Q. GOOD.

3 DO YOU RECOGNIZE EXHIBIT 1239, SIR?

4 A. YES, I DO.

5 Q. IS IT A DOCUMENT THAT YOU PREPARED?

6 A. YES.

7 Q. CAN YOU TELL THE LADIES AND GENTLEMEN WHAT IT IS, PLEASE?

8 A. IT IS A LIST OF VINTAGE TEAMS FOR THE MADDEN GAME, YEARS
9 '03 TO '07, FOR THREE DIFFERENT PLATFORMS OR CONSOLES:
10 PERSONAL COMPUTER, XBOX AND PLAYSTATION 2. SO 15 DIFFERENT
11 GAMES.

12 Q. DID YOU PERSONALLY PREPARE THIS EXHIBIT?

13 A. MY TEAM AND I DID, YES.

14 Q. YOU SUPERVISED THAT TEAM?

15 A. YES.

16 Q. AND DOES THIS DOCUMENT ACCURATELY REFLECT THE HISTORIC NFL
17 TEAMS FEATURED IN THESE VERSIONS OF THE MADDEN GAME?

18 A. TO THE BEST OF MY KNOWLEDGE, YES.

19 Q. THANK YOU.

20 NOW I WOULD LIKE YOU TO LOOK AT EXHIBIT 1240.

21 **THE COURT:** HOLD THAT UP. SHOW THEM HOW MANY PAGES
22 IT IS AND KIND OF WHAT ONE TYPICAL PAGE LOOKS LIKE.

23 **THE WITNESS:** (INDICATING.)

24 **MR. HUMMEL:** IT'S ON THE SCREEN TOO, YOUR HONOR.

25 **THE COURT:** NEVER MIND. IS THAT IN EVIDENCE?

1 **MR. HUMMEL:** YES.

2 **THE COURT:** IT'S IN EVIDENCE. ALL RIGHT.

3 **BY MR. HUMMEL:**

4 **Q.** NOW, MR. RHEE, I WOULD LIKE YOU TO LOOK AT EXHIBIT 1240.
5 DO YOU HAVE THAT IN FRONT OF YOU?

6 **A.** I DO NOT.

7 **Q.** I HAVE AN EXTRA COPY. DO YOU HAVE IT? DO YOU HAVE
8 EXHIBIT 1240 IN FRONT OF YOU?

9 **A.** YES.

10 **Q.** CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT
11 EXHIBIT 1240 IS?

12 **A.** IT IS A LIST OF RETIRED PLAYERS ON THE MADDEN GAME FOR THE
13 DIFFERENT YEARS, '03 TO '07, AND THEIR STATISTICS.

14 **Q.** DID YOU PREPARE THIS SUMMARY?

15 **A.** YES.

16 **Q.** AND IF YOU LOOK, PLEASE, AT PAGE -- WELL, THERE ARE
17 ACTUALLY SEVERAL LISTS IN HERE, BUT I WANT TO FOCUS ON ONE,
18 WHICH IS THE LAST LARGE LIST.

19 **A.** YES. GOT IT.

20 **Q.** OKAY. AND IF YOU COULD TELL THE LADIES AND GENTLEMEN OF
21 THE JURY, THIS IS JUST THE 2007 PC VERSION OF EA'S MADDEN GAME,
22 CORRECT?

23 **A.** THAT IS CORRECT.

24 **Q.** AND WHAT IS DEPICTED, IF YOU CAN TELL THE LADIES AND
25 GENTLEMEN OF THE JURY, ON THIS CHART?

1 **A.** THESE ARE ALL THE MATCHES OF RETIRED PLAYERS IN THE CLASS
2 LIST THAT SHOW UP ON THE MADDEN GAME, AND THEIR STATISTICS.
3 THEY ARE RIGHT NEXT TO EACH OTHER.

4 **Q.** WHAT DID YOU DO TO PREPARE THIS SUMMARY?

5 AND LET ME NOTE FOR THE RECORD, AND THIS IS FAIR TO
6 MR. KESSLER BECAUSE THIS WAS HIS POINT, LET ME SHOW THE
7 FOOTNOTE, BEFORE WE GO INTO WHAT YOU ACTUALLY DID.

8 THESE SAMPLES ARE EXACT MATCHES ON HEIGHT -- BLOW
9 THAT UP -- POSITION, YEARS IN THE LEAGUE, AND WITHIN 5 PERCENT
10 OF RECORDED WEIGHT.

11 NOW, WITH THOSE PARAMETERS, COULD YOU DESCRIBE FOR
12 THE LADIES AND GENTLEMEN OF THE JURY WHAT YOU DID?

13 **A.** SURE. SO, FIRST OF ALL, WE NEEDED THE ROSTERS OF THE
14 VINTAGE TEAMS SHOWN ON THE MADDEN GAME.

15 ONCE YOU HAVE THE ROSTERS, YOU HAVE TO
16 CROSS-REFERENCE THE ROSTERS WITH WHOEVER IS ON THE GLA CLASS
17 LIST. SO WE HAVE A SUBSET OF THAT, WHO SHOW UP ON THE VINTAGE
18 TEAMS.

19 THEN WE WENT INTO THE MADDEN GAME. WE'VE LISTED THE
20 STATISTICS FOR THOSE PLAYERS.

21 THEN WE WENT INTO ESPN ENCYCLOPEDIA, WHICH IS A HUGE
22 BOOK WITH ALL THESE STATISTICS IN IT, WITH EVERY PLAYER THAT
23 PLAYED IN THE GAME. AND WE PUT IT SIDE BY SIDE. WE ENTERED
24 THESE STATISTICS RIGHT NEXT TO THEM.

25 **Q.** SO ALL THESE PLAYERS, JUST TO BE CLEAR HERE, ARE GLA ARE

1 CLASS MEMBERS?

2 **MR. KESSLER:** OBJECTION. LEADING, YOUR HONOR.

3 **THE WITNESS:** THAT'S CORRECT.

4 **THE COURT:** IT IS LEADING, BUT THAT'S PRELIMINARY.

5 GO AHEAD.

6 **BY MR. HUMMEL:**

7 **Q.** CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY, FOR
8 THESE CLASS MEMBERS, JUST AGAIN, THERE'S A RED COLUMN WHEN THEY
9 LOOK AT IT IN THE JURY ROOM. WHAT'S THAT? WHAT ARE THOSE
10 STATISTICS?

11 **A.** THOSE ARE THE MADDEN STATISTICS FOR THE '07 PC VERSION.

12 **Q.** IN OTHER WORDS, THEY ARE LISTED IN THE GAME?

13 **A.** YES.

14 **Q.** EA PUT THEM IN THERE?

15 **A.** YES.

16 **Q.** OKAY. AND THEN IN THE BLUE COLUMN, WHICH SAYS "ESPN
17 FOOTBALL ENCYCLOPEDIA," WHAT ARE THOSE STATISTICS?

18 **A.** THOSE ARE STATISTICS MADE BY THE AUTHORS OF THE ESPN
19 SPORTS ENCYCLOPEDIA."

20 **Q.** IN OTHER WORDS, THOSE ARE THE REAL STATISTICS FOR THE
21 PLAYER?

22 **A.** YES.

23 **MR. HUMMEL:** NOTHING FURTHER, YOUR HONOR.

24 **MR. KESSLER:** A FEW BRIEF QUESTIONS, YOUR HONOR.

25 **THE COURT:** ALL RIGHT.

CROSS EXAMINATION

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BY MR. KESSLER:

Q. GOOD MORNING, MR. RHEE. MY NAME IS JEFFREY KESSLER.

A. GOOD MORNING.

Q. MR. RHEE, I TAKE IT YOU'RE FAMILIAR WITH THE MADDEN GAME?

A. YES.

Q. DO YOU PLAY THE MADDEN GAME?

A. YES.

Q. DID YOU PURCHASE THE MADDEN GAME AS A CONSUMER?

A. OF COURSE.

Q. OKAY. LET ME ASK YOU, FIRST, MR. RHEE, THE WEIGHT IS WITHIN 5 PERCENT, RIGHT?

A. YES.

Q. 5 PERCENT COULD BE A BIG RANGE FOR A 300-POUND FOOTBALL PLAYER, RIGHT?

A. YES.

Q. OKAY. SO HOW COULD YOU DETERMINE WHETHER IT'S THE CORRECT WEIGHT OR NOT IF FOR A 300-POUND FOOTBALL PLAYER THAT COULD BE A -- WHAT, A 15-POUND DIFFERENCE?

HOW DO YOU KNOW? HOW DO YOU KNOW IT'S SUPPOSED TO BE THAT PLAYER OR NOT, IF IT'S 15 POUNDS?

A. THERE ARE OTHER CRITERIA, SUCH AS HEIGHT NEEDS TO BE EXACT, YEARS PROFESSIONAL NEEDS TO BE EXACT.

Q. OKAY.

A. AND POSITION.

1 Q. I'M JUST FOCUSING, SIR, JUST ON WEIGHT.

2 WOULD YOU AGREE WITH ME THAT IF IT'S A 15-POUND
3 DIFFERENCE, YOU HAVE NO IDEA WHETHER THAT WAS MEANT TO BE THE
4 WEIGHT OF THAT PLAYER OR NOT? YOU HAVE NO IDEA? JUST THAT.

5 A. REPEAT THE QUESTION, PLEASE.

6 Q. SURE. IF YOU WERE JUST LOOKING AT THE WEIGHT, AND THERE'S
7 A 15-POUND DIFFERENCE FROM THE ACTUAL WEIGHT OF THE PLAYER, YOU
8 HAVE NO IDEA WHETHER IT WAS THAT PLAYER'S WEIGHT OR NOT. IT
9 WASN'T HIS ACTUAL WEIGHT, IT WAS 15 POUNDS DIFFERENT.

10 A. IF JUST LOOKING AT THE WEIGHT AND NOTHING ELSE, YES,
11 YOU'RE CORRECT.

12 Q. OKAY. IN FACT, I'VE BEEN ADVISED THAT IT COULD BE 30
13 POUNDS DIFFERENCE, RIGHT?

14 A. YES.

15 Q. MY MATH IS BAD.

16 SO YOU HAVE A 30-POUND DIFFERENCE IN THE PLAYER, AND
17 YOU'D SAY IT WAS THE SAME PLAYER JUST BASED ON WEIGHT, WITH
18 30 POUNDS DIFFERENCE?

19 A. NO.

20 Q. AND MY WIFE WOULD LIKE ME TO LOSE 30 POUNDS. SHE THINKS
21 THAT'S A DIFFERENCE. DO YOU THINK THAT'S A DIFFERENCE?

22 (SIMULTANEOUS SPEAKING BETWEEN COUNSEL AND THE
23 WITNESS; NOT REPORTABLE.)

24 **THE COURT:** YOU DON'T WEIGH 300 POUNDS.

25 **MR. KESSLER:** THAT'S TRUE, YOUR HONOR. I HAVE A

1 DIFFERENT ISSUE.

2 **THE COURT:** WHAT IS IT, 10 PERCENT -- IS IT 10 OR
3 5 PERCENT?

4 **MR. KESSLER:** 5 PERCENT.

5 **THE COURT:** 5 PERCENT TIMES 300 IS PLUS OR MINUS 15.

6 **MR. KESSLER:** RIGHT, PLUS OR MINUS 15 IS 30 BECAUSE
7 IT COULD GO EITHER WAY.

8 **THE WITNESS:** YEAH.

9 **BY MR. KESSLER:**

10 **Q.** SO IT COULD HAVE BEEN 15 POUNDS HEAVIER OR 15 POUNDS
11 LIGHTER, AND YOU STILL SAY IT'S THE SAME WEIGHT?

12 **A.** YES.

13 **Q.** OKAY. NOW, WITH RESPECT TO POSITION, THERE ARE ONLY THE
14 SAME POSITIONS ON A FOOTBALL TEAM. SO NO MATTER WHAT PLAYER
15 WAS BEING REPRESENTED, THE POSITIONS ARE ALWAYS GOING TO BE
16 EXACTLY THE SAME, CORRECT, IN EVERY GAME IN THE HISTORY OF
17 FOOTBALL?

18 **A.** YES.

19 **Q.** OKAY. SO THE FACT THAT IT'S THE POSITION TELLS YOU
20 NOTHING ABOUT WHETHER IT'S THE SAME PLAYER OR NOT, RIGHT?

21 **A.** YES.

22 **Q.** OKAY. SO WE DISCUSSED HEIGHT. WE DISCUSSED POSITION.
23 WEIGHT AND POSITION.

24 LET'S TALK ABOUT HEIGHT.

25 **A.** SURE.

1 Q. YOU SAID YOU PLAYED THE GAME. DO YOU KNOW THE HEIGHTS OF
2 ANY -- AS A PLAYER, DO YOU KNOW THE HEIGHTS OF ANY VINTAGE TEAM
3 RETIRED PLAYERS? CAN YOU GIVE ME ONE?

4 A. SURE. EMMITT SMITH, FIVE EIGHT, FIVE NINE.

5 Q. OKAY. COULD YOU GIVE ME A SECOND?

6 A. UHM, YES. JERRY RICE, SIX ONE.

7 Q. OKAY. WHAT YEAR WAS HE SIX ONE? WAS HE ALWAYS LISTED AS
8 SIX ONE?

9 A. I DON'T KNOW.

10 (LAUGHTER)

11 **THE COURT:** THAT WAS THE YEAR AFTER THEY STRETCHED
12 HIM.

13 (LAUGHTER)

14 **BY MR. KESSLER:**

15 Q. THE REASON I ASKED THAT QUESTION, MR. RHEE, IF YOU LOOKED
16 AT THE FOOTBALL ENCYCLOPEDIA YOU KNOW, ISN'T IT, THAT FOR
17 WHATEVER REASON NFL PLAYERS HAVE DIFFERENT HEIGHTS LISTED.
18 SAME PLAYER, DIFFERENT HEIGHTS DIFFERENT YEARS SOMETIMES, ON
19 THEIR TRADING CARDS AND OTHER FORMULA?

20 A. THE HEIGHT IS USUALLY THE SAME FOR EVERY YEAR.

21 Q. HAVE YOU CHECKED THAT?

22 A. YES. IF YOU LOOK AT ANY TRADING CARD YOU'LL HAVE THE
23 HEIGHT ON THERE, AND THEN EACH YEAR WHAT ARE THEIR RELEVANT
24 STATISTICS.

25 Q. YOU BELIEVE THAT'S THE SAME. YOU LOOKED AT TRADING CARDS,

1 AND HEIGHT IS ALWAYS THE SAME?

2 **A.** YES.

3 **Q.** DO YOU KNOW, IF I ASKED YOU, THERE ARE HUNDREDS OF VINTAGE
4 TEAMS AND THEY INVOLVED, YOU'LL AGREE WITH ME, HUNDREDS OF
5 PLAYERS, RIGHT?

6 **A.** YES.

7 **Q.** OKAY. IS IT FAIR TO SAY THAT YOU, AS A CONSUMER, MIGHT
8 KNOW THE HEIGHTS OF TWO OR THREE RETIRED PLAYERS, AND NO MORE?
9 THAT'S FAIR, ISN'T IT?

10 YOU DON'T MEMORIZE HEIGHTS OF RETIRED PLAYERS, DO
11 YOU?

12 **A.** NO, BECAUSE I'M NOT -- I GUESS -- I'M A BIGGER FAN OF
13 NATIONAL BASKETBALL ASSOCIATION. IF YOU ASKED ME A RETIRED
14 PLAYER I WOULD PROBABLY KNOW THEIR HEIGHT.

15 **Q.** DO YOU THINK YOU HAVE FRIENDS WHO HAVE MEMORIZED NOT
16 CURRENT PLAYERS BUT WHO HAVE MEMORIZED THE HEIGHTS OF RETIRED
17 PLAYERS FROM 20, 30, 40 YEARS AGO? YOU THINK -- THAT'S WHAT
18 YOU THINK?

19 **A.** YEAH.

20 **MR. KESSLER:** OKAY. I DON'T HAVE ANY FURTHER
21 QUESTIONS.

22 **MR. HUMMEL:** NOTHING FURTHER, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. MAY OUR WITNESS BE EXCUSED
24 AND DISCHARGED?

25 **MR. KESSLER:** YES, HE MAY, YOUR HONOR.

1 **MR. HUMMEL:** YES, YOUR HONOR.

2 **THE COURT:** THANK YOU, MR. RHEE. YOU'RE FREE TO GO.
3 WE HAVE 20 MINUTES. LET'S TRY TO MAKE GOOD USE OF IT. THE
4 NEXT WITNESS.

5 **MR. CHARHON:** YOUR HONOR, THE PLAINTIFFS ARE GOING TO
6 CALL --

7 (REPORTER INTERRUPTS)

8 **MR. CHARHON:** BRETT CHARHON.
9 WE'RE GOING TO CALL GLENN EYRICH BY DEPOSITION. MY
10 COLLEAGUE AND I, ANTHONY GARZA, ARE GOING TO READ IT IN.

11 **THE COURT:** IS THIS ONE I HAVE ALREADY GONE THROUGH,
12 AND SO FORTH?

13 **MR. CHARHON:** YES, SIR.

14 **THE COURT:** THAT'S FINE. HOW LONG DO YOU THINK THIS
15 WILL TAKE?

16 **MR. CHARHON:** APPROXIMATELY 45 MINUTES TO AN HOUR.

17 **THE COURT:** WE'RE GOING TO GET A START ON IT AND NOT
18 FINISH IT, BUT THAT'S FINE. YOU GO AHEAD AND HAVE A SEAT.

19 I TOLD YOU HOW DEPOSITIONS WORK. AND SOMETIMES THE
20 WITNESS IS UNAVAILABLE OR THE LAWYERS JUST THINK IT'S BETTER TO
21 JUST READ THE TESTIMONY.

22 AND YOU'VE HEARD THE LAWYERS DO QUESTION/ANSWER,
23 QUESTION/ANSWER. AND I LIKE IT THAT WAY WHEN IT'S SHORT. BUT
24 ON A LONGER READ-IN IT'S BETTER, SO YOU CAN FOLLOW IT, TO HAVE
25 SOMEBODY PLAY THE ROLE OF THE WITNESS AND SOMEBODY PLAY THE

1 ROLE OF THE PERSON ASKING THE QUESTION.

2 DID YOU ASK THE QUESTIONS AT THE ORIGINAL DEPOSITION?

3 **MR. CHARHON:** NO, I DID NOT.

4 **THE COURT:** WE'VE GOT SOMEBODY WHO WASN'T PRESENT AT
5 THE CREATION ON EITHER SIDE. BUT THAT DOESN'T MATTER. WHAT
6 YOU'RE ABOUT TO HEAR IS GOING TO BE THE Q&A, QUESTIONS AND
7 ANSWERS, AS IT UNFOLDED AT THE DEPOSITION OF WHO NOW?

8 **MR. CHARHON:** GLENN EYRICH.

9 **THE COURT:** HOW DO YOU SPELL THAT?

10 **MR. CHARHON:** E-Y-R-I-C-H.

11 **THE COURT:** AND WHAT WAS THE DATE OF THE DEPOSITION?

12 **MR. CHARHON:** FEBRUARY 12TH, 2008.

13 **THE COURT:** AND WHO WERE THE LAWYERS ASKING QUESTIONS
14 AT THE DEPOSITION?

15 **MR. CHARHON:** I THINK RON KATZ ASKED QUESTIONS ON
16 BEHALF OF PLAINTIFFS.

17 **THE COURT:** ALL RIGHT. AND THEN? ANYONE ELSE?

18 **MR. CHARHON:** NOT ON BEHALF OF PLAINTIFFS, NO.

19 **THE COURT:** ARE YOU READING JUST THE PLAINTIFFS'
20 SIDE, OR ARE YOU GOING TO READ EVERYTHING THAT'S BEEN
21 DESIGNATED BY BOTH? RIGHT?

22 **MR. CHARHON:** YES. THERE HAVE BEEN
23 COUNTERDESIGNATIONS BY THE DEFENDANTS.

24 **THE COURT:** YOU'RE GOING TO DO THE WHOLE THING?

25 **MR. CHARHON:** YES, SIR.

1 **THE COURT:** SO BOTH SIDES HAVE GOTTEN TOGETHER,
2 FIGURED OUT WHAT THEY WANT YOU TO HEAR. THEY'VE REVIEWED THIS
3 SO IT'S ORIGINAL SIZE. AND SO THEY'VE GOT IT VETTED AND READY
4 TO GO.

5 AND WILL YOU BE SHOWING THINGS ON THE SCREEN?

6 **MR. CHARHON:** A COUPLE OF DEPOSITION EXHIBITS, YES.
7 AND WITH THE COURT'S PERMISSION, I'M GOING TO MOVE MOST OF THEM
8 INTO EVIDENCE AT THE CONCLUSION OF THE DEPOSITION, IF THAT'S
9 OKAY.

10 **THE COURT:** I GUESS WE CAN LIVE WITH THAT NOW. AT
11 LEAST AFTER THE JURY LEAVES TODAY, WE CAN DEAL WITH IT.

12 SO JUST SIT BACK AND TREAT THIS AS YOU WOULD ANY
13 OTHER WITNESS TESTIMONY. AND IT COUNTS JUST AS MUCH AS ANY
14 OTHER EVIDENCE.

15 ALL RIGHT GO AHEAD, COUNSEL.

16 **MR. CHARHON:** JUST ONE MORE HOUSEKEEPING MATTER.
17 THIS WAS A 30B(6) DEPOSITION, YOUR HONOR.

18 **THE COURT:** ALL RIGHT.

19 **MR. CHARHON:** IF WE COULD EXPLAIN THE IMPORT TO THE
20 JURY.

21 **THE COURT:** I WILL DO THAT.

22 **MR. KESSLER:** YOUR HONOR, BEFORE YOU DO THAT, THERE
23 WERE CERTAIN SPECIFIC SUBJECTS HE WAS DESIGNATED FOR 30(B)(6).
24 THEY ALSO ASKED HIM QUESTIONS OUTSIDE OF HIS 30(B)(6) CAPACITY,
25 AND THEY'VE DESIGNATED SOME MATERIALS THAT HAVE NOTHING TO WITH

1 HIS 30B6) CAPACITY. SO IT'S A LITTLE BIT COMPLICATED ON THAT
2 ISSUE.

3 **MR. CHARHON:** I DON'T MIND HANDING UP THE TOPIC, IF
4 YOU WOULD LIKE TO READ IT TO THE JURY.

5 **THE COURT:** YOU ARE MAKING IT SO COMPLICATED FOR THE
6 JURY.

7 WHO DID THIS WITNESS WORK FOR? WHAT COMPANY?

8 **MR. FEHER:** HE'S AN OUTSIDE ACCOUNTANT.

9 **THE COURT:** OUTSIDE ACCOUNTANT FOR WHO? WHO WAS HE A
10 30(B)(6) FOR?

11 **MR. KESSLER:** HE WAS AN OUTSIDE ACCOUNTANT FOR THE
12 PLAYERS ASSOCIATION AND PLAYERS INC.

13 **THE COURT:** SO THIS WAS A 30(B)(6) DIRECTED TO YOUR
14 SIDE?

15 **MR. KESSLER:** CORRECT.

16 **THE COURT:** AND THEN YOU DESIGNATED THIS OUTSIDE GUY?

17 **MR. KESSLER:** YES.

18 **THE COURT:** HE CAME IN AND TESTIFIED?

19 **MR. KESSLER:** YES.

20 **THE COURT:** AND -- ALL RIGHT.

21 **MR. KESSLER:** AND FOR THE SUBJECTS LISTED.

22 **THE COURT:** WELL, HERE'S THE WAY WE'RE GOING TO DEAL
23 WITH IT. FIRST OF ALL, LET ME TELL YOU WHAT HAPPENED. THIS IS
24 THE EASY PART.

25 YOU KNOW, I GAVE YOU ONE OF THE GROUND RULES FOR HOW

1 YOU GO ABOUT TAKING DISCOVERY BEFORE THE TRIAL. ANOTHER THING
2 YOU CAN DO IS SAY: WE WANT A DEPOSITION OF THE OTHER SIDE, BUT
3 WE DON'T KNOW EXACTLY WHO IT IS. SO YOU, THE OTHER SIDE, PICK
4 WHO YOU WANT TO COME SPEAK ABOUT A PARTICULAR SUBJECT.

5 AND YOU'RE ENTITLED TO DO THAT. THAT WAY YOU GET THE
6 BEST PERSON KNOWLEDGEABLE ON THAT SUBJECT.

7 AND THE TOPIC WAS SUPPOSED TO BE HOW YOU DETERMINE,
8 COLLECT, EXPEND, DISTRIBUTE, ACCOUNT FOR, AND AUDIT MONIES FROM
9 LICENSE AGREEMENTS, INCLUDING BUT NOT LIMITED TO THE ALLOCATION
10 OF FUNDS BETWEEN NFLPA AND PLAYERS INC, AND THE CALCULATION OF
11 THE EQUAL SHARE ROYALTY TO NFL PLAYERS.

12 SO THAT WAS THE TOPIC THEY WANTED A WITNESS ON. AND
13 MR. --

14 **MR. CHARHON:** EYRICH.

15 **THE COURT:** HE GOT DESIGNATED BY THE DEFENDANTS AS
16 THE PERSON MOST KNOWLEDGEABLE ON THIS SUBJECT.

17 ALL RIGHT. SO WHAT WE'RE GOING TO HAVE TO DO IS
18 THIS: IF IT TURNS OUT THAT IT REALLY MAKES A BURNING
19 DIFFERENCE, I WILL TELL YOU AFTER THE FACT WHICH GENERAL
20 SUBJECTS -- WELL, I CAN JUST TELL YOU NOW.

21 IF A QUESTION WAS OUTSIDE THAT TOPIC, THEN IT'S --
22 IT'S NOT ABSOLUTELY BINDING -- IT'S NOT REALLY ABSOLUTELY
23 BINDING ANYWAY. THIS WITNESS IS SPEAKING FOR THE NFLPA AND THE
24 PLAYERS INC. SO -- BUT HE'S ONLY SPEAKING FOR THEM ON THE
25 SUBJECT OF THIS TOPIC.

1 IF THEY VEER WAY OFF OF THAT TOPIC, THEN HE'S JUST
2 SPEAKING IN HIS ROLE AS AN ORDINARY PERCIPIENT WITNESS, WHICH
3 YOU CAN STILL GIVE SOME WEIGHT TO. BUT HE'S WEARING A
4 DIFFERENT HAT. WHEN HE WEARS THAT HAT, HE'S WEARING A HAT AS
5 AN ORDINARY WITNESS.

6 BUT WHEN HE'S WEARING HIS HAT AS A 30(B)(6) WITNESS,
7 HE'S WEARING THE HAT OF SOMEBODY SPEAKING FOR THE NFLPA AND
8 PLAYERS INC.

9 ALL RIGHT. I THINK I'VE EXPLAINED THAT UP. PLEASE
10 GO RIGHT AHEAD.

11 **GLENN EYRICH,**

12 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, TESTIFIED VIA
13 DEPOSITION READ IN OPEN COURT IN THE PRESENCE AND HEARING OF
14 THE JURY AS-FOLLOWS:

15 **EXAMINATION**

16 **Q.** GOOD MORNING SIR.

17 **A.** GOOD MORNING.

18 **Q.** WILL YOU PLEASE STATE YOUR NAME AND HOME ADDRESS FOR THE
19 RECORD.

20 **A.** GLENN M. EYRICH. 210 HOLMARD, H-O-L-M-A-R-D, STREET,
21 GAITHERSBURG, MARYLAND.

22 **Q.** AND CAN YOU GIVE US A BRIEF RESUME OF YOUR EMPLOYMENT
23 HISTORY.

24 **A.** I WORKED FOR CALIBRE CPA GROUP AND THOMAS HAVEY, LLP FOR
25 THE LAST 13 YEARS, AS AN AUDIT PARTNER THE LAST FIVES YEARS,

1 AND BEEN WITH THEM FOR THE LAST 13.

2 Q. DO YOU HAVE A CPA, SIR?

3 A. YES.

4 Q. DID THOMAS HAVEY ALSO -- WERE THEY ALSO THE AUDITORS FOR
5 THE NFLPA?

6 A. YES.

7 Q. AND DID YOU -- ARE YOU THE PERSON THAT'S BEEN DESIGNATED
8 BY THE NFLPA FOR THIS DEPOSITION?

9 A. YES.

10 Q. DID YOU SPEAK TO ANYONE ELSE IN THE COURSE OF YOUR
11 PREPARATION FOR THIS DEPOSITION?

12 A. YES.

13 Q. WITH WHOM DID YOU SPEAK?

14 A. JOE NORA, ERIN DOUGLAS, DAVID LEVINE. THAT'S IT.

15 Q. AND WHO IS MR. NORA?

16 A. HE'S IN-HOUSE COUNSEL FOR PLAYERS INC.

17 Q. AND MR. DOUGLAS?

18 A. ERIN DOUGLAS, FEMALE, IS THE CONTROLLER OF THE NFLPA.

19 Q. AND DAVID LEVINE?

20 A. HE'S AN ATTORNEY AT GROOM LAW GROUP.

21 Q. YOU HAVE REFERRED, SO FAR IN YOUR TESTIMONY, TO SOMETHING
22 CALLED AN EQUAL SHARE POOL; IS THAT CORRECT?

23 A. CORRECT.

24 Q. CAN YOU TELL ME, WHAT IS THAT, PLEASE?

25 A. EQUAL SHARE POOL IS REFERRED TO AS THE ACTIVE PLAYER

1 LICENSING POOL THAT IS ALLOCATED BETWEEN PLAYERS INC, THE
2 NFLPA, AND ACTIVE PLAYERS.

3 Q. CAN YOU TELL US WHAT AN LM-2 IS?

4 A. AN LM-2 IS THE REQUIRED DISCLOSURE TO THE DEPARTMENT OF
5 LABOR FOR ANY 501C5 LABOR ORGANIZATIONS, THE PRIMARY DEPARTMENT
6 OF LABOR FILING.

7 Q. WHEN YOU SAY "PRIMARY ACTIVITIES" WHAT DO YOU MEAN?

8 A. THE CORE MISSION OF THE ORGANIZATION OR THE PURPOSE OF THE
9 ORGANIZATION.

10 Q. IN THE CASE OF THE NFLPA, THAT WOULD BE WHAT, REPRESENTING
11 FOOTBALL PLAYERS?

12 A. THAT IS ONE OF THEIR PRIMARY MISSIONS.

13 Q. SO DOES THE NFL PAY TAX, PAY INCOME TAXES?

14 A. THEY DON'T PAY TAXES ON THEIR OPERATIONS.

15 Q. DO THEY PAY ANY TAXES, ANY INCOME TAXES, AS FAR AS YOU
16 KNOW?

17 A. NO INCOME TAXES.

18 Q. IS IT CORRECT THAT YOU DO THE NFL PI AND PI ACCOUNT?

19 A. YES.

20 Q. WHEN I SAY PI, I MEAN PLAYERS INC.

21 A. CORRECT.

22 Q. ARE THOSE CONSOLIDATED FINANCIAL STATEMENTS?

23 A. YES.

24 Q. CAN YOU TELL US, FOR THE RECORD, WHAT THAT MEANS?

25 A. CONSOLIDATED FINANCIAL STATEMENTS ARE -- ALL CLOSELY-HELD

1 ENTITIES ARE CONSOLIDATED INTO ONE FINANCIAL STATEMENT THAT WE
2 ISSUE AN OPINION ON THE CONSOLIDATED FINANCIAL STATEMENT SO ALL
3 ACTIVITIES OF THE ORGANIZATIONS ARE INCLUDED IN THE
4 CONSOLIDATION.

5 **Q.** WHAT IF ANYTHING DO YOU DO TO DETERMINE THAT A LICENSEE IS
6 PAYING PI THE CORRECT AMOUNT?

7 **A.** WE WOULD PERFORM AGREED-UPON PROCEDURES ON SITE AT THE
8 LICENSEE.

9 **Q.** ARE YOU AWARE THAT -- YOU KNOW MR. GENE UPSHAW?

10 **A.** YES.

11 **Q.** AND ARE YOU AWARE THAT MR. UPSHAW IS -- HOLDS HIGH OFFICE
12 AT BOTH THE NFLPA AND PI?

13 **A.** YES.

14 **Q.** DO YOU KNOW MR. DOUG ALLEN?

15 **A.** YES.

16 **Q.** ARE YOU FAMILIAR WITH THE FACT THAT MR. ALLEN, WHEN HE
17 WORKED FOR THE NFLPA, HELD HIGH OFFICE AT BOTH THE NFLPA AND
18 PI?

19 **A.** YES.

20 **Q.** BESIDES LICENSING AGREEMENTS AND LICENSING, WHAT OTHER
21 DEALINGS DID THE NFLPA AND PI HAVE?

22 **A.** THE NFLPA AND PLAYERS INC RESIDE IN THE SAME BUILDING.
23 THERE IS A LEASE AGREEMENT FOR PLAYERS INC, FOR THEIR LEASE
24 SPACE. SO THERE IS COMMON DEALINGS ADMINISTRATIVELY BETWEEN
25 THE TWO.

1 Q. OTHER THAN THAT, IS THERE ANY OTHER DEALINGS BETWEEN THE
2 NFLPA AND PI OTHER THAN LICENSING?

3 A. THERE'S ALSO AN ADMINISTRATIVE AGREEMENT THAT PLAYERS INC
4 MAINTAIN CERTAIN LICENSING CONTRACTS FOR THE NFLPA.

5 Q. CERTAIN LICENSING CONTRACTS, DID YOU SAY?

6 A. CORRECT.

7 Q. WITH RESPECT TO THE LICENSING PARTS, DO YOU TAKE INTO
8 ACCOUNT THE FACT THAT THERE ARE SOME INDIVIDUALS WHO ARE OR
9 HAVE BEEN IN BOTH -- OCCUPY HIGH OFFICE IN BOTH ORGANIZATIONS?

10 A. I DON'T UNDERSTAND WHAT YOU MEAN BY "TAKE INTO ACCOUNT."

11 Q. WELL, DO YOU UNDERSTAND THE CONCEPT OF CONFLICTS OF
12 INTEREST?

13 A. YES.

14 Q. AND DO YOU UNDERSTAND THE CONCEPT OF AN ARM'S LENGTH
15 TRANSACTION?

16 A. YES.

17 Q. WOULD YOU HAVE A CONCERN ABOUT AN ARM'S LENGTH TRANSACTION
18 WHERE TWO PEOPLE ARE DEALING WITH EACH OTHER AND THEY ARE BOTH
19 MEMBERS OF TWO ORGANIZATIONS THAT ARE MAKING THE TRANSACTION?

20 A. YES. THAT'S ALWAYS A CONSIDERATION.

21 Q. WELL, YOU UNDERSTAND THAT MR. UPSHAW AND MR. ALLEN, FOR
22 EXAMPLE, HAVE SIGNED AGREEMENTS ON BEHALF OF PLAYERS INC AND
23 NFLPA RESPECTIVELY; IS THAT CORRECT?

24 A. CORRECT.

25 Q. HOW DO YOU DETERMINE THAT THOSE AGREEMENTS HAVE BEEN MADE

1 AT ARM'S LENGTH?

2 **A.** WE DON'T MAKE THAT DETERMINATION.

3 **Q.** HAVE YOU EVER ASKED FOR AN INDEPENDENT EVALUATION OF A
4 TRANSACTION, TO MAKE SURE THAT IT WAS AT ARM'S LENGTH?

5 **A.** NO.

6 **Q.** AND DO YOU NOT BELIEVE THAT THAT WAS NECESSARY?

7 **A.** IT DEPENDS ON THE MATTER AT HAND, WHAT THE ISSUE IS.

8 **Q.** WELL, YOU'VE NEVER DONE IT. SO I TAKE IT YOU'VE NEVER
9 THOUGHT IT WAS NECESSARY. IS THAT CORRECT?

10 **A.** THAT'S CORRECT.

11 **Q.** DO YOU RECOGNIZE THIS DOCUMENT, SIR?

12 **A.** YES.

13 **Q.** CAN YOU TELL US WHAT IT IS, PLEASE?

14 **A.** IT'S WHAT'S CONSIDERED THE FINANCIAL STATEMENT PACKET,
15 THAT INCLUDES THE AUDITED FINANCIAL STATEMENTS, CHARTS AND
16 GRAPHS, AND THE NFLPA PLAYERS INC BUDGET.

17 **MR. CHARHON:** THIS IS ONE OF THE EXHIBITS WE WOULD
18 LIKE TO ENTER INTO EVIDENCE AT THIS TIME, SO THAT THE JURY CAN
19 SEE IT ON THE SCREEN. EXHIBIT 85.

20 **THE COURT:** 85 ANY OBJECTION?

21 **MR. KESSLER:** WHICH TRIAL EXHIBIT? I'M SORRY.

22 **MR. CHARHON:** 85.

23 **MR. KESSLER:** NO OBJECTION.

24 **THE COURT:** RECEIVED. GO AHEAD AND PUT IT ON THE
25 SCREEN.

1 (TRIAL EXHIBIT 85 RECEIVED IN EVIDENCE.)

2 (DOCUMENT DISPLAYED.)

3 **BY MR. KESSLER:**

4 **Q.** DIRECTING YOUR ATTENTION TO THE BOTTOM RIGHT-HAND CORNER
5 OF THESE PAGES IS SOMETHING WE CALL A BATES NUMBER. SO IF YOU
6 LOOK AT THE BATES NUMBER THAT HAS THE -- THE PAGE WITH THE
7 BATES NUMBER THAT HAS THE LAST DIGITS 6031, AND THERE'S A
8 COLUMN, "UNDESIGNATED FUNDS." CAN YOU TELL US WHAT
9 "UNDESIGNATED FUNDS" ARE, PLEASE?

10 **A.** THOSE ARE CONSIDERED UNRESTRICTED, ON BOARD DESIGNATED
11 FUNDS AT THE CONSOLIDATED NFLPA PLAYERS INC. AND THE BUILDING
12 CORPORATION.

13 **Q.** WHEN YOU SAY "UNRESTRICTED" WHAT DO YOU MEAN BY THAT, SIR?

14 **A.** THEY'RE CONSIDERED UNRESTRICTED IN ACCOUNTING TERMS, FOR
15 NOT-FOR-PROFITS, MEANING THEY ARE NON-DONOR RESTRICTED.

16 **Q.** I'M JUST TRYING TO UNDERSTAND WHAT THE MEANING OF
17 "UNRESTRICTED" MEANS. UNRESTRICTED IN WHAT SENSE?

18 **A.** IN ACCOUNTING, UNRESTRICTED FOR NOT-FOR-PROFITS MEANS
19 NON-DONOR RESTRICTED. MEANING, EFFECTIVELY, IT CAN BE USED FOR
20 THE OPERATIONS OF THE ORGANIZATION AND IT'S NOT RESTRICTED IN
21 ANY MANNER.

22 **Q.** BUT IS IT CORRECT TO SAY THAT THE PRIMARY BUSINESS OF
23 PLAYERS INC IS LICENSING?

24 **A.** THAT IS CORRECT.

25 **Q.** DO YOU HAVE AN UNDERSTANDING THAT -- DO YOU KNOW WHAT A

1 GROUP LICENSING AUTHORIZATION IS, GLA?

2 **A.** YES.

3 **Q.** TELL US WHAT YOUR UNDERSTANDING IS.

4 **A.** A GROUP LICENSING AUTHORIZATION IS AN AUTHORIZATION SIGNED
5 BY PLAYERS TO ALLOW PLAYERS INC TO USE THEIR NAME, LIKENESS,
6 FACSIMILE, SIGNATURE, IN GROUPS OVER SIX.

7 **Q.** DO YOU HAVE AN UNDERSTANDING THAT THE GROUP LICENSING
8 AUTHORIZATIONS ARE SIGNED WITH THE NFLPA?

9 **A.** YES.

10 **Q.** AND DO YOU HAVE AN UNDERSTANDING THAT THE NFLPA THEN
11 ASSIGNS THOSE GROUP LICENSING AUTHORIZATIONS TO PLAYERS INC?

12 **A.** YES.

13 **Q.** HAVE YOU EVER SEEN EXHIBIT 19, SIR?

14 **A.** NO.

15 **Q.** ISN'T IT CORRECT THAT LICENSING REVENUES FLOW FROM THE
16 LICENSEE LIKE TOPPS TO PLAYERS INC; ISN'T THAT RIGHT?

17 **A.** CORRECT.

18 **Q.** AND THEN ISN'T IT RIGHT THAT PLAYERS INC MAKES PAYMENTS OF
19 LICENSING REVENUES TO THE NFLPA; ISN'T THAT CORRECT? MAKES
20 PAYMENTS OUT OF THOSE LICENSING REVENUES TO THE NFLPA; ISN'T
21 THAT CORRECT?

22 **A.** PLAYERS INC DOES NOT PAY THE NFLPA FOR THE LICENSING
23 ROYALTIES.

24 **Q.** WHAT DO THEY PAY THE NFLPA FOR?

25 **A.** THE NFLPA, IN THEIR EARNING OF THEIR 40 PERCENT, RECEIVES

1 40 PERCENT OF THE GROSS LICENSING REVENUE DIRECTLY.

2 Q. DIRECTLY FROM?

3 A. FROM THE LICENSEES.

4 Q. FROM THE LICENSEES. AND THEN DO YOU -- IS THAT PART OF
5 YOUR WORK, PART OF YOUR AUDIT WORK, TO FOLLOW THAT FLOW OF
6 FUNDS?

7 A. YES.

8 Q. SO IF PI RECEIVES 60 PERCENT OF THAT FROM LET'S SAY TOPPS,
9 THEN THE NFLPA RECEIVES 40 PERCENT; IS THAT CORRECT?

10 A. NO.

11 Q. CAN YOU TELL ME HOW THAT WORKS?

12 A. SURE. THE GROSS LICENSING EQUAL SHARE POOL HAS THREE
13 COMPONENTS TO IT OF ALLOCATION.

14 THE FIRST IS THE NFLPA RECEIVING 40 PERCENT OF THE
15 ACTIVE PLAYER GROSS LICENSING SHARE. THE PLAYERS, THE ELIGIBLE
16 PLAYERS, RECEIVING 37 PERCENT WITH THE GROSS LICENSING SHARE.
17 AND PLAYERS INC, FOR OPERATIONS, RECEIVES APPROXIMATELY
18 23 PERCENT OF THE GROSS LICENSING EQUAL SHARE POOL.

19 Q. WHEN YOU SAY "THE PLAYERS," DO YOU MEAN THE ACTIVE
20 PLAYERS, THE RETIRED, OR BOTH?

21 A. THE ACTIVE PLAYERS.

22 Q. HOW DO RETIRED PLAYERS RECEIVE MONEY?

23 A. IT'S MY UNDERSTANDING THAT THE RETIRED PLAYERS HAVE
24 CERTAIN DEALS, DESIGNATED DEALS, THAT ARE NOT PART OF THE GROSS
25 LICENSING EQUAL SHARE POOL.

1 Q. LET ME DIRECT YOUR ATTENTION TO EXHIBIT 19 AGAIN. WOULD
2 EXHIBIT 19 BE ONE OF THOSE DESIGNATED DEALS TO WHICH YOU ARE
3 REFERRING?

4 A. THE DESIGNATED DEALS THAT I'M REFERRING TO ARE SEPARATE
5 AND DISTINCT DEALS BETWEEN THE RETIRED PLAYERS AND THE ACTUAL
6 COMPANIES, THE LICENSING COMPANIES.

7 Q. WELL, ARE THERE ANY MONIES THAT GO TO THE PEOPLE WHO
8 SIGNED THESE GROUPS LICENSING AUTHORIZATIONS, THAT YOU KNOW OF,
9 THE RETIREES?

10 A. I DON'T KNOW.

11 Q. THAT'S NOT PART OF YOUR WORK IN THE AUDIT?

12 A. OUR WORK IS BASED ON A LOT OF FACTORS AS WE DO THE AUDIT,
13 SUCH AS MATERIALITY, SUCH AS THE FINANCIAL STATEMENT LINE
14 ITEMS. SO THIS SPECIFICALLY WOULD NOT BE PART OF OUR AUDIT
15 WORK.

16 Q. WELL, YOUR AUDIT WORK HAS TO DO WITH ANY MONIES THAT CAME
17 IN OR OUT OF THE NFLPA OR PI?

18 A. CORRECT.

19 Q. IF MONEY IS GOING TO RETIRED PLAYERS, WOULDN'T THAT BE
20 PART OF YOUR WORK?

21 A. AGAIN, IT DEPENDS ON MATERIALITY, THE SAMPLE SIZE. SO OUR
22 AUDIT AND OPINION THAT WE GIVE IN THE FINANCIAL STATEMENTS IS
23 BASED ON SAMPLES.

24 Q. HAVE YOU EVER SEEN EXHIBIT 87 BEFORE, SIR?

25 A. NO.

1 Q. DOES THAT APPEAR TO REFER TO A DESIGNATED PROGRAM SUCH AS
2 YOU WERE DISCUSSING?

3 A. YES.

4 Q. SO WHERE DO YOU COME UP WITH THE NOMENCLATURE
5 "DESIGNATED"?

6 A. IN WORKING WITH THE NFLPA AND PLAYERS INC OVER THE YEARS,
7 IT'S BEEN KNOWN THAT THE RETIRED PLAYERS HAD SEPARATE
8 DESIGNATED AGREEMENTS WITH LICENSEES.

9 Q. AND HAS IT ALSO BEEN KNOWN THAT THERE WERE GROUP LICENSING
10 AUTHORIZATIONS WITH RETIRED PLAYERS? DID YOU KNOW THAT?

11 A. I WAS AWARE THERE WERE SOME RETIRED PLAYERS THAT SIGNED
12 GLA'S OVER THE YEARS.

13 Q. AND WERE YOU AWARE THAT THEY RECEIVED PAYMENTS FOR SIGNING
14 THE GLA'S?

15 A. NO.

16 Q. ARE YOU AWARE THAT PAYMENTS FROM PHOTO FILE WERE MADE TO
17 RETIRED PLAYERS PURSUANT TO GLA'S?

18 A. NO, I WAS NOT.

19 Q. DIRECTING YOUR ATTENTION BACK TO EXHIBIT 19, WHICH IS THE
20 GLA, ONE OF THE GLA'S SIGNED BY MR. ADDERLEY, AND YOU'LL NOTICE
21 IN THE LAST -- SECOND TO LAST PARAGRAPH IT SAYS, "IT IS FURTHER
22 UNDERSTOOD THAT THE MONIES GENERATED BY SUCH LICENSING OF
23 RETIRED PLAYERS GROUP RIGHTS WILL BE DIVIDED BETWEEN THE PLAYER
24 AND ESCROW ACCOUNT FOR ALL ELIGIBLE NFLPA MEMBERS WHO HAVE
25 SIGNED A GROUP LICENSING AUTHORIZATION FORM"?

1 **THE COURT:** SLOW DOWN A LITTLE BIT. SLOW DOWN,
2 PLEASE.

3 **MR. CHARHON:** SORRY ABOUT THAT.

4 **Q.** ARE YOU AWARE OF THE CREATION OF ANY SUCH ESCROW ACCOUNT?

5 **A.** NO, I'M NOT.

6 **Q.** AND DIRECTING YOUR ATTENTION AGAIN TO EXHIBIT 87, WHICH IS
7 A LETTER TO MR. HUFF, YOU WILL NOTE IN THE SECOND PAGE OF THAT,
8 THE RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORM, THE SAME
9 LANGUAGE APPEARS IN THE LICENSE.

10 THIS IS THE SECOND TO LAST PARAGRAPH OF THE SECOND
11 PAGE OF EXHIBIT 87. IT SAYS: "IT IS FURTHER UNDERSTOOD THAT
12 THE MONIES GENERATED BY SUCH LICENSING OF RETIRED PLAYER GROUP
13 RIGHTS WILL BE DIVIDED BY THE PRAYER IN AN ESCROW ACCOUNT FOR
14 ALL ELIGIBLE NFLPA MEMBERS WHO HAVE SIGNED A GROUP LICENSING
15 AUTHORIZATION."

16 AGAIN, I ASK YOU, ARE YOU AWARE OF SUCH ESCROW
17 ACCOUNT BEING CREATED?

18 **A.** NO.

19 **Q.** AND THEN WITH RESPECT TO EXHIBIT 88, THE MONIES FROM PHOTO
20 FILE TO RETIRED PLAYERS, WITH RESPECT TO THOSE MONIES ARE YOU
21 AWARE OF AN ESCROW ACCOUNT BEING CREATED?

22 **A.** NO, NOT THAT I'M AWARE OF.

23 **Q.** AND DIRECTING YOUR ATTENTION THEN TO EXHIBIT 2, TO EXHIBIT
24 1172. ARE THOSE INDIVIDUALS THAT RECEIVE MONIES PURSUANT TO A
25 GLA, MONEY FROM EA, ARE YOU AWARE OF ANY ESCROW ACCOUNT BEING

1 CREATED WITH RESPECT TO THOSE MONIES?

2 **A.** I'M NOT AWARE OF ANY ESCROW ACCOUNT.

3 **Q.** MOVING BACK TO THE 2006 FINANCIAL STATEMENT, WHICH IS --
4 WHAT'S THE EXHIBIT NUMBER ON IT?

5 **A.** 85.

6 **Q.** 85. THANK YOU.

7 IF WE LOOK IN THE CURRENT LIABILITY SECTION, WHICH IS
8 PAGE 6032, IT SAYS "ROYALTIES DUE TO PLAYERS" IS THE THIRD
9 TITLE. DOES THAT REFER TO RETIRED PLAYERS, ACTIVE PLAYERS, OR
10 BOTH?

11 **A.** IT WOULD REFER TO BOTH.

12 **Q.** AND DO YOU KNOW WHAT THE BREAKDOWN IS? IS THERE SOME
13 PLACE IN THIS DOCUMENT THAT WOULD SHOW THE BREAKDOWN?

14 **A.** NO.

15 **Q.** WHERE WOULD YOU GO TO FIND THAT? WHERE WOULD YOU GO TO
16 FIND THAT OUT?

17 **A.** THE NFLPA FINANCE DEPARTMENT.

18 **Q.** AND WHAT DOCUMENTS WOULD YOU LOOK FOR?

19 **A.** THERE WOULD BE A LISTING OF AMOUNTS DUE TO PLAYERS.

20 **Q.** ACTIVE AND RETIRED PLAYERS?

21 **A.** YES.

22 **Q.** IF WE MOVE TO PAGE 6033, UNDER "REVENUE," IT SAYS
23 "ROYALTIES, LICENSING." THERE'S A FIGURE OF \$67 MILLION AND
24 CHANGE. DO YOU SEE THAT?

25 **A.** YES.

1 Q. HOW DO YOU FIND -- HOW DO YOU DEFINE LICENSING IN THIS
2 CALCULATION?

3 A. THE DEFINITION OF LICENSING RELATED TO THE FINANCIAL
4 STATEMENTS OR ANY AGREEMENT PLAYERS INC OR THE NFLPA HAVE THAT
5 GENERATES ROYALTIES OR LICENSING INCOME.

6 Q. WOULD THIS INCLUDE BOTH ACTIVE AND RETIRED PLAYERS, THIS
7 67 MILLION?

8 A. YES.

9 Q. AND ON WHAT DOCUMENTS IF ANY DID YOU RELY TO VERIFY THIS
10 NUMBER OF 67 MILLION?

11 A. ON OUR SAMPLING OF THE LICENSING AGREEMENTS.

12 Q. SO THE AGREEMENTS FROM EA AND TOPPS, ET CETERA?

13 A. YES.

14 Q. THEN THERE'S A NUMBER FOR -- IF YOU LOOK UNDER EXPENSES --
15 PLAYER ROYALTIES AND APPEARANCES.

16 HOW -- AND I THINK THE NUMBER IS 54 MILLION AND
17 CHANGE. HOW DID YOU DETERMINE THAT NUMBER, SIR?

18 A. WELL, AGAIN, WE AUDIT THE NUMBER THAT'S DETERMINED BY THE
19 NFLPA. THE TWO MAJOR COMPONENTS TO THAT IS THE EQUAL SHARE
20 POOL, THE ACTIVE PLAYER EQUAL SHARE POOL, AND ANY PREMIUM
21 PLAYER APPEARANCES THAT WERE PAID OUT IN THIS YEAR.

22 **THE COURT:** ALL RIGHT. HAVE WE REACHED A GOOD
23 BREAKING POINT? IT'S TIME TO BREAK.

24 **MR. CHARHON:** THIS IS AS GOOD AS ANY.

25 **THE COURT:** ALL RIGHT. THIS IS WHERE WE'RE GOING TO

1 LEAVE IT FOR TODAY.

2 I HAVE AN EVIDENTIARY HEARING THAT STARTS IN ONE
3 MINUTE ON ANOTHER CASE, SO I'M GOING TO HAVE TO ASK EVERYONE TO
4 CLEAR THE TABLES AND SO FORTH.

5 REMEMBER THE ADMONITION. WE'LL SEE YOU ALL BACK HERE
6 TOMORROW AT 7:45. ISN'T THAT THE RIGHT TIME? 7:45.

7 HAVE A GOOD EVENING EVERYBODY. AND STAY IN GOOD
8 HEALTH NOW, AND WASH YOUR HANDS.

9 **THE CLERK:** ALL RISE.

10 **MR. KESSLER:** YOUR HONOR, I HAVE ONE 30-SECOND
11 REQUEST AFTER THE JURY LEAVES.

12 **THE COURT:** ALL RIGHT.

13 (THEREUPON, THE JURY LEAVES THE COURTROOM.)

14 **MR. KESSLER:** YOUR HONOR, THIS MORNING, BEFORE WE
15 BEGAN TRIAL, IN THE COURSE OF COLLOQUY YOUR HONOR MADE SOME
16 COMMENTS ABOUT YOUR HONOR'S VIEWS ABOUT THE GROUP LICENSING
17 AUTHORIZATION.

18 AND THE CONCERN WE HAVE IS THAT THERE IS SOME PRESS
19 PUBLICATIONS WHO ARE LITERALLY PUTTING OUT THE TRANSCRIPT EVERY
20 DAY. AND I AM CONCERNED ABOUT SOME JUROR POSSIBLY BECOMING
21 AWARE OF THOSE COMMENTS, WHICH I THINK WOULD BE VERY
22 PREJUDICIAL.

23 I KNOW YOUR HONOR HAD NO INTENTION THEY EVER SHOULD
24 GET TO ANY JUROR. AND SINCE THEY'RE NOT PART OF THE
25 EVIDENTIARY RECORD IN ANY WAY, I WAS WONDERING IF YOUR HONOR

1 WOULD CONSIDER EITHER EXCLUDING THOSE COMMENTS IN THE RECORD OR
2 REDACTING IT FROM THE PUBLIC RECORD, OR SOMETHING LIKE THAT.

3 YOUR HONOR MAY RECALL THE COMMENTS. THEY WERE ABOUT
4 YOUR HONOR'S VIEWS OF WHAT COULD BE THE, QUOTE, PROBLEMS WITH
5 THE GLA LANGUAGE. AND I THINK IF ANY JUROR GOT ANY WIND OF
6 THAT, THAT THAT WAS YOUR HONOR'S STATEMENT, IT COULD BE VERY
7 DAMAGING TO US.

8 **THE COURT:** ALL RIGHT. WHAT DOES THE OTHER SIDE SAY?

9 **MR. KATZ:** THIS IS A PUBLIC -- AN OPEN COURTROOM.
10 PERIOD.

11 **THE COURT:** WELL, IS THERE ANY MEMBER OF THE PRESS
12 HERE? I THINK THE CASE FROM NIGERIA HAS SUPERSEDED THE
13 PUBLIC'S INTEREST IN THIS CASE. I'M SORRY TO SAY.

14 **MR. KATZ:** ALL THE PLAYERS ARE DOWN THERE, YOUR
15 HONOR.

16 **THE COURT:** BUT IT IS A PUBLIC PROCEEDING. I
17 CAN'T -- I'VE GOT TO BE ABLE TO RUN THE COURTROOM THE WAY I RUN
18 THE COURTROOM. AND THAT IS GOING TO REQUIRE SOME FRANK
19 DISCUSSIONS WITH YOU LAWYERS ABOUT WHAT THE ISSUES IN THE CASE
20 ARE. THERE ARE ALL KINDS OF THINGS WE'VE SAID THAT WE DON'T
21 WANT THE JURY TO KNOW ABOUT.

22 SO THAT MOTION IS DENIED, AND I'M GOING TO RELY ON
23 THE JURY TO BRING TO MY ATTENTION IF THEY SEE ANY SUCH THING,
24 WHICH THEY'VE BEEN TOLD NOT TO PAY ANY ATTENTION TO.

25 **MR. KESSLER:** YOUR HONOR, MAYBE IT WOULD BE GOOD IF

1 YOU MADE A PUBLIC COMMENT NOW THAT I'M SURE YOUR HONOR DID NOT
2 INTEND TO EXPRESS ANY VIEW AS TO HOW THIS CASE SHOULD BE
3 DECIDED.

4 **THE COURT:** THAT IS TRUE. THAT IS UP TO THE JURY.

5 **MR. KESSLER:** THANK YOU, YOUR HONOR.

6 **THE COURT:** I'VE SAID THAT MANY TIMES, AND I STAND BY
7 THAT. THE JURY IS GOING -- I'M GOING TO GIVE THEM PROPER
8 INSTRUCTIONS OF LAW. BUT WHAT THEY DECIDE IS THEIR BUSINESS.

9 **MR. KESSLER:** THANK YOU.

10 **THE COURT:** ALL RIGHT. SEE YOU TOMORROW.

11 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL THURSDAY,
12 OCTOBER 30, 2008 AT 7:30 O'CLOCK A.M.)

13
14 - - - -

15 **CERTIFICATE OF REPORTER**

16 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
17 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

18 DATE: THURSDAY, OCTOBER 30, 2008.

19
20 S/B KATHERINE POWELL SULLIVAN

21 _____
22
23 KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
24 U.S. COURT REPORTER
25

I N D E X

	<u>PAGE</u>	<u>VOL.</u>
<u>PLAINTIFFS' WITNESSES</u>		
BEACH, III, WALTER		
Cross Examination by Mr. KESSLER	1147	6
LINZNER, JOEL LAURENCE		
Direct Examination by Mr. Hummel	1188	6
Cross Examination by Mr. FEHER	1274	6
Redirect Examination by Mr. Hummel	1307	6
Recross Examination Resumed by Mr. feher	1324	6
RHEE, PETER		
Direct Examination by Mr. HUMMEL	1329	6
Cross Examination by Mr. KESSLER	1334	6
EYRICH, GLEN		
DEPOSITION EXCERPTS READ BY MR. CHARON CHARHON AND MR. GARZA	1344	6

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

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
1245-7			1130	6
1245-8			1130	6
1245-9			1130	6
1263-7			1130	6
1239			1199	6
65			1218	6
67			1221	6
80			1227	6
1246			1230	6
1257			1235	6
1184			1258	6
1268			1272	6
1240			1273	6
26			1282	6
69			1286	6
79			1299	6
85			1350	6