

VOLUME 10

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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 )  
TUESDAY )  
NOVEMBER 4, 2008 )

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFFS:**

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(APPEARANCES CONTINUED ON NEXT PAGE)

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P R O C E E D I N G S

NOVEMBER 4, 2008

7:30 A.M.

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

**THE COURT:** GOOD MORNING.

**MR. KESSLER:** GOOD MORNING, YOUR HONOR.

**THE COURT:** HOW IS EVERYBODY?

**MR. HUMMEL:** VERY WELL. THANK YOU.

**THE COURT:** HAVE A SEAT. ALL RIGHT. WHAT ITEMS DO  
YOU HAVE FOR ME THIS MORNING?

**MR. KATZ:** WE HAVE TWO MATTERS, YOUR HONOR.

**THE COURT:** ALL RIGHT.

**MR. KATZ:** ONE RELATES TO A FILING THAT WE MADE LAST  
NIGHT WITH RESPECT TO STRIKING A PORTION OF MR. ARMSTRONG'S  
TESTIMONY BECAUSE OF DISCOVERY ABUSE.

**THE COURT:** I RECEIVED THAT. I READ IT.

**MR. KATZ:** DO YOU WANT ME TO ELABORATE ON IT, OR DO  
YOU WANT TO HEAR FROM MR. KESSLER?

**THE COURT:** WELL, LET'S HEAR FROM THE OTHER SIDE,  
FIRST.

**MR. KESSLER:** YOUR HONOR, I THINK THIS MOTION IS  
COMPLETELY UNFOUNDED.

FIRST OF ALL, THE ONLY YEAR THAT COULD BE AT ISSUE IS  
2003, BECAUSE MR. ARMSTRONG ONLY TESTIFIED THROUGH 2003. HE

1 THEN LEFT.

2 AND YOUR HONOR WILL RECALL THAT YOU CUT OFF ALL  
3 DISCOVERY PRIOR TO 2003 IN ONE OF YOUR DISCOVERY RULINGS.  
4 THERE WAS SOME DOCUMENTS PRODUCED PRIOR TO THAT, BUT BASICALLY  
5 YOU SAID THERE WAS NO PRODUCTION REQUIRED BEFORE THAT.

6 SO EVERYTHING HE TESTIFIED ABOUT, ANYTHING UP TO  
7 2003, THERE'S NOT EVEN AN ISSUE.

8 SECOND, WHAT THEY CITED, THE RETIRED PLAYER REPORTS,  
9 THE DEPARTMENT REPORTS ON LICENSING AND RETIRED PLAYERS, THEY  
10 WERE PRODUCED FROM THE ANNUAL MEETING.

11 IN FACT, THEY'VE EVEN IDENTIFIED ONE OF THOSE  
12 DOCUMENTS FROM THE ANNUAL MEETINGS TO USE WITH MS. ALLEN. I  
13 DON'T KNOW IF THEY'RE GOING TO USE IT OR NOT. BUT THOSE  
14 REPORTS THAT ARE DISCUSSED IN THE CITED TESTIMONY WERE  
15 COMPLETELY PRODUCED WITH RESPECT TO THAT.

16 THE ONLY ARGUMENT THEY MAKE IS THAT THEY HAVE A  
17 DOCUMENT REQUEST WHICH SAYS:

18 "ANY COMMUNICATION WITH RETIRED PLAYERS."

19 OKAY. AND THEY SAID:

20 "WELL, SINCE THERE WERE TWO MEMBERS OF THE  
21 RETIRED PLAYERS STEERING COMMITTEE THERE, MAYBE THERE WAS  
22 SOMETHING ELSE THAT THEY SAW THAT WASN'T PRODUCED."

23 YOUR HONOR, TO OUR KNOWLEDGE, THERE ARE NO OTHER  
24 DOCUMENTS THAT WE HAVE THAT DISCUSS RETIRED PLAYER LICENSING  
25 THAT WERE AT THOSE MEETINGS THAT WE HAVEN'T PRODUCED.

1           SO I DON'T THINK THERE'S AN ISSUE ABOUT ANYTHING  
2 HERE. I THINK THAT'S THE END OF THE STORY.

3           **THE COURT:** WHAT DO YOU SAY ABOUT THE MINUTES PART?

4           **MR. KESSLER:** TO MY KNOWLEDGE, THOSE MINUTES DON'T  
5 DISCUSS RETIRED PLAYER LICENSING. I'M ACTUALLY HAVING SOMEONE  
6 GO BACK AND CONFIRM THAT NOW, BUT I DON'T THINK THERE'S  
7 ANYTHING IN THOSE MINUTES ABOUT RETIRED PLAYER LICENSING.

8           THE MINUTES GENERALLY TALK ABOUT RESOLUTIONS AND  
9 THINGS LIKE THAT, THAT WERE PASSED. I'M NOT AWARE OF ANY  
10 SPECIFIC RESOLUTION ABOUT RETIRED PLAYER LICENSING IN THE YEARS  
11 '04, '05, OR ANYTHING LIKE THAT. BUT WE'LL TAKE A LOOK AND  
12 LOOK AT THAT. BUT I'M NOT AWARE OF ANYTHING.

13           **THE COURT:** LET'S SEE IF I UNDERSTAND THE POINT  
14 MR. KATZ IS TRYING TO MAKE HERE. HE SAYS:

15                         "DURING DISCOVERY PLAINTIFFS REQUESTED AND  
16 DEFENDANTS AGREED TO PRODUCE DOCUMENTS ENCOMPASSING THE ISSUES  
17 MR. ARMSTRONG TESTIFIED ABOUT, AND THAT MR. SAXON CONFIRMED  
18 WERE IN EXISTENCE."

19           NOW, HE'S TALKING ABOUT --

20           **MR. KESSLER:** IT'S A NON SEQUITUR, YOUR HONOR. IF  
21 YOU LOOK AT THE DOCUMENT REQUEST WHICH THEY CITE, WHICH IS ON  
22 THE SECOND PAGE OF HIS LETTER, I BELIEVE, THE DOCUMENT REQUEST,  
23 WHICH WE AGREED TO PRODUCE, IS:

24                         "ANY DOCUMENT SUMMARIZING," ET CETERA,  
25 "COMMUNICATIONS WITH RETIRED PLAYERS."

1 WE HAVE PRODUCED ALL SUCH DOCUMENTS THAT WE WERE ABLE  
2 TO LOCATE. WE WITHHELD NO SUCH DOCUMENTS. I'M NOT AWARE OF  
3 ANY SUCH DOCUMENT THAT'S THERE.

4 HE CITES MR. SAXON SAYING THERE WERE MINUTES PREPARED  
5 OF THE ANNUAL MEETINGS. THERE WERE MINUTES PREPARED, OKAY. TO  
6 MY KNOWLEDGE, WE DON'T BELIEVE THERE'S ANYTHING IN THOSE  
7 MINUTES DISCUSSING -- IN THE MINUTES, DISCUSSING RETIRED PLAYER  
8 LICENSING.

9 WHERE THE RETIRED PLAYER LICENSING WAS DISCUSSED WAS  
10 IN THE LICENSING DEPARTMENT REPORTS AND IN THE RETIRED PLAYER  
11 DEPARTMENT REPORTS. WE PRODUCED THOSE TO THEM.

12 THEY HAVE THOSE FROM THE MEETINGS MR. ARMSTRONG  
13 TESTIFIED ABOUT AND FROM SUBSEQUENT MEETINGS WHICH HE DIDN'T  
14 TESTIFY ABOUT.

15 SO THERE'S REALLY NO ISSUE HERE.

16 **THE COURT:** WELL, THE GROUND RULE IN MY SUPPLEMENTAL  
17 ORDER SAYS:

18 "EXCEPT FOR GOOD CAUSE, NO ITEM SHALL BE  
19 RECEIVED AS CASE-IN-CHIEF EVIDENCE IF THE PROPONENT HAS FAILED  
20 TO PRODUCE IT IN RESPONSE TO A REASONABLE AND PROPER DISCOVERY  
21 REQUEST."

22 THE PROBLEM, MR. KATZ, IS THAT THERE'S NO ITEM BEING  
23 OFFERED IN EVIDENCE. WE'RE JUST TALKING ABOUT VERBAL  
24 TESTIMONY.

25 **MR. KATZ:** WELL, ONLY YOUR HONOR CAN INTERPRET YOUR

1 OWN RULE AS TO WHAT "ITEM" MEANS.

2 BUT I THINK THE POINT OF YOUR RULE IS THAT YOU CAN'T  
3 SANDBAG SOMEONE. YOU CAN'T NOT PRODUCE SOMETHING IN DISCOVERY.

4 I MEAN, HERE THIS MAN COMES --

5 **THE COURT:** THEY SAY THEY DID PRODUCE EVERYTHING YOU  
6 REQUESTED, ACCORDING TO MR. KESSLER.

7 **MR. KESSLER:** YES.

8 **THE COURT:** AND YOU'RE COMPLAINING BECAUSE THEY  
9 DIDN'T CREATE MORE DOCUMENTS.

10 **MR. KATZ:** WELL, YOUR HONOR, THIS MAN COMES IN AND  
11 TESTIFIES TO THESE EXTENSIVE DISCUSSIONS THAT OCCUR ON  
12 LICENSING AT THESE MEETINGS. AND WHAT MR. KESSLER IS SAYING  
13 NOW IS THE INCREDIBLE POINT THAT DESPITE THESE EXTENSIVE  
14 DISCUSSIONS, SOMEHOW THEY WERE NOT MENTIONED IN THE MINUTES  
15 WHICH WERE CAREFULLY TAKEN BY THEIR GENERAL COUNSEL EVERY YEAR.

16 SO I WOULD SAY AT THE VERY LEAST WE SHOULD HAVE AN  
17 INSTRUCTION TO THE JURY THAT WHAT HE'S SAYING DID NOT APPEAR IN  
18 THE MINUTES. I QUESTION WHAT THOSE MINUTES ACTUALLY SAY.

19 WITH RESPECT TO MR. KESSLER'S POINT THAT THIS ALL  
20 HAPPENED BEFORE 2003, WELL, THEN IT SHOULD BE STRICKEN BECAUSE  
21 IT'S IRRELEVANT.

22 WHEN HE SAYS DOCUMENTS WERE NOT PRODUCED BEFORE 2003,  
23 THAT IS JUST FLAT OUT WRONG. HE'S PRODUCED DOCUMENTS FROM THE  
24 '80S. THERE ARE MANY, MANY DOCUMENTS THAT PREDATE 2003 HERE.

25 SO IF WHAT HE SAYS IS CORRECT, THEN YOUR HONOR SHOULD

1 GIVE AN INSTRUCTION TO THE JURY TO STRIKE MR. ARMSTRONG'S  
2 TESTIMONY ON THE GROUNDS THAT WHAT HAPPENED BEFORE 2003 ON THIS  
3 POINT IS SIMPLY IRRELEVANT.

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

5 **MR. KATZ:** MAY I FINISH?

6 **MR. KESSLER:** YES.

7 **MR. KATZ:** THEY ARE CLEARLY SANDBAGGING US, YOUR  
8 HONOR. THERE'S JUST NO QUESTION ABOUT IT.

9 **THE COURT:** WAIT, WAIT, WAIT.

10 A DISCOVERY VIOLATION CAN ONLY OCCUR IF THERE WAS  
11 SOMETHING THAT WAS REQUESTED THAT WAS NOT TURNED OVER, AND IT  
12 DID EXIST. I'VE SEEN OTHER CASES WHERE THAT DEFINITELY HAS  
13 HAPPENED.

14 BUT IN THIS CASE MR. KESSLER IS SAYING THAT HE DID  
15 TURN OVER EVERYTHING.

16 **MR. KATZ:** WHAT HE'S SAYING IS HE'S GOING TO CHECK  
17 WHETHER HE TURNED OVER EVERYTHING.

18 **MR. KESSLER:** NO, I BELIEVE --

19 **MR. KATZ:** YOU SAID YOU WERE GOING TO CHECK. YOU  
20 JUST SAID IT FIVE SECONDS AGO.

21 **MR. KESSLER:** PLEASE DON'T SHOUT AT ME, SIR.

22 **THE COURT:** MR. KATZ, IT'S YOUR BURDEN TO PROVE A  
23 DISCOVERY VIOLATION.

24 **MR. KATZ:** RIGHT.

25 **THE COURT:** AND YOU HAVEN'T PROVEN IT.

1           **MR. KATZ:** I THINK I HAVE PROBABLE CAUSE.

2           **THE COURT:** THAT'S NOT ENOUGH. AT THIS STAGE, IN  
3 CONCESSION TO THE SHORTNESS OF LIFE, WE CAN'T HAVE -- I TOLD  
4 YOU AT THE PRETRIAL CONFERENCE, IF YOU WANT TO ASSERT A  
5 DISCOVERY VIOLATION, COME IN WITH CHAPTER AND VERSE, PROVE IT  
6 AT THE HEARING. DON'T RAISE A PROBABLE CAUSE IDEA.

7           SO THIS -- THE ENTIRE PREMISE IS NOT PROVEN UP HERE.  
8 YOU HAVE NOT PROVEN A DISCOVERY VIOLATION. SO I'M NOT GOING TO  
9 GRANT THIS MOTION.

10           **MR. KATZ:** WELL, THEN, WOULD IT BE PERMISSIBLE, YOUR  
11 HONOR, TO ASK THE QUESTION -- I THINK THERE IS FOUNDATION TO  
12 ASK THE QUESTION OF MR. ARMSTRONG:

13                       "ISN'T IT A FACT THAT THESE EXTENSIVE  
14 DISCUSSIONS ABOUT LICENSING THAT YOU HAVE TESTIFIED ABOUT ARE  
15 NOT REFLECTED IN THE MINUTES OF THOSE MEETINGS?"

16           WE HAVE FOUNDATION FOR THAT.

17           **THE COURT:** IF YOU TELL ME IN GOOD FAITH THAT'S TRUE,  
18 THEN YOU CAN ASK THAT QUESTION.

19           **MR. KATZ:** I'M TELLING YOU IN GOOD FAITH BASED ON --

20           **THE COURT:** NOW, HE MIGHT SAY:

21                       "WELL, I DON'T KNOW."

22           WHERE ARE YOU GOING TO BE THEN?

23           **MR. KATZ:** RIGHT. HIS SPECIALTY IS JUST REMEMBERING  
24 THINGS, EXCEPT THE MINUTES. HE JUST DOESN'T REMEMBER THAT.  
25 HE'S GOT A LITTLE GAP, 18 MINUTE GAP IN HIS MEMORY.

1           **MR. KESSLER:** YOUR HONOR, I WANT TO SAY A WORD ABOUT  
2 THE TIME PERIOD HERE.

3           IT IS CORRECT, YOUR HONOR ORDERED WE DIDN'T HAVE TO  
4 PRODUCE DOCUMENTS BEFORE 2003 --

5           **MR. KATZ:** ACTUALLY, I DISAGREE WITH THAT, TOO.

6           **THE COURT:** I DON'T REMEMBER.

7           **MR. KATZ:** YOU DIDN'T ORDER THAT. I CAN SHOW YOU  
8 WHAT YOU ORDERED.

9           **MR. KESSLER:** THEY HAVE PUT INTO EVIDENCE OBVIOUSLY  
10 IN THIS CASE THE 1994 AGREEMENT, THE 2000 AGREEMENT. IN OTHER  
11 WORDS, THERE HAS BEEN EXTENSIVE DISCUSSIONS OF EVENTS PRIOR TO  
12 2003. AND MR. ARMSTRONG WAS TESTIFYING ABOUT THAT. AND THERE  
13 WAS NEVER ANY REQUEST FOR ANY DOCUMENTS -- HIS DOCUMENT REQUEST  
14 AT ISSUE DID NOT GO BACK BEFORE 2003. SO HE CAN'T MAKE  
15 STATEMENTS TO MR. ARMSTRONG.

16           I TELL YOU, YOUR HONOR, WE DIDN'T LOOK AT MINUTES IN  
17 2000 OR 2001, 2002, BECAUSE THEY WEREN'T CALLED FOR BY HIS  
18 REQUEST, AND YOUR HONOR NEVER REQUIRED THAT. SO HE CAN'T MAKE  
19 REPRESENTATIONS ABOUT THAT.

20           HE CAN ASK HIM ABOUT THE 2003 MINUTES, WHICH WERE  
21 CALLED FOR AND DIDN'T REFLECT ANYTHING.

22           **THE COURT:** WHY WOULDN'T IT BE PROPER -- HAS NOTHING  
23 TO DO WITH THE DISCOVERY VIOLATION -- WHY WOULDN'T IT BE PROPER  
24 FOR MR. KATZ ON CROSS EXAMINATION TO SAY TO MR. ARMSTRONG:

25           "CAN YOU POINT TO SINGLE MINUTE, A SET OF

1 MINUTES, OF ANY MEETING WHICH SUPPORTS WHAT YOU TESTIFIED TO?"

2 **MR. KESSLER:** HE CAN DO THAT. THAT'S A FAIR CROSS  
3 QUESTION.

4 **THE COURT:** AND THEN, HE CAN SAY:

5 "BEFORE COMING TO TESTIFY, DID YOU MEET WITH  
6 MR. KESSLER OR HIS TEAM?"

7 AND THE ANSWER TO THAT, I ASSUME, IS GOING TO BE:

8 "YES.

9 "AND DID MR. KESSLER OR HIS TEAM SHOW YOU A  
10 SINGLE SET OF MINUTES?"

11 THAT'S NOT PRIVILEGED. HE COULD ASK THAT QUESTION.

12 **MR. KESSLER:** THANK YOU.

13 **THE COURT:** BUT I THINK YOU COULD DO THAT.

14 BUT WHAT YOU CAN'T SAY IS:

15 "I REVIEWED ALL THE MINUTES, MR. ARMSTRONG," AND  
16 THAT'S JUST LAWYER TESTIFYING.

17 **MR. KATZ:** WELL, IN THE INTEREST OF VINDICATING THE  
18 INTEGRITY OF DISCOVERY PROCESS AND OF YOUR RULE NUMBER 16, WE  
19 WOULD ASK FOR PRODUCTION OF THOSE MINUTES.

20 **THE COURT:** IT'S TOO LATE. I'M NOT GOING TO START --  
21 I'M NOT GOING TO START GETTING INTO DISCOVERY VIOLATIONS -- I  
22 MEAN, NEW DISCOVERY. OLD DISCOVERY VIOLATIONS I CAN DEAL WITH.  
23 BUT, NO, THAT'S DENIED.

24 **MR. KATZ:** WHAT ABOUT MR. KESSLER'S REPRESENTATION,  
25 QUOTE, THAT HE'S "GOING TO GO BACK AND CHECK TO MAKE SURE THESE

1 THINGS AREN'T MENTIONED"?

2           **THE COURT:** THAT'S UP TO HIM. I'M NOT GOING TO  
3 REQUIRE THAT. I'M NOT GOING TO REQUIRE THAT. IF HE  
4 DETERMINES, THOUGH, THAT HE HAS VIOLATED DISCOVERY OBLIGATIONS  
5 IN THIS CASE WHEN HE DOES WHATEVER CHECKING HE'S GOING TO DO,  
6 THEN WE HAVE A PROBLEM.

7           **MR. KESSLER:** YOUR HONOR, JUST, AGAIN, SO YOUR HONOR  
8 UNDERSTANDS JUST FOR BACKGROUND, FOR EXAMPLE, WE PRODUCED THIS  
9 DOCUMENT, THIS THICK (INDICATING), FROM THE ANNUAL MEETING, ALL  
10 DISCUSSING LICENSING, INCLUDING RETIRED PLAYER LICENSING.

11           SO THERE'S EXTENSIVE DOCUMENTS FROM THESE MEETINGS  
12 THERE WHICH THEY HAVE HAD IN PRODUCTION, OKAY? AND WHICH ARE  
13 CONSISTENT WITH MR. ARMSTRONG'S TESTIMONY. SO I DON'T EVEN  
14 UNDERSTAND THIS POINT.

15           THEY'RE JUST COMPLAINING, WELL, WE DIDN'T PRODUCE A  
16 MINUTE THAT SHOWS THAT, AS OPPOSED TO EXTENSIVE MATERIALS FROM  
17 THOSE MEETINGS THAT WERE HANDED OUT AND GIVEN AT THOSE  
18 MEETINGS.

19           **THE COURT:** LOOK, I'VE SAID AS MUCH AS I CAN SAY.  
20 THIS MOTION IS DENIED.

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

22           **THE COURT:** YOU CAN CROSS-EXAMINE -- I'VE SUGGESTED A  
23 COUPLE OF LINES OF QUESTIONS WHICH I THINK WOULD BE FINE. BUT  
24 THERE HAS BEEN NO DISCOVERY VIOLATION PROVEN HERE. SO THE  
25 WHOLE PREMISE OF THIS MOTION IS MISTAKEN.

1           **MR. KATZ:** WE HAVE A SECOND MATTER, YOUR HONOR.

2           **THE COURT:** WHAT'S THAT?

3           **MR. KATZ:** THE SECOND MATTER IS MUCH MORE SIMPLE.

4 AND THAT IS APPARENTLY WHEN READING MR. UPSHAW'S DEPOSITION  
5 THEY JUST WANT TO READ THE CORRECTED VERSION AND NOT READ THE  
6 UNCORRECTED VERSION, AS WELL. WE THINK THEY SHOULD READ AT  
7 LEAST BOTH.

8           **THE COURT:** THEY'VE GOT TO READ BOTH.

9           **MR. KESSLER:** THAT'S FINE, YOUR HONOR. MY ONLY  
10 QUESTION WAS THERE'S THE QUESTION AND ANSWER AT ISSUE THEY  
11 ALREADY READ IN IN THEIR CASE, AND IT WAS READ IN ORIGINALLY  
12 AND CORRECTED.

13           THEY REDESIGNATED IT AGAIN NOW TO BE READ. SO WE  
14 DIDN'T KNOW IF WE HAD TO READ IT BOTH TIMES AGAIN.

15           **THE COURT:** THE WAY YOU'VE GOT TO DO THIS -- IS IT  
16 GOING TO BE READ OR PLAYED?

17           **MR. KESSLER:** IT'S GOING TO BE READ.

18           **THE COURT:** THE THING TO DO IS SAY, ALL RIGHT, THEN  
19 DO AS AN ASIDE TO THE JURY:

20           "I'M NOW GOING TO READ THE ORIGINAL TESTIMONY."  
21 READ IT. AND THEN, SAY:

22           "AND THIS IS THE WAY IT WAS CORRECTED BY THE  
23 WITNESS," AND THEN READ IT AGAIN.

24           **MR. KESSLER:** OKAY.

25           **THE COURT:** THEN MOVE ON TO THE NEXT QUESTION AND

1 ANSWER.

2           **MR. KESSLER:** MR. TAUB WILL BE READING FOR  
3 MR. UPSHAW.

4           **THE COURT:** YOU'VE GOT TO DO IT THEN AND THERE,  
5 OTHERWISE THE DISCREPANCY IS LOST.

6           **MR. KESSLER:** OKAY. VERY GOOD.

7           **MR. HUMMEL:** GOOD MORNING, YOUR HONOR.

8           **THE COURT:** GOOD MORNING.

9           **MR. HUMMEL:** WE HAVE ONE MORE POINT, AND WE CAN TAKE  
10 IT UP AT THE FIRST BREAK, BUT I WANTED TO CORRECT A  
11 MISIMPRESSION THAT I AM CONFIDENT I LEFT WITH THE COURT ABOUT  
12 MR. ROWLEY'S TESTIMONY. IT HAD TO DO WITH THE THREE YEAR OR  
13 MORE ISSUE OF DAMAGES THAT YOUR HONOR ACTUALLY ASKED ME ABOUT.  
14 WOULD YOU LIKE ME TO DO THAT NOW OR WAIT? IT WILL TAKE 30  
15 SECONDS.

16           **THE COURT:** SURE.

17           **MR. HUMMEL:** THERE ARE THREE PERIODS IN PLAY IN THIS  
18 CASE. THERE'S THE CLASS PERIOD, WHICH RUNS FROM FEBRUARY 14,  
19 2004 THROUGH FEBRUARY 14, 2007. AND THAT IS THE -- THAT'S THE  
20 PERIOD THAT DEFINES WHO'S IN THE CLASS, WHO SIGNED GLA'S THAT  
21 WERE IN EFFECT IN THAT PERIOD.

22           AND THEN, THERE'S THE STATUTE OF LIMITATIONS PERIOD,  
23 WHICH IS UNDER D.C. LAW THREE YEARS.

24           BUT, YOUR HONOR, WHAT YOU ASKED ME YESTERDAY, AND I  
25 THINK I PROBABLY ANSWERED INCORRECTLY AT THE TIME WAS:

1 "DO WE HAVE A THREE-YEAR DAMAGES PERIOD?"

2 THE ANSWER TO THAT IS "NO," BECAUSE IF SOMEONE HAD A  
3 GLA THAT EFFECT, FOR EXAMPLE, IN THE THIRD YEAR OF THAT CLASS  
4 PERIOD, AND HE WASN'T PAID IN THE FOURTH OR FIFTH YEAR AND THE  
5 GLA WAS STILL IN EFFECT, THAT WOULD BE DAMAGES THAT WE WOULD BE  
6 CLAIMING.

7 THAT'S WHY THERE WERE MORE YEARS IN MR. ROWLEY'S  
8 REPORT THAN THE SIMPLE THREE-YEAR STATUTE.

9 I JUST WANTED TO CORRECT THAT. WE WILL MAKE IT CLEAR  
10 TO THE JURY AT AN APPROPRIATE POINT, YOUR HONOR, IN THE CASE,  
11 BUT I DIDN'T WANT TO LEAVE YOU WITH A MISIMPRESSION.

12 **THE COURT:** WAIT A MINUTE. WHEN YOU BRING A  
13 LAWSUIT -- THE LAWSUIT WAS FILED ON FEBRUARY 14, '07.

14 **MR. HUMMEL:** RIGHT.

15 **THE COURT:** ANYTHING THAT SHOULD HAVE BEEN PAID  
16 WITHIN THREE YEARS BACK FROM THAT --

17 **MR. HUMMEL:** RIGHT.

18 **THE COURT:** -- IS CLAIMABLE. BUT ANYTHING THAT'S  
19 LONGER BACK THAN THREE YEARS IS NOT CLAIMABLE.

20 **MR. HUMMEL:** THAT'S RIGHT.

21 **THE COURT:** SO HOW CAN YOU GET MORE THAN THREE YEARS  
22 OF DAMAGES?

23 **MR. HUMMEL:** BECAUSE YOU CAN HAVE FUTURE DAMAGES.  
24 YOU CAN HAVE DAMAGES THAT ARE AFTER THE LAWSUIT. IN OTHER  
25 WORDS, THE GLA WAS IN EFFECT --

1           **THE COURT:** NOT UNLESS -- NOT UNLESS -- THE  
2 TRADITIONAL RULE IS THAT DAMAGES CUT OFF AS OF THE DATE OF THE  
3 FILING OF THE COMPLAINT.

4           NOW, I HAVE -- I ALLOW THE EXPERTS TO DO IT AS OF THE  
5 DATE OF THE EXPERT REPORT BECAUSE THIS ISSUE COMES UP SO OFTEN.

6           **MR. HUMMEL:** RIGHT.

7           **THE COURT:** SO WHEN WAS THE DATE OF THE EXPERT  
8 REPORT?

9           **MR. HUMMEL:** I DON'T HAVE IT IN FRONT OF ME.

10          JUNE 1, '08. JUNE 1, '08.

11          **THE COURT:** THEN DAMAGES COULD BE COLLECTED UP TO  
12 THAT DATE.

13          **MR. HUMMEL:** OKAY.

14          **THE COURT:** THEN IF HE DID A SPECIFIC FUTURE  
15 ANALYSIS, WHICH I DON'T THINK HE TESTIFIED TO --

16          **MR. HUMMEL:** HE DID NOT.

17          **THE COURT:** ALL RIGHT. WELL, THEN --

18          **MR. HUMMEL:** I JUST WANTED TO CLARIFY.

19          **THE COURT:** THAT SEEMS LIKE THAT'S CORRECT, ISN'T IT?

20          **MR. KESSLER:** NO, YOUR HONOR. IT'S VERY SIMPLE.  
21 THERE WERE THREE YEARS AT ISSUE, OKAY? AND WHAT THEY'RE TRYING  
22 TO DO IS CONFUSE THE FISCAL YEARS FROM THE CALENDAR YEARS. BUT  
23 IT DOESN'T MATTER. IN OTHER WORDS, ONCE A YEAR THERE'S A  
24 PAYMENT. SO THERE WAS A PAYMENT IN EACH OF THE THREE YEARS OF  
25 THE STATUTE OF LIMITATIONS, OKAY.

1           THEY CAN'T SQUEEZE FOUR YEARS WORTH OF PAYMENTS INTO  
2 THREE YEARS BY CLAIMING THAT BECAUSE THE FISCAL YEAR EXTENDS  
3 LATER THAT THEY SOMEHOW WOULD HAVE GOTTEN THOSE PAYMENTS.

4           **THE COURT:** WHEN IS THE PAYMENT MADE?

5           **MR. KESSLER:** THE PAYMENT IS MADE IN MARCH?

6           **MR. HUMMEL:** SEPTEMBER.

7           **MR. KESSLER:** SEPTEMBER OF EACH YEAR. THAT'S WHAT  
8 THEY'RE ENTITLED TO, THE SEPTEMBER PAYMENTS DURING EACH OF  
9 THOSE YEARS.

10          **THE COURT:** ALL RIGHT. WELL, OKAY. JUST A SECOND.  
11 I DON'T WANT TO MISSTATE THIS. I'VE GOT TO DRAW A DIAGRAM.

12          **MR. HUMMEL:** SO THERE'S A PAYMENT -- THE FIRST  
13 PAYMENT WITHIN THE CLASS PERIOD, YOUR HONOR, THEN, IS IN  
14 SEPTEMBER '04.

15          **MR. KESSLER:** CORRECT.

16          **MR. HUMMEL:** THERE'S ANOTHER ONE IN '05. THERE'S  
17 ANOTHER ONE IN '06, AND THERE'S ONE IN '07.

18          **THE COURT:** RIGHT. WHY ISN'T THAT RIGHT?

19          **MR. HUMMEL:** AND THE ONE IN '07 -- THAT'S RIGHT.

20          **MR. KESSLER:** NO, THE ONE IN '07 IS SEPTEMBER OF '07.

21          **THE COURT:** RIGHT. I ALLOW DAMAGES -- THE CLASS  
22 MEMBERS ARE DEFINED AS THEY ARE. BUT IF THOSE CLASS MEMBERS  
23 WERE ENTITLED -- I'M NOT SAYING THEY WERE, BUT IF THEY WERE  
24 ENTITLED AND PLAINTIFF PROVES THAT, TO RECOVER, THEY'RE  
25 ENTITLED TO RECOVER FOR THE '07 PAYMENT, TOO. I THINK THAT'S

1 RIGHT. I'M GOING TO ALLOW THAT.

2 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

3 **THE COURT:** THAT'S THE WAY --

4 **MR. KESSLER:** HERE'S THE PROBLEM, YOUR HONOR. THE  
5 SEPTEMBER '04 PAYMENT WAS FOR RIGHTS THAT ARE GOING TO INCLUDE  
6 PEOPLE BEFORE THE PERIOD OF TIME. THAT'S THE PROBLEM.

7 IN OTHER WORDS, YOU CAN'T SQUEEZE IN MORE THAN THREE.  
8 SO THE '04 PAYMENT INCLUDED RIGHTS IN '03, BEFORE THE CLASS  
9 STARTED.

10 THAT'S THE PROBLEM, RIGHT?

11 **THE COURT:** LET ME TEST YOU OUT ON THAT. LET'S SAY  
12 SOMEBODY SIGNS AN RP GLA ON FEBRUARY 15, '04.

13 **MR. KESSLER:** YES.

14 **THE COURT:** THE FIRST AND SECOND DAY OF THE PERIOD.

15 **MR. KESSLER:** YES.

16 **THE COURT:** ALL RIGHT. AND LET'S ASSUME THE  
17 PLAINTIFFS ARE CORRECT ON THEIR THEORY. WOULD THEY BE ALLOWED  
18 TO PARTICIPATE IN THE '04 -- SEPTEMBER '04 PAYMENT?

19 **MR. KESSLER:** NO.

20 **THE COURT:** WHY NOT?

21 **MR. KESSLER:** THE SEPTEMBER '04 PAYMENT WAS FOR  
22 FISCAL YEAR '03. SEE --

23 **THE COURT:** LOOK. HAVE YOU PUT IN EVIDENCE ON THIS  
24 POINT?

25 **MR. KESSLER:** I WILL PUT IN EVIDENCE ON THIS POINT IF

1 WE NEED IT. BUT IT WAS THEIR BURDEN OF PROOF. THEIR EXPERT  
2 UNDERSTOOD THAT THE FISCAL YEAR PAYMENTS -- AND I'LL PUT  
3 THAT --

4 **THE COURT:** I THINK YOU BETTER PUT IN EVIDENCE.  
5 RIGHT NOW YOU LAWYERS ARE TELLING ME THIS IS THE WAY THE POOL  
6 WORKS, BUT I HAVEN'T HEARD ANY EVIDENCE ON THIS.

7 **MR. KESSLER:** WE'LL PUT IN EVIDENCE THAT --

8 **THE COURT:** ALL RIGHT. SUBJECT TO WHAT MR. KESSLER  
9 SAID, IF IT ALWAYS WORKS THAT THE SEPTEMBER PAYMENT IS ONLY FOR  
10 PEOPLE WHO ARE PART OF THE POOL IN '03, THEN WE GET INTO AN  
11 ISSUE OF: IS IT ON AN ACCRUED BASIS OR A CASH BASIS?

12 HOW DO THEY DO IT FOR THE ACTIVE PLAYERS?

13 **MR. KESSLER:** THE SAME WAY. IN OTHER WORDS, THEY  
14 WOULD PAY IN SEPTEMBER OF THE NEXT CALENDAR YEAR FOR THE PRIOR  
15 FISCAL YEAR, WHICH CLOSED PREVIOUSLY. AND MOST OF THE CLASS --  
16 I DON'T THINK THERE ARE ANY CLASS MEMBERS WHO WOULD BE ENTITLED  
17 TO THE SEPTEMBER '04 PAYMENT.

18 THE ONLY POSSIBILITY -- AND I DON'T THINK THERE ARE  
19 ANY -- WOULD BE A CLASS MEMBER WHO SIGNED IN FEBRUARY, YOU  
20 KNOW, IN THE TWO WEEKS BEFORE THE BOOKS WERE CLOSED.

21 I DON'T THINK THERE ARE ANY SUCH CLASS MEMBERS.  
22 CERTAINLY WASN'T THE WHOLE CLASS.

23 **THE COURT:** I'M NOT RULING ON THIS POINT. I'M NOT  
24 SAYING YES. I'M NOT SAYING NO TO THIS POINT. IT MIGHT END UP  
25 BEING A MATTER OF PROOF.

1 WE GOT INTO IT WITH ONE WITNESS YESTERDAY. THE  
2 INTRICACIES OF HOW THE -- WHEN THE CUTOFFS ARE AND SO FORTH. I  
3 THINK IN YOUR CROSS EXAMINATION OF THEIR DAMAGES EXPERT YOU GOT  
4 INTO IT. BUT A LOT OF THAT WAS JUST YOU TALKING, MR. KESSLER.  
5 IT WASN'T THE WITNESS ADMITTING IT.

6 SO I'M CONFUSED IN MY OWN MIND OF WHAT THE RECORD  
7 ACTUALLY SHOWS. AND IF I WAS IN YOUR POSITION I WOULD PROVE  
8 WHATEVER YOU'RE TRYING TO PROVE UP ON THIS POINT.

9 **MR. KESSLER:** I UNDERSTAND, YOUR HONOR.

10 **THE COURT:** AND WHAT THE LEGAL SIGNIFICANCE OF IT IS,  
11 I DON'T KNOW, BECAUSE YOU GET INTO CASH VERSUS ACCRUAL. YOU  
12 GET INTO -- YOU GET INTO: HOW DOES IT WORK FOR THE ACTIVE  
13 PLAYERS? IT SHOULD WORK THE SAME WAY FOR THE RETIRED PLAYERS.

14 **MR. KESSLER:** IT ACTUALLY WILL BE PRETTY  
15 STRAIGHTFORWARD BECAUSE IT'S A CASH SYSTEM. THEY CLOSE THEIR  
16 BOOKS. IT'S JUST A QUESTION OF WHAT PERIOD OF TIME, WHEN DID  
17 THEY MAKE THE PAYMENTS, AND WE'LL PROVE THAT UP.

18 **MR. HUMMEL:** I JUST WANTED TO CLARIFY MY POINT.

19 **THE COURT:** I ACCEPT WHAT YOU SAID ON THE END OF THE  
20 PERIOD.

21 **MR. HUMMEL:** RIGHT.

22 **THE COURT:** SO YOU STILL HAVE THIS ISSUE ABOUT THE  
23 FIRST OF THE PERIOD.

24 **MR. HUMMEL:** I APPRECIATE THAT, YOUR HONOR. THANK  
25 YOU.

1           **THE COURT:** ALL RIGHT. WHAT ELSE DO WE HAVE?

2           **MR. KESSLER:** NOTHING FROM US.

3           **MR. KATZ:** NOTHING, YOUR HONOR.

4           **THE COURT:** WHAT WITNESS DO WE HAVE ON THE STAND NOW?

5           **MR. KESSLER:** MR. ARMSTRONG WAS STILL IN MY DIRECT.

6 WE WILL CALL HIM FROM OUTSIDE, IF THE JURY IS HERE.

7           **THE COURT:** WE WILL SEE IF THEY ARE ALL HERE.

8           **MR. KATZ:** HE'S JUST OUTSIDE REVIEWING THE MINUTES,

9 YOUR HONOR.

10          **THE COURT:** GOOD. HIS MEMORY WILL BE REFRESHED.

11                    (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT,

12                    IN THE PRESENCE OF THE JURY.)

13          **THE COURT:** WELCOME BACK. HAVE A SEAT.

14                    MR. ARMSTRONG IS OUR WITNESS ON THE STAND. AND YOU

15 WILL REMEMBER THAT WE HAD ABOUT, LOOKS LIKE, 32 MINUTES OF

16 DIRECT TESTIMONY.

17                    MR. KESSLER IS STILL IN HIS DIRECT TESTIMONY PHASE.

18                    YOU MAY CONTINUE.

19                                    **TRACE ARMSTRONG,**

20 CALLED AS A WITNESS FOR THE DEFENDANTS HEREIN, HAVING BEEN

21 PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED FURTHER AS

22 FOLLOWS:

23                                    **DIRECT EXAMINATION RESUMED**

24 **BY MR. KESSLER:**

25 **Q.** GOOD MORNING, MR. ARMSTRONG.

1 **A.** GOOD MORNING.

2 **MR. KESSLER:** GOOD MORNING, LADIES AND GENTLEMEN.

3 **BY MR. KESSLER:**

4 **Q.** MR. ARMSTRONG, WHEN WE CONCLUDED YESTERDAY I WAS JUST  
5 ABOUT TO ASK YOU ABOUT THE ELIGIBILITY CRITERIA FOR THE GLR  
6 POOL, THE GROSS LICENSING REVENUE POOL?

7 **A.** YES.

8 **Q.** AND MR. ARMSTRONG, DURING THE TIME YOU WERE A PLAYER  
9 REPRESENTATIVE OR AN OFFICER OF THE UNION, DID THE PLAYERS VOTE  
10 ON THE ELIGIBILITY CRITERIA FOR THE GLR POOL?

11 **A.** WE DID.

12 **Q.** OKAY. LET ME SHOW YOU -- YOU SHOULD HAVE IN FRONT OF YOU  
13 A COPY OF TRIAL EXHIBIT 2247, ALREADY IN EVIDENCE.

14 YOU DON'T HAVE IT?

15 **A.** SORRY, ANOTHER FOLDER.

16 **Q.** TAKE THIS ONE.

17 **A.** I'VE GOT IT.

18 **Q.** AND DO YOU RECOGNIZE THIS RESOLUTION FROM THE MARCH 18TH  
19 TO 20TH, 1991 MEETING OF THE NFLPA BOARD OF DIRECTORS MEETING?

20 **A.** I DO.

21 **Q.** DID YOU ATTEND THAT MEETING?

22 **A.** I DID.

23 **Q.** AND IT SAYS THAT:

24 "THE BOARD THEN DISCUSSED WHO SHOULD BE REGARDED  
25 AS A PARTICIPATING PLAYER IN THE GROUP LICENSING PROGRAM.

1 AFTER EXTENSIVE DISCUSSION, DAVE DUERSON MOVED THAT SUCH A  
2 PARTICIPATING PLAYER SHOULD BE ELIGIBLE IF HE WAS ON THE  
3 INJURED RESERVE OR ACTIVE LIST OF A CLUB AT THE END OF THE 1989  
4 SEASON OR WAS ON THE REGULAR SEASON ROSTER AT THE BEGINNING OF  
5 THE 1990 SEASON.

6 "HE EXPANDED HIS MOTION TO ALSO INCLUDE ANY  
7 PLAYER WHO SIGNED A GROUP LICENSING AUTHORIZATION AND WAS ON  
8 THE DEVELOPMENTAL SQUAD AT THE END OF THE 1989 SEASON, AND ALSO  
9 ANY PRACTICE SQUAD PLAYER WHO SIGNED A GROUP LICENSING  
10 AUTHORIZATION AND WAS ON THE PRACTICE SQUAD ROSTER AT THE  
11 BEGINNING OF THE 1990 SEASON."

12 THEN, IT SAYS:

13 "DAVE'S MOTION WAS SECONDED BY GARY REASONS.  
14 AFTER EXTENSIVE DISCUSSION IT PASSED UNANIMOUSLY."

15 DO YOU RECALL THAT, MR. ARMSTRONG?

16 **A.** VERY WELL.

17 **Q.** WAS THIS SOMETHING THAT WAS DISCUSSED EXTENSIVELY,  
18 DISCUSSED A LITTLE? WHAT DO YOU RECALL?

19 **A.** IT WAS ONE OF THOSE EXTENSIVE DISCUSSIONS THAT WE TALKED  
20 ABOUT YESTERDAY. THIS WAS DEBATED OVER THE COURSE OF SEVERAL  
21 HOURS IN THAT MEETING.

22 **Q.** NOW, WAS THE POOL OF MONEY BEING DISCUSSED HERE MONEY THAT  
23 CONTAINED MONEY FROM ACTIVE PLAYER LICENSING OR RETIRED PLAYER  
24 LICENSING, OR BOTH?

25 **A.** IT WAS JUST ACTIVE PLAYER LICENSING. THE WAY IT WAS

1 CONSTRUCTED WITH THE PLAYER BEING ON THE ROSTER AT THE  
2 BEGINNING OF THE YEAR AND THE END OF THE YEAR, WE WANTED THE  
3 PLAYERS THAT PARTICIPATED IN EARNING THE REVENUE FOR THAT YEAR  
4 TO SHARE IN THE REVENUE.

5 SO IT WOULD ONLY BE A PLAYER THAT WAS ON THE  
6 BEGINNING AND THE END OF THE YEAR.

7 WE DIDN'T WANT A SITUATION WHERE A GUY WAS ADDED FOR  
8 ONE GAME, AND THEN HE WOULD BE ENTITLED TO AN EQUAL SHARE OF  
9 THE REVENUE. WE DIDN'T THINK THAT WAS FAIR. SOMEBODY HAD TO  
10 BE ON THE TEAM THE ENTIRE YEAR.

11 AND THEN, THE WAY THE REVENUES WERE PAID OUT THEY  
12 WERE PAID OUT IN THE FOLLOWING YEAR AFTER WE HAD A CHANCE TO  
13 REVIEW THE FINANCIALS AND SEE WHAT WE ACTUALLY EARNED IN THAT  
14 SEASON.

15 **Q.** NOW, IF A PLAYER PLAYED JUST THREE OR FOUR GAMES, AN  
16 ACTIVE PLAYER, IN THE MIDDLE OF THE SEASON, WOULD HE BE  
17 ENTITLED TO AN EQUAL SHARE EVEN IF HE SIGNED A GLA?

18 **A.** NO. HE HAD TO MEET THE CRITERIA.

19 **Q.** NOW, MR. ARMSTRONG, WAS THE CRITERIA REVIEWED EACH OF THE  
20 YEARS AT THE MEETINGS; DO YOU RECALL?

21 **A.** YES.

22 **Q.** LET'S TAKE A LOOK NEXT AT TRIAL EXHIBIT 1307 THAT'S IN  
23 EVIDENCE. I DON'T KNOW IF YOU HAVE IT UP THERE, MR. ARMSTRONG.

24 **A.** THANK YOU.

25 **MR. KESSLER:** IF WE COULD SHOW THIS.

1 (DOCUMENT DISPLAYED.)

2 **BY MR. KESSLER:**

3 **Q.** THIS WAS THE ELIGIBILITY CRITERIA FOR THE 2003 SEASON,  
4 PAYMENT DURING THE 2004 SEASON. DO YOU SEE THAT? CORRECT?

5 **A.** UH-HUH.

6 **Q.** BY THE WAY, DO YOU KNOW WHAT IT MEANS THAT YOU'RE ELIGIBLE  
7 FOR THE 2003 SEASON, BUT THE PAYMENT'S MADE IN THE SUBSEQUENT  
8 SEASON?

9 **A.** YES. WE WOULD WAIT UNTIL THE FINAL ACCOUNTING WAS IN.  
10 OFTENTIMES, WHEN YOU HAVE A LICENSING AND MARKETING PROGRAM  
11 CHECKS WOULD NOT COME IN UNTIL THE END OF THE YEAR. AND SO WE  
12 HAD TO GO THROUGH A FINAL ACCOUNTING IN MARCH, TO DETERMINE,  
13 BASICALLY, HOW MUCH MONEY THE LICENSING AND MARKETING  
14 OPPORTUNITIES EARNED FOR THAT YEAR, AND THEN THE POOL WOULD BE  
15 DIVIDED UP EQUALLY BASED ON THE CRITERIA.

16 **Q.** SO IF A PAYMENT WAS MADE, LET'S SAY, IN MARCH -- I'M  
17 SORRY, IN SEPTEMBER -- WAS SEPTEMBER THE TIME THE MONEY WAS  
18 USUALLY DISTRIBUTED; DO YOU RECALL?

19 **A.** YES, FOR THE PRIOR YEARS.

20 **Q.** SO IF THE PAYMENTS WERE DISTRIBUTED FROM THE GROSS  
21 LICENSING REVENUE POOL --

22 **A.** UH-HUH.

23 **Q.** -- IN SEPTEMBER OF 2004, FOR WHAT SEASON WOULD THAT BE?

24 **A.** FOR THE PREVIOUS SEASON.

25 **Q.** FOR THE 2003 SEASON?

1 **A.** 2003 SEASON.

2 **Q.** THANK YOU. NOW, THIS HAS CRITERIA:

3 "IN ORDER FOR A PLAYER TO BE CONSIDERED ELIGIBLE  
4 HE MUST HAVE APPEARED ON THE LAST GAME ROSTER OF THE 2002  
5 SEASON AND/OR MUST HAVE APPEARED ON THE FIRST GAME ROSTER OF  
6 THE 2003 SEASON."

7 IS THAT THE SAME CRITERIA YOU HAD ADOPTED BACK IN  
8 1994?

9 **A.** YES.

10 **Q.** SO THE CRITERIA DIDN'T CHANGE DURING THAT PERIOD?

11 **A.** NO.

12 **Q.** AND IF YOU LOOK DOWN ON PRACTICE SQUAD PLAYERS.

13 **MR. KESSLER:** IF WE CAN GO TO THAT, WHICH I THINK IS  
14 THE NEXT PARAGRAPH.

15 (DOCUMENT DISPLAYED.)

16 **BY MR. KESSLER:**

17 **Q.** IT SAYS -- WELL, THIS IS ROOKIE PLAYERS?

18 **A.** UH-HUH.

19 **Q.** LET'S GO TO PRACTICE SQUAD PLAYERS.

20 **MR. KESSLER:** I DON'T HAVE IT IN FRONT OF ME, LAUREN,  
21 IF YOU COULD FIND WHERE THAT IS. THANK YOU.

22 IT SAYS -- NO. IF I CAN SEE A COPY OF THE DOCUMENT,  
23 IF SOMEONE GIVES IT TO ME FOR MR. ARMSTRONG.

24 (DOCUMENT DISPLAYED.)

25

1 **BY MR. KESSLER:**

2 **Q.** OH, HERE IT IS:

3 "PLAYERS WHO MEET THE ABOVE CRITERIA WITH ONLY  
4 THE STATUS OF PS RECEIVE A REDUCED AMOUNT OF 1,000."

5 SO I WANT TO UNDERSTAND THAT, OKAY.

6 DOES "PS" MEAN PRACTICE SQUAD?

7 **A.** IT DOES.

8 **Q.** EXPLAIN TO THE JURY WHAT IS THE PRACTICE SQUAD? WE'VE  
9 SPOKEN ABOUT THAT. WHAT IS THAT?

10 **A.** PRACTICE SQUAD IS A SMALL GROUP OF SIX PLAYERS THAT THE  
11 CLUB WILL SIGN. AND THEY'RE DEVELOPMENTAL PLAYERS, USUALLY  
12 VERY YOUNG PLAYERS WHO ARE MAYBE NOT TALENTED ENOUGH TO MAKE  
13 THE REGULAR ROSTER, BUT THE CLUB WANTED TO HAVE THEM STILL OUT  
14 THERE PRACTICING. THEY GET PAID A LESSER AMOUNT OF MONEY AND  
15 WERE DEVELOPMENTAL PLAYERS.

16 DID NOT PLAY ON SUNDAY. OFTENTIMES DID NOT TRAVEL  
17 WITH THE TEAM, IF WE LEFT TO GO ON THE ROAD AND PLAY A GAME.

18 **Q.** COULD THEY PLAY IN AN ACTUAL GAME WITHOUT BECOMING AN  
19 ACTIVE PLAYER?

20 **A.** NO. NO.

21 **Q.** SO THEY WOULD JUST BE PRACTICING DURING THE WEEK?

22 **A.** THAT'S RIGHT.

23 **Q.** NOW, DID THE BOARD OF PLAYER REPS DECIDE TO ONLY PAY THE  
24 PRACTICE SQUAD PLAYERS \$1,000?

25 **A.** WE DID.

1 Q. AND WHY WAS THAT DECISION MADE?

2 A. BECAUSE THEY WEREN'T ACTUALLY PLAYING THE GAMES ON  
3 SUNDAYS. THEY WEREN'T ON THE ACTIVE ROSTER. WE FELT LIKE THE  
4 PRACTICE SQUAD GUYS WERE VERY IMPORTANT TO A TEAM, IN THAT THEY  
5 GIVE YOU MANPOWER DURING THE WEEK AS GUYS GET INJURED. AND  
6 THEY ARE ALSO ANOTHER CHANCE TO DEVELOP YOUNG PLAYERS.

7 SO OFTENTIMES YOU MIGHT HAVE ONE OR TWO PLAYERS FROM  
8 THIS PRACTICE SQUAD THAT DEVELOPS, AND YOU BRING THEM UP ON TO  
9 THE ACTIVE ROSTER. SO WE FELT LIKE IT WAS APPROPRIATE FOR THEM  
10 TO PARTICIPATE IN THE PROGRAM, BUT JUST NOT GET A FULL SHARE,  
11 AS MOST OF THOSE GUYS WEREN'T ON THE ACTIVE ROSTER EVER.

12 Q. NOW, AGAIN, WE'RE IN 2003 CRITERIA NOW, YOUR LAST PERIOD  
13 OF TIME THAT YOU WERE IN THE BOARD.

14 WERE THESE CRITERIA FOR -- WERE THESE THE CRITERIA  
15 FOR THE GROSS LICENSING REVENUE POOL?

16 A. YES.

17 Q. OKAY. AND DID THAT POOL HAVE ANY RETIRED PLAYER MONEY IN  
18 IT, TO YOUR KNOWLEDGE?

19 A. NO, IT DID NOT.

20 Q. NOW, WHY DIDN'T THE BOARD OF PLAYER REPRESENTATIVES SIMPLY  
21 DECIDE TO GIVE THE ACTIVE PLAYER MONEY IN THE GROSS LICENSING  
22 REVENUE POOL, GIVE SHARES TO THE RETIRED PLAYERS?

23 A. WELL, IT WOULDN'T HAVE FIT WITH THE OBJECTIVES FOR  
24 STARTING PLAYERS INC AND DEVELOPING THIS PROGRAM.

25 MR. LECLAIR: YOUR HONOR, EXCUSE ME. I APOLOGIZE FOR

1 INTERRUPTING, BUT I HAVE AN OBJECTION.

2 IS THIS TALKING ABOUT DURING THE MEETING? OR IS THIS  
3 SOME OTHER DISCUSSION?

4 **THE COURT:** PLEASE CLARIFY THAT POINT.

5 **BY MR. KESSLER: :**

6 **Q.** OKAY. DO YOU HAVE AN UNDERSTANDING -- YOU WERE PRESIDENT  
7 OF THE UNION AT THIS TIME?

8 **A.** YES.

9 **Q.** DID YOU HAVE AN UNDERSTANDING AS PRESIDENT OF THE UNION AT  
10 THAT TIME AS TO WHY THERE WOULDN'T -- WHY THE ACTIVE PLAYER  
11 BOARD DIDN'T JUST SAY:

12 "LET'S TAKE THE ACTIVE PLAYER LICENSING MONEY IN  
13 THE GROSS LICENSING REVENUE POOL AND GIVE SHARES TO THE RETIRED  
14 PLAYERS"?

15 **MR. LECLAIR:** YOUR HONOR, SAME OBJECTION: FOUNDATION.  
16 I DON'T KNOW IF WE'RE TALKING ABOUT A DISCUSSION THAT OCCURRED  
17 AT THE BOARD MEETING, OR ARE WE TALKING ABOUT SOME OTHER  
18 DISCUSSION? I WOULD LIKE TO HAVE A FOUNDATION.

19 **THE COURT:** CORRECT. SUSTAINED.

20 IF HE'S JUST GIVING HIS OWN PERSONAL OPINIONS I'M NOT  
21 SURE THAT'S -- IT SOUNDED LIKE YOU WERE TALKING ABOUT SOME  
22 MEETING WHERE THE DISCUSSION TOOK PLACE, AND THIS WAS EXPRESSLY  
23 STATED. MAYBE WE VEERED OFF OF THAT, AND THAT'S NOT WHAT YOU  
24 HAVE IN MIND. BE VERY CLEAR.

25

1 **BY MR. KESSLER:**

2 **Q.** I'LL ASK MR. ARMSTRONG: WHAT'S THE BASIS FOR YOUR  
3 UNDERSTANDING?

4 **A.** THE BASIS IS 15 YEARS OF BOARD MEETINGS AND BEING INVOLVED  
5 IN WHEN WE STARTED PLAYERS INC WHAT THE ORIGINAL INTENT OF THE  
6 COMPANY WAS, AND THEN EVERY YEAR AS WE REVISITED LICENSING AND  
7 MARKETING WE ALWAYS WENT BACK TO THE ORIGINAL INTENT.

8 SO EVERY DECISION THAT WAS MADE, EVERY DISCUSSION WAS  
9 DONE WITH THE BASIS OF, YOU KNOW: WHY ARE WE DOING THIS?

10 AND WHY WE WERE DOING IT WAS TO SECURE THE FINANCIAL  
11 FUTURE OF THE UNION TO PROVIDE LEVERAGE AND RESOURCES FOR OUR  
12 ORGANIZATION IN OUR EFFORTS AND BATTLES AGAINST MANAGEMENT.  
13 AND THEN, ALSO TO BE ABLE TO REWARD PLAYERS, ACTIVE PLAYERS WHO  
14 PARTICIPATED IN LICENSING AND MARKETING.

15 THE WAY THIS SYSTEM WAS STRUCTURED, YOU CAN SEE THERE  
16 HAD TO BE A FULL ACCOUNTING OF LICENSING AND MARKETING REVENUE  
17 FOR A YEAR, AND THEN THE PLAYERS WHO WERE REWARDED FOR THAT  
18 WERE JUST THE PLAYERS THAT PARTICIPATED.

19 IT WAS CONSTRUCTED SPECIFICALLY THAT WAY SO THAT --  
20 FOR THE ACTIVE PLAYER MONEY. THE ONLY GUYS THAT GOT THE MONEY  
21 WERE THE GUYS THAT WERE A PART OF THE PROGRAM.

22 **Q.** IF -- IF THOUSANDS OF RETIRED PLAYERS COULD SIMPLY SIGN A  
23 PIECE OF PAPER AND GET AN EQUAL SHARE OF THE ACTIVE PLAYER  
24 LICENSING MONEY COULD THE UNION IN YOUR VIEW HAVE ACHIEVED ITS  
25 OBJECTIVES THAT WAY?

1 **A.** NO.

2 **MR. LECLAIR:** OBJECTION. SPECULATION, YOUR HONOR.

3 **THE COURT:** WELL, THIS IS A PRESENT DAY OPINION, AS  
4 PHRASED.

5 I WANT TO GO BACK TO THE PRIOR THING. I'M GOING TO  
6 ALLOW THAT PRIOR ANSWER TO STAND, BUT NOW THAT I'VE HEARD WHAT  
7 THE FOUNDATION IS, I NEED A WORD OF CAUTION TO THE JURY.

8 IT SOUNDS LIKE THIS WITNESS WAS PRESENT AT A LOT OF  
9 MEETINGS AND IS BASING HIS TESTIMONY ON 15 YEARS AND SO FORTH.

10 BUT HE'S NOT TRYING TO RECOUNT ANY SPECIFIC  
11 CONVERSATION OR MEETING, BUT, RATHER, HE'S GIVING WHAT I CALL  
12 LAY OPINION.

13 THIS IS HIS LAY OPINION OF WHY THE CHANGE WAS MADE.  
14 AND LIKE ALL OPINIONS, YOU MUST EVALUATE IT AND DECIDE HOW MUCH  
15 WEIGHT TO GIVE TO IT. IT'S NOT QUITE THE SAME THING AS, YOU  
16 KNOW, "THE LIGHT WAS RED" OR "THE LIGHT WAS GREEN."

17 THIS IS A LAY OPINION BY THIS WITNESS ABOUT WHAT HE  
18 THINKS THE COURSE AND REASONING WAS BY A GROUP OF PEOPLE OVER A  
19 COURSE OF 15 YEARS. THAT'S OPINION. THAT'S NOT AS BRIGHT A  
20 LINE AS "THE LIGHT WAS RED" OR "THE LIGHT WAS GREEN."

21 SO YOU TAKE THAT OPINION FOR WHAT YOU THINK IT WAS  
22 WORTH.

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

24 **BY MR. KESSLER:**

25 **Q.** AND I ASK ONE MORE QUESTION: IN 15 YEARS TIME AS

1 PRESIDENT IN 2003 --

2 **A.** YES.

3 **Q.** -- I'LL ASK THE QUESTION: COULD ALL RETIRED PLAYERS WHO  
4 SIGNED THE FORM, COULD THE UNION, THE ACTIVE PLAYERS, HAVE  
5 GIVEN THEM EACH AN EQUAL SHARE OF ACTIVE PLAYER LICENSING, AND  
6 COULD YOU STILL HAVE ACHIEVED THE OBJECTIVES OF USING LICENSING  
7 IN UNION ACTIVITIES AS YOU UNDERSTOOD THEM BASED ON THOSE 15  
8 YEARS?

9 **A.** NO.

10 **MR. LECLAIR:** EXCUSE ME, YOUR HONOR. I OBJECT TO  
11 SPECULATION UNLESS THIS WAS ACTUALLY DISCUSSED.

12 **THE COURT:** NO. HE CAN GIVE A LAY OPINION ON THIS  
13 POINT AND EXPLAIN WHY. IT IS AN OPINION, AND AT SOME POINT  
14 OPINIONS BECOME SPECULATION.

15 YOU HAVE A POINT, MR. LECLAIR. HE HAS 15 YEARS OF  
16 EXPERIENCE TO BASE THIS ON. AND IT'S UP TO THE JURY TO  
17 EVALUATE HOW RELIABLE THE LAY OPINION IS.

18 OVERRULED.

19 **BY MR. KESSLER:**

20 **Q.** SO COULD YOU PLEASE EXPLAIN TO THE JURY?

21 **A.** YES. THIS ISSUE WAS ADDRESSED EVERY YEAR. SO WHEN WE  
22 STARTED THE COMPANY BACK IN 1994, SO EVERY YEAR YOU WOULD GO  
23 THROUGH THE FINANCIALS, AND YOU WOULD LOOK AT: OKAY. THIS IS  
24 HOW MUCH REVENUE CAME IN FROM LICENSING AND MARKETING. THIS IS  
25 HOW IT'S BEING ALLOCATED.

1 SO THE PREMISE FOR THE COMPANY AND THE MISSION FOR  
2 THE COMPANY WAS ACTUALLY ADDRESSED EVERY YEAR. THE BOARD  
3 MEMBERS ADDRESSED IT EVERY YEAR.

4 SO WE EVALUATE THE PERFORMANCE OF THE COMPANY AND IS  
5 IT DOING WHAT WE WANT IT AS PLAYERS TO DO.

6 AND THERE WOULD BE TIMES WHEN DOUG OR PAT ALLEN WOULD  
7 BE QUESTIONED AT LENGTH AND QUITE HEAVILY ABOUT SPECIFIC  
8 PERFORMANCE IN DIFFERENT AREAS: ARE THERE OTHER AREAS WE NEED  
9 TO BE LOOKING AT?

10 AND SO, AGAIN, ALL THAT QUESTIONING WAS TO ENSURE  
11 THAT THE COMPANY WAS DOING WHAT WE INTENDED TO DO. WAS IT  
12 MEETING THE TWO CRITERIA?

13 **Q.** NOW, I TAKE IT FROM THE CRITERIA IT WAS SPECIFICALLY  
14 DISCUSSED AND VOTED UPON THAT ONLY ACTIVE PLAYERS COULD SHARE  
15 IN THE GLR POOL?

16 **A.** THAT'S RIGHT.

17 **Q.** NOW, MR. ARMSTRONG, THE GLR POOL MONEY THAT THE ACTIVE  
18 PLAYERS SHARED, 40 PERCENT WENT TO THE UNION?

19 **A.** YES.

20 **Q.** 23 PERCENT WENT TO PLAYERS INC?

21 **A.** YES.

22 **Q.** FOR RETIRED PLAYER LICENSING MONEY THAT WAS GENERATED, DID  
23 40 PERCENT GO TO THE UNION?

24 **A.** NO.

25 **Q.** HOW MUCH WENT TO THE UNION?

1 **A.** VIRTUALLY NOTHING.

2 **Q.** OKAY. FOR RETIRED PLAYER LICENSING MONEY, DID 23 PERCENT  
3 GO TO PLAYERS INC?

4 **A.** NO.

5 **Q.** HOW MUCH WENT TO PLAYERS INC?

6 **A.** NONE.

7 **Q.** OKAY. WHO GOT THE RETIRED PLAYER LICENSING MONEY?

8 **A.** RETIRED PLAYERS.

9 **Q.** NOW, MR. ARMSTRONG, IF THERE HAD BEEN A DECISION MADE IN  
10 THE UNION WHILE YOU WERE THERE TO GIVE EVERY RETIRED PLAYER AN  
11 EQUAL SHARE INTEREST IN THE LICENSING MONEY OF ACTIVE PLAYERS  
12 IN THE GLR POOL, WOULD THAT HAVE TO HAVE BEEN PRESENTED TO THE  
13 BOARD OF ACTIVE PLAYER REPS FOR APPROVAL?

14 **A.** YES. YES, IT WOULD HAVE HAD TO BEEN PRESENTED TO THE  
15 BOARD AND VOTED ON.

16 **Q.** OKAY.

17 **A.** I CAN TELL YOU THAT THERE WOULD NOT HAVE BEEN MUCH OF A  
18 CHANCE THAT THAT WOULD HAVE HAPPENED.

19 **Q.** WELL, DON'T SPECULATE WHAT WOULD HAVE HAPPENED. WAS IT  
20 EVER PRESENTED?

21 **A.** NO.

22 **Q.** WAS IT EVER -- DID ANYONE EVER PROPOSE DOING THAT?

23 **A.** NO.

24 **Q.** FINALLY, MR. ARMSTRONG, I WOULD LIKE TO ASK YOU NOW ABOUT  
25 YOUR OWN SITUATION.

1                   YOU TESTIFIED YESTERDAY THAT YOU WERE ON A SUPER BOWL  
2 TEAM?

3 **A.**    YES.

4 **Q.**    IS THAT CORRECT?

5 **A.**    YEAH.

6 **Q.**    YOU WERE ON ONE PRO BOWL?

7 **A.**    YES.

8 **Q.**    YOU WERE ALL PRO?

9 **A.**    YES.

10 **Q.**    OKAY.    SINCE YOU'VE -- WHEN DID YOU RETIRE?

11 **A.**    2003.

12 **Q.**    OKAY.    SO THAT WASN'T SO LONG AGO, JUST FIVE YEARS AGO.

13 OKAY.

14                   SINCE YOU LEFT THE NFL AS A RETIRED PLAYER, HAS  
15 ANYBODY LICENSED YOUR NAME AND IMAGE FOR ANY PRODUCT?

16 **A.**    NO.

17 **Q.**    HAS ANYONE TRIED -- ASKED YOU OR SOUGHT YOU OUT TO LICENSE  
18 YOUR NAME AND IMAGE FOR ANY PRODUCT?

19 **A.**    NO.

20 **Q.**    OKAY.    DO YOU GET MANY REQUESTS WHERE YOU'RE RECOGNIZED  
21 FOR AUTOGRAPHS TODAY?

22 **A.**    YEAH, SOMETIMES.

23 **Q.**    DO YOU GET AS MUCH AS WHEN YOU FIRST RETIRED?

24 **A.**    NO.

25 **Q.**    DESCRIBE TO THE JURY WHAT YOU PERCEIVE ABOUT YOUR OWN

1 NOTORIETY TO THE PUBLIC SINCE YOU'VE RETIRED?

2 **A.** I WAS, YOU KNOW, VERY FORTUNATE. I WAS -- I PLAYED IN  
3 GREAT PLACES AND I WAS, I WOULD SAY, A GOOD PLAYER FOR A LONG  
4 PERIOD OF TIME IN THE NFL. WHILE YOU'RE PLAYING IT'S VERY  
5 EXCITING. YOU ARE PART OF SOMETHING THAT IS BIGGER THAN YOU  
6 ARE. IT'S FUN, AND THERE'S A LOT OF NOTORIETY THAT GOES WITH  
7 THAT.

8 AND SOME OF THAT FOLLOWS YOU IN YOUR FIRST YEAR OR  
9 TWO OUTSIDE THE GAME. BUT THAT VERY QUICKLY FADES.

10 AND I'M 43. I'VE BEEN OUT OF THE GAME FIVE YEARS.  
11 AND NOW MY TIME AS A PLAYER IS JUST AN INTERESTING CHAPTER IN  
12 MY LIFE.

13 I HAVE KIDS. I GO TO THEIR GAMES. I GO TO THEIR  
14 SCHOOLS. NOBODY TREATS ME ANY DIFFERENTLY. NOBODY ASKS FOR  
15 AUTOGRAPHS.

16 AGAIN, IT'S JUST SOMETHING INTERESTING I USED TO DO.

17 **Q.** DO YOU THINK THE LICENSING OF YOUR NAME OR IMAGE HAS ANY  
18 MATERIAL ECONOMIC VALUE?

19 **A.** NO.

20 **Q.** DOES THAT SURPRISE YOU?

21 **A.** NO.

22 **MR. KESSLER:** THANK YOU, MR. ARMSTRONG. I HAVE NO  
23 FURTHER QUESTIONS AT THIS TIME.

24 **THE COURT:** MR. LECLAIR, CROSS EXAMINATION.

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

**CROSS EXAMINATION**

1

2 **BY MR. LECLAIR:**3 **Q.** GOOD MORNING, MR. ARMSTRONG.4 **A.** GOOD MORNING.5 **Q.** MR. ARMSTRONG, DURING YOUR TENURE -- YOU WERE THE  
6 PRESIDENT OF THE UNION FOR EIGHT YEARS, CORRECT?7 **A.** YES.8 **Q.** AND DURING YOUR TENURE DID YOU WORK CLOSELY WITH GENE  
9 UPSHAW, DOUG ALLEN AND RICHARD BERTHELSEN?10 **A.** I DID.11 **Q.** DID YOU REMAIN CLOSE TO GENE UPSHAW AFTER YOU LEFT THE  
12 PRESIDENCY?13 **A.** I DID.14 **Q.** AS A MATTER OF FACT, YOU SPOKE AT HIS FUNERAL, DIDN'T YOU,  
15 SIR?16 **A.** I DID.17 **Q.** DOES CREATIVE ARTISTS AGENCY -- BY THE WAY, THAT'S A VERY  
18 LARGE TALENT AGENCY, IS IT NOT, SIR?19 **A.** YES.20 **Q.** ONE OF THE BIGGEST IN THE COUNTRY?21 **A.** YES, I IMAGINE.22 **Q.** DO THEY REPRESENT PROFESSIONAL FOOTBALL PLAYERS?23 **A.** YES. THERE'S A DIVISION OF THE COMPANY THAT DOES.24 **Q.** AN ENTIRE DIVISION REPRESENTING FOOTBALL PLAYERS?25 **A.** RIGHT.

1 Q. OKAY. DOES --

2 A. THERE'S ALSO ONE REPRESENTING TV ACTORS, MUSICIANS.

3 Q. RIGHT. SO, IN OTHER WORDS, IT'S A VERY LARGE AGENCY. BUT  
4 ONE OF THE DIVISIONS IS REPRESENTATION OF PROFESSIONAL FOOTBALL  
5 PLAYERS?

6 A. UH-HUH.

7 Q. ALTHOUGH YOU SAID YOU PERSONALLY DON'T REPRESENT ANY  
8 FOOTBALL PLAYERS?

9 A. I DO NOT.

10 Q. ALL RIGHT. DO GOOD RELATIONSHIPS WITH THE UNION HELP IN  
11 CONNECTION WITH REPRESENTATION OF PROFESSIONAL FOOTBALL  
12 PLAYERS?

13 A. I DON'T KNOW THAT IT HELPS OR HURTS.

14 Q. ALL RIGHT, SIR. NOW, YOU RETIRED AFTER THE 2003 SEASON;  
15 IS THAT CORRECT, SIR?

16 A. YES.

17 Q. AND JUST -- THE JURY MAY NOT KNOW THIS. YOU DID NOT  
18 ACTUALLY SIGN THE GLA WHICH IS AT ISSUE IN THIS CASE, CORRECT?

19 A. I SIGNED A -- I SIGNED MANY GLA'S. I DON'T KNOW WHICH ONE  
20 YOU'RE REFERRING TO, SPECIFICALLY.

21 Q. WELL, THE ONE -- I THINK YOU HAVE IT IN FRONT OF YOU, I  
22 HOPE, EXHIBIT 1164-3.

23 OKAY. I'M SORRY. I'VE GOT IT.

24 A. NO.

25 MR. LECLAIR: MAY I APPROACH, YOUR HONOR?

1 **BY MR. LECLAIR:**

2 **Q.** MY APOLOGIES, SIR.

3 **A.** UH-HUH.

4 **Q.** IS THIS THE -- OUR INFORMATION IS THIS IS THE GLA YOU  
5 SIGNED AFTER YOU RETIRED.

6 **A.** YES.

7 **Q.** ALL RIGHT, SIR.

8 **MR. LECLAIR:** I'LL MOVE THE ADMISSION OF EXHIBIT  
9 1164-3, YOUR HONOR.

10 **MR. KESSLER:** NO OBJECTION.

11 **THE COURT:** RECEIVED.

12 (TRIAL EXHIBIT 1164-3 RECEIVED IN EVIDENCE.)

13 **MR. LECLAIR:** AND IF WE COULD BLOW THIS UP.

14 (DOCUMENT DISPLAYED.)

15 **BY MR. LECLAIR:**

16 **Q.** YOU SIGNED THIS ON APRIL 11, 2006, MR. ARMSTRONG; IS THAT  
17 CORRECT?

18 **A.** YES.

19 **Q.** AND IS THAT BECAUSE YOUR ACTIVE PLAYER GLA REMAINED IN  
20 EFFECT, OR DID YOU HAVE A PERIOD OF TIME WHEN YOU DIDN'T SIGN  
21 ANY GLA?

22 **A.** I BELIEVE THERE WAS A PERIOD OF TIME WHEN I DIDN'T SIGN A  
23 GLA.

24 **Q.** ALL RIGHT, SIR. AND THIS GLA -- ACTUALLY, THE JURY IS  
25 VERY FAMILIAR WITH THE GLA AT ISSUE IN THIS CASE.

1           THIS ONE IS THE ONE THAT WAS PUT INTO PLACE IN LATE  
2 2005, STARTED BEING USED. WERE YOU AWARE OF THAT, SIR?

3 **A.**    YES.

4 **Q.**    THAT THERE WAS A CHANGE IN THE GLA?

5 **A.**    UHM, I KNEW THERE WAS A NEW DOCUMENT, YES.

6 **Q.**    OKAY. AND, FOR EXAMPLE, THIS DOCUMENT HAS NO LANGUAGE IN  
7 IT ABOUT DIVIDING MONEY BETWEEN THE PLAYER AND AN ESCROW  
8 ACCOUNT FOR ALL ELIGIBLE NFLPA MEMBERS. DID YOU KNOW THAT  
9 CHANGE HAD BEEN MADE?

10 **A.**    YES.

11 **Q.**    SO THE REASON THAT YOU'RE NOT A MEMBER OF THE CLASS IS YOU  
12 NEVER SIGNED THE GLA THAT HAS THE LANGUAGE ABOUT DIVIDING THE  
13 MONEY BETWEEN THE PLAYER AND AN ESCROW ACCOUNT FOR ELIGIBLE  
14 NFLPA MEMBERS, CORRECT?

15 **A.**    YES.

16 **Q.**    OKAY. NOW, I WANT TO ASK YOU --

17                   **MR. LECLAIR:** YOU CAN TAKE THAT OFF THE SCREEN.

18 **BY MR. LECLAIR:**

19 **Q.**    I WANT TO ASK YOU, MR. ARMSTRONG, ABOUT THE DISCUSSIONS AT  
20 THE BOARD. AND LET'S FOCUS ON THE GLA AT ISSUE IN THIS CASE.  
21 DO YOU KNOW THAT IT WAS PUT INTO EFFECT, THE LANGUAGE OF IT WAS  
22 PUT INTO EFFECT IN 2001?

23 **A.**    I'M FAMILIAR WITH THE DOCUMENT.

24 **Q.**    ALL RIGHT, SIR.

25                   AND AT THE TIME THAT THE BOARD CONSIDERED IN -- LET'S

1 TAKE 2001. AT THE TIME THE BOARD CONSIDERED THE ISSUE OF THE  
2 DIVISION OF LICENSING REVENUES, THE 37/23/40, DID ANYBODY, GENE  
3 UPSHAW, DOUG ALLEN OR ANYBODY RAISE AT THE BOARD THE QUESTION  
4 OF WHETHER A RETIRED PLAYER MIGHT BE ENTITLED TO SHARE IN THAT  
5 REVENUE UNDER THE GLA THAT'S AT ISSUE IN THIS CASE?

6 **A.** THAT WAS NEVER -- NEVER BROUGHT UP SPECIFICALLY. BUT --

7 **Q.** THAT'S FINE, SIR. THAT'S ALL I NEED TO KNOW. IT WAS  
8 NEVER BROUGHT UP SPECIFICALLY.

9 AND, IN FACT, IS IT TRUE, SIR, THAT NOBODY EVER EVEN  
10 SUGGESTED THAT RETIRED PLAYERS WHO SIGNED THE GLA AT ISSUE IN  
11 THIS CASE WOULD BE ENTITLED TO SHARE IN THAT MONEY? IS THAT  
12 TRUE, SIR?

13 **A.** WELL, THE PEOPLE THAT WOULD HAVE HAD TO SUGGEST IT WOULD  
14 HAVE BEEN THE BOARD. THE BOARD WOULD HAVE HAD TO SUGGEST THAT  
15 RETIRED PLAYERS PARTICIPATE IN THAT POOL.

16 **Q.** RIGHT. AND AS FAR AS YOU CAN RECALL, NOBODY EVEN RAISED  
17 THE QUESTION AT THE BOARD MEETING 2001, CORRECT?

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

19 **Q.** AND, IN FACT, NOBODY RAISED THAT QUESTION IN 2002 OR '3  
20 WHILE YOU WERE ON THE BOARD; IS THAT TRUE, SIR?

21 **A.** THAT'S CORRECT.

22 **Q.** IS IT TRUE, SIR, THAT IT WAS THE UNION THAT RECOMMENDED  
23 THE 37/23/40 SPLIT IN THE FIRST INSTANCE?

24 **A.** NO. IT WAS DONE WITH -- UNDER THE ADVICE OF OUTSIDE  
25 COUNSEL.

1 Q. WELL, I UNDERSTAND, SIR. I DON'T WANT TO GET INTO  
2 PRIVILEGED MATTERS. BUT WOULD WHATEVER ADVICE -- AND I TAKE IT  
3 THIS WAS ADVICE SOUGHT BY THE ACTUAL EXECUTIVES THAT RAN THE  
4 UNION DAY-TO-DAY, THAT BEING GENE UPSHAW, DOUG ALLEN AND THAT  
5 GROUP, CORRECT?

6 A. IT WAS DONE UNDER THE ADVICE OF OUTSIDE COUNSEL AND  
7 PRESENTED TO THE BOARD BY OUTSIDE COUNSEL.

8 Q. ALL RIGHT.

9 A. SO THESE PERCENTAGES WERE DEBATED FAIRLY INTENSELY ON WHAT  
10 WOULD BE APPROPRIATE AS FAR AS ACCOMPLISHING THE TWO  
11 OBJECTIVES.

12 Q. ALL RIGHT. YOU'RE TALKING NOW, ARE YOU NOT, SIR, ABOUT  
13 1994? WHAT TIME PERIOD ARE YOU TALKING ABOUT?

14 A. WELL, EVERY YEAR IT WAS ADDRESSED.

15 Q. ALL RIGHT.

16 A. EVERY YEAR IT WAS ADDRESSED. THERE WOULD BE -- IF YOU  
17 LOOK BACK IN THE BUDGET THAT WE LOOKED AT YESTERDAY, THERE  
18 WOULD BE A FLOW CHART AND -- AN ORGANIZATIONAL FLOW CHART. AND  
19 IT WOULD SHOW HOW REVENUE GENERATED BY INC, WHERE IT WENT, HOW  
20 IT WENT. AND SO THAT WAS CLOSELY EXAMINED EVERY YEAR.

21 Q. ALL RIGHT, SIR. AND WOULD YOU AGREE WITH ME,  
22 MR. ARMSTRONG, THAT IT WOULD HAVE BEEN ADVERSE TO THE INTERESTS  
23 OF THE ACTIVE PLAYERS THAT YOU REPRESENTED IF YOU DECIDED TO GO  
24 AGAINST THE UNION RECOMMENDATION?

25 MR. FEHER: WELL, IT --

1           **MR. KESSLER:** YOUR HONOR I HAVE AN OBJECTION TO THE  
2 FORM. AGAIN, "THE UNION RECOMMENDATION"? THE ACTIVE PLAYERS  
3 ARE THE UNION? I DON'T UNDERSTAND THE QUESTION.

4           **THE COURT:** WELL, DOES THE WITNESS UNDERSTAND THE  
5 QUESTION?

6           **THE WITNESS:** WELL, IT -- FOR SOMETHING TO HAVE  
7 CHANGED IT WOULD HAVE HAD TO HAVE COME FROM THE BOARD. THE  
8 BOARD WOULD HAVE HAD TO SAY -- AND THOSE ARE ACTIVE PLAYERS.  
9 IT WOULD HAVE HAD TO COME TO THE BOARD. THEY WOULD SAY:

10                   "WE WANT TO CHANGE THIS."

11 **BY MR. LECLAIR:**

12 **Q.** ALL RIGHT, SIR. ALL I'M ASKING IS A PRETTY SIMPLE  
13 QUESTION, WHICH IS: IF YOU DECIDED TO GO AGAINST WHAT HAD BEEN  
14 RECOMMENDED BY WHOEVER IT WAS, TAX COUNSEL, WHOEVER, WOULD THAT  
15 HAVE BEEN ADVERSE TO THE INTERESTS OF THE ACTIVE PLAYERS YOU  
16 REPRESENTED?

17 **A.** YOU'RE ASKING IF I DECIDED?

18 **Q.** IF YOU VOTED AGAINST IT.

19 **A.** I DIDN'T -- DURING THAT TIME I WAS THE PRESIDENT. I  
20 DIDN'T HAVE A VOTE.

21 **Q.** OKAY. FAIR ENOUGH. IF YOU DECIDED TO RECOMMEND AGAINST  
22 IT, WOULD THAT HAVE BEEN ADVERSE TO THE INTERESTS OF THE ACTIVE  
23 PLAYERS THAT YOU WERE REPRESENTING?

24 **A.** IT WOULD HAVE GONE AGAINST THE OBJECTIVES FOR STARTING THE  
25 COMPANY.

1 Q. ALL RIGHT. THAT'S NOT QUITE MY QUESTION, SO LET ME ASK IT  
2 AGAIN.

3 WOULD IT HAVE BEEN ADVERSE TO THE INTERESTS OF THE  
4 ACTIVE PLAYERS THAT YOU REPRESENTED?

5 A. I THINK IT COULD BE, YES.

6 Q. ALL RIGHT, SIR.

7 NOW, WOULD YOU AGREE WITH ME, MR. ARMSTRONG, THAT IF  
8 THIS -- THE 63 PERCENT THAT'S BEING RETAINED BY THE UNION,  
9 OKAY, YOU'VE GOT 40 PERCENT GOING TO THE NFLPA AND 23 PERCENT  
10 TO PLAYERS INC, ALL RIGHT?

11 IF THAT 63 PERCENT IS SUPPOSED TO BE USED FOR A  
12 STRIKE FUND FOR THE FUTURE, THAT WOULD BE OF NO BENEFIT TO  
13 RETIRED PLAYERS; IS THAT TRUE, SIR?

14 A. NO, THAT'S NOT TRUE. AND I'D LIKE TO ADDRESS YOUR EARLIER  
15 POINT ABOUT -- YOU'RE KIND OF LUMPING TOGETHER THE 40 PERCENT  
16 AND THE 23 PERCENT.

17 40 PERCENT WAS UPSTREAM TO THE UNION. AND, AGAIN,  
18 THAT WAS TO PROVIDE FOR LONG-TERM SECURITY.

19 THE 23 PERCENT HAD TO BE RETAINED BY PLAYERS INC  
20 BECAUSE WE WERE ADVISED UNDER TAX LAW --

21 Q. DON'T INTERJECT, BUT I DON'T THINK THAT YOU SHOULD BE  
22 TALKING ABOUT YOUR PRIVILEGED CONVERSATIONS WITH YOUR TAX  
23 COUNSEL.

24 MR. KESSLER: ACTUALLY, THE TAX ADVICE OF THIS  
25 SUBJECT HAS BEEN THE SUBJECT OF DEPOSITION, SO WE DID NOT

1 ASSERT OBJECTION AS TO WHAT THIS SPECIFIC TAX ADVICE IS.

2 **MR. LECLAIR:** YOUR HONOR, WE'RE GOING TO HAVE TO TAKE  
3 THAT UP OUTSIDE THE PRESENCE OF THE JURY. I DISAGREE. I WAS  
4 THE ONE WHO TOOK THAT DEPOSITION. I THINK THEY ASSERTED  
5 PRIVILEGE ON THE COMMUNICATION, SO ...

6 **THE COURT:** I CAN'T RESOLVE THAT WITHOUT SEEING THE  
7 DEPOSITION, SO IF YOU WANT TO LIMIT FOR THE TIME BEING YOUR  
8 QUESTIONS TO THINGS THAT DIDN'T COME FROM TAX COUNSEL, YOU'RE  
9 THE ONE FRAMING THE QUESTION. SO JUST DO SO.

10 **MR. LECLAIR:** THAT'S FINE.

11 **BY MR. LECLAIR:**

12 **Q.** CAN YOU ANSWER WITHOUT ADVICE OF TAX COUNSEL?

13 **A.** THE 23 PERCENT, PLAYERS INC HAD TO BE A VIABLE,  
14 STAND-ALONE COMPANY. AND SO IT HAD TO HAVE -- WE HAD TO PAY  
15 STAFF SALARIES. SO AT THE END OF THE DAY YOU WANTED TO BE ABLE  
16 TO LOOK AT PLAYERS INC AND SAY:

17 "OKAY. IS IT GENERATING REVENUE?"

18 IT HAD TO PAY ITS OWN EXPENSES. IT HAD TO HAVE SOME  
19 RETAINED EARNINGS TO INVEST IN OPERATIONS FOR THE FOLLOWING  
20 YEAR. SO THE 23 PERCENT WAS RETAINED FOR THE OPERATION OF  
21 PLAYERS INC.

22 **Q.** ALL RIGHT, SIR. LET'S TALK ABOUT THE 40 PERCENT, THEN.

23 **A.** YES.

24 **Q.** IF THE 40 PERCENT -- YOU HAD DUES THAT YOU BUILT UP FOR  
25 THE -- FOR A STRIKE FUND, RIGHT? DIDN'T YOU TALK ABOUT THAT

1 YESTERDAY?

2 **A.** UHM, YES, WE DID HAVE DUES.

3 **Q.** AND, IN FACT, DIDN'T YOU SAY THAT THAT WASN'T ENOUGH, AND,  
4 THEREFORE, RETAINING THE LICENSING REVENUES, THE 40 PERCENT,  
5 WAS FOR THAT PURPOSE, AS WELL?

6 **A.** YES.

7 **Q.** ALL RIGHT. AND MY QUESTION TO YOU, SIR, BACK TO THE  
8 QUESTION IS: ISN'T IT TRUE THAT IF THAT'S THE PURPOSE, THAT  
9 DOESN'T BENEFIT RETIRED PLAYERS?

10 **A.** NO. IT ABSOLUTELY DOES.

11 WHEN WE STARTED -- IN 1993, PRIOR TO FORMATION OF  
12 PLAYERS INC, WE HAD JUST WON A LONG BATTLE WITH MANAGEMENT, AND  
13 WERE ABLE TO SECURE THINGS LIKE FREE AGENCY, A PERCENT OF THE  
14 GROSS. IT WAS A REAL VICTORY FOR PLAYERS.

15 WE KNEW THAT -- THE FINANCIAL STRAIN THAT THAT FIGHT  
16 PUT ON THE ORGANIZATION, AND WE KNEW THAT DUES ALONE WOULDN'T  
17 BE ENOUGH TO FUND ANOTHER FIGHT.

18 IN 1993, WE WENT BACK -- AS PART OF THAT COLLECTIVE  
19 BARGAINING AGREEMENT, WE WENT BACK AND MADE SIGNIFICANT CHANGES  
20 TO OUR BENEFIT SYSTEM THAT BENEFITED RETIRED PLAYERS.

21 WHEN THE AGREEMENTS WERE REDONE LATER, IN '95, AND  
22 SUBSEQUENT COLLECTIVE BARGAINING AGREEMENTS, WE WENT BACK AND  
23 SIGNIFICANTLY IMPROVED BENEFITS FOR RETIRED PLAYERS.

24 WHAT ALLOWED US TO DO THAT WAS THE LEVERAGE WE HAD OF  
25 HAVING A WAR CHEST, HAVING CAPITAL.

1 WE TALKED MANY TIMES ABOUT LEADERSHIP, LEVERAGE,  
2 RESOURCES. TO BE SUCCESSFUL AS A UNION, YOU HAVE TO HAVE ALL  
3 THREE. RESOURCES AND LEVERAGE OFTENTIMES COME FROM FUNDS.

4 IF YOU LOOK AT A UNION YOU'RE FIGHTING THE COLLECTIVE  
5 RESOURCES OF 32 CLUBS THAT ARE VALUED AT OVER A BILLION  
6 DOLLARS. SO THAT MONEY VERY MUCH BENEFITED RETIRED PLAYERS.

7 **Q.** SO IN YOUR VIEW, IT WAS NECESSARY TO RETAIN EVERY BIT OF  
8 IT SO YOU HAD MAXIMUM LEVERAGE?

9 **A.** YES.

10 **Q.** ARE YOU AWARE, SIR, THAT DURING THE CLASS PERIOD MILLIONS  
11 OF DOLLARS OF DUES WERE REBATED TO ACTIVE PLAYERS?

12 **A.** YES.

13 **Q.** SO, IN OTHER WORDS, YOU WERE GIVING BACK THE DUES TO THE  
14 ACTIVE PLAYERS DURING THAT SAME TIME PERIOD, RIGHT?

15 **A.** YES, WE DID REBATE DUES.

16 **Q.** WHILE YOU WERE RETAINING THE LICENSING MONEY, YOU WERE  
17 REBATING THE DUES, CORRECT?

18 **A.** YES.

19 **Q.** ALL RIGHT, SIR.

20 DID ANYBODY SUGGEST AT ANY TIME -- LET'S FOCUS ON THE  
21 PERIOD 2001 THROUGH 2003, WHILE THIS RETIRED PLAYER GLA AT  
22 ISSUE WAS IN EFFECT.

23 DID ANYBODY SUGGEST THAT THERE MIGHT BE A POSSIBILITY  
24 OF A CONFLICT OF INTEREST FOR THE UNION AND THE BOARD  
25 CONCERNING THE INTERESTS OF ACTIVE PLAYERS ON THE ONE HAND, AND

1 RETIRED PLAYERS ON THE OTHER HAND?

2 **A.** NO. WE ALWAYS FELT LIKE THEY WERE RELIANT. WE KNEW THAT  
3 YOU'RE ALWAYS ONE PLAY AWAY FROM BEING A RETIRED PLAYER. AND  
4 THAT'S WHY THE MANTRA OF OUR UNION IS "PAST, PRESENT AND  
5 FUTURE."

6 AND THAT'S WHY IN EVERY COLLECTIVE BARGAINING  
7 AGREEMENT EVERY OPPORTUNITY WE HAD TO ADVANCE BENEFITS FOR OUR  
8 RETIRED PLAYERS WE DID THAT.

9 AS AN EXAMPLE, LAST YEAR, IF YOU WATCHED ANY NFL  
10 FOOTBALL, EVERY PLAYER YOU SAW ON THE FIELD LAST YEAR GAVE  
11 ABOUT \$84,000 OUT OF HIS POCKET FOR BENEFITS FOR RETIRED  
12 PLAYERS. THAT'S HOW PASSIONATELY WE FEEL ABOUT IT IN THE  
13 ORGANIZATION.

14 **Q.** SIR, DID YOU CONSIDER -- DID ANYBODY SUGGEST THAT THERE  
15 WAS ANY POTENTIAL CONFLICT OF INTEREST WHEN YOU SET THE  
16 ELIGIBILITY CRITERIA EVERY YEAR, RELATED TO THE RETIRED PLAYER  
17 GLA?

18 **A.** NO.

19 **Q.** ALL RIGHT, SIR.

20 IS IT CORRECT THAT NOBODY SUGGESTED AT THE MEETING,  
21 2001 THROUGH 2003, THAT THERE SHOULD BE ANY SHARING UNDER THE  
22 RETIRED PLAYER GLA AT ISSUE IN THIS CASE?

23 **A.** I'M NOT SURE I UNDERSTAND YOUR QUESTION.

24 **Q.** IN OTHER WORDS, NOBODY BROUGHT UP, GENE UPSHAW, DOUG  
25 ALLEN, NOBODY BROUGHT UP THE QUESTION TO THE BOARD AND SAID:

1 "GEE, UNDER THIS RETIRED PLAYER GLA LANGUAGE  
2 THERE MIGHT BE A QUESTION ABOUT WHETHER THERE SHOULD BE A  
3 SHARING WITH THE RETIRED PLAYERS OF THIS GROUP LICENSING  
4 MONEY"?

5 **A.** UHM, NO. NO. IT WAS NOT BROUGHT UP.

6 **Q.** ALL RIGHT, SIR.

7 THE -- WHEN YOU WENT -- I CHANGING SUBJECTS NOW,  
8 MR. ARMSTRONG.

9 WHEN YOU WENT TO CHICAGO IN 1989, IS IT TRUE, SIR,  
10 THAT THE CITY OF CHICAGO HAD A GREAT AFFINITY FOR SOME OF THE  
11 VINTAGE CHICAGO BEARS TEAMS WHO HAD PLAYED?

12 **A.** SURE.

13 **Q.** FOR EXAMPLE, THE '85 BEARS ARE REGARDED AS ONE OF THE BEST  
14 TEAMS IN THE HISTORY OF FOOTBALL?

15 **A.** UH-HUH.

16 **Q.** AND DID THE FANS OF CHICAGO HAVE AN AFFINITY FOR THAT  
17 TEAM, BASED ON BEING IN THE CITY OF CHICAGO AND HOW THEY FELT  
18 ABOUT THAT TEAM?

19 **A.** YES.

20 **Q.** AND WHEN YOU WENT TO MIAMI AND PLAYED FOR MIAMI, AND YOU  
21 DID THAT IN WHAT YEAR, SIR?

22 **A.** WOULD HAVE BEEN 1995.

23 **Q.** DID PEOPLE STILL TALK ABOUT THE UNDEFEATED '72 MIAMI  
24 DOLPHINS?

25 **A.** YES.

1 Q. AND THIS IS 23 YEARS LATER, PEOPLE WERE STILL TALKING  
2 ABOUT A TEAM THAT PLAYED IN '72, CORRECT, SIR?

3 A. YES.

4 Q. WHEN YOU RETIRED, YOU PLAYED IN '02 WITH THE OAKLAND  
5 RAIDERS, CORRECT?

6 A. YES.

7 Q. DID YOU KNOW THAT AFTER YOU RETIRED THAT THE '02 OAKLAND  
8 RAIDERS WERE ACTUALLY A VINTAGE TEAM IN THE MADDEN FOOTBALL  
9 GAME?

10 A. NO.

11 Q. DID YOU KNOW THAT YOUR TEAM IN '02 -- DID YOU KNOW IN '02  
12 IT WAS IN THE MADDEN FOOTBALL GAME AS AN ACTIVE TEAM?

13 A. I'VE SEEN -- MY KIDS PLAY THAT GAME, SO I HAVE SEEN THE  
14 GAME.

15 Q. BUT YOU DIDN'T KNOW THAT YOU COULD PLAY THE '02 OAKLAND  
16 RAIDERS IN THE '03 MADDEN FOOTBALL GAME?

17 A. NO.

18 Q. DID YOU KNOW THAT YOU AND YOUR TEAMMATES WERE SCRAMBLED IN  
19 THE '03 VERSION VERSUS HOW YOU LOOKED IN THE '02 VERSION?

20 A. I DIDN'T SEE THE GAME, SO I DON'T KNOW IF I WAS SCRAMBLED  
21 OR NOT.

22 Q. ALL RIGHT, SIR. NOW, MR. KESSLER ASKED YOU A QUESTION  
23 ABOUT AD HOC MONEY AND DEDUCTIONS FROM AD HOC MONEY. AND I'D  
24 LIKE TO BE SURE THE RECORD ISN'T MISLEADING ON THAT.

25 YOU SAID RETIRED PLAYER MONEY, THERE'S NO DEDUCTIONS

1 OR VERY FEW DEDUCTIONS FROM AD HOC MONEY.

2           ISN'T IT TRUE, SIR, THAT ACTIVE PLAYERS GET A TON OF  
3 AD HOC PAYMENTS?

4 **A.** YES.

5 **Q.** AND HOW MUCH IS DEDUCTED FROM THE ACTIVE AD HOC PAYMENTS?

6 **A.** UHM, IT WOULD DEPEND, I THINK, ON THE PROGRAM.

7 **Q.** ISN'T IT TRUE, SIR, THAT LITTLE OR NOTHING IS DEDUCTED  
8 FROM ACTIVE AD HOC PAYMENTS?

9 **A.** YES. THE INTENT IS THAT MOST OF THE MONEY GOES TO THE  
10 PLAYERS THAT EARNED IT.

11 **Q.** EXACTLY RIGHT. AND YOU TALKED ABOUT THE 35 OR FEWER. SO  
12 IF 35 OR FEWER ARE USED, IT'S AD HOC AND PAID DIRECTLY TO THE  
13 ACTIVE PLAYERS, CORRECT, SIR?

14 **A.** YES.

15 **Q.** AND, IN FACT, ISN'T IT TRUE, SIR, THAT MUCH MORE MONEY  
16 WENT TO THE ACTIVE PLAYERS FOR AD HOC PAYMENTS THAN WENT TO THE  
17 RETIRED PLAYERS IN ANY GIVEN YEAR?

18 **A.** YES.

19 **Q.** FINALLY, MR. ARMSTRONG, ISN'T IT TRUE THAT YOU ARE A  
20 CANDIDATE TO REPLACE GENE UPSHAW AS HEAD OF THE UNION?

21 **A.** WELL, ULTIMATELY, THE PLAYERS WILL DECIDE WHO THE  
22 CANDIDATES ARE.

23 **Q.** HAS IT BEEN PUBLICLY REPORTED, SIR, THAT YOU ARE THE  
24 LEADING CANDIDATE TO BE THE PRESIDENT OF THE UNION?

25 **A.** UHM --

1 Q. I'M SORRY. NOT THE PRESIDENT OF THE UNION. I'M SORRY.  
2 THE EXECUTIVE DIRECTOR OF THE UNION?

3 A. MY NAME HAS BEEN MENTIONED IN THE MEDIA.

4 Q. WELL, HAS IT BEEN MENTIONED AS THE LEADING CANDIDATE?

5 A. YOU WOULD HAVE TO SHOW ME A PUBLICATION. I THINK IT  
6 DEPENDS ON THE PUBLICATION.

7 MR. KESSLER: YOUR HONOR, I JUST OBJECT. WHAT  
8 DIFFERENCE DOES IT MAKE WHAT THE MEDIA SAID AS TO WHO'S  
9 LEADING? HE DOESN'T RECALL WHETHER THEY SAID IT OR NOT.

10 MR. LECLAIR: CAN I SHOW IT TO HIM TO REFRESH HIS  
11 RECOLLECTION, YOUR HONOR?

12 THE COURT: GO AHEAD.

13 BY MR. LECLAIR:

14 Q. WERE YOU MENTIONED AS A LEADING CANDIDATE?

15 A. IN THIS ARTICLE, YES.

16 Q. OKAY. AND CAN YOU TELL US WHO THAT ARTICLE IS WRITTEN BY?

17 A. LET'S SEE --

18 Q. OR WHAT ENTITY, WHAT SPORTS ORGANIZATION?

19 A. ESPN.

20 MR. LECLAIR: ALL RIGHT, SIR.

21 I HAVE NO FURTHER QUESTIONS.

22 MR. KESSLER: I JUST HAVE A FEW, YOUR HONOR.

23 THE COURT: GO AHEAD.  
24  
25

**REDIRECT EXAMINATION**

1  
2 **BY MR. KESSLER:**

3 **Q.** MR. ARMSTRONG, YOU WERE ASKED ABOUT WHETHER IT WAS EVER  
4 SUGGESTED THAT THE RETIRED PLAYERS GLA SHOULD -- WELL,  
5 WITHDRAWN.

6 YOU WERE ASKED WHETHER IT WAS EVER SUGGESTED AT A  
7 MEETING THAT THE RETIRED PLAYERS SHOULD SHARE IN THE GROSS  
8 LICENSING REVENUE POOL. DO YOU RECALL THOSE QUESTIONS?

9 **A.** YES.

10 **Q.** OKAY. WAS THERE ANY RETIRED PLAYER MONEY IN THE GROSS  
11 LICENSING REVENUE POOL?

12 **A.** NO.

13 **Q.** IN YOUR EXPERIENCE AND JUDGMENT, WOULD THERE BE ANY REASON  
14 FOR ANYONE TO MAKE SUCH A SUGGESTION?

15 **A.** NO.

16 **Q.** NOW, YOU ALSO GOT ASKED ABOUT THE REBATING OF ACTIVE  
17 PLAYER DUES.

18 HOW MANY YEARS WOULD THE DUES BE KEPT BEFORE THEY  
19 WOULD BE REBATED?

20 **A.** IT WAS A FIVE-YEAR POOL. AND WE DID THAT SO A PLAYER  
21 WOULD PAY -- LET'S SAY HE CAME IN THE LEAGUE, AND HE PAID DUES  
22 HIS FIRST YEAR. THOSE DUES WOULD NOT BE REBATED UNTIL AFTER  
23 HIS FIFTH YEAR.

24 AND SO DUES THAT WOULD BE PAID IN HIS SECOND YEAR  
25 WOULD BE AFTER THE SIXTH SEASON OR SEVENTH SEASON. SO IT WAS A

1 FIVE-YEAR ROLLING POOL. SO THE UNION HELD THOSE DUES FOR A  
2 PERIOD OF FIVE YEARS. THAT GAVE US, AGAIN, A ROLLING POOL OF  
3 FUNDS, IN CASE WE NEEDED IT WITH MANAGEMENT.

4 AND WHEN WE STARTED, WHEN WE CREATED THAT POOL, THAT  
5 ALLOWED US, I BELIEVE, IN 1998 TO MAKE SIGNIFICANT GAINS IN  
6 COLLECTIVE BARGAINING. AS SOON AS WE ANNOUNCED WE WERE DOING  
7 THAT WE GOT A CALL FROM MANAGEMENT LITERALLY HOURS AFTER OUR  
8 BOARD MEETING IN HAWAII, AND WE WERE ABLE TO GET CONCESSIONS.  
9 SO THE INTENDED EFFECT WAS POWERFUL.

10 **Q.** NOW, HOW MUCH WERE THE ACTIVE PLAYER DUES AT THE TIME YOU  
11 WERE THERE?

12 **A.** \$5,000 A YEAR.

13 **Q.** WERE THEY SUBSEQUENTLY RAISED; DO YOU KNOW?

14 **A.** YES.

15 **Q.** WHAT DID THEY BECOME?

16 **A.** 10,000.

17 **Q.** NOW, DO YOU KNOW HOW MUCH DUES WERE TO BE A RETIRED MEMBER  
18 OF THE NFLPA?

19 **A.** YES. I BELIEVE IT WAS A HUNDRED DOLLARS.

20 **Q.** AND WAS \$50 OF THAT REBATED?

21 **A.** YES.

22 **Q.** SO IT WAS A NET TOTAL OF \$50?

23 **A.** YES.

24 **Q.** OKAY. WAS THAT SUFFICIENT TO FUND THE RETIRED PLAYER  
25 DEPARTMENT AND SERVICES?

1 **A.** NO.

2 **Q.** OKAY. WHEN THE 40 PERCENT OF THE GLR POOL WAS USED FOR  
3 THE UNION, DID ANY OF THAT GO TO FUND THE RETIRED PLAYER  
4 DEPARTMENT?

5 **A.** YES, ABSOLUTELY.

6 **Q.** OKAY. SO THE QUESTION YOU WERE ASKED ABOUT WHETHER OR NOT  
7 ANY OF THAT 40 PERCENT BENEFITED THE RETIRED PLAYERS, DID IT?

8 **A.** YES.

9 **Q.** DID ANYONE THE WHOLE TIME YOU WERE A PLAYER REP, THAT YOU  
10 WERE PRESIDENT, DID ANYONE -- DID YOU HEAR ANY RETIRED PLAYER  
11 EVER SUGGEST TO YOU IN ANY FORM, ANY SITUATION, THAT BECAUSE  
12 THEY HAD SIGNED THE RETIRED PLAYER GLA, THEY WERE ENTITLED TO A  
13 SHARE OF THE ACTIVE PLAYER LICENSING MONEY IN THE GLR POOL?

14 **A.** NO, THEY DID NOT, NOT EVER.

15 **Q.** DID YOU EVER HEAR ANYONE IN THE WORLD SUGGEST THAT, UNTIL  
16 AFTER THIS LAWSUIT WAS FILED?

17 **A.** NO.

18 **MR. KESSLER:** I HAVE NO FURTHER QUESTIONS.

19 **REXCROSS EXAMINATION**

20 **BY MR. LECLAIR:**

21 **Q.** MR. ARMSTRONG, YOU BROUGHT IN THE QUESTION OF THESE  
22 INCREASES IN BENEFITS TO RETIRED PLAYERS. YOU UNDERSTAND, SIR,  
23 YOU DO NOT, THERE IS A HUGE DEBATE OUT THERE ABOUT WHETHER  
24 RETIRED PLAYERS ARE BEING TREATED PROPERLY BY THE UNION? YOU  
25 UNDERSTAND THAT, DON'T YOU, SIR?

1 **A.** I DO.

2 **Q.** AND, IN FACT, DID YOU TESTIFY TO CONGRESS ON THAT VERY  
3 ISSUE?

4 **A.** I DID NOT, NO.

5 **Q.** BUT YOU ARE AWARE THAT CONGRESSIONAL HEARINGS WERE HELD ON  
6 THAT SUBJECT?

7 **A.** YES.

8 **Q.** AND A LOT OF CRITICISM WAS LEVIED AT THE UNION ABOUT ITS  
9 TREATMENT OF RETIRED PLAYERS. ARE YOU AWARE OF THAT, SIR?

10 **A.** I AM AWARE OF IT.

11 **MR. LECLAIR:** NO FURTHER QUESTIONS.

12 **MR. KESSLER:** NOTHING FURTHER FOR THIS WITNESS, YOUR  
13 HONOR.

14 **THE COURT:** ALL RIGHT. MAY -- MAY MR. ARMSTRONG BE  
15 DISCHARGED FROM THE SUBPOENA AND FREE TO GO?

16 **MR. KESSLER:** HE WAS NOT SUBPOENAED, YOUR HONOR. HE  
17 IS DISCHARGED AS FAR AS WE'RE CONCERNED.

18 **THE COURT:** MAY HE BE FREE TO GO.

19 **MR. LECLAIR:** HE'S FREE TO GO, YOUR HONOR.

20 **THE COURT:** YOU ARE FREE TO GO.

21 **THE WITNESS:** THANK YOU.

22 **THE COURT:** THE LAWYERS CANNOT CALL YOU BACK.

23 OKAY. DID YOU HAVE A WITNESS --

24 **MR. LECLAIR:** WE'RE CALLING A WITNESS OUT OF ORDER,  
25 YOUR HONOR, PAT ALLEN.

1           **THE COURT:** LET'S BRING PAT ALLEN IN.

2           WHILE THAT'S HAPPENING, I WILL REMIND THE JURY, NOW  
3 WE ARE -- THIS IS LIKE "BACK TO THE FUTURE," REMEMBER THAT  
4 MOVIE? WE'RE GOING BACK TO THE PLAINTIFFS' CASE AND PICK UP A  
5 WITNESS THAT WAS NOT AVAILABLE AT THAT TIME PERIOD. YOU SEE  
6 HOW IT WORKS.

7           ARE YOU MS. ALLEN?

8           **THE WITNESS:** YES.

9           **THE COURT:** PLEASE COME FORWARD.

10          STAND SOMEWHERE IN THERE AND RAISE YOUR RIGHT HAND.  
11 THE CLERK WILL SWEAR YOU IN.

12          (THEREUPON, THE WITNESS WAS SWORN.)

13          **THE WITNESS:** I DO.

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

15          **THE COURT:** MAY WE TAKE YOUR PICTURE SO IT CAN BE  
16 SHOWN IN CLOSING ARGUMENTS?

17          **THE WITNESS:** YES.

18          **THE CLERK:** TOO BLURRY. I'M SORRY. I NEED TO DO IT  
19 AGAIN.

20          (PICTURE TAKEN.)

21          THANKS. BETTER. THANK YOU.

22          **THE COURT:** PLEASE ADJUST THE MIC SO IT WILL CATCH  
23 YOUR VOICE. WE WANT TO MAKE SURE EVERYBODY ON THE JURY CAN  
24 HEAR YOU.

25          STATE YOUR NAME NOW.

1           **THE WITNESS:** PATRICIA ALLEN.

2           **THE COURT:** ALL RIGHT. VERY GOOD.

3           GO AHEAD, MR. LECLAIR.

4                           **PATRICIA ALLEN,**

5 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, HAVING BEEN

6 FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

7                           **DIRECT EXAMINATION**

8 **BY MR. LECLAIR:**

9 **Q.** GOOD MORNING, MS. ALLEN.

10 **A.** GOOD MORNING.

11 **Q.** YOU ARE THE WIFE OF DOUG ALLEN, ARE YOU NOT?

12 **A.** YES, I AM.

13 **Q.** AND YOU WERE EMPLOYED, I GUESS, FIRST AS THE DIRECTOR OF  
14 LICENSING AND SPECIAL PROJECTS AT THE NFLPA BEGINNING IN 1985?

15 **A.** NO, THAT'S NOT TRUE.

16 **Q.** OKAY. WHEN DID YOU START?

17 **A.** I STARTED EMPLOYMENT AT THE NFLPA IN 1973.

18 **Q.** OH, OKAY. AND DID YOU -- DID YOU BECOME -- DID YOU CHANGE  
19 JOBS IN '85?

20 **A.** YES, I DID. I WAS PROMOTED.

21 **Q.** AND DID YOU BECOME -- WHEN PLAYERS INC WAS FORMED IN 1994,  
22 DID YOU GO TO WORK THEN FOR PLAYERS INC?

23 **A.** YES, I DID.

24 **Q.** AND BECAME THE EXECUTIVE VICE PRESIDENT AND CHIEF  
25 OPERATING OFFICER?

1 **A.** YES.

2 **Q.** OKAY. WERE YOU ALSO ON THE BOARD OF DIRECTORS?

3 **A.** YES, I WAS.

4 **Q.** YOU ARE FAMILIAR WITH THE TERM "GROUP LICENSING  
5 AUTHORIZATION," ARE YOU NOT, MRS. ALLEN?

6 **A.** YES, I AM.

7 **Q.** AND YOU WERE AWARE THAT THERE WERE BOTH ACTIVE PLAYER  
8 GLA'S AND RETIRED PLAYER GLA'S?

9 **A.** YES.

10 **Q.** AND, IN FACT, YOUR VIEW WAS THAT THERE WERE ONLY MINOR  
11 DIFFERENCES IN LANGUAGE BETWEEN THE TWO, CORRECT?

12 **A.** UHM, NO, THAT'S NOT CORRECT.

13 **Q.** OKAY. WOULD YOU -- WOULD YOU LOOK AT YOUR DEPOSITION? I  
14 THINK SHOULD BE IN FRONT OF YOU.

15 **MR. LECLAIR:** MAY I APPROACH THE WITNESS, YOUR HONOR?

16 **THE COURT:** GO AHEAD.

17 **MR. LECLAIR:** MAKE SURE WE'VE GOT -- I'VE GOT IT  
18 HERE.

19 THERE WE GO. THERE YOU GO.

20 **THE COURT:** DO I NEED ONE, OR DO I HAVE ONE UP HERE?

21 **MR. LECLAIR:** I CAN GIVE YOU ONE, YOUR HONOR.

22 **THE COURT:** ALL RIGHT. PAGE AND LINE?

23 **MR. LECLAIR:** THIS IS PAGE -- I'LL READ PAGE 86, LINE  
24 4, THROUGH PAGE 86, LINE 12.

25 "QUESTION:" -- ACTUALLY, LET ME START ON PAGE 85,

1 LINE 22.

2 "QUESTION: AND THROUGH THE YEARS THERE HAVE  
3 BEEN DIFFERENT VERSIONS OF GLA'S; IS THAT  
4 ACCURATE?

5 "ANSWER: I THINK IT WAS MODIFIED FROM TIME  
6 TO TIME.

7 "QUESTION: AND AS FAR AS YOU'RE AWARE, IS  
8 THE ACTIVE PLAYER GLA DIFFERENT THAN A  
9 RETIRED PLAYER GLA?

10 "ANSWER: AS FAR AS THE WORDS IN THE  
11 AGREEMENTS?

12 "QUESTION: YEAH.

13 "ANSWER: BASICALLY" --  
14 SORRY, EXCUSE ME.

15 "QUESTION: BASICALLY ARE THEY DIFFERENT  
16 FORMS OR ARE THEY THE EXACT SAME FORMS, IF  
17 YOU'RE AWARE?

18 "ANSWER: I THINK THERE MAY HAVE BEEN SOME  
19 MINOR DIFFERENCES."

20 **BY MR. LECLAIR:**

21 **Q.** WERE YOU AWARE, MRS. ALLEN, THAT THE NFLPA HAD SECURED  
22 OVER 2,000 RETIRED PLAYER GLA'S?

23 **A.** YES.

24 **Q.** WITH RESPECT TO THE ACTIVE PLAYER GLA'S, IT'S CORRECT,  
25 ISN'T IT, THAT ONE OF THE STAFF MEMBERS IN THE TRADING CARDS

1 AND COLLECTIBLES DEPARTMENT HAD THE RESPONSIBILITY OF RECEIVING  
2 THE ACTIVE PLAYER GLA'S AND INPUTTING THAT INFORMATION INTO THE  
3 COMPUTER SYSTEM?

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

5 **Q.** AND IF YOU WANTED TO SEE A SPECIFIC ACTIVE PLAYER GLA, YOU  
6 COULD GO TO THAT PERSON AND GET IT, CORRECT?

7 **A.** I'M NOT SURE IF THAT PERSON HAD THE RECORD OR IF THOSE  
8 RECORDS WERE FILED SOMEPLACE THAT THEY WERE -- THEY WERE  
9 ACCESSIBLE. I'M NOT SURE IF IT WAS ONE PARTICULAR PERSON IN  
10 THAT DEPARTMENT.

11 **Q.** ALL RIGHT. BUT IN ANY EVENT THEY ACTUALLY TOOK THE  
12 TROUBLE TO INPUT THOSE INTO THE COMPUTER SYSTEM, CORRECT?

13 **A.** YES.

14 **Q.** WITH RESPECT TO RETIRED PLAYER GLA'S, YOU ARE NOT EVEN  
15 SURE WHO KEPT THOSE, ARE YOU, SIR? ARE YOU, MA'AM?

16 **A.** I'M NOT ABSOLUTELY SURE, NO.

17 **Q.** YOU DON'T REMEMBER WHETHER THEY WERE KEPT WITH THE ACTIVE  
18 GLA'S OR WHETHER THE RETIRED PLAYERS' DEPARTMENT AT THE NFLPA  
19 KEPT THEM, CORRECT?

20 **A.** I DON'T KNOW THAT FOR SURE, NO.

21 **Q.** IS THE CORRECT, MRS. ALLEN, THAT YOU DON'T KNOW WHETHER  
22 ANY RETIRED PLAYER RIGHTS WERE EVER LICENSED TO ANY THIRD PARTY  
23 PURSUANT TO A GLA?

24 **A.** COULD YOU REPEAT THAT QUESTION, PLEASE?

25 **Q.** SURE.

1           IS IT CORRECT THAT YOU DON'T KNOW WHETHER ANY RETIRED  
2 PLAYER RIGHTS WERE EVER LICENSED TO ANY THIRD PARTY PURSUANT TO  
3 A GLA?

4 **A.**   PURSUANT TO THE GLA, I'M NOT SURE IF THEY WERE.

5 **Q.**   OKAY.  NOW, I WANT TO ASK YOU A FEW QUESTIONS ABOUT  
6 MARKETING.  IS IT -- IS IT CORRECT, MRS. ALLEN -- BY THE WAY,  
7 YOU HAD PEOPLE THAT WORKED UNDER YOU.  THERE WAS A TEAM OF  
8 PEOPLE, AND THEY WERE RESPONSIBLE FOR MARKETING BOTH ACTIVE AND  
9 RETIRED PLAYERS, CORRECT?

10 **A.**   YES.

11 **Q.**   AND DID THEY OFTEN MARKET ACTIVE AND RETIRED PLAYERS  
12 TOGETHER?

13 **A.**   YES.

14 **Q.**   AND, IN FACT, WEREN'T RETIRED PLAYERS SOMETIMES PART OF A  
15 BIGGER ACTIVE PLAYER PROGRAM?

16 **A.**   SOMETIMES.

17 **Q.**   FOR EXAMPLE, I THINK YOU HAVE UP THERE EXHIBIT 1049.  DO  
18 YOU HAVE THAT IN FRONT OF YOU?

19           MAYBE I CAN HELP YOU.

20           **MR. LECLAIR:**  MAY I APPROACH, YOUR HONOR?

21 **BY MR. LECLAIR:**

22 **Q.**   GOT A LOT OF EXHIBITS HERE.  HERE IT IS.

23           IS THIS AN E-MAIL CHAIN THAT YOU RECEIVED ON OR ABOUT  
24 MARCH 15, 2004, MRS. ALLEN?

25 **A.**   APPARENTLY I DID.

1           **MR. LECLAIR:** I'LL MOVE EXHIBIT 1049 INTO EVIDENCE,  
2 YOUR HONOR.

3           **MR. FEHER:** NO OBJECTION, YOUR HONOR.

4           **THE COURT:** RECEIVED.

5                   (TRIAL EXHIBIT 1049 RECEIVED IN EVIDENCE.)

6                   (DOCUMENT DISPLAYED.)

7           **MR. LECLAIR:** LET'S START IN THE MIDDLE AND BLOW UP  
8 THAT E-MAIL.

9 **BY MR. LECLAIR:**

10 **Q.** THIS IS AN E-MAIL FROM PAMELA ADOLPH TO PAT ALLEN AND CLAY  
11 WALKER, JOSHUA GOODSTADT AND NICHOLE KRZESNY.

12                   WERE THOSE ALL PLAYERS THAT WORKED UNDER YOU AT  
13 PLAYERS INC?

14 **A.** YES, THEY WERE.

15 **Q.** THIS E-MAIL STATES, QUOTE:

16                   "AS PAT AND I DISCUSSED YESTERDAY, WE NEED TO  
17 REVISIT THE MANNER IN WHICH WE CONSTRUCT RETIRED PLAYER  
18 LICENSING DEALS. IN THE COLLECTIBLES CATEGORY, ALL RETIRED  
19 PLAYERS ARE PART OF A BIGGER ACTIVE PLAYER PROGRAM."

20                   WAS THAT TRUE, MRS. ALLEN?

21 **A.** WELL, TO THE EXTENT THEY WERE PART OF A BIGGER ACTIVE  
22 PLAYER PROGRAM, THE RIGHTS WERE NEVER COMBINED.

23                   THE ACTIVE PLAYER RIGHTS WERE PROVIDED, AND THEN IF A  
24 LICENSEE WISHED TO USE RETIRED PLAYERS, THEY WOULD COME TO US,  
25 AND WE WOULD TALK TO THEM ABOUT WHAT THE SPECIFICS WOULD BE

1 ABOUT INCLUDING THOSE RETIRED PLAYERS.

2 **Q.** SO ARE YOU SAYING MS. ADOLPH WAS INCORRECT IN WHAT SHE  
3 SAID HERE?

4 **A.** WELL, I'M NOT QUITE SURE WHAT SHE MEANT BY THAT, BUT THOSE  
5 RIGHTS WERE NEVER COMBINED IN ONE LICENSING AGREEMENT.

6 **Q.** AND THAT --

7 **A.** THERE MAY HAVE BEEN RETIRED PLAYERS INVOLVED IN A  
8 PARTICULAR PROGRAM, BUT NOT AS PART OF THE LICENSE AGREEMENT  
9 WITH THAT LICENSEE.

10 **Q.** SO WHEN PLAYERS INC DID THE LICENSES THEY ALWAYS SEPARATED  
11 RETIRED PLAYERS OUT, CORRECT?

12 **A.** PLAYERS INC LICENSED COMPANIES FOR ACTIVE PLAYER RIGHTS.  
13 WE MARKETED THE FACT THAT WE HAD ACCESS TO RETIRED PLAYERS, AND  
14 IF THEY -- WE ENCOURAGED THEM TO USE RETIRED PLAYERS. AND IF  
15 THEY WANTED TO, THEY WOULD LET US KNOW, AND WE WOULD DO OUR  
16 BEST TO SECURE THOSE RETIRED PLAYERS FOR THE PROGRAM.

17 **Q.** I'M GOING TO TALK WITH YOU MORE ABOUT THAT IN A MOMENT.

18 LET ME ASK YOU TO LOOK AT THE NEXT PARAGRAPH. IT  
19 SAYS, QUOTE:

20 "I HAVE A NEW WATCH LICENSEE WHO WANTS TO DO  
21 RETIRED PLAYERS, AND I TOLD THEM THEY NEEDED TO ALSO DO AT  
22 LEAST SIX ACTIVE GUYS," CLOSED QUOTE.

23 DO YOU SEE THAT LANGUAGE, MS. ALLEN?

24 **A.** YES.

25 **Q.** SO, IN OTHER WORDS, WHAT YOUR FOLKS WERE TELLING SOMEBODY

1 WHO CAME IN AND SAID THEY WERE INTERESTED IN RETIRED PLAYERS  
2 IS:

3 "YOU NEED TO BE SURE YOU ALSO DO ACTIVE  
4 PLAYERS," CORRECT?

5 **A.** NO, THAT'S NOT WHAT WE TOLD THEM.

6 **Q.** IS THAT NOT WHAT YOU READ IN MRS. ADOLPH'S E-MAIL?

7 **A.** THAT'S WHAT THE E-MAIL SAYS, BUT WE NEVER DID THAT.

8 **Q.** SHE WAS JUST --

9 **A.** I'M NOT SURE WHAT SHE MEANT BY THAT, BUT THAT IS NOT --  
10 THAT WAS NOT A PRACTICE AT PLAYERS INC.

11 **Q.** SO SHE JUST GOT IT WRONG?

12 **A.** I -- I CAN'T SPEAK TO WHAT SHE MEANT. BUT, AGAIN, THAT'S  
13 NOT SOMETHING THAT WE DID.

14 **Q.** LET ME ASK YOU, THEN, ABOUT YOUR INVOLVEMENT IN THE  
15 MARKETING OF RETIRED PLAYERS.

16 IS IT CORRECT THAT THE ONLY CONVERSATIONS YOU EVER  
17 HAD DIRECTLY WITH LICENSEES REGARDING THE MARKETING OF RETIRED  
18 PLAYERS WERE MEETINGS IN WHICH YOU SIMPLY STATE THAT PLAYERS  
19 INC HAD ACCESS TO RETIRED PLAYERS IF THEY WERE INTERESTED IN  
20 USING THEM?

21 **A.** WELL, WE -- EVERY MEETING THAT WE HAD WITH LICENSEES,  
22 PROSPECTIVE LICENSEES AND SPONSORS WE MADE SURE THEY UNDERSTOOD  
23 THAT WE HAD ACCESS TO RETIRED PLAYERS. AND THAT WAS DISCUSSED  
24 IN ALL OF THOSE MEETINGS AS A STANDARD PRACTICE.

25 **Q.** LET ME AGAIN ASK YOU TO LOOK AT YOUR DEPOSITION,

1 MRS. ALLEN, ON PAGE 41.

2 I'M GOING TO READ LINES 14 THROUGH 23.

3 **"QUESTION:** DID YOU EVER SPEAK TO ANY  
4 LICENSEE REGARDING THE LICENSING OF RETIRED  
5 PLAYERS WHILE YOU WERE AT PLAYERS INC?

6 **"ANSWER:** THE ONLY -- THE ONLY CONVERSATIONS  
7 I EVER HAD WITH RESPECT TO RETIRED PLAYERS  
8 WOULD HAVE BEEN IN THE CONTEXT OF MEETINGS  
9 WITH LICENSEES OR PROSPECTIVE LICENSEES TO  
10 THE EXTENT THAT I ATTENDED THEM. THAT SIMPLY  
11 STATED THAT PLAYERS INC HAD ACCESS TO RETIRED  
12 PLAYERS IF THEY WERE INTERESTED IN UTILIZING  
13 THEM," PERIOD, CLOSED QUOTE.

14 IT'S TRUE, ISN'T IT, MRS. ALLEN, THAT EVEN IN  
15 MARKETING RETIRED PLAYERS, YOU NEVER REALLY DISTINGUISHED THOSE  
16 WHO SIGNED A GLA FROM THOSE THAT DIDN'T SIGN A GLA?

17 **A.** I'M NOT SURE I UNDERSTAND THE QUESTION.

18 **Q.** IN OTHER WORDS, WHEN YOU'RE OUT SELLING RETIRED PLAYERS,  
19 IT DIDN'T MAKE ANY DIFFERENCE TO YOU WHETHER THEY HAD SIGNED A  
20 GLA OR HADN'T SIGNED A GLA, YOU WERE MARKETING EVERYBODY THAT  
21 YOU HAD ACCESS TO?

22 **A.** WELL, WE HAD A LARGE NUMBER OF PLAYERS WHO HAD SIGNED  
23 GLA'S. BUT UNFORTUNATELY, THERE WEREN'T A LOT OF PLAYERS IN  
24 THAT GROUP WHO WERE SOUGHT AFTER BY LICENSEES. SO WE HAD  
25 ACCESS TO PLAYERS. THE MORE RECOGNIZABLE PLAYERS WERE

1 GENERALLY THE ONES THAT THEY WANTED TO INCLUDE.

2 SO WHEN WE LET IT BE KNOWN THAT WE HAD ACCESS, WHAT  
3 WE WERE SAYING WAS THAT WE HAD ALL THE PLAYERS WHO HAD SIGNED A  
4 GLA. WE HAD ACCESS TO PLAYERS WHO HAD NOT SIGNED A GLA, BUT  
5 WHO WANTED TO BE DEALT WITH ON A CASE-BY-CASE BASIS, MOST OF  
6 WHOM WERE THE MORE RECOGNIZABLE PLAYERS.

7 AND WE HAD ACCESS THROUGH RELATIONSHIPS WITH AGENTS  
8 AND OTHER WAYS THAT WE HAD CONTACT WITH THEM.

9 **Q.** WITH A LOT OF RETIRED PLAYERS WHO DIDN'T SIGN A GLA?

10 **A.** YES, SOME.

11 **Q.** IS IT TRUE THAT YOU DON'T RECALL ASKING ANYONE AT PLAYERS  
12 INC TO SEND ANY THIRD-PARTY LICENSEE INFORMATION REGARDING  
13 POTENTIAL LICENSING WITH RETIRED PLAYERS?

14 **A.** I'M SORRY. COULD YOU STATE THAT QUESTION AGAIN, PLEASE?

15 **Q.** SURE. IS IT TRUE THAT YOU DON'T RECALL ASKING ANYONE AT  
16 PLAYERS INC TO SEND ANY THIRD-PARTY LICENSEE INFORMATION  
17 REGARDING POTENTIAL LICENSING WITH RETIRED PLAYERS?

18 **A.** WELL, I DON'T RECALL ASKING SPECIFICALLY, BECAUSE THAT WAS  
19 SOMETHING THAT WAS PART OF THEIR RESPONSIBILITIES ON A  
20 DAY-TO-DAY BASIS. EVERYBODY WAS RESPONSIBLE FOR PROMOTING THE  
21 FACT THAT WE HAD ACCESS TO RETIRED PLAYERS.

22 **Q.** LET'S TALK ABOUT EA FOR A MOMENT. EA WAS THE BIGGEST  
23 LICENSEE IN TERMS OF DOLLARS THAT PLAYERS INC HAD, CORRECT?

24 **A.** YES.

25 **Q.** AT THE MEETINGS THAT YOU ATTENDED WITH EA, YOU DON'T EVEN

1 RECALL THE SUBJECT OF RETIRED PLAYERS COMING UP, CORRECT?

2 **A.** THERE WERE SO MANY MEETINGS THAT WE ATTENDED, I DON'T  
3 RECALL SPECIFIC MENTION OF RETIRED PLAYERS. BUT THE TIME OF MY  
4 DEPOSITION I HAD NOT BEEN AT PLAYERS INC FOR TWO YEARS, SO A  
5 LOT OF THIS INFORMATION WAS KIND OF OUT OF MY HEAD.

6 I'VE HAD A LOT OF TIME TO THINK ABOUT A LOT OF THESE  
7 THINGS, AND I -- I KNOW THAT THOSE THINGS WERE DISCUSSED, BUT I  
8 CAN'T PINPOINT -- WE HAD HUNDREDS OF MEETINGS WITH PEOPLE. I  
9 CAN'T TELL YOU A SPECIFIC MEETING IN WHICH I STATED THAT WE HAD  
10 ACCESS TO RETIRED PLAYERS.

11 **Q.** IS IT TRUE THAT YOU DON'T EVEN RECALL MENTIONING THAT YOU  
12 HAD A SPECIFIC NUMBER OF RETIRED PLAYER GLA'S?

13 **A.** I DON'T RECALL THAT I MENTIONED THAT. BUT I WASN'T THE  
14 ONLY PERSON IN THE ROOM DURING THOSE MEETINGS.

15 **Q.** IS IT TRUE THAT YOU DON'T RECALL ANY DISCUSSION OF A  
16 SPECIFIC NUMBER OF GLA'S AT ALL?

17 **A.** I DON'T RECALL A SPECIFIC DISCUSSION, BECAUSE WE HAD SO  
18 MANY MEETINGS WITH SO MANY DIFFERENT COMPANIES.

19 BUT AS A STANDARD PRACTICE, AND AS A COURSE OF  
20 BUSINESS, OUR STAFF ALWAYS, IN ALL OF THEIR MEETINGS, LET IT BE  
21 KNOWN TO ANY LICENSEES OR PROSPECTIVE LICENSEES THAT WE HAD  
22 ACCESS TO RETIRED PLAYERS.

23 **Q.** RIGHT. AND I'M TALKING NOW ABOUT THE RETIRED PLAYERS WHO  
24 SIGNED A GLA. AND YOU DON'T RECALL TELLING ANY LICENSEE THAT  
25 YOU HAD A SPECIFIC NUMBER OF RETIRED PLAYERS WHO SIGNED A GLA;

1 IS THAT TRUE?

2 **A.** NO, WE DID TELL THEM THAT.

3 **Q.** YOU DID? ALL RIGHT. LET'S LOOK AT YOUR DEPOSITION, PAGE  
4 102. AND I WILL READ LINES 5 THROUGH 14.

5 **"QUESTION:** AN EXAMPLE: DID YOU EVER GO TO,  
6 FOR INSTANCE, EA AND SAY TO THEM 'OH, WE HAVE  
7 A CERTAIN AMOUNT OF GLA'S ALREADY SIGNED BY  
8 RETIRED PLAYERS'? DID ANY CONVERSATIONS LIKE  
9 THAT EVER TAKE PLACE THAT YOU'RE AWARE OF?

10 **"ANSWER:** I DON'T RECALL ANY SPECIFIC MENTION  
11 OF A PARTICULAR NUMBER OF GLA'S, NO.

12 **"QUESTION:** WHAT ABOUT GLA'S GENERALLY?

13 **"ANSWER:** NO."

14 LET ME BROADEN THE QUESTION, MRS. ALLEN. IS IT TRUE  
15 THAT YOU DON'T RECALL THAT ANY EMPLOYEE OF PI, PLAYERS INC,  
16 EVER SENT A LIST OF RETIRED PLAYERS WHO HAD SIGNED A GLA TO ANY  
17 THIRD-PARTY LICENSEE?

18 **A.** I DON'T RECALL A SPECIFIC INSTANCE OF A SPECIFIC PERSON.

19 BUT WE HAD THE LIST OF PLAYERS WHO HAD SIGNED GLA'S.  
20 AND IF THEY ASKED FOR IT, WE PROVIDED IT FOR THEM.

21 **Q.** YOU JUST DON'T RECALL IT EVER HAPPENING, SPECIFICALLY?

22 **A.** I DON'T RECALL A SPECIFIC INSTANCE OF IT. BUT NO ONE HAD  
23 TO COME TO ME AND ASK PERMISSION. THAT WAS SOMETHING THAT AS A  
24 GENERAL COURSE OF BUSINESS THEY WERE AUTHORIZED TO DO IF ANYONE  
25 ASKED.

1 Q. WERE YOU AWARE THAT MR. SKALL -- WHO WAS MR. SKALL?

2 A. HE WAS THE VICE PRESIDENT OF PLAYER MARKETING.

3 Q. WERE YOU AWARE HE WASN'T EVEN AWARE OF SUCH A LIST?

4 A. I DON'T KNOW.

5 MR. FEHER: OBJECTION, YOUR HONOR. HE'S TESTIFYING.

6 THE COURT: WELL, THE WITNESS HAS SAID SHE DOESN'T  
7 KNOW, SO THERE'S NO FOUNDATION TO PROCEED ON THAT LINE OF  
8 QUESTIONS.

9 MR. LECLAIR: I'M NOT GOING TO PROCEED ON THAT, YOUR  
10 HONOR.

11 BY MR. LECLAIR:

12 Q. I'M GOING TO CHANGE SUBJECTS, MRS. ALLEN.

13 IS IT TRUE THAT PLAYERS INC MADE PRESENTATIONS AT THE  
14 ANNUAL MEETING OF THE NFLPA?

15 A. YES.

16 Q. ALL RIGHT. I WANT TO SHOW YOU SOME OF THE -- SOME PARTS  
17 OF THOSE REPORTS, IF I COULD.

18 I BELIEVE THEY'RE IN FRONT OF YOU. I WANT TO FIRST  
19 START WITH EXHIBIT 1296. I THINK IT'S A BIG, THICK ONE.  
20 SHOULD BE RIGHT THERE.

21 IS EXHIBIT 1296 A COPY OF ONE OF THE REPORTS YOU MADE  
22 AT THE 2004 ANNUAL MEETING?

23 A. YES.

24 MR. LECLAIR: YOUR HONOR, I'LL MOVE EXHIBIT 1296 IN  
25 EVIDENCE.

1           **MR. FEHER:** NO OBJECTION AT ALL, YOUR HONOR.

2           **THE COURT:** RECEIVED.

3                   (TRIAL EXHIBIT 1296 RECEIVED IN EVIDENCE.)

4 **BY MR. LECLAIR:**

5 **Q.** LET'S GO, IF WE COULD, TO PAGE WHICH IS BATES STAMPED 271.

6 **A.** SORRY?

7 **Q.** THERE'S A BATES STAMP AT THE BOTTOM OF THE PAGE, ON THE  
8 RIGHT, MRS. ALLEN. I WANTED TO LOOK AT PAGE 271, WHICH IS  
9 SEVERAL PAGES BACK.

10 **A.** OKAY.

11           **THE COURT:** THIS IS EXHIBIT WHAT? 1296?

12           **MR. LECLAIR:** YES, YOUR HONOR.

13           **THE COURT:** THANK YOU. IT'S RECEIVED.

14 **BY MR. LECLAIR:**

15 **Q.** THIS PAGE IS A STATEMENT OF THE SUMMARY OF REVENUES AND  
16 PAYMENTS FOR THIS PARTICULAR YEAR; IS THAT CORRECT?

17 **A.** YES.

18 **Q.** LET'S LOOK AT THE VERY BOTTOM PARAGRAPH.

19           **MR. LECLAIR:** IF WE COULD HIGHLIGHT THAT.

20                   (DOCUMENT DISPLAYED.)

21 **BY MR. LECLAIR:**

22 **Q.** STATES, QUOTE:

23                   "A RECORD TOTAL OF 25.8 MILLION IN UNSHARED  
24 PAYMENTS TO PLAYERS WAS MADE BY PLAYERS INC'S LICENSEES AND  
25 SPONSORS. THE LIST OF DIFFERENT PLAYERS WHO RECEIVED THOSE

1 PAYMENTS INCLUDED 1,017 ACTIVE AND 328 RETIRED PLAYERS. THE  
2 LIST IS ATTACHED AS APPENDIX J."

3 AND, IN FACT, IF YOU LOOK AT THE BACK OF THIS EXHIBIT  
4 THERE'S A VERY LONG EXHIBITS, MRS. ALLEN, WHICH SETS FORTH  
5 THESE PAYMENTS. AND ARE THOSE WHAT'S EVERYONE HAS BEEN  
6 REFERRING TO AS THE "AD HOC PAYMENTS"?

7 **A.** YOU MEAN, WITH RESPECT TO RETIRED PLAYERS?

8 **Q.** NO. IN GENERAL, WERE THESE UNSHARED PAYMENTS? WERE THOSE  
9 THE AD HOC PAYMENTS MADE DIRECTLY TO PLAYERS, BOTH ACTIVE AND  
10 RETIRED?

11 **A.** YES.

12 **Q.** AND SO IN THIS PARTICULAR YEAR, IN AD HOC PAYMENTS THERE  
13 WERE OVER \$25 MILLION OF SUCH PAYMENTS MADE, CORRECT?

14 **A.** THAT'S CORRECT.

15 **Q.** AND IF YOU LOOK AT THE LIST -- LET'S TURN TO THE PAGE  
16 BATES STAMPED 475 AT THE BOTTOM, WHICH IS NEAR THE BACK.

17 WHO ACTUALLY PREPARED THIS PRINTOUT EACH YEAR,  
18 MRS. ALLEN?

19 **A.** I BELIEVE THE PRINTOUT WAS -- IT WAS RUN FROM OUR COMPUTER  
20 PROGRAM. I DON'T KNOW THAT THE SAME PERSON ACTUALLY RAN IT  
21 EVERY YEAR. BUT IT WAS RUN FROM OUR ACCOUNTING RECORDS.

22 **Q.** WELL, HERE'S THE QUESTION I WANT TO ASK ABOUT IT. ISN'T  
23 IT TRUE THAT THIS REPORT, WHICH WAS PREPARED EVERY SINGLE YEAR,  
24 BREAKS OUT THE PAYMENTS BY EACH ACTIVE PLAYER BY TEAM, CORRECT?  
25 AND THEN, IT BREAKS IT INTO TWO OTHER CATEGORIES: HALL OF

1 FAME, AND THEN RETIRED. IS THAT TRUE?

2 **A.** THIS PARTICULAR DOCUMENT DOES, YES.

3 **Q.** ALL RIGHT. DO YOU HAVE ANY REASON TO BELIEVE THAT ANY  
4 OTHER YEAR WAS ANY DIFFERENT THAN THIS YEAR?

5 **A.** I DON'T RECALL --

6 **Q.** IS IT --

7 **A.** -- HOW WE DID EACH YEAR.

8 **Q.** PARDON ME.

9 IS IT TRUE THAT THIS LIST, WHICH IS WHAT WAS  
10 PRESENTED, MAKES ABSOLUTELY NO DISTINCTION BETWEEN RETIRED  
11 PLAYERS WHO SIGNED A GLA AND THOSE WHO DIDN'T?

12 **A.** NO, IT DOESN'T.

13 **Q.** OKAY. NOW, LET'S TURN, IF WE COULD, TO THE PAGE BATES  
14 STAMPED 1326.

15 **MR. LECLAIR:** UNFORTUNATELY, THIS IS A BIG DOCUMENT,  
16 YOUR HONOR. TAKES A MOMENT TO GET IT ON THE SCREEN. I  
17 APOLOGIZE.

18 **THE COURT:** MAY I MAKE A SUGGESTION? I'LL LET EACH  
19 SIDE HERE HAVE ABOUT HALF A MINUTE.

20 IT MAY BE NOT CLEAR TO THE JURY WHY WE'RE GOING INTO  
21 THIS.

22 **MR. LECLAIR:** OKAY.

23 **THE COURT:** SO I'M GOING TO GIVE YOU 30 SECONDS TO  
24 EXPLAIN TO THE JURY THE POINT OF THIS EXAMINATION, AND THEN I'M  
25 GOING TO GIVE YOU 30 SECONDS TO RESPOND.

1           **MR. LECLAIR:**   RIGHT.

2           LADIES AND GENTLEMEN OF THE JURY, THE REASON I'M  
3 GOING INTO THIS IS OUR CONTENTION IN THIS CASE IS THAT PLAYERS  
4 INC DID NOT CARE ABOUT MARKETING GLA RETIRED PLAYERS. THEY  
5 MARKETED RETIRED PLAYERS. THEY DIDN'T MAKE ANY DISTINCTION.  
6 THEIR RECORDS ARE GOING TO SHOW YOU THEY HAD NO DISTINCTION AT  
7 ALL. NO -- YOU COULD NEVER TELL WHETHER THERE WAS A GLA OR NOT  
8 A GLA, BECAUSE THEY DIDN'T CARE. THEY DIDN'T EVEN KNOW WHERE  
9 THE LIST WAS.

10           AND, SECONDLY, THIS SHOWS -- WHAT WE'RE ABOUT TO PUT  
11 UP IS THE SHARED PAYMENTS AND THE UNSHARED PAYMENTS. THE  
12 UNSHARED PAYMENTS, WHICH WENT TO BOTH ACTIVE AND RETIRED  
13 PLAYERS, WERE EXTENSIVE. MORE TO THE ACTIVES, LESS TO THE  
14 RETIRED. THE UNSHARED PAYMENTS, ALL TO THE ACTIVES, NONE TO  
15 THE RETIRED.

16           THAT'S THE SIGNIFICANCE OF WHAT WE'RE DOING.

17           **THE COURT:**   ALL RIGHT. THANK YOU.

18           THIRTY SECONDS FROM THE DEFENSE.

19           **MR. FEHER:** LADIES AND GENTLEMEN OF THE JURY, I'M  
20 ACTUALLY GLAD THAT MR. LECLAIR IS BRINGING THIS UP, BECAUSE IT  
21 SHOWS THAT PLAYERS INC WORKED HARD TO MARKET RETIRED PLAYERS,  
22 GENERALLY.

23           THE EXHIBIT THAT HE'S POINTING OUT SHOWS A GREAT  
24 AMOUNT OF MONEY WHEN WE COULD GET LICENSEES TO BE INTERESTED IN  
25 RETIRED PLAYERS, THAT WE GENERATED FOR RETIRED PLAYERS AS A

1 GENERAL MATTER, WHETHER THEY SIGNED A GLA OR DIDN'T SIGN A GLA.

2 WE'VE ALREADY SHOWN THROUGH PRIOR TESTIMONY THAT  
3 PLAYERS INC WAS NOT ABLE TO GET ALL RETIRED PLAYERS TO SIGN  
4 GLA'S AND, AS A MATTER OF FACT, HAD GREAT DIFFICULTY GETTING  
5 LARGE NUMBERS OF STARS TO SIGN GLA'S.

6 **THE COURT:** ALL RIGHT. THAT'S ABOUT IT.

7 HOW MUCH LONGER DO YOU HAVE ON DIRECT?

8 **MR. LECLAIR:** YOUR HONOR, I'M GOING TO GO THROUGH  
9 THREE MORE REPORTS. VERY FEW QUESTIONS. JUST TAKES A FEW  
10 MINUTES TO GET THEM IDENTIFIED. IF YOU WANT TO BREAK, THAT'S  
11 FINE.

12 **THE COURT:** WE NEED TO BREAK IN A MINUTE, BUT I WANT  
13 YOU TO FINISH UP THE -- FIND A GOOD RESTING POINT.

14 **MR. LECLAIR:** LET ME FINISH THIS EXHIBIT, YOUR HONOR.

15 **THE COURT:** FINE.

16 **MR. LECLAIR:** WERE WE ABLE TO GET TO PAGE 1236? ARE  
17 WE STILL STRUGGLING WITH THAT?

18 LET ME DO THIS. I'M GOING TO HOLD THIS UP FOR THE  
19 JURY, IF WE COULD, YOUR HONOR.

20 **THE COURT:** THAT'S FINE.

21 **MR. LECLAIR:** BECAUSE I THINK THEY CAN SEE IT.

22 WAIT. WE FINALLY GOT IT.

23 (DOCUMENT DISPLAYED.)

24 **THE COURT:** ALL RIGHT.

25

1 **BY MR. LECLAIR:**

2 **Q.** AND, MRS. ALLEN, WAS THIS A CHART SHOWING THE PAYMENTS  
3 YEAR-BY-YEAR, BOTH SHARED AND UNSHARED?

4 **A.** YES.

5 **Q.** AND IT'S TRUE, IS IT NOT, FOR EXAMPLE, FOR 2003-2004, YOU  
6 SEE THAT THERE'S THE SAME 23.8 MILLION OF UNSHARED PAYMENTS  
7 THAT WAS REFERENCED IN THE FIRST PAGE THAT WE LOOKED AT?

8 **A.** YES.

9 **Q.** SO THAT INCLUDES BOTH ACTIVE AND RETIRED PLAYERS?

10 **A.** YES, I BELIEVE IT DOES.

11 **Q.** AND THE TITLE OF THIS CHART IS:

12 "TOTAL PAYMENTS TO NFL PLAYERS," CORRECT?

13 **A.** THAT'S CORRECT.

14 **Q.** ALL RIGHT. AND OF THE 25.8 MILLION OF UNSHARED AD HOC  
15 PAYMENTS, WHAT PERCENTAGE WENT TO ACTIVES VERSUS RETIRED, IF  
16 YOU KNOW?

17 **A.** I DON'T KNOW THE PERCENTAGE.

18 **Q.** WE'LL DO THAT SEPARATELY.

19 AND THEN, THE 15.4 MILLION IN 2003, 2004, 13.7 IN  
20 2002-'3, THAT WAS THE SHARED GROUP LICENSING MONEY THAT WENT TO  
21 THE EQUAL SHARE POOL, CORRECT?

22 **A.** YES.

23 **Q.** NOW, FINALLY, TO FINISH THIS EXHIBIT, IF WE TURN TWO PAGES  
24 BACK, IF WE CAN, TO PAGE 1324. GREAT.

25 THIS IS A CHART YOU ALSO PRESENTED AT THE ANNUAL

1 MEETING, MRS. ALLEN, CORRECT?

2 **A.** NO, I DON'T --

3 **Q.** IT WAS IN THE MIDST OF YOUR REPORT. THAT'S WHY I INCLUDED  
4 IT.

5 **A.** YES.

6 **Q.** GREAT. AND THIS WAS A CHART SHOWING THE HISTORY OF THE  
7 AMOUNT OF EQUAL SHARE ROYALTY, CORRECT?

8 **A.** YES.

9 **Q.** AND IT SHOWS THE AMOUNT OF THE CHECK TO EACH PLAYER  
10 YEAR-BY-YEAR WITH THE LAST YEAR BEING 2002. THE AMOUNT WAS  
11 \$6,100, CORRECT?

12 **A.** YES.

13 **Q.** PAID TO 2230 PLAYERS, FOR A TOTAL OF \$13,772,000, CORRECT?

14 **A.** YES.

15 **MR. LECLAIR:** YOUR HONOR, I THINK WE'LL BREAK AT THIS  
16 POINT.

17 **THE COURT:** ALL RIGHT. WE'LL TAKE 15 MINUTES.

18 LET ME ASK, MS. MARTIN, ARE YOU FEELING ALL RIGHT?  
19 SOMETIMES I NOTICE YOUR EYES ARE CLOSED, BUT IT SEEMS LIKE YOU  
20 ARE PAYING ATTENTION. YOU'RE PAYING ATTENTION?

21 **JUROR MS. MARTIN:** (NODDING.)

22 **THE COURT:** ALL RIGHT. YOU'RE INDICATING "YES."  
23 SOMETIMES PEOPLE LISTEN WITH THEIR EYES CLOSED, AND THAT'S  
24 PERFECTLY OKAY.

25 ALL RIGHT. WE'LL TAKE A 15-MINUTE BREAK. YOU

1 REMEMBER THE ADMONITION.

2 **THE CLERK:** ALL RISE.

3 (THEREUPON, THE JURY LEFT THE COURTROOM.)

4 **THE COURT:** MS. ALLEN, YOU CAN STEP DOWN. WHILE  
5 YOU'RE ON EXAMINATION WE HAVE GROUND RULES FOR NOT TALKING WITH  
6 LAWYERS. SO PLEASE REMEMBER THAT.

7 **THE WITNESS:** YES, YOUR HONOR.

8 **THE COURT:** THANK YOU. YOU CAN TAKE A 15-MINUTE  
9 BREAK, TOO.

10 ANYTHING THE LAWYERS NEED ME FOR?

11 **MR. LECLAIR:** NO, YOUR HONOR.

12 **MR. FEHER:** NO, YOUR HONOR.

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

14 **THE COURT:** WE'LL TAKE OUR BREAK, TOO.

15 OH, I'VE GOT A QUESTION FOR YOU.

16 YOU CAN GO AHEAD, MS. ALLEN.

17 TWO THINGS. FIRST IS THAT I HAVE A LIST OF THE  
18 EXHIBITS THAT ARE RECEIVED IN EVIDENCE. AND SOMETIME TODAY,  
19 TOMORROW, THE NEXT DAY, THE LAWYERS OUGHT TO VET THIS, BECAUSE  
20 THIS IS WHAT'S GOING IN THE JURY ROOM. IF YOU THINK I'VE MADE  
21 A MISTAKE, YOU'VE GOT TO BRING IT TO MY ATTENTION SOON ENOUGH  
22 TO FIX IT.

23 NUMBER TWO, REMEMBER THAT IF YOU WANT AN INDEX OF THE  
24 EXHIBITS TO GO INTO THE JURY ROOM, YOU'VE GOT TO STIPULATE TO  
25 THAT AND HAVE IT READY TO GO. IT WILL NOT GO IN AUTOMATICALLY.

1           NUMBER THREE, I CAN'T REMEMBER. IS THERE A CLAIM FOR  
2 PUNITIVE DAMAGES IN THIS CASE?

3           **MR. LECLAIR:** THERE IS, YOUR HONOR.

4           **THE COURT:** ALL RIGHT. THEN, I'LL HAVE TO INCLUDE  
5 THAT IN THE JURY INSTRUCTIONS.

6           **MR. LECLAIR:** I UNDERSTOOD, YOUR HONOR, THAT'S A  
7 SEPARATE PROCEEDING AFTER THE FIRST PROCEEDING.

8           **THE COURT:** NO, NO. THEY'VE GOT TO ANSWER THE  
9 QUESTION WHETHER OR NOT OPPRESSION, FRAUD, SO FORTH HAS BEEN  
10 PROVEN. WE DON'T HAVE A SEPARATE TRIAL ON THAT.

11           THE ONLY THING YOU HAVE A SEPARATE TRIAL ON IS THE  
12 AMOUNT OF PUNITIVE DAMAGES.

13           **MR. KESSLER:** AND YOUR HONOR, OUR ARGUMENT WOULD BE  
14 THAT AT THE CONCLUSION OF THEIR CASE THERE'S NOT GOING TO BE A  
15 BASIS FOR WHICH A REASONABLE JURY COULD ANSWER THAT QUESTION.  
16 AND, THEREFORE, THERE WOULD BE NO REASON TO ASK THE QUESTION,  
17 SO I'LL HAVE A PARTIAL RULE 50 MOTION WITH RESPECT TO THAT.

18           I DON'T THINK THEY HAVE PUT IN ANY EVIDENCE THAT  
19 WOULD SATISFY THE D.C. STANDARD FOR EGREGIOUS INTENT.

20           **THE COURT:** WE'RE NOT GOING TO ARGUE THIS NOW.

21           **MR. KATZ:** I THINK ALL OF OUR EVIDENCE SHOWS THAT,  
22 YOUR HONOR.

23           **THE COURT:** WE'RE NOT GOING TO ARGUE THIS POINT NOW.  
24 I JUST WANTED TO KNOW IF IT WAS STILL IN THE CASE.

25           THANK YOU.

1           **MR. KESSLER:**   THANK YOU.

2           **MR. FEHER:**   THANK YOU, YOUR HONOR.

3                   (RECESS TAKEN FROM 9:10 TO 9:31 A.M.)

4           **THE COURT:**   WE ARE GOING TO BRING BACK THE JURY.

5           MS. ALLEN, YOU CAN COME BACK UP HERE.

6           **THE CLERK:**   ALL RISE.

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

8           **THE COURT:**   HAVE A SEAT.

9                   SOMETHING FUNNY HAS HAPPENED.   SOME OF OUR JURORS ARE  
10   HAVING SMILES.   BUT THAT'S GOOD.   THAT'S GOOD.

11                   OKAY.   MR. LECLAIR, GO RIGHT AHEAD.

12   **BY MR. LECLAIR:**

13   **Q.**   MS. ALLEN, JUST A COUPLE MORE EXHIBITS, WE'LL BE DONE.

14                   IF YOU COULD TAKE A LOOK AT EXHIBIT 1298, WHICH  
15   SHOULD BE THERE.   IT'S ONE OF THE THICKER ONES.

16                   IS THIS THE ANNUAL REPORT YOU MADE AT THE ANNUAL  
17   MEETING IN MARCH OF 2005?

18   **A.**   YES, IT IS.

19                   **MR. LECLAIR:**   YOUR HONOR, I'LL MOVE IN EXHIBIT 1298.

20                   **MR. FEHER:**   NO OBJECTION, YOUR HONOR.

21                   **THE COURT:**   OKAY.   RECEIVED.

22                   (TRIAL EXHIBIT 1298 RECEIVED IN EVIDENCE.)

23   **BY MR. LECLAIR:**

24   **Q.**   AND I'M JUST GOING TO SHOW ONE PAGE.   I BELIEVE WE'VE

25   WORKED OUT OUR SCREEN PROBLEMS.   I WOULD LIKE TO SHOW THE PAGE

1 BATES STAMPED 510, MRS. ALLEN.

2 **MR. LECLAIR:** IF WE COULD HIGHLIGHT THAT LANGUAGE.

3 (DOCUMENT DISPLAYED.)

4 **BY MR. LECLAIR:**

5 **Q.** IN 2005, THIS STATES, QUOTE:

6 "A RECORD TOTAL OF 32.7 MILLION IN UNSHARED  
7 PAYMENTS TO PLAYERS WAS MADE BY PLAYERS INC'S LICENSEES AND  
8 SPONSORS COMPARED TO 25.8 MILLION IN FY '04. THE LIST OF  
9 DIFFERENT PLAYERS WHO RECEIVED THOSE PAYMENTS INCLUDED 1,082  
10 ACTIVE AND 335 RETIRED PLAYERS. THE LIST IS INCLUDED WITH THIS  
11 REPORT."

12 AND I NOTE THIS COPY DOESN'T HAVE IT ATTACHED. I  
13 DON'T THINK IT WAS ACTUALLY PRODUCED CONTEMPORANEOUSLY, BUT WAS  
14 THERE ACTUALLY A LIST THAT WAS ATTACHED WHEN YOU PRESENTED IT  
15 AT THE MEETING?

16 **A.** YES, THERE WAS.

17 **Q.** ALL RIGHT. LET'S LOOK NEXT, IF WE COULD, MRS. ALLEN, AT  
18 EXHIBIT 1299. ON THIS ONE THE DATE IS HARD TO READ, BUT I  
19 BELIEVE, EVEN THOUGH YOU CAN'T READ IT, THIS IS THE 2006 ANNUAL  
20 REVIEW.

21 CAN YOU TAKE A LOOK AND JUST LOOK AT A FEW PAGES AND  
22 DETERMINE THAT THAT'S THE CASE FOR ME?

23 **A.** YES, IT IS.

24 **Q.** ALL RIGHT.

25 **MR. LECLAIR:** I'LL MOVE IN EXHIBIT 1299, YOUR HONOR.

1           **MR. FEHER:** NO OBJECTION, YOUR HONOR.

2           **THE COURT:** RECEIVED.

3           (TRIAL EXHIBIT 1299 RECEIVED IN EVIDENCE.)

4 **BY MR. LECLAIR:**

5 **Q.** AND WE'LL TURN AGAIN TO THE PAGE 4, WHICH IS BATES STAMPED  
6 589. AND THIS PAGE STATES, QUOTE:

7                         "A RECORD TOTAL OF 36.6 MILLION IN UNSHARED  
8 PAYMENTS TO PLAYERS WAS MADE BY PLAYERS INC'S LICENSEES AND  
9 SPONSORS COMPARED TO 32.7 MILLION IN FY '05. THE LIST OF  
10 DIFFERENT PLAYERS WHO RECEIVED THOSE PAYMENTS INCLUDED 1,036  
11 ACTIVE (AN AVERAGE OF 32 PLAYERS PER TEAM) AND 421 RETIRED  
12 PLAYERS. THE LIST IS INCLUDED WITH THIS REPORT."

13                         AGAIN, MS. ALLEN, IT DOES NOT APPEAR TO BE ATTACHED,  
14 THE ACTUAL LIST, BUT WHEN YOU ATTENDED THE MEETING THERE WAS A  
15 LIST OF PLAYERS AND PAYMENTS?

16 **A.** YES.

17           **MR. LECLAIR:** YOUR HONOR, I HAVE NO OTHER QUESTIONS.

18           **THE COURT:** THANK YOU.

19                                 **CROSS EXAMINATION**

20 **BY MR. FEHER:**

21 **Q.** GOOD MORNING, MRS. ALLEN.

22 **A.** GOOD MORNING, MR. FEHER.

23 **Q.** WHAT IS YOUR CURRENT EMPLOYMENT?

24 **A.** I'M CURRENTLY RETIRED.

25 **Q.** AND HOW LONG HAVE YOU BEEN RETIRED?

1 **A.** TWO YEARS. A LITTLE OVER TWO YEARS, ACTUALLY.

2 **Q.** OKAY. AND WHEN THANK YOU START AT THE NFLPA?

3 **A.** UHM, MY EMPLOYMENT BEGAN IN 1973. I WAS THE -- HIRED AS  
4 THE SECRETARY TO THE GENERAL COUNSEL, RICHARD BERTHELSEN. AND  
5 WORKED FOR HIM FOR, I THINK, THREE YEARS.

6 AND THEN, IN 1976 WAS PROMOTED TO SECRETARY TO THE  
7 EXECUTIVE DIRECTOR, ED GARVEY.

8 THEN, IN 1979, I WAS PROMOTED TO ASSISTANT DIRECTOR  
9 OF LICENSING AND SPECIAL EVENTS, A POSITION I HELD UNTIL 1985,  
10 WHEN I WAS PROMOTED TO DIRECTOR OF LICENSING AND SPECIAL  
11 EVENTS.

12 AND THEN, SUBSEQUENTLY WHEN PLAYERS INC WAS FORMED IN  
13 1994, I WAS NAMED THE EXECUTIVE VICE PRESIDENT AND COO.

14 **Q.** OKAY. NOW, DID THERE COME A TIME WHEN YOU MARRIED DOUG  
15 ALLEN?

16 **A.** YES, THERE DID. THERE WAS.

17 **Q.** AND WHEN YOU MARRIED DOUG ALLEN, HOW WAS IT HANDLED IN  
18 TERMS OF ANY OF YOUR REVIEWS OR PROMOTIONS OR ANY  
19 BUSINESS-RELATED MATTERS IN TERMS OF ANY INVOLVEMENT OR  
20 NONINVOLVEMENT BY MR. ALLEN?

21 **A.** WELL, IN TERMS OF MY EMPLOYMENT, MY SALARY, MY PROMOTIONS,  
22 I REPORTED TO GENE UPSHAW.

23 IN TERMS OF DAY-TO-DAY PLAYERS INC BUSINESS, I  
24 REPORTED TO DOUG ALLEN.

25 **Q.** BUT MR. UPSHAW WAS RESPONSIBLE FOR ANY PROMOTIONS OR

1 SALARY ON YOUR PART?

2 **A.** YES.

3 **Q.** OKAY. IN TERMS OF YOUR RESPONSIBILITIES AT PLAYERS INC,  
4 WHEN YOU WERE COO, COULD YOU JUST TELL THE JURY BRIEFLY AS TO  
5 WHAT YOU DID?

6 **A.** I WAS RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS. I  
7 MANAGED THE STAFF. I MONITORED THE BUDGET. BASICALLY MADE  
8 SURE THE TRAINS RAN ON TIME AND MADE SURE THAT THE STAFF WAS  
9 HELD ACCOUNTABLE FOR ALL THEIR RESPONSIBILITIES.

10 **Q.** DID YOU HAVE DAY-TO-DAY MARKETING RESPONSIBILITIES? OR IF  
11 SO, TO WHAT EXTENT, IF AT ALL?

12 **A.** I'M NOT SURE I UNDERSTAND THE QUESTION.

13 **Q.** IN TERMS OF DAY-TO-DAY MARKETING TO INDIVIDUAL LICENSEES,  
14 HOW MUCH RESPONSIBILITY DID YOU HAVE ON THAT?

15 **A.** WELL, TO THE EXTENT THAT I ATTENDED MEETINGS, WE HAD -- WE  
16 WERE STRUCTURED BY DEPARTMENT. SO THERE WERE OFTEN MEETINGS  
17 HELD THAT I DID NOT ATTEND. TO THE EXTENT I DID ATTEND, I WAS  
18 INVOLVED IN THE DISCUSSION WITH RESPECT TO PLAYERS INC'S ASSETS  
19 AND WHAT WE WERE SELLING TO THE PROSPECTIVE LICENSEE OR  
20 SPONSOR.

21 **Q.** COULD YOU JUST BRIEFLY DESCRIBE HOW IT WAS ORGANIZED IN  
22 TERMS OF THE STAFF THAT WORKED UNDER YOU AND HOW IT WORKED?

23 **A.** WE HAD NUMEROUS DEPARTMENTS. WE HAD CATEGORY MANAGERS WHO  
24 HANDLED DIFFERENT CATEGORIES OF LICENSED PRODUCTS. WE HAD A  
25 MARKET -- A PLAYER MARKETING DEPARTMENT. WE HAD A CORPORATE

1     MARKETING DEPARTMENT.  WE HAD A SPECIAL EVENTS DEPARTMENT.  
2     OPERATIONS MANAGER THAT HANDLED SORT OF THE NUTS AND BOLTS OF  
3     THE OFFICE.

4             YOU KNOW, OPERATION SUPPLIES AND THAT SORT OF THING.

5             WE HAD A COMMUNICATIONS DEPARTMENT.  AND THE -- THERE  
6     WERE APPROXIMATELY 35 PEOPLE, AND IT WAS BROKEN DOWN.

7             I HAD ABOUT FIVE OR SIX DIRECT REPORTS.  AND THEN, IT  
8     WAS BROKEN DOWN FROM THERE.

9     **Q.**     OKAY.  OF THE PEOPLE AT PLAYERS INC WHO WORKED WITH YOU,  
10    HOW MANY OF THEM DURING THE PERIOD OF 2004 TO '06 WORKED ON  
11    MATTERS RELATING TO RETIRED PLAYER LICENSING?

12    **A.**     PROBABLY DURING THAT TIME PERIOD I WOULD SAY MAYBE ABOUT  
13    SIX OR EIGHT.

14    **Q.**     UHM, AS TO WHETHER ANY MARKETING MATERIALS WERE EVER  
15    PREPARED RELATING TO RETIRED PLAYERS, TO YOUR RECOLLECTION WERE  
16    ANY SUCH MARKETING MATERIALS EVER PREPARED?

17    **A.**     YES, THERE WERE.

18    **Q.**     OKAY.  ACTUALLY, I'D LIKE -- SHOULD BE ON YOUR STACK.  IF  
19    YOU HAVE ANY TROUBLE FINDING IT, LET ME KNOW.  IT'S TRIAL  
20    EXHIBIT 2260.

21             COULD YOU LOOK AT THAT, PLEASE?

22    **A.**     IS THAT ON THIS ONE?

23    **Q.**     I THINK SO.

24    **A.**     YES.

25    **Q.**     COULD YOU JUST IDENTIFY THAT DOCUMENT?  TELL US WHAT IT

1 IS.

2 **A.** THIS WAS A MARKETING PIECE, A BROCHURE THAT WAS PRINTED OR  
3 PRODUCED IN -- LET'S SEE WHAT -- I CAN'T TELL WHAT YEAR IT WAS,  
4 UNLESS I LOOK AT EACH PAGE.

5 BUT THESE PIECES WERE GENERALLY PRODUCED ON AN ANNUAL  
6 BASIS AS MARKETING TOOLS TO PROMOTE THE BUSINESS OF PLAYERS  
7 INC.

8 **MR. FEHER:** I'D MOVE THIS TRIAL EXHIBIT 2260 INTO  
9 EVIDENCE, YOUR HONOR.

10 **MR. LECLAIR:** NO OBJECTION, YOUR HONOR.

11 **THE COURT:** 2260?

12 **MR. FEHER:** YES.

13 **THE COURT:** RECEIVED.

14 (TRIAL EXHIBIT 2260 RECEIVED IN EVIDENCE.)

15 **BY MR. FEHER:**

16 **Q.** MS. ALLEN, IF YOU COULD GO TO PAGE SIX, THE SIXTH PAGE OF  
17 THE DOCUMENT. JUST TO SEE, THERE ARE SOME VIDEO GAMES ON  
18 THERE. DOES THAT PROVIDE ANY INDICATION AS TO WHEN THIS  
19 DOCUMENT WAS PRODUCED?

20 **A.** 2004.

21 **Q.** AND, GENERALLY, WHAT WAS THE PURPOSE OF THIS DOCUMENT WHEN  
22 IT WAS PREPARED?

23 **A.** UHM, THIS WAS A MARKETING PIECE THAT WAS -- IT WAS  
24 INCLUDED IN INFORMATIONAL PACKETS TO -- IN MEETINGS WITH  
25 LICENSEES, PROSPECTIVE LICENSEES, SPONSORS.

1           IT WAS GIVEN TO PLAYERS AT EVENTS, ALONG WITH SOME  
2 OTHER MATERIALS. IT WAS PROVIDED TO THE MEDIA AT PRESS  
3 CONFERENCES.

4           ANYTIME WE WERE TALKING ABOUT THE BUSINESS OF PLAYERS  
5 INC, THESE WERE THE KINDS OF MATERIALS THAT WERE PASSED OUT TO  
6 WHICHEVER GROUP WE WERE SPEAKING TO.

7 **Q.** WAS ANY PART OF THIS BROCHURE SPECIFICALLY DIRECTED TO THE  
8 SUBJECT OF RETIRED PLAYERS?

9 **A.** YES. THE LAST PAGE SPEAKS TO THE -- TO THE RETIRED PLAYER  
10 PROGRAM.

11           **MR. FEHER:** LAUREN, COULD YOU BRING THIS UP? I  
12 BELIEVE IT'S PAGES 18 AND 19. LAY THEM SIDE BY SIDE.

13           (DOCUMENT DISPLAYED.)

14 **BY MR. FEHER:**

15 **Q.** OKAY. JUST FIRST OFF, MRS. ALLEN, CAN YOU IDENTIFY THIS  
16 PERSON, WHO IT IS?

17 **A.** TONY DORSETT.

18 **Q.** AND AT THE TIME THIS BROCHURE WAS DISTRIBUTED, WHAT WAS  
19 HIS STATUS?

20 **A.** HE WAS A RETIRED PLAYER.

21 **Q.** IN TERMS OF THE TEXT OF THIS, DO YOU SEE IT SAYS:

22           "LEGENDARY CAREERS MAY VARY. CONSULT YOUR  
23 RECORD BOOKS."

24           AND THEN, UNDERNEATH THERE'S FURTHER TEXT:

25           "IT'S AMAZING WHAT THE STAR POWER OF NFL PLAYERS

1 CAN DO FOR YOUR ADVERTISING, YOUR MARKETING AND YOUR BRAND."

2 CAN YOU JUST TELL US GENERALLY AS TO WHAT THE PURPOSE  
3 WAS OF THESE TWO PAGES IN RESPECT OF RETIRED PLAYERS AND THIS  
4 BROCHURE, WHAT IT WAS INTENDED TO DO?

5 **A.** WELL, AS I STATED EARLIER, IT WAS OUR STANDARD PRACTICE TO  
6 PROMOTE RETIRED PLAYERS TO ALL THE COMPANIES WE DID BUSINESS  
7 WITH. AND THIS WAS AN EXAMPLE OF INCLUDING THE FACT THAT WE  
8 HAD ACCESS -- AND I THINK IN THIS BOOKLET IT STATES -- TO --  
9 SAYS:

10 "UNLEASH THE INFLUENCE OF NEARLY 5,000 FOOTBALL  
11 GREATS."

12 SO THE PURPOSE WAS TO MAKE IT KNOWN TO THE COMPANIES  
13 THAT WE DID BUSINESS WITH OR WHO WE WERE ABOUT TO DO BUSINESS  
14 WITH THAT WE HAD ACCESS TO THESE PLAYERS.

15 **Q.** WHEN THIS BROCHURE WAS DISTRIBUTED, WAS IT INTENDED TO  
16 MAKE ANY PARTICULAR DISTINCTION BETWEEN ANY PARTICULAR TYPES OF  
17 RETIRED PLAYERS, IN TERMS OF HOW THEY MIGHT BE LICENSED?

18 **A.** NO. NO.

19 **Q.** OKAY. HOW OFTEN WERE BROCHURES OF THIS TYPE PRODUCED BY  
20 PLAYERS INC?

21 **A.** GENERALLY, THEY WERE PRODUCED ANNUALLY. ONCE IN A WHILE  
22 WE WOULD USE ONE MAYBE FOR A COUPLE OF YEARS, AND WE WOULD  
23 UPDATE THE ARTWORK AND THE PRODUCTS TO KEEP IT TIMELY.

24 **Q.** DIRECT YOUR ATTENTION, MRS. ALLEN, TO TRIAL EXHIBIT 2263,  
25 WHICH IS IN FRONT OF YOU.

1 CAN YOU IDENTIFY THIS DOCUMENT, GENERALLY?

2 **A.** THIS WAS ANOTHER SIMILAR MARKETING BROCHURE THAT WAS  
3 PRINTED OR THAT WAS PRODUCED IN 2001.

4 **MR. FEHER:** YOUR HONOR, I WOULD MOVE EXHIBIT 2263  
5 INTO EVIDENCE.

6 **MR. LECLAIR:** YOUR HONOR, I THINK SHE SAID "2001," SO  
7 IT SEEMS TO ME THIS IS IRRELEVANT.

8 **MR. FEHER:** YOUR HONOR --

9 **THE COURT:** WHAT'S THE RELEVANCE?

10 **MR. FEHER:** YOUR HONOR, THIS IS CERTAINLY BACKGROUND  
11 INFORMATION IN TERMS OF ESTABLISHING A COURSE OF CONDUCT WITH  
12 RESPECT TO HOW RETIRED PLAYERS WERE TREATED. CERTAINLY THERE  
13 HAS BEEN EVIDENCE PRECEDING 2003 WITH RESPECT TO THE REGULAR  
14 PRACTICES OF PLAYERS INC WITH REGARD TO HOW RETIRED PLAYERS  
15 HAVE BEEN MARKETED.

16 **THE COURT:** ALL RIGHT. RECEIVED.

17 THE JURY WILL TAKE INTO ACCOUNT THE POSSIBILITY THAT  
18 THE EVIDENCE IS STALE, BUT IT MAY HAVE SOME RELEVANCE. THAT'S  
19 UP TO THE JURY TO DECIDE.

20 (DOCUMENT DISPLAYED.)

21 (TRIAL EXHIBIT 2263 RECEIVED IN EVIDENCE.)

22 **BY MR. FEHER:**

23 **Q.** ON THE FIRST PAGE OF THIS BROCHURE -- I WON'T BELABOR THE  
24 POINT, BUT CAN YOU IDENTIFY WHETHER THERE ARE ANY RETIRED  
25 PLAYERS ON THE COVER OF THIS BROCHURE?

1 **A.** YES. ONE OF THE PLAYERS IS ED "TOO TALL" JONES.

2 **Q.** AND CAN YOU TELL US, AS TO WHAT THE REGULAR PRACTICE WAS,  
3 IF ANY, WITH RESPECT TO PLAYERS INC IN TERMS OF FEATURING OR  
4 PROMOTING RETIRED PLAYERS IN BROCHURES OF THIS KIND THROUGHOUT  
5 THE TIME THAT THESE BROCHURES WERE USED?

6 **A.** FROM AS FAR BACK AS I CAN REMEMBER WHEN WE STARTED TO  
7 PRINT THESE BROCHURES WE ALWAYS INCLUDED A SECTION OR A  
8 REFERENCE TO OR INCLUSION OF RETIRED PLAYERS TO PROMOTE THE  
9 FACT THAT WE HAD ACCESS TO THEM, AND THEY WERE A BIG PART OF  
10 OUR PROGRAM.

11 **Q.** MS. ALLEN, I WOULD LIKE TO DIRECT YOUR ATTENTION TO A  
12 SMALL PILE OF DOCUMENTS THAT ARE IN FRONT OF YOU. IT'S TRIAL  
13 EXHIBITS 2292 THROUGH 2306.

14 **MR. FEHER:** YOUR HONOR, THESE ARE PLAYERS INC MONTHLY  
15 REPORTS, SIMILAR TO DOCUMENTS ALREADY ADMITTED INTO EVIDENCE.

16 **BY MR. FEHER::**

17 **Q.** MRS. ALLEN, I WOULD LIKE YOU TO JUST BRIEFLY REVIEW THESE  
18 DOCUMENTS SO THAT WE CAN GET THESE INTO EVIDENCE, AS TO IF  
19 YOU --

20 **A.** SORRY, WHAT WAS THE -- HOW MANY?

21 **Q.** IT'S 2292 THROUGH 2306. THEY ARE PLAYERS INC MONTHLY  
22 REPORTS FROM PAT ALLEN TO GENE UPSHAW FROM SEPTEMBER 2004  
23 THROUGH SEPTEMBER 2006.

24 **THE COURT:** IS THERE GOING TO BE AN OBJECTION TO  
25 THESE?

1           **MR. LECLAIR:** NO, YOUR HONOR.

2           **THE COURT:** 2292 ALL THE WAY THROUGH 2306 ARE  
3 RECEIVED THAT WILL SPEED THINGS ALONG.

4                   (TRIAL EXHIBIT 2292 THROUGH 2306 RECEIVED IN  
5 EVIDENCE.)

6 **BY MR. FEHER:**

7 **Q.** MRS. ALLEN, YOU AUTHORED THESE DOCUMENTS?

8 **A.** I'M SORRY?

9 **Q.** YOU AUTHORED THESE DOCUMENTS?

10 **A.** YES, I DID.

11 **Q.** OKAY. AND COULD YOU JUST BRIEFLY TELL THE JURY AS TO WHAT  
12 THEY DID IN TERMS OF DESCRIBING ANY MARKETING EFFORTS RELATING  
13 TO RETIRED PLAYERS?

14 **A.** WELL, THESE DOCUMENTS WERE PRODUCED ON A MONTHLY BASIS AS  
15 SORT OF A -- JUST SORT OF AN UPDATE, A SYNOPSIS OF WHAT HAD  
16 TRANSPIRED.

17                   THE BULLET POINTS, MAJOR BULLETS POINTS OF WHAT HAD  
18 TRANSPIRED AT PLAYERS INC IN THE COURSE OF THE LAST MONTH. AND  
19 I THINK THAT TO THE EXTENT RETIRED PLAYERS ARE MENTIONED,  
20 THEY'RE MENTIONED THROUGHOUT IN DIFFERENT DEPARTMENT REPORTS,  
21 DEPENDING ON WHAT PROGRAMS THEY PARTICIPATED IN.

22 **Q.** OKAY. JUST BRIEFLY, IF WE COULD GO TO JUST ONE OF THESE,  
23 I THINK, IS ENOUGH. IF WE COULD GO TO TRIAL EXHIBIT 2294. DO  
24 YOU SEE THAT ONE?

25                   (DOCUMENT DISPLAYED.)

1 **A.** YES.

2 **Q.** AND THEN, GO TO THE FOURTH PAGE OF THIS ONE, UNDER "PLAYER  
3 MARKETING."

4 **A.** YES.

5 **Q.** THERE YOU GO.

6 **A.** IT'S THE SECOND PAGE.

7 **Q.** IT'S BATES NUMBER 2197. DO YOU SEE THAT, MRS. ALLEN?

8 **A.** YES.

9 **Q.** OKAY. JUST IN TERMS OF SOME OF THESE ITEMS, THE THIRD AND  
10 FOURTH BULLETS FROM THE BOTTOM, YOU SEE HERE -- ACTUALLY, I  
11 DON'T KNOW THAT --

12 **MR. FEHER:** I'M NOT SURE THAT WE'RE ON 2197. I THINK  
13 YOU HAVE 2297.

14 LAUREN, 2197.

15 I APOLOGIZE, YOUR HONOR. IT'S 22 -- OH, IT'S 2295.

16 I APOLOGIZE.

17 **THE WITNESS:** 2295?

18 (DOCUMENT DISPLAYED.)

19 **BY MR. FEHER:**

20 **Q.** 2295, THE SECOND PAGE, JUST TOWARD THE BOTTOM.

21 DO YOU SEE HERE IT SAYS:

22 "CONFIRMED REMAINING 25 PLAYERS (WITH HELP OF  
23 RETIRED PLAYERS DEPARTMENT) FOR TOPPS RETIRED PLAYER PROGRAM.  
24 10 SESSIONS REMAIN."

25 AND THEN, RIGHT ABOVE IT, IT SAYS:

1 "CONFIRMED THAT 11 PLAYERS FOR REEBOK RETIRED  
2 PLAYERS PROGRAM - TOTAL OF 38."

3 **A.** YES.

4 **Q.** DID YOU REGULARLY MAKE REPORTS OF THIS KIND WITH RESPECT  
5 TO RETIRED PLAYERS BEING LICENSED BY PLAYERS INC?

6 **A.** YES.

7 **Q.** AND IN TERMS OF THE REEBOK RETIRED PLAYERS PROGRAM -- AND  
8 HERE IT SAYS:

9 "11 PLAYERS, TOTAL OF 38," WHO SELECTED THOSE  
10 PLAYERS?

11 **A.** THE LICENSEE.

12 **Q.** LET'S GO TO TRIAL EXHIBIT 1296, THE ANNUAL REVIEW THAT  
13 MR. LECLAIR HAS ALREADY OFFERED INTO EVIDENCE.

14 COULD YOU JUST GIVE US A LITTLE BACKGROUND,  
15 MRS. ALLEN -- IT'S THE BIG THICK ONE, THE ONE WITH THE LIST OF  
16 PLAYERS AT THE BACK.

17 **A.** I'M SORRY.

18 **Q.** COULD YOU JUST GIVE THE JURY A LITTLE BACKGROUND AS TO  
19 WHAT THIS DOCUMENT IS? WHAT DID IT REPRESENT?

20 **A.** WELL, THIS WAS A DOCUMENT THAT WAS PREPARED ANNUALLY FOR  
21 THE BOARD OF PLAYER REPRESENTATIVES. AND IT BASICALLY WAS A  
22 REVIEW OF PLAYERS INC'S BUSINESS THROUGHOUT THE COURSE OF THE  
23 PREVIOUS YEAR.

24 IT WAS MEANT TO REVIEW WITH THEM WHAT WE HAD  
25 ACCOMPLISHED, YOU KNOW, WHETHER WE MET OUR GOALS FOR THE

1 PREVIOUS YEAR, WHAT WE HAD ACCOMPLISHED DURING THE YEAR, AND TO  
2 OUTLINE WHAT OUR PLANS WERE FOR THE COMING YEAR.

3 **Q.** OKAY. AND WAS THIS REPORT REVIEWED VERBALLY WITH THE  
4 BOARD OF PLAYER REPS IN ANY MANNER BY YOU OR ANYONE UNDER YOUR  
5 DIRECTION? HOW DID THAT WORK?

6 **A.** YES. THIS WAS -- THIS WAS PASSED OUT TO THE ATTENDEES AT  
7 THE MEETING, INCLUDING THE LISTS AND SOME OTHER MATERIALS. AND  
8 I, ALONG WITH -- IT VARIED IN DIFFERENT YEARS. SOMETIMES IT  
9 WAS ONE OR TWO OR THREE OTHER STAFF PEOPLE. I DID THE LION'S  
10 SHARE OF THE ORAL REPORT.

11 BUT IT WAS BASICALLY -- IT WAS TAKEN FROM THE  
12 INFORMATION IN THIS DOCUMENT, AND REPORTED TO THE BOARD.

13 **Q.** OKAY. AT THESE BOARD MEETINGS, DO YOU RECALL IF THERE  
14 WERE EVER ANY RETIRED PLAYERS WHO WERE PRESENT AT THESE BOARD  
15 MEETINGS WHEN THIS DOCUMENT WAS REVIEWED?

16 **A.** YES, I BELIEVE THERE WERE. THERE WAS, I THINK, AT LEAST  
17 ONE, IF NOT MORE.

18 **Q.** OKAY. AND JUST VERY BRIEFLY GOING BACK TO THE LIST,  
19 BECAUSE MR. LECLAIR REVIEWED IT WITH YOU, DO YOU SEE --

20 **MR. FEHER:** LAUREN, IF YOU COULD PUT UP STARTING  
21 ON -- IT SAYS PAGE "148 OF 172," WHERE THERE'S A LISTING OF  
22 HALL OF FAME PLAYERS STARTING. I THINK IT'S ON PAGE 209,  
23 LAUREN. TURN IT SIDEWAYS.

24 (DOCUMENT DISPLAYED.)

25

1 **BY MR. FEHER:**

2 **Q.** DO YOU SEE THAT, MRS. ALLEN?

3 **A.** YES.

4 **Q.** IN TERMS OF THE LENGTH OF THE LIST OF THE HALL OF FAME  
5 PLAYERS THAT WERE LICENSED, HOW LONG DOES THIS LIST GO ON IN  
6 THIS? I DON'T WANT TO GET TOO --

7 **A.** THE HALL OF FAME?

8 **Q.** YEAH, THE HALL OF FAME. HOW LONG DOES IT GO ON? THERE'S  
9 JUST A BRIEF THING TO GO OVER HERE.

10 **A.** LOOKS LIKE AROUND 10 PAGES.

11 **Q.** OKAY. MY COUNT WAS A LITTLE DIFFERENT, ACTUALLY.

12 **A.** OH.

13 **Q.** IT SAYS "148 OF 172." AND THEN, HALL OF FAME ENDS UP IN  
14 THE MIDDLE OF PAGE 156 OF 172. SO ABOUT EIGHT OR NINE PAGES?

15 **A.** YES.

16 **Q.** OKAY.

17 **A.** I MIGHT HAVE MISCOUNTED.

18 **Q.** SORRY ABOUT THAT.

19 AND THEN, AFTER THE HALL OF FAME LIST IS DONE, DO YOU  
20 SEE, MRS. ALLEN, THERE'S A DIFFERENT CATEGORY WHERE IT SAYS  
21 "RETIRED"?

22 **A.** YES.

23 **Q.** WHAT DOES THAT INDICATE IN TERMS OF WHO THESE PLAYERS ARE?

24 **A.** THAT INDICATES ALL OF THE PLAYERS THAT WERE NOT IN THE  
25 HALL OF FAME THAT WE DID AD HOC DEALS WITH.

1 Q. OKAY. NOW, I WILL NOTE THAT THERE ARE SOME PLAYERS IN  
2 HERE WHO SUBSEQUENTLY MADE THE HALL OF FAME AFTER THEY RETIRED,  
3 SUCH AS MR. AIKMAN.

4 BUT EVEN WITH THAT, IN TERMS OF HOW MANY LICENSING  
5 DEALS WITH NON-HALL OF FAME RETIRED PLAYERS THAT ARE IDENTIFIED  
6 IN THIS DOCUMENT, CAN YOU JUST GO THROUGH AND TELL THE JURY HOW  
7 LONG THAT LIST IS, AND HOW IT COMPARES TO THE LENGTH OF THE  
8 HALL OF FAME DEALS THAT ARE MENTIONED HERE? JUST ROUGHLY.

9 MR. FEHER: LAUREN, COULD YOU FLIP THROUGH, JUST TO  
10 GET TO PAGE 232. IT'S --

11 THE WITNESS: LOOKS LIKE IT'S ABOUT 16 PAGES MAYBE.

12 BY MR. FEHER:

13 Q. SO IT'S ABOUT TWICE AS LONG AS THE HALL OF FAME LIST?

14 A. YES.

15 Q. IN TERMS OF THIS LIST AND ITS COMPARATIVE LENGTHS, WHAT,  
16 IF ANYTHING, DOES THIS REFLECT IN TERMS OF THE MARKETING  
17 EFFORTS THAT PLAYERS INC DID FOR RETIRED PLAYERS WHO WEREN'T  
18 HALL OF FAME PLAYERS, LIKE MR. ADDERLEY?

19 A. WELL, I THINK IT SPEAKS TO THE FACT THAT WE MARKETED ALL  
20 OF THE RETIRED PLAYERS THAT WE HAD ACCESS TO. THE FACT WAS  
21 THAT A MAJORITY, IF NOT MOST, OF THE PLAYERS WHO SIGNED GLA'S  
22 WERE NOT THE PLAYERS THAT WERE GENERALLY REQUESTED BY  
23 LICENSEES.

24 BUT THERE ARE A LOT OF PLAYERS IN HERE WHO WERE  
25 REQUESTED, WHO WERE NOT HALL OF FAME PLAYERS.

1 Q. OKAY. MRS. ALLEN, I WOULD JUST LIKE TO MOVE ON TO THE  
2 MORE RECENT VERSION OF THIS ANNUAL REVIEW THAT MR. LECLAIR  
3 REVIEWED WITH YOU, TRIAL EXHIBIT 1299, WHICH I BELIEVE IS  
4 ALREADY ADMITTED INTO EVIDENCE.

5 MR. FEHER: LAUREN, IF WE COULD START INSIDE OF THIS  
6 DOCUMENT, I BELIEVE IT'S THE EIGHTH PAGE.

7 THE WITNESS: YES.

8 (DOCUMENT DISPLAYED.)

9 BY MR. FEHER:

10 Q. MS. ALLEN, IF YOU COULD TELL THE JURY WHAT THE PURPOSE WAS  
11 OF THESE NARRATIVE DESCRIPTIONS IN TERMS OF MARKETING EFFORTS.  
12 WHAT WERE THESE NARRATIVE DESCRIPTIONS ALL ABOUT?

13 A. WELL, THAT THE REPORT WAS BROKEN DOWN BY DEPARTMENT,  
14 GENERALLY. AT LEAST THE FIRST PART OF IT WAS.

15 AND EACH DEPARTMENT WOULD TALK ABOUT WHAT THEY HAD  
16 ACCOMPLISHED OR WHAT WE HAD ACCOMPLISHED DURING THE LAST FISCAL  
17 YEAR. AND THEN, THEY WOULD DISCUSS A LITTLE BIT ABOUT WHAT  
18 KIND OF PLAYER PAYMENTS OR AD HOC DEALS WERE DONE FOR PLAYERS  
19 WITHIN THAT CATEGORY.

20 AND THEN, WE WOULD TALK ABOUT WHAT OUR PROJECTIONS  
21 WERE FOR THE COMING YEAR IN EACH CATEGORY, AND WHAT WE EXPECTED  
22 TO DO IN TERMS OF GROWING THE BUSINESS.

23 Q. OKAY. LET'S JUST FLIP THROUGH A FEW PAGES AND JUST GET --

24 MR. FEHER: I THINK IT'S ON PAGE 10 OF THIS, LAUREN.

25 (DOCUMENT DISPLAYED.)

1 UNDER "POSTERS, CALENDARS AND PHOTOGRAPHY," IF YOU  
2 COULD BLOW THAT UP.

3 **BY MR. FEHER:**

4 **Q.** YOU SEE THERE'S A DESCRIPTION IN HERE OF THIS FATHEAD  
5 DIRECT-TO-CONSUMER PRODUCT, AND INCLUDING REFERENCES TO RETIRED  
6 PLAYERS BEING PAID A TOTAL OF \$155,000 IN GUARANTEED ROYALTIES  
7 FOR THESE PLAYERS?

8 DO YOU SEE THAT, MRS. ALLEN?

9 **A.** YES.

10 **Q.** IN TERMS OF MARKETING PLANS FOR INDIVIDUAL LICENSEES, WHAT  
11 WAS THIS DOCUMENT INTENDED TO CONVEY TO THE BOARD OF PLAYER  
12 REPS? WHAT WAS THE POINT OF THIS?

13 **A.** THE WHOLE DOCUMENT?

14 **Q.** IN TERMS OF RETIRED PLAYERS AND MARKETING PLANS, YES.

15 **A.** WELL, I THINK IT WAS INTENDED TO -- TO SHOW THE BOARD THAT  
16 WE WERE ALWAYS LOOKING FOR OTHER BUSINESS. AND TO THE EXTENT  
17 THAT WE REPORTED THAT IN EACH DEPARTMENT AND EACH AREA OF THE  
18 BUSINESS, I THINK THAT WAS A WAY OF SHOWING THEM THAT WE HAD --  
19 EACH LICENSEE WOULD SUBMIT MARKETING PLANS FOR THE COMING YEAR,  
20 AND WE WOULD TALK TO THEM ABOUT WHAT THEY WERE EXPECTING TO DO.

21 BUT THEN, THERE WERE ALSO OTHER AREAS OF BUSINESS,  
22 LIKE THE SPONSORS, AND HOW MUCH THEY EXPECTED TO INTEGRATE THE  
23 PLAYERS INTO THEIR PROGRAMS.

24 AND THIS DOCUMENT WAS A WAY OF SHOWING, AGAIN, WHAT  
25 WE HAD DONE DURING THE PAST FISCAL YEAR, AND WHAT WE EXPECTED

1 TO DO IN ALL OF THOSE CATEGORIES IN THE NEXT FISCAL YEAR.

2 **Q.** IN TERMS OF ANY NOTION THAT PLAYERS INC NEVER DID ANY  
3 MARKETING PLANS FOR RETIRED PLAYERS, DO YOU HAVE ANY REACTION  
4 TO THAT?

5 **A.** THAT'S NOT TRUE. WE DID.

6 **Q.** JUST GOING BACK, VERY BRIEFLY, TO MR. LECLAIR'S QUESTIONS,  
7 HE ASKED YOU SOMETHING ABOUT DIFFERENCES BETWEEN, I BELIEVE,  
8 THE GLA'S IN TERMS OF A STATEMENT BY YOU THAT ANY DIFFERENCES  
9 WERE ONLY MINOR. DO YOU RECOLLECT THAT QUESTION AND ANSWER?

10 **A.** YES, I DO.

11 **Q.** WHY DID YOU SAY THAT?

12 **A.** THE -- MY RESPONSE TO HIS QUESTION, OR WHAT WAS IN MY  
13 DEPOSITION?

14 **Q.** YOUR RESPONSE TO THE QUESTION, IN TERMS OF ANY DIFFERENCES  
15 BEING MINOR. IF YOU COULD JUST EXPLAIN YOUR ANSWER TO -- AS TO  
16 WHY -- WELL, LET'S REPHRASE THIS.

17 IN TERMS OF YOUR DEPOSITION, OKAY, ANY REFERENCE TO  
18 ANY DIFFERENCES BEING MINOR, WHY DID YOU SAY THAT?

19 **A.** AS I SAID, I HADN'T REALLY SEEN ANY OF THESE DOCUMENTS IN  
20 TWO YEARS. AND I WAS REALLY NOT -- I HADN'T SEEN THE RETIRED  
21 PLAYER GLA PROBABLY IN LONGER THAN THAT. SO I WASN'T REALLY  
22 FAMILIAR WITH, AT THAT POINT, WHAT THE LANGUAGE WAS.

23 **Q.** AND IN TERMS OF YOUR RESPONSIBILITIES TO PLAYERS INC, DID  
24 YOU HAVE ANY SIGNIFICANT INVOLVEMENT IN DRAFTING THE PARTICULAR  
25 LANGUAGE IN ANY OF THESE GLA FORMS?

1 **A.** NO, I DID NOT.

2 **MR. FEHER:** I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

3 **THE COURT:** THANK YOU.

4 ANYTHING MORE?

5 **MR. LECLAIR:** JUST A LITTLE BIT, YOUR HONOR.

6 **REDIRECT EXAMINATION**

7 **BY MR. LECLAIR:**

8 **Q.** MRS. ALLEN, IS IT YOUR TESTIMONY THAT THIS IS A MARKETING  
9 PLAN? IS THAT WHAT YOU'RE SAYING? OR ARE YOU SAYING THERE'S  
10 SOMETHING ELSE?

11 **A.** NO. I'M SAYING THAT THIS WAS THE DOCUMENT WHICH LAID OUT  
12 BY CATEGORY WHAT OUR PLANS WERE FOR THE COMING YEAR.

13 **Q.** SO JUST SO WE'RE CLEAR, YOU'RE SAYING THAT THE ANNUAL  
14 REVIEW IS A MARKETING PLAN?

15 **A.** IT'S NOT JUST A MARKETING PLAN, BUT IT DOES INCLUDE  
16 MARKETING PLANS.

17 **Q.** ALL RIGHT. NOW, WITH RESPECT TO THE REPORTS THAT YOU  
18 GENERATE WHICH WERE PUT IN AS A GROUP -- I THINK IT'S 2294 AND  
19 FOLLOWING -- WOULD IT BE CORRECT THAT NOT ONE MENTION OF  
20 MARKETING RETIRED PLAYERS WHO SIGNED GLA'S AS A GROUP IS IN ONE  
21 SINGLE ONE OF THESE REPORTS?

22 **A.** I COULDN'T ANSWER THAT QUESTION.

23 **Q.** ALL RIGHT. DO YOU HAVE ANY REASON TO BELIEVE THAT IF THE  
24 JURY LOOKS AT THESE REPORTS THEY'RE GOING TO FIND ANY REFERENCE  
25 TO MARKETING RETIRED PLAYERS WHO SIGNED GLA'S AS A GROUP?

1 **A.** I CAN'T -- I DON'T KNOW.

2 **Q.** ALL RIGHT. IN THE BROCHURES THAT YOU LOOKED AT -- LET'S  
3 TALK ABOUT SPECIFICALLY EXHIBIT 2260. YOU HIGHLIGHTED --

4 **MR. LECLAIR:** COULD WE PUT THIS UP, 2260? YES. AND  
5 LET'S PULL UP THE PAGES THEY HAD WITH TONY DORSETT.

6 (DOCUMENT DISPLAYED.)

7 **BY MR. LECLAIR:**

8 **Q.** BY THE WAY, TONY DORSETT, DID HE SIGN A GLA? HE DIDN'T,  
9 DID HE?

10 **A.** I DON'T KNOW FOR SURE. I DON'T THINK HE DID.

11 **Q.** ALL RIGHT. AND THERE'S A REFERENCE -- IT'S VERY HARD TO  
12 READ AT THE BOTTOM. LET'S SEE -- ON THE SECOND PAGE, UNDER  
13 TONY DORSETT'S PICTURE -- WHO HAPPENS TO BE ONE OF MY FAVORITE  
14 PLAYERS, BECAUSE I'M FROM DALLAS -- BUT HE'S NOT A GLA.

15 AND IF YOU LOOK AT THAT LANGUAGE, IT SAYS -- WE NEED  
16 THE FIRST PAGE ALONG WITH YOU WITH IT.

17 **MR. LECLAIR:** COULD YOU BLOW IT UP AND PUT IT UNDER  
18 IT OR ON TOP OF IT? NO, I'M SORRY. AT THE VERY BOTTOM. THERE  
19 YOU GO. PUT THAT ON TOP OF THAT, IF YOU CAN.

20 (DOCUMENT DISPLAYED.)

21 **BY MR. LECLAIR:**

22 **Q.** "PLAYERS INC IS YOUR CONNECTION TO THE MEN OF PRO  
23 FOOTBALL. LEGENDS, VETERANS AND ROOKIES COMPRISE THE ROSTERS  
24 OF MORE THAN 1800 ACTIVE AND 3500 RETIRED PLAYERS WHO CAN  
25 IMPACT THE WAY YOU DO BUSINESS."

1           AND THAT REFERENCE TO 3500 RETIRED PLAYERS, THAT'S  
2 NOT THE GLA GROUP AT ALL, IS IT?

3 **A.**    IT INCLUDES THEM, YES.

4 **Q.**    SURE.  BUT YOU'RE NOT MARKETING THE GLA GROUP.  YOU'RE  
5 MARKETING A BIGGER GROUP, WHICH INCLUDES TONY DORSETT, WHO  
6 DIDN'T SIGN A GLA, RIGHT?

7 **A.**    WE WERE MARKETING THE PLAYERS WHO HAD GLA'S AND THE  
8 PLAYERS WE HAD ACCESS TO BEYOND THAT.

9 **Q.**    UNDERSTOOD.  BUT YOU NEVER MARKETED THE GLA PLAYERS BY  
10 THEMSELVES AS A GROUP; IS THAT FAIR?

11 **A.**    THERE WERE TIMES AND MEETINGS WHERE WE DID PROVIDE THAT  
12 LIST TO SPONSORS OR LICENSEES WHO WERE INTERESTED IN RETIRED  
13 PLAYERS.  BUT NINE TIMES OUT OF TEN, THERE WEREN'T A LOT, IF  
14 ANY, PLAYERS ON THAT LIST THAT ANYBODY WAS INTERESTED IN.

15 **Q.**    RIGHT.  DO YOU REMEMBER -- YOU JUST SAID THAT YOU DID  
16 PROVIDE IT.  DO YOU REMEMBER TESTIFYING AT YOUR DEPOSITION YOU  
17 DON'T RECALL EVER PROVIDING THAT LIST?

18 **A.**    WHAT I'M SAYING IS THAT IF SOMEONE WAS INTERESTED IN  
19 RETIRED PLAYERS, WE LET IT BE KNOWN THAT WE HAD X NUMBER OF  
20 PLAYERS SIGNED TO GLA'S.

21           IF THEY WANTED TO SEE THAT LIST, WE WERE -- WE  
22 READILY PROVIDED IT TO THEM.

23           I DID NOT PERSONALLY PROVIDE IT TO THEM, BUT OUR  
24 STAFF WAS INSTRUCTED TO DO SO WHENEVER ANYONE ASKED FOR IT.

25 **Q.**    DO YOU HAVE ANY EXPLANATION AS TO WHY MR. SKALL WOULDN'T

1 HAVE KNOWN ABOUT SUCH A LIST?

2 **MR. FEHER:** OBJECTION, YOUR HONOR.

3 **THE COURT:** SUSTAINED.

4 **MR. FEHER:** NO FOUNDATION.

5 **THE COURT:** ASSUMES A FACT NOT IN EVIDENCE.

6 **MR. LECLAIR:** THAT'S ALL I HAVE, YOUR HONOR.

7 **THE COURT:** PLEASE REMEMBER WHAT I SAID: WHEN THE  
8 LAWYERS START TALKING LIKE THAT, I DON'T WANT YOU TO GET IN THE  
9 JURY ROOM AND ASSUME THAT'S IN EVIDENCE. I DON'T REMEMBER THAT  
10 EVER COMING INTO EVIDENCE.

11 **MR. LECLAIR:** YOUR HONOR, CAN I READ FROM THE  
12 DEPOSITION OF MR. SKALL?

13 **MR. FEHER:** OBJECTION, YOUR HONOR.

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

15 **THE COURT:** YOUR CASE IS CLOSED.

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

17 **MR. FEHER:** YOUR HONOR, I JUST HAVE ONE FOLLOW-UP  
18 QUESTION RELATING TO SOMETHING THAT MR. LECLAIR SPECIFICALLY  
19 ASKED MRS. ALLEN.

20 **THE COURT:** GO AHEAD.

21 **MR. FEHER:** I WOULD ACTUALLY LIKE TO OFFER INTO  
22 EVIDENCE TWO GLA'S SIGNED BY ED "TOO TALL" JONES, DATED  
23 DECEMBER 17, 2003, MAY 1ST, 2001. THESE ARE IN THE SET OF  
24 DOCUMENTS THAT WERE DISCUSSED THAT WOULD BE INCLUDED IN THE  
25 MASTER EXHIBIT TO BE PROVIDED TO THE JURY.

1           **THE COURT:** YOU'RE SAYING THERE IS A GLA BY "TOO  
2 TALL" JONES?

3           **MR. FEHER:** THERE IS.

4           **THE COURT:** IS THAT THE ONE? BUT THAT WASN'T --

5           **MR. LECLAIR:** IT WASN'T THE ONE I REFERRED TO.

6           **THE COURT:** -- MR. LECLAIR'S FAVORITE PLAYER.

7           **MR. FEHER:** IT'S THE FELLOW ON THE COVER OF THE OTHER  
8 BROCHURE, YOUR HONOR.

9           **THE COURT:** HE WAS TALKING ABOUT SOMEONE ELSE.

10          **MR. LECLAIR:** TONY DORSETT, YOUR HONOR.

11          **THE COURT:** DO YOU HAVE ONE FROM TONY DORSETT?

12          **MR. FEHER:** I HAVE ONE FROM MR. JONES, YOUR HONOR. I  
13 HAVE NO OTHER --

14          **MR. KESSLER:** 1164-50, YOUR HONOR. IT'S PART OF  
15 THEIR BIGGER EXHIBIT. BUT THIS WILL BE AN INDIVIDUAL EXHIBIT.

16          **THE COURT:** 11 WHAT?

17          **MR. FEHER:** 1164-50 AND 1164-51, YOUR HONOR.

18          **THE COURT:** ALL RIGHT. ANY OBJECTION?

19                 IT'S ALREADY IN EVIDENCE, ANYWAY, RIGHT?

20          **MR. LECLAIR:** ACTUALLY, YOUR HONOR, THE ONE THING WE  
21 RESERVED, WE WERE GOING TO PUT IN THE WHOLE GLA LIST. 1164-4.  
22 1164-4.

23          **THE COURT:** ALL RIGHT. NOW, ONLY TWO PAGES OF THAT  
24 ARE IN.

25          **MR. LECLAIR:** I WAS GOING TO DO THAT AT THE

1 CONCLUSION OF MR. ALLEN'S TESTIMONY, YOUR HONOR.

2           **THE COURT:** ALL RIGHT. IT'S ALL RECEIVED. 1164 IS  
3 ALL IN.

4           (TRIAL EXHIBIT 1164 RECEIVED IN EVIDENCE.)

5                           **RECROSS EXAMINATION**

6 **BY MR. FEHER:**

7 **Q.** OKAY, MS. ALLEN, JUST ONE QUESTION. ED "TOO TALL" JONES,  
8 THE PLAYER WHO SIGNED THESE TWO GLA'S, YOU PUT HIM ON THE COVER  
9 OF ONE OF YOUR MARKETING BROCHURES; IS THAT RIGHT?

10 **A.** YES, WE DID.

11           **MR. FEHER:** THAT'S ALL.

12           **MR. LECLAIR:** NOTHING FURTHER, YOUR HONOR.

13           **THE COURT:** MAY THIS WITNESS BE EXCUSED, NOT SUBJECT  
14 TO RECALL?

15           **MR. LECLAIR:** YES, YOUR HONOR.

16           **MR. FEHER:** YES, YOUR HONOR.

17           **THE COURT:** YOU ARE FREE TO GO.

18           **THE WITNESS:** THANK YOU.

19           **MR. LECLAIR:** AND THEN, YOUR HONOR, AS I SAID, WE ARE  
20 GOING TO OFFER THE GLA'S INTO EVIDENCE, WHICH IS A RATHER LARGE  
21 EXHIBIT. AND SUBJECT TO THE DEFENDANTS' VERIFICATION -- THEY  
22 HAVE NO OBJECTION -- IT WILL BE MARKED AS 1164-4.

23           **THE COURT:** CORRECT?

24           **MR. KESSLER:** WE HAVE NO OBJECTION, SUBJECT TO MAKING  
25 SURE THE BOX CONTAINS THE RIGHT --

1           **THE COURT:** ALL RIGHT. IT'S ALL RECEIVED.

2           OKAY. NOW WE GO BACK TO THE -- BACK TO THE DEFENSE  
3 CASE.

4           (TRIAL EXHIBIT 1164-4 RECEIVED IN EVIDENCE.)

5           **MR. KESSLER:** I GUESS, YOUR HONOR, I GUESS PLAINTIFFS  
6 HAVE NOW COMPLETELY RESTED. I GUESS WE SHOULD ESTABLISH THAT.

7           **THE COURT:** HAVE YOU COMPLETELY RESTED, MR. LECLAIR?

8           **MR. LECLAIR:** YES, YOUR HONOR.

9           **THE COURT:** GREAT. WE HAVE REACHED A MILESTONE, AS I  
10 SAID SOMEWHAT PREMATURELY YESTERDAY.

11          OKAY. CAN WE CONTINUE ON WITH THE DEFENSE CASE?

12          **MR. KESSLER:** YES, YOUR HONOR. AS OUR NEXT WITNESS  
13 WE CALL PROFESSOR ROGER NOLL OF STANFORD UNIVERSITY.

14          **THE COURT:** HOW DO YOU SPELL THAT?

15          **MR. KESSLER:** N-O-L-L.

16          **THE COURT:** ALL RIGHT.

17          **MR. KESSLER:** WE ARE GETTING MR. NOLL NOW.

18          **THE COURT:** ALL RIGHT. PLEASE COME FORWARD.

19          IF YOU'LL STAND SOMEWHERE IN THERE, AND RAISE YOUR  
20 RIGHT HAND, WE'LL SWEAR YOU IN.

21          (THEREUPON, THE WITNESS WAS SWORN.)

22          **THE WITNESS:** I DO.

23          **THE CLERK:** THANK YOU.

24          **THE COURT:** ALL RIGHT. WE NEED TO TAKE YOUR  
25 PHOTOGRAPH. IS THAT OKAY?



1 TOWARDS BUSINESS, OR AS THE FIELD IS CALLED IN ECONOMICS,  
2 INDUSTRIAL ORGANIZATION.

3 **Q.** HAVE YOU DONE ANY PARTICULAR WORK IN THE AREA OF SPORTS  
4 ECONOMICS?

5 **A.** YES, I HAVE.

6 **Q.** WOULD YOU PLEASE EXPLAIN THAT TO THE JURY?

7 **A.** I HAVE -- I AM THE EDITOR AND AUTHOR OF SEVERAL CHAPTERS  
8 OF TWO BOOKS ON THE ECONOMICS OF SPORTS. ONE IS CALLED  
9 THE GOVERNMENT IN THE SPORTS BUSINESS, AND THE OTHER IS CALLED  
10 SPORTS JOBS AND TAXES.

11 THE LATTER IS ABOUT STADIUM SUBSIDIES. THE FORMER IS  
12 JUST A GENERAL SURVEY OF ALL THE ISSUES IN THE ECONOMICS OF  
13 SPORTS.

14 AND THEN, I PERIODICALLY WRITE RESEARCH PAPERS THAT  
15 ARE PUBLISHED IN PROFESSIONAL JOURNALS OR IN BOOKS.

16 **Q.** HAVE YOU EVER BEEN A CONSULTANT TO ANY GOVERNMENT AGENCIES  
17 IN THE AREA OF INDUSTRIAL ORGANIZATION ECONOMICS?

18 **A.** YES, I HAVE.

19 **Q.** COULD YOU PLEASE EXPLAIN TO THE JURY BRIEFLY SOME OF THOSE  
20 ASSIGNMENTS.

21 **A.** I HAVE ON SEVERAL OCCASIONS WORKED WITH THE ANTITRUST  
22 DIVISION OF THE DEPARTMENT OF JUSTICE AND THE FEDERAL TRADE  
23 COMMISSION.

24 I HAVE CONSULTED FOR THE -- WHAT WAS THEN CALLED THE  
25 SENATE SUBCOMMITTEE ON ANTITRUST AND MONOPOLY. THE NAME KEEPS

1 CHANGING. I DON'T KNOW WHAT THE CURRENT NAME IS.

2 AND I HAVE ALSO CONSULTED WITH THE FEDERAL  
3 COMMUNICATIONS COMMISSION ON BROADCASTING ISSUES.

4 **Q.** AND PROFESSOR NOLL, HAVE YOU EVER TAUGHT A COURSE ON THE  
5 ECONOMICS OF PROFESSIONAL SPORTS?

6 **A.** I HAVE TAUGHT COURSES IN WHICH THE ECONOMICS OF SPORTS ARE  
7 A PART. IN MY VIEW, IT DOESN'T SUSTAIN AN ENTIRE COURSE. BUT  
8 I HAVE TAUGHT COURSES ON SPORTS, ENTERTAINMENT AND THE MEDIA,  
9 WHICH I BELIEVE IS THE APPROPRIATE FIELD IN ECONOMICS.

10 **Q.** PROFESSOR NOLL, SO THE JURY KNOWS, HAVE YOU BEEN A WITNESS  
11 IN CASES THAT I'VE BEEN INVOLVED IN BEFORE?

12 **A.** YES, I HAVE.

13 **Q.** HAVE YOU SOMETIMES BEEN A WITNESS WHO I CALLED?

14 **A.** I HAVE SOMETIMES BEEN SOMEONE YOU CALLED, YES.

15 **Q.** AND HAVE YOU SOMETIMES BEEN A WITNESS WHO MY ADVERSARY  
16 CALLED?

17 **A.** YES, I HAVE.

18 **Q.** PROFESSOR NOLL, WERE YOU RETAINED IN CONNECTION WITH THIS  
19 LITIGATION?

20 **A.** YES, I WAS.

21 **Q.** AND YOU'RE BEING COMPENSATED FOR THAT?

22 **A.** YES, I AM.

23 **Q.** WHAT WAS YOUR HOURLY RATE WITH RESPECT --

24 **A.** \$700.

25 **Q.** AND DO YOU RECALL IN TOTAL APPROXIMATELY HOW MUCH YOU'VE

1 BEEN COMPENSATED IN CONNECTION WITH THIS MATTER?

2 **A.** UHM, IT'S AROUND \$85,000 TOTAL.

3 **Q.** OKAY. PROFESSOR NOLL, DOES THE OUTCOME OF THIS CASE IN  
4 ANY WAY AFFECT YOU FINANCIALLY ONE WAY OR THE OTHER?

5 **A.** NO.

6 **Q.** OKAY. PROFESSOR NOLL, WHAT WERE YOU ASKED TO DO IN  
7 CONNECTION WITH THIS CASE?

8 **A.** REVIEW AND EVALUATE THE TESTIMONY OF DR. RASCHER AND ITS  
9 LINKAGES TO THE TESTIMONY OF MR. ROWLEY.

10 **Q.** SO THAT WAS DR. RASCHER WHO WAS CALLED TO TESTIFY FOR THE  
11 PLAINTIFFS?

12 **A.** THAT'S CORRECT.

13 **Q.** I THINK THE JURY HAS ALREADY SEEN HIM.

14 PROFESSOR NOLL, I WOULD LIKE YOU TO TAKE A LOOK AT  
15 E1, WHICH IS A DEMONSTRATIVE EXHIBIT WE PREPARED FOR YOU.

16 **MR. HUMMEL:** YOUR HONOR, I OBJECT. THIS IS NOT  
17 DISCLOSED IN HIS EXPERT REPORT. IT'S A FORM OF LEADING. IT IS  
18 A WAY THAT HE CAN OUTLINE FOR THE WITNESS HIS TESTIMONY.

19 **THE COURT:** I'M GOING TO SUSTAIN THAT OBJECTION.

20 **MR. HUMMEL:** IT'S INAPPROPRIATE.

21 **THE COURT:** SUSTAINED.

22 **MR. HUMMEL:** AND THE WITNESS SHOULD NOT BE ABLE TO  
23 LOOK AT IT.

24 **MR. KESSLER:** OKAY.

25 **THE COURT:** WELL, AFTER YOU GO THROUGH THE SUBJECT

1 MATTER, THEN ONCE HE'S TESTIFIED TO IT, THEN YOU CAN GO BACK  
2 OVER IT.

3 IS THIS AN ILLUSTRATIVE CHART?

4 **MR. KESSLER:** YES, THESE ARE ILLUSTRATIVE CHARTS,  
5 YOUR HONOR, THAT BASICALLY THE WITNESS -- I WASN'T GOING TO PUT  
6 IT UP FIRST. I WAS GOING TO ASK THE WITNESS TO EXPLAIN WHAT  
7 CONCLUSIONS HE HAS REACHED, AND THEN I THOUGHT IT WOULD BE  
8 HELPFUL FOR THE JURY TO SEE A SUMMARY OF THOSE CONCLUSIONS.  
9 BUT IT'S UP TO YOUR HONOR.

10 **THE COURT:** THE THING TO DO, WITHOUT SHOWING IT TO  
11 HIM FIRST, GO THROUGH HIS CONCLUSIONS.

12 AND THEN -- NOW, DID YOU ON YOUR SIDE OVER THERE,  
13 MR. HUMMEL, DID YOU DO A SIMILAR THING WITH ANY OF YOUR  
14 EXPERTS?

15 **MR. HUMMEL:** NO, YOUR HONOR.

16 **MR. KESSLER:** THEY COULD HAVE, YOUR HONOR. AND, IN  
17 FACT, THESE ARE THE SAME CONCLUSIONS THAT ARE IN HIS EXPERT  
18 REPORT. SO IT'S ALREADY FULLY DISCLOSED IN THE EXPERT REPORTS.

19 **THE COURT:** WELL, AFTER HE HAS TESTIFIED TO IT, YOU  
20 CAN PUT IT UP ON THE SCREEN AND SUMMARIZE IT.

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

22 **BY MR. KESSLER:**

23 **Q.** DID YOU REACH ANY PARTICULAR CONCLUSIONS CONCERNING  
24 DR. RASCHER'S ANALYSIS?

25 **A.** YES, I DID.

1 Q. OKAY. LET ME FIRST ASK YOU ABOUT DR. RASCHER'S OPINION  
2 THAT RETIRED PLAYERS HAVE CONTRIBUTED TO -- EQUALLY TO THE  
3 LICENSING REVENUES TO PLAYERS INC. DO YOU RECALL THAT THAT'S  
4 ONE OF HIS OPINIONS?

5 MR. HUMMEL: OBJECTION. MISSTATES HIS OPINION, YOUR  
6 HONOR.

7 THE COURT: WELL, IT WILL BE FOR THE WITNESS AND THE  
8 JURY TO SORT THAT OUT.

9 SOMETIMES THE LAWYERS DISAGREE OVER WHAT OPINION WAS  
10 GIVEN. AND IF YOUR MEMORY IS DIFFERENT, YOUR MEMORY CONTROLS.

11 WITH THAT, OVERRULED.

12 PLEASE ANSWER.

13 BY MR. KESSLER:

14 Q. DO YOU RECALL WHAT YOUR CONCLUSION WAS ABOUT DR. RASCHER'S  
15 OPINION ABOUT RETIRED PLAYERS CONTRIBUTING TO THE LICENSING  
16 REVENUES OF PLAYERS INC?

17 A. YES, I DO RECALL.

18 Q. OKAY. AND WHAT WAS YOUR CONCLUSION ABOUT DR. RASCHER'S  
19 OPINION?

20 A. MY CONCLUSION WAS THAT THE EVIDENCE THAT HE CITED DID NOT,  
21 IN FACT, ESTABLISH THE CONCLUSION THAT THERE IS NO BASIS IN HIS  
22 TESTIMONY FOR THAT CONCLUSION, AND THAT, IN FACT, IT'S WRONG.

23 Q. WAS THERE ANY BASIS IN ECONOMIC ANALYSIS FOR THAT  
24 CONCLUSION?

25 A. NO, THERE WAS NO BASIS IN ECONOMIC ANALYSIS FOR THAT

1 CONCLUSION.

2 **MR. HUMMEL:** OBJECTION, YOUR HONOR, LEADING. MOTION  
3 TO STRIKE. HE IS READING FROM THE EXHIBIT, AND IT'S LEADING.

4 **THE COURT:** WHO'S --

5 **MR. HUMMEL:** MR. KESSLER JUST READ FROM THE EXHIBIT A  
6 QUESTION TO THIS WITNESS. IT WAS A LEADING QUESTION, AND I  
7 OBJECT. I ASK THAT THERE NOT BE LEADING OF THIS WITNESS.

8 **THE COURT:** WELL, DON'T LEAD THE WITNESS. BUT  
9 OVERRULED FOR NOW.

10 YOU CAN READ FROM WHATEVER YOU WANT, COUNSEL, BUT YOU  
11 CAN'T BE -- WHEN IT COMES OUT, IT CAN'T BE A LEADING QUESTION.

12 **MR. KESSLER:** YOUR HONOR, I DO NOT BELIEVE THAT WAS A  
13 LEADING QUESTION.

14 **THE COURT:** ALL RIGHT. WE'LL PASS ON TO THE NEXT  
15 QUESTION. NO LEADING.

16 **MR. KESSLER:** OKAY.

17 **BY MR. KESSLER:**

18 **Q.** DO YOU RECALL THAT DR. RASCHER HAD AN OPINION ABOUT  
19 DEFENDANTS' MARKET POWER OR LEVERAGE?

20 **A.** YES, I DO RECALL THAT OPINION.

21 **Q.** LET ME MAKE SURE I'M NOT LEADING. WHAT DO YOU RECALL WAS  
22 DR. RASCHER'S OPINION ABOUT THAT?

23 **A.** DR. RASCHER'S OPINION IS THAT THE NFL PLAYERS ASSOCIATION  
24 AND NFL PLAYERS INC SOMEHOW HAD SOME FORM OF BARGAINING POWER,  
25 EITHER LEVERAGE OR MARKET POWER, ARISING FROM THEIR POSITION AS

1 THE LICENSEES OF THE IMAGES OF BOTH ACTIVE AND RETIRED PLAYERS.

2 **Q.** AND DID YOU HAVE ANY CONCLUSION THAT YOU REACHED AS TO  
3 WHETHER THAT OPINION OF DR. RASCHER IS SUPPORTED OR  
4 UNSUPPORTED?

5 **A.** UHM, FROM MY PERSPECTIVE -- MY ANALYSIS WITH RESPECT TO  
6 THE RETIRED PLAYERS IS IT'S COMPLETELY UNSUPPORTED. IT IS  
7 SIMPLY NOT TRUE.

8 **Q.** NOW, DO YOU RECALL WHETHER DR. RASCHER DID SOME COMPARISON  
9 OF THE SHARE OF PLAYER LICENSING REVENUES THAT THE DEFENDANTS  
10 KEPT VERSUS WHAT OTHER ORGANIZATIONS KEPT?

11 **A.** YES.

12 **Q.** OKAY. AND DID YOU HAVE ANY CONCLUSION THAT YOU REACHED  
13 ABOUT THAT OPINION OF DR. RASCHER?

14 **A.** YES, I DID.

15 **Q.** AND WHAT WAS YOUR CONCLUSION?

16 **A.** MY CONCLUSION WAS THAT HIS -- HIS CONCLUSION THAT THERE'S  
17 SOMEHOW A SUBSTANTIAL OR SIGNIFICANT DIFFERENCE BETWEEN THE  
18 PRACTICES OF THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION  
19 AND ANY OTHER COMPARABLE ORGANIZATION ARE FALSE. THERE ARE NO  
20 SIGNIFICANT OR SUBSTANTIAL DIFFERENCES IN THE PRACTICES OF THE  
21 NFLPA AND OTHER ENTITIES THAT ENGAGE IN LICENSING.

22 **Q.** OKAY. WELL, SPECIFICALLY, DID YOU EXAMINE HOW THE  
23 LICENSING REVENUES FOR PLAYERS RETAINED BY THE NFLPA AND  
24 PLAYERS INC COMPARED TO SOME OTHER SPORTS UNIONS?

25 **A.** YES. I -- YES, I DID ANALYZE THAT.

1 Q. DID YOU REACH ANY CONCLUSION ABOUT WHETHER THERE WAS ANY  
2 MATERIAL DIFFERENCE?

3 A. YES, I DID REACH --

4 Q. WHAT WAS YOUR CONCLUSION?

5 A. THERE IS NO MATERIAL DIFFERENCE BETWEEN THE BEHAVIOR OF  
6 THE NFLPA AND THE OTHER PLAYERS UNIONS IN PROFESSIONAL SPORTS.

7 MR. KESSLER: YOUR HONOR, I WOULD LIKE TO DISPLAY  
8 NOW -- I BELIEVE I CAN HAND UP TO YOUR HONOR A DEMONSTRATIVE  
9 EXHIBIT THAT DISPLAYS THOSE CONCLUSIONS.

10 MR. HUMMEL: I OBJECT, YOUR HONOR.

11 THE COURT: OVERRULED. NOW, YOU CAN GO AHEAD AND GO  
12 OVER THE SUMMARY.

13 MR. KESSLER: THANK YOU, YOUR HONOR.

14 (DOCUMENT DISPLAYED.)

15 BY MR. KESSLER:

16 Q. PROFESSOR NOLL, I'M GOING TO REVIEW WHAT THE BASIS IS FOR  
17 EACH OF THESE THREE MAJOR CONCLUSIONS THAT YOU REACHED.

18 A. IF YOU'RE GOING TO DO THAT, YOU'RE GOING TO HAVE TO GIVE  
19 ME A COPY, BECAUSE I CAN'T READ THE SCREEN FROM HERE.

20 Q. I'M SO SORRY. WE CAN BLOW IT UP, TOO.

21 A. THAT'S OKAY.

22 Q. THE FIRST CONCLUSION I WANT TO FOCUS ON IS THAT:

23 "THERE IS NO BASIS IN ECONOMIC ANALYSIS FOR  
24 DR. RASCHER'S OPINION THAT RETIRED PLAYERS HAVE CONTRIBUTED  
25 EQUALLY TO CURRENT LICENSING REVENUES."

1 MY FIRST QUESTION IS: DO YOU RECALL DR. RASCHER  
2 CITED WHAT HE CALLED "PEER-REVIEW ARTICLES" IN SUPPORT OF HIS  
3 ANALYSIS?

4 **A.** YES, I DO.

5 **Q.** OKAY. DID YOU LOOK AT THOSE PEER-REVIEW ARTICLES?

6 **A.** I LOOKED NOT ONLY AT THE ARTICLES THAT HE CITED, BUT EVERY  
7 ARTICLE I COULD FIND THAT DEALT WITH THAT ISSUE.

8 **Q.** WHAT IS "ANY ARTICLE"? WERE YOU LOOKING AT SCHOLARLY  
9 RESEARCH?

10 **A.** YES. THESE ARE IN, NATURALLY, THE SAME ACADEMIC JOURNALS.  
11 THE "JOURNAL OF SPORTS MANAGEMENT" IS THE MOST IMPORTANT IN  
12 THIS FIELD. BUT THERE ARE A NUMBER OF OTHER JOURNALS THAT  
13 REGULARLY PUBLISH ARTICLES IN THIS AREA, AND I READ ALL THE  
14 ARTICLES THAT DEALT WITH THE ISSUES THAT HE REFERRED TO IN HIS  
15 TESTIMONY.

16 **Q.** OKAY. AND DID THE RESEARCH CITED BY DR. RASCHER MEASURE  
17 ANY RELATIONSHIP BETWEEN PAST PLAYERS, RETIRED PLAYERS, AND  
18 BRAND VALUE?

19 **A.** NO.

20 **Q.** WOULD YOU EXPLAIN TO THE JURY WHAT THOSE ARTICLES DID AND  
21 DID NOT DO?

22 **A.** HAPPILY.

23 THE ARTICLES THAT HE CITES, AND A MUCH LARGER NUMBER  
24 OF OTHER ARTICLES THAT HE DOESN'T, DEAL WITH ONE PART OF A LINK  
25 OF ARGUMENTS. AND THE LINK OF ARGUMENTS GOES AS FOLLOWS:

1 THERE'S SOMETHING OUT THERE CALLED "THE ATTACHMENT OF PEOPLE AS  
2 FANS TO A TEAM."

3 AND PRESUMABLY THAT'S RELATED TO SOMETHING ABOUT THE  
4 TEAM. IT MAY HAVE TO DO WITH THE PERSONALITIES OF THE CURRENT  
5 PLAYERS, THE RECORDS OF THE CURRENT TEAM, THE HISTORY OF THE  
6 TEAM, THE STADIUM IN WHICH IT PLAYS, THE TREATMENT OF THE FANS  
7 IN THE STADIUM BY THE PERSONNEL WHO WORK THERE, A WHOLE HOST OF  
8 ART -- OF ISSUES.

9 ONE OF THE AUTHORS THAT HE CITES, STEVEN ROSS, LISTS  
10 41 SEPARATE THINGS THAT HE BELIEVES CONTRIBUTE TO CAUSING  
11 PEOPLE TO BE FANS TO A TEAM.

12 SO THE -- THE FIRST LINK IS GOING FROM FEATURES OF A  
13 TEAM TO HOW INTENSE ITS FAN BASE IS. ALL RIGHT.

14 THEN, THE SECOND LINK IN THAT THEORETICAL ARGUMENT IS  
15 TO GO FROM THE INTENSITY OF FAN LOYALTY, THE ATTACHMENT, TO  
16 SOMETHING CALLED "BRAND EQUITY."

17 BRAND EQUITY IS A CONCEPT IN MARKETING THAT BASICALLY  
18 MEANS YOU BUY A PRODUCT NOT JUST FOR ITS INTRINSIC QUALITIES,  
19 BUT BECAUSE OF THE BRAND ASSOCIATED WITH.

20 THAT IS TO SAY, YOU PAY EXTRA WHEN YOU GO TO THE  
21 GROCERY STORE WHEN YOU BUY AN ORANGE THAT HAS "SUNKIST" ON IT  
22 THAN YOU WOULD IF IT DIDN'T HAVE "SUNKIST" ON IT.

23 ALL RIGHT. NOW, THAT DIFFERENCE IN PRICE OR  
24 DIFFERENCE IN PROFITS THAT A FIRM CAN MAKE BETWEEN THE PRICE IT  
25 COULD GET IF THERE WERE NO BRAND ASSOCIATED WITH THE PRODUCT

1 AND THE PRICE AND PROFITS THEY CAN GET BECAUSE OF THEIR BRAND,  
2 THAT IS CALLED "BRAND EQUITY."

3 **Q.** PROFESSOR NOLL, IF I CAN, MAYBE TO HELP FOCUS THE JURY,  
4 COULD YOU EXPLAIN DOES ANY OF THAT HAVE ANYTHING TO DO WITH  
5 WHETHER OR NOT RETIRED NFL PLAYERS HAVE CONTRIBUTED EQUALLY TO  
6 CURRENT LICENSING REVENUES?

7 **A.** IT COULD, IN THEORY. IN PRACTICE, THERE'S NO EVIDENCE  
8 THAT IT DOES.

9 BECAUSE THAT GETS TO THE LAST LINK, WHICH IS, AS I  
10 SAID, IT HAS SOMETHING TO DO WITH SALES AND PRICES. SO THE  
11 LAST LINK YOU WOULD HAVE TO MAKE IS THAT SOME SOURCE OF  
12 REVENUE, LIKE TICKET SALES, BROADCASTING REVENUES OR LICENSING  
13 REVENUES OF A TEAM WOULD BE RELATED TO BRAND EQUITY, WHICH  
14 WOULD BE RELATED TO FAN LOYALTY, WHICH WOULD BE RELATED TO  
15 THESE 41 CHARACTERISTICS.

16 NOW, THE WAY THAT RETIRED PLAYERS -- THE WAY THAT IT  
17 WOULD BE TRUE THAT RETIRED PLAYERS CONTRIBUTED EQUALLY TO  
18 LICENSING REVENUES THROUGH THIS CHAIN WOULD BE THE RETIRED  
19 PLAYERS EQUALLY CONTRIBUTE TO THIS FAN LOYALTY, THE ATTACHMENT;  
20 THAT FAN LOYALTY THEN FEEDS IN TO BRAND EQUITY THROUGH  
21 LICENSING.

22 THERE IS -- NOT ONLY IS IT THE CASE, THERE IS NOT A  
23 SINGLE RESEARCH PAPER IN THE LITERATURE THAT LINKS REVENUE TO  
24 THE FAN ATTACHMENT ARISING FROM RETIRED PLAYERS. THERE'S NOT A  
25 SINGLE PAPER THAT DOES THAT.

1           STEVEN ROSS, WHO IS ONE OF THE AUTHORS CITED BY  
2 DR. RASCHER, ACTUALLY HAS A MAY 2008 PAPER IN WHICH HE  
3 EXPLICITLY STATES THAT IS THE BIG UNSOLVED PART OF THE PUZZLE,  
4 IS THAT NO LINK HAS EVER BEEN MADE TO HIS RESEARCH, WHICH IS  
5 THE SOURCE OF FAN LOYALTY, AND ANY SOURCE OF REVENUE.

6           SO THERE'S JUST NO BASIS IN THAT. IT'S NOT TRUE THAT  
7 THERE'S ANY PEER-REVIEWED RESEARCH THAT HAS EVER ESTABLISHED  
8 THAT ANY REVENUE ENJOYED BY A TEAM HAS ANYTHING TO DO WITH FAN  
9 LOYALTY OR THAT IT HAS ANYTHING TO DO WITH RETIRED PLAYERS AS  
10 ONE OF THE 41 ELEMENTS THAT MIGHT CONTRIBUTE TO FAN LOYALTY.

11 **Q.**    PUTTING ASIDE -- YOU MENTIONED TEAMS. DO ALL THE PAPERS  
12 THAT DR. RASCHER CITED HAVE TO DO WITH THE VALUE OF TEAMS?

13 **A.**    YES.

14 **Q.**    OKAY.

15 **A.**    THEY ALL HAVE TO DO WITH TEAMS. AND SO THE REVENUE YOU  
16 WOULD LOOK AT IS THE LICENSING REVENUE OF TEAMS, WHICH HAS  
17 NOTHING TO DO WITH THE LICENSING REVENUE OF PLAYERS.

18 **Q.**    IS THERE ONE STUDY THAT DR. RASCHER CITED, AT ALL, THAT  
19 DISCUSSES THE REVENUES OR THE IMPACT ON REVENUES OF PLAYER  
20 LICENSING?

21 **A.**    NO. THERE'S NO -- THERE'S NOTHING IN THE PUBLISHED  
22 RESEARCH LITERATURE AT ALL ABOUT PLAYER LICENSING.

23 **Q.**    DID DR. RASCHER, IN HIS ANALYSIS AND REPORT, PRESENT ANY  
24 EVIDENCE CONCERNING WHAT IMPACT RETIRED PLAYERS HAD ON  
25 LICENSING BY PLAYERS INC, SPECIFICALLY? IS THERE ANY EVIDENCE

1 HE PRESENTED AT ALL?

2 **A.** NO.

3 **Q.** NOTHING?

4 **A.** NOTHING.

5 **Q.** NOW, PROFESSOR NOLL, DID YOU STUDY ANY DATA THAT WOULD  
6 BEAR ON THE ISSUE OF WHAT THE MARKETING VALUE WAS OF RETIRED --  
7 INDIVIDUAL RETIRED PLAYER LICENSING RIGHTS?

8 **A.** YES.

9 **Q.** EXPLAIN TO THE JURY WHAT DATA YOU LOOKED AT.

10 **A.** I LOOKED AT ALL OF THE RETIRED PLAYER LICENSING DATA SINCE  
11 2003, FROM THE NFLPI, ALL OF THE LICENSING ACTIVITIES ON BEHALF  
12 OF RETIRED PLAYERS THAT NFLPI HAS DONE.

13 **Q.** DID YOU LOOK AT THAT DATA AND ANALYZE IT ANY PARTICULAR  
14 WAY?

15 **A.** YES. I -- I TRIED TO -- WHAT I DID IN MY ANALYSIS WAS  
16 DETERMINE HOW EQUAL IT IS, WHO GETS THE REVENUE AND WHO  
17 DOESN'T. WHO -- WHO CAN BE LICENSED AND WHO CAN'T, ONE OF THE  
18 CHARACTERISTICS OF THE PLAYERS WHO ARE LICENSED VERSUS THE ONES  
19 WHO ARE NOT.

20 **MR. KESSLER:** WHAT HAPPENED TO MY SET OF EXHIBITS FOR  
21 PROFESSOR NOLL? I'M LOOKING AT TRIAL EXHIBIT 2397. DO YOU  
22 HAVE THAT?

23 **MR. CLARK:** HE ALREADY HAS IT.

24 **BY MR. KESSLER:**

25 **Q.** LET ME HAND YOU A COPY OF TRIAL EXHIBIT 2397. FIRST OF

1 ALL, DOES TRIAL EXHIBIT 2397 REFLECT SOME OF THE ANALYSIS YOU  
2 DID OF THIS LICENSING DATA?

3 **A.** IT REFLECTS SOME IT. THERE IS ONE TABLE THAT IS THE  
4 RESULT OF THIS ANALYSIS.

5 **Q.** WAS IT PREPARED UNDER YOUR DIRECTION?

6 **A.** IT WAS PREPARED UNDER MY DIRECTION, YES.

7 **MR. KESSLER:** YOUR HONOR, I MOVE INTO EVIDENCE TRIAL  
8 EXHIBIT 2397.

9 **MR. HUMMEL:** NO OBJECTION.

10 **THE COURT:** RECEIVED.

11 (TRIAL EXHIBIT 2397 RECEIVED IN EVIDENCE.)

12 (DOCUMENT DISPLAYED.)

13 **BY MR. KESSLER:**

14 **Q.** AND THIS SAYS:

15 "DISTRIBUTION OF LICENSING REVENUES AMONG  
16 PLAYERS WHO SIGNED RETIRED PLAYER GLA'S 2003 TO EARLY 2008."

17 SO JUST SO THE JURY UNDERSTANDS, DID THE DATA SET YOU  
18 LOOKED AT CONTAIN THOSE WHO SIGNED THE RETIRED PLAYERS GROUP  
19 LICENSING AUTHORIZATIONS?

20 **A.** YES, IT DID.

21 **Q.** OKAY. AND FOR WHAT PERIOD OF TIME DID YOU COVER?

22 **A.** IT WAS ALL OF THE YEARS 2003 THROUGH 2007, 2003 THROUGH  
23 2007, AND THEN, PART OF 2008. AT THE TIME I GOT THE DATA, 2008  
24 OBVIOUSLY ISN'T DONE YET.

25 **Q.** WAS THE DATE BEFORE YOU DID YOUR REPORT IN THIS CASE?

1 **A.** YES.

2 **Q.** EXPLAIN TO THE JURY WHAT THIS CHART SHOWS AND WHAT THE  
3 SIGNIFICANCE IS OF THIS CHART TO YOUR CONCLUSIONS.

4 **A.** WHAT THIS CHART SHOWS IS THAT VIRTUALLY ALL OF THE  
5 PLAYERS, OF THE REVENUE DERIVED FROM LICENSING OF RETIRED  
6 PLAYERS, IS ACCOUNTED FOR BY A RELATIVELY SMALL FRACTION OF  
7 THEM.

8           THERE ARE ON THE ORDER OF 2,000 RETIRED PLAYERS WHO  
9 SIGNED GLA'S, AND 1700 OF THEM NOTHING EVER HAPPENED. THERE  
10 WAS NO REVENUE.

11           BUT ON THE OTHER HAND, 30 OF THEM RECEIVED OVER  
12 \$50,000. SO --

13 **Q.** THAT WOULD BE THIS BOTTOM LINE, 30 OF THE PLAYERS --

14 **A.** YES.

15 **Q.** -- RECEIVED OVER 50,000?

16 **A.** RIGHT. SO WHAT IT SHOWS IS THAT THERE IS EXTREME  
17 INEQUALITY AMONG OF THE PLAYERS AS THEIR ATTRACTIVENESS AS  
18 POTENTIAL LICENSEES.

19 **Q.** AS AN ECONOMIST, DOES THIS DATA LEAD YOU TO ANY  
20 CONCLUSIONS ABOUT THE MARKET VALUE OF RETIRED PLAYERS?

21 **A.** WHAT IT TELLS ME IS -- THE DATA ON LICENSING ACTUALLY SHOW  
22 THAT THE VAST MAJORITY OF RETIRED PLAYERS HAVE NO MARKET VALUE  
23 IN TERMS OF LICENSING THEIR IMAGE.

24 **Q.** AND IS THAT RELATED TO THE FACT THAT SIX -- 1684 OF THE  
25 PLAYERS WERE NOT DESIRED BY LICENSEES AT ALL, AND 30 ONLY

1 RECEIVED UP TO \$25?

2 **A.** YES. SO -- SO MANY -- SUCH A LARGE FRACTION OF THEM  
3 RECEIVED NOTHING OR NEXT TO NOTHING, AND THEN A SMALL GROUP  
4 RECEIVED SOMETHING.

5 **Q.** LET ME SHOW YOU NEXT TRIAL EXHIBIT 2398.

6 PROFESSOR NOLL, DOES THIS REFLECT SOME FURTHER  
7 ANALYSIS THAT YOU DID OF THIS LICENSING DATA?

8 **A.** YES. THIS TAKES THE -- THE 378 PLAYERS WHO RECEIVED  
9 SOMETHING AND LOOKS AT THE FRACTION OF TOTAL LICENSING REVENUE  
10 THAT ARE ACCOUNTED BY THE TOP TEN, THE NEXT TEN, ET CETERA, IN  
11 TERMS OF THEIR RANK ORDERING WITH RESPECT TO LICENSING REVENUE.

12 **MR. KESSLER:** YOUR HONOR, I MOVE INTO EVIDENCE TRIAL  
13 EXHIBIT 2398.

14 **MR. HUMMEL:** NO OBJECTION.

15 **THE COURT:** RECEIVED.

16 (TRIAL EXHIBIT 2398 RECEIVED IN EVIDENCE.)

17 **BY MR. KESSLER:**

18 **Q.** AND IT SAYS:

19 "DISTRIBUTION OF LICENSING REVENUES AMONG  
20 PLAYERS WHO SIGNED RETIRED PLAYER GLA'S."

21 WOULD YOU EXPLAIN TO THE JURY, TAKE THEM THROUGH  
22 THESE LINES AND EXPLAIN WHAT THIS CHART SHOWS?

23 **A.** YES. IF YOU RECALL, THE LAST CHART SHOWED THAT LIKE 30  
24 PLAYERS RECEIVED OVER \$50,000. WELL, TEN OF THOSE 30 WOULD BE  
25 IN THIS TOP TEN. THEY WOULD BE THE TEN WHO GOT THE MOST MONEY.

1           AND THOSE TEN PLAYERS -- THAT'S TEN OUT OF  
2 APPROXIMATELY 2,000 WHO HAD SIGNED GLA'S -- ACCOUNTED FOR  
3 41 PERCENT OF ALL THE LICENSING REVENUE.

4           AND THEN, EVEN AMONG THOSE WHO RECEIVED MONEY,  
5 NUMBERS 201 THROUGH 378 GOT ONLY 2 PERCENT OF IT. SO THEY GOT  
6 ALMOST NOTHING, AS WELL.

7           SO, AGAIN, THIS JUST DEMONSTRATES THAT ALMOST ALL OF  
8 THE REVENUE, 90 PERCENT OF THE REVENUE, IS ACCOUNTED FOR BY A  
9 HUNDRED OF THESE 2,000 PLAYERS.

10 **Q.** NOW, PROFESSOR NOLL, AS AN ECONOMIST, IF YOU WERE  
11 EXAMINING WHAT AN INDIVIDUAL PLAYER'S LICENSING RIGHTS WOULD BE  
12 WORTH IF THAT PERSON WAS MARKETED, WHAT WOULD THIS DATA TELL  
13 YOU ABOUT THAT?

14 **A.** WELL, THESE DATA ACTUALLY CONFIRM WHAT YOU WOULD EXPECT AS  
15 AN ECONOMIST, WHICH IS THAT LICENSING REVENUE OUGHT TO BE A LOT  
16 LIKE PLAYER SALARIES. WE KNOW FROM OBSERVING PLAYER SALARIES  
17 THAT SOME PLAYERS ARE PAID \$10 MILLION A YEAR OR MORE. OTHERS  
18 EARN MINIMUM SALARIES, WHICH IS NOW ABOUT 225,000.

19           AND THE REASON FOR THAT, OF COURSE, IS THAT WE -- WE  
20 KNOW WHO THE STAR PLAYERS ARE. WE KNOW WHO JOE MONTANA WAS OR  
21 STEVE YOUNG.

22           WE KNOW WHO THE MOST IMPORTANT PLAYERS ARE. WE  
23 FOLLOW THEM AS FANS. BUT THE VAST MAJORITY OF PLAYERS ARE  
24 ANONYMOUS. THEY ARE NOT -- THE TYPICAL CAREER LENGTH IN THE  
25 NFL, THE AVERAGE CAREER LENGTH IS ABOUT THREE YEARS.

1           MANY PLAYERS NEVER EVEN GET INTO A GAME.  THEY --  
2  THEY COME IN AS ROOKIES.  MAYBE MAKE A PRACTICE SQUAD.  MAYBE  
3  MAKE THE ACTIVE SQUAD FOR A FEW GAMES, AND THEN THAT'S IT.  
4  THEIR CAREER IS OVER.

5           THEY EARN ALMOST NOTHING FROM THE SPORT.

6           **MR. HUMMEL:**  OBJECTION, YOUR HONOR.  HE HAS NOW GONE  
7  FAR BEYOND HIS EXPERT REPORT.  THERE IS NOTHING IN HIS EXPERT  
8  REPORT --

9           **THE COURT:**  MR. KESSLER, IS THAT RIGHT?

10          **MR. KESSLER:**  I DON'T AGREE, YOUR HONOR.  HIS ENTIRE  
11  ANALYSIS OF HIS DATA IS DESCRIBED IN HIS EXPERT REPORT.  AND  
12  THIS WAS EXPLORED AT LENGTH IN HIS DEPOSITION.

13          **THE COURT:**  IT DOESN'T MATTER ABOUT THE DEPOSITION.  
14  SHOW ME WHERE IT IS IN THE REPORT.  TAKE THE TIME.  GIVE ME THE  
15  REPORT.  SHOW ME WHERE IT IS IN THE REPORT.

16          WHILE YOU'RE LOOKING FOR THAT, THIS IS THE GROUND  
17  RULE -- THIS IS NOT MY RULE, THIS IS THE FEDERAL RULES -- THAT  
18  EXPERTS LIKE OUR PRESENT EXPERT, HAS TO SIGN AND PREPARE BEFORE  
19  THE TRIAL EVER STARTS A DETAILED REPORT THAT LAYS OUT ALL OF  
20  THEIR OPINIONS AND ALL OF THE REASONS FOR THEIR OPINIONS.

21          AND THEN, THEY ARE STUCK WITH THAT.  THEY CANNOT GO  
22  BEYOND THE FOUR CORNERS OF THAT REPORT, AT LEAST ON DIRECT  
23  EXAMINATION.

24          SO WHEN THIS OBJECTION IS MADE, AND I HAVE TO DECIDE  
25  WHETHER OR NOT -- WHAT THE WITNESS IS SAYING IS IN THE REPORT

1 OR WHETHER HE'S GOING BEYOND IT.

2 **MR. KESSLER:** YOUR HONOR, IT STARTS ON PAGE 19, AND  
3 IT'S AN EXTENSIVE DISCUSSION OF THIS ENTIRE SUBJECT, ALL THE  
4 WAY TO 25. AND I BELIEVE IT'S ENCOMPASSED BETWEEN THAT ENTIRE  
5 DISCUSSION, IF YOUR HONOR HAS IT.

6 LET ME HAND IT UP TO YOU.

7 **THE COURT:** I'VE GOT 19 TO 25.

8 **MR. KESSLER:** OKAY, YOUR HONOR. WHERE IT BEGINS:

9 "RELEVANCE TO INJURY TO THE GLA CLASS."

10 **THE COURT:** I FORGOT EXACTLY THE POINT THAT THE  
11 WITNESS WAS ON, BUT --

12 **THE WITNESS:** SALARIES.

13 **MR. KESSLER:** OH, 23 HAS THE SPECIFIC DISCUSSION IN  
14 THIS, YOUR HONOR, WITH THE CHARTS NEXT TO IT.

15 **MR. FEHER:** AND CITATIONS.

16 **MR. KESSLER:** TAKE A LOOK, FOR EXAMPLE, THAT THE  
17 PARAGRAPH THAT BEGINS:

18 "THESE FINDINGS ARE NOT SURPRISING."

19 **THE COURT:** ALL RIGHT. THE OBJECTION IS OVERRULED.  
20 THE COURT FINDS THAT THE SENTENCE THAT READS:

21 "ECONOMIC RESEARCH CONFIRMS THIS EXPECTATION,  
22 FINDING THAT SALARIES IN ALL PROFESSIONAL SPORTS, INCLUDING THE  
23 NFL, ARE STRONGLY CORRELATED WITH A PLAYER'S PERFORMANCE, YEARS  
24 OF SERVICE AND POSITION, AS WELL AS THE RULES GOVERNING THE  
25 PLAYER MARKET."

1            THAT'S PRETTY CLOSE TO WHAT THE WITNESS WAS SAYING.  
2 IT'S NOT EXACTLY THE SAME WORDS, BUT IT'S CLOSE ENOUGH THAT  
3 FAIR DISCLOSURE WAS MADE.

4            SO THE OBJECTION IS OVERRULED.

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

6 **BY MR. KESSLER:**

7 **Q.** PROFESSOR NOLL, TO GO BACK --

8 **A.** I HAVE NO IDEA WHERE I WAS.

9 **Q.** OKAY. WOULD YOU EXPLAIN TO THE JURY, OKAY, WHY, AS AN  
10 ECONOMIST, BASED ON YOUR REVIEW OF THE ECONOMICS LITERATURE,  
11 YOU WOULD EXPECT DIFFERENT RETIRED NFL PLAYERS TO HAVE  
12 DIFFERENT LICENSING VALUES RAISING -- RANGING FROM, YOU KNOW,  
13 FROM ZERO TO SOME SIGNIFICANT VALUE?

14 **A.** AND THE REASON IS BASICALLY THE SAME REASON THE SALARIES  
15 DIFFER, IS THAT PLAYERS DIFFER IN THEIR CONTRIBUTION TO THE  
16 TEAM. THEY DIFFER IN TERMS OF THEIR APPEAL TO FANS. AND,  
17 CONSEQUENTLY, THEIR SALARIES DIFFER WHEN THEY PLAY.

18            AND ONE WOULD EXPECT THAT LATER ON THE SAME FANS WHO  
19 ATTENDED GAMES BECAUSE JOE MONTANA WAS THE QUARTERBACK AND NOT  
20 BECAUSE SOME SECOND-STRINGER WAS THE BACKUP CORNERBACK, THOSE  
21 SAME FANS WOULD BE MORE LIKELY TO WANT TO BUY MERCHANDISE THAT  
22 HAD JOE MONTANA'S NAME OR PICTURE ON IT THAN THEY WOULD THE  
23 BACKUP CORNERBACK.

24 **Q.** PROFESSOR NOLL, HAVE YOU LOOKED IN YOUR DATA SET AND  
25 PREPARED EXAMPLES OF PARTICULAR PLAYERS OUT OF THAT DATA SET?

1 **A.** YES, I HAVE.

2 **Q.** I WOULD LIKE TO SHOW TRIAL EXHIBIT 2056.

3 **MR. HUMMEL:** OBJECTION, YOUR HONOR. THIS IS A CLEAR  
4 VIOLATION OF PARAGRAPH 15 OF YOUR ORDER. THIS IS NOT DISCLOSED  
5 IN HIS REPORT. IT'S A COMPILATION THAT WAS NEVER SHOWN. IT  
6 WAS NEVER SUBJECT TO DEPOSITION OR IN THE REPORT.

7 **THE COURT:** IS THIS IN THE REPORT?

8 **MR. KESSLER:** YOUR HONOR, THE ENTIRE DATA SET WAS  
9 PRODUCED. THIS IS SIMPLY TAKING -- AND IS DISCUSSED IN THE  
10 REPORT. IT'S THE SAME DATA THAT WENT INTO THE EXHIBITS ALREADY  
11 IN EVIDENCE.

12 THIS IS SIMPLY PULLING SOME INDIVIDUAL NAMES OUT OF  
13 THAT DATA SET SO THE JURY, WHO COULD NOT INSPECT THE ENTIRE  
14 DATA SET, CAN SEE SOME PIECES OF IT.

15 **MR. HUMMEL:** YOUR HONOR, IF I MIGHT, PARAGRAPH 15 OF  
16 YOUR ORDER, QUOTE:

17 "ILLUSTRATIVE ANIMATIONS, DIAGRAMS, CHARTS AND  
18 MODELS MAY BE USED ON DIRECT EXAMINATION ONLY IF THEY WERE PART  
19 OF THE EXPERT REPORT, WITH THE EXCEPTION OF SIMPLE DRAWINGS AND  
20 TABULATIONS THAT PLAINLY ILLUSTRATE WHAT IS ALREADY IN THE  
21 REPORT WHICH CAN BE DRAWN BY THE WITNESS AT TRIAL OR OTHERWISE  
22 SHOWN TO THE JURY."

23 THIS IS NOT SOMETHING THAT WAS IN THE REPORT. IT IS  
24 NOT SOMETHING THAT WAS SHOWN TO US. IT IS NOT SOMETHING HE DID  
25 IN CONNECTION WITH THIS REPORT. IT'S CLEARLY A VIOLATION OF

1 THE RULE.

2 **MR. KESSLER:** YOUR HONOR, I'LL LAND IT UP TO YOUR  
3 HONOR. THIS IS SIMPLY A SIMPLE ILLUSTRATION OR DRAWING OF THE  
4 DATA THAT EASILY COULD BE EXTRACTED FROM THE DATABASE THAT IS  
5 DESCRIBED IN PROFESSOR NOLL'S REPORT.

6 **MR. HUMMEL:** YOUR HONOR, THE DATABASE IS NOT IN  
7 EVIDENCE.

8 **MR. KESSLER:** THE ISSUE IS WHETHER IT'S DESCRIBED IN  
9 HIS REPORT, WHICH IT IS. AND IT WAS PRODUCED TO PLAINTIFFS.

10 **THE COURT:** THIS WAS NOT PRODUCED TO PLAINTIFFS.

11 **MR. KESSLER:** THAT INFORMATION WAS PRODUCED TO  
12 PLAINTIFFS IN THE DATA BACKUP THAT WAS GIVEN TO THEM, YOUR  
13 HONOR. IT SIMPLY -- THIS BREAKS OUT SOME EXAMPLES OF PLAYERS.

14 **THE COURT:** NO, NO, SHOULD HAVE BEEN ATTACHED. THE  
15 RULE SAYS IT SHOULD HAVE BEEN ATTACHED.

16 AND BY THE WAY, THE -- JUST A MOMENT. I'M GOING TO  
17 READ.

18 RULE 26, WHICH IS NOT SOMETHING I WROTE:

19 "THE REPORT SHALL CONTAIN A COMPLETE STATEMENT  
20 OF ALL OPINIONS TO BE EXPRESSED AND THE BASIS AND REASONS  
21 THEREFORE; THE DATA OR OTHER INFORMATION CONSIDERED BY THE  
22 WITNESS IN FORMING THE OPINIONS; ANY EXHIBITS TO BE USED AS A  
23 SUMMARY OR SUPPORT FOR THE OPINIONS."

24 WELL, THIS IS -- THIS IS AN EXHIBIT TO BE USED AS  
25 SUPPORT FOR THE OPINIONS, AND IT WASN'T ATTACHED TO THE REPORT.

1           **MR. KESSLER:** YOUR HONOR, I UNDERSTAND YOUR HONOR'S  
2 RULING. I'LL MOVE ON.

3           BUT THAT DATA WAS ATTACHED, JUST NOT BROKEN OUT BY  
4 INDIVIDUAL PLAYER NAMES. BUT IT'S OKAY. WE'LL MOVE ON.

5           **THE COURT:** OKAY. THANK YOU. SUSTAINED.

6 **BY MR. KESSLER:**

7 **Q.** PROFESSOR NOLL, LET ME SHOW YOU E2, WHICH I NOW BELIEVE  
8 SUMMARIZES THE OPINIONS THAT YOU'VE JUST EXPRESSED.

9           YOU HAVE E2 IN FRONT OF YOU, PLEASE?

10          **THE COURT:** I DO HAVE THIS QUESTION, THOUGH.

11          **MR. KESSLER:** YES.

12          **THE COURT:** MR. HUMMEL, THOSE DIAGRAMS THAT YOU PUT  
13 UP ON THE EASEL, WERE THEY DONE WITH AN EXPERT?

14          **MR. HUMMEL:** PARDON ME?

15          **THE COURT:** IT SEEMS TO ME THAT YOU HAD -- YOU DREW  
16 ON THE EASEL CHARTS THAT HAD COLUMNS OF NUMBERS.

17          **MR. HUMMEL:** THAT'S CORRECT. AND THOSE WERE DIRECTLY  
18 OUT OF THE REPORT. AND I TRIED TO FOLLOW THE EXACT LETTER OF  
19 YOUR RULE, WHICH I BELIEVE I DID.

20          **THE COURT:** THOSE EASEL DIAGRAMS WERE NOT ATTACHED TO  
21 THE REPORT.

22          **MR. HUMMEL:** NO. THEY WERE ACTUALLY -- THE NUMBERS  
23 WERE ABSOLUTELY IN HIS REPORT AND DISCLOSED.

24          **THE COURT:** IN EXACTLY THE SAME FORM?

25          **MR. HUMMEL:** IN EXACTLY THE SAME FORM.

1           **MR. KESSLER:** THAT WOULD BE INCORRECT, YOUR HONOR.  
2 THAT'S NOT IN THE EXACT FORM.

3           **THE COURT:** HERE'S THE THING, I DON'T LIKE IT  
4 WHENEVER THE LAWYERS TRY TO HAVE ONE RULE FOR THE OTHER SIDE.

5           **MR. HUMMEL:** I AGREE.

6           **THE COURT:** AND ONE RULE FOR THEMSELVES.

7           **MR. HUMMEL:** I AGREE. I DID NOT --

8           **THE COURT:** I'M NOT GOING TO ARGUE THIS OUT IN THE  
9 PRESENCE OF THE JURY. BUT IF IT TURNS OUT WHEN WE TAKE A BREAK  
10 THAT WE'RE NOT BEING FAIR IN HAVING THE SAME RULE BOTH WAYS,  
11 WE'RE GOING TO ADJUST THINGS.

12                   SO FOR RIGHT NOW I'M GOING TO LEAVE -- I'M GOING TO  
13 FOLLOW THE -- I'M GOING TO STICK BY THE RULING THAT I'VE MADE.

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

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

16 **BY MR. KESSLER:**

17 **Q.** PROFESSOR NOLL, DOES E2 -- YOU HAVE IN FRONT OF YOU?

18 **A.** I DON'T HAVE E2. I HAVE E1, BUT NOT E2.

19 **Q.** DOES THAT REFLECT THE CONCLUSIONS YOU HAVE ALREADY JUST  
20 TESTIFIED TO?

21 **A.** YES, THIS IS BASICALLY WHAT I SAID.

22           **MR. KESSLER:** YOUR HONOR, I WOULD LIKE TO MOVE IN NOW  
23 E2, WHICH IS JUST A SUMMARY OF WHAT THE WITNESS HAS JUST  
24 TESTIFIED TO.

25           **MR. HUMMEL:** OBJECTION, YOUR HONOR.

1           **THE COURT:** IS THIS ATTACHED TO THE REPORT?

2           **MR. KESSLER:** NO, YOUR HONOR. THIS IS LIKE THE FIRST  
3 ONE. HE HAS NOW TOTALLY TESTIFIED TO THESE CONCLUSIONS.

4           **THE COURT:** BUT THEY DON'T COME INTO EVIDENCE.

5           **MR. KESSLER:** NO, I JUST WANT TO DISPLAY IT, YOUR  
6 HONOR. I DON'T WANT TO MOVE IT INTO EVIDENCE.

7           **THE COURT:** YOU SAID YOU WANTED TO MOVE IT INTO  
8 EVIDENCE.

9           **MR. KESSLER:** FORGIVE ME, YOUR HONOR. I'M A LITTLE  
10 CONFUSED NOW.

11           **THE COURT:** YOU CAN DISPLAY IT TO THE JURY, BUT NOT  
12 MOVE IT INTO EVIDENCE.

13           **MR. KESSLER:** YES, YOUR HONOR. I WOULD LIKE TO  
14 DISPLAY IT.

15           **THE COURT:** THAT'S FINE.

16                   (DOCUMENT DISPLAYED.)

17 **BY MR. KESSLER:**

18 **Q.** "ECONOMIC ANALYSIS DOES NOT SUPPORT THE OPINION THAT  
19 RETIRED PLAYERS CONTRIBUTE EQUALLY TO CURRENT LICENSING  
20 REVENUES."

21                   JUST TO SUMMARIZE NOW YOUR TWO OPINIONS FOR THE JURY,  
22 AND THEN WE'LL MOVE ON, COULD YOU EXPLAIN THE BASIS, BRIEFLY,  
23 TO SUMMARIZE, OF WHY YOU CONCLUDED THAT THE BRAND EQUITY  
24 RESEARCH CITED BY DR. RASCHER DOES NOT MEASURE ANY RELATIONSHIP  
25 BETWEEN PAST PLAYERS AND BRAND VALUE?

1 **A.** BECAUSE NONE OF THE PAPERS IN THIS LITERATURE MEASURE ANY  
2 RELATIONSHIP BETWEEN ANY ATTRIBUTE OF A TEAM AND ITS LICENSING  
3 REVENUE, AND MOST CERTAINLY DON'T MEASURE ANYTHING REGARDING  
4 PLAYER LICENSING REVENUE.

5 **Q.** AND YOUR SECOND CONCLUSION, THAT:

6 "LICENSING DATA SHOW THAT THE DEMAND FOR  
7 LICENSEES [SIC] FOR RETIRED PLAYERS IS CONCENTRATED AMONG THE  
8 STARS OF THE PAST. AND FOR THE VAST MAJORITY OF CLASS MEMBERS,  
9 THE MARKET VALUE OF THEIR LICENSING RIGHTS IS LITTLE OR  
10 NOTHING," EXPLAIN TO THE JURY WHAT IS THE BASIS FOR YOUR  
11 CONCLUSION THERE, BRIEFLY, TO SUMMARIZE?

12 **A.** THE BASIS -- THERE'S TWO BASES FOR IT. AND ONE ISN'T A  
13 SUMMARY, BECAUSE YOU DIDN'T ASK ME ABOUT IT, SO I DON'T KNOW  
14 WHAT TO DO.

15 **Q.** YOU CAN EXPLAIN THE BASIS FOR IT. IT'S OKAY.

16 **A.** OKAY. THE FIRST BASIS FOR IT IS IN THE APPENDIX, THE DATA  
17 APPENDIX TO MY REPORT WHICH LISTS ALL THE LICENSING REVENUE BY  
18 PLAYER.

19 AND THAT DATA APPENDIX SHOWS THAT A VERY SMALL  
20 FRACTION OF PLAYERS ACCOUNT FOR THE VAST MAJORITY OF THE  
21 LICENSING DATA; THAT THE DISTRIBUTION OF THE LICENSING DATA IS  
22 MOST ASSUREDLY NOT EQUAL. THE VAST MAJORITY RECEIVED NOTHING.

23 AND IN ADDITION TO THAT, THE OTHER PIECE OF EVIDENCE  
24 THAT I CONSIDERED AND DECIDED SUPPORTED THIS CONCLUSION WAS THE  
25 FACT THAT THE VAST MAJORITY OF RETIRED PLAYERS HAVE NOT SIGNED

1 GLA'S. OF THE 13,000 OF RETIRED PLAYERS, ONLY 2,000 HAVE  
2 SIGNED GLA'S.

3 SO IF ANYBODY WANTED TO GET INTO THE BUSINESS OF  
4 LICENSING RETIRED PLAYERS, THERE IS NO IMPEDIMENT.

5 IN ADDITION TO THAT, THE GLA'S ARE NON-EXCLUSIVE. SO  
6 EVEN THOSE WHO HAVE SIGNED GLA'S, IF THERE WAS MARKET  
7 OPPORTUNITY OUT THERE, SOMEBODY COULD TAKE ADVANTAGE OF IT.  
8 AND, INDEED, SOME HAVE.

9 THERE HAVE BEEN A FEW LICENSES OF RETIRED PLAYERS  
10 OUTSIDE THE CONTEXT OF PLAYERS INC. THEY ARE MINOR, AND,  
11 AGAIN, THEY ARE ALL THE MOST FAMOUS PLAYERS. THEY ARE NOT THE  
12 VAST MAJORITY OF PLAYERS WHO ARE RETIRED FROM THE NFL.

13 **Q.** IS THERE ANY EVIDENCE IN THE ECONOMICS LITERATURE THAT  
14 YOU'VE REVIEWED THAT NONSTAR RETIRED PLAYERS GENERATE -- IN ANY  
15 SPORT -- GENERATE SIGNIFICANT LICENSING REVENUES INDIVIDUALLY?

16 **A.** NO. THERE'S NO EVIDENCE AT ALL. I MEAN, THINK AGAIN  
17 ABOUT THE LOGIC OF BRAND EQUITY, WHICH IS THE REAL ISSUE. THE  
18 ISSUE IS BRAND EQUITY.

19 OF COURSE, BRAND EQUITY IS AN INVESTMENT. IT'S LIKE  
20 A BUILDING OR A FACTORY. IT'S SOMETHING YOU INVEST IN AT A  
21 GIVEN MOMENT IN TIME.

22 THE PEOPLE WHO WORKED FOR THE COMPANY WHEN THAT  
23 INVESTMENT WAS MADE AREN'T THOUGHT OF AS THEN CONTRIBUTING TO  
24 THE REVENUE OF THE COMPANY 30 YEARS AFTER THEY RETIRED, RIGHT?

25 THAT IS TO SAY, IF THEY -- IF THEY BUILT AN ASSET,

1 THEY BUILT IT AS AN EMPLOYEE. THEY WERE PAID FOR IT. AND THEY  
2 MAY HAVE GOTTEN A PENSION AS PART OF THEIR EMPLOYMENT. BUT  
3 ONCE THEIR EMPLOYMENT IS OVER, THEY HAVE -- YOU DON'T ATTRIBUTE  
4 THE SUBSEQUENT REVENUE OF THAT COMPANY TO THE FACT THEY CREATED  
5 AN ASSET.

6 AND THAT'S EXACTLY WHAT BRAND EQUITY IS HERE. THAT  
7 IF IT WERE THE CASE THAT RETIRED PLAYERS CONTRIBUTED TO BRAND  
8 EQUITY, THEY DID IT IN THE CONTEXT OF THEIR EMPLOYMENT. THERE  
9 WOULDN'T BE ANY NECESSARY CONNECTION TO ANY LICENSING REVENUE  
10 30 YEARS LATER.

11 **Q.** THANK YOU, PROFESSOR NOLL.

12 LET ME TURN NOW TO YOUR SECOND CONCLUSION.

13 **MR. KESSLER:** LAUREN, IF WE COULD PUT UP THE FIRST  
14 DEMONSTRATIVE THE JUDGE PERMITTED US TO SHOW.

15 (DOCUMENT DISPLAYED.)

16 **BY MR. KESSLER:**

17 **Q.** WHICH IS THE SUMMARY OF YOUR THREE MAJOR CONCLUSIONS.

18 **MR. HUMMEL:** YOUR HONOR, I'M SORRY TO INTERRUPT.

19 THIS MAY HAVE COME IN EVIDENCE, BUT TO THE EXTENT IT  
20 DID, I THINK IT'S INAPPROPRIATE. IT CERTAINLY CAN BE  
21 DISPLAYED.

22 **MR. KESSLER:** THIS IS NOT IN EVIDENCE. IT IS TO BE  
23 DISPLAYED. THAT'S ALL WE'VE DONE.

24 **THE COURT:** I DIDN'T ALLOW IT IN EVIDENCE, BUT I  
25 ALLOWED IT TO BE PUT UP AS A SUMMARY TO HELP KEEP -- IT'S LIKE

1 A -- IT'S LIKE A GUIDEPOST SO THE JURY WILL KNOW HE'S GOT THREE  
2 OPINIONS, AND NOW WE'RE GOING TO THE SECOND OPINION. AND THIS  
3 IS JUST A WAY TO HELP ORGANIZE THE -- HE'S ALREADY TESTIFIED TO  
4 THESE OPINIONS.

5 **MR. KESSLER:** YES, HE HAS, YOUR HONOR.

6 **THE COURT:** SO I'M ALLOWING THIS.

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

8 **BY MR. KESSLER:**

9 **Q.** YOUR SECOND OPINION WAS ABOUT DR. RASCHER'S OPINION, WHICH  
10 WAS THAT DR. RASCHER'S OPINION THAT THE DEFENDANTS HAVE MARKET  
11 POWER OR LEVERAGE IN RETIRED PLAYER LICENSING IS UNSUPPORTED.

12 COULD YOU PLEASE EXPLAIN TO THE JURY WHAT IS THE  
13 BASIS FOR YOUR CONCLUSIONS ON THIS SUBJECT?

14 **A.** THE -- I THINK I HAVE TO DEFINE WHAT LEVERAGE AND MARKET  
15 POWER ARE FIRST --

16 **Q.** OKAY. LET ME DO THAT.

17 **A.** -- BEFORE I CAN DO THAT.

18 **Q.** LET'S GO WITH MARKET POWER. EXPLAIN TO THE JURY, WHAT IS  
19 MARKET POWER IN ECONOMICS?

20 **A.** MARKET POWER IS -- ARISES IN A CIRCUMSTANCE WHERE A FIRM  
21 HAS SUFFICIENTLY LITTLE COMPETITION THAT IT CAN EXTRACT PROFITS  
22 THAT ARE GREATER THAN YOU WOULD EXPECT TO FIND IN A COMPETITIVE  
23 INDUSTRY.

24 THAT IS THE EXTREME EXAMPLE IS A MONOPOLY. IF IT'S  
25 THE ONLY SELLER OF A PARTICULAR PRODUCT, YOU EXPECT IT TO BE

1 ABLE TO CHARGE A REALLY HIGH PRICE RELATIVE TO THE COST OF  
2 PRODUCING IT, BECAUSE THERE'S NO ONE TO COMPETE WITH IT TO  
3 FORCE THE PRICE DOWN.

4 WELL, MARKET POWER IS A SOFTER VERSION OF THAT. IT'S  
5 WHEN THERE'S THREE OR FOUR OR FIVE FIRMS IN AN INDUSTRY. IT  
6 STILL MAY BE THE CASE THAT COMPETITION ISN'T INTENSE ENOUGH  
7 AMONG THOSE FIRMS THAT THEY WILL BE FORCED TO CHARGE A  
8 COMPETITIVE PRICE.

9 **Q.** LET ME STOP YOU THERE. IN YOUR REVIEW OF DR. RASCHER'S  
10 WORK, HAS HE DONE ANY ANALYSIS AT ALL OF WHETHER OR NOT  
11 DEFENDANTS HAVE ANY MARKET POWER IN THEIR LICENSING ACTIVITIES?

12 **A.** NONE.

13 **Q.** EXPLAIN TO THE JURY WHY -- WHAT'S MISSING FROM THAT  
14 ANALYSIS?

15 **A.** THERE'S -- THERE'S NO ANALYSIS, FIRST OF ALL, WHAT THE  
16 MARKET IS AND WHO'S IN IT. AND THEN, WHO IN THAT MARKET HAS A  
17 BIG ENOUGH SHARE OF TOTAL SALES THAT THEY MIGHT HAVE MARKET  
18 POWER.

19 THE WAY ECONOMISTS GO ABOUT MEASURING MARKET POWER IS  
20 THEY BEGIN BY IDENTIFYING THE MARKET AND THE PLAYERS IN THE  
21 MARKET WHO COMPETE WITH EACH OTHER, AND THEN THEY TAKE THAT  
22 INFORMATION AND USE IT TO DETERMINE IF ANYBODY HAS MARKET  
23 POWER.

24 AND, OF COURSE, DR. RASCHER DIDN'T DISCUSS WHO MIGHT  
25 COMPETE WITH NFLPI IN SELLING LICENSES FOR RETIRED PLAYERS.

1 THERE ISN'T ANY DISCUSSION OF THAT AS A MARKET, LET ALONE  
2 WHETHER NFLPI HAS ACTUAL MARKET POWER IN THAT MARKET.

3 SO, IN OTHER WORDS, NONE OF THE THINGS YOU WOULD  
4 NORMALLY DO AS AN ECONOMIST WERE DONE.

5 **Q.** IN YOUR REVIEW OF DR. RASCHER'S REPORTS, DOES HE EVEN  
6 CONTEND ANYMORE THAT HE'S DONE ANY STUDY OF MARKET POWER?

7 **A.** I BELIEVE HE NOW AGREES WITH ME THAT HE HAS NOT DONE ANY  
8 STUDY OF MARKET POWER AND THAT HE -- HE -- I THINK HE NO LONGER  
9 ADHERES TO THE VIEW THAT THERE'S -- NFLPI HAS MARKET POWER IN  
10 RETIRED PLAYERS.

11 **Q.** NOW, EXPLAIN, THEN, WHAT WOULD BE LEVERAGING IN THIS  
12 CONTEXT REGARDING RETIRED PLAYER LICENSING AS A DIFFERENT  
13 CONCEPT FROM MARKET POWER.

14 **A.** OKAY. LEVERAGING, ACTUALLY, I THINK HE DIDN'T REALLY MEAN  
15 TO USE THAT. I THINK WHAT HE MEANT TO USE WAS "BARGAINING  
16 POWER ARISING FROM SUPERIOR EFFICIENCY."

17 LEVERAGE IS ANOTHER CONCEPT THAT HAS NOTHING TO DO  
18 WITH THIS CASE, SO I WON'T DISCUSS THAT.

19 WHAT I THINK HE MEANT WAS THAT IF YOU REPRESENT A  
20 VERY LARGE NUMBER OF PEOPLE, THAT'S EFFICIENT BECAUSE A  
21 POTENTIAL LICENSEE CAN COME TO YOU AND LICENSE LOTS OF PEOPLE  
22 AT THE SAME TIME.

23 THEY DON'T HAVE TO SEARCH THROUGH THE UNIVERSE TO  
24 FIND ALL THE PEOPLE WHOSE IMAGES THEY WANT TO LICENSE.

25 SO I THINK WHAT HE WAS REFERRING TO IS THAT THEY HAVE

1 AN EFFICIENCY ADVANTAGE OVER OTHERS THAT ENABLES THEM TO CHARGE  
2 A HIGHER PRICE THAN THE ACTUAL COST OF DOING LICENSES ONE AT A  
3 TIME.

4 **Q.** AND DID DR. RASCHER PRESENT ANY EVIDENCE THAT YOU, AS  
5 ECONOMIST, BELIEVES SUPPORTS THAT CONCLUSION?

6 **A.** NO. NOT ONLY DID HE NOT PRESENT ANY EVIDENCE, I THINK  
7 IT'S SORT OF OBVIOUS FROM THE FACTS, THE LICENSING OF RETIRED  
8 PLAYERS, THAT UNFORTUNATELY NFLPI DOESN'T EVEN HAVE THIS.

9 **Q.** CAN YOU EXPLAIN TO THE JURY, HAVE YOU DRAWN A CONCLUSION  
10 AS TO WHETHER OR NOT THE DEFENDANTS HAVE ANY LEVERAGING IN  
11 RETIRED PLAYER LICENSING?

12 **A.** I -- MY CONCLUSION IS THEY DON'T. AND THE REASON FOR IT  
13 IS THAT MOST OF THE PLAYERS WHO GET HIGH LICENSING REVENUES  
14 FROM NFLPI HAVEN'T SIGNED GLA'S. THEY ARE PEOPLE WHO ARE --  
15 MOST OF THE STAR PLAYERS ARE NOT SIGNED GLA'S.

16 WHAT HAPPENS IS THAT FOR NFLPI, SAY, TO SELL A GROUP  
17 LICENSE FOR A BUNCH OF RETIRED PLAYERS, THEY TYPICALLY HAVE TO  
18 GO OUT AND GET THESE PLAYERS OR THEIR AGENTS TO AGREE TO BE  
19 PART OF THE GROUP.

20 AND TYPICALLY, THESE PLAYERS HAVEN'T EVER SIGNED A  
21 GLA.

22 OF THOSE TOP TEN PLAYERS THAT WERE IN MY PREVIOUS  
23 SLIDE, NINE OF THOSE TEN HAVE NEVER SIGNED A GLA, IN TERMS OF  
24 THE TOP TEN PLAYERS IN TERMS OF TOTAL REVENUES DERIVED FROM  
25 LICENSING FROM PLAYERS INC.

1 **Q.** SO IF THE TOP NFL PLAYERS -- WITHDRAWN.

2 IF THE TOP RETIRED NFL PLAYERS IN TERMS OF LICENSING  
3 VALUE HAVE NEVER SIGNED RETIRED PLAYER GLA'S, WHAT DOES THAT DO  
4 TO THE ABILITY OF THE NFLPA OR PLAYERS INC TO EXERCISE ANY KIND  
5 OF BARGAINING POWER OR LEVERAGE?

6 **A.** WELL, IF THEY ATTEMPTED TO EXTRACT ANY -- ANY EXCESS  
7 PROFIT, IF YOU WILL, OUT OF THIS RELATIONSHIP, ANYBODY COULD  
8 JUST COME IN AND GET THEIR OWN DEAL.

9 I MEAN, THERE'S NOTHING TO PREVENT -- FIRST OF ALL,  
10 THE GLA'S THEMSELVES ARE NON-EXCLUSIVE.

11 SECONDLY, MOST OF THE PLAYERS WHO HAVE HIGH LICENSING  
12 VALUE HAVEN'T EVEN SIGNED THE GLA.

13 SO THERE'S ABSOLUTELY NOTHING PREVENTING ANY ONE OF  
14 US FROM IMMEDIATELY GETTING INTO THE LICENSING BUSINESS FOR TOP  
15 RETIRED NFL STARS AND CHARGING A LOWER PRICE THAN THE NFLPI  
16 WOULD CHARGE.

17 SO IT'S NOT A MARKET IN WHICH YOU WOULD ARGUE THAT  
18 THERE IS NO POTENTIAL FOR COMPETITION TO TAKE AWAY ANY ABILITY  
19 OF NFLPI TO EXTRACT ANYTHING FROM THESE LICENSES.

20 **Q.** IN THE VIDEO GAME INDUSTRY, DID YOU FIND ANY EVIDENCE THAT  
21 ANOTHER VIDEO GAME COMPANY CAME IN AND LICENSED RETIRED PLAYERS  
22 OUTSIDE OF PLAYERS INC?

23 **A.** YES. THAT'S THE TAKE TWO EXAMPLE.

24 **Q.** WOULD YOU EXPLAIN TO THE JURY WHAT THAT WAS?

25 **A.** OKAY. TAKE TWO IS A COMPETITOR WITH EA. AND AS YOU

1 RECALL, EA HAS THIS LICENSE WITH NFLPI THAT ACTUALLY SAYS FOR  
2 THE GAMES THAT ARE LICENSED EA MUST DEAL WITH NFLPI FOR THE  
3 PLAYERS WHO ARE IN THOSE GAMES, THOSE PARTICULAR GAMES.

4 WELL, THAT WOULD SEEMINGLY PREVENT ANYBODY FROM  
5 GETTING INTO THIS BUSINESS. WELL, OF COURSE, IT DIDN'T. TAKE  
6 TWO WENT DIRECTLY TO 240 RETIRED STARS, GOT THEIR LICENSING  
7 RIGHT, CREATED A VIDEO GAME THAT WAS INTRODUCED IN JULY OF LAST  
8 YEAR, WHERE THERE'S THESE 240 PLAYERS.

9 IF YOU WANT TO PLAY THE GAME, YOU DRAFT PLAYERS, JUST  
10 LIKE YOU WOULD IN A NORMAL FOOTBALL LEAGUE, AND THEN YOU PLAY A  
11 GAME WHERE YOUR DRAFTED PLAYERS PLAY THE OTHER GUY'S DRAFTED  
12 PLAYERS.

13 SO THIS IS SORT OF AN ILLUSTRATION OF THE FACT THAT  
14 GETTING -- YOU KNOW, GETTING INTO THIS BUSINESS WITHOUT DEALING  
15 WITH NFLPI AND HAVING LICENSING COME FROM SOME OTHER MECHANISM  
16 IS PERFECTLY FEASIBLE. THERE IS NO PREVENTION OF THAT.

17 **Q.** IN THE TAKE TWO GAMES, WERE SOME OF THE RETIRED PLAYERS  
18 WHO LICENSED THEIR RIGHTS TO TAKE TWO MEMBERS OF THIS CLASS?

19 **A.** YES.

20 **Q.** RETIRED PLAYERS WHO SIGNED GLA'S?

21 **A.** YES.

22 **Q.** NOW --

23 **A.** SOME WERE AND SOME WEREN'T. MOST WEREN'T.

24 **Q.** PROFESSOR NOLL, IN OPENING STATEMENT MR. PARCHER, COUNSEL  
25 FOR PLAINTIFFS, ACTUALLY QUOTED FROM YOUR DEPOSITION. PUT A

1 NICE LITTLE PICTURE OF YOU. AND IT HAD TO DO WITH THE ISSUE OF  
2 AN ANNOUNCEMENT EFFECT REGARDING RETIRED PLAYERS.

3 WOULD YOU EXPLAIN TO THE JURY, OKAY, WHAT YOUR  
4 CONCLUSION WAS WHETHER OR NOT THE NFLPA OR PI GOT ANY  
5 ANNOUNCEMENT EFFECT BENEFIT IN PRACTICE?

6 DID THEY GET SUCH A BENEFIT AS A RESULT OF HAVING  
7 RETIRED PLAYER GLA'S?

8 **A.** THE TESTIMONY I GAVE WASN'T ABOUT PI. IT WAS ABOUT THE  
9 RETIRED PLAYERS.

10 **Q.** SO WHY DON'T YOU EXPLAIN TO THE JURY WHAT YOUR CONCLUSIONS  
11 HAVE BEEN ABOUT ANNOUNCEMENT EFFECT?

12 **A.** THE ANNOUNCEMENT EFFECT STORY IS BASICALLY AS FOLLOWS:  
13 SUPPOSE THERE'S SOMEBODY OUT THERE WHO WANTS TO LICENSE RETIRED  
14 PLAYERS, BUT THEY HAVE NO IDEA HOW TO FIND THEM? THEY ARE  
15 PEOPLE WHO PLAYED 20 OR 30 YEARS AGO.

16 AND THE POINT THAT I WAS MAKING HERE IS THAT FROM THE  
17 RETIRED PLAYERS' POINT OF VIEW, HAVING THE NFLPA ANNOUNCE THAT  
18 IT WAS GOING TO ARRANGE FOR GROUP LICENSES FROM A LARGE NUMBER  
19 OF RETIRED PLAYERS WOULD HAVE THE EFFECT OF TELLING THESE  
20 LICENSEES:

21 "OH, NOW I KNOW WHERE I CAN GO AND FIND THESE  
22 PLAYERS."

23 BUT THE -- BUT THE -- THEN, THE ISSUE IS: WELL,  
24 THEN, WHO IS THE BENEFICIARY OF THE ANNOUNCEMENT EFFECT?

25 WELL, THE BENEFICIARY OF THE ANNOUNCEMENT EFFECT

1 COULD, IN THEORY, BE EITHER THE RETIRED PLAYERS OR THE NFLPI,  
2 IF THERE WERE A HUGE GAP BETWEEN THE LICENSE FEES THAT THE  
3 NFLPI COLLECTED AND THE LICENSE REVENUE GENERATED BY THE --  
4 THAT WAS ACTUALLY PAID TO THE RETIRED PLAYERS. LIKE IF -- IF  
5 THEY COLLECTED A MILLION DOLLARS FOR A GROUP LICENSE FOR SOME  
6 RETIRED PLAYERS, AND THEN PAID A HUNDRED THOUSAND OF THAT TO  
7 THE PLAYERS, THEN OBVIOUSLY PI WOULD BE THE BENEFICIARY.

8 IN REALITY, LESS THAN 1 PERCENT OF THE LICENSING  
9 REVENUE FOR RETIRED PLAYERS ACTUALLY GOES TO PI. OVER  
10 99 PERCENT OF IT ACTUALLY GOES TO THE RETIRED PLAYERS. SO THE  
11 BENEFICIARIES ARE VIRTUALLY ALL THE RETIRED PLAYERS NOW THAT  
12 THERE EXISTS AN NFLPI, AN ENTITY WHERE SOMEBODY WHO WANTS TO  
13 LICENSE THEIR IMAGES CAN GO.

14 AND NFLPI WILL FACILITATE THAT NOT ONLY WITH THE GLA  
15 PLAYERS, BUT FOR ALL THE RETIRED PLAYERS. IF YOU WANTED A  
16 RETIRED PLAYER WHO HADN'T SIGNED A GLA, THEY WILL FIND HIM AND  
17 TRY TO GET HIM IN ON THE DEAL.

18 **Q.** PROFESSOR NOLL, TAKE A LOOK AT TRIAL EXHIBIT 2056 ALREADY  
19 IN EVIDENCE. IT SHOULD BE IN YOUR STACK.

20 **A.** 2056.

21 **MR. KESSLER:** IF YOU CAN DISPLAY THAT, PLEASE.

22 (DOCUMENT DISPLAYED.)

23 **THE WITNESS:** OKAY.

24 **MR. KESSLER:** DISPLAY 2056.

25 THANK YOU.

1 (DOCUMENT DISPLAYED.)

2 **THE WITNESS:** OKAY.

3 **MR. KESSLER:** IF WE COULD JUST BLOW UP THIS WHOLE  
4 THING, LAUREN, TO THE BOTTOM. THANK YOU.

5 **BY MR. KESSLER:**

6 **Q.** THIS IS ALREADY IN EVIDENCE. IT'S A COMPILATION OF THE  
7 ROYALTIES FROM AD HOC AGREEMENTS PAID OUT TO RETIRED PLAYER  
8 CLASS MEMBERS.

9 ARE YOU FAMILIAR WITH THIS DATA?

10 **A.** YES, I AM. THIS ACTUALLY IS VERY SIMILAR TO WHAT YOU PUT  
11 UP A FEW SLIDES AGO.

12 **Q.** IT'S THE SAME DATA YOU UTILIZED IN YOUR ANALYSIS?

13 **A.** YEAH, THIS WHOLE EXHIBIT IS THE TABLE. AND THEN, ALL  
14 THE -- ALL THE -- ALL THE INFORMATION IT'S BASED ON, WHICH IS  
15 THE -- THIS IS THE PAYMENTS TO EVERY SINGLE RETIRED PLAYER THAT  
16 IS REPRESENTED IN THIS TABLE.

17 **Q.** OKAY. AND WHAT THIS TABLE SHOWS IS THAT OF THE  
18 \$7,116,196.29 PAID TO CLASS MEMBERS, ONLY \$66,000 -- LESS THAN  
19 1 PERCENT -- WAS KEPT BY PLAYERS INC OR THE NFLPA?

20 **A.** THAT'S CORRECT.

21 **Q.** AND SO WHAT DOES THIS DATA INDICATE TO YOU ABOUT WHO  
22 BENEFITED, IF THERE WAS ANY ANNOUNCEMENT EFFECT?

23 **A.** IT WAS OBVIOUSLY THE RETIRED PLAYERS. RETIRED PLAYERS --  
24 THE GLA PLAYERS HAVE GOTTEN \$7 MILLION, AND THE NON-GLA PLAYERS  
25 HAVE GOTTEN OVER \$20 MILLION.

1 **Q.** SO WAS THERE ANY MATERIAL ECONOMIC BENEFIT TO THE NFLPA OR  
2 PLAYERS INC AT ALL FROM DOING THIS RETIRED PLAYER LICENSING?

3 **A.** NO.

4 **Q.** NOW, LET ME MOVE ON NOW TO YOUR THIRD CONCLUSION.

5 **MR. KESSLER:** YOUR HONOR, SHOULD WE TAKE OUR BREAK?

6 **THE COURT:** WE'LL TAKE A 15-MINUTE BREAK AT THIS  
7 TIME.

8 PLEASE REMEMBER THE ADMONITION.

9 **THE CLERK:** ALL RISE.

10 (THEREUPON, THE JURY LEFT THE COURTROOM.)

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

13 **THE COURT:** WE MAY NEED YOU HERE FOR THIS.

14 **THE WITNESS:** OKAY.

15 **THE COURT:** EVERYONE HAVE A SEAT.

16 ON THIS DOCUMENT, NUMBER 2056, WHICH HAS NOT BEEN  
17 ALLOWED TO BE SHOWN TO THE JURY, IS THIS SOMETHING YOU STILL  
18 WANT TO USE?

19 **MR. KESSLER:** YOUR HONOR, I THINK -- GIVEN MY  
20 LIMITATIONS OF TIME, AND SINCE WE SPENT TIME DEBATING IT, I  
21 THINK AT THIS POINT I DON'T REALLY NEED IT, YOUR HONOR, BECAUSE  
22 I JUST DON'T WANT TO GO BACK AND SPEND TIME ON IT NOW. MY  
23 COLLEAGUES ARE TELLING ME MY CLOCK IS RUNNING.

24 I MIGHT PUT IT IN MAYBE FOR A SECOND, YOUR HONOR --

25 **THE COURT:** IF YOU DON'T CARE ABOUT IT, LET'S NOT

1 FIGHT OVER IT.

2 **MR. KESSLER:** OKAY.

3 **THE COURT:** ANYTHING THE LAWYERS NEED ME FOR?

4 OKAY. WE'LL TAKE A 15-MINUTE RECESS.

5 (RECESS TAKEN FROM 11:01 TO 11:19 A.M.)

6 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT,

7 IN THE PRESENCE OF THE JURY.)

8 **THE COURT:** THE JURY IS COMING IN.

9 OKAY. EVERYONE HAVE A SEAT.

10 MR. KESSLER, GO RIGHT AHEAD.

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

12 **BY MR. KESSLER:**

13 **Q.** BEFORE WE GET TO YOUR FINAL CONCLUSION, FINAL AREA,

14 DR. RASCHER EXPRESSED SOME VIEW ABOUT THE UNION BEING ABLE TO

15 EXERCISE LEVERAGE OVER ITS OWN PLAYERS.

16 DO YOU RECALL HIM EXPRESSING THAT VIEW?

17 **A.** YES, I DO.

18 **Q.** AND DO YOU HAVE A CONCLUSION ABOUT WHETHER THAT VIEW MAKES

19 ANY SENSE IN THE ECONOMICS?

20 **A.** IT MAKES NO ECONOMIC SENSE AT ALL TO SAY YOU HAVE LEVERAGE

21 OR MONOPOLY OF POWER OVER YOURSELF.

22 THE UNION IS THE ACTIVE PLAYERS. THEY RUN IT. THE

23 CHIEF EXECUTIVE OFFICER IS CHOSEN BY THE PLAYERS. THE PLAYER

24 REPRESENTATIVES, ONE FROM EACH TEAM, ARE THE ENTITY THAT

25 RUNS -- SETS THE POLICY.

1           SO WHAT HE'S BASICALLY SAYING IS THEY HAVE BARGAINING  
2 POWER OVER THEMSELVES, AND THAT'S RIDICULOUS. WHAT THEY DO IS  
3 DECIDE HOW TO ALLOCATE THE VARIOUS STREAMS OF INCOME FROM THE  
4 PLAYERS ASSOCIATION, AMONG COST, AMONGST SAVINGS FOR A RAINY  
5 DAY, AMONG ALLOCATING PAYOUTS TO PLAYERS.

6 **Q.** WITH RESPECT TO SOMETHING LIKE THE GROSS LICENSING REVENUE  
7 POOL, IF DECISIONS ARE MADE TO DIVIDE THAT POOL UP CERTAIN  
8 WAYS, IS THERE ANY ECONOMIC EVIDENCE THAT THAT WOULD BE THE  
9 UNION EXERCISING POWER AGAINST ITS PLAYERS?

10 **A.** NO, BECAUSE THE PEOPLE WHO MAKE THAT DECISION ARE THE  
11 PLAYERS THEMSELVES.

12           SO THAT WOULD BE SAYING THAT EACH -- THAT THE PLAYERS  
13 AND THE CALL ACTIVITY WERE SOMEHOW DOING THEMSELVES IN, AND  
14 THAT DOESN'T MAKE SENSE.

15 **Q.** PROFESSOR NOLL, I WOULD LIKE TO GO BACK TO E1, WHICH WAS  
16 JUST A DEMONSTRATIVE OF YOUR THREE CONCLUSIONS. WE ARE NOW ON  
17 THE THIRD CONCLUSION, WHICH IS THAT DR. RASCHER'S COMPARISON OF  
18 THE SHARE OF PLAYER LICENSING REVENUES DEFENDANTS RETAINED IS  
19 INVALID. THE DATA SHOW THE PERCENTAGE RETAINED BY DEFENDANTS  
20 IS NOT MATERIALLY DIFFERENT FROM OTHER SPORTS UNIONS.

21 **A.** RIGHT.

22 **Q.** IS THAT A CONCLUSION YOU REACHED IN THIS CASE?

23 **A.** YES, IT IS.

24 **Q.** OKAY. FIRST OF ALL, I'D LIKE YOU TO EXPLAIN TO THE JURY,  
25 OKAY, DOES IT MAKE ANY ECONOMIC SENSE IN YOUR VIEW, ONE WAY OR

1 THE OTHER, TO COMPARE THE LICENSING PERCENTAGE RETAINED BY THE  
2 NFLPA AND PLAYERS INC TO NONSPORTS UNION ENTITIES LIKE THE  
3 UNIVERSITY OF KENTUCKY'S LICENSING AGENT?

4 **A.** OF COURSE NOT.

5 **Q.** COULD YOU EXPLAIN TO THE JURY WHY NOT?

6 **A.** WELL, THE KEY POINT, OF COURSE, IS THE FUNDAMENTAL  
7 ECONOMIC PRINCIPLE IS THAT LICENSING ACTIVITY COSTS MONEY TO  
8 HAVE TO DO. YOU HAVE TO HAVE AN ORGANIZATION. YOU CAN EITHER  
9 DO IT YOURSELF, OR YOU CAN HIRE SOMEONE TO DO IT. THERE'S A  
10 CERTAIN AMOUNT OF COST ASSOCIATED WITH THAT.

11 IN THE CASE OF COLLEGES, SOME COLLEGES CHOOSE TO USE  
12 AN ENTITY, AN OUTSIDE ENTITY, TO DO THAT FOR THEM, AND THEY PAY  
13 A FEE FOR IT.

14 IN THE CASE OF THE NFL PLAYERS ASSOCIATION, THEY HAVE  
15 AN ENTITY CALLED "PLAYERS INC" TO DO THAT FOR THEM.

16 THE RELATIVE COMPARISON, IF THERE IS ONE, ABOUT THE  
17 COST OF THE LICENSING PROGRAM RELATIVE TO THE REVENUES IT  
18 BRINGS IN, WOULD BE TO COMPARE THE LICENSING FEE PAID BY THE  
19 COLLEGES WITH JUST THE COST TO PLAYERS INC.

20 **Q.** WOULD THAT BE THE 23 PERCENT?

21 **A.** THAT WOULD BE -- WELL, 23 PERCENT IS THE WRONG NUMBER.  
22 THAT'S THE NUMBER THAT DR. RASCHER USES. BUT 23 PERCENT IS THE  
23 FRACTION FROM THE GENERAL SHARED LICENSING POOL THAT IS KEPT.

24 BUT PLAYERS INC TAKES IN LESS THAN HALF OF ITS MONEY  
25 FROM THE MONEY THAT GOES INTO THE EQUALLY-SHARED POOL.

1           SO IF YOU LOOK AT PLAYERS INC'S COSTS AS A FRACTION  
2 OF THE TOTAL LICENSING REVENUE OF THE NFL PLAYERS ASSOCIATION,  
3 IT'S MUCH LESS THAN 23 PERCENT.

4 **Q.** DO YOU KNOW APPROXIMATELY WHAT -- LOOKING AT -- WELL, LET  
5 ME GET THIS FIRST.

6           IN TERMS OF DOING THIS COMPARISON, DR. RASCHER JUST  
7 LOOKED AT THE GROSS LICENSING REVENUE POOL, CORRECT?

8 **A.** THAT'S CORRECT.

9 **Q.** HE DID NOT LOOK AT ALL THE LICENSING REVENUES GENERATED  
10 FOR PLAYERS BY THE NFLPA AND PLAYERS INC; IS THAT CORRECT?

11 **A.** RIGHT. HE LOOKED AT JUST THAT PORTION OF THE LICENSING  
12 REVENUE THAT'S EQUALLY SHARED.

13 **Q.** AND WHEN HE DID HIS COMPARISONS TO OTHER ENTITIES, DID HE  
14 LOOK AT JUST A PORTION OF THEIR LICENSING REVENUES, OR DID HE  
15 LOOK AT ALL THEIR LICENSING REVENUES?

16 **A.** HE LOOKED AT ALL --

17           **MR. HUMMEL:** OBJECTION. LEADING.

18           **THE COURT:** THAT QUESTION IS NOT LEADING. IT WAS  
19 EITHER/OR. OVERRULED.

20           GO AHEAD.

21           **THE WITNESS:** YEAH. HE LOOKED AT ALL OF THE  
22 LICENSING REVENUES WITH RESPECT TO EVERYBODY ELSE, AND A  
23 FRACTION OF THE LICENSING REVENUES WITH RESPECT TO THE NFL  
24 PLAYERS ASSOCIATION AND PLAYERS INC.

25

1 **BY MR. KESSLER:**

2 **Q.** SO WHAT'S WRONG, IF ANYTHING, WITH LOOKING AT A PORTION OF  
3 THE LICENSING REVENUES AND COMPARING IT TO ALL THE REVENUES FOR  
4 SOME OTHER ENTITIES, FROM AN ECONOMIC STANDPOINT? WHAT'S YOUR  
5 VIEW OF THAT?

6 **A.** THE THING THAT'S WRONG WITH IT IS THAT THE COSTS  
7 ASSOCIATED WITH LICENSING SHOULD BE THAT THE REASONABLENESS OF  
8 PLAYERS INC EXPENDITURES IS DETERMINED BY WHETHER THEY BEAR A  
9 REASONABLE RELATIONSHIP TO THE TOTAL INCOME THEY GENERATE, NOT  
10 JUST A FRACTION OF IT.

11 IT'S A STRANGE THING TO SAY THAT ALL THE COSTS OF THE  
12 ORGANIZATION ARE GENERATED BY SOMETHING THAT'S AROUND HALF OF  
13 ITS TOTAL INCOME AND ALL THE REST IS FOR FREE.

14 THE RIGHT WAY TO DO THE COMPARISON IS TO SAY: IS  
15 PLAYERS INC REASONABLY EFFICIENT AT GENERATING LICENSING INCOME  
16 IN THE SENSE THAT PER DOLLAR SPENT THE AMOUNT OF REVENUE THAT  
17 COMES IN IS REASONABLE?

18 AND, OF COURSE, IT IS.

19 **Q.** SO DO YOU HAVE AN UNDERSTANDING OR AN ESTIMATE OF HOW MUCH  
20 OF ALL LICENSING REVENUE DOES PLAYERS INC RETAIN AS ITS  
21 LICENSING FEE, APPROXIMATELY?

22 **A.** IT'S IN THE RANGE OF 10 TO 15 PERCENT. IT'S MUCH LESS  
23 THAN 23 PERCENT.

24 **Q.** 10 TO 15 PERCENT?

25 **A.** YES.

1 Q. AND LOOKING AT THAT 10 TO 15 PERCENT FIGURE, HOW DOES THAT  
2 COMPARE TO THE OTHER LICENSING COMPANIES THAT DR. RASCHER  
3 LOOKED AT, LIKE COLLEGIATE LICENSING?

4 A. IT'S ACTUALLY LOWER.

5 SO, I MEAN, THE POINT IS, HE'S -- THE CONCLUSION IS  
6 HE HAS HUGE RANGE, ALL RIGHT? THIS WOULD BE AT THE BOTTOM OF  
7 THE RANGE AS -- AMONG THE THINGS HE REGARDS AS REASONABLE.

8 Q. SO FROM AN ECONOMIC STANDPOINT, IS THERE ANY EVIDENCE THAT  
9 PLAYERS INC'S SHARE WAS LOWER THAN OTHER COMPARABLE LICENSING  
10 ENTITIES?

11 A. NO, THERE'S NO EVIDENCE AT ALL. I THINK ANYBODY WHO DID  
12 THE CORRECT COMPARISON OF REVENUES GENERATED VERSUS COSTS,  
13 WOULD CONCLUDE THAT THE FRACTION OF REVENUES ACCOUNTED FOR BY  
14 THE COST OF THE LICENSING OPERATION IS COMPLETELY WITHIN THE  
15 RANGE OF REASONABLENESS. INDEED, IT'S BELOW AVERAGE.

16 Q. SO WAS THERE ANY MATERIAL DIFFERENCE?

17 A. NO, THERE'S NONE.

18 Q. NOW, YOU MENTIONED EARLIER -- AND THIS IS JUST PRELIMINARY  
19 TO GET THE JURY FOCUSED -- THAT YOU THOUGHT IT WAS  
20 INAPPROPRIATE TO COMPARE A SPORTS UNION'S RETENTION OF THE  
21 LICENSING REVENUES WITH NONSPORTS UNIONS. COULD YOU EXPLAIN  
22 WHY, JUST THAT POINT?

23 A. WELL, THE CRUCIAL FACT IS, THE UNION AS A CALL ACTIVITY IS  
24 GOING TO HAVE OTHER COSTS ASSOCIATED WITH RUNNING THE UNION.  
25 THE MEMBERS OF THE UNION CAN DECIDE: HOW ARE THEY GOING TO

1 BEAR THESE OTHER COSTS? ARE THEY GOING TO BEAR IT BY PAYING  
2 DUES AND KEEPING THE LICENSING REVENUE? OR ARE THEY GOING TO  
3 BEAR IT BY REDUCING THE DUES AND USING THE LICENSING REVENUES  
4 TO RUN THE UNION?

5           THERE IS NO COMPARABLE TO THAT IN THE CASE OF THE  
6 UNIVERSITY OF KENTUCKY, RIGHT? IT'S NOT PAYING PART OF ITS  
7 LICENSING REVENUES TO ITS PLAYERS OR -- IT'S JUST A SOURCE OF  
8 REVENUES.

9           IT'S RUNNING IT SORT OF LIKE A BUSINESS, WHERE IT'S  
10 THE UNIVERSITY OF KENTUCKY THAT'S GETTING THE REVENUES.

11           THERE'S NO COMPARABLE DECISION-MAKING THERE WITH  
12 RESPECT TO: HOW IS SOME OTHER ASPECT GOING TO BE PAID FOR? IS  
13 IT GOING TO BE PAID FOR OUT OF DUES, OR IS IT GOING TO BE PAID  
14 OUT OF THE LICENSING REVENUES?

15           THERE IS JUST NO COUNTERPART TO THAT IN ALL OF HIS  
16 OTHER EXAMPLES BESIDES THE BASEBALL PLAYERS.

17 **Q.** AS PART OF YOUR WORK IN THIS CASE AND, GENERALLY, IN YOUR  
18 STUDY OF THE SPORTS LITERATURE, ARE YOU FAMILIAR AS TO THE  
19 PRACTICES OF SPORTS LABOR UNIONS AS TO HOW THEY USE LICENSING  
20 MONEY?

21 **A.** YES, I AM.

22 **Q.** OKAY. AND WOULD YOU TELL THE JURY, WHAT IS -- IS THERE A  
23 COMMON PRACTICE REGARDING THE USE OF LICENSING MONEY BY PLAYERS  
24 FOR THEIR UNIONS OR NOT?

25 **A.** YES, THERE IS A COMMON PRACTICE.

1 Q. AND WHAT IS THAT PRACTICE?

2 A. THE COMMON PRACTICE AMONG ALL SPORTS UNIONS IS TO PAY A  
3 SUBSTANTIAL FRACTION, IF NOT ALL, OF THE COSTS OF THE UNION NOT  
4 FROM DUES, BUT FROM LICENSING REVENUES.

5 IF THE LICENSING REVENUES ARE SUFFICIENT TO PAY FOR  
6 THE -- THE FUNCTION OF THE UNION, THEN TYPICALLY WHAT THEY THEN  
7 DO IS REBATE THE DUES.

8 NOW, THERE'S A BIG EXCEPTION TO THAT, ALL RIGHT? AND  
9 THE BIG EXCEPTION TO THAT IS WHEN THERE'S GOING TO BE A LABOR  
10 PROBLEM.

11 UNION CONTRACTS IN PROFESSIONAL SPORTS TYPICALLY LAST  
12 FOR FIVE TO SEVEN YEARS. NEAR THE END OF THAT, PLAYERS HAVE TO  
13 MAKE AN ASSESSMENT: IS THIS COLLECTIVE BARGAINING SESSION  
14 GOING TO BE EASY OR HARD? AND "HARD" MEANS IT MAY LEAD TO A  
15 STRIKE. IT MAY LEAD TO A LOCKOUT. IT MAY LEAD TO PROTRACTED  
16 LITIGATION ABOUT WHETHER ONE SIDE OR THE OTHER IS ENGAGING IN  
17 FAIR BARGAINING OR, INDEED, VIOLATING THE ANTITRUST LAWS.

18 SO THERE'S CERTAIN EXPENSES THAT COME UP SOMETIMES,  
19 BUT NOT VERY FREQUENTLY, THAT HAVE TO DO WITH THE COLLECTIVE  
20 BARGAINING PROCESS ITSELF. THE STANDARD PRACTICE OF UNIONS IS  
21 TO BUILD UP A FUND TO PAY FOR THAT. AND THE FUND HAS TWO  
22 PARTS.

23 IT'S THE COST OF RUNNING THE UNION AND FIGHTING THE  
24 LITIGATION DURING A PERIOD WHEN THERE MIGHT BE A STRIKE OR A  
25 LOCKOUT AND YOU WON'T HAVE ANY DUES TO PAY FOR IT BECAUSE OF

1 THE STRIKE OR LOCKOUT.

2 AND THEN, SECONDLY, PROVIDING FINANCIAL ASSISTANCE TO  
3 PLAYERS WHO NO LONGER ARE GETTING PAID BECAUSE THERE'S A STRIKE  
4 OR A LOCKOUT.

5 AS YOU COME CLOSE TO A COLLECTIVE BARGAINING EPISODE  
6 THAT THE UNION BELIEVES IS GOING TO BE DIFFICULT, THEY SAVE  
7 LICENSING REVENUE AND DUES INTO BIG FUNDS TO GET THEM THROUGH  
8 THAT PERIOD. AND, AGAIN, LICENSING REVENUES CAN TYPICALLY  
9 CONTRIBUTE TO THOSE STRIKE FUNDS, AND ALL THE UNIONS DO IT.

10 **Q.** NOW, PROFESSOR, DR. RASCHER DID COMPARE THE LICENSING  
11 RETENTION OF REVENUES OF THE NFLPA AND PLAYERS INC WITH ONE  
12 OTHER SPORTS UNION, THE MAJOR LEAGUE BASEBALL PLAYERS  
13 ASSOCIATION?

14 **A.** THAT'S CORRECT.

15 **Q.** DID YOU EXAMINE THAT ANALYSIS?

16 **A.** YES, I DID.

17 **Q.** FIRST, AS A PRELIMINARY MATTER, DID YOU REACH A CONCLUSION  
18 AS TO WHETHER DR. RASCHER DID THE ANALYSIS CORRECTLY?

19 **A.** UHM, YEAH. MY -- MY VIEW ABOUT IT WAS HE DID IT  
20 INCORRECTLY, BECAUSE HE DIDN'T TAKE ACCOUNT OF THIS LAST  
21 PHENOMENON, WHICH IS THE COLLECTIVE BARGAINING ISSUES.

22 **Q.** WHAT ABOUT ON THE ISSUE OF WHETHER HE, FOR THE COMPARISON,  
23 LOOKED AT ALL THE NFLPA REVENUES VERSUS SOME OF THEM? DID HE  
24 DO THAT CORRECTLY?

25 **A.** WELL, HE HAD TWO THINGS THAT HE DID. ONE IS TO COMPARE

1 THE -- THE DISBURSAL OF JUST THE EQUAL SHARE REVENUE. AND, OF  
2 COURSE, THAT'S RIDICULOUS. THAT DOESN'T MAKE SENSE. IT ONLY  
3 MAKES SENSE TO LOOK AT HOW THEY DEAL WITH ALL THE LICENSING  
4 REVENUE; HOW MUCH OF THAT GOES TO THE PLAYERS AND HOW MUCH OF  
5 IT IS RETAINED.

6 **Q.** AND THAT WAS A SEPARATE ISSUE? WAS THAT A SEPARATE  
7 PROBLEM IN THE ANALYSIS? WAS IT GOOD THING, BAD THING? HOW  
8 DID YOU VIEW THAT?

9 **A.** NO? THE APPROPRIATE WAY -- AGAIN? LET'S GET BACK TO WHAT  
10 QUESTION THIS -- THIS MATTERS FOR.

11 THE QUESTION THAT IT MATTERS FOR IS HOW IN SOME SENSE  
12 ARE THE PLAYERS GETTING A JUST REWARD FOR THEIR LICENSING  
13 REVENUES? AND SO THE -- THE QUESTION HE'S TRYING TO ADDRESS  
14 IS: IS THE FRACTION OF LICENSING REVENUES THAT ACTUALLY GOES  
15 IN THE POCKETS OF PLAYERS REASONABLE?

16 IT'S SORT OF LIKE THE COST BEING REASONABLE, RIGHT?  
17 WE HAD THE QUESTION OF PLAYERS INC'S COSTS BEING REASONABLE.  
18 AND WE DECIDED THOSE WERE REASONABLE.

19 AND THEN, THE SECOND PART IS OF THE REMAINDER, IF WE  
20 LOOK AT THE AMOUNT THAT'S BEING KEPT TO RUN THE UNION VERSUS  
21 THE AMOUNT THAT'S GOING IN THE POCKETS OF THE PLAYERS, IS THAT  
22 DIVISION REASONABLE?

23 AND, OBVIOUSLY, IF YOU ONLY LOOK AT ONE FRACTION OF  
24 THE REVENUES, ONE TINY PIECE OF THE REVENUES, YOU CAN'T ADDRESS  
25 THE QUESTION AS TO WHETHER PLAYERS, IN GENERAL, ARE GETTING A

1 REASONABLE SHARE OF THE TOTAL INCOME OF THE ASSOCIATION.

2 **Q.** HAVE YOU STUDIED THE ISSUE AS TO WHETHER THE NFL PLAYERS  
3 ARE GETTING A REASONABLE SHARE OF THE LICENSING REVENUES?

4 **A.** YES, I HAVE.

5 **Q.** OKAY. LET ME ASK YOU TO TAKE A LOOK AT TRIAL EXHIBIT  
6 2399.

7 IS THIS EXHIBIT -- DOES THIS EXHIBIT REFLECT THE DATA  
8 THAT'S IN YOUR EXPERT REPORT AND IN YOUR COMPARISON?

9 **A.** YES, IT DOES.

10 **MR. KESSLER:** YOUR HONOR, MOVE INTO EVIDENCE TRIAL  
11 EXHIBIT 2399.

12 **MR. HUMMEL:** NO OBJECTION.

13 **THE COURT:** RECEIVED.

14 (TRIAL EXHIBIT 2399 RECEIVED IN EVIDENCE.)

15 **BY MR. KESSLER:**

16 **Q.** THIS SAYS:

17 "PERCENTAGE OF LICENSING INCOME PAID TO PLAYERS  
18 BY THE MLBPA AND NFLPA FROM 2003 TO 2007."

19 FIRST OF ALL, PROFESSOR NOLL, "MLBPA," WHAT IS THAT?

20 **A.** MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION.

21 **Q.** IS THAT THE UNION FOR BASEBALL PLAYERS?

22 **A.** YES.

23 **Q.** OKAY. AND WHEN IT SAYS "NFLPA," FOR THIS PURPOSE DID YOU  
24 AGGREGATE TOGETHER BOTH THE NFLPA AND PLAYERS INC?

25 **A.** YES. IT'S EVERYTHING, YES.

1 Q. OKAY. AND I WANT TO ASK YOU, FIRST, YOUR CALCULATIONS, IN  
2 2003, YOU CALCULATED THAT THE PLAYERS RECEIVED 73.9 PERCENT OF  
3 ALL THE LICENSING INCOME RECEIVED BY THE NFLPA AND NFLPI; IS  
4 THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. OKAY. AND SO 73.9 PERCENT IS OBVIOUSLY MUCH MORE THAN  
7 37 PERCENT, CORRECT?

8 A. THAT'S CORRECT.

9 Q. NOW, THIS -- DOES THIS INCLUDE THE AMOUNT PAID TO ACTIVE  
10 AND RETIRED PLAYERS, OR JUST RETIRED PLAYERS, OR JUST ACTIVE  
11 PLAYERS?

12 A. IT'S EVERYONE. IT INCLUDES BOTH THE RETIRED AND THE  
13 ACTIVE PLAYERS.

14 Q. OKAY. SO WHEN YOU ADD TOGETHER ALL THE LICENSING REVENUE  
15 RECEIVED BY THE NFLPA AND PLAYERS INC, AND YOU COUNT UP HOW  
16 MUCH OF THAT WAS PAID TO PLAYERS, EITHER ACTIVE PLAYERS OR  
17 RETIRED PLAYERS, COULD YOU TELL THE JURY WHAT ARE THE  
18 PERCENTAGES YOU CALCULATED EACH YEAR FROM 2003 TO 2007?

19 A. YEAH. IT'S SHOWN THERE AS THE LAST -- LAST LINE, THAT  
20 IT'S, YOU KNOW, 73.9, 72.4, ET CETERA, DOWN TO THE LOW OF 63.7  
21 LAST YEAR.

22 Q. SO IT NEVER GOT LOWER THAN 63.7 PERCENT, THE AMOUNT OF ALL  
23 THE LICENSING REVENUES PAID OUT TO PLAYERS, CORRECT?

24 A. THAT'S CORRECT.

25 Q. NOW, YOU ALSO CALCULATED THE AVERAGE. DO YOU SEE THAT?

1 **A.** YES.

2 **Q.** OKAY. IN LOOKING AT THIS TYPE OF ANALYSIS, IS IT MORE  
3 APPROPRIATE TO LOOK AT THE AVERAGE OR THE YEAR-BY-YEAR  
4 COMPARISONS?

5 **A.** AS YOU CAN TELL BY LOOKING AT MAJOR LEAGUE BASEBALL, IT  
6 MAKES MUCH MORE SENSE TO LOOK AT IT ON A YEAR-BY-YEAR BASIS,  
7 AND THEN TRY TO FIGURE OUT WHAT'S GOING ON.

8 MAJOR LEAGUE BASEBALL WAS FEARFUL OF ITS LAST  
9 COLLECTIVE BARGAINING SESSION. THEY THOUGHT THEY MIGHT HAVE A  
10 TERRIBLE EVENT. REMEMBER, BASEBALL HAD A STRIKE OR A LOCKOUT  
11 IN 1994, AND WE LOST THE WORLD SERIES. BASEBALL PLAYERS WERE  
12 AFRAID THE SAME THING WOULD HAPPEN TO THEM.

13 IT'S NOT AN INDICTMENT OF THE PLAYERS' UNION IN  
14 BASEBALL THAT THEY KEPT ALL THE LICENSING REVENUE IN THE UNION  
15 PRIOR TO THE SIGNING OF THAT COLLECTIVE BARGAINING AGREEMENT,  
16 WHICH HAPPENED IN DECEMBER OF 2006.

17 SO TO SAY -- PUT ANOTHER HAT ON: SHOULD WE BE  
18 ATTACKING MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION IN 2006  
19 BECAUSE IT DIDN'T PAY ANYTHING TO PLAYERS? OF COURSE NOT. IT  
20 WAS PROTECTING THE INTERESTS OF THE PLAYERS BY BUILDING A  
21 STRIKE FUND.

22 OF COURSE, THE VERY NEXT YEAR WHICH THE COLLECTIVE  
23 BARGAINING AGREEMENT IS SIGNED, THE BAD EVENT DIDN'T HAPPEN. A  
24 PERFECTLY AMICABLE COLLECTIVE BARGAINING AGREEMENT WAS REACHED.  
25 THERE WASN'T A STRIKE. THERE WASN'T A LOCKOUT. NOBODY SHOT

1 ANYBODY. IT WAS JUST FINE.

2 THEN, THEY JUST TURNED AROUND AND GAVE OUT A HUGE  
3 AMOUNT OF MONEY TO THEIR PLAYERS.

4 THAT'S EXACTLY WHAT UNIONS DO, ALL RIGHT? AND SO THE  
5 SAME THING HAPPENS IN THE NFLPA. IT'S BUILDING UP A STRIKE  
6 FUND BECAUSE THE OWNERS HAVE CANCELLED THE CURRENT COLLECTIVE  
7 BARGAINING AGREEMENT. THEY WANT TO REOPEN IT. AND IT WILL  
8 BE -- 2010 WILL BE THE LAST YEAR PLAYED UNDER THE CURRENT  
9 AGREEMENT. AND THE CURRENT FOOTBALL PLAYERS ARE AFRAID OF  
10 EXACTLY THE SAME THING BASEBALL PLAYERS WERE AFRAID OF, SO THEY  
11 ARE BUILDING UP A STRIKE FUND.

12 **Q.** WHEN YOU DID THIS COMPARISON OF MAJOR LEAGUE BASEBALL  
13 PLAYERS ASSOCIATION WITH THE NFLPA IN THESE YEARS, DO YOU FIND  
14 AS AN ECONOMIST THERE'S ANY MATERIAL DIFFERENCE BETWEEN THE  
15 PERCENTAGES THAT -- BETWEEN THE ECONOMIC ACTIVITY GOING ON HERE  
16 OR THE PERCENTAGES RETAINED?

17 **A.** WELL, I FIND THERE'S NO MATERIAL DIFFERENCE EVEN IF YOU  
18 USE DR. RASCHER'S NUMBERS. YOU'VE USED MINE.

19 BUT I WOULD ALSO LIKE TO SAY, IF YOU USE  
20 DR. RASCHER'S VERSION OF THE TOTAL LICENSING REVENUES AND THE  
21 TOTAL PAYOUTS TO PLAYERS, YOU GET SOMEWHAT SMALLER NUMBERS THAN  
22 MINE, BUT YOU DON'T GET MATERIALLY DIFFERENT NUMBERS FROM MINE.

23 IN OTHER WORDS, YOU END UP WITH A LOWER AVERAGE AND  
24 THE NUMBERS ARE BY AND LARGE LOWER. BUT YOU GET THE SAME  
25 ANSWER, WHICH IS THERE'S NOTHING DIFFERENT ABOUT THE NFLPA AND

1 OTHER UNIONS. IT'S BEHAVING EXACTLY AS YOU WOULD EXPECT IT TO.

2 **Q.** SO IN YOUR OPINION AS AN ECONOMIST, IS THERE ANY SUPPORT  
3 FOR DR. RASCHER'S CONCLUDING THAT THE EVIDENCE SHOWS THAT THE  
4 NFLPA AND PI TOOK OUT AN UNREASONABLE -- AN ECONOMICALLY  
5 UNREASONABLE PERCENTAGE OF PLAYER LICENSING REVENUE?

6 **A.** NO. AS I SAID BEFORE, EVEN DR. RASCHER'S OWN NUMBERS DO  
7 NOT SUPPORT THE VIEW THAT THERE WAS ANY UNREASONABLE AMOUNT OF  
8 MONEY WITHHELD FROM THE PLAYERS DURING THIS PERIOD.

9 **Q.** NOW, DR. RASCHER ALSO SAID THAT HE HAD AN OPINION THAT A  
10 RANGE OF 10 TO 40 PERCENT WAS THE CUSTOMARY PERCENTAGE. DO YOU  
11 RECALL THAT?

12 **A.** RIGHT.

13 **Q.** OKAY. AND WAS THERE ANY STUDY TO SHOW WHAT THE CUSTOMARY  
14 PERCENTAGES WERE OF UNIONS THAT HE DID?

15 **A.** WELL, SINCE HE ONLY USED ONE UNION -- SUPPOSE HE HAD COME  
16 UP WITH THE DIFFERENCE, RIGHT, THAT ONE OF THEM PAID OUT 60  
17 PERCENT AND ANOTHER ONE PAID OUT 40 PERCENT. WHICH ONE IS  
18 CUSTOMARY? ALL RIGHT.

19 I MEAN, YOU WOULD HAVE TO ASK THE QUESTION: WHY DO  
20 THESE UNIONS DIFFER? AND HE NEVER ASKED THAT QUESTION.

21 SO TO ASSIGN THE WORD "CUSTOMARY" TO ONE IN A TWO  
22 COMPARISON DOESN'T MAKE SENSE.

23 **Q.** SO IS THERE ANY SUPPORT FOR HIS OPINION THAT A 10 TO  
24 40 PERCENT RANGE WAS CUSTOMARY AS IT REGARDS TO THE ISSUES IN  
25 THIS CASE?

1 **A.** NO. IF YOU TAKE THE TWO UNIONS HE STUDIED, YOU'D HAVE TO  
2 SAY THE CUSTOMARY RANGE IS BETWEEN THE LOWER ONE AND THE HIGHER  
3 ONE, BECAUSE THAT'S ALL YOU HAVE.

4 **Q.** OKAY. FINALLY, TAKE A LOOK AT TRIAL EXHIBIT 3000. DO YOU  
5 HAVE THAT?

6 **A.** PROBABLY.

7 **Q.** I HOPE SO.

8 **A.** 3000.

9 **MR. CLARK:** IT'S PROBABLY THE TOP ONE ON YOUR LEFT  
10 STACK.

11 **THE WITNESS:** THAT'S 2399. OH, 3000.

12 **BY MR. KESSLER:**

13 **Q.** YES. DO YOU HAVE THAT?

14 **A.** YES, I DO.

15 **Q.** AND DOES THIS EXHIBIT REFLECT DATA AND ANALYSIS THAT'S  
16 CONTAINED IN YOUR EXPERT REPORT?

17 **A.** YES, IT DOES.

18 **MR. KESSLER:** YOUR HONOR, I MOVE IN TRIAL EXHIBIT  
19 3000.

20 **MR. HUMMEL:** I DON'T OBJECT AS A DEMONSTRATIVE. I DO  
21 OBJECT TO IT COMING INTO EVIDENCE. IT WASN'T A PART OF HIS  
22 EXPERT REPORT.

23 **MR. KESSLER:** IT ABSOLUTELY WAS PART OF HIS EXPERT  
24 REPORT. THE ONLY THING THAT'S ADDED, YOUR HONOR, IS THERE ARE  
25 SOME PICTURES OF A FOOTBALL AND --

1           **THE COURT:** EXPERT REPORTS DO NOT COME INTO EVIDENCE.  
2 THEY ARE HEARSAY. THEY DO NOT COME INTO EVIDENCE.

3           **MR. KESSLER:** OH, I DIDN'T MEAN THAT, YOUR HONOR.

4           **THE COURT:** NOW, DO YOU WANT TO USE IT AS  
5 ILLUSTRATIVE ONLY?

6           **MR. KESSLER:** I'LL USE IT AS AN ILLUSTRATIVE. THAT'S  
7 FINE.

8           **MR. HUMMEL:** NO OBJECTION.

9           **THE COURT:** ILLUSTRATIVE ONLY.

10          **MR. KESSLER:** FINE.

11                   (DOCUMENT DISPLAYED.)

12 **BY MR. KESSLER:**

13 **Q.** "THERE IS NO MATERIAL DIFFERENCE IN THE PERCENTAGE OF  
14 PLAYER LICENSING REVENUES DISTRIBUTED BY SPORTS UNIONS TO  
15 PLAYERS."

16           DR. NOLL, AS PART OF YOUR EXPERT ANALYSIS IN THIS  
17 CASE DID YOU ALSO LOOK AT THE NATIONAL BASKETBALL PLAYERS  
18 ASSOCIATION?

19 **A.** YES, I DID.

20 **Q.** IS THAT THE UNION FOR BASKETBALL PLAYERS?

21 **A.** YES, IT IS.

22 **Q.** DID YOU STUDY THE AMOUNT OF LICENSING REVENUE RETAINED BY  
23 EACH OF THESE UNIONS DURING 2003 TO 2007, AND HOW MUCH WAS PAID  
24 OUT TO PLAYERS?

25 **A.** YES.

1 Q. OKAY. AND DID YOU FIND THAT THE BASKETBALL PLAYERS PAID  
2 OUT ABOUT 76 PERCENT; IS THAT CORRECT --

3 A. YES --

4 Q. -- OVER TIME?

5 A. -- IT'S CORRECT. BUT YOU HAVE TO MAKE A FOOTNOTE HERE.

6 Q. WHAT'S THE FOOTNOTE?

7 A. THE FOOTNOTE IS THE BASKETBALL PLAYERS ASSOCIATION DOESN'T  
8 HAVE THEIR OWN LICENSING OPERATION. THE NBA DOES THE  
9 LICENSING, KEEPS SOME OF THE REVENUE, AND THEN PAYS THE  
10 BASKETBALL PLAYERS THE REST.

11 SO THE PLAYERS INC COUNTERPART ISN'T IN THERE. IT'S  
12 IN THE NBA SOMEWHERE. SO WHAT THE NATIONAL BASKETBALL PLAYERS  
13 ASSOCIATION GET IS A NET REVENUE FROM LICENSING AFTER THE COSTS  
14 OF LICENSING HAVE BEEN PAID.

15 SO THEIR NUMBER REALLY ISN'T 76.4. IT'S SOME LOWER  
16 NUMBER, BUT WE DON'T KNOW WHAT IT IS BECAUSE WE DON'T KNOW HOW  
17 MUCH THE NBA KEEPS OUT OF ITS LICENSING REVENUE.

18 Q. OKAY. HAVE YOU REACHED AN OPINION AS TO WHETHER BASED ON  
19 THIS DATA THERE'S ANY MATERIAL DIFFERENCE BETWEEN THE  
20 PERCENTAGE OF LICENSING REVENUES KEPT BY THE NFLPA AND PLAYERS  
21 INC VERSUS OTHER SPORTS UNIONS?

22 A. THERE IS NO DIFFERENCE. PARTICULARLY, WHEN YOU LOOK ON  
23 THE YEAR-TO-YEAR BASIS, BECAUSE EVERY SINGLE ONE OF THEM HAS  
24 THIS HUGE YEAR-TO-YEAR VARIATION IN THE FRACTION OF THE  
25 REVENUES THAT THEY KEEP, DEPENDING ON CIRCUMSTANCES.

1           SO -- AND IF YOU LOOK AT IT THAT WAY, WHICH IS THE  
2 RIGHT WAY, THEN IT'S ABSOLUTELY CLEAR THAT THEY ARE ALL  
3 BEHAVING BASICALLY THE SAME WAY, AND THERE'S NO DIFFERENCES  
4 AMONG THEM.

5 **Q.**    ONE FINAL SUBJECT. AS PART OF YOUR EXPERT STUDY IN THIS  
6 CASE, AND AS PART OF YOUR FIRST EXPERT REPORT, DID YOU EXAMINE  
7 THE ISSUE OF THE -- OF THE \$8 MILLION ADJUSTMENT THAT WAS MADE  
8 BY THE NFLPA AND PLAYERS INC IN -- OUT OF THE GROSS LICENSING  
9 REVENUE POOL?

10 **A.**    YES, I DID.

11 **Q.**    OKAY. AND DID YOU REACH ANY CONCLUSION AS AN ECONOMIST AS  
12 TO WHETHER THERE WAS AN ECONOMIC BASIS FOR THAT \$8 MILLION  
13 ADJUSTMENT?

14 **A.**    YES.

15 **Q.**    WHAT WAS YOUR CONCLUSION?

16 **A.**    THE CONCLUSION IS THAT THERE OBVIOUSLY IS SOME VALUE TO  
17 THE LOGOS OF THE ASSOCIATION, ALL RIGHT, THE PLAYERS  
18 ASSOCIATION AND PLAYERS INC.

19           AND, MOREOVER, THE ONLY COMPARABLE WE HAVE TO IT IS  
20 THE NBA PLAYERS ASSOCIATION. AND THEY ARE PAID SOMETHING FOR  
21 THOSE LOGO RIGHTS BY THE NBA, SEPARATELY FROM THE LICENSING  
22 REVENUES. THE NUMBERS ARE COMPARABLE.

23           SO THERE'S NOTHING PARTICULAR OR UNUSUAL ABOUT THE  
24 NFLPA'S CHARGING FOR THE LOGOS OF ITS ASSOCIATION.

25 **Q.**    TELL THE JURY, IF YOU KNOW AS PART OF YOUR STUDY, HOW MUCH

1 PER YEAR, ON AVERAGE, DOES THE NBA PAY THE NBA PLAYERS  
2 ASSOCIATION FOR ITS EXCLUSIVE LOGO RIGHTS?

3 **A.** IT HAS VARIED FROM YEAR TO YEAR, BUT IT'S NOW UP TO  
4 \$11 MILLION.

5 **Q.** MORE THAN \$8 MILLION?

6 **A.** IT'S MORE THAN 8.

7 **Q.** NOW, AS AN ECONOMIST, WOULD YOU EXPECT THE VALUE OF THE  
8 LOGOS OF THE NFLPA AND PI TO BE MORE OR LESS THAN THE VALUE OF  
9 THE BASKETBALL PLAYERS ASSOCIATION LOGOS?

10 **A.** I WOULD EXPECT THE FOOTBALL PLAYERS LOGO TO BE WORTH MORE  
11 THAN THE BASKETBALL PLAYERS' LOGOS.

12 **Q.** WHY IS THAT?

13 **A.** FOR TWO REASONS. FIRST OF ALL, FOOTBALL IS MORE POPULAR  
14 THAN BASKETBALL ON EVERY MEASURE: AMOUNT OF MONEY THEY TAKE  
15 IN; AUDIENCE RATING BY TELEVISION OR WHATEVER. SO IT'S MORE  
16 POPULAR.

17 AND, SECONDLY, THE DEAL WITH THE NFL IS THAT THE  
18 LOGOS OF THE NFLPA ARE ACTUALLY DISPLAYED IN LICENSING BY THE  
19 NFL. WHEREAS, THERE IS NO SIMILAR DEAL WITH THE NBA.

20 SO THE DEGREE TO WHICH THAT LOGO IS BEING ADVERTISED  
21 AND, THEREFORE, IS GENERATING RECOGNITION VALUE, WHICH IS WHAT  
22 LICENSEES WANT, IS GREATER FOR THE NFL THAN FOR THE NBA.

23 **Q.** SO ARE YOU AWARE OF ANY ECONOMIC EVIDENCE THAT THE  
24 \$8 MILLION ADJUSTMENT WAS IN ANY WAY EXCESSIVE FROM AN ECONOMIC  
25 STANDPOINT?

1 **A.** NO. I -- FOR THE LIFE OF ME, I DO NOT UNDERSTAND WHY  
2 SOMEONE WOULD CLAIM THAT THAT WAS AN UNREASONABLE NUMBER.

3 IT MAY NOT BE THE RIGHT NUMBER, BUT IT'S NOT AN  
4 UNREASONABLE NUMBER. IT'S PERFECTLY REASONABLE GIVEN THE  
5 HISTORY OF THE NBA PLAYERS --

6 **Q.** WHEN YOU SAY IT'S NOT THE RIGHT NUMBER, IT COULD BE THAT A  
7 HIGHER ADJUSTMENT WAS WARRANTED?

8 **A.** YES. I THINK IT'S, IN FACT, MORE LIKELY TO BE HIGHER THAN  
9 LOWER. BUT, YOU KNOW, I HAVEN'T DONE THE ANALYSIS, EITHER. I  
10 JUST KNOW WHAT THE NBA GETS.

11 **MR. KESSLER:** YOUR HONOR, I HAVE NO FURTHER QUESTIONS  
12 FOR THIS WITNESS AT THIS TIME.

13 **THE COURT:** THANK YOU.

14 ALL RIGHT. CROSS EXAMINATION.

15 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

16 **CROSS EXAMINATION**

17 **BY MR. HUMMEL:**

18 **Q.** DR. NOLL, GOOD MORNING.

19 **A.** GOOD MORNING.

20 **Q.** MY NAME IS CHAD HUMMEL. I HAVE A FEW QUESTIONS FOR YOU  
21 THIS MORNING.

22 YOU UNDERSTAND THAT THIS CASE IS ABOUT GROUP  
23 LICENSING AUTHORIZATIONS, CORRECT?

24 **A.** I UNDERSTAND IT IS ABOUT GROUP LICENSING, YES.

25 **Q.** ALL RIGHT. AND YOU'RE AWARE OF THE FACT THAT THERE WAS AN

1 EXPECTATION, IN CONNECTION WITH THE GROUP LICENSING  
2 AUTHORIZATIONS, THAT IT WOULD BE POSSIBLE TO LICENSE THE GROUP  
3 OF RETIRED PLAYERS THAT SIGNED THOSE GLA'S, CORRECT?

4 **MR. KESSLER:** YOUR HONOR, I HAVE AN OBJECTION TO THIS  
5 WITNESS HE'S TRYING TO USE TO INTERPRET THE GLA. I DON'T THINK  
6 THAT'S APPROPRIATE FOR AN EXPERT WITNESS TO DO, EITHER EXPERT  
7 WITNESS, IF THAT'S WHAT MR. HUMMEL IS SUGGESTING.

8 **MR. HUMMEL:** I'M NOT. I'M TALKING ABOUT AN ECONOMIC  
9 EXPECTATION.

10 **THE COURT:** I'M GOING TO ALLOW THIS LINE OF  
11 QUESTIONS, BUT IF YOU'RE AIMED AT TRYING TO INTERPRET THE GLA,  
12 FORGET IT. WE'RE NOT GOING TO GO DOWN THAT PATH, BECAUSE THIS  
13 WITNESS IS NOT QUALIFIED TO DO THAT, JUST LIKE THE OTHER DAY.

14 MR. KESSLER, YOU ASKED A LOT OF QUESTIONS YESTERDAY  
15 OF THE EXPERT THAT WERE OUTSIDE WHAT HE HAD PUT IN HIS REPORT,  
16 AND THAT WAS THE POINT YOU WERE TRYING TO MAKE. AND I'M GOING  
17 TO LET MR. HUMMEL DO THE SAME THING HERE.

18 SO FOR THE TIME BEING, I'M GOING TO GO ALONG WITH  
19 THIS LINE OF QUESTIONS, AND SEE WHERE IT GOES.

20 BUT IF IT'S AIMED AT TRYING TO GET THIS WITNESS TO  
21 INTERPRET THE GLA, HE'S NOT QUALIFIED TO DO THAT.

22 **MR. HUMMEL:** IT'S NOT, YOUR HONOR.

23 **BY MR. HUMMEL:**

24 **Q.** AND JUST TO BE CLEAR ON THE RECORD, DR. NOLL, YOU'RE  
25 OFFERING NO OPINION HERE TODAY ABOUT THE MEANING OF THE GLA,

1 RIGHT?

2 **A.** CORRECT.

3 **Q.** AND YOU'RE OFFERING NO OPINION HERE -- AND I'M NOT GOING  
4 TO ASK YOU -- ABOUT YOUR INTERPRETATION OF ANY THIRD-PARTY  
5 LICENSES, RIGHT?

6 **A.** GREAT.

7 **Q.** OKAY.

8 **A.** I'M NOT AN EXPERT ON THAT, YES.

9 **Q.** BUT YOU ARE AN EXPERT ECONOMIST, RIGHT?

10 **A.** I THINK SO, YES.

11 **Q.** AND ONE OF THE DATA POINTS IN THIS CASE THAT YOU  
12 CONSIDERED WAS: WHETHER THERE WAS AN EXPECTATION -- DURING THE  
13 TIME THAT THE UNION WAS SOLICITING THESE RETIRED PLAYERS TO  
14 SIGN GLA'S, THERE WAS AN EXPECTATION THAT THERE WOULD BE A  
15 POSSIBILITY TO LICENSE THE GROUP TO THIRD-PARTY LICENSEES,  
16 CORRECT?

17 **A.** I BELIEVE THAT'S PROBABLY TRUE THAT BOTH THE PLAYERS  
18 ASSOCIATION AND THE RETIRED PLAYERS WHO SIGNED GLA'S THOUGHT  
19 THAT, INDEED, THERE WAS THE POSSIBILITY OF LICENSING THE GROUP.

20 **Q.** I DON'T MEAN TO BE RUDE, BUT ONE OF THE GROUND RULES WE'VE  
21 HAD HERE IS THAT IF I ASK A QUESTION THAT CALLS FOR A YES OR  
22 NO, I WOULD APPRECIATE A YES OR NO ANSWER, IF YOU CAN DO THAT.

23 **THE COURT:** I'M GOING TO BACK THAT UP. IF YOU CAN  
24 SAY "YES" OR "NO," THIS IS CROSS EXAMINATION. AND MR. KESSLER  
25 GOT THE SAME GROUND RULE. YOU EITHER SAY "YES," "NO," "I DON'T

1 KNOW, " "I DON'T UNDERSTAND THE QUESTION," OR IN THE RARE CASE  
2 GIVE A ONE-SENTENCE EXPLANATION.

3 SO THAT'S THE GROUND RULE.

4 **MR. KESSLER:** I WOULD NOTE, YOUR HONOR, I GOT THAT  
5 RULE, BUT THEIR WITNESS DIDN'T EXACTLY FOLLOW IT.

6 **THE COURT:** WELL, I TRIED MY BEST. SO THIS WITNESS  
7 IS GOING TO TRY HIS BEST.

8 THANK YOU.

9 **MR. HUMMEL:** ALL RIGHT.

10 **BY MR. HUMMEL:**

11 **Q.** SO IT'S TRUE THAT THERE WAS AN EXPECTATION THAT THE GROUP  
12 LICENSING RIGHTS COULD BE SOLD TO THIRD-PARTY LICENSEES,  
13 CORRECT?

14 **A.** YES, IF YOU DEFINE "EXPECTATION BY WHOM" CORRECTLY.

15 **Q.** OKAY. AND IT'S TRUE, IS IT NOT, SIR, THAT IF SOME COMPANY  
16 CREATED OR SOLD A GAME, CALL IT A VIDEO GAME, IN WHICH THERE  
17 WERE HISTORICAL TEAMS -- LET'S TAKE, FOR EXAMPLE, THE '88 49ERS  
18 VERSUS THE 1965 GREENBAY PACKERS -- YOU, AS AN ECONOMIST, WOULD  
19 EXPECT THAT THE RETIRED PLAYERS COULD OBTAIN SIGNIFICANT  
20 LICENSING REVENUES FROM THAT VENTURE; IS THAT TRUE?

21 **A.** PARTIALLY TRUE, PARTIALLY FALSE.

22 **Q.** AND ISN'T IT TRUE THAT YOU WOULD EXPECT THAT SUCH A GAME  
23 THAT HAD HISTORICAL TEAMS IN IT WOULD GENERATE SIGNIFICANT  
24 LICENSING REVENUES EVEN FOR RETIRED PLAYERS WITH NO NAME  
25 RECOGNITION?

1 **A.** I WOULDN'T EXPECT THAT. IF THEY, IN FACT, LICENSED THEM,  
2 I WOULD EXPECT THEM TO PAY FOR IT, YES.

3 **Q.** SIR, YES OR NO, ISN'T IT TRUE THAT IF THERE WERE SUCH A  
4 GAME THAT HAD HISTORICAL TEAMS IN IT, THE 1989 49ERS, 1985  
5 BEARS, THE 1972 DOLPHINS, THAT THAT GAME COULD GENERATE  
6 SIGNIFICANT LICENSING REVENUES, EVEN FOR RETIRED PLAYERS WITH  
7 NO NAME RECOGNITION?

8 **MR. KESSLER:** OBJECTION, YOUR HONOR, TO INCOMPLETE  
9 HYPOTHETICAL. I THINK HE HAS TO SPECIFY WHETHER THE PLAYER  
10 NAMES ARE IN THE GAME OR NOT.

11 **THE COURT:** WELL, OVERRULED. THE WITNESS CAN ADD AN  
12 EXPLANATION, IF YOU THINK THAT'S NECESSARY.

13 PLEASE ANSWER.

14 **THE WITNESS:** THAT WAS WHY I HESITATED THE FIRST  
15 TIME. YOU GET TWO LICENSES WHEN YOU DO A HISTORICAL TEAM. YOU  
16 GET A LICENSE FOR THE TEAM, WHICH IS YOU CAN SHOW THE UNIFORMS  
17 AND USE THE TEAM NAME AND ALL THAT. AND THEN, YOU GET LICENSES  
18 FOR IMAGES.

19 AND THE TEAM ITSELF IS WORTH A LOT BECAUSE THERE ARE  
20 FANS OUT THERE WHO HAVE MEMORIES OF IT. BUT THE INDIVIDUAL  
21 PLAYERS MAY OR MAY NOT BE WORTH ANYTHING.

22 I THINK, TO GET TO YOUR FIRST QUESTION ABOUT  
23 EXPECTATION, I THINK THE EXPECTATION --

24 **THE COURT:** WAIT. YOU'RE GIVING A LONG SPEECH. THIS  
25 IS LONGER THAN THE GROUND RULE ALLOWS.

1           **THE WITNESS:**  OKAY.  OKAY.  OKAY.

2           **THE COURT:**  NEXT QUESTION.

3 **BY MR. HUMMEL:**

4 **Q.**    ISN'T IT TRUE, SIR, THAT EVEN WITH RESPECT TO THE PLAYERS  
5 WHO COULD EXPECT SIGNIFICANT LICENSING REVENUES IF SUCH A GAME  
6 EXISTED, WOULD INCLUDE THOSE PLAYERS WHO HAD NO INDEPENDENT  
7 LICENSING VALUE IN THE MARKETPLACE?  THOSE PLAYERS COULD EXPECT  
8 SIGNIFICANT LICENSING REVENUES?

9           **THE COURT:**  DO YOUR QUESTION AGAIN.  I LOST IT.

10          **MR. HUMMEL:**  THAT'S FINE.  I'LL DO IT IN TWO PIECES.

11          **THE COURT:**  ALL RIGHT.

12 **BY MR. HUMMEL:**

13 **Q.**    ONE, IF SUCH A GAME EXISTED -- AND I'M TALKING ABOUT A  
14 VIDEO GAME WITH HISTORICAL TEAMS.

15          **THE COURT:**  AND TAKE INTO ACCOUNT MR. KESSLER,  
16 HISTORICAL TEAMS WITH THE IDENTITIES OF THE PLAYERS OR NOT?

17          **MR. HUMMEL:**  NO.

18          **THE COURT:**  JUST SCRAMBLED NAMES.

19 **BY MR. HUMMEL:**

20 **Q.**    SUCH A GAME THAT HAD HISTORICAL TEAMS, OKAY?  YOU WOULD  
21 EXPECT THAT SUCH A GAME COULD GENERATE SIGNIFICANT LICENSING  
22 REVENUES EVEN FOR RETIRED PLAYERS WITH NO NAME RECOGNITION, YES  
23 OR NO?

24 **A.**    NO, I DON'T --

25 **Q.**    NO?

1 **A.** -- AGREE THAT --

2 **Q.** IS THAT "NO"?

3 **A.** YES.

4 **Q.** THAT'S NO. OKAY.

5 AND THAT WOULD MEAN RETIRED PLAYERS WHO HAD NO  
6 INDEPENDENT LICENSING VALUE IN THE MARKET, THEY COULD ALSO  
7 EXPECT SIGNIFICANT REVENUES FROM SUCH A GAME, CORRECT?

8 **A.** THEY COULD EXPECT IT. THEY MIGHT EXPECT IT, YES.

9 **Q.** ALL RIGHT. AND THAT'S BECAUSE NUMEROUS RETIRED PLAYERS  
10 WITH NO INDEPENDENT NAME RECOGNITION PLAYED ON SOME OF THE BEST  
11 TEAMS IN HISTORY THAT COULD BE INCORPORATED IN SUCH A GAME,  
12 ASSUMING IT EXISTED, CORRECT?

13 **A.** THAT'S WHY THEY WOULD HAVE THAT EXPECT -- THEY COULD HAVE  
14 THAT EXPECTATION, YES.

15 **Q.** SO IF SUCH A GAME EXISTED THAT HAD HISTORICAL TEAMS,  
16 RETIRED PLAYERS WHO SIGNED GLA'S COULD EXPECT SIGNIFICANT  
17 REVENUES FROM SUCH A GAME, CORRECT?

18 **A.** MIGHT EXPECT, YES.

19 **Q.** ALL RIGHT.

20 **A.** YEAH.

21 **Q.** NOW, DID YOU CONSIDER, SIR, IN CONNECTION WITH YOUR REPORT  
22 IN THIS CASE, THE FACT THAT EA HAD MANUFACTURED JUST SUCH A  
23 GAME THAT HAD OVER A HUNDRED RETIRED TEAMS? HAD YOU CONSIDERED  
24 THAT?

25 **A.** YOU DON'T MEAN "RETIRED TEAMS."

1 Q. HISTORIC TEAMS?

2 A. YES.

3 Q. HAD YOU, IN FACT, CONSIDERED THAT?

4 A. YES, EA DOES HAVE --

5 Q. THAT'S NOT MY QUESTION.

6 A. YES, I HAVE CONSIDERED IT.

7 Q. NO, SIR. MY QUESTION IS THIS: WHEN YOU WROTE YOUR EXPERT  
8 REPORT UNDER RULE 26 OF THE FEDERAL RULES OF CIVIL PROCEDURE,  
9 AND YOU GAVE YOUR DEPOSITION IN THIS CASE UNDER OATH ON JULY 9,  
10 2008, WHEN YOU FORMED YOUR OPINIONS, DID YOU KNOW THAT EA HAD  
11 SUCH A GAME?

12 MR. KESSLER: YOUR HONOR, I'M GOING TO OBJECT BECAUSE  
13 AT THE TIME HE'S TALKING ABOUT THIS ISSUE OF SCRAMBLING, AS  
14 YOUR HONOR --

15 (COUNSEL SPEAKING SIMULTANEOUSLY; NOT REPORTABLE.)

16 MR. HUMMEL: IT'S A SPEAKING OBJECTION, YOUR HONOR.

17 MR. KESSLER: -- WAS NOT EVEN IN THE CASE.

18 MR. HUMMEL: IT'S A SPEAKING OBJECTION, YOUR HONOR.

19 THE COURT: WELL, THAT COULD BE BROUGHT OUT LATER ON,  
20 IF THAT'S A FACTOR.

21 OBJECTION OVERRULED. PLEASE ANSWER.

22 THE WITNESS: I DID NOT ANALYZE THAT. I DIDN'T  
23 ANALYZE THE HISTORICAL TEAMS IN EA'S GAMES, NO.

24 BY MR. HUMMEL:

25 Q. YOU DIDN'T EVEN KNOW THEY HAD HISTORICAL TEAMS IN THE

1 GAMES, RIGHT?

2 **A.** THAT'S NOT WHAT I SAID. I SAID I WASN'T SURE.

3 **Q.** THAT IS NOT WHAT YOU SAID?

4 **A.** I SAID I DIDN'T KNOW.

5 **Q.** IS THAT WHAT YOU SAID?

6 **A.** YES.

7 **Q.** LET'S READ YOUR DEPOSITION, SIR.

8 **A.** FINE.

9 **THE COURT:** DO I HAVE THAT HERE?

10 **MR. HUMMEL:** YES, YOU DO.

11 PAGE 209, LINES 12 THROUGH 210, LINE 3.

12 **THE COURT:** ANY OBJECTION?

13 **MR. KESSLER:** NO.

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

15 **MR. HUMMEL:** (READING)

16 **"QUESTION:** SO YOU THINK THAT EA, FOR

17 EXAMPLE, WOULD BE WELL ADVISED TO CREATE A

18 GAME WHERE YOU COULD BE A SUCCESSFUL VINTAGE

19 TEAM LIKE THE '68 PACKERS?

20 **"ANSWER:** NO, I DIDN'T SAY THAT. WHAT I SAID

21 WAS I CAN IMAGINE THAT HAPPENING. THEY HAVE

22 CHOSEN NOT TO DO SO. I DON'T KNOW WHETHER

23 THAT'S A GOOD DECISION OR A BAD DECISION. I

24 CAN IMAGINE SOMEONE DOING THAT JUST AS, YOU

25 KNOW, YOU, THE GREATEST FOOTBALL TEAMS --

1 GAMES EVER PLAYED, WHETHER COLLEGE OR PRO, DO  
2 GET PERIODICALLY REBROADCAST WITH SMALL  
3 AUDIENCE RATINGS ON ESPN OR SOMETHING LIKE  
4 THAT."

5 **MR. KESSLER:** YOUR HONOR, NOW I HAVE AN OBJECTION.  
6 HE'S READING MORE, BUT NONE OF THIS IS IMPEACHING.

7 **MR. HUMMEL:** I WAS GOING TO READ THE COMPLETE ANSWER.

8 **MR. KESSLER:** HE IS NOW JUST READING A LONG PORTION  
9 OF HIS DEPOSITION.

10 **THE COURT:** OVERRULED. PLEASE CONTINUE.

11 **MR. HUMMEL:** (READING)

12 "BUT YOU DON'T EVER SEE A 1968 NFL GAME  
13 BETWEEN TWO TEAMS WHO FINISHED THE SEASON 2  
14 AND 14, ALL RIGHT? THAT'S JUST NOT WHAT'S ON  
15 TELEVISION. THERE'S INTEREST IN HISTORICAL  
16 BAD GAMES INVOLVING BAD PLAYERS WITH A SINGLE  
17 EXCEPTION OF THE NEW YORK METS."

18 **BY MR. HUMMEL:**

19 **Q.** WHICH IS A BASEBALL TEAM, RIGHT?

20 **A.** CORRECT.

21 **Q.** SO, SIR, ISN'T IT TRUE THAT YOU CAME TO COURT IN A  
22 DEPOSITION AND WITH AN EXPERT REPORT WITHOUT EVEN KNOWING THAT  
23 EA HAD PAID THE NFLPA AND THE UNION OVER \$80 MILLION IN  
24 LICENSING REVENUE FOR A TEAM THAT INCLUDED HISTORIC GAMES,  
25 WHICH YOU CONCEDED WOULD GENERATE SIGNIFICANT LICENSING REVENUE

1 FOR THIS CLASS, AND YOU DIDN'T EVEN KNOW IT EXISTED. YOU  
2 DIDN'T DO YOUR HOMEWORK, DID YOU? DID YOU, YES OR NO?

3 **A.** NO.

4 **Q.** NO. THANK YOU.

5 **A.** I DID MY HOMEWORK, AND I DIDN'T ANALYZE THE GAMES -- THE  
6 TEAMS IN THAT GAME. THE QUESTION WAS ABOUT A SEPARATE GAME  
7 INVOLVING JUST HISTORICAL TEAMS.

8 **Q.** YOU --

9 **A.** THAT'S WHAT THE QUESTION WAS ABOUT.

10 **Q.** YOU DIDN'T EVEN KNOW, DID YOU?

11 **A.** I SAID IN THE DEPOSITION THAT I DID NOT STUDY WHETHER --  
12 WHAT EXACTLY WAS IN THE MADDEN GAME. I THOUGHT I WAS ANSWERING  
13 THE QUESTION ABOUT ANOTHER GAME THAT, IN PRINCIPLE, COULD BE  
14 CREATED, INVOLVING ONLY HISTORICAL TEAMS. AND I SAID THAT  
15 MIGHT BE A REASONABLE PRODUCT, TOO. THAT'S WHAT THAT  
16 DEPOSITION TESTIMONY IS ABOUT.

17 **Q.** LET'S LOOK AT OTHER DEPOSITION TESTIMONY, SIR, WHERE YOU  
18 ADMITTED YOU DIDN'T KNOW?

19 **A.** A LOT OF THINGS I DON'T KNOW.

20 **Q.** YOU DIDN'T KNOW, RIGHT?

21 **A.** LOTS OF THINGS I DON'T KNOW.

22 **Q.** RIGHT. BUT YOU DIDN'T KNOW ONE OF THE CENTRAL ISSUES IN  
23 THE CASE.

24 **THE COURT:** WAIT.

25 **MR. KESSLER:** YOUR HONOR, NOW I'M OBJECTING. THIS IS

1 ARGUMENT, AND HE'S NOW ADMITTING THAT THE DEPOSITIONS HE JUST  
2 READ HAD NOTHING TO DO WITH THIS ISSUE --

3 **MR. HUMMEL:** THAT'S A SPEAKING OBJECTION, YOUR HONOR.  
4 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

5 **THE COURT:** PLEASE. JUST A SECOND. I'M GOING TO LET  
6 YOU READ MORE.

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

8 **THE COURT:** BUT YOU ARE OVERTAKING ONE QUESTION AFTER  
9 THE OTHER WITH A SERIES OF QUESTIONS, LEAVING US IN THE DARK AS  
10 TO WHICH ONE YOU WANT THE WITNESS TO ANSWER. AND SO I WANT TO  
11 GO BACK TO ONE OF YOUR OTHER QUESTIONS, AND LET'S JUST FIND OUT  
12 IF YOU DO.

13 AT THE TIME OF YOUR DEPOSITION, DR. NOLL, DID YOU  
14 KNOW ABOUT THE MADDEN GAME AND THE FACT THAT IT PORTRAYED  
15 HISTORICAL TEAMS?

16 **THE WITNESS:** I KNEW THERE WERE SCRAMBLED PLAYERS IN  
17 IT. I DIDN'T KNOW THAT WAS AN ISSUE IN THE CASE BECAUSE AT  
18 THAT TIME IT WASN'T, SO I DIDN'T STUDY IT.

19 **MR. HUMMEL:** OKAY.

20 **THE COURT:** ALL RIGHT. NOW, IF YOU WANT TO READ  
21 SOMETHING FROM THE DEPOSITION, GIVE US THE PAGE AND LINE.

22 **MR. HUMMEL:** PAGE 67, LINE 17 THROUGH PAGE 69, LINE  
23 10.

24 **THE COURT:** 67/17. ALL RIGHT. GO AHEAD.

25 **MR. HUMMEL:** (READING)

1           **"QUESTION:** WELL, YOU JUST MENTIONED  
2           DOCUMENTS THAT EXPRESSED THE HOPE THAT ALL  
3           COULD BE LICENSED, BUT THAT THIS HAS FAILED.  
4           CAN YOU NAME ANY SPECIFIC DOCUMENTS?

5           **"ANSWER:** NO. I MEAN, I'M JUST TRYING TO BE  
6           RESPONSIVE. THIS ISN'T PART OF MY REPORT AND  
7           SO I DIDN'T SEARCH FOR DOCUMENTS THAT SAID  
8           THAT PRIOR TO THE DEPOSITION. I DON'T SAY  
9           ANYTHING LIKE THAT IN MY REPORT. I'M JUST  
10          BEING RESPONSIVE TO YOUR QUESTION. I AM  
11          AWARE OF THE FACT THAT THERE WAS AN  
12          EXPECTATION TO BEGIN WITH THAT IT WOULD BE  
13          POSSIBLE TO LICENSE THE ENTIRE GROUP. BUT  
14          THAT EXPECTATION WASN'T REALIZED, THAT THE  
15          OUTCOME FRANKLY WOULD BE -- WOULD BE ONE THAT  
16          AN ECONOMIST WOULD PREDICT, WHICH IS THAT  
17          ONLY PLAYERS WHO WERE, WHO HAD ACHIEVED A  
18          SIGNIFICANT LEVEL OF FAME, WOULD, IN FACT,  
19          HAVE SIGNIFICANT LICENSING REVENUES. I THINK  
20          THERE IS, YOU KNOW, ONE OF THE THINGS I  
21          ACTUALLY LOOKED FOR AND I WAS INTERESTED IN  
22          WAS WHETHER THERE WERE LICENSES OUT THERE FOR  
23          THE ENTIRE HISTORICAL CLASSIC TEAMS, LIKE,  
24          YOU KNOW, YOU COULD SAY THE BART STAR TEAM  
25          THAT WON THE NFL CHAMPIONSHIP IN THE SNOW, OR

1 THE 49ERS TEAM WHERE THEY WON THE GAME AT THE  
2 VERY LAST MINUTE WITH DWIGHT CLARK MAKING  
3 'CATCH,' QUOTE/UNQUOTE. THERE ARE A NUMBER  
4 OF EXAMPLES OF HISTORICAL TEAMS WHEN I  
5 THOUGHT, WELL, GEE, MAYBE, MAYBE SOME PLAYERS  
6 WHO AREN'T VERY FAMOUS, WHO WERE THE BOTTOM  
7 HALF OF THOSE TEAMS, WHO ARE NOT PEOPLE WHO  
8 HAVE ANY NAME RECOGNITION PAST THE END OF  
9 THEIR CAREER, MAYBE YOU COULD LICENSE THAT.  
10 I CAN IMAGINE SOMEONE SELLING A GAME IN WHICH  
11 YOU HAD THE HISTORICAL TEAMS OF ALL TIME AS  
12 LICENSEES IN THE GAME, YOU KNOW. SO THAT YOU  
13 COULD HAVE THE 1988 SAN FRANCISCO 49ERS PLAY  
14 THE 1965 GREENBAY PACKERS, OR SOMETHING LIKE  
15 THAT. UNFORTUNATELY, NO SUCH GAME EXISTS AND  
16 NO SUCH LICENSE EXISTS. SO I CAN SEE HOW YOU  
17 MIGHT EXPECT THAT YOU COULD GET SIGNIFICANT  
18 LICENSING REVENUES, AT LEAST FOR THOSE  
19 RETIRED PLAYERS WITH NO NAME RECOGNITION WHO  
20 PLAY ON THE BEST TEAMS. BUT I DIDN'T FIND  
21 ANYTHING LIKE THAT, SO THAT I GUESS THAT  
22 FALLS INTO THE CATEGORY OF SOME KIND OF HOPE  
23 SOMEONE MIGHT HAVE WHEN ENTERING THIS PROGRAM  
24 THAT TURNED OUT NOT TO BE REALIZED," END  
25 QUOTE.

1           **MR. KESSLER:** YOUR HONOR, THERE'S NO FOLLOW-UP  
2 QUESTION. IT HAD NOTHING TO DO WITH IMPEACHMENT. THIS IS NOT  
3 A PROPER USE OF DEPOSITION TESTIMONY.

4           **THE COURT:** WELL, THAT'S FOR THE JURY TO DECIDE. BUT  
5 I DO THINK IT WOULD BE WORTHWHILE TO READ THE NEXT QUESTION AND  
6 ANSWER THAT GOES OVER TO THE LINE 17 ON PAGE 70.

7           **MR. HUMMEL:** I'LL DO THAT.

8           "HAVE YOU LOOKED IN THE MADDEN GAMES FOR ANY  
9 SUCH VINTAGE TEAMS?

10          **"ANSWER:** THE MADDEN, YES. THE MADDEN GAMES  
11 HAVE SOME STAR RETIRED PLAYERS IN THEM, YES.  
12 THE REASON -- WHAT I UNDERSTAND TO BE THE  
13 CASE IS THE GUYS WHO MAKE GAMES WANT TO BE  
14 ABLE TO UPDATE THEM PERIODICALLY TO BE ABLE  
15 TO RESELL THEM OVER AND OVER AGAIN. AND THE  
16 TROUBLE WITH A CLASSIC TEAM IS THAT IT'S JUST  
17 THERE. AND SO YOU JUST GET A ONE-HIT WONDER  
18 OUT OF IT. AND SO, YOU KNOW, THE ATTRACTION  
19 OF, BY CONTRAST, THE EA MADDEN LICENSE THAT  
20 HAS ALL THE ROSTERS OF THE CURRENT TEAMS OR  
21 EVEN THE ATTRACTION OF THE TAKE TWO LICENSE  
22 ON THE HALL OF FAME IS THAT THE ROSTERS  
23 CHANGE FROM YEAR TO YEAR. IN THE HALL OF  
24 FAME, THEY CHANGE BY VIRTUE OF THE PEOPLE WHO  
25 ARE ELECTED IN THE HALL OF FAME. SO FIVE

1 YEARS FROM NOW PROBABLY THERE WILL BE TEN  
2 MORE PEOPLE IN THE HALL OF FAME THAN THERE  
3 ARE NOW. AND SO YOU CAN REISSUE THE GAME  
4 WITH A DIFFERENT CAST OF CHARACTERS, SO THAT  
5 SEEMS TO BE THE EXPLANATION OF WHY THERE  
6 DOESN'T APPEAR TO BE MUCH OF A MARKET FOR THE  
7 CLASSIC TEAMS."

8 OKAY. SUFFICIENT, YOUR HONOR?

9 **THE COURT:** READ THE NEXT QUESTION AND ANSWER.

10 **MR. HUMMEL:** SURE.

11 **"QUESTION:** HAVE YOU CHECKED THE MADDEN GAMES  
12 FOR VINTAGE TEAMS LIKE THE '88 49ERS, OR THE  
13 '84 49ERS OR THE '68 GREENBAY PACKERS, ET  
14 CETERA?

15 **"ANSWER:** NOT IN THE CONTEXT OF THIS CASE. I  
16 DID WORK ON A CASE IN WHICH GAME MACHINES  
17 WERE AN ISSUE SEVERAL YEARS AGO. AND ONE OF  
18 MY DIFFICULT DUTIES WAS TO PLAY THE SAME  
19 MADDEN GAMES ON ALTERING MACHINES TO SEE IF  
20 IT MATTERED. BUT I DON'T REMEMBER MUCH ABOUT  
21 IT, AND I DIDN'T STUDY IT IN THE CASE OF THIS  
22 TEAM, THIS CASE.

23 **"QUESTION:** SO AS YOU SIT HERE NOW YOU DON'T  
24 BELIEVE THAT YOU CAN FIND VINTAGE TEAMS ON  
25 THE -- IN THE MADDEN GAMES?

1           **"THE WITNESS:** I DIDN'T -- THAT'S NOT WHAT I SAID.  
2           WHAT I SAID IS THERE IS NO SERIOUS AMOUNT OF REVENUE  
3           COMING IN FROM THAT."

4           THEN, IT GOES ON.

5           **THE COURT:** ALL RIGHT. I'LL LET YOU STOP THERE,  
6           UNLESS COUNSEL WANTS YOU TO CONTINUE.

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

8           **THE COURT:** ALL RIGHT. WE WILL STOP THERE.  
9           NEXT QUESTION.

10          **BY MR. HUMMEL:**

11          **Q.** IN CONNECTION WITH YOUR WORK ON THIS CASE, SIR, AS AN  
12          ECONOMIST, DID YOU EXAMINE THE OUTCOMES OF LICENSING MARKET  
13          CONDUCT IN TERMS OF WHETHER RETIRED PLAYERS COMMAND SIGNIFICANT  
14          LICENSING REVENUE?

15          **A.** I ANALYZED -- YES, IN THE CONTEXT OF THE PLAYERS INC  
16          LICENSING, YES.

17          **Q.** AS AN ECONOMIST, IS IT IMPORTANT TO STUDY REAL WORLD  
18          MARKETPLACE BEHAVIOR IN ORDER TO DRAW CONCLUSIONS ABOUT THE  
19          VALUE OF THE PRODUCT BEING MARKETED?

20          **A.** OF COURSE.

21          **Q.** OKAY. AND YET YOU COME TO COURT, CAME TO YOUR DEPOSITION,  
22          YOU OFFERED A REPORT IGNORING THE SINGLE MOST IMPORTANT  
23          LICENSEE, EA, WHICH HAD VINTAGE TEAMS IN THE MADDEN GAME THAT  
24          YOU YOURSELF SAID WOULD HAVE PROVIDED A SIGNIFICANT OPPORTUNITY  
25          FOR LICENSING REVENUE TO THE GLA CLASS, TRUE?

1           **MR. KESSLER:** YOUR HONOR, I'M GOING TO OBJECT NOW.  
2 HE KEEPS SAYING THAT THE SCRAMBLING IS THE SINGLE MOST  
3 IMPORTANT ISSUE IN THE CASE.

4           **MR. HUMMEL:** I DIDN'T SAY THAT.

5           **MR. KESSLER:** YOUR HONOR HAS GIVEN INSTRUCTIONS --

6           **THE COURT:** HE DIDN'T SAY THAT THIS TIME. HE SAID EA  
7 WAS THE SINGLE MOST IMPORTANT LICENSEE, BUT HE DID NOT SAY THAT  
8 SCRAMBLING WAS THE SINGLE MOST IMPORTANT -- I'M GOING TO  
9 ALLOW -- WHY CAN'T YOU ASK THE QUESTION BEING NOT SO  
10 ARGUMENTATIVE?

11           **MR. HUMMEL:** BECAUSE WE HAVE AN ARGUMENT, YOUR HONOR.

12           **THE COURT:** WELL, I'M GOING TO SUSTAIN THE OBJECTION,  
13 THEN.

14           **MR. HUMMEL:** ALL RIGHT.

15           **THE COURT:** YOU CAN RE-ASK THAT QUESTION IN A MUCH  
16 LESS ARGUMENTATIVE WAY TO MAKE THE SAME POINT, AND YET YOU'VE  
17 LARDED IT IN WITH A LOT OF ARGUMENT THAT OUGHT TO BE SAVED FOR  
18 THE CLOSING ARGUMENT.

19           I'M SUSTAINING THE OBJECTION.

20           ALTHOUGH MR. KESSLER WAS MISTAKEN ON THE POINT THAT  
21 HE WAS MAKING, THIS QUESTION IS STILL VERY ARGUMENTATIVE.

22 **BY MR. HUMMEL:**

23 **Q.** ISN'T IT TRUE, SIR, THAT AS AN ECONOMIST YOU WOULD  
24 ACTUALLY WANT TO KNOW WHAT PRODUCTS ARE OUT THERE THAT COULD  
25 HAVE UTILIZED THE GLA CLASS IN CONNECTION WITH RENDERING AN

1 OPINION THAT YOU THINK THE GLA CLASS IS WORTHLESS?

2 **A.** OF COURSE. AND THE EA CONTRACT IS ONE THAT, IN PRINCIPLE,  
3 COULD HAVE USED RETIRED PLAYERS.

4 **Q.** BUT YOU DIDN'T LOOK AT THE GAME, DID YOU?

5 **A.** I DIDN'T PLAY THE GAME. I'VE LOOKED AT THE GAME. I KNOW  
6 WHAT THE GAME IS ABOUT. BUT I --

7 **Q.** DO YOU KNOW HOW MANY VINTAGE TEAMS ARE IN THE GAME? YES  
8 OR NO?

9 **A.** I DON'T -- OF COURSE I DON'T KNOW HOW MANY VINTAGE TEAMS.  
10 I KNOW THERE ARE VINTAGE TEAMS IN THE GAME, BUT I DON'T KNOW  
11 HOW MANY THERE ARE.

12 **Q.** HAVE YOU STUDIED THAT?

13 **A.** NO, BECAUSE ALL I KNOW IS THE IMAGES OF THE PLAYERS ARE  
14 NOT THERE, EXCEPT FOR A FEW STARS.

15 **Q.** ALL RIGHT. LET'S TALK ABOUT OTHER MARKET OUTCOMES THAT  
16 YOU SAID WERE IMPORTANT TO CONSIDER.

17 DID YOU GO THROUGH TO DETERMINE WHETHER THE  
18 HUNDRED-PLUS LICENSEES OF THE DEFENDANTS UTILIZE ACTIVE PLAYERS  
19 IN THE PRODUCTS THAT THEY MARKET AND SELL?

20 **A.** I DON'T FULLY UNDERSTAND THE QUESTION. I'M SURE THEY USE  
21 ACTIVE PLAYERS. I DON'T UNDERSTAND WHAT YOU'RE AFTER.

22 **Q.** DO YOU KNOW IF ANY OF THESE COMPANIES THAT LICENSE  
23 PRODUCTS FROM THE NFLPA ACTUALLY UTILIZE RETIRED PLAYERS IN THE  
24 PRODUCTS THEY SELL?

25 **A.** SOME OF THEM HAVE RETIRED PLAYER LICENSES, YES. BOTH

1 RETIRED AND ACTIVE PLAYER LICENSES.

2 **Q.** AND YOU TOLD ME BEFORE, SIR, THAT IT'S IMPORTANT TO YOU AS  
3 AN ECONOMIST TO STUDY REAL WORLD MARKETPLACE BEHAVIOR IN ORDER  
4 TO DRAW CONCLUSIONS ABOUT THE VALUE OF THE PRODUCT BEING  
5 MARKETED, CORRECT?

6 **A.** I SAID THAT, YES.

7 **Q.** NOW, DID YOU LOOK AT, FOR EXAMPLE, ONE OF THE NFL'S  
8 LICENSEES NAMED ACTIVA? DID YOU EXAMINE WHAT THEY, IN FACT,  
9 LICENSED FROM THE NFLPA?

10 **A.** I DID LOOK AT ALL THE LICENSES. I DON'T REMEMBER VERY  
11 MANY OF THEM AS TO WHAT SPECIFICALLY THEY LICENSED. I CAN'T  
12 GIVE YOU A LICENSEE-BY-LICENSEE BREAKDOWN OF WHAT PRODUCTS THEY  
13 SELL, NO.

14 **Q.** MY QUESTION IS THIS: DID YOU LOOK AT ACTIVA TO DETERMINE  
15 WHETHER THEY USED RETIRED PLAYERS IN THEIR PRODUCTS?

16 **A.** I DO NOT RECALL WHETHER THEY WERE ONE THAT USED BOTH  
17 ACTIVE AND RETIRED PLAYERS OR NOT.

18 **Q.** WHAT ABOUT ATARI? DO YOU KNOW WHETHER THEY USED ACTIVE  
19 AND RETIRED PLAYERS?

20 **A.** I DIDN'T MEMORIZE THE LIST OF PEOPLE WHO USED BOTH. AND I  
21 CAN'T ANSWER THAT QUESTION FOR JUST ABOUT ANY LICENSEE.

22 **Q.** WHAT ABOUT FLEAR?

23 **A.** I DON'T REMEMBER. WELL, THEY PROBABLY USED BOTH, BUT I  
24 DON'T KNOW THAT FOR SURE.

25 **Q.** WHAT ABOUT ONFIELD APPAREL?

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

2 **Q.** YOU DON'T KNOW.

3 WHAT ABOUT A COMPANY CALLED "PLAYOFF"?

4 **A.** I DON'T REMEMBER WHETHER THEY USED BOTH.

5 **Q.** YOU DON'T KNOW.

6 WHAT ABOUT SEGA?

7 **A.** I DON'T REMEMBER WHETHER THEY USED BOTH.

8 **Q.** WHAT ABOUT TOPPS?

9 **A.** TOPPS PROBABLY USES BOTH, BUT I CAN'T -- I WOULDN'T SWEAR  
10 TO IT BECAUSE I HAVEN'T LOOKED AT THAT LICENSE IN A LONG TIME.

11 **Q.** WHAT ABOUT UPPER DECK?

12 **A.** PROBABLY, BUT I WOULDN'T WANT TO SWEAR TO IT.

13 **Q.** WHAT ABOUT YAHOO!?

14 **A.** I DON'T RECALL.

15 **Q.** WHAT ABOUT WHATIF SPORTS?

16 **A.** I DON'T RECALL.

17 **Q.** SO, IN FACT, SIR, ISN'T IT TRUE THAT YOU DIDN'T STUDY AT  
18 ALL AS AN ECONOMIST THE REAL WORLD MARKETPLACE BEHAVIOR OF THE  
19 NFLPA AND PI AS THEY WERE DEALING WITH LICENSEES IN TERMS OF  
20 WHETHER THOSE LICENSEES ACTUALLY WANTED TO LICENSE RETIRED  
21 PLAYERS?

22 **A.** THAT'S JUST NOT TRUE. THE FACT THAT I CAN'T REMEMBER  
23 WHICH LICENSES HAD WHICH PLAYERS IN THEM DOESN'T MEAN I DIDN'T  
24 READ THE LICENSES AND STUDY THEM, BECAUSE I DID.

25 **Q.** IT'S A DIFFERENT QUESTION. DID YOU LOOK AT THE PRODUCTS

1 THAT THESE LICENSEES ACTUALLY PRODUCED?

2 **A.** YES, AT THE TIME I READ THE LICENSES I KNEW WHAT THE  
3 PRODUCTS WERE. BUT I DON'T REMEMBER ON A LICENSE-BY-LICENSE  
4 BASIS WHAT THE PRODUCTS WERE.

5 **Q.** ALL RIGHT. NOW, YOU DID PREPARE A 65-PAGE REPORT IN THIS  
6 CASE, CORRECT?

7 **A.** YES.

8 **Q.** THAT WAS PREPARED BY YOU AND YOUR STAFF?

9 **A.** I HAVE NO STAFF. I DID IT ALL MYSELF.

10 **Q.** YOU WROTE THE REPORT?

11 **A.** I WROTE EVERY WORD.

12 **Q.** OKAY. AND YOU'VE BEEN PAID ABOUT \$80,000 FOR IT?

13 **A.** WELL, NOT JUST THAT. I'VE BEEN PAID A TOTAL OF 85,000 FOR  
14 EVERYTHING I'VE DONE IN THIS CASE, INCLUDING THE REPORT.

15 **Q.** AND HOW MUCH TIME DID YOU SPEND FORMULATING YOUR OPINIONS  
16 IN THIS CASE?

17 **A.** PROBABLY 60 HOURS, 50 HOURS, SOMETHING LIKE THAT.

18 **Q.** AND HAVE THERE BEEN ANY OPINIONS THAT YOU FORMED THAT YOU  
19 WERE TOLD NOT TO OFFER BY COUNSEL?

20 **A.** NO. I FORMED LOTS OF OPINIONS THAT HE DIDN'T ASK ME  
21 QUESTIONS ABOUT TODAY, BUT I'VE -- THERE'S NOTHING I'VE DONE  
22 THAT HE TOLD ME NOT TO HAVE THAT OPINION.

23 **Q.** ALL RIGHT. AND HAVE YOU INTERVIEWED, PERSONALLY, ANY OF  
24 THE LICENSEES AT ISSUE IN THIS CASE?

25 **A.** NO, I HAVEN'T.

1 Q. HAVE NOT. HAVE YOU INTERVIEWED ANY OF THE PLAYERS INC  
2 LICENSING PERSONNEL WHO WERE DEALING WITH THE LICENSEES, TO  
3 DETERMINE WHETHER THEY, IN FACT, ATTEMPTED TO, FOR EXAMPLE,  
4 LICENSE THE GLA CLASS TO ANY LICENSEE?

5 A. I WAS ON TWO CONFERENCE CALLS INVOLVING PEOPLE FROM BOTH  
6 PLAYERS INC AND THE NFLPA, ABOUT THEIR LICENSING ACTIVITIES.

7 AMONG OTHER THINGS THAT ISSUE WAS DISCUSSED.

8 Q. WHO WERE ON THOSE CALLS?

9 A. I REMEMBER MR. NAHRA WAS ON IT. I DON'T REMEMBER WHO  
10 EVERYBODY ELSE WAS.

11 Q. MR. NAHRA, HE'S A LAWYER INSIDE AT THE UNION, RIGHT?

12 A. UHM, I DON'T -- I THINK I REMEMBER HE'S A LAWYER, YES, BUT  
13 I DON'T REMEMBER WHAT HIS TITLE IS.

14 Q. WHO DID YOU TALK TO THAT WAS RESPONSIBLE FOR MARKETING THE  
15 RETIRED GLA PLAYERS?

16 A. I KNOW IT WAS A CONFERENCE CALL INVOLVING SEVERAL PEOPLE.  
17 THE PERSON I TALKED TO MOSTLY WAS MR. NAHRA.

18 Q. WHO WAS RESPONSIBLE FOR MARKETING THE RETIRED GLA PLAYERS?

19 A. I DON'T KNOW WHO WAS RESPONSIBLE FOR PARTICULAR LICENSING  
20 ACTIVITIES.

21 I WOULD NOT IMAGINE THEY SEPARATED OUT RETIRED VERSUS  
22 ACTIVE.

23 Q. THAT'S NOT MY QUESTION. DO YOU KNOW --

24 A. NO.

25 Q. -- WHO DID IT? NO.

1           SO YOU DIDN'T TALK TO THAT PERSON TO FIND OUT WHAT,  
2 IN FACT, THEY DID TO TRY TO MARKET THE GLA RETIRED PLAYERS,  
3 RIGHT?

4           **MR. KESSLER:** THAT'S ARGUMENT, YOUR HONOR.

5           **THE COURT:** NO, THIS IS A FAIR POINT OR QUESTION.  
6 GO AHEAD. PLEASE ANSWER.

7           **THE WITNESS:** I DIDN'T TALK TO ANYBODY THAT I CAN  
8 IDENTIFY BY NAME WHO MARKETED RETIRED PLAYER LICENSES.

9 **BY MR. HUMMEL:**

10 **Q.** AND IS IT FAIR TO SAY THAT WITH RESPECT TO EA, YOU DIDN'T  
11 INTERVIEW ANYONE AT EA TO FIND OUT IF, IN FACT, THEY WOULD HAVE  
12 HAD INTEREST IN LICENSING THE RIGHTS OF RETIRED NFL PLAYERS WHO  
13 SIGNED GLA'S?

14 **A.** WELL, I ALREADY KNEW ABOUT THAT FROM --

15 **Q.** THAT'S NOT MY QUESTION. DID YOU INTERVIEW THEM?

16 **A.** NO, I DIDN'T INTERVIEW THEM.

17 **Q.** YOU DIDN'T DO IT?

18 **A.** THAT'S NOT USEFUL INFORMATION.

19 **Q.** IT'S NOT USEFUL INFORMATION TO FIND OUT WHAT THE LICENSEES  
20 COULD HAVE USED?

21 **A.** NOT WHEN IT TRUMPS THINGS LIKE DEPOSITIONS AND  
22 DECLARATIONS, NO. IF YOU DON'T -- I -- IN NO CASE I'VE EVER  
23 BEEN INVOLVED WITH DID I RELY ON NONSWORN INTERVIEWS WITH  
24 PARTICIPANTS IN LITIGATION. I JUST NEVER WOULD DO THAT.

25 **Q.** OKAY. NOTHING PRECLUDED YOU FROM DOING THAT HERE, RIGHT?

1 **A.** NO, NOBODY PREVENTED ME FROM DOING IT. BUT AS MY STANDARD  
2 PRACTICE, I JUST DON'T ASK PARTIES WHO HAVE AN INTEREST IN A  
3 CASE WHAT THEIR VIEWS OF THE CASE ARE. I JUST DON'T DO THAT.

4 **Q.** IN YOUR REVIEW OF THE EVIDENCE IN THIS CASE, SIR, TO FORM  
5 THE OPINIONS THAT YOU HAVE EXPRESSED, HAVE YOU SEEN ANY  
6 EVIDENCE THAT PLAYERS INC ACTUALLY PROVIDED A LIST OF THE  
7 RETIRED NFL PLAYERS WHO SIGNED GLA'S TO ANY LICENSEE?

8 **A.** NO. THEY HAD SUCH A LIST, BUT I DON'T KNOW THAT THEY EVER  
9 GAVE IT TO ANYBODY.

10 **Q.** HAVE YOU SEEN THE LIST?

11 **A.** IT'S IN MY REPORT SO, OBVIOUSLY, YES.

12 **Q.** YOU HAVE A LIST THAT WAS PREPARED IN THE CONTEXT OF THIS  
13 LITIGATION. HAVE YOU SEEN A LIST THAT WAS USED, THAT YOU KNOW  
14 WAS USED BY PI, PLAYERS INC, IN CONNECTION WITH ATTEMPTING TO  
15 MARKET THOSE PLAYERS TO LICENSEES?

16 **MR. KESSLER:** AGAIN, YOUR HONOR, THIS IS -- NOW HE'S  
17 TRYING TO GET FACT TESTIMONY FROM THIS WITNESS. HAS NOTHING TO  
18 DO WITH HIS OPINIONS THAT HAVE BEEN EXPRESSED. IT'S CERTAINLY  
19 BEYOND THE SCOPE.

20 **THE COURT:** WELL, YOU WENT BEYOND THE SCOPE ON THEIR  
21 EXPERTS. THIS IS -- IT'S UP TO THE JURY TO DECIDE HOW MUCH  
22 WEIGHT TO GIVE IT, BUT THIS IS FAIR CROSS EXAMINATION TO TEST  
23 WHAT THE EXPERT DID OR DID NOT RELY UPON.

24 OVERRULED.

25 SO ASK THE QUESTION AGAIN.

1 **BY MR. HUMMEL:**

2 **Q.** HAVE YOU SEEN SUCH A LIST THAT WAS ACTUALLY USED BY  
3 PLAYERS INC IN CONNECTION WITH ATTEMPTING TO MARKET THE RETIRED  
4 PLAYER GROUP RIGHTS?

5 **A.** THE QUESTION HAS TWO PARTS. HAVE I SEEN SUCH A LIST ON A  
6 YEAR-BY-YEAR BASIS OF WHO THE PEOPLE ARE WHO SIGNED GLA'S? THE  
7 ANSWER TO THAT IS: YES.

8 THE SECOND PART OF THE QUESTION IS: WAS THAT LIST  
9 ACTUALLY USED TO TRY TO MARKET IT?

10 THE ANSWER TO THAT IS: I DON'T KNOW.

11 **Q.** YOU DON'T KNOW IF YOU'VE SEEN IT OR NOT?

12 **A.** NO, I DON'T KNOW IF IT WAS USED. I'VE SEEN SUCH LISTS,  
13 BUT I DON'T KNOW IF THAT WAS THE REASON FOR THE LISTS. I DON'T  
14 KNOW IF THAT'S WHAT THEIR USE WAS FOR.

15 **Q.** SO YOU THOUGHT, DID YOU NOT, AT THE TIME THAT YOU PREPARED  
16 YOUR REPORT, AND THE TIME THAT YOU GAVE YOUR DEPOSITION, THAT  
17 THIS IDEA OF A GAME THAT WOULD UTILIZE HISTORIC TEAMS WAS SOME  
18 KIND OF UNREALIZED HOPE; IS THAT CORRECT? ISN'T THAT WHAT YOU  
19 TESTIFIED?

20 **A.** AS A SEPARATE FREESTANDING GAME, YES. I THOUGHT I WAS  
21 ANSWERING QUESTIONS ABOUT A FREESTANDING GAME.

22 **Q.** THAT'S WHAT YOU THOUGHT? SO YOU MISINTERPRETED THE  
23 QUESTION OR YOU REALLY DIDN'T KNOW?

24 **A.** THE QUESTION ACTUALLY WAS THAT. BUT THAT'S OKAY. I MEAN,  
25 IT DOESN'T MATTER. WHAT I THOUGHT WE WERE TALKING ABOUT WAS

1 SOMETHING LIKE A HISTORIC -- IT'S SORT OF LIKE THE NFL CLASSICS  
2 TELEVISION PROGRAM. I THOUGHT WE WERE TALKING ABOUT A GAME  
3 THAT WOULD FEATURE CLASSIC TEAMS AS THE THING THE GAME HAD HAD.

4 OBVIOUSLY, THERE'S CLASSIC TEAMS IN MADDEN FOOTBALL,  
5 AS WELL. THAT'S WHAT I THOUGHT. I THOUGHT I WAS TALKING ABOUT  
6 THE FIRST AND NOT THE SECOND.

7 **Q.** FROM AN ECONOMIC PERSPECTIVE, IF PLAYERS INC, IN FACT, HAD  
8 THE BEST INTERESTS OF THE CLASS OF RETIRED GLA MEMBERS AT  
9 HEART, WOULD YOU HAVE EXPECTED THAT PLAYERS INC COULD HAVE  
10 OBTAINED SIGNIFICANT LICENSING REVENUES FOR THOSE RETIRED  
11 PLAYERS FROM EA?

12 **MR. KESSLER:** I'M GOING TO OBJECT TO THE FORM OF THAT  
13 QUESTION, YOUR HONOR. WHAT DOES IT HAVE TO DO WITH ECONOMIC  
14 EXPERT TESTIMONY?

15 **THE COURT:** OVERRULED.

16 PLEASE ANSWER.

17 **THE WITNESS:** I THINK THE TEAMS ARE VALUABLE AND CAN  
18 GET REVENUES. BUT THE IMAGES OF MOST OF THE PLAYERS I DO NOT  
19 THINK ARE VALUABLE AND CAN GENERATE REVENUES.

20 **BY MR. HUMMEL:**

21 **Q.** LET'S TALK ABOUT THE ALLOCATION OF THE REVENUES, LICENSING  
22 REVENUES THAT CAME IN --

23 **A.** YES.

24 **Q.** -- FROM THE LICENSEES, OKAY?

25 **A.** YES.

1 Q. AND IS IT TRUE THAT YOU'RE NOT OFFERING A SEPARATE  
2 ASSESSMENT OF WHETHER THAT ALLOCATION WAS FAIR OR APPROPRIATE,  
3 CORRECT?

4 A. I'M NOT HERE TO TESTIFY ABOUT FAIRNESS.

5 Q. ALL RIGHT. YOU DO KNOW THAT THAT ALLOCATION THAT WAS SET  
6 UP, WHERE THE PLAYERS GOT 37 PERCENT AND THE UNION AND PI GOT A  
7 COMBINED 63 PERCENT. YOU KNOW THAT WAS REVIEWED BY A COMPANY  
8 CALLED DUFF & PHELPS BACK IN 1995, CORRECT? YOU'VE SEEN THAT  
9 REPORT?

10 A. YES, I HAVE.

11 Q. AND DID YOU READ IT?

12 A. I DID, BUT I DON'T REMEMBER TODAY WHAT'S IN IT.

13 Q. ALL RIGHT. YOU LISTED IT AS ONE OF THE DOCUMENTS YOU  
14 CONSIDERED IN CONNECTION WITH YOUR REPORT.

15 A. THAT'S RIGHT.

16 Q. SO LET ME ASK YOU THIS: DID YOU UNDERSTAND WHEN YOU READ  
17 THIS THAT THE BASIS OF THE DUFF & PHELPS REPORT WAS THAT THE  
18 PLAYERS ON THE ONE HAND AND THE UNION ON THE OTHER HAND HAD  
19 DECIDED THAT THIS WOULD BE AN ALLOCATION, CORRECT?

20 A. YES, THAT'S RIGHT.

21 Q. OKAY. AND YOU UNDERSTOOD, DID YOU NOT, THAT THAT  
22 ALLOCATION WAS DECIDED BETWEEN PI, PLAYERS INC, ON THE ONE  
23 HAND, AND THE UNION, THE NFLPA ON THE OTHER, CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND DID YOU UNDERSTAND THAT THE DUFF & PHELPS REPORT, THE

1 BASIS OF THE DUFF & PHELPS BLESSING OF THIS IN 1995 --  
2 WITHDRAWN.

3 LET ME ASK YOU THIS: YOU DO KNOW THAT THIS REPORT  
4 THAT WAS PREPARED IN 1995 WAS NEVER UPDATED. THEY NEVER DID  
5 ANOTHER FAIRNESS REVIEW OF THIS --

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

7 **BY MR. HUMMEL:**

8 **Q.** -- CORRECT?

9 **MR. KESSLER:** -- I'M GOING TO OBJECT BECAUSE THEY  
10 DIDN'T DISCLOSE THIS DOCUMENT FOR HIS EXAMINATION PURSUANT TO  
11 YOUR HONOR'S RULES AT ALL FOR THIS WITNESS.

12 **MR. HUMMEL:** I HAVEN'T SHOWN HIM THE DOCUMENT. I'M  
13 NOT USING THE DOCUMENT.

14 **MR. KESSLER:** I DON'T THINK YOU CAN EVADE YOUR  
15 HONOR'S RULES BY WAVING THE DOCUMENT, DISCUSSING THE DOCUMENT  
16 AND SAYING YOU ARE NOT DISPLAYING IT.

17 I THINK YOUR HONOR'S RULES ARE VERY CLEAR HERE. AND  
18 IF I'M NOT GOING TO BE PERMITTED AT MR. HUMMEL'S OBJECTIONS TO  
19 SHOW CERTAIN THINGS, I DON'T THINK HE SHOULD BE PERMITTED TO  
20 VIOLATE YOUR HONOR'S RULES ON THIS.

21 **THE COURT:** WELL, YOU -- IS THAT A DOCUMENT THAT HE  
22 SIGNED?

23 **MR. HUMMEL:** NO.

24 **THE COURT:** WELL, THEN, IT'S NOT GOING TO BE PROPER  
25 IMPEACHMENT THEN. SO --

1           **MR. HUMMEL:** IT'S A DOCUMENT THAT HE CONSIDERED IN  
2 CONNECTION WITH FORMULATING HIS OPINION, YOUR HONOR. HE RELIED  
3 ON IT IN HIS REPORT.

4           **THE COURT:** WELL, LOOK, ARE YOU TRYING TO OFFER IT  
5 INTO EVIDENCE?

6           **MR. HUMMEL:** IT'S IN EVIDENCE.

7           **MR. KESSLER:** MY OBJECTION, YOUR HONOR, IS NOT THAT  
8 IT'S --

9           **MR. HUMMEL:** IT'S TRIAL EXHIBIT 93.

10          **MR. KESSLER:** -- NOT IN EVIDENCE. MY OBJECTION IS IT  
11 WAS NOT DISCLOSED PURSUANT TO YOUR HONOR'S RULES AS TO WHAT  
12 DOCUMENTS WOULD BE USED IN EXAMINATION, AS WE'VE ALWAYS  
13 COMPLIED WITH THAT, THEY SHOULD COMPLY, AS WELL.

14          **MR. HUMMEL:** YOUR HONOR, I DIDN'T KNOW THE SCOPE OF  
15 DIRECT, AND I THINK I'M ENTITLED TO SOME LATITUDE ON  
16 IMPEACHMENT.

17          **THE COURT:** ALL RIGHT. THE OBJECTION IS OVERRULED.

18          **MR. HUMMEL:** THANK YOU, YOUR HONOR.

19 **BY MR. HUMMEL:**

20 **Q.** SO DID YOU KNOW, SIR, THAT THE BASIS OF THE DUFF & PHELPS  
21 REPORT THAT THIS WAS A FAIR ALLOCATION WAS THAT THIS WAS AN  
22 ARM'S-LENGTH TRANSACTION BETWEEN PLAYERS INC, ON THE ONE HAND,  
23 AND THE NFLPA ON THE OTHER?

24 **A.** OR THAT IT REPLICATED IT, YES.

25 **Q.** RIGHT.

1 **A.** REPLICATION, I THINK, IS THE KEY CONCEPT.

2 **Q.** OKAY. BUT YOU KNOW, IN FACT, THAT THIS TRANSACTION WAS  
3 NOTHING LIKE AN ARM'S-LENGTH TRANSACTION, CORRECT?

4 **A.** WELL, PI IS WHOLLY-OWNED BY NFLPA, SO IT IS A TRANSFER  
5 WITHIN -- BETWEEN TWO DIVISIONS OF THE SAME ORGANIZATION.

6 **Q.** RIGHT. PI AND PA DON'T HAVE AN ARM'S-LENGTH RELATIONSHIP,  
7 DO THEY?

8 **A.** OF COURSE NOT.

9 **Q.** OF COURSE NOT. AND THAT'S TRUE IN CONNECTION WITH THE  
10 \$8 MILLION REALLOCATION, CORRECT? THAT WAS NOT AN ARM'S-LENGTH  
11 TRANSACTION, WAS IT?

12 **A.** NO TRANSACTION BETWEEN THE TWO OF THEM IS ARM'S LENGTH  
13 BECAUSE ONE IS OWNED BY THE OTHER.

14 **Q.** ALL RIGHT.

15 NOW, LET'S TALK ABOUT THE -- I THINK YOU MENTIONED OR  
16 YOU TALKED A LITTLE BIT ABOUT THE ANNOUNCEMENT EFFECT IN YOUR  
17 DIRECT EXAMINATION. DO YOU RECALL THAT?

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

19 **Q.** THERE WERE A NUMBER OF BENEFITS THAT WERE CONFERRED ON THE  
20 UNION AS A RESULT OF A LARGE NUMBER OF RETIRED PLAYERS SIGNING  
21 GLA'S, CORRECT?

22 **A.** I DON'T THINK THE UNION WAS THE BENEFICIARY, NO.

23 **Q.** ALL RIGHT. WHAT WERE THE PURPOSES THAT YOU CAN THINK OF  
24 THE -- FROM AN ECONOMIC PERSPECTIVE, PURPOSES OF SOLICITING ALL  
25 THESE THOUSANDS OF GLA'S?

1 **A.** I THINK THAT THE EXPECTATION WAS IT COULD BE SOMETHING TO  
2 BENEFIT THE PLAYERS, THE RETIRED PLAYERS. I THINK THAT'S THE  
3 REASON THEY DID IT, WAS TO TRY TO GENERATE SOME ADDITIONAL  
4 INCOME FOR SOME RETIRED PLAYERS.

5 **Q.** YOU THINK THE PURPOSE WAS TO BENEFIT RETIRED PLAYERS.  
6 HOW?

7 **A.** BY GENERATING A SIGNIFICANT AMOUNT OF LICENSING INCOME FOR  
8 THEM.

9 **Q.** PURPOSE WAS TO TRY TO GENERATE SIGNIFICANT LICENSING  
10 REVENUE FOR THEM; IS THAT CORRECT?

11 **A.** AS FAR AS I CAN UNDERSTAND IT, YES. THAT'S MY BELIEF.

12 **Q.** OKAY. LET ME READ --

13 **MR. HUMMEL:** PERMISSION TO READ FROM THE DEPOSITION  
14 TESTIMONY OF RICHARD BERTHELSEN, WHO IS A PARTY REPRESENTATIVE,  
15 PAGE 52, LINES 8 THROUGH 20.

16 MAY I PROCEED?

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

18 **MR. HUMMEL:** THANK YOU.

19 **"QUESTION:** DO YOU KNOW WHY THE NFLPA AND  
20 PLAYERS INC WERE SOLICITING RETIRED PLAYERS  
21 TO SIGN THESE FORMS?

22 **"ANSWER:** I'M AWARE OF WHAT WAS TOLD TO ME.

23 **"QUESTION:** WAS THAT BY DOUG ALLEN?

24 **"ANSWER:** PRIMARILY, YES.

25 **"QUESTION:** WHAT DID HE SAY ABOUT THAT?

1           **"ANSWER:** WELL, IT WAS AN EFFORT TO MAKE THE  
2           RETIRED PLAYERS' ORGANIZATION A MORE  
3           ATTRACTIVE ORGANIZATION FOR RETIRED PLAYERS  
4           TO JOIN. AND IT WAS TO GET RETIRED PLAYERS  
5           INVOLVED IN THAT ORGANIZATION AND WORKING  
6           WITH ACTIVE PLAYERS."

7 **BY MR. HUMMEL:**

8 **Q.** DID YOU CONSIDER THAT TESTIMONY --

9 **A.** YES, I READ THAT.

10 **Q.** YOU DID READ THAT?

11 **A.** RIGHT.

12 **Q.** HE DOESN'T MENTION THAT THE PURPOSE OF SOLICITING WAS TO  
13 DO ANYTHING GOOD FOR RETIRED PLAYERS, RIGHT? HE WAS TRYING TO  
14 GET THEM TO JOIN THE UNION, RIGHT?

15 **A.** RIGHT, TO JOIN THE RETIRED PLAYERS' ORGANIZATION, WHICH  
16 ITSELF IS AN ORGANIZATION TO TRY TO PROVIDE BENEFITS TO RETIRED  
17 PLAYERS.

18 **Q.** AND HE SAID IT WAS "TO GET RETIRED PLAYERS INVOLVED IN  
19 WORKING WITH ACTIVE PLAYERS," RIGHT?

20 **A.** YEAH. I -- YOU CAN READ IT ANY WAY YOU WANT. I READ THAT  
21 AS THE FOCUS OF IT WAS THE RETIRED PLAYERS. IF YOU DON'T WANT  
22 TO READ IT THAT WAY, THAT'S FINE. BUT IT SEEMED TO ME  
23 EVERYTHING WAS INVOLVED IN TRYING TO DO SOMETHING FOR RETIRED  
24 PLAYERS.

25 **Q.** WERE THERE A NUMBER OF GLA SIGNATORIES -- FOLKS WHO SIGNED

1 THE GLA -- WHO WERE NOT EVER MEMBERS OF THE NFLPA?

2 **A.** YES.

3 **Q.** DO YOU KNOW THE NUMBER?

4 **A.** I DON'T THINK YOU MEAN THAT. YOU MEAN RETIRED PLAYERS'  
5 ORGANIZATION.

6 **Q.** NO, I MEAN THE NFLPA.

7 **A.** I DON'T REMEMBER WHETHER THERE ARE PLAYERS WHO WERE NOT  
8 MEMBERS OF THE NFLPA WHEN THEY WERE ACTIVE PLAYERS. I DON'T  
9 REMEMBER THAT.

10 **Q.** YOU DO KNOW THAT RETIRED PLAYERS CAN JOIN THE NFLPA,  
11 RIGHT?

12 **A.** THEY CAN JOIN THE RETIRED PLAYERS PART OF THE NFLPA, YES.

13 **Q.** OKAY. AND THEY PAY DUES FOR THAT, RIGHT?

14 **A.** THEY PAY MUCH LESS DUES. THEY PAY A MUCH LOWER DUE, YEAH.

15 **Q.** FINE. BUT THEY DON'T VOTE, CORRECT?

16 **A.** THEY DON'T VOTE IN THE ACTIVE PLAYER ORGANIZATION. THEY  
17 CAN -- THEY CAN RUN THEIR OWN BRANCH, WHICH IS CALLED "THE  
18 RETIRED PLAYERS ORGANIZATION."

19 BUT THAT'S NOT BEING A MEMBER OF THE NFLPA; THAT'S  
20 BEING A MEMBER OF THE RETIRED PLAYERS' ORGANIZATION.

21 **Q.** AND ISN'T IT TRUE THAT THE GLA CAN SERVE -- HAVING A  
22 NUMBER OF GLA'S CAN SERVE TO REDUCE TRANSACTION COSTS OF  
23 GETTING PEOPLE INTO LICENSE AGREEMENTS?

24 **A.** IN PRINCIPLE IT COULD, YES. IF YOU HAD A LARGE ENOUGH  
25 GROUP OF ATTRACTIVE PLAYERS IT WOULD REDUCE THE TRANSACTION

1 COSTS.

2 **Q.** AND WHO BENEFITS FROM THAT, THE UNION OR THE PLAYERS, THE  
3 RETIRED PLAYERS?

4 **A.** I SAID IN MY EARLIER TESTIMONY IT COULD BE EITHER ONE. IT  
5 DEPENDS.

6 **Q.** AND THE NUMBER TWO PURPOSE THAT YOU'VE IDENTIFIED AS THE  
7 PURPOSE FOR SOLICITING THE GLA'S IS TO PRODUCE A LIST OF  
8 RETIRED PLAYERS THAT CAN BE SHOWN TO POTENTIAL LICENSEES AS:

9 "HERE IS THE PEOPLE THAT WE HAVE ALREADY SIGNED  
10 UP THAT WE CAN GUARANTEE YOU WILL BE PART OF THIS LICENSE  
11 UNLESS THEY HAVE A CONFLICT."

12 ISN'T THAT TRUE?

13 **A.** THAT'S RIGHT.

14 **Q.** OKAY. AND YOU DON'T KNOW -- I THINK WE'VE TALKED ABOUT  
15 THIS -- WHETHER THE UNION EVER, IN FACT, SHOWED THAT LIST TO  
16 ANY RETIREE -- TO LICENSEES, CORRECT?

17 **A.** THAT IS CORRECT. I DON'T KNOW WHETHER ANY LICENSEES EVER  
18 LOOKED AT THAT LIST.

19 **Q.** AND YOU CERTAINLY HAD AN UNDERSTANDING, SIR, THAT BY  
20 ADVERTISING PUBLICLY THE FACT THAT THE UNION REPRESENTED ALL  
21 ACTIVE PLAYERS AND THOUSANDS OF RETIRED PLAYERS, THEY WERE  
22 HOLDING THEMSELF OUT AS A ONE-STOP SHOP, CORRECT, FOR  
23 LICENSEES?

24 **A.** FOR THE LICENSEES THEY HAD, YES.

25 **Q.** OKAY. AND -- WELL, AND FOR OTHER POTENTIAL LICENSEES,

1 TOO, RIGHT?

2 **A.** WELL, IT -- YEAH. IT TURNS OUT THAT CAME LATER. THE  
3 EXPECTATION AT THE BEGINNING, I THINK, WAS THEY WOULD HAVE MANY  
4 MORE GLA'S SIGNED THAN THEY DID. BUT THE NUMBER THEY HAD  
5 SIGNED WAS SUCH A SMALL FRACTION OF THE RETIRED PLAYERS THE  
6 MAIN ISSUE HAD TO BE GETTING OTHER PEOPLE WHO HADN'T SIGNED  
7 THEM INTO THE DEAL.

8 **Q.** NOW, LET'S TALK ABOUT LEVERAGE. I THINK THAT'S A CONCEPT  
9 THAT YOU'RE FAMILIAR WITH AS AN ECONOMIST, RIGHT?

10 **A.** I'M FAMILIAR WITH IT AS AN ECONOMIST. I'M NOT REALLY  
11 FAMILIAR WITH IT IN THE WAY THAT DR. RASCHER USED IT, BUT I  
12 THINK I UNDERSTOOD WHAT HE MEANT.

13 **Q.** LET'S THINK ABOUT THIS. THE NFLPA AND PLAYERS INC DOES  
14 HAVE A MONOPOLY OVER ACTIVE PLAYER LICENSING RIGHTS, CORRECT?

15 **A.** IT HAS AN EXCLUSIVE LICENSE. WHETHER IT'S A MONOPOLY  
16 DEPENDS ON WHAT THE RELEVANT MARKET IS; WHETHER FOOTBALL  
17 PLAYERS CONSTITUTE A SEPARATE RELEVANT MARKET FROM OTHER  
18 PROFESSIONAL ATHLETES.

19 **Q.** FAIR ENOUGH. THE FIRST STEP YOU HAVE TO DO TO DETERMINE  
20 MARKET POWER IS TO FIND A RELEVANT GEOGRAPHIC AND PRODUCT  
21 MARKET, RIGHT?

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

23 **Q.** AND ONCE YOU DO THAT, ISN'T IT TRUE, THEN, YOU CAN ASSESS  
24 WHETHER THERE ARE REASONABLE SUBSTITUTES WITHIN A PRODUCT  
25 MARKET, RIGHT?

1 **A.** WELL, THAT'S THE WAY -- THAT'S THE WAY THAT IT'S -- THAT'S  
2 THE WAY THE LAW HAS DEFINED THE TASK OF THE ECONOMIST.  
3 CONCEPTUALLY, THAT'S NOT WHAT ECONOMISTS DO. BUT LEGALLY,  
4 THAT'S WHAT YOU DO IN A CASE, YES.

5 **Q.** OKAY. AND HERE YOU WOULD CONCEDE THAT IF -- IF ACTIVE NFL  
6 PLAYERS FOR LICENSING PURPOSES TO THIRD PARTIES IS A RELEVANT  
7 MARKET, CLEARLY THE NFLPA AND PI WOULD HAVE MARKET POWER,  
8 CORRECT?

9 **A.** IF THE MARKET FOR ACTIVE PLAYERS --

10 **Q.** RIGHT.

11 **A.** -- IS A RELEVANT MARKET, THEN THEY ARE THE ONLY  
12 PARTICIPANTS IN THAT MARKET FOR GROUP LICENSING. BUT THERE'S  
13 STILL THE DEGREE OF SUBSTITUTION BETWEEN INDIVIDUAL LICENSING  
14 AND GROUP LICENSES.

15 **Q.** FAIR ENOUGH. BUT AS FOR GROUP LICENSING, THEY HAVE  
16 EFFECTIVELY A MONOPOLY CONFERRED BY THE LICENSE AGREEMENT,  
17 CORRECT?

18 **MR. KESSLER:** OBJECTION, YOUR HONOR. HE MOVED FROM A  
19 HYPOTHETICAL TO NOW NONHYPOTHETICAL. HE'S CONFUSING THE TWO  
20 QUESTIONS.

21 **THE COURT:** TRUE. YOU DID DO THAT. PLEASE REPHRASE  
22 IT.

23 **MR. HUMMEL:** SURE.

24 **BY MR. HUMMEL:**

25 **Q.** ASSUMING THAT IT WE'VE ESTABLISHED THE RELEVANT A

1 MARKET --

2           **MR. HUMMEL:** AND, YOUR HONOR, I'D ASK THAT THAT  
3 ASSUMPTION CARRY THROUGH THESE QUESTIONS.

4 **BY MR. HUMMEL:**

5 **Q.** THAT THERE IS A RELEVANT MARKET FOR ACTIVE PLAYER  
6 LICENSING RIGHTS, OKAY?

7 **A.** YOU NEED MORE THAN THAT. YOU NEED GROUP LICENSING RIGHTS.

8 **Q.** ALL RIGHT. FOR GROUP LICENSING RIGHTS.

9           AND LET'S TALK ABOUT THAT FOR A MINUTE, ACTUALLY,  
10 BECAUSE YOU TESTIFIED AT GREAT LENGTH ABOUT THE COMBINED MONIES  
11 THAT WERE PAID TO PLAYERS OUT OF LICENSING REVENUES, CORRECT?

12 **A.** CORRECT.

13 **Q.** AND IN THAT YOU LUMP TOGETHER GROUP OR SHARED REVENUES  
14 WITH AD HOC LICENSING REVENUES, CORRECT?

15 **A.** WELL, THEY ARE ALL GROUP LICENSES. SOME ARE AD HOC AND  
16 SOME ARE SHARED.

17 **Q.** NO. JUST TALK ABOUT THE LICENSE FOR JOE MONTANA. THAT  
18 WOULD HAVE BEEN INCLUDED IN YOUR -- IN YOUR HYPOTHETICAL,  
19 RIGHT, OR IN YOUR DATA, RIGHT?

20 **A.** THAT IS PART OF A GROUP LICENSE.

21 **Q.** HOW IS IT PART OF THE GROUP LICENSE?

22 **A.** ANY LICENSE FOR THE SAME PRODUCT THAT INVOLVES SIX OR MORE  
23 PLAYERS IS A GROUP LICENSE, REGARDLESS OF WHETHER THE PLAYERS  
24 ARE PAID THE SAME OR THE PLAYERS ARE PAID DIFFERENTLY.

25           SO IN THE CASE OF THE HALL OF FAME GAME, JOE MONTANA

1 IS PART OF THAT AS PART OF A GROUP. IN THE CASE OF THE  
2 FIGURINES AND CLOTHING, JOE MONTANA IS PART OF A -- CAN BE PART  
3 OF A GROUP. BUT HE WOULD BE PAID DIFFERENT AMOUNTS IN THOSE  
4 DIFFERENCE LICENSES. AND SOME LICENSES HE WOULD BE PAID IN  
5 PROPORTION TO THE TOTAL AMOUNT OF REVENUE GENERATED FROM THE  
6 PRODUCT THAT HAD HIS NAME AND IMAGE.

7 **Q.** OKAY. SO YOU TREAT EVERYTHING AS GROUP LICENSING?

8 **A.** NOT ONLY I TREAT IT, BUT SO DOES THE NFLPA AND PLAYERS  
9 INC. BY DEFINITION, A GROUP LICENSE IS ANYTHING INVOLVING SIX  
10 OR MORE PLAYERS FOR THE SAME PRODUCT.

11 **Q.** HOW DOES THE NFLPA AND PLAYERS INC DECIDE WHAT GOES INTO  
12 THE EQUAL SHARE POOL?

13 **MR. KESSLER:** YOUR HONOR, AGAIN, I THINK WE'RE WAY  
14 BEYOND ANYTHING THAT THIS WITNESS HAS COVERED. I THINK IT'S  
15 FAR AFIELD AT THIS POINT.

16 **THE WITNESS:** I DON'T KNOW --

17 **THE COURT:** WAIT. WAIT A SECOND. WHAT IS THIS ALL  
18 LEADING UP TO?

19 **MR. HUMMEL:** HE TESTIFIED, HE GAVE A LONG  
20 EXPLANATION, YOUR HONOR, THAT THE AMOUNTS RETAINED BY THE UNION  
21 WERE WITHIN THE REALM OF REASON. AND HE SHOWED OTHER UNIONS,  
22 OTHER ENTITIES --

23 **THE COURT:** I REMEMBER ALL THAT. BUT WHAT HAS THIS  
24 LINE OF QUESTIONS GOT TO DO WITH THAT?

25 **MR. HUMMEL:** THIS LINE OF QUESTIONING, YOUR HONOR,

1 HAS SPECIFICALLY TO DO WITH HE HAS LUMPED APPLES IN WITH  
2 ORANGES; THAT THE UNION ITSELF TREATED GROUP LICENSING, SHARED  
3 REVENUES, ONE WAY, AND THEY TREATED AD HOCS ANOTHER WAY.

4 AND THIS IS NOT A CASE ABOUT AD HOCS.

5 WHAT WE'RE TALKING ABOUT IS HOW THEY DEALT WITH THE  
6 GROUP LICENSING. SO I'M ENTITLED ASK HIM WHETHER HE KNOWS IF  
7 HE HAS, IN FACT, ANALYZED APPLES AND ORANGES MIXED UP, OR  
8 WHETHER, IN FACT, HE COULD HAVE SEGREGATED THE APPLES.

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

10 **MR. HUMMEL:** THANK YOU, YOUR HONOR.

11 **THE WITNESS:** I DON'T REMEMBER THE QUESTION, SO YOU  
12 ARE GOING TO HAVE TO DO AGAIN.

13 **BY MR. HUMMEL:**

14 **Q.** IT HAD TO DO WITH APPLES, BUT I'LL TRY TO GET BACK.

15 **A.** PIPPIN OR GREEN?

16 **Q.** DO YOU KNOW HOW THE NFLPA AND PI ITSELF TREATED -- WELL,  
17 STRIKE THAT. NO. THIS WAS THE QUESTION.

18 IT WAS: HOW DID THEY DETERMINE WHAT FUNDS WENT IN  
19 THE EQUAL SHARE POOL THAT WAS DISTRIBUTED EQUALLY AMONG ALL  
20 ACTIVE PLAYERS?

21 **A.** THAT -- I DO NOT KNOW THE BASIS FOR IT IN THE SENSE OF  
22 EVER HAVING ASKED THEM OR READ A DOCUMENT, BECAUSE I DON'T  
23 THINK THAT'S WRITTEN DOWN.

24 I CAN TELL YOU WHAT I THINK HAPPENS AS AN ECONOMIST,  
25 BUT I CAN'T TELL YOU THAT I KNOW THAT ON THE BASIS OF BEING

1 TOLD THAT BY ANYBODY AT NFLPA OR HAVING READ ANY DOCUMENTS.

2 **Q.** AGAIN, ONE OF THE DOCUMENTS YOU SAID AT THE OUTSET OF THIS  
3 EXAMINATION WAS IT'S IMPORTANT TO STUDY THE REAL WORLD  
4 MARKETPLACE. IN OTHER WORDS, WHAT REALLY HAPPENED. I'M NOT  
5 INTERESTED IN THEORY.

6 I WANT TO KNOW FROM YOU IF YOU KNOW WHY THEY TREATED  
7 OR HOW THEY DECIDED THAT CERTAIN MONIES WENT INTO AN EQUAL  
8 SHARE POOL AND OTHER MONIES WERE PAID DIRECTLY TO THE PLAYERS  
9 UNDER AD HOCS. DO YOU KNOW?

10 **A.** WHAT I SAID, I WILL REPEAT, WHICH I CAN INFER IT FROM THE  
11 LICENSES. BUT I DIDN'T ASK THEM WHY THEY DID IT OR HOW THEY  
12 DID IT.

13 **Q.** OKAY. NOW, IF YOU COULD LOOK, PLEASE, AT EXHIBIT 2397.

14 **A.** OKAY.

15 **MR. HUMMEL:** COULD YOU DISPLAY 2397, PLEASE?

16 (DOCUMENT DISPLAYED.)

17 **BY MR. HUMMEL:**

18 **Q.** ALL RIGHT. SO THIS IS A DOCUMENT THAT MR. KESSLER SHOWED  
19 YOU. ISN'T IT TRUE THAT EVERY SINGLE PAYMENT ON THIS CHART  
20 REPRESENTS AN AD HOC PAYMENT TO A RETIRED PLAYER, OR IS THE SUM  
21 OF AD HOC PAYMENTS?

22 **A.** NO, THAT'S NOT CORRECT. THAT'S NOT CORRECT. I MEAN, WHAT  
23 IT -- IT'S ONLY CORRECT IF YOU DEFINE AN AD HOC AS AN AD HOC  
24 AGREEMENT A GROUP LICENSE THAT COVERS A SUBSET OF PEOPLE, AND  
25 THAT SUBSET IS TREATED EQUALLY, BUT WE STILL CALL IT "AD HOC."

1 IF YOU WANT TO CALL THAT "AD HOC," THEN EVERYTHING  
2 WOULD BE AD HOC.

3 **Q.** FAIR ENOUGH. SO UNDER THAT DEFINITION, EVERYTHING ON THIS  
4 CHART IS AD HOC, RIGHT?

5 **A.** YES.

6 **Q.** ALL RIGHT.

7 **A.** INCLUDING EQUAL SHARED AMONG THE SUBSET.

8 **Q.** IN FACT, YOU DO KNOW THAT NOT ONE PENNY, NOT ONE PENNY OF  
9 FUNDS FOR GROUP LICENSING OF THE RETIRED PLAYER CLASS WAS  
10 DISTRIBUTED EQUALLY AMONG THE CLASS, CORRECT?

11 **A.** THAT'S CORRECT. NOT A SINGLE PENNY WAS DISTRIBUTED TO ALL  
12 PEOPLE WHO HAD SIGNED A GLA.

13 **Q.** NOW, LET'S TALK ABOUT HOW THE UNION TREATED THE MONEY THAT  
14 CAME IN FROM GROUP LICENSING THAT WENT INTO THE EQUAL SHARE  
15 POOL. OKAY?

16 **A.** OKAY.

17 **Q.** ALL RIGHT? ISN'T IT TRUE THAT ALL OF THAT MONEY WAS  
18 DIVIDED EQUALLY AMONG ALL THE ACTIVE PLAYERS?

19 **A.** THAT'S NOT QUITE TRUE. ALL THE ELIGIBLE ACTIVE PLAYERS.

20 **Q.** ALL RIGHT. I WILL ADD "ALL THE ELIGIBLE ACTIVE PLAYERS."

21 BUT "ELIGIBLE" DIDN'T HAVE ANYTHING TO DO WITH THE  
22 RELATIVE VALUE OF THAT PLAYER TO THE TEAM, RIGHT?

23 **A.** THAT'S CORRECT.

24 **Q.** RIGHT.

25 **A.** IT'S SHARED EQUALLY AMONG THE ELIGIBLE PLAYERS.

1 Q. OKAY. AND SO, IN THAT SENSE, THE UNION IN HOW THEY DEALT  
2 WITH ACTIVE PLAYERS, DIDN'T TREAT THE DISTRIBUTION OF THOSE  
3 GROUP FUNDS ACCORDING TO RELATIVE WORTH. THEY DIDN'T TREAT IT  
4 LIKE PLAYERS' SALARIES, RIGHT?

5 A. WELL, YES AND NO. REMEMBER, EACH OF THESE AGREEMENTS WILL  
6 USUALLY HAVE AN AD HOC ASSOCIATED WITH IT. AGAIN, THE GROUP  
7 LICENSE WILL HAVE MULTIPLE AGREEMENTS ASSOCIATED WITH IT.

8 Q. I'M ASKING YOU A DIFFERENT QUESTION.

9 ISN'T IT TRUE THAT -- I'M JUST TALKING ABOUT THE  
10 FUNDS THAT WENT INTO THE EQUAL SHARE POOL. DO YOU UNDERSTAND  
11 ME?

12 A. YES.

13 Q. AND YOU KNOW THAT ALL OF THOSE FUNDS WERE DISTRIBUTED ON  
14 AN ANNUAL BASIS TO ALL ACTIVE PLAYERS EQUALLY, RIGHT? EACH ONE  
15 GOT AN EQUAL SHARE, CORRECT?

16 A. THAT'S TRUE. THE MONEY THAT WENT INTO THAT POOL WAS  
17 SHARED EQUALLY.

18 Q. AND THAT WAS TRUE REGARDLESS OF WHETHER THE PLAYER WAS TOM  
19 BRADY, THE MOST FAMOUS QUARTERBACK IN THE NFL TODAY, ALTHOUGH  
20 HE'S INJURED THIS YEAR, OR THE THIRD STRING LINEMAN FOR THE  
21 PHOENIX CARDINALS, CORRECT?

22 A. THAT'S CORRECT.

23 Q. AS LONG AS THEY WERE ELIGIBLE, RIGHT?

24 A. THAT'S CORRECT.

25 Q. SO THAT THIRD STRING LINEMAN ON THE PHOENIX CARDINALS, WHO

1 MAYBE NEVER EVEN GOT IN FOR A DOWN, BUT HE WAS ON THE ACTIVE  
2 ROSTER, GOT AN EQUAL SHARE. HE GOT THE SAME AS TOM BRADY,  
3 RIGHT?

4 **A.** FROM THAT PART --

5 **Q.** FROM THAT POOL.

6 **A.** -- OF THE GROUP LICENSES, RIGHT.

7 **Q.** SO AS AN ECONOMIST, HOW DO YOU EXPLAIN THAT?

8 **A.** I EXPLAIN THAT THE WAY THAT WE WERE TALKING ABOUT EARLIER,  
9 ABOUT TEAMS, COMPLETE TEAMS HAVING VALUE TO EA IN THEIR GAME,  
10 THAT AS I RECALL YOU READ, I THINK, FROM MY DEPOSITION THAT  
11 EXPLANATION OF HOW THE REASON THAT EA CAN SELL MADDEN NFL  
12 FOOTBALL EVERY SINGLE YEAR TO THE SAME PEOPLE IS BECAUSE THE  
13 CAST OF CHARACTERS CHANGES.

14 AND THE WAY THE GAME WORKS, THE IMAGE OF EVERY SINGLE  
15 PLAYER IS USED IN THE GAME. AND THAT HAS MARKETING VALUE  
16 BECAUSE THE PLAYERS CHANGE. AND SO THEY'RE WILLING TO PAY FOR  
17 ALL THE PLAYERS THAT ARE ON THE ROSTER, NOT JUST THE STARS.

18 **Q.** SO FOR THAT REASON YOU CERTAINLY ACCEPT THE CONCEPT THAT  
19 HISTORICALLY-SUCCESSFUL TEAMS BUILD SUPPORT FOR THE LEAGUE,  
20 CORRECT?

21 **A.** WHAT DID I SAY THAT CAUSED YOU TO SAY THAT? I DON'T  
22 UNDERSTAND THE QUESTION.

23 **Q.** WHAT YOU WERE SAYING WAS THERE'S A TEAM CONCEPT. THERE'S  
24 A TEAM CONCEPT. THAT IS, YOU CAN'T HAVE A VALUE BUILT UP OVER  
25 TIME UNLESS YOU HAVE THE WHOLE TEAM; IS THAT RIGHT? THAT'S THE

1 BASIS OF THE EQUAL SHARE DIVISION.

2 **A.** THAT WAS THE BASIS OF THE EQUAL SHARE OF A CERTAIN AMOUNT  
3 OF THE REVENUE, YES. BUT IT -- NOTHING ABOUT THE EA STRATEGY  
4 OF SELLING THE SAME GAME TO THE SAME PERSON YEAR AFTER YEAR  
5 PERTAINS TO THE HISTORICAL TEAMS, BECAUSE THEIR ROSTERS DON'T  
6 CHANGE.

7 SO THERE WOULD BE NO INCENTIVE FOR EA TO BUILD A GAME  
8 WITH ALL THE IMAGES OF ALL 52 PLAYERS ON IT, BECAUSE THAT  
9 WOULDN'T CHANGE FROM YEAR TO YEAR. IT WOULDN'T ENABLE THEM --  
10 IT WOULDN'T GIVE THEM ANY LEVERAGE TO SELL THE GAME OVER AND  
11 OVER AND OVER AGAIN TO THE SAME PERSON.

12 **Q.** DO YOU AGREE THAT HISTORICALLY SUCCESSFUL TEAMS BUILD  
13 SUPPORT FOR THE LEAGUE?

14 **A.** I BELIEVE THAT HISTORICAL EVENTS HAVE BUILT SUPPORT FOR  
15 THE LEAGUE. I BELIEVE THAT HISTORICAL HIGH-QUALITY TEAMS HAVE  
16 BUILT SUCCESS FOR THAT TEAM, YES.

17 **Q.** DO YOU AGREE THAT THE PERFORMANCE OF EXTREMELY GOOD  
18 PLAYERS AND EXTREMELY GOOD TEAMS IS BENEFICIAL TO BUILDING FAN  
19 SUPPORT FOR THE LEAGUE?

20 **A.** I BELIEVE THAT FAN LOYALTY IS, IN FACT, DETERMINED IN PART  
21 BY THE HISTORY OF A PARTICULAR TEAM. THE FAN LOYALTY TO THAT  
22 TEAM IS DETERMINED, IN PART, BY THE HISTORICAL PERFORMANCE OF  
23 THAT TEAM.

24 **Q.** AND IN TERMS OF THE ALLOCATION OF THE EQUAL SHARE POOL  
25 WHERE BEFORE IT EVEN GETS TO THE EQUAL SHARE POOL, THE UNION

1 AND PI TAKE OUT 63 TO 69 PERCENT, YOU'RE AWARE THAT THEY DO  
2 THAT, RIGHT?

3 **A.** YES.

4 **Q.** OKAY. THAT IS NOT -- NOTHING WOULD PREVENT THEM FROM  
5 DOING SOMETHING DIFFERENT. IN OTHER WORDS, THAT'S A POLICY  
6 DECISION THAT THEY'VE MADE, CORRECT?

7 **A.** IT IS A POLICY DECISION BY THE NFLPA HOW TO DIVIDE THE  
8 REVENUES FROM LICENSING THAT GO INTO THE GROUP LICENSING EQUAL  
9 SHARE POOL.

10 **Q.** NOW, LET'S GO BACK TO THIS CONCEPT -- AND I'LL TRY TO END  
11 WITH THIS -- THAT THE NFLPA HAS MARKET POWER OVER ACTIVE PLAYER  
12 LICENSING. DO YOU RECALL WE WERE TALKING ABOUT BEFORE?

13 **A.** YES.

14 **Q.** ALL RIGHT. NOW, WAS THERE ANYTHING TO PREVENT THE NFLPA  
15 FROM USING THE LEVERAGE THEY HAD AS A RESULT OF THAT MARKET  
16 POWER TO ATTEMPT TO HAVE LICENSEES TAKE THE RIGHTS FOR THE GLA  
17 RETIRED CLASS MEMBERS?

18 **A.** MARKET POWER OVER THE RETIRED PLAYERS?

19 **Q.** NO, SIR. LET ME GIVE YOU THIS HYPOTHETICAL. LET'S ASSUME  
20 EA HYPOTHETICALLY COMES TO THE NFLPA AND SAYS:

21 "WE WANT A LICENSE TO ALL ACTIVE PLAYERS,"  
22 RIGHT? WHERE ELSE CAN THEY GO FOR THAT?

23 **A.** IF THEY WANT TO DO A GROUP LICENSE FOR A SINGLE PRODUCT,  
24 THEY HAVE TO GO TO NFLPI.

25 **Q.** SO NFLPI HAS LEVERAGE OVER THEM. THEY HAVE TO COME TO

1 THEM, RIGHT?

2 **A.** WELL, I CAN THINK OF A WAY IN WHICH THEY COULD GET AROUND  
3 THAT.

4 **Q.** I COULD, TOO. BUT, THEORETICALLY, EA DID COME TO THEM,  
5 RIGHT?

6 **A.** THEY DID COME TO THEM, BUT THAT DOESN'T PROVE THEY HAVE  
7 MARKET POWER, BECAUSE I CAN THINK OF AN OBVIOUS WAY TO GET  
8 AROUND THAT.

9 **Q.** WHAT'S THAT?

10 **A.** THE OBVIOUS WAY IS THE EXACT SAME WAY THEY DO IT WITH  
11 HISTORICAL TEAMS, WHICH IS MAKE A LICENSE WITH THE NFL FOR USE  
12 OF THE TEAM LOGOS; SIGN INDIVIDUAL LICENSES WITH THREE OR FOUR  
13 STAR PLAYERS ON EACH TEAM; AND SCRAMBLE EVERYBODY ELSE. AND  
14 THEN, THEY DON'T HAVE TO DEAL WITH PLAYERS INC OR THE NFLPA.

15 **Q.** AND YOU THINK THAT WOULD HAVE BEEN RATIONAL FOR EA TO DO?

16 **A.** I DON'T KNOW. I DON'T RUN EA.

17 BUT THE ISSUE OF MARKET POWER IS ABOUT WHAT THE  
18 SUBSTITUTES ARE.

19 **Q.** RIGHT.

20 **A.** AND AT SOME PRICE THAT PI WOULD CHARGE, IT WOULD BE  
21 SUFFICIENTLY HIGH THAT IT WOULD BE CHEAPER TO DO IT THE OTHER  
22 WAY.

23 I HAVEN'T STUDIED THE ISSUE, NOR HAS DR. RASCHER, OF  
24 WHETHER INDIVIDUAL LICENSES ARE IN THE SAME RELEVANT MARKET AS  
25 GROUP LICENSES. BUT I'VE RAISED THE ISSUE FOR YOU THAT

1 SOMEBODY WOULD HAVE TO STUDY IN ORDER TO REACH THE CONCLUSION  
2 THAT THEY HAD MARKET POWER OVER ON -- ON THE LICENSING OF  
3 ACTIVE PLAYERS.

4 **Q.** WHAT WOULD IT INDICATE TO YOU THAT EA, WHEN THEY WERE  
5 OBTAINING A NON-EXCLUSIVE LICENSE TO GROUP PLAYER RIGHTS FROM  
6 THE NFLPA, PAID THEM \$500,000 A YEAR, AND WHEN THEY GOT AN  
7 EXCLUSIVE LICENSE TO THAT SAME GROUP THEY PAID THEM \$25 MILLION  
8 A YEAR?

9 **A.** WHAT THEY WERE BUYING WAS A MONOPOLY IN THE MARKET FOR  
10 VIDEO GAMES INVOLVING NFL TEAMS. THAT'S WHY THEY PAID MORE FOR  
11 IT.

12 **Q.** AND WAS THERE ANYTHING TO PREVENT -- GIVEN THE VALUE THAT  
13 THEY WERE GOING TO PLACE ON THAT RIGHT TO HAVE A MONOPOLY, WAS  
14 THERE ANYTHING TO PREVENT THEM FROM USING THE NFLPA'S POWER IN  
15 CONNECTION WITH HAVING ALL THOSE ACTIVE PLAYERS UNDER LICENSE  
16 TO SAY:

17 "HEY, TAKE OUR GUYS. TAKE THE GLA'S GUYS"?

18 **MR. KESSLER:** YOUR HONOR, I'M GOING TO OBJECT. THIS  
19 HAS ANYTHING TO DO WITH THE GLA IN THIS CASE. THIS IS NOW  
20 ARGUMENT OF COUNSEL ABOUT ISSUES THAT ARE SO FAR AFIELD, YOUR  
21 HONOR, AND I WOULD OBJECT.

22 **BY MR. HUMMEL:**

23 **Q.** THAT'S WHAT DR. RASCHER MEANT BY LEVERAGING, SIR.

24 **THE COURT:** OVERRULED. IF YOU UNDERSTAND THE  
25 QUESTION, PLEASE ANSWER.

1           **THE WITNESS:** I HAVE NO IDEA HOW YOU CAN GET FROM THE  
2 GLA'S THAT DIDN'T COVER MOST OF THE STAR PLAYERS, TO THE NOTION  
3 THAT NFLPI WAS EXERCISING SOME SORT OF MARKET POWER IN THE  
4 MARKET FOR RETIRED PLAYER RIGHTS.

5           **THE COURT:** THAT'S NOT QUITE COUNSEL'S QUESTION.  
6 HE'S ASKING THIS QUESTION.

7           **THE WITNESS:** OKAY.

8           **THE COURT:** WHAT WOULD HAVE BEEN THE OUTCOME IF  
9 PLAYERS INC HAD SAID TO EA:

10                   "YOU'RE NOT GOING TO GET EVEN OUR ACTIVE PLAYERS  
11 UNLESS YOU TAKE ALL THE GLA RETIRED PLAYERS."

12                   OR, FIRST, COULD THEY HAVE SAID THAT?

13           **THE WITNESS:** WELL, LET ME SKIP THE LEGAL ISSUE ABOUT  
14 WHETHER THAT WOULD BE --

15           **THE COURT:** SKIP IT. WE'RE TALKING ABOUT AS AN  
16 ECONOMIC MATTER, COULDN'T PI HAVE DONE THAT?

17           **THE WITNESS:** IN PRINCIPLE, THEY COULD HAVE SAID IT.  
18 WHETHER IT WOULD BE HAVE BEEN EFFECTIVE AND WHETHER IT WOULD  
19 HAVE CAUSED ALL THE RETIRED PLAYERS' IMAGES TO ACTUALLY --

20           **THE COURT:** NO, JUST THE GLA RETIRED PLAYERS.

21           **THE WITNESS:** THAT'S WHAT I MEANT. I SAID THAT IF  
22 THEY HAD DONE IT, WOULD IT HAVE LED TO AN AGREEMENT IN WHICH  
23 ALL THE GLA RETIRED PLAYER IMAGES WERE ACTUALLY ACQUIRED.

24           **THE COURT:** THE FIRST QUESTION I THINK COUNSEL WAS  
25 ASKING IS: COULD, AS A MATTER OF ECONOMICS, PI COULD HAVE

1 TRIED TO SAY:

2 "NO GLA RETIRED PLAYERS, IF YOU DON'T WANT TO  
3 TAKE THEM, THEN YOU'RE NOT GOING TO GET THE ACTIVE PLAYERS,  
4 EITHER."

5 THEY COULD HAVE SAID THAT.

6 **THE WITNESS:** THEY, IN PRINCIPLE, COULD HAVE SAID  
7 THAT, YES.

8 **THE COURT:** ALL RIGHT. NOW, DO YOU HAVE AN OPINION  
9 AS TO WHAT WOULD HAVE HAPPENED IN THE EVENT THAT PI HAD TAKEN  
10 THAT TACT?

11 **THE WITNESS:** WELL, I'M SURE THAT EA WOULD HAVE  
12 RESISTED IT. BUT THE ISSUE WOULD ALL TURN ON PRICE, RIGHT? IT  
13 WOULD TURN ON WHETHER THE LICENSE FEE WOULD HAVE BEEN  
14 SUBSTANTIALLY HIGHER THAN THE CURRENT SUM OF THE ACTIVE PLAYER  
15 PLUS RETIRED PLAYER LICENSE FEES THAT EA IS ALREADY PAYING.

16 AND MY EXPECTATION IS THAT THAT SUM OF LICENSE FEES  
17 WOULDN'T HAVE BEEN ANY DIFFERENT.

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

19 **THE COURT:** NOW, I WANT TO SAY ONE ADMONITION TO THE  
20 JURY. THAT WAS THE QUESTION THAT COUNSEL, I THINK, WAS TRYING  
21 TO ASK. IN MY TRYING TO MAKE -- SPEED THIS ALONG, I DON'T WANT  
22 THERE TO BE ANY SUGGESTION IN MY QUESTION THAT PI HAD A DUTY TO  
23 DO SUCH A THING.

24 THAT'S GOING TO BE FOR YOU TO DECIDE. BUT THAT WAS  
25 THE PURPORT OF HIS QUESTION. AND IT SEEMED TO ME THAT WE

1 WEREN'T GETTING A CLEAR-CUT ANSWER.

2 YES, MR. --

3 **MR. KESSLER:** YOUR HONOR, I MUST ASK FOR THE COURT'S  
4 INSTRUCTION BECAUSE OF THE LEGAL ISSUE RAISED TO TYING ONE  
5 PRODUCT TO ANOTHER COULD VERY WELL BE ILLEGAL TYING. AND SO  
6 IT'S BEEN NOW SUGGESTED AND INJECTED INTO THIS CASE THAT  
7 WHETHER OR NOT PLAYERS ASSOCIATION SHOULD HAVE DONE SOMETHING,  
8 YOUR HONOR, THAT IT VERY WELL MAY HAVE BEEN CONTENDED BY EA TO  
9 BE A LEGAL TYING. I THINK YOU HAVE TO EXPLAIN TO THE JURY THAT  
10 IT'S VERY UNCLEAR THAT THERE WAS ANY LEGAL ABILITY FOR THE  
11 NFLPA OR PI EVEN TO MAKE SUCH A REQUEST OF THE --

12 **THE COURT:** I DON'T KNOW IF THAT'S CLEAR OR NOT. WE  
13 CAN CLEAR THAT UP IN ANY INSTRUCTIONS AT THE END.

14 WHAT I WILL SAY TO THE JURY RIGHT NOW IS THAT I'M NOT  
15 SUGGESTING IN ANY WAY THAT PI HAD SUCH A DUTY TO MAKE SUCH A  
16 TIE-IN, IF IT IS A TIE-IN. THAT WAS THE QUESTION COUNSEL WAS  
17 ASKING, AND WE WERE BEATING AROUND THE BUSH AND NOT GETTING TO  
18 AN ANSWER.

19 ALL RIGHT. ARE WE DONE?

20 **MR. HUMMEL:** I HAVE ONE MORE QUESTION THAT HAS TO DO  
21 WITH TIE-IN, JUST SO WE'RE CLEAR FROM A STANFORD ECONOMIST WHO  
22 UNDERSTANDS, I THINK, ANTITRUST LAW AT LEAST, AND HOW IT  
23 APPLIES IN ECONOMICS.

24 **BY MR. HUMMEL:**

25 **Q.** A TIE ONLY EXISTS WHEN THERE'S A COERCED SALE, RIGHT?

1 **A.** A TIE IS LIKE -- "COERCE" MEANS YOU HAVE NO ALTERNATIVE.  
2 YOU HAVE TO TAKE BOTH OR NOTHING.

3 **Q.** RIGHT.

4 **A.** AND IF -- I THOUGHT YOUR QUESTION -- THE REASON I SAID  
5 "ILLEGAL" TO BEGIN WITH --

6 **Q.** SURE.

7 **A.** -- I THOUGHT YOU WERE ASKING ME:

8 SUPPOSE THEY HAD A MONOPOLY IN THE ACTIVE PLAYER  
9 LICENSING MARKET, AND THEY TRIED TO TIE THAT TO A MARKET IN  
10 WHICH THEY DIDN'T HAVE A MONOPOLY, WHICH IS LICENSES FOR  
11 RETIRED PLAYERS, AND INSIST THAT EA, IN FACT, LICENSE BOTH.  
12 THEY LICENSE THE PRODUCT IN WHICH THEY DIDN'T HAVE A MONOPOLY  
13 IN ORDER TO GET ACCESS TO THE ONE IN WHICH THEY DID HAVE A  
14 MONOPOLY.

15 I THOUGHT THAT'S WHAT YOUR QUESTION WAS ASKING ME.  
16 AND THAT'S WHY I WAS RELUCTANT TO SAY:

17 OH, YEAH, THEY COULD HAVE DONE THAT, BECAUSE I  
18 THINK THAT'S PROBABLY ILLEGAL.

19 **Q.** WELL, YOU DO? BUT DOESN'T THAT DEPEND ON WHETHER THERE  
20 ARE TWO PRODUCTS OR ONE?

21 **A.** EXACTLY.

22 **Q.** RIGHT.

23 **A.** IT DEPENDS.

24 **Q.** SO IF AS AN ECONOMIST YOU WERE TO CONCLUDE THAT THIS IS  
25 ONE PRODUCT, THIS IS THE SINGLE PRODUCT LICENSED BY THIS UNION,

1 THAT THEY'RE SELLING TO LICENSEES, THAT'S NOT A TIE?

2 **MR. KESSLER:** NOW, YOUR HONOR --

3 **BY MR. HUMMEL:**

4 **Q.** THAT'S THE LICENSING OF A SINGLE PRODUCT, RIGHT?

5 **MR. KESSLER:** WE'RE HAVING A DEBATE WITH AN ECONOMIST  
6 ON WHETHER IT'S A LEGAL TYING, WHICH IS NOT AN ISSUE IN THIS  
7 CASE. I'M AFRAID, YOUR HONOR, WE HAVE SO STEERED THIS JURY IN  
8 THE WRONG DIRECTION --

9 **THE COURT:** ALL RIGHT. FORGET IT.

10 **MR. HUMMEL:** YOUR HONOR, I WITHDRAW THE QUESTION, AND  
11 I'M DONE.

12 **THE COURT:** LET'S NOT GO DOWN THE PATH OF WHAT THE  
13 SHERMANN ACT REQUIRES OR DOESN'T REQUIRE.

14 ALL RIGHT. ARE YOU DONE?

15 **MR. HUMMEL:** YES.

16 **THE COURT:** CAN WE FINISH THIS WITNESS?

17 **MR. KESSLER:** I'LL TRY, YOUR HONOR. I'LL TRY.

18 **THE COURT:** GO FOR IT.

19 **REDIRECT EXAMINATION**

20 **BY MR. KESSLER:**

21 **Q.** I DON'T WANT TO GO INTO THIS AREA AT ALL, EXCEPT YOU  
22 STUDIED ANTITRUST ECONOMICS, CORRECT?

23 **A.** YES, I DID.

24 **Q.** AND ARE YOU AWARE JUST THAT THERE ARE PRINCIPLES OF TYING  
25 THINGS TOGETHER IN SOME CIRCUMSTANCES WHERE IT'S ILLEGAL TO DO

1 SO, CORRECT?

2 **A.** YES, I AM.

3 **Q.** OKAY. NOW, PROFESSOR NOLL, YOU GOT ASKED ABOUT WHETHER OR  
4 NOT YOU EXAMINED WHETHER THERE WAS A DESIRE FOR EA OR OTHER  
5 LICENSEES TO USE RETIRED PLAYERS IN GROUPS.

6 DO YOU RECALL THOSE QUESTIONS?

7 **A.** YES.

8 **Q.** AND YOU GOT CRITICIZED FOR NOT INTERVIEWING THE LICENSEES?

9 **A.** YES.

10 **Q.** DID YOU READ MR. JOEL LINZNER'S DEPOSITION TESTIMONY?

11 **A.** YES.

12 **Q.** AND ARE YOU FAMILIAR WITH WHAT MR. LINZNER SAID ABOUT EA'S  
13 INTEREST IN LICENSING A WHOLE GROUP -- ALL THE RETIRED PLAYERS?

14 **A.** YES.

15 **Q.** DID HE HAVE SUCH AN INTEREST?

16 **A.** NO, HE DIDN'T HAVE ANY INTEREST IN THAT AT ALL.

17 **Q.** DID YOU REVIEW THE DEPOSITION TESTIMONY OF MR. FRISS AND  
18 MR. ZUCKER FROM TOPPS?

19 **A.** YES, I DID.

20 **Q.** AND THAT'S ANOTHER LICENSEE OF PLAYERS INC?

21 **A.** THAT'S CORRECT.

22 **Q.** DID THEY HAVE ANY INTEREST IN LICENSING THE WHOLE GROUP OF  
23 RETIRED PLAYERS WHO SIGNED GLA'S?

24 **A.** NO.

25 **MR. HUMMEL:** OBJECTION, YOUR HONOR. IT'S NOT BASED

1 ON EVIDENCE IN THE CASE.

2           **THE COURT:** I DON'T REMEMBER -- I DON'T REMEMBER  
3 TOPPS THAT THEY DIDN'T -- I REMEMBER WHAT HE SAID ABOUT WHAT HE  
4 FELT THE CONTRACT MEANT. I DON'T REMEMBER ANY TESTIMONY THAT  
5 THEY WERE OR WERE NOT INTERESTED IN HIRING -- IN GETTING THE  
6 RIGHTS TO ALL THE RETIRED PLAYERS.

7           **MR. KESSLER:** YOUR HONOR, THIS HAS TO DO --  
8           (COUNSEL AND THE COURT SPEAKING SIMULTANEOUSLY; NOT  
9           REPORTABLE.)

10          **THE COURT:** WHY DON'T YOU READ THE TRANSCRIPT?

11          **MR. KESSLER:** NO, YOUR HONOR. I CAN READ THE  
12 TRANSCRIPT, IF YOUR HONOR WANTS. BUT ALL I'M ESTABLISHING HERE  
13 IS WHAT THE WITNESS REVIEWED, BUT I'LL READ THE TRANSCRIPT IF  
14 YOUR HONOR WANTS ME TO.

15          **THE COURT:** THIS IS JUST TURNING INTO LEADING THE  
16 WITNESS BY -- IF WE HAVE TO BRING HIM BACK TOMORROW, WE'LL  
17 BRING HIM BACK TOMORROW.

18                 BUT REMEMBER HOW -- SEE, THE LAWYERS GET CARRIED  
19 AWAY, AND THEY PUT THEIR OWN LITTLE SPINS ON WHAT THE PRIOR  
20 WITNESSES SAID. MAYBE IT'S PARTLY RIGHT. MAYBE IT'S TOTALLY  
21 RIGHT. BUT THE BEST EVIDENCE IS REALLY GOING TO BE FROM THE  
22 TRANSCRIPT, ISN'T IT?

23                 SO IF YOU DON'T HAVE THAT, I'M GOING TO SUSTAIN THE  
24 OBJECTION.

25

1 **BY MR. KESSLER:**

2 **Q.** OKAY. WITHOUT IDENTIFYING SPECIFIC ONES, DID YOU REVIEW  
3 MANY DEPOSITIONS OF LICENSEES?

4 **A.** YES, I READ NUMEROUS DEPOSITIONS.

5 **Q.** WAS THAT PART OF WHAT YOU STUDIED IN YOUR REPORT?

6 **A.** THAT'S PART OF WHAT I STUDIED.

7 **Q.** AND WHAT INFORMATION DO YOU GLEAN, WITHOUT IDENTIFYING  
8 SPECIFIC ONES, ABOUT WHETHER PLAYERS INC LICENSEES HAD ANY  
9 INTEREST IN LICENSING THE ENTIRE GROUP OF RETIRED PLAYER GLA'S?

10 **A.** TO MY KNOWLEDGE, THERE IS NO DEPOSITION OR ANY DOCUMENT IN  
11 THIS CASE THAT INDICATES THAT ANY LICENSEE IS INTERESTED IN  
12 LICENSING THE ENTIRE GLA GROUP OR THE ENTIRE GROUP OF RETIRED  
13 PLAYERS.

14 NOBODY HAS EXPRESSED AN INTEREST IN THAT, TO MY  
15 KNOWLEDGE.

16 **Q.** AND IS THAT SOMETHING YOU TOOK INTO ACCOUNT IN YOUR  
17 ANALYSIS?

18 **A.** RIGHT. I SAID IT IN MY REPORT.

19 **Q.** NOW, PROFESSOR NOLL, YOU ALSO GOT, I THINK, CRITICIZED FOR  
20 NOT EXAMINING THE SCRAMBLING ISSUE. DO YOU RECALL THAT?

21 **A.** THAT'S CORRECT.

22 **Q.** WHOSE REPORT WERE YOU ASKED TO EXAMINE IN THIS CASE?

23 **A.** DR. RASCHER'S.

24 **Q.** DOES DR. RASCHER GIVE ANY OPINIONS ABOUT THE SCRAMBLING  
25 ISSUE?

1 **A.** HE DIDN'T IN HIS ORIGINAL REPORT. THERE WAS -- THAT WAS  
2 NOT PART OF HIS REPORT, AND I WAS ASKED TO READ HIS REPORT AND  
3 EVALUATE IT. I DID.

4 SCRAMBLING WAS NOT AN ISSUE AT THE TIME HE WROTE HIS  
5 REPORT.

6 **Q.** SO DESPITE MR. HUMMEL SUGGESTING THAT SCRAMBLING WAS THIS  
7 GIGANTIC ISSUE, DR. RASCHER DIDN'T ADDRESS THAT IN HIS ORIGINAL  
8 REPORT, DID HE?

9 **A.** NO. AND HE DIDN'T AND I DIDN'T. NEITHER ONE OF US DID.

10 **Q.** NOW, YOU ALSO GOT ASKED:

11 "DID YOU STUDY REAL WORLD MARKET BEHAVIOR?"

12 DID YOU STUDY REAL WORLD MARKET BEHAVIOR IN THIS  
13 CASE?

14 **A.** YES.

15 **Q.** EXPLAIN TO THE JURY WHEN YOU STUDIED THE LICENSING  
16 PAYMENTS, IS THAT REAL WORLD MARKET BEHAVIOR?

17 **A.** OF COURSE. THOSE ARE REAL TRANSACTIONS. CONTRACTS ARE  
18 REAL TRANSACTIONS. THEY ARE ACTUAL HONEST-TO-GOD MARKET  
19 BEHAVIOR. SOMEBODY WAS A BUYER AND SOMEBODY WAS A SELLER AND  
20 THERE WAS A PRICE.

21 THAT'S WHAT MARKET IS.

22 **Q.** SO IS YOUR EXPERT OPINIONS BASED ON JUST THEORIES, OR WAS  
23 IT BASED STUDYING THE REAL WORLD MARKETPLACE BEHAVIOR? WHICH  
24 WAS IT?

25 **A.** IT'S OBVIOUSLY THE LATTER. I STUDIED ALL THESE CONTRACTS,

1 ALL THESE AGREEMENTS, AND IT'S BASED ON THAT.

2 **Q.** NOW, YOU GOT SOME ASKED QUESTIONS ABOUT HISTORICAL TEAMS  
3 IN THE MADDEN GAME.

4 **A.** YES.

5 **Q.** DO YOU RECALL THAT?

6 **A.** YES.

7 **Q.** AND YOU SAID, I BELIEVE, THERE WERE TWO CATEGORIES OF  
8 RIGHTS, THE TEAM RIGHTS AND THE PLAYER RIGHTS?

9 **A.** EXACTLY.

10 **Q.** LET'S GO THROUGH THIS QUICKLY FOR THE JURY. FOR THE TEAM  
11 RIGHTS, WHAT ARE THOSE RIGHTS, AND WHO GETS PAID FOR TEAM  
12 RIGHTS?

13 **A.** THE TEAM RIGHTS ARE THE JERSEYS, THE NAME OF THE TEAM, THE  
14 LOGO OF THE TEAM, THE HELMET AND EVERYTHING LIKE THAT. THAT IS  
15 LICENSED BY THE NFL, AND IT'S THE TEAMS OF THE NFL THAT OWN THE  
16 RIGHTS TO THEIR OWN JERSEYS AND LOGOS AND TEAM NAME.

17 SO IF YOU WANT TO DO A HISTORICAL TEAM, YOU HAVE TO  
18 GET A LICENSE FROM THE NFL FOR ALL THE TEAM STUFF. AND THEN,  
19 THERE'S A SECOND THING YOU WOULD NEED TO DO IF YOU WANT TO SHOW  
20 THE IMAGES OF SPECIFIC PLAYERS AND USE THOSE PLAYERS IN THE  
21 GAME AS IDENTIFIABLE PLAYERS, YOU THEN HAVE TO GO TO PLAYERS  
22 INC AND GET A LICENSE TO USE THE PLAYERS.

23 **Q.** NOW, IF YOU DON'T USE PLAYERS' NAMES OR PICTURES, DO YOU  
24 NEED ANY LICENSE FROM PLAYERS INC?

25 **A.** NO.

1 Q. NOW, YOU GOT ASKED A QUESTION ABOUT THE MADDEN GAME,  
2 AGAIN, AND WHAT THE EXPECTATIONS WERE OF PLAYERS.

3 DOES THE FACT THAT EA DID NOT CHOOSE TO PAY ANY MONEY  
4 TO SHOW RETIRED PLAYERS' NAMES AND FACES, AS AN ECONOMIST TELL  
5 YOU ANYTHING ABOUT WHETHER THE EXPECTATIONS THAT THE RETIRED  
6 PLAYER GROUP LICENSING PROGRAM WOULD YIELD MONEY FROM VIDEO  
7 GAMES WERE REALISTIC OR NOT?

8 A. OF COURSE IT DOES.

9 Q. WHAT DOES IT TELL YOU AS AN ECONOMIST?

10 A. THAT MEANS THERE WAS NO SIGNIFICANT MARKET VALUE  
11 ASSOCIATED WITH THOSE PLAYER IMAGES, OR THEY WOULD HAVE  
12 LICENSED THEM. I MEAN, THAT'S -- THE POINT IS THEY COULD  
13 CHOOSE ON THE ONE HAND TO HAVE A SMALL NUMBER OF LICENSES FOR  
14 STARS, OR THEY COULD CHOOSE ON THE OTHER HAND TO HAVE LICENSES  
15 FOR ALL THE PLAYERS ON THE TEAM, FOR THESE HISTORICAL TEAMS.

16 THEY CHOSE JUST TO DO THE STARS. THEY COULD HAVE  
17 GOTTEN THE REST. THEY CHOSE NOT TO PAY ANYTHING FOR THEM, AND  
18 SO THEY DIDN'T USE THEM. THAT'S A REAL MARKET EXAMPLE. THAT'S  
19 A REAL MARKET TRANSACTION.

20 THE COURT: MAY I ASK A QUESTION ON THIS?

21 THE WITNESS: SURE.

22 MR. KESSLER: SURE.

23 THE COURT: I DON'T WANT TO INTERRUPT YOUR EXAM.

24 MR. KESSLER: NO, CERTAINLY, YOUR HONOR. YOUR HONOR  
25 CAN ASK ANY QUESTION YOU LIKE AT ANY TIME.

1           **THE COURT:** ALL RIGHT. I WANT TO MAKE SURE I  
2 UNDERSTAND THIS VERY POINT YOU ARE MAKING.

3           WE KNOW THAT THEY HAVE A MADDEN GAME, HISTORICAL GAME  
4 WHERE THE PLAYERS ARE NOT IDENTIFIED, PER SE. SO ARE YOU  
5 SAYING THAT IF THEY INSTEAD HAD A HISTORICAL GAME WHERE THE  
6 PLAYERS WERE IDENTIFIED BY NUMBER, NAME AND THE WAY THEY ARE  
7 WITH THE -- WITH THE CURRENT TEAMS, THAT THAT HISTORICAL GAME  
8 WOULD NOT SELL FOR MORE IN THE MARKETPLACE?

9           **THE WITNESS:** I DON'T KNOW THE ANSWER TO THAT. ONLY  
10 EA REALLY KNOWS THE ANSWER TO THAT.

11           WHAT I'M SAYING IS THERE'S A REASON THAT YOU WOULD  
12 EXPECT CURRENT TEAMS' ENTIRE ROSTERS TO HAVE SOME VALUE, BUT  
13 NOT HISTORICAL TEAM ENTIRE ROSTERS TO HAVE VALUE.

14           AND IT WOULD GET TO THE FACT THAT WHEN YOU'RE PLAYING  
15 THE REAL GAMES, WHEN YOU'RE BUYING A MADDEN GAME TO PLAY WITH  
16 CURRENT TEAMS, YOU'RE PLAYING WITH THE CURRENT ROSTERS THAT YOU  
17 ARE READING ABOUT IN THE NEWSPAPERS. IF YOU FOLLOW THE 49ERS,  
18 YOU KNOW WHO THEIR OFFENSIVE LINE IS AND WHO THEIR DEFENSIVE  
19 LINEBACKERS ARE.

20           BUT IF YOU'RE A HISTORICAL 49ERS FAN, YOU PROBABLY DO  
21 NOT REMEMBER THE NAMES OF MORE THAN A HANDFUL OF PLAYERS FROM  
22 THAT HISTORICAL TEAM.

23           **THE COURT:** SO YOU'RE SAYING THAT -- LET'S TAKE --  
24 SAY YOU'VE GOT THE 49ER TEAM NOW.

25           **THE WITNESS:** YES.

1           **THE COURT:** YOU'RE SAYING THERE'S VALUE IN HAVING THE  
2 ACTUAL NAMES ASSOCIATED OF THE PLAYERS, ASSOCIATED WITH THAT  
3 PRODUCT IF IT'S A CURRENT PRODUCT. BUT IF YOU FAST FORWARD  
4 INTO THE FUTURE TEN YEARS AND NOW THAT SAME TEAM BECOMES A  
5 HISTORICAL TEAM, THERE'S NO LONGER ANY INTEREST IN HAVING THE  
6 ACTUAL NAMES ASSOCIATED WITH THOSE PLAYERS?

7           **THE WITNESS:** THERE'S TWO THINGS GOING ON, WHICH IS  
8 THE VALUE OF THE TEAM, PER SE, DECLINES THROUGH TIME, ALL  
9 RIGHT?

10           THAT IS TO SAY THE SAN FRANCISCO 49ERS OF 1985 ARE  
11 LESS VALUABLE IN 2008 THAN THEY WERE IN 1985, ALL RIGHT? AND  
12 THEN, THERE'S THE SECOND THING THAT'S GOING ON IS THAT THE NAME  
13 RECOGNITION TENDS TO ATTENUATE AS TIME PROGRESSES, SO THAT IF I  
14 ASK A RABID 49ERS FAN WHO HIS FAVORITE PLAYERS WERE IN 1988, HE  
15 COULD PROBABLY NAME THEM.

16           BUT IF I SAY:

17           "NAME THE OFFENSE -- YOU KNOW, ALL THE PEOPLE WHO  
18 GOT IN THE GAME PLAYING ON THE OFFENSIVE LINE," HE WOULDN'T BE  
19 ABLE TO. BUT HE MIGHT BE ABLE TO DO IT FOR THE CURRENT TEAM.  
20 SO I THINK THOSE TWO THINGS ARE GOING ON SIMULTANEOUSLY.

21           BUT IT'S EA, NOT AN ECONOMIST, WHO ULTIMATELY  
22 DECIDES: IS IT WORTHWHILE TO PAY A LICENSING REVENUE TO SHOW  
23 THE IMAGES OF ALL THE PLAYERS FROM A HISTORICAL TEAM? AND IS  
24 IT WORTH IT TO SHOW THE IMAGES OF ALL THE PLAYERS FROM A  
25 CURRENT TEAM?

1           THEY HAVE DECIDED TO USE STAR PLAYERS AND ANONYMOUS  
2 OTHER THINGS FOR THE HISTORICAL GAME TEAMS. AND THEY'VE  
3 DECIDED TO USE EVERYBODY FOR THE CURRENT TEAMS. AND I'D  
4 UNDERSTAND THE BUSINESS REASON FOR IT. I DON'T NECESSARILY  
5 UNDER -- KNOW THAT IT'S TRUE THAT IF THEY ADDED ONE MORE  
6 HISTORICAL PLAYER TO A HISTORICAL TEAM IT WOULDN'T HAVE ANY  
7 VALUE.

8           I DON'T KNOW WHETHER THAT'S TRUE.

9           **THE COURT:** ALL RIGHT. THANK YOU.

10          GO AHEAD.

11          **MR. KESSLER:** WELL, YOUR HONOR, I HAVE ABOUT 10 MORE  
12 MINUTES, AND IT'S 1:00 O'CLOCK, SO I'M ASKING YOUR HONOR FOR  
13 GUIDANCE ABOUT THIS.

14          **THE COURT:** ALL RIGHT. WE'RE GOING TO HAVE TO COME  
15 BACK TOMORROW, BECAUSE WE HAVE REACHED THE MAGIC HOUR. AND THE  
16 WITNESS WILL HAVE TO RETURN TOMORROW.

17          PLEASE REMEMBER THE ADMONITION. I CAN TELL YOU,  
18 LADIES AND GENTLEMEN, THE LAWYERS -- I'M KEEPING TRACK OF THE  
19 TIME. AND THERE'S AT LEAST SOME CHANCE THAT ONE SIDE OR THE  
20 OTHER WILL RUN OUT OF TIME TOMORROW. SO WE'RE GETTING CLOSE TO  
21 THE END.

22          ALL RIGHT? SO REMEMBER THE ADMONITION. WE'LL SEE  
23 YOU BACK HERE TOMORROW.

24          **THE CLERK:** ALL RISE.

25          (THEREUPON, THE JURY LEFT THE COURTROOM.)

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

3 **THE COURT:** WHAT IS OUR GROUND RULE ON THE WITNESS?  
4 EVERYONE BE SEATED.

5 HE'S NOT SUPPOSED TO TALK TO EITHER SIDE, CORRECT?

6 **MR. HUMMEL:** THAT'S CORRECT, YOUR HONOR.

7 **MR. KESSLER:** I THINK AT THIS POINT THE WITNESS  
8 SHOULD NOT TALK TO EITHER SIDE. CROSS EXAMINATION HAS ALREADY  
9 TAKEN PLACE.

10 **THE COURT:** HE HAS GOT RECROSS COMING UP.

11 **MR. KESSLER:** YES.

12 **THE COURT:** SO YOU CANNOT TALK TO EITHER SIDE. ALL  
13 RIGHT. WE'LL SEE YOU BACK HERE TOMORROW AT 7:30.

14 THANK YOU, SIR.

15 ANYTHING THAT THE LAWYERS NEED ME FOR?

16 **MR. KESSLER:** YOUR HONOR, ONLY THAT IT WOULD BE  
17 HELPFUL TO KNOW WHAT YOUR CURRENT COUNT IS, IF YOU HAVE ONE,  
18 SINCE TOMORROW I DO THINK IS GOING TO BE THE LAST DAY, SO BOTH  
19 SIDES CAN PLAN.

20 **THE COURT:** ALL RIGHT. WELL, YOU'RE GOING TO HAVE TO  
21 DO THE MATH YOURSELF. FOR THE PLAINTIFF IT'S 906 PLUS 35 PLUS  
22 60.

23 AND FOR THE DEFENSE IT'S 821 PLUS 30 PLUS 27 PLUS 53.  
24 I'VE GOT A SUBTOTAL, BUT NOT A FINAL TOTAL.

25 **MR. KESSLER:** YOUR HONOR, ONE OTHER QUESTION. IF

1 YOUR HONOR HAS ANY GUIDANCE TO US AS TO -- FURTHER GUIDANCE AS  
2 TO WHEN THE CHARGING CONFERENCE MIGHT BE AND CLOSINGS.

3 **THE COURT:** ALL RIGHT. HERE IS MY GUIDANCE. THIS IS  
4 TENTATIVE. FIRST, I'M GOING TO HAND TO YOU A PROPOSED CHARGE.  
5 I WANT YOU TO KNOW I'VE TAKEN INTO ACCOUNT YOUR OBJECTIONS.

6 I'VE ADDED A COUPLE OF PARAGRAPHS THAT NEITHER SIDE  
7 ASKED FOR, QUITE, BUT WHICH I BELIEVE TO BE A CORRECT STATEMENT  
8 OF THE LAW.

9 THIS IS ON THE FIDUCIARY DUTY POINT. AND SO YOU'LL  
10 WANT TO EXAMINE THAT.

11 I AM GOING TO GIVE TO DAWN A COPY OF THAT, AS WELL AS  
12 THE SPECIAL VERDICT FORM. AND THEN, YOU SHOULD BE GIVING ME  
13 YOUR COMMENTS BY 4:00 P.M. TOMORROW IN A 10-PAGE CRITIQUE.

14 WE WILL HAVE A CHARGING CONFERENCE, TOO. BUT  
15 OVERNIGHT I WILL BE LOOKING AT YOUR 10-PAGE CRITIQUES.

16 AND THEN, BY MIDNIGHT IF SOMEBODY WANTS TO SUBMIT A  
17 REPLY, THEY CAN, BUT THEY DON'T HAVE TO. I WILL LOOK AT THAT,  
18 TOO.

19 OUR CHARGING CONFERENCE WILL BE SOMETIME THURSDAY,  
20 THE TIME TO BE SELECTED, DEPENDING ON FACTORS. AND OUR CLOSING  
21 ARGUMENTS ARE VERY LIKELY TO BE FRIDAY. RIGHT NOW I'M  
22 TENTATIVELY THINKING THAT EACH SIDE WILL GET A TOTAL OF 100  
23 MINUTES.

24 THAT'S 60 PLUS 40. I'M SORRY, 80 MINUTES. THAT WOULD  
25 BE 60 PLUS 20. AND THAT YOU CAN RESERVE UP TO 30 MINUTES FOR

1 REBUTTAL.

2           AGAIN, I WANT TO SAY THAT WHEN I ASK A QUESTION I DO  
3 NOT WANT ANYONE IN THE CLOSING ARGUMENTS SAYING:

4                   "AND REMEMBER, THE JUDGE ASKED THIS QUESTION."

5           IF I HEAR THAT I'M GOING TO INTERRUPT YOU AND SAY:

6                   "YOU WERE INSTRUCTED NOT TO DO THAT."

7           NOW, YOU CAN SAY "THE QUESTION WAS ASKED." THAT'S  
8 OKAY. BUT I DON'T WANT ANYONE SAYING THAT I'M ASKING  
9 QUESTIONS.

10           I'M ASKING QUESTIONS THAT I THINK ARE ON THE JURY'S  
11 MIND. I AM NOT ONE OF THE ADVOCATES IN THIS CASE. AND I ASK  
12 QUESTIONS THAT ARE FAIRLY SUGGESTED BY THE OTHER QUESTIONS THAT  
13 HAVE BEEN ASKED.

14                   **MR. KESSLER:** YOUR HONOR, I WOULD JUST ASK, IN  
15 CLOSING, IS IT APPROPRIATE TO REFER TO THE SPECIAL VERDICT FORM  
16 ONCE IT'S FINALIZED.

17                   **THE COURT:** SURE. YOU CAN PUT IT UP THERE IN YOUR  
18 ENTIRE CLOSING AND SAY:

19                           "HERE'S WHAT YOU FILL OUT: YES. NO. YES.  
20 NO."

21                   **MR. KESSLER:** AND WHEN THE INSTRUCTIONS ARE FINAL,  
22 CAN WE PUT THE EVIDENCE IN THE CONTEXT OF THE INSTRUCTIONS AS  
23 WE SEE THEM?

24                   **THE COURT:** YOU CAN PUT THE INSTRUCTIONS ON THE  
25 SCREEN. THIS SET IS NOT THE FINAL SET.

1           **MR. KESSLER:** I UNDERSTAND THAT, YOUR HONOR.

2           **THE COURT:** YOU HAVE TO WAIT UNTIL THE FINAL SET.  
3 YOU DEFINITELY CAN DO THAT. I ENCOURAGE YOU TO DO THAT. YOU  
4 CAN SAY:

5                       "HERE'S WHAT THE JUDGE IS GOING TO INSTRUCT  
6 YOU." BOTH SIDES CAN DO THAT, OF COURSE.

7           ALL RIGHT. ANYTHING MORE TODAY?

8           **MR. KESSLER:** OH, YOUR HONOR, IT'S BEEN POINTED OUT  
9 TO ME THAT YOUR HONOR HAD TWO ENTRIES FOR PLAINTIFF TODAY ON  
10 TIME AND THREE FOR US. BUT --

11           **THE COURT:** I COLLAPSED SOME OF IT.

12           **MR. KESSLER:** I WAS GOING TO SAY THEY HAD --

13           **THE COURT:** I DID SOME MENTAL COLLAPSING LIKE IT WAS  
14 A ONE-MINUTE ONE, I COLLAPSED THAT WITH AN 8 MINUTE AND 21  
15 MINUTE.

16           ALL RIGHT. LOOK. HERE'S -- LOOK. YOUR SIDE WAS  
17 906, PLUS 28, PLUS 3, PLUS 4, PLUS 6.

18           THE OTHER SIDE WAS 821, PLUS 21, 1, 53, 27 AND 8. I  
19 JUST DID SOME MATH IN MY HEAD TO MAKE IT EASIER.

20           **MR. KESSLER:** DO WE HAVE A MAJOR DISCREPANCY, LAUREN?

21           **MR. GREENSPAN:** I THINK SO.

22           **THE COURT:** I'M GOING TO REPEAT IT. ARE YOU  
23 LISTENING?

24           THE DEFENSE HAD 821, 21, 1, 53, 27 AND 8. AND I'M  
25 STARTING WITH PAT -- I SKIPPED OVER TRACE ARMSTRONG. I ALREADY

1 SUMMARIZED HIM.

2 AND THEN, THIS IS WITH PAT ALLEN. AND THEN, 906 UP  
3 TO PAT ALLEN FOR PLAINTIFF. AND THEN, WITH PAT ALLEN FORWARD:  
4 28, 3, 4 AND 60. THAT'S WHAT I HAVE.

5 **MR. KESSLER:** OKAY. THANK YOU, YOUR HONOR. IF WE  
6 HAVE ANY QUESTIONS AFTER FURTHER REVIEWING I'LL LET YOUR HONOR  
7 KNOW TOMORROW. THANK YOU.

8 **THE COURT:** ALL RIGHT.

9 **MR. KESSLER:** THAT'S IT.

10 **THE COURT:** ANYTHING MORE? GREAT. I HAVE A CRIMINAL  
11 CALENDAR AT 2 O'CLOCK, SO I'LL NEED THE COURTROOM. THANK YOU.

12 **MR. KATZ:** THANK YOU.

13 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL WEDNESDAY,  
14 NOVEMBER 5, 2008, AT 7:30 O'CLOCK A.M.)

15 - - - -

16

17 **CERTIFICATE OF REPORTER**

18 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
19 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

20 DATE: TUESDAY, NOVEMBER 4, 2008

21

22 S/B KATHERINE POWELL SULLIVAN

23

24 KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR  
25 U.S. COURT REPORTER

I N D E X

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PLAINTIFFS' WITNESSESPAGEVOL.**ALLEN, PATRICIA**

DIRECT EXAMINATION BY MR. LECLAIR	2097	10
CROSS EXAMINATION BY Mr. FEHER	2121	10
REDIRECT EXAMINATION BY MR. LECLAIR	2139	10
RE CROSS EXAMINATION BY MR. FEHER	2144	10

DEFENDANTS' WITNESSESPAGEVOL.**ARMSTRONG, TRACE**

DIRECT EXAMINATION RESUMED BY MR. KESSLER	2060	10
CROSS EXAMINATION BY MR. LECLAIR	2076	10
REDIRECT EXAMINATION BY MR. KESSLER	2092	10
RE CROSS EXAMINATION BY MR. LECLAIR	2094	10

**NOLL, ROGER**

DIRECT EXAMINATION BY MR. KESSLER	2146	10
CROSS EXAMINATION BY MR. HUMMEL	2205	10
REDIRECT EXAMINATION BY MR. KESSLER	2257	10

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
1164-3			2078	10
1049			2102	10
1296			2110	10
1298			2119	10
1299			2121	10
2260			2125	10
2263			2128	10
2206 THROUGH 2306			2130	10
1164			2144	10
1164-4			2145	10
2397			2160	10
2398			2162	10
2399			2195	10

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