

## **Exhibit A**

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,