



**APPEARANCES CONTINUED:**

**ALSO FOR PLAINTIFFS:**

MCKOOL SMITH  
300 CRESCENT COURT  
SUITE 1500  
DALLAS, TEXAS 75201

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

**FOR DEFENDANTS:**

DEWEY & LEBOEUF  
1301 AVENUE OF THE AMERICAS  
NEW YORK CITY, NEW YORK 10019-6092

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

WEIL, GOTSHAL & MANGES LLP  
767 FIFTH AVENUE  
NEW YORK, NEW YORK 10153-0119

**BY: BRUCE S. MEYER, ESQ.**

**REPORTED BY:**

*KATHERINE POWELL SULLIVAN, CSR # 5812*  
*OFFICIAL REPORTER - U.S. DISTRICT COURT*

P R O C E E D I N G S

OCTOBER 31, 2008

7:30 A.M.

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

**THE COURT:** OKAY. LET'S GET STARTED. I'VE TALLIED  
UP SOME TIME HERE. I HAVE THE PLAINTIFFS HAVE USED SLIGHTLY  
UNDER 700 HOURS. USED 697 HOURS.

**MR. HUMMEL:** MINUTES?

**THE COURT:** MINUTES.

**MR. HUMMEL:** SEEMS LIKE HOURS.

**THE COURT:** SEEMS LIKE HOURS. MINUTES. AND 1,080  
HAVE BEEN ALLOCATED.

THEN DEFENSE I HAVE AT 525. IF ANYONE THINKS I'M OFF  
MORE THAN 5 PERCENT, I WOULD LIKE TO KNOW, BECAUSE I'VE DONE  
THE MATH A COUPLE OF TIMES, BUT I COULD MAKE AN ERROR OF  
COURSE.

ANYTHING ANYONE WANTS TO RAISE THIS MORNING?

**MR. KESSLER:** YOUR HONOR, I DO, JUST ONE ISSUE. THE  
FIRST WITNESS THAT PLAINTIFFS ARE CALLING THIS MORNING IS  
RICHARD BERTHELSEN.

MR. BERTHELSEN, UNTIL VERY RECENTLY, WAS THE LONG  
TIME GENERAL COUNSEL OF THE NFLPA. AND ON THE ISSUE OF THE  
RETIRED PLAYER GLA, THE ONLY INFORMATION HE HAS ABOUT THAT  
DOCUMENT IS IN THE CONTEXT OF ATTORNEY-CLIENT INFORMATION.

1           IN OTHER WORDS, HE'S NEVER ADDRESSED IT IN ANY OTHER  
2 CONTEXT. AND, THEREFORE, RATHER THAN -- I DON'T KNOW IF THEY  
3 INTEND TO ASK HIM ABOUT THE GLA OR ITS MEANING, OR ANYTHING  
4 ELSE, BUT HE HAS NO NONPRIVILEGED INFORMATION.

5           AND I JUST WANT TO RAISE THAT NOW SO I DON'T HAVE TO,  
6 IN FRONT OF THE JURY, START ASSERTING "OBJECTION, PRIVILEGE" IF  
7 THAT'S WHAT THEY INTEND TO GO INTO IN RESPECT TO THAT.

8           **THE COURT:** MR. BERTHELSEN WAS A LAWYER WHERE?

9           **MR. KESSLER:** GENERAL COUNSEL FOR THE NATIONAL  
10 FOOTBALL LEAGUE PLAYERS ASSOCIATION. HE WAS PURELY A LEGAL  
11 OFFICER UNTIL HE ASSUMED MR. UPSHAW'S POSITION JUST, YOU KNOW,  
12 A MONTH OR SO AGO. BEFORE THAT HE WAS THE LAWYER.

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

14           ARE YOU GOING TO BE INQUIRING INTO ATTORNEY-CLIENT  
15 PRIVILEGE?

16           **MR. HUMMEL:** CERTAINLY NOT INTO ATTORNEY-CLIENT  
17 COMMUNICATIONS, NO.

18           **MR. KESSLER:** THE POINT WOULD BE, YOUR HONOR, IF THEY  
19 ASK HIM DID HE HAVE AN UNDERSTANDING OF THE GLA, THE ONLY THING  
20 HE WOULD HAVE IS HIS ATTORNEY MENTAL PROCESS. SO I DON'T THINK  
21 THERE ARE ANY QUESTIONS ABOUT THE GLA THAT ARE APPROPRIATE.

22           THERE MAY BE OTHER QUESTIONS THAT ARE APPROPRIATE  
23 THAT ARE NONPRIVILEGED. BUT THAT PARTICULAR SUBJECT, IN  
24 PREPARING MR. BERTHELSEN, WE ESTABLISHED THAT HE HAS NO  
25 UNDERSTANDING OF THE GLA OTHER THAN HE HAS GOTTEN IN

1 ATTORNEY-CLIENT PRIVILEGED DISCUSSIONS. HE WAS NOT THE DRAFTER  
2 OF THE GLA, EITHER.

3 **THE COURT:** SO DO YOU PLAN ON INQUIRING INTO THAT  
4 SUBJECT?

5 **MR. HUMMEL:** SUBJECT OF COMMUNICATIONS REGARDING THE  
6 GLA? NO.

7 **THE COURT:** NO, BUT HE WASN'T INVOLVED IN THE  
8 DRAFTING OF THE GLA, WAS HE?

9 **MR. HUMMEL:** HE WAS THE GENERAL COUNSEL OF THE  
10 COMPANY. HE IS NOW HEAD OF THE UNION. I AM CERTAINLY ENTITLED  
11 TO ASK --

12 **THE COURT:** I'M NOT GOING TO ALLOW YOU TO ASK A  
13 WITNESS WHO WAS NOT INVOLVED IN THE NEGOTIATION --

14 **MR. HUMMEL:** I'M NOT GOING TO ASK THAT.

15 **THE COURT:** YOU MUST FIRST ESTABLISH THAT HE WAS  
16 INVOLVED IN THE ACTUAL NEGOTIATIONS.

17 **MR. HUMMEL:** THERE WERE NO NEGOTIATIONS.

18 **THE COURT:** JUST A SECOND, COUNSEL. YOU ARE ASKING  
19 ABOUT ALTERNATIVE MEANINGS OF THE GLA FOR A WITNESS WHO WAS NOT  
20 IN THE NEGOTIATIONS --

21 **MR. HUMMEL:** I DO NOT INTEND TO DO THAT, YOUR HONOR.

22 **THE COURT:** -- OR THE DRAFTING.

23 **MR. HUMMEL:** I DON'T INTEND TO DO THAT.

24 **THE COURT:** ALL RIGHT. SO IF WE GO THERE, I'M GOING  
25 TO ADMONISH THE JURY.

1           **MR. HUMMEL:** FINE.

2           **THE COURT:** NOW, I -- MERELY BECAUSE HE IS THE  
3 GENERAL COUNSEL DOES NOT MEAN THAT ANY AND ALL E-MAILS AND  
4 COMMUNICATIONS THAT HE HAD WERE PRIVILEGED. IT'S A  
5 CASE-BY-CASE THING.

6           IT HAS TO BE ON A CONVERSATION-BY-CONVERSATION BASIS.  
7 SO WE WILL JUST -- IF YOU GET INTO A CONVERSATION THAT WAS  
8 PRIVILEGED, WE HAVE TO DECIDE: WAS IT PRIVILEGED OR NOT? BUT  
9 THAT'S SEPARATE FROM THIS OTHER GRANDSTANDING THING.

10           THIS WITNESS, BEFORE YOU ASK HIM ABOUT THE MEANING OF  
11 THE GLA, YOU HAVE TO ESTABLISH SOME FOUNDATION THAT HE IS IN  
12 ONE OF THE NORMAL POSITIONS THAT HE WOULD HAVE FOUNDATION TO  
13 EXPRESS AN OPINION, SUCH AS THAT HE DRAFTED IT, THAT HE  
14 RECEIVED SOME -- THAT HE WAS IN SOME KIND OF A LOOP THAT WOULD  
15 GIVE HIM AN OCCASION.

16           IF ALL IT'S GOING TO BE THAT HE IS LOOKING AT IT  
17 TODAY OR WAS INVOLVED IN THIS LITIGATION, AND HERE IS HIS  
18 OPINION TODAY, THAT'S NOT HELPFUL.

19           **MR. KESSLER:** YOUR HONOR, IF I MAY -- AND THIS WILL  
20 HELP: MY UNDERSTANDING IS THE ONLY INVOLVEMENT THIS WITNESS  
21 HAD WITH THE GLA IS YOU'LL REMEMBER THAT THERE'S ANOTHER  
22 LITIGATION CALLED THE "JUSTIN LITIGATION," WHICH PLAINTIFFS  
23 MOVED TO EXCLUDE ANY REFERENCE ABOUT, WHICH -- BY OTHER RETIRED  
24 PLAYERS. AND YOUR HONOR GRANTED THEIR MOTION AND SAID:

25                       "NO ONE MAY REFER TO THE JUSTIN LITIGATION."

1           IN THE CONTEXT OF THAT LITIGATION, HE RENDERED LEGAL  
2 ADVICE TO HIS CLIENT BECAUSE THERE WAS A LITIGATION, AND HE GOT  
3 INFORMATION IN ATTORNEY-CLIENT PRIVILEGE ABOUT THE GLA IN  
4 RESPONDING TO LITIGATION.

5           **THE COURT:** LOOK, LOOK.

6           **MR. KESSLER:** WE'RE CONCERNED NOT TO GET INTO THAT  
7 BECAUSE YOUR HONOR HAS PRECLUDED THAT. WE DON'T WANT TO GET  
8 INTO THAT.

9           **THE COURT:** LOOK. THAT'S OFF THE TABLE, ANYWAY,  
10 BECAUSE YOU MADE THE MOTION, RIGHT?

11          **MR. KESSLER:** YES.

12          **MR. HUMMEL:** WELL, CERTAINLY WE MADE THE MOTION.

13          **THE COURT:** ALL RIGHT.

14          **MR. HUMMEL:** BUT WHETHER DOUG ALLEN TOLD HIM THINGS  
15 THAT HE TESTIFIED ABOUT IN HIS DEPOSITION, WHERE THERE WAS NOT  
16 AN OBJECTION ON PRIVILEGE GROUNDS, CERTAINLY THAT'S FAIR GAME.  
17 IT GOES TO WHAT DOUG ALLEN TOLD HIM ABOUT THE GLA.

18          **THE COURT:** IF IT WAS NOT -- IF A PRIVILEGE WAS NOT  
19 ASSERTED.

20          **MR. HUMMEL:** CORRECT.

21          **THE COURT:** IN OTHER WORDS, IF DOUG ALLEN MADE AN  
22 ADMISSION AND SAID:

23                       "YES, WE SCREWED THE RETIRED PLAYERS, AND WE'RE  
24 IN DEEP, DEEP TROUBLES" -- AND I'M MAKING THAT UP AS A  
25 HYPOTHETICAL --

1           **MR. HUMMEL:** IT'S NOT HYPOTHETICAL.

2           **THE COURT:** -- THAT HE EVER SAID SUCH A THING.

3           **MR. HUMMEL:** RIGHT.

4           **THE COURT:** IF HE MADE SUCH ADMISSION, AND HE  
5 TESTIFIED TO --

6           **MR. HUMMEL:** RIGHT. YES, OF COURSE.

7           (COUNSEL AND THE COURT SPEAKING SIMULTANEOUSLY, WHICH  
8 WAS NOT REPORTABLE.)

9           **MR. KESSLER:** ANYTHING HE SAID IN HIS DEPOSITION  
10 WOULD NOT ASSERT PRIVILEGE. BUT I WOULD NOTE IF HE GOES INTO  
11 THINGS WHERE THE ONLY WAY MR. BERTHELSEN CAN EXPLAIN IT IS THE  
12 DOOR OPENING, EXPLAIN THERE IS THIS CLAIM, AND THE REASON THEY  
13 DON'T WANT THIS IS THE RETIRED PLAYERS THERE LOOKED AT IT AND  
14 CONCLUDED THERE WAS NO CLAIM AND WENT AWAY. AND THAT'S WHY  
15 THEY WANT IT EXCLUDED. IF THEY'RE GOING TO PUSH IN THAT  
16 SPECIFIC AREA --

17           **MR. HUMMEL:** I AM NOT OPENING THAT DOOR ONE IOTA.

18           **THE COURT:** WELL, LOOK. I AM NOT MAKING ANY RULING  
19 RIGHT NOW. I'M JUST GIVING YOU SOME GUIDELINES. BUT I AM  
20 SAYING THIS. IF THIS WERE TO DEGENERATE INTO PUTTING A WITNESS  
21 ON THE STAND WHO HAS NO BASIS TO GIVE -- WHO HAD NO SUBJECTIVE  
22 INTENT AT THE TIME BECAUSE HE WASN'T INVOLVED AT THE TIME, AND  
23 ALL YOU'RE DOING NOW IS SAYING:

24                   "WELL, YOU'RE THE GENERAL COUNSEL. WHAT DO YOU  
25 THINK THIS MEANS?" THAT'S NOT GOING -- THAT'S NOT HELPFUL. SO

1 WE'RE NOT GOING TO DO THAT.

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

3 **THE COURT:** BUT I EXPECT THERE'S A LOT OF GROUND YOU  
4 COULD COVER WITHOUT EVER GETTING TO THAT POINT. AND WE'LL HAVE  
5 TO TAKE IT QUESTION BY QUESTION.

6 ALL RIGHT. WHAT ELSE DO YOU WANT TO RAISE?

7 **MR. KESSLER:** THAT'S ALL I HAD TO RAISE.

8 **THE COURT:** ALL RIGHT. ARE WE ALL SET TO GO? LET'S  
9 SEE IF THE JURY IS PRESENT.

10 (BRIEF PAUSE IN THE PROCEEDINGS.)

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

13 **THE COURT:** PLEASE BE SEATED. HAPPY HALLOWEEN TO ALL  
14 OF OUR JURORS.

15 YEARS FROM NOW YOU'RE GOING TO REMEMBER THIS CASE  
16 BECAUSE DURING THIS CASE WE HAD THE GREATEST STOCK MARKET CRASH  
17 SINCE THE DEPRESSION, HALLOWEEN CAME, WE'RE GOING TO HAVE AN  
18 ELECTION DAY NEXT WEEK, AND HERE YOU ARE DOING YOUR COUNTRY'S  
19 WORK EVERY DAY. THANK YOU FOR THAT. BUT A LOT OF THINGS HAVE  
20 HAPPENED.

21 TODAY BEING HALLOWEEN, I SEE WE HAVE ONE JUROR,  
22 MRS. MARTIN, SHE DRESSED APPROPRIATELY TODAY. THANK YOU FOR  
23 DOING THAT.

24 I WAS EXPECTING THAT MAYBE ONE OF THE LAWYERS WOULD  
25 COME DRESSED AS BABE RUTH AND THE OTHER YOGI BERRA TODAY. NO,

1 I THINK NOT.

2 OKAY. WE'RE GOING TO START. WE'RE STILL ON THE  
3 PLAINTIFFS' CASE, AND THE PLAINTIFF CAN CALL THEIR NEXT  
4 WITNESS.

5 **MR. HUMMEL:** THANK YOU, YOUR HONOR. PLAINTIFFS CALL  
6 RICHARD BERTHELSEN.

7 **THE COURT:** ALL RIGHT. MR. BERTHELSEN, PLEASE COME  
8 FORWARD.

9 RAISE YOUR RIGHT HAND AND WE'LL SWEAR YOU IN.

10 (THEREUPON, THE WITNESS WAS SWORN.)

11 **THE COURT:** I DO.

12 **THE CLERK:** OKAY. THANK YOU.

13 **THE COURT:** ALL RIGHT. MR. BERTHELSEN, YOU'VE BEEN  
14 HERE EVERY DAY.

15 **THE WITNESS:** GOOD MORNING.

16 **THE COURT:** SO YOU KNOW THE DRILL. CAN WE TAKE YOUR  
17 PICTURE FOR CLOSING ARGUMENTS?

18 (PICTURE TAKEN.)

19 **THE CLERK:** THANK YOU.

20 **THE COURT:** BE SURE TO SPEAK UP SO THE MIC CATCHES  
21 YOUR VOICE.

22 MR. HUMMEL, YOU MAY GO AHEAD.

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

24 GOOD MORNING, LADIES AND GENTLEMEN.

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**RICHARD BERTHELSEN,**

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

**DIRECT EXAMINATION**

**BY MR. HUMMEL:**

**Q.** MR. BERTHELSEN, HOW ARE YOU EMPLOYED BY THE NFL PLAYERS  
ASSOCIATION?

**A.** I'M THE ACTING EXECUTIVE DIRECTOR AND GENERAL COUNSEL.

**Q.** YOU'RE NOW THE HEAD OF THE UNION, CORRECT?

**A.** ON AN INTERIM BASIS, YES.

**Q.** OKAY. AND HOW LONG HAVE YOU BEEN WITH THE UNION, SIR?

**A.** SINCE MAY 15TH OF 1972.

**Q.** 1972. THAT'S EFFECTIVELY A CAREER WITH THE NFLPA,  
CORRECT?

**A.** HOPEFULLY, AN EFFECTIVE CAREER, YES.

**Q.** AND YOU'VE BEEN THE GENERAL COUNSEL FOR OVER 25 YEARS; IS  
THAT RIGHT?

**A.** JUST ABOUT 25 YEARS. I WAS APPOINTED AS GENERAL COUNSEL  
IN 1983.

**Q.** AND AM I CORRECT THAT THE GENERAL COUNSEL FOR A COMPANY IS  
THE HEAD LAWYER WITHIN THAT ORGANIZATION; IS THAT RIGHT?

**A.** THE HEAD IN-HOUSE COUNSEL IS THE WAY I ALWAYS TEND TO PUT  
IT, YES.

**Q.** AND YOU FROM TIME TO TIME HAVE RETAINED OUTSIDE COUNSEL TO  
WORK WITH YOU. THAT'S WHY YOU SAY "INSIDE," RIGHT?

1 **A.** THAT'S RIGHT, YES.

2 **Q.** OKAY. NOW, PLAYERS INC WAS FORMED IN 1994; IS THAT RIGHT?

3 **A.** I BELIEVE THAT WAS THE YEAR, YES.

4 **Q.** DID YOU SERVE AS THE GENERAL COUNSEL FOR PLAYERS INC AS  
5 WELL?

6 **A.** NO.

7 **Q.** WAS THERE A SEPARATE GENERAL COUNSEL FOR PLAYERS INC?

8 **A.** NOT -- NOT BY THAT TITLE. BUT WE USED OUTSIDE COUNSEL  
9 ALMOST EXCLUSIVELY WITH REGARD TO THAT.

10 **Q.** DID YOU HAVE ANY ROLE IN CONNECTION WITH PLAYERS INC OVER  
11 THE YEARS?

12 **A.** NOT IN PARTICULAR, NO. I DID NOT SERVE AS -- SERVE IN ANY  
13 TITLE AS FAR AS PLAYERS INC IS CONCERNED.

14 **Q.** YOU CERTAINLY KNEW WHAT IT DID, RIGHT?

15 **A.** YES, I DID.

16 **Q.** AND YOU CERTAINLY KNEW WHAT ITS MISSION WAS, RIGHT?

17 **A.** YES.

18 **Q.** AND ITS MISSION WAS TO TAKE THE HELMETS OFF THE PLAYERS  
19 AND MARKET THEM AS PERSONALITIES AS WELL AS PROFESSIONAL  
20 ATHLETES; IS THAT RIGHT?

21 **A.** THAT WAS PART OF IT, CERTAINLY.

22 **Q.** AND WAS IT ALSO TRUE THAT PLAYERS INC REPRESENTED MORE  
23 THAN 1800 ACTIVE PLAYERS AND OVER 3,000 RETIRED PLAYERS?

24 **A.** THAT SOUNDS CORRECT.

25 **Q.** OKAY. AND WAS IT TRUE THAT IN CONNECTION WITH THAT GROUP,

1 THAT 1800 ACTIVE PLAYERS AND 3,000 RETIRED PLAYERS, THAT  
2 PLAYERS INC WAS AGGRESSIVE IN ITS EFFORTS TO EXPAND PLAYER  
3 MARKETING OPPORTUNITIES?

4 **A.** YES.

5 **Q.** OKAY. NOW, IF I COULD JUST SHOW YOU WHAT'S ALREADY BEEN  
6 PREVIOUSLY MARKED AS EXHIBIT 5.

7 (DOCUMENT DISPLAYED.)

8 THAT'S BASICALLY WHAT I JUST READ TO YOU, SIR.

9 THAT'S THE WEB SITE OF PLAYERS INC. AND IT SAYS THERE THAT  
10 PLAYERS INC REPRESENTS MORE THAN 1800 ACTIVE PLAYERS AND OVER  
11 3,000 RETIRED PLAYERS.

12 NOW, DID YOU HAVE ANY HAND IN WRITING THAT WEBSITE?

13 **A.** NO.

14 **Q.** YOU DON'T DISAVOW IT, THOUGH, AS THE CORPORATE  
15 REPRESENTATIVE OF THE UNION AND PLAYERS INC HERE TODAY, DO YOU?

16 **A.** NO.

17 **Q.** OKAY. CAN YOU TELL ME THEN WHY, SIR, IMMEDIATELY AFTER  
18 THIS LAWSUIT WAS FILED PLAYERS INC CHANGED ITS WEB SITE?

19 **A.** I'M NOT AWARE OF THAT CHANGE.

20 **MR. HUMMEL:** YOUR HONOR, PERMISSION TO READ REQUEST  
21 FOR ADMISSION AND THE ANSWER TO NO. 14.

22 **THE COURT:** ANY OBJECTION?

23 **MR. KESSLER:** NO OBJECTION IF IT'S A REQUEST FOR  
24 ADMISSION.

25 **THE COURT:** ALL RIGHT. PLEASE READ THE REQUEST

1 EXACTLY AND THE ANSWER EXACTLY.

2 **MR. HUMMEL:** I WILL, YOUR HONOR.

3 "REQUEST FOR ADMISSION NO. 14: ADMIT THAT AFTER  
4 THIS LAWSUIT WAS FILED YOU CHANGED THE LANGUAGE ON YOUR  
5 WEB SITE TO SAY THAT PLAYERS INC REPRESENTS MANY MEMORABLE  
6 RETIRED PLAYERS INSTEAD OF CLAIMING TO REPRESENT MORE THAN A  
7 SPECIFIC NUMBER OF RETIRED PLAYERS.

8 "RESPONSE TO REQUEST FOR ADMISSION NUMBER 14:  
9 SOMETIME AFTER FEBRUARY 14, 2007, PLAYERS INC CHANGED THE  
10 LANGUAGE ON ITS WEB SITE SO THAT IT CURRENTLY STATES, QUOTE:  
11 'FORMED IN 1994, PLAYERS INC REPRESENTS MORE THAN 1800 ACTIVE  
12 AND MANY MEMORABLE RETIRED NFL PLAYERS.'

13 **BY MR. HUMMEL:**

14 **Q.** ARE YOU SAYING, MR. BERTHELSEN, YOU HAVE NO PERSONAL  
15 KNOWLEDGE OF WHY THAT CHANGE WAS MADE?

16 **A.** I DON'T HAVE ANY PERSONAL KNOWLEDGE.

17 **Q.** NOW, LET'S GO TO THE TIME THAT PLAYERS INC WAS  
18 ESTABLISHED: 1994. AND LET'S LOOK AT, IF YOU WOULD, TRIAL  
19 EXHIBIT NO. 125. IT'S IN EVIDENCE.

20 (DOCUMENT DISPLAYED.)

21 MR. BERTHELSEN, WERE YOU INVOLVED IN THE DRAFTING OF  
22 THIS AGREEMENT?

23 **A.** NO.

24 **Q.** DO YOU HAVE KNOWLEDGE OF ITS TERMS?

25 **A.** I HAVE KNOWLEDGE I'VE ACCUMULATED IN THE CONTEXT OF

1 LITIGATION.

2 **Q.** LET'S NOT TALK ABOUT HOW YOU ACQUIRED THE KNOWLEDGE.

3 **A.** OKAY.

4 **Q.** MY QUESTION IS: DO YOU HAVE KNOWLEDGE OF THE CONTENTS OF  
5 TRIAL EXHIBIT 125?

6 **A.** TO SOME DEGREE.

7 **Q.** TO SOME DEGREE. COULD YOU LOOK, PLEASE, AT PARAGRAPH 5(A)  
8 ON PAGE 6?

9 **MR. KESSLER:** YOUR HONOR, I'M JUST GOING TO OBJECT.  
10 I THINK THE WITNESS SAID THE ONLY KNOWLEDGE HE ACQUIRED WAS IN  
11 THE CONTEXT OF THIS LITIGATION. I'M NOT SURE, THEREFORE --

12 **MR. HUMMEL:** I HAVEN'T ASKED A QUESTION, YOUR HONOR.

13 **THE COURT:** WELL, I THINK YOU'RE GETTING DANGEROUSLY  
14 CLOSE TO VIOLATING THE ADMONITION I GAVE YOU BEFORE. BUT GO  
15 AHEAD AND ASK THE QUESTION.

16 YOU HAVE LAID NO FOUNDATION OTHER THAN JUST TO HAVE  
17 AN ARGUMENT SESSION WITH THIS WITNESS OVER THE MEANING OF THIS  
18 PROVISION.

19 **MR. HUMMEL:** I DO NOT INTEND TO DO THAT.

20 **THE COURT:** ALL RIGHT. I'LL BEAR WITH YOU TO SEE IF  
21 YOU'RE GOING TO A PLACE THAT'S OKAY.

22 **BY MR. HUMMEL:**

23 **Q.** MR. BERTHELSEN, YOU'RE AWARE, ARE YOU NOT, THAT THIS IS

24 THE PROVISION THAT ESTABLISHED THAT PLAYERS WOULD BE PAID A

25 ROYALTY AMOUNT FROM GROUP LICENSING ACTIVITIES IN THE AMOUNT OF

1 37 PERCENT, CORRECT?

2 **A.** I CAN CONFIRM THAT THAT'S WHAT THIS SAYS ON THE DOCUMENT,  
3 YES.

4 **Q.** OKAY. AND ARE YOU AWARE THAT IN 1995 THE UNION  
5 COMMISSIONED A STUDY OF THIS PARTICULAR ALLOCATION BY A COMPANY  
6 CALLED DUFF & PHELPS?

7 YOU TESTIFIED ABOUT THAT IN YOUR DEPOSITION. DO YOU  
8 RECALL THAT?

9 **A.** RIGHT, BUT I DON'T THINK I SAID "1995."

10 **Q.** ALL RIGHT.

11 **MR. HUMMEL:** WELL, CAN WE PUT EXHIBIT 94 ON THE  
12 BOARD, PLEASE? IT'S'S ON --

13 **BY MR. HUMMEL:**

14 **Q.** DO YOU HAVE ANY INDEPENDENT RECOLLECTION THIS WAS 1995?

15 **A.** I DON'T.

16 **Q.** BUT YOU CERTAINLY WERE AWARE OF THIS STUDY, CORRECT?

17 **A.** I WAS AWARE OF IT, YES.

18 **Q.** NOW, WHAT WAS YOUR UNDERSTANDING OF THE PURPOSE OF THIS  
19 STUDY IN CONNECTION WITH THE 37 -- WHAT MR. PARCHER DREW UP  
20 HERE AS THE 37/63 SPLIT? WHAT WAS YOUR UNDERSTANDING OF WHAT  
21 DUFF & PHELPS DID?

22 **A.** THE UNDERSTANDING THAT I HAD WAS DEVELOPED IN THE COURSE  
23 OF MY SERVICES AS AN ATTORNEY FOR THE PEOPLE TALKING TO ME  
24 ABOUT IT.

25 **Q.** SO --

1 **A.** SO IT WAS IN THE CONTEXT OF MY ROLE AS A LAWYER.

2 **Q.** ALL RIGHT. DID YOU UNDERSTAND THAT THIS DUFF & PHELPS  
3 STUDY SET UP A TEMPLATE FOR HOW THE MONEY THAT CAME IN FROM  
4 LICENSES, GROUP LICENSES, WAS TO BE DIVIDED?

5 **MR. KESSLER:** YOUR HONOR, I JUST -- IF THE WITNESS  
6 GOT IT IN A PRIVILEGED LAWYER RELATIONSHIP I WOULD HAVE TO  
7 ASSERT AN OBJECTION.

8 **MR. HUMMEL:** WELL, HE TESTIFIED ABOUT THIS VERBATIM  
9 IN HIS DEPOSITION, YOUR HONOR.

10 **THE COURT:** JUST READ THE DEPOSITION TESTIMONY. AND  
11 THEN, DEPENDING ON WHAT THAT WAS, I'LL ALLOW YOU TO ASK  
12 FOLLOW-UP QUESTIONS THAT ARE CLOSELY RELATED TO WHAT HE SAID IN  
13 THE DEPOSITION.

14 I THINK MAYBE THAT WOULD BE A WAY -- BECAUSE THERE  
15 WON'T BE ANY PRIVILEGE IF IT WAS TESTIFIED TO IN THE  
16 DEPOSITION.

17 **MR. HUMMEL:** YOUR HONOR, I PREFER NOT TO READ THE  
18 DEPOSITION NOW. I PREFER TO HOLD THAT FOR A LATER POINT.

19 **THE COURT:** RIGHT NOW THERE'S NO -- HE SAID HE  
20 LEARNED ABOUT THIS THROUGH ATTORNEY-CLIENT COMMUNICATIONS.

21 **MR. HUMMEL:** OKAY.

22 **THE COURT:** WHICH ARE PRIVILEGED. AND IT REALLY  
23 SERVES NO PURPOSE TO ASK HIM ABOUT THAT.

24 **MR. HUMMEL:** OKAY. I'LL MOVE ON.  
25

1 **BY MR. HUMMEL:**

2 **Q.** DID, TO YOUR KNOWLEDGE, AFTER THE 1995 DUFF & PHELPS -- I  
3 GUESS WE'LL CALL IT AN ANALYSIS OF THE LICENSING OPERATION IN  
4 THE DIVISION.

5 TO YOUR KNOWLEDGE, SIR, DID THE UNION OR PI EVER  
6 COMMISSION ANOTHER ASSESSMENT OF WHETHER THIS DIVISION WAS  
7 APPROPRIATE?

8 **A.** NOT TO MY KNOWLEDGE. NOT FROM A FIRM LIKE DUFF & PHELPS.

9 **Q.** FROM ANY OTHER FIRM?

10 **A.** WE HAD CONTINUAL INPUT IN THE AREA BY OUTSIDE COUNSEL.

11 **Q.** LEGAL ADVICE, RIGHT?

12 **A.** LEGAL, YES.

13 **Q.** I DON'T WANT TO GET INTO LEGAL ADVICE.

14 **MR. HUMMEL:** YOUR HONOR, COULD I ASK FOR AN  
15 INSTRUCTION TO THE JURY AS TO WHY ATTORNEY-CLIENT PRIVILEGE  
16 COMMUNICATIONS ARE OFF LIMITS WITH THIS WITNESS IN HIS CAPACITY  
17 AS GENERAL COUNSEL?

18 **THE COURT:** SURE. I'LL TRY MY BEST.

19 **MR. HUMMEL:** THANK YOU.

20 **THE COURT:** YOU KNOW, IF YOU WERE TO GO AND HAVE A  
21 CONVERSATION WITH A LAWYER OVER SOME LITIGATION OR JUST SOME  
22 PERSONAL FINANCIAL PROBLEM OR WHATEVER, UNDER THE LAW THAT  
23 CONVERSATION IS PRIVILEGED. MEANING IT'S CONFIDENTIAL AND  
24 SECRET AS BETWEEN YOU AND THE LAWYER.

25 AND THE REASON FOR THAT IS THAT THE LAW HAS

1 RECOGNIZED THAT FROM TIME TO TIME EVERYONE NEEDS TO HAVE LEGAL  
2 ADVICE. AND IN ORDER TO GET THE BEST POSSIBLE LEGAL ADVICE,  
3 YOU WANT TO ENCOURAGE CANDOR BETWEEN THE CLIENT AND THE LAWYER.  
4 THAT IS SO THE LAWYER WILL HAVE THE BENEFIT OF THE MOST  
5 ACCURATE AND LEGAL INFORMATION.

6 SO UNDER THE LAW THAT'S CALLED "A PRIVILEGE." IT'S A  
7 PRIVILEGED COMMUNICATION. WHAT THE LAWYER SAYS TO THE CLIENT,  
8 AND VICE VERSA, IN A CONFIDENTIAL RELATIONSHIP FOR THE PURPOSE  
9 OF OBTAINING LEGAL ADVICE IS PRIVILEGED FROM DISCLOSURE.

10 IT CAN BE WAIVED, BUT IF IT IS WAIVED, THEN IT OPENS  
11 THE DOOR -- IT CAN'T BE A SELECTIVE WAIVER. IT HAS TO BE A  
12 COMPLETE WAIVER ON THAT ENTIRE SUBJECT.

13 SO THE COUNSEL IS ASKING ME TO EXPLAIN TO YOU WHY IT  
14 IS THAT WE'RE NOT ALLOWING HIM TO INQUIRE INTO THAT. AND HE  
15 UNDERSTANDS THAT. HE'S DOING NOTHING WRONG. IT'S PERFECTLY  
16 PROPER FOR MR. HUMMEL TO ASK QUESTIONS OF THIS WITNESS THAT ARE  
17 NOT PRIVILEGED. AND HE'S ALREADY ANSWERED A NUMBER, AND  
18 THERE'S NO DOUBT THAT THERE'S A LOT OF THINGS THAT HE KNOWS AND  
19 CAN TESTIFY TO THAT ARE NOT PRIVILEGED.

20 BUT ON SOME THINGS, BECAUSE HE DID HAVE THE ROLE OF  
21 BEING GENERAL COUNSEL, IT'S GOING TO BE PRIVILEGED. SO WE'RE  
22 HAVING TO TREAD A LITTLE CAREFULLY HERE TO MAKE SURE THAT WE  
23 DON'T INVADE SOME ATTORNEY-CLIENT PRIVILEGE ITEM.

24 SO THAT'S WHAT'S GOING ON HERE. AND THERE'S NOTHING  
25 IMPROPER ABOUT INVOKING THE ATTORNEY-CLIENT PRIVILEGE. IT'S

1 PERFECTLY OKAY TO DO THAT. AND PLEASE DO NOT DRAW ANY ADVERSE  
2 INFERENCE ON ACCOUNT OF THE EXERCISE OF THE PRIVILEGE.

3 ALL RIGHT. GO AHEAD.

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

5 **BY MR. HUMMEL:**

6 **Q.** MR. BERTHELSEN, YOU JUST HEARD THAT ADMONITION BY THE  
7 COURT ABOUT THE PRIVILEGE?

8 **A.** YES.

9 **Q.** AND YOU HEARD THE COURT SAY TO YOU AND TO THE JURY THAT  
10 THE CLIENT CAN WAIVE THE PRIVILEGE?

11 **A.** I HEARD THE JUDGE SAY THAT, YES.

12 **Q.** AND JUST SO WE'RE CLEAR THAT YOU AS THE GENERAL COUNSEL,  
13 ACTING HEAD OF THE UNION, AND CORPORATE REPRESENTATIVE OF THE  
14 COMPANY HERE, ARE ELECTING NOT TO WAIVE THE PRIVILEGE, CORRECT?

15 **A.** THAT'S CORRECT.

16 **Q.** OKAY.

17 **THE COURT:** THERE'S NOTHING WRONG WITH THAT. ARE YOU  
18 SUGGESTING THERE'S SOMETHING WRONG WITH --

19 **MR. HUMMEL:** ABSOLUTELY NOT. I JUST WANT TO BE VERY  
20 CLEAR ON THE RECORD THAT THERE IS NOT A WAIVER OF THE PRIVILEGE  
21 HERE.

22 **THE COURT:** ALL RIGHT. THERE IS NO WAIVER OF THE  
23 PRIVILEGE.

24 BUT BY THE SAME TOKEN YOU, SHOULD NOT THINK:

25 "OH, THEY'RE TRYING TO HIDE SOMETHING FROM ME."

1 THAT IS NOT TRUE.

2 I DON'T KNOW WHY THEY'RE EXERCISING THE PRIVILEGE,  
3 BUT IT'S PERFECTLY NORMAL TO DO SO, AND YOU SHOULD NOT DRAW ANY  
4 ADVERSE INFERENCE WHATSOEVER FROM THE EXERCISE OF THE  
5 PRIVILEGE.

6 **BY MR. HUMMEL:**

7 **Q.** NOW, MR. BERTHELSEN, GO BACK, IF YOU WOULD, TO THE PRIOR  
8 EXHIBIT 125. THIS IS THE 1994 AGREEMENT BETWEEN THE NFLPA AND  
9 PLAYERS INC. AND THIS WAS SIGNED, WAS IT NOT, SIR, BY GENE  
10 UPSHAW AND DOUG ALLEN?

11 **A.** LOOKING AT THE LAST PAGE, THAT'S APPARENT, YES.

12 **Q.** AND IN THE YEAR 2000, SIR, THERE WAS A SUBSEQUENT  
13 AGREEMENT BETWEEN THE NFLPA AND PI. THAT'S EXHIBIT 95, WHICH  
14 IS IN EVIDENCE.

15 **MR. HUMMEL:** COULD YOU PLEASE DISPLAY THAT, PLEASE.

16 (DOCUMENT DISPLAYED.)

17 **BY MR. HUMMEL::**

18 **Q.** WERE YOU INVOLVED, SIR, IN THE NEGOTIATION OF THIS  
19 DOCUMENT BETWEEN MR. UPSHAW AND MR. ALLEN?

20 **A.** NO.

21 **Q.** DID YOU, YES OR NO, PROVIDE ANY LEGAL ADVICE REGARDING  
22 THIS AMENDMENT?

23 **A.** NO.

24 **Q.** NOW, WHAT HAPPENED NEXT -- THAT'S 2000. WHAT HAPPENED  
25 NEXT IS IN 2006, THERE WAS AN AMENDMENT TO THIS 2000 AGREEMENT.

1 ARE YOU AWARE OF THAT AMENDMENT?

2 **A.** YES.

3 **Q.** ALL RIGHT.

4 **MR. HUMMEL:** COULD YOU PUT EXHIBIT 91 ON THE BOARD,  
5 PLEASE.

6 (DOCUMENT DISPLAYED.)

7 **BY MR. HUMMEL:**

8 **Q.** NOW, EXHIBIT 91 --

9 **MR. HUMMEL:** IF YOU COULD HIGHLIGHT THE ONE, TWO,  
10 THREE, FOUR, FIFTH PARAGRAPH DOWN.

11 (DOCUMENT DISPLAYED.)

12 **BY MR. HUMMEL::**

13 **Q.** WERE YOU AWARE, SIR, THAT THE NFLPA AND PLAYERS INC AGREED  
14 THAT \$8 MILLION OF GROSS LICENSING REVENUE AS DEFINED IN  
15 PARAGRAPH 4A OF THAT 2000 AGREEMENT SHOULD BE REALLOCATED AMONG  
16 THE NFLPA AND PLAYERS INC?

17 **A.** I AM AWARE THAT THAT HAPPENED.

18 **Q.** ALL RIGHT. AND LOOK AT THE BOTTOM PARAGRAPH, IF YOU  
19 WOULD, SIR. BOTTOM PARAGRAPH OF THAT AGREEMENT STARTS WITH THE  
20 "WHEREAS"?

21 **A.** YES.

22 **Q.** IT SAYS:

23 "WHEREAS THE NFLPA AND PLAYERS INC AGREE THAT  
24 FURTHER ADJUSTMENT MAY BE NECESSARY AFTER COMPLETION OF AN  
25 INDEPENDENT, THIRD-PARTY VALUATION OF THE VALUE CONFERRED BY

1 THE PLAYERS, THE NFLPA, AND PLAYERS INC."

2 DO YOU SEE THAT?

3 **A.** I SEE IT.

4 **Q.** TO YOUR KNOWLEDGE, SIR, WAS SUCH AN INDEPENDENT  
5 THIRD-PARTY EVALUATION OF THAT VALUE EVER CONDUCTED BY THE  
6 UNION OR PLAYERS INC?

7 **A.** NOT TO MY KNOWLEDGE.

8 **Q.** WOULD YOU LOOK, SIR, AT PAGE -- TRIAL EXHIBIT 1130.

9 **A.** THE LAST ONE.

10 **Q.** DO YOU HAVE THAT IN FRONT OF YOU?

11 **A.** I DO.

12 **Q.** DO YOU RECOGNIZE THAT DOCUMENT?

13 **A.** YES.

14 **Q.** AND WHAT IS IT?

15 **A.** IT APPEARS TO BE AT LEAST AN EXCERPT -- I DON'T KNOW IF IT  
16 WOULD BE THE FULL DOCUMENT OR NOT -- OF A FINANCIAL STATEMENT  
17 FOR THE PERIOD MARCH 1, 2005 TO FEBRUARY 28, 2006.

18 **Q.** FINANCIAL STATEMENT OF WHOM?

19 **A.** OF THE NFLPA AND PLAYERS INC. COMBINED STATEMENTS.

20 **MR. HUMMEL:** YOUR HONOR, MOVE TRIAL EXHIBIT 1130.

21 **THE COURT:** 1130.

22 **MR. KESSLER:** YOUR HONOR, WE HAVE A COMPLETENESS  
23 OBJECTION. THE COMPLETE VERSION, I BELIEVE, WAS ALREADY PUT  
24 INTO EVIDENCE DURING MR. EYRICH'S DEPOSITION. AND WE HAVE A  
25 COMPLETENESS OBJECTION TO THIS ONE. IT'S NOT THE ENTIRE

1 DOCUMENT.

2           **MR. HUMMEL:** WHAT'S THE FULL DOCUMENT NUMBER? I  
3 DON'T KNOW.

4           **MR. CLARK:** I THINK IT'S TRIAL EXHIBIT 85, I BELIEVE.  
5 LET ME CHECK.

6           **MR. HUMMEL:** I HAVE NO PROBLEM, YOUR HONOR. WE WON'T  
7 SEPARATELY MOVE IN ONE THAT'S INCOMPLETE.

8 **BY MR. HUMMEL:**

9 **Q.** I DO WANT TO ASK YOU ABOUT -- DO YOU HAVE 1130 IN FRONT OF  
10 YOU, SIR?

11 **A.** I DO. THE FOLDER SAYS IT'S "1130."

12 **Q.** RIGHT. AND THERE'S A TAG ON THE FIRST PAGE THAT SAYS  
13 "1130"?

14 **A.** YES.

15           **MR. KESSLER:** YOUR HONOR, IT'S 85.

16           **MR. HUMMEL:** THANK YOU, MR. KESSLER.

17           **THE COURT:** WHY DON'T YOU USE 85 SO THAT WE WILL HAVE  
18 REFERENCES MADE TO A DOCUMENT IN EVIDENCE?

19           **MR. HUMMEL:** YOU DON'T HAVE EXHIBIT 85 IN FRONT OF  
20 YOU, BUT IT'S OKAY. I NOW HAVE ONE.

21           **MR. KESSLER:** I THINK 85 IS IN EVIDENCE, YOUR HONOR.

22           **THE COURT:** IT IS.

23 **BY MR. HUMMEL:**

24 **Q.** OKAY. SO YOU SAID THIS IS THE CONSOLIDATED FINANCIAL  
25 STATEMENT OF PLAYERS INC ON THE ONE HAND, AND NFLPA ON THE

1 OTHER. DO YOU KNOW WHY, OTHER THAN IN A PRIVILEGED CONTEXT OR  
2 BASED ON PRIVILEGED COMMUNICATIONS, PLAYERS INC AND THE NFLPA  
3 HAD A CONSOLIDATED FINANCIAL STATEMENT?

4 **A.** IT'S ACTUALLY MORE THAN THAT. I THINK THE BUILDING  
5 CORPORATION WOULD BE IN THERE, TOO. IT'S THE ACCOUNTANT'S  
6 ADVICE TO DO IT THAT WAY.

7 **Q.** SO YOU RELY ON YOUR ACCOUNTANT'S ADVICE TO DO IT THAT WAY;  
8 IS THAT RIGHT?

9 **A.** YES, AND COUNSEL, AS WELL.

10 **Q.** IS THIS A PUBLIC DOCUMENT OR PRIVATE DOCUMENT, DO YOU  
11 KNOW?

12 **A.** IT'S A PRIVATE DOCUMENT.

13 **Q.** IT'S NOT FILED WITH ANY UNITED STATES DEPARTMENT OF LABOR  
14 OR ANYBODY ELSE?

15 **A.** THAT ISN'T, BUT SOMETHING THAT'S A LOT BROADER AND MORE  
16 DETAILED THAN THAT IS FILED EVERY YEAR WITH THE FEDERAL  
17 GOVERNMENT.

18 **Q.** OKAY. WHAT IS THE PURPOSE, IF YOU KNOW, OF HAVING A  
19 CONSOLIDATED FINANCIAL STATEMENT?

20 **A.** SO THAT THE ENTIRE PICTURE IS SHOWN TO THE PEOPLE WHO THAT  
21 REPORT IS PREPARED FOR.

22 **Q.** AND WHO IS THE REPORT PREPARED FOR?

23 **A.** OUR BOARD OF PLAYER REPRESENTATIVES, THE GOVERNING BODY OF  
24 THE ORGANIZATION.

25 **Q.** SO YOU'RE SHOWING THIS TO THE BOARD OF PLAYER

1 REPRESENTATIVES, RIGHT?

2 **A.** YES.

3 **Q.** OKAY. LET'S GO TO PAGE 14, NOTE 11.

4 THIS BOARD OF PLAYER REPRESENTATIVES, BY THE WAY, IS  
5 THE SAME BOARD THAT AUTHORIZES, INITIALLY AUTHORIZED, ACCORDING  
6 TO MR. ALLEN, THIS INITIAL SPLIT, RIGHT?

7 **A.** YES.

8 **Q.** ALL RIGHT. SO YOU'VE NOW DONE THIS \$8 MILLION  
9 REALLOCATION.

10 **A.** COUNSEL, I'M SORRY. IF YOU ARE REFERRING TO SOMETHING  
11 OVER THERE, I DON'T UNDERSTAND THAT.

12 **Q.** I DON'T, EITHER.

13 **A.** OKAY.

14 **Q.** I ACTUALLY DO. IT'S AN ARTISTIC RENDERING.

15 WHAT BUT WHAT I'M TALKING ABOUT, I UNDERSTAND THAT  
16 THE BOARD OF PLAYERS INC NEVER RATIFIED THIS CHART?

17 **A.** RIGHT.

18 **Q.** BUT THEY DID RATIFY THE ALLOCATION OF 63 PERCENT GOING TO  
19 THE UNION AND PI COMBINED, AND 37 PERCENT TO THE PLAYERS,  
20 RIGHT?

21 **A.** 40 PERCENT TO NFLPA, 37 PERCENT TO THE PLAYERS AND  
22 23 PERCENT TO PLAYERS INC, YES.

23 **Q.** RIGHT. AND THE TOTAL OF 40 AND 23 IS, OF COURSE, 63,  
24 RIGHT?

25 **A.** MATHEMATICALLY THAT'S THE TOTAL. BUT IT'S A SEPARATE

1 ALLOCATION.

2 **Q.** I UNDERSTAND. BUT 63 PERCENT DOESN'T GO TO THE PLAYERS,  
3 RIGHT?

4 **A.** IT GOES TO THEIR ORGANIZATIONS. IT GOES TO THEIR UNION,  
5 WHICH SERVES THEIR INTERESTS AND PROTECTS THEIR INTERESTS.

6 **Q.** FAIR ENOUGH. AND THE UNION IS -- THE BODY THAT IS  
7 SUPPOSED TO REPRESENT THE PLAYERS IN THE UNION IS THE BOARD OF  
8 PLAYER REPS, RIGHT?

9 **A.** THAT'S THE GOVERNING BODY, YES.

10 **Q.** OKAY. AND THIS CONSOLIDATED FINANCIAL STATEMENT, EXHIBIT  
11 85, IS WHAT YOU'RE TELLING THE PLAYER REPS. AND WHAT I'M GOING  
12 TO SHOW YOU, IS WHAT YOU'RE TELLING THE PLAYER REPS ABOUT THAT  
13 \$8 MILLION REALLOCATION, OKAY?

14 **A.** OKAY.

15 **Q.** SO IF YOU COULD LOOK AT NOTE 11. AND THE YEAR HERE IS  
16 2005, ENDING FEBRUARY 28, 2006. SO THE REALLOCATION HAS  
17 OCCURRED, AND HERE'S WHAT YOU'RE TELLING THE PLAYER REPS:

18 "THE NFLPA AND PLAYERS INC" --

19 **MR. HUMMEL:** CAN WE HIGHLIGHT THAT, PLEASE, RIGHT  
20 HERE? I'LL JUMP.

21 **BY MR. HUMMEL:**

22 **Q.** THERE (INDICATING).

23 "THE NFLPA AND PLAYERS INC PLAN TO OBTAIN A  
24 THIRD-PARTY VALUATION TO REEVALUATE THE CURRENT ECONOMIC  
25 STRUCTURE OF THE PAYMENTS TO ALL PARTIES DURING THE YEAR ENDING

1 FEBRUARY 28, 2007. DEPENDING UPON THE RESULTS OF THE  
2 THIRD-PARTY VALUATION" -- SORRY, IT SAID "VALUATION -- FUTURE  
3 AMOUNTS OF LICENSING REVENUE ALLOCATED TO PLAYERS" -- THAT'S  
4 THE 37, PERCENT, RIGHT?

5 **A.** YES.

6 **Q.** --- "PLAYERS INC AND THE NFLPA MAY BE REVISED."

7 DO YOU SEE THAT?

8 **A.** YES.

9 **Q.** DID THE NFLPA OR PLAYERS INC EVER OBTAIN THE THIRD-PARTY  
10 VALUATION THAT YOU PROMISED TO THE BOARD OF PLAYER REPS?

11 **A.** TO MY KNOWLEDGE, THERE WAS NO THIRD-PARTY VALUATION, AS  
12 YOU REFER TO IT THERE. I DON'T KNOW ABOUT YOUR PROMISE, BUT --

13 **Q.** AND, IN FACT, AFTER -- AFTER THE REALLOCATION OF  
14 \$8 MILLION, DO YOU KNOW, SIR, IF THIS AMOUNT, 63, ACTUALLY WENT  
15 TO 69 PERCENT?

16 **A.** I'D HAVE TO DO THE MATH. I DON'T THINK IT WOULD BE THAT  
17 BIG OF A JUMP.

18 **Q.** YOU DON'T KNOW?

19 **A.** WELL, I DO KNOW FROM CERTAINLY LISTENING TO EVIDENCE IN  
20 THIS CASE, AND SO ON, FROM PRIOR WITNESSES, AND LOOKING AT SOME  
21 OF THE ISSUES THAT MATHEMATICALLY HOWEVER MUCH GOES IS A  
22 FUNCTION OF THE TOTAL AMOUNT IN THE POOL SO YOU COULD DO THE  
23 CALCULATION. YOU WOULD HAVE TO DO A CALCULATION. IF YOU  
24 REDUCED THE POOL BY SOME AMOUNT OF MONEY, YEAH, THERE WOULD BE  
25 A REDUCTION IN THE DOLLAR AMOUNT THAT PLAYERS WOULD GET.

1           BUT GIVEN THE SIZE OF THE POOL, IT WOULD BE A VERY  
2 SMALL AMOUNT.

3 **Q.**    RIGHT.  AND, IN FACT, IF THIS GOES TO 69, JUST TO BE  
4 CLEAR, THIS GOES TO 31 PERCENT, AND THIS DOCUMENT WE JUST TOLD  
5 YOU ABOUT WENT TO THE BOARD OF PLAYER REPS, AND SAID:

6                   "DON'T WORRY.  WE'RE GOING TO CONDUCT AN  
7 INDEPENDENT VALUATION" THAT YOU NEVER DID; ISN'T THAT TRUE?

8 **A.**    THESE ARE THE DECISIONS OF THE BOARD ITSELF.  THEY APPROVE  
9 ALL OF THIS.  A REPORT IS GIVEN TO THEM, AND THEN THEY APPROVE  
10 THAT REPORT AND IMPLEMENT WHAT IS RECOMMENDED BY VIRTUE OF  
11 THEIR PASSING OF OUR BUDGET.

12                   THIS IS ALL FOR THE ACTIVE PLAYER POOL.

13 **Q.**    ISN'T IT TRUE, SIR, THAT YOU NEVER CONDUCTED THAT  
14 INDEPENDENT VALUATION BECAUSE YOU DIDN'T WANT TO MESS WITH THE  
15 TEMPLATE?

16 **A.**    NO.

17 **Q.**    IT'S NOT TRUE?

18 **A.**    NO.

19 **Q.**    OKAY.  AND THAT TEMPLATE WAS SET UP BY DUFF & PHELPS IN  
20 1995 AND NEVER REEVALUATED THEREAFTER; ISN'T THAT TRUE?

21 **A.**    YOU MEAN THE 40/37/23?

22 **Q.**    YES.

23 **A.**    YES, THAT WAS ORIGINALLY SET UP IN '94, '95.

24 **Q.**    AND YOU NEVER TOUCHED THAT THEREAFTER, RIGHT?

25 **A.**    TOUCHED THE VALUATION?

1 Q. CHANGED THE TEMPLATE.

2 A. NO, NOT -- NOT REALLY.

3 Q. OKAY.

4 A. BUT IT WAS THE ACTIVE PLAYERS' DECISION ON WHAT THEY WERE  
5 GOING TO DO WITH THEIR LICENSING REVENUE.

6 Q. RIGHT. AND YOU TOLD THE ACTIVE PLAYERS YOU WERE GOING TO  
7 DO A THIRD-PARTY VALUATION AND NEVER DID IT?

8 A. IT SAYS:

9 "THE NFLPA AND PLAYERS INC PLANNED TO OBTAIN."

10 Q. NEVER DID?

11 A. NOT TO THIS MOMENT.

12 Q. OKAY. NOW, HIS HONOR KEEPS SAYING -- AND HE'S QUITE  
13 RIGHT -- THAT THIS CASE IS ABOUT THE GLA. IN FACT, YESTERDAY  
14 DID YOU HEAR HIM SAY:

15 "THREE WORDS IN THIS CASE: G-L-A"? DO YOU  
16 RECALL THAT?

17 A. I HEARD HIS HONOR SAY THAT, YES.

18 Q. YOU WERE HERE FOR THE OPENING STATEMENT OF MR. KESSLER,  
19 RIGHT?

20 A. YES.

21 Q. YOU HEARD HIM SAY:

22 "LET'S NOT POUND ON THE TABLE. LET'S TALK ABOUT  
23 THE EVIDENCE."

24 SO I WANT TO TALK ABOUT THE GLA. OKAY.

25 **MR. HUMMEL:** LET'S PUT EXHIBIT 110 ON THE BOARD,

1 PLEASE.

2 (DOCUMENT DISPLAYED.)

3 **BY MR. HUMMEL:**

4 **Q.** NOW, THIS IS THE GLA THAT MR. ADDERLEY SIGNED IN NOVEMBER  
5 OF 2002. CORRECT, SIR?

6 **A.** EXHIBIT 110.

7 **Q.** YOU MIGHT HAVE 17 IN FRONT OF YOU. IS THAT WHAT YOU HAVE?

8 **MR. HUMMEL:** MAY I APPROACH?

9 **THE WITNESS:** WHAT DATE DID YOU GIVE, NOVEMBER?

10 **BY MR. HUMMEL::**

11 **Q.** IT'S EXHIBIT 110. NOVEMBER, '02.

12 **A.** OKAY.

13 **Q.** WE'RE ON THE SAME PAGE. EXHIBIT 110.

14 NOW, DID YOU, AS THE GENERAL COUNSEL OF THE COMPANY,  
15 HAVE ANY INVOLVEMENT IN DRAFTING THE GLA?

16 **A.** NO.

17 **Q.** DO YOU KNOW WHO DRAFTED THE GLA?

18 **A.** NOT SPECIFICALLY.

19 **Q.** WAS IT THE UNION AND PLAYERS INC, OR WAS IT A PLAYER?

20 **MR. KESSLER:** YOUR HONOR, I'M GOING TO OBJECT.  
21 COUNSEL POINTED AT ME.

22 **MR. HUMMEL:** NO, NO, NO. I WASN'T --

23 **MR. KESSLER:** THAT'S GOING TO THE SAME ISSUE --

24 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

25 **MR. KESSLER:** YOUR HONOR HAS ALREADY TOLD THE JURY

1 ABOUT THAT. THAT'S NOT APPROPRIATE.

2 **MR. HUMMEL:** THAT'S NOT TRUE. I DO NOT MEAN -- WHEN  
3 I POINTED, I POINTED AT DEFENDANTS VERSUS PLAINTIFFS. I  
4 ACTUALLY POINTED AT MR. PARCHER. SO --

5 **THE COURT:** YOU'RE JUST TRYING TO ASK: DID THE  
6 PLAYER DRAFT THIS?

7 **MR. HUMMEL:** CORRECT.

8 **THE COURT:** OR DID THE DEFENDANTS DRAFT IT, SOMEBODY  
9 FROM THE DEFENDANTS DRAFT IT VERSUS THE PLAYER?

10 **MR. HUMMEL:** RIGHT.

11 **THE COURT:** IT'S ALMOST SELF-EVIDENT.

12 GO AHEAD. YOU CAN ANSWER THAT QUESTION.

13 **THE WITNESS:** I DON'T KNOW WHO DRAFTED IT ORIGINALLY.  
14 I DOUBT THAT A PLAYER DRAFTED IT, THOUGH, IF YOU'RE TALKING  
15 ABOUT LIKE AN ACTIVE PLAYER WHO IS A MEMBER OF THE  
16 ORGANIZATION.

17 **BY MR. HUMMEL:**

18 **Q.** DO YOU ACTUALLY KNOW, YES OR NO, WHETHER THE DEFENDANTS  
19 ARE RESPONSIBLE FOR THIS DOCUMENT OR NOT?

20 **A.** RESPONSIBILITY IS A DIFFERENT QUESTION. YES, DEFENDANTS  
21 HAVE TO TAKE RESPONSIBILITY FOR THE DOCUMENT.

22 **Q.** DEFENDANTS TAKE RESPONSIBILITY FOR THE DOCUMENT. OKAY.

23 NOW, I CAN'T REMEMBER WHICH WITNESS MR. KESSLER ASKED  
24 ABOUT THIS WITH, BUT IF YOU COULD GO TO THE FIRST PARAGRAPH OF  
25 THIS GLA.

1 HE WANTED TO POINT OUT THAT THIS IS A NON-EXCLUSIVE  
2 RIGHT THAT THE PLAYER WAS SIGNING OVER. DO YOU RECALL THAT?

3 **A.** DO I RECALL HIM TESTIFYING TO THAT EFFECT?

4 **Q.** MR. KESSLER, I'M CONFIDENT, DID NOT TESTIFY. BUT HE SAID  
5 IT. DO YOU RECALL THAT?

6 **A.** IT'S BEEN SAID, YES.

7 **Q.** NOW, DO YOU SEE THAT WORD HIGHLIGHTED: "NON-EXCLUSIVE  
8 RIGHT"? DO YOU SEE IT?

9 **A.** I SEE IT HIGHLIGHTED, YEAH.

10 **Q.** AND, MR. BERTHELSEN, YOU'RE A MEMBER OF THE -- WHAT'S IT  
11 CALLED -- SPORTS LAWYERS ASSOCIATION?

12 **A.** I AM.

13 **Q.** WHAT IS THE SPORTS LAWYERS ASSOCIATION?

14 **A.** IT'S LIKE A BAR ASSOCIATION OF SPORTS LAWYERS.

15 **Q.** IT'S A BUNCH OF LAWYERS WHO DO SPORTS LAW?

16 **A.** OR WHO WANT TO, YEAH.

17 **Q.** FAIR ENOUGH. AND YOU'VE ACTUALLY LISTED YOUR RESUME ON  
18 THE WEB SITE FOR THE SPORTS LAWYERS ASSOCIATION, RIGHT?

19 **A.** I BELIEVE THERE IS A RESUME OF ME ON THERE. I DON'T KNOW  
20 HOW CURRENT IT IS.

21 **Q.** ON THE RESUME YOU SAY YOU'VE BEEN RESPONSIBLE SINCE --

22 **MR. KESSLER:** YOUR HONOR, I OBJECT TO READING FROM  
23 IT. IT'S NOT A DISCLOSED EXHIBIT, AND HE'S TRYING TO GET AN  
24 EXHIBIT IN.

25 **THE COURT:** SUSTAINED. YOU SHOULDN'T BE READING FROM

1 A DOCUMENT THAT'S NOT IN EVIDENCE.

2 **BY MR. HUMMEL:**

3 **Q.** WAS IT TRUE, SIR, THAT IN -- SINCE 19 -- SINCE 1972,  
4 YOU'VE BEEN INVOLVED IN NEGOTIATING AND DRAFTING PLAYER GROUP  
5 LICENSING AGREEMENTS?

6 **A.** AT ONE TIME I WAS, YEAH.

7 **Q.** OKAY.

8 **A.** NOT THIS ONE, THOUGH?

9 **Q.** WHICH ONE?

10 **A.** THE ONE ON THE SCREEN.

11 **Q.** THIS IS NOT A GROUP LICENSING AGREEMENT, IS IT?

12 **A.** WELL, I'M MAKING IT CLEAR TO YOU I WAS NOT INVOLVED IN THE  
13 DRAFTING OF THAT.

14 **Q.** I UNDERSTAND. I'M NOT ASKING YOU ABOUT THE GLA, EVEN  
15 THOUGH IT'S ON THE BOARD.

16 **A.** OKAY.

17 **Q.** YOU UNDERSTAND -- AND LET'S BE VERY CLEAR -- THAT THERE'S  
18 A GLA, AND THAT'S AN AGREEMENT BETWEEN A PLAYER AND THE NFLPA,  
19 CORRECT?

20 **A.** RIGHT.

21 **Q.** AND YOU ALSO UNDERSTAND THAT THE NFLPA ASSIGNED THOSE  
22 RIGHTS TO PLAYERS INC, CORRECT?

23 **A.** RIGHT.

24 **Q.** OKAY. AND ON THE OTHER HAND, THEN, WHAT PLAYERS INC DID  
25 WAS IT WENT OUT TO THIRD-PARTY LICENSEES, LIKE EA, AND IT

1 OBTAINED GROUP LICENSES, RIGHT?

2 **A.** RIGHT.

3 **Q.** NOW, WERE YOU INVOLVED SINCE 1972 IN NEGOTIATING WITH  
4 THOSE THIRD-PARTY LICENSEES ABOUT THOSE LICENSES?

5 **A.** I WAS NOT.

6 **Q.** OKAY. WHAT NEGOTIATING AND DRAFTING OF PLAYER GROUP  
7 LICENSING AGREEMENTS HAVE YOU BEEN INVOLVED IN?

8 **A.** FOR A SHORT TIME WHEN I STARTED, FIRST STARTED IN 1972, WE  
9 HAD A LIMITING LICENSING PROGRAM, ALL OF THE FUNDS OF WHICH  
10 WENT TO THE UNION. AND I WAS INVOLVED TO SOME EXTENT WITH  
11 THOSE EARLY ON.

12 BUT AFTER WE CREATED OUR OWN LICENSING DEPARTMENT AND  
13 EVERYTHING, I WAS NO LONGER INVOLVED IN THAT. I ALSO DID SOME  
14 WORK FOR THE SOCCER PLAYERS WHEN WE HELPED THEM ORGANIZE THE  
15 UNION WAY BACK IN THE, I THINK, EARLY '80S.

16 **Q.** OKAY. FAIR ENOUGH.

17 SO YOU'RE GENERALLY, THOUGH, FAMILIAR WITH THE PHRASE  
18 "NON-EXCLUSIVE RIGHT." AND I'M NOT GOING TO ASK YOU ABOUT YOUR  
19 PRESENT UNDERSTANDING OF THAT AT ALL.

20 BUT WHAT I DO WANT TO ASK YOU IS: DO YOU KNOW THAT  
21 EVEN THOUGH THIS DOCUMENT SAYS "NON-EXCLUSIVE RIGHT," EACH OF  
22 THE LICENSEES THAT PLAYERS INC SIGNED A CONTRACT WITH ARE  
23 CONTRACTUALLY PRECLUDED FROM DEALING WITH THOSE PLAYERS WHO  
24 SIGNED GLA'S?

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

1 **BY MR. HUMMEL:**

2 **Q.** AND THESE ARE THE LICENSES.

3 **MR. KESSLER:** I'M GOING TO OBJECT. THIS IS EXACTLY  
4 WHAT YOUR HONOR WAS HAVING AN ADMONITION ABOUT PREVIOUSLY ABOUT  
5 THIS IS JUST ARGUMENT. HE DIDN'T ASK ANY FACTUAL QUESTION  
6 ABOUT -- OF THE WITNESS ABOUT THIS DOCUMENT. HE IS ARGUING  
7 ABOUT THE MEANING AND INTERPRETATION.

8 **THE COURT:** AS THE QUESTION IS FRAMED, SUSTAINED.

9 **BY MR. HUMMEL:**

10 **Q.** DO YOU KNOW, SIR, THAT, IN FACT, NOTWITHSTANDING WHAT IT  
11 SAYS IN THAT DOCUMENT --

12 **THE COURT:** THIS IS ARGUMENT. I CAN TELL ALREADY  
13 IT'S GOING TO BE AN ARGUMENT.

14 **MR. HUMMEL:** IT IS NOT AN ARGUMENT, YOUR HONOR.

15 **THE COURT:** YOU'RE SAYING "NOTWITHSTANDING." RIGHT  
16 AWAY THAT IS AN ARGUMENT.

17 **MR. HUMMEL:** FINE.

18 **BY MR. HUMMEL:**

19 **Q.** DO YOU HAVE ANY KNOWLEDGE, SIR, ABOUT WHETHER A PLAYER WHO  
20 SIGNED A GLA CAN GET A CONTRACT DIRECTLY WITH ANY OF THE  
21 LICENSEES WITH WHICH PLAYERS INC HAS ENTERED INTO AN AGREEMENT?

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

23 **Q.** COULD I DRAW YOUR ATTENTION, SIR, TO EXHIBIT 28, WHICH IS  
24 THE EA AGREEMENT?

25 **MR. KESSLER:** YOUR HONOR, AGAIN, I'M GOING TO OBJECT.

1 THE WITNESS JUST SAID HE DOESN'T KNOW. HE'S NOW GOING TO MAKE  
2 AN ARGUMENT ABOUT LANGUAGE.

3 **THE COURT:** YOU DON'T KNOW THAT YET. IT MAY BE  
4 COUNSEL CAN ESTABLISH A FOUNDATION TO ASK THESE QUESTIONS WITH  
5 THE SPECIFIC AGREEMENT, THEN IT WILL BE PROPER TO ASK.

6 **MR. KESSLER:** I WOULD ASK, YOUR HONOR, THAT HE START  
7 OUT BY LAYING FOUNDATION OF THE WITNESS'S KNOWLEDGE OF THIS  
8 AGREEMENT.

9 **THE COURT:** WELL, I THINK THAT'S A FAIR POINT.  
10 SO YOU SHOULD ESTABLISH WHAT ROLE THE WITNESS HAD  
11 WITH EXHIBIT 28.

12 **MR. HUMMEL:** RIGHT.

13 **BY MR. HUMMEL:**

14 **Q.** DO YOU HAVE 28 IN FRONT OF YOU?

15 **A.** 28? I THOUGHT YOU SAID "26." I'M SORRY.

16 **Q.** 28.

17 **A.** ALL RIGHT. I HAVE IT IN FRONT OF ME.

18 **Q.** WERE YOU INVOLVED, SIR, AS THE GENERAL COUNSEL OF THE  
19 COMPANY IN DRAFTING, REVIEWING OR APPROVING THE GENERAL  
20 TEMPLATE FOR LICENSE AGREEMENTS BETWEEN PI AND ANY THIRD-PARTY  
21 LICENSEE?

22 **A.** NO.

23 **Q.** YOU HAD NO KNOWLEDGE OF THAT AT ALL?

24 **A.** THAT'S A DIFFERENT QUESTION.

25 **Q.** YOU HAD NO INVOLVEMENT IN THE DRAFTING OF THIS?

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

2 **Q.** YOU NEVER REVIEWED IT OUTSIDE THE CONTEXT OF LITIGATION?

3 **A.** THAT'S CORRECT.

4 **Q.** AND YOU HAVE NO KNOWLEDGE OF ITS IMPORT? IN OTHER WORDS,  
5 YOU HAVE NO IDEA HOW THIS CONTRACT WAS ACTUALLY IMPLEMENTED OR  
6 WHAT IT WAS INTENDED TO COVER, CORRECT?

7 **A.** CORRECT. WELL, WE HAVE TO SEPARATE THE KNOWLEDGE THAT I  
8 GAINED IN LITIGATION FROM THAT.

9 **Q.** I UNDERSTAND.

10 **A.** SO APART FROM THE LITIGATION, I HAVE NO KNOWLEDGE.

11 **Q.** NO INDEPENDENT VIEW. ALL RIGHT.

12 SO YOU HAVE NO KNOWLEDGE WHATSOEVER OF THE IMPORT,  
13 WHAT WAS INTENDED BY THE NONINTERFERENCE CLAUSES IN THESE  
14 CONTRACTS; IS THAT RIGHT?

15 **THE COURT:** HE SAID THAT HE HAS SOME KNOWLEDGE BASED  
16 ON THE LITIGATION THAT HE HAS ACQUIRED, BUT APART FROM THAT HE  
17 WAS NOT INVOLVED AND HAS NO KNOWLEDGE.

18 IS THAT CORRECT?

19 **THE WITNESS:** THAT'S CORRECT.

20 **THE COURT:** WHY ARE YOU TRYING TO RECAST IT IN A  
21 DIFFERENT WAY, MR. HUMMEL?

22 **MR. HUMMEL:** I WON'T, YOUR HONOR.

23 **THE COURT:** I DON'T UNDERSTAND WHY IT WASN'T CLEAR  
24 ENOUGH.

25 LET'S MOVE ON TO SOMETHING ELSE.

1           **MR. HUMMEL:** I'LL MOVE ON.

2 **BY MR. HUMMEL:**

3 **Q.** LET'S GO BACK TO THE GLA, SIR.

4 **A.** OKAY.

5 **Q.** LET'S TALK ABOUT THE EVIDENCE.

6 **A.** WHAT EXHIBIT, 17?

7 **Q.** 110.

8 **A.** OKAY.

9 **Q.** JUST SO WE'RE ABSOLUTELY CLEAR, OUTSIDE OF THE CONTEXT OF  
10 LITIGATION YOU NEVER SAW THIS GLA?

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

12 **Q.** YOU WERE NOT INVOLVED IN DRAFTING IT?

13 **A.** I THINK I TOLD YOU THAT BEFORE. I WAS NOT, YES.

14 **Q.** YOU DON'T KNOW IF ANYONE IN YOUR DEPARTMENT -- BY THE WAY,  
15 WITHIN NFLPA, HOW MANY LAWYERS ARE ON STAFF?

16 **A.** DEPENDS ON WHETHER YOU COUNT ME NOW. BUT IF YOU COUNT ME,  
17 IT'S SIX.

18 **Q.** SIX LAWYERS?

19 **A.** YES.

20 **Q.** DO YOU HAVE ANY KNOWLEDGE THAT ANY OF THOSE SIX LAWYERS  
21 WHO REPORTED TO YOU BLESSED THIS GLA?

22 **A.** WHAT DO YOU MEAN BY "BLESSING"?

23 **Q.** WERE INVOLVED IN DRAFTING?

24 **A.** NOBODY WORKING ON OUR LEGAL STAFF RIGHT NOW WAS INVOLVED  
25 IN DRAFTING THIS AGREEMENT.

1 Q. IN THE PAST DO YOU KNOW IF ANYBODY ON YOUR LEGAL STAFF WAS  
2 INVOLVED IN DRAFTING THIS AGREEMENT?

3 A. THAT'S WHAT I MEANT TO JUST SAY.

4 Q. YOU HAVE NO KNOWLEDGE OF ANYBODY EVER, WITHIN THE LEGAL  
5 DEPARTMENT OF THE NFLPA, DRAFTING THIS; IS THAT RIGHT?

6 A. THIS DOCUMENT.

7 Q. RIGHT. AND YOU, AS YOU SIT HERE AS THE CORPORATE  
8 REPRESENTATIVE, CANNOT TESTIFY AS TO WHO WROTE THIS; IS THAT  
9 RIGHT?

10 MR. KESSLER: OBJECTION, YOUR HONOR, AS THE CORPORATE  
11 REPRESENTATIVE HE'S SUGGESTING SOME OTHER ROLE. A CORPORATE  
12 REPRESENTATIVE HAS NOTHING TO DO --

13 THE COURT: NO, NO, IT WOULD NOT BE PRIVILEGED. IF  
14 HE KNOWS WHO ACTUALLY DID DRAFT IT, THAT'S NOT PRIVILEGED.

15 MR. KESSLER: NO, I'M NOT ASSERTING PRIVILEGE. I'M  
16 OBJECTING TO HIS SUGGESTING AS THE CORPORATE REPRESENTATIVE  
17 GIVES HIM SOME SPECIAL STATUS TO TESTIFY.

18 THE COURT: MR. BERTHELSEN, IF YOU KNOW WHO WAS  
19 INVOLVED IN DRAFTING THIS WITHIN THE -- IF ANYONE, IN YOUR  
20 IN-HOUSE LEGAL DEPARTMENT, THEN THAT'S NOT PRIVILEGED, AND YOU  
21 SHOULD TELL US WHO THAT WAS.

22 THE WITNESS: I BELIEVE I ANSWERED THAT NONE OF THE  
23 LAWYERS WERE INVOLVED IN THE DRAFTING OF THIS DOCUMENT.

24 THE COURT: ALL RIGHT. THANK YOU.  
25

1 **BY MR. HUMMEL:**

2 **Q.** WAS MR. UPSHAW INVOLVED?

3 **A.** I DON'T KNOW. I DOUBT IT.

4 **Q.** WAS MR. ALLEN INVOLVED?

5 **A.** POSSIBLY.

6 **Q.** WELL, TO THE BEST OF YOUR KNOWLEDGE, WAS MR. ALLEN  
7 INVOLVED IN DRAFTING THIS DOCUMENT?

8 **A.** TO THE BEST OF MY KNOWLEDGE, POSSIBLY HE WAS, YES.

9 **Q.** OKAY. LET'S LOOK AT THE SECOND TO LAST PARAGRAPH OF THE  
10 GLA. NO. THAT ONE.

11 DO YOU SEE WHERE IN THAT PARAGRAPH THERE'S REFERENCE  
12 TO AN ESCROW ACCOUNT?

13 **A.** YES.

14 **Q.** YES OR NO, SIR: WAS AN ESCROW ACCOUNT EVER SET UP?

15 **A.** MY KNOWLEDGE OF THIS IS IN THE CONTEXT OF LITIGATION.

16 **Q.** YOU HAVE NO INDEPENDENT KNOWLEDGE?

17 **A.** I KNOW THAT IT WASN'T SET UP.

18 **Q.** WAS NOT SET UP?

19 **A.** RIGHT.

20 **Q.** NOW, LET'S GO TO THE SECOND PARAGRAPH, WHICH IS THE  
21 DEFINITION OF GROUP LICENSING.

22 **A.** OKAY.

23 **Q.** OUTSIDE OF THE CONTEXT OF WHAT YOU LEARNED IN LITIGATION  
24 OR WHAT YOU LEARNED IN A PRIVILEGED CONTEXT AS THE GENERAL  
25 COUNSEL OF THE COMPANY, DID YOU HAVE AN UNDERSTANDING THAT IT

1 WAS THE INTENT OF THE UNION AND THE PLAYERS INC TO CREATE A  
2 MARKETING PROGRAM, A GROUP LICENSING PROGRAM FOR THE BENEFIT OF  
3 THE PRESENT AND FORMER NFL PLAYERS?

4 **A.** OUTSIDE OF -- WHAT WAS THE PREMISE OF YOUR QUESTION,  
5 AGAIN: OUTSIDE OF LITIGATION DID I KNOW?

6 **Q.** OUTSIDE OF LITIGATION AND OUTSIDE OF WHAT YOU MAY HAVE  
7 LEARNED IN YOUR ROLE AS GENERAL COUNSEL OF THE COMPANY, DO YOU  
8 KNOW WHETHER OR NOT IT WAS THE INTENT OF THE NFLPA, THE UNION,  
9 AND PLAYERS INC, TO ESTABLISH A GROUP LICENSING PROGRAM FOR THE  
10 BENEFIT OF SIX OR MORE PRESENT OR FORMER NFL PLAYERS?

11 **A.** NONE OF THIS IS REALLY OUTSIDE MY ROLE AS COUNSEL. I  
12 THINK THAT WAS THE PREMISE OF YOUR QUESTION. WHAT I KNOW, I  
13 KNOW IN MY ROLE AS AN ATTORNEY AND IN DEALING IN LITIGATION.

14 **Q.** WELL, ISN'T IT TRUE, SIR, THAT YOU ALWAYS UNDERSTOOD THAT  
15 RETIRED PLAYER LICENSING WOULD BY THE UNION AND PI BE KEPT  
16 TOTALLY SEPARATE FROM ACTIVE PLAYER LICENSING?

17 **A.** I CONSISTENTLY -- THAT WAS THE INTENT THAT THEY BE TOTALLY  
18 SEPARATE PROGRAMS, YES.

19 **Q.** TOTALLY SEPARATE PROGRAMS. AND THE REASON FOR THAT, SIR,  
20 ISN'T IT TRUE, IS THAT IF -- IF THE UNION AND NFL PI WERE TO  
21 INCLUDE A GROUP LICENSING PROGRAM OF SIX OR MORE PRESENT OR  
22 FORMER NFL PLAYERS, YOU COULD NO LONGER RELY ON A DUFF & PHELPS  
23 TEMPLATE WHERE 69 PERCENT OF THE GROSS LICENSING REVENUES WENT  
24 TO THE UNION AND PLAYERS INC?

25 **A.** NO.

1 Q. THAT'S NOT TRUE?

2 MR. HUMMEL: YOUR HONOR, PERMISSION TO READ FROM HIS  
3 DEPOSITION, PAGE 74, LINES 7 -- EXCUSE ME, 5 THROUGH 17.

4 THE COURT: 74, 5 THROUGH 17. SINCE THIS IS A PARTY  
5 DEPOSITION, YOU MAY PROCEED.

6 MR. HUMMEL: THANK YOU, YOUR HONOR.

7 "QUESTION: BUT WHY NOT JUST LICENSE BOTH" --

8 MR. KESSLER: WAIT. THAT'S NOT THE CORRECT CITE.

9 MR. HUMMEL: PAGE 74, LINE 5.

10 THE COURT: THAT STARTS IN THE MIDDLE OF SOMETHING.

11 MR. KESSLER: I DON'T KNOW WHAT HE'S READING FROM.

12 MR. HUMMEL: WELL, I HAVE A MINI VERSION OF THE  
13 DEPOSITION.

14 THE COURT: SOMETIMES THEY HAVE IT WRONG. WHAT'S THE  
15 FIRST WORD IN THE SENTENCE?

16 MR. HUMMEL: THE QUESTION IS: "BUT."

17 THE COURT: THAT'S NOT WHAT'S ON THIS PAGE. HERE,  
18 WHY DON'T YOU LOOK AT THE OFFICIAL --

19 MR. HUMMEL: I WILL, YOUR HONOR.

20 THE COURT: AND FIND OUT WHERE YOU WANT TO START.  
21 SOMETIMES THOSE SHORTENED DOWN THINGS GIVE YOU THE  
22 WRONG PAGE NUMBER.

23 MR. HUMMEL: I CAN'T FIND IT, YOUR HONOR, BASED ON --  
24 THE TRANSCRIPT THAT I HAVE IS APPARENTLY DIFFERENT FROM THE  
25 OFFICIAL.

1           **THE COURT:** WELL, IT'S PROBABLY THE SAME, BUT I HAVE  
2 SEEN IT BEFORE WHERE THE SHRUNK DOWN VERSION, IF THAT'S WHAT  
3 YOU'RE GETTING, GETS THE PAGINATION OFF.

4           **MR. HUMMEL:** DO WE HAVE THE PAGE AND LINE CITE?

5           **UNIDENTIFIED SPEAKER:** LOOK AT 76/5.

6           **MR. HUMMEL:** PAGE 76, LINE 5.

7           **THE COURT:** ALL RIGHT. SO LET'S GO AHEAD. YOU MAY  
8 READ THAT.

9           **MR. KESSLER:** YOUR HONOR, MY OBJECTION ONLY IS FOR  
10 COMPLETENESS. I WOULD LIKE TO HAVE READ IN FROM PAGE 75, LINE  
11 12, AND THEN HE CAN READ IN WHAT COMES AFTER IT, BECAUSE IT  
12 PUTS IT INTO CONTEXT FOR COMPLETION.

13           **MR. HUMMEL:** WHERE YOU DO YOU WANT ME TO START,  
14 MR. KESSLER?

15           **MR. KESSLER:** 75, LINE 12.

16           **MR. HUMMEL:** STARTING WITH "WHY WOULD THAT BE"?

17           **MR. KESSLER:** YES.

18           **THE COURT:** ALL RIGHT. YOU MAY DO THIS. READ THAT.  
19 BUT WHEN YOU GET TO THE PART WHERE YOU ARE MOST INTERESTED, YOU  
20 MAY PAUSE AND SAY TO THE JURY:

21                   "AND HERE'S THE PART THAT I WOULD LIKE TO  
22 EMPHASIZE."

23           **MR. HUMMEL:** FINE.

24           **THE COURT:** GO AHEAD. YOU MAY DO IT THAT WAY.

25           **MR. HUMMEL:** THANK YOU.

1           **THE COURT:** SAY "QUESTION" AND "ANSWER."

2           **MR. HUMMEL:** YOUR HONOR, MAY I HAVE THE CONTEXT  
3 AGAIN? I APOLOGIZE FOR THE PAGE SNAFU.

4 **BY MR. HUMMEL:**

5 **Q.** BUT THE CONTEXT IS, SIR, THAT THE UNION NEVER DID THIS,  
6 NEVER INCLUDED RETIRED PLAYERS IN A GROUP LICENSING PROGRAM  
7 BECAUSE YOU DIDN'T WANT TO DISTURB THE TEMPLATE WHERE THE UNION  
8 KEPT 69 PERCENT. AND TO THAT YOU SAID "NO."

9           NOW, READING PARAGRAPH --

10 **A.** THAT WASN'T YOUR QUESTION, COUNSEL. THAT'S NOT HOW I  
11 UNDERSTOOD YOUR QUESTION.

12 **Q.** THE RECORD WILL BE WHAT IT IS.

13 **A.** OKAY.

14 **Q.** PAGE 75, LINE 12:

15           **"QUESTION:** WHY WOULD THAT BE? WHY WOULD YOU  
16 WANT TO KEEP THEM SEPARATE?

17           **"ANSWER:** AGAIN, THIS IS NOT MY AREA. THIS  
18 IS NOT MY RESPONSIBILITY.

19           **"QUESTION:** FAIR ENOUGH. HAS ANYONE EVER  
20 EXPLAINED TO YOU WHY KEEP THEM SEPARATE?

21           **"ANSWER:** I CAN DRAW MY OWN CONCLUSIONS.

22           **"QUESTION:** TELL ME WHAT YOUR CONCLUSIONS  
23 ARE.

24           **"ANSWER:** BECAUSE YOU WANT THE PEOPLE WHO  
25 GENERATE THE MONEY TO BENEFIT FROM IT.

1 ACTIVE PLAYERS WOULD NOT BE GENERATING THE  
2 MONEY FROM RETIRED PLAYER GROUP LICENSING  
3 PROGRAMS. IT WOULD BE UNFAIR TO THE RETIRED  
4 PLAYERS TO GIVE ACTIVE PLAYERS A SHARE OF  
5 THAT. AND THAT'S TRUE ON THE FLIP SIDE. IF  
6 THE MONEY IS GENERATED BY ACTIVE PLAYERS,  
7 IT'S UNFAIR TO THE ACTIVE PLAYERS TO DIVIDE  
8 IT WITH RETIRED PLAYERS."

9 AND NOW, MR. BERTHELSEN, THE QUESTION I WAS  
10 INTERESTED IN:

11 "BUT WHY NOT JUST LICENSE BOTH TOGETHER?

12 **"ANSWER:** BECAUSE ONE IS A VIABLE, ONGOING  
13 PROGRAM AND HAS BEEN FOR DECADES. THE OTHER  
14 WAS A TRY-AND-SEE, WHICH DID NOT SUCCEED. IT  
15 WOULDN'T MAKE SENSE TO COMBINE THE TWO.

16 "AS I TESTIFIED PREVIOUSLY, THERE WAS AN  
17 ALLOCATION SET UP BY DUFF & PHELPS FROM THE  
18 BEGINNING, AND THAT WAS AN ALLOCATION AS  
19 BETWEEN THE UNION, PLAYERS INC AND ACTIVE  
20 PLAYERS. WHY WOULD WE UNDERMINE THAT  
21 TEMPLATE, THAT ADVICE, OR THAT VALUATION BY  
22 INCLUDING ANOTHER GROUP?"

23 NOW, MR. BERTHELSEN, ISN'T IT TRUE THAT EVEN THOUGH  
24 THE UNION AND PLAYERS INC REPRESENTED THOUSANDS OF RETIRED  
25 PLAYERS THAT THEY WERE GOING TO HAVE A GROUP LICENSING PROGRAM

1 THAT INVOLVED SIX OR MORE ACTIVE OR RETIRED PLAYERS, THE UNION  
2 NEVER INTENDED TO HONOR THAT PROMISE?

3 **A.** THAT'S NOT TRUE.

4 **MR. HUMMEL:** NOTHING FURTHER, YOUR HONOR.

5 **MR. KESSLER:** YOUR HONOR, I JUST HAVE VERY BRIEF  
6 EXAMINATION.

7 **THE COURT:** ALL RIGHT. WAIT A MINUTE. GO AHEAD.

8 **CROSS EXAMINATION**

9 **BY MR. KESSLER:**

10 **Q.** GOOD MORNING, MR. BERTHELSEN.

11 **A.** GOOD MORNING.

12 **MR. KESSLER:** GOOD MORNING, LADIES AND GENTLEMEN OF  
13 THE JURY.

14 **BY MR. KESSLER:**

15 **Q.** MR. BERTHELSEN, EXPLAIN TO THE JURY, PLEASE, WHY RETIRED  
16 PLAYER MONEY WAS KEPT SEPARATE FROM ACTIVE PLAYER MONEY.

17 **A.** BECAUSE IT WAS THE VIEW THAT WHOEVER EARNS THE MONEY  
18 SHOULD GET IT. IT WOULDN'T BE FAIR TO HAVE A DOLLAR EARNED BY  
19 MR. ADDERLEY GO TO ACTIVE PLAYERS. AND IT WOULDN'T BE FAIR FOR  
20 A DOLLAR EARNED BY AN ACTIVE PLAYER TO GO TO MR. ADDERLEY.

21 **Q.** IF THERE WAS ANY RETIRED PLAYER MONEY EARNED, WHETHER IT  
22 WAS JUST RETIRED PLAYERS IN AN AGREEMENT OR IF IT WAS A  
23 COMBINATION OF RETIRED PLAYERS AND ACTIVE PLAYERS IN AN  
24 AGREEMENT, WHERE WOULD THE RETIRED PLAYER MONEY GO?

25 **MR. HUMMEL:** OBJECTION --

1 (COUNSEL AND WITNESS SPEAKING SIMULTANEOUSLY, WHICH  
2 WAS NOT REPORTABLE.)

3 (REPORTER INTERRUPTS.)

4 **MR. HUMMEL:** OBJECTION, FOUNDATION.

5 **THE COURT:** ALL RIGHT. YOU CAN ANSWER THIS IF YOU  
6 HAD KNOWLEDGE OF THIS OUTSIDE YOUR ROLE AS A LAWYER. BUT IF  
7 YOU HAVE TO DRAW UPON WHAT YOU LEARNED IN THIS LITIGATION THEN  
8 THERE IS'S A PROBLEM.

9 **BY MR. KESSLER:**

10 **Q.** CAN YOU ANSWER THIS, MR. BERTHELSEN, OUTSIDE OF YOUR ROLE  
11 AS A LAWYER BASED ON YOUR KNOWLEDGE OF HOW THE POOLS WORK?

12 **A.** I'D HAVE TO HAVE THAT QUESTION READ BACK, I THINK.

13 **Q.** MR. BERTHELSEN, YOU WERE ASKED QUESTIONS BY COUNSEL ABOUT  
14 PROGRAMS WHERE RETIRED AND ACTIVE PLAYERS COULD BE COMBINED.  
15 DO YOU RECALL THAT?

16 **A.** I RECALL HIS QUESTION, YES.

17 **Q.** OKAY. IF THERE WERE ANY RETIRED PLAYER MONEY EARNED IN A  
18 COMBINED PROGRAM, DO YOU HAVE KNOWLEDGE, APART FROM LEGAL  
19 KNOWLEDGE, AS TO WHO WOULD GET THAT MONEY FROM THE RETIRED  
20 PLAYER RIGHTS?

21 **MR. HUMMEL:** OBJECTION. FOUNDATION.

22 **THE COURT:** ALL RIGHT.

23 **THE WITNESS:** YES.

24 **BY MR. KESSLER:**

25 **Q.** YOU HAVE SOME SUCH?

1 **A.** YES.

2 **Q.** WHO WOULD GET SUCH MONEY?

3 **A.** THE RETIRED PLAYERS.

4 **Q.** EVEN IF IT WAS IN A COMBINATION PROGRAM WITH ACTIVE  
5 PLAYERS?

6 **A.** IT --

7 **MR. HUMMEL:** OBJECTION, YOUR HONOR.

8 (COUNSEL AND WITNESS SPEAKING SIMULTANEOUSLY, WHICH  
9 WAS NOT REPORTABLE.)

10 **THE COURT:** WHAT IS THE OBJECTION?

11 **MR. HUMMEL:** THERE WAS A CLEAR LINE THAT WAS DRAWN,  
12 AND NOW THAT LINE IS BEING TROT OVER. I JUST WANT TO BE VERY  
13 CLEAR THAT I INTEND TO CROSS EXAMINE ON THIS.

14 **THE COURT:** WAIT A SECOND. WHEN YOU DID ASK -- YOU  
15 READ INTO EVIDENCE THIS QUESTION ABOUT THE TEMPLATE AND THE  
16 ACTIVE VERSUS THE RETIRED, AND HE GAVE AN ANSWER IN HIS  
17 DEPOSITION. AND FAIRNESS ENTITLES HIM, STICKING WITH THIS VERY  
18 SUBJECT IN THE DEPOSITION, TO GIVE AN EXPLANATION THAT IS NOT  
19 FAR AFIELD BUT CLOSELY ALLIED TO THE SUBJECT THAT WAS BROUGHT  
20 UP IN THE DEPOSITION AND WHICH WAS READ TO THE JURY A MOMENT  
21 AGO.

22 SO I'M GOING TO ALLOW THAT.

23 SO YOU CAN GO THAT FAR. BUT AFTER YOU DO THAT, YOU  
24 MAY NOT EXCEED GOING BEYOND THE SCOPE OF WHAT YOU HAD PERSONAL  
25 KNOWLEDGE OF BECAUSE YOU HAVE INVOKED THIS PRIVILEGE ON THE

1 ATTORNEY-CLIENT.

2           **MR. KESSLER:** VERY GOOD, YOUR HONOR. THAT'S EXACTLY  
3 MY INTENTION.

4 **BY MR. KESSLER:**

5 **Q.** ONE LAST QUESTION WHICH COUNSEL OBJECTED TO SO, I'LL ASK  
6 IT AGAIN: EVEN IF IT WAS A COMBINATION PROGRAM, DO YOU HAVE  
7 KNOWLEDGE WHETHER THE RETIRED PLAYERS WOULD GET THE RETIRED  
8 PLAYER MONEY?

9 **A.** THE PORTION GENERATED BY RETIRED WOULD GO TO RETIRED. THE  
10 SAME THING FOR ACTIVE. PORTION GENERATED BY ACTIVE WOULD GO TO  
11 ACTIVE.

12 **Q.** THANK YOU.

13           **MR. KESSLER:** I WOULD NOW LIKE TO PUT UP TRIAL  
14 EXHIBIT 91, WHICH COUNSEL SHOWED YOU.

15 **BY MR. KESSLER:**

16 **Q.** THIS WAS THE DOCUMENT ABOUT THE \$8 MILLION ALLOCATION.  
17 AND I'D LIKE TO DIRECT YOUR ATTENTION -- I'LL JUST SHOW THE  
18 JURY AGAIN ON THE TOP WHAT THIS IS TO REMIND THEM. THIS WAS  
19 THE AGREEMENT REACHED IN MARCH 1, 2000. AND IT RELATES TO THE  
20 \$8 MILLION ALLOCATION.

21           **MR. KESSLER:** IF WE COULD LOOK AT THIS MIDDLE  
22 "WHEREAS" CLAUSE, IF WE CAN, THE FOURTH ONE, PLEASE, JUST SO WE  
23 CAN REMIND THE JURY.

24           **MR. FEHER:** 2006.

25           **MR. KESSLER:** I'M SORRY. I MISSPOKE.

1 GO BACK TO THE TOP AGAIN.

2 **BY MR. KESSLER:**

3 **Q.** THIS AGREEMENT RELATES TO AN AMENDMENT TO THE 2000  
4 AGREEMENT, BUT IT WAS ENTERED INTO IN FEBRUARY OF 2006; IS THAT  
5 CORRECT?

6 **A.** YES.

7 **Q.** NOW, LOOKING AT THE FOURTH "WHEREAS," THE NEXT ONE. I'M  
8 SORRY.

9 THIS AGREEMENT RELATED TO THE REALLOCATION OF THE  
10 \$8 MILLION; IS THAT CORRECT?

11 **A.** YES.

12 **Q.** LOOKING AT THE LAST "WHEREAS" CLAUSE THAT YOU WERE ASKED  
13 ABOUT, IT SAYS:

14 "WHEREAS, THE NFLPA AND PLAYERS INC AGREE THAT  
15 FURTHER ADJUSTMENTS MAY BE NECESSARY AFTER COMPLETION OF AN  
16 INDEPENDENT, THIRD-PARTY VALUATION OF THE VALUE CONFERRED BY  
17 PLAYERS, THE NFLPA, AND PLAYERS INC."

18 MR. BERTHELSEN, WERE THERE ANY FURTHER ADJUSTMENTS  
19 MADE AFTER THIS DATE TO THE ALLOCATION OF THE MONEY, TO YOUR  
20 KNOWLEDGE?

21 **A.** NOT TO MY KNOWLEDGE.

22 **Q.** OKAY. SO IF THERE WERE NO FURTHER ADJUSTMENTS MADE, WAS  
23 THERE ANY NEED YET TO DO A THIRD-PARTY VALUATION, ANOTHER ONE?

24 **A.** APPARENTLY NOT.

25 **Q.** AND, FINALLY, MR. BERTHELSEN, YOU TESTIFIED ABOUT HOW THIS

1 WAS DISCUSSED WITH THE BOARD OF PLAYER REPS. DID THE -- WAS  
2 THE BOARD OF PLAYER REPS INFORMED AT THEIR MEETING THAT THERE  
3 HAS NOT YET BEEN A NEED TO DO THE THIRD-PARTY VALUATION?

4 **A.** YES.

5 **Q.** NO FURTHER QUESTIONS.

6 **MR. KESSLER:** NO FURTHER QUESTIONS.

7 **MR. HUMMEL:** NO QUESTIONS, YOUR HONOR.

8 **THE COURT:** ALL RIGHT. THANK YOU, MR. BERTHELSEN.

9 YOU MAY RETURN TO YOUR SEAT.

10 **THE WITNESS:** THANK YOU, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. NEXT WITNESS.

12 **MR. LECLAIR:** YOUR HONOR, WE CALL JOSEPH NAHRA.

13 **THE COURT:** OKAY. MR. NAHRA.

14 MR. NAHRA, RAISE YOUR RIGHT HAND.

15 (THEREUPON, THE WITNESS WAS SWORN.)

16 **THE WITNESS:** I DO.

17 **THE COURT:** VERY WELL. PLEASE HAVE A SEAT. WE'LL

18 TAKE YOUR PICTURE LATER BECAUSE MY PHOTOGRAPHER IS ABSENT.

19 SCOOT FORWARD AND MAKE SURE THE MIC CATCHES YOUR

20 VOICE. AND STATE YOUR FULL NAME.

21 **THE WITNESS:** JOSEPH NAHRA. THAT'S N-A-H-R-A.

22 **THE COURT:** OKAY. THANK YOU.

23 COUNSEL, GO RIGHT AHEAD.

24

25



1 I BELIEVE HE ALSO IS THE EXECUTIVE VICE PRESIDENT OF PLAYERS  
2 INC.

3 **Q.** DID MR. FEFFER REPLACE MR. WALKER?

4 **A.** NO.

5 **Q.** DID HE COME AFTER MR. WALKER LEFT?

6 **A.** YES.

7 **Q.** DID HE ASSUME SOME OF MR. WALKER'S RESPONSIBILITIES?

8 **A.** I'M NOT SURE ABOUT THAT.

9 **Q.** ALL RIGHT, SIR.

10 MR. NAHRA, DID YOU WORK ON AN AGREEMENT IN 2006  
11 BETWEEN ELECTRONIC ARTS, PLAYERS INC AND THE PRO FOOTBALL HALL  
12 OF FAME?

13 **A.** YES, I DID.

14 **Q.** AND WAS CLAY WALKER THE BUSINESS EXECUTIVE AT PLAYERS INC  
15 WHO WORKED ON THAT SAME DEAL?

16 **A.** HE WAS A BUSINESS EXECUTIVE. I'M NOT SURE WHETHER HE WAS  
17 THE ONLY.

18 **Q.** DO YOU RECALL, MR. NAHRA, THAT IN 2005 ELECTRONIC ARTS AND  
19 PI ENTERED INTO AN EXCLUSIVE 5-YEAR AGREEMENT TO MAKE THE  
20 MADDEN GAME?

21 **A.** YES, I DO.

22 **Q.** NOW, AT THAT TIME WAS -- PRIOR TO THE EXCLUSIVE  
23 ARRANGEMENT, WAS TAKE TWO ANOTHER COMPANY LIKE ELECTRONIC ARTS  
24 THAT WAS MAKING VIDEO GAMES WITH FOOTBALL PLAYERS?

25 **A.** I'M NOT SURE.

1 Q. IS IT TRUE, SIR, THAT AFTER THE EXCLUSIVE DEAL WAS DONE  
2 BETWEEN THE UNION AND -- OR BETWEEN PI AND ELECTRONIC ARTS THAT  
3 TAKE TWO WAS OUT SOLICITING RETIRED PLAYERS TO GO INTO A  
4 FOOTBALL VIDEO GAME?

5 A. YES, I HAD HEARD THAT.

6 Q. AND IS IT TRUE, SIR, THAT ELECTRONIC ARTS EXPRESSED  
7 CONCERN TO PLAYERS INC ABOUT THAT HAPPENING?

8 A. UHM, I DON'T HAVE ANY FIRSTHAND KNOWLEDGE OF THAT. I HAD  
9 HEARD THAT.

10 Q. DO YOU RECALL, SIR, THAT YOU GOT A CALL FROM A LAWYER AT  
11 ELECTRONIC ARTS WHO WANTED TO KNOW WHAT WAS GOING ON WITH  
12 RETIRED PLAYERS AND TAKE TWO?

13 A. UHM, I CERTAINLY MAY HAVE. AS I'M SITTING HERE TODAY I  
14 DON'T RECALL THE SPECIFICS OF THE CONVERSATION. BUT YOU  
15 CERTAINLY COULD BE RIGHT. I MAY HAVE TESTIFIED TO IT IN MY  
16 DEPOSITION.

17 MR. LECLAIR: LET ME READ, IF I COULD, YOUR HONOR,  
18 FROM MR. NAHRA'S DEPOSITION, PAGE 239, LINES 9 THROUGH 19.

19 MR. KESSLER: YOUR HONOR, IT'S NOT IMPEACHING. HE  
20 COULD ASK QUESTIONS.

21 THE COURT: ISN'T HE A REPRESENTATIVE?

22 MR. KESSLER: HE WAS DESIGNATED NOW AS A  
23 REPRESENTATIVE. HE WAS NOT A 30(B)(6) ON THAT TOPIC AT HIS  
24 DEPOSITION.

25 THE COURT: WELL, THE FAILURE TO RECALL IS THE SAME,

1 AND YOU CAN READ -- YOU CAN READ THE PRIOR TESTIMONY AS  
2 IMPEACHMENT.

3 **MR. KESSLER:** VERY GOOD, YOUR HONOR.

4 **THE COURT:** THAT'S THE RULE IN THIS COURTROOM.

5 **MR. KESSLER:** OKAY.

6 **THE COURT:** GO AHEAD AND READ IT.

7 **MR. LECLAIR:** LET ME MAKE SURE I HAVE THE RIGHT --  
8 OKAY. ACTUALLY, YOUR HONOR, I BELIEVE IT -- NO, IT IS 239,  
9 LINE 13 THROUGH 19.

10 MAY I PROCEED, YOUR HONOR?

11 **THE COURT:** GO AHEAD.

12 **THE WITNESS:** I'M SORRY, WHAT WERE THE LINES AGAIN?

13 **MR. LECLAIR:** 13 THROUGH 19.

14 **THE WITNESS:** OKAY.

15 **MR. LECLAIR:** ACTUALLY, I'LL BEGIN AT LINE 9,

16 MR. NAHRA. THE QUESTION WAS:

17 **"QUESTION:** WAS EA CONCERNED AT THIS POINT IN  
18 TIME ABOUT THE COMPETITION FROM TAKE TWO?"

19 THERE WAS AN OBJECTION. THEN:

20 **"QUESTION:** DID YOU EVER HEAR OF THAT FROM  
21 ANYONE?

22 **"ANSWER:** I CANNOT ANSWER AS TO WHETHER THEY  
23 WERE CONCERNED OR NOT, BUT I THINK I PROBABLY  
24 GOT A CALL FROM -- I DON'T THINK IT WAS JOEL  
25 LINZNER, BUT A LAWYER AT EA TO SEE WHAT WE

1 KNEW ABOUT TAKE TWO AND RETIRED PLAYER VIDEO  
2 GAMES."

3 **BY MR. LECLAIR:**

4 **Q.** NOW, IS IT CORRECT, MR. NAHRA, THAT IF EA WANTED TO MAKE  
5 CONTACT WITH RETIRED PROFESSIONAL FOOTBALL PLAYERS THEY HAD TO  
6 GO THROUGH PLAYERS INC BECAUSE OF A CONTRACTUAL ARRANGEMENT?

7 **A.** NOT NECESSARILY.

8 **Q.** ALL RIGHT. TAKE A LOOK, IF YOU WOULD, AT EXHIBIT 1148.

9 **A.** OKAY.

10 **Q.** IS IT CORRECT, MR. NAHRA, THAT YOU WERE THE LAWYER WHO  
11 OFTEN DEALT WITH LICENSE AGREEMENTS WITH THESE THIRD PARTIES?

12 **A.** YES, SIR.

13 **Q.** ALL RIGHT, SIR. AND THIS IS A -- THIS LICENSE AGREEMENT,  
14 IT'S NOT PARTICULARLY IMPORTANT WHO IT'S WITH. THIS ONE  
15 HAPPENS TO BE WITH -- I THINK IT'S FANTASY SPORTS  
16 CHAMPIONSHIPS.

17 DO YOU RECOGNIZE THIS AGREEMENT, SIR?

18 **A.** I DO.

19 **MR. LECLAIR:** ALL RIGHT. I WOULD MOVE 1148 IN  
20 EVIDENCE, YOUR HONOR.

21 **MR. KESSLER:** NO OBJECTION.

22 **THE COURT:** RECEIVED.

23 (TRIAL EXHIBIT 1148 RECEIVED IN EVIDENCE.)

24 **BY MR. LECLAIR:**

25 **Q.** TURN TO PARAGRAPH 13, IF YOU WOULD, AND PUT IT UP ON PAGE

1 8.

2 (DOCUMENT DISPLAYED.)

3 IS IT CORRECT, MR. NAHRA, THAT THIS PARTICULAR CLAUSE  
4 CALLED "NON-INTERFERENCE" IS A STANDARD PROVISION WHICH APPEARS  
5 IN VIRTUALLY EVERY SINGLE LICENSE AGREEMENT THAT PI DOES WITH  
6 LICENSEES WITH EA AND OTHERS?

7 **A.** YES, THAT'S TRUE.

8 **Q.** ALL RIGHT. LET'S READ THIS INTO THE RECORD.

9 "NONINTERFERENCE. LICENSEE AGREES AND  
10 ACKNOWLEDGES" --

11 **MR. LECLAIR:** I'M IN THE WAY HERE. CAN I MOVE OVER  
12 HERE, YOUR HONOR?

13 **THE COURT:** YES.

14 **MR. LECLAIR:** "LICENSEE AGREES AND ACKNOWLEDGES THAT  
15 IT SHALL NOT SECURE OR SEEK TO SECURE, DIRECTLY FROM ANY  
16 PLAYER, WHO IS UNDER CONTRACT TO AN NFL CLUB, IS SEEKING TO  
17 BECOME UNDER CONTRACT TO AN NFL CLUB, OR AT ANY TIME IN THE  
18 PAST WAS UNDER CONTRACT TO AN NFL CLUB, OR FROM SUCH PLAYER'S  
19 AGENT, PERMISSION OR AUTHORIZATION FOR THE USE OF SUCH PLAYER'S  
20 IDENTITY IN CONJUNCTION WITH THE LICENSED PRODUCT HEREIN."

21 **BY MR. LECLAIR:**

22 **Q.** THAT WAS THE STANDARD PROVISION IN YOUR LICENSE  
23 AGREEMENTS, WAS IT NOT, MR. NAHRA?

24 **A.** YES, IT IS.

25 **Q.** AND SO IF ELECTRONIC ARTS WANTED TO TALK TO ANY RETIRED

1 PLAYER, ANY RETIRED PLAYER, ABOUT BEING IN THE MADDEN GAME OR  
2 ANY OF EA'S VIDEO GAME PRODUCTS COVERED BY THE LICENSE, THEY  
3 HAD TO COME TO PLAYERS INC TO DO THAT?

4 **A.** THAT'S TRUE. BUT THAT WASN'T YOUR PRIOR QUESTION.

5 **Q.** OKAY. BUT IT IS TRUE THAT THEY HAD TO DO THAT FOR THE  
6 VIDEO GAME PRODUCTS THEY WERE MAKING?

7 **A.** RIGHT, FOR THE -- FOR THE PRODUCTS THAT WERE LICENSED  
8 THROUGH THEIR LICENSE AGREEMENT WITH PLAYERS INC, THAT'S  
9 CORRECT.

10 **Q.** ALL RIGHT, SIR.

11 NOW, YOU WORKED ON, SIR, THE AGREEMENT WITH PLAYERS  
12 INC AND THE HALL OF FAME RELATED TO THE FOOTBALL GAME, CORRECT,  
13 SIR?

14 **A.** YES, SIR.

15 **Q.** ALL RIGHT. LET'S -- EXHIBIT 56 IS IN EVIDENCE. YOU HAVE  
16 IT IN FRONT OF YOU, SIR. THAT IS THE AGREEMENT WITH -- BETWEEN  
17 EA, PLAYERS INC AND THE HALL OF FAME; IS THAT CORRECT?

18 **A.** YES, SIR.

19 **MR. LECLAIR:** LET'S LOOK AT PARAGRAPH 1B. AND  
20 HIGHLIGHT THAT, IF WE COULD.

21 (DOCUMENT DISPLAYED.)

22 **BY MR. LECLAIR:**

23 **Q.** THIS PARAGRAPH REFERS TO -- IT'S LANGUAGE THAT WE'VE SEEN.

24 BEFORE, MR. NAHRA, THAT SAYS THAT THE NFLPA HAS BEEN  
25 DULY APPOINTED AND IS ACTING ON BEHALF OF THE FOOTBALL PLAYERS

1 OF THE NATIONAL FOOTBALL LEAGUE WHO HAVE ENTERED INTO A GROUP  
2 LICENSING ASSIGNMENT WHICH HAVE BEEN ASSIGNED TO PLAYERS INC.

3 IT GOES ON TO SAY:

4 "LICENSEE ACKNOWLEDGES THAT PLAYERS INC ALSO ON  
5 OCCASION SECURES AUTHORIZATION FOR INCLUSION IN PLAYERS INC  
6 LICENSING PROGRAMS FROM PLAYERS INCLUDING, BUT NOT LIMITED TO,  
7 THE H.O.F. PLAYERS REFERENCED ABOVE AND OTHER RETIRED PLAYERS  
8 WHO HAVE NOT ENTERED INTO SUCH GROUP LICENSING AUTHORIZATION  
9 BUT WHO, NEVERTHELESS, AUTHORIZED PLAYERS INC TO REPRESENT SUCH  
10 PLAYERS FOR DESIGNATED PLAYERS INC LICENSED PROGRAMS."

11 AND THEN, IT GOES ON TO SAY AS FOLLOWS: IN SUCH  
12 CAPACITY, PLAYERS INC HAS GRANTED LICENSEE CERTAIN RIGHTS AS  
13 SET FORTH IN THE LICENSE AGREEMENT EFFECTIVE MARCH 1, 2006, THE  
14 PLAYERS INC LICENSE AGREEMENT."

15 SO WHAT IT'S SAYING IN THIS PARAGRAPH, IS IT CORRECT,  
16 MR. NAHRA, IN THE CAPACITY AS SET FORTH IN THIS PARAGRAPH YOU  
17 HAD GRANTED RIGHTS UNDER THE MARCH 1, 2006 EA AGREEMENT, WHICH  
18 WAS THE BIG \$25 MILLION A YEAR AGREEMENT, CORRECT?

19 **A.** RIGHT. WE HAD GRANTED EA THE LICENSE FOR THE ACTIVE  
20 PLAYERS IN THE MARCH 2006 AGREEMENT.

21 **Q.** SO WHAT YOU'RE SAYING IS THAT THIS LANGUAGE THAT TALKS  
22 ABOUT THE H.O.F. PLAYERS AND THE RETIRED PLAYERS, THAT THAT  
23 LANGUAGE DOESN'T HAVE ANYTHING TO DO WITH THE LAST SENTENCE  
24 THAT TALKS ABOUT "IN SUCH CAPACITY"; IS THAT WHAT YOU'RE  
25 SAYING, SIR?

1 **A.** I'M JUST SAYING THE INTENT OF THIS PARAGRAPH WAS TO STATE  
2 THE FACT THAT WE HAD ENTERED INTO AN AGREEMENT WITH  
3 ELECTRONIC ARTS ON MARCH 1ST, 2006, FOR THE ACTIVE PLAYERS.  
4 WHICH -- YOU'LL READ FURTHER IN THE AGREEMENT, WHICH REQUIRES  
5 PLAYERS INC'S APPROVAL WHENEVER THEY WANT TO USE OTHER PLAYERS  
6 IN THAT LICENSED PRODUCT, SUCH AS THE HALL OF FAME PLAYERS.

7 **Q.** WELL, DO YOU ACKNOWLEDGE, SIR, THAT PLAYERS INC WAS  
8 REPRESENTING THE HALL OF FAME PLAYERS, SUCH AS MR. ADDERLEY, IN  
9 CONNECTION WITH THIS AGREEMENT?

10 **A.** NO, WE WERE NOT.

11 **Q.** THAT'S NOT WHAT THIS SAYS TO YOU?

12 **A.** THE HALL OF FAME IS REPRESENTING THE HALL OF FAME PLAYERS  
13 IN THIS AGREEMENT.

14 **Q.** AND YOUR TESTIMONY TO THIS JURY IS THAT EVEN THOUGH YOU  
15 REQUIRED EA TO COME TO PI IN ORDER TO TALK TO A RETIRED PLAYER  
16 ABOUT THE VIDEO GAMES THAT EA WAS MAKING, YOU'RE SAYING THAT  
17 YOU WEREN'T REPRESENTING THE RETIRED PLAYERS IN THIS AGREEMENT?

18 **A.** IN THIS -- THIS IS A VERY UNIQUE LICENSE AGREEMENT. AND  
19 IN THIS AGREEMENT THE HALL OF FAME IS ACTUALLY THE ORGANIZATION  
20 THAT HOLDS THE RIGHTS TO THE HALL OF FAME PLAYERS.

21 AND IT WAS THE HALL OF FAME THAT WAS GRANTING THE  
22 RIGHTS TO ELECTRONIC ARTS UNDER THIS AGREEMENT.

23 THERE MAY HAVE BEEN HALL OF FAME MEMBERS WHO PLAYERS  
24 INC ALSO HAD RIGHTS TO, BUT UNDER THIS AGREEMENT THE HALL OF  
25 FAME WAS GRANTING THE HALL OF FAME PLAYERS TO EA.

1 Q. SO ARE YOU TELLING THE JURY, SIR, THAT REALLY PI WASN'T  
2 INVOLVED IN THIS NEGOTIATION WITH RESPECT TO THESE RETIRED  
3 PLAYERS?

4 A. UHM, I DON'T KNOW -- I DON'T HAVE FIRSTHAND KNOWLEDGE OF  
5 PLAYERS INC'S INVOLVEMENT IN THE NEGOTIATIONS. BUT THE REASON  
6 THAT PLAYERS INC WAS A PARTY TO THIS AGREEMENT WAS NOT TO  
7 REPRESENT THE HALL OF FAME PLAYERS. IT WAS BECAUSE WE HAD  
8 APPROVAL RIGHTS OVER WHAT WOULD BE GOING INTO THE MADDEN GAME,  
9 WHICH WE HAD LICENSED FOR THE ACTIVE PLAYERS.

10 Q. ISN'T IT TRUE, SIR, THAT AFTER THIS AGREEMENT WAS SIGNED  
11 IN 2006, THAT PI, PLAYERS INC, TOLD ELECTRONIC ARTS THAT IT  
12 WAS, QUOTE, "A REAL COUP," CLOSED QUOTE, THAT PI WAS ABLE TO  
13 GET THE HALL OF FAME PLAYERS SO CHEAPLY FOR THIS AGREEMENT?

14 A. DID PLAYERS INC TELL THAT SPECIFICALLY TO EA?

15 Q. YES, SIR.

16 A. I DON'T BELIEVE SO.

17 Q. YOU DON'T THINK THAT HAPPENED?

18 LET ME ASK YOU THIS: IS IT CORRECT, SIR, THAT  
19 BECAUSE OF THE COMPETITION FROM TAKE TWO, WHICH WAS OUT SIGNING  
20 UP RETIRED PLAYERS, THAT CLAY WALKER FROM PI FORGED A 3-WAY  
21 DEAL WITH THE HALL OF FAME TO PROVIDE THE HALL OF FAME PLAYERS  
22 FOR THE MADDEN GAME?

23 A. I'M NOT SURE WHAT THE BASIS WAS FOR THIS LICENSE  
24 AGREEMENT, BUT I ALREADY TESTIFIED THAT EA HAD CONTACTED US AND  
25 WAS WONDERING WHAT WAS HAPPENING WITH TAKE TWO IN SECURING

1 RIGHTS TO RETIRED PLAYERS FOR A VIDEO GAME.

2 **Q.** ISN'T IT TRUE, MR. NAHRA, THAT PLAYERS INC TOLD  
3 ELECTRONIC ARTS THAT ELECTRONIC ARTS OWED PLAYERS INC A HUGE  
4 FAVOR BECAUSE THE THREAT OF THIS HALL OF FAME AGREEMENT WAS  
5 ENOUGH TO TAKE -- CAUSE TAKE TWO TO BACK OFF OF ITS PLANS,  
6 LEAVING EA AS THE ONLY VIDEO GAME MANUFACTURER FOR PROFESSIONAL  
7 FOOTBALL?

8 **A.** WELL, TAKE TWO DID MAKE A VIDEO GAME FOR RETIRED PLAYERS.  
9 I DON'T KNOW EXACTLY WHAT WAS COMMUNICATED TO ELECTRONIC ARTS  
10 ABOUT WHAT YOU JUST QUOTED. I BELIEVE THERE ARE SOME E-MAILS.

11 IF YOU WOULD LIKE ME TO TAKE A LOOK AT THOSE E-MAILS  
12 I CAN TELL YOU WHAT IT SEEMS TO BE COMMUNICATING TO EA.

13 **MR. KESSLER:** YOUR HONOR, AT THIS POINT DEFENDANTS  
14 WOULD REQUEST THAT THE COURT ISSUE AN INSTRUCTION TO THE JURY  
15 THAT THE HALL OF FAME AGREEMENT BEING DISCUSSED IS NOT THE  
16 SUBJECT OF ANY CLAIM IN THIS CASE, YOUR HONOR. IT'S ONE OF THE  
17 AD HOC AGREEMENTS.

18 **MR. LECLAIR:** ACTUALLY, THAT'S NOT CORRECT, YOUR  
19 HONOR. AS I'VE SAID, WE ARE CLAIMING THE GROUP LICENSING  
20 MONEY, WHICH INCLUDES THE GROUP LICENSING MONEY FROM EA.

21 YOUR HONOR WILL CERTAINLY INSTRUCT THE JURY  
22 APPROPRIATELY, AND THAT'S FINE.

23 **THE COURT:** JUST A PRELIMINARY MATTER.

24 MR. LECLAIR READ FROM SOMETHING AND USED THE WORD  
25 "FORGED."

1           AND YOUR NATURAL REACTION IS TO SAY:

2                   "OH, MY GOD. NOW, THEY'RE IN FORGERY."

3           NO, THAT'S NOT WHAT THE WORD MEANT. IT WAS -- I'VE  
4 SEEN THIS E-MAIL HE WAS READING FROM. IT MEANT "FORGED,"  
5 PULLED TOGETHER.

6           AND MR. LECLAIR DIDN'T MEAN TO SUGGEST THAT SOMEBODY  
7 WAS CREATING CRIMINAL ACTS OF FORGERY.

8           THAT'S THE WAY IT CAME ACROSS.

9           **MR. LECLAIR:** I'M SORRY. I DIDN'T EVEN REALIZE --

10          **THE COURT:** I KNOW YOU DIDN'T. BUT YOU WERE ACTING  
11 IN TOTAL GOOD FAITH. I'M JUST MAKING THAT POINT CLEAR SO NO  
12 ONE GETS OFF ON THE TANGENT THAT NOW WE'RE INVOLVED IN FORGERY.

13          OKAY. NOW, I THINK ALL I NEED TO SAY IS THIS CASE IS  
14 ABOUT THE GLA AND WHETHER OR NOT THE GLA ENTITLED THE CLASS  
15 MEMBERS TO GET A SHARE OF THE MONEY THAT THE DEFENDANTS GOT  
16 FROM COMPANIES LIKE EA THAT THE DEFENDANTS TREATED AS BEING  
17 ACTIVE PLAYER MONEY.

18          AND YOU HAVE ALL HEARD ABOUT THESE AD HOC AGREEMENTS,  
19 AND THE DEFENDANTS HAVE SAID -- I'M SORRY -- THE PLAINTIFFS  
20 HAVE SAID, AND THE DEFENDANTS HAVE SAID SEVERAL TIMES, THAT  
21 THE -- THIS CASE IS NOT ABOUT TRYING TO REDISTRIBUTE THE MONEY  
22 THAT WAS PAID ON THE AD HOCS, SOME OF WHICH DID GO TO RETIRED  
23 PLAYERS, TRYING TO REDISTRIBUTE THAT IN SOME WAY.

24          RATHER, IT'S OVER THE FIRST SET OF ISSUES THAT I  
25 MENTIONED. THE HALL OF FAME AGREEMENT FALLS INTO THE CATEGORY

1 OF AN AD HOC AGREEMENT. BUT THERE MAY BE -- THERE MAY BE SOME  
2 SUB ISSUES ON WHICH THIS AFFAIR HAS SOME BEARING. AND THAT'S  
3 WHY YOU'RE BEING ALLOWED TO HEAR ABOUT THE HALL OF FAME  
4 AGREEMENT.

5 HAVE I SAID IT MORE OR LESS RIGHT? DID YOU WANT TO  
6 ADD OR SUBTRACT ANYTHING FROM WHAT I'VE SAID?

7 **MR. LECLAIR:** I'M FINE WITH THAT, YOUR HONOR.

8 **MR. KESSLER:** I THINK THAT'S FINE, YOUR HONOR. I  
9 WILL PROBABLY READ IN A STIPULATION AT THE APPROPRIATE POINT.

10 **THE COURT:** ALL RIGHT. FINE. NOW, LET'S MOVE ON.

11 **BY MR. LECLAIR:**

12 **Q.** MR. NAHRA, IT'S TRUE, ISN'T IT, SIR, YOU KNOW EXACTLY WHAT  
13 WAS SAID BECAUSE YOU'VE READ THESE VERY E-MAILS, HAVE YOU NOT,  
14 SIR?

15 **A.** RIGHT. THERE WERE -- THERE WAS A CHAIN OF E-MAILS. SOME  
16 OF THOSE E-MAILS WERE INTERNAL OR DID NOT INVOLVE ANY DIRECT  
17 COMMUNICATION WITH EA. AND SOME OF THEM DID INVOLVE DIRECT  
18 COMMUNICATION WITH EA. AND THE LANGUAGE IS SIMILAR, BUT NOT  
19 THE SAME. AND THAT'S WHY I'M NOT -- I'M NOT POSITIVE AS TO  
20 WHICH E-MAILS YOU'RE REFERRING WHEN YOU QUOTE LANGUAGE.

21 **Q.** ALL RIGHT, SIR. WELL, WE'RE GOING TO LOOK AT ALL OF THEM.  
22 SO LET'S DO IT RIGHT NOW.

23 **A.** SURE.

24 **Q.** LET'S LOOK AT EXHIBIT 1034.

25 **THE COURT:** ALL RIGHT. BEFORE YOU DO THAT, YOU DID

1 NOT MOVE EXHIBIT 56 IN EVIDENCE.

2 **MR. LECLAIR:** I APOLOGIZE. I MOVE IT INTO EVIDENCE,  
3 YOUR HONOR.

4 **THE COURT:** ANY OBJECTION?

5 **MR. KESSLER:** NO OBJECTION.

6 **THE COURT:** YOU SHOULD ALWAYS MOVE IT IN BEFORE YOU  
7 SHOW IT TO THE JURY.

8 (TRIAL EXHIBIT 56 RECEIVED IN EVIDENCE.)

9 **THE COURT:** ALL RIGHT. NOW, ARE YOU GOING TO SHOW  
10 THESE TO THE JURY? IF YOU ARE, YOU OUGHT TO MOVE THEM INTO  
11 EVIDENCE FIRST.

12 **MR. LECLAIR:** I WILL DO THAT, YOUR HONOR.

13 **THE WITNESS:** WHAT NUMBER?

14 **MR. LECLAIR:** 1034.

15 **THE COURT:** LAY THE FOUNDATION, AND THEN --

16 **BY MR. LECLAIR::**

17 **Q.** THIS IS A SERIES OF E-MAILS ON WHICH YOU WERE COPIED,  
18 MR. NAHRA, CORRECT?

19 **A.** YES.

20 **MR. LECLAIR:** ALL RIGHT. I MOVE 1034 INTO EVIDENCE,  
21 YOUR HONOR.

22 **MR. KESSLER:** I THINK YOUR HONOR HAS ALREADY RULED  
23 THEM.

24 (COUNSEL AND THE COURT SPEAKING SIMULTANEOUSLY, WHICH  
25 WAS NOT REPORTABLE.)

1           **THE COURT:** THIS IS GOING TO BE ADMISSIBLE SUBJECT  
2 TO YOUR PRIOR OBJECTIONS.

3           **MR. KESSLER:** YES.

4                   (TRIAL EXHIBIT 1034 RECEIVED IN EVIDENCE.)

5           **MR. LECLAIR:** LET'S PUT UP 1034, PLEASE, AND  
6 HIGHLIGHT THE TOP E-MAIL.

7 **BY MR. LECLAIR:**

8 **Q.** THIS IS AN E-MAIL FROM WHICH YOU WERE COPIED FROM CLAY  
9 WALKER AT PI, WHO WAS THE EXECUTIVE AT PLAYERS INC, AND IT'S TO  
10 PAUL CAIRNS AT EA, ELECTRONIC ARTS, CORRECT?

11 **A.** YES, SIR.

12 **Q.** I WOULD LIKE FOCUS ON THE THIRD LINE OF THIS E-MAIL.

13                   IN THE MIDDLE IT SAYS, QUOTE:

14                                 "THE PER PLAYER PRICE FOR MOST OF THESE GUYS WAS  
15 TENS OF THOUSANDS OF DOLLARS LESS THAN WHAT THEY WERE  
16 GUARANTEED BY TAKE TWO INTERACTIVE, SO IT'S A REAL COUP THAT WE  
17 WERE ABLE TO PULL THIS OFF SO CHEAPLY."

18                   ALL RIGHT, SIR? NOW, DO YOU HAVE ANY INFORMATION,  
19 MR. NAHRA, TO SUGGEST THAT AT THE TIME ANYBODY SAID THIS WAS  
20 WRONG?

21 **A.** UHM, YES, I DO.

22 **Q.** AT THE TIME WHEN THIS WAS DONE ARE YOU TELLING THE JURY  
23 THAT YOU SAID THIS WAS WRONG?

24 **A.** AT THE TIME THAT THIS WAS SENT, I'M NOT SURE IF I HAD ANY  
25 INFORMATION TO SUGGEST THAT -- THAT THE MONEY WAS LESS THAN

1 WHAT TAKE TWO WAS OFFERING.

2 **Q.** AT THE TIME --

3 **THE COURT:** WAIT. WAIT. WAIT. DO YOU MEAN  
4 INACCURATE OR DO YOU MEAN MORALLY WRONG? THE WORD "WRONG" HAS  
5 TWO MEANINGS HERE.

6 **BY MR. LECLAIR:**

7 **Q.** WAS IT INACCURATE?

8 **A.** WELL, WHAT I DO -- WHAT I KNOW NOW AND WHAT I KNEW AT THE  
9 TIME WAS THAT THE RIGHTS THAT TAKE TWO WAS ATTEMPTING TO SECURE  
10 WERE EXCLUSIVE RIGHTS. BUT I DON'T KNOW HOW MUCH THEY WERE  
11 OFFERING FOR THOSE RIGHTS.

12 **Q.** LET ME JUST ASK THIS SIMPLE QUESTION, MR. NAHRA.

13 AT THE TIME WHEN THIS E-MAIL WAS SENT BY CLAY WALKER,  
14 DID YOU SAY TO ANYONE:

15 "THIS IS NOT CORRECT" WHAT YOU'RE SAYING?

16 **THE COURT:** WHAT DO YOU MEAN "CORRECT"? YOU MEAN --

17 **BY MR. LECLAIR:**

18 **Q.** ACCURATE. "WHAT YOU, MR. WALKER, ARE SAYING IS  
19 INCORRECT?"

20 **A.** I DON'T RECALL SAY THAT.

21 **Q.** ALL RIGHT. LET'S GO ON THE E-MAIL. AT THE END OF THE  
22 FIFTH LINE IT SAYS, QUOTE:

23 "WE KNOW THAT TAKE TWO OFFERED SIX-FIGURE DEALS  
24 TO SEVERAL FORMER NFL PLAYERS, SO THE TOTAL COST IS MILLIONS  
25 BELOW MARKET PRICES," PERIOD, CLOSED QUOTE.

1            THAT'S WHAT MR. WALKER WAS SAYING TO EA IN 2006 IN  
2 FEBRUARY, CORRECT?

3 **A.**    YES, THAT'S WHAT THE E-MAIL SAYS.

4 **Q.**    THEN, IT GOES ON TO SAY, QUOTE:

5            "THAT BEING SAID, WE WILL CONTINUE TO GO AFTER  
6 THE NEW INDUCTEES FOR THE SAME PRICE PER PLAYER PAREN (AROUND  
7 \$2,500) AND I THINK WE'LL BE SUCCESSFUL," PERIOD, CLOSED QUOTE.  
8 DO YOU SEE THAT?

9 **A.**    I SEE IT, YES.

10 **Q.**    NOW, I THOUGHT A LITTLE EARLIER YOU TOLD THE JURY THAT IT  
11 WAS THE HALL OF FAME THAT WAS NEGOTIATING WITH THESE PLAYERS.

12 **A.**    THE LICENSE AGREEMENT THAT YOU REFERENCED WITH THE HALL OF  
13 FAME LICENSE AGREEMENT, THAT -- UNDER THAT AGREEMENT THE HALL  
14 OF FAME LICENSED MOST, IF NOT ALL, OF THEIR MEMBERS TO  
15 ELECTRONIC ARTS.

16            IT WASN'T A LICENSE FROM PLAYERS INC TO  
17 ELECTRONIC ARTS. IT WAS A LICENSE FROM THE HALL OF FAME,  
18 BECAUSE THEY ALSO HAD RIGHTS. THEY HAVE -- THEY HAVE RIGHTS TO  
19 HALL OF FAME MEMBERS. AND THEY GRANTED THOSE RIGHTS TO  
20 ELECTRONIC ARTS.

21            AT THE TIME THAT THEY GRANTED THOSE RIGHTS, THERE WAS  
22 A CERTAIN NUMBER OF PLAYERS, BECAUSE ONLY A CERTAIN NUMBER OF  
23 PLAYERS WERE IN THE HALL OF FAME.

24            BUT EVERY YEAR THERE'S A NEW CLASS OF MEMBERS. AND  
25 THIS STATEMENT THAT HE'S TALKING ABOUT IS FOR NEW INDUCTEES.

1 SO I BELIEVE THERE'S SOME LANGUAGE IN THE LICENSE  
2 AGREEMENT THAT TALKS ABOUT HOW PLAYERS INC COULD HELP TO SECURE  
3 PLAYERS WHO WERE NOT GRANTED BY THE HALL OF FAME, WHICH THE  
4 PRIMARY EXAMPLE WOULD BE NEW INDUCTEES. THE HALL OF FAME COULD  
5 ALSO SECURE THOSE RIGHTS AND GRANT THEM TO EA, BUT WE ALSO  
6 COULD DO THAT.

7 **Q.** ISN'T IT CORRECT, SIR, THAT IT WAS YOU AND MR. WALKER WHO  
8 WERE RESPONSIBLE FOR THE NEGOTIATION OF THESE DISCOUNTED  
9 PRICES?

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

11 **Q.** ALL RIGHT, SIR. LET'S LOOK AT EXHIBIT 521.

12 ARE THESE E-MAILS BETWEEN YOU, MR. WALKER AT PI AND  
13 ANDY FEFFER AT PI?

14 **A.** YES.

15 **MR. LECLAIR:** YOUR HONOR, I'LL MOVE EXHIBIT 521 INTO  
16 EVIDENCE.

17 **MR. KESSLER:** SUBJECT TO THE SAME OBJECTIONS, YOUR  
18 HONOR.

19 **THE COURT:** ALL RIGHT. RECEIVED.

20 (TRIAL EXHIBIT 521 RECEIVED IN EVIDENCE.)

21 **BY MR. LECLAIR:**

22 **Q.** FIRST OF ALL, LET'S FOCUS ON THE BOTTOM E-MAIL. THIS IS  
23 FROM YOU, MR. NAHRA, TO CLAY WALKER:

24 "SUBJECT: HALL OF FAME."

25 **A.** I'M SORRY. WHICH E-MAIL ARE YOU REFERRING TO?

1 Q. 521 AT THE BOTTOM OF THE FIRST PAGE.

2 A. OKAY.

3 Q. IS THAT AN E-MAIL FROM YOU TO CLAY WALKER?

4 A. YES.

5 Q. AND, IN FACT, MR. WALKER HAD BY THIS POINT LEFT PI,  
6 CORRECT?

7 A. RIGHT.

8 Q. AND YOU SENT HIM AN E-MAIL AND SAID, QUOTE:

9 "CAN YOU PLEASE PUT YOUR PI HAT BACK ON AND  
10 PROVIDE SOME INSIGHT HERE," CORRECT?

11 A. RIGHT.

12 Q. AND THEN, MR. WALKER RESPONDED TO YOU WITH THE E-MAIL IN  
13 THE MIDDLE. AND I WANT TO FOCUS ON THIS E-MAIL NOW.

14 IS IT CORRECT, SIR, THAT EA WAS ASKING PI TO ABSORB  
15 PART OF THE COST OF THIS LICENSE AGREEMENT?

16 A. YES. PI DIDN'T WANT TO PAY THAT MUCH MONEY FOR THE HALL  
17 OF FAME MEMBERS.

18 Q. RIGHT. OR MAYBE THEY THOUGHT THEY HAD ALREADY PAID  
19 \$25 MILLION?

20 A. NO, THEY DIDN'T WANT -- THEY DIDN'T WANT TO PAY 400,000.  
21 THEY WANTED TO PAY -- I THINK THEY WANTED -- THEY WERE WILLING  
22 TO PAY 200,000, BUT THEY WANTED --

23 **THE COURT:** WHO IS THE "THEY"?

24 **THE WITNESS:** ELECTRONIC ARTS.

25 **THE COURT:** EARLIER YOU SAID PI DIDN'T WANT TO PAY.

1 DID YOU MEAN "EA"?

2 **THE WITNESS:** YES, I DID.

3 **THE COURT:** ALL RIGHT.

4 **BY MR. LECLAIR:**

5 **Q.** WELL, LET'S LOOK AT WHAT MR. WALKER SAYS IN THE MIDDLE.

6 LET'S START IN THE MIDDLE WHERE IT SAYS:

7 "FOR THE RECORD."

8 HE STATES: QUOTE:

9 "FOR THE RECORD, THIS CAME UP BECAUSE TAKE TWO  
10 WENT AFTER RETIRED PLAYERS TO CREATE AN NFL-STYLE VIDEO GAME  
11 AFTER WE GAVE THE EXCLUSIVE TO EA."

12 PARDON ME, AGAIN.

13 "I WAS ABLE TO FORGE THIS DEAL WITH THE  
14 H.O.F" -- THAT'S THE HALL OF FAME -- "THAT PROVIDES THEM WITH  
15 400K PER YEAR, PAREN, (WHICH IS SIGNIFICANTLY BELOW MARKET  
16 RATE), CLOSED PAREN, IN EXCHANGE FOR THE H.O.F. PLAYER RIGHTS.  
17 EA OWES ME A HUGE FAVOR, BECAUSE THAT THREAT WAS ENOUGH TO  
18 PERSUADE TAKE TWO TO BACK OFF ITS PLANS, LEAVING EA AS THE ONLY  
19 PROFESSIONAL FOOTBALL VIDEO GAME MANUFACTURER OUT THERE,"  
20 CLOSED QUOTE.

21 SO, MR. NAHRA, YOU ASKED CLAY WALKER TO PUT HIS PI  
22 HAT BACK ON AND TELL YOU WHAT HAPPENED IN THE NEGOTIATION,  
23 CORRECT?

24 **A.** YES. I WAS LOOKING FOR SOME INFORMATION AS TO WHAT  
25 HAPPENED, BECAUSE EA HAD -- DID NOT WANT TO PAY 400,000. THEY

1 THOUGHT THEY WERE BEING ASKED TO PAY TOO MUCH FOR THE RIGHTS.

2 AND I WANTED TO KNOW, EA MADE THE CLAIM THAT WE HAD  
3 SOMEHOW AGREED TO PAY A HUNDRED THOUSAND OF THEIR 400,000. AND  
4 I WAS JUST TRYING TO FIGURE OUT WHETHER WE OWED EA ANY MONEY OR  
5 NOT.

6 **Q.** AND SO MR. WALKER THEN WROTE BACK TO YOU AND SAID EXACTLY  
7 WHAT HE SAID IN THIS E-MAIL, CORRECT?

8 **A.** THAT'S HIS E-MAIL, YES.

9 **Q.** AND WHAT YOU DID WAS YOU TOOK MR. WALKER'S E-MAIL AND YOU  
10 FORWARDED IT TO ANDY FEFFER, WHO WAS THE NEW PERSON RESPONSIBLE  
11 WITHIN PLAYERS INC FOR THIS RELATIONSHIP WITH EA, CORRECT?

12 **A.** SEVERAL MONTHS LATER EA AGAIN CONTACTED, I BELIEVE, ANDY  
13 FEFFER, AND AGAIN WANTED US TO PAY A HUNDRED THOUSAND DOLLARS  
14 WORTH OF COSTS.

15 AND AT THAT POINT, ANDY FEFFER ASKED ME IF I KNEW  
16 ANYTHING ABOUT IT. AND I SAID:

17 "I WASN'T INVOLVED IN THE NEGOTIATION, BUT  
18 HERE'S WHAT CLAY SAID."

19 AND I FORWARDED CLAY'S E-MAIL TO ANDY.

20 **Q.** OKAY. LET'S NOW GO TO EXHIBIT 522.

21 **A.** OKAY.

22 **Q.** IS THIS ANOTHER SERIES OF E-MAILS ON WHICH YOU WERE COPIED  
23 RELATED TO THIS SAME HALL OF FAME AGREEMENT?

24 **A.** YES.

25 **MR. LECLAIR:** MOVE EXHIBIT 522 INTO EVIDENCE, YOUR

1 HONOR.

2 **MR. KESSLER:** YOUR HONOR, SAME OBJECTIONS.

3 **THE COURT:** ALL RIGHT. SAME RULING.

4 (TRIAL EXHIBIT 522 RECEIVED IN EVIDENCE.)

5 **BY MR. LECLAIR:**

6 **Q.** NOW, SO IS IT CORRECT, MR. NAHRA, THAT ON NOVEMBER 1ST --  
7 LET ME GET THE TIMING STRAIGHT.

8 MR. WALKER WRITES HIS E-MAIL TO YOU, EXHIBIT 521, IN  
9 FEBRUARY OF 2007, CORRECT?

10 COULD YOU LOOK BACK AT 521 AND JUST TELL ME IF THAT'S  
11 THE DAY HE WROTE IT?

12 **A.** FEBRUARY 20, 2007.

13 **Q.** OKAY. SO NOW FAST FORWARD TO NOVEMBER OF 2007, ALMOST  
14 EIGHT MONTHS LATER, OKAY?

15 YOU THEN FORWARD -- YOU HAD TO GO BACK AND FIND  
16 MR. WALKER'S E-MAIL, AND YOU THEN FORWARDED IT TO ANDY FEFFER,  
17 CORRECT?

18 **A.** YES.

19 **Q.** ALL RIGHT. AND MR. FEFFER WAS DEALING AGAIN WITH EA ABOUT  
20 THIS HALL OF FAME AGREEMENT AND WHO OUGHT TO ABSORB THE COST OF  
21 IT, CORRECT?

22 **A.** YES.

23 **Q.** ALL RIGHT. AND NOW, MR. FEFFER SENDS AN E-MAIL TO PAUL  
24 CAIRNS AT ELECTRONIC ARTS.

25 **MR. LECLAIR:** AND LET'S BLOW UP THE TOP E-MAIL.

1 (DOCUMENT DISPLAYED.) .

2 **BY MR. LECLAIR:**

3 **Q.** AND MR. FEFFER WRITES TO PAUL CAIRNS AND SAYS TO  
4 MR. CAIRNS, QUOTE:

5 "UNFORTUNATELY, I'M NOT IN A POSITION WHERE I  
6 CAN ASSIST YOU WITH THIS. I HAVE EXHAUSTIVELY REVIEWED THE  
7 ISSUES WITH CLAY, JOE, OUR COUNSEL, AND SEVERAL OTHERS, ALL WHO  
8 MAKE VERY CLEAR THAT THERE WAS NEVER A COMMITMENT FROM US TO  
9 PAY THE HUNDRED THOUSAND OR ANY AMOUNT AS PART OF THIS OVERALL  
10 DEAL."

11 IS IT TRUE, MR. NAHRA, AS MR. FEFFER SAYS IN HIS  
12 E-MAIL, THAT HE EXHAUSTIVELY REVIEWED THE ISSUES WITH YOU AND  
13 MR. WALKER?

14 **A.** I DON'T KNOW WHAT COMMUNICATION, IF ANY, HE HAD WITH CLAY  
15 WALKER. I DON'T KNOW.

16 **Q.** HE SAYS HE EXHAUSTIVELY REVIEWED IT WITH CLAY AND WITH  
17 YOU. DID HE DO THAT?

18 **A.** NOT TOGETHER.

19 **Q.** DID HE DO IT WITH YOU SEPARATELY?

20 **A.** HE TALKED TO ME ABOUT IT.

21 **Q.** ALL RIGHT, SIR.

22 AND THEN, HE GOES ON TO SAY, QUOTE:

23 "I UNDERSTAND THAT THE TOTAL PAYMENT TO H.O.F.  
24 IS \$400,000. I CAN TELL YOU THAT CLAY AND JOE'S NEGOTIATION OF  
25 THESE DISCOUNTED TERMS WAS A SIGNIFICANT CONTRIBUTION TO EA AS

1 YOU MORE THAN LIKELY WOULD HAVE PAID IN EXCESS OF \$1 MILLION  
2 FOR THESE RIGHTS WITHOUT THEIR INVOLVEMENT AND ASSISTANCE,"  
3 PERIOD, CLOSED QUOTE.

4 THAT WAS WHAT MR. FEFFER SAID. HE COPIED YOU, AND I  
5 THEREFORE ASSUME YOU THOUGHT IT WAS CORRECT?

6 **A.** UHM, I DIDN'T REALLY HAVE AN OPINION AS TO IT ONE WAY OR  
7 ANOTHER. I TOLD ANDY I WAS INVOLVED IN DRAFTING THE LEGAL  
8 LANGUAGE. I WAS NOT INVOLVED IN THE NEGOTIATIONS OF ANY DOLLAR  
9 AMOUNTS OR ANY AGREEMENT TO PAY A HUNDRED THOUSAND OR NOT PAY A  
10 HUNDRED THOUSAND.

11 **Q.** ARE YOU TELLING THE JURY, MR. NAHRA, THAT WHEN ANDY FEFFER  
12 SAID THAT YOU AND MR. WALKER NEGOTIATED, QUOTE, "DISCOUNTED  
13 TERMS," YOU'RE TELLING THE JURY THAT WASN'T TRUE?

14 **A.** WELL, AGAIN, I DON'T KNOW WHAT CLAY WALKER NEGOTIATED  
15 WITH -- IF HE NEGOTIATED AT ALL, EVEN, REALLY, BECAUSE IT WAS  
16 THE HALL OF FAME THAT WAS GRANTING THE RIGHTS. SO I'M ASSUMING  
17 THAT THE HALL OF FAME HAD SOMEONE WHO WAS RESPONSIBLE FOR  
18 NEGOTIATING THE PRICE THEY WOULD RECEIVE FOR THOSE RIGHTS.

19 BUT I WAS NOT INVOLVED IN THE NEGOTIATION OF ANYTHING  
20 OTHER THAN THE LEGAL LANGUAGE IN THE CONTRACTS, WHICH WAS MY --  
21 WHICH IS MY ROLE IN PRETTY MUCH ALL OF THE LICENSE AGREEMENTS.

22 I NEGOTIATE THE LEGAL LANGUAGE, NOT THE BUSINESS  
23 TERMS LIKE THE DOLLAR AMOUNTS THAT ARE PAID FOR THE RIGHTS.

24 **Q.** I WANT TO SEE IF I CAN GET A "YES" OR "NO" TO THIS  
25 QUESTION, MR. NAHRA.

1           IS IT TRUE THAT YOU AND MR. WALKER NEGOTIATED  
2 DISCOUNTED TERMS?

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

4           **MR. KESSLER:**   IT'S COMPOUND, YOUR HONOR.

5           **THE COURT:**    SUSTAINED.   IT IS COMPOUND.

6           YOU CAN ASK HIM ONE AT A TIME.

7 **BY MR. LECLAIR:**

8 **Q.**    IS IT TRUE --

9           **MR. LECLAIR:**   I'M SORRY, YOUR HONOR.

10          **THE COURT:**   YOU CAN ASK AS TO JOE.   YOU CAN ASK AS TO  
11 CLAY.

12          AND SO YOU ANSWER TO THE BEST OF YOUR KNOWLEDGE AND  
13 INFORMATION AS TO EACH OF THE TWO.

14 **BY MR. LECLAIR:**

15 **Q.**    IS IT TRUE, YES OR NO, THAT CLAY WALKER NEGOTIATED  
16 DISCOUNTED TERMS FOR THE HALL OF FAME PLAYERS?

17 **A.**    ALL I KNOW ABOUT WHAT CLAY WALKER NEGOTIATED --

18 **Q.**    CAN YOU ANSWER "YES" OR "NO," SIR?

19          (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

20 **A.**    -- EMAIL.

21 **Q.**    CAN YOU ANSWER THE QUESTION?   I HAVEN'T ASKED YOU TO DO  
22 THIS, BUT I WANT TO GET A "YES" OR "NO" TO THAT QUESTION, IF  
23 YOU CAN DO IT, SIR?

24 **A.**    NO.

25 **Q.**    IT DIDN'T HAPPEN?

1 **A.** WELL, IF I CAN EXPLAIN MY ANSWER I CAN PROBABLY SHED SOME  
2 LIGHT ON THAT. BUT IF YOU JUST WANT ME TO ANSWER: "IS IT  
3 TRUE" --

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

5 **THE WITNESS:** AGAIN, I DON'T KNOW WHETHER CLAY WALKER  
6 NEGOTIATED ANYTHING. WHAT HE SAID IN HIS E-MAIL SUGGESTS THAT  
7 HE WAS INVOLVED IN THE NEGOTIATION.

8 BUT, TYPICALLY, IN THIS SITUATION PLAYERS INC WAS  
9 JUST A MIDDLEMAN. THE HALL OF FAME WAS THE ONE GRANTING THE  
10 RIGHTS AND AGREEING TO WHAT THE COMPENSATION WOULD BE FOR THOSE  
11 RIGHTS.

12 SO CLAY WALKER'S E-MAIL SPEAKS FOR ITSELF AS TO WHAT  
13 HIS INVOLVEMENT WAS.

14 **BY MR. LECLAIR:**

15 **Q.** AND YOU'RE TELLING THE JURY THAT EVEN THOUGH THE E-MAIL  
16 FROM MR. FEFFER ON WHICH YOU WERE COPIED SAYS THAT YOU WERE  
17 INVOLVED IN NEGOTIATING DISCOUNTED TERMS, YOU'RE TELLING THE  
18 JURY THAT'S NOT TRUE?

19 **A.** THAT IS NOT TRUE. I WAS NOT INVOLVED IN ANY NEGOTIATION  
20 OF MONETARY TERMS.

21 **Q.** AND I ASSUME THAT YOU IMMEDIATELY E-MAILED BACK TO  
22 MR. FEFFER AND SAID:

23 "NO, NO, YOU'VE GOT IT ALL WRONG. I DIDN'T DO  
24 THAT"?

25 **A.** NO, I DIDN'T E-MAIL ANDY FEFFER THAT.

1 Q. YOU NEVER DID?

2 A. NO, I DIDN'T.

3 Q. ISN'T IT A FACT, SIR, IN THE LAST SENTENCE -- I TAKE IT  
4 BACK. THE NEXT TO THE LAST SENTENCE. IT SAYS, QUOTE:

5 "WHILE THIS MIGHT NOT SATISFY YOUR REQUEST FOR  
6 PAYMENT, I HOPE TO CONVEY TO YOU THE GREAT VALUE THAT WAS  
7 BROUGHT BY US AS PART OF SECURING THIS DEAL," CLOSE QUOTE.

8 DO YOU SEE THAT LANGUAGE, SIR?

9 A. I DO.

10 Q. AND ISN'T IT CORRECT, MR. NAHRA, THAT THE GREAT VALUE THAT  
11 PI BROUGHT TO THIS DEAL WAS TO DISCOUNT PLAYERS LIKE  
12 MR. ADDERLEY, WHO WAS IN THE HALL OF FAME? THAT'S THE GREAT  
13 VALUE YOU BROUGHT TO THIS DEAL?

14 A. I'M NOT SURE WHAT ANDY FEFFER MEANT ABOUT "GREAT VALUE."  
15 I DON'T KNOW WHAT HIS MEANING WAS.

16 **THE COURT:** HE'S NOT ASKING YOU WHAT MR. FEFFER --  
17 HE'S SAYING JUST DO YOU AGREE WITH IT OR NOT? YOU WERE  
18 INVOLVED IN THIS DEAL.

19 THE QUESTION IS: DID YOUR COMPANY, PI, CONFER A  
20 BENEFIT ON EA BY HELPING NEGOTIATE A DEAL TO GET THESE PLAYERS  
21 AT LESS THAN WHAT THE COMPETITOR WAS TRYING TO PAY THEM?  
22 THAT'S A FAIR QUESTION, AND YOU'VE NOT ANSWERED IT. SO PLEASE  
23 ANSWER.

24 **THE WITNESS:** WELL, I THINK WE CONFERRED A BENEFIT ON  
25 EA BY APPROVING THEIR SECURING THE HALL OF FAME RIGHTS TO

1 INCLUDE IN THEIR GAME.

2 I CAN'T SPEAK TO WHETHER THE PRICE THAT THE HALL OF  
3 FAME AGREED TO PAY WAS A BENEFIT TO EA OR NOT A BENEFIT TO EA,  
4 BECAUSE I'M NOT A MARKETER. I'M NOT A SALESPERSON. I DON'T  
5 PUT DOLLAR AMOUNTS ON THINGS.

6 THE BUSINESS PEOPLE HAVE MUCH BETTER UNDERSTANDING OF  
7 WHAT THE RIGHTS ARE WORTH THAN I DO.

8 BUT WITHOUT US BEING INVOLVED IN APPROVING IT, THEN  
9 EA COULD NOT HAVE PUT HALL OF FAME PLAYERS IN THEIR GAME. THEY  
10 NEEDED APPROVAL FROM US BECAUSE OF THE TERMS OF OUR LICENSE  
11 AGREEMENT.

12 **BY MR. LECLAIR:**

13 **Q.** ARE YOU TELLING THIS JURY, MR. NAHRA, THAT THE GREAT VALUE  
14 THAT PI BROUGHT TO THIS DEAL, ARE YOU TELLING THEM THAT HAD  
15 NOTHING TO DO WITH THE DISCOUNT FOR PLAYERS LIKE MR. ADDERLEY?  
16 IS THAT WHAT YOU'RE TELLING THE JURY?

17 **A.** WELL, YOU'RE ASSUMING THAT THERE WAS A DISCOUNT. I'M JUST  
18 TESTIFYING --

19 **Q.** THAT'S WHAT HE SAID IN THE E-MAIL, ISN'T IT TRUE, SIR?

20 **A.** THAT'S WHAT ANDY FEFFER SAID, YES.

21 **Q.** ALL RIGHT, SIR. AND I'M ASKING YOU: ARE YOU TELLING THE  
22 JURY THAT THAT GREAT VALUE THAT HE REFERRED TO HAS NOTHING TO  
23 DO WITH THE DISCOUNT FOR THE PLAYERS?

24 **A.** IF THERE WAS A DISCOUNT, THEN THAT WOULD BE PART OF THE  
25 VALUE OF IT, I WOULD ASSUME. BUT I DON'T KNOW WHETHER THERE

1 WAS A DISCOUNT OR NOT. HE'S CONVEYING THAT THERE WAS.

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

3 **THE COURT:** ALL RIGHT. REDIRECT (SIC).

4 HOW LONG IS IT GOING TO BE?

5 **MR. KESSLER:** 15, 20 MINUTES, YOUR HONOR.

6 **THE COURT:** WE NEED A BREAK, MY COURT REPORTER IS  
7 TELLING ME. AND I THINK THE JURY NEEDS A BREAK, TOO. SO WE'LL  
8 TAKE A 15-MINUTES RECESS.

9 PLEASE REMEMBER THE ADMONITION.

10 **THE CLERK:** ALL RISE.

11 (THEREUPON, THE JURY LEFT THE COURTROOM.)

12 **THE COURT:** ALL RIGHT. ANYTHING THE LAWYERS NEED ME  
13 FOR?

14 **MR. KESSLER:** I ASSUME YOUR HONOR WANTS TO DIRECT THE  
15 WITNESS --

16 **THE COURT:** DON'T DISCUSS ANYTHING WITH THE LAWYERS  
17 ON THE CROSS EXAMINATION NOW.

18 ALL RIGHT.

19 THANK YOU.

20 **MR. HUMMEL:** THANK YOU.

21 **MR. KESSLER:** THANK YOU.

22 **THE COURT:** 15-MINUTE BREAK.

23 (RECESS TAKEN FROM 9:19 TO 9:34 A.M.)

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

1           **MR. HUMMEL:** YOUR HONOR, ONE HOUSEKEEPING MATTER  
2 BEFORE WE START.

3           **THE COURT:** GO AHEAD.

4           **MR. HUMMEL:** THERE ARE 95 LICENSE AGREEMENTS THAT  
5 WE'RE MOVING INTO EVIDENCE. THERE'S NO OBJECTION FROM THE  
6 DEFENSE. THEY'RE STIPULATED IN. I HAVE THE LIST FOR YOUR  
7 HONOR. AND THEY ARE THE LICENSE AGREEMENTS BETWEEN THE PLAYERS  
8 INC AND THE LICENSEES THAT HAVE THE LANGUAGE.

9           **THE COURT:** WHICH, THIRD-PARTY LICENSEES?

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

11          **THE COURT:** CAN I SEE THE LIST?

12          **MR. HUMMEL:** SURE.

13          **THE COURT:** IS IT AGREED TO?

14          **MR. HUMMEL:** IT'S AGREED TO.

15          **MR. KESSLER:** THESE ARE LICENSE AGREEMENTS WITH  
16 THIRD-PARTY LICENSEES. WE HAVE NO OBJECTION. SO WE AGREED  
17 THAT HE CAN MOVE THEM IN, IF YOU WILL, EN MASSE AND YOU ARE --

18          **THE COURT:** I'M NOT GOING TO READ THE ENTIRE LIST,  
19 BUT THIS IS A MULTI-PAGE LIST THAT STARTS WITH TRIAL EXHIBIT  
20 28, 29, 32, AND THEN IT GOES UP 1150, 1151, 1152.

21                 I JUST DEEM EVERYTHING ON THIS LIST IS IN EVIDENCE.  
22 AND PLEASE MAKE THIS A PART OF THE CLERK'S RECORD.

23          **MR. HUMMEL:** WE WILL, YOUR HONOR. THANK YOU VERY  
24 MUCH.

25          **THE COURT:** DONE.

1           **MR. HUMMEL:** THANK YOU.

2           (TRIAL EXHIBITS REFERRED TO ABOVE WERE RECEIVED IN  
3 EVIDENCE.)

4           **THE COURT:** ALL RIGHT. SO CAN WE BRING OUR JURY  
5 BACK?

6           **MR. KESSLER:** YES, YOUR HONOR.

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

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

9           **THE COURT:** WELCOME BACK. PLEASE HAVE A SEAT.  
10 BEFORE WE GET STARTED, I WANT TO TAKE YOUR PICTURE.

11          **THE CLERK:** GOOD. THANKS.

12          **MR. KESSLER:** YOUR HONOR, NO ONE EVER WANTS TO TAKE  
13 MY PICTURE.

14          **THE COURT:** ALL RIGHT.

15          **MR. KESSLER:** FOR GOOD REASON.

16          **THE COURT:** MAYBE THERE WILL BE, LIKE FOOTBALL CARDS,  
17 WE'LL HAVE LAWYER CARDS.

18          (LAUGHTER)

19          **MR. KESSLER:** THERE WOULD REALLY BE NO MARKET FOR  
20 THAT.

21          **THE COURT:** AND IT WOULD SAY ON THE BACK: "NUMBER OF  
22 LEADING QUESTIONS."

23          (LAUGHTER)

24          **MR. KESSLER:** ARE YOU SUGGESTING I WOULD LEAD THE  
25 LEAGUE, YOUR HONOR?



1 Q. WOULD YOU TELL THE JURY THE FACTS ABOUT THAT?

2 A. YES. MOST OF THE MEMBERS OF THE HALL OF FAME HAVE NEVER  
3 SIGNED RETIRED PLAYER GLA'S. AND THAT WAS ONE OF THE BIGGEST  
4 PROBLEMS WE HAD WITH BUILDING OUR RETIRED PLAYER GROUP  
5 LICENSING PROGRAM IS WE COULD NOT GET --

6 THE COURT: WAIT. YOU ARE GOING BEYOND THE QUESTION  
7 NOW. THE QUESTION WAS --

8 MR. KESSLER: I THINK HE ANSWERED THE QUESTION.

9 THE COURT: ALL RIGHT. SO YOU CAN ASK A FOLLOW-UP  
10 QUESTION AND MAYBE ELICIT THE INFORMATION HE WAS ABOUT TO PUT  
11 IN THERE. BUT HE WAS BEYOND THE ACTUAL QUESTION.

12 BY MR. KESSLER:

13 Q. MR. NAHRA, WHAT IMPACT DID IT HAVE ON THE RETIRED PLAYER  
14 GLA PROGRAM THAT YOU DIDN'T HAVE MOST HALL OF FAME PLAYERS?

15 A. WELL, I THINK IT WAS PROBABLY THE BIGGEST REASON THAT WE  
16 WEREN'T ABLE TO CONVINCING A LICENSEE THAT THEY SHOULD LICENSE  
17 AND PAY FOR ALL OF OUR RETIRED PLAYERS THAT WE HAD GLA'S FOR,  
18 BECAUSE IT WAS REALLY THE, IN MOST CASES, THE HALL OF FAME  
19 PLAYERS THEY WERE INTERESTED IN USING.

20 Q. IS SO TO THE EXTENT HALL OF FAME PLAYERS GAVE THEIR RIGHTS  
21 IN THIS AGREEMENT, WAS IT A -- WAS IT A GROUP -- WAS IT A  
22 PROGRAM UNDER THE RETIRED PLAYER GLA, OR WAS IT WHAT WE'VE BEEN  
23 REFERRING TO AS "AD HOC PROGRAMS"?

24 A. WELL, IT CERTAINLY WASN'T UNDER OUR RETIRED PLAYER GLA,  
25 BECAUSE, AGAIN, THE RIGHTS WERE COMING FROM THE HALL OF FAME.

1 Q. WAS IT AN AD HOC PROGRAM FOR THE HALL OF FAME?

2 A. I BELIEVE IT WAS AN AD HOC PROGRAM FOR THE HALL OF FAME,  
3 YES.

4 MR. KESSLER: YOUR HONOR, AT THIS TIME I WOULD LIKE  
5 TO READ IN JOINT STIPULATED FACT NO. 13, IF I MAY.

6 THE COURT: READ IT SLOWLY, AND THEN I WILL ASK  
7 COUNSEL IF IT'S STIPULATED TO.

8 MR. KESSLER: "NO. 13: PLAINTIFFS DO NOT SEEK TO  
9 RECOVER IN THIS CASE ANY MONIES PAID TO SOME GLA CLASS MEMBERS  
10 UNDER SEPARATE SO-CALLED 'AD HOC LICENSE AGREEMENTS.'"

11 THE COURT: STIPULATED TO?

12 MR. LECLAIR: STIPULATED, YOUR HONOR.

13 THE COURT: THANK YOU. ALL RIGHT. THAT'S NOW PROVEN  
14 IN THE CASE. YOU MUST TAKE THAT A GIVEN.

15 ALL RIGHT. THANK YOU. GO AHEAD.

16 BY MR. KESSLER:

17 Q. NOW, MR. NAHRA, LET'S TAKE A LOOK AT TRIAL EXHIBIT 56,  
18 WHICH IS IN EVIDENCE. AND LET'S GO TO THE FIRST PARAGRAPH,  
19 PLEASE.

20 (DOCUMENT DISPLAYED.)

21 "THIS AGREEMENT IS MADE AND ENTERED INTO THIS  
22 25TH DAY OF APRIL, 2006, BY AND AMONG ELECTRONIC ARTS INC.,  
23 EA."

24 AND THEN, IT'S -- IT'S ANOTHER EA ENTITY, EACV. IS  
25 THAT ALSO ANOTHER ELECTRONIC ARTS ENTITY?

1 **A.** YES, I BELIEVE SO.

2 **Q.** OKAY. AND THEN, IT SAYS:

3 "THE "NATIONAL FOOTBALL MUSEUM DOING BUSINESS,  
4 DBA, THE PRO FOOTBALL HALL OF FAME."

5 WHAT IS THAT, MR. NAHRA?

6 **A.** THAT IS THE ENTITY THAT REPRESENTS THE HALL OF FAME  
7 MEMBERS IN THIS DEAL.

8 **Q.** AND THEN, IT'S REFERRED TO IN THE AGREEMENT AS HOF; IS  
9 THAT CORRECT?

10 **A.** YES, FOR HALL OF FAME.

11 **Q.** AND THEN, IT SAYS:

12 "NATIONAL FOOTBALL LEAGUE PLAYERS INCORPORATED."

13 THAT WOULD BE PLAYERS INC?

14 **A.** CORRECT.

15 **MR. KESSLER:** LET'S LOOK AT THE GRANT OF RIGHTS,  
16 PLEASE. GRANT OF RIGHTS, PLEASE, PARAGRAPH 2.

17 **BY MR. KESSLER:**

18 **Q.** IT SAYS:

19 "UPON THE TERMS AND CONDITIONS SET FORTH IN THIS  
20 AGREEMENT, HOF HEREBY GRANTS TO LICENSEE AND LICENSEE HEREBY  
21 ACCEPTS THE NON-EXCLUSIVE RIGHT, LICENSE AND PRIVILEGE OF  
22 UTILIZING THE TRADEMARKS AND NAMES OF HOF, WHICH MAY BE AMENDED  
23 FROM TIME TO TIME BY HOF IN AND IN CONNECTION WITH THE  
24 MARKETING OF LICENSED PRODUCTS. II, THE NAMES, LIKENESSES,  
25 INCLUDING WITHOUT LIMITATION, NUMBERS, PICTURES OWNED BY HOF,

1 PHOTOGRAPHS OWNED BY HOF, FACSIMILE SIGNATURES AND/OR  
2 BIOGRAPHICAL INFORMATION HEREINAFTER IDENTITY OF THE PLAYERS."

3 I'LL ASK YOU, MR. NAHRA, WHO WAS GRANTING THE PLAYER  
4 RIGHTS TO EA IN THIS AGREEMENT?

5 **A.** HOF, THE HALL OF FAME.

6 **Q.** DID PLAYERS INC GRANT ANY PLAYER RIGHTS IN THIS AGREEMENT?

7 **A.** NO.

8 **Q.** NOW, LET'S LOOK, IF WE CAN, AT THE PAYMENT TERMS.  
9 PARAGRAPH 5.

10 (DOCUMENT DISPLAYED.)

11 OKAY. IT SAYS:

12 "EA SHALL PAY PLAYERS INC ON BEHALF OF HOF A  
13 ONE-TIME, FLAT-FEE PAYMENT OF \$400,000."

14 DO YOU SEE THAT, SIR?

15 **A.** YES.

16 **Q.** OKAY. WHO DID THAT \$400,000 GO TO?

17 **A.** IT WENT TO THE HALL OF FAME.

18 **Q.** OKAY. THANK YOU.

19 NOW, I'D LIKE TO REFER YOUR ATTENTION TO THE EXHIBIT,  
20 EXHIBIT A OF THIS AGREEMENT. I'M SORRY. IT'S PAGE 8. OKAY.

21 **MR. KESSLER:** IF YOU COULD JUST DO THE BEGINNING  
22 FIRST SO THEY COULD UNDERSTAND WHAT THIS IS.

23 (DOCUMENT DISPLAYED.)

24 **BY MR. KESSLER: :**

25 **Q.** WHAT IS THIS AN EXHIBIT OF, IF YOU KNOW, SIR?

1 **A.** I BELIEVE IT'S A LIST OF THE PLAYERS WHO ARE BEING GRANTED  
2 BY THE HALL OF FAME TO ELECTRONIC ARTS FOR THIS PRODUCT.

3 **Q.** WHO IS GRANTING THESE RIGHTS? IS IT HALL OF FAME OR  
4 PLAYERS INC?

5 **A.** THE HALL OF FAME.

6 **Q.** IF YOU TAKE A LOOK DOWN THE LIST IN THE RIGHT-HAND COLUMN.

7 **MR. KESSLER:** IF YOU COULD GIVE ME THE BOTTOM THIRD  
8 OF THE LIST. THANK YOU.

9 THANK YOU. GOT IT. GO A LITTLE BIT HIGHER. THERE.

10 (DOCUMENT DISPLAYED.)

11 **BY MR. KESSLER::**

12 **Q.** THIS SAYS "GENE UPSHAW."

13 DO YOU SEE THAT?

14 **A.** YES, I DO.

15 **Q.** WAS MR. UPSHAW A HALL OF FAME PLAYER?

16 **A.** YES, HE WAS.

17 **Q.** WAS HE ONE OF THE PLAYERS WHO THE HALL OF FAME WAS  
18 GRANTING RIGHTS TO?

19 **A.** YES. THAT APPEARS TO BE. HE'S ON THIS EXHIBIT.

20 **Q.** SO IF THERE WAS ANY DISCOUNT HERE OF PLAYERS, WOULD THAT  
21 BE A DISCOUNT ON MR. UPSHAW'S RIGHTS, ALSO, IF THERE WAS SUCH A  
22 THING?

23 **A.** YES.

24 **Q.** NOW, YOU WERE HERE FOR MR. ADDERLEY'S TESTIMONY, WERE YOU  
25 NOT?

1 **A.** I WAS.

2 **Q.** AND YOU HEARD MR. ADDERLEY TESTIFY THAT HE ONLY NEGOTIATED  
3 WITH THE HALL OF FAME FOR HOW MUCH THEY WOULD PAY HIM FOR THIS  
4 AGREEMENT, CORRECT?

5 **A.** YES.

6 **MR. LECLAIR:** OBJECTION. MISSTATES THE TESTIMONY OF  
7 MR. ADDERLEY, YOUR HONOR.

8 **THE COURT:** WAIT A MINUTE.

9 WELL, IT WOULD BE UP TO THE JURY TO DECIDE WHETHER OR  
10 NOT COUNSEL IS ACCURATELY REFERRING TO WHAT MR. ADDERLEY  
11 ACTUALLY SAID. I DON'T FRANKLY REMEMBER. BUT I'M POSITIVE  
12 THAT COLLECTIVELY THE JURY WILL.

13 AND, THEREFORE, IF THIS MISSTATES THE TESTIMONY TAKE  
14 THAT INTO ACCOUNT IN DISCOUNTING THE QUESTION AND THE ANSWER.

15 IF YOU HAVE THE ACTUAL TRANSCRIPT OF THE TESTIMONY  
16 THAT WOULD BE A BETTER WAY TO PROCEED.

17 **MR. KESSLER:** I WILL DO THAT, YOUR HONOR. THANK YOU.

18 **THE COURT:** THAT WAY THERE WON'T BE ANY QUESTION  
19 ABOUT WHAT MR. ADDERLEY SAID.

20 **MR. KESSLER:** WANT TO GO TO SOMETHING ELSE WHILE  
21 THEY'RE LOOKING FOR THAT. COME BACK TO THAT.

22 **THE COURT:** GO AHEAD.

23 **BY MR. KESSLER:**

24 **Q.** OKAY. MR. NAHRA, APART FROM MR. ADDERLEY'S TESTIMONY FOR  
25 THE MOMENT, DO YOU KNOW WHETHER THE HALL OF FAME OR PLAYERS INC

1 ACQUIRED THE RIGHTS TO ANY HALL OF FAME PLAYERS WHO THE HALL OF  
2 FAME DID NOT ALREADY HAVE THE RIGHTS TO?

3 **A.** I BELIEVE THAT EITHER ONE OF THEM COULD ACQUIRE RIGHTS TO  
4 PEOPLE -- ARE YOU TALKING ABOUT NEW INDUCTEES?

5 **Q.** LET ME ASK THIS WAY. LET ME SHOW YOU A COPY OF TRIAL  
6 EXHIBIT 2320. IT'S IN FRONT OF YOU.

7 BEFORE WE GET TO THAT, WE NOW FOUND MR. ADDERLEY'S  
8 TESTIMONY. AND I'LL READ TO YOU FROM TRANSCRIPT 1584. AND MY  
9 QUESTION TO MR. ADDERLEY WAS IN THE CONTEXT OF THIS HALL OF  
10 FAME AGREEMENT WAS:

11 **"QUESTION:** RIGHT. IN OTHER WORDS, PLAYERS  
12 INC DIDN'T NEGOTIATE THAT 2,000 WITH YOU, DID  
13 THEY? THAT WAS DIRECTLY THE HALL OF FAME?

14 **"ANSWER:** YES."

15 **MR. LECLAIR:** YOUR HONOR, FOR OPTIMAL COMPLETENESS,  
16 CAN I READ 1596, LINE 13 THROUGH 16?

17 **MR. KESSLER:** YOUR HONOR, THAT'S -- I DON'T KNOW WHAT  
18 IT SAYS, BUT IT'S FOR COMPLETENESS, IT'S LIKE 12 PAGES LATER IN  
19 THE TRANSCRIPT. SO I DON'T THINK IT COULD BE FOR COMPLETENESS.

20 **THE COURT:** YOU CAN DO THAT LATER ON.

21 **MR. LECLAIR:** FINE.

22 **THE COURT:** SO WHAT IS YOUR QUESTION?

23 **BY MR. KESSLER:**

24 **Q.** MY QUESTION IS: DO YOU KNOW, MR. NAHRA, WHETHER  
25 MR. ADDERLEY WAS CORRECT THAT IT WAS THE HALL OF FAME WHO WAS

1 CONTACTING THE PLAYERS TO NEGOTIATE HOW MUCH THEY WOULD BE PAID  
2 FOR THE HALL OF FAME AGREEMENT AND NOT PLAYERS INC? DO YOU  
3 KNOW?

4 **A.** YES, THAT'S MY UNDERSTANDING.

5 **Q.** WHO WAS IT, SIR?

6 **A.** IT WAS THE HALL OF FAME.

7 **Q.** OKAY. AND TO THE EXTENT THE 400,000 WAS NEGOTIATED  
8 BETWEEN THE HALL OF FAME AND EA, AND TO THE EXTENT THAT  
9 MR. WALKER WAS INVOLVED IN THE 400,000 NEGOTIATION, WHO DID  
10 THAT MONEY GO TO?

11 DID IT GO TO THE PLAYERS, OR WAS THAT THE AMOUNT THAT  
12 WENT TO THE HALL OF FAME? WHICH WAS IT?

13 **A.** IT'S THE AMOUNT THAT EA AGREED TO PAY TO THE HALL OF FAME.

14 **Q.** AND WAS THE HALL OF FAME FREE TO PAY WHATEVER THEY WANTED  
15 TO TO THE PLAYERS?

16 **A.** AS FAR AS I KNOW.

17 **Q.** NOW, TAKE A LOOK AT TRIAL EXHIBIT 2320. ARE YOU FAMILIAR  
18 WITH THIS AS TO WHAT THIS WAS?

19 **A.** I'M FAMILIAR WITH IT.

20 **Q.** OKAY. TELL THE JURY WHAT THIS WAS, AND THEN -- WHAT THIS  
21 WAS. THANK YOU.

22 **A.** THIS IS A LETTER FROM THE HALL OF FAME. I'M ACTUALLY NOT  
23 SURE WHO MRS. HUNT IS. BUT IT'S A LETTER FROM THE HALL OF FAME  
24 SORT OF ANNOUNCING THE DEAL THAT THE PRO FOOTBALL HALL OF FAME  
25 WANTS TO ENTER INTO WITH EA FOR THE MADDEN NFL VIDEO GAME.

1 AND --

2           **MR. LECLAIR:** YOUR HONOR, I THINK HE'S READING FROM  
3 AN EXHIBIT THAT'S NOT IN EVIDENCE. WAS THIS A DISCLOSED  
4 DOCUMENT?

5           **MR. KESSLER:** YES.

6           **MR. LECLAIR:** I APOLOGIZE.

7           **THE COURT:** HE'S JUST TALKING OUT LOUD.

8           **MR. KESSLER:** I'M SORRY. IT WASN'T DISCLOSED FOR  
9 THIS WITNESS BECAUSE WHEN WE DID OUR DESIGNATIONS THE HALL OF  
10 FAME WASN'T THERE.

11           **MR. LECLAIR:** THEN, I OBJECT, YOUR HONOR.

12           **THE COURT:** HE'S JUST READING FROM IT, ANYWAY. IT'S  
13 NOT IN EVIDENCE.

14           **MR. KESSLER:** LET ME JUST ASK HIM.

15 **BY MR. KESSLER:**

16 **Q.** ARE YOU FAMILIAR WITH THIS DOCUMENT?

17 **A.** YES.

18           **MR. KESSLER:** OKAY. I WOULD LIKE TO MOVE THIS INTO  
19 EVIDENCE, YOUR HONOR. I AGREE IT WAS NOT DISCLOSED FOR THIS  
20 WITNESS, BUT WHEN WE DID OUR DISCLOSURES IT WAS BEFORE THIS  
21 HALL OF FAME SUBJECT CAME INTO THE CASE.

22           **MR. LECLAIR:** YOUR HONOR, I HAVE TWO OBJECTIONS TO  
23 THIS. ONE: THEY DIDN'T DISCLOSE IT. TWO: THIS WITNESS IS  
24 NOT COPIED, NOT SHOWN TO HAVE ANY CONNECTION TO THIS LETTER  
25 WHATSOEVER.

1           **THE COURT:** ON THE FIRST POINT, SINCE WE AMENDED THE  
2 PARAMETERS OF THE TRIAL TO GET INTO THE HALL OF FAME, I'M GOING  
3 TO EXCUSE THE FAILURE TO DISCLOSE IT BECAUSE THAT'S  
4 UNDERSTANDABLE.

5           BUT IF THE WITNESS -- NOW, EARLIER YOU MADE A POINT  
6 OF DISTINGUISHING BETWEEN WHAT YOU KNEW, MR. NAHRA, VERSUS  
7 ANYTHING ELSE. NOW YOU HAVE GONE INTO TESTIFYING TO YOUR  
8 UNDERSTANDINGS AND YOUR, QUOTE, "FAMILIARITY."

9           SO IF YOU ARE JUST READING FROM A DOCUMENT AND TRYING  
10 TO INTERPRET IT FOR THE JURY AND HAVE HAD NO ROLE IN IT, THEN  
11 THAT'S IMPROPER. I'M NOT GOING TO ALLOW THAT.

12 **BY MR. KESSLER:**

13 **Q.** I'M GOING TO --

14           **THE COURT:** IF HE HAD SOME CONNECTION WITH THE  
15 TRANSACTION THAT ALLOWED HIM TO SPEAK FROM ACTUAL FIRSTHAND  
16 KNOWLEDGE, I'M OKAY WITH THAT. BUT I DON'T WANT HIM JUST  
17 INTERPRETING DOCUMENTS AND GIVING HIS, QUOTE, "UNDERSTANDINGS"  
18 TO THE JURY.

19           **MR. KESSLER:** UNDERSTOOD, YOUR HONOR.

20 **BY MR. KESSLER:**

21 **Q.** MR. NAHRA, WERE YOU FAMILIAR WITH THE TYPES -- WITH THE  
22 ANNOUNCEMENTS AND FORMS THE HALL OF FAME WAS SENDING OUT ABOUT  
23 THIS AT THIS TIME?

24 **A.** YES.

25 **Q.** AND DOES THIS -- DO YOU RECOGNIZE THIS AS ONE OF THOSE

1 ANNOUNCEMENTS?

2 **A.** I'M NOT SURE I'VE EVER SEEN THIS BEFORE, BUT I UNDERSTAND  
3 WHAT'S BEING COMMUNICATED. I WAS AWARE THAT THAT WAS BEING  
4 COMMUNICATED.

5 **MR. KESSLER:** IF YOUR HONOR DOESN'T THINK THAT'S  
6 SUFFICIENT, THEN I WON'T MOVE IT IN. I'LL JUST ASK HIM WHAT  
7 HIS UNDERSTANDING WAS.

8 **THE COURT:** THANK YOU. THAT'S WHAT YOU HAVE TO -- IF  
9 HE HAS A FIRST -- WAS IT AN UNDERSTANDING OF HEARSAY GOSSIP IN  
10 THE HALLWAY? OR DOES HE HAVE FIRSTHAND KNOWLEDGE?

11 **BY MR. KESSLER:**

12 **Q.** DID YOU HAVE FIRSTHAND KNOWLEDGE AT THE TIME, NOT ABOUT  
13 THIS SPECIFIC ONE, ABOUT THE ANNOUNCEMENTS THAT HALL OF FAME  
14 WAS MAKING AT THAT TIME TO RETIRED PLAYERS?

15 **A.** NO. I DON'T HAVE FIRSTHAND KNOWLEDGE ABOUT ANNOUNCEMENTS.

16 **Q.** OKAY. THAT'S FINE.

17 **THE COURT:** PASS TO SOMETHING ELSE.

18 **MR. KESSLER:** THAT'S FINE. WE'LL MOVE ON.

19 **BY MR. KESSLER:**

20 **Q.** MR. NAHRA, YOU WERE ASKED SOME QUESTIONS ABOUT TAKE TWO.  
21 DO YOU KNOW, DO YOU HAVE KNOWLEDGE WHETHER OR NOT TAKE TWO DID  
22 COME OUT WITH ITS VIDEO GAME OF FEATURING SOME RETIRED NFL  
23 PLAYERS?

24 **A.** YES, THEY DID.

25 **Q.** SO DESPITE WHAT MR. WALKER SAID IN THAT E-MAIL ABOUT TAKE

1 TWO NOT COMING OUT, THERE WAS A TAKE TWO GAME, CORRECT?

2 **A.** THERE WAS A TAKE TWO GAME, YES.

3 **Q.** AND DO YOU KNOW WHETHER RETIRED PLAYERS WHO SIGNED THE GLA  
4 WITH PLAYERS INC, DO YOU KNOW WHETHER ANY OF THEM ALSO SIGNED  
5 UP WITH TAKE TWO?

6 **A.** YES, THEY DID.

7 **Q.** OKAY. AND DOES THE NON-EXCLUSIVE RETIRED PLAYER GLA  
8 PREVENT PLAYERS FROM SIGNING WITH TAKE TWO?

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

10 **Q.** NOW, THERE WERE QUESTIONS RAISED ABOUT COMMENTS BY  
11 MR. WALKER IN THE E-MAIL ABOUT WHETHER OR NOT PAYMENTS TO  
12 PLAYERS WERE BELOW MARKET OR NOT. DO YOU RECALL THAT IN THE  
13 E-MAIL?

14 **A.** YES.

15 **Q.** HE'S DISCUSSING THE \$400,000 NUMBER, CORRECT, IN THOSE  
16 E-MAILS?

17 **A.** RIGHT.

18 **MR. LECLAIR:** OBJECTION. LEADING, YOUR HONOR.

19 **MR. KESSLER:** IT'S PRELIMINARY, YOUR HONOR.

20 **THE COURT:** WELL, THAT QUESTION IS PRELIMINARY, SO  
21 YOU CAN LEAD ON THE PRELIMINARY POINT.

22 **BY MR. KESSLER:**

23 **Q.** WAS THE \$400,000 NUMBER THE NUMBER PAID TO THE HALL OF  
24 FAME OR THE NUMBER THAT WAS PAID TO INDIVIDUAL PLAYERS?

25 **A.** IT WAS THE NUMBER THAT WAS PAID TO THE HALL OF FAME.

1 Q. NOW, IN THE E-MAILS THAT AROSE WHEN EA STARTED THIS, WHAT  
2 WAS EA SAYING TO PLAYERS INC WHEN THESE E-MAILS AROSE ABOUT THE  
3 \$400,000 PAYMENT?

4 A. THE REASON IT CAME TO MY ATTENTION WAS BECAUSE EA WAS  
5 CLAIMING THAT THEY DIDN'T WANT TO PAY 400,000 IN THAT THEIR  
6 UNDERSTANDING WAS THAT WE HAD AGREED TO PAY SOME OF THAT MONEY.

7 Q. SO IS EA SAYING THAT THEY WERE PAYING TOO MUCH OR TOO  
8 LITTLE?

9 A. EA BELIEVED THAT THEY HAD PAID TOO MUCH FOR THE RIGHTS.

10 Q. SO DID EA SAY ANYTHING TO YOU TO INDICATE THEY THOUGHT  
11 THEY GOT A BELOW-MARKET DEAL?

12 A. NO.

13 Q. NOW, MR. NAHRA, YOU MENTIONED THAT THE TAKE TWO DEAL IN  
14 YOUR TESTIMONY ON DIRECT EXAMINATION WAS, TO YOUR  
15 UNDERSTANDING, AN EXCLUSIVE LICENSE, CORRECT?

16 A. MY UNDERSTANDING IS THAT EA -- TAKE 2 WHEN THEY WERE  
17 TRYING TO SIGN UP RETIRED PLAYERS FOR THEIR GAME, THEY WERE  
18 TRYING TO SECURE THE EXCLUSIVE RIGHTS TO THOSE PLAYERS.

19 Q. NOW, BASED ON YOUR UNDERSTANDING OF THE LICENSING  
20 BUSINESS, DO COMPANIES PAY MORE FOR EXCLUSIVE RIGHTS THAN  
21 NON-EXCLUSIVE RIGHTS?

22 A. YES.

23 MR. LECLAIR: OBJECTION, YOUR HONOR. THIS IS BEYOND  
24 THE SCOPE, AND IT'S ALSO IRRELEVANT.

25 MR. KESSLER: THEY RAISED THE COMPARISON WITH THE

1 TAKE TWO GAME, YOUR HONOR.

2 **THE COURT:** OVERRULED. IT'S WITHIN THE SCOPE. IT'S  
3 A FAIR QUESTION.

4 PLEASE ANSWER.

5 **BY MR. KESSLER:**

6 **Q.** EXPLAIN TO THE JURY WHY A VIDEO GAME COMPANY MIGHT PAY  
7 MORE FOR EXCLUSIVE RIGHT TO RETIRED PLAYERS THAN NON-EXCLUSIVE  
8 RIGHTS.

9 **A.** WELL, BECAUSE IF THEY CAN OBTAIN EXCLUSIVE RIGHTS TO THE  
10 PLAYERS, THEN THEY'RE THE ONLY COMPANY OUT THERE WITH THE  
11 ABILITY TO PUT THOSE PLAYERS INTO A PRODUCT, AND THEREBY BE THE  
12 ONLY COMPANY WITH THE ABILITY TO SELL THAT PRODUCT. SO IT'S  
13 WORTH MORE MONEY TO BE THE ONLY PRODUCT ON THE SHELF.

14 **Q.** NOW, MR. NAHRA, LET ME DIRECT YOUR ATTENTION TO TRIAL  
15 EXHIBIT 1148 THAT COUNSEL SHOWED TO YOU.

16 **MR. KESSLER:** PUT THAT UP, PLEASE.

17 (DOCUMENT DISPLAYED.)

18 **BY MR. KESSLER: :**

19 **Q.** AND 1148 WAS THIS LICENSE THAT HE SHOWED YOU --

20 **MR. KESSLER:** LOOK AT THE TOP, PLEASE, LAUREN.

21 **BY MR. KESSLER:**

22 **Q.** -- BY AND BETWEEN FANTASY SPORT CHAMPIONS AND PLAYERS INC;  
23 DO YOU REMEMBER THAT?

24 **A.** YES, I DO.

25 **Q.** AND HE DIRECTED YOUR ATTENTION TO PARAGRAPH 13.

1 "NONINTERFERENCE."

2           **MR. KESSLER:** IF WE CAN DO THAT, LAUREN. THAT'S ON  
3 PAGE 8, 13.

4 **BY MR. KESSLER:**

5 **Q.** AND HE ASKED YOU IF THIS WAS A -- THANK YOU.

6           HE ASKED YOU IF THIS WAS A PARAGRAPH THAT APPEARED IN  
7 MOST PLAYERS INC AGREEMENTS, AND I THINK YOU SAID IT DID; IS  
8 THAT CORRECT?

9 **A.** YES.

10 **Q.** OKAY. NOW, UNDER THIS NONINTERFERENCE CLAUSE, LET'S SAY  
11 IT WAS IN AN EA AGREEMENT, WAS EA PRECLUDED FROM HAVING DEALS  
12 WITH RETIRED PLAYERS, FOR EXAMPLE, IF IT WAS NOT A LICENSED  
13 PLAYERS INC PRODUCT?

14 **A.** NO.

15 **Q.** COULD YOU EXPLAIN THAT TO THE JURY, PLEASE?

16 **A.** WELL, EA'S A HUGE COMPANY. AND WHILE THEY PRIMARILY DO  
17 VIDEO GAMES, THEY DO OTHER THINGS, AS WELL. IF THEY WANTED TO  
18 USE A RETIRED PLAYER TO -- OR ANY PLAYER TO DO SOMETHING THAT  
19 DIDN'T INVOLVE THEIR MADDEN GAME, THAT WE LICENSED, THEN THEY  
20 WOULDN'T HAVE TO DO IT THROUGH PLAYERS INC. WE WOULD HAVE NO  
21 INVOLVEMENT IN IT.

22 **Q.** LET ME GIVE YOU AN EXAMPLE FROM ANOTHER LICENSEE. TAKE A  
23 COMPANY LIKE TOPPS TRADING CARDS, OKAY?

24           IF TOPPS TRADING CARDS -- DO THEY HAVE A  
25 NONINTERFERENCE CLAUSE IN THEIR AGREEMENTS?

1 **A.** I'M CERTAIN THEY DO.

2 **Q.** YES? IF TOPPS TRADING CARDS WANTED TO LICENSE A LINE OF  
3 RETIRED PLAYER TRADING CARDS, SEPARATE AND APART FROM THE  
4 PRODUCTS THAT THEY LICENSED FROM YOU, COULD THEY DO THAT  
5 PRODUCT ON THEIR OWN?

6 **A.** YES.

7 **Q.** FINALLY, MR. NAHRA, OUT OF THE CLASS MEMBERS IN THIS CASE,  
8 DO YOU KNOW WHETHER MORE THAN 17 OF THOSE MEMBERS WERE IN THE  
9 EA HALL OF FAME AGREEMENT GAME?

10 **A.** I'M SORRY. CAN YOU REPEAT THAT QUESTION?

11 **Q.** DO YOU KNOW THE NUMBER OF CLASS MEMBERS IN THIS CASE WHO  
12 SIGNED HALL OF FAME AGREEMENTS WHERE THERE WAS MORE THAN 17?

13 **A.** UHM, NO. THAT SOUNDS LIKE A PRETTY REASONABLE NUMBER.

14 **Q.** DO YOU KNOW IT WOULD BE A VERY SMALL NUMBER?

15 **A.** YEAH.

16 **MR. KESSLER:** THANK YOU. I HAVE NO FURTHER  
17 QUESTIONS, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. I THINK THIS LAST POINT IS  
19 ONE THAT DESERVES TO BE -- OUGHT TO BE A CLEAR-CUT THING.

20 MR. LECLAIR, I WANT A STIPULATION. HOW MANY CLASS  
21 MEMBERS WERE IN THE HALL OF FAME DEAL?

22 **MR. LECLAIR:** I BELIEVE IT'S 17, YOUR HONOR. BUT  
23 WE'LL MAKE SURE THAT'S RIGHT AND STIPULATE TO IT.

24 **THE COURT:** IS THAT YOUR UNDERSTANDING?

25 **MR. KESSLER:** OUR UNDERSTANDING IS 17 CLASS MEMBERS

1 HAD AN AGREEMENT IN EFFECT WHILE THEY WERE IN THE HALL OF  
2 FAME -- WHILE THEY WERE IN THE HALL OF FAME AGREEMENT.

3 THE REASON I SAY THAT, YOUR HONOR, IS SOME CLASS  
4 MEMBERS HAD AN AGREEMENT IN EFFECT FOR ONE YEAR OF THE PERIOD,  
5 BUT NOT ANOTHER. SO THOSE CLASS MEMBERS WHO HAD A GLA IN  
6 EFFECT DURING THE HALL OF FAME GAME WAS 17. THAT'S IT.

7 **THE COURT:** MR. KESSLER, I'M TRYING TO MAKE THIS  
8 SIMPLE FOR THE JURY.

9 **MR. KESSLER:** 17.

10 (LAUGHTER)

11 **THE COURT:** 17 IS THE ANSWER.

12 **MR. KESSLER:** YES.

13 **THE COURT:** THANK YOU. GO AHEAD.

14 **REDIRECT EXAMINATION**

15 **BY MR. LECLAIR:**

16 **Q.** MR. NAHRA, I JUST HAVE A FEW QUESTIONS FOR YOU.

17 MR. KESSLER ASKED YOU ABOUT THIS INTERFERENCE CLAUSE.  
18 WHY DID YOU PUT THAT INTERFERENCE CLAUSE IN ALL OF YOUR LICENSE  
19 AGREEMENTS?

20 **A.** UHM, I'M NOT SURE I KNOW ALL THE REASONS, BUT THE REASON  
21 THAT COMES UP MOST OFTEN IS THAT AS THE LICENSORS, AS THE  
22 COMPANY THAT IS GRANTING RIGHTS TO SOMEONE ELSE TO USE IN THEIR  
23 PRODUCT, WE ALWAYS WANT TO BE AWARE OF WHAT PLAYERS IT IS THEY  
24 PLAN ON PUTTING INTO THAT PRODUCT.

25 AND SO THROUGH THE NONINTERFERENCE CLAUSE, IF THERE'S

1 A PLAYER WHOSE RIGHTS THEY HAVE NOT ALREADY BEEN GRANTED THAT  
2 THEY WANT TO USE IN ANY WAY IN CONJUNCTION WITH THAT PRODUCT,  
3 THEN THEY NEED TO GET IN TOUCH WITH US IN ORDER TO DO THAT.

4 **Q.** ISN'T ONE OF THE REASONS YOU PUT THAT IN THERE IS BECAUSE  
5 YOU WERE REPRESENTING RETIRED PLAYERS AS YOU SAID ON YOUR  
6 WEB SITE?

7 **A.** NO.

8 **Q.** THAT'S JUST NOT -- THAT HAS NOTHING TO DO WITH YOUR  
9 PRECLUDING YOUR LICENSEES FROM GOING DIRECTLY TO THE RETIRED  
10 PLAYERS? IT HAS NOTHING TO DO WITH THE FACT THAT YOU REPRESENT  
11 THEM?

12 **A.** I'VE NEVER HEARD THAT AS A REASON FOR THIS CLAUSE.

13 **Q.** ALL RIGHT, SIR. NOW, MR. KESSLER ASKED YOU ABOUT THE  
14 MONEY PAID TO THE HALL OF FAME VERSUS THE PLAYERS.

15 ARE YOU TRYING TO TELL THIS JURY THAT THE \$400,000  
16 THAT WAS NEGOTIATED DIDN'T HAVE ANYTHING TO DO WITH WHAT WAS  
17 PAID TO THE PLAYERS? IS THAT WHAT YOU'RE TELLING THE JURY?

18 **A.** I'M TELLING THE JURY THAT EA AGREED TO PAY THE HALL OF  
19 FAME \$400,000. IT WAS UP TO THE HALL OF FAME WHAT THEY DID  
20 WITH THAT MONEY.

21 **Q.** YOU KNEW, DIDN'T YOU, MR. NAHRA, THAT THEY WERE GOING TO  
22 DISTRIBUTE THE MONEY THAT WAS PAID TO THEM IN THE AGREEMENT;  
23 DIDN'T YOU, SIR?

24 **A.** I DIDN'T. I DIDN'T KNOW.

25 **Q.** YOU JUST HAVE NO IDEA? YOU THOUGHT THEY'D PAY 2 MILLION,

1 EVEN THOUGH THEY ONLY GOT 400,000; IS THAT WHAT YOU'RE TELLING  
2 THE JURY?

3 **A.** NO. LIKE I TESTIFIED EARLIER, WHEN YOU SHOWED ME THE --  
4 I'M NOT SURE I CAN TESTIFY ABOUT THIS. THE LETTER FROM --

5 **Q.** CAN YOU JUST ANSWER MY QUESTION, SIR? ARE YOU TELLING THE  
6 JURY THAT IT WAS IRRELEVANT WHAT WAS PAID, THE 400,000 IS  
7 IRRELEVANT TO WHAT WENT TO THE PLAYERS? ARE YOU TELLING THE  
8 JURY THAT?

9 **A.** WELL, IN OUR MIND IT'S NOT IRRELEVANT. BUT IT'S UP TO THE  
10 HALL OF FAME TO MAKE THAT DETERMINATION.

11 **Q.** RIGHT. AND WHEN MR. WALKER TOLD EA THAT HE HAD DONE THEM  
12 A HUGE FAVOR BY GETTING THIS DISCOUNTED TERM, YOU THOUGHT IT  
13 WAS JUST COMPLETELY IRRELEVANT IN THE IMPACT ON THE PLAYERS  
14 THEMSELVES? YOU THOUGHT IT HAD NOTHING TO DO WITH THAT?

15 **A.** I WASN'T INVOLVED IN THOSE NEGOTIATIONS. I DIDN'T THINK  
16 ABOUT IT ONE WAY OR ANOTHER.

17 **Q.** ALL RIGHT, SIR.

18 NOW, MR. -- MR. KESSLER ASKED YOU ABOUT TAKE TWO, AND  
19 DID THEY COME OUT WITH A VIDEO GAME. ARE YOU AWARE, SIR, OF  
20 WHETHER THE TAKE TWO VIDEO GAME WAS ACTUALLY DELAYED IN COMING  
21 OUT?

22 **A.** UHM, I'M NOT EXACTLY SURE WHEN IT CAME OUT.

23 **Q.** DO YOU THINK IT MIGHT HAVE BEEN DELAYED BECAUSE OF YOUR  
24 DEAL?

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

1 Q. ALL RIGHT, SIR.

2 MR. LECLAIR: YOUR HONOR, I HAVE A SUBJECT THAT WAS  
3 UNDER THE MOTION IN LIMINE AND I WANT TO -- I BELIEVE THE DOOR  
4 HAS BEEN OPENED, AND I WANT TO BE ABLE TO ASK THE WITNESS ABOUT  
5 IT.

6 I DON'T KNOW. DO YOU WANT TO DO A SIDEBAR ON THIS?

7 THE COURT: I THINK WE BETTER.

8 (THE FOLLOWING PROCEEDINGS WERE HELD AT SIDEBAR.)

9 MR. LECLAIR: YOUR HONOR, THEY PUT UP GENE UPSHAW'S  
10 NAME. THEY'RE TELLING THE JURY THERE WOULDN'T HAVE BEEN ANY  
11 DISCOUNT HERE BECAUSE GENE UPSHAW WAS ON THE DEAL.

12 I WANT TO NOW ASK THIS WITNESS DOES HE KNOW THAT GENE  
13 UPSHAW WAS PAID MILLIONS OF DOLLARS A YEAR BY THE PLAYERS INC  
14 AND THE NFLPA? HE DOESN'T CARE ABOUT \$2,000 IN A LICENSE  
15 AGREEMENT, UNLIKE SOME OF THESE PLAYERS IN OUR CLASS.

16 THEY OPENED THE DOOR. THEY'RE SUGGESTING TO THE JURY  
17 THAT GENE UPSHAW WOULD CARE ABOUT THIS MONEY AND, THEREFORE,  
18 WOULDN'T ALLOW IT TO HAPPEN. AND THAT'S JUST FALSE.

19 HE WAS MAKING MILLIONS OF DOLLARS. HIS CONCERN WAS  
20 ABOUT EA, NOT ABOUT THIS \$2,000 LICENSE PAYMENT. AND THEY'RE  
21 SUGGESTING A TOTALLY IMPROPER INFERENCE TO THE JURY.

22 MR. KESSLER: YOUR HONOR, I COULDN'T DISAGREE WITH  
23 THAT MORE. HE WANTS TO MAKE WILDLY INFLAMMATORY INFORMATION  
24 ABOUT MR. UPSHAW'S SALARY. THE NUMBERS, BY THE WAY, ARE  
25 INACCURATE, SO HE WOULD BE PUTTING INACCURATE INFORMATION --

1 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

2 **MR. KESSLER:** YOUR HONOR, THIS RULE IS THE EXACT  
3 INFLAMMATORY INFORMATION I'M ENTITLED TO. IN FACT, THEY DON'T  
4 EVEN KNOW THE ACTUAL SALARY INFORMATION BECAUSE YOUR HONOR WILL  
5 RECALL YOU DENIED THEIR MOTION TO GET IT AND SAID:

6 "IF THAT'S YOUR THEORY OF THE CASE, YOU BETTER  
7 GET ANOTHER THEORY."

8 THAT WAS YOUR HONOR'S WORDS IN RESPECT TO THIS. IN  
9 NO WAY DID WE DO ANYTHING OTHER THAN POINT OUT IN A DOCUMENT  
10 THEY PUT IN EVIDENCE THAT MR. UPSHAW WAS LISTED THERE. DIDN'T  
11 ARGUE ANYTHING ABOUT WHAT MR. UPSHAW'S FINANCIAL SITUATION WAS  
12 OR ANYTHING ELSE. AND IT'S REALLY NO BASIS FOR THEM TO  
13 INTERJECT THIS HERE.

14 **THE COURT:** WE'RE NOT GETTING INTO THAT POINT. BUT  
15 YOU WOULD BE FREE IN YOUR CLOSING ARGUMENT TO MAKE THE ARGUMENT  
16 THAT SURELY MR. UPSHAW WAS WELL PAID AND, THEREFORE, EVEN  
17 THOUGH -- I'M GOING TO ALLOW THAT INFERENCE IF THIS POINT EVEN  
18 HAS ANY CONSEQUENCE. AND, THEREFORE, IF THEY -- HE WOULD NOT  
19 CARE WHETHER OR NOT HE WAS -- HE GOT DISCOUNTED OR NOT. THAT  
20 WOULD BE OKAY.

21 BUT WE'RE NOT GOING TO TAKE THE TIME TO GET INTO THE  
22 SPECIFICS OF HIS SALARY.

23 **MR. LECLAIR:** YOUR HONOR, YOU'VE TOLD THE JURY THAT  
24 THEY'RE ONLY SUPPOSED TO CONSIDER EVIDENCE. THERE'S NOT GOING  
25 TO BE ANY EVIDENCE UNLESS WE GET SOME EVIDENCE ON THIS. IT'S

1 NOT FAIR TO LET THEM ARGUE THAT GENE UPSHAW WOULD HAVE CARED  
2 ABOUT THIS \$2,000.

3 I'LL PUT IN THE LM-2, WHICH HAS THEIR NUMBERS  
4 PUBLICLY REPORTED. ONE LM-2. THAT'S ALL I WANT TO PUT IN,  
5 BECAUSE IT'S NOT FAIR TO LET THEM MAKE THAT INFERENCE TO THE  
6 JURY.

7 **THE COURT:** IT'S ONE DOCUMENT, A PUBLIC DOCUMENT.

8 **MR. KESSLER:** THAT WOULD BE A TOTAL DISTORTION,  
9 BECAUSE NOT ONLY IS THAT LM-2 ABOUT -- HAS ANNUAL PAYMENTS  
10 MIXING TOGETHER ALL OF MR. UPSHAW'S RETIREMENT PAYMENTS IN A  
11 SALARY THAT HE GETS INTO AND EXPLAIN -- SO IT'S COMPLETELY  
12 THE -- COMPLETELY THE WRONG NUMBER.

13 I THINK YOUR HONOR IS RIGHT. I THINK THIS JURY KNOWS  
14 MR. UPSHAW WAS THE HEAD OF THE UNION. THERE IS NO DISPUTE HE  
15 WAS GOING TO BE COMPENSATED SUFFICIENTLY. THAT'S NOT THE  
16 ISSUE.

17 FOR THEM TO PUT SPECIFIC NUMBERS IN MILLIONS, OR  
18 SOMETHING LIKE THAT, THAT'S INFLAMMATORY. AND THAT'S WHY THEY  
19 WANT TO DO IT.

20 **MR. LECLAIR:** WHY DID THEY MAKE THAT ARGUMENT, JUDGE?  
21 THEY DID IT SO THE JURY WOULDN'T BELIEVE PI WOULD DO THIS. AND  
22 THEY'VE OPENED THIS DOOR BY SAYING GENE UPSHAW --

23 **THE COURT:** I'M GOING TO TELL THE JURY, IF YOU AGREE,  
24 OTHERWISE, I'M GOING TO ALLOW THIS LINE OF QUESTIONS. I'M  
25 GOING TO TELL THE JURY TO DISREGARD THE PRIOR STATEMENT BY THIS

1 WITNESS ABOUT GENE UPSHAW AND THE FACT THAT HE WAS PART OF THIS  
2 GROUP, AND WHETHER HE GOT A DISCOUNT OR NOT.

3 **MR. KESSLER:** I'M PERFECTLY CONTENT WITH THAT, YOUR  
4 HONOR.

5 **THE COURT:** AND YOU DON'T MAKE THE ARGUMENT, AND THEY  
6 DISREGARD IT, AND WE WILL MOVE ON.

7 **MR. KESSLER:** ABSOLUTELY, YOUR HONOR. IT WAS NOT A  
8 MAJOR POINT, AND SO THAT'S FINE.

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

10 (SIDEBAR CONCLUDED.)

11 **THE COURT:** TO MAKE OUR CASE SLIGHTLY SIMPLER, I'M  
12 GOING TO INSTRUCT YOU TO DISREGARD SOMETHING THAT CAME UP ABOUT  
13 TEN MINUTES AGO. AND THAT WILL SAVE US FROM HAVING TO GET INTO  
14 FURTHER QUESTIONS AND ANSWERS ABOUT THAT SUBJECT.

15 YOU WILL REMEMBER A QUESTION THAT WAS ASKED BY MR.  
16 KESSLER ABOUT WHETHER OR NOT GENE UPSHAW, WHO WAS THE DIRECTOR  
17 OF THE -- OF THE UNION, WAS IN THE HALL OF FAME PROGRAM. AND  
18 SOME SUGGESTION WAS MADE THAT HE WAS TREATED LIKE ALL THE OTHER  
19 RETIRED HALL OF FAME PEOPLE.

20 AND I'M TELLING YOU TO COMPLETELY DISREGARD THAT  
21 COUPLE OF QUESTIONS, BECAUSE IF I ALLOW YOU TO CONSIDER THAT,  
22 IN FAIRNESS I'VE GOT TO ALLOW THE OTHER SIDE TO GET INTO SOME  
23 RESPONSE.

24 SO IT'S JUST SIMPLER TO MAKE -- IT'S SO FAR AFIELD  
25 FROM THE ISSUE YOU HAVE TO DECIDE IN THIS CASE I'M JUST TAKING

1 THAT AWAY. THAT'S NOT SOMETHING FOR YOU TO CONSIDER, GENE  
2 UPSHAW'S -- WHETHER HE WAS HAPPY OR UNHAPPY, WENT ALONG WITH OR  
3 DISCOUNTED OR WHATEVER. THAT'S OUT OF THE CASE.

4 AND I TOLD MR. KESSLER NOT TO MAKE THAT ARGUMENT IN  
5 THE CLOSING ARGUMENT. HE'S AGREED.

6 SO SUBTRACT THAT FROM YOUR MEMORY, PLEASE, AND PLACE  
7 NO RELIANCE ON THAT POINT.

8 ALL RIGHT.

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

10 **THE COURT:** ANYTHING MORE?

11 **MR. KESSLER:** NOTHING FURTHER, YOUR HONOR.

12 **THE COURT:** YOU CAN STEP DOWN, MR. NAHRA. THANK YOU  
13 VERY MUCH.

14 **THE WITNESS:** THANK YOU.

15 **THE COURT:** NEXT WITNESS.

16 **MR. KESSLER:** I ASSUME MR. NAHRA IS DISCHARGED, YOUR  
17 HONOR.

18 **THE COURT:** I THOUGHT HE WAS A CORPORATE  
19 REPRESENTATIVE.

20 **MR. KESSLER:** WELL, HE WILL BE HERE, BUT HE MAY NOT  
21 BE HERE EVERY DAY. HE HAS OTHER BUSINESS TO --

22 **THE COURT:** ALL RIGHT. YOU ARE DISCHARGED.  
23 YOU DON'T WANT HIM RETAINED, DO YOU?

24 **MR. LECLAIR:** WE WILL NOT DISCHARGE MR. NAHRA, YOUR  
25 HONOR, BUT IT'S FINE. WE'LL WORK ON HIS SCHEDULING PROBLEMS HE

1 MAY HAVE.

2           **THE COURT:** YOU ARE NOT DISCHARGED. YOU CANNOT GO  
3 OUT OF THE DISTRICT WITHOUT -- YOU'VE GOT TO MAKE YOURSELF  
4 AVAILABLE FOR RECALL ON REASONABLE NOTICE.

5           **MR. KESSLER:** WE'LL WORK THAT OUT WITH PLAINTIFFS, IF  
6 THEY NEED HIM FOR SOME REASON.

7           **THE COURT:** I HOPE YOU WILL.

8           THANK YOU.

9           NEXT WITNESS.

10          **MR. HUMMEL:** YOUR HONOR, PLAINTIFFS CALL DANIEL  
11 RASCHER.

12          **THE COURT:** DANIEL RASCHER, PLEASE COME FORWARD.

13          **MR. HUMMEL:** I HAVE A NOTEBOOK FOR YOUR HONOR.

14          **THE COURT:** ALL RIGHT. PLEASE RAISE YOUR RIGHT HAND.  
15 THE CLERK WILL SWEAR YOU IN.

16          (THEREUPON, THE WITNESS WAS SWORN.)

17          **THE WITNESS:** I DO.

18          **THE COURT:** OKAY. WE NEED TO TAKE YOUR PICTURE SO  
19 THE JURY CAN BE REMINDED WHAT YOU LOOK LIKE, AND MAYBE REMEMBER  
20 YOUR TESTIMONY.

21          (PICTURE TAKEN.)

22          **THE COURT:** THANK YOU.

23          PLEASE STATE YOUR NAME AND SPEAK SO THAT THE MIC  
24 CATCHES YOUR VOICE.

25          **THE WITNESS:** OKAY. MY NAME IS DAN RASCHER.

1           **THE COURT:** GO AHEAD.

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

3                           **DAN RASCHER,**

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

6                           **DIRECT EXAMINATION**

7 **BY MR. HUMMEL:**

8 **Q.** DR. RASCHER, WHAT DO YOU DO FOR A LIVING?

9 **A.** I'M AN ECONOMIST. I'M A PROFESSOR AT THE UNIVERSITY OF  
10 SAN FRANCISCO. I DIRECT THE SPORT MANAGEMENT PROGRAM.

11 **Q.** IS THERE ANY -- WHAT IS THE SPORT MANAGEMENT PROGRAM?

12 **A.** ALL RIGHT. SO AT USF WE HAVE A MASTER'S PROGRAM IN SPORTS  
13 MANAGEMENT. STUDENTS TAKE COURSES IN ECONOMICS, FINANCE, LAW  
14 AND SO FORTH.

15                   AND I RUN THE ACADEMIC PORTION OF THE PROGRAM. THERE  
16 ARE ABOUT 200 MASTER STUDENTS IN SAN FRANCISCO AND IN ORANGE  
17 COUNTY.

18 **Q.** DR. RASCHER, I AM GOING TO ACTUALLY DO MY BEST TO SLOW  
19 DOWN, BECAUSE THE COURT REPORTER IS HAVING TROUBLE. SO IF YOU  
20 COULD JUST KEEP YOUR ANSWERS SLOW, WE'LL GET THIS DONE MORE  
21 EFFICIENTLY, I THINK.

22                   DR. RASCHER, DO YOU HAVE A PARTICULAR AREA OF  
23 EXPERTISE?

24 **A.** YES, I'M SPORTS ECONOMIST, SO I APPLY ECONOMIC PRINCIPLES  
25 TO THE SPORTS INDUSTRY.

1 Q. CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT A  
2 SPORTS ECONOMIST IS?

3 A. SPORTS ECONOMIST STUDIES SPORT LEAGUES, THE LABOR MARKET  
4 IN SPORTS, SPONSORSHIPS, ENDORSEMENTS, LICENSING IN SPORTS.

5 AND AS AN ECONOMIST, YOU APPLY THE PRINCIPLES OF  
6 MICROECONOMICS. YOU KNOW, PRICES, DEMAND FOR CERTAIN PRODUCTS,  
7 THE SUPPLY OF CERTAIN PRODUCTS TO THE MARKETPLACE, WHAT PRICES  
8 PREVAIL IN THOSE CASES, AND OTHER AREAS WITHIN THE SPORTS  
9 INDUSTRY.

10 Q. AND DO YOU HAVE AN ADVANCED DEGREE IN ECONOMICS, SIR?

11 A. YES. I HAVE A PH.D. IN ECONOMICS FROM UC BERKELEY. AND I  
12 FOCUSED ON THE SPORTS INDUSTRY DURING MY DISSERTATION WORK.

13 AND AFTER THAT, I WENT TO THE UNIVERSITY OF MASSACHUSETTS AND  
14 TAUGHT IN THE SPORT MANAGEMENT DEPARTMENT THERE, WHICH IS  
15 WIDELY CONSIDERED ONE OF THE TOP ONE OR TWO SPORT MANAGEMENT  
16 DEPARTMENTS.

17 THEN AFTER THAT IS WHEN I CAME BACK TO THE BAY AREA,  
18 MY HOME, AND STARTED TEACHING AT THE UNIVERSITY OF  
19 SAN FRANCISCO.

20 MR. HUMMEL: YOUR HONOR, WE ACTUALLY HAVE A  
21 STIPULATION AMONG THE PARTIES AS TO THE QUALIFICATIONS UNDER  
22 RULE 702 OF THE FEDERAL RULES OF EVIDENCE.

23 MR. KESSLER: WE AGREED, YOUR HONOR, THAT ALL OF THE  
24 EXPERTS FOR BOTH SIDES ARE QUALIFIED.

25 THE COURT: WELL, THEN WHY DON'T YOU JUST MOVE ON?

1           **MR. HUMMEL:** WE WILL, YOUR HONOR. I TENDER  
2 DR. RASCHER, THEN, PURSUANT TO THAT STIPULATION AS AN EXPERT IN  
3 SPORTS ECONOMICS.

4           **THE COURT:** ALL RIGHT. YOU'RE GOING TO HEAR SOME --  
5 NORMALLY, WE DON'T ALLOW ANYONE TO TESTIFY TO ANYTHING EXCEPT  
6 WHAT THEY SAW OR THEY HEARD OR THEY DID. YOU KNOW, YOU'VE  
7 HEARD A LOT ABOUT THAT IN THIS TRIAL.

8           WE DO OCCASIONALLY ALLOW OPINIONS. ONE OCCASION  
9 WHERE OPINIONS COME IN, AS OPPOSED TO FACTS, IS WHENEVER THE --  
10 WE HAVE AN EXPERT WITNESS. AN EXPERT WITNESS IS SOMEONE WHO BY  
11 SPECIAL TRAINING OR EDUCATION IS ALLOWED TO GIVE OPINIONS TO  
12 THE JURY.

13           I'M PRETTY SURE IT'S GOING TO TURN OUT THAT THIS  
14 WITNESS, AS WELL AS ANY EXPERTS ON THE OTHER SIDE, WERE NOT  
15 PRESENT AT ANY OF THE EVENTS IN QUESTION. RATHER, THEY'VE DONE  
16 SOME REVIEWS AND THAT THEY HAVE FORMED OPINIONS BASED UPON  
17 THOSE REVIEWS.

18           SO YOU NEED TO EVALUATE EXPERT TESTIMONY JUST LIKE  
19 YOU WOULD ANY OTHER, EXCEPT THERE'S AN ADDITIONAL WRINKLE. YOU  
20 ALWAYS SHOULD BE THINKING ABOUT: WHAT IS THIS OPINION BASED  
21 ON?

22           AND, ALSO, IN OTHER WORDS, WHAT ARE THE UNDERLYING  
23 FACTS AND ASSUMPTIONS, AND HAVE THOSE FACTS AND ASSUMPTIONS  
24 BEEN PROVEN UP IN THE CASE?

25           SO THEN THAT'S THE MAIN POINT.

1           THIS IS GOING TO BE TRUE FOR ALL OF THE EXPERTS IN  
2 THE CASE, NOT JUST THIS EXPERT.

3           ALL RIGHT. GO AHEAD, MR. HUMMEL.

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

5 **BY MR. HUMMEL:**

6 **Q.** NOW, DR. RASCHER, YOU WERE RETAINED BY PLAINTIFFS' COUNSEL  
7 IN THIS CASE TO PROVIDE SOME OPINIONS?

8 **A.** YES, THAT'S RIGHT.

9 **Q.** WERE YOU PAID FOR THAT WORK?

10 **A.** YES.

11 **Q.** DO YOU HAVE ANY FINANCIAL INTEREST IN THE OUTCOME OF THIS  
12 CASE? IN OTHER WORDS, IF PLAINTIFFS PREVAIL, WILL YOU MAKE  
13 MORE MONEY?

14 **A.** NO.

15 **Q.** YOU WERE PAID BY THE HOUR?

16 **A.** I'M BEING PAID BY THE HOUR. THAT'S RIGHT.

17 **Q.** NOW, YOU WERE GIVEN SOME VERY SPECIFIC ASSIGNMENTS IN THIS  
18 CASE BY PLAINTIFFS' COUNSEL, CORRECT?

19 **A.** THAT'S RIGHT.

20 **Q.** LET'S TALK ABOUT THEM ONE BY ONE. AND WHAT I'M GOING TO  
21 DO IS ASK SPECIFICALLY WHAT THE ASSIGNMENT WAS. AND THEN, I'M  
22 GOING TO ASK YOU WHAT YOU DID TO ANALYZE THE PROBLEM. AND THEN  
23 I'M GOING TO ASK YOU TO TELL THE LADIES AND GENTLEMEN OF THE  
24 JURY WHAT YOUR CONCLUSION WAS, AND AS HIS HONOR POINTED OUT,  
25 WHAT IT WAS BASED ON, OKAY?

1 **A.** OKAY.

2 **Q.** THAT'S WHAT WE'LL DO.

3 SO THE FIRST ASSIGNMENT YOU WERE GIVEN WAS THE  
4 FOLLOWING: DID THE RETIRED NATIONAL FOOTBALL LEAGUE PLAYERS  
5 HELP TO MAKE THE GAME WHAT IT IS TODAY?

6 WAS THAT YOUR UNDERSTANDING OF YOUR ASSIGNMENT?

7 **A.** YES.

8 **Q.** AS AN ECONOMIST, AS A SPORTS ECONOMIST, HOW DID YOU GO  
9 ABOUT EVALUATING THAT PROBLEM?

10 **A.** RIGHT. SO AS THAT QUESTION IS KIND OF A BROAD QUESTION OR  
11 A NON-ECONOMIC QUESTION. SO AS AN ECONOMIST I HAD TO LOOK AT  
12 THAT AND SAY: WHAT IS THE ECONOMIC MEANING OF THAT QUESTION?

13 AND SO I TOOK IT TO MEAN: IS THE VALUE OF TODAY'S  
14 NFL, THE GAMES, THE TEAMS, THE LICENSING RIGHTS, IS THAT  
15 AFFECTED BY PLAYERS IN THE PAST, PERFORMANCES IN THE PAST,  
16 TEAMS IN THE PAST?

17 IN OTHER WORDS, DOES THE BRAND AND FAN LOYALTY BUILD  
18 UP OVER TIME SO THAT AFFECTS PEOPLE'S DECISIONS TODAY TO BUY  
19 LICENSED MERCHANDISE OR BUY TICKETS OR WATCH IT ON TELEVISION  
20 AND SO FORTH.

21 **Q.** THAT'S HOW YOU INTERPRETED THE QUESTION. NOW, WHAT DID  
22 YOU DO TO ANALYZE THAT QUESTION?

23 **A.** SO I LOOKED AT -- SO ANOTHER THING ECONOMISTS DO IS WE  
24 LOOK AT PEER-REVIEWED ECONOMIC RESEARCH OR PUBLISHED RESEARCH.

25 AND SO ONE OF THE THINGS I DID WAS I WENT OUT AND

1 LOOKED AT THE LITERATURE. RESEARCH THAT'S BEEN -- GONE THROUGH  
2 A PEER-REVIEW PROCESS AND THEN GETS PUBLISHED IN ECONOMIC  
3 JOURNALS.

4 I LOOKED AT MARKET ACTIVITY. ANOTHER THING THAT  
5 ECONOMISTS DO IS WE LOOK AT ACTUAL TRANSACTIONS IN THE  
6 MARKETPLACE, ACTIVITY IN THE MARKETPLACE AND SEE IF WE CAN  
7 GLEAN SOME INFORMATION FROM THAT.

8 **Q.** OKAY. AND DID YOU DO THAT IN CONNECTION WITH THIS PROBLEM  
9 WHICH, AGAIN, WAS: DID THE RETIRED NFL PLAYERS HELP MAKE THE  
10 GAME WHAT IT IS TODAY?

11 **A.** YES.

12 **Q.** SO WHEN YOU LOOKED AT THAT, WHAT WERE YOUR CONCLUSIONS?

13 **A.** SO, FOR INSTANCE, ONE OF THE PEER REVIEW ARTICLES I LOOKED  
14 AT WHICH WAS VERY COMPELLING WAS BY PROFESSOR STEVEN ROSS AND  
15 HIS COLLEAGUES AT THE UNIVERSITY OF MINNESOTA.

16 HE SHOWED THAT -- THAT TEAM HISTORY -- AND THIS WAS  
17 AN EMPIRICAL ARTICLE, MEANING THAT HE GATHERED DATA FROM THE  
18 INDUSTRY AND DID SURVEYS AND SO FORTH.

19 I'M SORRY ABOUT SPEAKING FAST.

20 HE FOUND THAT TEAM HISTORY -- AND THE ELEMENT OF TEAM  
21 HISTORY THAT'S IMPORTANT HERE IS THE HISTORY OF THE TEAM'S  
22 PERSONNEL. SO SPECIFICALLY THE PLAYERS ON THE TEAM AND THE  
23 COACHES ON THE TEAM.

24 THE HISTORY OF THE TEAM'S PERSONNEL WAS IMPORTANT IN  
25 DEVELOPING THE BRAND OF THAT TEAM. SO OVER TIME, THAT BRAND

1 GETS BUILT UP BY THE PLAYERS ON THE TEAM AND BY OTHER FACTORS.

2 AND SO TODAY, THE VALUE OF THAT BRAND, THE ABILITY TO  
3 SELL LICENSED MERCHANDISE, TO BE ABLE TO DRAW PEOPLE TO GAMES  
4 AND WATCH ON TELEVISION IS AFFECTED BY THE HISTORY OF THE  
5 FRANCHISE, FOR INSTANCE.

6 THAT WAS ONE EXAMPLE.

7 ANOTHER EXAMPLE IS BY PROFESSOR UNDERWOOD AND HIS  
8 COLLEAGUES. HE SHOWED THAT THE -- THAT THERE'S AN APPRECIATION  
9 AND RECOGNITION OF FORMER TEAMS AND PLAYERS THAT HAS A FACTOR  
10 IN DEVELOPING FAN LOYALTY.

11 SO IT'S NOT SURPRISING THAT OVER TIME, IF ANY OF YOU  
12 ARE SPORTS FANS OR NOT, IF YOU KNOW SPORTS FANS, OVER TIME THEY  
13 DEVELOP A PASSION FOR THAT TEAM, AN EMOTIONAL ATTACHMENT TO  
14 THAT TEAM.

15 SO THESE, AMONG OTHER RESEARCH ARTICLES, SHOW THAT  
16 THAT, IN FACT, IS THE CASE. AND THAT EVENTUALLY LEADS TO  
17 PEOPLE BUYING MORE TICKETS, BUYING MORE LICENSED MERCHANDISE  
18 AND SO FORTH.

19 **Q.** SO DID YOU DRAW ANY CONCLUSION AS A MATTER OF ECONOMICS AS  
20 TO THE VALUE TO WOULD-BE LICENSEES TO USE NAMES OR LIKENESSES  
21 OF CURRENT OR FORMER PLAYERS BASED ON THOSE CONCLUSIONS YOU  
22 REACHED?

23 **A.** I DIDN'T -- I DIDN'T CONCLUDE A QUANTITATIVE NUMBER. I  
24 DIDN'T SET OUT TO SAY WHAT IS THE EXACT DOLLAR VALUE OF RETIRED  
25 FOOTBALL PLAYERS' LICENSING RIGHTS AND SO FORTH.

1           WHAT I SHOWED WAS REALLY A QUALITATIVE RESULT, WAS  
2 THAT THE VALUE OF -- OF TODAY'S LICENSING RIGHTS, TICKET SALES,  
3 THE ENTIRE DEMAND FOR THE PRODUCT IS AFFECTED BY THE PLAYERS  
4 FROM THE PAST.

5           THERE'S A LOT OF OTHER EVIDENCE, TOO, FROM THE  
6 MARKETPLACE.

7           FOR INSTANCE, I KNOW YOU'VE HEARD ABOUT THE EA MADDEN  
8 FOOTBALL GAME, I IMAGINE. IN THAT GAME YOU CAN PLAY WITH  
9 ACTIVE PLAYERS. YOU CAN PLAY WITH RETIRED PLAYERS. YOU CAN  
10 PLAY WITH HISTORICAL TEAMS.

11           SO IT'S A PRINCIPLE IN ECONOMICS IF A BUSINESS, A  
12 SAAVY BUSINESS LIKE ELECTRONIC ARTS GOES OUT AND SIGNS UP  
13 RETIRED PLAYERS AND PUTS ALL THESE PLAYERS IN THE GAME AND GETS  
14 THE STATISTICS RIGHT AND EVERYTHING, THAT THEY PERCEIVE THERE'S  
15 GOING TO BE A VALUE TO THAT, THAT THEY ARE DOING THAT FOR A  
16 REASON SO THEY CAN SELL MORE GAMES.

17           GOING OUT TO THE MARKETPLACE, THAT'S A PIECE OF  
18 EVIDENCE THAT THE RETIRED PLAYERS AND THE TEAMS OF THE PAST  
19 HAVE VALUE IN TODAY'S MARKETPLACE.

20 **Q.** SO IF THIS JURY WERE TO CONCLUDE THAT EA SPORTS, IN FACT,  
21 UTILIZED HISTORIC OR RETIRED -- HISTORIC TEAMS OR RETIRED  
22 PLAYERS IN ITS GAME, WOULD THAT INDICATE ANYTHING TO YOU ABOUT  
23 WHETHER OR NOT THERE WAS A VALUE OF THOSE RETIRED PLAYERS?

24           **MR. KESSLER:** YOUR HONOR, I OBJECT. THIS WAS NOT IN  
25 HIS -- HIS DISCLOSED FIRST EXPERT REPORT. AND, THEREFORE,

1 UNDER YOUR HONOR'S RULES THIS IS A SUBJECT HE CAN'T COVER.

2 **MR. HUMMEL:** PAGE 5, LINES 2 THROUGH 4.

3 AND YOU HAVE IT, YOUR HONOR.

4 **THE COURT:** MAY I SEE THE REPORT, PLEASE?

5 **MR. HUMMEL:** SURE. I HANDED YOU A NOTEBOOK OF THE  
6 REPORT.

7 **THE COURT:** THIS IS THE ORIGINAL REPORT?

8 **MR. HUMMEL:** THE ORIGINAL REPORT, YOUR HONOR, PAGE 5,  
9 LINES 2 THROUGH 4.

10 **THE COURT:** OKAY. AND THE QUESTION, AGAIN, IS WHAT?

11 **MR. HUMMEL:** COULD I HAVE IT READ BACK, PLEASE.

12 (THE REPORTER READ THE PENDING QUESTION AS FOLLOWS:)

13 **"QUESTION:** SO IF THIS JURY WERE TO CONCLUDE  
14 THAT EA SPORTS, IN FACT, UTILIZED HISTORIC OR  
15 RETIRED -- HISTORIC TEAMS OR RETIRED PLAYERS  
16 IN ITS GAME, WOULD THAT INDICATE ANYTHING TO  
17 YOU ABOUT WHETHER OR NOT THERE WAS A VALUE OF  
18 THOSE RETIRED PLAYERS?"

19 **MR. KESSLER:** I THINK THAT'S FAIR, YOUR HONOR.

20 **THE COURT:** I THINK YOU'RE RIGHT, MR. KESSLER.

21 WE'LL ALLOW THE QUESTION.

22 THANK YOU.

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

24 **BY MR. HUMMEL:**

25 **Q.** DO YOU HAVE THE QUESTION IN MIND, SIR?

1 **A.** YES. SIMILAR TO WHAT I HAD JUST STATED, WHICH WAS THAT  
2 THE EA BUILDS THESE GAMES, AND THEY WANT TO SELL UNITS, RIGHT?  
3 SO THEY PUT THE ACTIVE PLAYERS IN THERE, AND THEY PUT THE  
4 RETIRED PLAYERS IN THERE, AND THE HISTORIC TEAMS.

5 AND THEY DO THAT TO INCREASE THE -- YOU KNOW, TO SELL  
6 MORE GAMES.

7 SO THE LICENSING RIGHTS THAT THE ACTIVE PLAYERS AND  
8 RETIRED PLAYERS GIVE UP OR ESSENTIALLY SELL TO PUT IN THOSE  
9 GAMES CLEARLY HAS -- HAS VALUE.

10 **Q.** ALL RIGHT. LET'S MOVE ON TO THE SECOND ONE OF YOUR  
11 ASSIGNMENTS.

12 IT WAS -- AND I'LL READ THIS:

13 "DO THE NFLPA AND NFL PI'S LM-2 DOCUMENTS  
14 SUBMITTED ANNUALLY TO THE UNITED STATES DEPARTMENT OF LABOR  
15 ACCURATELY REFLECT THE LICENSING REVENUES THAT HAVE ACTUALLY  
16 BEEN PAID TO PLAYERS?"

17 DO YOU RECALL THAT WAS YOUR SECOND ASSIGNMENT?

18 **A.** YES.

19 **Q.** AND CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT  
20 AN "LM-2" IS, AS YOU UNDERSTAND IT?

21 **A.** SO AN LM-2 IS A FILING THAT UNIONS SUBMIT TO THE  
22 DEPARTMENT OF LABOR IN ORDER TO BE TRANSPARENT. SOME UNIONS IN  
23 THE PAST UNITED STATES HISTORY HAVE MAYBE MISAPPROPRIATED FUNDS  
24 OR EMBEZZLED FUNDS OR MISMANAGED FUNDS, OR WHATEVER.

25 SO THE DEPARTMENT OF LABOR REQUIRES THESE UNIONS TO

1 SUBMIT AN LM-2 DOCUMENT. IT'S ESSENTIALLY SHOWING THE CASH  
2 FLOWS COMING IN AND THE CASH FLOWS GOING OUT.

3 **Q.** DID YOU, SIR, IN COMPLETING THIS ASSIGNMENT REVIEW THE  
4 LM-2 FORMS THAT WERE SUBMITTED BY THE NFLPA AND PI TO THE  
5 UNITED STATES DEPARTMENT OF LABOR?

6 **A.** YES, I DID. I REVIEWED EACH YEAR DURING THE CLASS PERIOD.

7 **Q.** AND DID YOU, BASED ON THAT REVIEW AND BASED ON YOUR REVIEW  
8 OF THE INTERNAL FINANCIAL DOCUMENTS OF THE DEFENDANTS', DRAW  
9 ANY CONCLUSION ABOUT WHETHER THE LM-2S ACCURATELY REFLECT THE  
10 LICENSING REVENUES THAT HAVE ACTUALLY BEEN PAID TO THE PLAYERS?

11 **A.** YES, I DID. SO IF YOU LOOK AT THE LM-2S, THEY DON'T  
12 REFLECT THE SHARED GROUP LICENSING REVENUES THAT ARE REFLECTED  
13 WHEN YOU GET THE INTERNAL BUSINESS DOCUMENTS FROM THE NFLPA.

14 THEY TURN THOSE OVER IN DISCOVERY. SO WHEN YOU LOOK  
15 AT THE INTERNAL BUSINESS DOCUMENTS YOU CAN TRACK THROUGH. IN  
16 FACT, I RECEIVED ACTUAL SPREADSHEETS SO I COULD KIND OF TRACK  
17 THROUGH IN EXCEL AND EVERYTHING.

18 AND YOU CAN TRACK THROUGH THERE, AND YOU CAN MATCH  
19 THOSE NUMBERS UP WITH THE AGREEMENT BETWEEN THE PLAYERS  
20 ASSOCIATION AND PLAYERS INC.

21 WHEN YOU LOOK AT THE LM-2S, IT JUST DOESN'T -- THOSE  
22 NUMBERS JUST DON'T MATCH UP.

23 **Q.** AND CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY HOW  
24 THEY DON'T MATCH UP? CAN YOU DESCRIBE THAT?

25 **A.** WELL, THE INTERNAL BUSINESS DOCUMENTS -- SO WHEN GROUP --

1 SHARED GROUP LICENSING REVENUE COMES IN, THE PLAYERS  
2 ASSOCIATION AND PLAYERS INC TAKE A CHUNK. AND IN 2003, THEY  
3 TOOK 64 PERCENT, AND THE PLAYERS GOT 36 PERCENT.

4 SO THE UNION KEPT 64 PERCENT OF THE LICENSING, THE  
5 SHARED GROUP LICENSING REVENUE, AND 36 PERCENT WENT TO THE  
6 PLAYERS.

7 IN 2004, THE SAME NUMBER. 2005, THE SAME NUMBER.

8 IN 2006, THE PLAYERS GOT 31 PERCENT INSTEAD OF  
9 36 PERCENT, LIKE THEY HAD RECEIVED IN THE YEARS BEFORE.

10 AND IN 2007, THEY RECEIVED 32 PERCENT. NOW, THAT ALL  
11 COMES FROM THE INTERNAL BUSINESS DOCUMENTS.

12 **Q.** IT DOES NOT COME FROM THE -- YOU CAN'T TELL THAT BASED ON  
13 WHAT PUBLICLY FILED WITH THE UNITED STATES DEPARTMENT OF LABOR;  
14 IS THAT RIGHT?

15 **MR. KESSLER:** YOUR HONOR, HE'S LEADING AN EXPERT.

16 **BY MR. HUMMEL:**

17 **Q.** CAN YOU TELL THAT?

18 **A.** NO, YOU CAN'T TELL THAT.

19 **THE COURT:** IT IS LEADING. I AM GOING TO ALLOW IT IN  
20 THIS INSTANCE.

21 GO AHEAD.

22 **THE WITNESS:** SO THE LM-2 -- SO THE LM-2, IT LOOKS  
23 LIKE THE PLAYERS ARE RECEIVING A HIGHER SHARE OF THE GROUP  
24 LICENSING REVENUES.

25

1 **BY MR. HUMMEL:**

2 **Q.** ALL RIGHT. NOW, DID YOU -- YOU JUST REFERENCED THAT YOU  
3 DID AN ANALYSIS LOOKING AT THE INTERNAL FINANCIAL DOCUMENTS OF  
4 THE DEFENDANTS, AND YOU DETERMINED PRECISELY BASED ON THE FLOW  
5 OF FUNDS HOW MUCH, IN FACT, WAS RETAINED BY THE UNION AND HOW  
6 MUCH WAS PAID TO THE PLAYERS; IS THAT RIGHT? IS THAT WHAT YOU  
7 DID?

8 **A.** YES.

9 **Q.** AND DID YOU PREPARE A SUMMARY CHART BASED ON YOUR REVIEW?

10 **A.** YES.

11 **Q.** COULD I SHOW, PLEASE -- WOULD YOU TAKE A LOOK AT EXHIBIT  
12 1208? DON'T PUT IT ON THE BOARD YET.

13 **A.** IS THAT THE FIRST ONE HERE?

14 **Q.** IT'S 1208. THERE SHOULD BE A LITTLE TAB NUMBER ON THERE.

15 DO YOU HAVE 1208 IN FRONT OF YOU, DR. RASCHER?

16 **A.** YES, I DO.

17 **Q.** WOULD YOU LOOK AT THE THIRD -- WELL, YEAH, IT'S THE THIRD  
18 PAGE OF THAT EXHIBIT.

19 **A.** OKAY.

20 **Q.** DO YOU HAVE THAT IN FRONT OF YOU?

21 **A.** YES.

22 **Q.** AND CAN YOU DESCRIBE FOR THE LADIES AND GENTLEMEN OF THE  
23 JURY WHAT IT SAYS AT THE TOP?

24 **A.** IT SAYS:

25 "NFLPA, NFL PI LICENSING SPLITS PER NFLPA/NFL PI

1 SPREADSHEETS."

2 **Q.** WAS THIS A DOCUMENT PREPARED BY YOU OR UNDER YOUR  
3 SUPERVISION?

4 **A.** YES.

5 **Q.** IS IT AN ACCURATE REFLECTION OR SUMMARY OF DOCUMENTS  
6 PRODUCED BY THE DEFENDANTS IN THIS CASE?

7 **A.** YES.

8 **MR. HUMMEL:** YOUR HONOR, I'D MOVE ADMISSION OF PAGE  
9 2, EXHIBIT 2 OF 1208, AND ASK IT BE DISPLAYED TO THE JURY.

10 **MR. KESSLER:** NO OBJECTION TO THAT PAGE.

11 **THE COURT:** PAGE WHAT?

12 **MR. HUMMEL:** IT'S THE THIRD PAGE OF TRIAL EXHIBIT  
13 1208. IT'S A SUMMARY.

14 **THE COURT:** THIRD PAGE IS RECEIVED.

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

16 I'LL CALL IT 1208A.

17 **THE COURT:** HOW ABOUT-3?

18 **MR. HUMMEL:** DASH 3. 1208-3.

19 (TRIAL EXHIBIT 1208-3 RECEIVED IN EVIDENCE.)

20 ALL RIGHT. CAN YOU BLOW THAT UP FOR THE JURY,  
21 PLEASE?

22 (DOCUMENT DISPLAYED.)

23 **BY MR. HUMMEL:**

24 **Q.** DR. RASCHER, CAN YOU EXPLAIN TO THE JURY BRIEFLY WHAT THIS  
25 SHOWS?

1 **A.** YES. IF YOU GO TO THE BOTTOM LINE -- WE'LL START THERE AT  
2 THE BOTTOM -- THAT'S -- THOSE ARE THE NUMBERS THAT I HAD JUST  
3 TOLD YOU ABOUT.

4 SO YOU CAN SEE UNDER 2003 --

5 **Q.** HANG ON.

6 **A.** YEAH.

7 **Q.** WHICH BOTTOM LINE?

8 **A.** SORRY. THE BOTTOM LINE OF THE ENTIRE PICTURE THERE.

9 **Q.** "IN AGGREGATE"?

10 **A.** YES. THANK YOU.

11 SO WHAT THAT SHOWS, THE THIRD BOX THERE YOU CAN SEE  
12 THAT IT SAYS "PLAYER PERCENTAGE."

13 WHAT THAT SHOWS IS IN 2003, THE PLAYERS RECEIVED  
14 36 PERCENT OF THE SHARED GROUP LICENSING REVENUE.

15 NOW, IF YOU GO STRAIGHT UP TO THE SECOND BOX, WHERE  
16 IT SAYS "NFL PI PERCENTAGE," AND THAT'S THE TOP. THAT'S WHERE  
17 IT SAYS "NFLPA PERCENTAGE," CORRECT.

18 YOU CAN SEE THAT IF YOU ADD THOSE TOGETHER THAT'S THE  
19 64 PERCENT THAT THE UNION AND PI KEPT.

20 SO IN 2003, THE PLAYERS RECEIVED 36 PERCENT, AND THE  
21 UNION AND PI COMBINED RECEIVED 64 PERCENT.

22 NOW, IN 2006, YOU CAN SEE THAT IT DROPPED, WHAT THE  
23 PLAYERS RECEIVED DOWN TO 31 PERCENT, WHICH, AGAIN, THIS IS THE  
24 BOTTOM LINE OF THE ENTIRE GRAPHIC UP THERE.

25 **Q.** LET ME STOP YOU RIGHT THERE.

1 **A.** OKAY.

2 **Q.** DO YOU KNOW OR DO YOU HAVE AN OPINION BASED ON YOUR REVIEW  
3 OF THE FINANCIAL RECORDS WHY IT DROPPED FROM 36 PERCENT TO  
4 31 PERCENT?

5 **A.** YES.

6 **Q.** WHAT'S YOUR UNDERSTANDING, SIR?

7 **A.** THE -- IN 2006, THE PLAYERS ASSOCIATION AND PLAYERS INC  
8 DECIDED TO TAKE SHARED GROUP LICENSING REVENUE, A CERTAIN  
9 AMOUNT OF IT, IN PARTICULAR \$8 MILLION.

10 SO THE YEAR BEFORE THOSE MONIES WERE BEING SHARED AT  
11 THE 36 PERCENT/64 PERCENT SPLIT. AND THEN, THEY DECIDED TO  
12 TAKE THAT AND GIVE THE PLAYERS ZERO PERCENT AND SHARE THAT  
13 AMONGST THEMSELVES AT, I THINK, A 60 TO 40 PERCENT SPLIT.

14 AND THE REASON GIVEN IN THE -- IN THE EVIDENCE THAT  
15 I'VE SEEN IS THAT THEY'RE VALUING THE LOGO OF PLAYERS INC AND  
16 PLAYERS ASSOCIATION, AND SO THAT'S NOT FOR THE PLAYERS, YOU  
17 KNOW, IS WHAT I'VE SEEN IN THE EVIDENCE. SO THEY --

18 **Q.** I'M SORRY. HAVE YOU SEEN IN YOUR REVIEW OF THE DOCUMENTS  
19 ANY INDEPENDENT ASSESSMENT OF THE FAIRNESS OF THAT REALLOCATION  
20 THAT RESULTED IN THE 36 TO 31 PERCENT DEDUCTION?

21 **A.** NO, I HAVE NOT SEEN ANY EVIDENCE THAT THEY'VE TRIED TO  
22 VALUE WHAT THAT SHOULD BE WORTH, OR THAT THEY SHOULD EVEN DO IT  
23 IN THE FIRST PLACE OR ANYTHING LIKE THAT.

24 **Q.** ALL RIGHT. JUST SO WE'RE CLEAR, YOU'VE BROKEN IT OUT  
25 BETWEEN NFLPA, NFL PI AND THE PLAYER. HOW DID THE UNION, IF

1 YOU'VE FORMED AN OPINION ABOUT THIS, ACTUALLY TREAT THEIR  
2 FINANCIALS WITH PI?

3 **A.** WELL, THE NFL PI AND NFLPA -- NFL PI IS A SUBSIDIARY  
4 HUNDRED PERCENT OWNED BY NFLPA. THEY SHARE THE SAME EXECUTIVES  
5 AND DECISION-MAKERS, AND SO FORTH, SO IT'S REALLY ONE AND THE  
6 SAME.

7 **Q.** DID THEY FILE SEPARATE OR CONSOLIDATED FINANCIAL  
8 STATEMENTS?

9 **A.** THEY FILED CONSOLIDATED FINANCIAL STATEMENTS.

10 **Q.** ALL RIGHT. AND JUST TO FINISH UP THIS ONE TOPIC, THESE  
11 NUMBERS, THESE AGGREGATE PLAYER PERCENTAGES, WHERE THE PLAYER  
12 GOT 31 PERCENT IN '06, 32 PERCENT IN '07, THAT WAS NOT  
13 PUBLICLY-DISCLOSED TO THE LABOR DEPARTMENT, RIGHT?

14 **A.** WHEN YOU LOOK AT THE LM-2 DOCUMENTS, YOU CAN'T TELL THAT  
15 THAT'S IN THERE AT ALL.

16 **Q.** CAN'T SEE IT. OKAY.

17 NOW, LET'S GO TO YOUR NEXT ASSIGNMENT, WHICH WAS:  
18 YOU WERE ASKED, QUOTE.

19 "HOW DOES -- HOW DO THOSE PERCENTAGES RETAINED  
20 BY THE UNION AND PI COMPARE WITH OTHER PROFESSIONAL SPORTS  
21 UNIONS OR THIRD-PARTY LICENSING ENTITIES? HOW DOES THE  
22 PERCENTAGE KEPT BY NFLPA PI COMPARE TO WHAT IS CUSTOMARY IN  
23 SPORTS LICENSING?"

24 DO YOU HAVE EXPERIENCE IN THIS AREA SUCH THAT -- OR  
25 LEARNED STUDY IN THIS AREA SUCH THAT YOU CAN OFFER AN OPINION

1 IN THAT AREA?

2 **A.** YES, I HAVE PUBLISHED IN THE AREA OF THE SPORTS LICENSING.

3 I'VE WORKED ON OTHER LAWSUITS INVOLVED IN SPORTS LICENSING,

4 MAJOR LEAGUE SOCCER, FOR INSTANCE.

5 I VALUE ENDORSEMENTS AND SPONSORSHIPS WHICH ARE

6 CLOSELY RELATED TO LICENSING.

7 **Q.** SO TO ANSWER THAT QUESTION AS TO HOW THIS COMPARES TO

8 COMPARABLES, WHAT DID YOU DO?

9 **A.** SO I WENT OUT AND LOOKED -- AND LOOKED AT OTHER SITUATIONS

10 WHERE THERE'S A LICENSING ENTITY. THERE'S A SET OF LICENSING

11 LICENSES, AND THOSE ARE BEING SOLD. AND IF THERE'S AN OUTSIDE

12 THIRD PARTY SELLING THEM, WHAT COMMISSION, WHAT RATE DO THEY

13 CHARGE BEFORE THEY GIVE THE LICENSING REVENUES TO THE

14 LICENSORS?

15 SO, AS AN EXAMPLE, COLLEGIATE LICENSING COMPANY,

16 THEY'VE GOT HUNDREDS OF COLLEGES AND UNIVERSITIES AS THEIR

17 CLIENTS. THEY'LL TAKE THE LICENSING RIGHTS FROM THE

18 UNIVERSITY, AND THEY'LL GO OUT AND SELL THEM IN THE

19 MARKETPLACE.

20 SO IF YOU GO BUY, YOU KNOW, SHIRTS AND JERSEYS AND

21 CUPS AND MUGS AND EVERYTHING, THOSE ARE LICENSED PRODUCTS.

22 THEY'LL CHARGE A FEE OF ABOUT 15 TO 20 PERCENT.

23 MEANING THAT THE UNIVERSITY, LIKE CAL BERKELEY, FOR INSTANCE,

24 IS ONE OF THEIR CLIENTS, THE UNIVERSITY WILL KEEP 85 PERCENT OR

25 80 PERCENT OF LICENSING REVENUES, AND THE COMMISSION WILL BE 15

1 TO 20 PERCENT.

2 FROM A LEADING TEXTBOOK IN SPORTS MANAGEMENT MENTIONS  
3 A RATE OF ABOUT 20 PERCENT. ANOTHER BOOK MENTIONS A RATE FOR  
4 SMALLER LEAGUES UP TO 35 PERCENT.

5 SO YOU CAN SEE THAT THERE'S -- THERE'S SOME RANGE  
6 THERE, DEPENDING ON THE CIRCUMSTANCES.

7 NOW, THIS BRINGS UP A GOOD POINT ABOUT SMALLER  
8 LEAGUES.

9 IF YOU'RE GOING TO PUT A LICENSING PROGRAM TOGETHER  
10 THERE'S GOING TO BE SOME OVERHEAD COSTS AND SOME UPFRONT COSTS.  
11 IF YOU CAN'T SELL MUCH IN LICENSING REVENUES, THEN YOU'RE NOT  
12 GOING TO GET VERY MUCH BACK TO COVER THOSE COSTS.

13 AND SO THE AMOUNT OF KIND OF LEFT OVER LICENSING  
14 REVENUE THAT YOU CAN GIVE TO THE LICENSORS IS PROBABLY GOING TO  
15 BE SMALLER.

16 **MR. KESSLER:** YOUR HONOR, I ASK THAT WE GET A FRESH  
17 QUESTION. THIS WITNESS IS NOW GOING OFF ON ANOTHER SUBJECT  
18 AND --

19 (COUNSEL AND THE COURT SPEAKING SIMULTANEOUSLY, WHICH  
20 WAS NOT REPORTABLE.)

21 **THE COURT:** THAT'S TRUE.

22 I'M NOT BEING CRITICAL OF YOU, MR. RASCHER, BUT WE'VE  
23 GOT TO HAVE QUESTIONS AND ANSWERS.

24 SO THE ANSWER'S GOT TO BE LIKE THREE OR FOURS  
25 SENTENCES LONG, SO THAT WE CAN GET A NEW -- THAT WAY COUNSEL

1 GETS A CHANCE TO OBJECT TO THE NEXT QUESTION.

2 ALL RIGHT. NEW QUESTION.

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

4 **BY MR. HUMMEL:**

5 **Q.** SO, DR. RASCHER, DID YOU LOOK AT COMPARABLES TO RENDER AN  
6 OPINION ABOUT WHETHER OR HOW THE NFLPA AND PI COMPARED TO WHAT  
7 IS CUSTOMARY IN SPORTS LICENSING?

8 **A.** YES.

9 **Q.** DESCRIBE THE COMPARABLES YOU LOOKED AT.

10 **A.** OKAY. SO I MENTIONED THE CLC, THE COLLEGIATE LICENSING  
11 COMPANY, ABOUT 15 TO 20 PERCENT, AND A COUPLE OTHERS I  
12 MENTIONED.

13 MAJOR LEAGUES BASEBALL PLAYERS ASSOCIATION IS A  
14 COMPARABLE. IT'S ANOTHER PROFESSIONAL LEAGUE WITH A UNION.  
15 MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION, THEY SELL GROUP  
16 LICENSING, SHARED GROUP LICENSING, ALSO. OR THEY PACKAGE IT,  
17 AND THEY SELL IT OUT TO THE MARKETPLACE.

18 THEY KEEP ABOUT 38 TO 39 PERCENT. SO, IN THIS  
19 EXAMPLE, YOU CAN SEE THE NFLPA PA/PI KEEPS 64 PERCENT OR AS  
20 HIGH AS 69 PERCENT, AND THE REST GO TO THE PLAYERS.

21 IN BASEBALL, IT'S REALLY THE OPPOSITE. THE PLAYERS  
22 RECEIVE OVER 60 PERCENT, AND THE UNION, THE BASEBALL UNION  
23 KEEPS ABOUT 38 OR 39 PERCENT.

24 **Q.** SO DO YOU HAVE ANY OVERALL OPINION THAT YOU CAN OFFER FOR  
25 THIS JURY AS A GUIDE TO THEM AS TO WHAT'S CUSTOMARY IN SPORTS?

1 **A.** YEAH. CUSTOMARY RANGE IN SPORTS FOR SELLING THESE  
2 LICENSES WOULD BE SOMEWHERE BETWEEN 10 AND 40 PERCENT.

3 **Q.** OKAY. NOW, FINAL ASSIGNMENT THAT WAS GIVEN TO YOU WAS THE  
4 FOLLOWING:

5 "WHAT EFFECT, IF ANY, WAS THE FACT THAT THE  
6 NFLPA NFL PI REPRESENTS BOTH THE ACTIVE AND THE RETIRED PLAYERS  
7 FOR GROUP LICENSING HAVE ON THE BARGAINING POSITION OF THE  
8 NFLPA NFL PI WITH RESPECT TO RETIRED PLAYERS AND LICENSEES?"

9 DID YOU LOOK AT THAT QUESTION?

10 **A.** YES, I DID.

11 **Q.** HOW DID YOU BRING YOUR EXPERTISE IN SPORTS ECONOMICS TO  
12 BEAR ON THAT QUESTION?

13 **A.** WELL, ONE AREA THAT ECONOMISTS FOCUS ON OFTEN IS, AS I  
14 MENTIONED BEFORE, IN MARKETS. YOU'VE GOT SUPPLY AND YOU'VE GOT  
15 DEMANDS.

16 SO IN THIS CASE YOU'VE GOT THE PLAYERS GROUPING THEIR  
17 LICENSING RIGHTS TOGETHER AND SUPPLYING THOSE TO THE MARKET.

18 THE MARKET, IN RETURN, EA SPORTS, TOPPS, YOU KNOW,  
19 FOR TRADING CARDS, ADIDAS FOR CLOTHING, AND SO FORTH, THEY  
20 DEMAND THESE LICENSES SO THEN THEY CAN GO OUT AND SELL  
21 PRODUCTS.

22 AND SO WITH RESPECT TO THE SHARED GROUP LICENSES OF  
23 THE NFLPA, THE ACTIVE PLAYERS ARE AUTOMATICALLY BEING  
24 REPRESENTED BY THE NFLPA. THAT'S PART OF WHAT HAPPENS IN THE  
25 UNION.

1           SO EA, FOR INSTANCE, COULDN'T GO TO A THIRD PARTY AND  
2 SAY:

3                   "WE WOULD LIKE TO GET ACTIVE FOOTBALL PLAYERS OR  
4 A GROUP OF -- A LARGE ENOUGH GROUP OF ACTIVE FOOTBALL PLAYERS."

5           THEY WOULD GO DIRECTLY TO THE PLAYERS ASSOCIATION.

6           SO THAT GIVES THE PLAYERS ASSOCIATION LEVERAGE IN THE  
7 MARKETPLACE, BECAUSE IF YOU WANT TO MAKE A PRODUCT WITH ACTIVE  
8 FOOTBALL PLAYERS YOU WOULD HAVE TO GO TO THE PLAYERS  
9 ASSOCIATION.

10           NOW, WHEN THE PLAYERS ASSOCIATION SIGNS A CONTRACT  
11 WITH EA TO MAKE VIDEO GAMES -- SO THEY'RE OVER HERE, THE  
12 PLAYERS ASSOCIATION IS SIGNING A CONTRACT WITH EA. A RETIRED  
13 PLAYER ALL OF A SUDDEN IS AFFECTED BY THAT. BECAUSE THERE'S A  
14 CLAUSE CALLED "A NONINTERFERENCE CLAUSE," THAT SAYS THAT IF EA  
15 WANTS TO GET ANY MORE PLAYERS, SUCH AS RETIRED PLAYERS, THAT  
16 THEY HAVE TO GO THROUGH THE PLAYERS ASSOCIATION IN ORDER TO PUT  
17 THOSE PLAYERS IN THE GAME.

18           SO EFFECTIVELY, WHAT THAT DOES IS IT MAKES THE  
19 PLAYERS ASSOCIATION THE SINGLE SELLER OF ALL OF THESE LICENSING  
20 RIGHTS, ACTIVE PLAYERS, RETIRED PLAYERS. AND SO THEY CAN GO  
21 OUT TO THE MARKETPLACE AND SAY:

22                   "WE'VE GOT EVERYBODY. YOU KNOW, COME TO US AND  
23 WE'LL -- WE'LL GET YOU THOSE LICENSING RIGHTS."

24           SO IT GIVES THEM LEVERAGE SO THEY CAN CHARGE A HIGHER  
25 LICENSING FEE THAN IF EA COULD GO OUT AND GET THESE FROM A

1 BUNCH OF OTHER DIFFERENT GROUPS.

2 **Q.** DID YOU REACH ANY CONCLUSION ABOUT WHETHER THIS -- THIS  
3 BENEFIT TO THE UNION OF HAVING ACTIVES AND RETIRED PLAYERS HAS  
4 ANY -- ALLOWS THE UNION TO EXERCISE ANY LEVERAGE OVER ITS OWN  
5 MEMBERS?

6 **A.** RIGHT. AND SO IT'S INTERESTING. I MEAN, WHEN YOU GROUP  
7 LICENSES TOGETHER IT LOWERS THE COST OF DOING THE LICENSING.  
8 SO THAT'S POSITIVE.

9 IT LOWERS THE COST FOR EA BECAUSE THEY CAN GO TO ONE  
10 SPOT IN TERMS OF THEIR COSTS OF GETTING ALL THESE SIGNED UP.

11 IT LOWERS THE COST -- NOT THE COST. IT LOWERS THE  
12 COST TO THE PLAYERS ASSOCIATION BECAUSE THEY'VE GOT EVERYONE  
13 TOGETHER.

14 AT THE SAME TIME, THE RETIRED PLAYERS IN THIS CASE  
15 DON'T HAVE VOTING RIGHTS IN THE UNION. AND SO THE EXTENT TO  
16 WHICH THE PLAYERS ASSOCIATION IS GOING TO GIVE SOME OF THOSE  
17 LICENSING RIGHTS TO THE RETIRED PLAYERS THEY DON'T HAVE AS MUCH  
18 CONTROL BECAUSE THEY DON'T HAVE VOTING RIGHTS.

19 AND SO I DIDN'T STUDY THAT, IN PARTICULAR, ABOUT THE  
20 UNION. I DIDN'T LOOK INSIDE THE UNION AND SEE IF THAT WAS THE  
21 CASE. BUT YOU CAN SEE THAT THE RETIRED PLAYERS DON'T HAVE  
22 VOTING RIGHTS, AND SO THEY DON'T HAVE AS MUCH ABILITY TO -- TO  
23 SAY:

24 "HEY, WE WOULD LIKE MORE OF THOSE LICENSING  
25 RIGHTS," FOR INSTANCE.

1 **Q.** DR. RASCHER, FINAL QUESTIONING.

2 WHEN YOU UNDERSTOOD THAT THE NFLPA AND PI REPRESENTED  
3 BOTH ACTIVE AND RETIRED PLAYERS FOR GROUP LICENSING, WAS THAT  
4 AN ADVANTAGE FOR THEM FROM AN ECONOMIC PERSPECTIVE IN THE  
5 MARKETPLACE IN TERMS OF HOW THEY COULD HOLD THEMSELVES OUT IN  
6 THE MARKETPLACE?

7 **A.** YES. THE -- WHEN THEY GROUPEd THE ACTIVE AND THE RETIRED  
8 LICENSING RIGHTS TOGETHER, YOU KNOW, THEY BECOME THE SINGLE  
9 SELLER OUT IN THE MARKETPLACE.

10 SO IF ANYBODY WANTS TO DO LICENSED FOOTBALL PRODUCTS,  
11 THEN THEY WILL HAVE TO GO THROUGH THE PLAYERS ASSOCIATION. SO  
12 IT GIVES THEM THAT LEVERAGE, THAT SINGLE-SELLER POWER.

13 **MR. HUMMEL:** NOTHING FURTHER, YOUR HONOR.

14 **THE COURT:** CROSS EXAMINATION.

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

16 **THE COURT:** IS THERE A DEPOSITION YOU NEEDED TO GIVE  
17 ME?

18 **MR. CLARK:** WE'VE ALREADY HANDED IT UP.

19 **THE COURT:** I'VE ALREADY GOT IT. THANK YOU.

20 **MR. KESSLER:** JASON, IF YOU COULD SIT RIGHT HERE YOU  
21 CAN LOOK THROUGH THE EXHIBITS IF I NEED THEM WITH RESPECT TO  
22 THAT.

23 **CROSS EXAMINATION**

24 **BY MR. KESSLER:**

25 **Q.** GOOD MORNING.

1 **A.** GOOD MORNING.

2 **Q.** DO YOU PREFER TO BE CALLED "PROFESSOR RASCHER,  
3 DR. RASCHER"?

4 WHAT'S YOUR PREFERENCE, SIR?

5 **A.** DR. RASCHER, PROFESSOR RASCHER. THOSE ARE FINE.

6 **Q.** OKAY. I'LL CALL YOU DR. RASCHER, OKAY.

7 DR. RASCHER, YOU DID NOT MEAN TO SUGGEST TO THIS JURY  
8 IN ANY WAY THAT YOU HAVE AN OPINION THAT THE LM-2 FORMS FILED  
9 BY THE PLAYERS ASSOCIATION WITH THE DEPARTMENT OF LABOR ARE IN  
10 ANY WAY INACCURATE, DID YOU?

11 **A.** NO.

12 **Q.** OKAY. SO I WANT TO BE THIS VERY CLEAR, OKAY? YOU BELIEVE  
13 THOSE LM-2 FORMS ARE COMPLETELY ACCURATE, CORRECT?

14 **A.** RIGHT. THE PROBLEM WITH THE LM-2 FORMS --

15 **Q.** JUST WORK WITH ME ON A "YES" OR "NO" ANSWER. THE ANSWER  
16 IS "YES," RIGHT?

17 **A.** YES.

18 **Q.** OKAY. AND WHAT YOUR ONLY OPINION IS IS THAT THE LM-2  
19 FORMS TO THE DEPARTMENT OF LABOR DON'T BREAK OUT SEPARATELY THE  
20 POOL OF ACTIVE PLAYER LICENSING MONEY THAT IS EQUALLY SHARED,  
21 WHAT WE'VE BEEN CALLING THE GLR POOL, RIGHT?

22 **MR. HUMMEL:** OBJECTION TO THE FORM OF THE QUESTION.  
23 IT ASSUMES FACTS NOT IN EVIDENCE, SPECIFICALLY, THAT IT'S AN  
24 ACTIVE PLAYER POOL. THAT'S A CONCLUSION.

25 **THE COURT:** OVERRULED. THIS IS CROSS EXAMINATION,

1 AND THE WITNESS IS AN EXPERT. HE CAN SAY IF IT'S NOT TRUE OR  
2 WHATEVER. SO PLEASE, IF YOU DON'T AGREE WITH THE QUESTION JUST  
3 SAY YOU DON'T AGREE WITH IT.

4 BUT IF YOU DO AGREE, THEN AGREE.

5 **BY MR. KESSLER:**

6 **Q.** I'LL PHRASE IT AGAIN, OKAY? YOUR ONLY COMMENT ABOUT THE  
7 DEPARTMENT OF LABOR FORMS WAS THAT THEY DON'T BREAK OUT  
8 SEPARATELY THE GLR POOL THAT PLAINTIFFS' COUNSEL ASKED YOU TO  
9 FOCUS ON IN THIS CASE, CORRECT?

10 **A.** RIGHT. THERE'S THE SHARED GROUP LICENSING POOL OF THE  
11 RETIRED AND ACTIVE PLAYERS. AND THE LM-2 -- SO THE AD HOC  
12 LICENSE AGREEMENT -- AGAIN, I HAVEN'T READ THE TRANSCRIPTS. I  
13 IMAGINE YOU GUYS HAVE HEARD THAT TERM. THOSE ARE COMBINED IN  
14 THE LM-2 DOCUMENT WITH THE SHARED GROUP LICENSING REVENUES.

15 AND SO YOU CAN'T SEPARATE OUT. YOU CAN'T SAY:

16 "WELL, HERE'S THE AD HOC AMOUNT. HERE'S THE  
17 SHARED AMOUNT. NOW WE CAN ANALYZE IT."

18 THAT DOESN'T HAPPEN IN THE LM-2. IT'S ALL AGGREGATED  
19 TOGETHER, SO YOU DON'T KNOW WHAT PERCENTAGE THE PLAYERS RECEIVE  
20 WHEN YOU LOOK AT THE LM-2 DOCUMENT.

21 **Q.** AND THE REASON IT DOESN'T HAPPEN IN THE LM-2 IS BECAUSE  
22 THE DEPARTMENT OF LABOR ASKS THE UNION TO DISCLOSE ALL OF THE  
23 LICENSING REVENUES AND PAYMENTS, NOT JUST THOSE THAT ARE IN A  
24 GLR POOL, CORRECT?

25 **A.** I MEAN, THE DEPARTMENT OF LABOR IS ASKING EXCEPT THAT THEY

1 WANT THEM TO DISCLOSE EVERYTHING. AND IT JUST HAPPENS TO BE  
2 AGGREGATED IN THIS WAY.

3 I MEAN, I'M SURE THEY COULD HAVE DISCLOSED THEM  
4 SEPARATELY HAD THEY WANTED TO. BUT I'M NOT SAYING THAT THE  
5 DEPARTMENT OF LABOR ASKED THEM TO -- YOU SAID THEY ASKED  
6 THEM -- ASKED THEM TO DISCLOSE.

7 **Q.** HAVE YOU AT ALL, SIR, STUDIED THE DEPARTMENT OF LABOR  
8 REQUIREMENTS AS TO HOW THE INFORMATION SHOULD BE DISCLOSED?

9 **A.** I'VE LOOKED AT A LITTLE BIT, BUT NO.

10 **Q.** NO. SO YOU HAVE NO OPINION TO OFFER TO THE JURY THAT THIS  
11 UNION DID ANYTHING WRONG AT ALL IN THEIR DEPARTMENT OF LABOR  
12 DISCLOSURES, DO YOU?

13 **A.** RIGHT. I MEAN, I AGREE THAT I DON'T HAVE ANY OPINION THAT  
14 THEY DID ANYTHING WRONG IN THERE DISCLOSURES FOR THE LM-2.

15 **Q.** THANK YOU.

16 NOW, LET'S TAKE A LOOK AT TRIAL EXHIBIT 280 --  
17 1208-1.

18 **THE COURT:** IT'S NOT IN EVIDENCE YET. ONLY DASH 3 IS  
19 IN EVIDENCE.

20 **MR. KESSLER:** IS THAT NOT IN EVIDENCE?

21 **THE COURT:** DASH 3 IS IN EVIDENCE.

22 **BY MR. KESSLER:**

23 **Q.** I'M SORRY. I WOULD LIKE TO PUT IN 1208-1. DO YOU  
24 RECOGNIZE THIS AS PART OF YOUR EXPERT REPORT IN THIS CASE?

25 **A.** ARE YOU ON THIS PAGE?

1 Q. YES.

2 A. CAN I JUST --

3 Q. SURE.

4 THE COURT: ANY OBJECTION?

5 MR. HUMMEL: NO OBJECTION.

6 THE COURT: RECEIVED.

7 (TRIAL EXHIBIT 1208-1 RECEIVED IN EVIDENCE.)

8 MR. KESSLER: HERE'S THE OFFICIAL COURT COPY, YOUR  
9 HONOR, IF I MAY, SO YOU'LL HAVE THAT ONE.

10 IF WE CAN MOVE THAT AROUND PLEASE.

11 (DOCUMENT DISPLAYED.)

12 BY MR. KESSLER:

13 Q. BY THE WAY, BEFORE WE COME TO THIS EXHIBIT, IT'S CORRECT,  
14 ISN'T IT, THAT ALL UNIONS FILE LM-2S WITH THE DEPARTMENT OF  
15 LABOR. IT'S JUST A STANDARD REQUIREMENT FOR ALL UNIONS IN THIS  
16 COUNTRY?

17 A. I DON'T -- I BELIEVE SO. I DON'T KNOW EXACTLY WHO IS  
18 REQUIRED TO FILE AN LM-2.

19 Q. YOU HAVE NO REASON TO DISAGREE WITH THE FACT THAT ALL  
20 UNIONS ARE REQUIRED TO FILE LM-2S IF THEY'RE IN THIS COUNTRY?

21 A. CORRECT.

22 Q. NOW, THIS WAS AN EXHIBIT THAT YOU PREPARED, CORRECT, SIR?

23 A. YES.

24 Q. NOW, WHAT THIS EXHIBIT SHOWS, IF ALL THE LICENSING  
25 REVENUES COLLECTED BY THE UNION ARE COUNTED, AND ALL THE

1 PAYMENTS TO PLAYERS ARE COUNTED, THAT THE PLAYERS ACTUALLY GOT  
2 68.6 PERCENT OF THE LICENSING REVENUE, NOT 36 PERCENT, CORRECT?

3 **A.** IF YOU -- IF YOU INCLUDE THE AD HOC --

4 **Q.** CAN YOU ANSWER THAT QUESTION "YES" OR "NO," SIR?

5 **A.** CAN YOU READ IT BACK?

6 **Q.** SURE. WHAT THE LM-2 SHOWS IS THAT IF YOU COUNT ALL OF THE  
7 LICENSING REVENUES TAKEN IN BY THE PLAYERS ASSOCIATION AND PI,  
8 AND YOU COUNT ALL THE PAYMENTS MADE TO PLAYERS FROM THOSE  
9 LICENSING REVENUES, WHAT THE PLAYERS ACTUALLY RECEIVED IN 2003  
10 WAS 68.6 PERCENT, RIGHT?

11 **A.** BUT -- RIGHT. BUT IT'S NOT THE GROUP SHARED LICENSING.

12 **Q.** RIGHT. BUT IF YOU LOOK AT ALL THE REVENUES THEY RECEIVED  
13 68.6 PERCENT, CORRECT?

14 **A.** RIGHT. IF YOU LOOK AT THE AD HOC LICENSING REVENUES THAT  
15 THE STAR ACTIVE PLAYERS GET, BECAUSE THEY GET MOST OF THEIR  
16 REVENUES. THE UNION ESSENTIALLY PASSES THOSE THROUGH TO THE  
17 STARS.

18 IT'S THE GROUP LICENSING REVENUE, THE SHARED GROUP  
19 LICENSING REVENUE THAT EVERYBODY GETS, THE STARS AND THE  
20 JOURNEYMEN AND, YOU KNOW, THE ONE-YEAR PLAYER. THAT'S THE  
21 NUMBER THAT WHERE THEY ONLY GET 36 PERCENT OR 31 PERCENT.

22 **Q.** DR. RASCHER, THERE'S LOTS OF LICENSING REVENUES AND LOTS  
23 OF PAYMENTS TO PLAYERS THAT ARE NOT IN THAT GLR POOL, CORRECT?  
24 YES OR NO?

25 **A.** CORRECT.

1 Q. AND NOT ALL THOSE PAYMENTS ARE JUST TO STAR PLAYERS, THE  
2 AD HOC PAYMENTS; IS THAT CORRECT?

3 A. WELL, STAR PLAYERS ON AVERAGE ARE GOING TO GET MORE OF AD  
4 HOC REVENUES BECAUSE IT'S INDIVIDUAL LICENSEES THAT GO AFTER  
5 THESE STAR PLAYERS.

6 Q. SURE. THE PLAYERS WHO HAVE THE GREATEST ECONOMIC VALUE  
7 WILL GET THE MOST LICENSING REVENUE, CORRECT?

8 A. CORRECT.

9 Q. AND PEOPLE WHO HAVE NO VALUE WOULD GET NO AD HOC LICENSING  
10 REVENUE BECAUSE NOBODY WANTS THEM, RIGHT? YOU WOULD AGREE WITH  
11 THAT?

12 A. I MEAN, IF THEY DON'T SIGN UP DEALS, THEN THEY DON'T SIGN  
13 UP DEALS.

14 Q. RIGHT. IF THE MARKETPLACE DOESN'T WANT YOU, YOU DON'T GET  
15 ANY REVENUES FROM THAT, RIGHT? YOU KNOW THAT AS AN ECONOMIST?

16 A. RIGHT, FOR THE AD HOCS.

17 Q. WELL, IT WOULD BE TRUE OF A GROUP, AS WELL. IN ANY  
18 GROUP -- IN ANYTHING YOU'RE SELLING, IF THE MARKETPLACE DOESN'T  
19 WANT IT, THEN YOU DON'T GET ANY MONEY FOR IT. THAT'S A SIMPLE  
20 PROPOSITION, RIGHT?

21 A. RIGHT.

22 Q. NOW, DR. RASCHER, I JUST WANT TO GO EACH YEAR. SO IF YOU  
23 COUNTED ALL THE LICENSING REVENUE IN 2004 RECEIVED BY THE  
24 UNION, AND ALL OF THE MONEY PAID OUT, THAT WOULD BE  
25 67.5 PERCENT RIGHT, GIVEN TO THE PLAYERS?

1 **A.** YEAH. I MEAN, IT'S --

2 **Q.** THAT'S ALL "YES, YES," RIGHT?

3 **A.** RIGHT.

4 **Q.** AND IN 2005, THE PERCENTAGE GIVEN TO THE PLAYERS WAS  
5 68.9 PERCENT, CORRECT?

6 **A.** YES.

7 **Q.** AND IN 2006, IT WAS 42.8 PERCENT, CORRECT?

8 **A.** RIGHT.

9 **Q.** YES?

10 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

11 **Q.** I'M ASKING YOU "YES" OR "NO," SIR? IS IT "YES"?

12 **A.** IT IS WHAT IT SAYS.

13 **Q.** AND IN 2007, IT WAS 54 PERCENT, RIGHT?

14 **A.** CORRECT.

15 **Q.** SO IN EVERY YEAR THAT YOU STUDIED, IF YOU COUNT ALL THE  
16 LICENSING REVENUES AND ALL THE PAYERS -- THE PLAYERS, THE  
17 PERCENTAGE GIVEN TO THE PLAYERS IS MUCH GREATER THAN 36 PERCENT  
18 OR 37 PERCENT, CORRECT?

19 YES OR NO?

20 **A.** CORRECT.

21 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

22 **Q.** YOU'LL HAVE A CHANCE IF YOUR COUNSEL WANTS TO ASK YOU  
23 MORE.

24 **THE COURT:** I NEED TO SAY SOMETHING. YOU ARE A  
25 PROFESSIONAL EXPERT AND WITNESS. YOU'VE TESTIFIED BEFORE. YOU

1 KNOW HOW THIS WORKS. THIS IS CROSS EXAMINATION.

2 MR. KESSLER IS ENTITLED TO ASK A LEADING QUESTION AND  
3 GET A SPECIFIC "YES" OR "NO," BECAUSE THIS IS HIS CHANCE TO  
4 MAKE HIS POINTS.

5 IT'S NOT YOUR CHANCE TO ARGUE YOUR CASE. YOU'VE  
6 ALREADY DONE THAT. IF YOU NEED TO EXPLAIN BECAUSE YOU CAN'T  
7 POSSIBLY SAY "YES" OR "NO," THEN I WILL LET YOU DO THAT.

8 BUT FOR 90 PERCENT OF THE QUESTIONS IT OUGHT TO BE  
9 "YES, NO" OR "I DON'T REMEMBER" OR "I DON'T UNDERSTAND THE  
10 QUESTION."

11 SO THAT'S ALL YOU GET TO SAY. THIS IS CROSS  
12 EXAMINATION.

13 NOW, IF YOU CAN'T SAY "YES" AND YOU CAN'T SAY "NO,"  
14 AND IT JUST CALLS OUT FOR -- I'LL LET YOU HAVE A ONE-SENTENCE  
15 EXPLANATION, ALL RIGHT?

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

17 **THE COURT:** IN FAIRNESS, THIS IS WHAT WE DO IN ALL  
18 CROSS EXAMINATIONS. THE CROSS-EXAMINER IS ENTITLED TO SEE IF  
19 THE OTHER SIDE -- IF THE WITNESS WILL ANSWER AND ADMIT THAT  
20 PARTICULAR SPECIFIC POINT.

21 ALL RIGHT. I KNOW YOU'RE DOING FINE. I'M NOT  
22 ACCUSING YOU OF ANYTHING, BUT THAT'S THE GROUND RULES HERE.

23 ALL RIGHT. GO AHEAD, MR. KESSLER.

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

25

1 **BY MR. KESSLER:**

2 **Q.** DR. RASCHER, INCLUDED IN THE PAYMENTS PAID TO THE PLAYERS  
3 IN THE LM-2, IS THE MILLIONS OF DOLLARS PAID TO RETIRED PLAYERS  
4 UNDER AD HOC AGREEMENTS, CORRECT?

5 **A.** YES.

6 **Q.** IN FACT, I BELIEVE YOU KNOW -- YOU LOOKED AT THE DATA --  
7 THAT ABOUT \$30 MILLION WAS PAID TO RETIRED PLAYERS DURING THE  
8 PERIOD AT ISSUE IN THIS CASE, CORRECT?

9 **MR. HUMMEL:** OBJECTION, VAGUE.

10 **BY MR. KESSLER:**

11 **Q.** BY THE PLAYERS ASSOCIATION, CORRECT?

12 **MR. HUMMEL:** OBJECTION.

13 **THE WITNESS:** I DON'T KNOW THE NUMBER. I DIDN'T LOOK  
14 AT THE AD HOC REVENUES THAT CLOSELY --

15 **BY MR. KESSLER:**

16 **Q.** YOU DIDN'T STUDY THAT AT ALL?

17 **A.** I DID A LITTLE BIT, BUT I DON'T HAVE THE NUMBER AS I SIT  
18 HERE. I DON'T REMEMBER.

19 **THE COURT:** THAT'S A GOOD ANSWER. THE OBJECTION IS  
20 OVERRULED.

21 GO AHEAD.

22 **BY MR. KESSLER:**

23 **Q.** NOW, YOU AGREE WITH ME, THOUGH, THAT THERE IS RETIRED  
24 PLAYER PAYMENTS IN THESE NUMBERS HERE, RIGHT?

25 **A.** YES. I MEAN --

1 Q. YES?

2 A. THEY REPORT THE TOTAL LICENSING REVENUES GOING IN AND OUT.

3 Q. YES. YES. OKAY.

4 NOW, THE ONLY REASON YOU FOCUSED ON THE GROUP  
5 LICENSING REVENUE POOL IS BECAUSE PLAINTIFFS' LAWYERS ASKED YOU  
6 TO DO THAT, RIGHT? YOU HAD NO ECONOMIC REASON FOR FOCUSING  
7 JUST ON THAT POOL?

8 A. WELL, WHEN YOU COMPARE TO --

9 Q. COULD YOU ANSWER "YES" OR "NO"?

10 THE COURT: WELL, HE CAN EXPLAIN.

11 GIVE YOUR ONE-SENTENCE EXPLANATION.

12 THE WITNESS: NOW, WHEN YOU COMPARE TO MAJOR LEAGUE  
13 BASEBALL PLAYERS ASSOCIATION YOU WANT TO DO AN APPLES-TO-APPLES  
14 COMPARISON.

15 SO MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION THEY DO  
16 JUST ONLY GROUP SHARED LICENSING REVENUES. SO THAT'S THIS SET  
17 OF APPLES.

18 THEN, THE NFLPA DOES THE GROUP SHARED LICENSING, A  
19 SET OF APPLES, BUT THEY ALSO DO AD HOC LICENSING, AS  
20 MR. KESSLER MENTIONED. THAT'S ORANGES.

21 IN OTHER WORDS, YOU'RE DOING ORANGES AND APPLES TO  
22 APPLES. YOU WANT TO GET RID OF THE ORANGES AND COMPARE JUST  
23 THE APPLES TO THE APPLES, WHICH MEANS YOU WANT TO COMPARE THE  
24 SHARED GROUP LICENSING REVENUES OF THE NFLPA, AS AN EXAMPLE, TO  
25 THE SHARED GROUP LICENSING REVENUES OF MAJOR LEAGUE BASEBALL.

1 **BY MR. KESSLER:**

2 **Q.** LET'S TALK ABOUT APPLES TO APPLES.

3 MOST OF THE COMPARISONS YOU DID TO THE SHARE RETAINED  
4 FOR THE UNION WERE NOT WITH THE MLB PA. THEY WERE WITH  
5 COLLEGES, OTHER SPORTS LEAGUES, ET CETERA, CORRECT?

6 **A.** RIGHT. I TOOK --

7 **Q.** YES OR NO, SIR?

8 **A.** YES.

9 **Q.** MOST? YES.

10 AND FOR EVERYONE BUT THE MAJOR LEAGUE BASEBALL  
11 PLAYERS ASSOCIATION, THOSE AREN'T SHARED LICENSING REVENUES IN  
12 ANY WAY. THEY WERE ALL THEIR LICENSING REVENUES, CORRECT?

13 YES OR NO?

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

15 **Q.** OKAY. DO YOU KNOW WITH RESPECT TO COLLEGES HOW SHARING IS  
16 DONE AMONG THE COLLEGES --

17 **A.** MAJOR LEAGUE BASEBALL --

18 **Q.** YES OR NO? DO YOU KNOW?

19 YOU HAVE TO ANSWER, SIR. I'M SORRY.

20 **A.** DO I KNOW HOW THE SHARING IS DONE?

21 **Q.** FOR EXAMPLE, WHEN YOU'RE REPRESENTING THE COLLEGIATE  
22 ATHLETIC ASSOCIATION, IS IT SHARED IN SOME EQUAL SHARING POOL?

23 **A.** IT DEPENDS ON THE DEAL. SOME ARE SHARED AND SOME AREN'T.

24 **Q.** HAVE YOU STUDIED THAT, SIR?

25 **A.** NOT IN RESPECT TO THIS CASE, NO.

1 Q. OKAY. SO IN THIS CASE WHEN YOU COMPARED TO THE COLLEGIATE  
2 LICENSING AUTHORITY, FOR EXAMPLE, YOU HAVE NO IDEA HOW MUCH OF  
3 THAT WAS SHARED OR NOT. YOU LOOKED AT ALL THE MONEY, CORRECT?

4 A. CORRECT.

5 Q. YET, WHEN YOU TOOK JUST ALL THE MONEY FROM THE COLLEGIATE  
6 LICENSING ASSOCIATION, YOU ONLY COMPARED IT TO A PORTION OF THE  
7 MONEY FOR THE PLAYERS ASSOCIATION AND PLAYERS INC, CORRECT?

8 YES OR NO?

9 A. I MEAN, I LOOKED AT THE --

10 Q. YES OR NO, SIR? DID YOU LOOK AT A PORTION OR ALL?

11 THE COURT: I THINK YOU CAN ANSWER THAT "YES" OR  
12 "NO."

13 THE WITNESS: CAN YOU ASK IT AGAIN?

14 BY MR. KESSLER:

15 Q. YES. WHEN YOU COMPARED THE COLLEGIATE LICENSING  
16 ASSOCIATION, WHEN YOU LOOKED AT ALL THE MONEY, YOU JUST  
17 COMPARED IT TO A PORTION OF THE LICENSING MONEY FOR THE PLAYERS  
18 ASSOCIATION, CORRECT?

19 A. THE GROUP SHARED LICENSING REVENUES.

20 Q. OKAY. AND IF YOU HAD COMPARED THE TOTAL AMOUNT OF  
21 LICENSING FOR THE PLAYERS ASSOCIATION WITH THE TOTAL AMOUNT OF  
22 LICENSING FOR COLLEGIATE ATHLETIC ASSOCIATION, YOU WOULD HAVE  
23 HAD A VERY DIFFERENT COMPARISON, WOULDN'T YOU, SIR?

24 A. RIGHT. IF YOU THREW THE AD HOC REVENUES IN, BUT, YOU  
25 KNOW, THAT'S NOT -- THE RETIRED PLAYERS DON'T HAVE ACCESS TO

1 THOSE.

2 SO IF YOU WANT TO DO THE APPLES-TO-APPLES COMPARISON,  
3 AS I SAID, YOU WANT TO COMPARE THE SHARED GROUP LICENSING, SAY,  
4 OF FOOTBALL TO THE SHARED GROUP LICENSING OF  
5 BASEBALL-TO-BASEBALL UNION OR EVEN BASEBALL-TO-BASEBALL  
6 PROPERTIES. THEY SELL SHARED GROUP LICENSING, AND THEY CHARGE  
7 A FEE OF ABOUT 15 PERCENT.

8 **MR. KESSLER:** YOUR HONOR, I MOVE TO STRIKE. THE  
9 WITNESS IS NOW GIVING A SPEECH. IT HAD NOTHING TO DO WITH THE  
10 QUESTION I JUST ASKED.

11 **THE WITNESS:** IT'S SHARED. IT'S SHARED COMPARISON.

12 **THE COURT:** WELL, HE WAS TALKING ABOUT COLLEGIATE.  
13 THE ANSWER IS -- PART OF YOUR ANSWER IS STRICKEN. YOU VEERED  
14 OFF INTO MAJOR LEAGUE BASEBALL.

15 **MR. KESSLER:** WOULD YOU EXPLAIN TO THE JURY WHAT IT  
16 MEANS WHEN YOU STRIKE AN ANSWER?

17 **THE COURT:** IT MEANS DISREGARD IT.

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

19 I WANT TO SAY AGAIN, THIS IS A PROFESSIONAL WITNESS.  
20 HE IS HERE TO GIVE OPINION. HE KNOWS -- HE'S TESTIFIED AS A  
21 WITNESS BEFORE.

22 THIS IS GOING TO BE TRUE FOR YOUR SIDE, TOO.

23 **MR. KESSLER:** OF COURSE, YOUR HONOR.

24 **THE COURT:** THE GUY WHO -- THE LAWYER WHO IS  
25 CROSS-EXAMINING IS ENTITLED TO ASK A POINTED QUESTION AND GET A

1 "YES" OR "NO" TO IT.

2 AND IF YOU START BLURRING IT UP WITH A LOT OF  
3 SPEECHES, THEN IT GETS CONFUSED AND NO ONE KNOWS WHAT'S BEEN  
4 ADMITTED TO.

5 AT LEAST, THAT'S THE WAY I LIKE TO DO A TRIAL.

6 I'M GOING TO ASK YOU AGAIN, SAY "YES NO, I DON'T  
7 RECALL" OR "I DON'T UNDERSTAND THE QUESTION," AND OCCASIONALLY  
8 IF I THINK A QUESTION DOES REQUIRE TO ALLOW FOR A ONE-SENTENCE  
9 EXPLANATION, I'LL ALLOW YOU IN CERTAIN CASES TO DO THAT.

10 **BY MR. KESSLER:**

11 **Q.** DR. RASCHER, SPEAKING ABOUT YOUR PROFESSIONAL STATUS,  
12 YOU'RE A PRINCIPLE IN THE ECONOMIC CONSULTING FIRM THAT YOU  
13 WORK FOR; IS THAT CORRECT?

14 **A.** YES.

15 **Q.** THAT MEANS YOU'RE AN OWNER?

16 **A.** YES.

17 **Q.** WOULD YOU TELL THE JURY APPROXIMATELY HOW MUCH MONEY YOUR  
18 COMPANY HAS BEEN PAID BY THE PLAINTIFFS FOR YOUR TESTIMONY HERE  
19 TODAY?

20 **A.** I DON'T KNOW EXACTLY. I KNOW WE WENT THROUGH THIS IN  
21 DEPOSITION.

22 **MR. HUMMEL:** I OBJECT, YOUR HONOR. THAT QUESTION, AS  
23 PHRASED, IS ARGUMENTATIVE. WE ARE NOT PAYING FOR HIS  
24 TESTIMONY.

25 **THE COURT:** IT IS. HE IS BEING PAID TO DO THE STUDY

1 AND TO COME IN HERE AND TESTIFY. BUT YOU'RE IMPLYING THAT HE  
2 HAS BEEN PAID TO COME UP WITH A SPECIFIC ANSWER. I THINK YOU  
3 SHOULD REPHRASE THAT QUESTION.

4 **BY MR. KESSLER:**

5 **Q.** VERY GOOD.

6 HOW MUCH WERE YOU PAID BY PLAINTIFFS IN CONNECTION  
7 WITH YOUR WORK IN THIS CASE? YOUR COMPANY, NOT YOU PERSONALLY.

8 **A.** THAT I DON'T KNOW. I DON'T TRACK THAT. I'M NOT THE  
9 MANAGING PRINCIPAL WHO TRACKS THAT.

10 **Q.** WELL, YOU KNOW, SIR, IS IT HUNDREDS OF THOUSANDS OF  
11 DOLLARS?

12 **A.** IT'S PROBABLY A HUNDRED THOUSAND OR SOMETHING AROUND  
13 THERE. BUT I DON'T --

14 **Q.** OKAY.

15 **A.** AGAIN, I DON'T KNOW. I'M NOT TRACKING THAT.

16 **Q.** YOU DIDN'T THINK IT WAS IMPORTANT IN YOUR PREPARATION FOR  
17 THIS CASE TO COME PREPARED TO TELL THE JURY HOW MUCH YOUR  
18 COMPANY WAS MAKING IN CONNECTION WITH THIS CASE?

19 **A.** NO. IT'S NOT RELEVANT.

20 **Q.** LET ME ASK YOU THIS, SIR.

21 YOU'RE AWARE, ARE YOU NOT, THAT THE MONEY IN THE GLR  
22 POOL THAT YOU STUDIED, OKAY, IS ALL ACTIVE PLAYER MONEY?

23 YOU'RE AWARE OF THAT, ARE YOU NOT?

24 **A.** WHAT DO YOU MEAN WHEN YOU SAY "ACTIVE PLAYER MONEY"?

25 **Q.** CAN YOU ANSWER MY QUESTION?

1 **A.** WELL, I MEAN, CAN YOU EXPLAIN WHEN YOU SAY "ACTIVE PLAYER  
2 MONEY"?

3 **Q.** DO YOU RECALL MY QUESTIONING YOU ABOUT THAT AT YOUR  
4 DEPOSITION?

5 LET ME ASK YOU THIS: IT'S TRUE, IS IT NOT, THAT YOU  
6 UNDERSTAND THAT ALL THE MONEY IN THIS POOL, OKAY, IS MONEY  
7 GENERATED FROM LICENSING AGREEMENTS THAT INVOLVE ACTIVE  
8 PLAYERS?

9 **A.** ALL THE MONEY WENT TO THE ACTIVE PLAYERS.

10 **Q.** OKAY. I'M ASKING A DIFFERENT QUESTION. IT'S TRUE, ISN'T  
11 IT, THAT YOU KNOW THAT ALL OF THE MONEY IN THIS POOL COME FROM  
12 LICENSING AGREEMENTS THAT LICENSED ACTIVE PLAYER RIGHTS; IS  
13 THAT TRUE OR FALSE?

14 **A.** I DON'T KNOW THAT.

15 **Q.** HAVEN'T YOU EXAMINED THE LICENSING AGREEMENTS IN THIS CASE  
16 AT ALL?

17 **A.** I EXAMINED MANY LICENSING AGREEMENTS IN THIS CASE.

18 **Q.** OKAY. FROM ALL THE LICENSING AGREEMENTS THAT YOU  
19 EXAMINED, DO YOU KNOW WHICH ONES HAD REVENUES IN THE GLR POOL  
20 AND WHICH DID NOT?

21 **A.** YEAH.

22 **Q.** OKAY. SO FOR THOSE YOU EXAMINED THAT HAD REVENUES IN THE  
23 GLR POOL, DID THEY ALL LICENSE ACTIVE PLAYER RIGHTS, EVERY  
24 SINGLE ONE?

25 **MR. HUMMEL:** OBJECTION, VAGUE.

1           **THE COURT:**   WHAT?

2           **MR. HUMMEL:**   OBJECTION, VAGUE.

3           **THE COURT:**   I THINK IT'S A FAIR ENOUGH QUESTION.

4   OVERRULED.

5           PLEASE ANSWER.

6           **THE WITNESS:**   I'M NOT A LAWYER, SO WHEN I READ THESE

7   CONTRACTS SOMETIMES THERE'S SOME LEGALESE -- WHEN I --

8           (MR. KESSLER AND THE WITNESS SPEAKING SIMULTANEOUSLY;

9   NOT REPORTABLE.)

10          **THE COURT:**   MR. KESSLER, I'M GOING TO INTERRUPT HERE

11   FOR A SECOND.

12          THIS WITNESS IS AN ECONOMIST.

13          **MR. KESSLER:**   YES, SIR.

14          **THE COURT:**   WE'VE HAD LOTS OF TESTIMONY ON THE

15   MEANING OF THE ELECTRONIC ARTS AGREEMENT AND ALL THE OTHER

16   THIRD-PARTY AGREEMENTS THAT YOU'RE REFERRING TO.

17          WE'VE GONE VERY FAR AFIELD IN WHAT PEOPLE OF VARIOUS

18   UNDERSTANDINGS.

19          THIS WITNESS WAS NOT INVOLVED IN ANY OF THOSE

20   NEGOTIATIONS.

21          **MR. KESSLER:**   ABSOLUTELY NOT, YOUR HONOR.

22          **THE COURT:**   SO YOU CAN ASK MAYBE WHAT HIS ASSUMPTION

23   IS.   BUT HE IS NOT -- UNLESS HE'S CLAIMING TO BE QUALIFIED TO

24   READ THOSE AGREEMENTS, I'M NOT GOING TO ALLOW HIM TO TESTIFY

25   ABOUT WHETHER THEY COVERED RETIRED PLAYERS OR NOT.   YOU CAN GET

1 INTO WHAT HE ASSUMED WAS THE CASE, AND THEN MAKE IT CLEAR TO  
2 THE JURY IT'S A MERE ASSUMPTION. IF THE JURY DISAGREES WITH IT  
3 THEY CAN GO OFF IN A DIFFERENT DIRECTION.

4 BUT HE IS NOT, I DON'T THINK, QUALIFIED TO START  
5 TELLING US WHAT THAT CONTRACT MEANT.

6 **MR. KESSLER:** VERY GOOD, YOUR HONOR.

7 **BY MR. KESSLER:**

8 **Q.** DID YOU HAVE ANY ASSUMPTION AS TO WHETHER THE GLR POOL  
9 INVOLVED CONTRACTS THAT ONLY LICENSED ACTIVE PLAYER RIGHTS?

10 **A.** I LOOKED AT THE GROUP LICENSING REVENUES THAT WERE  
11 REPORTED BY THE NFLPA IN THEIR -- IN THE DISCOVERY, IN THEIR  
12 SPREADSHEETS.

13 I LOOKED AT INDIVIDUAL CONTRACTS. AND YOU COULD SEE  
14 THE PAYMENTS BY DIFFERENT LICENSEES.

15 BUT I DON'T KNOW -- YOU KNOW, I DON'T KNOW WHICH  
16 PLAYERS RIGHTS WERE ACTUALLY BEING LICENSED. I MEAN, OKAY,  
17 THAT WASN'T PART OF WHAT I STUDIED.

18 I WAS JUST STUDYING THE MONEY COMING IN AND THE MONEY  
19 GOING OUT.

20 **Q.** WELL, YOU WERE STUDYING ONLY THE MONEY GOING INTO THE GLR  
21 POOL AND THE MONEY GOING OUT OF THE GLR POOL. YOU DIDN'T STUDY  
22 THE MONEY COMING IN FOR ALL --

23 **A.** RIGHT.

24 **Q.** -- LICENSING AND GOING OUT FOR ALL LICENSING, RIGHT?

25 **A.** JUST THE SHARED GROUP LICENSING.

1 **Q.** NOW, YOU TESTIFIED THAT YOU -- THE COMPARISON WITH A LOT  
2 OF ENTITIES THAT WERE NOT SPORTS UNIONS, AND ONE SPORTS UNION,  
3 MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION, CORRECT?

4 **A.** CORRECT.

5 **Q.** OKAY. SO I WANT TO FOCUS ON THE UNION.

6 SIR, IS IT YOUR UNDERSTANDING THAT IT IS TYPICAL IN A  
7 SPORTS UNION, WHEN THERE IS LICENSING OF ACTIVE PLAYER RIGHTS,  
8 THAT THE ACTIVE PLAYERS TYPICALLY WILL DEVOTE A PORTION OF  
9 THEIR LICENSING REVENUES TO FUND THE UNION AND COLLECTIVE  
10 BARGAINING ACTIVITIES OF THEIR ASSOCIATION?

11 IS THAT TYPICAL?

12 **MR. HUMMEL:** OBJECTION. BEYOND THE SCOPE.

13 **THE COURT:** OVERRULED.

14 **THE WITNESS:** IN MAJOR LEAGUE BASEBALL, FOR INSTANCE,  
15 THEY GET DUES FROM THE PLAYERS, AND THEN THEY ALSO GET  
16 LICENSING REVENUES, GROUP LICENSING REVENUES. AND THEY USE  
17 SOME OF THOSE GROUP LICENSING REVENUES -- THEY CALL THEM  
18 SPECIAL DUES, AND THEY USE THEM FOR VARIOUS THINGS PARTLY TO  
19 RUN THE UNION, PARTLY TO SAVE UP FOR COLLECTIVE BARGAINING  
20 PURPOSES.

21 NOW, IN THE NFLPA --

22 **BY MR. KESSLER:**

23 **Q.** I'LL ASK YOU ANOTHER QUESTION. YOU'VE GONE BEYOND THIS.

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

1 **BY MR. KESSLER:**

2 **Q.** SO IN BASEBALL --

3 (COUNSEL SPEAKING SIMULTANEOUSLY; NOT REPORTABLE.)

4 **MR. HUMMEL:** -- TO COMPLETE THAT QUESTION. HE HAS AN  
5 EXPLANATION.

6 **THE COURT:** WELL, IT SEEMS TO ME HE DID COMPLETE THE  
7 ANSWER.

8 ASK A FRESH QUESTION.

9 IF YOU THINK THERE'S MORE, YOU CAN GO INTO IT IN  
10 REDIRECT.

11 **BY MR. KESSLER:**

12 **Q.** I WANT TO DO THIS IN BITES. I'LL GIVE YOU A CHANCE TO  
13 TALK ABOUT ALL THE UNIONS.

14 IN BASEBALL, THE PLAYERS DECIDE THAT SOME OF THEIR  
15 LICENSING MONEY WILL GO TO RUN THE UNION FOR THINGS LIKE STRIKE  
16 FUNDS, COLLECTIVE BARGAINING, AND THOSE TYPES OF ACTIVITIES,  
17 CORRECT?

18 **A.** IT'S IN THEIR AUDITED FINANCIALS. WELL, I MEAN, I'M  
19 SAYING IT'S STRICTLY IN THEIR AUDITED FINANCIALS THAT THEY DO  
20 THAT.

21 **Q.** BUT THEY DO THAT. GIVE ME A "YES," PLEASE?

22 **A.** YES.

23 **Q.** THAT'S ALL I NEED IS A "YES."

24 AND YOU ALSO KNOW AS A SPORTS ECONOMIST THAT THE NBA  
25 PLAYERS ASSOCIATION, THE BASKETBALL PLAYERS ASSOCIATION, ALSO

1 HAS USED ITS LICENSING REVENUES FROM TIME TO TIME TO SUPPORT  
2 THE UNION ACTIVITIES, ESPECIALLY DURING POSSIBLE WORK  
3 STOPPAGES.

4 YOU KNOW THAT, CORRECT?

5 **A.** YES.

6 **Q.** AND YOU ALSO KNOW THAT THE NFLPA, THE UNION IN THIS CASE,  
7 OKAY, USES SOME OF ITS LICENSING REVENUES TO SUPPORT UNION  
8 OPERATIONS, CORRECT?

9 YOU KNOW THAT?

10 **A.** BUT NOT --

11 **Q.** COULD YOU SAY "YES" OR "NO"?

12 DO YOU KNOW THAT?

13 **A.** YOU NEED TO BE MORE SPECIFIC ON "UNION OPERATIONS."

14 (MR. KESSLER AND THE WITNESS SPEAKING SIMULTANEOUSLY;  
15 NOT REPORTABLE.)

16 **Q.** UNION OPERATIONS, INCLUDING COLLECTIVE BARGAINING. YOU  
17 KNOW THEY USE IT TO SUPPORT COLLECT BARGAINING?

18 **A.** NO. IT'S STRICTLY IN THEIR AUDITED FINANCIALS THAT THEY  
19 DON'T -- THEY -- TO SUPPORT COLLECTIVE BARGAINING, THEY USE THE  
20 PLAYERS' DUES. SO THE PLAYERS' DUES COME RIGHT OFF THE CHECKS  
21 OF THE PLAYERS.

22 THAT MONEY IS BUILT UP OVER TIME FOR COLLECTIVE  
23 BARGAINING PURPOSES.

24 SECONDLY, THE SHARED GROUP LICENSING REVENUES COME  
25 IN, AND THEY DO USE SOME OF THOSE FOR THE OPERATIONS OF THE

1 UNION.

2           AND THEN, THERE'S A WHOLE LARGE AMOUNT, \$68 MILLION,  
3 THAT BUILDS UP OVER TIME THAT'S JUST SITTING THERE. IT'S AN  
4 UNRESTRICTED NET ASSET.

5           SO THE GROUP LICENSING REVENUE COMES IN, AND SOME OF  
6 IT'S USED TO RUN THE UNION, BUT NOT FOR THE STRIKE FUND.

7           AND THEN, THE REST OF IT IS BUILT UP OVER TIME, SO  
8 THERE'S SHARED GROUP LICENSING REVENUES THAT ARE WORTH ABOUT  
9 \$68 MILLION THAT ARE JUST SITTING THERE IN THE UNION THAT ARE  
10 UNRESTRICTED.

11 **Q.** DR. RASCHER, OKAY, HAVE YOU EXAMINED THE EVIDENCE AT ALL  
12 TO DETERMINE WHETHER OR NOT THE REASON FOR THAT \$68 MILLION IN  
13 UNRESTRICTED ASSETS IS TO SUPPORT THE UNION IF THERE'S A WORK  
14 STOPPAGE, A STRIKE OR OTHER LABOR ACTIVITY?

15           DO YOU KNOW ONE WAY OR THE OTHER, SIR?

16 **A.** WELL, SPECIFICALLY, IN THE AUDITED FINANCIALS THEY HAVE  
17 WHAT'S FUNDS B WHICH IS --

18 **Q.** SIR, CAN YOU ANSWER MY QUESTION, PLEASE?

19           DO YOU KNOW WHAT THE ACTIVE PLAYER BOARD MEMBERS HAVE  
20 VOTED UPON AS TO WHAT THAT \$68 MILLION IS FOR?

21           DO YOU KNOW, SIR, YES OR NO?

22 **A.** NO, I DON'T KNOW. THE \$68 MILLION IN SHARED LICENSING  
23 REVENUE THAT'S BEEN BUILDING UP OVER TIME.

24 **Q.** YOU DON'T KNOW ONE WAY OR THE OTHER?

25 **A.** I DON'T --

1 (MR. KESSLER AND THE WITNESS SPEAKING SIMULTANEOUSLY;  
2 NOT REPORTABLE.)

3 **Q.** THAT'S MY QUESTION.

4 **THE COURT:** WERE YOU TRYING TO SAY THAT THERE'S SOME  
5 AUDITED FINANCIAL THAT SAYS WHAT THE 68 MILLION IS FOR?

6 **THE WITNESS:** SO THE AUDITED FINANCIAL SAYS WHAT  
7 EVERYTHING ELSE IS FOR, BUT THESE ARE UNRESTRICTED NET ASSETS.  
8 SO, BY DEFINITION, THEY ARE NOT RESTRICTED.

9 **THE COURT:** HOW DO YOU KNOW IF IT'S FOR A STRIKE FUND  
10 OR FOR WORK STOPPAGE OR NOT, THEN?

11 **THE WITNESS:** THEY HAVE A SEPARATE STRIKE FUND OF  
12 \$120 MILLION. SO, NO. SO IT'S TRUE. IT'S POSSIBLE THEY WOULD  
13 USE THAT AND HAVE \$2 MILLION WORTH OF STRIKE FUND. I MEAN, IT  
14 DOESN'T SAY WHAT THEY DO WITH THE UNRESTRICTED NET ASSETS IN  
15 THE AUDITED FINANCIALS.

16 **BY MR. KESSLER:**

17 **Q.** SO YOU CAN'T TELL FROM THE AUDITED FINANCIALS, RIGHT, WHAT  
18 THEY ARE GOING TO DO WITH THE 68 MILLION?

19 YOU CAN'T TELL?

20 **A.** NO, IT'S REVENUES THAT ARE BUILDING UP OVER TIME. IT'S  
21 JUST SITTING THERE.

22 **Q.** NOW, DR. RASCHER, IT'S ALSO CORRECT, IS IT NOT, THAT IF  
23 YOU LOOKED AT THE AUDITED FINANCIALS THAT THE NFLPA REFUNDS ITS  
24 DUES FOR THE UNION PERIODICALLY; IS THAT TRUE?

25 YES OR NO?

1 **A.** YES. THEY REFUND --

2 **Q.** OKAY. THAT'S A YES. IT'S A YES.

3 AND WHEN THEY REFUND THEIR DUES TO THE EMPLOYEES, THE  
4 REASON THEY COULD FUND THOSE DUES IS BECAUSE THEY'VE GOTTEN THE  
5 40 PERCENT OF THE LICENSING REVENUE, CORRECT?

6 **A.** NO. THEY'RE FUNDING THE DUES --

7 **Q.** SIR, YOU JUST TESTIFIED THEY NEED THE DUES TO RUN THE  
8 ORGANIZATION, RIGHT?

9 **A.** NO, NO, NO. I DIDN'T SAY THAT. I SAID THAT THE SHARED  
10 GROUP LICENSING REVENUE THEY USE TO RUN THE ORGANIZATION, THE  
11 DUES, FUND A AND FUND B, IT SAYS IN THERE ARE USED -- ARE  
12 DESIGNATED FOR THE -- ESSENTIALLY, A STRIKE FUND.

13 **Q.** OKAY. MAYBE I MISUNDERSTOOD YOUR TESTIMONY. SO YOU'RE  
14 NOW TESTIFYING -- MAYBE YOU DID BEFORE. MAYBE I MISUNDERSTOOD  
15 IT -- THAT YOU AGREE THAT THE 40 PERCENT IS USED TO RUN THE  
16 UNION?

17 YOU AGREE WITH THAT?

18 **A.** THE 64 TO 69 PERCENT IS USED FOR TWO THINGS: PART --

19 **Q.** SIR?

20 **A.** NO.

21 **Q.** FIRST OF ALL, LET ME CLARIFY THIS. DO YOU UNDERSTAND THAT  
22 23 PERCENT IS PAID TO PLAYERS INC SEPARATELY, AND THAT THE  
23 UNION GETS ITS OWN PAYMENTS? DO YOU UNDERSTAND THAT, SIR?

24 **A.** THAT'S NOT WHAT HAPPENS.

25 FIRST OF ALL --

1 Q. I DON'T HAVE A QUESTION.

2 A. OKAY.

3 Q. OKAY?

4 A. OKAY.

5 Q. DID YOU READ THE AGREEMENTS BETWEEN THE PLAYERS  
6 ASSOCIATION AND PLAYERS INC AS TO HOW THE MONEY IS DIVIDED?

7 A. YES.

8 Q. DO THOSE AGREEMENTS PROVIDE THAT PLAYERS INC WILL GET  
9 23 PERCENT AS ITS LICENSING FEE, CORRECT? DO THEY PROVIDE  
10 THAT?

11 A. THE AGREEMENTS SAY THAT, BUT THAT'S NOT WHAT HAPPENS.

12 Q. OKAY. SO THE AGREEMENTS SAY THAT, RIGHT?

13 DO YOU AGREE, WHATEVER THE AMOUNT IS -- I KNOW YOU  
14 HAVE YOUR OWN CALCULATIONS OF THE AMOUNTS -- BUT WHATEVER THE  
15 AMOUNTS ARE, THAT PLAYERS INC GETS SEPARATE MONIES FROM THE  
16 NFLPA?

17 DO YOU AGREE WITH THAT?

18 A. THEY'RE ONE IN THE SAME. THERE'S NOT A DIFFERENCE BETWEEN  
19 PLAYERS INC AND PLAYERS ASSOCIATION.

20 SO FROM AN ECONOMIC PERSPECTIVE IT'S NOT IMPORTANT  
21 THAT ONE OF THEM IS CALLED "PLAYERS INC" AND ONE OF THEM IS  
22 CALLED "PLAYERS ASSOCIATION."

23

24 Q. SO, DR. RASCHER, IS IT YOUR OPINION AS AN ECONOMIST THAT  
25 EVERY COMPANY IF IT HAS A WHOLLY-OWNED SUBSIDIARY THEY ARE ALL

1 ECONOMICALLY THE SAME?

2 **A.** IF IT'S WHOLLY OWNED, AND THEY HAVE THE SAME  
3 DECISION-MAKERS ON BOTH SIDES OF THE FENCE, THEN IT'S SHAKING  
4 HANDS WITH YOURSELF. IF YOU'RE A DEAL BETWEEN THE PLAYERS  
5 ASSOCIATION AND PLAYERS INC. IT'S LIKE SHAKING YOUR OWN HANDS.

6 **Q.** YES. NOW, YOU KNOW LEGALLY THEY ARE SEPARATE COMPANIES.  
7 YOU DON'T DISAGREE WITH THAT, SIR, DO YOU?

8 **A.** RIGHT.

9 **Q.** AND YOU KNOW THAT THESE TWO LEGALLY-SEPARATE COMPANIES  
10 HAVE SEPARATE MONIES THAT GO TO EACH ONE, CORRECT?

11 **A.** I MEAN, THEY FILE AUDITED -- CONSOLIDATED AUDITED  
12 FINANCIALS, BUT I'M SURE THEY HAVE -- I DIDN'T SEE A BANK  
13 ACCOUNT. I DON'T KNOW WHAT THEIR BANK ACCOUNTS ARE. I AM SURE  
14 THAT THEY HAVE SEPARATE BANK ACCOUNTS.

15 **Q.** WELL, DID YOU KNOW --

16 **A.** I ---

17 **Q.** -- THAT THE NFLPA IS A NONPROFIT COMPANY, BUT THAT PLAYERS  
18 INC IS A PROFIT COMPANY?

19 **A.** YES.

20 **Q.** AND THAT MEANS PLAYERS INC FILES A TAX RETURN FOR ITSELF  
21 AS A PROFIT COMPANY, CORRECT?

22 **A.** RIGHT.

23 **Q.** AND THAT MEANS THE NFLPA FILES DIFFERENT INFORMATION AS A  
24 NONPROFIT COMPANY, CORRECT?

25 **A.** BUT ALSO CONSOLIDATED.

1 Q. THAT'S YES OR NO.

2 A. YES.

3 Q. YOU DON'T FILE CONSOLIDATED RETURNS ANYWHERE WITH THE TAX  
4 DEPARTMENT, DO YOU?

5 MR. HUMMEL: OBJECTION, YOUR HONOR. WAY BEYOND THE  
6 SCOPE. NO FOUNDATION.

7 THE COURT: OVERRULED IN LIGHT OF THE WITNESS'S PRIOR  
8 TESTIMONY. I THINK THIS IS FAIR CROSS EXAMINATION.

9 GO AHEAD.

10 BY MR. KESSLER:

11 Q. YOU DON'T FILE CONSOLIDATED RETURNS WITH THE TAX  
12 DEPARTMENT, DO YOU?

13 THE COURT: YOU MEAN, HIM PERSONALLY?

14 BY MR. KESSLER:

15 Q. I DON'T MEAN YOU PERSONALLY, SIR. PLAYERS INC AND THE  
16 NFLPA DON'T FILE CONSOLIDATED RETURNS OF FINANCIAL INFORMATION  
17 WITH THE TAX DEPARTMENT, WOULD THEY?

18 A. RIGHT. I LOOK --

19 (MR. KESSLER AND THE WITNESS SPEAKING SIMULTANEOUSLY;  
20 NOT REPORTABLE.)

21 Q. THAT WAS MY QUESTION.

22 (MR. KESSLER AND THE WITNESS SPEAKING SIMULTANEOUSLY;  
23 NOT REPORTABLE.)

24 (COURT REPORTER INTERRUPTS.)

25 THE COURT: WE'RE GOING TO HAVE TO BRING THE WHOLE

1 TRIAL TO AN END BECAUSE YOU LAWYERS AND WITNESSES CAN'T BEHAVE.

2 PLEASE, ONE AT A TIME.

3 START OVER WITH A FRESH QUESTION.

4 **MR. KESSLER:** I JUST ASK YOU TO PLEASE --

5 (COUNSEL AND THE COURT SPEAKING SIMULTANEOUSLY, WHICH  
6 WAS NOT REPORTABLE.)

7 **THE COURT:** YOU INTERRUPT HIM, AND HE'S A  
8 FAST-TALKING -- HE TALKS SO FAST I CAN'T -- GOES BY AT  
9 LIGHTENING SPEED.

10 HE SAYS "YES," AND THERE IS A NANOSECOND BEFORE  
11 THERE'S AN EXPLANATION.

12 AND HE'S GOOD AT IT. SO I SUGGEST TO YOU THAT JUST  
13 LET -- IF HE'S GOING TO MAKE AN EXPLANATION AND IT GETS OUT OF  
14 HAND, I'LL STRIKE IT.

15 BUT STOP INTERRUPTING HIM.

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

17 **BY MR. KESSLER:**

18 **Q.** DR. RASCHER, DO YOU UNDERSTAND THAT YOU'RE SUPPOSED TO TRY  
19 TO ANSWER "YES" OR "NO," IF YOU CAN?

20 DO YOU UNDERSTAND THAT, SIR?

21 **A.** YES.

22 **Q.** THANK YOU.

23 DR. RASCHER, THE CONSOLIDATED FINANCIAL STATEMENTS  
24 YOU'RE TALKING ABOUT WERE ONLY FOR THE INTERNAL USE OF THE  
25 BOARD OF PLAYER REPRESENTATIVES, CORRECT?

1 **A.** I MEAN, THEY WERE AUDITED BY AN OUTSIDE COMMITTEE, SO I  
2 DON'T KNOW WHAT ELSE -- I DON'T KNOW WHAT THEY USE THEM FOR.

3 **Q.** YOU KNOW THAT THERE WAS JUST TESTIMONY TODAY PRESENTED  
4 THAT THEY WERE ONLY FOR THE INTERNAL USE FOR THE BOARD PLAYER  
5 REPRESENTATIVES?

6 **A.** I DON'T KNOW ABOUT TODAY'S TESTIMONY.

7 **THE COURT:** CAN I CUT THROUGH THIS FOR A SECOND?

8 **MR. KESSLER:** YES.

9 **THE COURT:** IT SEEMS TO ME WE ARE TAKING UP AN UNDUE  
10 AMOUNT OF TIME OF THE JURY, AND THAT THE FOLLOWING POINTS  
11 PROBABLY ARE CORRECT. AND LET'S SEE IF THE WITNESS AGREES WITH  
12 THIS.

13 THAT AT LEAST ON PAPER THESE -- PLAYERS INC IS A  
14 SEPARATE ORGANIZATION FROM THE UNION.

15 DO YOU AGREE WITH THAT? AT LEAST ON PAPER.

16 **THE WITNESS:** ON PAPER. NOT ECONOMICALLY.

17 **THE COURT:** ALL RIGHT. SO PUTTING ASIDE THE QUESTION  
18 FOR THE MOMENT OF WHETHER OR NOT UNDER THE LAW THESE TWO  
19 ENTITIES COULD BE MERGED TOGETHER AND TREATED AS ONE, PUT  
20 THAT -- AT LEAST ON PAPER, SOME PERCENTAGE GOES TO THE UNION OF  
21 THIS MONEY AND SOME PERCENTAGE GOES TO PLAYERS INC OF THIS  
22 MONEY; IS THAT TRUE?

23 **THE WITNESS:** YES.

24 **THE COURT:** IS THAT ALL YOU WERE TRYING TO ESTABLISH?

25 **MR. KESSLER:** YES.

1           **THE COURT:** DO WE NEED TO GET INTO WHETHER OR NOT WE  
2 ARE GOING TO -- THIS WITNESS IS NOT QUALIFIED TO SAY WHETHER OR  
3 NOT THE TWO COMPANIES OUGHT TO BE TREATED AS ONE UNDER THE  
4 15-FACTOR TEST.

5           **MR. KESSLER:** OF COURSE, YOUR HONOR. IF THE WITNESS  
6 WOULD GIVE ME A "YES" OR "NO," I WOULDN'T HAVE TO DO ANY OF  
7 THIS.

8           **THE COURT:** THE WAY THE YOU PHRASE YOUR QUESTION  
9 SOMETIMES IT INVITES THIS KIND OF RESPONSE.

10 **BY MR. KESSLER:**

11 **Q.** LET ME TRY TO GET A "YES" OR "NO."

12           SO YOU AGREE -- OR DO YOU AGREE THAT AS THE --  
13 PLAYERS INC IS THE ONE WHO IS THE LICENSING ENTITY, CORRECT?

14 **A.** YES.

15 **Q.** OKAY. AND DO YOU AGREE THAT THE LICENSING ENTITY IS  
16 ENTITLED TO SOME MUCH PERCENTAGE FOR ITS SERVICES AS A  
17 LICENSING ENTITY, CORRECT?

18 **A.** YES.

19 **Q.** OKAY. AND THAT WOULD BE SEPARATE AND APART FROM WHATEVER  
20 THE PLAYERS MIGHT DECIDE TO GIVE TO THE UNION TO FUND THE UNION  
21 OPERATIONS, CORRECT? YES OR NO?

22 **A.** ECONOMICALLY, NO. YOUR HONOR'S TALKED ABOUT ON PAPER.  
23 AND THAT'S THE DIFFERENCE BETWEEN THE ECONOMICS OF THE  
24 SITUATION AND WHAT'S WRITTEN DOWN ON PAPER.

25 **Q.** YOU AGREE THE LICENSING ENTITY DESERVES A PAYMENT FOR

1 BEING A LICENSING ENTITY, CORRECT?

2 **A.** YES.

3 **Q.** OKAY. SO WHEN YOU'RE DEALING WITH SOMETHING LIKE  
4 COLLEGIATE LICENSING, IT'S ONLY A LICENSING ENTITY, NOT A  
5 UNION, CORRECT?

6 **A.** CORRECT.

7 **Q.** OKAY. SO WOULDN'T THE APPLES-TO-APPLES COMPARISON BE:  
8 WHAT IS THE PERCENTAGE THAT PLAYERS INC GETS AS A LICENSING  
9 ENTITY VERSUS WHAT COLLEGIATE LICENSING GETS AS A LICENSING  
10 ENTITY, AND NOT MIX IN WHAT THE PLAYERS GIVE TO THE UNION TO  
11 FUND ITS OPERATIONS AS A UNION?

12 WOULDNT'T THAT BE AN APPLES-TO-APPLES COMPARISON, YES  
13 OR NO?

14 **A.** IF YOU COULD DO THAT.

15 **Q.** THANK YOU.

16 **A.** BUT YOU CAN'T DO THAT HERE.

17 **Q.** BUT THAT WOULD BE AN APPLES TO APPLES IF YOU COULD DO IT?

18 **A.** IF YOU COULD DO IT.

19 **Q.** THAT'S ALL. YES OR NO. THANK YOU.

20 **THE COURT:** DID THIS WITNESS GIVE AN EXPERT REPORT ON  
21 THE ALTEREGO TEST TRYING TO MERGE TWO COMPANIES TOGETHER?

22 **MR. KESSLER:** IN NONE OF HIS REPORTS HAS HE GIVEN ANY  
23 DISCLOSURE OF ANY OPINION THAT THEY'RE ECONOMICALLY AS ONE,  
24 YOUR HONOR. AND I MOVE TO STRIKE ALL HIS TESTIMONY ABOUT THAT.

25 **THE COURT:** I'M NOT GOING TO STRIKE. YOU'VE ELICITED

1 A LOT OF THIS TESTIMONY.

2 I WANT TO ADMONISH THE JURY ABOUT SOMETHING. THERE  
3 IS A WHOLE DIFFERENT BODY OF LAW OUT THERE ABOUT WHEN YOU TREAT  
4 A COMPANY AND ITS SUBSIDIARY AS ONE IN THE SAME, AS OPPOSED TO  
5 TWO LEGAL ENTITIES.

6 I WILL TELL YOU THE FACT THEY HAVE A CONSOLIDATED  
7 FINANCIAL STATEMENT IS NOT THE TEST. THERE ARE A WHOLE BUNCH  
8 OF FACTORS, ABOUT 15 OF THEM, IF YOU WOULD LOOK AT.

9 IF IT'S GOING TO BE AN ISSUE IN THIS CASE, I AM  
10 SURPRISED. I HAVEN'T HEARD THAT YET.

11 THIS WITNESS IS NOT GOING TO REPORT ON THAT SUBJECT.  
12 SO YOU TAKE INTO ACCOUNT THE FACT THAT WHAT THIS WITNESS SAYS  
13 ABOUT WHETHER OR NOT THEY OUGHT TO BE TREATED AS ALTEREGOS OF  
14 THE OTHERS, HE HAS NO FOUNDATION FOR THAT. IT MAY BE TRUE.  
15 BUT HE DOESN'T HAVE FOUNDATION TO PROVIDE YOU WITH THAT  
16 TESTIMONY.

17 SO I'D ASK YOU TO TAKE THAT AS A WORD OF CAUTION.

18 NOW, THAT IS ONLY A SMALL, TINY PART OF THIS  
19 EXAMINATION.

20 HE HAS SAID OTHER THINGS.

21 I'M NOT TRYING TO ADDRESS THAT.

22 I'M JUST ADDRESSING THIS POINT ABOUT ALTEREGO.

23 AND I ASK THE LAWYERS TO PLEASE GET OFF THE ALTEREGO  
24 AT LEAST UNTIL WE CAN ADDRESS IT OUT OF THE PRESENCE OF THE  
25 JURY.

1           **MR. KESSLER:** I'M OFF IT, YOUR HONOR.

2           **THE COURT:** IS IT TIME FOR A BREAK? ALL RIGHT. ALL  
3 RIGHT. MY COURT REPORTER NEEDS A BREAK. HER FINGERS HAVE BEEN  
4 WORKING AT LIGHTENING SPEED, SO WE'RE GOING TO TAKE A 15-MINUTE  
5 RECESS.

6           PLEASE REMEMBER THE ADMONITIONS.

7           (THEREUPON, THE JURY LEFT THE COURTROOM.)

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

9           EXPLAIN TO ME THIS: AM I GOING TO HAVE TO GIVE  
10 INSTRUCTIONS TO THE JURY ON ALTEREGO? IS THE JURY GOING TO  
11 HAVE TO MAKE FINDINGS ON WHETHER OR NOT THESE TWO COMPANIES ARE  
12 ONE AND THE SAME?

13           **MR. KESSLER:** ABSOLUTELY NOT, YOUR HONOR. THERE HAS  
14 BEEN NO ISSUE IN THAT CASE. IN THEIR PROPOSED JURY  
15 INSTRUCTIONS THEY DIDN'T RAISE THAT ISSUE. THE FIRST TIME I'VE  
16 EVER HEARD THAT IS OUT OF THIS WITNESS WHO I BELIEVE WAS  
17 PREPARED, FRANKLY, TO INJECT THAT ISSUE IN THE CASE.

18           HE DIDN'T RAISE IT IN ANY OF HIS REPORTS. IT WAS  
19 NEVER DISCLOSED. HE DID INJECT IT IN RESPONSE TO MY QUESTIONS,  
20 WHICH, YOUR HONOR, I WOULD POINT OUT WERE QUESTIONS THAT COULD  
21 HAVE BEEN ANSWERED "YES" OR "NO," BUT HE INJECTED IT IN THE  
22 SPEECH, AND THEN I HAD TO FOLLOW UP ON IT. THAT DOES NOT  
23 BELONG IN THIS CASE.

24           **MR. HUMMEL:** RIGHT.

25           **THE COURT:** WHAT?

1           **MR. HUMMEL:** RIGHT.

2           **THE COURT:** WELL, THEN, WHY NOT LET US JUST MOVE ON  
3 TO OTHER THINGS?

4           DO YOU HAVE ANY MORE EXAMINATION?

5           **MR. KESSLER:** OH, I DO, YOUR HONOR, ON OTHER PARTS OF  
6 HIS TESTIMONY.

7           **MR. HUMMEL:** I CERTAINLY DIDN'T ELICIT ANYTHING  
8 HAVING TO DO WITH ALTEREGO ON DIRECT EXAMINATION. IT'S NOT  
9 TRUE.

10          **MR. KESSLER:** NO, HIS WITNESS VOLUNTEERED IT.

11          **THE COURT:** THE JURY IS NOT HERE. IT'S PERFECTLY  
12 OKAY, AS THIS WITNESS PUT IN, TO HAVE A HANDSHAKE DEAL WITH  
13 YOURSELF.

14          **MR. HUMMEL:** SURE.

15          **THE COURT:** THAT IS DONE. I'VE SEEN MANY CASES, AND  
16 AS LONG AS EACH PERSON IS WEARING THE APPROPRIATE HAT, THERE'S  
17 NOTHING NECESSARILY WRONG WITH THAT.

18                 AND IF WE GET OFF INTO THAT, I'M GOING TO HAVE TO  
19 GIVE JURY INSTRUCTIONS TO THAT VERY POINT.

20                 SO I WANT US TO STICK TO THE ISSUES AT HAND. ALL  
21 RIGHT.

22                 WE'RE GOING TO TAKE A SHORT BREAK.

23          **MR. KATZ:** YOUR HONOR, MAY I HAVE ONE MOMENT?

24          **THE COURT:** ALL RIGHT. WHAT'S THAT?

25          **MR. KATZ:** TWO DAYS AGO I ASKED PERMISSION FROM YOUR

1 HONOR -- I ASKED IF YOUR HONOR WOULD READ AN INSTRUCTION TO THE  
2 JURY ON THE ISSUE OF THE IP RIGHTS WITH RESPECT TO THE  
3 SCRAMBLING VIS-A-VIS THE FIDUCIARY DUTY RIGHTS VIS-A-VIS THE  
4 SCRAMBLING.

5 AND WE HAVE DONE THAT. I WOULD LIKE TO HAND IT UP TO  
6 YOUR HONOR. I HAVE JUST GIVEN IT TO MR. KESSLER. SO YOU BOTH  
7 CAN STUDY IT OVER THE BREAK.

8 **MR. KESSLER:** I CAN TELL YOUR HONOR ALREADY WE WOULD  
9 PROPOSE A DIFFERENT INSTRUCTION THAN THAT. WHY DON'T WE HAVE A  
10 CHANCE TO STUDY IT AND PERHAPS PROPOSE SOMETHING ON MONDAY?

11 **THE COURT:** I'LL STUDY IT OVER THE BREAK AND LET YOU  
12 KNOW WHEN I COME BACK.

13 THANK YOU.

14 (RECESS TAKEN.)

15 **BY MR. KESSLER:**

16 **Q.** MR. RASCHER, JUST TO CLOSE OFF THIS ISSUE ABOUT COLLEGIATE  
17 LICENSING, A COMPANY LIKE COLLEGIATE LICENSING DOESN'T ENGAGE  
18 IN ANY UNION ACTIVITIES, RIGHT?

19 **A.** RIGHT.

20 **Q.** AND IT'S ALSO TRUE, WHEN YOU DID THE COMPARISON WITH  
21 COLLEGIATE LICENSING, YOU DIDN'T TAKE OUT THE STAR UNIVERSITIES  
22 IN SPORTS AND DISTINGUISH THEM FROM THE OTHER UNIVERSITIES WHO  
23 MAY NOT BE BIG SPORTS POWERS, RIGHT? YOU TREATED IT ALL  
24 TOGETHER?

25 **A.** RIGHT.

1 **Q.** OKAY. NOW, LET ME SHOW YOU, DR. RASCHER, I PUT IN FRONT  
2 OF YOU ON YOUR RIGHT-HAND SIDE EXHIBIT 1275-3, WHICH I BELIEVE  
3 IS AN EXHIBIT THAT YOU'VE PREPARED IN CONNECTION WITH YOUR WORK  
4 IN THIS CASE; IS THAT TRUE?

5 **A.** YES.

6 **MR. KESSLER:** YOUR HONOR, I MOVE 1275-3 INTO  
7 EVIDENCE.

8 **THE COURT:** 1275-3.

9 **MR. KESSLER:** YES. WE'RE PUTTING IN PAGES OF THIS AS  
10 OPPOSED TO --

11 **THE COURT:** ANY OBJECTION?

12 **MR. HUMMEL:** NO OBJECTION.

13 **THE COURT:** RECEIVED.

14 (TRIAL EXHIBIT 1275-3 RECEIVED IN EVIDENCE.)

15 **MR. KESSLER:** IF WE CAN BLOW UP THE WHOLE THING.

16 THAT WOULD BE GREAT.

17 THANK YOU. JUST THE TITLE AND THE BOX. I DON'T NEED  
18 THE NOTES FOR RIGHT NOW.

19 GET A BIGGER VIEW FOR THE JURY.

20 **BY MR. KESSLER:**

21 **Q.** THIS IS THE REVENUE -- THE LICENSING REVENUES AND THE  
22 PLAYER SHARES THAT YOU CALCULATED FOR THE MAJOR LEAGUE BASEBALL  
23 PLAYERS ASSOCIATION, CORRECT?

24 **A.** YES.

25 **Q.** AND THIS IS THE ONLY SPORTS UNION, OTHER THAN THE NFLPA,

1 THAT YOU'RE OFFERING TO THE JURY AS EVIDENCE IN THIS CASE,  
2 CORRECT?

3 **A.** YES. IT WAS THE ONLY ONE THAT --

4 **Q.** THANK YOU.

5 **A.** -- WAS COMPARABLE. OKAY.

6 **Q.** "YES" WOULD HAVE BEEN SUFFICIENT, SIR. OKAY?

7 THANK YOU.

8 NOW, YOU TOLD THE JURY THAT MAJOR LEAGUE BASEBALL  
9 PLAYERS ASSOCIATION ONLY KEPT 38 TO 39 PERCENT OF THE LICENSING  
10 REVENUE AND PAID THE REST OUT TO THE PLAYERS; IS THAT CORRECT?

11 **A.** YES.

12 **Q.** WHAT YOU DIDN'T TELL THE JURY IS THAT THAT WAS AN AVERAGE  
13 CALCULATION, CORRECT?

14 **A.** CORRECT.

15 **Q.** IF I LOOK YEAR BY YEAR, OKAY, THE MAJOR LEAGUE BASEBALL  
16 PLAYERS ASSOCIATION IN 2003, FOR EXAMPLE, PAID 54 PERCENT TO  
17 THE PLAYERS AND KEPT 46 PERCENT FOR ITSELF, CORRECT?

18 **A.** CORRECT.

19 **Q.** AND THAT WOULD BE MORE THAN YOUR 10 TO 40 PERCENT  
20 CUSTOMARY RANGE, CORRECT?

21 46 IS MORE THAN 40, CORRECT?

22 **A.** RIGHT.

23 **Q.** OKAY. AND IN 2004, MAJOR LEAGUE BASEBALL PLAYERS  
24 ASSOCIATION KEPT 47 PERCENT OF THE REVENUE FOR ITS UNION  
25 OPERATIONS, AND THAT'S MORE THAN YOUR 10 TO 40 PERCENT

1 CUSTOMARY RANGE, CORRECT?

2 **A.** CORRECT.

3 **Q.** AND IN 2005, MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION  
4 KEPT 84 AND A HALF PERCENT OF THE REVENUES OF ITS LICENSING FOR  
5 THE UNION OPERATIONS, CORRECT?

6 **A.** RIGHT.

7 **Q.** AND THAT 84 AND A HALF PERCENT IS A BIGGER PERCENTAGE THAN  
8 THE NFLPA AND PI -- EVEN COMBINE THEM TOGETHER IF YOU WANT --  
9 EVER KEPT OUT OF THE PLAYER LICENSING YOU LOOKED AT, CORRECT?  
10 YES OR NO?

11 **A.** I MEAN, YES.

12 **Q.** THANK YOU.

13 **A.** THEY ARE --

14 **Q.** AND IN 2006, THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION  
15 KEPT 99.6 PERCENT OF THE LICENSING REVENUES. AND THAT IS  
16 VASTLY MORE THAN THE NFLPA AND PI EVER KEPT OUT OF PLAYER  
17 LICENSING REVENUE, CORRECT?

18 **A.** RIGHT.

19 **Q.** AND THE REASON FOR THAT FLUCTUATION IS BECAUSE WHEN THERE  
20 ARE TIMES WHEN LABOR ACTIVITY IS GREATER, THE ACTIVE PLAYERS  
21 MIGHT SAY:

22 "LET'S KEEP MORE MONEY IN THE UNION," CORRECT?

23 **A.** YES.

24 **Q.** AND THAT'S WHAT HAPPENED IN BASEBALL, CORRECT?

25 **A.** THAT'S WHAT HAPPENED IN BASEBALL.

1 Q. AND THAT'S WHY IN 2007 THERE'S A REAL BIG PAYOUT TO THE  
2 PLAYERS, 165 PERCENT -- THAT'S MORE THAN THEY GOT IN -- BECAUSE  
3 THEY HAD SETTLED A COLLECTIVE BARGAINING AGREEMENT, AND THEY  
4 DECIDED TO PAY MONEY BACK TO THE PLAYERS, RIGHT?

5 A. THAT'S RIGHT.

6 Q. AND WHAT YOU KNOW, SIR, IS YOU DID NO ANALYSIS OF THE  
7 COLLECTIVE BARGAINING SITUATION IN THE NFL DURING ANY OF THE  
8 YEARS YOU STUDIED TO DETERMINE IF THE LABOR SITUATIONS WERE  
9 COMPARABLE OR NOT COMPARABLE ON A YEAR-BY-YEAR BASIS, CORRECT?

10 A. I ACTUALLY DID LOOK AT THAT.

11 Q. OKAY. FINE. THEN YOU KNOW, FOR EXAMPLE, THAT IN 2006,  
12 THE NFL HAD A VERY TENSE LABOR NEGOTIATION WITH THE OWNERS?  
13 ARE YOU AWARE OF THAT, SIR?

14 A. YES.

15 Q. SO 2006 WOULD BE A YEAR, YOU'D AGREE, THE PLAYERS MAY WANT  
16 TO HAVE SOME MONEY IN THEIR UNION FOR PROTECTION, CORRECT?

17 YES OR NO?

18 A. CORRECT. IF --

19 Q. THAT'S MY QUESTION.

20 AND AFTER 2006, IN 2007, THE OWNERS IMMEDIATELY SAID,  
21 THE VERY NEXT YEAR, THEY'RE GOING TO TERMINATE THE AGREEMENT  
22 EARLY. THAT'S WHAT THEY ARE THINKING OF, SO THE PLAYERS HAD TO  
23 STILL KEEP THAT MONEY IN THE UNION, CORRECT?

24 A. SO WHICH MONEY ARE YOU TALKING ABOUT?

25 Q. YES OR NO?

1 **A.** I DON'T KNOW WHICH MONEY YOU'RE TALKING ABOUT.

2 **Q.** REVENUES TO SUPPORT THE UNION. THERE WAS A TENSE LABOR  
3 SITUATION, YES OR NO?

4 **A.** THERE WAS DEFINITELY A TENSE LABOR SITUATION.

5 **Q.** THANK YOU, SIR.

6 NOW, WHEN YOU LOOKED AT THE UNIVERSITY OF KENTUCKY OR  
7 COLLEGIATE LICENSING, WERE YOU TAKING A LOT OF DIFFERENT YEARS  
8 AND AVERAGING THEM ALL TOGETHER, OR JUST ONE FIGURE?

9 **A.** WELL, IT'S ONE FIGURE, BUT --

10 **Q.** THANK YOU. THAT'S ALL I ASKED. ONE FIGURE FOR --

11 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

12 **A.** THEY'RE AVERAGING IT.

13 **Q.** FOR THE UNION YOU DECIDED TO TAKE -- FOR BASEBALL YOU TOOK  
14 ALL THESE DIFFERENT YEARS, AND YOU JUST PRESENTED TO THE JURY  
15 AN AVERAGE AND NEVER DISCLOSED IT WAS AN AVERAGE, DID YOU?

16 **A.** DISCLOSED IT IN WHAT WAY? YOU MEAN, TOLD THEM IT WAS AN  
17 AVERAGE?

18 **Q.** YEAH. YOU DIDN'T TELL THEM ON YOUR DIRECT EXAMINATION,  
19 DID YOU?

20 **A.** RIGHT.

21 **Q.** NOW, IS IT FAIR TO SAY THAT THERE'S NOT ONE SINGLE YEAR,  
22 NOT ONE SINGLE YEAR WHEN THE PERCENTAGE RETAINED BY MAJOR  
23 LEAGUE BASEBALL PLAYERS ASSOCIATION WAS WITHIN THE 10 TO  
24 40 PERCENT RANGE YOU SAID WAS CUSTOMARY? THERE'S NOT ONE  
25 SINGLE YEAR?

1 **A.** RIGHT. IT'S THE WAY --

2 **Q.** RIGHT. RIGHT.

3 SO YOU TOLD THIS JURY THAT SOMETHING WAS CUSTOMARY  
4 BASED ON MAJOR LEAGUE BASEBALL, WHEN NOT ONE SINGLE YEAR IS  
5 WITHIN THE CUSTOMARY RANGE. YOU JUST AVERAGED IT ALL TOGETHER  
6 TO PRESENT SOME OTHER NUMBER TO THE JURY.

7 IS THAT FAIR, SIR?

8 **A.** NO, THAT'S NOT -- THAT'S NOT WHAT'S HAPPENING HERE.  
9 THAT'S JUST NOT A GOOD REPRESENTATION OF WHAT GOES ON IN  
10 BASEBALL, WHAT GOES ON IN FOOTBALL, WHAT GOES ON AT COLLEGIATE  
11 LICENSING CORPORATION.

12 THAT'S JUST NOT A FAIR REPRESENTATION.

13 **Q.** OKAY. I'M GOING TO MOVE ON.

14 NOW, SIR, IN YOUR REPLY REPORT -- I'M SORRY, IN YOUR  
15 MAIN REPORT, THE QUESTION YOU WERE ASKED TO DO BY COUNSEL WAS  
16 THE FOLLOWING:

17 "WHAT IS THE PERCENTAGE OF LICENSING MONIES KEPT  
18 BY THE NFLPA, NFL PI?"

19 THAT WAS THE QUESTION, RIGHT?

20 AND THEN, IT WAS:

21 "HOW DOES IT COMPARE WITH OTHER PROFESSIONAL  
22 SPORTS UNIONS OR THIRD-PARTY LICENSING ENTITIES? HOW DOES THE  
23 PERCENTAGE KEPT BY THE NFLPA, NFL PI COMPARE TO WHAT IS  
24 CUSTOMARY IN SPORTS LICENSING," CORRECT?

25 THOSE ARE THE QUESTIONS. I READ THEM ACCURATELY?

1 **A.** YES.

2 **Q.** THESE QUESTIONS DON'T TELL YOU:

3 "ONLY LOOK AT A PORTION OF THE LICENSING REVENUES  
4 THAT ARE EQUALLY SHARED."

5 THERE'S NOTHING IN THE QUESTION THAT SAYS THAT,  
6 RIGHT?

7 **A.** I'D HAVE TO LOOK AT IT. BUT -- MY INTERPRETATION WAS --

8 **Q.** I WILL ASK YOU A SPECIFIC THING. IS THERE ANYTHING IN THE  
9 LANGUAGE OF THE QUESTION THAT SAYS:

10 "ONLY LOOK AT EQUAL SHARE -- THE GLR EQUAL SHARE  
11 POOL, AND DON'T LOOK AT ALL THE OTHER LICENSING REVENUE"? IS  
12 THERE ANYTHING IN THE QUESTION THAT SAYS THAT?

13 **A.** IT DOESN'T SAY THAT.

14 **Q.** THANK YOU. THANK YOU.

15 YOU NOW, LET'S MOVE ON TO ANOTHER SUBJECT.

16 YOU TESTIFIED THAT ONE OF YOUR OPINIONS IS THAT --  
17 WELL, LET ME ASK YOU THIS:

18 RE-EXPRESS IN ONE LINE, WHAT IS YOUR OPINION ABOUT  
19 THE CONTRIBUTION OF FORMER PLAYERS TO THE BUSINESS TODAY? I  
20 WANT TO JUST UNDERSTAND: WHAT IS YOUR OPINION, BECAUSE I  
21 COULDN'T FOLLOW IT.

22 **THE COURT:** YOU CAN TAKE TWO OR THREE SENTENCES, IF  
23 YOU WANT.

24 **MR. KESSLER:** OKAY. THANK YOU.

25 **THE WITNESS:** MY OPINION IS THAT THE RETIRED PLAYERS

1 BUILT THE BRAND, BUILT THE FAN LOYALTY THAT TODAY CAUSES PEOPLE  
2 TO BUY LICENSED MERCHANDISE, GO TO GAMES, WATCH ON TELEVISION,  
3 AND ESSENTIALLY BE COMMITTED FANS TO THE VARIOUS TEAMS AND  
4 PLAYERS THAT ARE OUT THERE.

5 **BY MR. KESSLER:**

6 **Q.** OKAY. JUST WANTED TO GET IT IN YOUR OWN WORDS.

7 NOW, YOU TOLD THE JURY THAT YOU STUDIED SOMETHING TO  
8 REACH THAT OPINION, RIGHT?

9 **A.** YES.

10 **Q.** YOU DIDN'T JUST LIKE WAKE UP IN THE MORNING WITH THAT  
11 OPINION, RIGHT?

12 **A.** RIGHT.

13 **Q.** AND WHAT YOU TOLD THE JURY YOU DID IS FIRST YOU SAID YOU  
14 LOOKED AT PEER-REVIEWED ARTICLES, RIGHT?

15 **A.** YES.

16 **Q.** NOW, THAT'S SOMEBODY ELSE'S WORK, NOT YOUR WORK, RIGHT?

17 **A.** WELL, NO, SCIENTIFIC WORK IS -- IS LOOKING AT OTHER  
18 STUDIES, UNDERSTANDING THEM AND COMPILING THEM TO SEE IF  
19 THERE'S A THEME.

20 **Q.** SIR, I'M JUST TRYING TO UNDERSTAND. YOU DIDN'T WRITE  
21 THOSE ARTICLES?

22 **A.** I DIDN'T WRITE THE ARTICLES.

23 **Q.** YOU DIDN'T DO THOSE STUDIES, CORRECT?

24 **A.** CORRECT.

25 **Q.** SOMEBODY ELSE DID THOSE STUDIES WHO'S NOT IN THIS

1 COURTROOM, CORRECT?

2 **A.** CORRECT.

3 **Q.** NOW, IT'S ALSO TRUE THAT NONE OF THOSE STUDIES, NONE OF  
4 THE STUDIES YOU LOOKED AT SPECIFICALLY LOOKED AT THE  
5 RELATIONSHIP BETWEEN RETIRED NFL PLAYERS AND A PLAYER LICENSING  
6 BUSINESS, TRUE?

7 **A.** YOU MEAN, THEY LOOKED AT RETIRED PLAYERS, PLAYERS FROM THE  
8 PAST, TEAMS' PERSONNEL FROM THE PAST, WHICH ARE THE PLAYERS  
9 FROM THE PAST.

10 **Q.** COULD YOU ANSWER "TRUE" OR "FALSE" TO MY QUESTION. YOU  
11 CAN SAY "FALSE."

12 **A.** SORRY. FALSE.

13 **Q.** OKAY. IT'S FALSE. YOU JUST TOLD THE JURY IT'S FALSE TO  
14 MY QUESTION AS TO WHETHER ANY OF THESE ARTICLES LOOKED AT THE  
15 RELATIONSHIP BETWEEN RETIRED NFL PLAYERS TO A PLAYER LICENSING  
16 BUSINESS.

17 LET ME ASK YOU ABOUT THE TWO ARTICLES YOU CITED, SIR:  
18 THE FIRST ARTICLE YOU CITED WAS BY STEVEN D. ROSS, CORRECT?

19 **A.** CORRECT.

20 **Q.** AND THAT ARTICLE WAS A STUDY INTENDED TO MEASURE  
21 PROFESSIONAL SPORTS TEAM BRAND ASSOCIATION, CORRECT?

22 **A.** RIGHT.

23 **Q.** THERE'S NOTHING IN THIS ARTICLE THAT DISCUSSES PLAYER  
24 LICENSING AT ALL, TRUE OR FALSE?

25 **A.** IT DOESN'T SAY "PLAYER LICENSING."

1 Q. THERE'S NOT A WORD ABOUT PLAYER LICENSING IN THIS ARTICLE,  
2 TRUE?

3 A. TRUE.

4 Q. OKAY. THE OTHER ARTICLE YOU CITED WAS BY ROBIN UNDERWOOD,  
5 CORRECT?

6 A. CORRECT.

7 Q. NOW, THAT WAS DESIGNED TO TALK ABOUT BRAND EQUITY FOR  
8 SERVICE MARKETERS, CORRECT?

9 A. CORRECT.

10 Q. AND THERE'S NO DISCUSSION IN THIS ARTICLE ABOUT PLAYER  
11 LICENSING, IS THERE? NOTHING?

12 A. IT TALKS ABOUT FAN LOYALTY, SO IT DOESN'T SAY THE WORD  
13 "PLAYER LICENSING."

14 Q. IT DOESN'T DO ANY DATA ON THE SALE OF LICENSED PLAYER  
15 MERCHANDISE, DOES IT?

16 A. NO.

17 Q. RIGHT. SO AND THAT'S TRUE OF EVERY PEER-REVIEW ARTICLE  
18 YOU LOOKED AT. NOT A SINGLE ONE STUDIED THE ISSUE OF RETIRED  
19 NFL PLAYERS SPECIFICALLY, WHAT THEIR IMPACT WAS ON PLAYER  
20 LICENSING; THAT'S TRUE, YES OR NO?

21 A. THE ART --

22 Q. YES OR NO?

23 A. NO.

24 Q. OKAY. TELL ME AN ARTICLE, AN ARTICLE, THAT SPECIFICALLY  
25 DISCUSSES PLAYER LICENSING, ACTUALLY TALKS ABOUT THE LICENSING

1 BY A PLAYERS ASSOCIATION OF PLAYERS' RIGHTS AND THE IMPACT OF  
2 RETIRED PLAYERS.

3 IS THERE SUCH AN ARTICLE, YES OR NO?

4 **A.** THERE ARE ARTICLES --

5 **Q.** YES OR NO? WOULD YOU LISTEN TO MY QUESTION, SIR --

6 **THE COURT:** YOU CAN DO THIS.

7 ANSWER "YES" OR "NO," AND THEN YOU CAN ADD A SENTENCE  
8 BY WAY OF EXPLANATION.

9 **BY MR. KESSLER:**

10 **Q.** IS THERE ANY ARTICLE YOU RELIED UPON WHICH LOOKS AT THE  
11 LICENSING, PLAYER LICENSING BUSINESS OF A PLAYERS ASSOCIATION,  
12 AND SAYS WHAT'S THE IMPACT OF RETIRED PLAYERS ON THAT BUSINESS?  
13 ANY ARTICLE?

14 **A.** NOT SPECIFICALLY THE WAY --

15 **Q.** THANK YOU. THANK YOU.

16 **THE COURT:** YOU DO YOU WANT TO ADD A SENTENCE?

17 **THE WITNESS:** I LOOKED AT DOZENS OF ARTICLES. SOME  
18 OF THEM LOOKED AT MERCHANDISE SALES OF NFL TEAMS AND HOW THAT'S  
19 IMPACTED BY THE PAST AND THE BRAND EQUITY THAT'S BEEN BUILT UP.

20 THOSE MERCHANDISE SALES OF THOSE TEAMS INCLUDE, YOU  
21 KNOW, IF YOU BUY A 49ER'S JERSEY IT'S GOT "ROGER CRAIG" OR  
22 "DWIGHT CLARK" OR SOMEONE ON THE BACK.

23 THAT'S PLAYER LICENSING. THEY DIDN'T USE THE WORD  
24 "PLAYER LICENSING" IN THE RESEARCH, BUT IT'S ABOUT THE OVERALL  
25 SALES OF TEAM MERCHANDISE AND THE OVERALL DEMAND FOR THE

1 PRODUCT.

2           THEY USE THE WORD "MERCHANDISE" IN THERE, LICENSED  
3 MERCHANDISE.

4           **THE COURT:** ALL RIGHT. NEXT QUESTION.

5 **BY MR. KESSLER:**

6 **Q.** DR. RASCHER, YOU'RE A SPORTS ECONOMIST, RIGHT?

7 **A.** YES.

8 **Q.** YOU TOLD THE JURY YOU'RE FAMILIAR WITH THE LICENSING IN  
9 THE SPORTS BUSINESS, RIGHT?

10 **A.** YES.

11 **Q.** THE TEAMS LICENSE THEIR RIGHTS SEPARATELY FROM THE  
12 PLAYERS, CORRECT?

13 **A.** CORRECT.

14 **Q.** RIGHT. SO IF YOU'RE STUDYING TEAM RIGHTS THAT'S NOT THE  
15 SAME THING AS STUDYING THE VALUE OF PLAYER RIGHTS, IS IT?

16           YES OR NO?

17 **A.** UNLESS THEY ARE JOINT PRODUCTS. LIKE THE EA PRODUCT HAS  
18 TO GET THE TEAM LICENSING AND THE PLAYER LICENSING.

19           WHEN SOMEONE BUYS A UNIT OR BUYS A GAME, THE VIDEO  
20 GAME, THEY ARE NOT ONLY CREATING MONEY FOR THE TEAM LICENSING  
21 RIGHTS, BUT THEY ARE CREATING MONEY FOR THE PLAYER LICENSING  
22 RIGHTS.

23 **Q.** GREAT POINT. HAVE YOU DONE ANY STUDY, SPECIFICALLY AN  
24 ECONOMICAL ANALYSIS OF DATA RELATING TO THE SALES OF EA GAMES  
25 AND HOW IT'S IMPACTED BY RETIRED PLAYERS RIGHTS? ANY KIND OF

1 ANALYSIS?

2 **A.** I'VE NOTED THEY HAVE SOLD BILLIONS OF DOLLARS WORTH OF --

3 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

4 **Q.** THAT'S NOT MY --

5 **A.** WELL, THAT'S --

6 **Q.** MY QUESTION IS: DID YOU DO ANY TYPE OF ECONOMIC STUDY?

7 YOU KNOW WHAT AN ECONOMIC STUDY IS, SIR?

8 **A.** YES.

9 **Q.** YOU'RE FAMILIAR WITH REGRESSION ANALYSIS, RIGHT?

10 **A.** THAT'S NOT THE ONLY --

11 **Q.** OKAY.

12 **A.** -- KIND OF ANALYSIS.

13 **Q.** OKAY. THERE ARE A LOT OF ECONOMIC STUDIES.

14 **A.** RIGHT.

15 **Q.** HAVE YOU DONE ANY ANALYSIS OF THE ECONOMIC DATA IN THIS  
16 CASE TO COME TO A CONCLUSION ABOUT ANY KIND OF RELATIONSHIP IN  
17 A DATA SENSE BETWEEN SALES OF EA GAMES AND RETIRED PLAYERS, ANY  
18 KIND OF DATA ANALYSIS?

19 **A.** YOU MEAN, LIKE SPECIFIC QUANTITATIVE --

20 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

21 **Q.** YES, NO QUANTITATIVE --

22 **A.** QUALITATIVE ANALYSIS.

23 **Q.** OKAY. BUT YOU'VE DONE NO QUANTITATIVE ANALYSIS?

24 **A.** RIGHT. QUALITATIVE ANALYSIS.

25 **Q.** BUT YOU'VE DONE NO QUANTITATIVE ANALYSIS? YOU HAVE DONE NO

1 ANALYSIS INVOLVING NUMBERS. THAT'S QUANTITATIVE, RIGHT?

2 **A.** RIGHT.

3 **Q.** SO NO NUMBER ANALYSIS. LET'S TRY TO MAKE IT SIMPLE.

4 NOW, SIR, IT'S ALSO TRUE, IS IT NOT, THAT YOU AGREE  
5 THAT ALL THE RETIRED PLAYERS WHO ARE IN THIS CLASS WOULD NOT  
6 CONTRIBUTE EQUALLY TO THE VALUE OF A LICENSING BUSINESS OR ANY  
7 TYPE OF SPORTS BUSINESS. THEY WOULD ALL HAVE DIFFERENT VALUES,  
8 RIGHT?

9 **A.** I MEAN, YEAH. INDIVIDUAL PLAYERS WOULD HAVE DIFFERENT  
10 VALUES. IT'S INTERESTING IN THE EA GAME THAT IF THEY HAVE ALL  
11 THE PLAYERS ON THE TEAM, THEN IN A SENSE IT'S -- IF YOU WANT TO  
12 PLAY THE GAME YOU HAVE GOT TO HAVE A TACKLE AND A GUARD AND A  
13 CENTER, AND SO FORTH.

14 SO IN THAT SENSE THEY'RE ALL CONTRIBUTING THE SAME  
15 VALUE. NOW, IN EA THEY HAVE THE HALL OF FAME THAT ARE  
16 HIGHLIGHTED, AND SO FORTH. AND THEN, THEY'VE GOT THE  
17 JOURNEYMEN PLAYERS WHO AREN'T HIGHLIGHTED.

18 **Q.** OKAY.

19 **A.** BUT --

20 **Q.** SIR, YOU UNDERSTAND, DO YOU NOT, THAT IF YOU HAVE STAR  
21 QUARTERBACKS, FOR EXAMPLE, THEIR ECONOMIC LICENSING RIGHTS ARE  
22 GOING TO BE WORTH A LOT MORE THAN A JOURNEYMAN PLAYER WHO  
23 BARELY PLAYED?

24 YES OR NO?

25 **A.** THEY SELL --

(SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

1 Q. THANK YOU.

2 A. -- THEM AS A GROUP.

3 Q. YES OR NO? CAN I GET A YES OR NO? IS IT YES?

4 A. YOU SAID --

5 Q. YES?

6 A. YOU SAID "WORTH MORE"?

7 Q. ECONOMICALLY WORTH MORE IN A MARKETPLACE. WOULD A STAR'S  
8 LICENSING RIGHTS BE WORTH MORE THAN A JOURNEYMAN PLAYER'S, YES  
9 OR NO?

10 A. YES.

11 Q. AND YOU KNOW, DO YOU NOT, THAT IN THIS CLASS, MOST OF THE  
12 CLASS MEMBERS WERE NOT STAR PLAYERS? YOU KNOW THAT, DON'T YOU?

13 A. YES.

14 Q. OKAY. AND YOU WOULD AGREE THAT MOST OF THE CLASS MEMBERS  
15 IN THIS CASE -- AND THIS IS NO CRITICISM OF THEM -- DON'T HAVE  
16 ANY SIGNIFICANT ECONOMIC LICENSING VALUE IN THEIR INDIVIDUAL  
17 RIGHTS?

18 THAT'S TRUE, ISN'T IT?

19 A. IN THEIR INDIVIDUAL RIGHTS --

20 Q. YES.

21 A. -- AS OPPOSED TO THEIR GROUP RIGHTS.

22 Q. YES.

23 A. I MEAN, I DIDN'T STUDY INDIVIDUAL DEALS THAT A PLAYER MAY  
24 GO OUT AND DO AN ENDORSEMENT OR A SPONSORSHIP OR A LICENSING  
25

1 DEAL WITH A CHEVY DEALER OR SOMEONE THAT DIDN'T GO THROUGH THE  
2 PLAYERS ASSOCIATION.

3 **Q.** LET ME ASK YOU THIS. LET'S SAY THERE'S A CLASS MEMBER.  
4 LET'S SAY THERE'S A CLASS MEMBER WHO NEVER PLAYED A GAME.  
5 WOULD YOU AGREE WITH ME NO COLLECTABLE COMPANY IS GOING TO  
6 LICENSE THAT PLAYER'S RIGHTS?

7 **A.** RIGHT.

8 **Q.** WHETHER IT'S IN A GROUP OR INDIVIDUALLY, THEY HAVE NO USE  
9 FOR THOSE PLAYER RIGHTS?

10 **A.** IN A GROUP -- GROUP LICENSE IS A DIFFERENT THAN AN  
11 INDIVIDUAL LICENSE.

12 **Q.** I'M TALKING ABOUT COLLECTIBLES. DO YOU KNOW WHAT  
13 COLLECTIBLES ARE?

14 **A.** YES.

15 **Q.** LET'S TALK ABOUT FIGURINES. DO YOU THINK WHETHER IT'S A  
16 GROUP OR INDIVIDUAL THAT A COLLECTIBLE COMPANY WOULD WANT THE  
17 RIGHTS TO A PLAYER WHO NEVER PLAYED A GAME? THEY WOULD PUT OUT  
18 A --

19 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

20 **A.** WELL, NO --

21 **Q.** AND THAT WOULD ALSO BE TRUE OF JERSEY. OKAY. IF YOU HAD  
22 A JERSEY, IF A PLAYER NEVER PLAYED A GAME, SAYS YOU'RE NOT  
23 GOING TO WANT THAT PLAYER'S RIGHTS FOR THE JERSEY WHETHER IT'S  
24 IN A GROUP OR NOT, RIGHT?

25 **A.** RIGHT.

1 Q. AND LET'S SAY YOU HAD A WHOLE GROUP AS A HYPOTHETICAL.  
2 LET'S SAY YOU HAD A GROUP OF INDIVIDUALS WITH -- LET'S SAY IT'S  
3 A HUNDRED PLAYERS WHO NEVER PLAYED MORE THAN THREE GAMES. IF  
4 YOU HAD A HUNDRED OF THOSE PLAYERS, AND YOU PUT THEM IN A  
5 GROUP, THERE'S NOT GOING TO BE ANY VALUE IN THAT GROUP IF THEY  
6 NEVER PLAYED A GAME FOR LICENSING, IS THERE?

7 A. I DON'T KNOW WHY THEY WOULD HAVE --

8 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

9 Q. FOR THOSE PLAYERS WHO HAVE NO VALUE, YOU CAN ADD UP -- IF  
10 YOU ADD UP A ZERO PLUS A ZERO TIMES A ZERO, FOR THOSE WHO HAVE  
11 NO VALUE YOU CAN'T CREATE VALUE OUT OF NOTHING, RIGHT?

12 A. IF YOU HAVE A GROUP OF THOSE PLAYERS, IF YOU HAVE A GROUP  
13 OF RETIRED PLAYERS, THEN THERE'S CERTAINLY VALUE IN THAT, AND  
14 I'VE TESTIFIED TO THAT.

15 Q. THE VALUE WOULD COME FROM THE STAR PLAYERS IN THE GROUP,  
16 RIGHT?

17 A. IT COMES FROM ALL THE PLAYERS AS A GROUP. YOU NEED EVERY  
18 PLAYER ON THE TEAM. FOOTBALL IS A TEAM SPORT. IT'S NOT A GOLF  
19 OR A TENNIS. IT'S A TEAM SPORT.

20 Q. YOU KNOW THAT THE GLA CLASS HERE DOESN'T INCLUDE MOST OF  
21 THE STAR PLAYERS, RIGHT? YOU KNOW THAT?

22 A. I MEAN, I DON'T KNOW THE PERCENTAGES, BUT --

23 Q. THAT'S FAIR. MOST STAR PLAYERS NEVER SIGN THE RETIRED  
24 PLAYER GLA. THAT'S CORRECT, ISN'T IT? YOU KNOW THAT.

25 A. NO, I DON'T KNOW THAT.

1 Q. DID YOU EVEN EXAMINE THAT ISSUE?

2 A. I LOOKED AT IT, BUT I WASN'T LOOKING AT THAT PARTICULAR  
3 ISSUE, SO I DON'T KNOW THE PERCENTAGES. WHEN YOU SAY "MOST,"  
4 DO YOU MEAN 90 PERCENT? 80 PERCENT?

5 Q. MAJORITY OF STAR PLAYERS DON'T SIGN GLA'S. YOU'LL GIVE ME  
6 THAT, WON'T YOU?

7 A. I DON'T KNOW THAT.

8 Q. YOU HAVEN'T LOOKED AT THE GLA'S IN THIS CASE ENOUGH TO  
9 MAKE THAT JUDGMENT, SIR? THAT'S YOUR TESTIMONY?

10 A. I'VE LOOKED AT INDIVIDUAL GLA'S, BUT I WAS LOOKING AT THE  
11 TOTAL REVENUES, TOTAL GROUP LICENSING REVENUES. IF YOU LOOK AT  
12 THE QUESTIONS I WAS ASKED BY COUNSEL, BY PLAINTIFFS' COUNSEL, I  
13 WASN'T LOOKING AT INDIVIDUAL GLA'S TO DETERMINE WHO SIGNED THEM  
14 AND WHO DIDN'T SIGN THEM.

15 Q. SO THE COUNSEL NEVER ASKED YOU TO LOOK AT THE CENTRAL  
16 ISSUE IN THIS CASE: THE GLA. THAT'S WHAT YOUR TESTIMONY IT  
17 IS?

18 A. NO, I LOOKED --

19 MR. HUMMEL: OBJECTION, YOUR HONOR.

20 MR. KESSLER:

21 Q. OKAY. YOU DID LOOK AT THE GLA.

22 THE COURT: WELL, LOOK. THIS WITNESS DOESN'T HAVE TO  
23 ADDRESS EVERY SINGLE ISSUE IN THE CASE. HE WAS CALLED HERE TO  
24 ADDRESS CERTAIN ISSUES THAT COUNSEL READ OUT TO HIM. AND  
25 WITHIN THE SCOPE OF CROSS -- YOU'RE ENTITLED TO CROSS-EXAMINE,

1 BUT I THINK THAT LAST QUESTION WAS TOO ARGUMENTATIVE.

2 **MR. KESSLER:** OKAY, YOUR HONOR.

3 I'LL ASK A DIFFERENT QUESTION.

4 **BY MR. KESSLER:**

5 **Q.** YOU NEVER DID ANY ANALYSIS OF THE ECONOMIC VALUE OF  
6 INDIVIDUAL GLA CLASS MEMBERS IN LICENSING, RIGHT?

7 YOU DID NOT?

8 **A.** RIGHT. NO, I DIDN'T.

9 **Q.** I WANTED TO MAKE SURE YOUR VOICE WAS --

10 **A.** INDIVIDUAL, YOU SAID. RIGHT? NO.

11 **Q.** OKAY. NOW --

12 **THE COURT:** HOW CLOSE TO THE END ARE YOU?

13 **MR. KESSLER:** OH, I'D SAY ABOUT 10 OR 15 MINUTES,  
14 YOUR HONOR.

15 I'LL TRY TO MOVE IT QUICKER.

16 **THE COURT:** I WOULD LIKE TO GET -- YOU HAVE ONE MORE  
17 WITNESS, RIGHT, THEN YOU REST?

18 **MR. HUMMEL:** SUBJECT TO WHAT WE'VE TALKED ABOUT  
19 BEFORE.

20 **THE COURT:** I DON'T REMEMBER WHAT THAT IS. BUT IT  
21 WOULD BE NICE FOR THE PLAINTIFF TO REST BEFORE WE BREAK.

22 **MR. KESSLER:** I'M AFRAID, YOUR HONOR, SINCE IT'S  
23 THEIR DAMAGES EXPERT I WILL HAVE SOME CROSS ON THAT, AS WELL.

24 **THE COURT:** IT'S IMPOSSIBLE, ANYWAY.

25 **MR. KESSLER:** YEAH.

1           **THE COURT:** ANYWAY, PLEASE TRY TO TAKE YOUR 10  
2 MINUTES OR SO AND LET'S TRY TO WIND UP THIS WITNESS.

3 **BY MR. KESSLER:**

4 **Q.** I WILL TRY.

5           IT'S TRUE, ISN'T IT, THAT IT'S YOUR OPINION THAT NOT  
6 JUST RETIRED PLAYERS CONTRIBUTE TO THE VALUE OF THE NFL GAME  
7 TODAY, BUT THAT YOU BELIEVE THAT OTHERS WHO CONTRIBUTE ARE  
8 COACHES, CORRECT?

9 **A.** CORRECT.

10 **Q.** TRAINERS, CORRECT?

11           YES OR NO?

12 **A.** EVERYBODY ON -- EVERYBODY CONTRIBUTES AT DIFFERENT LEVELS,  
13 OF COURSE, BUT EVERYBODY CONTRIBUTES.

14 **Q.** TICKET-TAKERS, CORRECT?

15 **A.** WHY WOULD THEY HAVE THEM OTHERWISE?

16 **Q.** OKAY. PEOPLE -- AND I'M NOT IN ANY WAY SAYING THIS --  
17 PEOPLE WHO DO SECURITY IN THE STADIUM OR DO PARK THE CARS OR  
18 SELL CONCESSIONS, THEY ALL CONTRIBUTE, CORRECT?

19 **A.** ALL THE EMPLOYEES CONTRIBUTE VALUE AT DIFFERENT LEVELS TO  
20 AN NFL TEAM, TO THE NFL LEAGUE, AND SO FORTH.

21 **Q.** RIGHT. JUST LIKE ALL EMPLOYEES OF ANY BUSINESS CONTRIBUTE  
22 TO IT, CORRECT?

23 **A.** RIGHT.

24 **Q.** RIGHT. SO YOU'RE NOT OFFERING AN OPINION THAT AN NFL  
25 TICKET-TAKER SHOULD SHARE IN THE GLR POOL, ARE YOU? IS THAT

1 YOUR OPINION?

2 **A.** NO.

3 **Q.** OKAY. LET ME MOVE ON NOW TO YOUR POINT ABOUT LEVERAGE.

4 WHEN YOU FIRST EXPLAINED YOUR CREDENTIALS TO THE  
5 JURY, YOU SAID YOU'RE AN ECONOMIST AND YOU APPLY MICROECONOMIC  
6 PRINCIPLES, CORRECT?

7 **A.** CORRECT.

8 **Q.** IN YOUR OPINION ABOUT LEVERAGE, YOU DIDN'T DO ANY TYPE OF  
9 MICROECONOMIC ANALYSIS OF POWER OR MARKET POWER OR ANY ISSUE  
10 LIKE THAT, DID YOU?

11 **A.** NOT IN AN ANTITRUST SENSE OF DEFINING PRODUCT MARKETS,  
12 DEFINING GEOGRAPHIC MARKETS.

13 **Q.** IN THE STANDARD PRINCIPLES OF MICROECONOMIC ANALYSIS OF  
14 INDUSTRIAL ORGANIZATION -- YOU'RE FAMILIAR WITH THAT, CORRECT?

15 **A.** OF COURSE.

16 **Q.** THAT'S YOUR AREA OF EXPERTISE, CORRECT?

17 **A.** YES.

18 **Q.** YOU DIDN'T DO ANY STUDY OF THAT ISSUE APPLYING THE  
19 PRINCIPLES OF INDUSTRIAL ORGANIZATION OF WHICH YOU ARE AN  
20 EXPERT, RIGHT?

21 **A.** NO, I DID.

22 **Q.** YOU DIDN'T DO ANY MARKET DEFINITION, RIGHT?

23 **A.** NO, I DIDN'T DO A MARKET DEFINITION.

24 **Q.** AND YOU WOULD AGREE WITH ME THAT UNDER MICROECONOMIC  
25 STANDARD PRINCIPLES, WITHOUT A MARKET DEFINITION, YOU CAN'T

1 GIVE ANY ECONOMIC OPINION AS TO WHETHER THERE'S MARKET POWER,  
2 CORRECT?

3 YES OR NO?

4 **A.** FOR MARKET POWER, BUT NOT LEVERAGE OR BARGAINING POWER.

5 **Q.** I'M ASKING ABOUT MARKET POWER.

6 **A.** CORRECT.

7 **Q.** SO YOU HAVE NO OPINION TO THIS JURY ABOUT MARKET POWER OR  
8 MONOPOLY POWER, RIGHT? NO OPINION AT ALL?

9 **A.** CORRECT.

10 **Q.** SO WHAT YOU'RE TALKING ABOUT IS WHAT YOU CALL "LEVERAGE,"  
11 CORRECT?

12 **A.** CORRECT.

13 **Q.** AND WHAT YOU TESTIFIED TO THE JURY IS BECAUSE THE NFLPA  
14 CAN OFFER ALL THE ACTIVE PLAYERS, FOR EXAMPLE, THAT THAT GIVES  
15 THEM A ONE-STOP-SHOPPING BENEFIT, CORRECT?

16 **A.** CORRECT.

17 **Q.** AND YOU SAID THAT GIVES THEM LEVERAGE OVER LICENSEES LIKE  
18 EA, CORRECT?

19 **A.** CORRECT.

20 **Q.** NOW, AS AN ECONOMIST, IT'S YOUR OPINION THAT'S A VERY GOOD  
21 THING, ISN'T IT?

22 YES OR NO?

23 **A.** NO.

24 **Q.** OKAY. ISN'T IT TRUE THAT BY HAVING LEVERAGE OVER  
25 LICENSEES THERE ARE EFFICIENCY RATES CREATED?

1 **A.** NOT FROM THE LEVERAGE, FROM THE COLLECTIVITY. SO THERE  
2 ARE TWO SEPARATE ISSUES. THERE'S EXCLUSIVITY. THERE'S  
3 EXCLUSIVE RIGHTS THEY HAVE TO SELL IN THE MARKETPLACE AND THEY  
4 CAN CHARGE A HIGHER PRICE.

5 AND THERE'S COLLECTIVE RIGHTS. WHEN YOU SELL THEM  
6 ALL TOGETHER YOU SAVE EVERYBODY TIME AND MONEY. YOU SAY BOTH  
7 SIDES, THE EA'S OF THE WORLD AND YOU SAVE THE PLAYERS  
8 ASSOCIATION TIME AND MONEY SO THEY CAN DO A DEAL ON WHAT ONE  
9 CONTRACT, INSTEAD OF GOING OUT TO EACH AND EVERY INDIVIDUAL  
10 PLAYER.

11 SO THOSE ARE TWO DIFFERENT THINGS.

12 **Q.** LET'S TAKE A LOOK, SIR, AT YOUR DEPOSITION, IF YOU WILL.

13 **A.** OKAY.

14 **Q.** TAKE A LOOK -- AND I'M GOING TO READ TO YOU -- I'M SORRY?

15 **THE COURT:** WHAT IS THE --

16 **MR. KESSLER:** I APOLOGIZE, SIR. I THOUGHT YOU HAD IT  
17 UP THERE.

18 ALL RIGHT. I'M SORRY.

19 **THE COURT:** WHAT IS THE PAGE NUMBER?

20 **MR. KESSLER:** PAGE 171.

21 **THE COURT:** WAIT UNTIL WE ALL GET THERE.

22 **MR. KESSLER:** AND I'M GOING TO READ FROM 14, YOUR  
23 HONOR, ALL THE WAY TO LINE 12 ON 172.

24 **THE COURT:** ANY OBJECTION?

25 **MR. HUMMEL:** NO.

1           **THE COURT:** GO AHEAD.

2           **MR. KESSLER:** OKAY.

3           **"QUESTION:** BUT YOU HAVEN'T REACHED ANY  
4 CONCLUSION AS TO WHETHER THERE'S A RELEVANT  
5 ECONOMIC MARKET OR NOT HERE?

6           **"ANSWER:** RIGHT.

7           **"QUESTION:** OR WHAT IT IS?

8           **"ANSWER:** MY CONCLUSION, RIGHT. MY  
9 CONCLUSION IS THAT THE NFLPA/PI FOR THE  
10 FOOTBALL -- FOR THE FOOTBALL RIGHTS IS ABLE  
11 TO, SINCE THEY GATHERED THEM TOGETHER ACTIVE  
12 AND RETIRED, THEY'RE ABLE TO GO OUT TO  
13 POTENTIAL LICENSEES AND HAVE LEVERAGE, YOU  
14 KNOW, IN TERMS OF NEGOTIATING A FAVORABLE  
15 DEAL FOR THEMSELVES.

16           **"QUESTION:** NOW, YOU ALSO TALKED ABOUT  
17 EFFICIENCY RENTS THAT ARE EARNED, CORRECT?

18           **"ANSWER:** CORRECT.

19           **"QUESTION:** IN ECONOMICS, EFFICIENCY RENTS  
20 ARE A GOOD THING NOT A BAG THING, RIGHT?

21           **"ANSWER:** RIGHT.

22           **"QUESTION:** RIGHT. IT'S A POSITIVE THING TO  
23 CREATE EFFICIENCY RENTS AS OPPOSED TO  
24 MONOPOLY RENTS; IS THAT TRUE?

25           **"ANSWER:** CORRECT, THAT'S TRUE.

1 **BY MR. KESSLER:**

2 **Q.** NOW, DR. RASCHER, WHEN THE NFLPA AND PI PUT TOGETHER  
3 ACTIVE PLAYER RIGHTS AND THEY ALSO SAY "WE CAN ALSO PROVIDE YOU  
4 WITH RETIRED PLAYER RIGHTS," THAT CREATES EFFICIENCY RENTS,  
5 TRUE OR FALSE?

6 **A.** TRUE.

7 **Q.** AND THOSE ARE GOOD THINGS, CORRECT?

8 **A.** YES.

9 **Q.** THANK YOU.

10 **MR. KESSLER:** YOUR HONOR, I'M TRYING TO LIVE WITHIN  
11 YOUR ADMONITION.

12 I HAVE NO FURTHER QUESTIONS AT THIS MOMENT.

13 **THE COURT:** THANK YOU, MR. KESSLER.

14 LET'S GO TO REDIRECT.

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

16 **REDIRECT EXAMINATION**

17 **BY MR. HUMMEL:**

18 **Q.** DR. RASCHER, MR. KESSLER ASKED YOU ABOUT BASEBALL. DO YOU  
19 RECALL THIS?

20 **A.** CORRECT.

21 **Q.** AND HE SHOWED YOUR EXHIBIT ON THE BOARD WHICH HAD SOME  
22 DIFFERENT -- DIFFERENT AMOUNTS RETAINED BY THE LICENSING ENTITY  
23 OVER THE YEARS, RIGHT? AND YOU TESTIFIED THAT YOU AVERAGED  
24 THOSE TOGETHER?

25 **A.** YES.

1 Q. WHAT WAS THE AVERAGE?

2 A. THE AVERAGE WAS THAT THE PLAYERS RECEIVED WAS 62.3 PERCENT  
3 IN BASEBALL.

4 Q. 62.3 PERCENT. OVER WHAT YEARS DID YOU STUDY THAT?

5 A. 2003 TO 2007.

6 Q. 2003 TO 2007.

7 NOW, IN CONNECTION WITH THE NFLPA AND PI DO YOU KNOW  
8 WHEN THEY STARTED MAKING THIS DIVISION WHERE THE PLAYERS ONLY  
9 GOT 37 PERCENT?

10 MR. KESSLER: YOUR HONOR, LEADING. IT'S HIS EXPERT.

11 THE COURT: HE'S ASKING WHETHER HE KNOWS. AND THEN,  
12 WE'LL FIND OUT IN A NONLEADING QUESTION WHAT THE ANSWER IS, IF  
13 HE DOES KNOW.

14 SO JUST SAY "YES" OR "NO"; DO YOU KNOW?

15 THE WITNESS: YES.

16 BY MR. HUMMEL:

17 Q. WHEN DID THE NFLPA AND PI ESTABLISH THAT THE PLAYERS WOULD  
18 ONLY GET 37 PERCENT?

19 A. TO MY KNOWLEDGE, IT WAS 1994 WHEN THEY FIRST SIGNED THE  
20 DEAL TO SET UP PI, PLAYERS INC AND THE PLAYERS ASSOCIATION.

21 Q. SO FROM 1994 THROUGH 2008, ROUGHLY, WHAT WAS THE AVERAGE  
22 THAT THE PLAYERS GOT?

23 A. ACCORDING TO THE CONTRACTS BETWEEN THE PLAYERS ASSOCIATION  
24 AND PLAYERS INC FROM 1994 THROUGH 2002, THEY GOT 37 PERCENT.

25 Q. HOW MANY TIMES IN THAT PERIOD WAS THERE ANY QUESTION --

1 WELL, IN HOW MANY YEARS IN THERE WAS THERE LABOR UNREST THAT  
2 THEY HAD TO BE WORRIED ABOUT?

3 **A.** I MEAN, I DON'T -- I DIDN'T STUDY THAT PARTICULAR QUESTION  
4 RIGHT NOW. THERE ARE LABOR UNREST KIND OF AT THE END OF EACH  
5 COLLECTIVE BARGAINING AGREEMENT.

6 **Q.** HOW LONG ARE THE COLLECTIVE BARGAINING AGREEMENTS, DO YOU  
7 KNOW?

8 **A.** SOME ARE THREE, FOUR, FIVE YEARS, DEPENDING ON THE LEAGUE  
9 AND THE SPORT.

10 **Q.** SO THERE WERE NUMEROUS YEARS IN THAT PERIOD WHEN THERE WAS  
11 NO CONCERN ABOUT LABOR UNREST, CORRECT?

12 **A.** YES.

13 **Q.** AND THROUGHOUT THAT ENTIRE PERIOD, NFLPA/PI KEPT, ON  
14 AVERAGE, 63 TO 69 PERCENT?

15 **A.** I MEAN --

16 **MR. KESSLER:** YOUR HONOR, LACK OF FOUNDATION. THIS  
17 WITNESS ONLY STUDIED THE MORE RECENT PERIOD. HE CAN'T KNOW THE  
18 NUMBERS FOR THE EARLIER PERIOD.

19 LACK OF FOUNDATION.

20 **THE COURT:** WELL, HE DID NOT STUDY IT.

21 DID YOU STUDY THAT?

22 **THE WITNESS:** I LOOKED AT THE CONTRACT. SO I  
23 STUDIED -- FROM THE ACTUAL DATA I STUDIED 2003 TO 2007, WHICH  
24 IS WHAT WE SHOWED. FROM 1994 --

25 **THE COURT:** BASED ON THE CONTRACTS YOU CAN ANSWER.

1 BUT MAKE IT CLEAR --

2 **THE WITNESS:** RIGHT.

3 **THE COURT:** -- THAT YOU'RE --

4 **THE WITNESS:** RIGHT.

5 **THE COURT:** -- THAT'S BASED ON WHAT THE CONTRACT  
6 SAYS.

7 **THE WITNESS:** THAT'S BASED ON WHAT THE CONTRACTS SAY  
8 ABOUT DIVIDING THE MONEY BETWEEN THE PLAYERS AND PLAYERS INC  
9 AND THE PLAYERS ASSOCIATION.

10 **BY MR. HUMMEL:**

11 **Q.** OKAY. AND MR. KESSLER, I GUESS, WAS IMPLYING TO YOU IN  
12 HIS QUESTIONS THAT THEY WERE BUILDING UP SOME KIND OF STRIKE  
13 FUND.

14 DO YOU RECALL THAT?

15 **A.** YES.

16 **Q.** NOW, CAN YOU TELL LOOKING AT THE CONSOLIDATED FINANCIALS  
17 IS THERE, IN FACT, A STRIKE FUND?

18 **A.** YOU'RE TALKING FOOTBALL?

19 **Q.** JUST FOOTBALL.

20 **A.** YEAH. IN THE NFL PLAYERS ASSOCIATION THEY BUILD UP A  
21 STRIKE FUND IN WHAT THEY CALLED "FUND B," AND THE AUDITED  
22 FINANCIALS ARE PRETTY CLEAR ON THAT.

23 THEY HAVE A SEPARATE FUND CALLED "FUND A." THOSE TWO  
24 FUNDS ARE DESIGNATED, MEANINGS THAT THERE ARE ONLY CERTAIN  
25 THINGS THEY CAN DO WITH THOSE FUNDS.

1           AND THOSE COME FROM -- WELL, FUND B COMES FROM UNION  
2 DUES, OKAY? SO IT'S DUES THAT COME RIGHT OFF THE PAYCHECKS OF  
3 THE FOOTBALL PLAYERS.

4 **Q.**    AND FUND B IS THE STRIKE FUND?

5 **A.**    AND FUND B IS THE STRIKE FUND.

6 **Q.**    OKAY.

7 **A.**    SEPARATELY, THE SHARED GROUP LICENSING REVENUES COME IN,  
8 AND THEY GIVE SOME OF THOSE 36, 31, 32 PERCENT TO THE PLAYERS.

9           THEN, THEY TAKE SOME OF THOSE AND THEY -- THEY  
10 ESSENTIALLY RUN THE UNION WITH THEM.

11           BUT THEN THEY HAVE THIS OTHER PART LEFT OVER, AND  
12 RIGHT NOW IT'S ABOUT \$68 MILLION.

13 **Q.**    WHAT'S THAT FUND CALLED?

14 **A.**    IT'S -- WHAT IS IT?

15           **THE COURT:** UNRESTRICTED.

16           **THE WITNESS:** "UNRESTRICTED NET ASSETS." THANK YOU.  
17 THANK YOU, YOUR HONOR.

18           UNRESTRICTED NET ASSETS.

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

20           **THE WITNESS:** SO WHAT THAT MEANS IS THEY CAN DO --  
21 NOT WHATEVER THEY WANT -- WITHIN THE LAW, THOSE AREN'T  
22 RESTRICTED TO CERTAIN SPENDING AREAS.

23 **BY MR. HUMMEL:**

24 **Q.**    AND IF THE JURY WANTED TO LOOK AT WITH THE FINANCIAL  
25 STATEMENTS THAT ARE IN EVIDENCE, THAT UNRESTRICTED MONEY, WHERE

1 WOULD THEY LOOK?

2 **A.** IT'S IN THE CONSOLIDATED FINANCIALS ON -- IF YOU LOOK AT  
3 THE REVENUES AND EXPENSES, YOU KIND OF SEE IT AS A NET REVENUE  
4 AT THE END. AND EACH YEAR IT GOES UP BY 8, \$9 MILLION. SO  
5 IT'S BUILT UP TO \$68 MILLION.

6 **Q.** THE COLUMN IS CALLED "UNRESTRICTED"?

7 **A.** YEAH. IF I SAW IT --

8 **MR. HUMMEL:** I'M SHOWING THE WITNESS EXHIBIT 1024.

9 **THE COURT:** FINE.

10 **MR. HUMMEL:** TO REFRESH HIS RECOLLECTION AS TO WHAT  
11 THAT COLUMN IS CALLED.

12 **THE WITNESS:** YEAH. FOR EXHIBIT 1024, IF YOU LOOK AT  
13 WHAT'S LISTED AS PAGE 5, IT'S THE CONSOLIDATED STATEMENTS OF  
14 ACTIVITY OF THE NFL PLAYERS ASSOCIATION AND ITS SUBSIDIARIES.  
15 IT'S GOT THE REVENUES AND EXPENSES. IT'S GOT --

16 **MR. HUMMEL:** YOUR HONOR, PERMISSION TO PUBLISH THAT.  
17 I DON'T THINK THERE IS ANY DISPUTE ABOUT THAT, SO WE CAN FOLLOW  
18 IT EASILY.

19 **MR. KESSLER:** YOUR HONOR, THEY DIDN'T NOTICE THIS  
20 EXHIBIT FOR THIS WITNESS AT ALL. IT'S ALSO NOT SUBJECT OF HIS  
21 EXPERT REPORT. WE HAD NO DISCUSSION OF THIS ISSUE --

22 **THE COURT:** WE'RE NOT GOING --

23 **MR. KESSLER:** -- IN HIS EXPERT REPORT.

24 **THE COURT:** -- TO TAKE ANY MORE TIME ON THIS.

25 THE JURY UNDERSTANDS THAT IT'S 86 MILLION OR

1 WHATEVER.

2 **MR. HUMMEL:** ALL RIGHT.

3 **THE COURT:** 67 MILLION. JUST TELL US THE NUMBER

4 AGAIN.

5 **THE WITNESS:** IT'S 68 MILLION.

6 **THE COURT:** 68 MILLION. ALL RIGHT.

7 LET'S MOVE ON TO SOMETHING ELSE.

8 **BY MR. HUMMEL:**

9 **Q.** ALL RIGHT. FINALLY, DR. RASCHER, IS THERE ANY DOUBT IN  
10 YOUR MIND, BASED ON YOUR ECONOMIC ANALYSIS, THAT RETIRED  
11 PLAYERS BUILT BRAND EQUITY IN THE CURRENT VALUE OF LICENSING IN  
12 THE NATIONAL FOOTBALL LEAGUE?

13 **A.** THERE IS NO DOUBT IN MY MIND. IN FACT, IT'S KIND OF  
14 COMMON SENSE.

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

16 **THE COURT:** ANYTHING MORE, MR. KESSLER?

17 **REXCROSS EXAMINATION**

18 **BY MR. KESSLER:**

19 **Q.** JUST ONE QUESTION: THE UNRESTRICTED NET ASSETS, DOES THAT  
20 INCLUDE THE VALUE OF ANY BUILDINGS?

21 DO YOU KNOW?

22 **A.** IT'S THE NET REVENUE LEFT OVER AFTER EACH YEAR. THE PA  
23 BRINGS IN REVENUES, IF YOU LOOK AT THE LINE ITEMS. THE PA  
24 SPENDS SOME OF THOSE ON THE LICENSING MONEY THAT GOES OUT TO  
25 THE PLAYERS, AS I SAID.

1 SPENDS SOME OF THOSE ON OTHER EXPENSES LIKE RENT AND  
2 INSURANCE AND POSTAGE AND DELIVERIES AND SO FORTH, AND A NET  
3 AMOUNT LEFT OVER. AND EACH YEAR THAT'S BEEN BUILT UP TO  
4 AMOUNTS AROUND 68 MILLION.

5 **Q.** THIS FINANCIAL STATEMENT ALSO CONSOLIDATES THE REVENUES  
6 AND ASSETS OF A COMPANY THAT OPERATES A BUILDING; IS THAT  
7 CORRECT?

8 **A.** YES.

9 **Q.** BUILDING CORP?

10 **A.** YES.

11 **Q.** HAVE YOU DONE ANY ANALYSIS AS TO WHAT PORTION OF THE  
12 NUMBER YOU JUST TESTIFIED TO THE JURY IS DUE TO RENTS RECEIVED  
13 BY BUILDING CORP, FOR EXAMPLE?

14 **A.** I MEAN, THESE ARE --

15 **Q.** HAVE YOU DONE AN ANALYSIS OF THAT, SIR?

16 **A.** OF THE PARTICULAR RENTS RECEIVED, NO.

17 **Q.** NO. SO YOU HAVE NO IDEA WHETHER THE NUMBER YOU'RE TALKING  
18 ABOUT COMES FROM LICENSING REVENUE OR FROM RENTS ON A BUILDING,  
19 DO YOU? YOU DON'T KNOW HOW MUCH --

20 **A.** NO, IT SAYS IT. IT SAYS IT IN HERE. IT SAYS:

21 "ROYALTIES, \$55 MILLION."

22 AGENTS PAY THE PLAYERS ASSOCIATION TO BE MEMBERS TO  
23 REPRESENT PLAYERS. THAT'S \$2.2 MILLION.

24 "INVESTMENT INCOME: \$1.3 MILLION."

25 **Q.** WHAT PAGE ARE YOU ON?

1 **A.** BUILDING RENT IS \$415,000 OF THE 68 MILLION. I MEAN --

2 **Q.** COULD YOU SHOW ME WHAT LINE YOU'RE REFERRING TO, SIR?

3 **A.** THIS IS PAGE 5 OF 1024.

4 **Q.** PAGE 5. WHAT LINE ARE YOU LOOKING AT, SIR?

5 **A.** RIGHT. SO IF YOU GO DOWN -- OKAY.

6 **THE COURT:** WHY DON'T YOU GO -- LOOK OVER --

7 **THE WITNESS:** DO YOU WANT ME TO SHOW YOU?

8 (SIMULTANEOUS SPEAKING, NOT REPORTABLE.)

9 **MR. KESSLER:** THANK YOU. THAT WILL HELP ME.

10 **THE WITNESS:** YOU HAVE BUILDING RENTS OF 415,000.

11 **BY MR. KESSLER:**

12 **Q.** WHAT ARE YOU LOOKING AT AS THE UNRESTRICTED ASSET LINE?

13 **A.** UNRESTRICTED.

14 **THE COURT:** KEEP YOUR VOICES UP.

15 **THE WITNESS:** UNRESTRICTED NET ASSETS AT THE

16 BEGINNING OF THE YEAR FOR THIS PARTICULAR YEAR SAYS

17 "34 MILLION," THEN THEY ADDED ABOUT 8 MILLION RIGHT THERE.

18 **BY MR. KESSLER:**

19 **Q.** OKAY. SO THIS LINE INCLUDES, FOR EXAMPLE, SETTLEMENT

20 PAYMENTS. DO YOU HAVE ANY IDEA WHAT THAT IS?

21 **A.** SETTLEMENTS FROM THE NFL.

22 **Q.** DOES THAT HAVE ANYTHING TO DO WITH PLAYER LICENSING, THAT

23 SETTLEMENT OF A LITIGATION, DO YOU KNOW, SIR?

24 **A.** THAT'S \$5 MILLION VERSUS THE ENTIRE 92 MILLION IN REVENUE

25 THAT YEAR.

1 Q. DO YOU KNOW IF IT HAS ANYTHING TO DO WITH PLAYER LICENSING  
2 ONE WAY OR THE OTHER?

3 DO YOU KNOW?

4 A. I DOESN'T NO.

5 Q. OKAY. AND THEN, SOMETHING ELSE HERE IS:

6 "AGENT FINANCIAL ADVISORS AND RETIRED MEMBERSHIP  
7 FEES."

8 DOES THAT HAVE ANYTHING TO DO WITH PLAYER LICENSING?

9 A. NO.

10 Q. OKAY. THAT'S ANOTHER 2 MILLION. THEN YOU HAVE:

11 "INVESTMENT INCOME. INTEREST 1.379 MILLION."

12 DOES THAT HAVE ANYTHING TO DO WITH PLAYER LICENSING?

13 A. IT'S INTEREST OFF OF MONEY SITTING THERE. PART OF IT IS  
14 GOING TO GROW FROM THE PLAYER LICENSING REVENUES. PART IS  
15 GOING TO GROW FROM THE OTHER REVENUES.

16 Q. YOU DON'T KNOW WHAT PORTION IS FROM PLAYER LICENSING AND  
17 WHAT PORTION IS FROM OTHER INCOME, RIGHT?

18 YOU JUST DON'T KNOW?

19 A. I DON'T KNOW.

20 Q. THANK YOU.

21 THEN, I SEE --

22 **THE COURT:** LOOK, ARE WE GOING DOWN THE ENTIRE --

23 **MR. KESSLER:** NO. I'LL DO ONE LAST QUESTION.

24 **THE COURT:** YOU'VE MADE YOUR POINT.

25 **MR. KESSLER:** THANK YOU, YOUR HONOR. I MADE MY

1 POINT, I THINK.

2 **THE COURT:** ALL RIGHT. ANYTHING MORE?

3 **MR. HUMMEL:** NOTHING FURTHER, YOUR HONOR.

4 **MR. KESSLER:** NOTHING FURTHER, YOUR HONOR.

5 **THE COURT:** CAN THIS WITNESS BE DISCHARGED FROM ANY  
6 SUBPOENA AND FREE TO GO?

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

8 **MR. KESSLER:** WE HAVE NO FURTHER USE FOR THIS  
9 WITNESS.

10 **THE COURT:** DR. RASCHER, THANK YOU FOR COMING.  
11 YOU'RE FREE TO GO. YOU ARE NOT SUBJECT TO RECALL. YOU CAN  
12 TAKE WITH YOU ANY ANYTHING YOU BROUGHT, BUT PLEASE LEAVE OUR  
13 EXHIBITS HERE.

14 **THE WITNESS:** THANK YOU, YOUR HONOR. THANK YOU,  
15 MEMBERS OF THE JURY.

16 **THE COURT:** YOU ARE MOST WELCOME.

17 LET'S GIVE A HEADS-UP TO THE JURY.

18 I'M NOT SURE WE SHOULD START ANOTHER WITNESS IF WE  
19 ARE NOT GOING TO FINISH HIM.

20 **MR. HUMMEL:** I AGREE WITH THAT, YOUR HONOR. I DON'T  
21 SEE A WAY TO DO THAT.

22 **THE COURT:** TAKE A MOMENT AND GIVE THE JURY A  
23 HEADS-UP ON WHERE WE ARE IN TERMS OF WHERE YOU ARE IN YOUR  
24 CASE, SO THEY CAN HAVE AN IDEA.

25 **MR. HUMMEL:** I WILL, YOUR HONOR.

1 LADIES AND GENTLEMEN, WE HAVE TWO MORE WITNESSES TO  
2 GO. THE SECOND WITNESS IS A FINANCIAL ANALYST WHO LOOKED AT --  
3 AN EXPERT FINANCIAL ANALYST WHO LOOKED AT THEIR INTERNAL  
4 RECORDS AND MADE A DETERMINATION ABOUT THE FOLLOWING QUESTION:  
5 WHETHER IF THE RETIRED PLAYERS WERE INCLUDED IN THE GROUP  
6 LICENSING POOL, WHAT AMOUNTS WOULD HAVE FLOWED TO THE RETIRED  
7 PLAYER GROUP.

8 THAT'S THE ISSUE, AND HE WILL TESTIFY TO THAT UNDER  
9 SOME ASSUMPTIONS ON MONDAY.

10 WE HAVE ONE OTHER WITNESS WHO IS PAT ALLEN, WHO IS  
11 THE WIFE OF DOUG ALLEN, AND SHE WILL COME IN, I THINK, TUESDAY,  
12 MR. KESSLER?

13 **MR. KESSLER:** TUESDAY.

14 **MR. HUMMEL:** TUESDAY TO PROVIDE TESTIMONY. SHE HAD  
15 TO BE OUT OF TOWN, SO WE'RE GOING TO CALL HER ON TUESDAY.

16 **THE COURT:** OUT OF TURN.

17 **MR. HUMMEL:** OUT OF TURN DURING THEIR CASE.

18 **MR. KESSLER:** YOUR HONOR, IF I COULD HAVE ONE MINUTE.

19 **THE COURT:** TAKE YOUR MINUTE.

20 **MR. KESSLER:** LADIES AND GENTLEMEN, I'M HAPPY TO  
21 INFORM YOU THAT THE DEFENSE CASE IS GOING TO BE MERCIFULLY  
22 SHORT. OKAY?

23 WE DON'T BELIEVE THAT THERE'S A LOT MORE INFORMATION  
24 YOU'RE GOING TO NEED IN THIS CASE IN ORDER TO DECIDE IT FAIRLY  
25 AND CORRECTLY.

1           SO I EXPECT WE'LL BE ON A FEW DAYS NEXT WEEK IN OUR  
2 CASE, PROBABLY TO WEDNESDAY OR THURSDAY, DEPENDING ON HOW LONG  
3 THEY GO.

4           BUT THEN, HOPEFULLY, YOU CAN THEN BRING THIS CASE TO  
5 AN END.

6           SO THANK YOU VERY MUCH.

7           **THE COURT:** ALL RIGHT. THAT'S WHERE WE ARE.

8           MY ESTIMATE IS THAT THE CASE WILL GO TO YOU FOR  
9 ARGUMENT ON MAYBE FRIDAY OF NEXT WEEK. AND THEN -- WHAT IS  
10 FRIDAY NEXT WEEK? THAT'S THE 7TH. BUT THAT YOU SHOULD COUNT  
11 ON BEING HERE THE FOLLOWING WEEK. I THINK AT A MINIMUM YOU  
12 WOULD BE DELIBERATING THE FOLLOWING WEEK, ALTHOUGH THE 11TH, AS  
13 I TOLD YOU, IS ARMISTICE'S DAY, NOVEMBER 11, 11:00 A.M. THE  
14 11TH MONTH, THE 11TH DAY, THE ELEVENTH HOUR, IF YOU SOME YOU OF  
15 KNOW YOUR HISTORY.

16           I SEE BLANK LOOKS OVER THERE. YOU THINK I'M A  
17 LUNATIC. BUT, ANYWAY, WHEN I WAS A KID IN SCHOOL THEY MADE US  
18 LEARN ALL THAT.

19           ANYWAY, THAT'S ARMISTICE'S DAY. AND YOU WILL GET  
20 BONUS POINTS IF YOU KNOW WHERE THAT TOOK PLACE.

21           ANY OF YOU KNOW?

22           (NO RESPONSE.)

23           **THE COURT:** NO. ALL RIGHT. WELL, YOU CAN LOOK THAT  
24 UP OVER THE WEEKEND. WHAT YOU CAN'T LOOK UP IS ANYTHING HAVING  
25 TO DO WITH THIS CASE. YOU CAN'T LOOK AT ANY PRESS REPORTS.

1 YOU CAN'T TALK TO ANYONE. YOU'VE GOT TO KEEP AN OPEN MIND.

2 THE LAWYERS SAY IT'S OKAY IF YOU TAKE YOUR NOTEBOOKS  
3 HOME AND STUDY THOSE. THAT'S FINE.

4 REMEMBER THE EVIDENCE YOU'VE GOT TO DECIDE THIS CASE  
5 FROM COMES SOLELY FROM HERE IN THE COURTROOM. NO INDEPENDENT  
6 INVESTIGATIONS, NO NOTHING.

7 SO WE -- WE WILL SEE YOU PACK HERE AT THE REGULAR  
8 TIME ON MONDAY, NOVEMBER 3RD. AND I HOPE YOU HAVE A HAPPY  
9 HALLOWEEN.

10 ALL RIGHT. ANYTHING MORE BEFORE I LET THE JURY GO?

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

12 **THE COURT:** OKAY. GREAT. SEE YOU ON MONDAY. THANK  
13 YOU.

14 (THEREUPON, THE JURY LEFT THE COURTROOM.)

15 **THE COURT:** OKAY. HAVE A SEAT.

16 ANYTHING THE LAWYERS WANT TO BRING UP?

17 **MR. KESSLER:** I'LL JUST HAND UP, YOUR HONOR, WE MADE  
18 OUR SUGGESTIONS TO THEIR SCRAMBLING INSTRUCTION.

19 YOUR HONOR CAN LOOK AT THAT. WE JUST MADE A FEW  
20 CHANGES TO IT.

21 **MR. KATZ:** DO I GET A COPY?

22 **MR. KESSLER:** I CAN READ IT TO YOU OR THE COURT CAN.

23 **THE COURT:** I'M SORRY, WHAT DID I DO WITH IT? HERE  
24 IT IS. HAVE A SEAT, EVERYONE.

25 I LOOKED AT IT, AS WELL, AND I DID MAKE A CHANGE TO

1 WHAT I'M ABOUT TO HAND YOU, BASED ON WHAT MR. KATZ HANDED UP.

2 BUT IT'S NOT EXACTLY WHAT HE HANDED UP, EITHER.

3 I'M GOING TO GIVE TO EACH OF YOU -- DAWN, WOULD YOU  
4 HAND ONE COPY TO EACH SIDE?

5 THIS IS A PRELIMINARY DRAFT OF THE MEAT OF THE  
6 INSTRUCTIONS. IT DOES NOT HAVE THE PRELIMINARY INSTRUCTIONS ON  
7 BURDEN OF PROOF AND SO FORTH. BUT -- NOR DOES IT HAVE THE  
8 CONCLUDING INSTRUCTIONS.

9 BUT IT HAS A PRETTY GOOD FIRST CUT AT THE SUBSTANTIVE  
10 LAW.

11 SO WHAT I WANT YOU TO DO BY SUNDAY AT 5:00 P.M. IS TO  
12 FILE A 5-PAGE CRITIQUE. JUST FIVE PAGES. PLEASE DON'T DO  
13 ANYTHING MORE. FIVE PAGES ONLY. AND THAT WAY I'LL GET WHAT I  
14 KNOW IS THE THINGS THAT YOU HAVE THE GREATEST HEARTBURN OVER.

15 AND THEN, YOU WILL LATER -- NEXT WEEK YOU WILL GET A  
16 MUCH -- YOU KNOW, A COMPLETE SET THAT WILL TAKE INTO ACCOUNT  
17 YOUR CRITIQUE.

18 AND THEN, WE'LL GET A CHANCE TO DO IT ALL OVER AGAIN,  
19 AND YOU'LL HAVE A CHANCE TO OBJECT TO EVEN THE SMALL POINTS  
20 THAT YOU DON'T LIKE ABOUT THESE INSTRUCTIONS.

21 BUT I URGE YOU TO CONCENTRATE YOUR FIRE IN THOSE FIVE  
22 PAGES ON THE POINTS THAT YOU THINK MEAN THE MOST TO YOU. AND  
23 WE'LL -- THAT YOU MOST OBJECT TO. OR THINGS THAT YOU THINK YOU  
24 MIGHT EVEN THINK:

25 "WELL, THESE ARE FINE AS FAR AS THEY GO, BUT

1 WE'VE GOT TO ADD THINGS."

2 SO THAT CRITIQUE WILL BE VERY -- VERY USEFUL.

3 NOW, I HAVE DRAFTED THESE LARGELY MYSELF, WITH A  
4 LITTLE BIT OF INPUT FROM MY LAW CLERK. AND I'VE DRAFTED IT  
5 WITH A VIEW TOWARDS EVERYTHING THAT I'VE HEARD IN THE TRIAL, SO  
6 THAT I HAVE A GOOD SENSE OF WHAT THE ISSUES ARE AND THE  
7 SPECIFIC POINTS THAT THE JURY MUST DECIDE.

8 AND THAT'S THE WAY I LIKE TO DO INSTRUCTIONS. I LIKE  
9 TO ZERO IN ON THE POINTS THAT THEY REALLY HAVE GOT TO DECIDE,  
10 AND THEN GIVE THEM THE LAW THAT WILL HELP THEM DECIDE THAT  
11 POINT.

12 ANYWAY, I'M JUST NOW -- I'M JUST RUNNING ON, SO I'LL  
13 STOP ON THAT.

14 THERE'S NOTHING YOU NEED TO SAY ON THIS AT THIS  
15 POINT.

16 BUT 5:00 P.M. WOULD YOU PLEASE SUBMIT IT ON SUNDAY?

17 **MR. KESSLER:** 5:00 P.M. SUNDAY?

18 **THE COURT:** SUNDAY. SO I CAN GET IT THAT EVENING AND  
19 I WILL BE IN A POSITION TO LOOK AT IT THE NEXT MORNING. I  
20 EARLIER SAID 5:00 O'CLOCK ON MONDAY MORNING. FORGET THAT. I  
21 WANT IT 5:00 P.M. ON SUNDAY.

22 **MR. KESSLER:** THAT'S WHY I SAID THAT.

23 **THE COURT:** THANK YOU FOR CLARIFYING.

24 IN TERMS OF TIME, THE PLAINTIFFS HAVE NOW USED BY MY  
25 NOTES 828 MINUTES OUT OF A TOTAL OF 1,080 THAT IS AVAILABLE.

1           SO YOU'RE GETTING DOWN TO THE POINT WHERE YOU NEED TO  
2 BE CAREFULLY MARSHALING IF YOU WANT TO HAVE ANY TIME LEFT FOR  
3 CROSS EXAMINATION OR FOR ANY REBUTTAL.

4           AND THEN, FOR THE -- I CAN GIVE YOU THE NUMBERS FOR  
5 THE DEFENSE ARE 532 PLUS 24, 38 AND 30. I HAVEN'T DONE THE  
6 MATH ON THAT. BUT IT IS LESS THAN WHAT THE PLAINTIFFS HAVE  
7 USED SO FAR.

8           OKAY. NOW, WITH THAT IS THERE ANYTHING THAT YOU WANT  
9 TO RAISE WITH ME BEFORE WE ADJOURN FOR THE WEEKEND?

10           **MR. KESSLER:** NOTHING FURTHER FROM DEFENDANTS, YOUR  
11 HONOR, EXCEPT TO WISH YOU A GOOD WEEKEND.

12           **THE COURT:** THANK YOU. ANYTHING ON YOUR SIDE?

13           **MR. PARCHER:** NOTHING.

14           **MR. KATZ:** THANK YOU, YOUR HONOR.

15           **THE COURT:** ALL RIGHT. DAWN, I WANT TO GIVE THE  
16 LAWYERS A HEADS-UP. IT SEEMS LIKE THERE'S SOME DAYS NEXT WEEK  
17 WHEN WE HAVE SOME CONFLICTS IN THE --

18           **THE CLERK:** CONFLICTS FOR THE TRIAL?

19           **THE COURT:** WELL, LET'S SEE. ON THE DIAZ CASE, IS  
20 THAT GOING TO BE IN THE AFTERNOON, THE PRETRIAL CONFERENCE?

21           **THE CLERK:** PRETRIAL WAS ALWAYS SET IN THE AFTERNOON.

22           **THE COURT:** DID YOU PUT THAT INTO THE AFTERNOON?

23           **THE CLERK:** IT WAS ALREADY, PREVIOUSLY SET.

24           **THE COURT:** IS THERE ANY OTHER CONFLICT?

25           **THE CLERK:** THE LAW AND MOTION. THAT'S IT.

1           **THE COURT:**  NOTHING ELSE?  ALL RIGHT.

2           **MR. PARCHER:**  MAY I ASK YOU A QUESTION?

3           **THE COURT:**  OF COURSE.

4           **MR. PARCHER:**  HAVE YOU GIVEN US ANY THOUGHT ON HOW  
5 LONG YOU ARE GOING TO GIVE US ON SUMMATION, IN MY CASE THE  
6 SUMMATION AND A LITTLE EXTRA AFTER WHAT MR. KESSLER HAS TO SAY?

7           **THE COURT:**  I WANT TO GET YOUR INPUTS ON THAT.

8           **MR. PARCHER:**  OKAY.

9           **THE COURT:**  WHAT DO YOU THINK?

10          **MR. PARCHER:**  WELL, I HAVE TO BE CANDID AND SAY I'M  
11 NOT USED TO THE LIMITATION.  SO I'M TRYING TO GAUGE MY ANSWER  
12 SO IT'S CALCULATED TO GET YOUR HONOR TO SAY YES.

13                   I THINK TWO HOURS WOULD DO IT.

14          **MR. KESSLER:**  I THINK THAT'S MORE THAN WE NEED, YOUR  
15 HONOR.  I WOULD SAY PERHAPS 90 MINUTES.  AND I THINK IT SHOULD  
16 BE THE SAME TOTAL FOR BOTH SIDES.

17                   AND IF MR. PARCHER WANTS TO BREAK IT UP I THINK HE'S  
18 ENTITLED TO DO THAT, TO GO FIRST AND LAST, AS I UNDERSTAND HOW  
19 YOUR HONOR CONDUCTS THIS.  BUT IT SHOULD BE THE SAME TOTAL, NOT  
20 ANY MORE.

21          **THE COURT:**  WELL, IT WILL BE THE SAME AMOUNT,  
22 WHATEVER IT IS.  BUT TWO HOURS -- I'VE BEEN ON THIS BENCH NOW  
23 NINE AND A HALF YEARS AND NO ONE HAS EVER GOTTEN TWO HOURS.  
24 THAT'S TOO MUCH.

25          **MR. PARCHER:**  WE'RE COMING UP TO ARMISTICE'S DAY.

1           **THE COURT:** PORTENDS NOTHING FOR SETTLEMENT IN THIS  
2 CASE. THERE'S NO ARMISTICE IN THIS.

3           **MR. PARCHER:** I KNEW THE QUOTE. YOU SAID WE GET  
4 POINTS.

5           **THE COURT:** YOU DO. YES, YOU DO.

6           **MR. PARCHER:** OKAY.

7           **THE COURT:** BUT YOU DIDN'T GIVE ME THE MAGIC ANSWER  
8 WHERE IT TOOK PLACE.

9           **MR. PARCHER:** I DON'T KNOW.

10          **MR. KATZ:** VERSAILLES.

11          **MR. PARCHER:** WELL, IF YOU GIVE ME A CHANCE, I WAS  
12 GOING TO --

13          **MR. FEHER:** COMPIEGNE.

14          **THE COURT:** VERY GOOD.

15          **MR. FEHER:** THE RAILROAD CAR.

16          **THE COURT:** RAILROAD CAR, AND IT'S STILL THERE  
17 SOMEPLACE.

18                   THE OTHER SIDE GOT THE BONUS POINTS.

19          **MR. PARCHER:** AS HE POINTED OUT SO GRACIOUSLY TO THE  
20 JURY, MERCIFULLY HIS CASE IS GOING TO BE A LOT SHORTER.

21          **MR. KESSLER:** I HAVE TO TALK ABOUT HIS CASE, TOO.

22          **MR. PARCHER:** DOESN'T HAVE MUCH TO SAY IN DEFENSE OF  
23 HIMSELF.

24          **THE COURT:** I DON'T THINK ANYBODY CAN COUNT ON TWO  
25 HOURS. I KNOW YOU ARE GOING TO GET MORE THAN ONE HOUR. I

1 DON'T KNOW WHERE IN-BETWEEN. I GOT TO THINK. I NEED TO  
2 BALANCE A LOT OF FACTORS.

3 IF THIS WAS THE ONLY CASE I HAD, I STILL WOULD HAVE  
4 TO TAKE INTO ACCOUNT THE CONVENIENCE TO THE JURY. BUT THERE  
5 ARE A LOT OF FACTORS TO TAKE INTO ACCOUNT. AND -- BUT IT WILL  
6 BE SOMEWHERE BETWEEN 60 AND SOMETHING LESS THAN TWO HOURS. SO  
7 YOU JUST HAVE TO LET ME THINK ABOUT WHAT IS A FAIR THING TO DO.

8 **MR. KESSLER:** THAT'S FINE, YOUR HONOR. AND IT WOULD  
9 BE HELPFUL -- I'M SORRY. GO AHEAD.

10 **MR. PARCHER:** I'M NOT TRYING TO PRESS MY LUCK HERE.  
11 I WANT TO GIVE A SPEECH BEFORE I MADE --

12 **THE COURT:** PRESS YOUR LUCK.

13 **MR. PARCHER:** -- MY COMMENT, BUT WE'RE GOING TO HAVE  
14 BEEN HERE ABOUT A MONTH. I DON'T WANT -- I DON'T WANT TO STAY  
15 ONE MINUTE MORE THAN I HAVE TO. I PROMISE YOU THAT. I DON'T  
16 WANT TO STAY ONE MINUTE MORE.

17 AND I'LL TRY TO SAY A LOT LESS BECAUSE I KNOW HOW  
18 YOUR HONOR FEELS ABOUT IT. BUT BE MERCIFUL IS THE WORD.

19 **THE COURT:** YOU CAN'T HELP YOURSELF. YOU SAY ALL  
20 THESE EXTRA THINGS.

21 **MR. PARCHER:** WELL, THAT'S PART OF MY CHARM.

22 (LAUGHTER)

23 **MR. PARCHER:** JOYCIE HAS BEEN MARRIED TO ME FOR 48  
24 YEARS, AND SHE -- WELL, SHE COMPLAINS A LITTLE BIT ABOUT IT,  
25 BUT NOT PUBLICLY.

1           **MR. KESSLER:** WHAT I WOULD ASK YOUR HONOR, IF  
2 POSSIBLE, AS I SAID WE THINK 90 MINUTES IS ADEQUATE. BUT IF  
3 YOU COULD LET US KNOW BY TUESDAY MORNING, BECAUSE OBVIOUSLY  
4 WE'RE GOING TO BE PREPARING OUR CLOSING EVEN AS WE'RE STILL  
5 DOING THE CASE. AND SO IF WE HAVE SOME GUIDANCE AS TO THE TIME  
6 IT WILL HELP US FOCUS THAT.

7           **THE COURT:** I KNOW YOU DO. AND I KNOW YOU NEED IT.  
8 BUT IT'S TOO SOON.

9           **MR. KESSLER:** I UNDERSTAND.

10          **THE COURT:** IT'S TOO SOON TO SETTLE ON A TIME LIMIT.

11          **MR. PARCHER:** AND IF I GET THE TIME I'LL START OFF  
12 THE SUBMISSION BY SAYING "GLA, GLA." I'LL SAY IT TWICE

13          **THE COURT:** OKAY. HEARING NOTHING MORE WE'RE GOING  
14 TO ADJOURN. AND SEE YOU AT 7:30 ON MONDAY MORNING.

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

16          **MR. PARCHER:** THANK YOU, JUDGE.

17          (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL MONDAY, NOVEMBER 3,  
18 2008 AT 7:30 O'CLOCK A.M.)

19                                    **CERTIFICATE OF REPORTER**

20           I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
21 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

22   DATE:    FRIDAY, OCTOBER 31, 2008

23                                    S/B KATHERINE POWELL SULLIVAN  
24                                    \_\_\_\_\_

25           KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR  
                                  U.S. COURT REPORTER

I N D E X

	<u>PLAINTIFF'S WITNESSES</u>	<u>PAGE</u>	<u>VOL.</u>
3	<b>BERTHELSEN, RICHARD</b>		
	Direct Examination by Mr. Hummel	1619	8
4	Cross Examination by Mr. Kessler	1655	8
5	<b>NAHRA, JOSEPH</b>		
	Direct Examination by Mr. Leclair	1661	8
6	Cross Examination by Mr. Kessler	1692	8
	Redirect Examination by Mr. LeClair	1709	8
7			
	<b>RASCHER, DAN</b>		
8	Direct Examination by Mr. Hummel	1718	8
	Cross Examination by Mr. Kessler	1741	8
9	REDIRECT EXAMINATION BY MR. HUMMEL	1801	8
10	RECROSS EXAMINATION BY MR. KESSLER	1807	8

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

E X H I B I T S

<u>TRIAL EXHIBITS</u>	<u>IDEN</u>	<u>VOL.</u>	<u>EVID</u>	<u>VOL.</u>
1148			1665	8
56			1674	8
1034			1675	8
521			1678	8
522			1682	8
Multiple Exhibits Listed On Record			1691	8
1208-3			1731	8
1208-1			1745	8
1275-3			1777	8