

Volume 14

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

BERNARD PAUL PARRISH, HERBERT)
ANTHONY ADDERLEY, WALTER ROBERTS)
III,)
)
Plaintiffs,)

VS.

No. C 07-0943 WHA

NATIONAL FOOTBALL LEAGUE PLAYERS)
ASSOCIATION and NATIONAL FOOTBALL)
LEAGUE PLAYERS INCORPORATED d/b/a)
PLAYERS INC,)
)
Defendants.)

San Francisco, California
Monday
November 10, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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(Appearances continued on next page)

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Reported By:

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Official Reporter - U.S. District Court

P R O C E E D I N G S

1
2 **NOVEMBER 10, 2008**

1:41 P.M.

3 (The following proceedings were held in open court,
4 outside the presence of the jury.)

5 **THE COURT:** Welcome back. Everyone have a seat.

6 We have a note saying they have reached a verdict.

7 So my plan is to bring them in and get the verdict.

8 Any objections?

9 **MR. KATZ:** No objection.

10 **MR. KESSLER:** No objections, Your Honor. Sounds like
11 a plan.

12 **THE COURT:** Let's bring our jury in.

13 (Thereupon, the jury returned to the courtroom.)

14 **THE COURT:** All right. Welcome back. Have a seat,
15 everyone.

16 Ms. Desouza, you're our foreperson, correct?

17 **FOREPERSON MS. DESOUZA:** Yes.

18 **THE COURT:** Have you reached a unanimous verdict?

19 **FOREPERSON MS. DESOUZA:** Yes.

20 **THE COURT:** Did you date and sign the form?

21 **FOREPERSON MS. DESOUZA:** Yes.

22 **THE COURT:** In other words, there is a date on there?

23 **FOREPERSON MS. DESOUZA:** Yes.

24 **THE COURT:** And a signature?

25 **FOREPERSON MS. DESOUZA:** Yes.

1 **THE COURT:** Would you hand the form to the marshal.
2 The marshal will hand it to me.

3 Now, what I'm going to do is look at this, in just a
4 moment, to make sure it's in the right form. And then if it
5 is, I'll hand it to the clerk to read.

6 But I would like to say what I'm about to say before
7 I open this up so there won't be any doubt as to what you
8 decide. It's completely your decision, and my thanks to you is
9 independent of that, and makes no difference to me which way
10 your verdict is. That's a great thing about our American jury
11 system. So I want to thank all of you for your hard work and
12 attention in this case over many weeks. It's what makes our
13 country great, to have good citizens like you who will come in
14 and serve their country. You made a big sacrifice. Thank you
15 for doing that.

16 Now I'm going to open this up. It's all sealed up.
17 If it's in good order, I'll get the clerk to read it.

18 All right. What I'm going to do is give this to the
19 clerk. The clerk will read each question. And at the end, we
20 will ask you whether or not the verdict as read is your
21 individual verdict. That way we will know that it's unanimous.
22 So, please, listen carefully as the clerk reads the verdict.

23 **THE CLERK:** Okay. Thanks.

24 Ladies and gentlemen of the jury, listen to your
25 verdict as it will stand recorded.

1 In the case of Herbert Anthony Adderley versus
2 National Football League Players Association and National
3 Football Players -- I'm sorry, National Football League Players
4 Incorporated, the special verdict form is:

5 Answer to question number 1:

6 "On behalf of the class, has plaintiff proven by a
7 preponderance of the evidence a class-wide breach of any term
8 of the RPGLA?"

9 No. I'm sorry. Answer:

10 "Yes."

11 Question 2:

12 "If the answer to question No. 1 is 'Yes,' then state
13 the amount of damages to class members, if any, plaintiff has
14 proven by reason of any such breach."

15 Dollar amount is zero.

16 Question 3:

17 "On behalf of the class, has plaintiff proven by a
18 preponderance of the evidence that defendants owed a fiduciary
19 duty to the RPGLA Class in connection with the RPGLA?"

20 Answer: "Yes."

21 Question 4:

22 "If your answer to Question No. 3 is 'Yes,' then
23 state whether plaintiff has proven by a preponderance of the
24 evidence any class-wide breach of fiduciary duty by defendants
25 under the RPGLA.

1 Answer: "Yes."

2 Question 5: "If your answer to Question No. 4 is
3 'Yes,' then state the amount of damages to class members, if
4 any, plaintiff has proven by reason of any such breach.

5 Answer: "7.1 million."

6 Question 6: "If the answer to Questions No. 3 and
7 No. 4 are 'Yes,' then state whether plaintiff has proven by
8 clear and convincing evidence that punitive damages should be
9 imposed on defendants."

10 Answer: "Yes."

11 It's signed and dated by the foreperson on
12 November 10, 2008.

13 **THE COURT:** All right. Let's poll each member of the
14 jury, please.

15 **THE CLERK:** Lisa Desouza, is the verdict read your
16 verdict?

17 **FOREPERSON MS. DESOUZA:** Yes.

18 **THE CLERK:** Nancy Jean Smith is the verdict read your
19 verdict?

20 **JUROR MS. SMITH:** Yes.

21 **THE CLERK:** Danny C. Chui, is the verdict read your
22 verdict?

23 **JUROR MR. CHUI:** Yes.

24 **THE CLERK:** Douglas Neville, is the verdict read your
25 verdict?

1 **JUROR MR. NEVILLE:** Yes.

2 **THE CLERK:** Debra Jean Martin, is the verdict read
3 your verdict?

4 **JUROR MS. MARTIN:** Yes.

5 **THE CLERK:** Lana Lim Ma, is the verdict read your
6 verdict?

7 **JUROR MS. MA:** Yes.

8 **THE CLERK:** Laura Yamane, is the verdict read your
9 verdict?

10 **JUROR MS. YAMANE:** Yes.

11 **THE CLERK:** Ofelia Schwartzler, is the verdict read
12 your verdict?

13 **JUROR MS. SCHWARTZLER:** Yes.

14 **THE CLERK:** Natalie Hart, is the verdict read your
15 verdict?

16 **JUROR MS. HART:** Yes.

17 **THE CLERK:** And, Amy Holm, is the verdict read your
18 verdict?

19 **JUROR MS. HOLM:** Yes.

20 **THE CLERK:** Your Honor, the verdict is unanimous.

21 **THE COURT:** All right. We will move directly into
22 the proceeding where you determine the amount of punitive
23 damages. That's the short, supplemental proceeding. I'm going
24 to ask you to take a 15-minute break at this point. And when
25 you come back, you will hear the supplemental proceedings and

1 the supplemental argument, and then you will go back into the
2 jury room to determine the amount of any punitive damages.

3 All right. So thank you. Your job is not done yet.
4 We'll see you back in here in a few minutes.

5 **THE CLERK:** All rise.

6 (Jury in recess.)

7 (The following proceedings were held in open court,
8 outside the presence of the jury.)

9 **THE COURT:** Plaintiff, do you have any additional
10 witnesses you wish to put on?

11 **MR. KATZ:** Yes, we do, Your honor.

12 We are calling now Mr. Rowley, our damages expert, to
13 come back.

14 **THE COURT:** He better be here in 15 minutes.

15 **MR. KATZ:** He is within 15 minutes of the courtroom,
16 Your Honor. He's on standby and he's coming right away from
17 One Market.

18 **THE COURT:** All right. The --

19 **MR. KATZ:** And we also will call Mr. Berthelsen.

20 **THE COURT:** You can call him first. Each side only
21 has about 30 minutes of time left. So this is going to be
22 brief, as we promised the jury.

23 **MR. KATZ:** I'm going to call Mr. Berthelsen. I think
24 I have about 15 minutes with him and about 15 minutes with
25 Mr. Rowley.

1 **THE COURT:** All right. You have enough time to do
2 that.

3 **MR. KATZ:** All right.

4 **THE COURT:** Enough time remaining, is what I mean.

5 **MR. KATZ:** What is Your Honor's thought with respect
6 to closings?

7 **THE COURT:** Each side will get about 15 minutes to do
8 their argument.

9 **MR. KATZ:** All right.

10 **THE COURT:** Then the jury goes back and decides the
11 amount.

12 **MR. KATZ:** So I would take then ten, and then five
13 after Mr. Kessler's case.

14 **THE COURT:** That's fine.

15 Mr. Kessler, anything you want to bring up by way of
16 procedure?

17 **MR. KESSLER:** Well, first, Your Honor, I don't know
18 if you want now to hear we obviously would renew our motion for
19 JMOL, Your Honor, both with respect to the liability
20 determinations, and with respect to the damage determinations,
21 and with respect to the punitive damages --

22 **THE COURT:** All of that is renewed. But we have a
23 jury that hasn't had a completed verdict yet.

24 **MR. KESSLER:** Okay.

25 **THE COURT:** So we can't just hold them in abeyance

1 until we argue ad infinitum over those items.

2 **MR. KESSLER:** I understand, Your Honor.

3 **THE COURT:** You have to let them make their decision.

4 **MR. KESSLER:** I wanted to preserve our motions which
5 we will argue at some point. Obviously, Your Honor, in terms
6 of timing, I will need some time, and I understand the
7 constraints, to cross-examine, obviously, their witnesses that
8 they are going to put on.

9 **THE COURT:** Each side has about 30 minutes left of
10 time. So when we run out of time, we run out of time.

11 Can I just give each side 30 minutes -- can we just
12 agree on 30 minutes of evidence time per side?

13 **MR. KATZ:** Sure.

14 **THE COURT:** All right. So use your -- how about you,
15 Mr. Kessler?

16 **MR. KESSLER:** If that's all Your Honor is allowing,
17 that's it. I do think this is an important issue, but I
18 understand Your Honor's determination. But I guess I would
19 object to the limitations on the time on this issue, but, Your
20 Honor --

21 **THE COURT:** Do you want me to go back and add up the
22 amount of time you have left? I will. It might not even be 30
23 minutes. But if it's more, then I will give each side more.

24 **MR. KATZ:** Your Honor, if you're finished with that,
25 I have another subject.

1 **THE COURT:** Sure.

2 **MR. KATZ:** Your Honor has given an instruction on
3 punitive damages, but, then, there is yet another standard D.C.
4 instruction, number 16.3, which deals with the computation.

5 **THE COURT:** Yes, I need to have that. Do we have
6 that here?

7 **MR. KATZ:** I have a copy of it, Your Honor. It's
8 slightly marked, but I can give it to you.

9 **THE COURT:** I'm going to need to instruct on that.
10 I'll ask my law clerk to go find whatever we have on that
11 subject.

12 **MR. KATZ:** If you'll just give me a moment, Your
13 Honor.

14 **THE COURT:** Sure.

15 **MR. KATZ:** Do you intend to read 16.01 again to them,
16 which is what you gave the other day?

17 **THE COURT:** I have already given that once before.

18 **MR. KATZ:** Right.

19 **THE COURT:** Let me see the part that I haven't given
20 yet.

21 **MR. KATZ:** Here's 16.01 and 16.03. I have made some
22 underlinings on them, but they are of no consequence.

23 **MR. KESSLER:** Well, Your Honor, there are factors
24 here in which we never had -- I don't know what he intends to
25 put in. We've never even had any discovery on, for example,

1 charging them about the amount of attorneys' fees the
2 plaintiffs have incurred in the case, or things of that nature.

3 I don't know whether he intends to put that on. But
4 if that's to be the case, Your Honor, frankly, I don't think
5 there should be a proceeding immediately.

6 **MR. KATZ:** We don't intend to put on evidence
7 regarding attorneys' fees, Your Honor. Although, I think Your
8 Honor can still give that instruction.

9 The jury obviously is going to know --

10 **THE COURT:** I'll take out the word "the costs," and
11 put in "the duration of the litigation."

12 I think they can infer and use common sense as to
13 what the -- that entails, costs.

14 But I think the attorneys' fees, it would be unfair
15 at this stage to inject that into the case.

16 **MR. KATZ:** We're not going to inject it, but I still
17 think that those words can remain in the instruction because
18 the jury will obviously know that attorneys' fees are part of
19 this. And the parties did agree to D.C. law.

20 **THE COURT:** I'm going to put in "burden" instead.
21 I'll say "the burden and duration of the litigation."

22 That will just be a point of argument. You can say:
23 Look how many lawyers were in the courtroom, and so forth, how
24 many depositions you heard from.

25 But it would be unfair to start trotting out -- and

1 you can argue attorneys' fees. In other words, you can say:
2 All these attorneys aren't free, they cost something.

3 **MR. KATZ:** Okay.

4 **THE COURT:** But the -- discovery wasn't taken on
5 this. It wouldn't be fair, at this stage, to start laying
6 attorneys' fees and billing rates and so forth before the jury.

7 But I'll substitute "the burden and duration of the
8 litigation."

9 **MR. KATZ:** Also, Your Honor, we will be -- I don't
10 know where the exhibits are right now. I will be using a
11 couple of those exhibits.

12 **THE COURT:** Which ones? The financial statements?

13 **MR. KATZ:** Yeah, 22 -- one is in. The 2007 financial
14 statement is in. I believe that's 1024. And, also, we're
15 going to put in the 2008 financial statement, which is 2242, I
16 believe.

17 **THE COURT:** Is that in yet?

18 **MR. KATZ:** It is not in yet.

19 **THE COURT:** At this point, it should be in.

20 So, do you want the jury to return, for use during
21 the argument, the earlier exhibit you mentioned?

22 **MR. KATZ:** Well, I -- actually, I think that it's
23 overtaken by the '08 ones. And I believe that Mr. Berthelsen
24 is going to be able to --

25 **THE COURT:** Do you have that here in the courtroom?

1 **MR. KATZ:** I have copies of it, yeah.

2 **THE COURT:** All right.

3 **MR. KATZ:** Now, another thing, Your Honor, we don't
4 have our audiovisual equipment anymore. So what we have done
5 is that we have made sufficient -- I'm going to be using, I
6 want to say, three or four exhibits. We've made sufficient
7 copies to give to the jury and to give, of course, Your Honor,
8 and Mr. Kessler.

9 We would ask permission to hand those out --

10 **THE COURT:** It's okay with me, as long as Mr. Kessler
11 looks at it and makes sure it's an accurate copy.

12 **MR. KATZ:** Yeah, these are like the Duff & Phelps
13 report, their financial statement --

14 **THE COURT:** It could be three documents on it.

15 **MR. KESSLER:** I have a question. You say the Duff &
16 Phelps report from 1994?

17 I can't imagine why that would be admissible or
18 relevant to this proceeding. He's not entitled now, Your
19 Honor, to reargue liability issues.

20 **MR. KATZ:** I don't intend to do that, Your Honor.

21 **THE COURT:** What does that have to do with the
22 financial net worth or the issues that we're -- the jury has
23 already determined that there should be punitive damages.

24 And, now, it's true that they say "the nature of the
25 wrong committed," but we're not going to go back and start

1 putting exhibits before the jury on the nature -- we had a
2 whole trial on that.

3 **MR. KATZ:** Your Honor, the Duff & Phelps report does
4 give a methodology for computing what they call "enterprise
5 value," which is essentially net worth. Mr. Rowley will
6 testify to that. So I --

7 **THE COURT:** Is that already in evidence?

8 **MR. KATZ:** The Duff & Phelps report is. That's
9 number 93.

10 **THE COURT:** I think the only ones that you should be
11 putting in the jury box are financial statements. I will give
12 you permission to argue, to put the new financial statement in
13 the jury box.

14 But the others are already in evidence. And you can
15 just refer to it in your argument. If you think the Phelps --
16 I think what you have in mind will just deluge the jury with a
17 lap full of documents in what is supposed to be a short
18 proceeding.

19 So I think anything that's already in evidence you
20 just have to argue it. I'm sorry you don't have your equipment
21 here, but you can just argue it the old-fashioned way.

22 But the new financial statement, that one you can
23 hand out.

24 **MR. KATZ:** All right. And then I can show, for
25 example, the Duff & Phelps report to Mr. Rowley, because he

1 will be referring to it in his testimony. I don't --

2 **THE COURT:** Yeah, you can do that.

3 **MR. KATZ:** Yeah.

4 **THE COURT:** You can do that with the testimony of the
5 witness, of course.

6 **MR. KESSLER:** Your Honor, I assume he's going to have
7 a copy for me of these documents.

8 **MR. KATZ:** Oh, yeah.

9 **MR. KESSLER:** We don't have those in the courtroom
10 anymore.

11 **MR. KATZ:** I have a copy for you.

12 **THE COURT:** I'm not going to send in a written
13 version of the instructions. I'm going to read it the
14 old-fashioned way.

15 All right. So --

16 **MR. KATZ:** Your Honor --

17 **THE COURT:** Let's take a moment to let you get
18 organized, and then we'll bring the jury back.

19 **MR. KATZ:** Okay. So do you want the podium here?

20 **THE COURT:** You can move it back, if you want. It's
21 up to you.

22 **MR. KATZ:** For the witnesses, it can be here. For
23 the closing, I would rather -- maybe I can move it over.

24 **THE COURT:** Move it around the way you want. All
25 right. We'll take another 10-minute break, and then we'll come

1 back.

2 **MR. KATZ:** Thank you, Your Honor.

3 (Recess taken from 1:59 to 2:18 p.m.)

4 **THE COURT:** All right. Let's go back to work. We
5 have to get going.

6 Mr. Katz has returned. I did the math, and each side
7 has roughly 40 minutes of time. But I want to say this --
8 evidence time.

9 This is not an occasion, in these supplemental
10 proceedings, to go back over the conduct that led to the wrong
11 in the first place. That evidence is already before the jury.
12 We don't embellish it, at this point.

13 The whole purpose of the supplemental proceeding is
14 to introduce financial information which is usually objected to
15 by the defendant because they don't want that before the jury
16 in deciding liability.

17 So that is what the purpose of the evidence at this
18 stage is, to lay before the jury the factors on which you would
19 not have had an opportunity, like net worth of the defendant,
20 at the time of trial. If there had been discovery provided on
21 the burden and duration of the litigation, but I think the jury
22 can infer from the number of depositions and the number of
23 lawyers and so forth, get a rough estimate of what the burden
24 has been.

25 But we're not going to go back into making

1 Mr. Berthelsen look like a bad guy from the nature of the
2 wrong. That's been done. So don't start asking him questions
3 about fraud and so forth, intending to commit fraud.

4 All right.

5 **MR. KATZ:** Well, Your Honor, obviously, I'm going to
6 follow your guidelines.

7 I have been in other proceedings of this nature where
8 remorse is considered because that goes to the need to deter
9 the behavior. But if Your Honor doesn't want me to go into
10 that, then I won't go into that.

11 I do think it's relevant. And it does require
12 talking a bit about some of the issues that have come up; for
13 example, the scrambling.

14 **THE COURT:** Well, let's ask, Mr. Kessler, are you
15 going to get into those kinds of things?

16 **MR. KESSLER:** Absolutely not, Your Honor. And I
17 object to him doing it, too, certainly, under these time
18 constraints.

19 **THE COURT:** Look. We have already had one trial on
20 the state of mind of the defendant when the wrong was
21 committed. We don't need to embellish that. So remorse is not
22 indicated in this instruction you gave me. So we're just not
23 going to get into that.

24 What you should be getting into is the relative
25 financial condition of the defendant. That's fair game. But

1 all of these other factors -- really, in all the other cases
2 that I've done where there has been punitives, the lawyers
3 don't even try to put on evidence. The only thing additional
4 that comes in is the financial statement, and then we
5 immediately proceed to the argument.

6 So just giving you this opportunity to put on more
7 evidence is already going beyond what is normally done on
8 punitive damages.

9 I just want it to be clear, the purpose of this
10 supplemental evidence is to address issues we haven't addressed
11 yet, namely financial condition. So that's going to be the
12 ruling.

13 Now, if the witness blurts out something that
14 requires a follow-up and so forth, I won't say never, but going
15 into this the ground rule has got to be the number one and only
16 relevant consideration is financial condition of the defendant.

17 I think all of these other factors are either
18 self-evident or -- you -- I will allow you to ask him about the
19 burden and duration of the litigation, because, for example, I
20 guess you could even ask how much has he paid in fees to the
21 other side.

22 **MR. KATZ:** To his lawyers?

23 **THE COURT:** That would be okay. To his lawyers.
24 That would be roughly --

25 **MR. KESSLER:** I would object to that, Your Honor. I

1 don't think that's relevant.

2 **THE COURT:** Well, then, let me ask, has your law firm
3 been paid money, or are you doing this on a contingency?

4 **MR. KATZ:** On a contingency -- it's not a
5 contingency. Your Honor sets the fees.

6 **THE COURT:** How can you get up and say attorneys'
7 fees? Plaintiff hasn't incurred any attorneys' fees.

8 **MR. KATZ:** Actually, it's worse than that. Your
9 Honor sets the fees.

10 **THE COURT:** What?

11 **MR. KATZ:** Only you will know what the fees are going
12 to be, because you set the fees.

13 **THE COURT:** I'm just going to rule: Off limits.

14 You can ask him how long the litigation has gone on,
15 how many depositions there were, if he knows, how many lawyers
16 were involved by -- on the defense side. But to get -- or on
17 the plaintiff side.

18 But we're not going to get into the dollar amount,
19 because the dollar amount of attorneys' fees paid by the
20 defendant is not in your -- it's not in your write-up here,
21 this instruction you gave me.

22 **MR. KATZ:** Well, the instruction does include
23 language about attorneys' fees, Your Honor. I think you've
24 changed that.

25 **THE COURT:** Attorneys' fees that the plaintiff has

1 incurred.

2 **MR. KATZ:** Right.

3 **THE COURT:** It doesn't say that the defendant has
4 incurred.

5 **MR. KATZ:** Right. And I think that --

6 **THE COURT:** I just think to be safe here, I'm not
7 going to go beyond what's in this paragraph.

8 And I think that we ought to stick to what is
9 normally done and customary on these supplemental proceedings,
10 and be very short. So I think you -- I've indicated what I
11 think you can get into.

12 So let's -- but let's get started. This jury is
13 ready to go. We have a shot at getting this over today. I'd
14 like to get it done today.

15 **MR. KATZ:** Also, Your Honor, I have put -- asked your
16 clerk to give you the financial statement.

17 **THE COURT:** I got it.

18 **MR. KATZ:** It's not the original. So -- I mean, I
19 know your rule is we have to use the original document. I'm
20 just saying this is not the original.

21 **THE COURT:** In this case, 2242 can be used without
22 being the original.

23 **MR. KATZ:** Mr. Kessler has a copy, and I put one up
24 there for the witness.

25 **THE COURT:** All right. Dawn, let's bring in our

1 jury.

2 **THE CLERK:** Okay.

3 (Thereupon, the jury returned to the courtroom.)

4 **THE COURT:** Welcome back. Have a seat.

5 All right. We need to have a supplemental
6 proceeding. And let me give you what that's all about.

7 This comes in two parts. The first part is the
8 evidence part, in which you will hear some additional evidence
9 that mainly goes to the financial condition of the defendant at
10 the time of the trial.

11 And as you will see from the jury instructions, the
12 reason that that is relevant is that you can consider, in
13 deciding what the amount of punitive damages should be, what
14 the relative wealth is of the defendant at the time of trial,
15 or the net worth. So there's no set formula. It's just a
16 factor that you can consider.

17 And then, you've already heard most of the evidence
18 in the case that relates to the issue you still need to decide,
19 but you will get, first, some additional evidence, mainly on
20 financial condition. And then there will be part two, which is
21 a short, this time short, argument, 15 minutes per side, that
22 will be on what the dollar amount should be. And then you go
23 and -- to the jury room and decide that issue.

24 At this time, then, we reopen the evidence, and
25 Mr. Katz is going to call a witness for plaintiffs.

1 Mr. Katz.

2 **MR. KATZ:** Thank you, Your Honor. Good afternoon.

3 Good afternoon, ladies and gentlemen of the jury.

4 Plaintiff calls Richard Berthelsen.

5 **THE COURT:** All right. Mr. Berthelsen, please come
6 forward.

7 I can't remember if we excused you, so we'll have to
8 swear you in again. So, please, raise your right hand
9 somewhere in there.

10 **RICHARD BERTHELSEN,**

11 called as a witness for the Plaintiffs herein, having been
12 first duly sworn, was examined and testified as follows:

13 **THE WITNESS:** I do.

14 **THE CLERK:** Okay. Thank you.

15 **THE COURT:** All right. Thank you, Mr. Berthelsen.

16 You know the drill by now.

17 If you can speak into the microphone and adjust it so
18 that it catches your voice, that would be great. Okay.

19 Mr. Katz, please proceed.

20 **MR. KATZ:** Thank you, Your Honor. May it please the
21 Court.

22 **DIRECT EXAMINATION**

23 **BY MR. KATZ:**

24 **Q.** Good afternoon, Mr. Berthelsen.

25 You have before you Exhibit 2242. Could you take a

1 look at that, please.

2 **A.** Okay.

3 **Q.** And just to refresh everybody's recollection, you are
4 currently the interim head of the union, the interim executive
5 director; is that correct?

6 **A.** I'm the acting executive director, yes.

7 **Q.** And you have been with the union for over 27 years; is
8 that correct?

9 **A.** Quite a bit over 27 years, yes.

10 **Q.** Right. And you have been the general counsel of the
11 union?

12 **A.** I have been, yes.

13 **Q.** So the top legal officer?

14 **A.** If you want to call it that, yes.

15 **Q.** And you also offer legal advice to Players Inc; isn't that
16 right?

17 **A.** Very rarely.

18 **Q.** But you have done that?

19 **A.** On infrequent occasions.

20 **Q.** Yes. Isn't it a fact, sir, that Exhibit 2242 is the
21 annual financial report for the National Football League
22 Players Association and NFL Players for the period March 1st,
23 2007, to February 29, 2008?

24 **A.** It appears to be.

25 **MR. KATZ:** I offer Exhibit 2242, Your Honor.

1 **MR. KESSLER:** No objection.

2 **THE COURT:** All right. That's received. 2242 is in.
3 (Trial Exhibit 2242 received in evidence.)

4 **MR. KATZ:** Also, Your Honor, because we don't have
5 our audiovisual material, I have made copies for the jury, if
6 Your Honor --

7 **THE COURT:** Please hand those to Ms. Desouza, and she
8 will pass them around.

9 **MR. KATZ:** Thank you.

10 Your Honor, on --

11 **BY MR. KATZ:**

12 **Q.** Mr. Berthelsen, I would like to direct your attention and
13 the jury's attention to numbers on the bottom right-hand corner
14 of the pages. They're called Bates numbers.

15 I would like to direct your attention to the one that
16 is PI 140393.

17 **A.** Okay.

18 **Q.** And can you tell the jury what that is, sir, please.

19 **A.** It's entitled, "Consolidated Statements of Activities."

20 **Q.** This is a document prepared by your accountants?

21 **A.** Yes.

22 **Q.** For financial reporting purposes?

23 **A.** For reporting to our Board of Player Representatives, the
24 governing body of our organization.

25 **Q.** Okay. And this is the official report for that period of

1 March 1st, 2007, to February 29, 2008?

2 **A.** It appears to be.

3 **Q.** Directing your attention to the bottom of page PI 140393,
4 there's an item which is labeled -- if you look at the
5 left-hand column, it says, "Unrestricted Net Assets."

6 Do you see that?

7 **A.** I do.

8 **Q.** And then if you go to the bottom line, it says, "End of
9 Year." And if you go over three columns, it gives the number
10 \$219,655,553. Do you see that, sir?

11 **A.** I do.

12 **Q.** Is that the net worth of the NFLPA, of the defendants?

13 **A.** I don't know. The words "net worth" are not here. I
14 don't know that that's the net worth.

15 **Q.** Do you believe that to be the net worth?

16 **A.** Well, it's been a while since I've had -- I had accounting
17 in college, and I understood net worth to be the difference
18 between your assets and your liabilities. If that's what this
19 number is, then it would comport with my understanding of what
20 net worth is.

21 **Q.** Okay. And then if we look at the top line, there's -- if
22 you look at the left-hand column, it says "Revenue." At the
23 top of the left-hand column, "Revenue" --

24 **A.** Yes.

25 **Q.** -- do you see that?

1 And then it says "Royalties" after that?

2 **A.** Yes.

3 **Q.** And then from licensing, licensing royalties for this
4 period of time from 2007 and 2008, were approximately
5 \$81 million; is that correct?

6 **A.** That's the number that appears there.

7 **Q.** And you have no reason to doubt that, do you, sir?

8 **A.** No.

9 **Q.** Okay. And then you were here when Mr. Parcher gave his
10 closing argument the other day.

11 **A.** I was.

12 **Q.** And he mentioned a figure of unrestricted -- an
13 unrestricted account which he said was about \$68 million. If
14 you look, again, at the unrestricted net assets beginning of
15 year, that was \$67 million, where it says "Beginning of Year."
16 It's, again, at the bottom left.

17 **A.** You have to show me where you're pointing to.

18 **Q.** At the bottom left, if you go down the column, it says,
19 "Unrestricted Net Assets"?

20 **A.** Yes.

21 **Q.** And then it says "Beginning of Year." And then it gives
22 the number \$67,961,194. Do you recall that that's the number
23 that Mr. Parcher gave to the jury the other day?

24 **A.** I think he gave a number that was close to that.
25 Although, he mischaracterized it, in my view.

1 Q. \$68 million, right?

2 A. There is a figure on the financial, saying that, yes. But
3 all of our funds are basically restricted because they're
4 basically held in trust for the interests of the people we
5 represent.

6 MR. KATZ: I move to strike, Your Honor. It's
7 nonresponsive.

8 THE COURT: Overruled. Please continue.

9 BY MR. KATZ:

10 Q. And then that number has actually gone up -- Mr. Parcher
11 gave the number for the beginning of the year, which was March
12 of 2007. But that number has actually gone up, as of
13 February 29, 2008, to \$98,038,660; is that correct?

14 A. I don't have the previous statement in front of me.

15 Q. It says here "Beginning of Year."

16 A. Okay.

17 Q. Beginning of year would be, if we look at the cover,
18 March 1, 2007; isn't that correct, sir?

19 A. Yes.

20 Q. And then at the end of the year was 98,038,660; is that
21 right?

22 A. I see what you're referring to.

23 Q. Is that right?

24 A. That number appears at the bottom, under the column "End
25 of Year."

1 Q. Do you have any reason to believe that that number is not
2 correct?

3 A. As of that date, it was probably correct.

4 Q. Okay.

5 A. It may not be now.

6 Q. Do you have any reason to believe that any of the numbers
7 in this document are not correct?

8 A. No, I don't.

9 Q. The -- now, you testified, sir, about the Duff & Phelps
10 report that was issued in 1994.

11 A. I think I may have been asked about it. I don't recall
12 much testimony about it. But I know what you're referring to.

13 Q. I think Mr. Hummel was asking you about that. Do you
14 recall?

15 A. I recall I was asked about it in my testimony, yes.

16 Q. Has Duff & Phelps issued any other reports since that
17 report, which is Exhibit 93?

18 A. No.

19 MR. KATZ: I have nothing further, Your Honor.

20 THE COURT: All right. Anything more?

21 MR. KESSLER: I have some questions, Your Honor.

22 THE COURT: Sure. Please.

23 MR. KESSLER: Good afternoon ladies and gentlemen of
24 the jury. Mr. Berthelsen, good afternoon.

25

CROSS EXAMINATION

1
2 **BY MR. KESSLER:**

3 **Q.** The document the jury has been given and you were looking
4 at is dated February 29, 2008; is that correct?

5 **A.** That's correct.

6 **Q.** Okay. Are the unrestricted assets of the NFLPA and
7 Players Inc generally invested?

8 **A.** Yes, they are.

9 **Q.** Take a look at page 406. It begins with a PI 140406.

10 **A.** I got it.

11 **Q.** Okay. And you'll see here that it talks about
12 investments. And there's an indication here that as of
13 February 29, 2008, there was \$111,158,000 invested.

14 Do you see that, sir?

15 **A.** Yes, I do.

16 **Q.** And, generally speaking, since last February, has the
17 market for stocks, alternative investments, municipal
18 obligations, et cetera, gone up or down?

19 **MR. KATZ:** Objection, Your Honor. There is no
20 foundation.

21 **THE COURT:** Well, first of all, establish that he's
22 in a position to know. And then he can then answer the
23 question.

24 **BY MR. KESSLER:**

25 **Q.** Do you know, sir, whether or not the investment value of

1 funds that the union has had invested has gone up or down since
2 last February?

3 **A.** Yes.

4 **Q.** Okay. Has it gone up or down?

5 **A.** Down, along with everybody else's investments in the stock
6 market.

7 **Q.** Has it gone down significantly or --

8 **MR. KATZ:** Object, Your Honor.

9 **BY MR. KESSLER:**

10 **Q.** -- or just a little bit?

11 **MR. KATZ:** Object, Your Honor. There is no
12 foundation. Not the best evidence.

13 **THE COURT:** Doesn't have to be the best evidence, as
14 long as he is competent to testify to it.

15 Do you know this of your own personal knowledge?

16 **THE WITNESS:** Well, in the same way that all of us
17 would. I check every day in the newspapers, and I check
18 periodically with our director of finance.

19 **THE COURT:** All right. The objection is overruled.
20 Go ahead.

21 **BY MR. KESSLER:**

22 **Q.** Has it gone down significantly?

23 **A.** Yes.

24 **Q.** And, Mr. Berthelsen, whatever amount of unrestricted net
25 assets you have left, would you explain to the jury, please,

1 you said those assets were held in trust for the active
2 players. What did you mean by that?

3 **A.** Well, in effect, all of our assets are restricted because
4 they come from either active player licensing or from dues.
5 And we, in effect, hold the money in trust for the players, the
6 active players, to help protect their future.

7 It's a decision that they make that instead of having
8 their dues refunded or instead of having more of the licensing
9 money go back to the players, that it's put aside so that we're
10 protected in the future. We're going to be facing a possible
11 lockout in the year 2011.

12 We recently saw how the hockey players were locked
13 out and they lost an entire season. Literally, hundreds of
14 millions of dollars were lost as a result of that lockout.

15 So we, in effect, are holding all of these assets in
16 a restricted way, in trust for the players, in case they have
17 to go through what the hockey players did.

18 And every indication, at this point, is that that's
19 what the NFL owners want to do, and that's what they're
20 threatening the players with.

21 **Q.** If there is a lockout or strike or an end of this
22 bargaining agreement -- first, have they always given notice as
23 to when the collective bargaining agreement is going to expire?

24 **A.** Yes, they have.

25 **MR. KATZ:** I'm going to object, Your Honor. It is

1 beyond the scope.

2 **THE COURT:** It is beyond the scope, but the defendant
3 is entitled to recall Mr. Berthelsen to testify.

4 So the objection is overruled.

5 **MR. KATZ:** Your Honor, it also would be opening the
6 door, I think, to some of the topics we talked about in the
7 break.

8 **THE COURT:** I don't see that.

9 **MR. KESSLER:** I don't see that, Your Honor, either.

10 **MR. KATZ:** Well, I'll take them one at a time.
11 Sorry, Your Honor.

12 **THE COURT:** All right. Go ahead.

13 **BY MR. KESSLER:**

14 **Q.** Have the owners given notice as to whether or not they're
15 going to terminate the collective bargaining agreement early?

16 **A.** Yes, they gave us notice earlier this year that they
17 intend to terminate it two years prior to its expiration.
18 Which puts us at a possible lockout in the year 2011.

19 **Q.** Have you been through labor battles with the NFL owners
20 before?

21 **A.** On many, many past occasions, yes.

22 **Q.** And based on your experience through labor battles with
23 the NFL owners, even if your unrestricted net assets had not
24 declined during the stock market, is the -- would 98 million
25 even be a large amount of money to go into a labor battle with,

1 in your judgment?

2 **MR. KATZ:** Object. Leading.

3 **THE COURT:** It is leading. Sustained.

4 **BY MR. KESSLER:**

5 **Q.** Explain to the jury, based on your more than 30 years of
6 experience in the union, the need or lack of need for these
7 assets in any labor battle and why.

8 **A.** We have an enormous need for this amount of money, and
9 even more, because all of the National Football League owners
10 are, by definition, billionaires.

11 They have almost unlimited resources because their
12 franchises are worth, on average, over a billion dollars. They
13 go up in value each year by a tremendous amount, an average of
14 \$85 million.

15 So you take that times 32, \$85 million, that's just
16 the growth in the value of their franchises, add the 25 million
17 in profit that they all average, and you can see that they
18 would have enormous sums of money. Probably would be able to
19 outspend us 10 or 20 or 50 to 1.

20 And that's why it's so important for us to put every
21 penny aside that we can.

22 **Q.** Do you know whether or not pensions for retired players,
23 including class members, could or could not be the subject of
24 this next bargaining fight?

25 **MR. KATZ:** Object, Your Honor. Now he's really --

1 **THE COURT:** Sustained. Sustained. It's too far
2 afield.

3 **MR. KESSLER:** Okay.

4 **BY MR. KESSLER:**

5 **Q.** Mr. Berthelsen, these unrestricted net assets, if you take
6 a look at what it was generated from, it's above it on the
7 page, the revenue.

8 **A.** Which page number?

9 **Q.** This is the same page. 393, page 4, that you've been
10 discussing.

11 **A.** Yes.

12 **Q.** If you look at the revenue that went into this, it says,
13 "Licensing Revenue" and "Premium Player Appearance Revenue."
14 Was that active player licensing revenue or retired player
15 licensing revenue; do you know?

16 **A.** For the most part, active player. Although, there are
17 funds that are paid to us, which we turn over 100 percent to
18 the active [sic] players. So there could be a pass-through in
19 terms of some of that. I'm just not totally sure.

20 **Q.** Let me just break it down. What happens to the retired
21 player licensing money?

22 **A.** It's received and sent to the retired players.

23 **Q.** Okay.

24 **A.** So it's just a pass-through.

25 **MR. KATZ:** Your Honor, object. We're definitely

1 getting, now, into a subject that we talked about at the break.

2 **THE COURT:** The retired money -- the jury has heard
3 about that ad infinitum. What we should be focusing on is the
4 financial condition of the defendant.

5 I think the jury has heard everything else that is
6 relevant to their determination. So --

7 **MR. KESSLER:** Very good, Your Honor.

8 **THE COURT:** -- please stick to the program.

9 **BY MR. KESSLER:**

10 **Q.** Given the current labor situation, okay, can the union
11 afford a significant damages, punitive damages, award in this
12 case?

13 **A.** No, not at all. The union cannot.

14 **MR. KESSLER:** Thank you. I have no further
15 questions, Mr. Berthelsen.

16 **THE COURT:** Thank you. Anything more?

17 **MR. KATZ:** I have a couple. May I consult with
18 Mr. Parcher for a moment?

19 **THE COURT:** Sure.

20 **MR. KATZ:** May it please the court.

21 **REDIRECT EXAMINATION**

22 **BY MR. KATZ:**

23 **Q.** I take it that you're not aware of the exact figure that
24 your stock holdings have declined?

25 **A.** As I sit here today, no, because I don't know how the

1 market did today. And it's not something that I have been able
2 to monitor --

3 **Q.** Okay.

4 **A.** -- being away from my office as I've been.

5 **Q.** And you're talking about a strike that might possibly
6 occur, or not, three years from now; isn't that right, sir?

7 **A.** No one has said strike.

8 Every indication is, is that the owners, given what
9 they have said, given who's representing them, given what
10 they've been doing, it's a lockout. That's a lot different.
11 It's when the employer says, "You can't come to work and we're
12 not going to pay you." And that's what is expected.

13 I would consider a strike to be extremely unlikely.
14 The players are not about to withhold their services.

15 What's likely is the owners are going to keep them
16 from being able to work. And the labor laws allow that to
17 happen, unfortunately.

18 **Q.** Your current contract extends through 2011; isn't that
19 right, sir?

20 **A.** No. It extends through 2010.

21 **Q.** 2010.

22 **A.** Through the 2010 season, yes.

23 **Q.** So two more seasons?

24 **A.** Yes.

25 **Q.** Do you have any reason to believe you will not be

1 generating at least 81 or \$82 million of licensing revenues
2 during each of those two years?

3 **A.** Yes.

4 **Q.** You don't believe you will?

5 **A.** Frankly, the way the economy has turned in the last few
6 months, there's a concern by everyone in terms of revenues,
7 because we are talking about discretionary spending of the
8 American public. And there's concerns about its impact on
9 professional sports, just like any other industry. Whatever
10 impacts professional sports, certainly impacts our union.

11 **Q.** Well, have you actually spoken to any of your professional
12 advisors that told you the number will go down from
13 \$81 million?

14 **A.** Well, you would not talk to our professional advisors --

15 **Q.** It calls for a yes or no. It calls for a yes or no, sir.

16 **A.** I have not -- your question mentions two things --

17 **Q.** It calls for a yes or no.

18 **A.** -- so I cannot say yes or no. I would like to explain.

19 **THE COURT:** Well, if he says he can't answer yes or
20 no -- why can't you answer yes or no?

21 **THE WITNESS:** Because it would not be those people
22 from whom we would get that information. Our professional
23 advisors are not sports economists.

24 **BY MR. KATZ:**

25 **Q.** My question is, simply, have you spoken to any of your

1 professional advisors about the likelihood, or not, that your
2 licensing revenues of \$81 million a year are likely to go down?

3 **A.** We don't have professional advisors who give that type of
4 advice. That type of information we get from other places.

5 **Q.** You have accountants; is that right?

6 **A.** We have accountants, yes.

7 **Q.** Have any of them told you that your revenues might go down
8 from the \$81 million level?

9 **A.** No, but they would not be the people who would tell us
10 that.

11 **Q.** And you have attorneys that help you; is that right?

12 **A.** Yes, indeed.

13 **Q.** And what advisors are you referring to, sir?

14 **A.** Uhm, people that I talk to who are familiar with league
15 economics and the efforts by teams to sell tickets at new
16 stadiums and to sell sponsorships and to -- to expand their
17 product in other markets like Europe.

18 **Q.** So not people that you're paying for advice?

19 **A.** Not really.

20 **Q.** Okay. And you're aware, sir, are you not -- you've
21 reviewed the EA contract, for example; is that right?

22 **A.** I'm familiar with the contract.

23 **Q.** Right. And that is -- provides a minimum of \$25 million a
24 year; does it not, sir?

25 **A.** I believe so.

1 Q. That goes out to like 2019 or something?

2 A. I don't think that -- I don't think it's that long of a
3 term.

4 Q. 2013? It goes out at least five years; isn't that right?

5 A. It's in evidence. I can't recall. I wanted to say 2,012,
6 but I could be wrong.

7 Q. And that \$25 million a year is guaranteed, isn't that
8 right, regardless of economic conditions?

9 A. Yes, it is.

10 Q. Now, you talked, sir, and testified in response to
11 questions from Mr. Kessler, about your concerns of preserving
12 monies for the active players.

13 A. Not only the active players. It's -- every time we go to
14 the bargaining table we're there for -- we've improved a lot of
15 things, a lot of benefits in the past. And that includes
16 inactive, retired players as well and our ability to fight for
17 them.

18 Q. Well, in fact, you were here when Mr. Armstrong testified,
19 weren't you?

20 A. I was not, except for his second day.

21 Q. In his second day of testimony do you recall that he
22 testified about the Congressional hearings that have been held
23 about your treatment of retired players?

24 MR. KESSLER: Your Honor, I object to this. This is
25 not relevant subject.

1 **MR. KATZ:** It's responsive to what he asked about,
2 Your Honor.

3 **MR. KESSLER:** I don't believe it is, Your Honor.

4 **THE COURT:** Well, the -- how many questions do you
5 have on this?

6 **MR. KATZ:** One or two.

7 **THE COURT:** In light of the fact that the witness
8 himself brought up collective bargaining for retirees and
9 pensions, Mr. Katz has got a point.

10 So you can -- subject to Rule 403, you may ask your
11 next couple of questions on this subject.

12 **MR. KATZ:** Thank you, Your Honor.

13 **BY MR. KATZ:**

14 **Q.** And you were here when Mr. Armstrong testified that
15 Congressional hearings had been held into the subject of the
16 union's treatment of retired players; isn't that right?

17 **A.** If that occurred in the second day that he testified. I
18 wasn't here for the Monday session.

19 **Q.** And you were here when he testified in his second day that
20 a lot of criticism has been levied at the union about its
21 treatment of retired players; you're aware of that, sir?

22 **A.** Totally unjustified criticism, yes.

23 **MR. KATZ:** Thank you.

24 **THE COURT:** I need to say one thing, though, for the
25 jury. It's not Mr. Katz's fault and it's really not even the

1 witness's fault.

2 I told you that we're not here to award punitive
3 damages against the union for broader issues. We're here on
4 account of the GLA, the RPGLA, and the issues that relate
5 directly to that.

6 Collective bargaining is not part of what you're here
7 to decide. And I would not want you to in any way factor that
8 into your decision on the amount of damages.

9 I think we should go to something new.

10 **MR. KATZ:** I have no further questions.

11 **THE COURT:** Anything more?

12 **MR. KESSLER:** Just a couple more, Your Honor.

13 **REXCROSS EXAMINATION**

14 **BY MR. KESSLER:**

15 **Q.** Mr. Berthelsen, if you look back to that page 393, which
16 was page 4, the financial statements, Mr. Katz asked you about
17 that there was a \$25 million a year guaranteed payment from EA,
18 in licensing.

19 Do you recall that?

20 **A.** Yes.

21 **Q.** Will you read to the jury what were the total expenses of
22 the union, if you look at total expense line in the year ending
23 February of 2008.

24 **MR. KATZ:** Object. Beyond the scope.

25 **THE COURT:** Why isn't this beyond the scope?

1 **MR. KESSLER:** This goes directly to why the
2 25 million is not adequate, at all, to pay for the expenses,
3 Your Honor.

4 **THE COURT:** All right. Overruled. Please go ahead.

5 **THE WITNESS:** It's \$125,225,147.

6 **BY MR. KESSLER:**

7 **Q.** Okay. So you would have to have a lot more than an EA
8 agreement to meet your union expenses, before you got to any
9 assets; isn't that correct?

10 **A.** Most definitely.

11 **Q.** And, Mr. Berthelsen, you got asked a question by Mr. Katz,
12 just now, about Congressional hearings and desires to improve
13 retired player pension benefits.

14 If there were going to be any improvements, could you
15 do that unilaterally or does it have to be in collective
16 bargaining?

17 **A.** The latter. It has to be in collective bargaining.

18 **Q.** And if you had an award which significantly reduced your
19 assets for collective bargaining, would that have any impact on
20 your ability to do anything for the retired players in the next
21 bargaining?

22 **MR. KATZ:** Object, Your Honor.

23 **THE COURT:** Sustained. This is too far afield.

24 **MR. KESSLER:** Your Honor, I have nothing further.

25 **MR. KATZ:** I have just one further question, Your

1 Honor.

2 **THE COURT:** Please, Mr. Katz.

3 **MR. KATZ:** May I consult with Mr. Parcher for a
4 moment?

5 **THE COURT:** Can't we bring this to an end?

6 **MR. KATZ:** I just have one more question.

7 **FURTHER REDIRECT EXAMINATION**

8 **BY MR. KATZ:**

9 **Q.** Are you telling the jury, Mr. Berthelsen, that the union
10 is having trouble getting by on \$81 million of licensing
11 revenue a year?

12 **A.** We need all the help --

13 **Q.** That calls for a yes or no.

14 **A.** We need all the help --

15 **Q.** Calls for a yes or no.

16 (Counsel and the witness speaking simultaneously; not
17 reportable.)

18 **A.** -- we can in order to prepare for the lockout.

19 **MR. KATZ:** Your Honor.

20 **THE COURT:** Can you answer that yes or no?

21 **THE WITNESS:** Would you repeat the question, please.

22 **BY MR. KATZ:**

23 **Q.** Are you telling the jury that the union is having troubles
24 getting by on \$81 million of licensing revenue a year?

25 **A.** Not at the moment.

1 **MR. KATZ:** Thank you.

2 **THE COURT:** All right. You can step down,
3 Mr. Berthelsen. Thank you.

4 All right. Do you have any other witness?

5 **MR. KATZ:** Yes. Mr. Philip Rowley.

6 **THE COURT:** Is he here?

7 **MR. KATZ:** He is.

8 **MR. KESSLER:** Your Honor, we have an objection to
9 this witness.

10 This witness did not cover in his expert reports,
11 either the first or the supplemental, anything on the subject
12 of the union's net worth.

13 In fact, Your Honor, it first came up at his
14 deposition when plaintiffs tried to get him to put in this
15 information. And I asked him --

16 **THE COURT:** Is it in the report?

17 **MR. KATZ:** It is not in the report, Your Honor.

18 **THE COURT:** All right. Well, then it's not proper
19 for him to start testifying about something that's not in the
20 report.

21 **MR. KATZ:** All right. We will not call him.

22 **THE COURT:** All right. Thank you.

23 Do you have any other witnesses?

24 **MR. KATZ:** No, Your Honor. The plaintiff rests.

25 **THE COURT:** All right. Any witnesses by the defense?

1 **MR. KESSLER:** No, Your Honor, just Mr. Berthelsen.
2 We have already done that.

3 **THE COURT:** Have a seat for a second.

4 We've reached another milestone and you've now heard
5 all the evidence you're going to hear on the additional
6 information.

7 But I need to make something clear to you. You've
8 heard an entire trial, and most of that has something that
9 could bear on the issue of the amount of punitive damages.

10 So this very short proceeding was -- was directed
11 mainly at financial condition, current financial condition,
12 which you have not heard about.

13 And that's just normal in the way these kinds of
14 trials are run, is that you -- if you decide there's going to
15 be punitive damages, then you -- we have a two part thing,
16 where the second part of the trial is related to the financial
17 condition. But everything else that you need for your decision
18 has already been presented to you in the main event. Okay.

19 Now, what I'm going to do is read to you an
20 instruction that is related to the amount, and some guidelines
21 for the amount of punitive damages.

22 I won't be able to get this reduced to written form,
23 I don't think, so this will be the time you hear it. This is
24 the old-fashioned way. They used to do it until about 1988.
25 Pick a number at random.

1 In the old days, we didn't have word processing and
2 all that, so the jury just heard it. And you never got it in
3 writing. But these days we can give you most things in
4 writing.

5 But on this one I will not be able to give you this
6 in writing, so I will try to say it twice to you. It's very
7 short.

8 Now that you have found that the plaintiff class is
9 entitled to an award of punitive damages, then you must decide
10 the amount of the award.

11 To determine the amount of the award, you may
12 consider the net worth and relative wealth of the defendant at
13 the time of trial; the nature of the wrong committed, the state
14 of mind of the defendant when the wrong was committed; the
15 burden and duration of the litigation.

16 Your award should be sufficient to punish the
17 defendant for his or her conduct and to serve as an example to
18 prevent others from acting in a similar way.

19 Okay. That's the end of it.

20 Now, I'm going to read it again in case you missed
21 something the first time.

22 Now that you have found that the plaintiff class is
23 entitled to an award of punitive damages, you must now decide
24 the amount of the award.

25 To determine the amount of the award you may consider

1 the net worth and relative wealth of the defendant at the time
2 of trial; the nature of the wrong committed; the state of mind
3 of the defendant when the wrong was committed; and the burden
4 and duration of the litigation.

5 Your award should be sufficient to punish the
6 defendant for his or her conduct and to serve as an example to
7 prevent others from acting in a similar way.

8 Now, does anyone want me to go over that a third time
9 or do you think you have it in mind?

10 (No response.)

11 **THE COURT:** Okay. You've got it in mind.

12 All right. So you know the drill. I have a special
13 verdict form to be sent into the jury room in a few moments,
14 that has a blank for you to fill in. And that's the only
15 remaining question for you to consider.

16 And, again, I want to make it clear that the evidence
17 presented in the entire trial is fair game for you to consider,
18 pro and con, on the subject.

19 However, before we get there -- I have now told you
20 what the factors are -- we have to have an argument by each
21 side as to what the dollar amount should be. This is going to
22 be very short.

23 Mr. Katz, you get to go first.

24 **MR. KATZ:** Thank you, Your Honor.

25 May I just set up that easel for a moment? I'm going

1 to draw.

2 **THE COURT:** Yes, go ahead.

3 **CLOSING ARGUMENT**

4 **MR. KATZ:** May it please the Court. Good afternoon,
5 ladies and gentlemen of the jury.

6 Again, to refresh your recollection, my name is Ron
7 Katz. And I want to add my thanks for your diligence, for your
8 service.

9 The judge has told you that you are sitting here
10 during some very historic times. We've had changes in our
11 executive branch. We've had changes in our legislative branch.
12 And, of course, you've been participating in the judicial
13 branch.

14 I think it's important to note that there's one thing
15 that those three branches have in common. They all have the
16 same boss. That boss is us. All of us. We the people of the
17 United States are the bosses of the executive branch, the
18 judicial branch, and the legislative branch.

19 That's the way our system works, so that we have
20 nobody to complain to but ourselves if we live in a society
21 where people do not act in an appropriate manner, where people
22 act, as you'll see from the instructions, with actual malice,
23 willful disregard for the rights of plaintiffs, where the
24 conduct was outrageous, grossly fraudulent, et cetera, et
25 cetera.

1 It's up to you. And why do we do this? Why have you
2 been sitting here this time? Essentially, we do it for each
3 other because it may be that some day you'll have a problem
4 with your union or with your employer or with another person.
5 And what will you want? You want to come to a fair place where
6 a jury of your peers can make a decision about how people
7 should conduct themselves.

8 And this is a very important decision that you will
9 be making now because you will be deciding whether to set an
10 example for whether this is the way a union should act toward
11 its members or not. That's up to you.

12 Because unless it costs them money -- this is not a
13 criminal proceeding -- they will not pay attention. And that's
14 why we're allowed to put on the net worth evidence of the
15 defendant because, obviously, if someone is extremely wealthy,
16 if they have, as the plaintiff does, \$221 million of net worth,
17 you can't set an example by fining them a thousand dollars.
18 They could pay that out of petty cash. It has to be something
19 that they will feel. It has to be something that will cause
20 them to change the conduct that you have already adjudged to be
21 worthy of punitive damages.

22 So that's what we're about to do right now. I don't
23 intend to take a lot of your time, but I think I can show that
24 this conduct was outrageous and willful and was a result of
25 actual malice.

1 Just to go over some of the -- I wouldn't call them
2 highlights, I would call them lowlights -- but the eligibility
3 criteria, the fact that these men were supposed to share with
4 the eligible NFLPA members who could only have been active
5 players; the fact that that was -- that they were defined out
6 of existence in an agreement between the NFLPA and PI that was
7 negotiated behind the back of these men, they had nothing --
8 Mr. Adderley had nothing, no knowledge of this agreement
9 whatsoever; the Hall of Fame agreement, where their rights were
10 sold for below market; the scrambling; and, most of all, I
11 think, the demeaning.

12 You know, of course, we're going to have
13 disagreements in our society. We have disagreements within our
14 families, within our friends. That's not a problem.

15 The problem is we must learn how to disagree with one
16 another in a civil manner. I respectfully disagree with your
17 opinion. Here's my view. Here's your view.

18 We just had a presidential election. Sometimes the
19 presidential candidates were civil to one another. Sometimes
20 they're not so civil to one another. But that is the goal.

21 And referring to someone as worthless, referring to
22 someone as dog food, is not a way of disagreeing with someone.
23 It's a way of demeaning people. And in this case they're
24 demeaning their own union members. I think it's a very serious
25 matter.

1 So what I would like to do, because of the time
2 limits that we have, is just take one example and show you how
3 this conduct -- I'm not going to use the words from the -- from
4 the instruction. I'm going to use more colloquial words. This
5 conduct was rotten to the core.

6 Let me demonstrate that to you. We start out at the
7 middle and the core is, basically, demeaning people. You are
8 worthless --

9 **MR. KESSLER:** Your Honor, doesn't this exceed -- I
10 object -- what Your Honor said was the purpose of this
11 particular argument now?

12 **THE COURT:** No. The evidence was limited to
13 financial condition. But in determining the amount, Counsel is
14 entitled to argue broader than just the financial condition,
15 and to get into those types of factors such that I gave in the
16 original instructions, evil motives, actual malice, et cetera,
17 and conduct that was outrageous, grossly fraudulent or reckless
18 toward the safety, that can be argued, as well as the state of
19 mind of the defendant and the nature of the wrong that was
20 committed.

21 So this is -- this is okay to get into in the
22 argument part.

23 Go ahead, Mr. Katz.

24 **MR. KATZ:** Thank you, Your Honor.

25 So we start out with the demeaning. You are

1 worthless. You are dog food.

2 Then the next level is that we see that that is
3 simply not true. Again, this is all about scrambling. There
4 are other examples I could give, but I'm just going to use the
5 scrambling.

6 We see evidence that that's simply not true. How do
7 we know that it's not true? Because EA -- there is demand from
8 EA. There's 143 vintage teams. There are -- they are teams
9 that are people's favorites. They want to play those games.
10 They want to be Joe Montana on the '89 49ers. They want to be
11 Herb Adderley on the '66 Packers.

12 So you can see with your own eyes. I don't have to
13 tell you that my clients are worthwhile. EA is saying that
14 they're worthwhile because they have 143 games in this
15 multi-million, hundreds of million dollars games. There are
16 actually many more vintage teams than there are current teams.

17 So that's the second level. And then the third level
18 is the misconduct. What do you do if you are the defendants
19 and you have this belief, for whatever reason, that they're
20 worthless and dog food, but now the real world is telling you
21 something else, there is demand?

22 So what do they do? They scrambled. LaShun Lawson
23 wrote a letter to EA and said: Scramble. We can't pay these
24 people. We can't have these people out there.

25 And, of course, scrambling doesn't really do any good

1 because if you want to be the '66 Greenbay Packers, it can only
2 be Herb Adderley there. If you want to be the '89 49ers, it
3 can only be Joe Montana.

4 This distinction that Dr. Noll made that it's the
5 teams and not the players, teams are made up of players.

6 Okay. So we've got the wrongdoing now. We've got
7 the scramble. And then they've got a final problem. Final
8 problem is that they have to meet we the people. They have to
9 meet you in a court of law.

10 And what did they do when they met you? They
11 basically insulted your intelligence. They insulted your
12 intelligence with their excuse.

13 And their excuse was -- Mr. Kessler said this just
14 last Friday, and he said it many times -- We did this, we did
15 the scrambling to protect their rights. You heard it so many
16 times.

17 Now, why does this insult your intelligence? Insults
18 your intelligence because it goes right to the core. I said I
19 will show you it's rotten to the core.

20 Let's go back to the core. They're worthless.
21 They're dog food.

22 Why do you need to protect the rights of people who
23 are worthless? There's no -- there's nothing to protect. What
24 are they saving them for? They've had this program for 16
25 years. They've never paid a penny. So what are they

1 protecting them for, another 16 years of not being paid a
2 penny?

3 It's just an untruth. It's not true that they're
4 protecting their rights. They are protecting their own right
5 to a stream of \$81 million a year. And they're having trouble.
6 They're scrimping by. You heard Mr. Berthelsen tell you.

7 So that, I think, is an example of what's happened
8 here, a graphic example that you've seen with your own eyes.

9 There's a lot of distractions, ad hoc agreements,
10 this, that, and the other thing. Accusations that these men
11 didn't complain.

12 They trusted their union. I mean, what did these men
13 do, really? They signed an agreement; they trusted their
14 union; and they didn't get paid. And, yet, they were put on
15 trial, all of them.

16 Mr. Laird, Mr. Beach, Mr. McNeil, they were all put
17 on trial. Why? How dare you, you didn't complain.

18 These men did nothing except to trust their union.
19 And a union is something you should be able to trust.

20 And that's what you have to tell this union. You
21 better be trustworthy the next time because it's going to cost
22 you some money.

23 **THE COURT:** Mr. Katz, you've used about 11 of your 15
24 minutes. If you want to save anything for rebuttal, keep that
25 in mind.

1 **MR. KATZ:** Thank you, Your Honor.

2 How much money? The wealth of the defendants is
3 \$219,655,553. You can see that on the page that I talked
4 about.

5 And what we believe is an appropriate number here,
6 that will cause the plaintiffs -- the defendants to think about
7 what they've done and hopefully to change their behavior, is
8 10 percent of their net worth. So approximately \$211 million,
9 we think, is appropriate.

10 My clients don't want to break the union. They don't
11 want to hurt the active players. But they want to send a
12 message. And they need you to send that message.

13 Unions have to be trustworthy. And this is how you
14 do that. This is how we the people does that.

15 Thank you.

16 **THE COURT:** Thank you, Mr. Katz. Could you move
17 the --

18 **MR. KATZ:** Sorry.

19 **THE COURT:** Move the easel, unless you're going to
20 use it.

21 **MR. KESSLER:** I'm not going to use the easel, Your
22 Honor.

23 **THE COURT:** All right. Mr. Kessler.

24 **CLOSING ARGUMENT**

25 **MR. KESSLER:** Good afternoon, ladies and gentlemen of

1 the jury.

2 Obviously, you know that I had a different view of
3 this case. But at this point in the proceedings I have to
4 respect the fact that you've come to a different conclusion
5 with respect to liability. And so I accept that. And I thank
6 you for working hard on this case.

7 I hope, though, that at this point some things will
8 be clear to you. Again, respecting your decision.

9 You have already set an example here. \$7.1 million
10 in damages is not a small amount for this union. It's not, as
11 Mr. Katz said, a \$1,000 fine, okay.

12 That already is going to be a significant reduction
13 in the amount of money that the active players have in their
14 coming labor battle to fight management, not just on behalf of
15 the active players, but on behalf of the retired players, as
16 well.

17 This is very, very important for you to keep in mind,
18 and I hope and trust that you will keep that in mind.

19 The union has many, many obligations. It's a large
20 union. It also runs a licensing business. So to look just at
21 their net restricted, unrestricted assets and say, oh, it's
22 just 10 percent that they're asking for, an additional number
23 of that amount, \$21 million, which gets us up to almost
24 \$30 million, would be a major reduction in their assets at a
25 time when, as we all know -- we said we're in historic times.

1 Unfortunately, not all the history is good.

2 And part of the history, as we know, is that the
3 value of their investments, that you saw as of February, as of
4 February, I don't have to tell you how much the stock market
5 has gone down with respect to that.

6 You can take almost notice of that fact as to what's
7 happened.

8 The fact that the licensing money is not going to be
9 there at the same levels the next two years because everybody
10 is tight now and people are not buying as many products, I
11 don't have to tell you that. You know that yourselves. This
12 is going to be a union that, no matter what, is going to need
13 this money if it's going to do its job.

14 And what's very important here, the original
15 instructions you received on this part of the case still apply.
16 This is not the preponderance of the evidence burden. This is
17 the part of the case that is the clear and convincing evidence
18 burden.

19 And the importance of that is, plaintiffs have not
20 come forward with clear and convincing evidence that this
21 amount of money they've asked for can be rendered without doing
22 severe damage to this union, without hurting the active
23 players, and demonstrating that the 7.1 million you've already
24 given is not enough.

25 They haven't even come in with any evidence as to

1 what the value is today. They just haven't. They came in with
2 what the value was back in February, before the terrible
3 problems we've had in the financial markets, before the
4 licensing business came under this onslaught.

5 So I would ask you, ladies and gentlemen of the jury,
6 to please think about the size of the verdict you've already
7 offered and do think about the conduct here.

8 Again, I respect your decision that you've obviously
9 found that there was a breach here. Okay. I cannot deny that.
10 That's your decision. But what is the nature of the breach?
11 Is it really the type of outrageous conduct, threat to public
12 safety, the types of things described in the punitive damage
13 instructions that the Court has already given you and is still
14 here?

15 Was there the type of evidence that someone like
16 Mr. Armstrong, who is the president of the Players Association
17 at this time, had such a severe, evil intent that he was rotten
18 to the core, that you need to send that type of measure of
19 punishment?

20 And I ask you to also, please, consider the fact this
21 was the only sports union that tried to do retired player
22 licensing. Please keep that in mind.

23 Because what would be the message of a large punitive
24 damage verdict here?

25 One message would be to this union and other sports

1 union societies: Don't try. Don't try to go out and help find
2 licensing opportunities for the retired players because if you
3 do so, and you make some mistakes, then you're not only going
4 to have the actual damages here but you're going to have some
5 large punitive damage award on top of that.

6 Think about it. If you were in the active players'
7 shoes, if you were sitting there and a large punitive damages
8 award came down, how would you react at all these sports unions
9 about whether or not this is something that should be tried?

10 I also would remind you that this class already
11 received in the ad hoc \$7 million. So if you're giving them
12 another \$7 million in the class, that's already \$14 million for
13 this class, because none of that \$7 million is coming back from
14 the ad hoc members who've already received that.

15 So, again, looking at the nature of the conduct,
16 looking at the need for this money in a labor battle, which you
17 could all appreciate.

18 And I would also point out, when you look at those
19 financial statements, a lot of the obligations for this union
20 are even things for pensions and obligations to their own
21 employees, okay, things that they have to fund, things where
22 the money has been invested in securities that we all know are
23 at risk now in terms of that.

24 Think about what it's going to do to this ability of
25 this union to thrive and function for the benefit of not just

1 the active players but for the retired players as well.

2 Again, I respect the hard work that you've done in
3 this verdict. And I'm asking you, please, don't let any
4 appeal, as the judge has instructed you, just for sympathy or
5 other emotional appeals on issues that have nothing to do with
6 the GLA lead you to punish this union and the active players in
7 a way that really is not required.

8 You've sent the message. We hear the message loud
9 and clear. The defendants hear your message.

10 I do not believe any award of the type or magnitude
11 that's been asked for here is warranted. Either we would ask
12 you to either just give a symbolic punitive damage award of a
13 small amount of money, if you want to make that statement, it's
14 completely within your discretion. It could be a small amount
15 that you feel appropriate. Or -- or even no punitive damage
16 award. That's probably too much for me to ask in light of your
17 verdict.

18 But, please, don't do something that's going to have
19 an effect that you don't want. Don't hurt this union to
20 protect its active and retired players. And don't send the
21 message to all the sports unions that what you should do is
22 stay as far away from your retired players as possible so that
23 you never get caught in this type of situation.

24 Thank you for your time and attention. You've been
25 here quite a while. I'm not going to take any more time right

1 now. But thank you.

2 **THE COURT:** Thank you, Mr. Kessler.

3 Mr. Katz, you have three minutes.

4 **REBUTTAL ARGUMENT**

5 **MR. KATZ:** Thank you, Your Honor.

6 First of all, I presented you with facts. We don't
7 want your sympathy. Mr. Adderley would be the first one to say
8 he did not come here for your sympathy. He came here for what
9 he believes is owed him. And you have given an answer on that
10 already.

11 With respect to why this is needed, I think
12 Mr. Kessler's presentation is proof of that. He's still trying
13 to fool you with these ad hoc payments. He said it just a
14 moment ago.

15 Go back and look at the instructions that Judge Alsup
16 gave you. He made it very clear, this case is not about those
17 ad hoc payments.

18 He had the opportunity to apologize for something
19 that he said last Friday. He said that he didn't consider the
20 dog food remark to be offensive, that that's just a southern
21 kind of thing.

22 Well, I don't know if any of you spent time in the
23 south. The people of the south are just as courteous and
24 respectful as our people in the Bay Area.

25 This is not an acceptable comment anywhere. He had

1 the opportunity to apologize for it. He did not.

2 I didn't say that Mr. Armstrong was rotten to the
3 core. I think Mr. Armstrong is probably a bit naive to think
4 that he can go to Maui for a few days each year and run a
5 hundred million dollar organization. That's not the way things
6 happen.

7 The organization was run by Mr. Upshaw and Mr. Allen.
8 They betrayed the trust of their members. And the only way
9 that they will understand that is if you dock them for punitive
10 damages.

11 If you look at that document that I gave you, you can
12 see -- if you look at the bottom line, there's that
13 \$219 million number. It's the third number over. It's made up
14 of two numbers. The first is \$98 million, which is what
15 Mr. Parcher referred to as the slush fund. That's completely
16 unrestricted. And then \$121 million is their strike fund.
17 They have an adequate strike fund. So we would not be cutting
18 into any of that. We don't want to. We're not asking you to
19 do that.

20 We're asking you to give a moderate piece of their
21 net worth because of the conduct that you yourself have seen,
22 you yourself have heard as recently as five minutes ago.

23 Thank you very much.

24 **THE COURT:** Thank you, Mr. Katz.

25 All right. Let me just remind you, again, what the

1 factors are. I'm going to give it to you the third time.

2 The factors you must use to decide the amount of the
3 award for punitive damages, you may consider the net worth and
4 relative wealth of the defendant at the time of trial; the
5 nature of the wrong committed; the state of mind of the
6 defendant when the wrong was committed; and the burden and
7 duration of the litigation.

8 Your award should be sufficient to punish the
9 defendants for their conduct and to serve as an example to
10 prevent others from acting in a similar way.

11 All right. At this time, I'm going to ask you to go
12 back to the jury room. In a few moments, I will send in a very
13 short special verdict form that has a blank to fill in.

14 And now, remember, that I gave you instructions
15 earlier, which I -- starting at paragraph 54 of the group of
16 instructions you've already got, which tell you what the
17 standards are for whether or not punitive damages are in order.

18 Now, you've already said that they are, but you, of
19 course, can consider those factors, as well, in determining
20 your amount.

21 All right? Okay. Please retire to the jury room to
22 continue your deliberations.

23 **THE CLERK:** All rise.

24 (Thereupon, the jury retired for further
25 deliberations.)

1 **THE COURT:** All right. Everyone be seated. May I
2 have my law clerk up here for a minute.

3 Just a question that I don't need your input right
4 now on, but I want us to be thinking about it.

5 The first step will be to enter a judgment based upon
6 the verdict. That will trigger the post trial motion times
7 under the rules.

8 Second question that we have in this case goes to
9 plan of distribution and attorneys' fees awards based out of
10 the verdict.

11 And I don't want to rule on any of that now, but I
12 would like to get the input of the lawyers, say, by Friday of
13 this week, a 2- or 3-page memorandum, 5 pages, maybe, on what
14 the proper procedure is to follow, given that this is a class
15 action and not an individual action.

16 So you don't have to address that now, but it is a
17 procedural concern that we only have in class actions and not
18 in an individual action.

19 Okay. Anything anyone else wants to say? Otherwise,
20 I will go wait. Please don't go far because I think we will
21 have, most likely, a verdict within half an hour.

22 **MR. KESSLER:** Your Honor, just a question.

23 Will Your Honor entertain briefing on the Rule 50
24 motions after verdict?

25 **THE COURT:** Of course, yes.

1 Take a look at the rule in the next few minutes. As
2 soon as the judgment is entered, you can make -- there's a
3 whole procedure for making post-trial motions, including motion
4 for new trial, motions for entry of judgment on the record.

5 So that's -- why don't you get the Rules of Civil
6 Procedure and our local rules out, and see if you can figure
7 out what that timeline is.

8 But that would be the time and place to do that.

9 **MR. KESSLER:** Very good, Your Honor.

10 **THE COURT:** All right. Anything more? Please don't
11 go very far. You can just stay right here in the courtroom.

12 (Proceedings in recess for jury deliberations.)

13 **THE COURT:** Please be seated.

14 I have been told, but I haven't seen the note, that
15 we have a verdict on the punitive damages.

16 So unless there's some reason, I'm going to bring the
17 jury in now to take the verdict.

18 **MR. KATZ:** No objection.

19 (Thereupon, the jury returned to the courtroom.)

20 **THE COURT:** All right. Welcome back. Please be
21 seated.

22 Ms. Desouza, do you have an unanimous verdict on the
23 question of the amount of punitive damages?

24 **FOREPERSON MS. DESOUZA:** Yes.

25 **THE COURT:** Please give it to the marshal. The

1 marshal will hand it to me.

2 Now, I've already thanked you, so I don't need to do
3 that again. But, of course, you know that the Court
4 appreciates your service in this case.

5 All right. I will hand this to the clerk to be read.
6 Please listen, and we will ask you if this is your verdict, as
7 well, individually.

8 **THE CLERK:** As to the case of Herbert Anthony
9 Adderley vs. National Football League Players Association and
10 the National Football League Players Inc, the Special Verdict
11 Form Re Punitive Damages. Your answer must be unanimous.

12 "As punitive damages, we the jury award to the
13 plaintiff class, and against the defendants, the sum of
14 \$21 million."

15 Sign and dated by the foreperson on November 10,
16 2008.

17 **THE CLERK:** Lisa Desouza, is the verdict read your
18 verdict?

19 **FOREPERSON MS. DESOUZA:** Yes.

20 **THE CLERK:** Nancy Jean Smith, is the verdict read
21 your verdict?

22 **JUROR MS. SMITH:** Yes.

23 **THE CLERK:** Danny C. Chui, is the verdict read your
24 verdict?

25 **JUROR MR. CHUI:** Yes.

1 **THE CLERK:** Douglas Neville, is the verdict read your
2 verdict?

3 **JUROR MR. NEVILLE:** Yes.

4 **THE CLERK:** Debra Jean Martin, is the verdict read
5 your verdict?

6 **JUROR MS. MARTIN:** Yes.

7 **THE CLERK:** Lana Lim Ma, is the verdict read your
8 verdict?

9 **JUROR MS. MA:** Yes.

10 **THE CLERK:** Laura Yamane, is the verdict read your
11 verdict?

12 **JUROR MS. YAMANE:** Yes.

13 **THE CLERK:** Ofelia Schwartzler, is the verdict read
14 your verdict?

15 **JUROR MS. SCHWARTZLER:** Yes.

16 **THE CLERK:** Natalie Hart, is the verdict read your
17 verdict?

18 **JUROR MS. HART:** Yes.

19 **THE CLERK:** Amy Holm, is the verdict read your
20 verdict?

21 **JUROR MS. HOLM:** Yes.

22 **THE CLERK:** Your Honor, the verdict is unanimous.

23 **THE COURT:** All right. The clerk will record the
24 verdicts in the record of the Court.

25 Any reason why the jury cannot be discharged at this

1 time?

2 **MR. KATZ:** No, Your Honor.

3 May we speak to the jury afterwards?

4 **THE COURT:** I'm coming to that in a moment.

5 Any reason, though, why the jury cannot be
6 discharged?

7 **MR. KESSLER:** No, Your Honor.

8 **THE COURT:** We have reached another milestone in the
9 case. I am about to turn you back into being civilians.

10 You have been here several weeks deciding this case
11 and paying close attention. I thank you, again, for that
12 service in this case.

13 I'm going to turn you back into being ordinary
14 civilians. I will ask you to go back to the jury room for
15 three or four minutes while Dawn will pick up your badges.

16 We will shred your notepads, so you don't have to
17 worry about that.

18 If there are any issues about getting your payments
19 as -- and your daily charges, travel, Dawn can help you with
20 that as well.

21 I would like to bring you into my chambers, which I
22 haven't had a chance to do, and spend not very long, just a few
23 minutes of your time to thank you again.

24 I will not talk to you about this case. You are free
25 to talk to anyone you want now, but I am not, because there are

1 future proceedings in this case.

2 Your part is over. So you will be able to go down to
3 the front of the courthouse and hold a press conference, if you
4 want, or you can talk to the lawyers in the case. When we meet
5 in chambers, I will give you some more heads up on that.

6 You are now officially relieved. You can talk with
7 your loved ones, your friends. You can watch TV. You can see
8 the news stories about this case. You can hold a press
9 conference. You can do anything you want because you have now
10 done your duty in this case and you're back to being not the
11 decision-maker anymore but being the ordinary civilians. And
12 very good civilians you are at that, too.

13 I thank you for taking the time out of your lives to
14 come here to work for your United States District Court.

15 So at this time -- I'm sorry, Mr. Parcher, are you --

16 **MR. PARCHER:** My absolute apologies.

17 **THE COURT:** What were you over there saying?

18 **MR. PARCHER:** I was simply telling Ron that rather
19 than interview people he should just thank them.

20 Everything I did was inappropriate.

21 **THE COURT:** Wait until -- this is an important thing,
22 to thank the jury.

23 **MR. PARCHER:** Everything I did was just
24 inappropriate.

25 **THE COURT:** All right. I know Mr. Parcher did not

1 mean any ill will toward you.

2 Thank you, again, for your service. You are now
3 discharged. Please go to the jury room. Dawn will meet you
4 there and we will take back your badges, and you'll be on your
5 way in just a few more moments.

6 All right. Thank you.

7 **THE CLERK:** All rise.

8 (Thereupon, the jury was discharged.)

9 **THE COURT:** All right. Everyone be seated.

10 The rules provide for timelines on motions for new
11 trial, Rule 50, and so forth. I'm just going to leave it to
12 the rules. Please keep in mind the time frames.

13 What I will tell the jury is that they are free to
14 come out here and talk to the -- I like to have them come out
15 here and talk to the lawyers in the jury box. Some do. Some
16 don't.

17 I've had cases where the jury says, "I've had enough
18 of this case. I'm going home." Especially late in the day
19 like this. I've had other cases where they want to talk about
20 it. So I think it would probably be worth your while to stay
21 around.

22 You're free to use -- well, let's see. I have
23 another matter. I may have to move you to the lawyers' lounge,
24 because I do have another matter that's been hanging fire since
25 3 o'clock. But for at least starters, I'll have them come out

1 here. And if there's anyone who wants to talk to the lawyers,
2 fine.

3 As far as the press is concerned, you can talk to the
4 jury. It's okay. You're discharged now. And you can talk to
5 the lawyers. No more gag rule, or whatever it's called. Both
6 sides are free to talk to the press and issue press releases,
7 do whatever you would like to do, because there's no issue of
8 jury contamination anymore.

9 So with that, I'm going to say good-bye for now. I'm
10 sure I'll see you back here on motion practice.

11 All right. Done.

12 (All counsel simultaneously thank the Court.)

13 **MR. ADDERLEY:** Thank you, sir.

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17 **CERTIFICATE OF REPORTER**

18 I certify that the foregoing is a correct transcript
19 from the record of proceedings in the above-entitled matter.

20

21 DATE: Monday, November 10, 2008

22

s/b Katherine Powell Sullivan

23

24 Katherine Powell Sullivan, CSR #5812, RPR, CRR
25 U.S. Court Reporter

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