

Exhibit A
to the
Declaration Of Ryan S. Hilbert In Support Of
Plaintiffs' Opposition To Defendants' Renewed
Motion For Judgment As A Matter Of Law

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ALSUP, JUDGE

BERNARD PAUL PARRISH,)
HERBERT ANTHONY ADDERLEY,)
WALTER ROBERTS, III, ET AL.,)

Plaintiffs,)

v.)

NO. C 07-00943 WHA

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

Defendants.)

San Francisco, California
Monday, October 20, 2008

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

APPEARANCES:

For Plaintiffs:

Manatt, Phelps & Phillips
1001 Page Mill Road
Building 2
Palo Alto, California 94304

BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.
and

Manatt, Phelps & Phillips
7 Times Square
New York City, New York 10036

BY: L. PETER PARCHER, ESQ.
and

Manatt, Phelps & Phillips
11355 West Olympic Boulevard
Los Angeles, California 90064

BY: CHAD HUMMEL, ESQ.

(Appearances continued, next page)

1 APPEARANCES, CONTINUED:

2 Also for Plaintiffs:

3 McKool Smith
4 300 Crescent Court
5 Suite 1500
6 Dallas, Texas 75201

7 BY: LEWIS T. LECLAIR, ESQ.
8 JILL ADLER NAYLOR, ATTORNEY
9 ANTHONY GARZA, ESQ.
10 BRETT CHARHON, ESQ.

11 For Defendants:

12 Dewey & LeBoeuf
13 1301 Avenue of the Americas
14 New York City, New York 10019-6092

15 BY: JEFFREY L. KESSLER, ESQ.
16 DAVID GREENSPAN, ESQ.
17 DAVID G. FEHER, ESQ.
18 ROY TAUB, ESQ.
19 MOLLY DONOVAN, ATTORNEY
20 JASON CLARK, ESQ.

21 Reported by:

22 BELLE BALL, CSR 8785, RMR, CRR
23 Official Reporter
24
25

1 THE COURT: I don't even know what Upper Deck is.
2 What is it?

3 PROSPECTIVE JUROR HAYWOOD: It's trading card and
4 licensing of images of sports.

5 THE COURT: I see.

6 PROSPECTIVE JUROR HAYWOOD: So he's told me stories,
7 but I have not been directly involved in any persons that he
8 has worked with, or was part of their organization.

9 THE COURT: What, do you think that causes you to be
10 biased in this case?

11 PROSPECTIVE JUROR HAYWOOD: No, I don't believe it
12 would.

13 THE COURT: All right.

14 Now, Mr. Casotto.

15 PROSPECTIVE JUROR CASOTTO: Yes. With my company we
16 are trying to do licensing agreements with our partners, but I
17 don't know if it's relevant to this case. We license our
18 software or OEM agreements.

19 THE COURT: Now, at the end of this case you are
20 going to have to decide what the contract means and what it
21 covers. And I will tell you the guidelines for deciding that.
22 And, it -- so you would not be applying what you think you
23 would apply the rules under your licensing agreements. You
24 would have to apply the rules that I give you.

25 Do you think you can keep that straight and do it the

CERTIFICATE OF REPORTER

I, BELLE BALL, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in C 07-00943 WHA, Parrish, et al. v. NFLPA, et al., were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/S/ Belle Ball

Belle Ball, CSR 8785, CRR, RMR

Monday, October 20, 2008

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NORTHERN DISTRICT OF CALIFORNIA

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III,)

Plaintiffs,)

VS.)

No. C 07-0943 WHA)

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

Defendants.)

San Francisco, California)

Tuesday)

October 21, 2008)

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APPEARANCES:

For Plaintiffs:

MANATT, PHELPS & PHILLIPS
1001 Page Mill Road
Building 2
Palo Alto, California 94304

BY: RONALD S. KATZ, ESQ.

and

MANATT, PHELPS & PHILLIPS
7 Times Square
New York City, New York 10036

BY: L. PETER PARCHER, ESQ.

and

MANATT, PHELPS & PHILLIPS
11355 West Olympic Boulevard
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(Appearances continued on next page)

APPEARANCES CONTINUED:

Also for Plaintiffs: MCKOOL SMITH
300 Crescent Court
Suite 1500
Dallas, Texas 75201
BY: LEWIS T. LECLAIR, ESQ.
JILL ADLER NAYLOR, 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.

Reported By: *Katherine Powell Sullivan, CSR #5812*
Official Reporter - U.S. District Court

1 If -- I would have been eligible to some of it, if it
2 was the players' union who made the deal without Mr. Adderley
3 making the deal for himself with a third party. And he
4 added -- and the players' union received the monies, then I
5 would have expected to be put in that escrow account and all of
6 us get part of it.

7 Q. Okay.

8 A. But that's one individual. That's not six. There's a
9 whole group of them. So if all those people got paid, I expect
10 to get paid, too, if it was during that period of time.

11 Q. And you don't know whether Mr. Adderley's payments
12 involved six or more players or not, do you?

13 A. No, I don't.

14 Q. Let me ask you about when you signed the retired player
15 group licensing authorization form, did you -- did you have to
16 pay any money or give up anything in return for whatever
17 opportunities you got from this agreement?

18 A. No. I had already paid my dues.

19 Q. Okay. And the dues you're referring to were dues to the
20 NFL --

21 A. When I played as an active player at the time.

22 Q. But in order to get whatever benefits you got from this,
23 all you had to do was sign it and send it back, right?

24 A. I had to be a member of the group.

25 Q. And so the only thing that it cost you really was a stamp;

1 All right. That's all I'm going to say on that
2 subject. All right.

3 We will see you tomorrow.

4 **MR. LECLAIR:** Your Honor, would you give us the time?

5 **THE COURT:** What?

6 **MR. LECLAIR:** I want to track the time daily.

7 **THE COURT:** So far I've got -- I can't add it up.

8 **MR. LECLAIR:** Okay.

9 **THE COURT:** You've gotten, looks like, an hour and 17
10 minutes for the plaintiff and 42 for the defense.

11 **MR. LECLAIR:** Thank you, Your Honor.

12 (Thereupon, this trial was continued until Wednesday,
13 October 22, 2008 at 7:30 o'clock a.m.)

14 - - - -

15
16 **CERTIFICATE OF REPORTER**

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

19
20 **DATE:** Tuesday, October 21, 2008

21
22 s/b Katherine Powell Sullivan

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

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

Defendants.)

San Francisco, California)

Wednesday)
October 22, 2008)

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APPEARANCES:

For Plaintiffs:

MANATT, PHELPS & PHILLIPS
1001 Page Mill Road
Building 2
Palo Alto, California 94304

BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.

MANATT, PHELPS & PHILLIPS
7 Times Square
New York City, New York 10036

BY: L. PETER PARCHER, ESQ.

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1301 Avenue of the Americas
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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.

Also Present:

KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, California 94111-1704

BY: R. JAMES SLAUGHTER, ESQ.

Reported By:

*Katherine Powell Sullivan, CSR #5812
Official Reporter - U.S. District Court*

1 exhibit, number 5?

2 MR. PARCHER: Trial Exhibit No. 5, Your Honor.

3 THE COURT: Received.

4 (Trial Exhibit 5 was received into evidence.)

5 BY MR. PARCHER:

6 Q. Turn to the second page of trial Exhibit No. 5. Turn to
7 the first paragraph of the second page.

8 (Document displayed.)

9 MR. PARCHER: Could you move it up so we can see
10 the -- just the top line, too, the head thing. See "What is
11 Players Inc?". If you move it up just a little. That's it.
12 Thank you.

13 BY MR. PARCHER:

14 Q. It says that Players Inc -- I'm not reading it verbatim,
15 I'm summarizing it. It says that Players Incorporated,
16 officially known as Players Inc, is the for-profit licensing
17 and marketing subsidiary of the NFL Players Association.

18 That's correct, isn't it?

19 A. Yes.

20 Q. Formed in 1994. Its message is to take the helmets off
21 the players and market them as personalities as well as
22 professional athletes. Is that the mission?

23 A. Uhm, yes.

24 Q. So anybody who was retired, that was asked to sign a GLA
25 and signed the GLA, would have a right to believe that what

1 Players Inc was going to do for them is take the helmets off
2 the players and market them as personalities as well as
3 professional athletes, correct?

4 A. Well --

5 Q. Yes or no, sir?

6 A. Yes.

7 Q. Then it goes on to say:

8 "Players Inc, which represents more than 1800
9 active players" -- and that number was more or less the same
10 throughout the years, right, a little more, a little less, but
11 a vast majority of the active players, right?

12 A. That's correct.

13 Q. And over 3,000 retired players. -- "has been aggressive
14 in its efforts to expand player marketing opportunities,"
15 right?

16 A. Right.

17 Q. So any retired player who was being asked to sign a group
18 licensing authorization by the union would have a right to
19 believe from this that Players Inc had been aggressive on
20 behalf of retired players to expand their marketing
21 opportunities, right?

22 A. That's correct.

23 Q. Okay. And then, if you'll turn to trial Exhibit No. 5 --
24 excuse me. I'm giving you the same exhibit twice. My mistake.
25 Trial Exhibit 23. That's a letter of yours, sir.

1 but amongst other things you were suggesting to them that since
2 1994, Players Inc marketed retired players in a variety of
3 ways, right?

4 A. Correct.

5 Q. Now, I'm saying to you, since 1994 and up to the time that
6 you left, isn't it true that never once did Players Inc, the
7 union, or anybody connected with Players Inc or the union, get
8 a license from any third party that including group licensing
9 of retired players, according to your position?

10 Yes or no?

11 A. No.

12 Q. "No," meaning they never did?

13 A. That's correct.

14 Q. Thank you.

15 Now, is there a reason, in 2006 -- you -- you weren't
16 intending to deceive any of the retired players when you were
17 encouraging them to sign GLAs, were you?

18 A. Absolutely not.

19 Q. And, by the way, I've handed you a -- you know, one
20 letter. But the fact is, from the inception of Players Inc
21 until the time you left, there was constant solicitation of the
22 retired persons, right, to sign GLAs?

23 A. We asked retired players to sign the retired players' GLA
24 on a regular basis, yes.

25 Q. And is there a reason that you didn't say to them up to a

1 never told any of these players:

2 "Watch yourself. You better get a lawyer here.

3 There may be some technical language as a linebacker, you may

4 not be all that familiar with," did you?

5 A. Did I say that? No.

6 Q. You never told them:

7 "It might be a good idea to get lawyered up

8 before you sign this, because this language may not be a

9 monument of clarity," did you?

10 A. I didn't believe the last part of that sentence, and I

11 didn't use -- I didn't say the first part to the players.

12 Q. Okay. So now going to the second paragraph.

13 (Document displayed.)

14 Would you agree with this statement? That language:

15 "Group licensing programs are defined as

16 programs in which a licensee utilizes a total of six or more

17 present or former NFL player images in conjunction with, or on

18 products that are sold at retail or used as promotional or

19 premium items."

20 Would you agree that that sentence is perfectly

21 clear?

22 A. I think it's clear, yes.

23 Q. Do you see any ambiguity in that sentence?

24 A. No.

25 Q. So that if six or more present or former NFL player images

1 eligible NFLPA member who has signed a group licensing
2 authorization form? What's it called? I think it's the
3 bylaws, but I don't want to mislead you.

4 A. I'm not sure I recall.

5 Q. Okay. Put it this way. Am I correct in saying that --
6 give me just a second.

7 MR. PARCHER: Can you, Your Honor?

8 BY MR. PARCHER:

9 Q. Am I correct in saying that there's nothing that you know
10 of that would have prevented the NFLPA from establishing
11 eligibility requirements that included the retired players?

12 A. I think that's correct.

13 Q. Didn't you ever say that exact thing?

14 A. It --

15 MR. KESSLER: Your Honor, he answered the question.

16 He said --

17 MR. PARCHER: Okay. Withdrawn. Withdrawn.

18 BY MR. PARCHER:

19 Q. Didn't you ever say that the NFLPA board of reps, in their
20 consideration of that issue, determined that wasn't
21 appropriate? Meaning that it wasn't appropriate to make
22 retired players eligible.

23 MR. KESSLER: Your Honor, I now have an objection
24 because he's -- he's reading testimony about the active player
25 pool fund.

1 MR. PARCHER: Okay. I'm sorry. I'm just asking
2 where you're asking me to read.

3 THE COURT: It was the second set of questions and
4 answers.

5 MR. PARCHER: Yeah. I think it's just -- you want to
6 go --

7 MR. HUMMEL: Line 7.

8 THE COURT: To the top of page 9.

9 MR. PARCHER: Oh, sure. Thanks. So we're on 99,
10 line 7:

11 "QUESTION: And do you make any efforts with
12 respect to selling images of retired players
13 to companies that request -- that make
14 requests for NFL player services?

15 "ANSWER: If they make a request it's pretty
16 much sold.

17 "QUESTION: Right. But do you make efforts
18 to sell that prior to them making requests?

19 "ANSWER: Not really."

20 BY MR. PARCHER::

21 Q. Do you see that?

22 A. Yes.

23 Q. Okay. Stop there.

24 Did you agree with that?

25 A. No.

1 Whatever that adds up to.

2 MR. KESSLER: 60 and 22, Your Honor, six-oh?

3 THE COURT: 45, 32, 96, 60, plus 22. That's what I
4 have written down for time lapsed on the plaintiffs. And 42
5 minutes for the defendants.

6 MR. PARCHER: Excuse me, Judge. What's the fourth
7 number you're saying? Six-zero?

8 THE COURT: I'll start all over. 45, 32, 96, 60.

9 MR. HUMMEL: Thank you.

10 THE COURT: Plus 22.

11 MR. HUMMEL: Thank you, Your Honor.

12 THE COURT: See you on Monday.

13 MR. PARCHER: Have a nice weekend, Judge.

14 THE COURT: Thank you.

15 (Thereupon, this trial was continued until Monday,
16 October 27, 2008 at 7:30 o'clock a.m.)

17 - - - -

18 CERTIFICATE OF REPORTER

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

21 DATE: Wednesday, October 22, 2008

22 s/b Katherine Powell Sullivan
23 _____

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

UNITED STATES DISTRICT COURT

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)
Defendants.)

San Francisco, California
Monday
October 27, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

MANATT, PHELPS & PHILLIPS
1001 Page Mill Road, Building 2
Palo Alto, California 94304

**BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.**

MANATT, PHELPS & PHILLIPS
7 Times Square
New York City, New York 10036

BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 West Olympic Boulevard
Los Angeles, California 90064

BY: CHAD HUMMEL, ESQ.

(Appearances continued on next page)

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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

1 Q. Now, Mr. Allen, there's also a discussion here about the
2 money that was generated, will be divided between the player
3 and an escrow account. Okay.

4 And I'm going to come back to that later in our
5 examination. Just briefly now, because the jury may have some
6 questions about this, was there an escrow account ever created?

7 A. No.

8 Q. Why not?

9 A. Uhm, the simple answer to that is there was no money
10 generated to create it with.

11 Q. Well, couldn't you just create an empty account and have
12 no money in it?

13 A. Didn't seem to be a lot of point to that. The -- the
14 reason the escrow account was not created is because we didn't
15 have a license agreement that paid for the rights that would
16 have been divided among all of the retired players who signed
17 GLAs because we couldn't convince somebody to take all of those
18 players and pay for them, because too many of them were players
19 like me that didn't have a market value in that -- in that
20 context.

21 The licensees wanted particular well-known players,
22 and they wanted to choose which ones. They weren't interested
23 in paying something to get everybody.

24 Q. Well, Mr. Allen, you were an NFL player. Are you saying
25 that no one has ever asked to license your name and image on a

1 For the GLR pool, again to remind the jury, what
2 money was in that pool, active or retired player money?

3 **A.** Active player only.

4 **Q.** Okay. For the GLR pool, were there eligibility criteria
5 set as to which active players would receive that money?

6 **A.** Yes.

7 **Q.** Okay. Now, did those eligibility criteria for the GLR
8 pool have anything to do with what would be the eligibility
9 criteria for the escrow account if one was set up?

10 **A.** No. Absolutely not. They were completely separate
11 activities.

12 **Q.** They were completely separate, but they both used the word
13 "eligible"?

14 **A.** But that was with reference to the retired player group
15 licensing, not with respect to -- not with respect to active
16 player licensing.

17 **Q.** So for this retired player group licensing, and the escrow
18 account, if there had been money put in it, would there be new
19 eligibility requirements?

20 **A.** Yes.

21 **Q.** Okay. And who would share in this money if it was
22 generated? Would it be active players or retired players or
23 both?

24 **A.** It would be only retired players who would share this
25 money.

1 thousand retired player images?

2 Is that what you understood?

3 **THE WITNESS:** That they would -- they would pay a
4 single price for the right to -- not knowing who they were
5 going to be from -- you know, as time changed, to pick from
6 that pool and be -- and that be the -- the universe of players
7 that they had to select from.

8 They weren't willing to pay us to do that, given the
9 quality and the mix of players that were in that group.

10 They wanted the right to say:

11 "We'll tell you which players we're interested in
12 and if you can get them to agree, that's fine. But we're
13 not" --

14 **THE COURT:** Mr. Allen, I'm asking: Did you
15 understand then that it was all or nothing, that the -- that
16 the GLA kicked in only if the third-party licensee agreed to
17 license on a blanket basis the entire group of retired GLA
18 people you had on GLAs? Is that your --

19 **THE WITNESS:** I'm confused.

20 **THE COURT:** I think you can say "yes" or "no" to
21 that.

22 **THE WITNESS:** Can you repeat the question?

23 **THE COURT:** I will.

24 Are you saying it was your view back at the time,
25 that the GLA would only kick in for retired players in the

1 event that a third party like EA agreed to license the entire
2 stable of retired players who had signed up under the GLA?

3 **THE WITNESS:** Yes.

4 **THE COURT:** All right.

5 **BY MR. KESSLER:**

6 **Q.** Mr. Allen, if I could follow up on that. First of all,
7 the programs you just testified about in response to the
8 Judge's question, in which EA or trading card companies wanted
9 small groups of individual retired players, is that what we've
10 been referring to as "ad hoc licensing"?

11 **A.** Yes.

12 **Q.** Now, was ad hoc licensing explained to the retired players
13 at the retired player conventions?

14 **A.** Absolutely.

15 **Q.** Was information given out about that ad hoc licensing
16 program?

17 **A.** Yes.

18 **Q.** Again, during the period of time that you were there, were
19 the retired players told that in these small groups ad hoc
20 licenses were used, not the retired player GLAs?

21 **A.** Yes.

22 **Q.** Now, Mr. Allen, let me ask you about active player
23 licensing, because you said -- withdrawn.

24 You said you had a hope that you'd convince the
25 licensees to license the whole stable of retired players.

1 A. Typically it did. Yes.

2 Q. I'll direct your attention, for example, where it says:

3 "Former players Bobby Brister, Boomer Esiason,
4 Jim Kelly and Warren Moon."

5 Were they active or retired players at this time?

6 A. Retired.

7 Q. If you take a look at page 12A of this exhibit.

8 That's not 12A. It has the -- that's it.

9 (Document displayed.)

10 Could you identify for the jury who's featured in
11 this photograph on the right-hand side?

12 A. Former Dallas Cowboy player, retired player Darrell
13 Johnston.

14 Q. And was he a retired player?

15 A. Yes.

16 Q. And what is was Players Inc Radio?

17 A. It was an interview show that Players Inc produced and got
18 aired on the radio. And he was a host of that show.

19 Q. Okay. I would now like you, Mr. Allen, if you can, to
20 turn attention to the next exhibit I handed to you, which was
21 Trial Exhibit 2259.

22 A. Yes.

23 Q. Do you recognize this exhibit?

24 A. Yes.

25 Q. What is this, please?

1 A. It is marketing material from Players Inc.

2 Q. Now, who would you give this marketing material to as a
3 normal business practice?

4 A. Uhm, it would go out to players, the licensees, sponsors,
5 prospective licensees and prospective sponsors, the National
6 Football League, the press. It would be widely circulated.

7 MR. KESSLER: Your Honor, I move into evidence Trial
8 Exhibit 2259.

9 MR. PARCHER: No new objection, Your Honor.

10 THE COURT: All right. Received.

11 Thank you.

12 (Trial Exhibit 2259 received in evidence.)

13 (Document displayed.)

14 BY MR. KESSLER:

15 Q. And this one was prepared or circulated in September of
16 '06. Is that what this top date indicates?

17 A. And I don't remember whether I mentioned this or not, but
18 this went out to every player, as well.

19 Q. Okay.

20 A. I'm sorry.

21 Q. Okay. Was this -- it says "09/06." Does that mean it was
22 the September '06 edition of this?

23 A. Yes.

24 Q. And did you have editions periodically of this?

25 A. Yes.

1 Q. And did the editions typically include just active
2 players, or were there also retired players in them?

3 A. There were also retired players on a regular basis.

4 Q. Uhm, by the way, what is this logo that's on the top here?

5 A. That's a form of the Players Inc logo that has existed
6 from the inception of Players Inc.

7 Q. Is that one of the logos you're referring to that gained
8 value so, therefore, required the \$8 million reallocation?

9 A. Yes.

10 Q. And was this logo seen in television advertising?

11 A. Regularly.

12 Q. Mr. Allen, going back to the page, if we can, the
13 left-hand paragraph. On the very first page it talks about the
14 following:

15 "Among the players taking their helmets off for
16 the shoot were Steven Jackson, Anthony Munoz, Hall of Fame,
17 Donovan McNabb," et cetera.

18 Were any of these retired players?

19 A. Yes. Anthony Munoz.

20 Q. Okay.

21 A. That's him in the upper right-hand corner.

22 Q. Right there (indicating)?

23 A. Yes.

24 Q. Okay. Taking a look, Mr. Allen, at the next page of this
25 exhibit, there's a reference --

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM H. ALSUP

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

VS.

No. C 07-0943 WHA

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

San Francisco, California
Tuesday
October 28, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs:

MANATT, PHELPS & PHILLIPS
1001 Page Mill Road, Building 2
Palo Alto, California 94304
BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.

MANATT, PHELPS & PHILLIPS
7 Times Square
New York City, New York 10036
BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 West Olympic Boulevard
Los Angeles, California 90064
BY: CHAD HUMMEL, ESQ.

(Appearances continued on next page)

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

1 acceptable. If a player has not given his rights to Players
2 Inc, his identity as defined above cannot be used within the
3 game."

4 Now, was it correct that at this time there were a
5 few active players who had not given you rights?

6 A. There was one that I can think of.

7 Q. Who was the one you can think of?

8 A. The linebacker for the Washington Redskins named LaVar
9 Arrington.

10 Q. Okay. And so in this -- it was Players Inc's position at
11 the time, according -- do you remember, was it Players Inc's
12 position at the time, to EA, that they'd have to scramble
13 Mr. Arrington because they -- you didn't have the rights there
14 either to give?

15 A. Yes. They couldn't -- they couldn't show LaVar Arrington,
16 as I recall, on the -- in the game.

17 Q. So how would you summarize what Players Inc's position was
18 back at this time about why images should be altered or
19 scrambled?

20 A. So that they wouldn't be utilizing the identities of
21 players that they didn't have the rights to use. In this case
22 the -- they did have the rights to use players that we had
23 provided them the right to use, but for those that they didn't
24 have those rights they shouldn't use their identities.

25 Q. Now, Mr. Allen, when money was paid under the addendum,

1 **THE COURT:** Fine. Go ahead.

2 **BY MR. PARCHER:**

3 **Q.** If I may. Did you consider for the license fee that was
4 already being paid, rather than scrambling the identities of
5 the retired players, just adding them to your EA license? No
6 extra money charged to EA. Did you consider that? Yes or no?

7 **A.** Uhm, sure.

8 **Q.** And you rejected that as an option?

9 **A.** Because I didn't think I had the authority to spend the
10 active player money on retired players under the agreements we
11 had and the rules.

12 **Q.** Excuse me. You're telling the Court and the jury that you
13 used your best efforts on behalf of these retired players,
14 correct?

15 **A.** Yes.

16 **Q.** And you're telling the Court and the jury that you didn't
17 feel you had any conflict between your best efforts for retired
18 players and protecting the active players, correct? Yes or no?
19 You said that, didn't you?

20 **A.** Yes.

21 **Q.** Right. And you're telling this Court and this jury that
22 you, meaning the defendants, have 63 -- at least 63 percent of
23 the money, at least 63 percent of the money that you defendants
24 retained after you give the active players 37 percent, aren't
25 you?

1 That's fine with me. Let me cross it out of my little
2 artist...

3 **BY MR. PARCHER:**

4 **Q.** When a dollar comes in from a company such as
5 Electronic Arts, Mr. Allen -- sorry to be standing so far away
6 from you. Don't really know where to put this.

7 When a dollar comes in, 37 percent goes to the
8 actives, and 63 percent is kept by PA, NFLPA, and PI, correct?

9 **A.** No.

10 **Q.** No?

11 **A.** No.

12 **Q.** What happens?

13 **A.** 23 percent is kept by Players Inc, and 40 percent is kept
14 by the Players Association separately.

15 **Q.** Okay. All I'm saying, I'm combining the two for purposes
16 of my question. The combination of PA and PI is 63 percent,
17 right?

18 **A.** That's correct.

19 **Q.** That's all I'm saying about that. I'm not quibbling here.

20 Now, when the 37 percent is distributed to the active
21 players -- if everybody can read my writing. "Active."

22 When the 37 percent is distributed to the active
23 players, the active players share and share that 37 percent.
24 Regardless of whether their names or likenesses were used on a
25 particular license, they get their share, right?

1 A. Correct.

2 Q. And the retirees, my clients, get zero, correct?

3 A. Get zero from what?

4 Q. My retirees --

5 A. You mean, out of the gross licensing --

6 Q. -- out of the gross licensing agreements.

7 A. Do you mean out of gross licensing revenues?

8 Q. Yes. Correct.

9 A. That's right.

10 Q. Now, suppose, just suppose -- I know you don't agree with
11 this -- but just suppose that the jury were to decide that the
12 Electronic Arts agreements granted the rights to retired --
13 granted the rights to retired players. Just assume that. I
14 know you don't agree with that. But just assume that that's
15 what the jury concluded. They didn't agree with you, they came
16 to a different conclusion.

17 Then, it's true that a share of the money of the
18 gross licensing revenue would be due to the retired players,
19 correct?

20 MR. KESSLER: Your Honor, inadmissible question for a
21 fact witness. It's argument, closing argument or expert
22 testimony.

23 MR. PARCHER: This is a question from my 8-year-old
24 grandson, not for a tax expert.

25 THE COURT: I don't know about your 8-year-old

1 Q. Right. They were hired by the defendants, right, who
2 had -- who had determined amongst themselves that 63 percent
3 would be kept by them, 37 percent would be given to the
4 players. And now you were hiring somebody to see if they would
5 say "good" for what you had decided or not, right?

6 Yes or no, sir?

7 A. No, that's not exactly how it worked.

8 Q. No? You weren't -- you weren't hiring them to examine the
9 decision that you and Mr. Upshaw had made? Isn't that why you
10 called it a so-called "independent third party"?

11 A. We -- we asked them to advise us on the appropriate split.

12 Q. But you had already determined 37 percent, first, and then
13 you went out and got the independent advisors, correct?

14 A. I believe that we -- we suggested to them that we had --
15 that we had arrived at a tentative conclusion, but we were
16 interested in knowing from them both whether they had an
17 alternative suggestion and whether they thought the tentative
18 conclusion that we had drawn was appropriate.

19 Q. Do you have a writing where that's what you said to them?

20 A. No. I was there when I said that to them.

21 Q. Right. But you don't have a writing, just in case
22 somebody were to say, "Gee" --

23 A. I have no idea. This was 13, 14 years ago.

24 Q. Okay. But one thing, you have no idea what the situation
25 was 13 or 14 years ago?

1 A. Active or retired players, present or former.

2 Q. So did you have an understanding when you signed this
3 agreement about what would trigger an obligation for the union
4 to pay?

5 A. If they struck some type of deal for active or former
6 players to license us, then we would get paid.

7 Q. Did you draft this document?

8 A. No, sir.

9 Q. Did you negotiate it?

10 A. No, sir.

11 Q. Did anyone from the union ever instruct you or advise you
12 you better hire a lawyer?

13 A. No, sir.

14 Q. When you signed this document, did you send it back in?

15 A. Yes, sir.

16 Q. Did you retain any control at all?

17 A. No. Well, what does "control" mean?

18 Q. Do you have an understanding of the word "control"?

19 A. In what context?

20 Q. Well, when you sent this letter back in, did you retain
21 any control over what the union could or couldn't do?

22 A. Oh, no.

23 Q. Did you have a mind-set about what the union was going to
24 do on your behalf under this agreement?

25 A. I assumed they're acting as an agent for active and

1 retired players, and they were going to try to get deals for
2 us, and we would get paid.

3 Q. What do you mean by the word "agent"?

4 A. Well, usually when we do things as even active or retired
5 players, sometimes you have agents that work on your behalf to
6 get you either speaking engagements, motivational speaking or
7 other things. And the agent takes a percentage of the -- of
8 the monies, and you get paid the rest.

9 Q. And is that how you thought of the NFLPA in connection
10 with this deal?

11 A. Yes.

12 Q. They would be acting on your behalf?

13 A. Yes.

14 Q. In connection with what, specifically?

15 A. I have no idea.

16 Q. Well, was it in connection with something other than
17 licenses?

18 MR. KESSLER: Objection, leading.

19 THE WITNESS: I'm not sure.

20 BY MR. HUMMEL:

21 Q. Okay.

22 THE COURT: Well, the witness doesn't know, so
23 overruled.

24 Go ahead.

25

1 A. Yes, I did.

2 Q. If the NFLPA used your image in a way that was offensive
3 to you, did you think you had any rights under this agreement?

4 A. Probably.

5 Q. Okay. What did you have an understanding?

6 A. Well, if I didn't like the sponsor maybe I would have
7 something to say about it.

8 Q. Did you think if they had done something that was
9 offensive to you, you could quit the program?

10 A. I assumed I could.

11 Q. Did you understand at this point when you signed this
12 agreement -- by the way, what's the date of it?

13 A. This is January, 2004.

14 Q. And it was effective through what date?

15 A. I'm not sure.

16 Q. If you look right above your signature.

17 A. Oh, to December, 2006. I'm sorry, yeah.

18 Q. Okay. As of this date, January 5, 2004, had you learned
19 whether or not other retired players had signed this?

20 A. Yes.

21 Q. Did you ever learn how many signed it?

22 A. Not the actual number, no.

23 Q. Did you have an understanding, was it ten or 50 or more?

24 A. It was in the hundreds.

25 Q. In the hundreds. That was your understanding?

1 A. Yes, sir.

2 Q. Did you have any -- and just as in the last agreement, how
3 did you view the NFLPA's role vis-a-vis you and the group in
4 connection with licensing programs? How did you think about
5 it?

6 Do you understand the question?

7 A. No.

8 Q. All right. So you signed this document, right? And
9 you're giving them what?

10 A. The right to act as my agent. I'm giving them my image as
11 a professional football player.

12 Q. And did you think they were going to do anything with that
13 right?

14 A. I assumed so. Why would they ask me to sign something?

15 Q. All right. And what did you expect them to do?

16 A. I expected them to market retired and active players in
17 the group licensing agreement.

18 Q. As your what?

19 A. As my representative, my agent, whatever you want to call
20 them.

21 Q. Now, did Mr. Allen, at any of these retired player
22 conventions, ever report to the retired players on royalties
23 that were being received by the union?

24 A. No.

25 Q. From licensing programs?

1 A. Of course I remember signing it. It wasn't -- it wasn't
2 on my mind about the exact wording of the GLA.

3 Q. Okay. Mr. Laird, let me move on to another subject.

4 It's correct, isn't it, you've testified you got the
5 GLA in the mail. You signed it, put a stamp on it and sent it
6 in, correct?

7 A. Or it could have been a self-addressed envelope back to
8 them.

9 Q. So it may not even have cost you a stamp, right?

10 A. Could have been.

11 Q. And you didn't have to -- you didn't have to pay anything
12 to sign the GLA, right?

13 A. No.

14 Q. The GLA you signed, the second one in 2004, was
15 non-exclusive, right?

16 A. I don't know. You'd have to show it to me.

17 Q. You don't recall?

18 A. No.

19 MR. KESSLER: Could we put up the second retired
20 player GLA?

21 This is Trial Exhibit 12 -- what is it, 25?

22 BY MR. KESSLER::

23 Q. And if you look at the first line, you'll see it says
24 "non-exclusive."

25 (Document displayed.)

1 **A.** No, not just because I signed the contract. I was
2 automatic -- I believe that I was automatically to receive
3 money with reference to the group licensing agreement. Not
4 just because I signed it. But if I signed it, and it was used,
5 I thought I was entitled to monies.

6 **Q.** Did you expect the union to make an affirmative effort to
7 market you as a part of this group?

8 **MR. KESSLER:** Your Honor, leading.

9 **THE COURT:** Sustained. It's leading.

10 **BY MS. NAYLOR:**

11 **Q.** What did you expect from the union, if anything?

12 **A.** Well, my -- my belief was that these particular documents,
13 the GLA, would probably be collected by the union, and then the
14 union would take those and market it through -- through a third
15 party.

16 **Q.** And if the union was able to sell a group license of six
17 or more present or active players, but they didn't use your
18 image, in particular, did you think you were entitled to share
19 in the money?

20 **A.** Yes.

21 **Q.** And what led you to believe that?

22 **A.** Because it says it's a collective -- it's a group
23 licensing agreement. It doesn't mean me, per se. There's
24 nothing in that that says that. It says I must be part -- I
25 could be part of the group or any six current or former players

1 "It is further understood that the monies
2 generated by such a licensing of retired player group rights
3 will be divided between the players and an escrow account for
4 all group license contracts entered into."

5 I'm sorry.

6 Q. I don't think you read that exactly right.

7 A. I dropped down a line. Let me start from the beginning.

8 "It is further understood that the monies
9 generated by such licensing of retired player group rights will
10 be divided between the players and an escrow account for all
11 eligible NFLPA members who have signed the group's licensing
12 authorization form."

13 Q. So from 1996 to 2006, that paragraph, the language never
14 changed?

15 A. That's correct.

16 Q. Did you ever receive any licensing money from the union in
17 connection with this second GLA?

18 A. No.

19 Q. Did you ever receive an accounting from the union?

20 A. No.

21 Q. Mr. Beach, after you signed the GLA, what control, if any,
22 did you have over the union's ability to license your rights to
23 third parties?

24 A. Well, the control that -- that I think that we all had is
25 that in -- and I think it's the third paragraph -- I'm sorry,

1 fourth paragraph:

2 "If the undersigned players' inclusion in a
3 particular NFL player program will conflict with an
4 individual's exclusive endorsement agreements and the players
5 provides the NFLPA with a timely notice of that conflict," if
6 there was something that conflicts with it, if they were -- I
7 had given my image, and they were probably -- if they used my
8 image for something in reference to alcohol or something that I
9 didn't -- that would be in conflict with my personal, then I
10 would have the opportunity to say that I wouldn't want to
11 participate.

12 Q. Did you believe you had the right to revoke this GLA, as
13 well?

14 A. That's correct.

15 Q. Did you ever complain to the union that they hadn't sent
16 you a check or any reports or accounting on the GLAs?

17 A. No.

18 Q. Why not?

19 A. Uhm, as I -- as I said earlier, I -- when I left football,
20 I left football. I was fortunate and blessed. I was glad to
21 receive the GLAs. And as I received the GLAs, I sent it back.
22 But I didn't -- I didn't have a lot of contact with the -- with
23 the league or to that nature. So I was about doing other
24 things.

25 Q. Did anything under the GLA that you're aware of obligate

1 minutes in here, so I will need your tables. But you can leave
2 everything else.

3 **MR. KESSLER:** Okay. Thank you.

4 **MR. KATZ:** Thank you.

5 (Thereupon, this trial was continued until Wednesday,
6 October 29, 2008 at 7:30 o'clock a.m.)

7

8

9

10

- - - -
CERTIFICATE OF REPORTER

11

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

13

DATE: Tuesday, October 28, 2008.

14

15

s/b Katherine Powell Sullivan

16

17

18

19

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

20

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25

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

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

PLAINTIFFS,)

VS.)

NO. C 07-0943 WHA

NATIONAL FOOTBALL LEAGUE PLAYERS)
ASSOCIATION AND NATIONAL FOOTBALL)
LEAGUE PLAYERS INCORPORATED D/B/A)
PLAYERS INC,)

DEFENDANTS.)

SAN FRANCISCO, CALIFORNIA

WEDNESDAY

OCTOBER 29, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

MANATT, PHELPS & PHILLIPS
1001 PAGE MILL ROAD, BUILDING 2
PALO ALTO, CALIFORNIA 94304

**BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.**

MANATT, PHELPS & PHILLIPS
7 TIMES SQUARE
NEW YORK CITY, NEW YORK 10036

BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

BY: CHAD HUMMEL, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

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

1 A. YES, SIR.

2 Q. CLAY WALKER?

3 A. YES, SIR.

4 Q. ANYBODY ELSE?

5 A. GENE UPSHAW.

6 Q. GENE UPSHAW. ALL RIGHT.

7 A. LASHUN LAWSON SOMETIMES.

8 Q. NOW, DID ANY OF THOSE PEOPLE EVER SHOW YOU A GLA?

9 A. A GLA?

10 Q. THIS RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORM,
11 REGARDLESS OF WHETHER IT WAS SIGNED OR UNSIGNED.

12 A. I DON'T RECALL SEEING THIS BEFORE.

13 Q. DID THEY EVER GIVE YOU A LIST OF RETIRED NFL PLAYERS WHO
14 HAD SIGNED RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORMS?

15 A. NOT THAT I RECALL.

16 Q. DID ANY OF THOSE INDIVIDUALS OFFER EA A LICENSE TO THOSE
17 RETIRED PLAYERS WHO HAD SIGNED GLA -- THAT IS RETIRED PLAYER
18 GROUP LICENSING AUTHORIZATION FORMS?

19 A. I'M SORRY. COULD YOU REPEAT THAT, MA'AM?

20 MR. HUMMEL: COULD I HAVE THAT ONE READ BACK, PLEASE?

21

22 (THE REPORTER READ THE PENDING QUESTION AS FOLLOWS:

23 "QUESTION: DID ANY OF THOSE INDIVIDUALS

24 OFFER EA A LICENSE TO THOSE RETIRED PLAYERS

25 WHO HAD SIGNED GLA -- THAT IS RETIRED PLAYER

1 GROUP LICENSING AUTHORIZATION FORMS?")

2 **THE WITNESS:** THAT'S NOT TYPICALLY THE WAY IT WORKS.
3 WE WOULD TYPICALLY TELL THEM WHICH PLAYERS WE WERE INTERESTED
4 IN, AND THEN THEY WOULD ENDEAVOR TO GET THE RIGHTS TO THE
5 PLAYERS WE WERE INTERESTED IN.

6 **BY MR. HUMMEL:**

7 **Q.** I UNDERSTAND THAT. I'M ASKING YOU A DIFFERENT QUESTION,
8 AND IT'S IMPORTANT ON THIS ONE THAT WE BE AS PRECISE AS
9 POSSIBLE.

10 **A.** OKAY.

11 **Q.** DID ANY OF THE INDIVIDUALS FROM PI THAT YOU REFERENCED,
12 INCLUDING DOUG ALLEN, EVER OFFER EA A LICENSE TO AT LEAST THOSE
13 RETIRED PLAYERS FOR WHOM THEY HAD OBTAINED A RETIRED GROUP
14 AUTHORIZATION FORM?

15 **A.** EVERYBODY THAT OBTAINED A FORM?

16 **Q.** YES.

17 **A.** I DIDN'T KNOW -- I DIDN'T HAVE -- LIKE I SAID BEFORE, I
18 DON'T THINK I EVER GOT A LIST OF EVERYBODY THAT THEY HAD A
19 FORM. SO I DON'T THINK THEY -- YOU KNOW, IF THEY WOULD HAVE
20 OFFERED IT THEY WOULD HAVE SUPPLIED ME WITH A LIST.

21 **Q.** AND THEY NEVER DID THAT?

22 **A.** I WASN'T REALLY INTERESTED IN THAT, THOUGH.

23 **Q.** THAT'S NOT MY QUESTION.

24 **A.** I DON'T RECALL THEM EVER GIVING ME THAT LIST OR OFFERING
25 ME THAT LIST.

1 Q. DID THEY EVER SAY TO YOU THAT:

2 "WE HAVE 2100 RETIRED PLAYERS WHO HAVE SIGNED
3 RETIRED PLAYER GROUP LICENSING AUTHORIZATION FORMS, AND WE
4 WOULD LIKE YOU TO TAKE A LICENSE TO THOSE GUYS"?

5 A. NO.

6 Q. DID THEY EVER TRY TO MARKET THOSE TO YOU?

7 A. YES.

8 Q. WHAT DID THEY SAY?

9 A. THEY SAID IF -- YOU KNOW, THEY'D ASK US IF WE WERE
10 INTERESTED IN USING FORMER NFL PLAYERS, RETIRED PLAYERS. AND
11 ON THOSE OCCASIONS WHEN WE WERE INTERESTED, WHICH WE WERE ON
12 SEVERAL OCCASIONS, THEY HELPED US LICENSE THEM. AND WE
13 NEGOTIATED A SEPARATE CHARGE FOR THAT.

14 Q. OKAY. BUT DID THEY EVER IN THOSE DISCUSSIONS REFERENCE A
15 LIST OF GLA MEMBERS THAT THEY HAD SIGNED UP?

16 A. THEY HAD REFERENCED THAT THERE WERE CERTAIN PLAYERS THAT
17 THEY HAD SIGNED UP AND OTHER PLAYERS WHO DID NOT WANT TO WORK
18 WITH PLAYERS INC. --

19 Q. DID THEY OFFER --

20 A. -- AND --

21 MR. FEHER: YOUR HONOR, THE WITNESS SHOULD BE ALLOWED
22 TO FINISH HIS ANSWER.

23 THE COURT: PLEASE FINISH YOUR ANSWER.

24 THE WITNESS: THANK YOU, SIR.

25 AND IN SOME OF THOSE INSTANCES WHERE THERE'S CERTAIN

1 SMALL EXCEPTION, WE NEVER REALLY HAD ANY ISSUES WITH THEM. AND
2 THEY WERE ABLE TO LICENSE US ENOUGH OF THE RETIRED PLAYERS THAT
3 WE NEEDED TO DO THE FEATURES THAT WE HAD IN OUR GAMES.

4 Q. IS IT TRUE THAT YOU UNDERSTOOD THAT, IN EFFECT, THE NFL
5 PI, PLAYERS INC, WAS ACTING AS A SORT OF AGENT FOR RETIRED
6 PLAYERS IN DEALING WITH YOU?

7 A. YEAH, THEY WERE AN AGENT OR MIDDLEMAN TO -- BETWEEN THE
8 RETIRED PLAYERS AND US TO LICENSE THE RIGHTS OF THOSE RETIRED
9 PLAYERS.

10 Q. IS IT TRUE THAT YOU UNDERSTOOD THAT THEY ACTED AS A SORT
11 OF AGENT TO GET MERCHANDISING OR LICENSING DEALS FOR RETIRED
12 PLAYERS?

13 A. WELL, AT LEAST WITH RESPECT TO US THEY DID. I DON'T KNOW
14 ABOUT OTHER ENTITIES.

15 Q. WITH RESPECT TO YOU THAT'S HOW YOU UNDERSTOOD IT?

16 A. THEY HAD A PROVISION IN THEIR AGREEMENT THAT IF WE WANTED
17 THE RIGHTS TO RETIRED PLAYERS OR UPCOMING PLAYERS, FOR THAT
18 MATTER, WE WOULD WORK THROUGH THEM TO DO THAT.

19 Q. IS IT TRUE, SIR, THAT IN YOUR VIEW, IN FACT, THE NFLPA AND
20 PLAYERS INC NEVER EVEN TRIED TO GET EA TO ADD MORE RETIRED
21 PLAYERS IN A GAME?

22 A. NO.

23 Q. THAT'S NOT TRUE?

24 A. NO.

25 Q. IS IT TRUE, THOUGH, THAT EA SELECTS WHICH PLAYERS IT

1 THE MADDEN GAME THAN YOU WOULD ALLOW -- THAN THEY WOULD ALLOW?

2 A. I DON'T KNOW WHAT YOU'RE TALKING ABOUT.

3 Q. YOU'RE NOT FOLLOWING?

4 A. NOT AT ALL.

5 Q. LET'S LOOK AT EXHIBIT 1320, WHICH IS IN EVIDENCE.

6 (DOCUMENT DISPLAYED.)

7 A. 1320.

8 Q. I COULD JUST ASK YOU, SIR, YOU SAID YOU KNOW WHO JEREMY
9 STRAUSSER IS, RIGHT?

10 A. STRAUSSER, YES.

11 Q. STRAUSSER? HE'S AN EMPLOYEE OF ELECTRONIC ARTS?

12 A. JEREMY STRAUSSER IS AN EMPLOYEE OF ELECTRONIC ARTS.

13 Q. AND HE WAS AS OF MAY 31, 2001?

14 A. YES. AS FAR AS I RECALL HE WAS, YES.

15 Q. AND YOU KNOW WHO LASHUN, L-A-S-H-U-N, IS?

16 A. I DO.

17 Q. AT THE TIME WAS SHE AN EMPLOYEE AT PLAYERS INC?

18 A. SHE WAS.

19 Q. HAVE YOU EVER SEEN THIS LETTER BEFORE?

20 A. I HAVE.

21 Q. YOU HAVE. ALL RIGHT.

22 A. I JUST SAW IT IN CONNECTION WITH THIS TRIAL.

23 Q. OKAY. WERE YOU AWARE, AS OF MAY 31, 2001, THAT PI WAS
24 INSTRUCTING ELECTRONIC ARTS TO "SCRAMBLE" -- THAT'S

25 MS. LAWSON'S WORD IN THE FIRST PARAGRAPH -- RETIRED PLAYERS IN

1 WHO SIGNED RETIRED PLAYER GROUP AUTHORIZATION FORMS THERE MIGHT
2 HAVE BEEN SOME RIGHTS THAT YOU ACTUALLY WANTED TO USE, RIGHT?

3 **A.** WE DIDN'T KNOW WHO -- I'VE TOLD YOU SEVERAL TIMES -- I'M
4 SURE THE JURY'S HEARD IT BY NOW -- THEY DID NOT GIVE US A LIST
5 OF 2100 PLAYERS.

6 WE TYPICALLY WOULD TELL THEM WHO WE WANTED, AND THEY
7 WOULD TRY AND GET THEM.

8 **MR. HUMMEL:** ONE MOMENT, YOUR HONOR.

9 NOTHING FURTHER AT THIS TIME, YOUR HONOR.

10 **THE COURT:** TAKE A BREAK SO I CAN DEAL WITH THE HALL
11 OF FAME ISSUE. THIS TIME IT WILL BE 20 MINUTES.

12 **THE CLERK:** ALL RISE.

13 (THEREUPON, THE JURY LEFT THE COURTROOM.)

14 **THE WITNESS:** DO YOU NEED ME FOR THIS, YOUR HONOR?

15 **THE COURT:** DO I NEED THE WITNESS FOR THIS?

16 **MR. KESSLER:** I DON'T THINK SO, YOUR HONOR.

17 **MR. HUMMEL:** NO, YOUR HONOR.

18 **THE COURT:** WHY DON'T YOU STEP OUT AND TAKE YOUR
19 20-MINUTE BREAK, TOO?

20 THANK YOU, MR. LINZNER.

21 DO YOU STILL WANT TO GO INTO THE HALL OF FAME?

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

23 **THE COURT:** ALL RIGHT. WELL, THEN, HERE IS WHAT MY
24 NOTES FROM THE -- EVERYONE ELSE HAVE A SEAT.

25 DO YOU WANT MR. LINZNER HERE OR NOT?

1 YOU MADE A PUBLIC COMMENT NOW THAT I'M SURE YOUR HONOR DID NOT
2 INTEND TO EXPRESS ANY VIEW AS TO HOW THIS CASE SHOULD BE
3 DECIDED.

4 **THE COURT:** THAT IS TRUE. THAT IS UP TO THE JURY.

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

6 **THE COURT:** I'VE SAID THAT MANY TIMES, AND I STAND BY
7 THAT. THE JURY IS GOING -- I'M GOING TO GIVE THEM PROPER
8 INSTRUCTIONS OF LAW. BUT WHAT THEY DECIDE IS THEIR BUSINESS.

9 **MR. KESSLER:** THANK YOU.

10 **THE COURT:** ALL RIGHT. SEE YOU TOMORROW.

11 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL THURSDAY,
12 OCTOBER 30, 2008 AT 7:30 O'CLOCK A.M.)

13

14

15

- - - -

CERTIFICATE OF REPORTER

16

17

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

18

DATE: THURSDAY, OCTOBER 30, 2008.

19

20

S/B KATHERINE POWELL SULLIVAN

21

22

23

KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
U.S. COURT REPORTER

24

25

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

1 NOT EVIDENCE. I'VE JUST ASKED THEM TO DO THIS TO GET YOU IN
2 THE RIGHT FRAME OF MIND SO THAT YOU WILL BE ABLE TO PICK
3 SOMETHING OF VALUE OUT OF THIS DEPOSITION.

4 ALL RIGHT. YOU'VE GOT ABOUT 30 MORE MINUTES TO GO?

5 MR. CHARHON: HOPEFULLY LESS.

6 THE COURT: ALL RIGHT. GO RIGHT AHEAD.

7 GLENN EYRICH,

8 CALLED AS A WITNESS FOR THE PLAINTIFFS HEREIN, TESTIFIED VIA
9 DEPOSITION READ IN OPEN COURT IN THE PRESENCE AND HEARING OF
10 THE JURY AS-FOLLOWS:

11 (TRANSCRIPT OF DEPOSITION TESTIMONY READ BY MR.
12 CHARHON AND MR. GARZA AS FOLLOWS:)

13 **EXAMINATION**

14 Q. AND DOES THIS INCLUDE ROYALTIES THAT WERE PAID TO OR
15 PAYMENTS THAT WERE MADE TO RETIRED PLAYERS?

16 A. IT INCLUDES BOTH ACTIVE AND RETIRED.

17 Q. DOES IT INCLUDE PAYMENTS THAT WERE MADE PURSUANT TO GROUP
18 LICENSING AUTHORIZATIONS, SUCH AS EXHIBIT 19, THE ONE THAT
19 MR. ADDERLEY SIGNED?

20 A. I DON'T KNOW SPECIFICALLY IF THAT WAS INCLUDED IN THIS
21 ACCOUNT, BUT THAT IS THE ACCOUNT THAT HAS ALL OF THE ROYALTIES
22 EARNED BY BOTH ACTIVE AND RETIRED PLAYERS.

23 Q. SO WITH RESPECT TO ACTIVE PLAYERS, LET'S JUST FOCUS ON
24 THEM FIRST. THEY GOT AN EQUAL SHARE; IS THAT CORRECT?

25 A. CORRECT.

1 LICENSING AUDITS ON A ROTATING BASIS FOR THE REVENUES THAT ARE
2 COMING INTO PLAYERS INC AND THE NFLPA.

3 Q. BUT ONCE IT GETS TO -- I THINK YOU JUST SAY BEFORE THEY
4 COME SIMULTANEOUSLY FROM THE LICENSEE TO BOTH NFLPA AND PI?

5 A. CORRECT.

6 Q. AND THEN FROM THERE TO THE PLAYER. DID YOU AUDIT THAT?

7 A. WE LOOK AT THE ELIGIBILITY REQUIREMENTS AND DO A SAMPLING
8 OF INDIVIDUAL PLAYERS TO THE AMOUNT OF MONEY THAT WAS RECEIVED.

9 Q. NOW, I THINK YOU TESTIFIED THAT UNDER THE ELIGIBILITY
10 REQUIREMENTS, YOUR UNDERSTANDING WAS RETIRED PLAYERS WEREN'T
11 ELIGIBLE?

12 A. CORRECT.

13 Q. SO WITH RESPECT TO RETIRED PLAYERS, YOU DIDN'T DO ANYTHING
14 FURTHER TO CHECK THAT THEY WERE RECEIVING THE AMOUNTS OF MONEY
15 DUE THEM, BECAUSE YOU DIDN'T THINK THERE WERE ANY AMOUNTS OF
16 MONEY DUE THEM?

17 A. ON THE EQUAL SHARE ROYALTY POOL, THAT IS CORRECT.

18 Q. DO YOU RECOGNIZE THIS DOCUMENT?

19 A. YES.

20 Q. CAN YOU TELL US WHAT IT IS, PLEASE.

21 A. IT'S THE CALCULATION.

22 Q. EXCUSE ME. THE QUESTION IS, SIR, WHAT IS THIS?

23 A. THIS IS A CALCULATION PERFORMED BY THE PLAYERS INC FINANCE
24 DEPARTMENT ON THE ALLOCATION OF THE EQUAL SHARE ROYALTY POOL.

25 Q. AND HAVE YOU REVIEWED IT, ALSO?

1 A. YES.

2 (READING STOPPED.)

3 MR. CHARHON: PLAINTIFFS OFFER EXHIBIT 102 INTO
4 EVIDENCE.

5 MR. KESSLER: COULD I SEE?

6 YOUR HONOR, IF I JUST CAN SEE WHAT IT IS.

7 THE COURT: ANY OBJECTION?

8 MR. KESSLER: NO OBJECTION, YOUR HONOR.

9 THE COURT: RECEIVED.

10 (TRIAL EXHIBIT 102 RECEIVED IN EVIDENCE.)

11 (READING RESUMED.)

12 Q. CAN YOU TAKE US THROUGH IT, PLEASE? THIS IS FOR 2003?

13 A. RIGHT. FISCAL YEAR ENDED 2/28/03.

14 Q. IF YOU COULD TAKE US THROUGH THE FIRST PAGE OF THIS
15 DOCUMENT, SIR?

16 A. UNDER THE GROSS LICENSING REVENUES YOU SEE THAT THERE'S
17 LICENSING ROYALTIES, NFLPA, WHICH REPRESENTS THE CALCULATED
18 40 PERCENT SHARE OF GROSS LICENSING REVENUE EQUAL SHARE POOL,
19 COMING TO \$14,074,000. LICENSING ROYALTIES, PLAYERS INC
20 REPRESENTS THE PLAYERS INC PORTION OF THE EQUAL SHARE POOL.
21 COMING TO TOTAL AMOUNT RECEIVED, TOTAL LICENSING ROYALTIES OF
22 \$27.2 MILLION FOR THE YEAR ENDED 2/28/03. IN ADDITION TO THE
23 TOTAL LICENSING ROYALTIES FOR THAT YEAR, THE NFL SPONSORSHIP
24 AND INTERNET AMOUNTS ARE ADDED THERE AT THAT \$10 MILLION.
25 THERE'S A DEDUCTION FOR THE 25 PERCENT NFL FUND RELATING TO THE

1 SPONSORSHIP AGREEMENT OF \$2.1 MILLION.

2 COMING DOWN TO THE NET GROSS LICENSING REVENUE OR
3 EQUAL SHARE POOL OF \$35.1 MILLION.

4 GOING TO THE BOTTOM, GROSS LICENSING REVENUE, COMING
5 STRAIGHT DOWN FROM THE MIDDLE OF THE PAGE, \$35.1 MILLION LESS
6 THE NFL PORTION, \$14 MILLION, COMES TO \$21,111,198, WHICH FROM
7 THERE 60 PERCENT OF THAT WOULD GO TO ACTIVE PLAYERS IN THE
8 PLAYER POOL, COMING TO \$12,666,718.

9 Q. AND THEN MOVING TO THE SECOND PAGE.

10 A. STARTING AT THE TOP, NFLPA, WHAT IT CURRENTLY HAS
11 RECEIVED, \$10.9 MILLION. THE ACCRUALS AT THE END OF THE YEAR,
12 2/28/03, \$2.8 MILLION. PLAYERS INC CURRENTLY RECEIVED
13 12.2 MILLION.

14 THE ACCRUALS RELATED TO PLAYERS INC IS \$1.5 MILLION.
15 THERE YOU SEE THE \$10 MILLION FROM THE SPONSORSHIP AND THE
16 INTERNET AGREEMENT LESS THE 25 PERCENT SPONSORSHIP AGREEMENT,
17 DEDUCTION OF \$2.1 MILLION, TO COME TO THE NET GROSS LICENSING
18 REVENUE OF \$35.1 MILLION.

19 YOU CAN SEE THE NFLPA PORTION, WHICH IS 40 PERCENT OF
20 THAT \$35.1 MILLION, IS 14,074,131.

21 Q. THERE ARE TWO MORE NUMBERS THERE.

22 A. I DON'T KNOW EXACTLY WHAT THE LESS WHAT PA WILL GET WITH
23 ACCRUALS MEANS.

24 THE NEXT LINE DUE TO NFLPA TO MEET PORTION OF GROSS
25 LICENSING REVENUE IS THE AMOUNT DUE TO NFLPA TO GET THEM TO

1 THEIR 40 PERCENT LICENSING AMOUNT.

2 LOOKING AT THE BOTTOM, GOING TO THE \$21.1 MILLION,
3 THE 60 PERCENT THAT'S GOING TO THE PLAYERS CALCULATED ON THE
4 PREVIOUS PAGE IS DEDUCTED FROM THAT \$21.1 MILLION, COMING TO
5 THE AMOUNT RETAINED BY PLAYERS INC, THE \$8.4 MILLION FOR THE
6 YEAR.

7 Q. THEN MOVING TO THE NEXT PAGE. ACTUALLY, THE NEXT PAGE ARE
8 ALL THE SAME FORMAT.

9 A. THE NEXT PAGES ARE ALL ROLLING UP INTO THE SECOND PAGE
10 HERE UNDER GROSS LICENSING REVENUE.

11 Q. SO THE -- AFTER PAGE 2 OF EXHIBIT 102, AFTER THE SECOND
12 PAGE OF EXHIBIT 102, THE REMAINDER IS THE BACKUP FOR PAGE 2; IS
13 THAT FAIR TO SAY?

14 A. CORRECT.

15 Q. NOW LET'S DO THE SAME THING FOR 2004. WHAT IS EXHIBIT
16 103, SIR?

17 A. EXHIBIT 103 IS THE CALCULATION OF THE ACTIVE PLAYER EQUAL
18 SHARE POOL FOR 2004, THE YEAR ENDED FEBRUARY 28TH, 2004.

19 (READING STOPPED.)

20 **MR. CHARHON:** PLAINTIFFS MOVE EXHIBIT 103 INTO
21 EVIDENCE.

22 **MR. KESSLER:** NO OBJECTION.

23 **THE COURT:** RECEIVED.

24 (TRIAL EXHIBIT 103 RECEIVED IN EVIDENCE.)

25 (READING RESUMED.)

1 Q. IN THE HOPE OF MOVING THIS ALONG AND GETTING MR. FEHER ON
2 HIS TRAIN, COULD YOU COMPARE AND CONTRAST EXHIBIT 103 AND 102?
3 IF IT'S THE SAME FORMAT, THE SAME WAY OF CALCULATION, TELL US
4 THAT; IF IT'S DIFFERENT, TELL US THAT.

5 A. THE ONLY THING DIFFERENT THAT I CAN SEE ON THE FIRST PAGE
6 RELATES TO THE 528,000 REFERRING TO LICENSING ROYALTIES NOT
7 SUBJECT TO THE POOL, 5 AND 10 PERCENT PORTIONS.

8 Q. I'M SORRY. OH, YES, I SEE THAT.

9 A. THE THIRD LINE.

10 Q. HOW IS THAT DIFFERENT?

11 A. THE NFLPA -- WELL, THE TOTAL GROSS LICENSING REVENUES WAS
12 OVER \$40 MILLION FOR THE FIRST TIME. AND IN MAKING A
13 CALCULATION RELATING TO PLAYERS INC, NFLPA, AND WHAT THE
14 PLAYERS GET IN THAT ALLOCATION, THERE IS A DIFFERENCE OF
15 528,000 BETWEEN THE NFLPA GETTING 40 PERCENT AND EFFECTIVELY A
16 REDUCED AMOUNT BECAUSE IT WENT OVER \$40 MILLION.

17 Q. I SEE. EXHIBIT 103 DOES NOT SHOW ANY FLOWS OF MONEY TO
18 RETIRED PLAYERS, RIGHT?

19 A. BASED ON THE FORM OR LOOKING AT IT, IT'S NOT CLEAR,
20 WITHOUT HAVING DETAIL OF WHAT THE 25 PERCENT NFL FUND WHO THAT
21 WAS DISTRIBUTED TO.

22 Q. ASIDE FROM THAT, IT DOES NOT TRACK A RETIRED PLAYERS --

23 A. NO.

24 Q. LET'S ASK THE REPORTER TO MAKE THIS THE NEXT EXHIBIT, 104.

25 CAN YOU TELL US WHAT EXHIBIT 104 IS?

1 A. CALCULATION EQUAL SHARE ROYALTY POOL FOR THE YEAR ENDED
2 FEBRUARY 28, 2005.

3 (READING STOPPED.)

4 MR. CHARHON: PLAINTIFFS OFFER EXHIBIT 104 INTO
5 EVIDENCE, YOUR HONOR.

6 MR. KESSLER: NO OBJECTION.

7 THE COURT: RECEIVED.

8 (TRIAL EXHIBIT 104 RECEIVED IN EVIDENCE.)

9 (READING RESUMED.)

10 Q. FOR ACTIVE PLAYERS, RIGHT?

11 A. EQUAL SHARE ROYALTY POOL IS FOR ACTIVE PLAYERS ONLY.

12 Q. AND CAN YOU COMPARE AND CONTRAST EXHIBIT 104 WITH EXHIBIT
13 103 AND 102, JUST TELLING US IF IT'S THE SAME FORMAT OR
14 DIFFERENT?

15 A. THE ONLY DIFFERENCE I CAN SEE ON THE FIRST PAGE IS THERE'S
16 MORE DETAIL IN THE INITIAL CATEGORIES OF GROSS LICENSING
17 REVENUES AS OPPOSED TO HAVING ONE ROLLED-UP LINE WITH NFLPA AND
18 PLAYERS INC.

19 Q. AND THE DETAIL ROLLS INTO WHICH LINE?

20 A. WELL, THE DETAIL -- IT'S ALL ROLLING UP IN THE TOP FOUR
21 LINES THERE.

22 Q. ARE THERE ANY OTHER DIFFERENCES?

23 A. NOT THAT I SEE HERE.

24 Q. LET'S TAKE A LOOK AT 2006.

25 (READING STOPPED.)

1 **MR. CHARHON:** PLAINTIFFS OFFER 106 INTO EVIDENCE,
2 YOUR HONOR.

3 **THE COURT:** THERE IS NO 106 ON THE LIST. ARE YOU
4 SURE OF THE NUMBER? IT SKIPS FROM 105 TO 107.

5 **MR. CHARHON:** 105. EXCUSE ME.

6 **THE COURT:** 105 IS RECEIVED.

7 (TRIAL EXHIBIT 105 RECEIVED IN EVIDENCE.)

8 **MR. KESSLER:** NO OBJECTION TO 105.

9 (DOCUMENT DISPLAYED.)

10 (READING RESUMED.)

11 **Q.** CAN YOU COMPARE AND CONTRAST EXHIBIT 106 WITH 105, 104 AND
12 103?

13 **A.** THE ONLY DIFFERENCE THAT I NOTE BETWEEN THE THREE IS THE
14 CHANGE IN MARKET CONDITION ADJUSTMENT OF \$8 MILLION.

15 **Q.** WHERE DOES THAT APPEAR?

16 **A.** THAT APPEARS ON THE SIXTH LINE, UNDER ACTUAL FISCAL YEAR
17 2006 REVENUE.

18 **Q.** OKAY. AND THEN FOOTNOTE ONE APPEARS TO READ SPONSOR,
19 DOLLAR SIGN, DOLLAR SIGN OF 20,453,778, LESS 500K. INTERNET
20 DOLLAR SIGN OF 3 MILLION. 3 PERCENT FUND USED OF 169,500.

21 CAN YOU EXPLAIN THAT FOOTNOTE?

22 **A.** THAT'S REFERRING TO THE NFL PROPERTIES SPONSORSHIP
23 AGREEMENT. TOTAL REVENUE FROM THAT, \$13,252,000 LESS 500,000,
24 AS DESCRIBED IN THE PLAYERS INC NFLPA AGREEMENT. ADDING THE
25 INTERNET AMOUNT RECEIVED FOR THE YEAR OF 3 MILLION AND ALSO

1 ADDING CERTAIN AUDIT FINDINGS RELATED TO THESE AGREEMENTS OF
2 362,000, TOTALING THE AMOUNT THAT'S FLOWING INTO THAT FIRST
3 LINE. ONE NOTE.

4 Q. HAS THE EQUIVALENT DOCUMENT THAT WE'VE BEEN LOOKING AT FOR
5 2007 BEEN DONE?

6 A. YES.

7 Q. DO YOU KNOW AN INDIVIDUAL NAMED PAMELA ADOLPH?

8 A. YES.

9 Q. HAVE YOU EVER SEEN THIS PARTICULAR E-MAIL BEFORE, EXHIBIT
10 52?

11 A. NO.

12 Q. IT'S CORRECT THAT PAMELA ADOLPH IN DECEMBER 2003 WAS
13 ASSISTANT VICE PRESIDENT OF PLAYERS INC AS FAR AS YOU KNOW?

14 A. AS FAR AS I KNOW? YES.

15 Q. SHE REFERS TO SOMETHING CALLED THE INC CUT OF THE
16 ROYALTIES. INC IS IN ALL CAPS. DOES THAT MEAN ANYTHING TO
17 YOU?

18 A. I BELIEVE SHE'S REFERRING TO PLAYERS INC.

19 Q. DO YOU KNOW HOW THE ROYALTIES FLOW WITH RESPECT TO RETIRED
20 PLAYER APPAREL?

21 A. NO, I DON'T.

22 Q. THE LICENSING REVENUES COME INTO A GENERAL POOL OF MONIES
23 FOR BOTH PI AND NFLPA; IS THAT CORRECT?

24 A. IT GOES INTO THEIR RESPECTIVE BANK ACCOUNTS, CORRECT.

25 Q. AND THAT'S JUST A GENERAL POOL OF MONEY?

1 Q. DID YOU HIRE A LAWYER TO ADVISE YOU BEFORE YOU SIGNED
2 THESE AGREEMENTS?

3 A. NO.

4 Q. WHY NOT?

5 A. BECAUSE I TRUSTED AND HAD FAITH IN THE UNION, AND THEY
6 HAVE ENOUGH ATTORNEYS TO TAKE CARE OF WHAT THE GLA STATED. I
7 DIDN'T THINK THERE WAS A NEED FOR ME TO HIRE AN ATTORNEY TO
8 LOOK AFTER IT.

9 Q. AT THIS TIME YOU SIGNED THE AGREEMENT, HOW DID YOU
10 DETERMINE WHAT THE AGREEMENT MEANT?

11 A. BY READING OVER IT.

12 Q. OKAY.

13 A. AND INTERPRETING FOR MYSELF.

14 Q. ALL RIGHT. DID YOU SUGGEST ANY OF THE WORDS IN THIS
15 AGREEMENT?

16 A. NO.

17 Q. DID YOU HAVE ANY CONTROL OVER THE NFLPA WITH RESPECT TO
18 THIS AGREEMENT?

19 A. YES.

20 Q. AND WHAT CONTROL DID YOU HAVE, SIR?

21 A. WELL, IF THERE WAS A CONFLICT OF INTEREST AND THEY WANTED
22 TO USE ME IN A PROMOTION, FOR EXAMPLE, IF I WAS DOING SOMETHING
23 FOR NIKE AND THEY WANTED ME TO DO SOMETHING FOR REEBOK, I COULD
24 SAY:

25 "WAIT. THIS IS CONFLICT OF INTEREST."

1 OR IF THEY ASKED ME TO COME IN AND DO SOMETHING WITH
2 ALCOHOL OR TOBACCO, I COULD SAY:

3 "NO, I DON'T WANT ANY PARTS OF IT."

4 Q. OKAY. LET'S TAKE A LOOK AT THE SECOND PARAGRAPH --

5 MR. KATZ: WHY DON'T YOU PUT UP 110.

6 (DOCUMENT DISPLAYED.)

7 BY MR. KATZ:

8 Q. LET'S TAKE A LOOK AT THE SECOND PARAGRAPH. IT SAYS:

9 "GROUP LICENSING PROGRAMS ARE DEFINED AS
10 PROGRAMS IN WHICH A LICENSEE UTILIZES A TOTAL OF SIX OR MORE
11 PRESENT OR FORMER NFL PLAYER IMAGES IN CONJUNCTION WITH OR ON
12 PRODUCTS THAT ARE SOLD AT RETAIL OR USED AS PROMOTIONAL OR
13 PREMIUM ITEMS."

14 DID ANYONE FROM THE NFLPA EVER TELL YOU THAT THAT
15 MEANT ANYTHING OTHER THAN WHAT IT SAYS?

16 A. NO.

17 Q. NOW, LET'S LOOK AT THE PARAGRAPH WITH THE ESCROW ACCOUNT,
18 THE SECOND TO THE LAST PARAGRAPH. YEAH.

19 (DOCUMENT DISPLAYED.)

20 THIS IS THE ONE THAT WE TALKED ABOUT, THAT TALKS
21 ABOUT THE CREATION OF AN ESCROW ACCOUNT.

22 TO YOUR KNOWLEDGE, SIR, WAS SUCH AS ESCROW ACCOUNT
23 EVER CREATED?

24 A. NO.

25 Q. DID YOU EXPECT FOR AN ESCROW ACCOUNT TO BE CREATED?

1 **"QUESTION:** OKAY. FINE. SO DIRECTING YOUR
2 ATTENTION TO THE SECOND PAGE OF EXHIBIT 117,
3 IT QUOTES YOU AS FOLLOWS. WELL, IN THE FIRST
4 PARAGRAPH IT SAYS: 'UPSHAW, 60, WHO HAS BEEN
5 EXECUTIVE DIRECTOR OF THE NFLPA SINCE 1987,
6 SAYS HE STANDS BY HIS RECORD AND REJECTS A
7 SUGGESTION HE'S SUPPOSED TO BE THE RETIREES'
8 REPRESENTATIVE.' QUOTE: 'THE BOTTOM LINE IS
9 I DON'T WORK FOR THEM,' CLOSE QUOTE, HE SAID.
10 QUOTE: 'THEY DON'T HIRE ME, AND THEY CAN'T
11 FIRE ME. THEY CAN COMPLAIN ABOUT ME ALL DAY
12 LONG. THEY CAN HAVE THEIR OPINION. BUT THE
13 ACTIVE PLAYERS HAVE THE VOTE. THAT'S WHO
14 PAYS MY SALARY,' CLOSED QUOTE.

15 "DID YOU SAY THOSE WORDS?"

16 **"ANSWER:** I SAID THOSE WORDS DIRECTED AT ONE
17 INDIVIDUAL, JOE DELAMIELLEURE."

18 D-E-L-A-M-I-E-L-L-E-U-R-E.

19 JUST AS AN ASIDE, YOUR HONOR, I SPOKE TO
20 MR. DELAMIELLEURE THE OTHER DAY, AND TOLD HIM I HAD A HARD TIME
21 SPELLING HIS NAME. AND HE SAID:

22 "WHAT? IT'S J-O-E."

23 (LAUGHTER.)

24 **THE COURT:** OKAY. WHAT'S THE QUESTION?
25

1 ALL AFTERNOON SO BE SURE YOU CLEAR AWAY THE COUNSEL TABLE.

2 MR. HUMMEL: THANK YOU, YOUR HONOR.

3 MR. KESSLER: THANK YOU, YOUR HONOR.

4 MR. PARCHER: THANK YOU, YOUR HONOR.

5 MR. KATZ: THANK YOU, YOUR HONOR.

6 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL FRIDAY,
7 OCTOBER 21, 2008 AT 7:30 O'CLOCK A.M.)

8

9

10

- - - -

11

CERTIFICATE OF REPORTER

12

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT

13

FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

14

DATE: TUESDAY, OCTOBER 28, 2008.

15

16

S/B KATHERINE POWELL SULLIVAN

17

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20

KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
U.S. COURT REPORTER

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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
FRIDAY
OCTOBER 31, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

MANATT, PHELPS & PHILLIPS
1001 PAGE MILL ROAD, BUILDING 2
PALO ALTO, CALIFORNIA 94304

**BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.**

MANATT, PHELPS & PHILLIPS
7 TIMES SQUARE
NEW YORK CITY, NEW YORK 10036

BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

BY: CHAD HUMMEL, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

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

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 **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?

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 3, 2008

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

MANATT, PHELPS & PHILLIPS
1001 PAGE MILL ROAD, BUILDING 2
PALO ALTO, CALIFORNIA 94304

**BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.**

MANATT, PHELPS & PHILLIPS
7 TIMES SQUARE
NEW YORK CITY, NEW YORK 10036

BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

BY: CHAD HUMMEL, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

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

1 THERE WAS A BREACH OF CONTRACT AND/OR A BREACH OF FIDUCIARY
2 DUTY.

3 THE SECOND WAS THAT THE COURT PROVIDED ME WHAT WAS
4 THE APPROPRIATE LAW. THAT THEN DICTATED THE RELEVANT PERIOD TO
5 GO BACK AND LOOK AT THE ROYALTIES AS WELL AS AN INTEREST RATE,
6 IF APPROPRIATE.

7 Q. HAVE YOU FORMED ANY OPINION AT ALL ABOUT WHETHER, IN FACT,
8 THE DEFENDANTS BREACHED THE GLA?

9 A. NO. I WASN'T ASKED TO DO THAT.

10 Q. AND HAVE YOU FORMED ANY OPINION AT ALL ABOUT WHETHER, IN
11 FACT, THE DEFENDANTS VIOLATED ANY FIDUCIARY DUTY THEY MAY HAVE
12 HAD?

13 A. NO.

14 Q. ALL RIGHT. SO THOSE WERE ASSUMPTIONS. HAVE YOU FORMED
15 ANY OPINION AT ALL ABOUT THE PROPRIETY OF DIVIDING GROUP
16 LICENSING REVENUES AMONG NFL PLAYERS ON AN EQUAL SHARE BASIS?

17 A. MY OPINION IS THAT THAT IS THE APPROPRIATE WAY TO DIVIDE
18 IT.

19 Q. AND WHAT'S THAT BASED ON?

20 A. THAT'S BASED ON HOW NFLPA/PI ACTUALLY CONDUCTED THE
21 REVENUE POOL.

22 Q. OKAY. AND IN TERMS OF WHAT YOU LOOKED AT IN COMPLETING
23 THE ASSIGNMENTS, CAN YOU EXPLAIN TO THE LADIES AND GENTLEMEN OF
24 THE JURY WHAT WAS THE FIRST THING THAT YOU DID, WHAT YOU LOOKED
25 AT?

1 **A.** THE FIRST THING WAS REALLY TO LOOK AT NFLPA/PI'S, THEIR
2 OWN DOCUMENTS. THEY PROVIDED FINANCIAL RECORDS OVER THE
3 RELEVANT YEARS, INCLUDING WORKSHEETS, THE BACKUP DATA AS TO HOW
4 THE LICENSEES PAID ROYALTIES. THEY ALSO PROVIDED A LIST OF
5 ACTIVE PLAYERS, AS WELL AS LISTS OF RETIRED PLAYERS AND SIGNED
6 GLA'S.

7 SO I WENT THROUGH ALL OF THOSE DOCUMENTS.

8 **Q.** ALL RIGHT. SO MR. ROWLEY, COULD YOU TAKE A LOOK AT
9 EXHIBIT 1218, PLEASE, WHICH I BELIEVE IS IN FRONT OF YOU? AND
10 TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT EXHIBIT 1218 IS.

11 **A.** EXHIBIT 1218 REPRESENTS A SUMMARY OF ROYALTY PAYMENTS MADE
12 BY CERTAIN LICENSEES FOR THE PERIODS 2004 TO 2007.

13 **Q.** WAS THERE ANYTHING IN COMMON AMONG THOSE LICENSEES IN
14 TERMS OF HOW THE NFLPA AND PLAYERS INC TREATED THEM?

15 **A.** YES. THESE ARE THE LICENSE ROYALTIES THAT WENT INTO THE
16 GROUP LICENSING POOL.

17 **Q.** THE GROUP LICENSING POOL. OKAY. GO AHEAD?

18 **A.** WITH COUNSEL THERE ARE SOME ADDITIONAL MONIES THAT CAME IN
19 THROUGH AN NFL SPONSORSHIP AGREEMENT, SO IT'S NOT
20 ALL-INCLUSIVE.

21 **Q.** WHAT IS THAT NFL SPONSORSHIP AGREEMENT?

22 **A.** THERE ALSO WAS AN AGREEMENT BETWEEN THE NFL AND NFLPA
23 AROUND SPONSORS AND THE INTERNET WHERE THE NFL ALSO PAID
24 ROYALTIES TO NFLPA/PI.

25 **Q.** AND IN YOUR CONCLUSIONS, WHICH WE'LL GET TO IN A MINUTE,

1 DID YOU INCLUDE THE VALUE OF THAT SPONSORSHIP AGREEMENT?

2 A. YES.

3 Q. BUT PUTTING THE SPONSORSHIP AGREEMENT ASIDE, 1218 IS A
4 SUMMARY OF -- LET ME SEE IF I HAVE THIS RIGHT SO THE LADIES AND
5 GENTLEMEN OF THE JURY CAN UNDERSTAND IT.

6 MR. KESSLER: OBJECTION. LEADING. HE DOESN'T GET TO
7 SUMMARIZE HIS TESTIMONY.

8 MR. HUMMEL: THAT'S FINE.

9 BY MR. HUMMEL:

10 Q. DID YOU PREPARE EXHIBIT 1218?

11 A. MY STAFF AND I DID, YES.

12 Q. DID YOU SUPERVISE THE PREPARATION OF IT?

13 A. YES.

14 Q. IS IT AN ACCURATE REFLECTION OF THE ROYALTY PAYMENTS BY
15 LICENSEE BY DATE MADE BY LICENSEES TO THE NFLPA BETWEEN 2004
16 AND 2007?

17 A. YES.

18 MR. HUMMEL: YOUR HONOR, MOVE EXHIBIT 1218. I
19 BELIEVE THERE IS NO OBJECTION.

20 MR. KESSLER: NO OBJECTION.

21 THE COURT: 1218?

22 MR. HUMMEL: YES.

23 THE COURT: ALL RIGHT. IT'S RECEIVED.

24 (TRIAL EXHIBIT 1218 RECEIVED IN EVIDENCE.)

25

1 BY MR. HUMMEL:

2 Q. SO MR. ROWLEY --

3 MR. HUMMEL: CAN YOU BLOW THAT UP, PLEASE? MAYBE THE
4 FIRST FIVE LINES OR SO.

5 (DOCUMENT DISPLAYED.)

6 BY MR. HUMMEL:

7 Q. SO WHEN THE LADIES AND GENTLEMEN OF THE JURY LOOK AT
8 EXHIBIT 1218, THEY'LL SEE COLUMNS. CAN YOU BRIEFLY DESCRIBE
9 WHAT THE COLUMNS ARE?

10 A. YES. FAR LEFT-HAND COLUMN IS THE RELEVANT YEAR IN WHICH
11 THE ROYALTIES ARE PAID. THE TRANSACTION DATE IS WHEN THE
12 PAYMENT WAS ACTUALLY MADE. YOU MAY NOTE HERE YOU'LL SEE 2003,
13 AND IT'S THE 2004 YEAR. THE REASON FOR THAT IS NFLPA/PI HAS A
14 FISCAL YEAR THAT ACTUALLY BEGINS MARCH 1ST AND ENDS
15 FEBRUARY 28TH OF THE FOLLOWING YEAR.

16 THE NAME, THAT COLUMN REPRESENTS THE LICENSEE WHO
17 TOOK THE LICENSE AND MADE THE PAYMENTS.

18 THERE'S -- YOU'LL SEE C'S. THERE WAS AN ANALYSIS
19 THAT WAS DONE THAT LOOKED TO THE NATURE OF SOME OF THE
20 CONTRACTS. THAT'S THE "INCLUDE" COLUMN. THE AMOUNT ON THE
21 FAR-RIGHT COLUMN REPRESENTS THE PAYMENTS THAT WERE MADE.

22 Q. CAN YOU LOOK AT THE LAST PAGE OF EXHIBIT 1218, PLEASE.

23 MR. HUMMEL: PUT THAT UP ON THE BOARD.

24 (DOCUMENT DISPLAYED.)

25

1 BY MR. HUMMEL:

2 Q. DOES THIS REFLECT A TOTALING OF THE AMOUNTS PAID OVER
3 THOSE YEARS?

4 A. YES.

5 Q. AND WHAT IS THAT TOTAL, SIR?

6 A. APPROXIMATELY \$162 MILLION.

7 Q. ALL RIGHT. AND IF YOU ADDED THE SPONSORSHIP AGREEMENT,
8 WHAT IS THE TOTAL?

9 A. 215 MILLION, IS MY RECOLLECTION.

10 Q. 215 MILLION, GIVE OR TAKE?

11 A. TOTAL, YES.

12 Q. OKAY. NOW, COULD YOU LOOK AT EXHIBIT 1217, PLEASE.

13 COULD YOU DESCRIBE, PLEASE, WHAT EXHIBIT 1217 IS?

14 A. THIS IS ALSO A SUMMARY OF LICENSE PAYMENTS BY THE
15 INDIVIDUAL LICENSEE OVER TIME SO YOU COULD SEE THE TOTAL BY
16 LICENSEE.

17 Q. IS THIS A SUMMARY THAT YOU PREPARED?

18 A. YES.

19 Q. AND THE INFORMATION CONTAINED ON IT IS AN ACCURATE
20 REFLECTION OF UNDERLYING DOCUMENTS THAT YOU REVIEWED?

21 A. YES.

22 MR. HUMMEL: YOUR HONOR, MOVE EXHIBIT 1217. AND I
23 BELIEVE THERE IS NO OBJECTION.

24 MR. KESSLER: NO OBJECTION.

25 THE COURT: RECEIVED.

1 (TRIAL EXHIBIT 1217 RECEIVED IN EVIDENCE.)

2 BY MR. HUMMEL:

3 Q. SO SAME INFORMATION AS ON 1218 -- I'M SORRY, YES, 1218 --
4 BUT CATEGORIZED IN A DIFFERENT WAY, FAIR?

5 A. CORRECT.

6 Q. OKAY. CAN YOU TELL THE LADIES AND GENTLEMEN OF THE JURY
7 HOW -- WHAT IS SHOWN ON THIS EXHIBIT?

8 MR. HUMMEL: AND BLOW UP THE FIRST FIVE LINES OR SO.

9 (DOCUMENT DISPLAYED.)

10 THE WITNESS: THANK YOU.

11 ON THE FAR LEFT-HAND COLUMN IS THE NAME OF THE
12 LICENSEE. GOING ACROSS THE TOP YOU WILL SEE THE FISCAL YEARS
13 2004, 2005, 2006, 2007, AND THEN A TOTAL.

14 YOU'LL THEN SEE IN ANY GIVEN YEAR THE AMOUNTS THAT
15 THAT LICENSEE PAID, AND THEN WITH AN OVERALL TOTAL FOR THE
16 RELEVANT TIME PERIOD.

17 BY MR. HUMMEL:

18 Q. ALL RIGHT. SO, FOR EXAMPLE, IF THE JURY WANTED TO SEE HOW
19 MUCH WAS PAID BY EA SPORTS OVER THIS 4-YEAR PERIOD, COULD THEY
20 LOOK AT THIS EXHIBIT AND DO THAT?

21 A. YES.

22 Q. COULD YOU POINT -- COULD YOU HIGHLIGHT, PLEASE, THE LINE
23 EA?

24 A. THE LINE 24.

25 Q. OKAY.

1 SO HOW MUCH WAS PAID BY JUST EA, A SINGLE LICENSEE,
2 OVER THIS PERIOD OF TIME?

3 A. \$82 MILLION, APPROXIMATELY.

4 Q. SO IF THE JURY WANTED TO LOOK AT HOW MUCH WAS PAID BY ANY
5 PARTICULAR LICENSEE, THEY WOULD LOOK AT EXHIBIT 1217?

6 A. EXCLUDING THE NFL SPONSORSHIP, YES.

7 Q. AND THAT TAKES THE VALUE, THE TOTAL FROM, AS YOU SAID,
8 2 -- IT TAKES THE TOTAL TO ROUGHLY 215?

9 A. YES.

10 Q. OKAY. SO NOW YOU'VE LOOKED AT THIS DATA. CAN YOU
11 PERHAPS, EVEN USING THAT CHART, EXPLAIN TO THE JURY WHAT YOU
12 DID?

13 A. SURE. MAY I?

14 Q. SURE.

15 MR. HUMMEL: YOUR HONOR, WITH THE COURT'S PERMISSION?

16 A.

17 THE WITNESS: MAY I?

18 THE COURT: YES, OF COURSE. IS THERE A MARKER THAT
19 WILL DO THE TRICK?

20 MR. HUMMEL: THERE IS, YOUR HONOR.

21 THE COURT: OKAY.

22 MR. HUMMEL: THERE'S A MARKER. WHETHER IT WILL DO
23 THE TRICK OR NOT --

24 THE COURT: LET'S MAKE SURE IT'S NOT DRIED UP.

25 THE WITNESS: THE FIRST STEP WAS TO DETERMINE THE

1 GROSS LICENSING REVENUES. AND WE'VE BEEN LOOKING AT TWO
2 EXHIBITS THAT GIVE US THOSE FIGURES.

3 SO THE FIRST STEP IS UP HERE GROSS LICENSING
4 REVENUES.

5 THIS IS IMPORTANT -- THESE ARE JUST WHAT ARE CALLED
6 GROSS LICENSING REVENUES THAT ARE TYPICALLY GROUP LICENSING.
7 THEY DO NOT INCLUDE SOME OTHER REVENUES AROUND LICENSING THAT
8 COME IN.

9 BY MR. HUMMEL:

10 Q. WHAT OTHER REVENUES?

11 A. THERE ALSO ARE PERFORMANCE LICENSES, AD HOC AGREEMENTS
12 THAT THE NFLPA/PI ALSO ACCEPTS.

13 Q. OKAY. HOW DID YOU DETERMINE WHAT WAS IN THAT SUBSET OF
14 THE GROUP LICENSING REVENUE BOX?

15 A. THAT CAME FROM THE NFLPA/PI RECORDS. THEY DELINEATE THE
16 TWO.

17 Q. CAN YOU EXPLAIN THAT, PLEASE? YOU'RE NOT MAKING ANY
18 DIFFERENT ASSUMPTIONS THAN WHAT THE UNION DID, RIGHT?

19 A. NO.

20 MR. KESSLER: OBJECTION.

21 BY MR. HUMMEL:

22 Q. CAN YOU EXPLAIN THAT, PLEASE?

23 A. NFLPA/PI FOR THEIR FINANCIAL REPORTING PURPOSES DELINEATES
24 THE LICENSES INTO TWO CATEGORIES.

25 THE FIRST CATEGORY IS A GROSS LICENSING REVENUE WHICH

1 TENDS TO BE GROUP LICENSES, LARGE GROUP LICENSES. THE SECOND
2 ARE WHAT ARE CALLED "PERFORMANCE FEES," OR AD HOC AGREEMENTS
3 THAT ARE MORE ON AN INDIVIDUAL BASIS. TWO SEPARATE CATEGORIES
4 WITHIN THE FINANCIALS.

5 Q. SO YOU LOOKED AT THE GROUP LICENSING REVENUES, RIGHT?

6 MR. KESSLER: OBJECTION, LEADING.

7 THE WITNESS: YES.

8 THE COURT: WELL, THIS IS PRELIMINARY ENOUGH. IT'S
9 OKAY TO LEAD ON THINGS THAT ARE NOT -- IS THIS IN CONTROVERSY?

10 MR. HUMMEL: NO.

11 MR. KESSLER: YES, YOUR HONOR, ON WHAT GROUP
12 LICENSING IS IS IN CONTROVERSY, YOUR HONOR.

13 THE COURT: WELL, ALL RIGHT. I'M GOING TO ALLOW THIS
14 ONE QUESTION. BUT TRY NOT TO LEAD ON ANYTHING THAT'S IN
15 CONTROVERSY. IT'S OKAY TO LEAD SO THAT WE CAN SPEEDILY ARRIVE
16 AT THE POINT WHERE THE CONTROVERSY STARTS.

17 MR. HUMMEL: THANK YOU, YOUR HONOR.

18 BY MR. HUMMEL:

19 Q. WHAT DID YOU THEN DO WHEN YOU DETERMINED WHAT MONEY IS IN
20 THE GLA?

21 A. THE NEXT STEP THAT OCCURS IS THERE IS A DEDUCTION BY
22 NFLPA/PI THAT THEY DEDUCT AND TAKE MONEY FOR THEMSELVES.

23 Q. DID YOU SEPARATELY CALCULATE WHAT THAT DEDUCTION WAS?

24 A. I WENT BACK AND VERIFIED THE CALCULATION. ON AN ANNUAL
25 BASIS IT RANGES BETWEEN 63 TO 69 PERCENT.

1 Q. OKAY. WHAT DID YOU DO NEXT?

2 A. NEXT WHAT HAPPENS IS YOU NOW HAVE WHAT COMES INTO WHAT'S
3 CALLED THE EQUAL SHARE POOL.

4 Q. WHO CALLS IT "THE EQUAL SHARE POOL"?

5 A. NFLPA.

6 Q. HOW DOES THE NFLPA PRESENTLY TREAT THE DISTRIBUTION OF
7 THAT EQUAL SHARE POOL?

8 A. FOR THE NUMBER OF PLAYERS WHO ARE ELIGIBLE IN A GIVEN
9 YEAR, THEY RECEIVE AN EQUAL SHARE OF THESE REVENUES ONCE THE
10 NFLPA/PI HAS TAKEN OUT THEIR DEDUCTION.

11 Q. ALL RIGHT. SO WHAT DID YOU DO THEN TO FULFILL YOUR
12 ASSIGNMENT OF DETERMINING HOW MUCH THE CLASS WOULD BE PAID IF
13 THEY HAD BEEN INVOLVED IN GROUP LICENSING?

14 A. THE ASSUMPTION IS THAT THE RETIRED PLAYERS WOULD ALSO HAVE
15 PARTICIPATED IN THE EQUAL SHARE POOL. SO THERE'S TWO ELEMENTS.
16 FIRST, THERE IS THE NUMBER OF ACTIVE PLAYERS IN ANY GIVEN YEAR.
17 THEN, YOU ALSO HAVE TO FIND IN ANY GIVEN YEAR THE NUMBER OF
18 RETIRED PLAYERS WHO HAD SIGNED THE RELEVANT GLA.

19 THAT THEN GIVES YOU A NEW NUMBER OF PLAYERS TO
20 PARTICIPATE IN THE EQUAL SHARE POOL.

21 Q. DID YOU MAKE ANY DETERMINATIONS AS TO HOW THE NFL
22 DIVIDES -- PRESENTLY THE NFLPA DIVIDES AMONG THE ACTIVE PLAYERS
23 FROM THE EQUAL SHARE POOL?

24 A. WELL, TO SOME EXTENT YOU DO HAVE TO VERIFY IN EACH YEAR.
25 THERE'S DIFFERENT ELIGIBILITY REQUIREMENTS. AND IN SOME YEARS

1 THE NFLPA/PI MODIFIED SLIGHTLY THIS POOL, GENERALLY, TO MAKE IT
2 A ROUND NUMBER. SO IT WASN'T \$7,386.26. THEY WOULD ROUND IT
3 TO \$8,000. SO WE WOULD GO TO WHAT WAS ACTUALLY DISTRIBUTED.

4 Q. OKAY. AND HOW DID THEY DISTRIBUTE IT TO THE -- HOW DID
5 THEY DISTRIBUTE THE EQUAL SHARE POOL TO THE ACTIVE PLAYERS?

6 A. EACH PLAYER RECEIVED AN EQUAL SHARE.

7 Q. REGARDLESS OF WHETHER IT WAS TOM BRADY OR A THIRD-STRING
8 OFFENSIVE TACKLE FOR THE PITTSBURGH STEELERS THEY GOT AN EQUAL
9 SHARE; IS THAT RIGHT?

10 MR. KESSLER: OBJECTION. LEADING.

11 THE COURT: WELL, THAT IS LEADING. BUT IS THIS IN
12 CONTROVERSY?

13 MR. KESSLER: YES. THE FACT THAT THIS WAS ALL EQUAL
14 SHARES IS IN CONTROVERSY.

15 THE COURT: ALL RIGHT. SUSTAINED.

16 PLEASE ASK A NONLEADING QUESTION.

17 BY MR. HUMMEL:

18 Q. DID YOU MAKE ANY DETERMINATION ABOUT WHETHER PLAYERS
19 RECEIVED AN EQUAL SHARE BASED ON THEIR RELATIVE LEVEL OF FAME
20 OR PARTICIPATION ON A PARTICULAR TEAM DURING A YEAR?

21 A. NO.

22 Q. OKAY.

23 THE COURT: YOU DID NOT MAKE ANY DETERMINATION?

24 THE WITNESS: I DID NOT MAKE A SEPARATE
25 DETERMINATION, YOUR HONOR. IT WAS EQUAL SHARE REGARDLESS OF

1 YOUR STATURE WITHIN THE GAME.

2 **THE COURT:** ALL RIGHT. I UNDERSTAND NOW. THANK YOU.
3 GO AHEAD.

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

5 **BY MR. HUMMEL:**

6 **Q.** NOW, THAT'S BASICALLY WHAT YOU DID. DID YOU DO ANYTHING
7 ELSE BEFORE YOU REACHED YOUR CONCLUSIONS ABOUT WHAT THE GROUP
8 WOULD BE ENTITLED TO IF THEY WERE IN THE GROUP LICENSING
9 PROGRAM?

10 **A.** THERE IS A MINOR ADJUSTMENT IN HERE THAT ARE FOR PRACTICE
11 SQUAD PLAYERS, BUT IT'S RELATIVELY SMALL.

12 **Q.** ALL RIGHT. MAYBE YOU COULD FLIP TO THE NEXT CHART AND
13 EXPLAIN TO THE JURY WHAT YOUR CONCLUSIONS WERE BASED ON THIS --

14 **A.** I --

15 **Q.** GO AHEAD. WAS THERE ANYTHING ELSE YOU WANTED TO ADD?

16 **A.** COUNSEL, IF YOU DON'T MIND, I HAVE NOT PROVIDED TO THE
17 JURY HOW THE CALCULATION IS MADE.

18 **Q.** WHY DON'T YOU DO THAT?

19 **A.** SO ONCE WE NOW HAVE AN EQUAL SHARE BASED ON ALL THE
20 PLAYERS BEING INCLUDED, RETIRED AND ACTIVE PLAYERS FOR THE
21 GIVEN YEAR, YOU THEN MULTIPLY THAT AMOUNT BY THE NUMBER OF JUST
22 RETIRED PLAYERS, TO DETERMINE WHAT THEY'RE OWED.

23 SO YOU HAVE AN EQUAL SHARE NOW OF ALL PLAYERS, IF
24 EVERYONE HAD PARTICIPATED. I KNOW WHAT THAT AMOUNT IS. IN
25 ANY GIVEN YEAR, I THEN MULTIPLY THAT AMOUNT BY THE NUMBER OF

1 RETIRED PLAYERS IN THAT GIVEN YEAR TO COME UP WITH WHAT THE
2 RETIRED PLAYERS ARE OWED FOR THE GIVEN YEAR.

3 Q. SO YOU'VE NOW DESCRIBED THE CALCULATION THAT YOU MADE, THE
4 METHODOLOGY. CAN YOU NOW TELL THE LADIES AND GENTLEMEN OF THE
5 JURY WHAT THE RESULTS OF YOUR METHOD -- OF THE APPLICATION OF
6 YOUR METHOD WERE?

7 A. YES.

8 Q. WHAT WERE YOUR CONCLUSIONS ABOUT WHAT AMOUNT WOULD BE DUE
9 TO THE CLASS?

10 A. WELL, COUNSEL, THERE WERE -- THERE'S A VARIETY OF MODELS
11 AND DATA POINTS.

12 Q. WHY DON'T YOU ASSUME FIRST THAT THE JURY FINDS THAT THE 63
13 TO 69 PERCENT ALLOCATION THAT THE NFLPA AND PI TOOK WAS
14 APPROPRIATE.

15 A. ALL RIGHT. SO WE'LL SET IT UP.

16 Q. WHY DON'T YOU EXPLAIN WHAT THE COLUMNS ARE YOU ARE SETTING
17 UP?

18 A. WHAT I'LL DO IS I'LL GIVE YOU A -- ASSUMING THE PERCENTAGE
19 FOR THE DEDUCTION THAT NFLPA/PI IS MAKING, I WILL GIVE YOU WHAT
20 AMOUNT WOULD BE OWED, AND THEN WHAT THAT AMOUNT WOULD BE,
21 ASSUMING THAT INTEREST SHOULD BE AWARDED.

22 Q. OKAY. SO ASSUME FIRST THAT THERE'S NO CHANGE IN THE
23 DEDUCTION BY THE NFLPA/PI, THAT THE JURY FINDS THAT THAT'S
24 FAIR.

25 A. OKAY. SO IF ON AVERAGE THE 63 TO 69 PERCENT IS ASSUMED TO

1 IT'S NOT IN HIS DEPOSITIONS.

2 IT'S NOWHERE UNTIL HE NOW WOULD LIKE TO DO IT FOR THE
3 FIRST TIME TODAY.

4 **MR. HUMMEL:** THAT'S ABSOLUTELY UNTRUE.

5 I'LL WITHDRAW IT, YOUR HONOR.

6 **THE COURT:** ALL RIGHT.

7 **MR. HUMMEL:** I'LL WITHDRAW IT.

8 **BY MR. HUMMEL:**

9 **Q.** MR. ROWLEY, DOES THE METHOD YOU DESCRIBED APPLY TO --
10 COULD THE JURY USE THE METHOD YOU DESCRIBED AND DISCLOSED IN
11 YOUR REPORT TO CALCULATE WHAT THE GROUP WOULD BE OWED BASED ON
12 INDIVIDUAL LICENSEES?

13 **A.** IT COULD, YES.

14 **Q.** HOW?

15 **A.** IN TOOTLING, MY RESPONSE WOULD BE YOU COULD TAKE AS A
16 PERCENTAGE OF THE TOTAL THESE AMOUNTS OF ROYALTIES AND APPLY
17 THAT PERCENTAGE THEN TO THE DAMAGE FIGURES.

18 **Q.** WHAT PERCENTAGE?

19 **A.** WELL, EA WOULD BE, OF THE LICENSEES, ROUGHLY HALF. BUT
20 THAT'S BEFORE YOU WOULD GET TO THE NFL SPONSORSHIP.

21 **Q.** OKAY. SO YOU -- WHAT YOU WOULD DO IS YOU TAKE THE TOTAL
22 PAID BY EA. AND THAT WOULD BE -- IF YOU PUT THAT OVER 215,
23 THAT WOULD BE THE PERCENTAGE YOU WOULD APPLY TO THESE NUMBERS;
24 IS THAT ROUGHLY RIGHT?

25 **MR. KESSLER:** YOUR HONOR, THAT'S LEADING. AND I MOVE

1 TO STRIKE THE LAST TWO ANSWERS OF THE WITNESS. THAT IS NOT
2 DISCLOSED ANYWHERE IN THE REPORT, SOME IDEA OF DOING AN
3 INDIVIDUAL CALCULATION --

4 **THE COURT:** LET ME SAY TO THE WITNESS: DON'T GO ONE
5 PHRASE BEYOND WHAT'S IN YOUR REPORT. I DON'T HAVE IT IN FRONT
6 OF ME, BUT -- SO IF YOU GO BEYOND IT I'M GOING TO STRIKE YOUR
7 ANSWER.

8 BUT YOU CAN ANSWER IT IF IT IS IN THE REPORT.
9 ASK THE QUESTION AGAIN, BUT STOP LEADING THE WITNESS.

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

11 **BY MR. HUMMEL:**

12 **Q.** HOW WOULD THE JURY GO ABOUT CALCULATING DAMAGES BASED ON A
13 FINDING OF SOME, BUT NOT ALL, OF THE LICENSES THAT ARE LISTED
14 ON EXHIBIT 1217?

15 **MR. KESSLER:** OBJECTION, YOUR HONOR. NOT IN THE
16 REPORT. I WOULD LIKE A FOUNDATION QUESTION TO THE WITNESS IS
17 IT --

18 **THE COURT:** IS IT IN YOUR REPORT?

19 (COUNSEL AND THE COURT SPEAKING SIMULTANEOUSLY, WHICH
20 WAS NOT REPORTABLE.)

21 **BY MR. HUMMEL:**

22 **Q.** DID YOU DO THAT ON YOUR INITIAL REPORT?

23 **A.** I CERTAINLY DESCRIBED THE METHODOLOGY ON TAKING ROYALTIES
24 AND REVENUES AND HOW YOU WALK THROUGH THE PROCESS TO COME UP
25 WITH THE EQUAL SHARE.

1 NOW, IF THE JURY WERE TO DECIDE THAT ONLY RETIRED
2 PLAYERS WHO WERE ON A FIRST GAME ROSTER OR A LAST GAME ROSTER
3 SHOULD SHARE IN THE EQUAL POOL, THE WAY THE RULE IS FOR ACTIVE
4 PLAYERS, YOUR CALCULATIONS DON'T PROVIDE ANY INFORMATION ON
5 THAT, DO THEY?

6 **A.** NO. THE RETIRED PLAYERS REPRESENT THOSE WHO SIGNED GLA'S
7 DURING THE RELEVANT TIME FRAME. ONE COULD GO BACK AND REVIEW
8 EACH PLAYER.

9 **Q.** NOW, YOU KNOW, SIR, THAT IN THE GLR POOL THAT WAS GIVEN TO
10 ACTIVE PLAYERS, PRACTICE SQUAD PLAYERS DID NOT GET AN EQUAL
11 SHARE. THEY GOT \$1,000, CORRECT?

12 **A.** CORRECT.

13 **Q.** OKAY. NOW, UNDER YOUR ANALYSIS, SIR, IF SOMEONE WAS A
14 PRACTICE SQUAD PLAYER IN 2006, OKAY, THAT -- AND THAT'S ALL HE
15 DID, HE WOULD GET \$1,000 FROM THE GLR POOL, CORRECT?

16 **A.** YES.

17 **Q.** IF THAT PRACTICE SQUAD PLAYER RETIRED IN 2006, IN THE
18 MIDDLE OF THE SEASON, SIGNED A RETIRED PLAYER GLA, BUT PLAYED
19 NO MORE GAMES, JUST SIGNED THE RETIRED PLAYER GLA, YOUR
20 ANALYSIS WOULD AWARD THAT PRACTICE SQUAD PLAYER TENS OF
21 THOUSANDS OF DOLLARS, RIGHT?

22 **A.** MY --

23 **Q.** YES OR NO?

24 **A.** NO. MY RECOLLECTION --

25 **MR. HUMMEL:** I OBJECT, YOUR HONOR. THERE'S NO

1 PLAYER BOARD MEETINGS CONTINUES TO THIS DAY?

2 A. ABSOLUTELY.

3 Q. OKAY.

4 A. IT CONTINUES TO THIS DAY.

5 Q. MR. GOICH, HAVE YOU ATTENDED ANY -- LET ME ASK YOU FIRST,
6 ARE YOU FAMILIAR WITH THE ANNUAL RETIRED PLAYERS ASSOCIATION
7 CONVENTIONS?

8 A. YEAH. I ATTENDED ALL OF THEM, YEAH.

9 Q. CAN YOU EXPLAIN TO THE JURY, GIVEN THE PICTURE OF WHAT IT
10 IS, WHAT HAPPENS?

11 A. COUPLE HUNDRED GUYS COME WITH THEIR WIVES AND THERE'S
12 PRESENTATIONS BY THE UNION. GENE GIVES A STATE OF, QUOTE, LIKE
13 THE UNION ADDRESS. AND ALL THE INFORMATION. WE HAVE
14 POWERPOINTS. WE HAVE THE PENSION DEPARTMENT TALK TO US. WE
15 HAVE THE RETIRED PLAYERS DEPARTMENT TALK TO US.

16 SOMETIMES THE ACTIVE PLAYERS' PRESIDENT COMES TO THE
17 CONVENTION AND TALKS TO US.

18 MEANWHILE, PEOPLE ARE GOING IN AND OUT, IN AND OUT.
19 AND THERE'S A DESK, AND THERE'S ALWAYS AN OPEN FORUM TO ASK
20 QUESTIONS ABOUT ANYTHING FROM ANYBODY. IT'S WIDE OPEN.

21 ARGUMENTS TAKE PLACE. THIS TAKES PLACE, ET CETERA.

22 BUT THE INFORMATION -- WE GET ALL THE INFORMATION
23 THAT'S THERE, YEAH.

24 Q. MR. GOICH, WAS THE RETIRED PLAYER GLA EVER DISCUSSED AT
25 THESE RETIRED PLAYERS ASSOCIATION CONVENTIONS?

1 **MR. KATZ:** OBJECT. LEADING.

2 **THE COURT:** IT'S PRELIMINARY. OVERRULED.

3 PLEASE ANSWER.

4 **THE WITNESS:** YES, IT WAS. IT WAS DISCUSSED --

5 **THE COURT:** BEFORE YOU SAY -- NEXT QUESTION. THAT
6 WAS THE PRELIMINARY QUESTION. WHAT'S THE NEXT QUESTION?

7 **BY MR. GREENSPAN:**

8 **Q.** WHO DISCUSSED THE RETIRED PLAYER GLA?

9 **A.** I HEARD THE GLA FROM DOUG, FROM GENE AND FROM FRANK.

10 **Q.** WHO IS DOUG?

11 **A.** DOUG ALLEN WAS THE SECOND-IN-CHARGE FOR MANY -- I DON'T

12 KNOW, 25 YEARS TO GENE. GENE UPSHAW WAS THE EXECUTIVE

13 DIRECTOR. I WOULD SAY DOUG ALLEN WAS THE ASSISTANT EXECUTIVE

14 DIRECTOR. AND THEN, THERE WAS FRANK, THE HEAD OF THE RETIRED

15 PLAYERS PART OF THE DEAL.

16 **Q.** ON HOW MANY DIFFERENT OCCASIONS, AS BEST YOU CAN RECALL,

17 WAS THE RETIRED PLAYER GLA DISCUSSED AT THESE CONVENTIONS?

18 **A.** EVERY CONVENTION THAT I CAN REMEMBER SINCE I THINK WE

19 STARTED THE GLA -- I WAS PRIVY TO INFORMATION PRIOR TO THE GLA

20 THAT THEY WERE FORMING SOMETHING LIKE THE GLA, GROUP LICENSING,

21 TO TRY TO HELP RETIRED PLAYERS.

22 AND THEN, EVERY YEAR WE SIGNED IT, AND IT CAME

23 THROUGH THE MAIL. THERE WAS THE TOUCHBACK, WHICH IS A

24 NEWSLETTER THAT COMES TO US AS UNION-PAYING MEMBERS.

25 I REMEMBER READING ABOUT THAT. I REMEMBER THE

1 POWERPOINT PRESENTATIONS, DISCUSSING IT WITH FRANK
2 INDIVIDUALLY, AND WITH THE GROUP, DISCUSSING IT WITH THE GUYS
3 AT THE CONVENTION, LISTENING TO DOUG TIME AND TIME AND TIME
4 AGAIN.

5 GENE, NOT SO OFTEN. BUT, GENE, YES, ALSO DISCUSSED
6 THE GLA WITH ALL OF US AT THE CONVENTION.

7 Q. MR. GOICH, DO YOU RECALL WHAT INFORMATION ABOUT THE
8 RETIRED PLAYER GLA WAS PROVIDED?

9 A. THE -- IT WENT THROUGH THIS.

10 Q. IT WENT THROUGH THE FORM?

11 A. YEAH.

12 Q. DID --

13 A. I'M NOT SO SURE IT -- I THINK IT WAS PART OF THE
14 POWERPOINT PRESENTATION.

15 Q. WAS THE SUCCESS OR LACK OF SUCCESS OF THE RETIRED PLAYER
16 GLA EVER DISCUSSED?

17 A. YEAH.

18 Q. AND WHAT WAS TOLD TO YOU?

19 A. THE MARKETABILITY OF RETIRED PLAYERS, FRANKLY, FROM THE
20 LICENSEES' PERSPECTIVE WASN'T THERE.

21 I ALWAYS FELT IT WAS -- AGAIN, I'LL SAY IT -- A HOPE,
22 A WING AND A PRAYER. I SAID, "IT'S NOT GOING TO WORK" WHEN
23 FRANK AND I WOULD TALK ONE-ON-ONE.

24 I SAID, "WHAT YOU'RE TRYING TO DO IS LICENSE A DEAD
25 HORSE."

1 A. AND I STILL DO, YEAH, BECAUSE NOTHING HAS HAPPENED.

2 Q. IN FACT, YOU SAID A BETTER KNOWN PLAYER LIKE MR. ADDERLEY,
3 RIGHT?

4 A. A LOT OF RESPECT FOR MR. ADDERLEY'S PLAYING.

5 Q. RIGHT. AND DO YOU KNOW MR. ADDERLEY SIGNED THIS? YOU
6 ACTUALLY WERE IN A GROUP WITH HIM. YOU BOTH SIGNED THE GLA,
7 DID YOU KNOW THAT?

8 A. I DIDN'T KNOW HE SIGNED IT UNTIL NOW.

9 Q. OKAY. AND DID ANYONE EVER TELL YOU HOW THE FUNDS RECEIVED
10 AS A RESULT OF THE GLA PROGRAM WERE TO BE DIVIDED?

11 A. YEAH. IF YOU WERE PART OF THE GROUP YOU WOULD SHARE IN
12 THOSE -- THOSE MONIES.

13 Q. RIGHT. BUT -- WELL, WHY DON'T WE LOOK AT THE SECOND TO
14 THE LAST PARAGRAPH -- SECOND TO LAST PARAGRAPH, YEAH.

15 AND ARE YOU FAMILIAR WITH THIS PARAGRAPH, SIR?

16 A. I THINK I AM.

17 Q. RIGHT. SO IT SAYS:

18 "IT IS FURTHER UNDERSTOOD THAT THE MONIES
19 GENERATED BY SUCH LICENSING OF RETIRED PLAYER GROUP RIGHTS WILL
20 BE DIVIDED BETWEEN THE PLAYER AND AN ESCROW ACCOUNT FOR ALL
21 ELIGIBLE NFLPA MEMBERS WHO HAVE SIGNED A GROUP LICENSING
22 AUTHORIZATION FORM."

23 SO DID THAT TELL YOU HOW IT WAS TO BE DIVIDED, WHAT
24 PERCENTAGE YOU WERE TO GET OR WHAT WOULD HAPPEN IF MONIES CAME
25 IN?

1 A. THAT WE WOULD SHARE IT.

2 Q. RIGHT. BUT DID YOU KNOW HOW YOU WOULD SHARE? WERE YOU
3 TOLD HOW YOU WOULD SHARE?

4 A. YOU MEAN, PERCENTAGE-WISE?

5 Q. WELL, WOULD IT BE EQUAL SHARE? WOULD YOU GET 10 PERCENT?
6 WOULD YOU GET -- WERE YOU TOLD ANYTHING ON THIS SUBJECT?

7 A. NOT PERCENTAGES WHAT WE WERE GOING TO GET.

8 Q. WELL, WHAT -- YOU'RE A MATH TEACHER, RIGHT?

9 A. WELL --

10 (SIMULTANEOUS SPEAKING OF WITNESS AND COUNSEL; NOT
11 REPORTABLE.)

12 Q. YOU'RE USED TO ADDING, SUBTRACTING, DIVIDING, ET CETERA?

13 A. THAT'S CORRECT.

14 Q. DID YOU HAVE ANY UNDERSTANDING JUST FROM A NUMBERS POINT
15 OF VIEW, A PERCENTAGE POINT OF VIEW, ANY POINT OF VIEW, HOW
16 THESE MONIES WERE TO BE DIVIDED? IT SAYS THEY WILL BE DIVIDED?

17 A. EQUALLY.

18 Q. EQUALLY.

19 A. TO THE GROUP THAT EARNED THOSE MONIES. THAT'S THE WAY I
20 UNDERSTOOD IT. IF YOU WERE PART OF THE GROUP THAT EARNED THE
21 MONIES, YOU WOULD SHARE EQUALLY. AND IT WOULD BE IN AN ESCROW
22 ACCOUNT. MY UNDERSTANDING, THERE WAS NEVER ENOUGH MONIES TO --
23 YOU KNOW, MAKE IT WORTHWHILE, I GUESS, TO GO TO AN ESCROW
24 ACCOUNT.

25 Q. DID ANYONE EVER TELL YOU THAT PLAYERS INC WAS AGGRESSIVELY

1 **MR. KESSLER:** I KNOW WELL ENOUGH TO SAY NOTHING, YOUR
2 HONOR.

3 **THE COURT:** I THINK YOU'VE USED ABOUT -- I'M ROUNDING
4 OFF HERE -- ROUGHLY 800 MINUTES. AND THE PLAINTIFFS HAVE USED
5 886 MINUTES.

6 **MR. KESSLER:** WE'RE CATCHING UP.

7 **THE COURT:** YOU'RE CATCHING UP. SO TOMORROW, BY THE
8 END OF TOMORROW SOMEBODY WILL BE PRETTY CLOSE TO HAVING USED UP
9 ALL THEIR TIME. ALL RIGHT. HEARING NOTHING MORE, WE WILL SEE
10 YOU AT 7:30 IN THE MORNING.

11 I HAVE A HEARING IN HERE IN AN HOUR. I APPRECIATE IT
12 IF YOU WOULD MAKE ENOUGH ROOM FOR THE LAWYERS AND THE
13 DEFENDANTS IN A CRIMINAL CASE TO GET SITUATED. THANK YOU.

14 **MR. KATZ:** THANK YOU, YOUR HONOR.

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

16 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL TUESDAY,
17 NOVEMBER 4, 2008, AT 7:30 O'CLOCK A.M.)

18

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: MONDAY, NOVEMBER 3, 2008

23

S/B KATHERINE POWELL SULLIVAN

24

KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
U.S. COURT REPORTER

25

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, |) | |
| |) | SAN FRANCISCO, CALIFORNIA |
| DEFENDANTS. |) | TUESDAY |
| |) | NOVEMBER 4, 2008 |

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

MANATT, PHELPS & PHILLIPS
1001 PAGE MILL ROAD, BUILDING 2
PALO ALTO, CALIFORNIA 94304

BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.

MANATT, PHELPS & PHILLIPS
7 TIMES SQUARE
NEW YORK CITY, NEW YORK 10036

BY: L. PETER PARCHER, ESQ.

MANATT, PHELPS & PHILLIPS
11355 WEST OLYMPIC BOULEVARD
LOS ANGELES, CALIFORNIA 90064

BY: CHAD HUMMEL, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

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

1 IS THAT TRUE?

2 A. NO, WE DID TELL THEM THAT.

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

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

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

12 "QUESTION: WHAT ABOUT GLA'S GENERALLY?

13 "ANSWER: NO."

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

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

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

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

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

1 A. -- AGREE THAT --

2 Q. IS THAT "NO"?

3 A. YES.

4 Q. THAT'S NO. OKAY.

5 AND THAT WOULD MEAN RETIRED PLAYERS WHO HAD NO
6 INDEPENDENT LICENSING VALUE IN THE MARKET, THEY COULD ALSO
7 EXPECT SIGNIFICANT REVENUES FROM SUCH A GAME, CORRECT?

8 A. THEY COULD EXPECT IT. THEY MIGHT EXPECT IT, YES.

9 Q. ALL RIGHT. AND THAT'S BECAUSE NUMEROUS RETIRED PLAYERS
10 WITH NO INDEPENDENT NAME RECOGNITION PLAYED ON SOME OF THE BEST
11 TEAMS IN HISTORY THAT COULD BE INCORPORATED IN SUCH A GAME,
12 ASSUMING IT EXISTED, CORRECT?

13 A. THAT'S WHY THEY WOULD HAVE THAT EXPECT -- THEY COULD HAVE
14 THAT EXPECTATION, YES.

15 Q. SO IF SUCH A GAME EXISTED THAT HAD HISTORICAL TEAMS,
16 RETIRED PLAYERS WHO SIGNED GLA'S COULD EXPECT SIGNIFICANT
17 REVENUES FROM SUCH A GAME, CORRECT?

18 A. MIGHT EXPECT, YES.

19 Q. ALL RIGHT.

20 A. YEAH.

21 Q. NOW, DID YOU CONSIDER, SIR, IN CONNECTION WITH YOUR REPORT
22 IN THIS CASE, THE FACT THAT EA HAD MANUFACTURED JUST SUCH A
23 GAME THAT HAD OVER A HUNDRED RETIRED TEAMS? HAD YOU CONSIDERED
24 THAT?

25 A. YOU DON'T MEAN "RETIRED TEAMS."

1 SUMMARIZED HIM.

2 AND THEN, THIS IS WITH PAT ALLEN. AND THEN, 906 UP
3 TO PAT ALLEN FOR PLAINTIFF. AND THEN, WITH PAT ALLEN FORWARD:
4 28, 3, 4 AND 60. THAT'S WHAT I HAVE.

5 MR. KESSLER: OKAY. THANK YOU, YOUR HONOR. IF WE
6 HAVE ANY QUESTIONS AFTER FURTHER REVIEWING I'LL LET YOUR HONOR
7 KNOW TOMORROW. THANK YOU.

8 THE COURT: ALL RIGHT.

9 MR. KESSLER: THAT'S IT.

10 THE COURT: ANYTHING MORE? GREAT. I HAVE A CRIMINAL
11 CALENDAR AT 2 O'CLOCK, SO I'LL NEED THE COURTROOM. THANK YOU.

12 MR. KATZ: THANK YOU.

13 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL WEDNESDAY,
14 NOVEMBER 5, 2008, AT 7:30 O'CLOCK A.M.)

15

16

17

CERTIFICATE OF REPORTER

18

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
19 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

20 DATE: TUESDAY, NOVEMBER 4, 2008

21

S/B KATHERINE POWELL SULLIVAN

22

23

KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
U.S. COURT REPORTER

24

25

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE WILLIAM H. ALSUP

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

PLAINTIFFS,)

VS.)

NO. C 07-0943 WHA

NATIONAL FOOTBALL LEAGUE PLAYERS)
ASSOCIATION AND NATIONAL FOOTBALL)
LEAGUE PLAYERS INCORPORATED D/B/A)
PLAYERS INC,)

DEFENDANTS.)

SAN FRANCISCO, CALIFORNIA

WEDNESDAY

NOVEMBER 5, 2008

TRANSCRIPT OF PROCEEDINGS

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MANATT, PHELPS & PHILLIPS
1001 PAGE MILL ROAD, BUILDING 2
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OFFICIAL REPORTER - U.S. DISTRICT COURT

1 A. I HAVEN'T SEEN ANY SUCH EVIDENCE.

2 Q. NOW, SIR, HAVE YOU SEEN ANY EVIDENCE THAT LICENSEES WERE
3 INTERESTED IN LICENSING SIX OR MORE PRESENT OR FORMER PLAYERS?

4 A. OF COURSE.

5 Q. RIGHT. AND, IN FACT, ISN'T EVERY SINGLE LICENSE IN THIS
6 CASE PROOF POSITIVE --

7 MR. HUMMEL: STANDING UP?

8 BY MR. HUMMEL:

9 Q. ISN'T EVERY SINGLE LICENSE IN THIS CASE EVIDENCE OF A
10 SIGNIFICANT ECONOMIC DEMAND FOR A GROUP THAT INCLUDES SIX OR
11 MORE PRESENT OR FORMER PLAYERS?

12 A. OF COURSE, YES. THERE'S SIGNIFICANT DEMAND FOR GROUP
13 LICENSES OR ELSE PLAYERS INC WOULDN'T EXIST.

14 Q. YOU ADMIT THAT, THAT EVERY SINGLE LICENSE IN THIS CASE IS
15 ECONOMIC EVIDENCE THAT THERE IS SIGNIFICANT DEMAND FOR GROUPS
16 OF SIX OR MORE ACTIVE OR RETIRED PLAYERS?

17 A. YES.

18 Q. HA, OKAY.

19 NOW, IF A LICENSEE FROM THE YEARS 2003 TO 2008
20 DESIRED A GROUP LICENSE THAT INCLUDED ALL PRESENT PLAYERS AND
21 SOME FORMER RETIRED PLAYERS, THAT LICENSEE HAD NO CHOICE, NO
22 VIABLE ECONOMIC ALTERNATIVE, BUT TO DEAL WITH PLAYERS INC;
23 ISN'T THAT TRUE?

24 MR. KESSLER: OBJECTION, YOUR HONOR. AND THIS IS
25 GETTING INTO EXACTLY THE SUBJECT WE DISCUSSED BEFORE THE JURY

1 A. ASSISTANT VICE PRESIDENT, PLAYER MARKETING.

2 Q. AND WAS THAT THE TITLE THAT YOU HAVE HAD UP UNTIL YOUR
3 DEPARTURE FROM PLAYERS INC?

4 A. NO.

5 Q. FOR HOW LONG DID YOU HOLD THE TITLE OF ASSISTANT VICE
6 PRESIDENT OF PLAYER MARKETING?

7 A. PROBABLY ANOTHER THREE TO FOUR YEARS.

8 Q. ALL RIGHT. AND THEN IN 2002 YOUR JOB TITLE CHANGED AGAIN,
9 CORRECT?

10 A. CORRECT.

11 Q. AND WHAT DID IT CHANGE TO AT THAT POINT?

12 A. VICE PRESIDENT, PLAYER MARKETING.

13 Q. FIRST YOU WERE ASSISTANT VICE PRESIDENT OF PLAYER
14 MARKETING, AND IN 2002 IT CHANGED TO VICE PRESIDENT OF PLAYER
15 MARKETING?

16 A. CORRECT.

17 Q. AND IS THAT THE TITLE THAT YOU HELD UP UNTIL THE TIME OF
18 YOUR DEPARTURE FROM PLAYERS INC?

19 A. YES.

20 Q. WAS YOUR DEPARTMENT INVOLVED IN THE LICENSING OF RETIRED
21 PLAYER RIGHTS?

22 A. NO.

23 Q. IS THERE A LIST OF APPROXIMATELY 3,000 RETIRED PLAYERS
24 THAT'S MADE AVAILABLE TO LICENSEES?

25 A. NOT THAT I WAS AWARE OF.

1 **THE COURT:** BUT THINK ABOUT IT FOR A SECOND. IF YOU
2 WIN ON THE MEANING OF THE CONTRACT, LET'S SAY, AND IF THAT'S
3 NOT SET ASIDE UNDER RULE 50 OR THE NINTH CIRCUIT, LET'S JUST
4 SAY IF YOU WIN ON THE CONTRACT THEORY ALONE, SINCE YOUR CLASS
5 GETS TO SHARE EQUALLY IN THE GROSS LICENSING REVENUE, ALL
6 RIGHT? THAT'S ONE SCENARIO.

7 THEN, THE FIDUCIARY DUTY CLAIM ADDS NO ADDITIONAL
8 DAMAGES.

9 ON THE OTHER HAND, IF YOU LOSE ON THAT, LET'S SAY THE
10 JURY DISAGREES WITH YOUR MEANING OF THE CONTRACT. AND LET'S
11 SAY THE JURY SAYS THERE'S NO WAY THIS EVER MEANT THEY WERE
12 GOING TO SHARE IN THE GROSS LICENSING REVENUE.

13 BUT THEN, LET'S SAY THE JURY AGREES THAT THE NFLPA
14 HELD THEMSELVES OUT AS A REPRESENTATIVE AND AN AGENT AND
15 UNDERTOOK A FIDUCIARY DUTY TO MARKET THESE PEOPLE, THESE CLASS
16 MEMBERS.

17 NOW, WE GET TO THAT JUNCTURE IN THE DECISION TREE BY
18 ONLY -- ON THE ASSUMPTION THAT THE CONTRACT DOES NOT REQUIRE
19 PARTICIPATION IN THE GROSS LICENSING REVENUE.

20 SO IS THERE THEN A DAMAGE THEORY THAT CAN GET YOU TO
21 THAT OUTCOME?

22 MR. KESSLER SAID, NO, THERE'S NOT.

23 MR. LECLAIR: YOUR HONOR --

24 **THE COURT:** SO WHAT IS THE MEASURE OF DAMAGES?

25 MR. LECLAIR: THE MEASURE OF DAMAGES IS THE SAME

1 REVENUE FROM THE SAME LICENSES, BECAUSE OUR THEORY IS THEY
2 SHOULD HAVE INCLUDED US. WE SHOULD HAVE BEEN PUT TOGETHER WITH
3 THE -- BECAUSE THEY WERE ACTING AS OUR AGENT.

4 **THE COURT:** EVEN THOUGH THE CONTRACT DID NOT
5 REQUIRE -- EVEN THOUGH THE JURY SAYS: LOOK, THE CONTRACT DOES
6 NOT REQUIRE -- THE THING THAT EVERYBODY SIGNED DOES NOT REQUIRE
7 THAT, AND THEN, NONETHELESS, YOU'RE SAYING THAT THE AGENCY
8 WOULD HAVE --

9 **MR. LECLAIR:** ACTUALLY, I AM SAYING THAT.

10 **THE COURT:** TAKE THE HOLLYWOOD EXAMPLE. TAKE THE
11 HOLLYWOOD EXAMPLE. LET'S SAY AN AGENT HAS A CONTRACT WITH A
12 FAMOUS HOLLYWOOD STAR, AND IT SAYS FLAT OUT:

13 "YOU DO NOT HAVE TO TRY TO GET ME INTO MOVIE X,
14 Y, Z. YOU'VE GOT TO TRY TO GET ME IN SOME OTHER MOVIE, BUT NOT
15 MOVIE X, Y, Z."

16 TURNS OUT X, Y, Z IS THE BIGGEST MOVIE OF ALL TIME.
17 CAN THAT STAR COME ALONG AND SAY:

18 "YEAH, BUT THEY OWED ME A FIDUCIARY DUTY, DESPITE
19 THE WORDING OF THE CONTRACT, TO TRY TO GET ME INTO X, Y, Z."

20 IT JUST SEEMS TO ME THAT'S TOPSY-TURVY.

21 AND WHY EVER HAVE A CONTRACT IF YOU CAN DISREGARD THE
22 WORDING OF IT?

23 **MR. LECLAIR:** YOUR HONOR, I THINK RESPECTFULLY THAT'S
24 NOT -- THAT ANALOGY ISN'T THE SAME AS OUR SITUATION.

25 BECAUSE THIS IS NOT A CONTRACT THAT SAYS WE'RE GOING

1 TO FAVOR THE ACTIVE -- THIS WOULD BE DIFFERENT. IF THE
2 CONTRACT SAID:

3 "BY THE WAY, WE'RE GOING TO FAVOR THE ACTIVE
4 PLAYERS; WE'RE GOING TO DO EVERYTHING WE CAN TO AVOID PUTTING
5 YOU IN A GROUP LICENSE; WE'RE GOING TO DO WHAT WE CAN TO KEEP
6 FROM PAYING YOU; WE'RE GOING TO DO OUR BEST TO MAKE SURE IF
7 YOU'RE A STAR PLAYER YOU GET YOUR MONEY; AND IF YOU'RE A
8 JOURNEYMAN, WE THINK YOU'RE WORTHLESS, AND YOU'RE NEVER GOING
9 TO GET ANYTHING," IF THEY HAD SAID ALL THAT IN THE CONTRACT WE
10 WOULDN'T BE HERE.

11 BUT THAT'S NOT WHAT THEY SAID. THEY SAID IN THE
12 CONTRACT -- THE CONTRACT CLAIM IS THAT THE LANGUAGE REQUIRES
13 THAT THEY PAY US BY VIRTUE OF THAT FOR EVERY LICENSE.

14 THE FIDUCIARY CLAIM IS:

15 "YOU SHOULD HAVE PUT US IN BY VIRTUE OF BEING
16 OUR AGENT."

17 AND IF YOU HAVE A CONTRACT --

18 **THE COURT:** EVEN THOUGH THE CONTRACT DID NOT REQUIRE
19 IT?

20 **MR. LECLAIR:** "EVEN THOUGH THE CONTRACT DID NOT
21 REQUIRE YOU TO DO IT, YOU SHOULD HAVE AS OUR FIDUCIARY. AND IF
22 YOU WEREN'T GOING TO DO THAT, YOU SHOULD HAVE DISCLOSED YOUR
23 CONFLICT OF INTEREST AND TOLD US WE DIDN'T HAVE TO."

24 **THE COURT:** BUT THE CONTRACT INTERPRETATION IS
25 SUPPOSED TO BE -- AS THE DRAFT INSTRUCTIONS SAY, IT IS SUPPOSED

1 TO CARRY OUT THE REASONABLE EXPECTATIONS -- REASONABLE
2 EXPECTATIONS OF THE PARTIES BASED ON THE LANGUAGE AND THE
3 SURROUNDING CIRCUMSTANCES.

4 SO IF THE REASONABLE EXPECTATIONS OF THE PARTIES WAS
5 IN NO WAY THAT THE RETIRED PLAYERS WERE GOING TO SHARE WITH THE
6 ACTIVE MONEY, HOW CAN YOU THEN SAY THAT THE CONTRACT AND THE
7 CIRCUMSTANCES IMPOSED A FIDUCIARY DUTY TO DO THE OPPOSITE,
8 I.E., TO GET THEM INTO THE SHARE AND SHARE ALIKE WITH THE
9 ACTIVE MONEY?

10 MR. LECLAIR: I DO UNDERSTAND YOUR HONOR'S QUESTION.
11 NOW I COMPLETELY UNDERSTAND WHAT YOU ARE SAYING. THERE IS A
12 GOOD ANSWER. LET ME GIVE IT TO YOU.

13 THE COURT: ALL RIGHT. WHAT IS IT?

14 MR. LECLAIR: WHAT WE'RE SAYING UNDER THE CONTRACT --
15 THEY HAVE THIS ARGUMENT UNDER THE CONTRACT, AND THEY HAVE BEAT
16 US AND BEAT US AND BEAT US WITH IT SAYING, EVERY WITNESS ON THE
17 STAND:

18 "IS THIS ALL ACTIVE PLAYER MONEY? IS THIS ALL
19 ACTIVE? IS THIS ALL ACTIVE PLAYER MONEY? IS IT ALL ACTIVE
20 PLAYER MONEY?"

21 OKAY? ASSUME THEY CONVINCED THE JURY THAT'S TRUE,
22 BECAUSE THEY DECIDED -- THEY THEMSELVES DID THE LICENSES --
23 EXPRESSLY TO SAY:

24 "CONTRARY TO WHAT WE SAY, ASSUME THE LICENSES DON'T
25 INCLUDE THE ACTIVE -- DON'T INCLUDE THE RETIRED PLAYERS."

1 EVIDENCE?

2 THE COURT: THAT'S ARGUMENT.

3 MR. KESSLER: YOUR HONOR, I'M BEGGING YOUR HONOR ON
4 THIS POINT TO LOOK AT THE D.C. LAW OF THIS. BECAUSE WHAT IT
5 DOES --

6 THE COURT: WHERE CAN I FIND THAT? WE LOOKED FOR IT
7 AND COULDN'T FIND IT.

8 YOU LAWYERS GAVE ME ONLY 42,012 PAGES.

9 MR. KESSLER: THIS IS VERY EASY. STANDARD
10 INSTRUCTIONS OF D.C. 1601 MODIFIED.

11 THE COURT: DO YOU HAVE A COPY RIGHT HERE?

12 MR. KESSLER: IF WE HAVE IT, WE WILL GIVE IT TO YOU.

13 THE COURT: I'M GOING TO FOLLOW THE D.C. LAW.

14 MR. KESSLER: BUT MY POINT ON THE RULE 50 MOTION IS,
15 APPLYING THE D.C. LAW YOU HAVE TO MAKE A DETERMINATION IS THERE
16 EVIDENCE -- NOT FROM ARGUMENT, BUT EVIDENCE -- BECAUSE YOU HAD
17 A LOT OF ARGUMENTS ABOUT HOW HORRIBLE --

18 THE COURT: IT'S ALWAYS GOING TO BE CIRCUMSTANTIAL.

19 MR. KESSLER: RIGHT. RIGHT. BUT EVEN FROM
20 CIRCUMSTANTIAL, IT HAS TO BE BY CLEAR AND CONVINCING THAT A
21 JURY COULD FIND REASONABLY BY CLEAR AND CONVINCING EVIDENCE --
22 CIRCUMSTANTIAL IS OKAY, BUT NOT JUST BY LAWYERS' ARGUMENT --
23 THAT THAT TYPE OF OUTRAGEOUS BEHAVIOR OCCURRED TO WARRANT
24 THIS -- WHAT IS THAT YOU'RE HANDING ME?

25 MS. DONOVAN: THAT'S MODIFIED FROM THE D.C.

1 INSTRUCTIONS.

2 THE COURT: IF THERE WAS A BREACH OF FIDUCIARY DUTY,
3 DOES IT HAVE TO BE INTENTIONAL OR CAN IT BE NEGLIGENT?

4 MR. KESSLER: IT HAS TO BE INTENTIONAL.

5 THE COURT: WELL, THEY ARGUED THERE IS AN
6 INTENTIONAL. ISN'T THAT BAD ENOUGH?

7 MR. KESSLER: NO, NO, NO. IT HAS TO BE -- THIS IS
8 IMPORTANT -- A SPECIFIC TYPE OF INTENT. IT HAS TO BE EVIL
9 MOTIVE, WHICH IS DEFINED IN D.C. AS REALLY EVIL; ACTUAL MALICE,
10 WHICH IS ALSO DEFINED IN THESE HORRIBLE THINGS; DELIBERATE
11 VIOLENCE OR OPPRESSION; OR IN WILLEFUL DISREGARD FOR THE RIGHTS
12 OF PLAINTIFFS.

13 AND THE INTENT ALONE IS NOT ENOUGH. THE CONDUCT HAS
14 TO BE OUTRAGEOUS, GROSSLY FRAUDULENT -- NOT JUST FRAUDULENT,
15 MERE FRAUD IS NOT ENOUGH -- OR RECKLESS TOWARDS SAFETY.
16 CLEARLY, THIS ISN'T A SAFETY ISSUE.

17 THE PROBLEM, YOUR HONOR, IS BY PUTTING ANY
18 INSTRUCTION ON THIS IS THE COURT'S SUGGESTING A JURY COULD
19 POSSIBLY FIND SUCH OUTRAGEOUS BEHAVIOR.

20 WHEN THERE'S NO EVIDENCE OF IT, IT'S PREJUDICIAL EVEN
21 TO GIVE THE INSTRUCTION. BECAUSE THEN THE JURY IS SAYING:

22 "AH-HA, THE COURT'S TELLING ME I MIGHT FIND THIS
23 IS AN OUTRAGEOUSLY RECKLESS, DANGEROUS, MALICE."

24 YOUR HONOR, THERE IS JUST NO EVIDENCE OF IT.
25 WHATEVER ELSE YOUR HONOR DOES ON RULE 50, WE BELIEVE

1 RESPECTFULLY THERE SHOULD BE NO PUNITIVE DAMAGES CLAIM IN THIS
2 CASE.

3 **MR. LECLAIR:** YOUR HONOR, WE TENDERED OUR
4 INSTRUCTION, WHICH IS BASED ON THE D.C. STANDARDIZED JURY
5 INSTRUCTIONS. AND WHAT IT SAYS IS, THE PLAINTIFF HAS TO PROVE
6 IN CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANTS' CONDUCT
7 WAS WILLFUL AND OUTRAGEOUS OR EXHIBITS RECKLESS DISREGARD FOR
8 THE RIGHTS OF OTHERS.

9 SO THE POINT IS, IF THEY BREACHED THEIR -- IF THEY
10 DID WHAT WE SAY THEY DID, IF THE JURY FINDS THEY DID WHAT WE
11 SAY THEY DID, IF THEY INTENDED NOT TO SHARE THIS MONEY WITH
12 RETIRED PLAYERS, AND THEY INTENTIONALLY MISLED THE RETIRED
13 PLAYERS BY WHAT THEY DID AND WHAT THEY SAID, AND THE
14 CIRCUMSTANTIAL --

15 **THE COURT:** IT WOULD HAVE TO BE AN INTENTIONAL
16 BREACH OF DUTY. YOU CAN'T INTRODUCE FRAUD IN THE CASE. IT
17 WOULD HAVE TO BE FIRST THEY FIND A FIDUCIARY DUTY.

18 **MR. LECLAIR:** AND THAT THEY INTENDED TO DO IT.

19 **THE COURT:** THAT IT WAS BREACHED, AND THEY INTENDED
20 TO BREACH, AND THEN THEY DID IT THROUGH THIS DESPICABLE CONDUCT
21 TEST.

22 **MR. LECLAIR:** ABSOLUTELY, YOUR HONOR. AND WE THINK
23 THE EVIDENCE WILL SHOW THAT'S EXACTLY WHAT THEY DID. BUT IF
24 THEY DID, THEY DID. IF THEY DIDN'T, THEY DIDN'T.

25 **MR. KESSLER:** AND, AGAIN, YOUR HONOR, I WOULD JUST

1 SAY WHILE THEY ARGUE IT'S DESPICABLE, THEY HAVE TO ACTUALLY
2 HAVE CONDUCT THAT'S DESPICABLE. THEY HAVE NO EVIDENCE OF
3 CONDUCT THAT'S DESPICABLE.

4 IN FACT, THEY DON'T HAVE ANY KIND OF EVIDENCE SAYING:

5 "OH, YES. WE DELIBERATELY GAVE THESE FORMS,
6 SAYS NOT INTENDING TO LICENSE THEM, WITHOUT TELLING THE ACTIVE
7 PLAYERS THAT WE WERE GIVING AWAY THEIR MONEY, EVEN THOUGH WE
8 KNEW WE COULDN'T GIVE AWAY THEIR MONEY, AND WE DECEIVED THE
9 RETIRED PLAYERS TO GIVE IT OUT."

10 FOR WHAT? THAT'S ALL ARGUMENT, YOUR HONOR.

11 THIS WHOLE STUFF ABOUT THE AGENT, THE PLOT TO
12 DOMINATE THE WORLD IS ARGUMENT. WHATEVER ELSE YOUR HONOR MAY
13 THINK, IT'S NOT A BASIS FOR PUNITIVE DAMAGES. NOT UNDER D.C.
14 LAW.

15 **MR. LECLAIR:** YOUR HONOR, FIRST OF ALL,
16 MR. BERTHELSEN SAID THEY NEVER INTENDED TO PUT THIS TOGETHER.
17 THEY ALWAYS INTENDED TO KEEP IT SEPARATE, EVEN THOUGH
18 EVERYTHING THEY TOLD US WAS IT WAS GOING TO BE TOGETHER.
19 THAT'S THE REASON WHY IT WAS INTENTIONAL.

20 **THE COURT:** HE ALSO TESTIFIED THAT HE -- THEY NEVER
21 INTENDED TO PUT IT TOGETHER BECAUSE HE ALWAYS UNDERSTOOD THE
22 CONTRACT TO KEEP THE RETIRED SEPARATE FROM THE ACTIVE.

23 **MR. KESSLER:** RIGHT. HIS TESTIMONY WAS THAT
24 EVERYBODY UNDERSTOOD RETIRED PLAYER MONEY WOULD GO TO RETIRED
25 AND ACTIVE WOULD GO TO ACTIVE. THAT'S DESPICABLE CONDUCT?

1 IF YOU TAKE THE -- HERE ARE SOME OF THE POINTS THAT
2 WORK IN THE PLAINTIFFS' FAVOR. YOU'VE GOT A CONTRACT THAT
3 CALLS FOR AN ESCROW AND NO ESCROW WAS EVER SET UP.

4 YOU'VE GOT A CONTRACT THEY TRIED FOR 14 YEARS TO GET
5 PEOPLE TO SIGN UP, AND NOT ONE PENNY WAS EVER DISTRIBUTED UNDER
6 THIS CONTRACT. SO WHAT WAS THE -- WHY WAS THAT? AND WHY WAS
7 IT SO HARD?

8 IT'S TRUE THAT YOU HAVE SOME VERBAL TESTIMONY SAYING:

9 "YES, WE TRIED TO INTEREST THE LICENSEES IN THE
10 GROUP LICENSING CLASS MEMBERS." BUT IT'S NOT STRONG EVIDENCE.
11 IT'S VERBAL.

12 AND THERE IS IN WRITING A LETTER SAYING:

13 "DON'T USE THEIR NAMES AND IMAGES. YOU MUST
14 SCRAMBLE."

15 IT WOULD HAVE BEEN NICE IF THAT SAME LETTER HAD SAID:

16 "AND, BY THE WAY, WE STAND READY TO GIVE YOU A
17 GROUP LICENSE ON THESE PEOPLE, OR AT LEAST ON A LARGE NUMBER OF
18 THEM."

19 BUT THE DEFENSE PERSON -- I HAVE FORGOTTEN HER
20 NAME -- WHO WROTE THAT LETTER, DIDN'T DO THAT. INSTEAD, SHE
21 SAID:

22 "DON'T USE THEM."

23 NOW, I UNDERSTAND THE EXPLANATION. BUT IF THE -- IF
24 THE DEFENDANTS WERE SO KEEN ON TRYING TO MARKET THESE RIGHTS,
25 THAT WOULD HAVE BEEN A VERY NATURAL OPPORTUNITY TO SAY:

1 "AND, BY THE WAY, WE HAVE 20,000 -- I MEAN 2,053
2 SIGNED UP. WE WILL LICENSE THESE TO YOU FOR \$10,000."

3 OKAY? FOR SOME REASONABLE SUM OVER AND ABOVE.

4 SOMETHING TO INDICATE IN WRITING THAT THERE WAS A
5 GENUINE, SINCERE EFFORT TO MARKET.

6 NO, THAT DID NOT OCCUR.

7 THAT -- LASHANDA, WAS THAT HER NAME?

8 MR. HUMMEL: LASHUN LAWSON.

9 THE COURT: MS. LAWSON DID NOT DO THAT. INSTEAD, SHE
10 JUST SAYS:

11 "NO. SCRAMBLE."

12 THEN, YOU HAVE THE PROBLEM WITH OWING THE FAVOR AND
13 TRYING TO HELP EA OUT AND SAVING THEM MONEY.

14 ONE COULD INFER THAT THE DEFENDANTS WANTED TO
15 MONOPOLIZE -- THAT'S TOO STRONG A WORD -- WANTED TO KEEP
16 SOMEONE ELSE OUT, LIKE TWO DECK OR DOUBLE DECK OR --

17 MR. KATZ: TWO K.

18 THE COURT: WHO?

19 MR. KATZ: TWO K.

20 MR. PARCHER: TAKE TWO.

21 THE COURT: KEEP TAKE TWO OUT OF THE MARKET SO THAT
22 THEY WOULD NOT EMERGE AN ALTERNATIVE SOURCE FOR FOOTBALL
23 PLAYERS.

24 AND THAT THIS WAS A PREEMPTIVE MOVE, A DEFENSIVE MOVE
25 TO BOTTLE UP THE PLAYERS AND -- IT'S NOT EXCLUSIVE, BUT,

1 NONETHELESS, MAKE THE PLAYERS THINK THAT THEY WERE DOING
2 SOMETHING SO THAT THEY WOULD NOT GET ANY INTEREST IN TAKE TWO.

3 WHAT I'M DOING IS RECITING FOR THE RECORD A THEORY
4 THAT THE PLAINTIFFS HAVE IN WORDS, MORE OR LESS, ARTICULATED,
5 WHICH WOULD SUPPLY EVIL MOTIVE, SUPPLY GREED, TRYING TO TRICK
6 THE RETIRED PLAYERS.

7 I RECOGNIZE THAT THERE IS AN ALTERNATIVE VERSION THAT
8 MAKES MR. ALLEN AND HIS GROUP LOOK LIKE ANGELS, GOOD
9 SAMARITANS, HONESTLY. AND IT GOES SOMETHING LIKE THIS:

10 THEY SET UP A GROUP -- A RETIRED THING. THE ACTIVE
11 PLAYERS PAID FOR IT. IT COST MILLIONS OF DOLLARS. THE ACTIVE
12 PLAYERS PAID FOR IT. THE ACTIVE PLAYERS TRIED TO FIGURE OUT A
13 WAY TO GET THE RETIRED SOME MONEY, SO THEY DID ALL THESE
14 AD HOCS, MILLIONS AND MILLIONS OF DOLLARS OF AD HOCS.

15 AND THEN, THEY TRIED THIS GROUP LICENSING THING. AND
16 IN ORDER TO GET THAT TO WORK YOU NEEDED 11,000, THEY ONLY GOT
17 TWO. SO NO WONDER IT FAILED.

18 THEY TRIED FOR 14 YEARS TO GET EVERYBODY TO SIGN UP,
19 BUT IT NEVER GOT TO THE CRITICAL MASS. THAT'S WHY NO MONEY WAS
20 EVER PAID UNDER THIS.

21 THAT'S AN ALTERNATIVE THEORY.

22 AND NOW NO GOOD DEED EVER GOING UNPUNISHED,
23 MR. PARCHER IS ON THEIR CASE. THAT'S THE ALTERNATIVE.

24 BUT TO GO BACK TO THE EVIL VERSION FOR A MOMENT, THE
25 EVIL VERSION CONCEIVABLY COULD BE ACCEPTED BY THE JURY. IF SO,

1 THAT COULD LEAD TO PUNITIVE DAMAGES.

2 I THINK THE MORE FUNDAMENTAL PROBLEM THAT THE COURT
3 HAS IS THE -- IF THERE IS A BREACH OF FIDUCIARY DUTY, AND
4 THERE'S NO CONTRACT VIOLATION, THERE MAY NOT BE A VIABLE AVENUE
5 TO COLLECT DAMAGES.

6 SO THAT'S THE ONE THAT I'M GOING TO RESERVE ON. I'M
7 RESERVING ON ALL OF THESE. YOU CAN MAKE ALL YOUR MOTIONS AT
8 THE END, ANYWAY.

9 SO I'M AFRAID THAT I'M GOING TO HAVE TO LET
10 MR. PARCHER LOOSE ON THE JURY TO SEE WHAT HE CAN DO.

11 **MR. KESSLER:** I'LL TAKE IT AS A GIFT, YOUR HONOR.

12 **THE COURT:** ALL RIGHT. TAKE IT AS A GIFT.

13 SO THOSE MOTIONS ARE ALL DENIED WITHOUT PREJUDICE FOR
14 RENEWAL AT THE END OF THE VERDICT.

15 I HAVE TO BRING THIS TO A CLOSE. IS THERE ANYTHING
16 MORE RIGHT NOW?

17 **MR. KESSLER:** NO, YOUR HONOR. AGAIN, I WOULD NOTE
18 THAT ON THIS AREA, IN PARTICULAR, IN THE INSTRUCTIONS AND IN
19 THE VERDICT FORM, I WOULD ASK YOUR HONOR -- WE WILL BE
20 SUBMITTING IN OUR BRIEF -- TO PLEASE MAKE SURE THAT YOU REVIEW
21 D.C. LAW ON THIS PUNITIVE DAMAGES --

22 **THE COURT:** I'M GOING TO LOOK AT THAT AS SOON AS --

23 **MR. KESSLER:** AND THE VERDICT FORM, IN PARTICULAR, WE
24 THINK, DOESN'T HAVE IT IN A WAY WE THINK IS CONSISTENT.

25 **THE COURT:** WE'LL HAVE OUR CONFERENCE TOMORROW

1 STARTING AT 7:30.

2 THANK YOU.

3 MR. KESSLER: THANK YOU, YOUR HONOR.

4 MR. PARCHER: THANK YOU, YOUR HONOR.

5 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL THURSDAY,
6 NOVEMBER 6, 2008, AT 7:30 O'CLOCK A.M.)

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CERTIFICATE OF REPORTER

16

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18

19

DATE: WEDNESDAY, NOVEMBER 5, 2008

20

21

S/B KATHERINE POWELL SULLIVAN

22

KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
U.S. COURT REPORTER

23

24

25

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, |) | |
| |) | SAN FRANCISCO, CALIFORNIA |
| DEFENDANTS. |) | THURSDAY |
| |) | NOVEMBER 6, 2008 |

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS: MANATT, PHELPS & PHILLIPS
1001 PAGE MILL ROAD, BUILDING 2
PALO ALTO, CALIFORNIA 94304
BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.

(APPEARANCES CONTINUED ON NEXT PAGE)

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.

FOR DEFENDANTS:

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

BY: JEFFREY L. KESSLER, ESQ.
DAVID G. FEHER, ESQ.
ROY TAUB, 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

1 WE HAVE NO IDEA WHETHER IT'S 150 OR WHETHER IT'S 200,
2 OR WHAT THE NUMBER IS.

3 THE AMOUNT OF THE CHECK IS -- IN OTHER WORDS, THE
4 AMOUNT OF CHECK FOR NONPRACTICE SQUAD PLAYERS ONLY, THERE'S NO
5 EXPLANATION. WE DON'T KNOW. WE JUST KNOW THE TOTAL INCLUDES
6 THE PRACTICE SQUAD. WE DON'T KNOW HOW THAT FITS INTO THIS
7 AMOUNT OF CHECK.

8 AND THERE WAS NO QUESTIONS ASKED OF MR. ALLEN TO
9 EXPLAIN THIS CHART. THERE'S NOTHING THERE. THIS IS WHAT THEIR
10 EXPERT SHOULD HAVE DONE.

11 MR. LECLAIR: THIS IS WHAT HE --

12 MR. KESSLER: SO EVEN IF YOUR HONOR GIVES A PROPER
13 INSTRUCTION AND TELLS THE JURY TO MAKE THESE CALCULATIONS I
14 DON'T KNOW HOW THE JURY COULD DO IT WITHOUT SPECULATION.

15 MR. LECLAIR: YOUR HONOR, THAT'S WHAT OUR EXPERT DID.
16 HE DID DO THIS CALCULATION. AND THEY HAD EVERY OPPORTUNITY TO
17 CROSS-EXAMINE HIM IF THEY WANTED TO BRING THINGS OUT TO THE
18 JURY.

19 MR. KESSLER: THAT WASN'T MY --

20 THE COURT: I'M GOING TO DENY THIS MOTION, BECAUSE IT
21 LOOKS TO ME LIKE THERE'S SUFFICIENT EVIDENCE FROM WHICH THE
22 JURY COULD FIGURE OUT FOR EACH PAYMENT INTO THE FUND HOW MANY
23 ACTIVE PLAYERS PARTICIPATED IN IT. AND WE KNOW HOW MANY CLASS
24 MEMBERS THERE WERE BY YEAR.

25 IT'S TRUE THAT THERE IS SOME LOOSEY-GOOSEY ROOM ON

1 THE PRACTICE SQUAD PEOPLE. BUT IF YOU LOOK AT THE ACTUAL
2 DOLLARS THAT COULD BE -- IT'S GOING TO BE 150 TO 200 PER YEAR.

3 AND AT A THOUSAND DOLLARS A POP, THAT'S ONLY 200,000,
4 AT MOST, OUT OF 13, \$14 MILLION. IT'S GOING TO BE SO DE
5 MINIMUS THAT THIS IS CLOSE ENOUGH.

6 SO THAT MOTION IS DENIED. THERE IS -- THERE IS A
7 METHODOLOGY BEFORE THE JURY WHEREBY THEY COULD CRANK THE
8 NUMBERS AND COME UP WITH -- ALL RIGHT.

9 MR. KESSLER: YOUR HONOR, THEN, I WOULD AT LEAST
10 REQUEST THAT THE JURY BE INSTRUCTED THEY HAVE TO MAKE THOSE
11 CALCULATIONS.

12 RIGHT NOW, YOUR HONOR'S INSTRUCTIONS SIMPLY SAY ALL
13 THEY HAVE TO FIND -- IT STARTS IN 33, BUT WE WOULD ASK FOR AN
14 INSTRUCTION ON THIS LATER. THEY HAVE TO DETERMINE: HAVE
15 PLAINTIFFS PROVEN, THROUGH A FORMULA OR OTHERWISE, WHAT THE
16 INDIVIDUAL INJURIES ARE SO THAT THE JURY WILL TRY TO MAKE THOSE
17 CALCULATIONS?

18 RIGHT NOW YOU'VE ONLY TOLD THEM IT'S CLASS WIDE. WE
19 THINK THAT'S INAPPROPRIATE.

20 THE COURT: AT THIS POINT, I'M GOING TO LEAVE IT AS
21 IT IS, AS AN INTRODUCTORY STATEMENT. WHEN WE GET TO THE MORE
22 DETAILED ONES YOU CAN RENEW THAT POINT.

23 ALL RIGHT. ALL OBJECTIONS TO 33 ARE OVERRULED.

24 ANY MORE FROM YOU, MR. LECLAIR?

25 HEARING NONE, NUMBER 34.

1 AND YOUR HONOR SAID: "WE'RE GOING TO COME BACK TO
2 THAT WHEN WE GET TO IT."

3 I THINK THIS IS WHERE WE GET TO IT.

4 **THE COURT:** I UNDERSTAND YOUR ARGUMENT, AND I MAY
5 ADJUST THIS LANGUAGE IN SOME WAY TO CONFORM CLOSER TO -- THERE
6 IS A METHODOLOGY HERE. WE WENT THROUGH IT A WHILE AGO. AND
7 THE METHODOLOGY ALLOWS YEAR BY YEAR THE NUMBER OF INDIVIDUALS
8 WHO SIGNED THESE THINGS, AND HOW MANY ACTIVE PLAYERS THERE
9 WERE, AND THE AMOUNT OF MONEY. AND THE JURY, IN THEORY, COULD
10 DO THEIR OWN MATHEMATICS AND CALCULATE IT.

11 SO I AM GOING TO REFINE THIS, BUT YOU'LL JUST HAVE TO
12 WAIT AND SEE WHAT I COME UP WITH.

13 **MR. KESSLER:** WE UNDERSTAND, YOUR HONOR. AGAIN, WE
14 ASK THE JURY BE TOLD THEY HAVE TO FIND AS TO HOW MUCH IT WOULD
15 BE FOR EACH CLASS MEMBER. THAT WILL BE OUR POSITION, AND YOUR
16 HONOR WILL RULE ON IT.

17 **THE COURT:** I WILL RULE ON IT. THANK YOU.

18 **MR. KESSLER:** AT THIS POINT, YOUR HONOR, WE BELIEVE
19 WE PROPOSED AN INSTRUCTION IN OUR MEMORANDUM LAST NIGHT WHICH
20 WE BELIEVE WOULD BE INSERTED HERE. THIS INSTRUCTION WAS THE
21 FOLLOWING, WHICH IS THAT YOUR HONOR SHOULD INSTRUCT THAT THE
22 ONLY DAMAGE EVIDENCE THAT'S BEEN PRESENTED TO THE JURY IS A
23 CLAIM TO EQUAL SHARES OF THE GLR POOL.

24 SO UNLESS THE JURY FINDS THAT THERE WAS SOME
25 CONTRACTUAL ENTITLEMENT FOR THE BREACH OF CONTRACT CLAIM TO AN

1 EQUAL SHARE OF THE GLR POOL, OR THE JURY FINDS FOR THE BREACH
2 OF FIDUCIARY DUTY CLAIM THAT THERE WAS SOME DUTY TO PROVIDE AN
3 EQUAL SHARE OF THE GLR POOL, THAT THE JURY SHOULD -- CAN ONLY
4 AWARD NOMINAL DAMAGES, EVEN IF THEY FIND A BREACH OF EITHER OF
5 THOSE THINGS.

6 YOUR HONOR, WE'VE ARGUED THIS IN THE CONTEXT OF A
7 RULE 50 MOTION. BUT THAT'S THE ONLY EVIDENCE HERE. THEIR
8 EXPERT, MR. ROWLEY, ADMITTED UNDER OATH, AS YOUR HONOR KNOWS,
9 THAT HE STATED IF THE JURY DOESN'T FIND THAT THERE IS SUCH AN
10 ENTITLEMENT TO AN EQUAL SHARE OF THE GLR POOL, THEN HE'S
11 PRESENTED NO DAMAGES EVIDENCE.

12 AND THAT'S THE ONLY CLASS-WIDE FORMULA THAT'S BEEN
13 PUT IN PLAY. SO WE BELIEVE THE JURY NEEDS TO UNDERSTAND THAT,
14 THAT UNLESS THEY FIND AN ENTITLEMENT TO THOSE EQUAL SHARES
15 SOMEWHERE, EITHER IN BREACH OF CONTRACT OR IN BREACH OF
16 FIDUCIARY DUTY, THEN THEY ONLY CAN AWARD NOMINAL DAMAGES,
17 BECAUSE THERE'S NOTHING ELSE FOR THEM TO FIND HERE.

18 **MR. LECLAIR:** YOUR HONOR, WE COMPLETELY DISAGREE WITH
19 THIS INSTRUCTION BECAUSE WHAT WE CLAIM IS THE REVENUE. THEY
20 PUT IT IN THE GLR POOL, WHICH IS WHY OUR DAMAGE EXPERT USED THE
21 METHODOLOGY THAT HE DID.

22 BUT OUR CLAIM IS TO THE REVENUE FROM THE LICENSE
23 AGREEMENTS. AND TO START INSTRUCTING THE JURY THAT WE HAVE TO
24 BE PART OF THE GLR POOL IS CONFUSING AND MISLEADING TO THE
25 JURY, BECAUSE WHAT WE'RE CLAIMING IS THE REVENUE. THAT'S

1 CLEAR.

2 OUR EXPERT DIDN'T -- DIDN'T AGREE WITH WHAT
3 MR. KESSLER SAID, BECAUSE THE QUESTION IS: ARE WE ENTITLED TO
4 THE REVENUE? THERE'S NO NEED FOR AN INSTRUCTION ON THE GLR
5 POOL.

6 THAT'S THE METHODOLOGY BY WHICH THE AMOUNT IS
7 CALCULATED. IT'S NOT -- IT'S NOT WHETHER OR NOT WE'RE ENTITLED
8 TO DAMAGES, WHICH IS THE REVENUE FROM THE LICENSE AGREEMENTS.

9 MR. KESSLER: WELL, THEIR EXPERT DID ABSOLUTELY -- I
10 READ IT YESTERDAY, YOUR HONOR -- AGREE WITH WHAT I STATED.

11 MORE IMPORTANTLY, THE METHODOLOGY, AS YOUR HONOR
12 KNOWS, IS BASED ON EQUAL SHARES OF THIS SPECIFIC POOL OF MONEY.
13 HE DIDN'T CALCULATE, AS YOUR HONOR NOTED YESTERDAY: HOW MUCH
14 WOULD THEY GET FROM THE AGREEMENTS IN SOME OTHER FORM?

15 WE WENT THROUGH THAT AT LENGTH YESTERDAY.

16 THE ONLY THING HE DID IS HE SAID: "I'M ASSUMING WHAT
17 THEY'RE ENTITLED TO IS EQUAL SHARES OF THIS SPECIFIC POOL OF
18 MONEY, THE GLR POOL," WHICH, AS YOUR HONOR KNOWS, CONTAINS
19 CERTAIN REVENUES, AND NOT OTHER REVENUES.

20 THAT'S THE ONLY CLAIM PRESENTED.

21 SO IF THE JURY DOESN'T FIND THAT THERE IS EITHER A
22 CONTRACTUAL ENTITLEMENT TO EQUAL SHARES OF THAT -- I UNDERSTAND
23 THEY HAVE AN ARGUMENT THERE. THEY COULD FIND THAT, BUT THEY
24 HAVE TO FIND IT. OR THAT THERE WAS A FIDUCIARY DUTY TO GIVE
25 THEM AN EQUAL SHARE OF THAT POOL.

1 MR. LECLAIR: NO OBJECTION.

2 MR. KESSLER: NO OBJECTION TO 49. WELL, WAIT A
3 MINUTE, YOUR HONOR. ONLY -- ONLY TO THE EXTENT IT TALKS ABOUT
4 THE CLASS, AS OPPOSED TO INDIVIDUAL INJURY. WE HAVE THIS
5 OBJECTION RUNS THROUGH THE DAMAGE CLAIMS.

6 THE COURT: ALL RIGHT..

7 MR. KESSLER: I JUST WANT TO PRESERVE IT.

8 THE COURT: 50.

9 MR. LECLAIR: NO OBJECTION.

10 MR. KESSLER: NO OBJECTION, OTHER THAN AS STATED --

11 THE COURT: ALL RIGHT. 51.

12 MR. LECLAIR: NO OBJECTION.

13 MR. KESSLER: AGAIN, SUBJECT TO THE SAME OBJECTION
14 UNDER INDIVIDUAL INJURY, NO, WE HAVE NO OBJECTION.

15 THE COURT: 52.

16 MR. LECLAIR: NO OBJECTION.

17 MR. KESSLER: NO OBJECTION TO 52.

18 THE COURT: 53.

19 MR. KESSLER: 53, YOUR HONOR, I GUESS WE BOTH HAVE
20 OBJECTIONS. I SEE MR. LECLAIR GETTING UP, AS WELL.

21 I'LL STATE MINE. OUR FIRST OBJECTION, AS WE ARGUED
22 THE RULE 50 MOTION, WE DON'T THINK THERE SHOULD BE PUNITIVE
23 DAMAGES --

24 THE COURT: I'M GOING TO OVERRULE THAT.

25 MR. KESSLER: MY SECOND OBJECTION, YOUR HONOR, IS

1 **THE COURT:** HE ONLY NEEDED TWO DOCUMENTS. ALL THE
2 OTHER LAWYERS WOULD BE -- THEY WOULD HAVE THOUSANDS OF PAGES
3 AND DOCUMENTS AND EVERYTHING. HE WOULD SAY: "GIVE ME TWO
4 DOCUMENTS."

5 SO, WHICH ONES ARE THOSE? "FIRST, GIVE ME THE BEST
6 DOCUMENT IN THE CASE, AND THEN GIVE ME THE MAGNA CARTA." AND
7 HE WILL WIN THE CASE. AND HE ALWAYS DID.

8 **MR. KESSLER:** YOUR HONOR, I'VE SEEN HIM IN ACTION,
9 AND FREQUENTLY HE DID.

10 **THE COURT:** SO THIS IS CLOSING ARGUMENT TIME. SO
11 THERE WILL BE A LOT OF LEEWAY, OF COURSE. BUT REMEMBER YOUR
12 DUTIES AS AN OFFICER OF THE COURT.

13 OKAY. SEE YOU TOMORROW AT 7:30.

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

15 **MR. KATZ:** THANK YOU, YOUR HONOR.

16 (THEREUPON, THIS TRIAL WAS CONTINUED UNTIL FRIDAY,
17 NOVEMBER 7, 2008, AT 7:30 O'CLOCK A.M.)

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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: THURSDAY, NOVEMBER 6, 2008

23

S/B KATHERINE POWELL SULLIVAN

24

KATHERINE POWELL SULLIVAN, CSR #5812, RPR, CRR
25 U.S. COURT REPORTER

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:

For Plaintiffs:

MANATT, PHELPS & PHILLIPS
1001 Page Mill Road, Building 2
Palo Alto, California 94304

**BY: RONALD S. KATZ, ESQ.
RYAN S. HILBERT, ESQ.**

MANATT, PHELPS & PHILLIPS
7 Times Square
New York City, New York 10036

BY: L. PETER PARCHER, ESQ.

MCKOOL SMITH
300 Crescent Court
Suite 1500
Dallas, Texas 75201

**BY: LEWIS T. LECLAIR, ESQ.
BRETT CHARHON, ESQ.**

(Appearances continued on next page)

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 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.

14 - - - -

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CERTIFICATE OF REPORTER

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

20

21 DATE: Monday, November 10, 2008

22

23

s/b Katherine Powell Sullivan

24

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

25