

# **EXHIBIT O**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

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In Re: NCAA Student-Athlete Name : Case No.  
and Likeness Licensing Litigation : 09-CV-1967  
: CW  
-----x

\* \* \*

Videotaped Deposition of ROBERT  
McCORMICK, taken by the Defendant, Wednesday,  
May 15, 2013, held at the offices of Hausfeld LLP,  
1700 K Street, Washington, DC, commencing at  
9:13 a.m. before Jamie I. Moskowitz, a Shorthand  
Reporter and Notary Public.

\* \* \*

Objection, 702. Plaintiffs object to the entirety of the NCAA's designation of Dr. McCormick's deposition. Plaintiffs have not sought to elicit testimony from Dr. McCormick at trial. Moreover, the bulk of the NCAA's designations are to questions and answers beyond the scope of Dr. McCormick's expert reports and expertise, as Dr. McCormick has repeatedly noted at his deposition. That testimony is inadmissible and should be stricken.

**Designation Color Key**  
Blue = NCAA Affirm Desigs.  
Orange = Pls' Counter Desigs.  
Fuchsia = NCAA Rebuttal Desigs

1 MS. FAHMY: Christina Fahmy,  
2 Kilpatrick Townsend & Stockton on behalf of the  
3 Collegiate Licensing Company.

4 MR. PAYNTER: Stuart Paynter for the  
5 plaintiff's side.

6 MR. ARMSTRONG: Robert Armstrong for  
7 plaintiffs.

8 MR. HAUSFELD: Michael Hausfeld for  
9 the plaintiffs.

10 THE VIDEOGRAPHER: Thank you.

11 Will the court reporter please swear  
12 in the witness.

13 \* \* \*

14 ROBERT McCORMICK, after having been first  
15 duly sworn, was examined and testified as  
16 follows:

17 EXAMINATION BY

18 MR. CURTNER:

19 Q Good morning.

20 A Good morning, sir.

21 Q Would you state your full name for the  
22 record, please?

23 A Robert Exley McCormick.

24 Q Should I call you Dr. McCormick?

25 A Bobby is fine if you wish.

1 Q All right. When were you retained in  
2 this matter?

3 A Sometime in March of this year.

4 Q When were you first contacted about --  
5 MR. CURTNER: Did somebody just join  
6 or leave?

7 BY MR. CURTNER:

8 Q When were you first contacted about  
9 potentially being retained?

10 A Sometime in March of this year.

11 Q And who contacted you?

12 A Bruce Wecker, I believe it was.

13 Q And was that the first you knew about  
14 this case?

15 A No, I was aware of the case from the  
16 press.

17 Q Had you had any contact with the case  
18 or the filings in the case other than what you read  
19 in the press?

20 A No, I had not.

21 Q Had you spoken to any lawyers about  
22 this case prior to March of 2013?

23 A None of the lawyers in this case.

24 Q Had you spoken to any of the  
25 economists or experts in this case prior to that?

1 Q I mean the sports that we're talking  
2 about here, the so-called major college football and  
3 basketball, whatever that means.

4 A What's on the horizontal axis in the  
5 diagram you're asking me to hypothetically draw?

6 Q Yeah, quantity.

7 A Quantity of what?

8 Q And price?

9 A Of what?

10 Q Quantity of whatever unit of input you  
11 want to talk about. The input of labor.

12 A Well, it wouldn't -- didn't -- so  
13 you're asking me what the demand for labor looks  
14 like? I don't understand the question. I need  
15 to --

16 Q I'm asking you what the supply of  
17 student athlete labor looks like?

18 A Well, what I say in my paper is and  
19 what others have said in this case is that it's very  
20 inelastic, maybe perfectly inelastic; and that's not  
21 my opinion, that's what others have said.

22 Q You quote Donald Remy's letter to Joe  
23 Nocera on that subject and say you agree with it,  
24 right?

25 A Did I say I agree with it?

Objection  
O, V, 402

Objection  
402

1 Q Yeah, I think you say you find  
2 yourself in substantial agreement.

3 A Okay, "substantial" is the word I was  
4 looking for you to say.

5 Q It's at footnote 14 on page 12.

6 A I note in some substantial agreement.

7 So there was two qualifiers there, but, yeah.

8 Q "That the supply of talent is quite  
9 inelastic, perhaps nearly perfectly inelastic as he  
10 suggests;" do you see that?

11 A I do. That's what I wrote.

12 Q And if you were to draw that, that  
13 would mean that the supply function would be a flat  
14 line parallel with the horizontal axis?

15 A No, sir, it wouldn't be.

16 Q All right. What would it look like?

17 A It would be a vertical line.

18 Q At the quantity taken, right?

19 A Yes.

20 Q Okay. So it would be a vertical line  
21 at the quantity taken which would translate into  
22 meaning that you would get that same quantity  
23 supplied without regard to the price?

24 A That's correct -- that's what he says,  
25 and I note that I'm in substantial agreement with

Objection  
402

1 him that it is quite inelastic, which is less than  
2 perfectly inelastic, and perhaps nearly perfectly  
3 inelastic. Perhaps nearly perfectly inelastic, as  
4 he suggests.

5 Q Which means that you could fill up  
6 your football and basketball teams even if you  
7 offered less than a grant-in-aid, correct?

8 A That's the implication of that  
9 statement, that's correct.

10 Q And would you agree with that?

11 A I'd have to put myself to more careful  
12 thought, but my first reaction to that is yes. I'd  
13 want to think more carefully about it, because I  
14 haven't put myself to that question, but that's --  
15 what I'm not prepared to say without thinking about  
16 it is whether that line goes all the way down at  
17 zero. But I think it does, but I want to think more  
18 carefully about that.

19 Q We could agree that there's probably  
20 some players for whom they would not go to college  
21 if they didn't have some aid because they couldn't  
22 afford it, right?

23 A I'm not prepared to say that because I  
24 haven't put myself to that question. I don't know  
25 the answer to that question.

Objection  
402

Objection  
702, 402

1 close to such, and even though there would be some  
2 players who would enter and some who would exit if  
3 the compensation level were to vary?

4 A Well, let's say what economic theory  
5 says and then we don't have to disagree. If the  
6 line goes all the way down to zero, perfectly  
7 inelastic, you get the same number no matter what  
8 you pay. If it's less than perfectly inelastic and  
9 it goes all the way down to zero, then there would  
10 be some players who come in if you raise the price  
11 high enough and some players that drop out if you  
12 lower the price. How many that is I think is very  
13 small but -- and I -- I'm not prepared to say that  
14 the line is perfectly inelastic. I think really  
15 says -- my interpretation is he says it's perfectly  
16 inelastic and I think that it is -- I quote myself,  
17 I'm in substantial agreement and perhaps nearly  
18 perfectly inelastic, so there might be a very small  
19 amount of adjustment.

20 Q So it could be substantially perfectly  
21 inelastic but you could still have some  
22 substitution; you might have different people in  
23 there, you still would fill up your teams --

24 A But --

25 Q -- at zero or at a hundred thousand



1 dollars?

2 A If it's virtually perfectly

3 inelastic -- there will be none. If it's perfectly

4 inelastic there will be no shifting and if it's less

5 than perfectly inelastic there'd be a little bit.

6 Q Okay.

7 A And it's very nearly perfectly

8 inelastic, probably. I mean so -- the question of

9 how much shifting there would be is sort of a gut

10 check; and I think that it's widely held by the

11 testimony of everybody here, which I'm not in

12 disagreement with, that it's very nearly perfectly

13 inelastic.

14 Q But you certainly agree as well, do

15 you not, sir, that the identity of the individuals

16 on teams would change if the price were zero on the

17 one hand and a hundred thousand dollars on the other

18 hand?

19 A No, I don't -- I'm not testifying to

20 that.

21 Q Are you saying that people would not

22 make different decisions in the real world between

23 zero and a hundred thousand dollars?

24 A If the supply curve is perfectly

25 inelastic that's what it says. The price doesn't

1 Q Do you know of any things that you  
2 would call a cartel outside of industries that buy  
3 and sell commodity-type goods, like oil and oranges  
4 and things like that?

5 A Yeah, sure. I mean there's -- there's  
6 a lot of legal cartels where entry is limited and  
7 output's restricted. In agriculture, for instance,  
8 the government sanctions a cartel.

9 Q But again, those are commodity goods?

10 A Oh, I thought you asked me about  
11 commodities.

12 Q No, I'm asking you if know of any that  
13 do not involve commodity goods?

14 A Would you consider education to be a  
15 non-commodity good? I don't know what you mean by  
16 non-commodity --

17 Q Yeah, I think I would consider  
18 education to be non-commodity good?

19 A Okay. Yes, I'm -- yes.

20 Q You think education's a cartel?

21 A I think there's some medical  
22 education, for instance. There's a medical  
23 education cartel. And a legal education cartel.

24 Q In terms of what? How do you think a  
25 medical education cartel works?

Objection  
402

Objection  
O, V, 402,  
702

1 A You have to attend a AMA sanctioned  
2 medical school in order to be board certified.  
3 There's limits on who can start a medical school and  
4 there's lots of restrictions there. Depends on the  
5 study --

6 Q And so a --

7 A Look, I'm just telling you what the  
8 literature says. I'm not testifying -- you  
9 understand I'm not testifying. You aren't asking me  
10 questions about my report.

11 Q My question was about your views  
12 but --

13 A Well, my views about life in general  
14 don't have anything to do with my testimony in this  
15 case.

16 My testimony in this case is about the  
17 expert reports of defendants' experts and Dr. Noll.  
18 I mean I'll talk about these cartels all that you  
19 want to, but I'm not going to testify to them and  
20 they shouldn't be considered part of the record for  
21 what Dr. McCormick is testifying to.

22 Q So I'm just trying to test your  
23 opinions by finding out whether you know of other  
24 examples of things that you think fit into the  
25 cartel category that involve something other than

Objection  
402  
702

Objection  
402  
702

1 commodities, like agricultural products or oil?

2 A Well, I just gave you medical and

3 legal education.

4 Q Yes, you did. Are there any others?

5 A Well, the Ivy -- the Ivy -- you know,  
6 the Ivy case that I cite.

7 THE COURT REPORTER: I'm sorry?

8 THE WITNESS: The Ivy league case that  
9 I cite.

10 BY MR. CURTNER:

11 Q And we're going to talk about that in  
12 a minute. Any others?

13 A I'm sure there's others, but again,  
14 I'd have to put myself to thinking about it, but...  
15 I'm sure there's others.

16 Q Would you agree that it's hard to have  
17 a successful cartel when the product in question has  
18 a variety of characteristics and is sold on  
19 something other than a clear unit in exchange for a  
20 clear dollar price?

21 A That's too hard a question to ask out  
22 of context. I literally need -- you know, I don't  
23 want to testify about that without some context. I  
24 mean there's general guidelines and rules about  
25 these kind of things, but I don't want to be

Objection  
402  
702

1 I'm not going to testify about it. I didn't study  
2 it for purposes of testifying in this case.

3 Q But you do agree that these  
4 nonmonetary services to student athletes would be  
5 affected if the compensation levels to student  
6 athletes for their performance were to change?

7 A No. I don't agree with that  
8 statement. To the extent that I have an opinion  
9 about it, I declare what we've already discussed --  
10 let me find it for you.

11 Q Go ahead, I'm sorry.

12 A Earlier in this testimony we discussed  
13 the flypaper effect and the like. I think I want to  
14 harken back to my testimony there --

15 THE COURT REPORTER: I want to...

16 THE WITNESS: Harken back to my  
17 testimony there and just repeat it is the  
18 answer to your question. And I'll find it for  
19 if you'd like me to, but where I discuss that  
20 in my paper.

21 BY MR. CURTNER:

22 Q I remember you using the term  
23 "flypaper effect" but I'm not quite sure how it  
24 applies to this question?

25 A It applies to this question in the

Objection  
402

1 following way. There's a literature about donations  
2 let's say from the State of South Carolina to  
3 Clemson University. If those increase is there a  
4 concomitant to reduction in donations by donors and  
5 vice versa?

6 So the question of flypaper effect is  
7 entities that receive gifts, do they really receive  
8 gifts, because if there is an alternative source of  
9 support, does the alternative source of support dry  
10 up because they already got the gift, and that's  
11 what that literature is about.

12 And it's germane in this case, if you  
13 take the position that I'm testifying to here that  
14 the effects are mostly to transfer the rents to the  
15 university, and then how that money gets spent is a  
16 more complex question that's not relevant to the  
17 inquiry here, that's what I say. It's plausible and  
18 indeed quite likely that what it does is it filters  
19 back, that it's free money to the university which  
20 then would be made up for by increased state and  
21 private support where the rent's absent. That's the  
22 underlying theory.

23 Q I see.

24 And so because this money would be  
25 made up for from these other sources potentially,

Objection  
402

1 you're saying there might not be any change in  
2 facilities and recruiting and stadiums and things  
3 like that?

4 A Correct. The reason the stadium is  
5 big is because it fits the business plan of the  
6 university.

7 Q And it satisfies customers and  
8 attracts customers, right?

9 A It's part of the business plan of the  
10 university. You know, again, the university makes a  
11 complex business decision about what its product mix  
12 is going to be, and the size of the stadium and the  
13 extent of the athletic program are a part of that  
14 complex business decision. And I'm suggesting to  
15 the Court that these rents flow to the university  
16 and likely therefore just simply lead to less  
17 external support than would otherwise be present  
18 because they're free money and therefore the donors  
19 don't feel the need to step up.

20 Q Which is another way of saying that it  
21 satisfies the alumni base or the public base and  
22 makes them happier than they otherwise would be,  
23 right?

24 A Because they got free money.

25 Q Because they got a sport at a --

Objection  
402

1 C E R T I F I C A T E

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3 I, Jamie I. Moskowitz, a Shorthand  
4 (Stenotype) Reporter and Notary Public, do hereby  
5 certify that the foregoing Deposition, of the  
6 witness, ROBERT McCORMICK, taken at the time and  
7 place aforesaid, is a true and correct transcription  
8 of my shorthand notes.

9 I further certify that I am neither  
10 counsel for nor related to any party to said action,  
11 nor in any way interested in the result or outcome  
12 thereof.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 15th day of May 2013.

15



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Jamie Ilyse Moskowitz  
License No. XI01658

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