

# EXHIBIT AA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE NCAA STUDENT-ATHLETE ) CASE NO.  
NAME & LIKENESS LICENSING ) 4:09-cv-1967 CW (NC)  
LITIGATION )

The videotaped deposition upon oral examination of GREG WEITEKAMP, a witness produced and sworn before me, Debbi S. Austin, RMR, CRR, Notary Public in and for the County of Hendricks, State of Indiana, taken on behalf of the Plaintiffs, at the offices of Faegre Baker & Daniels, 300 North Meridian Street, 27th Floor, Indianapolis, Marion County, Indiana, on the 5th day of June, 2012, commencing at 9:45 a.m., pursuant to the Federal Rules of Civil Procedure with written notice as to time and place thereof.

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

1 Greg Curtner. I'm with the firm of Schiff  
2 Hardin, and I represent the National Collegiate  
3 Athletic Association.

4 MR. SLAUGHTER: James Slaughter for EA.

5 MR. BOYLE: Peter Boyle for Defendant  
6 Collegiate Licensing Company.

7

8 GREG WEITEKAMP,  
9 having been duly sworn to tell the truth, the whole  
10 truth, and nothing but the truth relating to said  
11 matter, was examined and testified as follows:

12

13 DIRECT EXAMINATION,

14 QUESTIONS BY MR. JON T. KING:

15 Q Good morning. Would you state your full name  
16 for the record, please.

17 A Sure. Gregory Weitekamp.

18 Q Have you ever had your deposition taken before?

19 A No.

20 Q Have you ever given any kind of sworn testimony  
21 to a -- for example, a governmental body or a  
22 regulatory body?

23 A No.

24 Q Have you ever testified at any sort of criminal  
25 or civil trial?

1 A No.

2 Q I'll give just a couple ground rules that you  
3 probably covered with your attorney, but just to  
4 make sure we have it on the record. Would you  
5 agree that you'll try to give me a verbal  
6 response as opposed to just a silent shaking of  
7 your head, that type of thing?

8 A Yes.

9 Q And can we agree that we'll try to not talk over  
10 each other so we can get a clear record?

11 A Yes.

12 Q And will you let me know if you need a break?

13 A Absolutely.

14 Q Okay. And if I ask a question, I'd definitely  
15 invite you to clarify it if you need to. And if  
16 you don't ask me to clarify it, is it fair for  
17 me to presume that you understood the question?

18 A Yes.

19 Q Okay. Are you currently employed?

20 A Yes.

21 Q By who?

22 A The National Collegiate Athletic Association.

23 Q And --

24 MR. CURTNER: Can we also agree to go at a  
25 pace that allows me to make objections if I need

1 to?

2 THE WITNESS: Yes.

3 MR. CURTNER: Thank you.

4 Q And what is your current title?

5 A That's an interesting one, because it's changed  
6 about eight times. But it's currently director  
7 of championships and alliances.

8 Q Okay. Director of championships and alliances.  
9 And how long have you held that title?

10 A That title changed approximately eight months  
11 ago. I've had the title of director since 2006.

12 Q Okay. I'm going to try to work backwards --

13 A Sure.

14 Q -- chron- -- chronologically. So you've had  
15 that -- that title for about eight months you  
16 say?

17 A Yes.

18 Q And then what was your title prior to that?

19 A Director of broadcasting.

20 Q And how long did you hold the title director of  
21 broadcasting?

22 A Since 2000 -- I think I said '6. It actually  
23 was the fall of 2005.

24 Q And what was your title -- let me back up a  
25 little. When did you start working for the

1 NCAA?

2 A December of 2001.

3 Q So prior to taking the title director of  
4 broadcasting in the fall of 2005, what was your  
5 title?

6 A Associate director of broadcasting.

7 Q And how long did you have that title?

8 A Two years.

9 Q And what was your title prior to that?

10 A Manager of syndication and asset management.

11 Q And how long did you have that title?

12 A That was the title I started with at the NCAA,  
13 so December of 2001.

14 Q Okay. Prior to joining the NCAA in December of  
15 2001, were you employed?

16 A Yes.

17 Q By who?

18 A I was employed by the Horizon League.

19 Q And what is the Horizon League?

20 A The Horizon League is a Division I athletic  
21 conference, a member of the NCAA.

22 Q And are the teams in the Horizon League members  
23 of Division I in men's basketball?

24 A Yes.

25 Q And how about football?

1 Q And when did you get that?

2 A I completed it December of 2009.

3 Q And where did you get that degree from?

4 A Butler University.

5 Q Okay. I appreciate you going over that.

6 A Sure.

7 Q So now, though, I'd like to drill down a little  
8 bit deeper on some of those. And --

9 A Okay.

10 Q -- maybe we'll work from present day backwards.

11 So as the director of championships and  
12 alliances, could you describe just in -- your --  
13 your general responsibilities? And we can get  
14 more particular later. But just on a broad  
15 basis, what are your responsibilities?

16 A I oversee a department called media services.

17 Q You over- -- oversee that, did you say?

18 A Uh-huh. It consists of three what we call  
19 functional areas, one being broadcast and  
20 digital rights management. The others are our  
21 statistics group. The third is our media  
22 coordination group.

23 Q How many personnel are there in the broadcast  
24 and digital rights management group?

25 A There are three associate directors. We have

1 two contracted production assistants. And we  
2 have -- we share administrative assistants  
3 across the board in the media services group.  
4 So at any one point in time, up to three  
5 administrative assistants are working within the  
6 group.

7 Q Okay. And who are the three associate  
8 directors?

9 A In order in terms of -- in terms of their  
10 tenure, Frank Rhodes, Jeramy Michiaels, and  
11 Julie Kimmons.

12 Q What is the -- the basic function or functions  
13 of the broadcast and digital rights management  
14 group?

15 A Basic function of the group is to administer and  
16 minister -- and administer, excuse me, our media  
17 contracts with Turner Sports, CBS, ESPN, Thought  
18 Equity in Motion, Rich Clarkson & Associates,  
19 and Dial Global.

20 Q What is the contract with -- did you say Dial  
21 Global?

22 A Dial Global is a radio network. They purchased  
23 Westwood One.

24 Q In terms of the organizational hierarchy, do you  
25 report to a particular person?

1 A Yes.

2 Q And can you explain a bit about what type of  
3 documents you had in mind?

4 A We have received their credentialing policies  
5 and some of their media policies, specifically  
6 highlight usage.

7 Q Who did you -- well, when you said "we," did you  
8 personally receive those, or they came to you  
9 from some other person?

10 A I did receive those. They did not come  
11 directly, though, from the leagues. They  
12 come -- they came from one of our partners.

13 Q And who was that? Which partner?

14 A Turner.

15 Q Are you familiar with -- now, you said -- you --  
16 you have worked -- let me back up. Sorry.

17 You -- you've interacted with Thought

18 Equity in Motion; correct?

19 A Yes.

20 Q Could you describe what their relationship is in  
21 a broad way with the NCAA? You referred to them  
22 earlier as a partner. What do they partner  
23 with --

24 MR. CURTNER: Object to the form.

25 Q -- the NCAA on?

1 MR. CURTNER: I'm sorry. I didn't mean to  
2 step on your question.

3 MR. KING: That's all right.

4 A For the record, they -- they have gone through a  
5 recent name change. Their name is now T3 Media.

6 Q T3 Media?

7 A Yes. Our partnership with Thought Equity is  
8 twofold. No. 1, it's the preservation of our  
9 archive in a digital format. No. 2, it is the  
10 representation of our archival rights.

11 Q And for the representation of the NCAA's  
12 archival rights, does T3 Media's role include  
13 licensing content to those that might wish to  
14 use NCAA content?

15 A Yes.

16 Q Has T3 Media used a standard licensing form in  
17 your experience for that purpose?

18 A Yes.

19 Q Did you have any role in developing whatever  
20 standard forms they may use for that process?

21 A When our partnership started with T3 Media, we  
22 provided our licensing form that we were using  
23 at the time. They developed it. Our legal  
24 reviewed it. I also looked at it.

25 Q As a part of that process, did you ever have

1 occasion to look at what the -- at -- at the  
2 professional league's licensing forms for  
3 comparison purposes?

4 A No.

5 Q Do the NCAA bylaws guide you in any way in terms  
6 of your job responsibilities?

7 A Yes.

8 Q How so?

9 A We look at our bylaws in a couple different  
10 fashions. No. 1, our bylaws provide us, the  
11 national office, the ability to enter into media  
12 contracts to represent the membership via  
13 championships. We also work through the bylaws  
14 in specifically working with our membership  
15 services or currently called AMA group in the  
16 way that we are simply based upon eligibility.

17 Q Are -- to your knowledge, are those bylaws  
18 incorporated by reference in any of the  
19 contracts that the NCAA has with its partners?

20 MR. CURTNER: Object to the form.

21 You may answer.

22 A Bylaws are not directly referenced. Rules are,  
23 which indirectly is the bylaws.

24 Q Okay. I'm trying to make sure I understand.

25 Would -- would rules encompass something in

1 addition to the bylaws?

2 A Sure, playing rules.

3 Q Anything else that comes to mind?

4 A No.

5 Q And -- and how -- how would a contract with a  
6 partner -- let -- let's use Turner as an  
7 example -- incorporate or reference the NCAA  
8 rules?

9 MR. CURTNER: Object to the form.

10 You may answer.

11 A Just listed simply that the partner must follow  
12 all NCAA rules. Shall not actively, knowingly  
13 conduct their business that would be in a  
14 violation of one of those rules.

15 Q Are there -- going back to my -- my question  
16 about the types of documents that would guide  
17 you in your responsibilities. Are there -- in  
18 addition to the NCAA bylaws, are there formal  
19 NCAA policies other than -- I think we spoke  
20 about media credentialing ones that guide you in  
21 some fashion that you refer to for guidance.

22 MR. BOYLE: Object to the form.

23 A No.

24 Q Does the NCAA have something called the  
25 broadcasting manual?

1 A Yes.

2 Q Does the NCAA itself measure that?

3 A We have two different websites, ncaa.org, which  
4 the NCAA manages in-house. Therefore, all the  
5 analytics/metrics are provided by the NCAA. The  
6 website ncaa.com is managed and run by Turner  
7 Sports. Turner Sports collects all the  
8 metrics/data.

9 Q Do they share that with the NCAA?

10 A Yes.

11 Q On -- on what type of basis? Is it a regular  
12 basis?

13 A We receive weekly reports.

14 Q On ncaa.com, are there items for sale?

15 A Yes.

16 Q Could you describe in general, general  
17 categories? Is it apparel, merchandise, what  
18 type of things?

19 A Yes, apparel, souvenirs, hats. That's part of  
20 apparel.

21 Q How about DVDs?

22 A Yes.

23 Q Are there clips available for viewing of game  
24 footage on ncaa.com?

25 A Yes.

611b

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1 Q Are those currently free to view?

2 A Yes.

3 Q Is there advertising on ncaa.com?

4 A Yes.

5 Q Can you think of offhand any of the advertisers  
6 that come to mind that are on there?

7 A Sure. Many of our corporate partners and  
8 champions advertise on ncaa.com; Coca-Cola,  
9 Capital One, AT&T, to name a few.

10 Q We were talking a little bit about the  
11 preferences of -- of sports fans. And I'll make  
12 it more particular to college sports fans. But  
13 how -- you mentioned you consider the  
14 preferences of sports fans and college sports  
15 fans in some way in your job responsibilities.  
16 Can you be more particular in terms of how you  
17 get information about what the preferences of  
18 college sports fans might be?

19 MR. CURTNER: Object to the form.

20 You may answer.

21 Q In other words, do you do -- do you have surveys  
22 you look at, or is it kind of anecdotal, or --

23 A Yes. We --

24 MR. CURTNER: Objection.

25 You may answer.

1 cover all 89. So let me be clear in that.

2 Q Okay. Are -- are any conferences treated --  
3 with that caveat as to some contracts may not  
4 cover all championships, but are any -- maybe  
5 it's easier if we focus on the current -- the  
6 NCAA has a current contract with Turner;  
7 correct?

8 A (Affirmative nod.)

9 Q And is CBS also a party to that same contract?

10 MR. CURTNER: Object to the form.

11 A There's --

12 Q I'm trying to get at the live -- the current --  
13 currently operative live broadcast rights  
14 contract.

15 A There's two contracts with Turner. There's the  
16 Turner/CBS contract, and then there is a  
17 contract between us and Turner for digital.

18 Q For the Turner/CBS contract, is any conference  
19 treated differently under that -- that contract  
20 as compared to any other conference?

21 MR. CURTNER: Object to the form.

22 MR. KING: You can answer.

23 A No.

24 Q What does the -- could you describe a little bit  
25 about the type of things that are covered in the

1 Turner/CBS contract versus the type of things  
2 that are covered in the Turner digital rights  
3 contract or what falls in which contract?

4 A Sure.

5 MR. CURTNER: Object to the form.

6 Q Starting with --

7 MR. CURTNER: You may answer.

8 Q Starting with, say, live broad- -- live  
9 broadcasts of games --

10 A Uh-huh.

11 Q -- how are those covered in these contracts?

12 MR. CURTNER: Same objection.

13 A In the Turner/CBS multimedia agreement, the only  
14 championship that is covered as a obligation is  
15 the Division I men's basketball championship.

16 Q And what's the -- and that's for purely live  
17 broadcasts?

18 A For live broadcasts. And there are some what we  
19 would call near live rights as well, meaning a  
20 use beyond the live window.

21 Q What is the -- the time period governed by that  
22 current contract? In other words, when did it  
23 start? When is it envisioned to end?

24 A The -- in terms of the term or --

25 Q Right. When did it go into effect?

1 A Sure. The contract went into effect -- that  
2 would have been 2000- -- the 2011 tournament, so  
3 it would have been 2010-2011, goes through  
4 2023-'24.

5 Q And what's the -- what did Turner and CBS  
6 collectively commit to pay for the rights to  
7 broadcast live games?

106

8 MR. CURTNER: Object to the form.

9 A There -- there's other things in the agreement,  
10 so to --

11 Q Well --

12 A -- just say the live -- if you're looking for  
13 the entire package of what the rights fee is?

14 Q Yes.

106

15 A 10.8 billion.

16 Q What's the difference between live rights and  
17 near live rights? You used the phrase "near  
18 live rights." Can you explain a little more  
19 what that means?

20 A Sure. Live is it's happening right here. This  
21 is happening live. What I just said, post that  
22 somewhere else, that's -- within five minutes  
23 from now, that is near live. So essentially  
24 once the live window ends, there's another set  
25 of, quote/unquote, rights that kind of encompass

1 the next period of time.

2 Q Does the -- the current Turner/CBS contract  
3 address in any way the rights to use archival  
4 materials?

5 A Yes.

6 Q How so?

7 A It defines how those networks can use archival  
8 material.

9 Q And is that meaning the NCAA's archival material  
10 that's preexisting?

11 A Correct.

12 Q Can you describe in -- in -- if you have an  
13 understanding, in general how that is addressed  
14 in the contract?

15 A Sure. CBS and Turner can use highlights in an  
16 editorial capacity on their own platforms when  
17 speaking about men's basketball for the  
18 Division I men's basketball championship.

19 Q What does "editorial capacity" mean?

20 MR. CURTNER: Object to the form.

21 You may answer.

22 A News and information on fiction, factual  
23 information.

24 Q News and information about factual --

25 A Yes.

1 Q -- information? Okay.

2 Is there some -- so that's editorial  
3 capacity. Is -- is there some other capacity in  
4 which they can't use that footage?

5 A That they can't use it?

6 Q Correct, cannot.

7 A They cannot use it in any way to promote or --  
8 or -- they can't use it in any commercial way  
9 that would promote a product. They cannot  
10 sublicense it.

11 Q Do you consider the NCAA to be a product in any  
12 way?

13 MR. CURTNER: Object to the form.

14 You may answer.

15 A The television rights or the television -- a  
16 television broadcast, I guess, in a way, no.  
17 Let me answer that, no, it's not a product.

18 Q Do you consider the NCAA to be a brand?

19 MR. CURTNER: Object to the form.

20 You may answer.

21 A Yes.

22 Q And can you expand on that? How?

23 MR. CURTNER: Same objection.

24 A Every -- let me put it this way: Every  
25 organization has a brand. They're identified by

1 their brand. Our brand is based upon the fact  
2 that we are an organization of higher education  
3 that works within athletics that provides  
4 opportunities for students to compete on the  
5 playing field in athletics and earn that  
6 education in the classroom via scholarship.  
7 That is the NCAA brand.

8 Q And when you -- is that a phrase that's used  
9 internally in discussing the NCAA brand?

10 MR. CURTNER: Object to the form.

11 A Yes.

12 Q Does the NCAA brand  
13 sure we're being c  
14 compared to all the

Dropped designations at 56:18-57:7.  
Eliminate counters/rebuttals on pages  
57-59?

15 A Sure.

16 Q When the NCAA brand is discussed internally, is  
17 it focused on just the NCAA itself, meaning the  
18 entity that controls the championships that you  
19 discussed, or is it broader to be a proxy in a  
20 way for college sports in total?

21 A The NCAA is an association of member  
22 institutions and conferences. Our brand  
23 encompasses those member institutions and  
24 conferences. Championships is a part of what we  
25 do at the NCAA. But it is continuing to provide

1 an athletic experience on top of their education  
2 as well to exceed and excel on the playing field  
3 and also in the classroom.

4 Q Are you involved with discussions about ways to  
5 strengthen the NCAA brand?

6 A I have been, yes.

7 Q Can you describe a little bit about those?

8 A Sure.

9 MR. CURTNER: Object to the form.

10 A Our PSA campaign that you may be familiar with  
11 would be an example of that, the messaging that  
12 comes across within -- within those messages  
13 about there's 400- -- 400,000 student-athletes  
14 going pro in something other than sports.

15 Q In your view and experience, does strengthening  
16 the NCAA brand improve the NCAA's ability to  
17 negotiate higher value contracts with its  
18 partners?

19 MR. CURTNER: Object to the form.

20 You may answer.

21 A Yes.

22 Q And how do those things relate?

23 A The NCAA is a unique organization in that  
24 they're a higher education organization with  
25 athletics. And that goes towards the education

1 of students that turn into young professionals.  
2 That brand is something that a lot of  
3 corporations want to be attached to.

4 Q And -- and how does that desire of corporations  
5 to want to be attached to that -- do you mean  
6 them in terms of advertisers, potential  
7 advertisers that --

8 A They're providing --

9 MR. CURTNER: Object to the form. Sorry.  
10 You may answer.

11 THE WITNESS: Thank you.

12 A Our sponsors, our corporate champions and  
13 partners, yes.

14 MR. CURTNER: Jon, when you get to a change  
15 of subject or a breaking point, maybe it's an  
16 appropriate time for a --

17 MR. KING: Okay. This is a good time.

18 MR. CURTNER: -- a break. Okay. Thanks.

19 THE VIDEOGRAPHER: We're off the record.

20 Local time is 10:52 a.m.

21 (A recess was taken.)

22 THE VIDEOGRAPHER: We're back on the record  
23 at 11:03 a.m.

24 BY MR. KING:

25 Q Prior to becoming the director of championships

1 Q And at the time -- well, when they last had  
2 involvement with running the website, was it  
3 called CSTV at that time?

4 A No, CBS College Sports Network.

5 Q Okay. I was hoping you'd say CSTV. That's  
6 easier for me to say. I'll call them, I guess,  
7 just CBS.

8 Was it -- with respect to editorial content  
9 versus commercial content, was it also -- just  
10 like it's Turner's decision now, was it CBS's  
11 decision at that point?

12 MR. CURTNER: Object to the form.

13 A Yes.

14 Q Does the NCAA itself have policies on what is  
15 considered editorial versus commercial?

16 MR. CURTNER: Objection, asked and  
17 answered.

18 You may answer.

19 Q You can answer if you -- we've covered how --

20 A Sure.

21 Q -- cur- -- currently it's Turner deciding. In  
22 the past it was CBS deciding. And I'm trying to  
23 understand if the NCAA has its own policies that  
24 it might need to look to in any particular  
25 circumstance as to what's editorial versus

1 commercial.

2 A In terms of defining it between editorial and  
3 commercial, there is no -- nothing specifically  
4 in place.

5 Q Have -- have you ever had to weigh in personally  
6 on a judgment or -- or give counsel or guidance  
7 as to whether you think something is editorial  
8 versus commercial?

9 A Yes.

10 Q On roughly how many occasions?

11 A Honestly, I don't know.

12 Q Would you say quite a few, or is it very rare?

13 A I'd say more than a few.

14 Q And do you recall sort of what -- what you would  
15 look to to form your decisions or guidance on  
16 that? In other words, did you have some written  
17 materials or talk to others, or how would you  
18 formulate your thoughts on that?

19 A In many instances, we're looking at eligibility,  
20 in that regard, and so we would consult the  
21 membership services AMA group on certain  
22 elements of that. The other places really just  
23 in terms of standard practice.

24 Q And what's "standard practice" mean?

25 A Very simply, what is editorial? Editorial is a

1 news and information platform.

2 Q So standard, not -- not just within the NCAA,  
3 but standard meaning in --

4 A Yes.

5 Q -- a broader way?

6 A Yes.

7 Q And what -- just to make sure we're talking the  
8 same language, what would be -- what -- would  
9 there -- would there be a particular industry?  
10 Would it be the entertainment industry or the  
11 way professional sports does it, or what would  
12 be looked to to decide what is standard?

13 A It would be the -- really the news and  
14 information industry; the newspapers, television  
15 stations, other websites.

16 Q Did you ever have occasion to weigh in about  
17 issues about advertising done in conjunction  
18 with editorial use in association with it or  
19 proximity to it?

20 MR. CURTNER: Object to the form.

21 You may answer.

22 A Yes.

23 Q Can you describe the -- the type of issues that  
24 you recall coming up in that context?

25 A I'll provide an example. Banner advertising on

1 A Yes.

2 MR. KING: Okay. Next exhibit, please,  
3 287.

4 (Deposition Exhibit 287 marked for  
5 identification.)

6 Q Do you recall seeing this document before?

7 A Same answer, in terms of top of mind, no. But  
8 anything that's attributed to my name, I would  
9 have seen at some point.

10 Q It's a press release dated May 23rd, 2007,  
11 titled "Thought Equity Motion Now Offers  
12 Licensing Rights and Clearances, Expertise to  
13 Its Customers." And the fourth paragraph down,  
14 it has a quote attributed to you.

15 A Uh-huh.

16 Q It says, "The video content within our library  
17 contains some of the best conceptual footage  
18 available across 23 sports and 88 NCAA  
19 championships. Our N- -- our championships  
20 demonstrate teamwork, challenges, sportsmanship,  
21 and achievement. And our NCAA corporate  
22 champions and partners are drawn to make these  
23 connections in their advertising and  
24 promotions."

25 Do you agree with the sentiments expressed

1 or attributed to you there?

2 A Yes.

3 Q Then the next quote in that same paragraph, it  
4 says, "Because of the complexities of the rights  
5 and clearance as related to current NCAA  
6 student-athletes, individuals' likeness, and  
7 institutional trademarks, it has been difficult  
8 for our partners to utilize and leverage these  
9 great moments in sports competitions."

10 Do you agree with that statement attributed  
11 to you?

12 A Yes.

13 Q Could you explain a little bit about what is  
14 meant there by "the complexities of the rights  
15 and clearances"?

16 MR. CURTNER: Object to the form.

17 You may answer.

18 A There's two aspects of it. No. 1, there are  
19 eligibility concerns that certainly we have that  
20 our partners are -- have the experience to at  
21 least help describe. They don't make decisions  
22 when it comes to eligibility on our behalf, but  
23 they can help describe those to partners.

24 And then in terms of the latter part of it,  
25 which is the use of one's likeness, we do not

1 give the rights to use anyone's likeness.  
2 Thought Equity in part put this group in place  
3 to help serve as not only our partners but other  
4 partners out there to go out and clear likeness  
5 associated with the commercial use of the video.

6 Seeking out individuals' likeness is  
7 complex and takes time. Most corporations don't  
8 want to do that, so they like to have a third  
9 party do it on their behalf.

10 Q And is it your understanding that process would  
11 need to occur if the usage is going to be  
12 commercial versus editorial?

13 A Correct.

14 Q When --

15 MR. KING: One moment. I'm just checking  
16 my monitor here.

17 Q When you said in your answer, "we do not give  
18 the rights to use anyone's likeness," are you  
19 speaking just about the licensing that Thought  
20 Equity is involved in? In other words, the NCAA  
21 does give the right to use likenesses in its  
22 broadcast contracts; is that true?

23 MR. CURTNER: Object to the form.

24 A There's -- the broadcasting of an event, there's  
25 no consent to get one's likeness. We are not

701

1 conceding anyone's likeness in any of our  
2 agreements.

3 Q Wait, I'm sorry. Let me -- I'm not sure I  
4 understand that. So if -- and I know I switched  
5 gears on you.

6 A Uh-huh.

7 Q But I want to make sure. Going back to the  
8 broadcast contracts --

9 A Uh-huh.

10 Q -- with CBS --

11 A Correct.

12 Q -- and Turner, Turner and CBS have the rights to  
13 broadcast and film and record the likenesses of  
14 the performers, right --

15 A Yes.

16 Q -- for the purposes of their broadcast?

17 A Yes.

18 MR. CURTNER: Object to the form.

19 MR. KING: Sorry. I just wanted to  
20 clarify.

21 Q But when it comes to the commercial use -- maybe  
22 we can -- let me read the next quote from you.

23 "But by outsourcing the rights and clearances  
24 function to Thought Equity Motion, it allows our  
25 corporate champions and partners like AT&T, The

1 A No. I would need to probably see an example of  
2 how it's being described.

3 Q Okay. Let me see if it's worth doing here.  
4 Okay. It's a one-pager, so this ...

5 MR. KING: Let's mark this 292, please.

6 (Deposition Exhibit 292 marked for  
7 identification.)

8 Q Do you -- this is an e-mail from 2003. Do you  
9 happen to recall this e-mail?

10 A I do.

11 Q You do. Okay.

12 Well, it's an e-mail from Greg Millard to  
13 Matt Kauffman. You're one of the cc's.

14 A Yes.

15 Q And if you look in the last line, the author  
16 indicates -- he says, "I have cc'd Greg  
17 Weitekamp from the NCAA who provided us with  
18 much of the guidance listed and would ask that  
19 he weigh in if anything is not clearly stated or  
20 if he has anything to add."

21 Do you see that?

22 A Uh-huh.

23 Q And where I got the -- the line "sponsored  
24 content" is the second bullet point there under  
25 internet usage. And it says, "As long as GM is

106

1 not branded into the play or clip online, e.g.,  
2 onscreen guide, there will not be restrictions  
3 online as it is considered sponsored content as  
4 opposed to a commercial."

5 Do you see that?

6 A Uh-huh.

7 Q Does that help you understand the context a  
8 little bit of what "sponsored content" would --  
9 would mean?

10 A Sure.

11 Q And is that a phrase that -- is that not  
12 commonly used? Is that why it wasn't familiar?

13 MR. CURTNER: Object to the form.

14 A It's -- it's not one that is commonly used, no.

15 Q And do you see under eligibility issues, it  
16 says, "Do not use players younger than five  
17 years old in order to ensure that there are no  
18 eligibility concerns"?

19 A Yes.

20 Q And then the last paragraph, it says, "Hopefully  
21 this provides clarification. As you can see,  
22 there is no hard and fast -- hard and fast set  
23 of rules, but the N- -- NCAA was confident  
24 that -- that these parameters had been  
25 successful to date in protecting parties using

1 footage," et cetera.

2 Do you see that?

3 A Uh-huh.

4 Q Do you recall -- does this refresh your memory,  
5 were these parameters that the NCAA used to deal  
6 with corporate requests to use footage?

7 MR. CURTNER: Object to the form.

8 You may answer.

9 A These were essentially guidelines or practices  
10 that we provided for corporations to take into  
11 consideration. The key element in this case is  
12 that we were not providing by any means saying  
13 that we represent the rights to these  
14 individuals.

15 Q Go back to -- it says, "The sponsored content as  
16 opposed to a commercial." That's where I'm not  
17 asking it very well, but I'm trying to  
18 understand. It seems like there's a distinction  
19 there that "sponsored content" means one thing,  
20 but "a commercial" means something else.

21 A Sure.

22 Q Is that -- is that a distinction that you deal  
23 with? I'm trying to understand it more.

24 What --

25 A Sure.

1 Q What's the difference?

2 A I'll provide an example perhaps to better -- to  
3 best clarify what -- I believe in this segment  
4 when they're using the term "sponsored content,"  
5 what it meant. What they were referring to in  
6 terms of sponsored content likely meant a banner  
7 within the page of this segment or feature that  
8 was being produced. Could have also included a  
9 pre-roll ad of a product prior to a highlight  
10 clip.

11 A commercial would be the sense of which  
12 the images of a particular athlete are being  
13 used within the context of the product or a  
14 commercial of the product.

15 Q Could you explain a little more what pre-roll ad  
16 means or --

17 A Sure. A pre-roll is a standard advertising  
18 mechanism within digital technology for clips  
19 that you would see or editorial stories that are  
20 online. And there would be a -- anywhere from a  
21 5- to 30-second ad that would run before it,  
22 generally dips to black, and then the story  
23 appears.

24 Q And is there other terms for -- if -- well, I  
25 guess that -- does that -- in your experience,

1 would the ads ever appear in the middle, or is  
2 it -- is pre-roll basically the only term?  
3 There's no middle equivalent or end equivalent?

4 A You can insert ads within, but it's generally  
5 based upon the length of the program. So, for  
6 instance, if it was a 30-minute program -- and  
7 we're specifically talking about an online  
8 program -- you may see, somewhere between five  
9 and ten minutes, a advertisement within the  
10 middle of that to break it up.

11 And then in some cases, there's called a  
12 post-roll, which isn't used very often anymore,  
13 because generally once the content is over,  
14 people quit watching it. But it was a  
15 advertisement at the end of the segment.

16 Q And -- and what you've described with the  
17 pre-roll advertisement, if there's a pre-roll ad  
18 and then footage follows from that, in your  
19 experience, is that considered editorial by the  
20 NCAA, editorial use of that footage?

21 MR. CURTNER: Object to the form.

22 A Yes. Our legal counsel had advised that that is  
23 more of an editorial use protected under  
24 copyright.

25 Q Do you -- do you think former players have

1 consented to their images being used in that  
2 editorial use type of way you just described  
3 there?

4 MR. CURTNER: Object to the form, calls for  
5 a legal opinion.

6 You may state your understanding if you  
7 have one.

8 A I do not have an understanding.

9 MR. KING: Okay. Next document, 292,  
10 please.

11 THE REPORTER: 293.

12 MR. KING: I'm sorry, 293.

13 (Deposition Exhibit 293 marked for  
14 identification.)

15 Q This is a short one.

16 A Uh-huh.

17 Q Do you happen to recall this e-mail?

18 A Yes.

19 Q And it's an e-mail dated February 6th, 2003,  
20 from you to Kellie Carroll.

21 And who is Ms. Carroll?

22 A I honestly do not remember who she was. She --  
23 based upon the -- she was somebody that worked  
24 at Kraft, account rep.

25 Q And it says -- starts, "Kellie" -- from you to

1 her, "Kellie, The NCAA authorizes Kraft Foods,  
2 as an NCAA corporate partner, the right to use  
3 the NCAA copyrighted footage for a promotion on  
4 the planters.com website."

5 Do you see that?

6 A Uh-huh.

7 Q Is -- does the NCAA make some distinction  
8 that -- between corporate partners and  
9 noncorporate partners that -- is it only the  
10 corporate partners that are allowed to use  
11 NCAA-controlled footage for promote -- for  
12 advertising purposes?

13 A -- best way of answering that is is 90 to  
14 95 percent for advertising purposes would be  
15 used from our corporate champions and partners.  
16 There are some what we call white label clips  
17 which you cannot identify anything to do with  
18 the event. You wouldn't even know, if you  
19 looked at the footage, whether or not it was  
20 from an NCAA event or any other sporting event  
21 that may be used by other folks. But if it's  
22 recognizable as an NCAA championship, we would  
23 not license that to nonchampions and partners.

24 Q How many roughly, at the present time, champions  
25 and partner companies are there?

1 A There's three champions and eight or nine  
2 partners, without counting them up.

3 Q Who -- who are the champions?

4 A Coca-Cola, AT&T, and Capital One.

5 Q And on the partners, the other group, do -- do  
6 those include the Turner and ESPN, the ones we  
7 talked about earlier, or are there -- are these  
8 different partners?

9 A No, these are different partners. Turner, CBS,  
10 ESPN would be considered our media partners.

11 Q On -- then on these eight or nine other  
12 partners, can you just give me some of the names  
13 so I can get an idea of who they are?

14 A Sure. Reese's would be one. Northwestern  
15 Mutual, UPS.

16 Q Are those champions and partners the companies  
17 that would be authorized to use footage online  
18 with -- with the pre-roll advertising or the  
19 banner advertising that we talked about?

20 A Would they be authorized? They have the right  
21 to use it, meaning that they have -- they would  
22 be granted permission, but they still have to  
23 clear the use of the copyright through T3 Media.

24 Q Is it correct those partners and champions get  
25 a -- do they get that footage free or at a

1 reduced rate as compared to others that might  
2 request it?

3 A Yes, they receive it at a reduced rate.

4 Q The last line of this e-mail, you say, "All  
5 other aspects of the footage with the exception  
6 of" -- well, let me read -- I don't want to be  
7 accused of being incomplete. So you first say,  
8 "Please note the NCAA does not own the likeness  
9 to the individuals featured on the footage and  
10 does not have the ability to give the  
11 individuals' consent." Last sentence says, "All  
12 other aspects of the footage with the exception  
13 of announcer calls and graphics are owned by the  
14 NCAA."

15 I think that -- is it right that you  
16 probably meant "announcer calls" there?

17 A Yes.

18 Q Okay. I wasn't clear on the distinction. If  
19 the NCAA owns the footage, why don't they have  
20 the right to use the -- from what you say here,  
21 the announcer calls and graphics?

22 A There was a -- within our previous agreement, so  
23 not our current agreements, there was a  
24 distinction made between parties related to  
25 announcer calls and graphics being owned by the

1 networks versus as part of the copyright itself.

2 That has since changed.

3 Q And how has it changed?

4 A That there's no dispute in that, that we as part

5 of the work, the entire work, have the ability

6 to use announcer calls and graphics.

7 Q Are the announcers members of a union to your

8 knowledge or something?

9 A I do not know.

10 Q Do you have any understanding if they get -- if

11 under the old arrangement at least they get

12 royalties of some type for the use of their

13 voices?

14 A I do not know.

15 MR. SLAUGHTER: Object to the form.

16 Q What -- what do you have to do -- or what does a

17 company have to do to become a NCAA corporate

18 champion or partner?

19 A They would work with Turner and CBS, who own the

20 rights to the corporate champion partner

21 program, and they would work out an agreement

22 with those entities.

23 Q Would those entities to your understanding

24 that -- pay money to Turner and CBS to have that

25 status?

1 who was being depicted on the front, was in  
2 violation of that bylaw.

3 Q To be more specific, what do you think about his  
4 point that the NCAA has received revenues up  
5 front, which he says at the time that it was  
6 6 billion, that includes, among other things,  
7 the sale of future DVDs? Do you think that's --  
8 his assessment there is correct in that  
9 statement?

10 A Well --

11 MR. CURTNER: Object to the form.

12 You may answer.

13 A -- the reality is is we didn't receive 6 billion  
14 up front. That's -- so that point is not  
15 accurate. We received partial of 6 billion up  
16 front. And within that, those are based upon a  
17 yearly payment. And it was part of the rights  
18 for -- and CBS had the right to produce a DVD as  
19 part of their rights fee payment.

20 Q Does the NCAA have any type of business  
21 relationship with Sports Illustrated?

22 A No.

23 Q Has it ever considered that type of a  
24 relationship, to your knowledge, to make a  
25 product, to be more specific?

1 A No.

2 Q Does --

3 A Not to my knowledge.

4 Q Does the -- I mean, does the NCAA have any  
5 position about if student-athletes should be  
6 appearing on covers of publications like Sports  
7 Illustrated or any of the other major national  
8 publications like that?

9 MR. CURTNER: Object to the form.

10 You may answer.

11 A I don't want to speak on behalf of the entire  
12 organization, but the fact is is that those  
13 magazines are considered to be editorial, and,  
14 therefore, their image being depicted upon an  
15 editorial publication would fall within fair  
16 use.

17 Q And "fair -- fair use," to clarify, is a --

18 A Media -- the media having -- they shoot the  
19 picture. They have the ability to use it for  
20 their purposes.

21 Q And is -- is it your understanding that's a  
22 legal concept that's been --

23 A Yes.

24 Q -- developed?

25 A I do my best to describe it, but I am not a

1 A We did.

2 Q How -- I thought -- to reconcile that, I thought  
3 the NCAA didn't get involved in likeness  
4 clearance. Did this -- does it mean it went  
5 through Thought Equity somehow?

6 A No, not if we're -- our agency that was creating  
7 our own commercials -- and it wasn't a matter of  
8 the use of their likeness. They were actors  
9 that we were clearing, and they needed to  
10 provide us their clearance of likeness.

11 So for this instance, when we were  
12 producing our own spots that involved actors,  
13 we -- or the agency that is creating them on our  
14 behalf, would have to make sure that they have  
15 signed away our ability to use them in this  
16 spot.

17 Q When you say they were actors, does that mean  
18 they got paid for the use of their likeness; is  
19 that your understanding?

20 A Yes. Well, let me take that back. I don't know  
21 if they got paid or not. That would have been  
22 another group that made that decision. I  
23 honestly don't know.

24 MR. KING: 300, please.

25 (Deposition Exhibit 300 marked for

1 identification.)

2 A We did not wrap it up within two to three weeks.

3 Q Does this e-mail look familiar to you?

4 A It's more -- again, reading it, I recall the  
5 time period and providing updates related to  
6 contract status.

7 Q And it's an e-mail you sent Tuesday, June 1st,  
8 2010 --

9 A Uh-huh.

10 Q -- to Ronnie Ramos, who you mentioned before,  
11 and then Brad Alderson. Who's Mr. Alderson?

12 A Brad Alderson is our former managing director of  
13 IT.

14 Q And in the e-mail you're discussing some  
15 dealings with Turner. Can you tell from this,  
16 was this about the -- the status of negotiations  
17 on the digital rights agreement or --

18 A Yes, it was.

19 Q Okay. And the part I wanted to focus on --  
20 well, you seem to indicate it didn't wrap up as  
21 soon as anticipated here. This was June 2010.  
22 When did it finally get done?

23 A We executed the agreement in September.

24 Q And in the middle of the first paragraph of your  
25 e-mail, you say, "There are a few legal nuances

1 as well, such as Turner asking the NCAA to rep  
2 that we can use student-athlete likenesses for  
3 any use on the digital platform. As you know,  
4 we simply cannot agree to that. This point is a  
5 fairly big one for Turner, one we cannot back --  
6 back off of or compromise on without putting the  
7 NCAA at risk."

8 Do you see that?

9 A Uh-huh.

10 Q And I've seen some other e-mails on that, but I  
11 think we can just stick with this one. Do you  
12 have -- can you explain a little bit, if you  
13 recall, what was the issue there, and then how  
14 did it get resolved, if it did, by the time of  
15 the contract?

16 A Sure. Turner wanted us to represent that we  
17 could represent the likeness of  
18 student-athletes, and we do not, and we cannot.

19 Q And did they subsequently agree to accept the  
20 NCAA's position on that and -- and the contract  
21 was signed in accordance with what the NCAA  
22 wanted?

23 A Yes.

24 Q And you'd agree, so we don't have to pull up a  
25 contract, it speaks for itself? Whatever it

1 A I would not.

2 Q Okay. And how come?

3 A Because that could be anybody in a fictional  
4 sense.

5 Q Fair enough.

6 Can you use the names and likenesses of  
7 student-athletes to promote a commercial  
8 product?

9 MR. CURTNER: Object to the form.

10 A No, from -- from an eligibility standpoint.

11 Q Okay. Why not?

12 A It violates bylaw 12.5.

13 Q And what is that violation?

14 A The violation is is they're not permitted to  
15 be -- their name and likeness is not permitted  
16 to be used in association with a commercial  
17 product. I've paraphrased 12.5.

18 Q Okay. When you say a promotion of a commercial  
19 product, what do you -- what do you mean by  
20 that?

21 A A --

22 MR. SLAUGHTER: Object to the form.

23 MR. ARAGON: You can answer.

24 A A commercial product, anything from a product  
25 itself. Products come in lots of different

1 forms. So it could be, like I said, a beverage  
2 of some sort. It could be a toy. It could be  
3 clothing. Those are all products.

4 Q Okay. So can we agree that a student-athlete  
5 cannot promote an NCAA video game by appearing  
6 in an advertisement for that game?

7 MR. SLAUGHTER: Object to the form.

8 MR. CURTNER: Object to the form.

9 A Yes.

10 Q Okay. Now, what if they -- let's just assume  
11 that they are in the video game, the  
12 student-athletes, current student-athletes.  
13 Would that be a promotion of the video game, and  
14 would that be prohibited or not?

15 MR. CURTNER: Object to the form.

16 MR. SLAUGHTER: Join.

17 A First of all, they're not in the video game.

18 Q I understand. Let's assume that they are,  
19 though.

20 A So if -- if, in fact, they were current  
21 student-athletes, and a current student-athlete  
22 was on the cover, that it would not be -- to my  
23 knowledge, would not be permissible. But I  
24 would need an interpretation from our membership  
25 services group to provide that.

1 STATE OF INDIANA )  
 ) SS:  
2 COUNTY OF HENDRICKS )  
3

4 I, Debbi S. Austin, RMR, CRR, a Notary  
5 Public in and for the County of Hendricks, State of  
6 Indiana, at large, do hereby certify that GREG  
7 WEITEKAMP, the deponent herein, was by me first  
8 duly sworn to tell the truth, the whole truth, and  
9 nothing but the truth in the aforementioned matter;

10 That the foregoing videotaped deposition was  
11 taken on behalf of the Plaintiffs at the offices of  
12 Faegre Baker & Daniels, 300 North Meridian Street,  
13 27th Floor, Indianapolis, Marion County, Indiana,  
14 on the 5th day of June, 2012, commencing at  
15 9:45 a.m., pursuant to the Federal Rules of Civil  
16 Procedure;

17 That said deposition was taken down in  
18 stenograph notes and afterwards reduced to  
19 typewriting under my direction, and that the  
20 typewritten transcript is a true record of the  
21 testimony given by the said deponent; and that the  
22 signature of said deponent to his or her deposition  
23 was requested;

24 That the parties were represented by their  
25 counsel as aforementioned.

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I do further certify that I am a disinterested person in this cause of action, that I am not a relative or attorney of either party, or otherwise interested in the event of this action, and that I am not in the employ of the attorneys for any party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on this 15th day of June, 2012.

N O T A R Y P U B L I C

My Commission Expires:

July 16, 2015

County of Residence:

Hendricks County