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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 PETER DAVIS, 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 6th day of June, 2012, commencing at 8:55 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 PETER DAVIS,
2 having been duly sworn to tell the truth, the whole
3 truth, and nothing but the truth relating to said
4 matter, was examined and testified as follows:

5
6 DIRECT EXAMINATION,

7 QUESTIONS BY MR. STEVEN J. GREENFOGEL:

8 **Q Would you state your name for the record,**
9 **please.**

10 **A Certainly. It's Peter Davis.**

11 Q Okay. And what is your home address?

12 A 4409 North Pennsylvania Street, Indianapolis,
13 Indiana.

14 **Q And by whom are you currently employed?**

15 **A National Collegiate Athletic Association.**

16 **Q And for how long have you been employed by NCAA?**

17 **A Ten years this month.**

18 **Q And what is your current position with the NCAA?**

19 **A Director of corporate relationships.**

20 Q How long have you held the title of director of
21 corporate relationships?

22 A Various titles, but the general responsibilities
23 for about seven years now.

24 Q Was it called something else before it became
25 director of corporate relationships?

1 A It would have been the director of corporate
2 alliances and in a fleeting moment the director
3 of championships and alliances.

4 Q Okay. So would it be okay if I use director of
5 corporate relationships?

6 A Certainly.

7 Q Okay. And you said you've had that title or
8 something akin to it for seven years. What did
9 you do before that?

10 A Prior to that I was involved in the brand and
11 advertising group at the NCAA.

12 Q And for how long a period of time were you in
13 the brand and advertising group?

14 A It would have been the remainder of my time at
15 the NCAA, so approximately three years.

16 Q Can you recall approximately what year it was
17 that you became director of corporate relations?

18 A 2005 or 2006. Oh, corporate relations. That's
19 been within the last 18 months.

20 Q No, I -- I'm using that as a generic term.

21 A Oh, as a generic term, yes. So 2000- -- roughly
22 2005, 2006 time frame.

23 Q Okay. And as the director of corporate

24 relations, what were your duties and

25 responsibilities?

1 A My duties were and continue to be responsibility
2 for the NCAA sponsorship program, the NC- -- and
3 the NCAA licensing programs.

4 Q And what is the NCAA sponsorship program?

5 A The sponsorship program is servicing of the
6 corporate champions and corporate partners, in
7 layman's terms, sponsors, and working with their
8 marketing groups to understand and implement or
9 approve the implementation of their marketing
10 promotional activations.

11 Q What's an NCAA champion?

12 A NCAA champion is the highest tier of sponsor.
13 There are two tiers, corporate champion and
14 corporate partner, corporate champion being the
15 higher of the two.

16 Q Okay. And how does one become a corporate
17 champion?

18 A CBS at the -- going back a few years, CBS Sports
19 was -- was the -- the rights holder to NCAA
20 marketing rights. They would go out and -- and
21 solicit major corporations to become sponsors of
22 the NCAA. So it's a -- it's an advertising --
23 financial package that includes advertising and
24 rights to NCAA marks.

25 Q So -- and that -- that would have been done

1 through CBS?

2 A The sales process, yes.

3 Q Is that true today?

4 A CBS is a partner with Turner Sports who also
5 assists in that -- those endeavors.

6 Q So as of today, then it's CBS and Turner --

7 A That's correct.

8 Q -- who go out and get the corporate champions
9 and the corporate partners?

10 And then what is your relationship with
11 those corporate champions and the corporate
12 partners?

13 A Once Turner and CBS do find those and we -- and
14 they agree to terms with those companies to
15 become a cor- -- an NCAA corporate champion or
16 corporate partner, the NCAA, my group in
17 particular, works with those sponsors to have
18 them understand their rights as a sponsor and
19 execute those rights in their marketing
20 materials, marketing activities.

21 Q Now, in terms of what you do as the director of
22 corporate relations, does your relationship with
23 the corporate champions or corporate sponsors
24 generate any income directly to the NCAA?

25 A There are times when, if the NCAA is -- has

1 developed a program and we offer it to the
2 champions or partners at cost for them to
3 participate, to put their logo on a sign, for
4 example, then yes, there is direct payment to
5 the NCAA.

6 Q But basically, most of the revenue that is
7 generated from corporate champions and corporate
8 partners go to CBS/Turner; is that correct?

9 A That is correct.

10 Q Now, in addition to -- since I missed it, you
11 said -- to the NCAA sponsorship programs, you
12 said you had one other major responsibility, and
13 I'm blanking on what it was that you said.

14 A The NCAA licensing program.

15 Q Okay. And what was that?

16 A It's kind of a three-tier program that I deal
17 with. One tier being sales at NCAA
18 championships of merchandise and the management
19 of that vendor. The second tier being retail
20 licensees. And the third tier being the NCAA
21 official supplier program, the official
22 equipment supplier program.

23 Q What is the official equipment supplier program?

24 A The NCAA builds partnerships with sporting goods
25 manufacturers that supply equipment that we

1 they know and recognize that they have
2 opportunity to use NCAA marks in their marketing
3 materials. We help them understand how to use
4 it -- how to use those marks appropriately so as
5 to protect the NCAA brand and -- well, the size
6 of the logos, the placement of logos. Another
7 example would be how to utilize tickets in a
8 sweepstakes-type promotion.

9 Q In the course of your duties and
10 responsibilities as director of corporate
11 relations, do you have occasion to deal with the
12 issues of name, image, and likeness?

13 A Yes.

14 Q And -- and how does that come into play in your
15 job as director of corporate relations?

16 A In that scenario, there may be a request from a
17 sponsor to utilize a certain image or piece of
18 video footage that has or potentially may have
19 currently eligible student-athletes involved,
20 and it's our role to educate them on the NCAA
21 bylaws that would prevent such student-athletes
22 from participating in their commercial endeavors
23 or determining where it is appropriate or where
24 it is not appropriate for those student-athletes
25 to appear.

1 Q Do the corporate champions pass their proposed
2 advertising by you?

3 A Yes. Well, the -- the proposed advertising that
4 utilizes NCAA trademarks, yes.

5 Q And let me back up one thing. As director of
6 corporate relations, who do you report to?

7 A Right now I report to the executive vice
8 president of the NCAA.

9 Q And for how long a period have you been
10 reporting to the executive vice president of the
11 NCAA?

12 A The executive vice president has been in place
13 for about six weeks now. Prior to that, I
14 reported to the interim executive vice
15 president. And prior to that, it was the same
16 individual under a different title that I don't
17 know that I can recall right now.

18 Q And who was that?

19 A That was Greg Shaheen.

20 Q And in your position as director of corporate
21 relations, did you have a staff?

22 A Yes, I do.

23 Q And who comprised your staff?

24 A In general terms, in the -- in the -- in the
25 basic history, I've had a number of managers or

1 of a year, I think we'd be looking upwards of
2 1500 approvals or approval requests.

3 Q And -- and would those approval requests come
4 directly from the corporate sponsors?

5 A Typically, yes, unless the sponsor is using an
6 ad agency or -- or a -- another agency
7 representing them.

8 Q So -- so the -- rather -- I -- because my
9 question really is is that it didn't come from
10 CBS or Turner?

11 A That's correct. No, it came directly from the
12 champions, partners, or their representative.

13 Q And were there occasions when you were reviewing
14 proposed advertisements that you rejected
15 specific ads?

16 A Certainly, yes.

17 Q Did the corporate sponsors have any recourse
18 above you to ask for any sort of relief from
19 your Draconian rulings?

20 A I suspect if -- if there was need or purpose,
21 they could ask -- could ask senior management
22 for assistance, yes.

23 MR. CURTNER: The record should reflect
24 that I was slow on the uptake there and I should
25 have objected to the form of the question. The

1 name, image, and likeness?

2 MR. SLAUGHTER: Object to the form.

3 A Outside of the world of sponsorship -- well,
4 yes, we dealt with name, image, and likeness in
5 licensing as well.

6 Q And -- and how did you deal with that?

7 A Very similarly, working with NCAA licensees that
8 had requested to potentially use name, image, or
9 likeness of currently el- -- eligible or former
10 student-athletes.

11 Q And when you use the term "former
12 student-athletes," what do you mean by that?

13 A Typically I mean -- not typically. In I think
14 every case, I mean student-athletes that have
15 exhausted their eligibility and/or moved on
16 beyond collegiate athletics.

17 Q And how -- how would you deal with individuals
18 who had exhausted their eligibility in the
19 course of your dealings with licensees?

20 A Well, typically my charge has been to look after
21 the bylaws of the NCAA. And once a
22 student-athlete has exhausted or foregone their
23 eligibility, then that's no longer something
24 that the NCAA watches over. So we would simply
25 direct -- direct the licensee to find that

1 individual and -- and come to agreement with
2 that individual. It's not something that the
3 NCAA controls.

4 Q So in other words, with respect to former
5 students who have exhausted their eligibility,
6 you had no position with respect to anything to
7 do with them and just told the licensees, that's
8 your problem; right?

9 MR. CURTNER: Object to the form.

10 You may answer.

11 A For the -- yeah, I think that is right. That --
12 I mean, we -- we would help them find the school
13 or the individual if we knew where to find that
14 individual. But essentially, if they're dealing
15 with someone that is not involved -- no longer
16 involved with the NCAA, then yes, that would be
17 up to the licensee to work with that individual.

18 Q And how many licensees did the NCAA have?

19 A It certainly varies, but I would say typically
20 between 30 and 40.

21 Q And you're responsible for all of them?

22 A Uh-huh.

23 (A discussion was held off the record.)

24 (Deposition Exhibit 305 marked for
25 identification.)

1 Q Okay.

2 (Deposition Exhibit 308 marked for
3 identification.)

4 Q I'll show you a document we've marked as
5 Plaintiffs' Exhibit 308, which has the NCAA
6 production number of 00213924 through 928. And
7 it's a series of e-mails. And let's go through
8 them, see if we can identify the ones on which
9 you are either the author or recipient.

10 A Uh-huh.

11 Q And if you take a look at the e-mail that's
12 starting sort of halfway down the page on
13 page 926.

14 A Yes.

15 Q And it's an e-mail from you to -- dated
16 October 5th, 2004, to Bill Glenn at Cingular
17 and a number of other people. And I would ask
18 if this is a document which you prepared on or
19 about that date in the course of your duties as
20 an employee of the NCAA.

21 A It does appear to be, yes.

22 Q And at this point in time, were you becoming
23 more active in terms of dealing with NCAA
24 corporate partners?

25 A Yes, very much so.

1 Q And actually I guess your -- had your title
2 changed?

3 A Yes.

4 Q And what was an associate director of corporate
5 alliances?

6 A Associate director of corporate alliances was
7 very similar to my role now. I did not have as
8 much direct authority and still worked with my
9 boss who was Greg Shaheen at the time.

10 Q But by this point in time in 2004, you had
11 switched out of brands and advertising?

12 A That's right, so I was -- that's right.

13 Q Yeah, time flies when you're having fun.

14 A Isn't that true.

15 Q I can't remember what I was doing last night.

16 Now, if you'd take a look at the e-mail
17 three-quarters of the way down on page 925 --

18 A Uh-huh.

19 Q -- from Brooke Studwell to you dated October 6,
20 2004. I would ask if this is a document which
21 you prepared -- or which you received on or
22 about October 6th, 2004, in the course of your
23 duties as an employee of the NCAA.

24 A Yes, it looks to be.

25 Q And in 2004 -- Cingular was a predecessor of

1 AT&T?

2 A That's correct.

3 MR. BOYLE: Objection to form.

4 Q So when Cingular was merged in with AT&T, AT&T
5 took over that corporate champion slot?

6 A Yes.

7 Q And I guess that Brooke Studwell asked you
8 whether video footage of basketball highlights
9 would be available through the NCAA royalty free
10 in addition to photos.

11 Did you find out the answer for that?

12 A I'm sure I did.

13 Q And actually you did.

14 A Yes.

15 Q And if you take a look at the first page,
16 there's an e-mail from Greg Weitekamp to you --

17 A That's right.

18 Q -- dated October 9th, 2004. I'd ask if this
19 is a document which you received on or about
20 2004 -- October 9th, 2004, in the course of
21 your duties as an employee of the NCAA.

22 A It looks to be, yes.

23 Q Okay. And who is Mr. Weitekamp?

24 A Greg Weitekamp at the time was my counterpart on
25 the broadcast side while I was working with the

1 sponsorship side at the NCAA.

2 Q And -- and he told you that -- that this would
3 be provided to -- this material would be
4 provided to Cingular; correct?

5 MR. BOYLE: Object.

6 MR. CURTNER: Object to the form.

7 A It certainly depended on what they requested
8 specifically. There would be opportunity to
9 provide them with assets, yes.

10 Q And -- and he went on to tell -- to say that --
11 that "Cingular will need to clear all the
12 likenesses of the athletes that appear in the
13 footage if they are used -- using as a
14 commercial or promotional application. I cannot
15 guarantee that the individuals will not charge a
16 fee for the use of their likenesses."

17 Correct?

18 A Correct.

19 Q Okay. Then I guess the top e-mail you sent to
20 yourself. Was that so that you would have that
21 in your file?

22 A I changed the subject so I'd recognize it in a
23 file, yes.

24 Q Okay.

25 (A discussion was held off the record.)

1 that right?

2 A That's right.

3 Q So -- so the position was that you wanted to --
4 you weren't going to stand in the way of
5 individual players building and sharing rosters
6 that may or may not include eligible
7 student-athletes' names?

8 MR. CURTNER: Object to the form.

9 A That's correct.

10 Q Okay. Do you recall having any discussions with
11 Mr. O'Brien about how file sharing might affect
12 revenues for their game?

13 A I do not recall having revenue conversations
14 related to that aspect of the video game, no.

15 MR. GREENFOGEL: 332.

16 (Deposition Exhibit 332 marked for
17 identification.)

18 Q I'll show you a document we've marked as
19 Plaintiffs' Exhibit 332, which bears the Bates
20 numbers NCAA production 00242950 through 957.
21 And it's a series of e-mails with an attachment.

22 Who is Dave Schnase?

23 A Dave Schnase is also an employee of the NCAA, I
24 believe also in membership services.

25 Q Now, if you take a look at the bottom e-mail on

1 the first page, Mr. Schnase writes to you on
2 April 22nd, 2008, and to David Knopp, and
3 asks -- I would ask if this is a document which
4 you received on or about that date in the course
5 of your duties as an employee at the NCAA.

6 A Yes, it looks like it is.

7 Q And he was telling you that -- is it Joan Scott
8 from Nike --

9 A That's correct.

10 Q -- wanted a list of dos and don'ts for corporate
11 involvement.

12 And -- and if you look at the attachment,
13 it -- it's -- there -- there's one titled
14 "Working with NCAA Trademarks" and "Guidelines
15 for Promotional Use of NCAA Images and Marks."

16 Did you discuss these attachments with
17 Mr. Knopp before he provided them to -- well,
18 strike that.

19 Were -- were these attachments provided to
20 Joan Scott of Nike?

21 MR. CURTNER: Object to the form.

22 A I don't know.

23 Q Now -- all right. Going up to the next -- the
24 middle e-mail on the first page where it's from
25 Mr. Knopp to a number of people, including you,

1 dated April 22nd, 2008. I would ask if this
2 is a document which you received on or about
3 that date in the course of your duties as an
4 employee of the NCAA.

5 A It seems that I did.

6 Q Okay. And -- and Mr. Knopp says, "We prepared a
7 cheat sheet for ESPN a few months ago on the use
8 of SA likenesses, et cetera, that might be of
9 some help."

10 Were you involved in the creation of that
11 cheat sheet?

12 MR. CURTNER: Object to the form.

13 A I was not.

14 Q And he says -- he goes on and says, "And members
15 of your MS staff and Greg Weitekamp and Jim
16 Hayes -- Haynes met with ESPN to review those
17 rules and may have prepared another document
18 related to this topic."

19 And Jim Haynes was -- was your direct
20 report; right?

21 A That's correct.

22 Q Do you recall having any discussions with
23 Mr. Haynes regarding this?

24 A I do not.

25 Q Okay.

1 A I think this document was prepared by EA Sports
2 with editorial assistance from the NCAA.

3 Q And what was the purpose of this?

4 MR. SLAUGHTER: Object to the form.

5 MR. CURTNER: Object to the form.

6 Q Of that -- what was the purpose of that
7 preparation?

8 MR. SLAUGHTER: Object to the form.

9 A The purpose of this preparation was for the --
10 it was the ability to share internally
11 information, and if necessary, externally if
12 asked. But internally in particular information
13 about the new video game, which would have been
14 NCAA Football 2009, partic- -- particularly as
15 related to the file sharing that we've
16 discussed.

17 Q So if you take a look under No. 3, where the EA
18 response was that it says, "NCAA policy does not
19 permit the usage of player names or likenesses
20 in video games. In accordance with the NCAA, EA
21 is permitted to accurately re-create university
22 rosters with uniform numbers, positions,
23 heights, weights, and the previous season's
24 statistical information."

25 Was that correct?

104a;
611b

1 MR. CURTNER: Object to the form.

2 A Yes, that's correct.

3 Q And "While NCAA policy also permits the accurate
4 re-creation of skin tones, EA does not model
5 faces or body types after student-athletes."

6 Did NCAA policy permit accurate re-creation
7 of skin tones?

8 MR. CURTNER: Object to form.

9 A That's a question I don't know the answer to
10 based on the bylaw. But if -- we do not
11 preclude that.

12 Q Was -- was this a document prepared in
13 anticipation of a press conference that was
14 going to go hand in hand with the announcement
15 of NCAA Football '09?

16 A This was not prepared for that purpose.

17 Q Because if -- if you take a look at this, at the
18 bottom part of No. 3 --

19 A Uh-huh.

20 Q -- where it says, "Note, if this question is
21 asked of EA, we defer all questions regarding
22 NCAA policy to the NCAA."

23 So -- so for what purpose was this
24 designed, this document?

25 MR. CURTNER: Objection, foundation.

1 potentially could. This would be something that
2 we'd refer to the schools and universities
3 themselves as they helped protect the names and
4 likenesses of the student-athletes individually,
5 whereas the NCAA does not.

6 (Deposition Exhibit 336 marked for
7 identification.)

8 Q I'll show you a document we've marked as
9 Plaintiffs' Exhibit 336, which bears the Bates
10 number NCAA production 00204331. And this is a
11 pair of e-mails -- or it's three e-mails. I'll
12 take them one at a time. And this is a very
13 painful e-mail for me to read about.

14 The first one is from you to Joan Scott at
15 Nike dated March 4th, 2009. And ask if this
16 is a document which you prepared on or about
17 that date in the course of your duties as an
18 employee at the NCAA.

19 A Yes, it appears to be.

20 Q What was it that Ms. Scott was trying to do with
21 the University of Illinois, University of North
22 Carolina footage?

23 MR. CURTNER: Object to the form.

24 A As I recall, this was a Nike advertisement that
25 they were utilizing footage from the

1 championship game of the 2005 Final Four in
2 which the University of Illinois and the
3 University of North Carolina competed. They
4 were focusing on individual players within the
5 ad. And those individual players had exhausted
6 their eligibility and moved on to either the pro
7 ranks or had -- had left the collegiate game.

8 So they were asking permission to license
9 the footage from the NCAA and then also if there
10 were any other issues that we had. And that's
11 where I indicate to Joan that let's make sure
12 that there aren't any arms, legs, or fingers of
13 an eligible student-athlete within the video
14 clip. Because if there's an arm, it's
15 recognizable by that individual perhaps, so we
16 just need to make sure that all shots were
17 completely clear of eligible student-athletes.

18 Q In fact, in the -- in the next e-mail up the
19 chain, you wrote to Joan Scott on March 4th,
20 2009, that it was Nike or Thought Equity's
21 obligation to clear each player or coach that
22 was shown; correct?

23 A That's right. So the student-athletes that had
24 gone on, had left the collegiate ranks and
25 playing, they have the right to be in a

1 commercial just as anyone would. And they have
2 the right to be compensated to be part of that
3 advertising campaign. And it's the -- it's
4 the -- the duty of the advertiser, in this case
5 Nike, or their vendor, Thought Equity, who was
6 sourcing the video footage for Nike -- it's
7 their responsibility to make sure that everybody
8 that is in the video footage is cleared and has
9 either signed off their likeness or is being
10 compensated for it, the use of their likeness in
11 the ad.

12 Q And that was a document in which you prepared on
13 or about March 4th, 2009, in the course of
14 your duties as an employee of the NCAA?

15 A Correct.

16 Q And then in the e-mail above that, she writes
17 back to you and says, "Eric Lautenbach is
18 getting clearance from players."

19 And who is Eric Lautenbach?

20 A Eric Lautenbach at the time was head of NCAA --
21 or N- -- of college basketball for Nike and may
22 have had more responsibility than just college
23 basketball. I don't recall specifically his --
24 his title or -- or full scope of responsibility.
25 In essence, he had access to the players that

1 photo in a commercial setting.

2 Q So then -- so that the -- and your view was the
3 safest way was to -- to minimize the problem was
4 to make sure that a photo would be at least five
5 years old?

6 A That's right. Typically student-athletes have
7 four years of eligibility. And if there's an
8 injury, they might have a fifth year. It's very
9 unlikely that they would have a sixth, seventh,
10 or eighth year of eligibility, based on injury
11 or -- or other circumstances. So if commercial
12 entities are looking to utilize photos for
13 commercial purposes, it's much easier to look at
14 photos that are five years old or older, because
15 it's very unlikely that they will find somebody
16 with eligibility remaining in that photo that
17 would cause issues for that student-athlete.

18 (Deposition Exhibit 338 marked for
19 identification.)

20 Q Let me show you a document we've marked as 338,
21 which bears the Bates of NCAA production
22 00203057 through 61. And this is from Erika
23 Austin to Dan DeFabio with a cc to you dated
24 December 21, 2009. And I would ask if this is a
25 document which you received on or about that

1 date in the course of your duties as an employee
2 at the NCAA.

3 A Yes, it looks to be.

4 Q And this was a situation where somebody was
5 trying to create a Villanova national champions
6 print collection?

7 A I believe that's correct.

8 Q Was this from 19- -- the 1985 team?

9 A I think this was pertaining to their football
10 championship, subdivision national championship.

11 Q Oh, okay.

12 So the only -- I guess Ms. Austin writes
13 that -- that -- that if this item were being
14 sold commercially, it couldn't be done if there
15 were any students that had any eligibility left;
16 correct?

17 A Yes. I -- and I don't know the bylaw, which is
18 why we have the membership services team. But I
19 think there are ways for the school itself to be
20 able to produce and/or sell a photo with
21 currently eligible student-athletes rather than
22 a corporate entity doing so.

23 Q Could the school do it for commercial purposes?

24 MR. SLAUGHTER: Object to the form, lacks
25 foundation.

1 A I -- I guess I don't know the answer to that
2 question. It would very much depend on what
3 the -- what the request looked like.

4 Q All right. I'm just going to introduce this
5 document. I'm probably not going to ask you
6 very many questions about it.

7 A Okay.

8 MR. GREENFOGEL: I just want to make sure
9 that my pile goes down so that I can fit it all
10 in one bag on the way home.

11 MR. CURTNER: I'm sure I can find a
12 wastebasket.

13 (Deposition Exhibit 339 marked for
14 identification.)

15 Q Let me show you a document that we've marked as
16 338 --

17 THE REPORTER: 339.

18 Q -- 339, which bears the Bates number of NCAA
19 production 00228565 through 605. And it's
20 titled "NCAA Corporate Champion and Corporate
21 Partner Marketing Guidelines, Revised July 13th,
22 2010."

23 Is this a document that was generated from
24 your office?

25 A In conjunction with counterparts at CBS Sports,

1 yes.

2 Q And -- and were you involved in the preparation
3 of this document, you personally?

4 A Yes.

5 Q And -- and who did you work with at C- -- CBS in
6 terms of preparing this document?

7 A CBS, because they have certain marketing rights
8 of the NCAA and partnership with us on the
9 corporate champion and partner program, wanted
10 to make sure they had review and approval rights
11 before we shared this with the corporate
12 champions and corporate partners. In doing so,
13 the -- those that may have reviewed it would
14 include -- 2010, so probably Devron Edwards,
15 Jeff Brenner, and Chris Simko.

16 Q So -- so the way it worked was -- was -- did --
17 did you personally prepare it, this document?

18 A This revision, I was the lead preparer. I had a
19 number of other colleagues at the NCAA that
20 worked with me. But yes, this was my project.

21 Q Okay. And then -- and then it went -- it was
22 submitted to CBS for review and comment?

23 A That's correct.

24 Q So they -- they weren't generally part of the
25 initial drafters of this?

1 at some point, and I'm sure I played as the
2 University of Michigan at some point.

3 Q You said you played as -- as -- as the mascots.
4 Can you explain that?

5 A There's a -- a function in the game where rather
6 than student-athlete avatars, each of the
7 players is actually a mascot. So if you played,
8 for example, just using the two examples I gave,
9 the University of Tennessee versus University of
10 Michigan, you might have University of
11 Tennessee's dog mascot playing against -- the
12 University of Michigan may be a bad example. I
13 can't think of what their mascot would be as a
14 wolverine. But as a -- against -- a dog versus
15 a wolverine I guess is what it would look like.

16 Q And you were able to recognize the mascots for
17 those teams?

18 A Yes.

19 Q And did they have the names on the back of their
20 jerseys or not?

21 A I don't recall, but because they're not eligible
22 student-athletes, it wouldn't be a concern if
23 they did.

24 Q Okay. Okay. When you played the 2009, 2010
25 NCAA football games, did you recognize any

1 student-athletes in the game?

2 MR. SLAUGHTER: Object to form.

3 MR. CURTNER: Object to form.

4 A I did not, because they are not the same as
5 real-life individuals.

6 Q Well, explain that to me, please.

7 A The --

8 MR. CURTNER: Object to form.

9 A The student-athlete avatars are, for lack of a
10 better term, cartoons, and they're -- they are
11 not actual individuals that exist in real life.

12 Q Okay. I understand that the avatars are
13 cartoons. But did you recognize any of the
14 avatars to be representations of actual
15 student-athletes?

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

18 A I did not recognize them as such.

19 Q Do you understand that you can have an avatar
20 that would represent an athlete --

21 MR. CURTNER: Object to form.

22 Q -- in a video game?

23 MR. SLAUGHTER: Object to form.

24 A I do understand that they can be built to be
25 extremely similar, particularly in the

1 professional games. In professional NBA games,
2 you can tell exactly who -- who the -- the
3 likeness is supposed to be that mirror to the
4 real-life athlete -- professional athlete.

5 Q How can you tell?

6 A Well, in -- in an NBA game, you can see very
7 explicit facial features and -- and hair
8 stylings and tattoos.

9 Q Any other way?

10 A That's -- that's the best -- that's the most
11 telling way to tell an individual, in my book.

12 Q Would you be able to tell certain athletes by
13 the number they wear and the team that they play
14 for --

15 MR. CURTNER: Object --

16 Q -- without seeing their face?

17 MR. CURTNER: Object to form.

18 MR. SLAUGHTER: Join.

19 A It depends on the individual. Some individuals
20 may be able to make a judgment that they are
21 looking at someone, and many others would not be
22 able to make that same judgment.

23 Q If you saw a video game from the late '80s and
24 there was a player, an avatar for the Chicago
25 Bulls wearing No. 23, would you know who that

1 is?

2 MR. SLAUGHTER: Object to the form.

3 A In the late '80s?

4 Q Yes.

5 A You could draw -- I mean, it says a name on the
6 back, so it probably says Jordan on the back of
7 the jersey. So for that reason it says Jordan,
8 certainly.

9 Q Without the name would you know who it was if
10 you saw just the number and the Chicago Bulls
11 jersey from the front?

12 MR. CURTNER: Object to form.

13 A Depends on -- I mean, perhaps. I'd have to see
14 that avatar to really know and understand.

15 Q When you played the video game, did you notice
16 whether or not there were any student-athlete
17 images in the 2009 and 2010 NCAA football game?

18 MR. SLAUGHTER: Object to the form.

19 A Could you describe what you mean by
20 "student-athlete images"?

21 Q Pictures of student-athletes.

22 A Of real student-athletes, of real-life
23 student-athletes.

24 Q Real student-athletes, not their avatars.

25 A There are not pictures. There should not be

1 pictures of real student-athletes within the
2 game.

3 Q Did you determine whether -- did you make an
4 investigation to determine whether or not that
5 was true, or is that your belief of what should
6 be in the game -- or should not be in the game,
7 excuse me?

8 A Certainly there's very little ability for me to
9 see every avatar within the game. So the
10 avatars that I did see I did not find problem
11 with.

12 Q During your review, did you see student-athlete
13 names being used in the 2009 and 2010 NCAA
14 football game?

15 A I did not see names being used.

16 Q Were you reviewing this as part of a review
17 process prior to the release of the game, or was
18 this after the game had been released?

19 A Using -- in the NCAA offices, it was after the
20 release of the game. There were times where we
21 had opportunity to see a beta test before the
22 game was completely finished. So we did see
23 parts of what the game would look like prior to
24 final development of the video game.

25 Q And when you say "we," who are you referring to?

1 each individual's -- each individual
2 student-athlete. Each individual school has the
3 opportunity to review the video game, and they
4 would be the ones that would be more likely to
5 have an opportunity to identify true
6 student-athletes or exact representations of
7 student-athletes on their campus. So there's
8 not an obligation of the NCAA to look for
9 individuals within the video game that reflect
10 that of someone in real life.

11 Q Does the NCAA approve the video game before it's
12 released to the public?

13 MR. CURTNER: Object to the form.

14 A The NCAA does approve. Our approvals are based
15 on the use of NCAA trademarks and NCAA rules
16 within the video game that reflect reality of
17 the game -- of game -- the -- the game rules,
18 the field rules, the academic rules of the NCAA,
19 not specifically the -- the individuals within
20 the game. That's the role of the -- each
21 individual school to make those approvals.

22 Q So if the game included names of
23 student-athletes, current student-athletes, you
24 would have no role in approving or disapproving
25 that game based on the inclusion of those names?

611b

1 game.

2 Q Was someone else actually physically playing the
3 game while you observed?

4 A You can actually have the computer play itself.
5 So that's the easiest way to watch it and see
6 what's going on.

7 Q And did you set up the game to have the computer
8 play itself, or was someone helping you?

9 A I was able -- I was able to get that far and let
10 the computer play itself.

11 Q And what EA basketball games have you reviewed?

12 A I think probably about the same timeline. And I
13 don't recall if the last -- the last basketball
14 game was March -- was NCAA basketball -- or
15 March Madness 2010 or '9, but it would have been
16 the 2008, '9, or '10 time frame that I'd be more
17 familiar with.

18 Q And how often did you play those games?

19 A Similar to the football video game, very
20 infrequently. Maybe -- maybe ten or a dozen
21 times in a given year.

22 Q And which game -- which version of the game did
23 you play most often?

24 A If I had to select one, I would say 2009
25 version.

1 Q Did you recognize student-athletes in any of the
2 basketball games that you played?

3 MR. CURTNER: Objection.

4 A I did not.

5 Q What teams did you play when you played the
6 basketball games or observed the games being
7 played?

8 A I would say similar to the other one, to the
9 other answer in football, it was very much my
10 opportunity to look at the different venues, and
11 I probably selected venues at which I had
12 visited either for a game or another purpose to
13 see the similarity in -- in venue.

14 Q When you observed the games, did you also review
15 the rosters within the games?

16 A I reviewed the rosters perhaps of -- of -- of a
17 few individual schools, but for no particular
18 purpose, I would say. When the game begins, you
19 see the roster. So for no other reason than
20 that, I saw the rosters.

21 Q Did you compare the roster within the EA video
22 game to the roster of that particular team in --
23 in real life?

24 A I did not.

25 Q We used the term "name, image, and likeness"

1 actually happened in real life.

2 Q Do you know specifically what the change was,
3 though?

4 MR. SLAUGHTER: Objection.

5 A My recollection is in real life he scored a
6 touchdown. In this, he did not. So how that
7 was -- how that manifested itself, I don't
8 remember the exact play.

9 Q Okay. And other than -- and who -- who was the
10 running back, again, I'm sorry, Ian Johnson?

11 MR. CURTNER: Object to the form.

12 A In the Fiesta Bowl, there was a running back
13 named Ian Johnson.

14 Q And is Mr. Johnson's number 41?

15 MR. SLAUGHTER: Object to the form.

16 MR. CURTNER: Join.

17 A I don't know the answer to that.

18 Q Okay. So if I understand this correctly, if
19 they use a avatar that has the same height,
20 weight, position, school, skin color, and number
21 of Mr. Johnson, and have him run this Statute of
22 Liberty play, that would be okay --

23 MR. SLAUGHTER: Object to --

24 Q -- if it's -- if it's slightly different than
25 the play that was run in real life?

104a;
16;
611b

1 MR. SLAUGHTER: Object to form.

2 A Doing so would not affect the eligibility of
3 Mr. Johnson if someone perceived that to be a
4 representation of Mr. Johnson based on NCAA
5 bylaws.

6 Q Okay. Would Mr. John- -- Johnson be able to
7 license his height, weight, position, hair
8 color, facial features, home state, and position
9 to Electronic Arts and have that avatar be used
10 in a video game?

11 MR. CURTNER: Object to the form, calls for
12 a legal opinion.

13 You may answer if you have some
14 understanding.

15 A I can only speak to the eligibility concern. If
16 he -- if Mr. Johnson decided to accept monetary
17 value for licensing his name and facial
18 features, likenesses, then that's his right to
19 do so. However, his eligibility would be
20 compromised, and he would no longer be eligible
21 to play collegiate athletics.

22 Q Okay. Well, let's take out fac- -- facial
23 feature, and so he licenses his height, weight,
24 position, hair color, home state, position, and
25 number to Electronic Arts. Would that affect

104a;
106;
611b

106;
611b;
701

1 his eligibility?

2 MR. CURTNER: Object to the form.

3 MR. SLAUGHTER: Object to the form, lacks
4 foundation, incomplete hypothetical.

5 A And that, I don't know.

6 Q How come? What -- what's the difference?

7 MR. SLAUGHTER: Object --

8 A I don't --

9 MR. SLAUGHTER: Object to the form.

10 A I don't know that you can license those things
11 or cannot. I don't know. I -- I don't know if
12 he would be interested, and I don't know if a
13 company would be interested in doing so.

14 Q I understand. But do you know whether or not it
15 would affect his eligibility?

16 MR. SLAUGHTER: Object to the form.

17 A If he were to -- if a -- if he were to accept
18 compensation from a commercial entity in return
19 for representing himself, then yes, that
20 would -- that would negatively impact his
21 eligibility.

22 Q Well, what do you mean by "representing
23 himself"? You wouldn't be using a picture of
24 him. You wouldn't be using his name. What
25 would be the problem in the scenario that I gave

1 you?

2 MR. SLAUGHTER: Object to the form.

3 A I think the scenario you gave me was he was --
4 he was licensing his own statistics or his own
5 image, if you will, or his own likeness. So if
6 that is indeed what he is licensing and
7 accepting monetary compensation for, then yes,
8 that damages his ability, because he said this
9 is me, and that damages his -- his eligibility
10 by NCAA bylaws.

11 Q Because he says it's himself?

12 MR. CURTNER: Object to the form.

13 Q Is -- is that right? Is that what you just
14 said?

15 A If he is selling information as himself, then --
16 without knowledge of law, then I suppose that is
17 right.

18 Q Okay. Well, let's assume Mr. Johnson is an
19 Electronic Arts video game while a current
20 student-athlete. Well, let me strike that.

21 Let's assume that No. 41 for Boise State
22 during this period of time is in an Electronic
23 Arts video game and that avatar matches the
24 height, weight, position, hair color, home state
25 of Mr. Johnson. That wouldn't affect his

1 that right?

2 A That is correct.

3 Q Do you have an understanding about why that
4 occurs?

5 A The understanding that I have of why that occurs
6 is because they're looking for any advance
7 notice of things that could be problematic
8 and/or anything that could be an opportunity for
9 the NCAA to provide additional information or
10 additional assets to make that feature or
11 addition more robust than it may already be.

12 Q Is EA generally receptive to comments and
13 concerns expressed by the NCAA?

14 MR. ARAGON: Form.

15 MR. GREENFOGEL: Objection as to form.

16 A Very much so.

17 Q Is EA permitted to use the name or likeness of a
18 current student-athlete in any of its games?

19 A EA is not permitted to use the name or likeness
20 of student-athletes.

21 Q As far as you know, do any of EA's video games
22 use the name or likeness of an -- any current
23 NCAA student-athlete?

24 A As far as I know, they do not.

25 Q If EA had paid a current student-athlete for the

1 Q Is that an accurate statement of NCAA policy as
2 you understand it?

3 A It is.

4 Q Has that been, based on your experience at the
5 NCAA, the consistent practice at the NCAA?

6 A It has been.

7 Q I'd ask you to turn, if you would, please, to
8 Exhibit 339. That was one of the exhibits
9 counsel marked earlier in the day.

10 A Uh-huh.

11 Q And it's entitled "NCAA Corporate Champion and
12 Corporate Partner Marketing Guidelines, Revised
13 July 13th, 2010."

14 Right?

15 A Yes.

16 Q Would you turn to page 21 of that document.

17 A Okay.

18 Q There's a subparagraph there that's entitled,
19 "Use of Student-Athletes in NCAA-Related
20 Advertising or Communications."

21 Do you see that?

22 A Yes, I do.

23 Q Are you familiar with that section?

24 A Very familiar.

25 Q Why is it that you're very familiar?

1 A This -- well, as discussed earlier, this was a
2 document that I was instrumental in putting
3 together. And -- and the use of
4 student-athletes is a piece of our marketing
5 guidelines that is critical to everything we do
6 with our champions, our partners, and our
7 licensees.

8 Q Would you read paragraph 1 for the record,
9 please.

10 A Yes. Paragraph 1 reads, "Current NCAA
11 student-athletes with athletics eligibility
12 remaining or their names, pictures, or
13 likenesses may not be used in any advertising,
14 marketing, or communication activities."

15 Q Based on your years of experience at the NCAA,
16 is that a correct statement of NCAA policy?

17 A Yes, that is a correct statement.

18 Q Based on your years of experience at the NCAA,
19 has that been a consistent practice of the NCAA?

20 A It has been. And I should point out that
21 although these guidelines have been revised from
22 time to time, that -- that piece has not
23 changed.

24 Q What was done with these guidelines?

25 A These guidelines are supplied to the NCAA

1 corporate champions and partners as well as the
2 NCAA broadcast partners so as to help them
3 understand the -- the marketing opportunities
4 that they have with the assets of the NCAA.

5 Q Would you look at the second paragraph of that
6 subparagraph G and read the first sentence for
7 the record, please.

8 A Sure. "Personalities retired from any sport may
9 appear in advertising, marketing, or
10 communications activities provided that the CC/P
11 obtains the individual's consent."

12 Q Now, it says, "Personalities retired from any
13 sport." Would that include what we've been
14 referring to as former student-athletes?

15 A That's right.

16 Q Or -- or individuals who have exhausted or
17 renounced their remaining eligibility for
18 collegiate athletics?

19 A That's correct.

20 Q And has -- is that an accurate statement of NCAA
21 practice based on your experience?

22 A That is.

23 Q Does the NCAA license in any way individual
24 rights to the use of their name, image, likeness
25 in advertising, marketing, or communications

1 activities?

2 MR. GREENFOGEL: Objection as to form.

3 MR. ARAGON: Form.

4 A No. The NCAA doesn't have rights to individual
5 likeness or -- or appearance or names. Any --
6 any business dealings having to deal with that
7 would be through the individual or the school of
8 the individual, not through the NCAA.

9 Q Do you know whether or not commercial interests
10 such as corporate champions and partners or
11 other commercial interests, in fact, do obtain
12 releases from former student-athletes and pay
13 them money for their consent to appear in
14 advertising, marketing, or communications
15 activities?

16 A Yes.

17 MR. GREENFOGEL: Objection as to form.

18 Q And what is the -- the source or the basis for
19 your information in that regard?

20 A Experience. We direct our sponsors, our
21 corporate champions and partners, and/or our
22 licensees to work directly with individuals if
23 utilizing names or images.

24 Q And do you know whether there is an active trade
25 or business in obtaining and paying for those

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1 rights?

2 A There is. In fact, we utilize -- Thought Equity

3 has the ability -- it's a vendor of the NCAA --

4 has the ability -- I guess they're called T3

5 now. But T3 has the ability and service that

6 they provide to champions, partners, and

7 licensees -- if they are in need of obtaining

8 permission and authorization from individuals to

9 use their likeness, T3 will do that on behalf of

10 the commercial entity.

103

11 Q If the NCAA does not own those rights or control

12 those rights to individuals -- name, image,

13 likeness of former student-athletes, why does it

14 encourage its corporate partners or champions to

15 obtain a clearance and pay where appropriate to

16 obtain those rights?

17 A Well, while it may not be our responsibility to

18 do so, certainly we are interested in the

19 welfare of our former student-athletes and

20 certainly interested in the partnerships we have

21 developed. So we want to make sure, just as in

22 anything else we do with our sponsors, that we

23 help them clear hurdles that they may or may not

24 be aware of to make sure that their promotional

25 activities, marketing activities, run as

1 smoothly and -- and without issue as possible.

2 Q Would you look at Exhibit 336 from earlier
3 today, please.

4 A Okay.

5 Q This was a document that was -- included some
6 e-mail chain, including some to and from you.

7 A Uh-huh.

8 Q And there's one statement in an e-mail from you
9 in March of 2009 to someone at Nike --

10 A Uh-huh.

11 Q -- where you say, "And on top of below, we can't
12 provide rights to the individuals in the video
13 clips, so Nike or Thought Equity has to clear
14 each player/coach shown." And then down below,
15 you were telling Nike that they should use
16 five-year or older footage so that there would
17 be no one or part of anyone with eligibility
18 remaining.

19 Do you remember these events?

20 A I do.

21 Q So could you explain for the record, please, why
22 you were concerned about not using footage that
23 was newer than five years old.

24 A Certainly. One, to protect Nike, making sure
25 that they did not cause any eligibility concerns

1 for currently eligible student-athletes that may
2 be part of the video sequence that they utilize
3 in their advertising. And then secondary to
4 that is to make sure that we're working on -- to
5 the degree we can, the school's behalf in a
6 larger picture, to make sure that the
7 individuals are protected and -- and their
8 eligibility is protected.

9 Q And then for those people who appear in such
10 clips five years or older whose eligibility
11 would be exhausted, you say you can't provide
12 those rights; is that --

13 A That's right. Yeah, the NCAA does not have
14 those rights to convey.

15 Q And then you say, "Thought Equity or Nike has to
16 clear each player/coach shown."

17 What does it mean to clear?

18 A Typically what that means would be that the
19 commercial entity, Nike in this case or Thought
20 Equity, as I've described, now known as T3,
21 would need to contact each player or coach
22 and/or their representation, their agent, to get
23 their authorization to be included within the
24 Nike advertisement.

25 Q And is that a form of permission or clearance or

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611c

1 authorization that they can get from the NCAA?

2 A It is not.

3 Q And why not?

4 A The NCAA does not have rights to individual
5 players or coaches to convey.

6 MR. CURTNER: Thank you. I have nothing
7 else.

8 MR. ARAGON: I have no further questions.

9 MR. GREENFOGEL: Me neither. Thank you
10 very much.

11 MR. CURTNER: We're done. This closes the
12 deposition. We'll read and sign as usual.

13 THE VIDEOGRAPHER: We're off the record at
14 3:58 p.m.

15
16 (Time noted: 3:58 p.m.)

17 AND FURTHER DEPONENT SAITH NOT.

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

7 IN WITNESS WHEREOF, I have hereunto set my
8 hand and affixed my notarial seal on this 18th
9 day of June, 2012.

10

11

12

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

13

14 My Commission Expires:

15 July 16, 2015

16 County of Residence:

17 Hendricks County

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