

EXHIBIT B

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**LAW OFFICES OF
JOSEPH A. YABLONSKI, P.L.L.C.**

1776 K Street, N.W.
Suite 840
Washington, D.C. 20006

Phone: (202) 833-9062
Fax: (202) 463-6688
chip@yablonskilaw.com

September 29, 2008

BY EMAIL, FACSIMILE & FIRST CLASS MAIL

Cyril V. Smith, Esq.

Zuckerman Spaeder, LLP

100 East Pratt Street, Suite 2440
Baltimore, MD 21202-1031

Re: Sagapolutele, et al. v. The Bert Bell/Pete Rozelle NFL Retirement Plan, et al.
Civil Action No. WMN-08-1870

Dear Mr. Smith:

Please be advised that I am representing the National Football League Players Association (“NFLPA”) in responding to Plaintiffs’ subpoena. The NFLPA makes the following objections to plaintiffs’ subpoena *duces tecum* you signed which is dated September 12, 2008, and was served on September 15, 2008. These objections apply to the requests for hard-copy as well as electronically stored information.

General Objections:

1. The NFLPA objects to providing any material in response to the subpoena because such information will neither be admissible nor will it lead to admissible evidence in this case. This case is a benefits claim under ERISA in which the Retirement Board of the Plan has full discretion to determine benefits. The Fourth Circuit has held that evidence outside the administrative record cannot be considered by a reviewing court in such a case.¹

2. The NFLPA objects because the “Documents to Be Produced” are not described with reasonable particularity. The requests are compound and confusing

¹ For the same reasons described in NFLPA’s General Objections, the Rule 30(b)(6) notice is also defective.

and seek multiple types of information from multiple sources, several of which are beyond the control of the NFLPA.

3. The NFLPA objects because the requests make no distinction between documents in the custody of individuals employed by the NFLPA documents in the custody of individuals designated by the NFLPA who are fiduciaries of the Plans and documents that individuals employed by the NFLPA have in their custody as agents of the NFLPA. The NFLPA will produce only those documents over which it has legal control.

4. The NFLPA objects because it would impose an extraordinary burden on the NFLPA to locate and produce the seventeen broad and vague categories of documents sought by plaintiffs. The electronically stored information sought by these requests is not reasonably accessible and cannot be produced without undue burden or cost. The burden and expense of the proposed discovery outweighs any marginal benefit it could have on this case, and the information sought will have no bearing on the Court's determination as to whether the determinations by the Retirement Board in the cases of Messrs. Sagapolutele, Smith and Schwager were arbitrary, capricious, or an abuse of discretion.

5. The NFLPA objects to the requests because they seek, without limitation, information which is covered by the attorney-client privilege, the work-product doctrine, and the common-interest privilege.

6. The NFLPA objects on the grounds that the materials sought, if they are discoverable, can be obtained more conveniently, less expensively and with less burden from the defendants.

7. The NFLPA objects because Plaintiffs' requests have no bearing upon the claims asserted in this case. The names of the Messrs. Sagapolutele, Smith and Schwager do not appear on Attachment B in any of the 17 categories of NFLPA documents that Plaintiffs have requested. The requests are plainly designed to annoy, embarrass, and oppress the NFLPA, which is not a party to this case and did not make the decisions concerning benefits at issue in this case. Instead of taking reasonable steps to avoid imposing undue burden upon the NFLPA, the subpoena is written in the broadest and vaguest terms that would require the NFLPA to incur great burdens and expense to comply, for which it will seek sanctions under Rule 45(c)(1), Fed.R.Civ.P.

8. The NFLPA objects to the extent the instructions and definitions set forth in the subpoena and attachments are inconsistent with the limitations imposed by the Federal Rules of Civil Procedure, Local Rules of the U.S. District Court for the District of Columbia, and any applicable Local Rules of the U.S. District Court for the District of Maryland.

9. The NFLPA objects on the ground that the date and place of the deposition and production of documents were unilaterally determined by Plaintiffs.

10. The NFLPA objects on the ground that, based on the procedural posture and standard of review at issue in this matter, Plaintiffs are not entitled to proceed with discovery and depositions merely because they have served such discovery. Fourth Circuit precedent requires Plaintiffs to obtain an affirmative ruling permitting such discovery.

11. The NFLPA objects on the ground that it does not fund or administer the Plan, and the Plan document provides the relevant information concerning Plan funding and administration.

12. The NFLPA incorporates its general objections into each specific objection set forth below.

Specific Objections: The NFLPA responds *seriatim* to the Paragraphs of Attachment B to the subpoena as follows:

1. **Document Request No. 1:** All documents which relate to the impact of claims assessments and benefit determinations under the Plan on employer contributions, Projected Benefits, the Salary Cap, Total Revenue, and Guaranteed League-wide Salary.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 1, and it also objects to this Paragraph because it is overbroad and vague and is not limited to the claims asserted by Plaintiffs Sagapolutele, Smith and Schwager. The documents sought have no bearing on the claims asserted in this action. The NFLPA objects because

the request is unlimited in temporal scope. The NFLPA objects on the ground that the terms "impact" and "assessments" are vague, ambiguous, and overly broad.

2. **Document Request No. 2:** All documents which memorialize or relate to communications by, from, between or among the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw since January 1, 2000 regarding the impact of claims assessments and benefit determinations under the Plan on employer contributions, Projected Benefits, the Salary Cap, Total Revenue, and Guaranteed League-wide Salary.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 2 and it also objects to this Paragraph because it is overbroad and vague and is not limited to the claims asserted by Plaintiffs Sagapolutele, Smith and Schwager. The documents sought have no bearing on the claims asserted in this action. The NFLPA objects on the ground that the terms "impact" and "assessments" are vague, ambiguous, and overly broad.

3. **Document Request No. 3:** All documents relating to selection by the NFLMC, the NFLPA, or Gene Upshaw of representatives on the Retirement Board or the DICC, including the criteria for their selection, their qualifications, and their prior experience in the fields of pension benefits, medicine, disabilities, employment law, or disability claims assessments and benefit determinations.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 3 and it also objects to this Paragraph because it is overly broad and unduly burdensome and has no temporal limitations. Any documents relating to the selection or qualifications of any representatives designated by the NFLMC or the NFLPA to sit on the Retirement Board are totally irrelevant to the claims of Plaintiffs Sagapolutele, Smith and Schwager and will neither be admissible in evidence nor lead to admissible evidence in this case. The NFLPA further objects because the Plan does not contain any specific qualifications or limitations on the persons who are selected to serve on the Retirement Board.

4. **Document Request No. 4:** All documents which constitute, memorialize, or relate to reports or other communications since January 1, 2000 by Retirement Board representatives appointed by the NFLMC to the NFLMC, the League, or any Club.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 4. Subject to and without waiving its objections, on information and belief, the NFLPA has no documents responsive to this request involving communications between NFLMC's chosen representatives on the Retirement Board and the NFLMC, the League or the Clubs.

5. **Document Request No. 5:** All documents related to actual or potential conflicts of interest by the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw in the funding or administration of the Plan, the selection of Retirement Board or DICC representatives, disability claims assessments, benefit determinations, or other decision-making by the Retirement Board and the DICC.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 5. The request is also overbroad, having no temporal limitations. The compound nature of this request obscures and fails to describe with reasonable particularity the documents that are being sought. The NFLPA objects to the extent that the request seeks documents over which it has no control. It also objects to this request because it seeks documents that are protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege. The NFLPA further objects on the ground that the phrase "actual or potential conflicts of interest" is overly broad, vague, and ambiguous.

6. **Document Request No. 6:** All documents related to actual or potential bias on the part of the Plan, the Retirement Board, the DICC, the NFLPA or Gene Upshaw against retired NFL players.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 6. The request is also overbroad, having no temporal limitations. The compound nature of this request obscures and

fails to describe with reasonable particularity the documents that are being sought. The NFLPA objects on the ground that the phrase "actual or potential bias" is overly broad, vague, and ambiguous.

7. **Document Request No. 7:** All documents which discuss or address the motives of the Plan, the Retirement Board, the DICC, the NFLPA or Gene Upshaw regarding disability claims assessments, benefit determinations, or other decision-making under the Plan.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 7. The request is also overbroad, having no temporal limitations. The compound nature of this request obscures and fails to describe with reasonable particularity the documents that are being sought. The NFLPA objects to the extent that the request seeks documents protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege. To the extent the request seeks documents within the administrative records of Plaintiffs' claims, such documents can be obtained more conveniently, less expensively, and with less burden from the defendants.

8. **Document Request No. 8:** All documents relating to efforts by the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw to assure fair or accurate benefit claims decisions under the Plan.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 8. The request is also overbroad, having no temporal limitations. The compound nature of this request obscures and fails to describe with reasonable particularity the documents that are being sought. The NFLPA objects to the extent that the request seeks documents protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege. The NFLPA objects on the ground that it neither administers nor determines eligibility for benefits under the Plans, and further objects on the ground that the Plan document provides the procedure by which benefit claims are to be determined. To the extent the request seeks documents within the administrative records of Plaintiffs' claims, such documents can be obtained more conveniently, less expensively, and with less burden from the defendants.

9. **Document Request No. 9:** All documents related to or constituting changes made to the Plan Document since the Webster decision.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 9 and it makes the following specific objections to this Paragraph: it is overbroad and vague and is not limited to the claims asserted by Plaintiffs Sagapolutele, Smith and Schwager. The documents sought have no bearing on the claims asserted in this action. The NFLPA objects to the extent that the request seeks documents protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege.

10. **Document Request No. 10:** All documents related to or constituting proposed changes made to the Plan Document since the Webster decision.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 10 and it makes the following specific objections to that Paragraph: This paragraph is overbroad and vague and is not limited to the claims asserted by Plaintiffs Sagapolutele, Smith and Schwager, and the documents sought have no bearing on the claims asserted in this action. The NFLPA objects to the extent that the request seeks documents protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege.

11. **Document Request No. 11:** All documents related to or constituting communications by, to, between or among the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw since January 1, 2005 regarding the Webster decision or the Webster appeal.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 11 and it makes the following specific objections to that Paragraph: Apart from the fact that counsel for the Plaintiffs in this case was counsel in the *Webster* case, there is no nexus between that decision and appeal and the claims asserted in this case. To the extent the settlors of these trusts had communications concerning the *Webster* decision and

the *Webster* appeal, such communications are privileged under the common-interest privilege, the work product doctrine and/or the attorney-client privilege.

12. **Document Request No. 12:** All documents which memorialize or relate to communications by, to, between, or among the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw since January 1, 2005 regarding efforts and advocacy by, and publicity about, retired players, associations of retired players, and their representatives who have attempted to influence or reform the Plan, the Retirement Board, or the Retirement Board's status, membership, administration, operation, benefit determinations, or decision-making process.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 12 and it makes the following specific objections to that Paragraph: Communications "by, to, between or among" various entities and individuals concerning "efforts," "advocacy" and "publicity" about retired players who have attempted to influence or reform the Plan have nothing whatsoever to do with the claims asserted by Plaintiffs Sagapolutele, Smith and Schwager in this case. The NFLPA objects to the extent that the request seeks documents protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege. The NFLPA further objects on the ground that the request and the terms therein are overly broad.

13. **Document Request No. 13:** All documents which memorialize or relate to communications by, to, between, or among the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw since January 1, 2005 regarding legislative hearings or proposed legislation concerning the Retirement Board, its status, membership, administration, operation, benefit determinations, or decision-making process.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 13 and it makes the following specific objections to that Paragraph: Communications concerning legislative hearings or legislation are protected by the attorney-client and common-interest privileges as well as the First Amendment associational privilege. The NFLPA

further objects on the ground that the request and the terms therein are overly broad.

14. **Document Request No. 14:** All documents which relate to efforts by the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw since January 1, 2005 to provide information to the media or public, or to influence public opinion or media perception of (a) the Plan, the Retirement Board and its decisions, or (b) Gene Upshaw's leadership of the NFLPA, with respect to the Plan or Retirement Board, including without limitation all correspondence, emails, reports, surveys, polls, studies, plans, or other material prepared by, for, or at the behest of any person engaged in public relations on behalf of the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 14 and it makes the following specific objections to that Paragraph: Any documents relating to the provision of "information to the media or public" or "to influence public opinion or media perception regarding the Plan" or its decisions would neither be admissible nor lead to admissible evidence. The NFLPA objects to the extent that the request seeks documents protected from disclosure by the attorney-client privilege, work-product doctrine, or common-interest privilege. The NFLPA further objects on the ground that the request and the terms therein are overly broad.

15. **Document Request No. 15:** All documents which relate to efforts by the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw since January 1, 2005 to provide information to any public official, or to lobby public officials regarding (a) the Plan, (b) the Retirement Board and its decisions, or (c) Gene Upshaw's leadership of the NFLPA, with respect to the Plan or the Retirement Board.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 15 and it makes the following specific objections to that Paragraph: Documents concerning lobbying and legislative activities of the NFLPA are protected by either the attorney-client,

common-interest, or First Amendment associational privileges. The NFLPA further objects on the ground that the request and the terms therein are overly broad.

16. **Document Request No. 16:** All documents which comprise, memorialize, or relate to studies, research, or analyses reviewed by, or undertaken by or at the behest of, the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw which compared benefits available under the Plan with benefits available under retirement or benefit plans applicable to players of any other professional sport, including major league baseball, professional basketball, or professional ice hockey.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 16 and it makes the following specific objections to that Paragraph: Any documents comparing benefits made available to athletes in other professional leagues is irrelevant to the claims asserted in this case by Plaintiffs Sagapolutele, Smith and Schwager and would neither be admissible nor lead to admissible evidence as to whether the Retirement Board's determinations concerning Messrs. Sagapolutele, Smith and Schwager were arbitrary, capricious, or an abuse of discretion. The NFLPA further objects because the request is unlimited in temporal scope.

17. **Document Request No. 17:** All documents which comprise, memorialize, or relate to studies, research, or analyses reviewed by, or undertaken by or at the behest of, the Plan, the Retirement Board, the DICC, the League, any Club, the NFLMC, the NFLPA, or Gene Upshaw which analyzed the impact of different standards of eligibility or different disability criteria on potential benefits under the Plan.

Objections: The NFLPA incorporates herein its General Objections to the categories of documents requested in Paragraph 17 and it makes the following specific objections to that Paragraph: Any documents concerning the impact of different standards of eligibility or different disability criteria on potential benefits under the Plan are irrelevant to the claims asserted in this case and would be neither admissible nor lead to admissible evidence as to whether the Retirement Board's determinations concerning Messrs. Sagapolutele, Smith and Schwager

Cyril V. Smith, Esq.

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were arbitrary, capricious, or an abuse of discretion. The NFLPA further objects because the request is unlimited in temporal scope.

If I can be of any further assistance to you, please do not hesitate to contact me. In the event Plaintiffs intend to make good-faith efforts to resolve the above-referenced issues, please contact me. In the event Plaintiffs file a motion to compel, please serve both the Groom Law Group and me with the papers.

Sincerely,



Joseph A. Yablonski, Esq.

cc: Richard A. Berthelsen, Esq.
Tom DePaso, Esq.
Douglas Ell, Esq.
Edward A. Scaliet, Esq.
Hisham M. Amin, Esq.