

# EXHIBIT D

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**FILED**

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Clerk, U.S. District  
Bankruptcy Courts



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October 7, 2008

**VIA E-MAIL AND REGULAR MAIL**

Joseph A. Yablonski  
Law Offices of Joseph A. Yablonski, P.L.L.C.  
1776 K Street, N.W.  
Suite 840  
Washington, DC 20006

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

Dear Chip:

I write in response to your September 29, 2008 letter to Cy Smith of this Firm in which you set forth objections to our subpoena to the National Football League Players Association ("NFLPA").

In the final paragraph of your letter, you invite our "good faith efforts to resolve" those objections. As you know, since your letter, Plaintiffs have engaged in such good faith efforts to resolve this discovery dispute. We have offered to postpone or suspend the NFLPA's deposition to await a ruling by the Court on Defendants' pending Motion for Protective Order which would address the vast majority of your objections. We have also offered to meet and confer with you to see if we can resolve differences about the scope of the subpoena or to see if particular documents would satisfy our requests. So far, you have rejected all of our proposals, refused to meet and confer with us, and insisted that Plaintiffs simply withdraw their subpoena. Your uncompromising demand for withdrawal of the subpoena is inconsistent with both the "good faith efforts" you propose and the obligations imposed on counsel by applicable Federal and local rules to narrow the scope of our dispute.

Nonetheless, we are responding to your written objections in the hope that you will reconsider your position and engage with us in "good faith efforts" to resolve this discovery dispute. Our responses to your General and Specific Objections are keyed to each of the numbered objections set forth in your letter.



**General Objections:**

1. Your general objection to evidence outside the administrative record in this case is the subject of a pending Motion for Protective Order filed by Defendants in this action. As mentioned above, we have offered to suspend your client's compliance with the subpoena pending the Court's ruling on that Motion, but you have declined. We have reached such an agreement with Defendants and another third-party deponent, and continue to believe that this approach makes sense and will allow for efficient and orderly discovery.

2. Your assertion that the "Documents To Be Produced" are not described with reasonable particularity is unfounded because each of the 17 document requests is narrowly tailored to a readily-identifiable set of documents, as you concede when you also assert that some of the responsive documents "are beyond the control of the NFLPA."

3. Plaintiffs seek only documents which are within the control of your client.

4. You fail to set forth any facts to substantiate your claim that it would be unduly burdensome for the NFLPA, one of the wealthiest and professionally-administered unions in the United States with (according to its Web site) a full-time in-house legal staff of at least nine people, to comply with the subpoena. Similarly, your assertion that electronically stored information "is not reasonably accessible" lacks any substantiation. If you provide more information about this objection, we would be in a better position to work with you to come up with a mutually-acceptable method of accessing the requested information.

5. Pursuant to Fed.R.Civ.P. 26(b)(5)(A), assertions of privilege should be made regarding particular documents and in a manner that will enable Plaintiffs to assess the claim. Your sweeping general objection based on privilege does not permit us, or a reviewing court, to evaluate your claim.

6. You fail to set forth any facts to substantiate your assertion that the documents which Plaintiffs seek can be more conveniently obtained from Defendants. Defendants are two benefit plans, and many of the documents sought by Plaintiffs seek documents which only the NFLPA would possess (e.g., documents related to the impact of benefit determinations on provisions of the Collective Bargaining Agreement, or "CBA"). Moreover, we are unaware of any legal authority for withholding documents otherwise subject to a subpoena on the ground that the party seeking the documents can obtain some of them from another source. In any event, if you provide more information about the documents you believe are duplicative with other sources, we would be in a better position to evaluate this objection.



7. Your general objection based on relevance is incorrect as a matter of law for the reasons set forth in Plaintiffs' Opposition to Defendants' Motion for Protective Order in this action ("Plifs' Opposition") (a copy of which is attached).

8. We cannot evaluate this general objection because you fail to describe how the instructions and definitions set forth in subpoena are inconsistent with any governing rules. If you provide more information about this objection, we would be in a better position to work with you to come up with a mutually-acceptable set of instructions and definitions.

9. We will work with you to come up with a mutually-acceptable date for the deposition and production of documents, consistent with the scheduling order in this case. At present, your objection appears to be any deposition at all, not to the date and time noted in the subpoena.

10. See our responses to your General Objections ## 1, and 7.

11. The fact that another entity funds the Plan does not limit Plaintiffs' ability to take discovery of the NFLPA in this action for the reasons set forth in Plifs' Opposition.

**Specific Objections:**

1. Document Request No. 1: As for your claim that the requested documents are not relevant, see our responses to your General Objections ## 1, and 7. As for your claim that the term "impact" is vague, ambiguous, and overly broad, the term as used in this request means the effect or influence of claims assessments and benefit determinations under the Plan on employer contributions, Projected Benefits, the Salary Cap, Total Revenue, and Guaranteed League-wide Salary (all defined terms under the CBA). As for your claim that the term "assessments" is vague, ambiguous, and overly broad, the term as used in this request means the evaluation of benefit claims.

Document Request No. 2: Please see our response to your Specific Objection #1.

Document Request No. 3: For the reasons set forth in Plifs' Opposition, your objections to this request based on (a) relevance and (b) the fact that the Plan Document does not establish qualifications for Retirement Board members, is without merit. Further, under Fed.R.Civ.P. 26(b)(1), information is discoverable if it "appears reasonably calculated to lead to the discovery of admissible evidence." The background and experience of the persons who made the benefit decisions being challenged by Plaintiffs in this action clearly satisfies that broad standard.



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Document Request No. 4: This was a typographical error, and all references in this request to "NFLMC" should be "NFLPA."

Document Request No. 5: As for your objections based on the description of documents, control over responsive documents, and privilege, please see our response to your General Objections ## 2, 3, and 5, respectively. As for your objection that the term "actual or potential conflicts of interest" is overly broad, vague and ambiguous, the term "conflict of interest" as used in this request has its commonly understood meaning (also applied in numerous ERISA cases) of competing financial, professional, or personal interests that make it difficult to fulfill a person's duties on an impartial basis, or that create an appearance of impropriety.

Document Request No. 6: Please see our response to your Specific Objection #5. As for your objection that the term "actual or potential bias" is overly broad, vague and ambiguous, the term "bias" as used in this request has its commonly understood meaning of partiality or favoritism, including a tendency or inclination that prevents unprejudiced consideration of a benefits application.

Document Request No. 7: As for your objections based on relevance, the description of documents, and privilege, please see our response to your General Objections ## 1, 2, and 5, respectively. As for your objection based on the availability of responsive documents from another source, please see our response to your General Objections #6.

Document Request No. 8: Please see our response to your Specific Objection #7.

Document Request No. 9: Please see our response to your General Objections ## 1, 5 and 7.

Document Request No. 10: Please see our response to your Specific Objection # 9.

Document Request No. 11: As to your objection based on the relevance of the *Webster* case, the Complaint in this action makes specific allegations regarding the NFLPA's response to the *Webster* case as evidencing conflict of interest, bias, and animus which are relevant both to establishing the appropriate standard of review and evaluating the reasonableness of the challenged benefit determinations. See Plfs' Opposition. As to your objection based on privilege, please see our response to your General Objection #5.

Document Request No. 12: As to your objection based on the relevance of the information about efforts by retired players to influence or reform the Plan, that information



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is evidence of, or may lead to the discovery of admissible evidence regarding, conflict of interest, bias, and animus, which are relevant both to establishing the appropriate standard of review and evaluating the reasonableness of the challenged benefit determinations. See Plifs' Opposition. As to your objection based on privilege, please see our response to your General Objection #5.

Document Request No. 13: Please see our response to your General Objection # 5.

Document Request No. 14: Please see our response to your Specific Objections ## 11 and 12.

Document Request No. 15: Please see our response to your General Objection # 5.

Document Request No. 16: Information regarding a comparison of benefit determinations made by the Plans with benefit determinations made in other professional sports is relevant to, or may lead to the discovery of admissible evidence regarding, the reasonableness of the challenged benefit determinations. In addition, the requested information may be evidence of, or may lead to the discovery of admissible evidence regarding, conflict of interest, bias, and animus, which are relevant both to establishing the appropriate standard of review and evaluating the reasonableness of the challenged benefit determinations. See Plifs' Opposition.

Document Request No. 17: Information regarding different standards of eligibility or different disability criteria on potential benefits under the Plan is relevant to, or may lead to the discovery of admissible evidence regarding, conflict of interest, bias, and animus, which are relevant both to establishing the appropriate standard of review and evaluating the reasonableness of the challenged benefit determinations. See Plifs' Opposition.

\* \* \* \*

You have advised us that you will move to quash Plaintiffs' subpoena in the District Court for the District of Columbia. If you do so, we trust that you will inform the court of Plaintiffs' efforts to resolve your objections to the subpoena, and provide a copy of this letter to the court along with your motion.

Finally, as you know, quite apart from the documents sought, Plaintiffs have served a valid and enforceable subpoena requiring testimony on October 13 on topics properly identified under Rule 30(b)(6). Unless there is an order quashing that subpoena, we expect the NFLPA to provide one or more witnesses on the date specified, ready to testify.

I look forward to hearing from you.



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Sincerely,

William K. Meyer

cc: Cyril V. Smith, Esq.  
Hisham Amin, Esq.