

# EXHIBIT A

--- F.Supp.2d ----, 2011 WL 706319 (D.Minn.)  
(Cite as: 2011 WL 706319 (D.Minn.))

Only the Westlaw citation is currently available.

United States District Court,  
D. Minnesota.  
Reggie WHITE, Michael Buck, Hardy Nickerson,  
Vann McElroy and Dave Duerson, Plaintiffs,  
v.  
NATIONAL FOOTBALL LEAGUE; The Five  
Smiths, Inc.; Buffalo Bills, Inc.; Chicago Bears  
Football Club, Inc.; Cincinnati Bengals, Inc.; Cleve-  
land Browns, Inc.; The Dallas Cowboys Football  
Club, Ltd.; PDB Sports, Ltd.; The Detroit Lions, Inc.;  
The Green Bay Packers, Inc.; Houston Oilers, Inc.;  
Indianapolis Colts, Inc.; Kansas City Chiefs Football  
Club, Inc.; The Los Angeles Raiders, Ltd.; Los An-  
geles Rams Football Company, Inc.; Miami Dolphins,  
Ltd.; Minnesota Vikings Football Club, Inc.; KMS  
Patriots Limited Partnership; The New Orleans Saints  
Limited Partnership; New York Football Giants, Inc.;  
New York Jets Football Club, Inc.; The Philadelphia  
Eagles Football Club, Inc.; B & B Holdings, Inc.;  
Pittsburgh Steelers Sports, Inc.; The Chargers Football  
Company; The San Francisco Forty-Niners, Ltd.; The  
Seattle Seahawks, Inc.; Tampa Bay Area NFL Foot-  
ball Club, Inc.; and Pro-Football, Inc., Defendants.

Civil No. 4-92-906(DSD).  
March 1, 2011.

**Background:** Professional football players brought action against football league alleging it violated the settlement and stipulation agreement (SSA) the parties had entered into. Special master ruled in favor of league. Players objected.

**Holding:** The District Court, [David S. Doty, J.](#), held that the conduct of league constituted a breach of provision of SSA requiring it to use best efforts to maximize revenue for both league and players during years covered by SSA.

Recommendation adopted in part and overruled in part.

West Headnotes


[\[1\]](#) Federal Civil Procedure 170A  1900

[170A](#) Federal Civil Procedure  
[170AXIII](#) Reference  
[170Ak1896](#) Report, Findings and Conclusions  
[170Ak1900](#) k. Conclusiveness in General.  
[Most Cited Cases](#)

**Federal Civil Procedure 170A  1901**

[170A](#) Federal Civil Procedure  
[170AXIII](#) Reference  
[170Ak1896](#) Report, Findings and Conclusions  
[170Ak1901](#) k. Clear Error in General. [Most Cited Cases](#)

On appeal, a special master's conclusions of law are reviewed de novo and factual findings are reviewed under the clearly erroneous standard.

[\[2\]](#) Contracts 95  147(2)

[95](#) Contracts  
[95II](#) Construction and Operation  
[95II\(A\)](#) General Rules of Construction  
[95k147](#) Intention of Parties  
[95k147\(2\)](#) k. Language of Contract.  
[Most Cited Cases](#)

Under New York law, the terms of a contract must be construed so as to give effect to the intent of the parties as indicated by the language of the contract.

[\[3\]](#) Contracts 95  152

[95](#) Contracts  
[95II](#) Construction and Operation  
[95II\(A\)](#) General Rules of Construction  
[95k151](#) Language of Instrument  
[95k152](#) k. In General. [Most Cited Cases](#)

Under New York law, the court should also give the words in a contract their plain and ordinary meaning unless the context mandates a different interpretation.

[\[4\]](#) Contracts 95  143.5

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[95](#) Contracts

[95II](#) Construction and Operation

[95II\(A\)](#) General Rules of Construction

[95k143.5](#) k. Construction as a Whole. [Most Cited Cases](#)

Under New York law, the court must give effect and meaning to each term of a contract, making every reasonable effort to harmonize all of its terms.

[5](#) Contracts [95](#)  153

[95](#) Contracts

[95II](#) Construction and Operation

[95II\(A\)](#) General Rules of Construction

[95k151](#) Language of Instrument

[95k153](#) k. Construction to Give Validity and Effect to Contract. [Most Cited Cases](#)

Under New York law, the court must interpret a contract so as to effectuate, not nullify, its primary purpose.

[6](#) Compromise and Settlement [89](#)  11

[89](#) Compromise and Settlement

[89I](#) In General

[89k10](#) Construction of Agreement

[89k11](#) k. In General. [Most Cited Cases](#)

Under New York law, the phrase “consistent with sound business judgment” in stipulation and settlement agreement (SSA) between football league and players, that required football league to exercise good faith in carrying out the SSA consistent with sound business judgment, permitted football league to consider its long-term interests in renegotiating broadcast agreements, provided it did so while acting in good faith and using best efforts to maximize total revenues for each SSA playing season.

[7](#) Contracts [95](#)  189

[95](#) Contracts

[95II](#) Construction and Operation

[95II\(C\)](#) Subject-Matter

[95k189](#) k. Scope and Extent of Obligation. [Most Cited Cases](#)

Under New York law, an obligation in a contract that a party must use “best efforts” imposes a higher obligation than a provision requiring a party to act in good faith.

[8](#) Contracts [95](#)  189

[95](#) Contracts

[95II](#) Construction and Operation

[95II\(C\)](#) Subject-Matter

[95k189](#) k. Scope and Extent of Obligation. [Most Cited Cases](#)

Under New York law, good faith connotes an actual state of mind motivated by proper motive and encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage; it requires that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.

[9](#) Compromise and Settlement [89](#)  20(1)

[89](#) Compromise and Settlement

[89I](#) In General

[89k20](#) Performance or Breach of Agreement

[89k20\(1\)](#) k. In General. [Most Cited Cases](#)

Under New York law, conduct of football league in renegotiating broadcast contracts to benefit its exclusive interest in ensuring revenue for itself during a possible player lockout, in order to gain a bargaining advantage over players and help league achieve a more favorable collective bargaining agreement (CBA), at the expense of, and contrary to, the joint interests of the league and the players in maximizing total revenues for each playing season covered by stipulation and settlement agreement (SSA) that league and players had entered into, constituted a design to seek an unconscionable advantage, that was inconsistent with the good faith that the league was required to exercise under the SSA.

[10](#) Compromise and Settlement [89](#)  20(1)

[89](#) Compromise and Settlement

[89I](#) In General

[89k20](#) Performance or Breach of Agreement

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[89k20\(1\)](#) k. In General. [Most Cited Cases](#)

Under New York law, conduct of football league in failing to act in good faith so as to maximize total revenues for each playing season covered by stipulation and settlement agreement (SSA) entered into with players, constituted a breach of the SSA; league renegotiated broadcast agreements so as to ensure revenue for itself during a possible player lockout, and to avoid possibility of defaulting on its debt obligations, at expense of maximizing revenue for both league and players during years covered by SSA.

[\[11\]](#) [Contracts 95](#)  [189](#)

[95](#) [Contracts](#)  
[95II](#) [Construction and Operation](#)  
[95II\(C\)](#) [Subject-Matter](#)  
[95k189](#) k. Scope and Extent of Obligation.  
[Most Cited Cases](#)

Under New York law, there is no more significant context for a best efforts obligation than the agreement of which it is a part or is made so; best efforts necessarily takes its meaning from the circumstances.

[\[12\]](#) [Contracts 95](#)  [189](#)

[95](#) [Contracts](#)  
[95II](#) [Construction and Operation](#)  
[95II\(C\)](#) [Subject-Matter](#)  
[95k189](#) k. Scope and Extent of Obligation.  
[Most Cited Cases](#)

Under New York law a best efforts clause imposes an obligation to act with good faith in light of one's own capabilities.

[\[13\]](#) [Contracts 95](#)  [189](#)

[95](#) [Contracts](#)  
[95II](#) [Construction and Operation](#)  
[95II\(C\)](#) [Subject-Matter](#)  
[95k189](#) k. Scope and Extent of Obligation.  
[Most Cited Cases](#)

Under New York law, a party obligated to give best efforts maintains the right to give reasonable consideration to its own interests and is allowed a reasonable variance in the exercise of sound business

judgment.

[\[14\]](#) [Contracts 95](#)  [189](#)

[95](#) [Contracts](#)  
[95II](#) [Construction and Operation](#)  
[95II\(C\)](#) [Subject-Matter](#)  
[95k189](#) k. Scope and Extent of Obligation.  
[Most Cited Cases](#)

Under New York law, although a best-efforts provision does not require a promisor to spend itself into bankruptcy, it does prohibit a promisor from emphasizing profit above everything else without fair consideration of the effect on the promisee.

[\[15\]](#) [Contracts 95](#)  [189](#)

[95](#) [Contracts](#)  
[95II](#) [Construction and Operation](#)  
[95II\(C\)](#) [Subject-Matter](#)  
[95k189](#) k. Scope and Extent of Obligation.  
[Most Cited Cases](#)

Under New York law, a best-efforts clause requires the promisor to do more than treat a promisee's interest as well as its own.

[\[16\]](#) [Compromise and Settlement 89](#)  [20\(1\)](#)

[89](#) [Compromise and Settlement](#)  
[89I](#) [In General](#)  
[89k20](#) [Performance or Breach of Agreement](#)  
[89k20\(1\)](#) k. In General. [Most Cited Cases](#)

Under New York law, conduct of football league in actively renegotiating broadcast contracts to ensure favorable changes for itself and disadvantage the players, while failing to seek revenue for modifications to the broadcast contracts in seasons covered by the settlement and stipulation agreement (SSA) that had been entered into between league and players, constituted breach of provision of SSA requiring league to use best efforts to maximize revenue for both league and players during years covered by SSA.

[\[17\]](#) [Contracts 95](#)  [189](#)

[95](#) [Contracts](#)

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[95II Construction and Operation](#)

[95II\(C\) Subject-Matter](#)

[95k189 k. Scope and Extent of Obligation.](#)

[Most Cited Cases](#)

Under New York law, a promisor's consideration of its own interests becomes unreasonable under best efforts clause when it is manifestly harmful to the party to which it has obligations.

**[18] Injunction 212** 

[212 Injunction](#)

[212I Nature and Grounds in General](#)

[212I\(B\) Grounds of Relief](#)

[212k9 k. Nature and Existence of Right Requiring Protection.](#) [Most Cited Cases](#)

The court considers four factors in determining whether an injunction should issue: (1) the threat of irreparable harm to the movant in the absence of relief, (2) the balance between that harm and the harm that the relief may cause the non-moving party, (3) the likelihood of the movant's ultimate success on the merits and (4) the public interest.

**[19] Injunction 212** 

[212 Injunction](#)

[212I Nature and Grounds in General](#)

[212I\(B\) Grounds of Relief](#)

[212k14 k. Irreparable Injury.](#) [Most Cited Cases](#)

**Injunction 212** 

[212 Injunction](#)

[212I Nature and Grounds in General](#)

[212I\(B\) Grounds of Relief](#)

[212k15 Inadequacy of Remedy at Law](#)

[212k17 k. Recovery of Damages.](#) [Most Cited Cases](#)

Irreparable harm, for purposes of determining whether injunctive relief is warranted, occurs when a party has no adequate remedy at law because its injuries cannot be fully compensated through money damages.

[Thomas J. Heiden, Esq.](#), Latham & Watkins, Chicago,

IL, [David A. Barrett, Esq.](#), Latham & Watkins, Washington, DC, [Anthony N. Kirwin, Esq.](#), Lindquist & Vennum, Minneapolis, MN, [David G. Feher, Esq.](#), [Jeffrey L. Kessler, Esq.](#), [David L. Greenspan, Esq.](#), [Eva W. Cole, Esq.](#), Dewey & LeBoeuf LLP, New York, NY, [James W. Quinn, Esq.](#), Weil, Gotshal & Manges, New York, NY, [Heather McPhee, Esq.](#), NFL Players Association, Washington, DC, [Timothy R. Thornton, Esq.](#), Briggs & Morgan, Minneapolis, MN, counsel for plaintiffs.

[Daniel J. Connolly, Esq.](#), [Aaron D. Van Oort, Esq.](#), Faegre & Benson, Minneapolis, MN, [Gregg H. Levy, Esq.](#), [Benjamin Block, Esq.](#), [Neil K. Roman, Esq.](#), Covington & Burling, Washington, D.C., [Shepard Goldfein, Esq.](#), Skadden, Arps, Slate, Meagher & Flom, New York, NY, for defendants.

**ORDER**

[DAVID S. DOTY](#), District Judge.

\*1 This matter is before the court upon the objection in part by Class Counsel and the National Football League Players' Association (collectively, Players or NFLPA) to the February 1, 2011, opinion of Special Master Stephen B. Burbank. Based on a review of the file, record and proceedings before the court, and for the reasons stated, the court adopts in part and overrules in part the recommendation of the special master.

**BACKGROUND**

This appeal arises out of a proceeding commenced by the Players pursuant to Article XXII of the *White Stipulation and Settlement Agreement (SSA)*. <sup>FNI</sup> See ECF No. 524. The Players allege that the National Football League, its member clubs and the National Football League Management Council (collectively, NFL) violated the SSA by ignoring the obligation to act in good faith and use best efforts to maximize total revenues for both the NFL and the Players for each SSA playing season. In this appeal, the court must, in considering the special master's opinion, determine (1) what the SSA requires of the parties; and (2) whether the NFL violated the SSA when it extended and renegotiated broadcast contracts with DirecTV, CBS, FOX, NBC and ESPN (collectively, broadcasters).

**I. Historical Context**

On September 10, 1992, following a ten-week trial, a jury found the NFL in violation § 1 of the

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Sherman Antitrust Act, 15 U.S.C. § 1. See *McNeil v. Nat'l Football League (Plan B Free Agency)*, No. 4-90-476, 1992 WL 315292, at \*1 (D.Minn. Sept.10, 1992). Following the verdict, individual players sought injunctive relief to become free agents for the 1992 season. See *Jackson v. Nat'l Football League*, 802 F.Supp. 226, 228 (D.Minn.1992). Based on the *McNeil* verdict, the court temporarily enjoined enforcement of Plan B. *Id.* at 235. Less than two weeks after the *McNeil* verdict, players Reggie White, Michael Buck, Hardy Nickerson, Vann McElroy and Dave Duerson brought an antitrust class action seeking injunctive relief in the form of total or modified free agency. See *White v. Nat'l Football League*, 822 F.Supp. 1389 (D.Minn.1993). The parties decided to settle their financial and labor disputes, and a mandatory settlement class was certified for damages and injunctive relief. The NFLPA became the official exclusive bargaining authority for football players in March 1993. The NFL and the Players formed the SSA to bring an end to a wide range of litigation. On April 30, 1993, the court approved the SSA. The parties also entered into a Collective Bargaining Agreement (CBA) that mirrors the SSA. The parties amended and extended the CBA in 1996 and 1998. In 2006, the parties renegotiated the CBA for 2006-2012.

On May 20, 2008, the NFL opted out of the final two years of the current CBA and SSA because, among other reasons, it believed that the current agreement “does not adequately recognize the costs of generating the revenues of which the players receive the largest share,” and other elements of the deal “simply are not working.” Ex. 77.<sup>FN2</sup> As a result, the SSA and CBA expire on March 4, 2011. The NFL recognized that a lockout was “realistically” possible in order to achieve a new agreement more favorable to its interests. Tr. 771; see Ex. 221.

\*2 Soon after opting out of the CBA, the NFL began to negotiate extensions of its broadcast contracts. Rights fees in the broadcast contracts generate approximately half of the NFL's total revenues. Goodell Direct Test. 4. Existing broadcast contracts effectively prevented the NFL from collecting revenue during a lockout in 2011 because the contracts did not require broadcasters to pay rights fees during a lockout or required the NFL to repay lockout fees in 2011. Op. 20-21, ¶¶ 12-22; Ex. 228, at 00065812. Moreover, some of the NFL's loan obligations include “average media revenues” covenants which provide that an

“event of default” occurs if average annual league media revenues fall below a specified value. Op. 20, ¶ 9; *id.* at 21, ¶ 11; Siclare Direct Test. 1, 3. The NFL worried that its creditors could argue that a default event had occurred if the NFL locked out the Players in 2011, the same year that some broadcast contracts were set to expire, and that a default would give the Players bargaining power in labor negotiations. Op. 21, ¶ 23; Goodell Direct Test. 3. In light of “market conditions and strategic considerations,” the NFL understood that it was “prudent to consider [broadcast contract] extension alternatives today.” Ex. 228, at 00065812.

## II. Broadcast Contracts

In May 2008, the NFL had broadcast contracts with DirecTV for the 2006-2010 seasons, with CBS, FOX and NBC, respectively, for the 2006-2011 seasons, and with ESPN for the 2006-2013 seasons (collectively, previous contracts).

### A. DirecTV

The NFL's contract with DirecTV was to expire at the end of the 2010 season. The previous contract had no work-stoppage provision. As a result, the NFL would receive no revenue if it locked out the Players. DirecTV had the exclusive right to broadcast a “Red Zone” channel featuring scoring opportunities from every regular-season Sunday afternoon game. The NFL wanted to offer its own version of the Red Zone. Op. 22, ¶ 31; Rolapp Direct Test. 4.

The NFL and DirecTV began negotiations in July 2008. The extended contract provides that DirecTV will pay a substantial fee if the 2011 season is not cancelled and up to 9% more, at the NFL's discretion, if the 2011 season is cancelled. Of the total amount payable in the event of a cancelled season, 42% of that fee is nonrefundable and the remainder would be credited to the following season. Op. 27, ¶¶ 71-72; Goodell Direct Test. 11. As a result, the NFL could receive substantially more from DirecTV in 2011 if it locks out the Players then if it does not. DirecTV would have considered paying more in 2009 and 2010 “to have [the work-stoppage provision] go away.” Tr. 410.

In the extended contract, DirecTV: (1) gained the right to distribute Sunday Ticket via broadband; (2) gained packaging flexibility; (3) maintained the exclusive right to carry out-of-market games (Sunday



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Ticket); and (4) maintained the nonexclusive right to carry programming that features year-round, 24-hour football programming (the NFL Network) through the end of the 2014 season. Op. 27, ¶ 74; Tr. 379; Goodell Direct Test. 15. The NFL gained the immediate right to distribute “look-ins” of Sunday Ticket games as part of its Red Zone channel. Op. 27, ¶ 74; Tr. 381. DirecTV agreed to pay an increased average rights fee for 2011 through 2014. The NFL did not seek an increase in rights fees for the 2009 and 2010 seasons, and those fees remained unchanged. Op. 26, ¶ 62; Goodell Direct Test. 7.

## B. CBS & FOX

\*3 The NFL's contracts with CBS and FOX were to expire at the end of the 2011 season. Under the previous contracts, CBS and FOX had to pay rights fees in the event of a work stoppage. The NFL and the networks would then negotiate a refund and, if necessary, resolve disputes through arbitration. If refunds were due, the NFL had to repay fees for the first three cancelled games during the affected season, with the remainder due the following season. If a work stoppage occurred in 2011, the final year of the contract, the NFL had to repay CBS and FOX that same year. The NFL began simultaneous negotiations with CBS and FOX in April 2009.

The NFL and CBS and FOX, respectively, extended the contracts through the 2013 season. Under the extended contracts, the new work-stoppage provision: (1) eliminates the requirement that the NFL repay rights fees attributable to the first three lost games in the affected season; (2) allows the NFL to request less than the full rights fee; and (3) allows the NFL to repay the funds, plus money-market interest, over the term of the contract. Op. 32, ¶ 126. If an entire season is cancelled, the contracts extend for an additional season. *Id.* ¶ 127. Initially, FOX expressed reluctance to pay rights fees during a work stoppage. Goodell Direct Test. 19. The NFL considered opposition to the work-stoppage provision a “deal breaker[.]” Ex. 163.

CBS and FOX gained highlight rights, streaming rights and advertising flexibility for the 2009-2010 seasons. *See* Op. 30, ¶¶ 106, 107-08, 119; Goodell Direct Test. 21; Rolapp Direct Test. 11. The NFL gained the immediate right to distribute “look-ins” of CBS and FOX games for its Red Zone channel and the right to distribute highlights through its wireless pro-

vider. *See* Op. 30, ¶ 103; Rolapp Direct Test. 11. CBS and Fox agreed to pay increased rights fees for the 2012 and 2013 seasons. The NFL did not seek increased rights fees for the 2009, 2010 and 2011 seasons, and they remained unchanged. CBS, FOX and the NFL approved the respective contract extensions in May 2009.

## C. NBC

The NFL's broadcast contract with NBC was to expire at the end of the 2011 season. The previous contract contained a work-stoppage provision identical to the provisions in the previous CBS and FOX contracts. The NFL and NBC began negotiations in March 2009.

The NFL extended NBC's contract through the 2013 season. Under the extended contract, the new work-stoppage provision: (1) eliminates the requirement that the NFL repay rights fees attributable to the first three lost games in the affected season; (2) allows the NFL to request less than the full rights fee; and (3) allows the NFL to repay the funds, plus money-market interest, over the term of the contract. Op. 39, ¶ 190; Goodell Direct Test. 21, 24. If an entire season is cancelled, the contract extends for one year with the right to broadcast the Super Bowl that year. Op. 39, ¶ 191; Goodell Direct Test. 24.

\*4 In extension negotiations, NBC felt that the NFL was “hosing” it by its rights fees demand. Op. 39, ¶ 185; Tr. 1339. To “bridg[e] the gap,” the NFL agreed to award NBC an additional regular-season game for the 2010-2013 seasons. Op. 38, ¶ 181; Tr. 1048-1050, 1339. The NFL did not seek additional rights fees for the 2009, 2010 and 2011 seasons, and they remained unchanged. NBC agreed to pay increased rights fees for the 2012 and 2013 seasons.

NBC gained limited digital and advertising rights for the 2009-2010 seasons. The NFL gained the immediate right to stream Sunday Night Football via its wireless partner and certain “lookin” rights. The NFL and NBC approved the contract extension in May 2010.

## D. ESPN

The NFL's contract with ESPN for Monday Night Football was to expire in 2013. This contract was not extended, but the work-stoppage provision was amended. Op. 40, ¶ 194; *id.* at 41, ¶¶ 204-05; Goodell

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Direct Test. 25-26. The previous contract contained a work-stoppage provision similar to the provisions in the previous CBS, FOX and NBC contracts, except that the NFL could be required to repay damages incurred by ESPN due to lost subscription fees. ESPN wanted to obtain additional digital rights from the NFL. Op. 40, ¶ 195. The NFL and ESPN negotiated digital rights and a new work-stoppage provision in fall 2009. Op. 40, ¶¶ 198-200; Goodell Direct Test. 25.

In the event of a cancelled season, the new work-stoppage provision provides that: (1) ESPN would, at the NFL's discretion, pay up to the full rights fee; (2) a credit for the first three games of the season would be applied the same year; (3) the NFL may request less than the full rights fee; and (4) the NFL would repay the funds, with LIBOR interest plus 100 basis points, over the term of the contract. Op. 42, ¶¶ 214-15; Tr. 302-03. If an entire season is cancelled, the contract extends for an additional season. Op. 42, ¶ 213; Rolapp Direct Test. 17. The NFL is not liable to repay more than ESPN's yearly rights fee.

ESPN gained (1) the right to use NFL footage in linear distribution of regular programming across digital platforms (excluding the right to distribute live Monday Night Football wirelessly); (2) the right to stream live Monday Night Football highlights on its website; (3) the right to show game highlights online; (4) incremental international rights; and (5) broad wireless rights. Op. 40, ¶ 199; Rolapp Direct Test. 16-17. The NFL gained the right to distribute in-progress highlights of ESPN's Monday Night Football game on NFL.com and wireless devices.

ESPN agreed to pay rights fees for July 2010 through July 2014. Op. 40, ¶ 198; Goodell Direct Test. 25. ESPN requested that the fee not be payable in the event of a work stoppage, but the NFL rejected the request. Goodell Direct Test. 25. The NFL stated that the digital deal and the work-stoppage provisions were "linked." Op. 41, ¶ 208; Tr. 889-90. To secure ESPN's agreement to the work-stoppage provision, the NFL granted the right to a Monday Night Football "simulcast" via the wireless partner. Op. 41, ¶ 209; Tr. 891-92.

#### **E. Comcast & Verizon**

\*5 In 2008, the NFL was engaged in litigation with cable provider Comcast over limited carriage of the NFL Network. Op. 34, ¶ 141; Goodell Direct Test.

12. After securing contract extensions with CBS and Fox, the NFL concluded a carriage agreement with Comcast, whereby Comcast agreed to carry the NFL Network on an expanded digital tier, leading to an 8-million subscriber increase in distribution. Op. 34, ¶¶ 1447-48; *id.* at 35, ¶ 150; Goodell Direct Test. 22; Tr. 1038. As a result, the NFL Network revenue increased substantially from 2008 to 2009. Op. 35, ¶ 150; Siclare Direct Test. 14.

In February 2010, Verizon Wireless (Verizon) became the NFL's wireless partner. Op. 43, ¶ 220; Rolapp Direct Test. 15. Verizon agreed to pay higher fees than the NFL's previous wireless partner, resulting in large increases in direct and indirect value. Op. 43, ¶¶ 223, 225; Rolapp Direct Test. 15. Access to the NFL's Red Zone channel, Sunday night football streaming, in-progress highlights, and post-season live audio helped the Verizon deal move forward. Op. 43, ¶ 228; Rolapp Direct Test. 15-16. In the event of a work stoppage, Verizon is obligated to pay a non-refundable rights fee. Op. 44, ¶ 230; Rolapp Direct Test. 3.

In total, the NFL negotiated access to over \$4 billion in rights fees in 2011 if it locks out the Players. Of that sum, it has no obligation to repay \$421 million to the broadcasters.

#### **III. Present Action**

On June 9, 2010, the Players sought a declaration that the NFL violated Article X, § 1(a)(i) and Article XIX, § 6 of the SSA when it extended and renegotiated broadcast contracts without satisfying its duty to maximize total revenues in SSA years 2009 and 2010, which would inure to the benefit of both the Players and the NFL. The special master held a trial on January 4-7 and 13, 2011. On February 1, 2011, the special master found that the NFL violated Article X, § 1(a)(i) when it granted NBC an additional regularseason game in the 2010 season and granted ESPN an additional right in the 2010 season in exchange for an amended work-stoppage provision. Op. 46, ¶¶ 15-16. The special master granted the Players \$6.9 million in damages for the NBC violation, and determined that the Players had not met their burden of demonstrating damages with respect to the ESPN violation. Op. 47-48. The special master found that the NFL did not otherwise breach the SSA. The Players objected in part to the special master's opinion. The court now considers the objection.



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## DISCUSSION

[\[1\]\[2\]\[3\]\[4\]\[5\]](#) On appeal, the special master's conclusions of law are reviewed de novo and factual findings are reviewed under the clearly erroneous standard. See *White v. Nat'l Football League (Rob Moore)*, 88 F.Supp.2d 993, 995 (D.Minn.2000); see also *Fed.R.Civ.P. 53(f)(3)(A)-(4)* (factual findings reviewed for clear error and legal conclusions reviewed de novo). New York law governs interpretation of the SSA. As the court has previously stated:

\*6 Under New York law, the terms of a contract must be construed so as to give effect to the intent of the parties as indicated by the language of the contract. The objective in any question of the interpretation of a written contract, of course, is to determine what is the intention of the parties as derived from the language employed. The court should also give the words in a contract their plain and ordinary meaning unless the context mandates a different interpretation.

See *White v. Nat'l Football League (30% Rule)*, 899 F.Supp. 410, 414 (D.Minn.1995). Further, the court must give effect and meaning to each term of the contract, making every reasonable effort to harmonize all of its terms. See *Reda v. Eastman Kodak Co.*, 233 A.D.2d 914, 649 N.Y.S.2d 555, 557 (N.Y.App.Div.1996). The court must also interpret the contract so as to effectuate, not nullify, its primary purpose. See *id.* Here, the primary purpose of the SSA was to settle numerous labor and financial disputes between the Players and the NFL, and to secure revenue for their mutual benefit. The SSA and the CBA have been amended several times to continue labor harmony between the parties.

### I. Alleged SSA Violations

Article X, § 1(a)(i) of the SSA provides that:

The NFL and each NFL team shall in good faith act and use their best efforts, consistent with sound business judgment, so as to maximize Total Revenues for each playing season during the term of this Agreement...

SSA Art. X, § 1(a)(i). The SSA defines total revenues as:

“Total Revenues” (“TR”) means the aggregate revenues received or to be received on an accrual

basis, for or with respect to a League Year during the term of this Agreement, by the NFL and all NFL Teams (and their designees), from all sources, whether known or unknown, derived from, relating to or arising out of the performance of players in NFL football games....

*Id.*

The Players argue that the special master erred by concluding that the NFL did not breach the SSA, finding that the good-faith requirement adds nothing to the SSA, erroneously interpreting “sound business judgment” and total revenues, and declining to issue an injunction. The Players “bear the burden of demonstrating by a clear preponderance of the evidence that the challenged conduct was in violation of Article X.” SSA Art. XV, § 3.

### A. Consistent with Sound Business Judgment

The court first considers the meaning of the words “consistent with sound business judgment” because this language is essential to interpreting the meaning of “good faith” and “best efforts” in Article X. The special master found that “consistent with sound business judgment” qualifies the duty to act in good faith and use best efforts to maximize total revenues, thereby rejecting the Players' argument that it imposes an additional obligation. Op. 14.

The language of § 1(a)(i) cannot be construed by looking at each word in isolation. See *Dore v. La Pierre*, 226 N.Y.S.2d 949, 952 (N.Y.Sup.Ct.1962) (“In interpreting a contract, particular words should not be considered as isolated from the context.”). The court looks to the entire sentence and the words surrounding the phrase for guidance. See *Popkin v. Sec. Mut. Ins. Co. of N.Y.*, 48 A.D.2d 46, 367 N.Y.S.2d 492, 495 (N.Y.App.Div.1975). In this case, applying the principle of *noscitur a sociis* and considering punctuation and grammatical structure, the court agrees with the special master that “consistent with sound business judgment” qualifies the duties to act in good faith and use best efforts.

\*7 The special master erred, however, in his application and analysis of “consistent with sound business judgment.” He reasoned that “it would be absurd and commercially unreasonable” to allow the Players to substitute their own business judgment for that of the NFL, Op. 13-14, because he relied on cases

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that interpret the business-judgment rule as it applies to fiduciary duties of corporate directors. See *In re Lipper Holdings, LLC*, 1 A.D.3d 170, 766 N.Y.S.2d 561, 562 (N.Y.App.Div.2003) (reviewing limited partnership agreement); *Auerbach v. Bennett*, 47 N.Y.2d 619, 629-30, 419 N.Y.S.2d 920, 393 N.E.2d 994 (N.Y.1979) (reviewing corporate action). The rationale for the business-judgment rule does not apply here. In a corporate context, the business-judgment rule exists to insulate corporate directors from personal liability when they take good-faith risks on behalf of a corporation. The rule protects directors from actions by stockholders (owners) and others. Unlike corporate directors and stockholders, whose interests generally align, the interests of management (owners) and labor are adversarial. Therefore, in the SSA, the words “sound business judgment” do not grant the same discretion enjoyed by corporate directors.

The special master should have considered the intent of the parties and the context from which this language arose. The NFL and Players formed the SSA to avoid the consequences of the jury verdict finding the NFL in violation of antitrust law. The level of discretion allowed by the SSA is constrained by the context and hard bargaining which establish the intent of the parties and the meaning of that language.

[6] The court must construe the SSA in light of the language agreed to by the parties and New York law. The phrase “consistent with sound business judgment” qualifies, and is qualified by, the SSA requirement that the parties act in good faith and use best efforts to maximize total revenues for the joint benefit of the Players and the NFL. Indeed, “consistent with sound business judgment” allows the NFL to consider its long-term interests provided it does so while acting in good faith and using best efforts to maximize total revenues for each SSA playing season. Accord *Dist. Lodge 26 of Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. United Techs. Corp.*, 689 F.Supp.2d 219, 242 (D.Conn.2010) (considering contract's “every reasonable effort” provision).<sup>FN3</sup> “Sound business judgment” does not allow the NFL to pursue its own interests at the expense of maximizing total revenues during the SSA. Therefore, the special master committed legal error in his interpretation of “sound business judgment,” which effectively nullified pertinent terms of the SSA.

## B. Good Faith

[7] Good faith and best efforts are distinct obligations:

Good faith is a standard that has honesty and fairness at its core and that is imposed on every party to a contract. Best efforts is a standard that has diligence at its essence and is imposed on those contracting parties that have undertaken such performance. The two standards are distinct, and that of best efforts is the more exacting....

\*8 2 E. Allan Farnsworth, *Farnsworth on Contracts* § 7.17c (3d ed.2004) (citation omitted); see also *Grossman v. Melinda Lowell, Attorney at Law, P.A.*, 703 F.Supp. 282, 284 (S.D.N.Y.1989) (best efforts imposes additional obligation); *Ashokan Water Servs., Inc. v. New Start, LLC*, 11 Misc.3d 686, 807 N.Y.S.2d 550, 556 (N.Y.Civ.Ct.2006) (“A best efforts requirement must be reconciled with other clauses in the contract to the extent possible, not used as a basis for negating them.”) (citation and internal quotation marks omitted). The special master correctly stated that best efforts imposes a “higher obligation” than good faith. Op. 12-13 (citing *Ashokan Water Servs.*, 807 N.Y.S.2d at 555); see also *Kroboth v. Brent*, 215 A.D.2d 813, 625 N.Y.S.2d 748, 814 (N.Y.App.Div.1995) (“ ‘best efforts’ requires more than ‘good faith’ ”). However, the special master then declined to analyze the SSA's good faith obligation because he reasoned that “under New York law, any breach of the duty of good faith will also constitute a failure to exert best efforts, although the converse is not always true.” Op. 12-13. The failure to separately analyze good faith constitutes legal error.

[8] Good faith “connotes an actual state of mind ... motivated by proper motive” and “encompasses, among other things, an honest belief, the absence of malice and the absence of a design to defraud or to seek an unconscionable advantage.” *Ashokan Water Servs.*, 807 N.Y.S.2d at 554 (citation and internal quotation marks omitted). In addition, good faith requires that “neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.” 511 W. 232nd Owners Corp. v. Jennifer Realty Co., 98 N.Y.2d 144, 746 N.Y.S.2d 131, 773 N.E.2d 496, 500 (N.Y.2002) (citation omitted).

[9] Broadcast contracts are an enormous source of

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shared revenue for the Players and the NFL. Under the SSA, the Players rely on the NFL to negotiate these contracts on behalf of *both* the NFL's own interests *and* the interests of the Players. In May 2008, the NFL opted out of the final two years of the CBA, and recognized that a lockout in 2011 would help achieve a more favorable CBA. Thereafter, the NFL sought to renegotiate broadcast contracts to ensure revenue for itself in the event of a lockout. *See, e.g.*, Exs. 98, 102, 110, 131, 228. The record shows that the NFL undertook contract renegotiations to advance its own interests and harm the interests of the players.<sup>FN4</sup> The NFL argues that the SSA does not require it to act in good faith in 2011 or subsequent seasons, that lockouts are recognized bargaining tools and that it is entitled to maximize its post-SSA leverage. The court agrees.<sup>FN5</sup> However, under the terms of the SSA, the NFL is not entitled to obtain leverage by renegotiating shared revenue contracts, during the SSA, to generate post-SSA leverage and revenue to advance its own interests and harm the interests of the Players. Here, the NFL renegotiated the broadcast contracts to benefit its exclusive interest at the expense of, and contrary to, the joint interests of the NFL and the Players. This conduct constitutes “a design ... to seek an unconscionable advantage” and is inconsistent with good faith. *See Ashokan Water Servs.*, 807 N.Y.S.2d at 554 (citation and internal quotation marks omitted).

\*9 [10] The NFL next argues that any injury to the Players' interests will occur after the termination of the SSA. The court disagrees. As a result of the broadcast contract renegotiations, the NFL demanded and received “material[ly]” different, immediately effective work-stoppage agreements. *See, e.g.*, Bornstein Dep. 168-69. Moreover, at least one broadcaster would have considered paying more in the 2009-2010 seasons “to have [the work-stoppage provision] go away,” Tr. 410, indicating that the NFL's inflexibility with respect to lockout provisions resulted in less total revenues for the 2009-2010 seasons. The NFL also argues that the broadcast contracts were renegotiated to avoid defaulting under certain loan covenants. That fact alone substantiates value to the NFL without a corresponding increase in total revenues. Moreover, the value of the renegotiated contracts far exceeds the amount needed to satisfy loan covenants, and the DirecTV contract creates a financial incentive to institute a lockout. Further, the decision to lockout the Players is entirely within the control of the NFL, thereby rendering a debt default also entirely within its control. Lastly, the debt covenants are of the NFL's

own making. The risk of debt default brought about by a lockout does not excuse or justify a breach of the SSA. Therefore, construing the good faith obligation as modified by “consistent with sound business judgment,” the NFL breached the SSA by failing to act in good faith so as to maximize total revenues for each SSA playing season.<sup>FN6</sup> The special master committed legal error by failing to properly interpret the good faith provision and by finding no breach.<sup>FN7</sup>

### C. Best Efforts

[11][12] “There is, of course, no more significant context for a ‘best efforts’ obligation than the agreement of which it is a part or is made so.” *Ashokan Water Servs.*, 807 N.Y.S.2d at 556. Best efforts “necessarily takes its meaning from the circumstances.” *Bloor v. Falstaff Brewing Corp.*, 454 F.Supp. 258, 266 (S.D.N.Y.1978) (citation and internal quotation marks omitted). Under New York law “a best efforts clause imposes an obligation to act with good faith in light of one's own capabilities.” *Bloor v. Falstaff Brewing Corp.*, 601 F.2d 609, 613 n. 7 (2d Cir.1979) (internal quotation marks omitted). Capability “is a far broader term than financial ability” and “must take into account [the promisor's] abilities and opportunities which it created or faced.” *Bloor*, 454 F.Supp. at 267 (internal quotation marks omitted).

[13][14][15] A party obligated to give best efforts maintains the “right to give reasonable consideration to its own interests,” *Bloor*, 601 F.2d at 614, and is allowed a “reasonable variance ... in the exercise of sound business judgment,” *Bloor*, 454 F.Supp. at 269. Although a best-efforts provision does “not require [a promisor] to spend itself into bankruptcy,” it does prohibit a promisor from “emphasizing profit *uber alles* without fair consideration of the effect” on the promisee. *Bloor*, 601 F.2d at 614. A best-efforts clause requires the promisor to do more than treat a promisee's interest “as well as its own.” *Id.*

\*10 The special master failed to analyze the total capabilities and the market power of the NFL because he found it “difficult to believe that” the parties intended best efforts to “require the NFL to seek additional consideration for rights already under contract.” Op. 15. This is another example of importing corporate law to a sui generis agreement that was forged at the anvil of litigation, threatened repercussions and hard bargaining.<sup>FN8</sup>

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Moreover, although the rights fees for the 2009-2010 seasons were already agreed upon, the renegotiated contracts materially changed almost every other aspect of the previous contracts. Further, the NFL gave digital rights in 2009 and 2010 without incremental payments to convince two broadcasters to agree to work-stoppage provisions. See Op. 46, ¶ 16; Exs. 160, 163, 170; Tr. 866-77. The NFL gave digital and other rights in 2009 and 2010 without incremental payments to convince other broadcasters to pay increased rights fees in 2012 and subsequent seasons. See Op. 46, ¶ 15; Ex. 167, at 00003736. The NFL made no effort to maximize total revenues in 2009-2010 in exchange for those rights.

The court agrees with the special master that the best-efforts clause does not require the NFL to “constantly badger[ ] its broadcast ... partners for more money” without offering anything in return. Op. 15. However, the SSA requires the NFL to use best efforts to maximize total revenues for the 2009-2010 seasons when it enters into widespread and lucrative contract renegotiations.<sup>FN9</sup> As the special master noted, the law disfavors “those who come to regret deals they have made and seek to switch the locus of risk ex post.” Op. 15. However, by actively renegotiating broadcast contracts to ensure favorable changes for itself and disadvantage the Players, the NFL did precisely that. As a result, the failure of the NFL to seek revenue for modifications to the broadcast contracts in the 2009-2010 seasons is inconsistent with best efforts.

In applying the total-capabilities analysis, the court finds that the NFL's capabilities are formidable and extensive. “Capability is a far broader term than financial ability” and includes the NFL's market power and “the opportunities which it created or faced.” *Bloor*, 454 F.Supp. at 267. Along with favorable lockout protection and digital rights agreements, the NFL secured annual rights fees increases large enough to be considered an “enormous accomplishment.” Goodell Direct Test. 10, 20-21, 24; see Op. 22, ¶¶ 25-26. According to one network executive, “[y]ou know you've reached the absolute limits of your power as a major network ... [when] the commissioner of the National Football League calls you ... and says ... [w]e're done, pay this or move on ... [the NFL has] market power like no one else, and at a certain point in time, they'll tell you to pack it up or pay the piper.” Tr. 1346. The record indicates that, using its market power, the NFL had substantial capability to maxim-

ize total revenues for the 2009 and 2010 playing seasons when it entered into broadcast contract renegotiations.

\*11 [16][17] To the extent that “consistent with sound business judgment” modifies the best efforts requirement, the NFL may consider its long-term interests but not at the expense of maximizing total revenues for each SSA season for the joint benefit of itself and the Players. A promisor's consideration of its own interests becomes unreasonable when it is manifestly harmful to the party to which it has obligations. See *Van Valkenburgh, Nooger & Neville, Inc. v. Hayden Pub. Co.*, 30 N.Y.2d 34, 330 N.Y.S.2d 329, 281 N.E.2d 142, 145 (N.Y.1972); accord *Dist. Lodge 26*, 689 F.Supp.2d at 242. “Consistent with sound business judgment” does not permit the NFL to enhance its long-term interests at the expense of its present obligations.<sup>FN10</sup> The record shows, however, that the NFL did just that. In considering broadcast contract renegotiations, the NFL consistently characterized gaining control over labor as a short-term objective and maximizing revenue as a long-term objective. See, e.g., Exs. 142, 201, 228. The NFL used best efforts to advance its CBA negotiating position at the expense of using best efforts to maximize total revenues for the joint benefit of the NFL and the Players for each SSA playing season. Moreover, at least three networks expressed some degree of resistance to the lockout payments. As it renegotiated the contracts, the NFL characterized network opposition to lockout provisions to be a deal breaker and “clearly a deal” it would not consider. Ex. 163. To the contrary, the evidence shows that maximizing total revenues for SSA seasons was, at best, a minor consideration in contract renegotiations. Therefore, the court finds that the NFL breached Article X, § 1(a)(i) in extending or renegotiating its broadcast contracts. Accordingly, the special master committed legal error in failing to properly interpret the SSA's requirement to act in good faith and use best efforts, consistent with sound business judgment, to maximize total revenues for each SSA playing season, and thus finding no breach.

## II. Remedies

[18][19] In his “recommendations of relief,” the special master did not consider injunctive relief. See Op. 46-48. The special master's failure to consider injunctive relief constitutes legal error. The court considers four factors in determining whether an injunction should issue: (1) the threat of irreparable



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harm to the movant in the absence of relief, (2) the balance between that harm and the harm that the relief may cause the non-moving party, (3) the likelihood of the movant's ultimate success on the merits and (4) the public interest. *Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir.1981) (en banc).<sup>FN1</sup> Irreparable harm occurs when a party has no adequate remedy at law because its injuries cannot be fully compensated through money damages. See *Gen. Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319 (8th Cir.2009). The issue of the extent to which, and whether, money damages can compensate the Players has not been fully briefed or argued before the court. Therefore, the court determines that additional briefing and a hearing concerning remedies are warranted before it issues its final order.

### CONCLUSION

**\*12 IT IS HEREBY ORDERED** that:

1. The court adopts the special master's "recommendations for relief" paragraphs 1 and 2, see Op. 47, as there is no objection to these findings and recommendations before the court;

2. The court overrules the special master's findings as to the NFL's breach of the SSA relating to its contracts with DirecTV, CBS, FOX, NBC and ESPN, and holds that the NFL breached the SSA as to those contracts; and

3. The court orders that a hearing be held concerning relief to be granted to the Players arising from the NFL's breach of the SSA. The hearing shall consider the award of both money damages and equitable relief, including injunction. District of Minnesota Local Rule 7.1(b) will dictate briefing schedules and related procedures.

<sup>FN1</sup>. The parties amended the SSA in 1993, 1996, 2002 and 2006.

<sup>FN2</sup>. "Ex." refers to joint trial exhibits submitted at the hearing before the special master. "Tr." refers to the transcript of the hearing before the special master. "Direct Test." refers to direct testimony declarations. "Op." refers to the special master's February 1, 2011, opinion.

<sup>FN3</sup>. "New York courts use the term reasonable efforts interchangeably with best efforts." *Monex Fin. Servs. Ltd. v. Nova Info. Sys., Inc.*, 657 F.Supp.2d 447, 454 (S.D.N.Y.2009) (citation and internal quotation marks omitted).

<sup>FN4</sup>. The NFL's "Decision Tree" is one glaring example of the NFL's intent and consideration of its own interests above the interests of the Players. See Ex. 216, at 00081969. Moving forward with a deal depended on the answer to the question: "Does Deal Completion Advance CBA Negotiating Dynamics?" If yes, the NFL should "Do Deal Now"; if no, the NFL should "Deal When Opportune." *Id.*

<sup>FN5</sup>. The court notes, however, that a lock-out is usually an economic weapon employed in response to a strike. See 48B Am.Jur.2d *Labor & Labor Relations* § 2652 ("A lockout is a legitimate move by an employer in the face of a strike....").

<sup>FN6</sup>. The NFL rankles under the restriction to its enormous market power imposed by the *White* settlement after the jury in *McNeil* found that the NFL had abused its power in unlawful restraint of trade. The facts underlying this proceeding illustrate another abuse of that market power wherein various broadcasters of NFL games were "convinced" to grant lucrative work-stoppage payments to the NFL if the NFL decides to institute a lockout. Typical work-stoppage provisions anticipate a strike by players, not a work stoppage created by the NFL itself. Whether the contract provisions insuring these payments might ultimately be deemed unenforceable because of their potentially collusive nature is not an issue before this court, but the court does consider the abuse of the NFL's market power when finding that it did not act in good faith to benefit both itself and the Players, as required by the SSA.

<sup>FN7</sup>. As a result, the court need not analyze whether the NFL also violated SSA Article XIX, § 6.

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[FN8](#). The special master noted that “a signed writing is sufficient to overcome the traditional refusal to enforce a promise to pay more in the absence of additional consideration.” Op. 15. The special master erred in relying on the preexisting duty rule. The rule does not apply where, as here, the parties do, or promise to do, something in addition to their preexisting duties. *See, e.g., Care Travel Co., Ltd. v. Pan Am. World Airways, Inc.*, [944 F.2d 983, 990 \(2nd Cir.1991\)](#) (airline promised that it would not terminate contract within 90 days, even though it had right to do so, and agency agreed to operate as nonexclusive agent).

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[FN9](#). The court rejects the argument that such an interpretation hypothetically requires the NFL to sell tickets or sponsorship rights for a future season in 2009 or 2010. Unlike the hypothetical scenario, here the NFL renegotiated contracts for years within the term of the SSA and obtained immediate benefits from those renegotiations.

[FN10](#). The NFL urges the court to follow an unpublished Fourth Circuit case, which held that the duty to use best efforts “consistent with its overall business objectives” allows the defendant “to act in accordance with its own objectives if they conflict with those of [plaintiff].” *Mylan Pharm., Inc. v. Am. Cyanamid Co.*, Nos. 94-1502, 94-1472, 1995 WL 86437, at \*6 (4th Cir.1995). This unpublished case is not persuasive or controlling authority. *See* 8th Cir. R. 32.1A; 2d Cir. R. 32.1. Moreover, it provides no analysis or substantive reasoning for its interpretation.

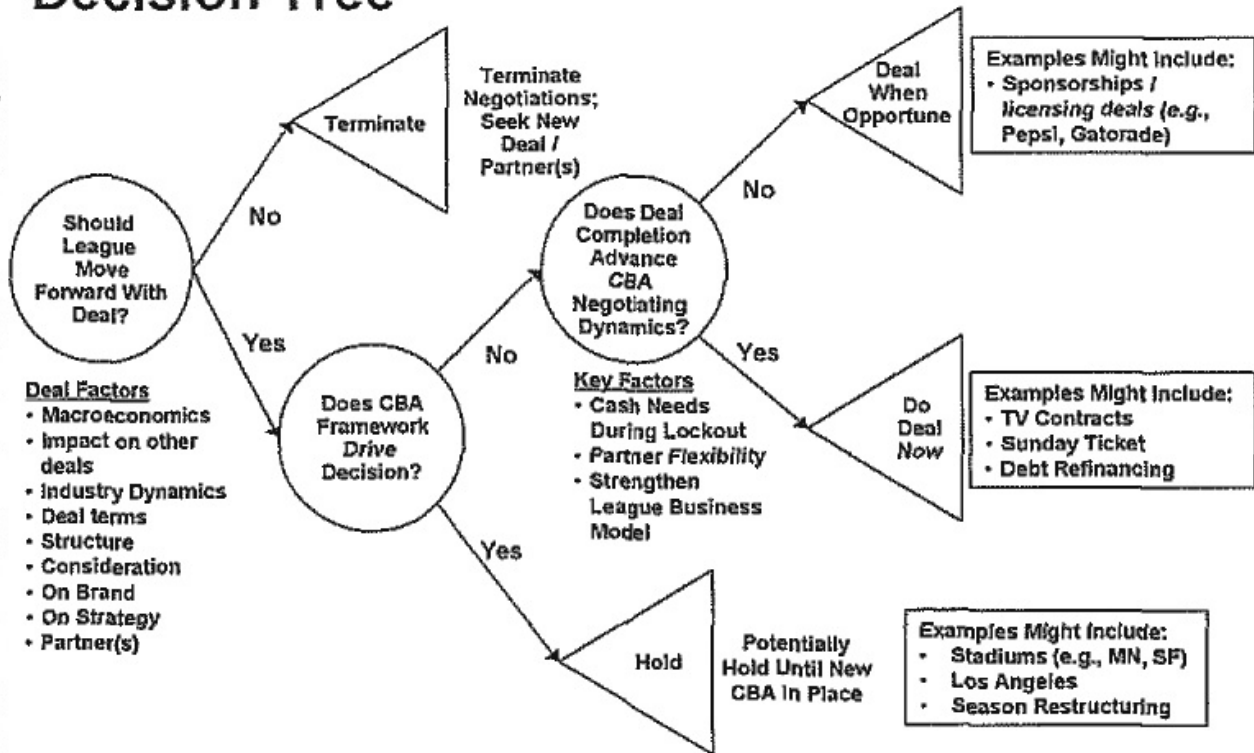
[FN11](#). The factors are the same for a permanent injunction except that the movant must show actual success on the merits. *See Vonage Holdings Corp. v. Minn. Pub. Util. Comm'n.*, [290 F.Supp.2d 993, 996 \(D.Minn.2003\)](#) (citing *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)).

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# EXHIBIT B



# Decision Tree

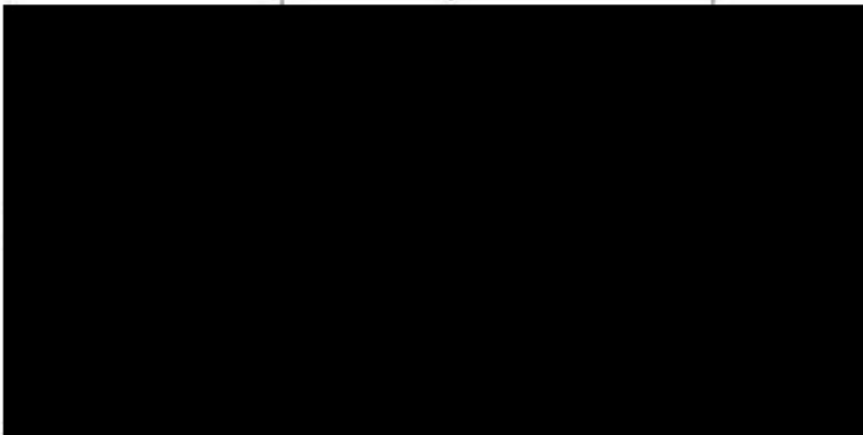
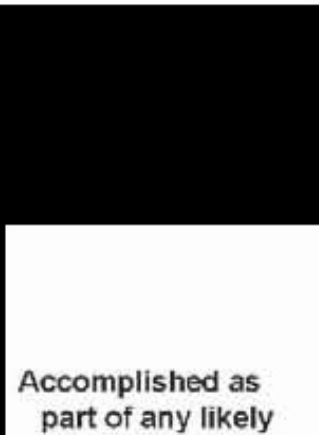


NATIONAL FOOTBALL LEAGUE

# EXHIBIT C

# Key Current NFL Media Objectives



Requirements	Assessment
	
<p data-bbox="207 709 389 877"><b>Greater Leverage in Upcoming Labor Negotiations</b></p> <ul data-bbox="451 730 896 856" style="list-style-type: none"><li>▪ Secure access to revenue in 2011 if a work stoppage occurs</li><li>▪ Likely involves current partners and deals beyond 2011</li></ul>	<p data-bbox="1036 604 1292 772">Accomplished as part of any likely extension... optimal timing ASAP</p>

**What alternatives allow NFL to accomplish all three objectives?**

# EXHIBIT D

# Current Television Packages

## Short Term Extension Alternative



Concept

- Two-year extension of current Sunday packages

Rationale

- Shifts leverage in labor negotiations away from Union...ability to pull money into a Work Stoppage year

Is this structure attractive to NFL? Should it be explored further?

# EXHIBIT E

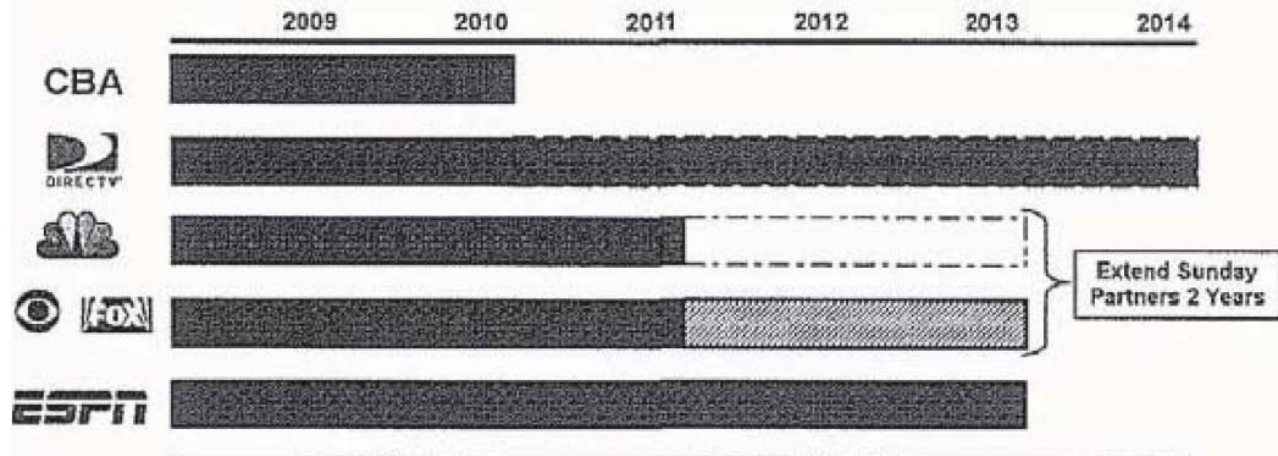
# Short Term Extension: Concept Overview



Rationale

## Labor

- Current structure of broadcast contracts prevent NFL from collecting payments if work stoppage in 2011... no deal in 2012 for "rebate"
- Leverage in negotiations...no "hold up" value for union





# EXHIBIT F

August 6, 2009

**VIA E-MAIL AND FIRST CLASS MAIL**

Jeffrey Pash, Esq.  
National Football League  
280 Park Avenue  
New York, NY 10017



**NFL PLAYERS**  
ASSOCIATION  
LEGAL DEPARTMENT

Dear Jeff:

Before responding to your letter of July 10, 2009 regarding our request for certain information relevant to collective bargaining, I took some time to research our past dealings regarding the NFLPA's right to review television contracts. As I had recalled, we requested copies of the television contracts in preparation for bargaining back in 1981, and when the league refused to provide them, we filed an unfair labor practice charge in Region 2 of the National Labor Relations Board. That charge resulted in the filing of a Complaint by the NLRB against the NFL Management Council on April 19, 1982, saying that the league's refusal to allow the NFLPA to review television contracts was a violation of Section 8(a)(1) and (5) of the National Labor Relations Act.

After an evidentiary hearing on the Complaint, Judge Julius Cohn ruled in favor of the NFLPA on September 27, 1982, and ordered the NFL, among other things, to cease and desist from failing and refusing to furnish the non-monetary terms of the TV contracts to the union. That NLRB case was settled as part of an NLRB Settlement Agreement signed on December 11, 1982. That Agreement provided in Paragraph 1.a. (7) and (8) that the NFL was to make available for the NFLPA's inspection the non-financial terms of all media contracts. A copy of the Agreement is enclosed for your review.

Against this backdrop, it would seem that your current failure or refusal to share at least the non-financial terms of the television contracts with us violates legal precedent. It makes no difference, as you state on page 3 of your letter, that "The new television agreements, which you request in your letter, cover seasons not included within the current agreement." The contracts we sought in 1982 also covered seasons subsequent to the term of the then current CBA, and the same was true of the TV contracts we requested to see when we returned to bargaining in 1987.

Accordingly, I trust that you will reconsider your refusal to provide the NFLPA with copies of the new television contracts with CBS, NBC, and Direct TV. The League and the Clubs committed long ago to provide non-financial terms, and in view of the obvious relevance of financial terms, and the stated willingness in your letter to share the "expected revenues from those contracts when the negotiations focus on overall revenue," it seems the financial terms should be provided as well.

In addition, I remind you of our request for the audited financials of the clubs which DeMaurice made in his May 18, 2009 letter to Roger. Although you declined to provide that information in your letter of June 1, 2009, you did say at the end of our first bargaining session

Mr. Jeff Pash  
August 6, 2009  
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on June 3 in New York that we deserved to have "more specifics" on why the clubs needed concessions from the NFLPA in the economic area. That view was essentially repeated near the end of our July 14 session in Washington when Greg Levy stated that your side realized that you needed to give us more information on the "specific areas" in which clubs have experienced increased costs in recent years. This was after we stated that we needed to see club financials in order to be persuaded that there is a financial problem before we can begin discussing any solutions. As of this date, however, no financial information has been provided.

As a further matter, you and other members of your committee have told us that not all of the owners' objections to the current CBA are "data driven" or for that matter, rational. For example, we were told at the June 3 meeting that our side "should not assume that the owners' decision to terminate was "all rational or numbers-based," and that "each owner has his own reasons."

To make any real progress, we therefore believe that we need to know more about the owners' reasons for terminating, whether they be rational or not. We need to see specific economic information which we can use to evaluate the need for change, and we need to understand, to the best of our ability, what each owner's reasons are for discontinuing the partnership which has performed so well for both of us since its inception in 1993. None of that information has been forthcoming so far, but we trust that will not remain the case as we prepare for our next round of talks.

In that respect, DeMaurice has asked me to discuss with you possible dates in either the second or third weeks in August. Please let us know if that time frame fits your committee's schedule. Meanwhile, you will also recall that you agreed that the next meeting will be most productive if you are ready to begin presenting whatever proposals you wish to make on behalf of the owners for changing our current agreement. Since the owners were the parties terminating the existing deal, it is incumbent upon them to come forward and propose what specific changes they are seeking. Frankly, since the termination by the owners was so long ago, we are surprised and cannot understand why we have not yet received any proposal from the owners' side. We hope and trust that this situation will shortly change, as the uncapped year is coming closer, and we urge you to come to the next meeting with some specific proposals that we can evaluate.

Sincerely,



Richard Berthelsen

cc: DeMaurice Smith

# EXHIBIT G



**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

June 7, 2010

**VIA EMAIL AND FIRST CLASS MAIL**

Jeffrey Pash  
National Football League  
280 Park Avenue  
New York, NY 10017

Re: **Schedule of Club Costs for Collective Bargaining**

Dear Jeff:

Since June of last year we have had a total of thirteen bargaining sessions between our two bargaining committees and another series of subcommittee meetings dealing with specific subjects. We have also exchanged numerous written proposals and counter proposals on a variety of subjects, both economic and non-economic. Despite the large number of issues we have discussed, however, I think it is fair to say that the one core issue that has separated us the most has been your demand for an eighteen per cent reduction in the cost of player salaries and benefits.

You have consistently maintained in every one of our meetings that this eighteen per cent shift is necessary, not because of player costs, but instead because of significant increases in the clubs' non-player costs since our current CBA was first negotiated in 1993. You and other members of your committee have stated on numerous occasions that the owners are being "squeezed" (presumably a reference to cash flow) by the current system because their non-player costs have increased so significantly. You have made factual representations, for example, that the owners bear a much higher percentage of stadium and game day costs than they did when the CBA was first agreed to, and that they have had to spend considerably more money in recent years to promote ticket sales and to generate sponsorships. You have cited examples ranging from the Green Bay Packers having to pay for new high definition televisions in their luxury suites to the Dallas Cowboys having to spend money to promote the sale of lottery tickets because of their sponsorship agreement with the Texas Lottery.

In response, we have consistently told you that we needed to have relevant financial information from the clubs' books which would allow us to evaluate these assertions. As you know, under the salary cap system we have had direct access to club and league revenue and player cost information, and the right to audit the books of both the clubs and the League in those two areas on a confidential basis. Unfortunately,

Mr. Jeff Pash  
June 7, 2010  
Page 2

though, the one area of club and league financial information we have not had full access to is the non-player costs, and it is those costs which are at the very heart of the issue which now separates us at the bargaining table.

In one of our sessions last year, you did provide our committee with a one page "Schedule of Costs" which listed cost items in various general categories, including "Direct Costs," "Stadium Rent and Stadium Operating Costs," "Sales and Marketing," etc. for 2007, 2008, and projected costs for the 2012 season. But the listed costs were not broken down by club and were very general in nature. You later provided us with four more pages of general cost items in January of this year entitled "Schedule of Costs, Detail Information," but that schedule only provided subcategories of the same information provided previously for 2007 and 2008. It did not include any breakdown by club, and it did not provide any comparison of those costs to similar costs in any prior year of our CBA term.

It is incumbent upon the NFLPA as the players' bargaining agent to be able to evaluate and verify your assertions about cost increases so that we can properly respond and develop our own counterproposals. With that in mind, the NFLPA has retained the services of a labor economics consulting firm here in Washington to advise us on what is needed. The firm specializes in labor economics and analysis, and it believes that we need to obtain more specific, club-by-club data about the costs you listed in your Schedules.

In particular, we request that you make available those parts of the original books and records of the individual clubs which show the actual expenditures each club has made in the cost categories listed in your schedules (see copy of your schedules attached for your convenience). These original books and records should cover all of the years since 1993, since your assertions at the table have most often referred to 1993 as the comparison point. (For example, in our first session in New York on June 3, 2009 you personally stated that there had been "significant increases in stadium costs" and "other costs" since 1993, and in our session in Washington on November 24, 2009 you stated that there has been a significant "shift from public to private responsibility" for game day and stadium expenses from 1993 to the present.)

To properly evaluate and verify these and other assertions, we feel it is necessary to see the individual club books (or copies of those books) from 1993 and subsequent years which show expenditures in these important areas, and to compare them to the same categories of expenditures in 2008, 2009, and 2010. (It would be preferable to

Mr. Jeff Pash  
June 7, 2010  
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receive this information in electronic form, but we will work with you to make it as convenient as possible if you wish to provide it in some other form.) In turn, we can then see what percentage of all revenues these costs represented in 1993 (and later years) compared to the present. The data you have given us show that these costs, as a percentage of revenue, have remained relatively constant in recent years (17.9% in 2007, 18.3 % in 2008, and 18.1% forecasted for 2012), so a comparison to the earlier years of the CBA would be more meaningful. We would also request that you tell us how the percentage increases in the costs listed on your attached schedules compare to any increases in other non-player costs which are not listed on those schedules.

Of course, if some of the clubs do not have original books and records going back to 1993, we would like to see whatever they have from the earliest years available. Also, if it is instead your position that the cost increases in the areas in question are a more recent phenomena, and that a later year than 1993 is more useful as a comparison point, we request that you provide the requested club records from that year forward.

I look forward to your response to this information request. Please be assured that we will work with you to make the process of providing it as convenient as possible for the NFL and the clubs. This task may be somewhat time-consuming, but we think it is a necessary one in order to advance the bargaining process. In an interview last month, Bob Batterman was quoted as saying that "we are as far apart as [he] could imagine" in our current bargaining. We acknowledge that we are "far apart", but we believe the reason is that we do not have the information requested in this letter. Hopefully we can begin to narrow the gap by your agreeing to provide that information as soon as possible. In making this request, the NFLPA is not superseding our repeated requests for the full audited financials. We continue to believe those audited financials would be an effective way to move forward to an agreement, but we are making this narrower request in hopes of making progress.

Sincerely,



Richard Berthelsen  
General Counsel

cc: DeMaurice Smith  
w/ enclosures



## Schedule of Costs

CONFIDENTIAL - for Collective Bargaining Purposes Only

## EXHIBIT A

(\$ in millions)

	2007 Season		2008 Season		2012P Season	
<u>Direct Costs (not deducted from TR)</u>						
Fulfillment Costs	42.6		47.5		59.5	
Direct Labor	38.8		41.3		51.8	
Cost of Goods Sold	31.4		39.3		49.3	
Printing / Signage / Production	20.9		15.0		18.8	
Rent/Utilities	19.2		24.1		30.1	
Merchandising Direct Costs	18.0		16.7		20.9	
Sales Commissions	10.5		10.6		13.3	
Suite Costs	6.2		7.1		8.9	
Other	9.8	197.4	5.6	207.2	7.0	259.6
<u>Stadium Rent</u>	51.6		56.3		49.4	
<u>Stadium Operating Costs (non D&amp;A)</u>						
Day of Game	84.7		86.4		97.0	
Facility Maint / Repairs	71.7		70.4		74.1	
Stadium related non DOG.	49.2		56.8		109.4	
Practice facility	35.3	292.5	42.4	312.3	41.9	371.8
<u>Sales and Marketing</u>						
Comp. & Benefits/ T&E	104.3		108.6		120.9	
Advertising & Promo	29.8		35.7		29.8	
Credit Card Fees	24.3		28.7		24.0	
Supplies / Shipping	15.2		15.1		14.4	
Barter and other Fulfillment	8.1		8.0		6.5	
Prof. Fees	6.5		7.0		5.6	
Excess Comps.	3.0		9.0		7.6	
Occupancy	2.9		3.1		2.6	
Other	12.9	207.0	15.7	230.8	13.2	224.6
<u>Stadium Debt Service</u>						
Interest Expense	125.0		158.3		201.9	
Principal	64.7	189.7	83.8	242.1	157.2	359.1
<u>Game Travel</u>						
Air Charters / Travel		72.2		86.8		90.9
<u>Post Season Operations</u>		55.0		54.3		63.6
<u>Capital Expenditure (not including stadium construction or major renovation)</u>		262.0		245.0		280.0
<b>Total Costs</b>		1,275.8		1,378.5		1,649.6
<b>Total Revenue ("TR")</b>		7,129.2		7,546.3		9,099.0
<b>Costs as % of Current TR</b>		17.9%		18.3%		18.1%

This schedule is prepared for discussion purposes only, the NFLMC expressly reserves all rights to amend or supplement.

**Schedule Of Costs**

**Detail Information - Direct Costs not Currently Deducted from TR**

(\* in millions)

	2007		2008	
<b><u>Fulfillment Costs - Sponsorship rights fees</u></b>				
Game day Hospitality	13.6		10.2	
Non Game - Sponsor events; trips , etc.	11.0		12.4	
Game day Other	4.1		7.4	
Non Game Day T&E / Hospitality	5.0		4.8	
Non Game Day Promo Events	5.3		6.4	
Other	3.6	42.6	6.3	47.5
<b><u>Direct Labor</u></b>				
Website	4.0		4.2	
Concessions	4.3		8.3	
Parking	4.9		3.8	
Stadium Clubs	0.3		0.6	
Merchandise / Novelties	22.6		21.8	
Other	2.7	38.8	2.6	41.3
<b><u>Cost of Goods Sold (not currently deducted from TR)</u></b>				
Concessions	3.4		8.8	
Parking	2.4		1.3	
Signage	4.9		4.0	
Stadium Clubs	4.8		2.4	
Merchandise / Novelties	9.6		15.7	
Other	6.3	31.4	7.1	39.3
<b><u>Printing / Stadium Signage / Production</u></b>				
Naming Rights	0.3		0.1	
Stadium signage	3.3		2.1	
Merchandise / Novelties	5.9		4.9	
Stadium clubs			0.2	
Production - purchase of time	4.8		4.5	
Website hosting fees	2.1		1.9	
Website Design	0.9		0.6	
Production equip costs	0.4		(0.2)	
Other	3.2	20.9	0.9	15.0

**Schedule Of Costs**  
**Detail Information - Direct Costs not Currently Deducted from TR**  
(in millions)

	2007		2008	
<b><u>Rent / Utilities / Maintenance</u></b>				
<b>Rent</b>				
Concessions	0.4		0.4	
Parking	5.6		6.0	
Stadium clubs	0.2		0.7	
Merchandise / Novelties	<u>8.9</u>	15.1	<u>9.2</u>	16.3
<b>Utilities</b>				
Parking	0.2		0.2	
Merchandise / Novelties	<u>1.4</u>	1.6	<u>0.6</u>	0.8
<b>Maintenance</b>				
Concessions	0.1		-	
Parking	1.1		0.7	
Stadium clubs			0.6	
Other	<u>1.3</u>	2.5	<u>2.9</u>	4.2
<b>Catering</b>				
Concessions	-		0.4	
Stadium clubs	<u>-</u>	-	<u>2.4</u>	2.8
		19.2		24.1
<b><u>Merchandise Direct Costs</u></b>				
Merchandise/Novelties	0.7		0.6	
Online Sales	-		0.9	
Proshops	1.4		2.3	
In-house merchandising	<u>15.9</u>	18.0	<u>12.9</u>	16.7
<b><u>Sales Commissions</u></b>				
Sponsorship	10.7		10.4	
Other	<u>(0.2)</u>	10.5	0.2	10.6
<b><u>Suite Costs</u></b>				
Depreciation	3.1		4.3	
Rent	2.8		1.8	
Interest	-		(0.2)	
Taxes	<u>0.3</u>	6.2	<u>1.2</u>	7.1
<b><u>Other</u></b>				
		<u>9.8</u>		<u>5.6</u>
<b>Total Direct Costs</b>		<b>197.4</b>		<b>207.2</b>

Schedule Of Costs  
 Detail Information - Stadium Rent and Operating Costs  
 (millions)

	2007		2008	
<b>Stadium Rent</b>		51.6		56.3
<b>Stadium Operating Costs</b>				
<b>Day of Game</b>				
Compensation & Benefits	10.0		10.8	
Travel / Meals / Entertainment	5.7		6.4	
Supplies	3.8		4.9	
Building / Facility Rent	4.5		4.3	
Utilities / Communications	3.5		3.4	
Maint. & Repairs	1.0		1.0	
Sanitation	6.6		6.1	
Security	22.0		22.0	
Insurance	0.4		0.4	
Media Relations	1.1		1.5	
Special Events	4.3		1.3	
Outside Labor	10.0		10.6	
Game Entertainment	6.7		8.0	
Other	5.1	84.7	5.7	86.4
<b>Facility / Maint.</b>				
Compensation & Benefits	16.7		15.6	
Travel / Meals / Entertainment	0.1		0.1	
Utilities / Communications	18.3		19.2	
Maint. & Repairs	18.1		19.9	
Supplies	5.6		5.8	
Other	12.9	71.7	9.8	70.4
<b>Stadium Related</b>				
Compensation & Benefits	20.8		23.8	
Travel / Meals / Entertainment	1.2		1.8	
Supplies	3.0		4.3	
Occupancy	24.2	49.2	26.9	56.8
<b>Practice Facility</b>				
Compensation & Benefits	6.3		7.9	
Travel / Meals / Entertainment	0.1		0.2	
Supplies	3.1		4.0	
Occupancy	25.8	35.3	30.3	42.4
		292.5		312.3

Schedule Of Costs  
 Detail Information  
 (in millions)

	2007	2008
<b><u>Sales &amp; Marketing</u></b>		
Compensation & Benefits	104.3	108.6
Advertising	29.8	35.7
Credit Card Fees	24.3	28.7
Supplies / Shipping	15.2	15.1
Barter & other Fulfillment	8.1	8.0
Professional Fees	6.5	7.0
Excess Comps	3.0	9.0
Occupancy	2.9	3.1
Other	12.9	15.6
	<u>207.0</u>	<u>230.8</u>
<b><u>Stadium Debt Service</u></b>		
Interest Expense	125.0	158.3
Principal	64.7	83.8
	<u>189.7</u>	<u>242.1</u>
<b><u>Game Travel - Team Charter Flights</u></b>	<u>72.2</u>	<u>86.8</u>
<b><u>Post Season Operations</u></b>		
Transportation	15.5	13.8
Entertainment / Lighting / Sound	7.9	6.5
Construction	6.7	6.5
Facility rent / utilities	9.9	8.8
Security	6.4	5.8
Game Operations	4.7	4.6
Insurance	1.8	1.8
Staff Costs	1.1	1.4
Promotional / Media	1.0	0.6
Other	-	4.5
	<u>55.0</u>	<u>54.3</u>
<b><u>Capital Expenditures</u></b>	<u>262.0</u>	<u>245.0</u>

# EXHIBIT H



**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

July 8, 2010

**VIA EMAIL AND FIRST CLASS MAIL**

Jeffrey Pash  
National Football League  
280 Park Avenue  
New York, NY 10017

**Re: Your Letter of July 5, 2010**

Dear Jeff:

This is in reply to your letter of July 5, 2010 regarding our request for club cost information.

First, I am glad that you recognize your obligation to produce information “which is reasonably required to verify assertions of financial fact” that you have made in support of your proposal. However, your letter goes on to imply that the club cost information we requested in my June 7, 2010 letter does not relate to the assertion of any financial facts which you have made in support of your proposal. In our view, nothing could be further from the truth.

Indeed, to date the sole basis which you have advanced for your proposal to reduce player costs by 18 percent has been the alleged growth in the non-player costs which you listed on the schedule you gave us back in November. And the only “assertions of financial fact” that you have given us in support of that proposal are the ones contained on that schedule and the additional sheets you gave us on January 19. At almost every bargaining session so far, we have asked you why, if the current economic model is in such need of change, did you agree to continue that model in the CBA extensions we agreed to in 1996, 1998, 2002, and again in 2006? Invariably, your answer has been that the costs on that schedule have increased dramatically since the model was originally agreed to in 1993. Our response, therefore, has been to request reliable information that would verify that increase, and to compare it to increases in other cost areas as well as revenues. That request admittedly involves a historical comparison of costs, but it is made because your proposal necessitates that comparison. In fact, and as our labor economics consultants have advised, it would be difficult to imagine anything more relevant to our current bargaining than the “then and now” information we seek. Your letter pretends otherwise, but there can be no dispute that your 18 per cent proposal is grounded in that very information. If it is not, you should take it off the table and we can try to make progress in another way.

Mr. Jeff Pash  
July 8, 2010  
Page 2

Second, your letter is quite disingenuous in stating that we have accepted the "accuracy" of the information on your schedule and that we have accepted your assertion that the owners are being "squeezed" financially by the current system. As for the scheduled non-player costs you gave us, we have made it clear to you that we would not be fulfilling our statutory duty and responsibility to our members if we accepted your bare numbers as a basis for changing the CBA. As we have stated and your side has acknowledged, we have an "information challenge" vis' a vis' our members which we can only meet by obtaining information which verifies your bare numbers, and which verifies your position that these numbers have changed dramatically since the CBA was first agreed to in 1993. And as for the owners being "squeezed" by the current system, what we have acknowledged is that they (and you) have made that claim, not that it is true. To the contrary, DeMaurice Smith specifically stated in one of our meetings that Forbes Magazine reported that average club profits for 2008 were over \$30 million, and that did not indicate any "squeezing" of their bottom lines. He also said that we were going to assume that the Forbes figures were accurate, at least until it is demonstrated by you that they were not. And while we have acknowledged that costs in certain areas have been increasing, we have stated that those increases have to be compared to increases in revenues and profits over the same period of time in order to be meaningful.

It is also disingenuous for you to suggest that any financial analysis done by the NFLPA has demonstrated any "squeezing" of the owners' bottom line. The financial analysis we have given you to date instead shows that there has been a decrease in the players' percentage of all revenue since 2006. While you claim that the players received over 70% of incremental Total Revenue since 2006, you ignore the fact that "Total Revenue" is determined by subtracting deductions for certain non-player costs which have increased, thanks to our agreement, from \$473 million in 2005 to over \$1 billion in 2009. Naturally, if the permitted deductions were to increase as we agreed, the players' percentage of the remaining difference was also going to increase. But as we stressed to you in our analysis, if the players' percentage is viewed (as it should be) as a percentage of all revenue, the trend, if any, has been downward, and not in any direction that would "squeeze" the owners.

Finally, you try once again in your letter to find fault with us for refusing to meet. Let me repeat that we are not refusing to meet. We have only asked that, in advance of meeting, you indicate in writing what information you are willing to provide. As your letter demonstrates, the spoken word can often be misconstrued, while the written word is less subject to debate or misinterpretation. Also, your letter of July 5 indicates a willingness to provide us with the requested club data for 1993, "as an initial matter." I trust that this will be followed by club data for 1994 and subsequent years. If not, please advise.



Mr. Jeff Pash  
July 8, 2010  
Page 3

Meanwhile, we would be glad to meet with you or your representative(s) to discuss any logistical issues in transmitting the information to us.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Berthelsen", written in a cursive style.

Richard Berthelsen  
General Counsel

cc: DeMaurice Smith

# EXHIBIT I

October 27, 2010

Jeffrey Pash  
National Football League  
280 Park Avenue  
New York, NY 10017



**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

**Re: Club Cost/Return on Investment Data**

Dear Jeff:

I am writing as a follow up regarding the financial data the NFL has been willing, and not willing, to provide to the NFLPA. After reviewing the limited cost data that the NFL most recently provided to us, we believe additional information is urgently needed to assist the NFLPA in carrying out its duty to assess the accuracy of the NFL's proposals and the claims the NFL has made in bargaining, and developing its own counterproposals.

From the very beginning of our negotiations, your side has made it abundantly clear that the owners don't believe that they are getting an adequate return on their investment in the current system because costs are too high. To try to support this position, you selected a series of supposedly escalating Club cost items which currently add up to about 18% of Total Revenue, and you proposed that those items be included as additional deductions from Total Revenue in the future. Through this mechanism, you would thereby shift 18% of the revenues from the player's side of the ledger to the owners' side, and thereby achieve a return on investment that you believe would be satisfactory to the owners.

After receiving your proposal, we thus naturally asked for the information necessary for us to verify, evaluate and bargain over the specific financial proposal that has been presented as the owners' main economic proposal. We pointed out in my letter of June 7, 2010 that these cost items appeared to be the "core issue" in our negotiations, and we argued that they were thus highly relevant to our role as the bargaining representative of the players, especially if they had been consistently and significantly escalating since our original deal was made, as you had claimed in our bargaining sessions. You eventually agreed to give us club-by-club breakdowns on these cost items for the years 1993, 1995, 2000, 2005, 2007, and 2008, but you quickly tried to shift attention away from the owners' return on investment concerns by contending that the costs in question were not the reason you wanted a change in the system. For example, before you gave us any further information, you stated in a letter dated June 17, 2010 that the owners "have not maintained that additional costs credits are necessary because of significant increases in non-player costs over the years. Instead, [the owners] have argued more generally that the current economic model fails to incentivize greater investment prospectively." In other words, you would have us believe that increasing costs and the owners' return on investment was not an issue for your side, and that instead the issue was whether the owners' had an "incentive" to grow the game in the future.

We believe, however, that such statements were simply a pretext to try to defeat our right to the financial information that the owners have put at issue in the negotiations, and that the owners' highest priority was and still is to significantly increase their return on investment by having a greater share of their non-player costs deducted from revenue before the players' share is determined. As much as you might otherwise say in writing, the statements made by your side at the table have consistently made it clear that "costs," "margins," and "return on investment" are your highest priority. For example:

- In our July 14, 2009 meeting in Washington, D.C., Anthony Noto, then the CFO of the NFL, made a presentation to the NFLPA in which he claimed that the NFL's costs were increasing and that revenues were no longer increasing at the same rate, with the result that the owners' rate of return has been reduced and is inadequate. Noto also claimed that the players had received 75% of all incremental revenue since 2006 (an assertion we have subsequently shown you is not accurate), and that this resulted in reduced incremental cash flow to the owners. Noto made all of these assertions as a basis for the owners seeking concessions from the players.
- On December 18, 2009, at another bargaining session, you stated that the League had shown the NFLPA how costs have increased and profits have decreased. In that same meeting, Noto reiterated, as a justification for the League's position, that, of the \$3.7 billion in incremental revenue generated since 2006, the players received 75% of that revenue, and that NFL club average margins are down 200 basis points (an assertion we have never received any data to test its accuracy or to determine how this was calculated). Noto also claimed that the owners now finance 75% of stadiums, not 25% as before.
- At that same meeting, New York Giants owner John Mara stated that returns are not high enough, and he would not support any deal without fundamental economic change.
- At a bargaining session on January 5, 2010, you once again stated, as a justification for the owners' position, that margins are down, and that the owners are being squeezed. You also asserted that a reason for the proposal of an 18% reduction in the players' share was that the owners did not have enough revenues, net of the costs used to generate them, which costs have grown.
- In a bargaining session on January 12, 2010, Noto stated that the owners were not backing off their proposal for an 18% reduction in the players' share of revenues, claiming that the owners need that level of reduction because profit margins are declining and returns are not adequate. Noto also asked whether the players would guarantee the owners a specific return on equity.
- On February 6, 2010, at our meeting with the NFLMC Executive Committee at the Super Bowl, New England Patriots owner Robert Kraft stated, in support of the NFL's bargaining position, that he expects to make \$100 million a year on \$1 billion (10%), but that it is acceptable in a sports business to make \$50 million a year on \$1 billion (5%); that owners have a lot of costs that are not recognized, and that NFL owners have stopped innovating because of inadequate returns on investment.
- Noto said in that same meeting that he thought the financial information the NFLPA presented at the meeting concerning the players' share of revenue over time did not change the NFL's point of view, and did not change the owners' conclusion – the issue, he said, is that owners are being squeezed, and margins are deteriorating. Noto said the

players' share of incremental revenue since 2006 was a symptom, not the disease – players received \$2.6 billion in incremental revenue since 2006 and the owners were \$200 million "in the hole." Noto went on to state in support of the NFL's position that the owners' average operating profit was just \$7 million, and all of the rest of the money covered costs (not subtracting capital expenses).

- At a bargaining session on February 25, 2010, Noto asserted in support of the NFL's position that revenues are now at a level so that returns are insufficient for the owners, and all game-related expenses should be deducted. Green Bay Packer President Mark Murphy stated that the current economic model is not working and the owners need substantial change. He was asked by a player attending that session whether the issue is cash flow, and Murphy responded affirmatively, stating that expenses are growing at a faster rate than revenues.

It is obvious from the above that the NFL's demand for an 18% reduction in the players share is, in fact, based on a claim that non-player costs have increased at a higher rate than revenues, and that the owners' return on investment is thus purportedly shrinking and not high enough according to the owners. The union's ability to verify, evaluate and bargain over the NFL's core economic proposal requires the union to have access to the financial information on which the NFL's proposal is based. We also need this information to evaluate the NFL's alternative characterization of its position -- that the current economic split of revenues with the players does not provide either an "adequate return" on the teams' investment or an "adequate incentive" to "invest in the future."

Even if all of the bargaining statements by the owners reviewed above were ignored, and we credited your recent statements that the owners' position is just based on a claim that clubs have insufficient "incentives" to justify further investments "necessary to grow the game" (see your letter of 7/5/10), we would still be entitled to this additional information. In evaluating whether the current CBA system provides sufficient financial incentives to the clubs to invest in the game, it clearly makes a difference whether, under the current system, clubs have an annual return on investment of say, \$5 million or \$50 million each.

Moreover, the limited cost information you have provided to date has not made any case for the "fundamental change" that John Mara and others have said that you need. According to our labor economists who have analyzed the cost data you have given us, since 2000, there has been only a small difference between the growth of the costs you want deducted and revenue growth.<sup>1</sup> We therefore need the other cost data you have not given us to see whether the increase in non-player costs you have claimed does, or does not, exist.

Further, the cost data provided to us to date shows that just a small group of teams account for the majority of some cost categories, and that the disparity in costs is enormous between the teams, indicating even more why the NFLPA cannot assess the NFL's investment incentive position without seeing all of the rest of the costs of each team and each team's return on investment information. Such disparities

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<sup>1</sup> For example, our labor economist calculated that the costs on the schedules you gave us represented 14.1% of all revenue in 2000 compared to 16.1% in 2008, and 15.4% of Total Revenue in 2000 compared to 18.3% in 2008, in each case an increase of only a couple of percentage points or less.

indicate that any financial issues that purportedly exist may be extremely localized to particular teams, based upon conditions that do not generally apply across the League and thus do not justify an across-the-board, 18% reduction in player salaries, as opposed to solutions targeted to conditions at particular teams.<sup>2</sup> Indeed, several of the teams with increased costs appear to be teams that have also had recent massive increases in revenues (in part, presumably, because of the capital investments made by those teams). Without return on investment and the missing cost data, it is impossible to tell if the few teams with large cost items disclosed to us have been receiving an adequate return on investment as the other cost categories and return on investment data would be necessary to make those determinations.

The cost categories for the data given us also do not seem uniform or consistent so we need the other categories to assess the accuracy of these figures. It is simply not possible to tell whether the cost categories in your proposal (which you claimed are more closely related to revenue generation than the categories you excluded) make any sense without considering the nature and size of the cost categories you did not include in your proposal.

Our economists have also advised us that franchise values are an integral part of determining an owner's return on investment. In order to assess the economic justification for your proposal, we therefore need to see information concerning how clubs' investments have been rewarded through capital appreciation and how much that appreciation has been.

Accordingly, after examining the limited cost data provided to date and consulting with our labor economists, we believe it is necessary to renew our requests, made on July 29, 2010, for additional return on investment information, and additional non-player cost data. Specifically, we request the following information:

1. A club-by-club accounting for all of the non-player costs not included for the years in question in the club cost data you previously gave us (plus data for any League entities).
2. Data sufficient to disclose each club's annual return on investment for each year from 1993 to the present, including annual data for net cash flow, EBITDA, interest, taxes, depreciation, amortization, capital contributions, and dividends or other payments to owners (or entities controlled by or existing for the benefit of owners or their families), and any such data for League entities.
3. Data sufficient to disclose the economic terms of all NFL franchise acquisitions and sales from 1993 to the present. We can discuss the details of this disclosure to make it as efficient

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<sup>2</sup> For example, in 2008 capital expenditures (capex) comprised nearly 18% of the increased expense deductions sought by the NFL, but more than one-half of those capex expenses arose from just two teams (i.e., nearly 10% of all of the increased deductions sought by the NFL arose in 2008 from a single expense category for just two teams). Indeed, even when including the volatile capex category -- which is not even considered to be an operating expense under standard accounting practices -- the aggregate growth rate for the cost categories for which the NFL wants additional credits has, in fact, slowed since the 2006 CBA was entered into.

as possible, but we assume the request is not unduly burdensome since the League should have records from its approval process as to the terms of each franchise sale.

Please let us know as soon as possible if you will provide us with the requested information. Without such data, we simply cannot constructively respond to the owners' assertions that the current system does not adequately recognize their costs, or yield the owners an adequate return on investment.

Sincerely,



Richard Berthelsen

cc: DeMaurice Smith  
Kevin Mawae

# EXHIBIT J





**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

*VIA E-MAIL AND FIRST CLASS MAIL*

December 15, 2010

Dennis Curran  
Senior Vice-President and General Counsel  
National Football League Management Council  
280 Park Avenue  
New York, NY 10017

Re: NFLPA Request for Documents and Other Information

Dear Dennis:

As you know, Article XLIX of our Collective Bargaining Agreement (“CBA”) provides in Section 5 that “Upon request by the NFLPA, the Management Council will promptly provide the NFLPA with any document or other information relating to group insurance, including materials relating to experience and costs.” Pursuant to that provision, the NFLPA is requesting the following information for the current plan year (September 1, 2010 through August 31, 2011) and for the four preceding plan years. As used herein, the term “document” refers to both hard copy and electronically stored information and data, including email.

The documents the NFLPA requests the Management Council to promptly provide are as follows:

1. A copy of each of the insurance policies which covered or cover the various benefits provided for in Article XLIX of the CBA for the current year and the four previous plan years.
2. All premium billing statements from each insurance carrier providing or which has provided Article XLIX insurance benefits during the current plan year and preceding four plan years.
3. A copy of any other documents governing or pertaining to the provision of the various benefits provided for in Article XLIX of the CBA for the same periods, including any:
  - a. Summary Plan Descriptions (“SPD’s”) provided to active and/or former players;
  - b. Document(s) comprising the “NFL Player Insurance Plan” as that term has been used in SPD’s provided to NFL players, and any amendments thereto; and
  - c. Document(s) comprising the “NFL Players Insurance Trust” and any amendments thereto.
4. Any communications among and between the NFL, the NFLMC, AON Consulting, Inc., Cigna Insurance Company, any active player or former player, the NFL Alumni Association, MetLife Insurance Company, or any other entity or individual acting on behalf of any of those entities, pertaining to:

- a. The extension or provision of coverage for active or former players of any of the benefits described in Article XLIX of the CBA for any period beyond March 3, 2011;
  - b. The question of whether or not the NFL, the NFLMC, or any of the clubs will continue paying for the coverage of any of the benefits described in Article XLIX of the CBA for any active or former players after March 3, 2011; and
  - c. Any distinction between players or groups of players as to which of them will or will not have the cost of insurance benefits described in Article XLIX of the CBA paid for them by the NFL, the NFLMC, or any of the clubs for any period beyond March 3, 2011.
5. A copy of every version of the healthcare enrollment materials for life, dental, and health insurance that were distributed to any active or former players during the last five league years, including the folders or packets containing such materials.

The CBA requires this information to be produced "promptly" upon request by the NFLPA, so I trust that you will be able to produce them by the end of next week.

Sincerely,



Richard A. Berthelsen  
General Counsel

cc: DeMaurice F. Smith  
NFLPA Executive Committee

# EXHIBIT K

May 18, 2010

**VIA FACSIMILE**

Jeffrey Pash  
National Football League  
280 Park Avenue  
New York, NY 10017



**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

Re: Amended Television Contracts

Dear Jeff:

It has come to our attention that you have obtained “lockout insurance” from your broadcast partners (DirecTV, CBS, FOX, NBC and ESPN) as a result of your most recently negotiated TV contracts (broadcast, cable and satellite), the terms of which would allow the NFL and its clubs to continue to receive payments from those broadcast partners even if there is a lockout in 2011. We are also aware of your statements that the TV contracts only provide for a “lockout loan” and that while the NFL will be paid the TV money even during a lockout, such monies are only loans which must be repaid in the future.

A lockout would take away NFL games from our fans and would be harmful to our game. Our ongoing negotiations over a new CBA should not prevent the games from being played. Therefore, we ask that you confirm by your signature below that, notwithstanding any language in the TV contracts to the contrary, the NFL and its member clubs agree that they will not accept monies, loans or any other form of financing from their broadcast partners for any games that are not played due to a lockout. By agreeing accordingly, the NFL would be confirming its good-faith desire to reach an agreement on a new CBA in a timely manner. If you are in agreement, please sign and return a copy of this letter to me by Friday, May 21, 2010.

Sincerely,

Richard Berthelsen  
General Counsel

Seen and Agreed:

\_\_\_\_\_  
Jeffrey Pash  
On behalf of the NFL and its Clubs

Date: May \_\_, 2010

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\*\*\* TX REPORT \*\*\*  
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F A X C O V E R



**NFL PLAYERS**  
ASSOCIATION

<b>Date:</b>	5-18-10
<b>Attention:</b>	Jeff Pash
<b>Fax number:</b>	212-681-7571
<b>Office location:</b>	Richard Berthelsen

URGENT  REPLY ASAP  PLEASE COMMENT  PLEASE REVIEW  FOR YOUR INFORMATION

TOTAL PAGES, INCLUDING COVER: 2

**Comments:**

Re: Amended Television Contracts

# EXHIBIT L



**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

MEMORANDUM

**To:** NFL Club Presidents and General Managers  
**From:** DeMaurice Smith, Executive Director, NFLPA  
**Date:** March 11, 2011  
**Re:** Renunciation of NFLPA Bargaining Rights

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As of 4:00 p.m. Eastern Time today the NFLPA has renounced its status as the collective bargaining agent for all NFL players. As a result, no representatives of the NFLPA, including our previously elected Player Representatives or Alternates, has the authority or authorization to engage in any collective bargaining discussions, grievance processing, or any other activities associated with collective bargaining on behalf of the players at either the club or the league level.

As a further result of this change in its status, the NFLPA will no longer be regulating or overseeing the activities or conduct of Contract Advisors (agents) who were previously certified by the NFLPA to represent individual players in player contract negotiations with NFL clubs. From this point forward, any agent, whether or not he or she was previously certified by the NFLPA under its prior agent regulation system, should be viewed strictly as a representative of the individual players he or she represents, and not in any way as a representative of the NFLPA for bargaining purposes or otherwise.

I wish you and your club good luck for the upcoming season.

cc: Roger Goodell  
Jeff Pash

# EXHIBIT M





**NFL PLAYERS**  
ASSOCIATION

LEGAL DEPARTMENT

March 11, 2011

**VIA FACSIMILE AND OVERNIGHT MAIL**

Commissioner Roger Goodell  
National Football League  
280 Park Avenue  
New York, N.Y. 10017

**Re: Renunciation of Collective Bargaining Status**

Dear Roger:

This is to advise you that, pursuant to a vote in which a majority of the players indicated that they wished to end the collective bargaining status of the NFLPA, the NFLPA is renouncing its status as the players' collective bargaining representative and disclaiming interest in continuing as the collective bargaining agent of the players as of 4:00 p.m. eastern time today. It is the players' intention to instead operate hereafter as a professional association dedicated to improving the business conditions of professional football players in the National Football League, including the enhancement and the protection of the contracting rights of its members. By copy of this letter to each of the member clubs of the NFL, I am also informing them of this important change in our status.

Sincerely,

A handwritten signature in black ink, appearing to read "DeMaurice Smith". The signature is stylized with large loops and a long horizontal stroke.

DeMaurice Smith  
Executive Director

cc: NFL Member Clubs  
NFLPA Executive Committee

# EXHIBIT N



**NATIONAL FOOTBALL LEAGUE**

**Dennis Curran**  
Senior Vice President  
of Labor Litigation & Policy

March 11, 2011

VIA EMAIL

DeMaurice Smith  
Executive Director  
National Football League Players Association  
1133 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

Dear De:

Please be advised that, assuming the National Football League ("NFL") and the National Football League Players Association ("Union") have not agreed upon terms for a collective bargaining agreement by 11:59 p.m. on March 11, 2011 (when the parties' current agreement expires), the NFL's member Clubs will institute a lockout of members of the Union's bargaining unit immediately thereafter.

In the event of a lockout, Clubs will be delivering letters to their players in the form attached hereto. Should you have any questions, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dennis Curran".

Dennis Curran

cc: Roger Goodell  
Jeff Pash  
Richard Berthelsen

[On Club Letterhead]

March 11, 2011

[Player Name]

[Address]

Dear [Player Name]:

This is to inform you that the [Club Name] ("Club") will institute a lockout of its players at 12:00 a.m. Eastern time on March 12, 2011.

During the lockout, the following will be in effect:

1. You may not enter any Club facility or the stadium, except for the purpose of attending a non-Club event or Club charitable event.
2. You will not receive any compensation from the Club.
3. The Club will not pay for or provide health insurance or other active-player benefits or services. You have already received separate communications regarding your option to pay for health benefits continuation under COBRA.
4. You will not be permitted to perform any services under your Player Contract or otherwise perform any duties for the Club. This includes, but is not limited to, any duties you would otherwise be performing at Club facilities, such as playing, practicing, working out, attending meetings, consulting with Club medical or training staff (except as provided below), and making promotional appearances for the Club.
5. Testing and treatment obligations under the Policy and Program for Substances of Abuse and Policy on Anabolic Steroids and Related Substances will cease.
6. If you need information from the Club's human resources department (such as copies of your tax information, child support correspondence, or to arrange collection of personal property you may have left on Club premises), please call [human resources representative's name and title] at [contact number].
7. Except for the human resources representative noted above, Club personnel (coaches, trainers and other non-player staff) will not communicate with you regarding football or any other Club or NFL business issues. This means that they will not communicate with you regarding any issues relating to your current or potential contract terms, or about collective bargaining negotiations between the NFL and the Union.

This will be the case whether you are currently under contract with the Club or not.

8. If you have an agent, the same procedures stated above concerning access to Club facilities and communications with the Club will apply to your agent.
9. The Club will not give you any further instructions or guidance as to workouts or training.
10. Except for injured players rehabilitating from football-related injuries, the Club will not provide, arrange or pay for facilities, equipment or other services relating to training or workouts. Injured players will receive a separate letter regarding their treatment and rehabilitation during a lockout. Clubs will not provide or pay for treatment for non-football related injuries or illnesses.
11. Club security and Player Development staff will not assist you with legal or other problems.
12. If you engage in any activities during the lockout, even training, you do so at your own risk. Any injury resulting from such activities will not be the responsibility or liability of the Club or the NFL. You are free to engage in alternate employment during the lockout, but you will not be protected by the Club or the NFL against injuries during such employment. Once a new labor agreement is reached between the NFL and the Union, you may be expected to report to the Club immediately. Therefore, you should structure any alternate employment so you can return to the Club promptly after a new labor agreement is reached.

Should you have any questions, please contact the NFL Players Association.

Sincerely,

[Club Executive]

# EXHIBIT O



# NEWS RELEASE

FEDERAL MEDIATION AND CONCILIATION SERVICE  
OFFICE OF PUBLIC AFFAIRS  
WASHINGTON, D.C. 20427

**Friday, March 11, 2011**  
**For Immediate Release**  
**Web site: [www.fmcs.gov](http://www.fmcs.gov)**

**Contact: John Arnold**  
**Director of Public Affairs**  
**Phone: (202) 606-8100**

## **Statement by FMCS Director George H. Cohen on NFL-NFLPA Talks**

WASHINGTON, DC — As a follow up to the NFL's and NFLPA's agreeing to my invitation on February 17, 2011 to conduct further negotiations under the auspices of the FMCS, over the past four weeks 17 days of mediation have taken place. During this extensive period, a wide variety of issues—both economic and work related—were addressed in a professional, thoughtful manner, consistent with what one would expect to take place in a constructive collective bargaining setting. Those issues were explored at length; consensus emerged in a number of them; and in others, differences were narrowed and focused.

Regrettably, however, the parties have not achieved an overall agreement, nor have they been able to resolve the strongly held, competing positions that separated them on core issues.

In these circumstances, after carefully reviewing all of the events that have transpired, it is the considered judgment of myself and Deputy Director Scot Beckenbaugh, who has been engaged with me throughout this process, that no useful purpose would be served by requesting the parties to continue the mediation process at this time. For our part, the Agency has advised the parties that we will be willing and prepared to continue to facilitate any future discussions upon their mutual request.

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*The Federal Mediation and Conciliation Service, created in 1947, is an independent U.S. government agency whose mission is to preserve and promote labor-management peace and cooperation. Headquartered in Washington, DC, with 10 district offices and 67 field offices, the agency provides mediation and conflict resolution services to industry, government agencies and communities.*