Brady et al v. National Football League et al Doc. 57 Att. 9

EXHIBIT I

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NFL PLAYERS
ASSOCIATION
LEGAL DEPARTMENT

October 27, 2010

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

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 <u>not</u> 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.[1] 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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[1] 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.[2] 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

[2] 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