

The Honorable Marsha J. Pechman

FILED ENTERED  
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JUN 27 2008

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

07-CV-01620-NTC

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF SEATTLE,

Plaintiff,

v.

PROFESSIONAL BASKETBALL CLUB  
LLC,

Defendant.

No. C07-01620-MJP

TRIAL WITNESS  
JULY 15, 2008 - LISTS

Pursuant to Local Rule CR 16.1, Plaintiff City of Seattle (the "City") and Defendant The Professional Basketball Club, LLC ("PBC") hereby submit the Pretrial Order in the above-captioned case:

**JURISDICTION**

This Court has jurisdiction of this civil action under 28 U.S.C. § 1332(a) because the parties are citizens of different states and the value of the amount in controversy exceeds \$75,000.

**CLAIMS AND DEFENSES**

The City will pursue the following claim:

1. A declaratory judgment that the City is entitled to specific performance of

PRETRIAL ORDER - 1

Case No. C07-01620-MJP

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KIRKPATRICK & LOCKHART  
PRESTON GATES ELLIS LLP  
925 FOURTH AVENUE  
SUITE 2900  
SEATTLE, WASHINGTON 98104-1158  
TELEPHONE: (206) 623-7580  
FACSIMILE: (206) 623-7022

1 the Sonics' tenancy is unique, but it is also difficult to value, thus money cannot adequately  
2 compensate the City if PBC fails to fulfill its obligations as promised.

3 7. Filing suit to enforce contractual rights is not unclean hands as a matter of law.

4 **DEFENDANT'S ISSUES OF LAW**

5 1. PBC agrees with the City's Issues of Law Nos. 1 and 2 subject to interpretation  
6 of the Lease by the Court.

7 2. PBC disagrees with the City's Issues of Law Nos. 3 through 7.

8 **EXPERT WITNESSES**

9 (a) Each party shall be limited to \_\_\_\_\_ expert witnesses on the issues of \_\_\_\_\_.  
10

11 (b) The names and addresses of the expert witnesses to be used by each party at the  
12 trial and the issue upon which each will testify are:

13 (1) On behalf of plaintiff:

JUN 17 2008  
14 **Andrew Zimbalist**  
15 **c/o K&L Gates**  
16 **925 Fourth Ave, Suite 2900**  
17 **Seattle, WA 98104**

18 Mr. Zimbalist will testify that there are substantial intangible benefits to having a local  
19 sports team, but that these benefits are difficult to quantify. Mr. Zimbalist's opinions are set  
20 forth in his expert report.

21 **Todd Menenberg**  
22 **c/o K&L Gates**  
23 **925 Fourth Ave, Suite 2900**  
24 **Seattle, WA 98104**

25 Mr. Menenberg will testify regarding various opinions as set forth in his expert report.  
26 He will describe that the Sonics had significant operating losses prior to the 2005-06 season;

**PRETRIAL ORDER - 10**

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1 the Sonics losses in 2006-07 increased substantially from 2005-06 due to declines in  
2 attendance and ticket revenue, and substantial increases in player salaries; and the Sonics  
3 losses in 2007-08 are projected to be substantially higher, driven by the same factors (lower  
4 attendance, higher salaries). He also will explain that PBC's operating losses are likely offset  
5 by capital appreciation (10-15% annually) and tax benefits from purchase (around \$50  
6 million).  
7  
8

JUN 18 2008  
JUN 18 2008  
9 Lon Hatamiya  
10 c/o K&L Gates  
11 925 Fourth Ave, Suite 2900  
12 Seattle, WA 98104

13 Mr. Hatamiya will testify regarding the substantial economic benefits the Sonics bring  
14 to Seattle both directly and indirectly. Mr. Hatamiya's opinions are set forth in his expert  
15 report.  
16

17 (2) On behalf of defendant.

JUN 18 2008  
18 Danny Barth  
19 c/o Byrnes & Keller  
20 1000 Second Avenue  
21 38<sup>th</sup> Floor  
22 Seattle, WA 98104

23 Mr. Barth is the Interim President and CEO of the Sonics. He will testify about the  
24 matters set forth in his expert report, the Sonics' financial performance, the decline in fan  
25 interest in the team, the decline in sponsorships, the inadequacies of KeyArena, and all  
26 matters detailed in his deposition.

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1 Deborah Jay  
2 c/o Byrnes & Keller  
3 1000 Second Avenue  
JUN 19 2008 38<sup>th</sup> Floor  
Seattle, WA 98104

4 Ms. Jay will testify as to the matters detailed in her expert report about the survey of  
5 Seattle residents regarding their views about the impact on their lives if the Sonics leave  
6 Seattle.  
7

8  
JUN 19 2008 Mitchell Ziets  
9 c/o Byrnes & Keller  
10 1000 Second Avenue  
11 38<sup>th</sup> Floor  
Seattle, WA 98104

12 Mr. Ziets will testify about the matters detailed in his expert report, including the  
13 financial impact of the Sonics playing in Seattle for the final two years of the lease as a  
14 "lame-duck franchise."  
15

16  
JUN 19 2008 Brad Humphreys  
17 c/o Byrnes & Keller  
18 1000 Second Avenue  
19 38<sup>th</sup> Floor  
Seattle, WA 98104

20 Mr. Humphreys will testify as to the matters detailed in his expert report, including the  
21 fact that there will be no net economic impact on Seattle if the Sonics leave Seattle.  
22  
23  
24  
25  
26

1 **OTHER WITNESSES**

2 The names and addresses of witnesses, other than experts, to be used by each party at  
3 the time of trial and the general nature of the testimony of each are:

4 (a) On behalf of plaintiff:

5  
6 **JUN 16 2008** Virginia Anderson  
7 c/o K&L Gates  
8 925 Fourth Ave, Suite 2900  
9 Seattle, WA 98104

10 Ms. Anderson will testify regarding the negotiation of KeyArena Lease, including the  
11 City's purposes in negotiating a 15 year term. She also will offer testimony regarding the  
12 benefits to the Seattle Center of having the Sonics play in KeyArena.

13  
14 Bob Watt  
15 c/o K&L Gates  
16 925 Fourth Ave, Suite 2900  
17 Seattle, WA 98104

18 Mr. Watt may testify regarding the benefits stemming from the presence of the Sonics  
19 in Seattle.

20 **JUN 18 2008** Jyo Singh  
21 c/o K&L Gates  
22 925 Fourth Ave, Suite 2900  
23 **JUN 17 2008** Seattle, WA 98104

24 Mr. Singh will testify regarding the renovations of KeyArena, the characteristics of  
25 KeyArena and its functionality as a venue for professional basketball, and the nature of the  
26 working relationships between Seattle Center and Sonics staff.

JUN 17 2008  
JUN 18 2008

1 Clayton Bennett  
c/o Byrnes & Keller  
1000 Second Avenue  
38<sup>th</sup> Floor  
Seattle, WA 98104

4 Mr. Bennett will testify regarding the Lease, PBC's obligations, negotiations, due  
5 diligence efforts, and understanding of the BCOS operating losses. He will describe the  
6 various acknowledgements (public and otherwise) in which PBC claimed intended to honor  
7 the Lease through 2010 and find a suitable location for a new arena in the Seattle metropolitan  
8 area. Mr. Bennett will testify regarding broad economic and non-economic benefits NBA  
9 teams provide to their home city. He will testify regarding various admissions PBC made in  
10 response to discovery requests. Mr. Bennett will testify that the terms of the Lease and the  
11 condition of KeyArena are the same as they were when PBC bought the team. Mr. Bennett  
12 may also testify by deposition as designated by the City.  
13  
14

JUN 18 2008

15 Danny Barth  
16 c/o Byrnes & Keller  
17 1000 Second Avenue  
18 38<sup>th</sup> Floor  
19 Seattle, WA 98104

20 Mr. Barth will testify regarding PBC's intent to run the Sonics in same way if specific  
21 performance is ordered, including PBC's compliance with its obligations under the Lease. He  
22 will explain the various ways in which losing the Sonics will impact the Seattle community  
23 negatively, including the opportunity to see NBA games live. He will describe the Sonics'  
24 rich history, history of fan support, and strong community and charitable involvement. He  
25 will testify regarding the causes of the Sonics' losses (uncertainty and team performance).  
26 Mr. Barth will also testify by deposition as designated by the City.

1 **James Donaldson**  
2 **c/o K&L Gates**  
3 **925 Fourth Ave, Suite 2900**  
4 **Seattle, WA 98104**

5 Mr. Donaldson will testify regarding the Sonics' involvement in community, charitable  
6 activities, and general benefits to the City from the presence of the Sonics.

7 **Matthew Wade**  
8 **c/o K&L Gates**  
9 **925 Fourth Ave, Suite 2900**  
10 **Seattle, WA 98104**

11 Mr. Wade may testify regarding the Sonics' involvement in community and charitable  
12 activities.

13 **Sherman Alexie**  
14 **c/o K&L Gates**  
15 **925 Fourth Ave, Suite 2900**  
16 **Seattle, WA 98104**

17 Mr. Alexie will testify regarding the Sonics' role in the Seattle metropolitan  
18 community from the perspective of a Season Ticket holder, the diverse nature of Sonics'  
19 crowds, the impact of the Sonics on minority communities, and the impact of sports on family  
20 relationships.

21 **Greg Nickels**  
22 **c/o K&L Gates**  
23 **925 Fourth Ave, Suite 2900**  
24 **Seattle, WA 98104**

25 Mayor Nickels will testify regarding the contributions of professional sports, including  
26 the Sonics, in making Seattle a great city. He will describe how the health and vitality of

1 KeyArena affects the general health and vitality of the larger Seattle Center campus, including  
2 the Seattle Opera, the Pacific Northwest Ballet, etc. Mayor Nickels will describe the non-  
3 economic benefits the Sonics bring to Seattle, including: community spirit and pride; City  
4 exposure; cultural vitality; enhanced ability to attract new residents; and charitable activities  
5 with Seattle organizations and institutions.  
6

JUN 20 2008

JUN 26 2008

7 Nick Licata  
8 c/o K&L Gates  
9 925 Fourth Ave, Suite 2900  
10 Seattle, WA 98104

11 Mr. Licata will testify regarding the extent to which the Sonics provide the City with a  
12 cultural and civic benefit, and his interactions with constituents regarding this issue.  
13  
14

JUN 16 2008

15 Aubrey McClendon (will testify by deposition)  
16 c/o Byrnes & Keller  
17 1000 Second Avenue  
18 38<sup>th</sup> Floor  
19 Seattle, WA 98104

20 Mr. McClendon will testify via deposition regarding his understanding that the  
21 opportunity to purchase Sonics was unique. He describe that as a representative of PBC, he  
22 did not focus on financial elements of the Sonics acquisition and is able to handle any losses  
23 related to the team's operation. Mr. McClendon will testify regarding PBC's expectations for  
24 moving the Sonics to Oklahoma City. Mr. McClendon will also testify by deposition as  
25 designated by the City. (If Mr. McClendon agrees to testify in person, the City may also  
26 present testimony by deposition.)



1 **James Couch (will testify by deposition)**  
2 **Office of the City Manager**  
3 **200 N Walker, 3rd Floor**  
4 **Oklahoma City, OK 73102**

**JUN 16 2008**

5 Mr. Couch is the City Manager of Oklahoma City. He will testify regarding  
6 the matters addressed in the deposition excerpts designated by the City, including the  
7 economic and intangible benefits to Oklahoma City of having an NBA team, communications  
8 with PBC regarding the Sonics and relocation of the Sonics, and the terms of the Ford Center  
9 lease between PBC and Oklahoma City. (If Mr. Couch agrees to testify in person, the City  
10 may also present testimony by deposition.)  
11

12 **Brent Gooden (will testify by deposition)**  
13 **c/o Byrnes & Keller**  
14 **1000 Second Avenue**  
15 **38<sup>th</sup> Floor**  
16 **Seattle, WA 98104**

**JUN 16 2008**

17 Mr. Gooden is a public relations consultant hired by PBC. He may testify regarding  
18 the matters addressed in the deposition excerpts designated by the City, including Mr.  
19 Gooden's work for and his communications with PBC and its members.

20 **Joel Litvin (will testify by deposition)**  
21 **NBA 30(b)(6) deponent**  
22 **c/o Skadden, Arps, Slate, Meagher & Flom LLP**  
23 **Four Times Square**  
24 **New York, New York 10036**

**JUN 16 2008**

25 Mr. Litvin is the 30(b)(6) deponent from the NBA. He will testify about the matters  
26 addressed in the deposition excerpts designated by the City (Mr. Litvin's deposition has been  
identified as Confidential Material by the NBA).

1       **Roy Williams (will testify by deposition)**  
2       **The Greater Oklahoma City Chamber of Commerce 30(b)(6) deponent**  
3       **c/o Crowe & Dunleavy**  
4       **20 North Broadway**  
5       **Suite 1800**  
6       **Oklahoma City, OK 73012**

7       Mr. Williams will testify regarding the matters addressed in the deposition excerpts  
8       designated by the City, including the economic and intangible benefits to Oklahoma City of  
9       having an NBA team, the campaign for approval of a tax to pay for the renovations of the  
10      Ford Center in Oklahoma City, PBC's contributions to that campaign, the tax break provided  
11      to PBC by Oklahoma State, and the NBA relocation committee's visit to Oklahoma City.

12      If PBC elects to offer the testimony of Tim Ceis, Richard Conlin, or Robert Nellams  
13      solely through deposition, the City reserves the right to call them as live witnesses for  
14      purposes of rebuttal. The City reserves the right to call other rebuttal witnesses as necessary.

15      (b) On behalf of defendant:

16      **Clay Bennett (will testify)**  
17      **c/o Byrnes & Keller**  
18      **1000 Second Avenue**  
19      **38<sup>th</sup> Floor**  
20      **Seattle, WA 98104**

21      Mr. Bennett is the Chair of the PBC. He will testify concerning the PBC, the PBC's  
22      acquisition of the team, its efforts to obtain a new arena in the greater Seattle area, the losses it  
23      anticipates if it continues to play at KeyArena relative to the financial impact of playing in  
24      Oklahoma City, the reasons for relocating the team to Oklahoma City, and all matters  
25      addressed in his deposition.  
26

1       **Aubrey McClendon (will testify)**  
2       **c/o Byrnes & Keller**  
3       **1000 Second Avenue**  
4       **38<sup>th</sup> Floor**  
5       **Seattle, WA 98104**

6       Mr. McClendon is a member of the PBC. He will testify about the PBC's intention to  
7       secure a new arena in the Seattle area.

8       **James Couch (will testify)**  
9       **Office of the City Manager**  
10      **200 N Walker, 3rd Floor**  
11      **Oklahoma City, OK 73102**

12      Mr. Couch is the City Manager of Oklahoma City. He will testify about when the PBC  
13      first contacted the City about relocating to Oklahoma City, efforts the City made to  
14      accommodate relocation, the steps that have been taken to prepare for the Sonics in Oklahoma  
15      City, including local and state legislation and remodeling of Ford Center, the interest among  
16      Oklahoma City residents in having the Sonics move to Oklahoma City, and the matters  
17      addressed in his deposition.

18      **Walter Walker (will testify)**  
19      **c/o Michael A. Goldfarb**  
20      **Peterson Young Putra**  
21      **2800 Century Square**  
22      **1501 4th Avenue**  
23      **Seattle, WA 98101**

24      Mr. Walker may testify about his involvement in the City's efforts to use specific  
25      performance to force the PBC to sell the Sonics, his involvement with potential buyers of the  
26      Sonics, the problems with KeyArena as a venue for NBA basketball, and efforts to persuade  
27      the NBA not to permit the PBC to relocate the Sonics to Oklahoma City.

1 **Mathew Griffin (will testify)** JUN 20 2008

2 Mr. Griffin will testify about his involvement in the City's efforts to use specific  
3 performance to force the PBC to sell the Sonics, and his efforts to secure city and state support  
4 of a new arena.

5  
6 **Tim Ceis (may testify)**

7 Mr. Ceis may testify about the City's efforts to lobby against the PBC's attempt to  
8 secure legislative support for a new arena in the greater Seattle area. He may also testify about  
9 the City's efforts to use specific performance to force the PBC to sell the Sonics, and the City's  
10 efforts to obtain legislative support for remodeling KeyArena, and efforts to persuade the NBA  
11 not to permit the PBC to relocate the Sonics to Oklahoma City.

12  
13 **Richard Conlin (may testify) (by deposition)**

14 Mr. Conlin may testify about the City's efforts to lobby against the PBC's attempt to  
15 secure legislative support for a new arena in the greater Seattle area. He may also testify about  
16 the City's efforts to use specific performance to force the PBC to sell the Sonics, and the City's  
17 efforts to obtain legislative support for remodeling KeyArena. Mr. Conlin may also testify  
18 about the lack of any cultural or economic impact of the Sonics on the City of Seattle.

19  
20  
21 **Nick Licata (will testify)**  
22 **c/o K&L Gates**  
23 **925 Fourth Ave, Suite 2900**  
24 **Seattle, WA 98104**

25 Mr. Licata may testify about the City's efforts to lobby against the PBC's attempt to  
26 secure legislative support for a new arena in the greater Seattle area. He may also testify about  
the City's efforts to use specific performance to force the PBC to sell the Sonics, and the City's

**PRETRIAL ORDER - 20**  
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1 efforts to obtain legislative support for remodeling KeyArena. Mr. Licata may also testify  
2 about the lack of any economic or cultural impact of the Sonics on the City of Seattle, and his  
3 role in Initiative 91, which limits the use of public funds for sports facilities in Seattle.

4  
5 **Larry Nichols (may testify)**

6 Mr. Nichols may testify about the PBC's intention to attempt to obtain a new arena in  
7 the greater Seattle area, and the impact of that intention on potential investors in the PBC.

8  
9 **Robert Nellams (may testify) (by deposition)**

10 Mr. Nellams may testify about the economics of KeyArena from the perspective of the  
11 City, why those economics render the lease unworkable from the City's perspective, and his  
12 involvement with potential buyers of the Sonics.

13  
14 **Greg Nickels (may testify)**  
15 **c/o K&L Gates**  
16 **925 Fourth Ave, Suite 2900**  
17 **Seattle, WA 98104**

18 Mr. Nickels may testify about the cultural impact of the Sonics leaving Seattle, the  
19 City's efforts to obtain legislative support for remodeling KeyArena, the inadequacies of  
20 KeyArena, the City's goal in bringing this lawsuit, and all matters addressed in his deposition.

21 **Terry McLaughlin (may testify)**

22 Mr. McLaughlin is a former executive with the Sonics, both when they were owned by  
23 the PBC and previously by the Schultz group. Prior to that, he worked for the Seattle City  
24 Center. Mr. McLaughlin may testify about efforts by the Schultz ownership group and the  
25 PBC to obtain support from the legislature for either a remodel of KeyArena or a new  
26 multipurpose arena. He may also testify about the circumstances of the negotiation of the

**PRETRIAL ORDER - 21**

**Case No. C07-01620-MJP**

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**TELEPHONE: (206) 623-7580**  
**FACSIMILE: (206) 623-7022**

1 original lease, and the inadequacies of KeyArena.

2  
3  
4 **James Kneeland** (may testify)

5 Mr. Kneeland is the principal of Pacific Public Affairs, a public relations and lobbying  
6 firm. He may testify about the efforts made by the PBC and his company to obtain a new  
7 multipurpose arena in the greater Seattle area.

8  
9 **Gerry Johnson** (may testify)  
10 c/o K&L Gates  
11 925 Fourth Ave, Suite 2900  
12 Seattle, WA 98104

13 Mr. Johnson is a lawyer with K&L Gates. He will only be called to authenticate  
14 documents if the City does not stipulate to authenticity of such documents.

15 **Slade Gorton** (may testify)  
16 c/o K&L Gates  
17 925 Fourth Ave, Suite 2900  
18 Seattle, WA 98104

19 Mr. Gorton is a lawyer with K&L Gates. He will only be called to authenticate  
20 documents in the event that the City does not stipulate to the authenticity of such documents.

21 **Cushman & Wakefield Document Custodian** (may testify)

22 The custodian will only testify in the event that the City disputes the authenticity of  
23 Cushman & Wakefield documents.