

"A LOOK AT THE MCNEIL LITIGATION AND ITS RESULTS"

by

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I. THE BACKGROUND/OVERVIEW OF MCNEIL V. NFL¹

A. THE ROZELLE RULE AND MACKEY V. NFL²

THE ROZELLE RULE, UNILATERALLY IMPLEMENTED BY THE NATIONAL FOOTBALL LEAGUE (THE "NFL") IN 1963, WAS THE PRECURSOR TO THE PLAN B RIGHT OF FIRST REFUSAL/COMPENSATION SYSTEM ("FR/C") AT ISSUE IN MCNEIL V. NFL. UNDER THE "ROZELLE RULE," IF A TEAM SIGNED A PLAYER NO LONGER UNDER CONTRACT WITH HIS CURRENT TEAM (A "FREE AGENT"), THE COMMISSIONER OF THE NFL, PETE ROZELLE, WOULD FORCE THE TEAM SIGNING THE PLAYER TO COMPENSATE THE PLAYER'S CURRENT TEAM IN DRAFT PICKS OR CASH, AT A LEVEL OF COMPENSATION DECIDED UPON BY THE COMMISSIONER AT HIS SOLE DISCRETION. BECAUSE THE COMMISSIONER GENERALLY IMPOSED A HIGH LEVEL OF COMPENSATION, APPARENTLY TO DISCOURAGE MOVEMENT OF FREE AGENTS WITHIN THE NFL, THE ROZELLE RULE SIGNIFICANTLY DETERRED TEAMS FROM SIGNING FREE AGENTS. EVENTUALLY, THE PLAYERS MOUNTED A SUCCESSFUL ANTITRUST CHALLENGE TO THE ROZELLE RULE IN THE CASE OF MACKEY V. NFL, 407 F. SUPP. 1000 (D. MINN. 1975), AFF'D 543 F.2D 606 (8TH CIR. 1976), CERT. DISMISSED, 434 U.S. 801 (1977).³

1. CIV. NO. 4-90-476 (D. MINN.).

2. CIV. NO. 76-1184 (D. MINN.).

3. SEE THESE OPINIONS FOR A FULL DISCUSSION OF THE OPERATION AND EFFECT OF THE ROZELLE RULE.

B. THE AFTERMATH OF MACKEY: THE 1977 AND 1982 COLLECTIVE BARGAINING AGREEMENTS

IN 1977, FOLLOWING THE SUCCESSFUL ANTITRUST CHALLENGE TO THE ROZELLE RULE IN MACKEY, THE PLAYERS'S UNION, THE NATIONAL FOOTBALL LEAGUE PLAYERS ASSOCIATION (THE "NFLPA"), ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT ("CBA") WITH THE NFL. UNDER THE TERMS OF THIS AGREEMENT, WHICH WAS EXTENDED FOR AN ADDITIONAL FIVE YEARS IN 1982, THE PARTIES IMPLEMENTED A "FIRST REFUSAL/COMPENSATION" SYSTEM ("FR/C") DESIGNED TO PROVIDE THE PLAYERS WITH SIGNIFICANTLY MORE FREEDOM THAN THE ROZELLE RULE. UNDER THE FR/C SYSTEM, PLAYERS NO LONGER UNDER CONTRACT TO THEIR CURRENT TEAM WERE "FREE" TO NEGOTIATE DURING A LIMITED PERIOD OF TIME WITH ANY TEAM, OTHER THAN THEIR CURRENT TEAM, AND RECEIVE A WRITTEN OFFER FROM ANOTHER TEAM. THE CURRENT TEAM THEN HAD THE RIGHT TO EITHER (1) MATCH THE OTHER TEAM'S OFFER AND FORCE THE "FREE" PLAYER TO REMAIN WITH HIS CURRENT TEAM, OR (2) RECEIVE DRAFT CHOICE COMPENSATION AS DETERMINED BY THE CBA. GENERALLY THE COMPENSATION WAS TWO FIRST ROUND DRAFT CHOICES, WHICH, ACCORDING TO ONE NFL GENERAL MANAGER, "NOT EVEN GOD WAS WORTH." AS A RESULT, THE FR/C SYSTEM PROVED TO BE AS RESTRICTIVE AS THE ROZELLE RULE AND IN THE HISTORY OF THIS RESTRAINT ONLY TWO PLAYERS OUT OF THOUSANDS ACTUALLY CHANGED TEAMS -- WILBUR MARSHALL (FROM CHICAGO TO WASHINGTON IN 1988) AND NORM THOMPSON (FROM THE ST. LOUIS CARDINALS TO THE BALTIMORE COLTS IN 1978).⁴

4. THE 1982 CBA FOLLOWED A 57-DAY STRIKE BY THE PLAYERS. UNDER THE 1982 CBA, THE PLAYERS RECEIVED SUBSTANTIAL EMPLOYEE BENEFITS EXCEEDING \$1.2 BILLION OVER FIVE YEARS AND A SLIGHT UPWARD ADJUSTMENT TO THE SALARY LEVELS NEEDED TO TRIGGER COMPENSATION UNDER THE FR/C SYSTEM. SEE POWELL V. NFL, 678 F. SUPP. 777, 779-81 (D. MINN. 1988) FOR A FULL DISCUSSION OF THE OPERATION AND EFFECT OF THE FR/C SYSTEM EMBODIED IN THE 1977 AND 1982 CBA'S.

1. CONTRASTED WITH THE SYSTEMS IN OTHER SPORTS, SUCH AS BASEBALL AND BASKETBALL, THE NFL'S FR/C SYSTEM WAS SEVERELY RESTRICTIVE.

(1) MAJOR LEAGUE BASEBALL⁵

IN MAJOR LEAGUE BASEBALL ("MLB"), ALL PLAYERS WITH SIX YEARS OF SERVICE AND NO LONGER UNDER CONTRACT ARE FREE AGENTS. THEIR FORMER TEAM HAS NO RIGHT OF FIRST REFUSAL AND AT MOST, THE FORMER TEAM IS ENTITLED TO AN EXTREMELY LIMITED AMOUNT OF COMPENSATION WHICH HAS HAD NO DISCERNABLE EFFECT ON PLAYER MOVEMENT. PLAYERS WITH THREE YEARS OF SERVICE AND NO LONGER UNDER CONTRACT, MUST BE OFFERED SALARY ARBITRATION BY THEIR TEAMS BY DECEMBER 7. IF THE TEAM FAILS TO OFFER SALARY ARBITRATION, THE PLAYER IS FREE TO SIGN WITH ANY OTHER TEAM UNTIL MAY 1. IF THE PLAYER ACCEPTS THE OFFER OF SALARY ARBITRATION, HE GENERALLY WILL BE ABLE TO RECEIVE A COMPETITIVE SALARY COMMENSURATE WITH WHAT OTHER PLAYERS OF SIMILAR SKILL AT HIS POSITION RECEIVE. IN CONTRAST, FOOTBALL PLAYERS UNDER THE FR/C RULES WERE RESTRICTED FOR THEIR ENTIRE CAREERS WITH NO ABILITY TO OBTAIN A COMPETITIVE SALARY THROUGH A BASEBALL-LIKE ARBITRATION SYSTEM.

5. SEE TRIAL TESTIMONY OF DONALD FEHR, EXECUTIVE DIRECTOR AND GENERAL COUNSEL TO THE MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION AT 1788-92, 1801-06 FOR A FULL DISCUSSION OF THE OPERATION AND EFFECT OF BASEBALL'S FREE AGENCY-ARBITRATION SYSTEM.

(2) NATIONAL BASKETBALL ASSOCIATION

IN THE NATIONAL BASKETBALL ASSOCIATION ("NBA"), ALL PLAYERS WHO HAVE COMPLETED TWO CONTRACTS AND FIVE YEARS IN THE NBA (FOUR YEARS AFTER THE 1992-93 SEASON) ARE UNRESTRICTED FREE AGENTS. THEY MAY SIGN WITH ANY TEAM AND THE FORMER TEAM HAS NEITHER A RIGHT OF FIRST REFUSAL NOR A RIGHT TO ANY COMPENSATION. ANY PLAYER WHO HAS LESS THAN FIVE YEARS IN THE NBA MAY ALSO NEGOTIATE AND SIGN AN OFFER SHEET WITH ANY TEAM. THE PRIOR TEAM HAS THE RIGHT TO MATCH THE OFFER AND RETAIN THE PLAYER. HOWEVER, UNLIKE THE FR/C SYSTEM IN THE NFL, IF THE PRIOR TEAM DOES NOT MATCH THE OFFER, IT LOSES THE PLAYER AND RECEIVES NO FORM OF COMPENSATION. THEREFORE, IN CONTRAST TO THE FOOTBALL PLAYERS UNDER THE FR/C SYSTEM, THE NBA PLAYERS ENJOYED A SIGNIFICANTLY HIGHER LEVEL OF MOVEMENT (AND HIGHER SALARIES) THAN THEIR NFL COUNTERPARTS. THERE IS ALSO A SALARY CAP IN PLACE IN THE NBA AGREED TO IN COLLECTIVE BARGAINING WITH THE NBA PLAYERS UNION. HOWEVER, ACCORDING TO THE TESTIMONY OF THE NBA'S FORMER GENERAL COUNSEL GARY BETTMAN (NOW THE COMMISSIONER OF THE NATIONAL HOCKEY LEAGUE), THE SALARY CAP HAS HAD NO DISCERNIBLE IMPACT ON EITHER PLAYER MOVEMENT OR SALARIES.

2. THE COMPETITION CREATED BY THE UNITED STATES FOOTBALL LEAGUE HIGHLIGHTED THE SEVERITY OF THE FR/C RESTRICTIONS.

THE UNITED STATES FOOTBALL LEAGUE ("USFL") WAS A SHORT-LIVED RIVAL LEAGUE WHICH OPERATED FOR THREE SEASONS IN THE SPRING OF EACH YEAR BETWEEN 1983-85. EVEN THOUGH THE USFL ONLY EXISTED FOR THREE YEARS AND DID NOT COMPETE HEAD-TO-HEAD WITH THE NFL DURING THE FALL/WINTER SEASON, IT CREATED A LIMITED LEVEL OF COMPETITION FOR THE SERVICES OF SOME OF THE NFL PLAYERS. WHEN THIS LIMITED AMOUNT OF COMPETITION CAUSED NFL SALARIES TO INCREASE SIGNIFICANTLY,⁶ IT DEMONSTRATED HOW THE FR/C SYSTEM SEVERELY REPPRESSED NFL PLAYER SALARIES.

C. THE 1987 STRIKE

THE PLAYERS RESOLVED NOT TO SUBMIT TO SUCH UNFAIR RESTRICTIONS EVER AGAIN. THEREFORE, AFTER THE 1982 CBA EXPIRED IN THE FALL OF 1987 AND IT BECAME CLEAR THAT THE OWNERS WOULD CONTINUE TO SEVERELY RESTRICT THE PLAYERS, THE PLAYERS WENT ON STRIKE. THE OWNERS RESPONDED BY BRINGING IN SCAB PLAYERS AND AFTER FOUR WEEKS, THE PLAYERS UNSUCCESSFULLY ENDED THE STRIKE.

6. THE USFL COMPETITION CAUSED THE AVERAGE NFL PLAYER SALARY TO INCREASE 74.3 PERCENT FROM 1982 TO 1985. ONCE THE USFL DISBANDED, THE AVERAGE NFL PLAYER SALARY ACTUALLY DECREASED 6 PERCENT FROM 1985 TO 1988. (SEE PLAINTIFFS' TRIAL EXHIBIT 418).

D. OWNERS UNILATERALLY IMPOSE PLAN B

THE YEAR AFTER THE STRIKE, THE OWNERS UNILATERALLY IMPOSED THE "PLAN B" SYSTEM OF RESTRAINTS.⁷ THESE RESTRAINTS WERE ESSENTIALLY THE SAME AS THE FR/C RESTRAINTS IN EFFECT UNDER THE 1982 CBA. THEY DIFFERED IN THAT UNDER PLAN B, EACH TEAM WOULD "ONLY" RESTRICT THE TOP 37 PLAYERS ON THE TEAM. THE REMAINING PLAYERS WERE "FREE" UNDER PRESCRIBED CIRCUMSTANCES TO SIGN WITH OTHER TEAMS WITH NO COMPENSATION OR RIGHT OF FIRST REFUSAL ATTACHING. ACCORDING TO THE PLAYERS, THE PROBLEM WITH THIS PLAN B "FREE AGENCY" SYSTEM WAS THAT IT WAS ONLY THE FRINGE PLAYERS -- THOSE LIKELY TO BE RELEASED FROM THE TEAM ANYWAY -- WHO WERE GRANTED THIS FORM OF FREE AGENCY. FURTHERMORE, UNDER THE PLAN B SYSTEM, THE PLAYERS LOST THE SIGNIFICANT MEDICAL AND PENSION BENEFITS THEY HAD UNDER THE 1982 CBA.⁸

7. "PLAN A" WAS THE SYSTEM OFFERED TO THE PLAYERS FOLLOWING THE 1987 STRIKE. IT PROVIDED FOR BETTER BENEFITS, BUT, MORE SEVERE PLAYER MOVEMENT RESTRICTIONS THAN PLAN B. BECAUSE THE PLAYERS REFUSED TO ACCEPT THE TERMS OF PLAN A, THE OWNERS UNILATERALLY IMPLEMENTED PLAN B. SEE PLAINTIFFS' TRIAL EXHIBIT 15 (PLAN A & PLAN B PROPOSALS - "WHICH PLAN DO YOU WANT?").

8. SEE FOOTNOTE 4, SUPRA.

E. PLAYERS DECIDED TO PURSUE THEIR RIGHTS THROUGH LITIGATION -- POWELL V. NFL⁹

ON OCTOBER 15, 1987, AFTER THE STRIKE ENDED UNSUCCESSFULLY, THE NFLPA AND NINE INDIVIDUAL NFL PLAYERS FILED POWELL V. NFL, AN ANTITRUST CLASS ACTION ON BEHALF OF ALL NFL VETERAN PLAYERS.

1. NONSTATUTORY LABOR EXEMPTION

TWO YEARS LATER, ON THE NFL'S APPEAL OF ITS SUMMARY JUDGEMENT MOTION, THE 8TH CIRCUIT RULED THAT THE NFL WOULD CONTINUE TO BE SHIELDED FROM ANTITRUST LIABILITY BY A NONSTATUTORY LABOR EXEMPTION FOR AS LONG AS THE PARTIES MAINTAINED AN "ONGOING COLLECTIVE BARGAINING RELATIONSHIP." SEE POWELL V. NFL, 888 F.2D 559, 568 (8TH CIR. 1989), CERT. DENIED, 111 S.CT. 711 (1991).

F. DECERTIFICATION -- SETTING THE SEEDS FOR THE MCNEIL CASE

FOLLOWING THE EIGHTH CIRCUIT'S DECISION IN POWELL, THE NFLPA MEMBERS DECIDED THAT THE ONLY WAY TO FINALLY TERMINATE THIS "ONGOING COLLECTIVE BARGAINING RELATIONSHIP" WAS TO DECERTIFY THE NFLPA UNION, I.E. TO VOLUNTARILY WITHDRAW THE NFLPA'S PRIOR AUTHORIZATION TO BARGAIN COLLECTIVELY ON BEHALF OF ALL NFL PLAYERS. BY DOING SO, THE NFL WOULD NO LONGER BE ABLE TO USE THE NONSTATUTORY LABOR EXEMPTION TO SHIELD ITSELF FROM THE ANTITRUST LAWS. ACCORDINGLY, THE NFLPA MEMBERS VOTED OVERWHELMINGLY "TO DECERTIFY" THEIR UNION AND TO REFORM THE NFLPA AS A TRADE ASSOCIATION WITHOUT COLLECTIVE BARGAINING POWER IN NOVEMBER 1989, IMMEDIATELY FOLLOWING THE 8TH CIRCUIT'S DECISION IN POWELL. SEE POWELL V. NFL, 764 F. SUPP. 1351 (D. MINN. 1991) (ONGOING COLLECTIVE BARGAINING RELATIONSHIP CEASED IN LIGHT OF NFLPA'S DECERTIFICATION AS UNION).

9. CIV. NOS. 4-87-917, 4-90-476 (D. MINN.).

G. MCNEIL V. NFL, CIV. NO. 4-90-476 (D. MINN.)

COMMENCED APRIL 1990 IN NEW JERSEY AND
SUBSEQUENTLY TRANSFERRED TO MINNESOTA BECAUSE THAT
WAS THE FORUM WHERE POWELL AND MACKEY WERE
LITIGATED, EIGHT INDIVIDUAL PLAINTIFFS ALLEGED
THAT THE PLAN B SYSTEM OF PLAYER RESTRAINTS
VIOLATED THE ANTITRUST LAWS, SPECIFICALLY, SECTION
1 OF THE SHERMAN ANTITRUST ACT.

II. THE UNITED STATES ANTITRUST LAWS APPLICABLE IN MCNEIL

THE MCNEIL PLAINTIFFS BROUGHT THEIR ANTITRUST ACTION PURSUANT TO SECTION 1 OF THE SHERMAN ANTITRUST ACT AND SECTIONS 4 AND 16 OF THE CLAYTON ACT. SECTION 1 OF THE SHERMAN ANTITRUST ACT PROHIBITS ALL UNREASONABLE RESTRAINTS OF TRADE AFFECTING INTERSTATE COMMERCE. SECTIONS 4 AND 16 OF THE CLAYTON ACT AUTHORIZE AND ENCOURAGE (THROUGH TREBLE DAMAGE AND ATTORNEY FEE PROVISIONS) PRIVATE PARTY CIVIL ANTITRUST ACTIONS FOR DAMAGES AND INJUNCTIVE RELIEF. IN DETERMINING WHETHER OR NOT A PARTICULAR SET OF RESTRAINTS ARE UNREASONABLE UNDER SECTION 1 OF THE SHERMAN ANTITRUST ACT, COURTS WILL APPLY EITHER THE PER SE OR THE "RULE OF REASON" ANALYSIS.

A. PER SE V. "RULE OF REASON": THE UNIQUE JOINT VENTURE CHARACTERISTICS OF SPORTS LEAGUES FAVOR THE RULE OF REASON APPROACH

CERTAIN RESTRAINTS OF TRADE ARE SO CLEARLY UNREASONABLE THAT THEY ARE GENERALLY CONDEMNED TO BE PER SE ILLEGAL. TYPICALLY, RESTRAINTS BY HORIZONTAL COMPETITORS (TEAMS WITHIN A LEAGUE ARE HORIZONTAL COMPETITORS) FIT INTO THIS PER SE CATEGORY. HOWEVER, DUE TO THE UNIQUE NATURE OF THE NFL AND OTHER SPORTS LEAGUES, IN THAT ALL THE TEAMS IN EACH PARTICULAR LEAGUE MUST COOPERATE IN ORDER TO PRODUCE THEIR JOINT PRODUCT (GAMES), THE COURTS GENERALLY DO NOT CONDEMN THEM PER SE. SEE MACKAY V. NFL, 543 F.2D 606, 619 (8TH CIR. 1976); SMITH V. PRO FOOTBALL, INC., 593 F.2D 1173, 1177-82 (D.C. CIR. 1978). SEE ALSO MCNEIL V. NFL, 790 F. SUPP. 871, 896-97 (D. MINN. 1992) (DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANTS' LIABILITY UNDER THE PER SE ANALYSIS).

RATHER, COURTS WILL APPLY A RULE OF REASON ANALYSIS TO DETERMINE WHETHER PLAYER RESTRAINTS ARE UNREASONABLE. UNDER THIS APPROACH, COURTS WILL ANALYZE ALL THE SURROUNDING FACTS AND CIRCUMSTANCES, INCLUDING THE HISTORY OF THE RESTRAINTS AND THE NATURE OF THE INDUSTRY, AND THEN BALANCE THE PROCOMPETITIVE AND ANTICOMPETITIVE EFFECTS OF THE RESTRAINT TO ASCERTAIN WHETHER OR NOT THE RESTRAINTS ARE UNREASONABLE IN VIOLATION OF THE ANTITRUST LAWS.

III. THE CORE ISSUE IN MCNEIL (OR IN ANY SIMILAR SPORTS CASE¹⁰) IS WHETHER, UNDER THE RULE OF REASON ANALYSIS, PLAN B (OR ANY PARTICULAR SET OF PLAYER MOVEMENT RESTRICTIONS) UNREASONABLY RESTRAINS TRADE IN VIOLATION OF THE SHERMAN ANTITRUST ACT

THE REASON PLAN B (OR ANY PLAYER MOVEMENT RESTRICTIONS) ARE UNREASONABLE IS THAT IN VIRTUALLY EVERY BUSINESS IN THE FREE WORLD (WHICH UNTIL THE MCNEIL VERDICT, INCLUDED EVERYWHERE EXCEPT FOR THE NFL) EMPLOYEES ARE FREE TO SEEK EMPLOYMENT WITHOUT RESTRICTION IN ANY PLACE OR WITH ANYONE WHO IS WILLING TO HIRE THEM. HOWEVER, UNDER PLAN B, PLAYERS (EMPLOYEES) NOT UNDER CONTRACT WERE NOT FREE TO NEGOTIATE EITHER THE TERMS OR PLACE OF EMPLOYMENT. THIS WAS AN UNJUSTIFIED AND SEVERE RESTRAINT OF TRADE.

10. EXCEPT FOR MAJOR LEAGUE BASEBALL WHICH ENJOYS AN ILLOGICAL AND OUTDATED ANTITRUST EXEMPTION. SEE FLOOD V. KUHN, 407 U.S. 258 (1972).

IV. COMPETITIVE BALANCE -- THE PURPORTED JUSTIFICATION FOR PLAN B AND OTHER SIMILAR PLAYER RESTRAINTS

A. WHAT IS COMPETITIVE BALANCE?

SPORTS LEAGUES ARGUE THAT IN ORDER TO COMPETE IN THE ENTERTAINMENT BUSINESS THEY NEED TO PRODUCE AN ATTRACTIVE PRODUCT WHICH WILL CREATE STRONG CONSUMER INTEREST. CONSUMER INTEREST WHICH WILL RESULT IN GATE RECEIPTS (CONSUMERS PURCHASING TICKETS TO ATTEND SPORTING EVENTS), T.V. VIEWERSHIP (CONSUMERS WATCHING SPORTING EVENTS ON T.V. WHICH ULTIMATELY LEADS TO LUCRATIVE NETWORK RIGHTS FEES PAID TO THE SPORTS LEAGUE), AND MERCHANDISING (CONSUMERS PURCHASING LEAGUE MARKETED MERCHANDISE). ACCORDINGLY, IN ORDER TO INCREASE CONSUMER INTEREST, SPORTS LEAGUES ARGUE THAT THEY NEED TO MAINTAIN WHAT THEY CALL "COMPETITIVE BALANCE."

COMPETITIVE BALANCE ACCORDING TO SPORTS LEAGUES OCCURS WHEN THE TEAMS WITHIN A LEAGUE ARE OF SIMILAR SKILL AND ABILITY WITH EACH OTHER SO THAT THE LEAGUE IS ABLE TO PRODUCE CLOSE SCORING GAMES IN WHICH ANY GIVEN TEAM CAN BEAT ANY OTHER TEAM ON ANY GIVEN DAY AND WHERE TOWARDS THE END OF THE REGULAR SEASON, A NUMBER OF TEAMS ARE COMPETING TO QUALIFY FOR POST SEASON PLAY.

1. CONSUMER INTEREST IN POST SEASON PLAY

DURING POST SEASON PLAY CONSUMER INTEREST IS GENERALLY HIGHEST AS TEAMS COMPETE FOR THE OPPORTUNITY TO BE RECOGNIZED AS THE BEST TEAM IN THE WORLD IN THEIR SPORT. FOR EACH SPORTS LEAGUE, ITS CHAMPIONSHIP GAMES ARE ITS MOST SIGNIFICANT CONSUMER EVENTS OF THE YEAR. (BASEBALL -- THE WORLD SERIES; BASKETBALL -- THE NBA FINALS; COLLEGE BASKETBALL -- THE NCAA FINAL FOUR; PRO FOOTBALL -- THE SUPER BOWL; COLLEGE FOOTBALL -- THE JANUARY 1 BOWL GAMES; HOCKEY -- THE STANLEY CUP). FURTHERMORE, THE MAGNITUDE OF CONSUMER INTEREST FOR SOME OF THESE EVENTS IS REFLECTED IN THE FACT THAT THEY ARE AMONG THE MOST WATCHED T.V. PROGRAMS IN THE UNITED STATES. FOR EXAMPLE, OF ALL T.V. PROGRAMS IN THE UNITED STATES EACH YEAR, THE SUPER BOWL

IS THE MOST WATCHED AND THE NCAA FINAL FOUR CHAMPIONSHIP GAME IS THE SECOND MOST WATCHED.

B. WHAT DESTROYS COMPETITIVE BALANCE?

SPORTS LEAGUES ARGUE THAT PLAYER MOVEMENT RESTRAINTS ARE NEEDED TO MAINTAIN COMPETITIVE BALANCE BECAUSE WITHOUT THESE RESTRAINTS THE BEST PLAYERS WOULD "FLOCK" TO TEAMS IN MAJOR CITIES. AS A RESULT, TEAMS IN MAJOR CITIES WOULD DOMINATE THE SPORT AND COMPETITIVE BALANCE WOULD BE DESTROYED. WITHOUT COMPETITIVE BALANCE, A LEAGUE WOULD BE UNABLE TO PRODUCE AN ATTRACTIVE PRODUCT, CONSUMER INTEREST WOULD DECREASE AND EVENTUALLY THE LEAGUE WOULD COLLAPSE.

V. DISPELLING THE PURPORTED JUSTIFICATIONS FOR PLAYER RESTRICTIONS: TRUE FREE AGENCY FOR PLAYERS WILL NOT LEAD TO THE DESTRUCTION OF PROFESSIONAL SPORTS IN THE UNITED STATES

A. SPORTS LEAGUES DO NOT NEED COMPETITIVE BALANCE TO THRIVE AND SURVIVE

1. TOO MUCH COMPETITIVE BALANCE WOULD CREATE DULL AND UNEXCITING GAMES. IF ALL NFL TEAMS ENDED THE SEASON AT 8-8, FAN INTEREST WOULD DECREASE.
2. COLLEGE FOOTBALL PRODUCES AN ATTRACTIVE AND HIGHLY POPULAR PRODUCT THAT DRAWS STRONG CONSUMER INTEREST AND CREATES LUCRATIVE GATE, T.V. AND MERCHANDISING REVENUES. YET, ACCORDING TO THE NFL'S "EXPERT" COLLEGE FOOTBALL IS NOT A COMPETITIVELY BALANCED SPORT.¹¹

B. PLAYER MOVEMENT RESTRICTIONS ARE NOT NEEDED TO FURTHER COMPETITIVE BALANCE

THE MCNEILL PLAINTIFF'S EXPERT ECONOMIST, DR. ROGER NOLL DID A STUDY AND CONCLUDED THAT THERE WAS NO RELATIONSHIP BETWEEN THE PLAN B RESTRICTIONS AND COMPETITIVE BALANCE.¹² THE NFL PRESENTED NO RESPONSE.

11. SEE TRIAL TESTIMONY OF NFL'S EXPERT ECONOMIST DEAN GEORGE DALY AT 7503-04 FOR THE PROPOSITION THAT THE NFL IS SIGNIFICANTLY MORE COMPETITIVELY BALANCED THAN COLLEGE FOOTBALL. SEE ALSO TRIAL TESTIMONY OF GEORGE YOUNG, GENERAL MANAGER OF THE NEW YORK GIANTS AT 5254-57.

12. SEE TRIAL TESTIMONY OF ROGER NOLL AT 2403-04, 2662-63.

1. OTHER FACTORS THAT ENCOURAGE COMPETITIVE BALANCE OR THAT ADDRESS THE NFL'S CONCERNS REGARDING FREE AGENCY.
 - a. REVENUE SHARING: ADDRESSES THE NFL'S CONCERN THAT BIGGER MARKETS WILL HAVE AN UNFAIR ADVANTAGE AT SIGNING PLAYERS (EVEN THOUGH BASEBALL'S EXPERIENCE HAS PROVEN THAT REVENUE DISPARITIES DO NOT DESTROY COMPETITIVE BALANCE (SEE BELOW)). IN FACT, BECAUSE THE NFL ALREADY HAS EXTENSIVE REVENUE SHARING, THE NFL'S CONCERN THAT THE BIG MARKET TEAMS WILL BE ABLE TO SIGN ALL THE BEST FREE AGENTS IS UNFOUNDED. (SEE BELOW).
 - b. SCHEDULING: THE NFL'S CURRENT SCHEDULING PROCEDURE HELPS MAINTAIN COMPETITIVE BALANCE. WEAKER TEAMS ARE MATCHED TO PLAY OTHER WEAK TEAMS AND STRONGER TEAMS ARE MATCHED TO PLAY OTHER STRONG TEAMS IN THE FOLLOWING SEASON.
 - c. GUARANTEED/LONG TERM CONTRACTS: IF PLAYERS ARE OFFERED GUARANTEED AND LONG TERM CONTRACTS, THE NFL TEAMS IN ALL MARKETS ARE EQUALLY ABLE TO RETAIN THEIR PLAYERS' SERVICES FOR LONGER PERIODS OF TIME.
 - d. MANAGEMENT/COACHING: DEVELOPING AN EXCELLENT MANAGEMENT AND COACHING STAFF, COMMITTED TO ITS PLAYERS AND TO WINNING, WILL HELP A TEAM ATTRACT AND RETAIN QUALITY PLAYERS.
 - e. PLAYING CONDITIONS: UTILIZING NATURAL GRASS, RATHER THAN ARTIFICIAL TURF (WHICH CAUSES INJURIES), WILL HELP A TEAM ATTRACT AND RETAIN QUALITY PLAYERS.
 - f. TREATMENT OF PLAYERS: TREATMENT OF PLAYERS WITH RESPECT AND DIGNITY, OFFERING THEM POST CAREER DEVELOPMENT OPPORTUNITIES, CONTINUING COLLEGE EDUCATION OPPORTUNITIES, AND THE LIKE, WILL HELP A TEAM ATTRACT AND RETAIN QUALITY PLAYERS.

C. **PLAYER MOVEMENT RESTRICTIONS DO NOT FURTHER COMPETITIVE BALANCE RATHER, THEY CREATE A COMPETITIVE IMBALANCE**

FOR EXAMPLE, SINCE FREE AGENCY WAS INTRODUCED IN BASEBALL IN 1977, 13 OF THE 26 TEAMS (50%) WON THE WORLD SERIES.¹³ IN CONTRAST, DURING THAT SAME TIME PERIOD, ONLY SEVEN OF THE 28 TEAMS (25%) IN THE NFL WON THE SUPER BOWL.¹⁴

1. **THE NFL'S "CONTINUITY" ARGUMENT.**

THE NFL ARGUES THAT BECAUSE FOOTBALL IS A TEAM SPORT AND BECAUSE EACH COACH'S SYSTEM IS UNIQUE AND DIFFICULT TO LEARN, EMPLOYEE CONTINUITY MUST BE MAINTAINED.

a. **HOWEVER, CONTINUITY DISCOURAGES COMPETITIVE BALANCE AND MAINTAINS A COMPETITIVE IMBALANCE. BECAUSE THE BETTER TEAMS ARE ABLE TO RESTRICT THEIR PLAYERS FROM MOVING TO OTHER TEAMS, THE WEAKER TEAMS ARE UNABLE TO IMPROVE THEMSELVES BY SIGNING THE BETTER PLAYERS.**

b. **FURTHERMORE, THE NFL'S CONTINUITY RATIONALE IS UNDERMINED BY THE REALITY THAT THERE IS ALREADY A TREMENDOUS AMOUNT OF MOVEMENT IN THE NFL. BETWEEN 1990-91, THE LEAGUE TURNOVER RATE FOR PLAYER PERSONNEL WAS 32%. AS EXAMPLES, CLEVELAND HAD 53% TURNOVER, NEW ENGLAND 45%, AND PHOENIX 49%.¹⁵**

13. INCLUDING THE RECENT 1992 WORLD SERIES VICTORY BY THE TORONTO BLUE JAYS. ALSO, DURING THIS TIME PERIOD, ALL BUT THREE OF THE TEAMS IN MLB HAVE WON DIVISION TITLES. SEE PLAINTIFFS' EXHIBIT 326Y.

14. SEE PLAINTIFFS' TRIAL EXHIBIT 817.

15. SEE PLAINTIFFS' TRIAL EXHIBIT 334.

c. FINALLY, THE NFL'S ARGUMENT THAT CONTINUITY MUST BE MAINTAINED BECAUSE EACH COACH'S SYSTEM IS DIFFICULT TO LEARN, IS FURTHER UNDERMINED BY THE ABSENCE OF RESTRICTIONS ON THE MOVEMENT OF COACHES IN THE NFL. EVEN THOUGH COACHES ARE SO CRUCIAL TO THE TEAM, THEY ARE FREE TO MOVE TO DIFFERENT TEAMS.¹⁶ IN FACT, IN THE LAST FOUR YEARS, THERE HAS BEEN A TURNOVER OF COACHES IN EXCESS OF 75% -- ALL BRINGING IN THEIR NEW AND SUPPOSEDLY "DIFFICULT" SYSTEM TOGETHER WITH A LARGELY NEW GROUP OF ASSISTANT COACHES.

16. SEE PLAINTIFFS' TRIAL EXHIBIT 407 (NFL POLICY STATES THAT A CLUB MAY NOT PREVENT ONE OF ITS ASSISTANT COACHES FROM DISCUSSING AND/OR ACCEPTING A HEAD COACHING POSITION WITH ANOTHER TEAM EVEN IF THE ASSISTANT COACH IS CONTRACTUALLY OBLIGATED TO HIS CURRENT TEAM).

D. FREE AGENCY IN OTHER SPORTS LEAGUES HAS HELPED THOSE LEAGUES THRIVE

THE DEMONSTRATIVE EVIDENCE IN MCNEIL SHOWED THAT ALTHOUGH BASEBALL (MLB) AND BASKETBALL (NBA) HAVE SIGNIFICANTLY LESS PLAYER RESTRICTIONS THAN FOOTBALL (NFL), BOTH THE NBA AND MLB ARE MORE COMPETITIVELY BALANCED THAN THE NFL.¹⁷ FURTHERMORE, THE NBA AND MLB ARE NOW SIGNIFICANTLY MORE POPULAR AND PROFITABLE THAN THEY WERE BEFORE THEY ALLOWED FREE AGENCY.¹⁸

1. THE THEORY THAT FREE AGENCY WILL DESTROY COMPETITIVE BALANCE BY ENABLING THE BIG MARKET TEAMS TO DOMINATE THE LEAGUE, COMPLETELY CONTRADICTS THE EVIDENCE IN BASEBALL.¹⁹ FOR EXAMPLE, DURING THE RECENT 1992 BASEBALL SEASON, NONE OF THE BIG MARKET CLUBS (NEW YORK METS, NEW YORK YANKEES, LOS ANGELES DODGERS, CALIFORNIA ANGELS, CHICAGO CUBS, CHICAGO WHITE SOX) CAME CLOSE TO WINNING THEIR DIVISION. IN FACT, THESE TEAMS WERE AMONG THE WORST TEAMS IN THE LEAGUE. ON THE OTHER HAND, THE SMALL MARKETS TEAMS (ATLANTA BRAVES, TORONTO BLUE JAYS, PITTSBURGH PIRATES, OAKLAND A'S, CINCINNATI REDS, MILWAUKEE BREWERS, MONTREAL EXPOS) ALL FARED EXTREMELY WELL AND WERE AMONG THE BEST TEAMS IN THE LEAGUE.
2. BASEBALL HAS EXISTED FOR 15 YEARS AND BASKETBALL FOR 10 YEARS WITH EXTENSIVE FREE AGENCY AND NEITHER HAS BEEN "DESTROYED." TO THE CONTRARY, BOTH HAVE THRIVED.

17. SEE TRIAL TESTIMONY OF DONALD FEHR AT 1869-76, 1987. THIS EVIDENCE WAS ESSENTIALLY UNREBUTTED BY THE NFL.

18. ID. AT 1828-29 (FREE AGENCY HAS HAD NO NEGATIVE EFFECT ON THE FINANCIAL STABILITY OF MLB).

19. ID. AT 1976-77, 1886-88, 2005-06.

- E. THE NFL'S THEORY THAT FREE AGENCY WILL CAUSE THE BEST PLAYERS TO FLOCK TO A HANDFUL OF TEAMS IN THE LARGEST CITIES IS UNFOUNDED AND UNSUPPORTED BY THE TESTIMONY IN MCNEIL

THE MCNEIL RECORD DEMONSTRATED THAT IN ADDITION TO FINANCIAL CONSIDERATIONS, PLAYERS WITH UNRESTRICTED FREE AGENCY WILL CONSIDER MANY FACTORS IN DECIDING WHERE TO PLAY. PLAYERS WILL LOOK FOR OPPORTUNITIES TO BECOME STARTERS, OPPORTUNITIES TO PLAY FOR A WELL COACHED TEAM, OPPORTUNITIES TO PLAY IN A LIVEABLE CITY, OPPORTUNITIES TO PLAY IN THEIR HOMETOWN, OPPORTUNITIES TO PLAY FOR A TEAM THAT TREATS ITS PLAYERS VERY WELL (PROVIDES POST CAREER DEVELOPMENT, CONTINUING EDUCATION), OPPORTUNITIES TO PLAY ON NATURAL GRASS, OPPORTUNITIES TO PLAY IN CERTAIN CLIMATES, OPPORTUNITIES TO PLAY IN CITIES PARTICULARLY SUPPORTIVE OF THEIR TEAM, OPPORTUNITIES TO PLAY FOR A TEAM THAT IS COMMITTED TO WINNING, AND A HOST OF MANY OTHER REASONS.

1. JACKSON V. NFL, CIV. NO. 4-92-876 (D. MINN.)

IMMEDIATELY FOLLOWING THE MCNEIL VERDICT, A HANDFUL OF PLAYERS STILL RESTRICTED UNDER THE PLAN B SYSTEM, BUT NOT YET SIGNED FOR THE 1992 SEASON, SOUGHT TO ENJOIN THE NFL FROM CONTINUING TO RESTRICT THEM UNDER THE NOW UNLAWFUL PLAN B SYSTEM. ON SEPTEMBER 24, 1992 THE COURT ISSUED A TEMPORARY RESTRAINING ORDER GRANTING THE FOUR REMAINING PLAINTIFFS FIVE DAYS OF UNFETTERED FREE AGENCY. SEE JACKSON V. NFL, 802 F. SUPP. 226 (D. MINN. 1992).

THREE OF THE FOUR PLAINTIFFS SIGNED IMMEDIATELY -- AND NONE WITH ANY OF THE BIGGEST MARKET TEAMS (NEW YORK JETS, NEW YORK GIANTS, LOS ANGELES RAMS, LOS ANGELES RAIDERS, CHICAGO BEARS) AND ALL SIGNED WITH DIFFERENT TEAMS. NAME PLAINTIFF AND ALL-PRO TIGHT END KEITH JACKSON (FORMERLY OF THE PHILADELPHIA EAGLES) SIGNED WITH THE MIAMI DOLPHINS, WIDE RECEIVER WEBSTER SLAUGHTER (FORMERLY OF THE CLEVELAND BROWNS) SIGNED WITH THE HOUSTON OILERS AND DEFENSIVE LINEMAN GARIN VERIS (FORMERLY OF THE NEW ENGLAND

PATRIOTS) SIGNED WITH HIS HOMETOWN SAN FRANCISCO 49ERS).

2. TRIAL EXAMPLES FROM MCNEIL

- a. FROM 1989-1992, THE FOUR YEARS IN WHICH PLAN B WAS IN EFFECT, GREEN BAY, KANSAS CITY, CLEVELAND AND SAN DIEGO (THE 22ND, 24TH, 11TH, AND 20TH LARGEST NFL MARKETS RESPECTIVELY) SIGNED MORE UNRESTRICTED PLAYERS THAN ANY OF THE OTHER NFL TEAMS.²⁰
- b. STAR DEFENSIVE BACK FRANK MINNIFIELD WAS AN UNRESTRICTED FREE AGENT AFTER THE USFL DISBANDED. ALTHOUGH HE COULD HAVE GONE TO ANY TEAM IN THE LEAGUE, HE WENT TO THE CLEVELAND BROWNS BECAUSE THEY PLAYED ON NATURAL GRASS AND BECAUSE THEIR DEFENSE WAS ONE PLAYER AWAY FROM BEING A GREAT DEFENSE.²¹
- c. QUARTERBACK BOBBY HEBERT WAS ALSO AN UNRESTRICTED FREE AGENT AFTER THE USFL DISBANDED. HE WENT TO THE NEW ORLEANS SAINTS, ONE OF THE SMALLEST NFL MARKETS, EVEN THOUGH HE HAD OFFERS FROM ALL THE SO-CALLED GLAMOUR MARKETS. NEW ORLEANS WAS HIS HOMETOWN AND HE WANTED TO PLAY THERE. HE ALSO HAD AN OPPORTUNITY TO START THERE.²²
- d. BERNIE KOSAR, CLEVELAND'S STARTING QUARTERBACK, ELECTED TO ENTER THE SUPPLEMENTAL COLLEGE DRAFT SO HE COULD PLAY FOR CLEVELAND, NEAR HIS HOMETOWN, A SUBURB OF YOUNGSTOWN, OHIO.²³

20. SEE PLAINTIFFS' TRIAL EXHIBIT 338E.

21. SEE TRIAL TESTIMONY OF FRANK MINNIFIELD AT 1280.

22. SEE TRIAL TESTIMONY OF BOBBY HEBERT AT 3671.

23. SEE TRIAL TESTIMONY OF ERNIE ACCORSI, THE FORMER GENERAL MANAGER OF THE CLEVELAND BROWNS AT 5393-96.

e. GEORGE YOUNG, THE GENERAL MANAGER OF THE NEW YORK GIANTS, TESTIFIED ABOUT THREE PLAN B PLAYERS HE NEGOTIATED WITH, BUT WHO ALL ENDED UP GOING TO MINNESOTA RATHER THAN NEW YORK. ONE PLAYER WENT TO MINNESOTA BECAUSE IT WAS HIS HOMETOWN, A SECOND, BECAUSE HE COULD START AND THE THIRD, BECAUSE HE HATED NEW YORK.²⁴

F. EXTENSIVE REVENUE SHARING IN FOOTBALL TOTALLY UNDERMINES THE NFL'S FLOCKING THEORY

THE NFL SHARES MOST OF ITS REVENUES EQUALLY.²⁵ AS A RESULT, THERE IS VERY LITTLE DISPARITY IN REVENUE FROM ONE TEAM TO THE NEXT.²⁶ THEREFORE, THE ARGUMENT THAT THE BIG MARKET TEAMS HAVE MORE MONEY TO SIGN FREE AGENTS THAN THE SMALL MARKET TEAMS IS NOT TRUE.²⁷

1. NOTWITHSTANDING REVENUE SHARING, DISPARITIES IN REVENUE DO NOT AFFECT COMPETITIVE BALANCE.

a. BASEBALL'S EXPERIENCE -- DESPITE FREE AGENCY COUPLED WITH LARGE REVENUE DISPARITY, COMPETITIVE BALANCE IS BETTER THAN EVER.²⁸

24. SEE TRIAL TESTIMONY OF GEORGE YOUNG AT 5279-81. THE RECENT EXPERIENCE OF THE NEW YORK YANKEES IN FAILING TO SIGN TOP FREE AGENTS IS ILLUSTRATIVE OF THIS PROBLEM.

25. SEE TRIAL TESTIMONY OF NEIL AUSTRIAN, PRESIDENT OF THE NFL AT 6382-83.

26. SEE PLAINTIFFS' TRIAL EXHIBIT 854A (DEMONSTRATING THAT IN 1990, DUE TO EXTENSIVE REVENUE SHARING THE "BIG MARKET" NEW YORK JETS ONLY RANKED 21ST IN TEAM REVENUES).

27. SEE PLAINTIFFS' TRIAL EXHIBIT 855A (DEMONSTRATING THAT IN 1990 THE SMALLER MARKET TEAMS WERE MORE THAN TWICE AS PROFITABLE AS THE LARGER MARKET TEAMS).

28. SEE PLAINTIFFS' TRIAL EXHIBITS 949, 326J, 326Y, 816, AND 814.

b. RECOGNITION THAT "A CHAMPIONSHIP CANNOT BE BOUGHT" AND THAT "AVAILABILITY OF ADDITIONAL FINANCES BEYOND NORMALLY EXPECTED REVENUES, COUPLED WITH THE WILLINGNESS OF OWNERSHIP TO SPEND THESE REVENUES DOES NOT CREATE A TRUE COMPETITIVE ADVANTAGE." MEMORANDUM, DATED AUGUST 8, 1990, OF CARMEN A. POLICY, PRESIDENT OF THE SAN FRANCISCO 49ERS, TO PAUL TAGLIABUE, THE COMMISSIONER OF THE NFL, REGARDING THE SALE OF THE SAN FRANCISCO 49ERS TO THE DEBARTOLO CORPORATION.²⁹

G. THE REAL REASON PLAYER MOVEMENT RESTRICTIONS EXIST IS TO MAINTAIN OWNER PROFITS AND SUPPRESS PLAYER SALARIES

THE MCNEIL PLAINTIFFS' EXPERT ECONOMIST DR. ROGER NOLL TESTIFIED THAT THE PLAN B SYSTEM IMPLEMENTED BY THE NFL HAD "NO LEGITIMATE BASIS AT ALL IN PRESERVING OR MAKING BETTER IN SOME SENSE COMPETITIVE BALANCE" AND THAT THE EFFECT OF PLAN B WAS TO "LOWER PLAYER SALARIES" AND INCREASE OWNER PROFITS.³⁰ NOT ONE NFL OWNER TOOK THE WITNESS STAND TO TESTIFY TO THE CONTRARY.

29. SEE PLAINTIFFS' TRIAL EXHIBIT 140.

30. SEE TRIAL TESTIMONY OF ROGER NOLL AT 2403-04.

VI. THE MCNEIL VERDICT AND ITS IMPLICATIONS

ON SEPTEMBER 10, 1992, THE MCNEIL JURY FOUND THAT THE NFL'S PLAN B SYSTEM OF PLAYER RESTRAINTS WAS AN UNREASONABLE RESTRAINT OF TRADE IN VIOLATION OF SECTION 1 OF THE SHERMAN ANTITRUST ACT. FOR THE PLAYERS, THE VERDICT SIGNALLED THE END OF THE TYPE OF SEVERE PLAYER RESTRAINTS IMPOSED UPON THEM FOR THE PAST 30 YEARS THROUGH THE ROZELLE RULE, THE 1977 AND 1982 CBA'S AND PLAN B, AND MARKED THE BEGINNING OF AN ERA OF SIGNIFICANT AND MEANINGFUL FREE AGENCY FOR THOUSANDS OF PLAYERS NOW, AND IN THE FUTURE. FOR THE OWNERS, THE VERDICT SIGNALLED THE NEED TO CONTINUE ON WITH LITIGATION (AT LEAST TEMPORARILY) IN HOPE THAT THEY WOULD SOMEDAY PREVAIL IN THEIR ANTITRUST SUITS.

A. MAJOR LITIGATION DEVELOPMENTS FOLLOWING THE MCNEIL VERDICT

1. JACKSON V. NFL, 802 F. SUPP. 226 (D. MINN. 1992): THE COURT ISSUED A TEMPORARY RESTRAINING ORDER FREEING THE FOUR PLAYERS NOT UNDER CONTRACT FOR THE 1992 SEASON WHO WERE STILL RESTRAINED FROM NEGOTIATING WITH OTHER TEAMS UNDER THE TERMS OF PLAN B. THE COURT HELD THAT PLAN B IRREPARABLY HARMED THESE FOUR PLAYERS AND THAT THE NFL WAS NOT JUSTIFIED IN CONTINUING TO VIOLATE THE ANTITRUST LAWS. THE COURT ALSO RULED THAT ALL EIGHT PLAINTIFFS IN MCNEIL WERE INJURED BY PLAN B EVEN THOUGH THE JURY WAS ONLY ABLE TO CALCULATE DAMAGES FOR FOUR OF THESE PLAINTIFFS. THE COURT SAID THAT THE JURY'S INABILITY TO CALCULATE DAMAGES FOR FOUR PLAYERS, EVEN THOUGH THEY SUFFERED ANTITRUST INJURY, WAS FURTHER EVIDENCE THAT THE PLAYERS SUFFER IRREPARABLE HARM UNDER THE PLAN B SYSTEM.

2. MCNEIL V. NFL (D. MINN.): THE MCNEIL PLAINTIFFS FILED A MOTION FOR PERMANENT INJUNCTIVE RELIEF TO PREVENT THE NFL FROM RESTRICTING THEM IN ANY WAY.
3. WHITE V. NFL (D. MINN.): A CLASS ACTION WAS FILED ON BEHALF OF APPROXIMATELY 600 PLAYERS WHOSE CONTRACTS EXPIRE AT THE END OF THE 1992 SEASON. THE COMPLAINT SEEKS: (1) INJUNCTIVE RELIEF PREVENTING THE NFL FROM RESTRICTING, IN ANY WAY, THE WHITE CLASS, AND (2) DAMAGES FOR THE 1990-1992 SEASONS. PLAINTIFFS SUBSEQUENTLY MOVED FOR SUMMARY JUDGEMENT ON LIABILITY BASED ON THE COLLATERAL ESTOPPEL EFFECT OF THE MCNEIL VERDICT.

B. SETTLEMENT

ON JANUARY 6, 1993, AFTER FIVE YEARS OF LITIGATION, THE PARTIES REACHED A SETTLEMENT AGREEMENT PROVIDING FOR EXTENSIVE FREE AGENCY FOR ALMOST ALL NFL VETERAN PLAYERS.

1. BRIEF OUTLINE OF THE TERMS OF THE AGREEMENT.

- a. FREE AGENCY: UNRESTRICTED FREE AGENCY FOR PLAYERS WITH FIVE YEARS OF EXPERIENCE AND FOR ALL NAME PLAINTIFFS INVOLVED IN THE VARIOUS ANTITRUST LAWSUITS AGAINST THE NFL.³¹ THE FREE AGENCY SIGNING PERIOD RUNS FROM APPROXIMATELY MARCH 1 TO THE BEGINNING OF TRAINING CAMP.

31. THESE CASES INCLUDE MCNEIL V. NFL, CIV. NO. 4-90-476 (D. MINN.); WHITE V. NFL, CIV. NO. 4-92-906 (D. MINN.); JACKSON V. NFL, CIV. NO. 4-92-876 (D. MINN.); LEWIS V. NFL, CIV. NO. 91-2685 (D.D.C.); NFL V. NFLPA ("HILTON") CIV. NO. 4-91-877 (D. MINN.); ALLEN AND BYRD V. CHARGERS AND RAIDERS, CIV. NO. 91-4322 (C.D. CAL.); JOYNER V. NFL, CIV. NO. 92-2876 (E.D. PA.).

- b. **FREE AGENCY EXEMPTIONS:** EACH TEAM CAN EXEMPT ONE "FRANCHISE" PLAYER FROM FREE AGENCY FOR THE DURATION OF HIS CAREER. HOWEVER, THE PLAYER MUST BE OFFERED A CONTRACT THAT EXCEEDS THE AVERAGE OF THE TOP FIVE SALARIES AT HIS POSITION. DURING THE 1993 SEASON, TEAMS WILL BE ABLE TO EXERCISE A RIGHT OF FIRST REFUSAL ON TWO OF THEIR FREE AGENT PLAYERS (ONE PLAYER IN 1994) IF THEY OFFER THOSE PLAYERS A SALARY THAT EXCEEDS THE AVERAGE OF THE TOP TEN SALARIES AT THAT POSITION.
("TRANSITION" PLAYER EXEMPTION)
- c. **SALARY CAP:** IF PLAYER COSTS REACH 67 PERCENT OF DESIGNATED LEAGUE GROSS REVENUES (APPROXIMATELY 95 PERCENT OF THE LEAGUE'S GROSS REVENUES), TEAM SALARY CAPS WILL BE IMPOSED AND PLAYERS WILL BE ELIGIBLE FOR FREE AGENCY AFTER FOUR YEARS. THE CAP WILL BEGIN AT 64 PERCENT AND WILL DECREASE ONE PERCENT A YEAR UNTIL IT REACHES 62 PERCENT. IT REMAINS AT THIS 62 PERCENT LEVEL FOR THE REMAINDER OF THE AGREEMENT. IF A SALARY CAP IS IMPOSED, PLAYERS ARE GUARANTEED 58 PERCENT OF THE DESIGNATED REVENUES.
- d. **COLLEGE DRAFT:** THE COLLEGE DRAFT WILL BE SEVEN ROUNDS, REDUCED FROM 12 ROUNDS. TEAMS THAT LOSE THE MOST PLAYERS TO FREE AGENCY WILL BE GRANTED EXTRA DRAFT PICKS.
- e. **ROOKIE SALARIES:** SALARIES WILL REMAIN AT THE 1992 RATE OF 3.5 PERCENT OF DESIGNATED LEAGUE GROSS REVENUES. CURRENTLY, THAT AMOUNTS TO APPROXIMATELY \$2 MILLION A YEAR PER TEAM.
- f. **LITIGATION SETTLEMENT:** THE PLAYERS WILL RECEIVE A PAYMENT OF \$195 MILLION TO SETTLE ALL OUTSTANDING LITIGATION.
- g. **TERM OF AGREEMENT:** THE AGREEMENT WILL BE IN EFFECT FOR SEVEN YEARS (1993-1999).

2. PRELIMINARY RESULTS OF THE NEW, LESS RESTRICTIVE, SYSTEM.

BETWEEN MARCH 1 AND APRIL 8:

- a. 78 UNRESTRICTED FREE AGENTS ENTERED INTO NEW CONTRACTS, 53 WITH NEW TEAMS; AT LEAST 10 RESTRICTED FREE AGENTS RECEIVED OFFERS FROM OTHER TEAMS, AT LEAST 4 MOVED TO NEW TEAMS; 4 TRANSITION PLAYERS RECEIVED OFFERS FROM OTHER TEAMS, 2 MOVED
- b. AVERAGE SALARIES OF THESE PLAYERS INCREASED OVER 150 PERCENT, FROM LESS THAN \$500,000 TO OVER \$1.2 MILLION
- c. LARGE INCREASES BY NON-GLAMOUR POSITIONS - HIGHEST OFFENSIVE LINEMAN SALARY GREW IN 3 WEEKS FROM 1.4 MILLION PER YEAR TO OVER 2.5 MILLION PER YEAR
- d. PLAYERS DID NOT "FLOCK" TO BIG MARKETS - REGGIE WHITE TURNED DOWN N.Y. JETS AND WASHINGTON REDSKINS TO GO TO GREEN BAY

3. A HANDFUL OF PLAYERS OBJECTED TO THE PROPOSED SETTLEMENT. ON APRIL 30, 1993, THE COURT REJECTED ALL OBJECTIONS. THE COURT APPROVED THE SETTLEMENT AS FAIR, REASONABLE, AND ADEQUATE.

C. ON MAY 6, 1993, THE NFL AND THE NFLPA AGREED ON A SEVEN YEAR COLLECTIVE BARGAINING AGREEMENT WHICH INCORPORATES THE TERMS OF THE SETTLEMENT AGREEMENT WITH A FEW MODIFICATIONS

APPENDIX

CASES

Mackey v. NFL, 543 F.2d 606 (1976)

Powell v. NFL, 678 F. Supp. 777 (D. Minn. 1988)

Powell v. NFL, 888 F.2d 559 (8th Cir. 1989)

Powell v. NFL, 764 F. Supp. 1351 (D. Minn. 1991)

McNeil v. NFL, 790 F. Supp. 871 (D. Minn. 1992)

Jackson v. NFL, 802 F. Supp. 226 (D. Minn. 1992)

White v. NFL, No. 4-92-906, slip op. (D. Minn. 4/30/93)

PLAINTIFFS' TRIAL EXHIBITS

The following trial exhibits are assembled in the order in which they appear in the outline: 418, 15, 326Y, 817, 334, 407, 338E, 854A, 855A, 949, 326J, 816, 814 AND 140.

The following trial exhibits not cited in the outline are also included: 110B, 849, 825, 824, 861, 822, 330E AND 776.