"A LOOK AT THE MCNEIL LITIGATION AND ITS RESULTS"

by

JEFFREY L. KESSLER, ESQ.
(Represented the Plaintiff Players)

SPORTS LAWYERS ASSOCIATION

19TH ANNUAL SPORTS LAWYERS CONFERENCE

MAY 13-15, 1993

ANA WESTIN HOTEL
WASHINGTON, D.C.
THE BACKGROUND/OVERVIEW OF MCNEILL V. NFL

A. THE ROZELLE RULE AND MACKEY V. NFL

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 McNeill 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).

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.


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 BASEBALL

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.
NATIONAL BASKETBALL ASSOCIATION

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, IT DEMONSTRATED HOW THE FR/C SYSTEM SEVERELY REPRESSED NFL PLAYER SALARIES.

C. THE 1987 STRIKE


D. OWNERS UNILATERALLY IMPOSE PLAN B


8. SEE FOOTNOTE 4, SUPRA.
E. PLAYERS DECIDED TO PURSUE THEIR RIGHTS THROUGH LITIGATION -- POWELL V. NFL

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


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


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 MACKY WERE LITIGATED, EIGHT INDIVIDUAL PLAINTIFFS ALLEGED THAT THE PLAN B SYSTEM OF PLAYER RESTRANTS 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


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 CASE) 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.

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. DISPENDELNG 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 MCNEIL 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.


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. IN CONTRAST, DURING THAT SAME TIME PERIOD, ONLY SEVEN OF THE 28 TEAMS (25%) IN THE NFL WON THE SUPER BOWL.

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%.

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. 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 MCNEILL 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.\textsuperscript{17} FURTHERMORE, THE NBA AND MLB ARE NOW SIGNIFICANTLY MORE POPULAR AND PROFITABLE THAN THEY WERE BEFORE THEY ALLOWED FREE AGENCY.\textsuperscript{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.\textsuperscript{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 FAIRED 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.

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

\textsuperscript{18} \textit{Id.} AT 1828-29 (FREE AGENCY HAS HAD NO NEGATIVE EFFECT ON THE FINANCIAL STABILITY OF MLB).

\textsuperscript{19} \textit{Id.} AT 1976-77, 1886-88, 2005-06.
B. 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.

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


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.

e. GEORGE YOUNG, THE GENERAL MANAGER OF THE NEW YORK GIANTS, TESTIFYED 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.  

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

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

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.

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).


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

THE MCNEILL 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.  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 signaled 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 signaled 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 judgment 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. The free agency signing period runs from approximately March 1 to the beginning of training camp.

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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.

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


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)
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.