

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDWARD O'BANNON, ET AL.,)	
)	
)	
PLAINTIFFS,)	NO. C-09-3329 CW
)	
VS.)	THURSDAY, JUNE 12, 2014
)	
NATIONAL COLLEGIATE)	OAKLAND, CALIFORNIA
ATHLETIC ASSOCIATION,)	
ET AL.,)	
)	
DEFENDANTS.)	COURT TRIAL
)	

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

REPORTERS' TRANSCRIPT OF PROCEEDINGS

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TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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I N D E X

PLAINTIFFS' WITNESS:**PAGE****VOL.**

DESSER, EDWIN

DIRECT EXAMINATION BY MR. ROSENTHAL

618

4

CROSS-EXAMINATION BY MR. KLAUS

667

4

REDIRECT EXAMINATION BY MR. ROSENTHAL

708

4

DEFENDANTS' WITNESS:

PILSON, NEAL

DIRECT EXAMINATION BY MR. KLAUS

715

4

CROSS-EXAMINATION BY MR. ISAACSON

761

4

REDIRECT EXAMINATION BY MR. KLAUS

815

4

PLAINTIFFS' EXHIBITS:**EVD.**

400 (REDACTED)

646

2104 (REDACTED)

641

2116 (REDACTED)

644

2162 (REDACTED)

640

2230

632

8:30 A.M.

8:30 A.M.

PROCEEDINGS

THE CLERK: REMAIN SEATED. COME TO ORDER. COURT IS
BACK IN SESSION.

THE COURT: GOOD MORNING.
YOU MAY CALL YOUR WITNESS.

MR. ROSENTHAL: EDWIN DESSER FOR PLAINTIFFS.

THE CLERK: COME UP TO THE WITNESS STAND FOR ME AND
RAISE YOUR RIGHT HAND. OKAY?

(EDWIN DESSER, CALLED AS A WITNESS FOR THE PLAINTIFFS,
HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

THE WITNESS: I DO.

THE CLERK: PLEASE BE SEATED, AND ONCE SEATED, I'M GOING TO ASK THAT YOU PLEASE STATE AND SPELL YOUR FIRST AND LAST NAME FOR THE RECORD.

THE WITNESS: MY FIRST NAME IS EDWIN E-D-W-I-N. LAST
NAME DESSER, D-E-S-S-E-R.

THE CLERK: THANK YOU.

DIRECT EXAMINATION

BY MR. ROSENTHAL:

Q. GOOD MORNING, MR. DESSER.

PLEASE TELL THE COURT WHAT YOU DO FOR A LIVING.

A. I'M A SPORTS MEDIA CONSULTANT.

Q. WHAT DOES THAT MEAN?

A. THAT MEANS I WORK ON SPORTS MEDIA TRANSACTIONS, WHETHER

1 THAT BE CONTRACTS, VALUATIONS, OR A SERIES OF OTHER SPORTS
2 MEDIA WORK ON BEHALF OF CLIENTS.

3 **Q.** DOES SPORTS MEDIA INCLUDE TELEVISION?

4 **A.** YES, IT DOES. TELEVISION IS PROBABLY ONE OF THE BIGGEST
5 PARTS OF THE SPORTS MEDIA BUSINESS.

6 **Q.** FOR HOW LONG HAVE YOU BEEN IN THE SPORTS MEDIA BUSINESS?

7 **A.** IT'S BEEN 37 YEARS.

8 **Q.** HAVE YOU HAD EXPERIENCE NEGOTIATING MEDIA RIGHTS CONTRACTS
9 BEFORE?

10 **A.** YES. I'VE NEGOTIATED HUNDREDS AND HUNDREDS OF MEDIA
11 RIGHTS CONTRACTS FOR SPORTS EVENTS.

12 **Q.** AND THOSE HAVE INCLUDED TELEVISION -- TELEVISION SPORTING
13 EVENTS?

14 **A.** YES. THAT'S CORRECT.

15 **Q.** HAVE YOU BEEN ASKED TO PROVIDE AN EXPERT OPINION TO THE
16 COURT IN THIS CASE?

17 **A.** YES, I HAVE.

18 **Q.** ON WHAT SUBJECT?

19 **A.** ON THE SUBJECT OF NIL, NAME, IMAGE AND LIKENESS BEING A
20 Hugely Important Part of the Grant of Rights that Broadcaster
21 Receives in the Context of a Sports Program and that that
22 Grant of Rights has -- A Significant Value.

23 **Q.** ARE YOU PREPARED TO SHARE THAT OPINION WITH THE COURT
24 TODAY?

25 **A.** YES, I AM.

1 Q. BEFORE WE DO THAT, LET'S TALK A LITTLE BIT ABOUT YOUR
2 BACKGROUND.

3 WHERE DID YOU GET YOUR COLLEGE DEGREE?

4 A. I WENT TO THE UNIVERSITY AT CALIFORNIA AT LOS ANGELES, AND
5 I HAVE A BACHELORS IN ECONOMICS.

6 Q. DID YOU DO ANY POST-GRADUATE WORK?

7 A. YES. I WENT TO U.S.C. I HAVE A MASTERS OF BUSINESS
8 ADMINISTRATION FROM U.S.C.

9 Q. LET'S TAKE YOUR WORK HISTORY IN REVERSE CHRONOLOGICAL
10 ORDER.

11 WHERE DO YOU WORK NOW?

12 A. I'M THE PRESIDENT OF DESSER SPORTS MEDIA, THE
13 AFOREMENTIONED CONSULTING COMPANY.

14 WE WORK FOR A VARIETY OF CLIENTS. MANY OF THEM TEAMS,
15 LEAGUES, FEDERATIONS. ALSO DO A LITTLE BIT OF WORK OF THIS
16 SORT IN THE CONTEXT OF DISPUTE RESOLUTION. M AND A
17 TRANSACTIONS, VALUATIONS, CONTRACT NEGOTIATIONS.

18 Q. HOW LONG HAVE YOU BEEN THE PRINCIPLE AT DESSER SPORTS
19 MEDIA?

20 A. IT'S BEEN NINE YEARS.

21 Q. WHILE AT DESSER SPORTS, HOW MANY AGREEMENTS HAVE YOU
22 NEGOTIATED INVOLVING THE TELECAST OR THE TELEVISING OF
23 SPORTING EVENTS?

24 A. I WOULD SAY IT'S NOW IN EXCESS OF 50 IN THE PAST NINE
25 YEARS.

1 Q. HAVE ANY OF THOSE AGREEMENTS INVOLVED THE REBROADCAST OF
2 SPORTING EVENTS?

3 A. YES.

4 Q. HAVE ANY INVOLVED VIDEO CLIPS OR HIGHLIGHTS OF SPORTING
5 EVENTS?

6 A. YES.

7 Q. ARE THEY PARTS OF THE SAME AGREEMENT?

8 A. GENERALLY THEY ARE, YES.

9 Q. WHO HAVE SOME OF YOUR CLIENTS BEEN IN NEGOTIATING THESE
10 AGREEMENTS FOR LIVE BROADCAST, REBROADCASTS, AND VIDEO CLIPS?

11 A. THE LOS ANGELES LAKERS, THE PORTLAND TRAIL BLAZERS, THE
12 TORONTO MAPLE LEAFS, AND RAPTORS, MIAMI HEAT -- RAPTORS, MIAMI
13 HEAT, AND SAN ANTONIO SPURS, CURRENT COMPETITORS IN THE NBA
14 CHAMPIONSHIP. THE L.A. KINGS ALSO PLAYING IN THE STANLEY CUP
15 CHAMPIONSHIP, AS WELL AS A VARIETY OF OTHER ENTITIES SUCH AS
16 THE PGA TOUR, THE CANADIAN FOOTBALL LEAGUE, MAJOR LEAGUE
17 BASEBALL, NATIONAL BASKETBALL ASSOCIATION, AND MANY OTHERS.

18 Q. DESCRIBE WHAT YOU DO ON BEHALF OF THESE CLIENTS WHEN YOU
19 NEGOTIATE TELECAST AGREEMENTS FOR THEM?

20 A. WELL, IT'S A PROCESS.

21 FIRST, YOU START BY LOOKING AT THE CURRENT AGREEMENT
22 THAT -- OR AGREEMENTS THAT THE PARTICULAR ENTITY HAS, AND
23 STUDY IT, UNDERSTAND ITS BENEFITS, IT'S WEAKNESSES. THEN YOU
24 MAKE AN ASSESSMENT OF THE MARKETPLACE AT THIS PARTICULAR TIME,
25 AND IDENTIFY DIRECTIONALLY WHERE VALUES ARE GOING, WHAT KEY

1 ISSUES, WHAT KEY BUCKETS OF RIGHTS ARE BECOMING MORE
2 IMPORTANT. AND YOU LOOK AT THE THIRD PARTIES WITH WHICH YOU
3 MIGHT ENTER INTO AN AGREEMENT.

4 PART OF THE PROCESS ALSO INVOLVES LOOKING AT ALTERNATIVES
5 FOR DOING A DEAL WITH AN EXISTING PARTY. YOU MIGHT LOOK AT
6 STARTING A NEW NETWORK, AND IT'S IMPORTANT THEN TO UNDERSTAND
7 THE DYNAMICS, THE RISKS, THE VALUES OF STARTING A NEW NETWORK,
8 WHETHER IT BE A ORIGINAL SPORTS NETWORK, A NATIONAL SPORTS
9 NETWORK, OR SOMETHING ELSE.

10 ONCE WE'VE DONE THAT, WE TYPICALLY PROVIDE A VALUATION FOR
11 THE RIGHTS TO THE CLIENT, AND THEN WE CAN CONTINUE THE PROCESS
12 INTO ACTUALLY HANDS-ON NEGOTIATIONS. WE'LL NEGOTIATE WITH THE
13 INCUMBENT FIRST, TYPICALLY.

14 **Q.** WHEN YOU SAY "THE INCUMBENT", WHO ARE YOU TALKING ABOUT?

15 **A.** THE INCUMBENT BEING THE CURRENT RIGHTS HOLDER.

16 LET'S TAKE THE LAKERS, FOR EXAMPLE. THE LAKERS' RECENT
17 DEAL, THEY HAD AN INCUMBENT FOX AND CBS BROADCAST STATION IN
18 LOS ANGELES, THEY WERE THE INCUMBENTS, AND IN THE PARTICULAR
19 CASE OF THE LAKERS, WE BEGIN FIRST WITH THOSE TWO.

20 THEN, IF YOU REACH AN AGREEMENT, YOU MOVE FORWARD WITH
21 PUTTING IT IN WRITING. IF YOU DON'T, YOU THEN GO OFF AND TALK
22 TO THE MARKETPLACE, AS WAS THE CASE WITH THE LAKERS. WE
23 TALKED TO A VARIETY OF THIRD PARTIES, SOME OF WHICH CURRENTLY
24 OPERATED NETWORK, SOME OF WHICH DIDN'T OPERATE NETWORKS, SOME
25 OF WHICH WANTED TO START NEW NETWORKS USING THE LAKERS

1 PROGRAMMING.

2 WE ULTIMATELY, IN THAT PARTICULAR CASE, MADE A DEAL WITH
3 TIME WARNER CABLE TO START TWO NEW NETWORKS, ONE IN ENGLISH,
4 ONE IN SPANISH, AND THAT IS, MORE OR LESS, A TYPICAL PROCESS.

5 Q. HOLD THAT THOUGHT ABOUT THE NEW NETWORK YOU CREATED WITH
6 THE LAKERS.

7 WHEN YOU NEGOTIATE THESE AGREEMENTS ON BEHALF OF YOUR
8 CLIENTS --

9 THE COURT: COULD WE MOVE RELATIVELY QUICKLY TO THE
10 ACTUAL CASE RATHER THAN TOO MUCH MORE DETAIL ABOUT PAST
11 HYPOTHETICALS AND EXAMPLES AND SO ON.

12 MR. ROSENTHAL: SURE. I'M JUST TRYING TO QUALIFY THE
13 WITNESS, YOUR HONOR.

14 THE COURT: I DON'T THINK THERE WILL BE ANY DISPUTE
15 ABOUT THAT.

16 MR. ROSENTHAL: THEY HAVEN'T AGREED TO IT.

17 THE COURT: DO YOU HAVE ANY OBJECTION TO THIS WITNESS
18 BEING QUALIFIED AS AN EXPERT FOR WHAT HE'S PROFFERED FOR? I'M
19 JUST TRYING TO CUT OUT A LOT OF THIS INITIAL --

20 MR. KLAUS: I APPRECIATE IT. THE PROFFER WAS ON --
21 AS HIM AS AN EXPERT ON WHAT SUBJECT?

22 MR. ROSENTHAL: SPORTS TELEVISION AND MEDIA TO
23 INCLUDE THE NEGOTIATION OF TELEVISION RIGHTS CONTRACTS.

24 MR. KLAUS: I HAVE NO OBJECTION TO HIM BEING
25 QUALIFIED AS AN EXPERT ON THE NEGOTIATION OF SPORTS MEDIA

1 CONTRACTS. BEYOND THAT, AS TO BEING AN EXPERT ON VALUATIONS
2 IN THE SPORTS MEDIA, HE WAS NOT DISCLOSED.

3 **THE COURT:** I DIDN'T HEAR HIM SAY THAT.

4 **MR. KLAUS:** OKAY.

5 **MR. ROSENTHAL:** THAT'S NOT WHAT HE'S BEING OFFERED
6 FOR.

7 **THE COURT:** HE'S ACCEPTED FOR WHAT YOU SAID.
8 GO AHEAD.

9 **MR. ROSENTHAL:** THANKS.

10 **BY MR. ROSENTHAL:**

11 **Q.** BASED ON YOUR EXPERIENCE OVER 37 YEARS IN SPORTS MEDIA
12 INDUSTRY, MR. DESSER, WHAT IS YOUR OPINION ON WHETHER TELECAST
13 AGREEMENTS FOR COLLEGE FOOTBALL AND MEN'S BASKETBALL GAMES
14 CONVEYED TO THE BROADCASTER THE RIGHT TO USE THE NAME, IMAGE
15 AND LIKENESS OF THE PARTICIPANTS?

16 **A.** THEY DO.

17 **Q.** AND WHAT IS YOUR OPINION ON WHETHER THE NAME, IMAGE AND
18 LIKENESS OF THE PARTICIPANTS HAVE VALUE?

19 **A.** THEY DO HAVE SIGNIFICANT VALUE.

20 **Q.** BEFORE WE EXPLORE THE REASONS FOR YOUR OPINION, LET'S TALK
21 A LITTLE BIT ABOUT THE SOURCES OF YOUR OPINION.

22 WHAT ARE THE SOURCES OF YOUR OPINION? WHAT DID YOU RELY
23 ON?

24 **A.** WELL, I DID REVIEW QUITE A NUMBER OF THE AGREEMENTS IN
25 THIS CASE. I HAVE NEGOTIATED HUNDREDS OF SPORTS MEDIA

1 AGREEMENTS PERSONALLY, AND I HAVE BEEN ACTIVE IN THIS INDUSTRY
2 FOR NEARLY FOUR DECADES.

3 **Q.** SO LET'S TALK FIRST ABOUT YOUR EXPERIENCE AND THEN ABOUT
4 THE CONTRACTS YOU'VE REVIEWED.

5 ON THE EXPERIENCE, HOW DOES YOUR EXPERIENCE LEAD YOU TO
6 YOUR CONCLUSIONS HERE?

7 **A.** WELL, I HAVE BEEN ON ALL SIDES OF THESE SORTS OF ISSUES.

8 I HAVE BEEN A BROADCASTER. I HAVE BEEN A LICENSOR, I'VE
9 NEGOTIATED ON BEHALF OF LICENSORS, I HAVE DONE CONSULTING ON
10 BEHALF OF LICENSEES, LICENSORS, DISTRIBUTORS, CABLE OPERATORS.

11 SO, OVER THE COURSE OF MY PROFESSIONAL EXPERIENCE, I HAVE
12 REALLY SURROUNDED THE SPORTS MEDIA INDUSTRY AND I HAVE
13 EXTENSIVE EXPERIENCE ACROSS ALL OF THE RELEVANT POINTS OF
14 VIEW.

15 **Q.** HAVE YOU EVER NEGOTIATED AN AGREEMENT THAT HAS NOT
16 INCLUDED A CONVEYANCE OF THE ABILITY TO USE THE NAME, IMAGE
17 AND LIKENESS OF THE PARTICIPANTS?

18 **A.** THE ONLY CIRCUMSTANCE THAT I CAN RECALL NOT GRANTING NAME,
19 IMAGE AND LIKENESS WOULD HAVE BEEN IN THE CONTEXT OF RADIO
20 AGREEMENTS, WHICH OBVIOUSLY DON'T TRANSMIT THE IMAGE.

21 BUT WITH RESPECT TO TELEVISION AGREEMENTS, THEY
22 UNIVERSALLY CONVEY THOSE RIGHTS, EITHER EXPLICITLY OR
23 IMPLICITLY.

24 **Q.** BASED ON YOUR EXPERIENCE, WHAT'S -- WHY DO YOU CONCLUDE
25 THAT?

1 **A.** BECAUSE THESE RIGHTS ARE AT THE CENTER, THEY ARE AT THE
2 HEART OF WHAT IS BEING CONVEYED.

3 IF -- IT'S SIMPLY IMPOSSIBLE TO CONCEIVE OF A TELECAST OF
4 A SPORTS EVENT WITHOUT THE ABILITY TO SHOW THE IMAGES OF THE
5 PARTICIPANTS. IT JUST DOESN'T MAKE ANY SENSE. IT DOESN'T
6 WORK THAT WAY.

7 **Q.** OKAY.

8 ARE THERE DIFFERENCES BETWEEN THE BROADCAST OF
9 PROFESSIONAL SPORTING EVENTS AND THE BROADCASTS OF COLLEGIATE
10 SPORTING EVENTS THAT WOULD MAKE WHAT'S CONVEYED IN THE
11 PROFESSIONAL CONTEXT DIFFERENT THAN WHAT'S CONVEYED IN THE
12 COLLEGIATE CONTEXT?

13 **A.** WELL, THERE ARE, OF COURSE, SOME DIFFERENCES IN THE NATURE
14 OF THOSE AGREEMENTS, WHO THE CONTRACTING PARTIES ARE, THE
15 LENGTH OF GAMES IN SOME CASES, THAT SORT OF THING.

16 BUT FROM A CONTRACTUAL STANDPOINT, THE PROVISIONS IN
17 COLLEGIATE AGREEMENTS ARE VIRTUALLY IDENTICAL TO THE
18 PROVISIONS IN PROFESSIONAL AGREEMENTS. THERE IS NO MATERIAL
19 DIFFERENCE BETWEEN THEM.

20 **Q.** WHAT ABOUT THE ACTUAL PHYSICAL TELECAST ITSELF? ARE THEIR
21 SUBSTANTIVE DIFFERENCES THERE BETWEEN COLLEGE AND PROFESSIONAL
22 SPORTS?

23 **A.** WELL, THE ONLY SIGNIFICANT DIFFERENCE REALLY IS THE
24 PARTICIPANTS. IN ONE CASE YOU HAVE PARTICIPANTS THAT ARE
25 ENROLLED IN COLLEGE, ANOTHER CASE YOU HAVE PARTICIPANTS WHO

1 ARE -- WHO ARE PROFESSIONALS.

2 BUT WITH THOSE EXCEPTIONS, WE ARE TALKING ABOUT TELECASTS
3 THAT GO ON THE SAME NETWORKS, THAT ARE PRODUCED BY THE SAME
4 PEOPLE, THAT EXIST AS A RESULT OF CONTRACTS WHICH CONTAIN
5 VIRTUALLY THE SAME PROVISIONS, AND THEY EXIST IN AN ECOSYSTEM
6 THAT IS THE SAME.

7 IN OTHER WORDS, THE -- THE COLLEGE SPORTS PROGRAMMING AND
8 PROFESSIONAL SPORTS PROGRAMMING COMPETE FOR THE ATTENTION OF
9 FANS, COMPETE FOR THE ATTENTION OF ADVERTISERS, AND COMPETE
10 FOR THE ATTENTION OF TELEVISION NETWORKS THAT -- THAT CONNECT
11 THEM.

12 Q. NOW YOU SAID BEFORE THAT THE NAME, IMAGE AND LIKENESS OF
13 THE PARTICIPANTS, IN FACT, HAVE VALUE IN THESE AGREEMENTS.

14 WHY DO YOU CONCLUDE THAT?

15 A. WELL, FIRST OF ALL, WE ARE TALKING ABOUT VERY, VERY
16 VALUABLE AGREEMENTS. SO, YOU KNOW, WITH HUGE SUMS OF MONEY.

17 SO, YOU KNOW, AT THE ESSENCE OF WHAT IS BEING CONVEYED, IS
18 THE RIGHT TO TELECAST THE AGREEMENT -- THE GAME, AND THE RIGHT
19 TO -- TO SHOW THE COMPETITORS PERFORMING. AND IF YOU ARE
20 SHOWING THE COMPETITORS PERFORMING ON TELEVISION, YOU ARE
21 USING THEIR NAMES, YOU ARE USING THEIR IMAGES, AND IN MANY
22 CASES ALSO USING THEIR LIKENESSES.

23 Q. WOULD A BROADCASTER ENTER INTO AN AGREEMENT IF IT THOUGHT
24 THAT IT DIDN'T HAVE THE RIGHT TO USE THE NAME, IMAGE AND
25 LIKENESS OF THE PARTICIPANTS?

1 **A.** ABSOLUTELY NOT.

2 **Q.** AGAIN, WHY NOT?

3 **A.** BECAUSE NO TELEVISION NETWORK WANTS TO SHOW AN EMPTY ARENA
4 OR A GAME WHERE THEY HAVE TO BLUR OUT THE PLAYERS TAKING PART
5 IN IT, OR WHERE THERE IS SOME ACTIVITY THAT, YOU KNOW, ISN'T
6 THE ESSENCE OF WHAT THE FANS WANT TO WATCH, WHICH IS THE
7 COMPETITION BETWEEN THE TEAMS AND THE PLAYERS.

8 **Q.** OKAY.

9 WE TALKED ABOUT WHY YOUR EXPERIENCE LEADS YOU TO
10 CONCLUSIONS. LET'S TALK ABOUT YOUR REVIEW OF SOME OF THE
11 CONTRACTS AT ISSUE IN THIS CASE. WHAT ABOUT YOUR REVIEW OF
12 THE CONTRACTS AT ISSUE IN THIS CASE LEAD YOU TO THE CONCLUSION
13 THAT THE NIL, NAME, IMAGE AND LIKENESS ARE BEING CONVEYED AND
14 THAT THEY HAVE VALUE?

15 **A.** THE TYPICAL CONTRACT HAS, YOU KNOW, THREE ESSENTIAL
16 ELEMENTS. AND, OF COURSE, THERE'S THE CONSIDERATION, BUT YOU
17 HAVE, YOU KNOW, OF EQUAL IMPORTANCE THE GRANT OF RIGHTS.

18 SOMETIMES THERE'S A PREAMBLE AS PART OF THAT, BUT THERE IS
19 A GRANT OF RIGHTS THAT TYPICALLY SAYS, YOU KNOW, YOU, THE
20 BROADCASTER, HAVE TYPICALLY THE EXCLUSIVE RIGHT TO TELECAST
21 THIS EVENT OR THESE SERIES OF EVENTS OVER THIS PERIOD OF TIME
22 WITHIN THIS MARKETPLACE.

23 **Q.** LET ME STOP YOU THERE.

24 IN THOSE GRANTS OF RIGHTS, DO THE AGREEMENTS MENTION OR DO
25 THEY TALK ABOUT SIMPLY ACCESS TO FACILITIES OR DO THEY TALK

1 ABOUT THE RIGHT TO TELECAST THE GAMES, THE PERFORMANCES?

2 **A.** IT IS --

3 **MR. KLAUS:** OBJECTION, YOUR HONOR, COMPOUND.

4 **THE COURT:** OVERRULED.

5 **THE WITNESS:** IT IS THE LATTER. THEY -- THEY GRANT
6 THE RIGHT TO SHOW THE GAMES AND TYPICALLY THE EVENTS
7 SURROUNDING THE GAMES ON TELEVISION ON A LIVE BASIS TYPICALLY
8 EXCLUSIVELY.

9 **BY MR. ROSENTHAL:**

10 **Q.** SO THAT'S THE GRANT OF RIGHTS. YOU SAID THERE ARE A
11 COUPLE OF OTHER PROVISIONS THAT ARE TYPICALLY INCLUDED IN
12 THESE AGREEMENTS.

13 **A.** YES. THERE ARE ACTUALLY MANY OTHER PROVISIONS THAT ARE
14 TYPICAL. THEY RANGE FROM THINGS LIKE SCHEDULING, AND
15 PROMOTION, AND PRODUCTION OBLIGATIONS. EVEN THINGS LIKE HOW
16 MANY TICKETS ARE PROVIDED TO THE BROADCASTER.

17 BUT THEN BASICALLY AS BOOKENDS TO THE GRANT OF RIGHTS, YOU
18 HAVE TYPICALLY A COUPLE OF OTHER PROVISIONS. ONE IS -- IS A
19 WARRANTY. IT IS A REP AND WARRANTY SAYING THAT THE
20 INSTITUTION THAT'S DOING, THE LICENSING IS STANDING BEHIND.
21 IT HAS THE RIGHTS NECESSARY TO TELECAST THE GAME AND, YOU
22 KNOW, IT OWNS THOSE RIGHTS FREE AND CLEAR WITH RESPECT TO THE
23 RELATIONSHIP WITH THE BROADCASTER AND IT IS CONVEYING THOSE,
24 AND THEN THAT, YOU KNOW, AND -- AND, YOU KNOW, QUITE
25 IMPORTANTLY, IN THE EVENT THAT ANYTHING UNTOWARD SHOULD

1 HAPPEN, THAT THERE'S A CLAIM LATER, THERE'S AN
2 INDEMNIFICATION.

3 AND THE INDEMNIFICATION LANGUAGE BASICALLY MEANS THAT, YOU
4 KNOW, NOT ONLY ARE WE GRANTING YOU THESE RIGHTS, NOT ONLY ARE
5 WE STANDING BEHIND THEM, BUT, YOU KNOW, WE'RE -- WE'RE THERE
6 WITH, YOU KNOW, THE FULL FAITH AND CREDIT OF THIS INSTITUTION
7 TO STAND BEHIND THAT GRANT OF RIGHTS AND INDEMNIFY YOU, COVER
8 YOUR COURT COSTS IF THERE'S A CLAIM, COVER ANY DAMAGES IF
9 THERE'S A CLAIM.

10 IT'S A PRETTY POWERFUL PIECE OF LANGUAGE, NOT JUST MERE
11 BOILERPLATE.

12 Q. BASED ON YOUR EXPERIENCE, DO THE REPRESENTATIONS AND
13 WARRANTIES IN THE INDEMNIFICATION CLAUSES YOU MENTIONED HAVE
14 ECONOMIC VALUE?

15 A. WELL, THEY -- THEY COLLECTIVELY HAVE ECONOMIC VALUE. I
16 MEAN, IT ISN'T THAT YOU PUT A PARTICULAR PRICE TAG ON, YOU
17 KNOW, THIS REP AND THAT REP, BUT YOU HAVE TO THINK OF THE
18 ENTIRE GRANT OF RIGHTS AND THE ENTIRE CONTRACT AS BEING A
19 PACKAGE OF INTERRELATED PIECES THAT CREATE THE VALUE AND
20 MAINTAIN THE VALUE OF THE TELEVISION RIGHTS. IT'S -- IT'S ALL
21 SUPPORTIVE.

22 YOU DON'T PUT A PARTICULAR PRICE TAG TYPICALLY ON VARIOUS
23 OF THE ELEMENTS IN THE AGREEMENT, YOU PUT A PRICE TAG ON THE
24 PACKAGE OF ELEMENTS IN THE AGREEMENT.

25 Q. NOW THE CONTRACTS YOU REVIEWED, DO THEY ALL INCLUDE THE

1 GRANT OF RIGHTS, THE REPRESENTATIONS AND WARRANTIES AND THE
2 INDEMNIFICATION CLAUSES?

3 **A.** EVERY CONTRACT THAT I REVIEWED IN THIS CASE, SUBJECT TO
4 MAYBE SOME REDACTIONS, HAD THOSE PROVISIONS AS BEST I RECALL.

5 **Q.** DO ANY OF THEM INCLUDE AN EXPRESS CONVEYANCE OF THE
6 ABILITY OF THE BROADCASTER TO USE THE NIL OF THE PARTICIPANTS?

7 **A.** YES. MANY OF THEM DO INCLUDE AN EXPRESS PROVISION. SOME
8 OF THEM ALSO INCLUDE LANGUAGE, WHICH YOU COULD SAY IS --
9 IMPLIES OR INFERS THAT -- IMPLIES THAT -- THAT THAT HAS BEEN
10 GRANTED.

11 **Q.** SO IT'S EITHER EXPRESS OR IMPLIED?

12 **A.** YES.

13 **Q.** LET'S TAKE A LOOK AT SOME OF THE DOCUMENTS THAT YOU'VE
14 REVIEWED.

15 IF WE COULD, MATT, PUT UP EXHIBIT 2230, PAGE 1, PLEASE.

16 (EXHIBIT DISPLAYED ON SCREEN.)

17 IF WE COULD BLOW UP -- I AM SORRY, THE VERY TOP OF THE
18 AGREEMENT WHERE IT SAYS "TELECAST RIGHTS AGREEMENT".

19 **BY MR. ROSENTHAL:**

20 **Q.** HAVE YOU SEEN THIS AGREEMENT BEFORE, MR. DESSER?

21 **A.** YES, I HAVE.

22 **Q.** WHAT IS IT?

23 **A.** THIS IS THE CURRENT AGREEMENT BETWEEN FOX BROADCASTING,
24 FOX SPORTS NET IN THIS CASE, AND THE BIG 12 CONFERENCE.

25 **Q.** FOR THE TELECAST OF WHAT?

1 **A.** IT'S FOR THE TELECAST OF A SERIES OF COLLEGE FOOTBALL AND
2 BASKETBALL GAMES.

3 **Q.** OKAY.

4 **MR. ROSENTHAL:** MOVE EXHIBIT 2230 INTO EVIDENCE, YOUR
5 HONOR.

6 **MR. KLAUS:** WITHOUT OBJECTION.

7 **THE COURT:** RECEIVED.

8 (PLAINTIFFS' EXHIBIT 2230 RECEIVED IN EVIDENCE)

9 **BY MR. ROSENTHAL:**

10 **Q.** NOW, IS THERE LANGUAGE IN THIS PARTICULAR AGREEMENT,
11 MR. DESSER, SHOWING THAT THE RIGHT TO TELEVISION THE PERFORMANCE
12 IS, AS YOU SAY, THE ESSENCE OF THE AGREEMENT?

13 **A.** YES. IT -- IT'S IN THIS SECTION CALLED "THE RECITALS".

14 **MR. ROSENTHAL:** IF WE COULD BLOW UP SECTIONS A AND B
15 IN THE RECITAL SECTION.

16 **BY MR. ROSENTHAL:**

17 **Q.** AND I'M GOING TO ONLY DO THIS WITH ONE, MAYBE TWO
18 CONTRACTS, MR. DESSER, AND HAVE YOU ACTUALLY READ THE LANGUAGE
19 INTO THE RECORD.

20 BUT IF YOU COULD, READ THE LANGUAGE INTO THE RECORD THAT,
21 BASED ON YOUR EXPERIENCE, SHOWS THAT THE RIGHT TO TELEVISION THE
22 PERFORMANCE IS AT THE ESSENCE OF THE AGREEMENT.

23 IF YOU COULD READ SUBPARAGRAPH A.

24 **A.** SURE. AND I WOULD NOTE THAT THIS IS ON THE VERY FIRST
25 PAGE OF THE AGREEMENT IN THE VERY FIRST SUBSTANTIVE PARAGRAPH.

1 IT SAYS:

2 "REFERENCES RECITALS AND CONSIDERATIONS.

3 A. THE CONFERENCE OWNS THE RIGHT TO TELECAST CERTAIN
4 CONFERENCE INTERCOLLEGIATE MEN'S AND WOMEN'S ATHLETIC
5 EVENTS TO BE TELECAST HEREUNDER AS DESCRIBED MORE
6 FULLY HEREIN, AND THE RIGHT TO TELECAST ADDITIONAL
7 ANCILLARY PROGRAMMING FEATURING THE SPORTS PROGRAMS
8 OF THE CONFERENCE AND ITS MEMBER INSTITUTIONS AS
9 DESCRIBED MORE FULLY HEREIN."

10 Q. IS THERE ANYTHING IN THAT PARAGRAPH A ABOUT ACCESS TO
11 FACILITIES?

12 A. NO.

13 Q. GO AHEAD AND READ PARAGRAPH B, IF YOU WOULD.

14 A. (READING)

15 "B. FOX DESIRES TO PURCHASE A LICENSE TO TELECAST,
16 OR CAUSE THE TELECAST OF, SUCH CONFERENCE
17 INTERCOLLEGIATE ATHLETIC EVENTS TOGETHER WITH
18 ANCILLARY PROGRAMMING FEATURING THE SPORTS PROGRAMS
19 OF THE CONFERENCE AND ITS MEMBER INSTITUTIONS AND THE
20 CONFERENCE DESIRES TO LICENSE SUCH RIGHTS TO FOX ON
21 THE TERMS SET FORTH BELOW."

22 Q. OKAY. IT TALKS ABOUT A LICENSE TO TELECAST THE ATHLETIC
23 EVENTS. IS THERE ANYTHING IN THAT PARAGRAPH ABOUT ACCESS TO
24 FACILITIES?

25 A. NO.

1 **MR. ROSENTHAL:** IF YOU WOULD, TO PAGE 14, MATT,
2 PLEASE.

3 (PAGE DISPLAYED ON SCREEN.)

4 **BY MR. ROSENTHAL:**

5 **Q.** NOW YOU TALKED BEFORE ABOUT GRANTS OF RIGHTS AS BEING
6 LANGUAGE SHOWING THAT THE RIGHT TO TELEVISION THE PERFORMANCE AS
7 BEING AT THE ESSENCE OF THE AGREEMENT.

8 IS THIS PROVISION 3.1 ON EXHIBIT 2230 AT PAGE 14 AN
9 EXAMPLE OF WHAT YOU WERE TALKING ABOUT?

10 **A.** YES, IT IS.

11 **Q.** IF YOU WOULD, PLEASE READ THE FIRST, JUST THE FIRST
12 SENTENCE.

13 **A.** (READING)

14 "3.1. TELECAST RIGHTS TO EVENTS. SUBJECT TO THE
15 PROVISIONS OF SECTION 3.3.3, 3.4, 3.5, AND 3.6 BELOW,
16 CONFERENCE HEREBY GRANTS TO FOX THE SOLE AND
17 EXCLUSIVE PRODUCTION RIGHTS AND TELECAST RIGHTS TO
18 ALL EVENTS DURING THE TERM."

19 **Q.** THIS SECTION TALKS ABOUT TELECAST RIGHTS TO EVENTS. IS
20 THERE ANYTHING IN THIS PROVISION ABOUT ACCESS TO FACILITIES?

21 **A.** NO.

22 **MR. KLAUS:** OBJECTION, YOUR HONOR, VAGUE AND
23 AMBIGUOUS. DOES HE MEAN THE TELECAST RIGHT OR DOES HE MEAN
24 THE ENTIRE FIRST SENTENCE? I DON'T THINK IT'S CLEAR.

25 **THE COURT:** SAY THAT AGAIN? YOU WANT TO KNOW ABOUT

1 THE TELECAST RIGHTS?

2 **MR. KLAUS:** HE JUST READ THE FIRST SENTENCE. AND
3 MR. ROSENTHAL JUST ASKED HIM A QUESTION ABOUT THIS PROVISION,
4 AND HE FOCUSED IN ON TELECAST RIGHTS. IT ALSO MENTIONS
5 PRODUCTION RIGHTS, WHICH HE LEFT OUT OF THE QUESTION. I'M
6 SAYING IT IS VAGUE AND AMBIGUOUS, AND I WOULD LIKE HIM TO
7 CLEAR UP WHETHER HE'S ASKING ABOUT THE ENTIRE SENTENCE OR JUST
8 THE DEFINED TERM "TELECAST RIGHTS".

9 **THE COURT:** I DON'T UNDERSTAND. I'M SURE YOU CAN
10 CLEAR IT UP ON CROSS.

11 **MR. ROSENTHAL:** THANKS.

12 **BY MR. ROSENTHAL:**

13 **Q.** NOW, YOU'VE REVIEWED THIS AGREEMENT. IS THERE ANY
14 LANGUAGE IN THIS AGREEMENT, BASED ON YOUR EXPERIENCE, THAT
15 ALSO GUARANTEES THE BROADCASTER'S ABILITY TO USE THE NIL OF
16 THE PARTICIPANTS?

17 **A.** YES.

18 **MR. ROSENTHAL:** IF WE COULD, GO TO PAGE 37, SECTION
19 6.2.3 OF THIS AGREEMENT. IF WE CAN HIGHLIGHT THAT AS WELL AS
20 THE CONTINUATION ON OVER TO PAGE 38.

21 (PAGE DISPLAYED ON SCREEN.)

22 **BY MR. ROSENTHAL:**

23 **Q.** THIS SECTION 6.2.3 ON EXHIBIT 2230 IS ENTITLED
24 "CLEARANCES".

25 IF YOU WOULD READ ALL THE WAY THROUGH TO "THEREOF",

1 MR. DESSER.

2 **A.** (READING)

3 "THE CONFERENCE SHALL BE SOLELY RESPONSIBLE FOR
4 SECURING ALL CLEARANCES WITH RESPECT TO ALL OFFICIALS
5 AND OTHER PERSONS PARTICIPATING IN OR OTHERWISE
6 CONNECTED WITH EACH EVENT, AND SUCH CLEARANCES SHALL
7 INCLUDE FOX HAVING ALL RIGHTS OR CONSENTS NECESSARY
8 OR CONTEMPLATED FOR THE EXERCISE OF THEIR RIGHTS
9 UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION,
10 ALL NAME AND LIKENESS RIGHTS OF ALL PARTICIPANTS,
11 OFFICIALS, COMPETING TEAMS AND ANY OTHER PERSONS
12 CONNECTED WITH THE EVENTS THAT ARE RESPONSIBLE OR
13 NECESSARY FOR THE TELECAST OF THE EVENTS AND THE
14 PROMOTION AND ADVERTISING THEREOF."

15 **Q.** YOU MENTIONED EARLIER THAT SOME OF THE AGREEMENTS YOU
16 REVIEWED CONTAIN AN EXPRESS CONVEYANCE OF THE RIGHT TO USE THE
17 NIL OF THE PARTICIPANTS.

18 IS THIS ONE OF THEM?

19 **A.** YES.

20 **Q.** AND IS THERE OTHER LANGUAGE BEYOND THIS EXPRESS GRANT OF
21 THE RIGHT TO USE THE NIL OF PARTICIPANTS IN THIS CONTRACT
22 GUARANTEED TO THE BROADCASTER THE ABILITY TO USE THOSE NIL?

23 **A.** YES, THERE IS.

24 **Q.** IF YOU COULD TURN TO PAGE 43 -- I AM SORRY, TO PAGE 45,
25 SECTION 10.2.4 OF EXHIBIT 2230.

1 IF YOU COULD READ SECTION 10.2.4 INTO THE RECORD
2 MR. DESSER?

3 **A.** (READING)

4 "THE CONFERENCE HAS ALL LICENSES, PERMITS, AND RIGHTS
5 NECESSARY TO LICENSE TO FOX THE RIGHT TO PRODUCE,
6 PROMOTE, AND TELECAST THE SELECTED EVENTS AND THE
7 CONFERENCE ANCILLARY PROGRAMMING AND TO PERFORM ALL
8 OF ITS DUTIES UNDER THIS AGREEMENT."

9 **MR. ROSENTHAL:** NOW IF WE COULD TURN BACK TO PAGE 43,
10 PARAGRAPH 9.3.

11 (PAGE DISPLAYED ON SCREEN.)

12 **BY MR. ROSENTHAL:**

13 **Q.** AND ACTUALLY I'M NOT GOING TO HAVE YOU READ THIS WHOLE
14 PROVISION IN THE INTEREST OF TIME, MR. DESSER, BUT THIS IS ONE
15 OF THOSE INDEMNIFICATION CLAUSES THAT YOU REFERRED TO BEFORE?

16 **A.** YES.

17 **Q.** THIS INDEMNIFICATION CLAUSE IN SECTION 9.3 COUPLED WITH
18 THE REPRESENTATION AND WARRANTY IN SECTION 10.2.4, BASED ON
19 YOUR EXPERIENCE, WHAT DOES THAT GIVE TO THE BROADCASTER, IF
20 ANYTHING?

21 **A.** IT GIVES THE BROADCASTER GREAT COMFORT THAT, A, THEY ARE
22 GETTING THE RIGHTS THAT THEY NEED TO TELECAST. B, THAT THE
23 ENTITY THAT IS RECEIVING THE FUNDS AND PROVIDING THOSE RIGHTS
24 IS STANDING BEHIND IT, AND, AS EVIDENCE OF THE STRENGTH OF
25 THEIR CONVICTION, IT IS PROVIDING THIS INDEMNIFICATION SO THAT

1 THEY DON'T HAVE TO WORRY ABOUT CLAIMS THAT MIGHT COME LATER
2 SHOULD THERE BECOME AN ISSUE.

3 **Q.** BASED ON YOUR EXPERIENCE, DOES THE COMFORT THEY'RE GETTING
4 TO DO EVERYTHING THEY NEED TO TO BROADCAST THE EVENT, INCLUDE
5 THE RIGHT TO BROADCAST THE NIL OF THE PARTICIPANTS?

6 **A.** YES, OF COURSE.

7 **MR. ROSENTHAL:** YOU CAN TAKE THAT EXHIBIT DOWN, MATT.
8 THANK YOU.

9 THE NEXT CONTRACT IS EXHIBIT 2162. IF WE SHOW JUST THE
10 FIRST PAGE OF THAT AND BLOW UP THE ENTIRE THING.

11 (EXHIBIT DISPLAYED ON SCREEN.)

12 **BY MR. ROSENTHAL:**

13 **Q.** THIS IS VERY HEAVILY REDACTED HERE, MR. DESSER, BUT IS
14 THIS ONE OF THE AGREEMENTS THAT YOU REVIEWED?

15 **MR. KLAUS:** I'M SORRY. CAN I GET THE NUMBER AGAIN?

16 **MR. ROSENTHAL:** SURE. IT'S 2162. THIS IS THE BCS
17 CONTRACT.

18 **BY MR. ROSENTHAL:**

19 **Q.** IS THIS ONE OF THE DOCUMENTS THAT YOU REVIEWED,
20 MR. DESSER?

21 **A.** YES, IT IS.

22 **Q.** WHAT IS IT?

23 **A.** THIS IS THE AGREEMENT BETWEEN THE VARIOUS CONFERENCES AND
24 FOX FACILITATING THE BOWL CHAMPIONSHIP SERIES TELECASTS.

25 **Q.** AND IT'S HEAVILY REDACTED, CORRECT?

1 **A.** YES, IT MOST CERTAINLY WAS.

2 **Q.** WE DON'T EVEN -- IT DOESN'T EVEN INCLUDE THE GRANT OF
3 RIGHTS IN HERE, RIGHT?

4 **A.** NO. THE VAST MAJORITY OF THIS DOCUMENT IS BLACK -- BLANK
5 PAGES UNFORTUNATELY.

6 **Q.** OKAY.

7 IN YOUR REVIEW OF THE REDACTED VERSION, THOUGH, IS THERE
8 LANGUAGE GUARANTEEING THE ABILITY OF FOX TO PARTICIPATE -- TO
9 USE OR TO BROADCAST THE PARTICIPANTS OF THE -- THAT THE NIL OF
10 THE PARTICIPANTS IN THESE BOWL CHAMPIONSHIP SERIES GAMES?

11 **A.** YES, THERE IS.

12 **MR. ROSENTHAL:** IF WE CAN TURN TO PAGE 9 AT
13 PARAGRAPH 5.2.2.

14 AND IF WE CAN GO ALL THE WAY THROUGH "RIGHTS" RIGHT BEFORE
15 LITTLE ROMAN TWO.

16 (PAGE DISPLAYED ON SCREEN.)

17 **BY MR. ROSENTHAL:**

18 **Q.** IF YOU CAN READ THAT INTO THE RECORD, MR. DESSER.

19 **A.** (READING)

20 "CLEARANCES. THE BCS" --

21 **THE COURT:** LET'S NOT.

22 **MR. ROSENTHAL:** LET'S NOT? OKAY.

23 **THE COURT:** I SEE IT. IT'S IN EVIDENCE.

24 **MR. ROSENTHAL:** WELL, I WILL MOVE IT INTO EVIDENCE,
25 YOUR HONOR.

1 **THE COURT:** ANY OBJECTION?

2 **MR. KLAUS:** NO OBJECTION.

3 (PLAINTIFFS' EXHIBIT 2162 RECEIVED IN EVIDENCE)

4 **THE COURT:** I WOULD LIKE THEM TO ALL TO BE EVEN MORE
5 HEAVILY REDACTED. ALL I WANT TO SEE IS THE PARTS THAT ARE
6 RELEVANT. I DON'T KNOW HOW LONG THESE THINGS ARE, BUT I DON'T
7 WANT TO READ A LOT OF IRRELEVANT PASSAGES.

8 **MR. ROSENTHAL:** WE WILL MAKE SURE TO DO THAT.

9 **THE COURT:** WHATEVER IS ADDRESSED BY THE QUESTIONING
10 CAN BE INCLUDED.

11 **MR. KLAUS:** WE WILL BE HAPPY TO WORK WITH THE
12 PLAINTIFFS ON REDACTING THE AGREEMENT BEFORE IT'S SUBMITTED,
13 YOUR HONOR.

14 **MR. ROSENTHAL:** HAPPY TO DO THAT, YOUR HONOR.

15 **THE COURT:** OKAY.

16 **MR. ROSENTHAL:** NEXT CAN WE PUT UP EXHIBIT 2104,
17 MATT?

18 IF YOU CAN BLOW UP JUST THE FIRST PARAGRAPH AND THE TITLE.

19 (EXHIBIT DISPLAYED ON SCREEN.)

20 **BY MR. ROSENTHAL:**

21 **Q.** HAVE YOU SEEN THIS AGREEMENT BEFORE, MR. DESSER?

22 **A.** YES, I HAVE.

23 **Q.** WHAT IS IT?

24 **THE COURT:** I DON'T KNOW IF THE AUDIENCE CAN SEE THAT
25 MONITOR THERE. MAYBE YOU WANT TO TURN IT A LITTLE BIT SO THAT

1 PEOPLE CAN SEE IT AS LONG AS WE ARE NOT GOING TO READ IT OUT
2 LOUD.

3 I'M SORRY, GO AHEAD.

4 **BY MR. ROSENTHAL:**

5 **Q.** WHAT IS THIS AGREEMENT, MR. DESSER?

6 **A.** THIS IS THE AGREEMENT BETWEEN CBS SPORTS AND THE NCAA FOR
7 THE TOURNAMENT KNOWN AS MARCH MADNESS THAT WAS DATED 1994.

8 **Q.** DOES IT ALSO INCLUDE OTHER NCAA CHAMPIONSHIPS?

9 **A.** YES, IT DOES.

10 **MR. ROSENTHAL:** MOVE EXHIBIT 2104 INTO EVIDENCE, YOUR
11 HONOR?

12 **MR. KLAUS:** NO OBJECTION.

13 **THE COURT:** AGAIN, AS REDACTED.

14 **MR. ROSENTHAL:** AS REDACTED. YES.

15 (PLAINTIFFS' EXHIBIT 2104 RECEIVED IN EVIDENCE)

16 **BY MR. ROSENTHAL:**

17 **Q.** IS THERE LANGUAGE IN THIS AGREEMENT, MR. DESSER, SHOWING
18 THAT THE RIGHT TO TELEVISION THE PERFORMANCE OF THE -- THE
19 PERFORMANCE OF THE GAMES IS THE ESSENCE OF THE AGREEMENT?

20 **A.** YES, THERE IS.

21 **Q.** THAT IS ON PAGE 1, PARAGRAPH A.

22 IS THIS THE LANGUAGE YOU ARE REFERRING TO IN PARAGRAPH 1,
23 A ROMAN ONE?

24 **A.** YES. THIS IS A GRANT OF RIGHTS TO THOSE EVENTS.

25 **Q.** IS THERE LANGUAGE ALSO IN THIS CONTRACT GUARANTEEING THE

1 ABILITY OF CBS TO USE THE PARTICIPANTS' NIL?

2 A. YES, THERE IS.

3 MR. ROSENTHAL: IF WE COULD TURN TO PAGE 33,
4 PARAGRAPH 32.

5 (PAGE DISPLAYED ON SCREEN.)

6 BY MR. ROSENTHAL:

7 Q. IN THE INTEREST OF TIME, THIS IS A WARRANTY THAT THE NCAA
8 HAS OR -- HAS ALL THE RIGHTS IT NEEDS TO CONVEY TO CBS FOR THE
9 PURPOSE OF BROADCASTING EVENTS.

10 IS THIS ONE OF THE PROVISIONS YOU WERE REFERRING TO?

11 A. YES.

12 MR. ROSENTHAL: AND IF WE COULD ALSO TURN THEN TO
13 PAGE 36, PARAGRAPH 37? AND SPECIFICALLY 37B, WHICH RUNS FROM
14 36 TO 37.

15 (PAGES DISPLAYED ON SCREEN.)

16 BY MR. ROSENTHAL:

17 Q. AND THIS IS ONE OF THOSE INDEMNIFICATION CLAUSES?

18 A. YES. THAT'S CORRECT.

19 Q. AND TOGETHER WITH THE REPRESENTATION AND WARRANTY, DOES
20 THIS PROVIDE A GUARANTEE TO CBS OF THE ABILITY TO USE THE NIL
21 OF THE PARTICIPANTS, IN YOUR EXPERIENCE?

22 A. YES, IT DOES.

23 Q. WHY IS THAT?

24 A. BECAUSE IT GRANTS THE RIGHT TO TELECAST THE GAMES. YOU
25 CAN'T TELECAST THE GAMES WITHOUT SHOWING THE IMAGES OF THE

1 PLAYERS.

2 THE NCAA IS STATING THAT IT HAS ALL NECESSARY RIGHTS AND
3 IT'S STANDING BEHIND THAT WITH AN INDEMNIFICATION.

4 **MR. ROSENTHAL:** THANKS, MAT. IF WE CAN MOVE TO
5 2116 --

6 **THE CLERK:** 21...

7 **MR. ROSENTHAL:** 2116. YES.

8 IF WE CAN BLOW UP JUST THE TITLE AND THE FIRST PARAGRAPH,
9 PLEASE.

10 (EXHIBIT DISPLAYED ON SCREEN.)

11 **BY MR. ROSENTHAL:**

12 **Q.** IS THIS AN AGREEMENT YOU'VE SEEN, MR. DESSER?

13 **A.** YES.

14 **Q.** WHAT IS IT?

15 **A.** THIS IS THE SUBSEQUENT AGREEMENT FOR MARCH MADNESS BETWEEN
16 THE NCAA AND CBS.

17 **Q.** FOR THE TELECAST OF WHAT?

18 **A.** FOR THE TELECAST OF MARCH MADNESS.

19 **MR. ROSENTHAL:** MOVE 2116 INTO EVIDENCE, YOUR HONOR.

20 **MR. KLAUS:** MY OBJECTION TO THIS, AND I SAID THIS TO
21 MR. ROSENTHAL BEFORE, IS THAT EXHIBIT 2116 WAS NOT THE ACTUAL
22 DOCUMENT THAT MR. DESSER SAID IN HIS REPORT THAT HE RELIED ON.

23 I PROVIDED TO COUNSEL IN THE PREVIOUS DAYS THE EXHIBIT
24 MR. DESSER DID SAY HE RELIED ON.

25 **THE COURT:** OKAY. I'M SURE YOU CAN WORK THAT OUT. I

1 IMAGINE THEY'RE QUITE SIMILAR.

2 MR. KLAUS: THEY ARE QUITE SIMILAR. I HAVE NO
3 OBJECTION TO IT.

4 THE COURT: ALL RIGHT.

5 MR. ROSENTHAL: THANK YOU.

6 THE CLERK: ADMITTED, YOUR HONOR?

7 THE COURT: YES. AS REDACTED.

8 (PLAINTIFFS' EXHIBIT 2116 RECEIVED IN EVIDENCE)

9 BY MR. ROSENTHAL:

10 Q. IN THIS 1999 AGREEMENT TO TELECAST NCAA CHAMPIONSHIPS, IS
11 THERE LANGUAGE SHOWING THAT THE RIGHT TO TELEVISE THE
12 PERFORMANCE IS THE ESSENCE OF THE AGREEMENT AS YOU'VE SAID?

13 A. YES, THERE IS.

14 Q. AND WITHOUT GOING THROUGH THE AGREEMENT ITSELF, IS IT
15 BASICALLY THE SAME AS THE LANGUAGE IN THE PRIOR AGREEMENT, THE
16 1994 AGREEMENT THAT WE JUST LOOKED AT?

17 A. IN -- IN SUBSTANCE. I CAN'T TELL YOU THAT IT'S EXACTLY
18 THE SAME LANGUAGE, BUT IT'S SUBSTANTIALLY SIMILAR, YES.

19 Q. AND THE SAME KINDS OF REPRESENTATIONS AND WARRANTIES AND
20 INDEMNITY CLAUSES AS WELL?

21 A. YES. YOU'VE GOT THE GRANT OF RIGHTS, THE WARRANTY, AND
22 THE INDEMNIFICATION.

23 Q. OKAY.

24 AND IF WE COULD MOVE ON NOW TO EXHIBIT 400 PLEASE.

25 BEFORE WE GO ON TO 400, THE FOUR EXHIBITS THAT WE'VE JUST

1 REVIEWED SUBSTANTIVELY HOW DO EACH OF THOSE COMPARE TO THE
2 HUNDREDS OF AGREEMENTS THAT YOU HAVE NEGOTIATED?

3 **A.** THEY ARE VERY SIMILAR. THE -- THESE ARE TYPICAL
4 PROVISIONS. THESE ARE THINGS THAT -- THAT THE PARTIES,
5 SOPHISTICATED PARTIES ON EACH SIDE OF THE TRANSACTION ARE
6 ACCUSTOMED TO GRANTING AND ARE ACCUSTOMED TO RECEIVING.

7 AND SO I WOULD SAY THERE'S NOTHING PARTICULARLY UNUSUAL
8 ABOUT THESE AGREEMENTS. THEY ARE FAIRLY CUSTOMARY IN THE
9 INDUSTRY.

10 **Q.** OKAY. IS THERE ANY DIFFERENCE AS TO THE CONVEYANCE OF THE
11 ABILITY OF THE BROADCASTER TO USE THE PARTICIPANTS' NIL?

12 **A.** THE -- THE -- THE CONVEYANCE OF NIL MAY BE STRUCTURED IN
13 SOME DIFFERENT WAY IN A PARTICULAR AGREEMENT, BUT, IN ANY
14 EVENT, IT IS AT THE HEART OF WHAT IT IS THAT'S BEING
15 PURCHASED.

16 YOU -- YOU SIMPLY CANNOT SHOW SPORTS EVENTS WITHOUT THE
17 BENEFIT OF SHOWING THE PLAYERS IN THOSE EVENTS. AND SO
18 SOMETIMES IT GETS WRITTEN DOWN. OFTENTIMES IT IS. SOMETIMES
19 IT ISN'T. BUT IT DOESN'T MEAN THAT THE PARTIES IN THE LATTER
20 CASE DON'T EXPECT TO BE ABLE TO SHOW THE PLAYERS IN THE
21 EVENTS.

22 **Q.** OKAY.

23 **MR. ROSENTHAL:** IF WE CAN PUT 400 BACK ON THE SCREEN,
24 MATT, PLEASE?

25 (EXHIBIT DISPLAYED ON SCREEN.)

1 IF WE CAN GO TO PAGE -- LET'S BLOW THAT UP RIGHT THERE.

2 AND YOU'VE SEEN THIS AGREEMENT BEFORE, MR. DESSER?

3 **A.** YES, I HAVE.

4 **Q.** WHAT IS IT?

5 **A.** THIS IS THE CURRENT AGREEMENT COVERING MARCH MADNESS THAT
6 IS BETWEEN TURNER BROADCASTING, CBS, AS THE LICENSEES ON THE
7 ONE HAND, AND THE NCAA AS LICENSOR ON THE OTHER.

8 **Q.** AND WHAT'S IT DATED?

9 **A.** APRIL 22, 2010.

10 **MR. ROSENTHAL:** MOVE EXHIBIT 400 IN EVIDENCE, YOUR
11 HONOR.

12 **MR. KLAUS:** WITHOUT OBJECTION. THERE IS A PENDING
13 MOTION REGARDING SEALING THIS, BUT I DON'T THINK THAT AFFECTS
14 THE RECEIPT OF IT INTO EVIDENCE, YOUR HONOR.

15 **THE COURT:** WE WILL REDACT NONRELEVANT PORTIONS AS
16 WELL AS ANY CONFIDENTIAL PORTIONS.

17 **MR. ROSENTHAL:** THAT'S RIGHT, YOUR HONOR. THANK YOU.

18 (PLAINTIFFS' EXHIBIT 400 RECEIVED IN EVIDENCE)

19 **BY MR. ROSENTHAL:**

20 **Q.** IN THIS EXHIBIT 400, IS THERE LANGUAGE SHOWING THE ABILITY
21 TO TELEWISE THE PERFORMANCE BEING AT THE HEART OR THE ESSENCE
22 OF THE CONTRACT, AS YOU SAID?

23 **A.** YES, THERE IS.

24 **MR. ROSENTHAL:** IF WE CAN MOVE TO PAGE 8.

25 **MR. KLAUS:** I'M SORRY. I TALKED TO MR. ROSENTHAL

1 ABOUT THIS BEFOREHAND. WE HAD AGREED THAT IN VIEW OF THE
2 PENDING MOTION, THAT THIS WOULD NOT BE SHOWN ON THE SCREEN AND
3 THAT HE COULD LEAD THE WITNESS THROUGH THE DISCUSSION OF WHAT
4 THE RIGHTS WERE, WHICH I HAVE NO OBJECTION TO HIM DOING.

5 **MR. ROSENTHAL:** RIGHT. AND THIS IS NOT THAT SECTION.
6 THIS IS A DIFFERENT SECTION IN THE AGREEMENT.

7 **MR. OBARO:** YOUR HONOR, IF I MAY. COUNSEL FOR CBS,
8 BAMBO OBARO.

9 **THE REPORTER:** I'M SORRY?

10 **THE CLERK:** YOU NEED TO SPEAK INTO THE MIC.

11 **MR. OBARO:** GOOD AFTERNOON, YOUR HONOR, COUNSEL FOR
12 CBS, BAMBO OBARO.

13 WE ALSO ARE A PART OF THE MOTION REGARDING THIS PARTICULAR
14 EXHIBIT. AND WE HAVE A SETTLEMENT IN PRINCIPLE WITH THE
15 PLAINTIFFS THAT I WOULD LIKE TO READ INTO THE RECORD FOR
16 EXHIBIT 400.

17 **MR. ROSENTHAL:** YOUR HONOR, I FULLY UNDERSTAND WHAT
18 THE SETTLEMENT IS AND WHAT THE LIMITATIONS ARE. I AM NOT
19 PLANNING TO DISPLAY TO THE COURTROOM ANY PROVISIONS THAT THE
20 PARTIES HAVEN'T AGREED MAY BE DISPLAYED.

21 **MR. KLAUS:** I THINK --

22 **THE COURT:** INCLUDING CBS?

23 **MR. ROSENTHAL:** INCLUDING CBS AS FAR AS I UNDERSTAND
24 IT, YES.

25 **MR. KLAUS:** I THINK THAT'S FINE. MY UNDERSTANDING

1 IS, IF MR. ROSENTHAL WOULD LIKE TO DISPLAY AND READ THE
2 RECITALS, BUT THAT'S FINE.

3 **MR. OBARO:** THAT IS FINE, YOUR HONOR. I WANT THE
4 SETTLEMENT BETWEEN THE PARTIES TO BE ON THE RECORD, THOUGH.

5 **THE COURT:** OKAY. WELL, YOU CAN FILE IT.

6 **MR. OBARO:** OKAY.

7 **MR. ROSENTHAL:** MATT, MOVE TO PAGE 8, PLEASE?

8 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

9 IF WE COULD BLOW UP THE SECOND TWO "WHEREAS" CLAUSES.

10 **BY MR. ROSENTHAL:**

11 **Q.** IS THIS SOME OF THE LANGUAGE YOU WERE REFERRING TO BEFORE,
12 MR. DESSER, ABOUT HOW THE ABILITY TO TELEVISION THE PERFORMANCE
13 IS AT THE SENSE OF THE CONTRACT?

14 **A.** YES, IT IS.

15 **Q.** I WILL NOT HAVE YOU READ INTO THE RECORD, BUT I WILL NOTE
16 IT SAYS, "INTELLECTUAL PROPERTY RIGHTS" IN THE FIRST WHEREAS
17 CLAUSE THAT'S HIGHLIGHTED.

18 DO YOU SEE THAT?

19 **A.** YES.

20 **Q.** WHILE IT REFERENCES INTELLECTUAL PROPERTY RIGHTS IN THAT
21 FIRST WHEREAS CLAUSE, DO ANY OF THE WHEREAS CLAUSES TALK ABOUT
22 ACCESS TO FACILITIES?

23 **A.** NO.

24 **Q.** ALL RIGHT.

25 **MR. ROSENTHAL:** THE NEXT -- I DON'T WANT YOU TO SHOW

1 THIS ON THE SCREEN, MATT.

2 **THE CLERK:** JUST TO LET YOU KNOW, I SHOW IT ON THE
3 SCREEN. I'M THE ONE WHO PUBLISHES IT.

4 AT THIS POINT NOTHING'S BEING SHOWN ON THE BIG SCREENS
5 UNTIL I HEAR IT'S NOT CONFIDENTIAL. SO YOU HAVE TO GIVE ME
6 SOME KIND OF KEY WORD, NOT YOUR IT PEOPLE.

7 **MR. ROSENTHAL:** I'M SORRY. I WILL. OKAY.

8 AND WE ARE NOT GOING TO PUT THIS ONE ON THE SCREEN.

9 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

10 **BY MR. ROSENTHAL:**

11 **Q.** BUT THERE'S ALSO A GRANT OF RIGHTS IN THIS CONTRACT, ISN'T
12 THAT TRUE?

13 **MR. KLAUS:** OBJECTION, YOUR HONOR, IT'S ON THE
14 SCREEN. THEY CAN TO TAKE IT DOWN.

15 **THE CLERK:** IT'S ON THE SCREEN TO THE ATTORNEYS. SO
16 YOU WATCH FOR THE BIG SCREENS AND THAT SHOWS YOU WHAT SHOWS TO
17 THE AUDIENCE.

18 **MR. KLAUS:** THANK YOU.

19 **THE COURT:** NOW THE ATTORNEYS MAY NEED TO TURN THEIR
20 SCREENS AWAY --

21 **THE CLERK:** CORRECT.

22 **THE COURT:** -- FROM THE AUDIENCE, BUT WE DO A
23 SEPARATE CIRCUIT FOR THE COURT VERSUS THE AUDIENCE.

24 **THE CLERK:** WE WENT OVER THAT WHEN THE PARTIES' IT
25 PEOPLE CAME IN FOR A TEST RUN.

1 **BY MR. ROSENTHAL:**

2 **Q.** CAN YOU SEE THIS SECTION 2.1 IN FRONT OF YOU, MR. DESSER?

3 **A.** YES.

4 **Q.** THIS GRANT OF RIGHTS? YOU CAN SEE THAT?

5 **A.** YES.

6 **Q.** ALL RIGHT. AND THIS IS ONE OF THE PROVISIONS ALSO THAT
7 SHOWS THAT THE BROADCASTER HAS -- OR WHAT'S AT THE ESSENCE OF
8 THE AGREEMENT IS THE ABILITY TO TELECAST THE GAMES?

9 **A.** YES, THAT'S CORRECT.

10 **Q.** DOES THIS PROVISION 2.1, REGARDING THE GRANTS OF RIGHTS,
11 SAY ANYTHING ABOUT ACCESS TO FACILITIES?

12 **A.** NO.

13 **Q.** AND THEN ALSO THERE IS A SECTION 2.2 AND 2.3 WHICH INVOLVE
14 RESPECTIVELY REBROADCASTS AND HIGHLIGHTS OR VIDEO CLIPS,
15 CORRECT?

16 **A.** YES. THAT'S CORRECT.

17 **Q.** THAT'S PART OF THE GRANT OF RIGHTS; IS THAT RIGHT?

18 **MR. KLAUS:** OBJECTION, YOUR HONOR. MR. DESSER WAS
19 NOT DISCLOSED AS AN EXPERT ON REBROADCAST OR VIDEO CLIPS. AND
20 IN HIS EXPERT REPORT HE SAID NOTHING ABOUT THEM.

21 SO WE WOULD OBJECT TO ANY QUESTIONING ABOUT REBROADCAST
22 AND CLIPS.

23 **THE COURT:** I'M SURE HE KNOWS ABOUT THOSE THINGS TOO,
24 AND I WOULD LIKE TO HEAR ABOUT THEM. SO YOU CAN CROSS-EXAMINE
25 HIM AND YOUR EXPERT CAN TALK ABOUT THEM AS WELL.

1 **MR. KLAUS:** BUT, YOUR HONOR, WE WEREN'T PUT ON NOTICE
2 OF HIM --

3 **THE COURT:** I'M SURE YOU ARE EXTREMELY FAMILIAR WITH
4 THE WHOLE SUBJECT, AND YOU CAN HANDLE IT.

5 **MR. KLAUS:** THE OBJECTION IS OVERRULED?

6 **THE COURT:** YES.

7 **MR. KLAUS:** THANK YOU, YOUR HONOR.

8 **BY MR. ROSENTHAL:**

9 **Q.** DO THESE PROVISIONS REGARDING REBROADCASTS AND VIDEO CLIPS
10 HAVE ECONOMIC VALUE IN THE CONTEXT OF THIS CONTRACT?

11 **A.** YES, THEY DO.

12 **Q.** WHY IS THAT?

13 **A.** BECAUSE THEY ARE ADDITIONAL OPPORTUNITIES TO ALLOW CBS AND
14 TURNER TO EXPLOIT THE BUNDLE OF RIGHTS THAT THEY ARE RECEIVING
15 FROM THE NCAA.

16 NOT ONLY ARE THEY ABLE TO SHOW THE EVENTS ON A LIVE BASIS,
17 THEY ARE ABLE TO RESHOW THEM AND ACCUMULATE ADDITIONAL
18 AUDIENCE IN RESHOWING THEM, WHICH MEANS THEY HAVE MORE TO SELL
19 TO ADVERTISERS.

20 AND THEN THERE'S THE USE OF HIGHLIGHTS WHICH ALSO PERMITS
21 THEM TO UTILIZE IT IN PROMOTION, TO UTILIZE IT IN CONNECTION
22 WITH MAKING THE PRESENTATION OF THE EVENTS BETTER, REFERRING
23 TO THINGS THAT HAVE HAPPENED IN PREVIOUS GAMES, AND THE LIKE.

24 SO THESE ARE ALL VALUABLE ELEMENTS OF A TYPICAL BROADCAST
25 SPORTS CONTRACT.

1 Q. YOU MENTIONED USING HIGHLIGHTS FOR PROMOTIONAL PURPOSES.
2 WHAT DO YOU MEAN BY PROMOTIONAL PURPOSES?

3 A. WELL, OFTEN IT IS EVERY BIT AS IMPORTANT TO HAVE THE
4 ABILITY TO PROMOTE EVENTS IN ADVANCE SO THAT PEOPLE CAN TUNE
5 IN AND WATCH THEM.

6 AND SOME OF THE BEST WAYS TO GET PEOPLE TO TUNE IN AND
7 WATCH THEM IS TO -- TO PROMOTE PLAYERS AND THE EVENTS AND THE
8 TEAMS THAT ARE GOING TO BE TAKING PLACE IN THE CONTEST.

9 SO, IT IS QUITE COMMON IN SPORTS AGREEMENTS FOR THERE TO
10 BE A GRANT OF USE OF FOOTAGE OR HIGHLIGHTS FOR PROMOTIONAL
11 PURPOSES SO THAT THE AUDIENCE CAN ULTIMATELY BE LARGER AND SO
12 THAT THE RECIPIENT HAS THE ABILITY TO SELL A LARGER AMOUNT OF
13 ADVERTISING REVENUE.

14 MR. ROSENTHAL: IF WE CAN GO BACK TO PAGE 1 OF THE
15 AGREEMENT, THE DECLARATIONS. THERE IS SOMETHING THAT I
16 OVERLOOKED.

17 AND HIGHLIGHT THE SECOND "WHEREAS" CLAUSE.

18 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

19 BY MR. ROSENTHAL:

20 Q. THIS WHEREAS CLAUSE TALKS ABOUT THE NCAA'S DESIRE TO
21 MAXIMIZE THE REVENUE ACHIEVED FROM LICENSING OF SUCH
22 INTELLECTUAL PROPERTY RIGHTS.

23 BASED ON YOUR 37 YEARS OF EXPERIENCE, MR. DESSER, WHAT DO
24 YOU BELIEVE INTELLECTUAL PROPERTY RIGHTS REFERS TO?

25 A. THAT REFERS, IN MY OPINION, TO THE RIGHTS TO SHOW THE

1 TELECASTS, THE RIGHTS TO PRODUCE A TELECAST, THE RIGHTS TO
2 UTILIZE TRADEMARKS AND COPYRIGHTED MATERIAL IN CONNECTION WITH
3 THOSE TELECASTS AND THE RIGHT TO PROMOTE USING THOSE ELEMENTS.

4 Q. DOES IT INVOLVE THE NIL OF THE PARTICIPANTS IN ANY WAY?

5 A. YES. THAT IS PART OF WHAT IS BEING GRANTED IN THIS
6 AGREEMENT.

7 Q. NOW, BEYOND THIS LANGUAGE SHOWING THAT THE ABILITY TO
8 TELEVIEW THE GAMES IS AT THE HEART OF THE CONTRACT, IS THERE
9 ALSO LANGUAGE IN THIS AGREEMENT SHOWING THAT THE BROADCASTER
10 HAS EVERYTHING IT NEEDS TO TELECAST THE GAMES?

11 A. YES, THERE IS.

12 MR. ROSENTHAL: IF WE COULD TURN TO PARAGRAPH -- I'M
13 SORRY, TO PAGE 40, PARAGRAPH 12.1.

14 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

15 BY MR. ROSENTHAL:

16 Q. WHICH IS CALLED "NAME AND LIKENESS COVERAGE IN THE LIVE
17 WINDOW."

18 WHAT, IN YOUR -- BASED ON YOUR EXPERIENCE, DOES THIS
19 PARTICULAR PARAGRAPH DO, 12.1?

20 A. THIS, IN EFFECT, SAYS THAT -- THAT THE NCAA IS WARRANTING
21 THAT CBS AND TURNER SHOWING THE GAMES, INCLUDING WHAT IS
22 TAKING PLACE ON THE FLOOR, INCLUDING THE IMAGES OF THE PLAYERS
23 DOESN'T VIOLATE ANY STATUTORY OR COMMON LAW RIGHTS OF PRIVACY
24 OR PUBLICITY OF THE INDIVIDUALS, OR PARTICIPANTS AND COACHES
25 IN ANY GAME.

1 Q. ARE THERE OTHER REPRESENTATIONS AND WARRANTIES IN THIS
2 AGREEMENT AS WELL?

3 A. YES, THERE ARE.

4 MR. ROSENTHAL: IF WE COULD TURN TO PAGE 49,
5 PARAGRAPH 17.1 OF EXHIBIT 400.

6 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

7 BY MR. ROSENTHAL:

8 Q. AND IS THIS THE OTHER WARRANTY THAT YOU WERE REFERRING TO,
9 MR. DESSER?

10 A. YES, IT IS.

11 Q. IS THERE AN INDEMNIFICATION CLAUSE THAT GOES ALONG WITH
12 IT?

13 A. I BELIEVE THERE IS, YES.

14 MR. ROSENTHAL: IF WE CAN GO FURTHER DOWN THE PAGE TO
15 PARAGRAPH 18.1?

16 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

17 BY MR. ROSENTHAL:

18 Q. IS THAT THE INDEMNIFICATION CLAUSE WHERE THE NCAA
19 ESSENTIALLY GUARANTEES TO CBS, TO THE BROADCASTER, THAT IT HAS
20 THE RIGHT TO CONVEY EVERYTHING NEEDED TO BE CONVEYED TO
21 TELEVISION THE GAMES?

22 A. UM, YES. I MEAN IT'S -- IT'S, UM, BASICALLY SAYING THAT
23 THE INSTITUTION IS STANDING BEHIND ITS GRANT; THAT IF THERE
24 SHOULD BE A BREACH, THEY WILL DEFEND IT AND THEY WILL BE
25 RESPONSIBLE FOR IT.

1 **MR. ROSENTHAL:** IF WE COULD TURN BACK TO
2 PARAGRAPH 12.2, PLEASE, PAGE 41.

3 (PAGE DISPLAYED ON SCREEN TO COURT, COUNSEL & WITNESS.)

4 **BY MR. ROSENTHAL:**

5 **Q.** BECAUSE THIS PROVISION IS A SOURCE OF CONTENTION,
6 MR. DESSER, I'M ACTUALLY GOING TO HAVE YOU READ THIS INTO THE
7 RECORD.

8 IT IS UNDER THE NAME AND LIKENESS PROVISION OF THE
9 AGREEMENT, 12.2, AND IT IS ENTITLED "NO AUTHORIZATION".

10 **THE COURT:** SORRY. SO SAY THAT AGAIN? YOU WANT HIM
11 TO READ -- YOU ARE TELLING HIM TO READ IT TO HIMSELF?

12 IF IT WAS A CONFIDENTIAL PART, THEN --

13 **MR. ROSENTHAL:** THIS IS NOT A CONFIDENTIAL PART.

14 **MR. KLAUS:** YOUR HONOR, 12.2 HAS ALREADY BEEN FILED
15 INTO THE PUBLIC RECORD. I THINK THAT HE COULD PROBABLY FOCUS
16 IN ON THE LANGUAGE THAT HE WOULD LIKE TO WITHOUT BURDENING THE
17 RECORD WITH A LONG PARAGRAPH.

18 BUT IF HE WANTS HIM TO READ IT, WE DON'T HAVE AN OBJECTION
19 TO IT.

20 **MR. ROSENTHAL:** I'M HAPPY TO PROCEED THAT WAY.

21 **THE COURT:** DOES CBS HAVE AN OBJECTION? IS THIS
22 PARAGRAPH A PROBLEM FOR YOU?

23 **MR. OBARO:** YES. SECTION 12 IS PART OF THE --

24 **THE REPORTER:** I'M SORRY, I CAN'T --

25 **THE COURT:** OKAY. I WILL JUST READ IT TO MYSELF.

1 **MR. ROSENTHAL:** OKAY.

2 **THE COURT:** AND IT WILL BE DEEMED TO BE IN THE
3 RECORD.

4 **MR. ROSENTHAL:** THAT'S FINE.

5 **BY MR. ROSENTHAL:**

6 **Q.** IS THERE ANYTHING IN THIS PARTICULAR PROVISION,
7 MR. DESSER, THAT WOULD LEAD CBS TO BELIEVE THAT IT DID NOT
8 HAVE THE FULL RIGHT TO TELEVISION THE GAMES?

9 **MR. KLAUS:** OBJECTION, YOUR HONOR, CALLS FOR
10 SPECULATION.

11 **THE COURT:** OVERRULED.

12 **THE WITNESS:** NO.

13 **BY MR. ROSENTHAL:**

14 **Q.** WHY NOT?

15 **A.** BECAUSE THERE IS A SPECIFIC "PROVIDED HOWEVER" CLAUSE
16 HERE. AND IF YOU DON'T MIND, I DO WANT TO READ IT BECAUSE
17 IT -- IT -- IT'S THE -- IT'S MORE THAN COMFORT.

18 IT'S BASICALLY SAYING, YOU KNOW, WHAT YOU'VE DONE
19 HISTORICALLY IS -- IS FINE, AND YOU CAN CONTINUE TO DO IT.

20 AND IT SAYS THAT --

21 **THE COURT:** I DON'T WANT TO GET EVERYONE ALL UPSET.
22 SO DON'T READ IT. TELL ME WHICH LINE IT IS, AND I WILL READ
23 IT.

24 **MR. ROSENTHAL:** OKAY. IT'S WHERE IT SAYS "PROVIDED
25 HOWEVER", YOUR HONOR.

1 **THE COURT:** OKAY.

2 **BY MR. ROSENTHAL:**

3 **Q.** AND YOU SAID THAT THIS CONTRACT WAS EXECUTED APRIL 22ND,
4 2010.

5 HOW DOES THAT RELATE TO THE DATE OF THE ONSET OF THIS
6 LITIGATION?

7 **A.** I BELIEVE IT WAS THE YEAR AFTER THE LITIGATION WAS FILED.

8 **MR. ROSENTHAL:** WE CAN TAKE THAT DOWN FROM THE
9 SCREEN. THANKS.

10 **BY MR. ROSENTHAL:**

11 **Q.** NOW, THE NCAA HAS DESIGNATED AN EXPERT NEAL PILSON IN THIS
12 CASE. HAVE YOU HAD A CHANCE TO READ MR. PILSON'S EXPERT
13 REPORT?

14 **A.** YES, I HAVE.

15 **Q.** WHAT IS YOUR REVIEW OF THE OPINION THAT WHAT THE
16 BROADCASTER IS PURCHASING IN THESE TELECAST AGREEMENTS IS
17 SIMPLY THE RIGHT TO ACCESS THE VENUES WHERE THE GAMES ARE
18 BEING PLAYED?

19 **A.** I DISAGREE WITH THAT.

20 **Q.** WHY IS THAT?

21 **A.** BECAUSE THE AGREEMENTS CONVEY THE RIGHT TO SHOW THE GAMES,
22 THAT THE GRANT OF RIGHTS PROVIDES AN EXCLUSIVE ABILITY TO SHOW
23 THE GAMES BY THE PARTICULAR NETWORKS.

24 AND THEN THERE ARE A SERIES OF WHAT I WOULD CALL
25 MINISTERIAL PARAGRAPHS. AND THEY GO TO HOW ONE ACTUALLY GOES

1 ABOUT DOING THAT. AND IN THE CONTEXT OF -- OF THOSE
2 MINISTERIAL PARAGRAPHS, IT TALKS ABOUT GETTING ACCESS TO THE
3 ARENA, BEING ABLE TO PARK, TECHNICAL FACILITIES, GETTING
4 ACCESS TO PLACES TO PUT CAMERAS, THAT SORT OF THING, WHICH IS
5 NECESSARY, CERTAINLY, IN THE CONTEXT OF A TELEVISION SPORTS
6 AGREEMENT, BUT IS -- IS MORE OPERATIONAL THAN IT IS, YOU KNOW,
7 THE OVERALL VALUE OF THE AGREEMENT.

8 **Q.** WHAT'S YOUR VIEW OF THE OPINION THAT THE NIL HAVE NO VALUE
9 BECAUSE THE CONVEYANCE IN THE ABILITY TO USE THE NIL IS NOT
10 PART OF A SEPARATE LICENSING TRANSACTION?

11 **A.** I DISAGREE WITH THAT NOTION AS WELL.

12 NIL ARE BEING GRANTED, THE USE OF NIL ARE BEING GRANTED IN
13 THESE CONTRACTS ALONG WITH A WIDE RANGE OF OTHER THINGS.

14 A -- A TELEVISION SPORTS AGREEMENT IS A BUNDLE OF RIGHTS
15 AND RESPONSIBILITIES THAT ARE ALL INTERRELATED AND THAT, YOU
16 KNOW, CREATE VALUE, PROVIDE COMFORT, AND ARE -- ARE INTEGRATED
17 INTO THE AGREEMENT. AND THE VAST MAJORITY OF THOSE THINGS
18 DON'T HAVE PARTICULAR PRICE TAGS ATTACHED TO THEM, BUT RATHER
19 THEY ARE PART OF THE HOLISTIC VALUE OF THE AGREEMENT.

20 **Q.** HAVE YOU HAD A CHANCE TO READ PORTIONS OF MR. PILSON'S
21 DEPOSITION?

22 **A.** YES, I HAVE.

23 **MR. ROSENTHAL:** IF WE CAN PUT UP PAGE 79, LINES 4
24 THROUGH 17 OF MR. PILSON'S TRANSCRIPT.

25 **MR. KLAUS:** I OBJECT, YOUR HONOR, IT'S HEARSAY.

1 MR. PILSON HASN'T TESTIFIED YET.

2 THE COURT: I CAN GUARANTEE THEY ARE NOT OFFERING IT
3 FOR THE TRUTH. I IMAGINE --

4 MR. KLAUS: I UNDERSTAND, YOUR HONOR, IT IS ALSO --
5 (SIMULTANEOUS COLLOQUY.)

6 THE COURT: IN A FIGHT BETWEEN YOU AND ME AS TO WHO
7 GETS TO TALK? YOU NEED TO STOP.

8 I IMAGINE HE'S ASKING FOR HIS COMMENTARY ON IT, WHICH IS
9 WITHIN THE REALM OF EXPERT TESTIMONY, I THINK.

10 MR. KLAUS: I BELIEVE THAT UNDER RULE 32, HE'S NOT
11 SUPPOSED TO USE THE TRANSCRIPT OF THE DEPOSITION UNTIL THERE
12 HAS BEEN A SHOWING THAT THE WITNESS IS UNAVAILABLE, WHICH HE
13 MOST CERTAINLY IS NOT.

14 THE COURT: WELL, BUT THIS ISN'T BEING OFFERED UNDER
15 THAT PROVISION. IT'S BEING OFFERED AS EXPERT WITNESSES
16 COMMENTING ON EACH OTHERS VIEWS, WHICH IS PRETTY COMMON.

17 MR. KLAUS: OKAY.

18 BY MR. ROSENTHAL:

19 Q. MR. PILSON -- MR. PILSON, MR. DESSER, I WILL ASK THE
20 QUESTIONS AND HAVE YOU GIVE THE ANSWERS, AND THEN I'M GOING TO
21 ASK YOU ABOUT THIS TESTIMONY, OKAY?

22 "QUESTION: WELL, WHILE YOU WERE AT CBS, HOW MANY
23 CONTRACTS DID YOU SIGN THAT DID NOT HAVE AN EXPLICIT
24 GRANT OF NIL RIGHTS TO CBS?

25 A. (READING)

1 "MOST, IF NOT ALL, OF THE CONTRACTS DID NOT HAVE A
2 SPECIFIC GRANT OF -- OR EVEN A REFERENCE TO SO-CALLED
3 NIL RIGHTS."

4 Q. (READING)

5 "BOTH COLLEGE AND PRO?"

6 A. (READING)

7 "YES."

8 Q. (READING)

9 "AND YOU -- THAT'S BECAUSE YOU SAY THEY WERE IMPLIED
10 IN THE BROADCAST AGREEMENT?"

11 A. (READING)

12 "YES. IN OUR TELEVISION INDUSTRY, WHEN A BROADCASTER
13 AND RIGHTS HOLDER NEGOTIATE A DEAL, THE NIL'S OF THE
14 PEOPLE WHOSE -- WHO ARE IN THE EVENT ARE PART OF THE
15 BROADCAST AGREEMENT."

16 Q. NOW, HOW DOES THAT OPINION, THAT LAST ANSWER, THAT THE
17 NIL'S ARE PART OF THE BROADCAST AGREEMENT, SQUARE WITH YOUR
18 OWN VIEW, MR. DESSER?

19 A. I AGREE WITH THAT.

20 MR. ROSENTHAL: CAN YOU PUT UP THE NEXT CLIP, WHICH
21 IS I THINK PAGE 80 AT LINES -- I'M SORRY, 81, LINES 10 THROUGH
22 23.

23 AND WE WILL DO THE SAME THING.

24 THE COURT: I DON'T WANT TO READ THIS ALL OUT LOUD.

25 MR. ROSENTHAL: OKAY.

1 **THE COURT:** ASK HIM IF HE AGREES OR DISAGREES.

2 **MR. ROSENTHAL:** SURE.

3 **THE COURT:** YOU STATED THE PAGE AND LINE FOR THE
4 RECORD?

5 **MR. ROSENTHAL:** I DID.

6 **BY MR. ROSENTHAL:**

7 **Q.** SO MR. PILSON SAYS:

8 "WHAT I'M SAYING IS, THE PRACTICE IN THE INDUSTRY IS
9 THAT THE NIL OF THE PEOPLE PARTICIPATING IN THE
10 SPORTS EVENT ARE INCLUDED WITHIN THE GRANT OF
11 BROADCAST RIGHTS."

12 DO YOU DEGREE OR DISAGREE WITH THAT?

13 **A.** I AGREE WITH THAT.

14 **Q.** WHY'S THAT?

15 **A.** BECAUSE, AS I'VE SAID BEFORE, THE NIL RIGHTS EMBEDDED IN A
16 TELECAST SHOWING A SPORTS EVENT ARE -- ARE INEXTRICABLY
17 LINKED. YOU CANNOT HAVE A SPORTS CONTRACT AND NOT CONVEY
18 THESE SORTS OF RIGHTS. BECAUSE OTHERWISE, YOU ARE IN A
19 POSITION OF SHOWING AN EMPTY ARENA OR SHOWING AN ARENA WITHOUT
20 THE BENEFIT OF SEEING THE PLAYERS, AND THAT IS WHAT PEOPLE
21 WANT TO SEE.

22 **Q.** OKAY.

23 **MR. ROSENTHAL:** WE CAN TAKE THAT DOWN. THANK YOU.

24 **BY MR. ROSENTHAL:**

25 **Q.** MR. DESSER, IN ANY OF THE HUNDREDS OF TV RIGHTS CONTRACTS

1 THAT YOU'VE NEGOTIATED, HAS THE ISSUE OF WHETHER CERTAIN
2 STATES DID OR DID NOT RECOGNIZE THE PARTICIPANTS' RIGHTS OF
3 PUBLICITY IN SPORTS BROADCAST EVER COME UP?

4 **A.** NOT THAT I CAN RECALL, NO.

5 **Q.** I WANT TO MOVE ON TO ANOTHER SUBJECT NOW, MR. PILSON (SIC)
6 BRIEFLY. PART BECAUSE THE COURT HAS ASKED FOR SOME
7 CLARIFICATION ON THIS, AND I THINK THE PARTIES ARE STILL
8 TRYING TO WORK OUT A STIPULATION.

9 I'M NOT SURE WE RECEIVED ANYTHING BACK FROM THE GUYS YET.

10 **MR. KLAUS:** WE DID.

11 **MR. ROSENTHAL:** WAS IT THIS MORNING?

12 **MR. KLAUS:** WE SENT THE STIPULATION BACK OVER THIS
13 MORNING.

14 **THE COURT:** MAY I HAVE IT?

15 **MR. POMERANTZ:** THEY HAVEN'T COMMENTED ON IT.

16 **BY MR. ROSENTHAL:**

17 **Q.** MR. PILSON (SIC), ARE YOU FAMILIAR WITH THE SOURCES OF
18 TELEVISION REVENUE GENERATED BY COLLEGE FOOTBALL AND MEN'S
19 BASKETBALL?

20 **A.** I ASSUME YOU MEANT DESSER.

21 **Q.** YES. I'M SORRY.

22 I'M SORRY, MR. PILSON.

23 **A.** COULD YOU REPEAT THE QUESTION? I'M SORRY.

24 **Q.** ARE YOU FAMILIAR WITH THE SOURCES OF TELEVISION REVENUE
25 GENERATED BY COLLEGE FOOTBALL AND MEN'S BASKETBALL?

1 **A.** YES, I AM.

2 **Q.** HOW SO?

3 **A.** I'M A STUDENT OF THIS INDUSTRY. I HAVE BEEN INVOLVED IN
4 THE INDUSTRY FOR MANY, MANY YEARS. AND COLLEGE BASKETBALL,
5 COLLEGE FOOTBALL EXIST IN THE -- IN THE SAME OVERALL ECOSYSTEM
6 AS PROFESSIONAL BASKETBALL AND PROFESSIONAL FOOTBALL FROM A
7 BROADCAST STANDPOINT.

8 THEY ARE DISTRIBUTED ON MANY OF THE SAME NETWORKS. THEY
9 ARE SOLD TO MANY OF THE SAME ADVERTISERS. THEY ARE PRODUCED
10 BY MANY OF THE SAME PRODUCTION CREWS. SO -- AND THEY ARE
11 CONSUMED BY MANY OF THE SAME FANS.

12 **Q.** IDENTIFY FOR US THE VARIOUS SOURCES IN TELEVISION REVENUE
13 GENERATED BY THESE COLLEGE SPORTS.

14 **MR. KLAUS:** OBJECTION, YOUR HONOR. THIS IS BEYOND
15 THE SCOPE OF HIS EXPERT REPORT. HE WAS NOT DISCLOSED AS AN
16 EXPERT TO US AND HIS EXPERT REPORT SAID NOTHING ABOUT SOURCES
17 OF REVENUE.

18 **THE COURT:** RIGHT, BUT I HAVE BEEN TRYING TO FIND OUT
19 THIS INFORMATION FOR SOME TIME. IF I HAD THE STIPULATION I
20 WOULDN'T NEED IT.

21 IF IT'S DISPUTED -- IS IT DISPUTED, DO YOU SUPPOSE? IT
22 DOESN'T STRIKE ME AS THE SORT OF THING IF IT'S DISPUTED. I
23 JUST WANT TO KNOW THE ANSWER. IT WOULD BE HELPFUL TO ME.

24 **MR. KLAUS:** I THINK THE STIPULATION SHOULD BE IN
25 TODAY. I UNDERSTAND YOUR HONOR WOULD LIKE TO KNOW THE

1 INFORMATION. I THINK WE HAVE BEEN WORKING WITH THE
2 PLAINTIFFS' COUNSEL TO TRY TO RESOLVE IT.

3 MY CONCERN WITH THE LINE OF QUESTIONING IS WE HAVE HAD NO
4 NOTICE AND NO OPPORTUNITY TO CROSS-EXAMINE THIS WITNESS ON
5 WHAT IT IS HE'S ABOUT TO SAY REGARDING THE SOURCES OF REVENUE.
6 AND SO THERE HASN'T BEEN SUFFICIENT DISCLOSURE, YOUR HONOR.

7 **MR. ROSENTHAL:** THAT'S NOT TRUE, YOUR HONOR.

8 **THE COURT:** YOU DON'T KNOW WHAT HE'S GOING TO SAY?

9 **MR. KLAUS:** IT WAS NOT IN HIS EXPERT REPORT. I DON'T
10 KNOW WHAT HE'S GOING TO SAY.

11 **THE COURT:** HOW WOULD HE KNOW --

12 **MR. ROSENTHAL:** IT WAS IN HIS SECOND EXPERT REPORT.
13 IT WAS A DECLARATION ATTACHED IN JANUARY OF 2014. THERE'S A
14 WHOLE SECTION ABOUT THE COMMERCIALIZATION OF COLLEGE SPORTS
15 WHICH TALKS ABOUT TELEVISION REVENUES GENERATED BY FOOTBALL
16 AND MEN'S BASKETBALL. SEVERAL PAGES IN THAT EXPERT REPORT,
17 THAT DECLARATION TALK ABOUT THAT.

18 **MR. KLAUS:** IF I MAY, YOUR HONOR?

19 IT'S NOT AN EXPERT REPORT. IT WAS A SUMMARY JUDGMENT
20 DECLARATION, AND WE HAD NO OPPORTUNITY TO CROSS-EXAMINE
21 MR. DESSER ON THAT SUBJECT.

22 **THE COURT:** DO YOU DISAGREE WITH WHAT HE SAYS IN IT?

23 **MR. KLAUS:** I --

24 **THE COURT:** THIS STRIKES ME AS UNDISPUTED. THIS
25 ISN'T -- IT'S JUST SOME INFORMATION I NEED. I DOUBT IT'S

1 DISPUTED.

2 MR. KLAUS: I --

3 THE COURT: I WOULD SORT OF LIKE TO HAVE IT SOONER
4 RATHER THAN LATER. SO, COULD YOU TAKE A LOOK AT IT? IF IT'S
5 NOT DISPUTED, LET'S JUST --

6 MR. KLAUS: I WOULD SAY --

7 THE COURT: ALTERNATIVELY, IF IT'S GOING TO BE A HUGE
8 DEAL, I GUESS I CAN FIND IT OUT LATER. WE DON'T NECESSARILY
9 NEED THIS WITNESS TO TESTIFY TO IT IF WE HAVE A STIPULATION
10 THAT TELLS ME THE INFORMATION.

11 MR. ROSENTHAL: THE ISSUE IS, WE SENT THE STIPULATION
12 OVER ON, I GUESS IT WAS ON TUESDAY EVENING. WE GOT IT AT I AM
13 NOT SURE WHAT TIME THIS MORNING --

14 THE COURT: I DON'T WANT TO FIGHT ABOUT THAT.
15 JUST -- IS IT DISPUTED? I MEAN, LOOK AT HIS DECLARATION. DO
16 YOU DISPUTE WHAT HE'S GOING TO SAY?

17 (PAUSE IN THE PROCEEDINGS.)

18 THE COURT: DO YOU HAVE MORE STUFF FROM THIS WITNESS?

19 MR. ROSENTHAL: THIS IS IT.

20 MR. KLAUS: I'M SORRY. THE PAGES THAT YOU WANT HIM
21 TO TALK ABOUT?

22 (COUNSEL CONFER.)

23 THE WITNESS: YOUR HONOR, I WOULD BE HAPPY TO ANSWER
24 ANY OF YOUR QUESTIONS IF YOU HAVE THEM.

25 THE COURT: I'M SURE YOU WOULD, BUT SOME OF THESE

1 OTHER PEOPLE DON'T WANT TO HEAR IT.

2 **THE WITNESS:** I UNDERSTAND.

3 (PAUSE IN THE PROCEEDINGS.)

4 **THE COURT:** LET'S DO THIS. CROSS-EXAMINE HIM ON WHAT
5 HE SAID SO FAR. WE WILL BRING HIM BACK ON REDIRECT, AND I
6 WILL ALLOW RE-OPENING OF DIRECT TO INCLUDE THIS INFORMATION.

7 MEANWHILE SOMEBODY ELSE AT YOUR TABLE CAN READ IT AND MAKE
8 SURE YOU DON'T DISAGREE WITH IT, AND THEN WE WILL DO IT THAT
9 WAY.

10 **MR. ROSENTHAL:** THANK YOU, YOUR HONOR.

11 **THE COURT:** SO GO AHEAD AND CROSS-EXAMINE --

12 **MR. POMERANTZ:** YOUR HONOR, IF I MIGHT JUST SAY, WE
13 WILL HAVE WITNESSES THROUGHOUT THE WEEK NEXT WEEK WHO ARE
14 DIRECTLY INVOLVED IN ALL OF THIS.

15 **THE COURT:** I KNOW, BUT I WOULD LIKE TO KNOW SOONER
16 RATHER THAN LATER. I'VE BEEN ASKING --

17 (SIMULTANEOUS COLLOQUY.)

18 **MR. POMERANTZ:** IF WE CAN'T STIPULATE TO THE FACTS --

19 **THE COURT:** WHEN I'M STILL TALKING, YOU CAN'T -- IT
20 JUST MAKES IT SO HARD FOR THE COURT REPORTER WHEN TWO PEOPLE
21 ARE TALKING. IT'S HARD FOR HER TO HEAR.

22 YEAH, IT'S JUST IT WOULD BE EASIER FOR ME IN TRYING TO
23 UNDERSTAND THINGS AS THEY GO ALONG TO ALREADY KNOW IT RATHER
24 THAN TO KNOW I'M GOING TO KNOW IT SOMETIME IN THE FUTURE.

25 IT DOESN'T SEEM TO ME TO BE SOMETHING THAT'S LIKELY TO BE

1 DISPUTED. SO THAT'S WHY I WOULD LIKE TO HAVE IT SOONER. BUT
2 I THINK WE'VE RESOLVED IT.

3 SO WHAT WE WILL DO IS HAVE THIS GENTLEMAN CROSS-EXAMINED
4 BY WHOEVER IS -- I GATHER IT'S THIS GENTLEMAN HERE, WHO IS
5 GOING TO CROSS-EXAMINE HIM, GO AHEAD AND DO THAT RIGHT NOW.

6 MEANWHILE, YOU CAN HAVE SOMEONE ELSE AT YOUR TABLE
7 DOUBLECHECKING THE DECLARATION, WE'LL REOPEN DIRECT AND WE'LL
8 GET THAT INFORMATION, AND THEN YOU CAN REOPEN CROSS.

9 **MR. KLAUS:** JUST ONE MOMENT, YOUR HONOR.

10 (PAUSE IN THE PROCEEDINGS.)

11 **THE COURT:** IT SEEMS THESE TWO WITNESSES AREN'T GOING
12 TO TAKE AS LONG AS DR. NOLL DID. SO WE WILL HAVE TIME FOR
13 ANOTHER WITNESS AFTER THESE TWO, AND WE HAVE GOT SOMEONE?

14 **MR. ROSENTHAL:** YES, WE DO, YOUR HONOR.

15 **MR. KLAUS:** I'M QUITE SURE THAT THESE WITNESSES WILL
16 NOT TAKE AS LONG AS DR. NOLL, YOUR HONOR. SO LET ME GET....

17 **CROSS-EXAMINATION**

18 **BY MR. KLAUS:**

19 **Q.** GOOD MORNING, MR. DESSER.

20 **A.** GOOD MORNING.

21 **Q.** MR. DESSER, LET'S START WITH SOME POINTS WHERE I THINK
22 THERE WON'T BE ANY DISAGREEMENT BETWEEN US.

23 THE FIRST IS, YOU'VE SPENT 37 YEARS WORKING IN THE SPORTS
24 MEDIA INDUSTRY, RIGHT?

25 **A.** THAT'S CORRECT.

1 Q. AND DURING THAT TIME YOU'VE NEGOTIATED NUMEROUS SPORTS
2 MEDIA AGREEMENTS, RIGHT?

3 A. YES.

4 Q. AND, IN FACT, YOU NEGOTIATED MORE THAN 50 SUCH AGREEMENTS
5 SINCE STARTING YOUR COMPANY IN 2005; ISN'T THAT RIGHT?

6 A. YES.

7 Q. AND BEFORE THAT, YOU WORKED IN THE OFFICE OF THE
8 COMMISSIONER OF THE NATIONAL BASKETBALL ASSOCIATION, CORRECT?

9 A. YES.

10 Q. AND WHILE YOU WERE AT THE NBA, YOU NEGOTIATED A NUMBER OF
11 THE NBA'S NATIONAL MEDIA AGREEMENTS, CORRECT?

12 A. I BELIEVE I PARTICIPATED IN EACH AND EVERY ONE OF THEM
13 THAT WAS NEGOTIATED IN THAT PERIOD OF TIME.

14 Q. AND SO IT'S FAIR TO SAY YOU'VE SPENT HUNDREDS OF HOURS
15 NEGOTIATING MEDIA RIGHTS AGREEMENTS, CORRECT?

16 A. QUITE -- QUITE MANY MORE THAN HUNDREDS OF HOURS.

17 Q. AND THE CONTRACTS THAT YOU'VE NEGOTIATED, THEY'VE BEEN
18 VERY, VERY VALUABLE CONTRACTS, RIGHT?

19 A. UM, YES. BY AND LARGE THEY ARE LARGE CONTRACTS, BUT NOT
20 EVERY ONE OF THEM IS A LARGE CONTRACT.

21 Q. IT'S FAIR TO SAY THAT CUMULATIVELY THE AGREEMENTS THAT
22 YOU'VE BEEN INVOLVED IN NEGOTIATING, THEY HAVE PROBABLY
23 TOTALED MANY, MANY MILLIONS OF DOLLARS, RIGHT?

24 A. THEY HAVE TOTALED MANY BILLIONS OF DOLLARS.

25 Q. AND YOU'VE BEEN INVOLVED IN NEGOTIATING BROADCAST

1 AGREEMENTS WITH SOME OF THE BIGGEST BROADCASTERS IN THE
2 BUSINESS, RIGHT?

3 **A.** YES.

4 **Q.** COMPANIES LIKE CBS, AND NBC, AND ABC, AND ESPN. YOU HAVE
5 NEGOTIATED WITH THEM, RIGHT?

6 **A.** YES, I HAVE.

7 **Q.** AND WHEN YOU'VE NEGOTIATED, YOU'VE NEGOTIATED AGAINST VERY
8 SOPHISTICATED BUSINESS PEOPLE ON THE OTHER SIDE, RIGHT?

9 **A.** IN MOST CASES, THAT'S CORRECT.

10 **Q.** PEOPLE WHO, ON THE BROADCASTING SIDE, PEOPLE AT CBS, NBC,
11 ABC, ESPN, THESE ARE PEOPLE -- THESE ARE BUSINESS PEOPLE WHO
12 ARE REALLY AT THE TOP OF THEIR GAME; ISN'T THAT RIGHT?

13 **A.** MANY OF THEM ARE, YOU KNOW, DOING VERY WELL.

14 **Q.** OKAY.

15 THESE ARE PEOPLE WHO YOU RESPECT IN THEIR NEGOTIATION
16 ABILITIES, RIGHT? IN GENERAL.

17 **A.** IN GENERAL IN MOST CASES, YES.

18 **Q.** AND THESE PEOPLE, THEY ARE NOT AFRAID TO SPEAK THEIR
19 MINDS, ARE THEY, IN NEGOTIATIONS? IN GENERAL.

20 **A.** I THINK THAT THEY WILL EITHER SPEAK THEIR MINDS OR THEY
21 WILL CHOOSE NOT TO SPEAK THEIR MINDS IN PARTICULAR
22 CIRCUMSTANCES.

23 **Q.** AND THESE ARE PEOPLE WHO, IN YOUR EXPERIENCE, SIR, IF THEY
24 HAVE BEEN CONCERNED ABOUT ISSUES, IF THEY HAVE HAD CONCERNS,
25 YOUR EXPERIENCE HAS BEEN THEY'RE NOT AFRAID TO RAISE THEM IN

1 THE COURSE OF NEGOTIATIONS, RIGHT?

2 **A.** THEY WILL OFTEN RAISE ISSUES THAT THEY HAVE, OR SOMETIMES
3 THEY WILL DECIDE FOR STRATEGIC REASONS NOT TO RAISE ISSUES, OR
4 THEY WILL ACCEDE TO THE OTHER PARTIES' VIEW IF, EITHER GIVEN A
5 GOOD REASON, OR PERHAPS IN TRADE FOR SOME OTHER PROVISION.

6 **Q.** BUT, IN GENERAL, SIR, IT'S A FACT, ISN'T IT, THAT THE
7 PEOPLE WHO YOU'VE NEGOTIATED WITH, THEY HAVEN'T BEEN SHY ABOUT
8 EXPRESSING CONCERNS WITH YOU, HAVE THEY?

9 **A.** WE HAVE FULSOME CONVERSATIONS. AND I WOULDN'T USE THE
10 WORD "SHY" IN THIS CONTEXT.

11 **Q.** OKAY.

12 NOW, DURING THAT ENTIRE TIME, THE ENTIRE 37 YEARS THAT
13 YOU'VE BEEN NEGOTIATING AND HAVING THESE FULSOME CONVERSATIONS
14 WITH PEOPLE ABOUT WHAT THEY'RE INTERESTED IN, SIR, YOU'VE
15 NEVER EXPERIENCED SOMEONE ON THE BROADCASTING SIDE ASKING
16 WHETHER ANY OF THE PLAYERS IN A SPORTS EVENT GAVE THEIR
17 PERMISSION TO BE SHOWN ON TV DURING THE LIVE TELECAST OF A
18 SPORTING EVENT; ISN'T THAT RIGHT?

19 **A.** I DON'T RECALL THAT EVER COMING UP IN THE CONTEXT OF A
20 NEGOTIATION BECAUSE IT IS SIMPLY ASSUMED BY THE PARTIES.

21 **Q.** IF WE COULD -- FIRST OF ALL, LET ME HAND YOU THIS, SIR.

22 **MR. KLAUS:** YOUR HONOR, WOULD YOU LIKE ONE OF THESE
23 BINDERS, IF NECESSARY? I WILL HAPPILY TAKE IT BACK AT THE
24 END.

25 **THE COURT:** GIVE IT TO THE CLERK, THOUGH. THE COURT

1 REPORTER IS BUSY WRITING DOWN THINGS.

2 (BINDER HANDED TO CLERK.)

3 MR. KLAUS: YOUR HONOR, MAY I APPROACH THE WITNESS TO
4 HAND THIS TO HIM?

5 THE COURT: YES.

6 MR. KLAUS: THANK YOU.

7 (BINDER HANDED TO WITNESS.)

8 BY MR. KLAUS:

9 Q. MR. DESSER, I'VE HANDED YOU A BINDER THAT CONTAINS SOME
10 DOCUMENTS. THE FIRST OF WHICH IS YOUR -- THE TRANSCRIPT OF
11 YOUR DEPOSITION.

12 AND, FIRST OF ALL, YOU RECALL BEING DEPOSED IN THIS CASE,
13 SIR?

14 A. YES.

15 Q. AND DURING THAT DEPOSITION, YOU TOOK THE SAME OATH TO TELL
16 THE TRUTH THAT YOU TOOK THIS MORNING BEFORE YOU STARTED YOUR
17 TESTIMONY, CORRECT?

18 A. I DON'T REMEMBER IF IT WAS PRECISELY THE SAME, BUT I DID
19 TAKE AN OATH.

20 MR. KLAUS: AND, MR. NICKELS, IF YOU CAN BRING UP
21 PAGE 98 OF THE DEPOSITION, AT LINES 12 THROUGH 19.

22 (EXHIBIT DISPLAYED ON SCREEN.)

23 BY MR. KLAUS:

24 Q. THE QUESTION WAS ASKED OF YOU:

25 "SO, HAS A BROADCASTER, IN YOUR EXPERIENCE, EVER

1 ASKED WHETHER ANY OF THE PLAYERS GAVE THEIR
2 PERMISSION TO BE SHOWN DURING A LIVE TELECAST OF A
3 SPORTING EVENT?

4 "ANSWER: I HAVEN'T EVER EXPERIENCED A CIRCUMSTANCE,
5 BUT THAT REALLY, I THINK, HAS MORE TO DO WITH YOU'RE
6 DEALING WITH, YOU KNOW, LEGITIMATE LONGSTANDING
7 ORGANIZATIONS, AND IF THERE HASN'T BEEN A PROBLEM
8 WITH SOMETHING FOR A LONG TIME, YOU WILL TEND TO TAKE
9 COMFORT IN THAT."

10 DO YOU SEE THAT?

11 **A.** YES.

12 **Q.** THAT WAS YOUR TESTIMONY THEN, CORRECT?

13 **A.** THAT'S WHAT I SAID, YES.

14 **Q.** NOW, EARLIER IN YOUR CAREER, BEFORE YOU WENT TO THE OFFICE
15 OF THE COMMISSIONER OF THE NBA, YOU WORKED FOR A COMPANY
16 CALLED CALIFORNIA SPORTS, RIGHT?

17 **A.** YES.

18 **Q.** AND CALIFORNIA SPORTS IS THE COMPANY THAT OWNED AT THE
19 TIME THE LOS ANGELES LAKERS AND THE LOS ANGELES KINGS,
20 CORRECT?

21 **A.** YES.

22 **Q.** AND YOU WERE AT CALIFORNIA SPORTS FROM 1978 TO 1982,
23 CORRECT?

24 **A.** YES.

25 **Q.** AND WHILE YOU WERE AT CALIFORNIA SPORTS, YOU WERE

1 RESPONSIBLE FOR THE ADMINISTRATION OF THOSE TEAMS' BROADCAST
2 AGREEMENTS WITH LOCAL TV, RADIO BROADCASTERS AND SUBSCRIPTION
3 TV, CORRECT?

4 **A.** YES, AMONG OTHER THINGS.

5 **Q.** AND THOSE LOCAL BROADCASTERS, THEY WERE LICENSEES OF
6 CALIFORNIA SPORTS, RIGHT?

7 **A.** I DON'T RECALL IF THEY WERE LICENSEES OF CALIFORNIA SPORTS
8 OR THEY WERE LICENSEES OF THE PARTICULAR TEAMS. I SUSPECT IT
9 WAS THE LATTER.

10 **Q.** OKAY.

11 BUT THEY WERE, IN YOUR NEGOTIATIONS WITH THEM AND IN YOUR
12 ADMINISTRATION OF THOSE AGREEMENTS, THE BROADCASTERS WERE THE
13 PARTIES THAT YOU CONSIDERED TO BE THE LICENSEES, CORRECT?

14 **A.** YES.

15 **Q.** AND DURING THE ENTIRE TIME, NONE OF THOSE LICENSEES EVER
16 CAME TO YOU AND SAID, DO WE HAVE THE PERMISSION OF EVERYONE
17 WHO MIGHT BE SHOWN ON TV DURING A GAME. CORRECT?

18 **A.** I DON'T RECALL ANYONE BEING CONCERNED THAT THEY DIDN'T
19 HAVE THOSE RIGHTS.

20 **Q.** IF I COULD ASK YOU TO LOOK AT PAGE 53, LINES 6 THROUGH 10
21 OF YOUR TRANSCRIPT, SIR.

22 (DEPOSITION DISPLAYED ON SCREEN.)

23 **A.** I AM SORRY, 53?

24 **Q.** 53, YES, SIR, MR. DESSER.

25 YOU WERE ASKED:

1 "AND SO DID ANY OF THOSE LICENSEES COME TO YOU AND
2 SAY, QUOTE 'DO WE HAVE THE PERMISSION OF EVERYONE WHO
3 MIGHT BE SHOWN TO BE SHOWN ON TV' END QUOTE?

4 "ANSWER: I DON'T RECALL ANYONE EVER COMING TO ME AND
5 ASKING ME THAT QUESTION."

6 THAT WAS YOUR TESTIMONY CORRECT SIR?

7 **A.** YES, IT WAS.

8 **MR. ROSENTHAL:** YOUR HONOR, OBJECTION. THIS IS THE
9 SECOND TIME MR. KLAUS HAS SHOWN HIM A PORTION OF HIS
10 TRANSCRIPT THAT IS PERFECTLY CONSISTENT WITH HIS TRIAL
11 TESTIMONY. THAT IS NOT PROPER IMPEACHMENT.

12 **THE COURT:** YOU MAKE A GOOD POINT AS TO THESE TWO,
13 BUT SINCE IT'S A BENCH TRIAL, I GUESS I WON'T WORRY ABOUT IT
14 TOO MUCH.

15 **MR. KLAUS:** LET ME, IF I MAY, YOUR HONOR, I'M JUST
16 GOING TO BRING THE EASEL OVER.

17 **THE COURT:** WELL, YOU CAN, BUT YOU NEED TO BE CAREFUL
18 ABOUT SIGHT LINES BECAUSE THERE'S PEOPLE ALL OVER WHO WANT TO
19 CONTINUE TO BE ABLE TO SEE. BUT IF YOU CAN FIND A PLACE TO
20 PUT IT WHERE IT WON'T BLOCK ANYBODY, YOU'RE WELCOME TO.

21 **MR. KLAUS:** THERE REALLY ARE THREE PEOPLE WHO I'M
22 MOST CONCERNED ABOUT SEEING IT, AND THEY ARE ALL RIGHT HERE
23 AND I THINK THEY WILL BE ABLE TO, YOUR HONOR, BUT I WILL ALSO
24 BE HAPPY TO MAKE IT SO OTHER PEOPLE CAN.

25 **THE COURT:** I HAVE ANOTHER DOOR, SO YOU CAN BLOCK MY

1 DOOR. I CAN USE THIS OTHER ONE.

2 **MR. KLAUS:** I DON'T THINK IT WILL BE TERRIBLY
3 CONTROVERSIAL, YOUR HONOR. WHY DON'T I DO THIS. I WILL MOVE
4 IT OVER HERE. OKAY.

5 (COUNSEL DISPLAYS EASEL.)

6 **BY MR. KLAUS:**

7 **Q.** I WILL RETURN. AND, MR. DESSER, IF YOU HAVE TROUBLE
8 SEEING THAT, JUST LET ME KNOW AND WE WILL MOVE IT AROUND.

9 AGAIN, I DON'T THINK WE ARE GOING TO HAVE -- I DON'T THINK
10 THIS WILL BE TERRIBLY TAXING FOR VISION.

11 **A.** I WOULD JUST NOTE I CAN'T REALLY SEE THE BOTTOM HALF OF
12 IT.

13 **Q.** I'M GOING TO TRY TO CONFINE MYSELF TO THE TOP HALF. LET'S
14 SEE. WE CAN MOVE IT AROUND. I'M NOT -- I'M NOT ABOVE
15 CARRYING THE THING BACK AND FORTH.

16 **A.** ACTUALLY NOW THE CLERK'S HEAD IS IN THE WAY. I DON'T KNOW
17 WHAT YOU ARE GOING TO PUT ON THERE --

18 **Q.** LET'S WAIT --

19 **A.** -- IF I NEED TO SEE IT.

20 **Q.** LET'S WAIT AND SEE.

21 LET ME JUST, FIRST OF ALL, MR. DESSER, ASK YOU: IT'S YOUR
22 OPINION, IS IT NOT, THAT THE BROADCAST RIGHT FOR A SPORTING
23 EVENT IS OWNED BY THE SPORTS TEAM OR THE ORGANIZER OF THE
24 EVENT?

25 **A.** I THINK THAT IS GENERALLY THE CASE. THERE CAN BE

1 CIRCUMSTANCES WHERE THERE ARE MULTIPLE PARTIES THAT OWN A
2 RIGHT.

3 FOR EXAMPLE, IN THE CASE OF AN NBA GAME, THE RIGHTS ARE
4 ACTUALLY SHARED BY BOTH TEAMS. SO, ONE TEAM HAS THE RIGHT TO
5 SHOW IT IN ITS MARKET, THE OTHER HAS A RIGHT TO SHOW IT IN ITS
6 MARKET. SO -- BUT FOR THAT CLARIFICATION.

7 Q. BUT FOR THAT CLARIFICATION YOU WOULD AGREE WITH THAT AS A
8 GENERAL STATEMENT, SIR?

9 A. AS A GENERAL STATEMENT, UNLESS IT'S BEEN, YOU KNOW,
10 CONVEYED TO SOME THIRD PARTY.

11 Q. OKAY.

12 AND IT'S YOUR OPINION THAT THE -- THAT IT'S BEEN TRUE FROM
13 THE EARLY DAYS OF RADIO BROADCASTING IN THE 1930'S, THAT THE
14 BROADCAST RIGHT FOR A SPORTING EVENT IS OWNED BY THE SPORTS
15 TEAM OR TEAMS OR THE ORGANIZER OF THE EVENT, CORRECT?

16 A. YES. I BELIEVE THAT THERE WAS -- THERE WERE EARLY CASES
17 ON THOSE SUBJECTS, AND THAT'S MY GENERAL RECOLLECTION.

18 Q. AND YOUR GENERAL UNDERSTANDING OF -- OF THAT ARRANGEMENT
19 OF RIGHTS IS THAT THE SPORTS TEAM OR TEAMS OR THE EVENT
20 ORGANIZER HAS A PROPERTY RIGHT IN THE PICTURES, DESCRIPTIONS,
21 AND ACCOUNTS OF ITS GAME AND THE RIGHT TO CONTROL THE USE
22 THEREOF FOR A REASONABLE TIME FOLLOWING THE CONCLUSION,
23 CORRECT?

24 A. THAT SOUNDS RIGHT.

25 Q. SO LET'S --

1 **A.** AS A GENERAL RULE.

2 **Q.** OKAY.

3 A LOT OF YOUR DIRECT TESTIMONY WAS TALKING ABOUT THE FLOW
4 OF RIGHTS AND TRANSFERS OF RIGHTS AND CONVEYANCES OF RIGHTS.

5 SO WHAT I THOUGHT MIGHT BE HELPFUL WITH THE BUTCHER BLOCK
6 PAPER, IF I MAY, IS SIMPLY TO IDENTIFY THIS IN SOME SORT OF
7 ROUGH DIAGRAM WAY.

8 (COUNSEL AT EASEL.)

9 LET ME DO THIS. SO ONE PARTY IN THESE TRANSACTIONS IS THE
10 ORGANIZER OF THE EVENT.

11 CAN YOU SEE THAT?

12 **A.** YES.

13 **Q.** AND SO IN THE CASE OF THE MARCH MADNESS TOURNAMENT, THE
14 ORGANIZER IS THE NCAA, RIGHT?

15 **A.** YES, THAT'S MY UNDERSTANDING.

16 **Q.** AND IN THE CASE OF COLLEGE FOOTBALL GAMES, THE ORGANIZER
17 OF THE EVENT IS USUALLY AN ATHLETIC CONFERENCE, CORRECT?

18 **A.** NO. I THINK THE ORGANIZER OF MOST REGULAR SEASON COLLEGE
19 EVENTS IS THE HOME TEAM.

20 **Q.** OKAY.

21 THAT WOULD EITHER BE -- THAT WOULD BE A SCHOOL, CORRECT?

22 **A.** YES.

23 **Q.** AND THERE ARE SOME COLLEGE FOOTBALL AND BASKETBALL
24 BROADCASTS THAT MAY BE ORGANIZED BY THE ATHLETIC CONFERENCE,
25 RIGHT?

1 **A.** YES. TYPICALLY THE CONFERENCE CHAMPIONSHIP GAME OR GAMES
2 OR TOURNAMENT WOULD BE ORGANIZED BY THE CONFERENCE.

3 **Q.** OKAY.

4 SO, WE'VE GOT THAT PARTY RIGHT THERE (INDICATING). THAT'S
5 THE PARTY THAT'S GOT THE -- THE RIGHTS THAT WE DISCUSSED
6 EARLIER.

7 AND NOW ON THE OTHER SIDE OF THAT, WE'VE GOT RIGHTS -- AND
8 A LOT OF YOUR DIRECT TESTIMONY WAS TALKING ABOUT THE TRANSFER
9 OF RIGHTS FROM THE ORGANIZER OF THE EVENT TO A BROADCASTER,
10 RIGHT?

11 **A.** YES, WE TALKED ABOUT THAT EARLIER.

12 **Q.** AND SO THE BROADCASTER MIGHT BE SOMEBODY LIKE ABC?

13 **A.** THAT IS A BROADCASTER.

14 **Q.** BROADCASTER MIGHT ALSO BE SOMEBODY LIKE ESPN, RIGHT?

15 **A.** YES.

16 **Q.** AND SO A LOT OF YOUR DIRECT TESTIMONY WAS TALKING ABOUT
17 THE CONVEYANCE OF WHAT YOU CALL NIL RIGHTS OF THE PARTICIPANTS
18 IN THE EVENT FROM THIS PARTY HERE, THE ORGANIZER, TO THE
19 BROADCASTER, RIGHT?

20 **A.** YES. OF COURSE THAT'S ASSUMING THAT THE ORGANIZER HAS
21 ALREADY OBTAINED ALL OF THE NECESSARY RIGHTS THAT IT NEEDS TO
22 BE THE ORGANIZER.

23 SO, ONCE IT HAS ACCUMULATED THOSE RIGHTS, IT THEN CAN
24 CONVEY THEM TO THE BROADCASTER.

25 AND ONE NUANCE I SHOULD NOTE, ESPN TECHNICALLY IS NOT A

1 BROADCASTER, IT IS A CABLECASTER, BUT I ASSUME YOU WERE
2 SPEAKING MORE GENERICALLY.

3 Q. I'M SPEAKING AT A FAIRLY GENERIC LEVEL. AND IF WE -- IF I
4 USE BROADCASTER TO INCLUDE ESPN AND SPORTS BROADCASTS, CAN WE
5 HAVE THAT UNDERSTANDING THAT THEY ARE WITHIN THAT BROAD
6 UMBRELLA BROADCASTERS?

7 A. I WOULD PREFER YOU USE THE TERM "TELECASTER" BECAUSE THAT
8 WOULD INCLUDE BOTH OF THEM.

9 Q. I'M GOING TO WRITE THAT DOWN. THANK YOU. I WILL TRY TO
10 STAY CONSISTENT WITH TELECASTER WITH YOU, SIR.

11 AND YOUR LAST ANSWER BROUGHT UP SOMETHING THAT YOU DID NOT
12 DISCUSS DURING YOUR DIRECT TESTIMONY, AND THAT IS WHAT'S ON
13 THE LEFT-HAND SIDE HERE (INDICATING).

14 SO YOU TALKED ABOUT ORGANIZERS CONVEYING RIGHTS TO
15 TELECASTERS, BUT YOU DIDN'T TALK ABOUT OR EXPRESS ANY OPINIONS
16 ABOUT PARTICIPANTS CONVEYING RIGHTS TO THE ORGANIZER, DID YOU?

17 A. I WASN'T ASKED ANY OF THOSE QUESTIONS.

18 Q. OKAY. AND IT IS YOUR BELIEF, IS IT NOT, SIR, THAT -- I AM
19 SORRY, STRIKE THAT.

20 LET ME BE CLEAR, FIRST, ABOUT WHAT WE ARE TALKING ABOUT
21 WHEN WE TALK ABOUT RIGHTS.

22 YOU'RE NOT A LAWYER, RIGHT?

23 A. NO, I'M NOT.

24 Q. YOU'RE NOT OFFERING ANY LEGAL OPINION IN THIS CASE, RIGHT?

25 A. I'M NOT OFFERING A QUOTE "LEGAL OPINION, NO." UNQUOTE.

1 Q. BUT YOU THINK YOU HAVE AN UNDERSTANDING OF WHAT PEOPLE IN
2 THE BROADCAST INDUSTRY MEAN WHEN THEY USE THE WORD "RIGHTS",
3 CORRECT?

4 A. IT'S A BROAD TERM, BUT I HAVE AN UNDERSTANDING OF THE --
5 OF THE TERM AND HOW IT IS USED, OR HOW IT CAN BE USED. AND IN
6 THE PARTICULAR CONTEXT THAT WE MAY BE DEALING WITH, IT HAS AN
7 APPLICABLE MEANING THAT WOULD BE RELEVANT HERE.

8 Q. AND WHEN YOU USE "RIGHTS", WHAT YOU THINK IT IS GENERALLY
9 UNDERSTOOD TO MEAN IN THE BROADCAST INDUSTRY IS AN ENTITLEMENT
10 THAT CAN BE ENFORCED IN A COURT OF LAW, RIGHT?

11 A. I -- I DON'T KNOW IF I WOULD DESCRIBE IT AS AN ENTITLEMENT
12 THAT CAN NECESSARILY BE ENFORCED IN A COURT OF LAW. I MEAN,
13 IT COULD OFTEN BE SUCH A THING.

14 BUT I SUPPOSE IF I THOUGHT ABOUT IT, THERE MIGHT BE
15 CIRCUMSTANCES WHERE IT MIGHT BE SOMETHING ELSE THAT WAS MEANT
16 IN THE PARTICULAR CONTEXT.

17 Q. IF WE CAN BRING UP PAGE 25, LINES 2 THROUGH 6 OF YOUR
18 DEPOSITION, SIR.

19 (DEPOSITION DISPLAYED ON SCREEN.)

20 YOU WERE ASKED AT YOUR DEPOSITION:

21 "WHEN YOU USE THE WORD" --

22 **THE COURT:** I DON'T THINK THAT'S INCONSISTENT.

23 WE CAN MOVE ON. I READ IT, FOR WHAT IT'S WORTH, BUT LET'S
24 MOVE ON.

1 **BY MR. KLAUS:**

2 **Q.** AND WHEN YOU USE "NIL RIGHTS", YOU ARE REFERRING TO THE
3 PLAYERS' ABILITY -- WHEN YOU'RE TALKING ABOUT NIL RIGHTS WITH
4 RESPECT TO PARTICIPANTS IN SPORTS EVENTS, YOU'RE REFERRING TO
5 THE PLAYERS' ABILITY TO CONTROL WHETHER OTHER PEOPLE CAN USE
6 OR BROADCAST THAT PLAYER'S NAME, IMAGE AND LIKENESS, CORRECT?

7 **A.** THAT SOUNDS RIGHT.

8 **Q.** AND SO UNDER YOUR UNDERSTANDING OF RIGHTS AND NIL RIGHTS,
9 THAT MEANS, AS YOU UNDERSTAND IT, IF THE PERMISSION IS NOT
10 PROVIDED, THEN THE PERSON WHO OWNS THE RIGHTS, THE PLAYER TO
11 THEIR NAME, IMAGE AND LIKENESS, THEY COULD STOP SOMEONE FROM
12 USING THEIR NIL WITHOUT THEIR PERMISSION, CORRECT?

13 **A.** CONCEIVABLY THEY COULD.

14 **Q.** OKAY.

15 AND YOUR UNDERSTANDING IS THAT BEFORE SOMEONE'S
16 PERFORMANCE IS GOING TO BE CAPTURED AND SHOWN ON TELEVISION,
17 THAT PERSON HAS TO GIVE THEIR PERMISSION TO SOMEONE, RIGHT?

18 **A.** WELL, IT DOESN'T ALWAYS HAPPEN THAT THEY GIVE THEIR
19 PERMISSION. BUT IF YOU'RE RUNNING A BUSINESS LIKE A
20 TELEVISION NETWORK, A BROADCAST STATION, YOU WOULD PREFER TO
21 HAVE CONSENTS, AND YOU WOULD LIKE TO HAVE SOMEBODY STAND
22 BEHIND THOSE CONSENTS SO THAT YOU DON'T HAVE TO WORRY ABOUT
23 SOMEBODY COMING AFTER YOU LATER WITH A CLAIM.

24 **Q.** AND YOU THINK THAT'S TRUE OF TELECASTERS IN THE TELECAST
25 INDUSTRY, SIR, THAT THEY WOULD LIKE THEY -- IT'S IMPORTANT TO

1 THEM TO KNOW THAT THE PEOPLE HAVE GIVEN THEIR RIGHTS AND THEIR
2 PERMISSION TO BE SHOWN ON TV, RIGHT?

3 **A.** GENERALLY SPEAKING, THAT IS THE CASE.

4 THERE ARE, OF COURSE, EXCEPTIONS THAT HAVE TO DO WITH
5 NEWS. THERE ARE EXCEPTIONS THAT HAVE TO DO WITH
6 UNIDENTIFIABLE PEOPLE IN A MASS OF A CROWD, FOR EXAMPLE.

7 GENERALLY SPEAKING, YOU WANT THE PRINCIPAL COMPETITORS,
8 THE PRINCIPAL FOCUS OF A SPORTING EVENT TO HAVE PROVIDED
9 CONSENT OR, FOR THAT MATTER, AN ACTOR, A MUSICIAN, ONE OF THE
10 MANY, MANY PEOPLE WHOSE WORK MIGHT BE DISPLAYED ON TELEVISION.

11 **Q.** AND IT'S YOUR UNDERSTANDING, SIR, THAT THE TELECASTERS,
12 THEY DON'T GO TO THE INDIVIDUAL PLAYERS TO GO GET THEIR --
13 EITHER FOR A BASKETBALL OR FOOTBALL GAME, THE TELECASTERS
14 DON'T GO TO THE INDIVIDUAL PLAYERS TO GET THEIR PERMISSION TO
15 SHOW THEIR NAME, IMAGE AND LIKENESS ON TELEVISION, RIGHT?

16 **A.** NO. THEY RELY ON THE ORGANIZERS YOU'VE INDICATED IN YOUR
17 CHART.

18 **Q.** AND IN THE CHART, WHEN WE TALKED ABOUT PARTICIPANT TO
19 ORGANIZER TO TELECASTER, YOU'RE NOT EXPRESSING AN OPINION IN
20 THIS CASE ABOUT WHETHER AN NIL RIGHT IS, IN FACT, PAYING BY
21 THE ORGANIZER FROM THE PARTICIPANT, CORRECT?

22 **A.** WELL, I DO RECALL THERE WAS A -- A DISCUSSION OF THE NBA
23 COLLECTIVE BARGAINING AGREEMENT. I THINK THAT CAME UP IN MY
24 DEPOSITION. AND THAT'S AN EXAMPLE OF WHERE THE PLAYERS
25 WITH -- UNDER THE BASIS OF THEIR REPRESENTATIVE, THE PLAYER'S

1 ASSOCIATION TRANSFER THAT TO THE NBA FOR THE NBA TO -- TO
2 EXPLOIT.

3 Q. BUT YOU'RE NOT OFFERING AN OPINION, ARE YOU, SIR, ABOUT
4 WHETHER THE NIL RIGHTS OF BASKETBALL AND FOOTBALL PLAYERS,
5 COLLEGE BASKETBALL AND COLLEGE FOOTBALL PLAYERS, YOU HAVEN'T
6 EXPRESSED AN OPINION ABOUT WHETHER WHAT YOU'RE CALLING NIL
7 RIGHTS ARE, IN FACT, OBTAINED BY THE ORGANIZER FROM THE
8 PARTICIPANT, ARE YOU?

9 A. WELL, IT'S MY UNDERSTANDING, BASED UPON READING THE
10 CONTRACTS AND MY UNDERSTANDING OF THE WAY THAT THE BUSINESS
11 OPERATES, THAT THAT HAS BEEN OBTAINED.

12 I HAVE NOT PERSONALLY LOOKED AT ALL OF THE VARIOUS
13 DOCUMENTS THAT AN ATHLETE IS REQUIRED TO SIGN IN COLLEGE
14 SPORTS, SO I CAN'T OPINE ON THAT SUBJECT.

15 Q. HAVE YOU LOOKED, SIR, AT ANY OF THE DOCUMENTS THAT COLLEGE
16 ATHLETES SIGN IN TERMS OF FORMING YOUR OPINIONS IN THIS CASE?

17 A. I RECALL FROM TIME TO TIME LOOKING AT SOME DOCUMENTS, BUT
18 I HAVE NOT RELIED ON THAT FOR PURPOSES OF THIS TESTIMONY.

19 Q. OKAY.

20 LET ME JUST ASK IF WE CAN BRING UP -- IT'S IN YOUR BINDER,
21 SIR, EXHIBIT 2240.

22 MR. KLAUS: AND, MR. NICKELS, IF YOU CAN BLOW UP THE
23 TOP PART OF THAT FOR US, PLEASE.

24 (EXHIBIT DISPLAYED ON SCREEN.)

1 **BY MR. KLAUS:**

2 **Q.** AND THIS IS FORM 08-3A, STUDENT ATHLETE STATEMENT,
3 DIVISION I, ACADEMIC YEAR 2008, 2009.

4 IF I COULD ASK YOU, MR. DESSER, TO PLEASE TURN TO PAGE 4
5 OF THE EXHIBIT.

6 YOU'LL SEE THERE IS A -- DOWN AT THE BOTTOM LEFT, 2240-4.

7 DO YOU SEE THAT THERE'S A "PART V: PROMOTION OF NCAA
8 CHAMPIONSHIPS, EVENTS, ACTIVITIES OR PROGRAMS".

9 DO YOU SEE THAT?

10 **A.** YES.

11 **Q.** AND IS THIS ONE OF THE DOCUMENTS THAT YOU SAID YOU THOUGHT
12 YOU SAW?

13 **A.** THIS LOOKS FAMILIAR. I MEAN, I DID REVIEW QUITE A NUMBER
14 OF DOCUMENTS, AND THIS MAY HAVE BEEN ONE OF THEM OR SOMETHING
15 THAT LOOKS LIKE IT.

16 I CAN'T SAY FOR SURE THAT I HAVE REVIEWED THIS PARTICULAR
17 ONE, NO.

18 **Q.** AND DO YOU SEE THAT IT SAYS, SIR:

19 "YOU AUTHORIZE THE NCAA OR A THIRD PARTY ACTING ON
20 BEHALF OF THE NCAA", AND IT GOES ON TO SAY, "TO USE
21 YOUR NAME OR PICTURE TO GENERALLY PROMOTE NCAA
22 CHAMPIONSHIPS OR OTHER NCAA EVENTS, ACTIVITIES OR
23 PROGRAMS."

24 DO YOU SEE THAT?

25 **A.** YES.

1 Q. AND IT IS YOUR UNDERSTANDING, SIR, IN THE BROADCAST
2 INDUSTRY, IT IS GENERALLY UNDERSTOOD THAT PROMOTING OR
3 PUBLICIZING A BROADCAST IS NOT THE SAME THING AS THE ACTUAL
4 BROADCAST?

5 IS THAT YOUR UNDERSTANDING?

6 A. THAT'S CORRECT.

7 Q. THEY ARE DIFFERENT THINGS, RIGHT?

8 A. WELL, THEY RELATE TO ONE ANOTHER, BUT THEY ARE, IN FACT,
9 DIFFERENT THINGS. YES.

10 Q. AND SO BASED ON YOUR UNDERSTANDING OF AGREEMENTS AND THE
11 TRANSFERS AND CONVEYANCE OF RIGHTS, WOULD YOU AGREE WITH ME
12 THAT THIS PROVISION DOES NOT APPEAR TO TRANSFER NAME, IMAGE
13 AND LIKENESS RIGHTS FOR THE BROADCAST OF A GAME AS OPPOSED TO
14 THE PROMOTION OF A GAME?

15 A. WELL, IT -- IT -- THIS PARTICULAR PROVISION DEALS WITH THE
16 MATTER OF USE OF NIL FOR PROMOTION. THAT SEEMS TO BE WHAT IT
17 SAYS.

18 THERE MAY VERY WELL BE OTHER PROVISIONS IN THIS DOCUMENT
19 OR SOME DOCUMENT IT REFERS TO, OR MAYBE THERE ISN'T. I CAN'T
20 TELL YOU FOR SURE.

21 Q. OKAY.

22 BUT THERE'S NONE OTHER -- THERE ARE NO OTHERS THAT, AS YOU
23 ARE SITTING HERE, COME TO MIND THAT DEAL WITH THE -- THAT YOU
24 THINK TRANSFER THE NIL RIGHTS OF PARTICIPANTS TO THE
25 ORGANIZER, RIGHT?

1 **A.** I HAVE NOT STUDIED THAT PARTICULAR TRANSFER. THAT WAS NOT
2 IN THE SCOPE OF WHAT I WAS ASKED TO DO.

3 **Q.** OKAY.

4 NOW, SIR, YOUR TESTIMONY ABOUT HOW, WHAT YOU CALL NIL
5 RIGHTS ARE OBTAINED IN SPORTS BROADCASTING AGREEMENTS, THAT
6 WAS BASED ON YOUR REVIEW OF SOME OF THE AGREEMENTS IN THIS
7 CASE, RIGHT?

8 **A.** I REVIEWED A NUMBER OF AGREEMENTS AND I HAVE BEEN, YOU
9 KNOW, ACTIVE IN THE INDUSTRY FOR MANY YEARS.

10 **Q.** OKAY. AND IT'S A FACT, ISN'T IT, THAT YOU'VE NEVER
11 ACTUALLY NEGOTIATED AN AGREEMENT FOR THE BROADCAST OF A
12 COLLEGE SPORTS EVENT, CORRECT?

13 **A.** THAT'S CORRECT.

14 **Q.** AND YOU REVIEWED SOME OF THE AGREEMENTS THAT WERE PRODUCED
15 IN THIS CASE, BUT YOU DIDN'T REVIEW ALL OF THE BROADCASTING
16 AGREEMENTS, DID YOU?

17 **A.** NO. I WAS UNABLE TO GET ACCESS TO SOME OF THE AGREEMENTS
18 BECAUSE I HAD UNDERSTOOD THERE WERE DISCOVERY DISPUTES. BUT I
19 REVIEWED QUITE A NUMBER OF AGREEMENTS, AND FOUND THEM TO BE
20 VERY SIMILAR WITH THE AGREEMENTS THAT I'VE SEEN IN MY
21 PROFESSIONAL NEGOTIATING EXPERIENCE.

22 **Q.** OKAY. YOU SAID IN YOUR DEPOSITION THAT YOU REVIEWED
23 SOMETHING NORTH OF A DOZEN, RIGHT?

24 **A.** THAT IS SOUNDS ABOUT RIGHT.

25 **Q.** AND THE SPECIFIC AGREEMENTS THAT YOU REVIEWED, SIR, THOSE

1 ARE LISTED IN THE DOCUMENTS CONSIDERED TO EXHIBIT A TO YOUR
2 EXPERT DISCLOSURE, RIGHT?

3 **A.** I BELIEVE THAT THOSE THAT FORM THE BASIS OF MY TESTIMONY
4 WERE LISTED THERE.

5 **Q.** OKAY.

6 **MR. KLAUS:** AND, MR. NICKELS, IF YOU CAN BRING UP
7 EXHIBIT A SO JUST SO WE CAN MAKE THIS CLEAR. TO THE EXPERT
8 REPORT.

9 (PAUSE IN THE PROCEEDINGS.)

10 **BY MR. KLAUS:**

11 **Q.** YOU KNOW WHAT? YOU'VE GOT IT IN THE BINDER. I JUST WANT
12 TO -- THIS WILL BE MUCH MORE EXPEDITIOUS IF I JUST ASK YOU TO
13 LOOK AT EXHIBIT A.

14 THE AGREEMENTS THAT YOU LOOKED AT, YOU'RE REFERRING TO
15 WHAT YOU'VE NUMBERED PARAGRAPH 4 THROUGH PARAGRAPH --

16 **A.** EXCUSE ME. I DON'T KNOW WHAT AGREEMENT WE'RE LOOKING AT.

17 **Q.** I'M SORRY, SIR.

18 IF YOU WOULD LOOK IN YOUR BINDER THAT I HANDED YOU, RIGHT
19 AFTER THE DEPOSITION TRANSCRIPT, YOUR EXPERT REBUTTAL REPORT
20 SHOULD BE BEHIND THE NEXT TAB.

21 DO YOU HAVE THAT?

22 (DOCUMENT DISPLAYED ON SCREEN.)

23 **THE COURT:** I THINK THEY HAVE IT ON THE SCREEN NOW.

24 **THE WITNESS:** OKAY. I HAVE IT NOW.

1 **BY MR. KLAUS:**

2 **Q.** IF YOU LOOK AT EXHIBIT A, YOU WILL SEE THERE IS A LIST OF
3 DOCUMENTS THAT YOU CONSIDERED, CORRECT?

4 **A.** YES.

5 **Q.** AND ARE THE AGREEMENTS THAT YOU REVIEWED AND CONSIDERED IN
6 FORMULATING YOUR OPINION, THOSE ARE IDENTIFIED BY BATES
7 NUMBERS BETWEEN PARAGRAPHS 4 AND 13, CORRECT?

8 **A.** I'M NOT SURE THAT 13 IS A CONTRACT, BUT IT LOOKS LIKE THE
9 OTHER ONES ARE.

10 **Q.** OKAY.

11 AND ONE OF THE DOCUMENTS THAT MR. ROSENTHAL SHOWED YOU
12 TODAY WAS EXHIBIT 2230.

13 **MR. KLAUS:** MR. NICKELS, IF YOU CAN BRING UP THE FACE
14 PAGE SO WE ARE ALL THINKING ABOUT THE SAME THING HERE.

15 (DOCUMENT DISPLAYED ON SCREEN.)

16 **BY MR. KLAUS:**

17 **Q.** THIS IS THE TELECAST RIGHTS AGREEMENT BETWEEN THE BIG 12
18 CONFERENCE AND FOX, RIGHT?

19 DO YOU SEE THAT?

20 **A.** YES.

21 **Q.** AND YOU RECALL THAT MR. ROSENTHAL ASKED YOU A NUMBER OF
22 QUESTIONS ABOUT THAT THIS MORNING?

23 **A.** YES.

24 **Q.** AND IN YOUR EXPERT REPORT, YOU DESCRIBED THIS AGREEMENT AS
25 TYPICAL OF THE VAST MAJORITY OF THE COLLEGIATE TELECAST

1 CONTRACTS THAT YOU REVIEWED, RIGHT?

2 **A.** AS A GENERAL MATTER, THE TERMS AND CONDITIONS THAT ARE
3 CONTAINED IN THIS AGREEMENT ARE SUBSTANTIALLY SIMILAR TO THE
4 TERMS AND CONDITIONS IN THE OTHER AGREEMENTS, BUT THEY ARE NOT
5 VERBATIM COPIES OF EACH OTHER.

6 **Q.** OKAY.

7 YOU DESCRIBED A PARTICULAR PROVISION REGARDING -- RELATING
8 TO WHAT YOU CALLED NIL RIGHTS AS HAVING BEEN TYPICAL OF THE
9 VAST MAJORITY OF PROVISIONS THAT YOU REVIEWED IN THIS CASE,
10 RIGHT?

11 **A.** I'M NOT SURE IF THAT'S EXACTLY THE WAY I PUT IT. BUT, YOU
12 KNOW, THERE ARE SOME OF THESE AGREEMENTS THAT HAVE A SPECIFIC
13 NIL PARAGRAPH. THERE'S SOME OF THE AGREEMENTS THAT SIMPLY
14 BROADLY GRANT, YOU KNOW, ALL NECESSARY RIGHTS.

15 AND THERE IS NOT A STANDARD IN THE INDUSTRY FOR EXACTLY
16 THE WAY THIS STUFF IS CONTAINED. DIFFERENT LAWYERS DRAFT IN
17 DIFFERENT WAYS. DIFFERENT ORGANIZATIONS DO IN DIFFERENT WAYS
18 AS WELL.

19 **MR. KLAUS:** MAY I ASK YOU TO, MR. NICKELS, TO BRING
20 UP PARAGRAPH 23 OF THE EXPERT REPORT.

21 23 -- I'M SORRY.

22 THIS IS PAGE 9 OF MR. DESSER'S EXPERT REBUTTAL REPORT,
23 PARAGRAPH 23.

24 (DOCUMENT DISPLAYED ON SCREEN.)

1 **BY MR. KLAUS:**

2 **Q.** I'M NOT GOING TO QUOTE THE WHOLE THING, MR. DESSER, BUT
3 YOU TALK ABOUT SOME PROVISIONS; NAMELY, PARAGRAPHS 3.1 (B) AND
4 (C) IN THIS FOX AGREEMENT.

5 AND YOU SAY THAT THE PROVISION IS TYPICAL OF PROFESSIONAL
6 BROADCAST AGREEMENTS AND WAS TYPICAL OF THE VAST MAJORITY OF
7 COLLEGIATE TELECAST CONTRACTS THAT I REVIEWED.

8 CORRECT?

9 **A.** YES. THAT'S WHAT IT SAYS.

10 **Q.** SO THAT IS TYPICAL -- THE PROVISION THAT YOU REFERRED TO,
11 3.1.3, THAT WAS TYPICAL OF EIGHT OR NINE OF THE AGREEMENTS
12 THAT YOU REVIEWED, RIGHT?

13 **A.** WELL, I WAS TALKING ABOUT THE GRANT OF RIGHTS. I MEAN,
14 THIS ALL IN THIS GRANT OF RIGHTS SECTION WHERE YOU'RE GIVEN
15 THE RIGHT TO SHOW THE GAME, YOU'RE GIVEN THE RIGHT TO DO
16 PROMOTION, YOU'RE GIVEN THE RIGHT TO SOMETIMES EXCLUDE OTHERS
17 FROM DOING THE SAME THINGS IN COMPETITION, DEPENDING ON HOW
18 THE GRANT OF RIGHT IS STRUCTURED.

19 **Q.** OKAY.

20 NOW, LET'S TAKE A LOOK AT PARAGRAPH -- FIRST, LET'S HOLD
21 THIS LANGUAGE UP HERE FOR JUST ONE MOMENT. I WANT TO READ IT
22 TO MAKE SURE WE ARE CLEAR WHAT YOU SAID IN YOUR REPORT. WHAT
23 YOU SAID WAS:

24 "THE 2011 TELECAST RIGHTS AGREEMENT BETWEEN THE BIG
25 12 CONFERENCE AND FOX SPORTSNET, EXPRESSLY PROVIDES

1 THAT THE RIGHTS GRANTED IN CONNECTION WITH THE
2 CONTRACT INCLUDE QUOTE 'THE NAMES AND LIKENESSES OF
3 THE PLAYERS, MANAGERS, COACHES, OFFICIALS, AND OTHER
4 PARTICIPANTS OF THE CONFERENCE AND ITS MEMBER
5 INSTITUTIONS AND THE LIKENESSES OF CHEERLEADERS AND
6 PERSONNEL AS WELL AS THE NAMES AND LIKENESS OF THE
7 PLAYERS OF THE OTHER TEAMS."

8 AND YOU CITE PARAGRAPH 3.1.3 (B) AND (C), RIGHT?

9 THAT'S WHAT YOU SAID?

10 **A.** YES. THE -- THAT WHICH IS PART OF THAT GRANT OF RIGHTS
11 SECTION THAT I MENTIONED.

12 **Q.** LET'S TAKE A LOOK AT THAT GRANT OF RIGHTS SECTION IF WE
13 MAY.

14 **MR. KLAUS:** MR. NICKELS, IF YOU WOULD BRING UP
15 PARAGRAPH 3.1. THIS IS THE GRANT OF RIGHT SECTION.

16 (DOCUMENT DISPLAYED ON SCREEN.)

17 **BY MR. KLAUS:**

18 **Q.** I BELIEVE DURING YOUR DIRECT EXAMINATION, MR. ROSENTHAL
19 ASKED YOU SOME QUESTIONS REGARDING THIS PARAGRAPH THAT'S
20 HIGHLIGHTED HERE, 3.1, RIGHT?

21 **A.** YES. THIS IS THE GRANT OF RIGHTS.

22 **Q.** HE DIDN'T ASK YOU ANY QUESTIONS ABOUT 3.1.3 (B) AND (C),
23 WHICH WERE THE PROVISIONS THAT YOU CITED IN YOUR EXPERT
24 REPORT.

25 HE DIDN'T ASK YOU ANY QUESTIONS ABOUT THAT, DID HE?

1 **A.** I DON'T REMEMBER IF THAT'S WHEN WE WERE GETTING HURRIED
2 ALONG OR NOT, BUT I'LL ACCEPT YOUR REPRESENTATION THAT HE DID
3 NOT.

4 **Q.** WHY DON'T WE BRING UP -- LET'S TAKE A LOOK AT IT NOW.
5 3.1.3.

6 **MR. KLAUS:** AND, MR. NICKELS, IF YOU COULD PUT ON THE
7 SCREEN THE 3.1.3, WHICH IS AT THE BOTTOM OF PAGE 14, AND THEN
8 THE CARRY-OVER LANGUAGE WHICH IS AT THE TOP OF PAGE 15.

9 (DOCUMENT DISPLAYED ON SCREEN.)

10 **BY MR. KLAUS:**

11 **Q.** WHILE HE'S DOING THAT, LET'S GET OURSELVES SITUATED HERE,
12 SIR.

13 SO, 3.1.3, THIS IS TALKING ABOUT PROMOTIONAL RIGHTS,
14 CORRECT?

15 **A.** THAT'S WHAT THIS SUBPARAGRAPH IS -- IS ENTITLED, BUT I
16 BELIEVE IT IS ALSO UNDER THE OVERALL HEADING OF "GRANT OF
17 RIGHTS".

18 **Q.** AND WHAT IT'S SAYING IS THAT THESE PROMOTIONAL RIGHTS,
19 THAT THEY ARE THE RIGHT TO USE, AND THEN WHAT IT SAYS IS, "FOR
20 PURPOSES OF THE PROMOTION OF THE TELECAST OF THE SELECTED
21 EVENTS".

22 DO YOU SEE THAT LANGUAGE?

23 **A.** YES.

24 **Q.** AND THEN IT GOES ON TO HAVE THREE SUBPARAGRAPHS RELATING
25 TO TRADEMARKS, RELATING TO NAMES AND LIKENESSES, THE

1 CONFERENCE TEAM, AND THEN THE OTHER TEAM, RIGHT? THAT'S WHAT
2 IT SAYS THERE, RIGHT?

3 **A.** GENERALLY THAT'S CORRECT.

4 **Q.** OKAY.

5 AND JUST TO MAKE SURE WE ARE ON THE SAME PAGE STILL, SIR,
6 YOUR TESTIMONY IS THAT IT IS UNDERSTOOD THAT THERE ARE
7 DIFFERENCES BETWEEN PROMOTIONAL RIGHTS AND THE LIVE TELECAST
8 RIGHTS, CORRECT?

9 **A.** WELL, YOU USE SOME OF THE SAME THINGS IN BOTH. YOU CAN
10 DEFINE THEM IN SLIGHTLY DIFFERENT WAYS OR HAVE DIFFERENT
11 RIGHTS WITH RESPECT TO PROMOTION, FOR EXAMPLE, BUT WE'RE
12 TALKING ABOUT A BASKET OF RIGHTS HERE, THE RIGHT TO SHOW THE
13 GAME, THE RIGHT TO PROMOTE THE GAME.

14 AND IN BOTH CASES ONE NEEDS TO BE ABLE TO UTILIZE THE
15 IMAGES OF THE ATHLETES IN ORDER TO DO THAT.

16 **Q.** BUT THE LANGUAGE, SIR, THAT YOU POINTED TO IN YOUR EXPERT
17 REPORT TALKING ABOUT WHAT YOU SAID WAS TYPICAL OF THE
18 CONVEYANCE OF NAME, IMAGE AND LIKENESS RIGHTS FOR THE
19 BROADCAST OF THE GAME, WHAT YOU POINTED TO WAS THE PROMOTIONAL
20 RIGHTS LANGUAGE IN 3.1.3 (B) AND (C), CORRECT?

21 **MR. ROSENTHAL:** OBJECTION, YOUR HONOR, THAT'S NOT
22 WHAT HIS EXPERT REPORT SAYS. MISCHARACTERIZES WHAT'S IN THE
23 REPORT.

24 **THE COURT:** IS THAT WHAT HE'S TALKING ABOUT, HIS
25 REPORT OR HIS TESTIMONY?

1 **MR. ROSENTHAL:** HE'S TALKING ABOUT HIS REPORT, AND
2 USING THAT AS A BASIS FOR THAT QUESTION.

3 THE REPORT DOESN'T SAY "TYPICAL LANGUAGE WITH THE
4 CONVEYANCE OF BROADCAST RIGHTS". IT SAYS "TYPICAL LANGUAGE IN
5 ONE OF THESE CONTRACTS".

6 **THE COURT:** WHATEVER IT SAYS, THAT'S WHAT IT SAYS.
7 SO WE DON'T NEED TO ASK HIM WHAT IT SAYS, WE CAN JUST LOOK AT
8 IT OURSELVES LATER WHEN WE HAVE MORE TIME.

9 **MR. KLAUS:** SURE.

10 **MR. ROSENTHAL:** YES.

11 **MR. KLAUS:** UNDERSTOOD, YOUR HONOR.

12 **BY MR. KLAUS:**

13 **Q.** LET ME TURN TO, IF I MAY, A PROVISION THAT -- THAT
14 MR. ROSENTHAL DID ASK YOU ABOUT TODAY, THAT'S IN THIS
15 AGREEMENT 2230.

16 AND THAT WAS THE CLEARANCE PROVISION. THIS IS ON PAGE 37
17 OF EXHIBIT 2230.

18 **A.** OKAY.

19 **Q.** ARE YOU THERE, SIR?

20 **A.** BOTTOM OF THE PAGE?

21 **Q.** AT THE BOTTOM AND THEN IT CARRIES OVER TO THE TOP.

22 IT SAYS "PARAGRAPH 6.2.3 CALLED CLEARANCES", RIGHT?

23 **A.** THAT'S WHAT IT'S CALLED.

24 **Q.** OKAY. AND YOU DIDN'T DISCUSS THIS PROVISION AT ALL IN
25 YOUR EXPERT REPORT, DID YOU?

1 **A.** I DON'T RECALL IF I DID OR NOT. I GATHER YOU ARE
2 SUGGESTING THAT I DID NOT.

3 **Q.** OKAY.

4 IT'S NOT -- I CERTAINLY DIDN'T SEE IT, SIR. YOU DON'T
5 HAVE ANY RECOLLECTION OF SEEING IT THERE, DO YOU?

6 **A.** NOT AS I SIT HERE TODAY.

7 **Q.** OKAY.

8 AND YOU SAID THAT THIS PROVISION 6.2.3, WHICH IS TITLED
9 "CLEARANCES", WAS AN EXPRESS GRANT OF THE NAME, IMAGE AND
10 LIKENESS RIGHTS OF THE PLAYERS FROM THE BIG 12 CONFERENCE ON
11 THE ONE HAND TO THE TELECASTER, FOX, ON THE OTHER HAND,
12 CORRECT?

13 **A.** WELL, IN THE CONTEXT OF THE GRANT OF RIGHTS, THE
14 REPRESENTATIONS AND WARRANTIES AND THE INDEMNIFICATION, IT'S
15 PART OF THAT WHOLE STREAM OF CONVEYANCE.

16 **Q.** OKAY.

17 AND NOTHING IN THE LANGUAGE OF PARAGRAPH 6.2.3 SAYS THAT
18 NAME, IMAGE AND LIKENESS RIGHTS ARE GRANTED BY THE BIG 12
19 CONFERENCE TO FOX, CORRECT?

20 **A.** IT SAYS THAT THE CONFERENCE IS GOING TO BE RESPONSIBLE FOR
21 GETTING THE CLEARANCES WITH RESPECT TO THE PERSONS
22 PARTICIPATING OR OTHERWISE CONNECTING -- CONNECTED WITH EACH
23 EVENT.

24 SO, THAT, CERTAINLY TO ME, MEANS, AND WOULD INCLUDE THE
25 PLAYERS. AND THE CLEARANCE IS -- THE NIL RIGHTS IS PART OF

1 THAT CLEARANCE.

2 Q. AND LET ME GO BACK TO MY QUESTION, SIR.

3 IT DOESN'T SAY THAT RIGHTS ARE HEREBY GRANTED IN THE WAY
4 THAT, FOR EXAMPLE, THE GRANT OF RIGHTS PROVISIONS IN SECTION 3
5 SAY THAT RIGHTS ARE GRANTED; ISN'T THAT A FACT?

6 A. WELL, I CAN GO BACK AND LOOK AT SECTION 3 AND SEE HOW THE
7 GRANT OF RIGHTS IS STRUCTURED. I MEAN, THIS IS BASICALLY
8 SAYING, YOU KNOW, WHO'S RESPONSIBLE FOR DOING WHAT. IT'S --
9 IT'S A LITTLE BIT MORE MINISTERIAL AS OPPOSED TO THE GRANT OF
10 RIGHTS WHICH IS SAYING, OKAY, FOX, YOU GET THE RIGHTS TO SHOW
11 THE GAMES WITH THE PLAYERS IN THEM AND DISTRIBUTE THEM.

12 Q. OKAY.

13 LET'S TAKE A LOOK AT THE SCOPE OF THIS, AS YOU DESCRIBE
14 IT, MINISTERIAL PROVISION. AND LET'S TAKE A LOOK, SIR, AT
15 WHAT IT TALKS ABOUT THE CLEARANCES HAVING TO DO.

16 AND IT SAYS THAT THE CONFERENCE IS RESPONSIBLE FOR
17 OBTAINING THE CLEARANCE, AND THEN IT SAYS: "INCLUDING WITHOUT
18 LIMITATION ALL NAME AND LIKENESS RIGHTS OF ALL PARTICIPANTS."

19 AND THEN YOU SEE THE LANGUAGE THAT IT SAYS: "THAT ARE
20 REASONABLE OR NECESSARY FOR THE TELECAST OF THE EVENTS".

21 DO YOU SEE THAT?

22 A. YES.

23 Q. AND SO THAT RAISES A QUESTION, DOES IT NOT, SIR, ABOUT
24 WHETHER THE -- WHETHER NIL RIGHTS, AS YOU'VE DESCRIBED THEM,
25 FIT WITHIN THE DEFINITION OF WHETHER THAT IS SOMETHING THAT IS

1 REASONABLE OR NECESSARY FOR THE TELECAST, CORRECT?

2 **A.** I WOULD SAY THAT NIL RIGHTS ARE REASONABLE AND NECESSARY
3 FOR THE TELECAST.

4 **Q.** BUT THAT IS -- THAT'S NOT BASED ON ANY UNDERSTANDING OF
5 WHAT THE PARTIES TO THIS AGREEMENT INTENDED BY THE WORDS
6 "REASONABLE OR NECESSARY", CORRECT?

7 **A.** WELL, I THINK YOU HAVE TO ASK THE PARTIES WHAT THEY
8 THOUGHT.

9 IT DOES SAY "RIGHTS OF ALL PARTICIPANTS". IT
10 SPECIFICALLY, IT DOES SAY THE CONFERENCE IS RESPONSIBLE FOR
11 SECURING THEM. AND IT'S REALLY LEFT TO THE CONFERENCE TO
12 FIGURE IT OUT.

13 THEY'VE GOT TO GO OFF AND DO THAT AND SATISFY FOX THAT IT
14 HAS BEEN DONE TO FOX'S SATISFACTION.

15 **THE COURT:** WE'LL TAKE OUR BREAK. IT'S 10:20. WE
16 WILL BREAK UNTIL 10:30.

17 **MR. KLAUS:** THANK YOU, YOUR HONOR.

18 (RECESS TAKEN AT 10:20; RESUMED AT 10:32 A.M.)

19 **THE CLERK:** REMAIN SEATED. COME TO ORDER. THIS
20 COURT IS BACK IN SESSION.

21 **THE COURT:** YOU MAY YOU PROCEED.

22 **MR. KLAUS:** THANK YOU, YOUR HONOR.

23 **THE COURT:** HOW MUCH MORE DO YOU HAVE?

24 **MR. KLAUS:** I THINK LESS THAN 30 MINUTES. I THINK
25 PROBABLY CLOSER TO 15.

1 **THE COURT:** OKAY.

2 **MR. KLAUS:** I WILL TRY TO WRAP IT UP.

3 **THE COURT:** IF YOU CROSS-EXAMINE FOR LONGER THAN THE
4 DIRECT, THE END RESULT TURNS OUT TO BE THAT YOU USE UP ALL
5 YOUR TIME ON CROSS AND DON'T HAVE ANY TIME LEFT.

6 YOU ARE GETTING TO THE POINT OF THE LENGTH OF DIRECT.

7 **MR. KLAUS:** I THINK BOTH SIDES UNDERSTAND THAT AND
8 WILL BE MINDFUL OF THAT, YOUR HONOR.

9 **THE COURT:** GO AHEAD.

10 **MR. KLAUS:** AND WE, JUST TO BE CLEAR, WE HAD A
11 DISCUSSION OVER THE COURSE OF THE TESTIMONY AND THE BREAK,
12 SOME OF MY COLLEAGUES HAD A DISCUSSION.

13 I BELIEVE OUR UNDERSTANDING IS THAT IN RESPONSE TO YOUR
14 HONOR'S REQUEST FOR INFORMATION ABOUT WHERE THE REVENUE COMES
15 FROM, THERE WILL BE A BRIEF REDIRECT BY MR. ROSENTHAL ON THAT,
16 AND THEN I WILL CROSS THE WITNESS BASED ON WHAT'S SAID.

17 **BY MR. KLAUS:**

18 **Q.** WITH THAT, JUST A COUPLE OF OTHER THINGS, MR. DESSER.

19 ONE OF THE THINGS THAT YOU DISCUSSED WITH MR. ROSENTHAL
20 WAS YOUR VIEW --

21 **MR. KLAUS:** AND, MR. NICKELS, YOU CAN TAKE DOWN
22 6.2.3.

23 **BY MR. KLAUS:**

24 **Q.** -- WAS THAT ONE OF THE THINGS THAT YOU INDICATED THE GRANT
25 OF NAME, IMAGE AND LIKENESS RIGHTS WERE PROVISIONS THAT WERE

1 FOUND IN REPRESENTATION AND WARRANTY LANGUAGE, RIGHT?

2 A. I'M SORRY, I DIDN'T QUITE UNDERSTAND THAT QUESTION.

3 Q. YOU ARE RELYING ON REPRESENTATION AND WARRANTY PROVISIONS
4 AND AGREEMENTS AS BEING EVIDENCE OF NIL RIGHTS BEING CONVEYED
5 FROM THE ORGANIZER TO THE TELECASTER, CORRECT?

6 A. IN ADDITION TO THE GRANT OF RIGHTS PROVISION, YES.

7 Q. OKAY.

8 AND YOU TALKED ABOUT LANGUAGE ABOUT THE ORGANIZER OF THE
9 TEAM HAVING ALL THE RIGHTS THAT ARE NECESSARY TO CONVEY WHAT
10 IT NEEDS TO CONVEY UNDER THE AGREEMENT, CORRECT?

11 A. I -- I SAID THAT TYPICALLY THE -- THE ORGANIZER, IN MANY
12 CASES IT IS A TEAM OR A HOME INSTITUTION, IS RESPONSIBLE FOR
13 GATHERING TOGETHER THE VARIOUS THINGS THAT ARE NECESSARY TO
14 CONVEY TO THE BROADCASTER.

15 OF COURSE, PART OF THAT ALSO INVOLVES ITS AGREEMENT WITH
16 THE OTHER TEAM TO -- TO SHOW UP FOR THE GAME AND CONVEY THE
17 RIGHTS NECESSARY TO -- TO FOLLOW THROUGH.

18 Q. OKAY. AND IN YOUR EXPERIENCE, SIR, REPRESENTATION AND
19 WARRANTIES PROVISIONS, THEY ARE FAIRLY STANDARD IN BROADCAST
20 AGREEMENTS, RIGHT?

21 A. YES. THEY ARE A COMMON FEATURE OF A BROADCAST AGREEMENT.

22 Q. AND IT'S A FAIRLY STANDARD PROVISION FOR ONE PARTY SAYING
23 THAT IT HAS ALL THE RIGHTS THAT ARE NECESSARY TO PERFORM ITS
24 OBLIGATIONS UNDER THE AGREEMENT; THAT'S FAIRLY COMMON LANGUAGE
25 OF THAT TYPE IN REP AND WARRANTY PROVISIONS IN YOUR

1 EXPERIENCE?

2 **A.** AGAIN, COUPLED WITH THE GRANT OF RIGHTS, IT IS A FAIRLY
3 COMMON PROVISION, YES.

4 **Q.** AND YOUR -- AND YOU JUST MEAN THE STATEMENT THAT THERE IS
5 SOME GRANT OF RIGHTS AND THAT THERE IS SOME REPRESENTATION AND
6 WARRANTY SAYING THAT THE PARTY THAT IS DELIVERING RIGHTS HAS
7 WHAT IS NEEDED TO DO TO DELIVER THE RIGHTS, THAT COMBINATION
8 IS FAIRLY STANDARD IN YOUR EXPERIENCE?

9 **A.** GENERALLY SPEAKING, AND SOMETIMES THERE ALSO ARE THESE
10 CLEARANCE PROVISIONS AS -- IN THE AGREEMENT THAT WE LOOKED AT
11 A FEW MINUTES AGO.

12 **Q.** AND YOU DON'T HAVE ANY -- YOU DON'T HAVE ANY -- I'M SORRY,
13 STRIKE THAT.

14 IN YOUR EXPERIENCE, THE NEGOTIATIONS OVER THAT
15 REPRESENTATIONS AND WARRANTIES LANGUAGE ABOUT ONE PARTY HAVING
16 ALL THE RIGHTS THAT IT NEEDS, THAT'S TYPICALLY NOT VERY
17 CONTENTIOUS NEGOTIATION LANGUAGE, IS IT?

18 **A.** THAT IS LANGUAGE THAT -- THAT CAN GET NEGOTIATED FROM TIME
19 TO TIME, BUT GENERALLY SPEAKING, THESE ARE CUSTOMARY TERMS,
20 AND SOPHISTICATED PARTIES ARE ACCUSTOMED TO PROVIDING THEM OR
21 ARE USED TO RECEIVING THEM.

22 **Q.** OKAY. AND IT IS YOUR UNDERSTANDING, SIR, THERE ARE SOME
23 AGREEMENTS THAT ARE BETWEEN ORGANIZERS AND TELECASTERS IN THIS
24 CASE, THERE ARE SOME AGREEMENTS THAT DON'T MENTION NAME, IMAGE
25 AND LIKENESS AT ALL.

1 DO YOU KNOW THAT FOR A FACT?

2 **A.** UM, I BELIEVE THAT THAT IS -- IS CORRECT. AND IN THOSE
3 CASES, THERE ARE OTHER GRANTS THAT CAN BE READ TO INCLUDE
4 NAME, IMAGE AND LIKENESS, BUT IT MAY NOT USE THOSE SPECIFIC
5 WORDS.

6 **Q.** OKAY. YOU -- YOUR UNDERSTANDING OF THE AGREEMENTS IN THIS
7 CASE IS THAT THERE ARE A NUMBER OF TELECAST AGREEMENTS THAT
8 DON'T USE THOSE WORDS, "NAME, IMAGE AND LIKENESS", RIGHT?

9 **A.** SOMETIMES THOSE SPECIFIC STRING OF WORDS DON'T APPEAR IN A
10 CONTRACT.

11 **Q.** OKAY.

12 LET ME ASK YOU, SIR, ABOUT SOMETHING TO DO WITH ONE OF
13 YOUR PARTICULAR EXPERIENCES IN NEGOTIATIONS. AND THAT IS,
14 SINCE STARTING YOUR FIRM, YOU'VE DONE WORK FOR AN ORGANIZATION
15 CALLED THE CALIFORNIA INTERSCHOLASTIC FEDERATION, RIGHT?

16 **A.** YES, THAT'S CORRECT.

17 **Q.** THEY ARE CALLED CIF FOR SHORT, RIGHT?

18 **A.** YES.

19 **Q.** AND CIF IS THE GOVERNING BODY FOR HIGH SCHOOL SPORTS IN
20 CALIFORNIA, RIGHT?

21 **A.** THAT IS CORRECT.

22 **Q.** THEY SPONSOR COMPETITION AND CHAMPIONSHIPS FOR HIGH
23 SCHOOLS ACROSS THE STATE, RIGHT?

24 **A.** THAT'S CORRECT.

25 **Q.** AND THEY TELEWISE SOME OF THEIR CHAMPIONSHIPS AND SPORTS

1 EVENTS, RIGHT?

2 **A.** YES.

3 **Q.** AND YOU HELP CIF NEGOTIATE A BROADCAST AGREEMENT WITH FOX
4 AND COMCAST, RIGHT?

5 **A.** YES. ACTUALLY FOX AND COMCAST ARE THE ONES THAT BROADCAST
6 OR TELECAST. THE CIF IS THE ORGANIZER.

7 **Q.** AND THE LICENSE FEES THAT THEY PAY TO CIF IN THE AGREEMENT
8 YOU NEGOTIATED, THOSE ARE FAIRLY SUBSTANTIAL, CORRECT?

9 **A.** I MEAN CERTAINLY NOT COMPARED TO THE BILLIONS THAT WE ARE
10 TALKING ABOUT IN MANY OF THE AGREEMENTS THAT HAVE BEEN THE
11 SUBJECT OF THIS CASE. THEY ARE MUCH, MUCH SMALLER.

12 **Q.** FOR AN ORGANIZATION LIKE CIF, THOUGH, A HUNDRED THOUSAND
13 BUCKS, THAT'S REAL MONEY, RIGHT?

14 **A.** HUNDRED THOUSAND DOLLARS IS REAL MONEY TO MOST PEOPLE.

15 **Q.** OKAY. THANK YOU, SIR.

16 THAT'S ABOUT THE -- THAT'S THE -- THAT'S YOUR RECOLLECTION
17 OF WHAT THE RANGE OF FEES WERE PAID TO CIF, RIGHT?

18 **A.** SEVERAL YEARS AGO. I BELIEVE IN MORE RECENT AGREEMENTS
19 ARE CONSIDERABLY MORE THAN THAT.

20 **Q.** AND NONE OF THAT MONEY WENT TO THE HIGH SCHOOL ATHLETES
21 WHO PLAY IN THE CIF CONTEST, CORRECT?

22 **A.** AS FAR AS I'M AWARE, THEY DID NOT RECEIVE ANY OF THAT.

23 **Q.** AND WITH RESPECT TO YOUR WORK ON THE CIF AGREEMENTS, THE
24 NEGOTIATIONS WITH FOX AND COMCAST, THERE WAS NO DISCUSSION
25 COMING UP ABOUT THE PERMISSION OF ANY OF THE PARTICIPANTS IN

1 THOSE BROADCASTS OF THOSE EVENTS BEING DISCUSSED, RIGHT?

2 **A.** I DON'T RECALL THAT SUBJECT COMING UP IN THE NEGOTIATION.

3 I BELIEVE THERE WERE THE STANDARD SORTS OF CLAUSES THAT WE
4 HAVE BEEN TALKING ABOUT TODAY IN THE AGREEMENT, BUT I DON'T
5 REMEMBER IT BEING THE SUBJECT FOR -- OF A LOT OF NEGOTIATION.

6 **Q.** ALL RIGHT.

7 AND EVEN THOUGH THE SUBJECT WASN'T DISCUSSED DURING THE
8 NEGOTIATIONS, YOUR BELIEF WAS THAT FOX AND COMCAST EXPECTED
9 THAT CIF, THE ORGANIZER, WOULD BE CONVEYING TO THEM, THE
10 TELECASTER, THE NAME, IMAGE AND LIKENESS RIGHTS OF THE
11 PARTICIPANTS, RIGHT?

12 **A.** YES.

13 **Q.** OKAY. AND IT WAS YOUR UNDERSTANDING THAT -- IT WAS YOUR
14 UNDERSTANDING THAT THOSE RIGHTS EXISTED AND THEY WERE
15 SOMETHING OF VALUE, RIGHT?

16 **A.** YES.

17 **Q.** THEY ARE PART OF WHAT YOU CALL THE OVERALL BUNDLE VALUE
18 THAT YOU THINK IS WITHIN ANY CONTRACT BETWEEN AN ORGANIZER AND
19 A TELECAST FOR SPORTS EVENTS, RIGHT?

20 **A.** YES.

21 **Q.** OKAY. CIF, SIR, THAT'S THE CALIFORNIA INTERSCHOLASTIC
22 FEDERATION, RIGHT?

23 **A.** YES.

24 **Q.** THE ATHLETES THAT PARTICIPATE, THEY ARE KIDS WHO GO TO
25 HIGH SCHOOL IN THE STATE OF CALIFORNIA, RIGHT?

1 **A.** YES.

2 **Q.** THE CHAMPIONSHIPS CONTEST BETWEEN DIFFERENT TEAMS IN
3 CALIFORNIA, RIGHT?

4 **A.** YES.

5 **Q.** SO, THE BROADCAST IS -- THAT'S A BROADCAST OF PEOPLE WHO
6 LIVE IN CALIFORNIA, RIGHT?

7 **A.** IT'S A TELECAST OF PEOPLE WHO LIVE IN CALIFORNIA, BUT THE
8 LICENSED TERRITORY IN THAT AGREEMENT, IF I RECALL CORRECTLY,
9 IS WORLDWIDE.

10 **Q.** OKAY. BUT IT'S THE PARTICIPANTS ARE IN CALIFORNIA, RIGHT?

11 **A.** YES, I THINK THAT IS CORRECT.

12 **Q.** AND YOU EXPECT THE PRIMARY AUDIENCE OF THAT TELECAST TO BE
13 CALIFORNIA, RIGHT?

14 **A.** WELL, CERTAINLY THERE WILL BE A NUMBER OF VIEWERS IN
15 CALIFORNIA, BUT CONSIDERING THAT THERE ARE FIVE BILLION PEOPLE
16 OUTSIDE OF CALIFORNIA, IT'S ENTIRELY POSSIBLE MORE PEOPLE WILL
17 SEE IT OUTSIDE OF CALIFORNIA.

18 **Q.** DID YOU MAKE IT YOUR BUSINESS TO BE FAMILIAR WITH THE
19 EXPECTED AUDIENCE FOR THESE GAMES, SIR?

20 **A.** IN A GENERAL SENSE, BUT I DID NOT CONDUCT ANY SURVEYS. I
21 BELIEVE I DID LOOK AT SOME RATINGS DATA FROM PREVIOUS EVENTS
22 AT ONE POINT.

23 **Q.** YOU EXPECTED THESE TO BE PRIMARILY VIEWED BY CALIFORNIA
24 RESIDENTS WATCHING CALIFORNIA HIGH SCHOOL STUDENTS, RIGHT?

25 **A.** I DON'T KNOW THAT I HAD ANY SPECIFIC EXPECTATION THAT IT

1 WAS GOING TO BE PRIMARILY CALIFORNIA OR NOT, FRANKLY.

2 Q. DO YOU KNOW, MR. DESSER, THAT THERE IS -- THERE ARE NO NIL
3 RIGHTS WITH RESPECT TO PARTICIPANTS IN SPORTS BROADCASTS UNDER
4 CALIFORNIA LAW? DO YOU KNOW THAT?

5 A. UM, I HAVE HEARD THAT THE LAWS IN SOME STATES ARE
6 DIFFERENT, BUT TO THE EXTENT THAT THE AGREEMENTS WE ARE
7 TALKING ABOUT ARE -- ARE NATIONAL OR INTERNATIONAL IN SCOPE,
8 MY UNDERSTANDING IS THAT THE STATES -- STATE RIGHT ISSUES
9 DON'T COME INTO PLAY.

10 Q. OKAY. AND YOU ARE NOT A LAWYER, RIGHT?

11 A. NO, I'M NOT.

12 Q. OKAY.

13 MR. KLAUS: YOUR HONOR, MAY I APPROACH THE WITNESS TO
14 HAND HIM A COPY OF THE CALIFORNIA STATUTE?

15 I KNOW IT'S COMPOUND. MAY I APPROACH?

16 THE COURT: YOU MAY, IF YOU WANT TO. I'M NOT SURE WE
17 WILL BE ASKING HIS LEGAL OPINION ON THE CALIFORNIA STATUTE.

18 MR. KLAUS: I'M NOT GOING TO ASK HIS LEGAL OPINION,
19 YOUR HONOR.

20 THE COURT: OKAY.

21 MR. KLAUS: THANK YOU.

22 THE COURT: OR ANY OPINION.

23 (DOCUMENT HANDED TO WITNESS AND COUNSEL.)

24 MR. KLAUS: AND FOR YOU.

25 THE COURT: THE REPORTER DOESN'T NEED PIECES OF

1 PAPER. SHE JUST WRITES DOWN WHAT SHE HEARS.

2 **BY MR. KLAUS:**

3 **Q.** AND I WOULD ASK YOU, FIRST OF ALL, MR. DESSER, ARE YOU
4 FAMILIAR WITH THIS PROVISION OF CALIFORNIA LAW, CALIFORNIA
5 CIVIL CODE SECTION 3344?

6 **A.** NO.

7 **Q.** OKAY.

8 **MR. ROSENTHAL:** THAT BEING THE CASE, I OBJECT TO ANY
9 MORE QUESTIONS ALONG THIS LINE.

10 **MR. SINGLA:** IF I CAN POINT HIM TO A PROVISION AND
11 SEE IF IT JOGS HIS RECOLLECTION, YOUR HONOR?

12 **THE COURT:** NO.

13 **BY MR. KLAUS:**

14 **Q.** IF THERE ARE NO -- IF THERE ARE NO RIGHTS TO NIL UNDER
15 STATE LAW, MR. DESSER, AND I AM NOT ASKING YOU TO EXPRESS A
16 LEGAL OPINION ON WHETHER THERE ARE, BUT IF THERE ARE NO NIL
17 RIGHTS UNDER STATE LAW, THEN YOU WOULD AGREE WITH ME THAT
18 NOTHING IS BEING TRANSFERRED IN THE WAY OF NIL RIGHTS FROM
19 PARTICIPANT ORGANIZER, CORRECT?

20 **A.** WELL, I THINK YOU ARE STILL TALKING ABOUT THEIR
21 PERFORMANCE IN THE GAME AND ITS COVERAGE ON TELEVISION.

22 SO, TO SAY THAT NOTHING THAT RELATES TO NIL IS BEING
23 TRANSFERRED, I DON'T THINK IS REALLY CORRECT EVEN IF IT ISN'T
24 SPECIFICALLY RECOGNIZED BY CALIFORNIA LAW.

25 **Q.** OKAY. SO, TAKE WHAT YOU SAY ABOUT THE PERFORMANCE BEING

1 PART OF THE TELECAST AND THE RIGHTS, SIR, BUT IF THERE ARE NO
2 NIL RIGHTS AS A MATTER OF LAW, NOT ASKING YOU TO AGREE WHETHER
3 THERE ARE OR THERE AREN'T, THAT'S A LEGAL QUESTION, BUT IF
4 THERE ARE NO NIL RIGHTS AS A MATTER OF LAW, THEN NIL RIGHTS,
5 AS YOU UNDERSTAND THEM, THEY ARE NOT BEING TRANSFERRED FROM
6 PARTICIPANT TO ORGANIZER, ARE THEY?

7 **MR. ROSENTHAL:** OBJECTION, YOUR HONOR, CALLS FOR A
8 LEGAL CONCLUSION NOTWITHSTANDING THE CAVEAT.

9 **THE COURT:** I THINK IT DOES.

10 **MR. KLAUS:** JUST ASKING FOR HIS UNDERSTANDING, YOUR
11 HONOR.

12 **THE COURT:** I THINK IT CALLS FOR A LEGAL CONCLUSION.

13 **BY MR. KLAUS:**

14 **Q.** LET ME ASK YOU SOMETHING THAT I DON'T THINK CALLS FOR A
15 LEGAL CONCLUSION.

16 IF THERE ARE NO RIGHTS BEING TRANSFERRED, THAT'S NOT, IN
17 YOUR UNDERSTANDING, PART OF THE BUNDLE OF VALUE THAT'S BEING
18 TRANSFERRED FROM THE ORGANIZER TO THE TELECASTER, IS IT?

19 **A.** SO I -- SO THAT I UNDERSTAND YOUR QUESTION, YOU'RE SAYING
20 IF THERE'S NOTHING THERE, THEN -- THEN THE NOTHING CAN'T BE
21 TRANSFERRED?

22 **Q.** AND THAT HAS NO VALUE IN THE BUNDLE OF VALUE THAT YOU'VE
23 DESCRIBED BEING TRANSFERRED FROM THE ORGANIZER TO THE
24 TELECASTER, RIGHT?

25 **A.** WELL, I STILL THINK THAT THE APPEARANCE OF THE PLAYERS,

1 THEIR ACTIVITIES ON THE FIELD OF PLAY OR ON THE COURT, ARE --
2 ARE THINGS OF VALUE. AND TO THE EXTENT THAT SOMEBODY IS GIVEN
3 THE LEGAL RIGHT ON AN EXCLUSIVE BASIS TO CAPTURE THAT AND
4 DISSEMINATE IT, THEY ARE NONETHELESS GETTING SOMETHING OF
5 VALUE, OR THEY WOULDN'T BE PAYING FOR IT.

6 **Q.** AND THAT SOMETHING OF VALUE WOULDN'T INCLUDE WHAT YOU'VE
7 DESCRIBED AS NAME, IMAGE AND LIKENESS RIGHTS, WOULD IT?

8 **A.** WELL, I STILL THINK IT INCLUDES THOSE RIGHTS WHETHER IT
9 EXISTS AS A MATTER OF CALIFORNIA LAW OR NOT.

10 **MR. KLAUS:** JUST ONE MOMENT, YOUR HONOR?

11 (PAUSE IN THE PROCEEDINGS.)

12 **MR. KLAUS:** NO FURTHER QUESTIONS, YOUR HONOR.

13 **MR. ROSENTHAL:** I HAVE NO REDIRECT ON THE SUBJECT OF
14 THE CROSS. I WANT TO MOVE INTO AND AROUND THE TV CONTRACTS
15 AND COLLEGE SPORTS.

16 **THE COURT:** OKAY.

17 **REDIRECT EXAMINATION**

18 **BY MR. ROSENTHAL:**

19 **Q.** MR. DESSER, YOU TESTIFIED BEFORE ON DIRECT EXAMINATION
20 THAT YOU'RE FAMILIAR WITH THE TELEVISION INDUSTRY AS IT
21 RELATES TO COLLEGE FOOTBALL AND MEN'S BASKETBALL, RIGHT?

22 **A.** YES, I AM.

23 **Q.** OKAY. LET'S START WITH THE NCAA DIVISION I MEN'S
24 BASKETBALL CHAMPIONSHIP.

25 IS THE -- THE TELECAST OF THAT PARTICULAR EVENT SUBJECT OF

1 A CONTRACT?

2 A. YES.

3 Q. DID WE SEE THE CONTRACT BEFORE?

4 A. YES. I DON'T THINK THE AUDIENCE SAW IT, BUT I SAW IT.

5 Q. RIGHT. WHO IS THAT CONTRACT BETWEEN?

6 A. TURNER, CBS ON THE ONE HAND AND THE NCAA ON THE OTHER.

7 Q. OKAY. AND HOW LONG DOES THAT CONTRACT RUN FOR?

8 A. I BELIEVE IT'S 12 YEARS.

9 Q. HOW MUCH IS IT WORTH?

10 A. \$10.8 BILLION.

11 Q. NOW, THE REVENUES GENERATED BY THAT CONTRACT FLOW FROM WHO
12 TO WHOM?

13 A. WELL, THEY START BY FLOWING FROM TURNER AND CBS TO THE
14 NCAA, AND THEN IT'S MY UNDERSTANDING THE NCAA THEN
15 REDISTRIBUTES IT TO ITS MEMBERS.

16 Q. SO THAT'S THE DIVISION I MEN'S BASKETBALL CHAMPIONSHIP.
17 NOW LET'S MOVE ON --

18 A. LET ME AMEND THAT SLIGHTLY.

19 I BELIEVE THEY ALSO USE A PORTION OF THAT TO COVER THEIR
20 OPERATING OVERHEAD. SO THAT PORTION WHICH IS NOT TO COVER
21 OVERHEAD GOES TO THE MEMBERS.

22 Q. DO YOU KNOW HOW IT'S DISTRIBUTED AMONG THE MEMBERS?

23 MR. KLAUS: OBJECTION, YOUR HONOR. THERE'S A LACK OF
24 FOUNDATION HERE. I DON'T THINK THAT IT HAS BEEN ESTABLISHED
25 THAT THIS WITNESS HAS ANY BASIS FOR OFFERING THIS TESTIMONY

1 ABOUT THE DISTRIBUTION.

2 **THE COURT:** DO YOU KNOW?

3 **MR. HAUSFELD:** YES.

4 **MR. KLAUS:** DO I KNOW? YES. I WOULD BE HAPPY TO
5 TELL YOU.

6 **THE COURT:** WOULD YOU TELL ME?

7 **MR. KLAUS:** YES. THE MARCH MADNESS MONEY COMES INTO
8 THE NCAA. A LARGE PORTION OF THAT MONEY IS THEN DISTRIBUTED
9 TO THE MEMBER CONFERENCES OF THE NCAA. THE MEMBER --

10 **THE COURT:** ALL OF THEM EQUALLY, OR WHAT?

11 **MR. KLAUS:** THERE IS, I BELIEVE, A FORMULA. LET ME
12 ASK MS. LUEDTKE, WHO IS MORE KNOWLEDGEABLE --

13 **THE COURT:** WELL, I DON'T WANT TO DO THIS ON THE FLY.

14 **MR. ROSENTHAL:** HOPEFULLY THIS WILL BE THE SUBJECT OF
15 THE STIPULATION WE ARE TRYING TO NEGOTIATE, YOUR HONOR.

16 **THE COURT:** OKAY. I MEAN, I GUESS YOU COULD TRY AND
17 LAY A FOUNDATION. I THOUGHT THAT MIGHT BE QUICKER, BUT I'M
18 GETTING THE PICTURE THAT IT WOULDN'T BE.

19 **MR. ROSENTHAL:** I HONESTLY DON'T THINK IT WOULD BE.
20 I THINK THAT HE CAN GIVE YOU AN IDEA OF THE CONSTELLATION OF
21 TELEVISION CONTRACTS OUT THERE WITH RESPECT TO THE AMOUNT OF
22 MONEY AND WHERE IT ACTUALLY FLOWS TO. SPECIFICALLY, I'M NOT
23 SURE THIS IS THE GUY.

24 **THE COURT:** OKAY. THEN WE WILL GIVE UP.

25 **MR. ROSENTHAL:** WE WILL TRY TO WORK THAT OUT IN OUR

1 STIPULATION.

2 **THE COURT:** THAT MEANS YOU'RE DONE?

3 **MR. ROSENTHAL:** NO, NO. THAT WAS JUST ONE CONTRACT.

4 **THE COURT:** OH.

5 **MR. ROSENTHAL:** THERE ARE A WHOLE UNIVERSE OF
6 CONTRACTS HERE THAT I THINK YOUR HONOR NEEDS TO UNDERSTAND.

7 **THE COURT:** OKAY. I WASN'T LOOKING FOR THAT LEVEL OF
8 DETAIL. I DON'T WANT TO GO THROUGH CONTRACT BY CONTRACT. I
9 WAS LOOKING FOR MORE OF AN OVERVIEW.

10 **MR. ROSENTHAL:** THAT'S WHAT I INTEND TO GIVE YOU
11 THROUGH THIS WITNESS.

12 **THE COURT:** OKAY. WELL, WHY DON'T WE GO TO THAT PART
13 THEN.

14 **MR. KLAUS:** YOUR HONOR, I THINK THE LEVEL OF DETAIL
15 YOU ARE TALKING ABOUT, ABOUT WHERE THE MONEY COMES IN, FROM
16 WHAT SOURCE, AND HOW IT IS DISTRIBUTED DOWN, I THINK THAT'S
17 ALSO INFORMATION THAT THIS WITNESS WON'T HAVE ANYTHING ABOUT.
18 IT WILL BE THE SUBJECT OF OUR STIPULATION, AND I ASSURE YOU
19 THERE WILL BE MEN AND WOMEN TESTIFYING WHO CAN PROVIDE THAT
20 INFORMATION TO YOU OVER THE COURSE OF THE NEXT WEEK.

21 **MR. ROSENTHAL:** IF WE CAN HAVE SOME ASSURANCE, I
22 MEAN, LISTEN, WHEN WE TRIED TO NEGOTIATE THE STIPULATION ON
23 EXACTLY THIS CONSTELLATION OF CONTRACTS BEFORE TRIAL AS YOUR
24 HONOR SUGGESTED, THEY REDLINED THROUGH ALL OF IT. OKAY?

25 SO NOW WE DON'T KNOW WHETHER THEY ARE GOING TO ACCEPT, YOU

1 KNOW, ESSENTIALLY THE SAME STIPULATIONS WE PROPOSED THIS TIME
2 AROUND OR NOT. IT DOESN'T HAVE TO DO WITH THE AMOUNT OF
3 REVENUE, IT HAS TO DO, AGAIN, WITH HOW MANY CONTRACTS ARE OUT
4 THERE AND KIND OF THE DIFFERENT BUCKETS. LIKE WHO HAS THE
5 CONTRACTS FOR THE REGULAR SEASON FOOTBALL GAMES AND REGULAR
6 SEASON MEN'S BASKETBALL GAMES? WHO HAS THE CONTRACTS FOR POST
7 SEASON AND THAT KIND OF STUFF.

8 **THE COURT:** I DON'T REALLY CARE ABOUT THAT. I CARE
9 ABOUT THE FLOW OF THE MONEY. WHO GIVES IT AND WHO GETS IT AND
10 WHAT ARE THE CONSTRAINTS ON THOSE WHO GET IT?

11 **MR. ROSENTHAL:** OKAY. WE WILL TRY TO WORK THAT OUT
12 BY STIPULATION. AND WE MAY HAVE OTHER WITNESSES WHO CAN TALK
13 ABOUT THAT.

14 **THE COURT:** OKAY. SO YOU ARE DONE THEN?

15 **MR. ROSENTHAL:** ONE MOMENT.

16 (PAUSE IN THE PROCEEDINGS.)

17 **MR. ROSENTHAL:** WE WOULD LIKE TO HAVE AN AGREEMENT
18 FROM THE NCAA TO HAVE A STIPULATION -- A STIPULATION IN PLACE
19 BY TOMORROW MORNING IF WE CAN.

20 **THE COURT:** I THOUGHT THE BALL WAS IN YOUR COURT,
21 THEY SAID.

22 **MR. ROSENTHAL:** WELL, WE GOT IT FROM THEM. IT WAS
23 AFTER I CAME TO COURT. BUT WE WILL WORK ON IT THIS AFTERNOON
24 DILIGENTLY.

25 **THE COURT:** SO YOU NEED TO GET IT BACK TO THEM AND --

1 **MS. LUEDTKE:** I'M YOUR POINT PERSON.

2 **THE COURT:** -- YOU CAN DO THAT BY 2:00 O'CLOCK THIS
3 AFTERNOON? AND YOU CAN TURN IT AROUND BY 2:15?

4 **MR. ROSENTHAL:** I PROBABLY WON'T GET BACK TO THE
5 OFFICE UNTIL 2:00 O'CLOCK.

6 **THE COURT:** YOU DON'T NEED TO BE IN THE OFFICE TO DO
7 IT. I'M SURE YOU HAVE IT ON YOUR IPHONE OR OTHER DEVICE.

8 **MR. ROSENTHAL:** I BROUGHT NO ELECTRONIC DEVICES TO
9 THE COURTHOUSE. I'M SUPERSTITIOUS THAT WAY, JUDGE.

10 **MS. LUEDTKE:** YOUR HONOR, WE HAVE A COPY WE CAN GIVE
11 TO HIM. I AM CONCERNED I WILL NEED TO GET MY CLIENT TO REVIEW
12 IT, AND I DON'T KNOW IF I CAN DO THAT IN HALF AN HOUR AFTER
13 COURT. WE CAN DO OUR VERY BEST TO GET IT BY THE TIME WE ARE
14 IN COURT TOMORROW MORNING.

15 **THE COURT:** OH, NO, I WOULD LIKE IT BEFORE THEN.
16 YOU HAVE IT TO THEM BY 2:00 O'CLOCK. YOU TELL YOUR PEOPLE
17 THAT THEY NEED TO BE AVAILABLE AT 2:00 O'CLOCK TO APPROVE
18 WHATEVER CHANGES THEY MIGHT HAVE MADE. AND THEN YOU CAN HAVE
19 IT BACK TO THEM BY 2:30.

20 **MS. LUEDTKE:** ASSUMING THE CHANGES AREN'T EXTENSIVE,
21 I WILL DO MY VERY BEST.

22 **MR. ROSENTHAL:** WE WILL HAVE SOMEBODY START WORKING
23 ON IT NOW.

24 **THE COURT:** AND WE'LL GO BACK AND FORTH AND BACK AND
25 IN HALF-HOUR INCREMENTS THROUGH THE NIGHT UNTIL WE HAVE IT.

1 AND I WILL HAVE IT AT SOME POINT DURING THE EVENING ON -- YOU
2 CAN E-FILE IT, AND THEN I CAN LOOK AT IT ON MY DEVICE.

3 **MS. LUEDTKE:** YES, YOUR HONOR.

4 **MR. ROSENTHAL:** THANK YOU.

5 **THE COURT:** SO YOU'RE DONE?

6 **MR. ROSENTHAL:** YES. THANK YOU, MR. DESSER.

7 **THE COURT:** YOU'RE DONE?

8 **MR. KLAUS:** I HAVE NO FURTHER QUESTIONS OF THE
9 WITNESS.

10 **THE COURT:** THANK YOU VERY MUCH. YOU'RE EXCUSED.

11 YOU MAY CALL YOUR NEXT WITNESS -- I GUESS YOU ARE GOING TO
12 CALL YOUR GUY NOW?

13 **MR. KLAUS:** I AM GOING TO CALL MY GUY NOW. THANK
14 YOU.

15 **THE COURT:** GO AHEAD.

16 **MR. KLAUS:** YOUR HONOR, WE CALL OUT OF ORDER IN THE
17 PLAINTIFFS' CASE, BUT AS THE COURT HAS INSTRUCTED, WE CALL
18 NEAL PILSON.

19 **THE CLERK:** RAISE YOUR RIGHT HAND.

20 (NEAL PILSON, CALLED AS A WITNESS FOR THE DEFENDANTS,
21 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:)

22 **THE WITNESS:** YES.

23 **THE CLERK:** YOU MAY BE SEATED, AND ONCE SEATED, I'M
24 GOING TO ASK THAT YOU STATE AND SPELL YOUR FIRST AND LAST NAME
25 FOR THE RECORD, PLEASE.

1 **THE WITNESS:** NEAL, N-E-A-L. PILSON, P-I-L-S-O-N.

2 **THE CLERK:** THANK YOU.

3 **DIRECT EXAMINATION**

4 **BY MR. KLAUS:**

5 **Q.** GOOD MORNING, MR. PILSON.

6 **A.** GOOD MORNING.

7 **Q.** WHAT BUSINESS ARE YOU IN, SIR?

8 **A.** I'M A TELEVISION SPORTS CONSULTANT. MY OWN BUSINESS.

9 **Q.** AND WHAT DO YOU DO AS A TELEVISION SPORTS CONSULTANT?

10 **A.** I WORK WITH SPORTS EVENTS, TEAMS, LEAGUES, OTHER SPORTS
11 PROPERTIES BASICALLY TO HELP THEM SECURE NEW TELEVISION
12 AGREEMENTS OR BETTER AGREEMENTS THAN THE ONES THEY HAVE AT THE
13 PRESENT TIME.

14 **Q.** AND HOW LONG HAVE YOU BEEN IN THE BUSINESS OF NEGOTIATING
15 SPORTS TELECAST AGREEMENTS?

16 **A.** WELL, I FIRST BEGAN AT CBS AS DIRECTOR OF BUSINESS AFFAIRS
17 IN 1976, AND ESSENTIALLY I'VE BEEN IN THE SAME BUSINESS SINCE
18 THAT DATE.

19 **Q.** WHERE DID YOU GO TO SCHOOL, SIR?

20 **A.** I WENT TO HAMILTON COLLEGE, SMALL SCHOOL IN UPSTATE NEW
21 YORK AND YALE LAW SCHOOL.

22 **Q.** AND YOU MENTIONED GOING TO WORK FOR CBS AND STARTING TO
23 NEGOTIATE SPORTS TELECAST AGREEMENTS. HOW LONG WERE YOU AT
24 CBS?

25 **A.** ALMOST 20 YEARS.

1 Q. AND WHAT POSITIONS DID YOU HOLD AT CBS?

2 A. INITIALLY, I WAS DIRECTOR OF BUSINESS AFFAIRS WITH DIRECT
3 RESPONSIBILITY FOR NEGOTIATING ALL OF THEIR SPORTS AGREEMENTS.

4 SUBSEQUENTLY, I WAS NAMED VICE PRESIDENT. AND IN 1981, I
5 WAS NAMED PRESIDENT OF CBS SPORTS.

6 Q. DURING YOUR TIME AT CBS, WERE YOU INVOLVED IN NEGOTIATING
7 SPORTS BROADCAST AGREEMENTS?

8 A. YES, EXTENSIVELY.

9 Q. AND WHAT ARE SOME OF THE SPORTS BROADCAST AGREEMENTS YOU
10 NEGOTIATED WHILE AT CBS?

11 A. WELL, I HELPED INITIATE THE CBS NCAA MEN'S BASKETBALL
12 AGREEMENT. WE TOOK THAT PROPERTY AWAY FROM NBC.

13 ALSO HELPED NEGOTIATE THE FIRST COLLEGE FOOTBALL AGREEMENT
14 THAT CBS HAD HAD FOR MANY YEARS. ABC HAD DOMINATED IN THAT
15 AREA.

16 NEGOTIATED BOWL AGREEMENTS, OLYMPIC AGREEMENTS, AGREEMENTS
17 WITH THE NFL, THE NBA, GOLF, TENNIS, ALL OF THE ENTIRE RANGE
18 OF PROGRAMMING THAT CBS TELEVISED.

19 Q. WHEN DID YOU LEAVE CBS?

20 A. I LEFT CBS IN JUNE OF 1995.

21 Q. WHAT DID YOU DO AFTER LEAVING CBS?

22 A. I JOINED -- CREATED MY OWN SPORTS MEDIA COMPANY, AS I
23 MENTIONED. AND SINCE THAT TIME I HAVE BEEN ACTIVE IN
24 NEGOTIATING A SUBSTANTIAL NUMBER OF TELEVISION AGREEMENTS,
25 INCLUDING THE RECENT FOX BIG EAST 500 MILLION-DOLLAR

1 TELEVISION AGREEMENT.

2 ALSO NEGOTIATED -- HELP NEGOTIATE THE ROSE BOWL AGREEMENT
3 ABOUT SIX OR SEVEN YEARS AGO. NEGOTIATED ON BEHALF OF THE
4 UNIVERSITY OF CONNECTICUT WOMEN'S BASKETBALL AGREEMENT. AND
5 MULTIPLE AGREEMENTS WITH OTHER RIGHTS HOLDERS.

6 Q. ARE YOU STILL INVOLVED IN NEGOTIATING SPORTS TELECAST
7 AGREEMENTS TO THIS DAY?

8 A. YES, I AM.

9 Q. AND OVER THE COURSE OF YOUR SEVERAL DECADES IN THE SPORTS
10 BROADCAST INDUSTRY, HOW MANY TELECAST RIGHTS AGREEMENTS FOR
11 SPORTING EVENTS DO YOU BELIEVE YOU'VE BEEN INVOLVED IN
12 NEGOTIATING?

13 A. PROBABLY IN THE NEIGHBORHOOD OF 500. SINCE MY EARLY YEARS
14 AT CBS WE WERE NEGOTIATING LITERALLY THREE AGREEMENTS PER WEEK
15 FOR OUR ANTHOLOGY SERIES. IT IS A SUBSTANTIAL NUMBER OF
16 AGREEMENTS.

17 Q. AND HAVE YOU TAUGHT OR LECTURED ON THE SUBJECT OF
18 NEGOTIATING SPORTS BROADCAST AGREEMENTS?

19 A. I HAVE. I'VE LECTURED AT NUMEROUS SCHOOLS AND IN FRONT OF
20 MANY INDUSTRY PANELS IN THE PAST 20 YEARS, AND ALWAYS TEACH A
21 LEADERSHIP COURSE IN THE SPORTS BROADCASTING POST-GRADUATE
22 SCHOOL AT COLUMBIA.

23 Q. HAVE YOU RECEIVED AWARD OR RECOGNITIONS IN THE AREA OF THE
24 SPORTS BROADCAST INDUSTRY?

25 A. I HAVE.

1 I WAS NAMED TO THE INITIAL GROUP OF CHAMPIONS BY THE
2 *SPORTS BUSINESS JOURNAL*, WHICH IS THE INDUSTRY PUBLICATION. I
3 RECEIVED THE OLYMPIC ORDER OF MERIT IN 1994, AND THE FOUNDERS
4 AWARD FOR THE MARCH OF DIMES SPORTS LUNCHEON IN NEW YORK WHICH
5 IS IN IT'S 31ST YEAR, AND I HELPED START THAT LUNCHEON.

6 **MR. KLAUS:** YOUR HONOR, AT THIS POINT WE WOULD TENDER
7 MR. PILSON AS AN EXPERT IN THE SPORTS BROADCAST INDUSTRY IN
8 THE NEGOTIATION OF SPORTS BROADCAST AGREEMENTS.

9 **MR. ISAACSON:** NO OBJECTION.

10 **THE COURT:** ALL RIGHT.

11 **MR. KLAUS:** THANK YOU.

12 **BY MR. KLAUS:**

13 **Q.** MR. PILSON, CAN YOU DESCRIBE WHAT YOUR ASSIGNMENT WAS WITH
14 RESPECT TO THIS CASE?

15 **A.** I WAS ASKED TO REVIEW THE EXPERT OPINIONS AND THE EXPERT
16 REPORTS OF SEVERAL OF THE PLAINTIFFS' EXPERT WITNESSES,
17 INCLUDING DR. NOLL, MR. RASCHER, MS. STAUROWSKY --

18 **Q.** STAUROWSKY?

19 **A.** STAUROWSKY. I APOLOGIZE. I THINK SHE'S HERE. I
20 APOLOGIZE FOR MISPRONOUNCING HER NAME. AND YOUNG MR. DESSER.

21 **Q.** AND YOU WERE ASKED TO REVIEW AND DEAL WITH THEM IN
22 CONNECTION WITH WHAT SUBJECT, SIR?

23 **A.** YES. ALSO, AS DID MR. DESSER, I REVIEWED A SUBSTANTIAL
24 NUMBER OF AGREEMENTS THAT ARE EXHIBITS IN THIS CASE.

25 **Q.** AND HAVE YOU FORMED OPINIONS THAT RELATE TO THIS MATTER,

1 SIR?

2 A. I HAVE.

3 Q. CAN YOU DESCRIBE WHAT THOSE ARE, PLEASE?

4 A. WELL, INITIALLY THE FACT THAT SPORTS BROADCASTERS OR
5 TELECASTERS, WHICH ENCOMPASS THE WIDER RANGE, BASICALLY
6 NEGOTIATE FOR EXCLUSIVE ACCESS TO SPORTS PROGRAMMING. AND FOR
7 MOST OF MY CAREER, UP UNTIL THE LAST FEW YEARS, HAVE NOT
8 NEGOTIATED FOR, HAVE NOT REFERENCED, OR IN ANY WAY BARGAINED
9 FOR SO-CALLED NIL RIGHTS.

10 IN ADDITION, I HAVE LOOKED AT THE ISSUES HERE WITH RESPECT
11 TO AMATEURISM. I THINK THE SPORTS BROADCAST INDUSTRY
12 CONSIDERS AMATEURS THOSE WHOSE PERFORMANCE IS NOT PAID FOR,
13 AND THAT IF, IN FACT, THE NCAA WERE TO MOVE TO A PLAY
14 FORMAT -- PAY FORMAT FOR ATHLETES, THEY WOULD NO LONGER BE
15 CONSIDERED AMATEURS.

16 I HAVE ALSO LOOKED AT THE ISSUES IN THE CASE WITH RESPECT
17 TO GROWTH OF COLLEGE SPORTS. AND WHILE COLLEGE SPORTS HAS
18 CERTAINLY HAD DRAMATIC GROWTH AND INCREASES IN VIEWERSHIP AND
19 PROGRAMMING, IT'S NOT UNIQUE. ALMOST ALL OF THE SPORTS
20 BROADCASTING HAS EXPERIENCED THAT.

21 AND, IN FACT, MOST OF THAT IS DUE TO THE COMPETITIVE
22 FORCES WITHIN SPORTS AND THE TECHNOLOGY CHANGES THAT HAVE
23 OCCURRED IN THE LAST 20, 25 YEARS CREATING MANY MORE
24 PLATFORMS, MANY MORE COMPETITORS FOR SPORTS RIGHTS.

25 FINALLY, WE LOOKED AT THE ISSUE OF WHETHER PAYING COLLEGE

1 FOOTBALL PLAYERS WOULD HAVE AN IMPACT ON THE PUBLIC'S INTEREST
2 AND ENTHUSIASM FOR COLLEGE FOOTBALL AND COLLEGE BASKETBALL,
3 AND IT IS MY CONSIDERED JUDGMENT THAT, YES, IT WOULD HAVE A
4 NEGATIVE IMPACT ON THE PUBLIC'S PERCEPTION OF THOSE SPORTS.

5 **Q.** NOW, MR. PILSON, I WOULD LIKE TO TURN TO THE FIRST OF YOUR
6 OPINIONS REGARDING THE UNDERSTANDING IN THE BROADCAST INDUSTRY
7 OF THE RIGHTS THAT ARE CONVEYED IN A TELECAST AGREEMENT.

8 CAN YOU SAY, SIR, IN YOUR EXPERIENCE, WHAT IS IT THAT THE
9 PARTICIPANTS IN THE BROADCAST INDUSTRY UNDERSTAND A TELECAST
10 LICENSE FOR A SPORTING EVENT TO CONVEY?

11 **A.** WELL, PRIMARILY THEY CONVEY AND GIVE TO THE TELECASTER --
12 IN MOST CASES. SOME CASES THEY ARE NONEXCLUSIVE BROADCAST.
13 THEY ARE VERY FEW.

14 BUT IT GIVES THE BROADCASTER, TELECASTER THE EXCLUSIVE
15 ACCESS TO THE SPORTS EVENT WHICH ENABLES THE TELECASTER TO
16 BRING HIS CAMERAS, EQUIPMENT, AND MANPOWER TO THAT EVENT, SET
17 UP, AND TELECAST WHATEVER GOES ON IN THE FIELD OR THE ARENA.

18 **Q.** AND YOU RECALL THAT DURING -- YOU WERE HERE FOR
19 MR. DESSER'S TESTIMONY?

20 **A.** YES, I WAS.

21 **Q.** AND ONE OF THE THINGS THAT HIS LAWYER DID WAS WALK HIM
22 THROUGH SEVERAL GRANT OF RIGHTS PROVISIONS AND POINT TO THE
23 ABSENCE OF THE WORD "ACCESS" IN THOSE PROVISIONS.

24 DO YOU RECALL THAT LINE OF QUESTIONING AND TESTIMONY, SIR?

25 **A.** YES, I DO.

1 Q. AND THE IMPORT OF THAT, I BELIEVE, WAS THAT BECAUSE THE
2 WORD "ACCESS" IS NOT MENTIONED IN THOSE EXCLUSIVE LICENSE
3 PROVISIONS, THAT SOMEHOW THAT IS NOT WHAT IS BEING GRANTED.

4 WHAT IS -- DO YOU AGREE OR DISAGREE WITH MR. DESSER'S
5 ANALYSIS OF THAT SUBJECT?

6 A. I DISAGREE WITH IT IN TERMS OF EMPHASIS. WE ARE BOTH ON
7 THE -- SPEAKING ABOUT THE SAME INDUSTRY, BUT ONCE THE WORD
8 "EXCLUSIVE" IS USED, AND IT'S ALMOST ALWAYS USED IN SPORTS
9 AGREEMENTS, EXCEPT, AS I MENTIONED, IN LIMITED SITUATIONS
10 WHERE THE RIGHTS HOLDER FOR OBSCURE REASONS MAY WANT TO HAVE
11 MORE -- MORE TELECASTERS.

12 YOU MAY HAVE AN INTERNATIONAL RIGHTS HOLDER AND A DOMESTIC
13 RIGHTS HOLDER, BUT ALMOST EVERY MAJOR SPORTS AGREEMENT AS TO
14 THE SUBJECT MATTER, IT IS BARGAINED FOR AND PAID FOR AS AN
15 EXCLUSIVE NEGOTIATION, AND EXCLUSIVITY OBVIOUSLY INCLUDES
16 EXCLUSIVE ACCESS.

17 Q. WHO GRANTS THESE EXCLUSIVE RIGHTS IN THESE TELECAST
18 AGREEMENTS, SIR?

19 A. THE RIGHTS HOLDER. THE -- THE BODY THAT HOLDS THE
20 PROPERTY RIGHTS TO THE PARTICULAR EVENT OR LEAGUE OR
21 OCCURRENCE THAT IS BEING TELECAST.

22 Q. IN THE CASE OF COLLEGE FOOTBALL GAMES, WHO IS THE RIGHTS
23 OWNER?

24 A. WELL, I CAN PROBABLY IDENTIFY --

25 (SIMULTANEOUS COLLOQUY.)

1 **THE WITNESS:** -- AT LEAST THREE, IF YOU ARE TALKING
2 ABOUT REGULAR SEASON COLLEGE FOOTBALL AMONG THE MAJOR
3 CONFERENCES. THE SCHOOLS GENERALLY SEE THOSE RIGHTS AS PART
4 OF THEIR CONFERENCE AGREEMENT. SO THE TELEVISION NEGOTIATION
5 IS NORMALLY BETWEEN THE CONFERENCE AND THE NETWORK.

6 IF YOU TALK ABOUT THERE ARE SOME SCHOOLS THAT ARE (SIC)
7 LICENSED THOSE RIGHTS INDEPENDENTLY, NOTRE DAME AND BRIGHAM
8 YOUNG ARE THE TWO SCHOOLS THAT MAKE THEIR OWN DEALS.

9 THEN YOU GET TO BOWL GAMES, WHICH ARE WHERE THE RIGHTS
10 HOLDER IS THE PARTICULAR BOWL GAME AND THE TWO SCHOOLS AGREE
11 THAT THE RIGHTS HOLDER WILL NEGOTIATE.

12 AND YOU THEN HAVE ALSO THE --

13 **THE COURT:** WHO IS THE RIGHTS HOLDER?

14 **THE WITNESS:** THE BOWL GAMES.

15 **THE COURT:** BOWL.

16 **THE WITNESS:** B-O-W-L. YES, YOUR HONOR.

17 **THE COURT:** A GAME IS A RIGHTS HOLDER?

18 **THE WITNESS:** YES, MA'AM. AT THE END OF THE SEASON,
19 THERE ARE PROBABLY 30 OR 35 --

20 **THE COURT:** A GAME?

21 **THE WITNESS:** A SINGLE GAME. YES, YOUR HONOR.

22 **THE COURT:** THE GAME IS THE RIGHTS HOLDER?

23 **MR. KLAUS:** DO YOU MEAN -- I THINK -- MAY I TRY TO
24 CLEAR THIS UP, YOUR HONOR?

25 **THE WITNESS:** YEAH.

1 **BY MR. KLAUS:**

2 **Q.** I BELIEVE THE COURT'S QUESTION WAS ASKING WHO IS THE
3 RIGHTS OWNER, FOR EXAMPLE, OF THE ROSE BOWL? AND IS THERE AN
4 ENTITY THAT HAS THE WORD "THE ROSE BOWL" IN IT THAT IS THE
5 RIGHTS --

6 **A.** YES. AS A MATTER OF FACT, I REPRESENTED THE ROSE BOWL.

7 IT IS A BOWL COMMITTEE THAT ORGANIZES THE GAME. AND I
8 SHORTHANDED IT, AND I APOLOGIZE WHEN I SAID "THE GAME". BUT
9 THE BOWL COMMITTEE.

10 AND THEY ARE -- AS YOU CAN -- THE LISTING OF BOWL GAMES IS
11 EVEN A DISCUSSION AS TO WHETHER THERE'S TOO MANY, BUT, IN
12 FACT, THERE ARE CLOSE TO 30, 35 GAMES THAT TAKE PLACE AT THE
13 END OF THE SEASON WHERE THE RIGHTS ARE SPECIFIC TO THAT GAME.

14 **Q.** AND IN THE --

15 **A.** AND THE COMMITTEE THAT OWNS THE RIGHTS TO THAT GAME.

16 **MR. KLAUS:** ANY FURTHER QUESTIONS ON THAT POINT, YOUR
17 HONOR, OR IS THAT CLEAR?

18 **THE COURT:** WELL, OKAY. I THOUGHT IT WAS THE
19 CONFERENCE, BUT OKAY.

20 **THE WITNESS:** IN SOME CASES IT IS THE CONFERENCE, IN
21 SOME CASES IT IS THE BOWL COMMITTEE ITSELF.

22 AND THEN FINALLY THERE IS THE CHAMPIONSHIP SERIES THAT
23 PLAY THE COLLEGE FOOTBALL PLAYOFFS, WHICH IS -- THE RIGHTS
24 HOLDER IS A COMBINATION OF MULTIPLE CONFERENCES, AND THEY
25 LICENSE WHAT WILL BE FOUR TEAMS PLAYING -- EXCUSE ME, TWO

1 GAMES, THREE GAMES, AND FOUR TEAMS WHO WILL PLAY FOR THE
2 NATIONAL CHAMPIONSHIP. THAT IS NEW AND WILL BEGIN, I BELIEVE,
3 IN 15.

4 **BY MR. KLAUS:**

5 **Q.** AND, MR. PILSON, WITH RESPECT TO REGULAR SEASON MEN'S
6 BASKETBALL GAMES. WHO DO YOU UNDERSTAND ARE THE RIGHTS OWNERS
7 FOR REGULAR SEASON MEN'S BASKETBALL GAMES IN DIVISION I?

8 **A.** FOR THE MOST PART THOSE ARE THE CONFERENCES.

9 **Q.** ARE THEY SOMETIMES THE INDIVIDUAL SCHOOLS?

10 **A.** OCCASIONALLY THEY ARE INDIVIDUAL SCHOOLS BECAUSE THERE IS
11 A MULTIPLE-TIERED RIGHTS ARRANGEMENT WHERE THE CONFERENCES
12 LICENSE CERTAIN GAMES AND GAMES THAT ARE LEFT OVER AND NOT
13 LICENSED CAN BE LICENSED BY THE SCHOOLS.

14 THAT WAS THE TASK I HAD WHEN THE UNIVERSITY OF CONNECTICUT
15 LICENSED, I BELIEVE, 20 WOMEN'S BASKETBALL GAMES THAT HAD NOT
16 BEEN SELECTED BY THE CARRIER, THE TELEVISION CARRIER. THEY
17 LICENSED THEM INDEPENDENTLY TO CABLE, REGIONAL CABLE CHANNEL
18 IN NEW YORK.

19 **Q.** TO JUST CLOSE THE LOOP, WITH RESPECT TO THE CHAMPIONSHIP
20 TOURNAMENT KNOWN AS MARCH MADNESS, WHO IS THE RIGHTS OWNER OF
21 THE TELECAST RIGHTS AND THE CHAMPIONSHIP?

22 **A.** IN THAT CASE IT IS THE NCAA.

23 **Q.** MR. PILSON, WILL -- IN YOUR EXPERIENCE, WILL BROADCASTERS
24 EVER BROADCAST A LIVE SPORTS EVENT OR PUBLIC EVENT WITHOUT
25 OBTAINING AN EXCLUSIVE ACCESS LICENSE?

1 **A.** IT MAY HAVE HAPPENED IN SOME SITUATION, BUT NOT -- NOT --
2 IT IS NOT NORMAL. IT IS NOT GENERAL, NO.

3 **Q.** BY THE TERMS OF SPORTS EVENTS, I AM INCLUDING THINGS LIKE
4 A MARATHON OR PUBLIC EVENTS LIKE A PARADE. WILL THE
5 BROADCASTERS EVER TELECAST THOSE EVENTS WITHOUT OBTAINING A --
6 AN EXCLUSIVE ACCESS LICENSE OF THE TYPE YOU'VE DESCRIBED?

7 **A.** WELL, FOR AN EVENT HELD IN A PUBLIC STREETS OR PUBLIC
8 PARK, NORMALLY YOU CANNOT SECURE EXCLUSIVE TELECAST RIGHTS
9 BECAUSE THE EVENT IS BEING HELD IN THE PUBLIC.

10 SO THE BROADCASTER ON OCCASION WILL NEGOTIATE IT FOR A
11 SPECIFIC AREA AT A PARADE WHERE THEY ARE THE ONLY TELEVISION
12 COMPANY THAT CAN SET UP A CAMERA. AND THIS HAPPENS, FOR
13 EXAMPLE, IN THE THANKSGIVING DAY PARADE ON 34TH STREET. I
14 BELIEVE IT'S NBC USUALLY HAS EXCLUSIVE POSITION THERE, BUT CBS
15 HAS A POSITION UP AT COLUMBUS CIRCLE ON 59TH STREET.

16 BUT FOR THE MOST PART, EVENTS HELD IN PUBLIC AREAS ARE NOT
17 THE SUBJECT OF EXCLUSIVE GRANTS OF BROADCAST RIGHTS.

18 **Q.** AND WHEN A BROADCASTER COVERS AN EVENT THAT IS IN PUBLIC
19 OF THE TYPE THAT YOU JUST DESCRIBED, WHAT IS THE UNDERSTANDING
20 WITHIN THE BROADCAST INDUSTRY OF WHETHER THE BROADCASTER NEEDS
21 TO OBTAIN PERMISSION TO SHOW THE NAMES OR IMAGES OR THE
22 LIKENESSES OF PEOPLE WHO MAY BE PICKED UP ON CAMERA DURING
23 THAT EVENT?

24 **A.** THERE'S AN UNDERSTANDING THAT THAT'S NOT NECESSARY.

25 **Q.** AND --

1 **THE COURT:** EXCUSE ME. MAYBE THIS ISN'T THE RIGHT
2 QUESTION TO ASK YOU, BUT MAYBE IT'S HYPOTHETICAL, BUT WHAT
3 WOULD HAPPEN IF A RIVAL BROADCASTER TRIED TO BUY A TICKET TO A
4 GAME THAT A DIFFERENT BROADCASTER HAD THE EXCLUSIVE LICENSE?

5 IN OTHER WORDS, HOW IS THIS ACCESS ENFORCED BY THE
6 SCHOOLS?

7 **THE WITNESS:** WELL, YOUR HONOR, TO ANSWER THE
8 QUESTION, IF THEY WANTED TO BUY A TICKET, THAT WOULD BE OKAY.
9 IF THEY --

10 **THE COURT:** WHAT IF THEY BROUGHT A CAMERA WITH THEM?

11 **THE WITNESS:** IF THEY BROUGHT A CAMERA, THAT'S A
12 VIOLATION, COULD BE A VIOLATION OF THE EXCLUSIVE BROADCASTING
13 RIGHTS. AND IF -- IF IT WERE AS SIMPLE AS AN ESPN CAMERA
14 COMING IN AT A CBS GAME, CBS WOULD GO TO THE RIGHTS HOLDER AND
15 SAY, HEY, THEY'RE NOT ALLOWED TO BE HERE TO TELEVISION THE GAME.

16 THEN YOU GET INTO AN ISSUE OF WHETHER -- THEY ARE ONLY
17 THERE TO DO CLIPS MAYBE, THEY ARE NOT THERE TO DO THE LIVE
18 BROADCAST. AND THERE ARE SITUATIONS WHERE THAT GETS WORKED
19 OUT.

20 BUT IN TERMS OF THE LIVE TELECAST, THOSE RIGHTS ARE
21 GRANTED EXCLUSIVELY. THERE IS A GATE. THERE IS AN ENTRANCE
22 TO A FIELD OR TO AN ARENA, AND THE RIGHTS HOLDER HAS THE
23 OBLIGATION TO PREVENT A RIVAL BROADCASTER FROM COMING IN TO
24 LIVE -- TO PROVIDE LIVE TELECAST, AND IN MANY CASES TO TAKE
25 ANY VIDEO FROM THAT GAME.

1 **BY MR. KLAUS:**

2 **Q.** MR. PILSON, LET ME TURN NOW FROM THE PUBLIC EVENTS THAT WE
3 WERE TALKING ABOUT, LET'S TALK ABOUT TEAM SPORTING EVENTS LIKE
4 BASKETBALL AND FOOTBALL THAT TAKE PLACE IN ARENA OR STADIA.

5 AND WITH RESPECT TO THE NEGOTIATIONS FOR BROADCAST
6 LICENSES FOR THESE TYPES OF TEAM SPORTS, HAVE YOU EVER BEEN
7 PART OF A NEGOTIATION WHERE THERE WAS A DISCUSSION ABOUT THE
8 NAME, IMAGE AND LIKENESS RIGHTS OF THE PARTICIPANTS BEING
9 TRANSFERRED TO THE BROADCASTER?

10 **A.** NO, SIR, I HAVE NOT.

11 **Q.** WHAT ABOUT SPORTING EVENTS INVOLVING, INSTEAD OF TEAMS,
12 SPECIFIC INDIVIDUALS, HAVE YOU EVER BEEN PART OF DISCUSSIONS
13 WITH RESPECT TO THE TRANSFER OF PUBLICITY OR NAME IMAGE OR
14 LIKENESS RIGHTS IN THOSE CIRCUMSTANCES?

15 **A.** YES. THEY ARE RELATIVELY LIMITED COMPARED TO THE TEAM
16 SPORTS THAT -- THAT YOU WERE ADDRESSING BEFORE. BUT WHEN I
17 JOINED CBS, WE WERE TELEVISIONING A TENNIS SERIES CALLED WINNER
18 TAKE ALL TENNIS. AND THERE MAY NOT BE TOO MANY OF US HERE
19 THAT RECALL THAT, BUT IT WAS SPECIFIC MATCHES BETWEEN, IN ONE
20 CASE ILIE NASTASE AND JIMMY CONNORS, WHO WERE THE TOP TENNIS
21 PLAYERS. AND THAT WAS THE EVENT. IT WAS THE TWO PLAYING HEAD
22 TO HEAD.

23 AND IN THAT CASE, WE DID SECURE AN ASCENT ON THE PART OF
24 BOTH TENNIS PLAYERS THAT THEY WERE AWARE OF THE CONTRACT AND
25 THEY AGREED TO ITS TERMS. BUT THAT IS A VERY LIMITED

1 SITUATION.

2 Q. AND WITH RESPECT TO TEAM SPORTS, WHAT IS YOUR
3 UNDERSTANDING OF WHY, IN THE BROADCAST INDUSTRY, THERE IS NOT
4 AN ISSUE ABOUT OBTAINING NIL RIGHTS FROM PARTICIPANTS AND
5 HAVING THOSE TRANSFERRED TO THE BROADCASTER?

6 A. WELL, AS YOU ASK THE QUESTION, IT RAISES SOMETHING WE HAVE
7 BEEN DISCUSSING HERE, AND THAT IS THAT I -- I WOULD SUGGEST
8 THERE IS A DIFFERENCE BETWEEN NIL, WHICH IS MERELY A SHORTHAND
9 FOR NAME, IMAGE AND LIKENESS, OR PERFORMANCE, I THINK THOSE
10 ARE SIMILAR, AND NIL QUOTE "RIGHTS" CLOSE QUOTE.

11 AND WHILE THE BROADCAST INDUSTRY IS WELL AWARE OF NIL, AND
12 THERE ARE REFERENCES AND AGREEMENTS GOING ALL THE WAY BACK TO
13 WHEN I GOT INTO THE BUSINESS IN 1976 REGARDING NIL, THE
14 DISCUSSION ABOUT WHETHER THOSE ARE NIL QUOTE "RIGHTS" UNQUOTE
15 IS A RELATIVELY RECENT PHENOMENA.

16 Q. OKAY. AND JUST TO MAKE SURE WE ARE CLEAR ON THIS, ARE
17 NAMES AND IMAGES OF PARTICIPANTS USED IN A TELEVISION
18 BROADCAST OF A SPORTS EVENT?

19 A. OF COURSE THEY ARE, YES.

20 Q. AND ARE THE NAMES AND IMAGES OF OTHER PEOPLE IN THE
21 STADIUM OR THE ARENA, ARE THOSE ALSO USED IN THE BROADCAST?

22 A. YES, INDEED.

23 Q. AND SO THAT WOULD BE, FOR EXAMPLE, THE FANS, RIGHT?

24 A. YES.

25 Q. REFEREES?

1 **A.** YES.

2 **Q.** COACHES?

3 **A.** YES.

4 **Q.** CHEERLEADERS?

5 **A.** YES.

6 **Q.** MARCHING BANDS?

7 **A.** YES.

8 **Q.** THEIR IMAGES AND LIKENESSES, THOSE ARE PART OF TYPICAL
9 SPORTS BROADCAST, RIGHT?

10 **A.** YES, SIR.

11 **Q.** AND IN YOUR EXPERIENCE, HAVE YOU EVER HEARD OF ANY OF
12 THOSE PARTICIPANTS, EITHER DIRECTLY OR THROUGH SOMEBODY ELSE,
13 TRANSFERRING THEIR RIGHTS TO THEIR NAME, IMAGE, LIKENESS FOR
14 USE IN A GAME BROADCAST?

15 **A.** NO. I'M NOT AWARE OF ANY SITUATION LIKE THAT.

16 **Q.** DURING MR. DESSER'S TESTIMONY, MR. ROSENTHAL, THE
17 PLAINTIFFS' LAWYER, PUT UP A SNIPPET OF YOUR DEPOSITION
18 TESTIMONY REGARDING WHERE YOU MADE A REFERENCE TO NIL.

19 DO YOU REMEMBER THAT?

20 **A.** YES, I DO.

21 **Q.** AND DO YOU RECALL THAT THE -- WHAT HE ASKED MR. DESSER
22 WHETHER HE AGREED WITH YOU, AND I THINK THE IMPORT OF IT WAS
23 WHETHER YOUR -- AND CHARACTERIZED YOUR TESTIMONY AS -- AS
24 SAYING THAT NIL HAD BEEN TRANSFERRED FROM EVENT ORGANIZER TO
25 TELECASTER.

1 DO YOU RECALL THAT?

2 **A.** I RECALL, BUT I NEVER USED THE WORD, AND I WORKED HARD IN
3 MY DEPOSITION NOT TO USE THE WORD "TRANSFER," "LICENSE" OR
4 "GRANT".

5 AND I WAS ONLY REFERRING IN THAT, TO THE BEST OF MY
6 RECOLLECTION, WE CAN PUT IT UP, I CAN TAKE A LOOK AT IT, I WAS
7 REFERRING TO NIL AS BEING PART OF A SPORTS TELECAST, WHICH
8 OBVIOUSLY IT IS, ALONG WITH A WHOLE RANGE OF OTHER ELEMENTS,
9 NOT ONLY NIL OF THE PARTICIPANTS, BUT ALL OF THE OTHER
10 ELEMENTS THAT ARE REQUIRED TO BROADCAST A COLLEGE SPORTS
11 EVENT, IF WE FOCUS ON THAT.

12 **MR. KLAUS:** MR. NICKELS, CAN YOU PLEASE BRING UP IN
13 MR. PILSON'S DEPOSITION, PAGE 78, LINE 9 THROUGH PAGE 79,
14 LINE 3?

15
16
17
18
19
20 (CONTINUED ON NEXT PAGE; NOTHING OMITTED.)
21
22
23
24
25

(DEMONSTRATIVE PUBLISHED.)

BY MR. KLAUS:

Q. AND LET ME KNOW IF YOU CAN MAKE THAT OUT ON THE SCREEN,
MR. PILSON.

A. YES, I CAN.

Q. OKAY. AND --

A. ALL RIGHT.

Q. THE -- THE LAWYER WHO -- THE LAWYER WHO QUESTIONED YOU WAS
NOT MR. ROSENTHAL. IT WAS SOMEONE ELSE. BUT SHE SAID, AT
YOUR DEPOSITION, IS IT TRUE THAT NIL RIGHTS ARE AUTOMATICALLY
TRANSFERRED WHEN MULTIPLE BROADCASTERS CAN BROADCAST, SUCH AS
THEY DO IN PUBLIC EVENT AND WAY --

(OFF-THE-RECORD DISCUSSION.)

THE COURT: YEAH, YOU'RE -- YOU'RE READING VERY FAST.
LET'S JUST ALL JUST READ IT SILENTLY TO OURSELVES.

MR. KLAUS: OKAY.

Q. DO YOU SEE THE QUESTION, MR. PILSON?

A. YES, I DO. YES.

Q. OKAY. AND DO YOU SEE THE ANSWER THAT YOU GAVE TO THAT
QUESTION AT LINES -- PAGE 78, LINE 18 --

A. YES, I DO.

Q. -- THROUGH PAGE 79 LINE 3?

A. YES.

Q. WHAT WAS IT THAT YOU -- AND THIS WAS RIGHT BEFORE THE
SNIPPET OF DEPOSITION TESTIMONY THAT MR. ROSENTHAL PUT UP.

1 CAN YOU EXPLAIN WHAT -- WHAT YOU WERE SAYING TO THE LAWYER
2 WHO WAS ASKING YOU THAT QUESTION, SIR?

3 **A.** YES, I -- I WAS ACTUALLY --

4 **THE COURT:** COULD YOU SCROLL DOWN AND SHOW ME THE
5 PART OF THAT WE WERE LOOKING AT BEFORE.

6 **MR. KLAUS:** SURE. SURE.

7 **THE COURT:** MAYBE -- MAYBE I HAVE IT.

8 **MR. KLAUS:** I CAN GIVE YOU A COPY OF HIS DEPOSITION
9 TRANSCRIPT IF YOU'D LIKE TO JUST HAVE THE PAPER COPY, YOUR
10 HONOR.

11 **THE COURT:** NOT PARTICULARLY. I WAS JUST
12 INTERESTED -- IF YOU COULD RESHOW THE CLIP --

13 **MR. KLAUS:** SURE.

14 **THE COURT:** -- CLIP THAT THE OTHER GENTLEMAN WAS
15 REFERRING TO. I JUST DON'T REMEMBER EXACTLY.

16 **MR. KLAUS:** SO, MR. NICKELS, I BELIEVE IT WAS -- YOUR
17 HONOR, EXTENDED FROM 78, LINE 18, DOWN THROUGH 79, LINE 17.

18 (DEMONSTRATIVE DISPLAYED.)

19 **THE COURT:** YOU DON'T NEED TO BLOW IT UP. I CAN SEE
20 IT.

21 **MR. KLAUS:** OKAY.

22 **THE WITNESS:** IS THERE A QUESTION, SIR?

23 **BY MR. KLAUS:**

24 **Q.** YES.

25 I BELIEVE YOUR HONOR HAS -- HAS THE PAGES IN FRONT OF HER.

1 AND IF --

2 **THE COURT:** NOW, WHAT WAS THE PART THAT -- THAT
3 MR. DESSER LOOKED AT?

4 **MR. KLAUS:** I BELIEVE MR. DESSER LOOKED AT --

5 **THE WITNESS:** IN LINE 14 ON PAGE 79.

6 **THE COURT:** OH, OKAY. THANK YOU.

7 **MR. KLAUS:** OKAY.

8 **Q.** AND CAN YOU EXPLAIN WHAT IT WAS THAT YOU WERE SAYING TO
9 THE LAWYER HERE, SIR?

10 **A.** IF WE GO BACK TO LINE 18 ON PAGE 78, YOUR HONOR, I'M
11 SAYING I THINK WE HAVE A THRESHOLD DISCUSSION HERE, AND THAT
12 RELATES TO WHAT I JUST SAID ABOUT THE DIFFERENCE BETWEEN
13 NIL'S, WHICH IS THE NAME, IMAGE, AND LIKENESS, AND THE ISSUE
14 OF WHETHER THERE ARE NIL RIGHTS.

15 AND I SAY I'M NOT PERSUADED THERE'S ANY TRANSFER OF NIL
16 SO-CALLED RIGHTS. I THINK THAT'S AN ISSUE IN THIS CASE.

17 MY POINT BEING THAT THE INDUSTRY FOREVER HAS TALKED ABOUT
18 NAME, IMAGE, AND LIKENESS. BUT IN MY EXPERIENCE, ALL THE
19 YEARS AT CBS AND MY YEARS AS A CONSULTANT, I'VE NEVER BEEN A
20 PART OF A NEGOTIATION WHERE THERE WAS A DISCUSSION ABOUT THE
21 GRANT, TRANSFER, OR LICENSE OF NIL, QUOTE, RIGHTS, CLOSED
22 QUOTE.

23 **BY MR. KLAUS:**

24 **Q.** OKAY. AND FOR CONTEXT, MR. PILSON, IN THE AGGREGATE, WHAT
25 ARE THE AMOUNTS OF THE AGREEMENTS THAT YOU BEEN INVOLVED IN

1 NEGOTIATING?

2 **A.** WELL --

3 **Q.** IN SPORTS BROADCAST, SIR.

4 **A.** OVER MY CAREER, I -- I WOULD ESTIMATE I'VE NEGOTIATED
5 APPROXIMATELY \$15 BILLION WORTH OF TELEVISION AGREEMENTS.

6 **Q.** WHAT HAS BEEN THE LEVEL OF SOPHISTICATION OF BUSINESS
7 PEOPLE INVOLVED IN THE NEGOTIATIONS OVER THE SPORTS BROADCAST
8 AGREEMENTS YOU'VE BEEN INVOLVED WITH?

9 **A.** WELL, I SAT WITH WALTER BYERS TO MAKE THE TELEVISION --
10 INITIAL TELEVISION DEAL WITH THE NCAA, PETE ROZELLE, PAUL
11 TAGLIABUE, MR. DESSER'S RECENT BOSS DAVID STERN. THESE ARE
12 THE TOP GUNS IN OUR -- IN OUR INDUSTRY.

13 **Q.** OKAY. AND IN YOUR OPINION AND YOUR EXPERIENCE,
14 MR. PILSON, IF THERE HAD BEEN A CONCERN ON THE PART OF THE
15 BROADCAST NETWORK THAT IT NEEDED TO OBTAIN THE TRANSFER OF
16 PARTICIPANT NIL RIGHTS BEFORE BROADCASTING A GAME, DO YOU
17 THINK YOU WOULD HAVE HEARD ABOUT IT?

18 **A.** I'M SURE I WOULD HAVE HEARD ABOUT IT.

19 **Q.** IF THERE HAD BEEN A CONCERN IN YOUR UNDERSTANDING AND YOUR
20 EXPERIENCE ON THE PART OF THE NETWORK THAT IT NEEDED TO OBTAIN
21 THE TRANSFER OF PARTICIPANT NIL RIGHTS BEFORE BROADCASTING A
22 GAME, DO YOU THINK THAT WOULD HAVE BEEN RESOLVED IN WRITING?

23 **A.** YES, SIR.

24 **Q.** HOW WOULD THAT HAVE BEEN RESOLVED IN WRITING BASED ON YOUR
25 UNDERSTANDING AND YOUR EXPERIENCE?

1 **A.** WELL, THAT'S A HYPOTHETICAL BECAUSE I HAVEN'T HAD THAT
2 EXPERIENCE, BUT THE PARTIES WOULD INSERT APPROPRIATE LANGUAGE
3 WHERE ONE OF THEM GRANTS AND THE OTHER ONE ACKNOWLEDGES THE
4 GRANT OF THESE SO-CALLED RIGHTS. AND NO DOUBT THERE WOULD BE
5 VALUE ATTRIBUTED TO THOSE RIGHTS IN TERMS OF A -- PERHAPS A --
6 AN -- IF NOT AN ALLOCATION, AT LEAST A STATEMENT THAT THESE
7 ARE CRITICAL TO THE EXECUTION OF A MULTI-BILLION-DOLLAR
8 CONTRACT. THE OLYMPICS WAS A \$2 BILLION CONTRACT. THE NCAA
9 CONTRACT WAS OVER A BILLION DOLLARS. OUR NFL CONTRACT'S WELL
10 OVER A BILLION DOLLARS.

11 AND I DON'T RECALL ANY NEGOTIATION OR ANY DISCUSSION OR
12 ANY TALK ABOUT GRANTING OR LICENSING OR TRANSFERRING NIL
13 RIGHTS.

14 **Q.** AND WHEN YOU'RE TALKING ABOUT THE DOCUMENTATION OF A
15 TRANSFER OF RIGHTS AND THE ASSIGNMENT OF VALUE IN WRITING, IS
16 THAT LIMITED TO A FINAL AGREEMENT, OR ARE THERE ALSO
17 PRELIMINARY WRITINGS THAT ARE EXCHANGED BETWEEN THE BUSINESS
18 PEOPLE NEGOTIATING AN AGREEMENT IN YOUR EXPERIENCE?

19 **A.** MY EXPERIENCE HAS BEEN THAT WITH MANY OF THE MAJOR
20 CONTRACTS, THE PARTIES INITIALLY NEGOTIATE AND PUT INTO
21 WRITING WHAT WE CALL A TERM SHEET, WHICH INCLUDES THE BASIC
22 ELEMENTS OF THE CONTRACT, THE CONSIDERATION, THE SCHEDULE, THE
23 EVENTS THAT ARE BEING COVERED, THE GRANT OF RIGHTS, AS -- AS
24 MR. DESSER MENTIONED.

25 AND THAT TERM SHEET WOULD BE EITHER INITIALED OR

1 ACKNOWLEDGED AS BEING THE ESSENTIAL ELEMENTS OF THE CONTRACT.
2 AND THEN, THE -- BOTH PARTIES WOULD SEND THIS TERM SHEET TO
3 THEIR LEGAL DEPARTMENTS. AND AT THAT POINT, THE TERM SHEET
4 WOULD -- PERHAPS A TWO- OR THREE-PAGE TERM SHEET WOULD MORPH
5 INTO A 40-PAGE AGREEMENT.

6 Q. HAVE YOU EVER SEEN A -- FIRST OF ALL, MR. PILSON, IN YOUR
7 EXPERIENCE IN THE BROADCAST INDUSTRY, HAVE YOU SEEN TERM
8 SHEETS RELATING TO THE TELECAST AGREEMENTS FOR MAJOR SPORTING
9 EVENTS?

10 A. YES.

11 Q. HAVE YOU EVER SEEN A TERM SHEET FOR ANY TYPE OF BROADCAST
12 LICENSE AGREEMENT FOR A TEAM SPORTING EVENT DISCUSS THE
13 TRANSFER OF PLAYER NIL RIGHTS TO A BROADCASTER?

14 A. NO. NO.

15 Q. HAVE YOU EVER SEEN OR HEARD OF VALUE BEING ASSIGNED IN
16 SUCH A CONTRACT TO THE TRANSFER OF NIL RIGHTS?

17 A. NO.

18 Q. NOW, IN AGREEMENTS THAT YOU'VE NEGOTIATED, HAVE YOU EVER
19 SEEN ANY REFERENCE TO THE CONCEPT OF NAME, IMAGE, AND
20 LIKENESS?

21 A. YES. YES. THERE ARE REFERENCES.

22 Q. AND WHAT ARE THE REFERENCES WHERE YOU'VE SEEN -- THAT
23 YOU'VE SEEN IN -- IN TELECAST SPORTS AGREEMENTS TO NAME,
24 IMAGE, OR LIKENESS?

25 A. PRINCIPALLY OVER THE 40 YEARS, THOSE REFERENCES WERE IN

1 TWO AREAS. ONE WAS IN THE USE OF PROMOTION CLIPS. AND THE
2 SECOND WOULD BE IN THE AREA OR AN AREA THAT WOULD PRECLUDE THE
3 USE OF ANY NIL FOR COMMERCIAL PURPOSES WHERE YOU WOULD TAKE A
4 PICTURE OF AN ATHLETE AND PUT IT ON A COKE BOTTLE. THAT WAS
5 NOT A RIGHT THAT YOU ANTICIPATED -- THAT YOU EVER ACKNOWLEDGED
6 OR FELT THAT YOU HAD.

7 **Q.** APART FROM THAT TYPE OF -- FIRST OF ALL, WOULD YOU
8 CHARACTERIZE THE PROMOTIONAL LANGUAGE THAT -- AS YOU'VE JUST
9 DESCRIBED IT TO BE STANDARD LANGUAGE IN CONTRACTS?

10 **A.** YES.

11 **Q.** AND APART FROM THAT TYPE OF STANDARD LANGUAGE, DO YOU
12 RECALL SEEING REFERENCES TO TRANSFERS OF NAME, IMAGE, LIKENESS
13 RIGHTS IN ANY SPORTS BROADCAST AGREEMENTS THAT YOU'VE BEEN
14 INVOLVED IN FOR TEAM SPORTS?

15 **A.** NO.

16 **Q.** AND IN YOUR EXPERIENCE IN THE -- IN THE BROADCAST
17 INDUSTRY, IS THERE GENERALLY A -- AN ASSESSMENT OF OR AN
18 ASSIGNMENT OF VALUE TO PARTICULAR RIGHTS THAT ARE TRANSFERRED
19 UNDER AGREEMENTS?

20 **A.** YES, THERE IS.

21 **Q.** IS THAT AN IMPORTANT -- HAS THAT BEEN AN IMPORTANT
22 CONSIDERATION IN THE NEGOTIATIONS FOR BROADCAST AGREEMENTS IN
23 YOUR EXPERIENCE, THE ASSIGNMENT OF VALUE TO RIGHTS?

24 **A.** YES, VERY IMPORTANT.

25 **Q.** AND WITH RESPECT TO THE PROMOTIONAL RIGHTS THAT YOU WERE

1 DESCRIBING, THAT STANDARD LANGUAGE, IN YOUR EXPERIENCE, WHAT
2 VALUE HAS BEEN ASSIGNED TO THOSE RIGHTS IN CONNECTION WITH THE
3 NEGOTIATIONS THAT --

4 **A.** NO VALUE. THEY'RE BASICALLY LINKED INTO THE BASIC RIGHTS
5 FEE FOR THE PROPERTY.

6 **Q.** OKAY.

7 AND YOU -- YOU REVIEWED DR. RASCHER'S -- ONE OF HIS
8 REPORTS IN CONNECTION WITH THIS CASE. DO YOU RECALL THAT?

9 **A.** SOMETIME AGO, BUT I DID.

10 **Q.** OKAY. AND DO YOU RECALL THAT DR. RASCHER, ONE OF THE
11 THINGS THAT HE DID WAS TO ESTIMATE OR TO APPROXIMATE WHAT
12 DAMAGES WOULD BE IN A BUT-FOR WORLD WHERE CERTAIN RIGHTS HAD
13 BEEN NEGOTIATED FOR FOR BASKETBALL AND FOOTBALL PLAYERS, TRIED
14 TO SORT OF COME UP WITH A DAMAGES CALCULATION?

15 DO YOU RECALL THAT?

16 **A.** YES.

17 **Q.** DID DR. RASCHER CALCULATE ANY VALUES TO YOUR RECALL FOR
18 PROMOTIONAL RIGHTS?

19 **A.** MY RECOLLECTION IS HE DID NOT.

20 **Q.** AND WOULD THAT BE CONSISTENT WITH YOUR EXPERIENCE THAT
21 THOSE RIGHTS ARE ASSIGNED NO VALUE?

22 **A.** THEY'RE ASSIGNED NO VALUE. OBVIOUSLY, THEY HAVE -- THEY
23 HAVE SOME VALUE, AND YOU NORMALLY GET PROMOTION RIGHTS WHEN
24 YOU BUY RIGHTS TO AN EVENT. BUT WE'VE NEVER NEGOTIATED A
25 SEPARATE PRICE TO IT, AND IT'S ALWAYS BEEN INCLUDED WITH THE

1 BASIC COMMITMENT.

2 Q. AND IN YOUR EXPERIENCE WHERE YOU SAID THERE'S SOME VALUE,
3 WHAT IS THE RELATIONSHIP BETWEEN THAT VALUE AND THE OVERALL
4 VALUE OF THE TELECAST RIGHTS IN THE AGREEMENT AMONG THE
5 PARTIES?

6 A. I'VE NEVER ATTEMPTED TO PUT A DOLLAR FIGURE AGAINST IT.
7 IT -- MATTER OF FACT, I DON'T THINK I'VE EVER SEEN AN
8 AGREEMENT ANYWHERE IN OUR INDUSTRY WHERE YOU DID NOT HAVE THE
9 PROMOTION -- THE RIGHT TO PROMOTE THE EVENT THAT YOU'RE
10 ACQUIRING BECAUSE IT'S IN BOTH YOUR INTEREST AND THE RIGHTS
11 HOLDER'S INTERESTS TO GIVE THAT EVENT AS MUCH PROMOTION AS
12 POSSIBLE.

13 SO THERE IS A -- THERE'S AN INTANGIBLE VALUE IT TO, BUT
14 WE'VE NEVER IN OUR BUSINESS ASSIGNED A SPECIFIC VALUE TO IT.

15 Q. IN YOUR EXPERIENCE, MR. PILSON, IN YOUR SEVERAL DECADES OF
16 EXPERIENCE NEGOTIATING SPORTS TELECAST AGREEMENTS, DO YOU
17 RECALL ANYONE INVOLVED IN NEGOTIATIONS EVER DEMANDING THAT A
18 BROADCASTER PAY MORE MONEY FOR INCLUDING IN A BROADCAST
19 LICENSE A PROVISION STATING THAT PARTICIPANT NIL RIGHTS WERE
20 BEING GRANTED?

21 A. NO.

22 Q. DO YOU RECALL ANYONE IN ANY OF THOSE NEGOTIATIONS YOU BEEN
23 INVOLVED IN INSISTING THAT A BROADCASTER WOULD PAY LESS MONEY
24 UNLESS THE RIGHTS OWNER WOULD STATE THAT IT WAS TRANSFERRING
25 PARTICIPANT NIL RIGHTS?

1 **A.** NO.

2 **Q.** DO YOU RECALL IN ANY OF THOSE NEGOTIATIONS, ANYONE ASKING
3 FOR DOCUMENTED PROOF THAT A RIGHTS OWNER HAD NIL RIGHTS TO
4 CONVEY?

5 **A.** WELL, THERE WAS THAT SITUATION WHERE YOU -- WE PURCHASED
6 SPECIFIC ATHLETES AND THEY HAD TO COMMIT. BUT THE AGREEMENTS
7 THAT I'VE BEEN INVOLVED WITH DID NOT CONTAIN THAT LANGUAGE.

8 **Q.** OKAY.

9 AND TEAM -- TEAM AGREEMENTS, THAT'S WHAT I'M --

10 **A.** THAT'S CORRECT.

11 **Q.** OKAY. AND, MR. PILSON, LET ME TURN TO -- AS MR. ROSENTHAL
12 DID WITH -- WITH MR. DESSER TODAY, LET ME TURN TO YOUR REVIEW
13 OF THE -- THE TELECAST AGREEMENTS THAT WERE PRODUCED IN THIS
14 CASE.

15 YOU SAID THAT YOU REVIEWED A NUMBER OF THOSE AGREEMENTS.
16 APPROXIMATELY HOW MANY OF THOSE AGREEMENTS DID YOU REVIEW?

17 **A.** I LOOKED AT PERHAPS 50 TO 75 AGREEMENTS.

18 **Q.** WHAT DID YOU DETERMINE BASED ON THAT REVIEW INsofar AS IT
19 INFORMED YOUR FIRST OPINION HERE?

20 **A.** THE OVERWHELMING NUMBER OF THOSE AGREEMENTS -- NOT ALL BUT
21 THE OVERWHELMING NUMBER -- CONTAINED LANGUAGE WITH RESPECT TO
22 NIL REFERENCE TO PROMOTION AND NIL REFERENCE TO COMMERCIAL
23 ENDORSEMENTS AND PROHIBITING THAT.

24 THERE WERE SOME AGREEMENTS, SOME OF WHICH WERE ALREADY
25 DISCUSSED THIS MORNING, CONTAINED MORE EXTENSIVE LANGUAGE.

1 Q. OKAY. AND WITH RESPECT TO THE AGREEMENTS THAT YOU
2 REVIEWED AND WHAT THEY -- THEIR REFERENCES TO -- FIRST OF ALL,
3 DID SOME OF THEM REFER TO NAME, IMAGE, AND LIKENESS?

4 A. YES, MOST OF THEM DID BUT IN THE CONTEXT OF EITHER
5 PROMOTION AND/OR COMMERCIAL ENDORSEMENTS.

6 Q. OKAY. AND ONE OF THE AGREEMENTS THAT WE LOOKED AT BOTH ON
7 DIRECT AND CROSS-EXAMINATION WITH MR. DESSER WAS THE FOX
8 AGREEMENT WITH THE BIG 12 CONFERENCE.

9 DO YOU RECALL THAT?

10 A. YES.

11 Q. AND I CAN PUT THE AGREEMENT IN FRONT OF YOU, BUT DO YOU
12 RECALL WE LOOKED AT A PROVISION RELATING TO PROMOTIONAL
13 RIGHTS, SECTION 3.1.3, PARAGRAPHS B AND C?

14 DO YOU RECALL THAT GENERALLY?

15 A. I DO.

16 Q. AND FIRST OF ALL, IF -- I'D BE HAPPY TO SHOW YOU THE
17 LANGUAGE, BUT IS THAT THE TYPE OF LANGUAGE THAT WAS CONSISTENT
18 WITH WHAT YOU'VE SEEN IN TERMS OF WHAT YOU'VE CALLED
19 PROMOTIONAL RIGHTS PROVISIONS IN TELECAST AGREEMENTS?

20 A. I RESPECTFULLY ASK TO SEE THAT LANGUAGE AGAIN RATHER
21 THAN --

22 Q. SURE.

23 IF I COULD ASK YOU, MR. NICKELS, TO BRING UP EXHIBIT 2230.

24 (EXHIBIT PUBLISHED.)

25 (PAUSE IN THE PROCEEDINGS.)

1 **MR. KLAUS:** AND IF I COULD ASK YOU, MR. NICKELS, TO
2 BRING UP FOR THE WITNESS --

3 **Q.** AND, MR. PILSON, IF YOU'D LIKE ME TO HAND YOU A HARD COPY,
4 I'M HAPPY TO. I KNOW THE SCREEN CAN BE A LITTLE DIFFICULT TO
5 SEE.

6 **A.** THE SCREEN IS -- IS NOT AS CLEAR AS I -- I WOULD LIKE, AND
7 I DON'T THINK --

8 **Q.** WHY DON'T -- I'M GOING TO HAND THIS TO YOU.
9 MAY I APPROACH, YOUR HONOR?

10 **THE COURT:** YES.

11 **BY MR. KLAUS:**

12 **Q.** SO THE LANGUAGE IN -- THERE YOU ARE, SIR (INDICATING).

13 **A.** RIGHT.

14 **Q.** THE LANGUAGE THAT'S IN SECTION 3.1.3B AND C, IS THAT
15 THE -- IS THAT CONSISTENT WITH WHAT YOU'VE BEEN DISCUSSING IN
16 TERMS OF PROMOTIONAL RIGHTS LANGUAGE?

17 **A.** I WOULD NOTE PARENTHETICALLY AT THE TOP, THE -- THE LAST
18 SENTENCE IN THE -- 3.1 SAYS THE RIGHTS GRANTED HEREIN IN
19 CONNECTION WITH THE SELECTED EVENT SHALL INCLUDE THE
20 ABOVE-REFERENCED -- ABOVE-DEFINED TELECAST RIGHTS AS WELL AS
21 THE FOLLOWING, AND THEN THERE'S LANGUAGE IN 3.13 OF
22 PROMOTIONAL RIGHTS.

23 **Q.** OKAY.

24 **A.** AND -- IF YOUR QUESTION IS, DOES THAT LOOK LIKE LANGUAGE
25 THAT IS COMMONLY SEEN IN OTHER AGREEMENTS OF THIS TYPE, IT

1 WOULD BE MY JUDGMENT THAT IT IS.

2 Q. AND MR. DESSER ALSO OFFERED TESTIMONY WITH RESPECT TO THIS
3 AGREEMENT IN -- IF YOU TURN TO PAGE 37.

4 (EXHIBIT PUBLISHED.)

5 BY MR. KLAUS:

6 Q. HE FOCUSED ON THE CLEARANCE LANGUAGE. I THINK YOU
7 REFERRED TO THIS AS A MINISTERIAL PROVISION, BUT SECTION
8 6.2.3, BETWEEN THE BOTTOM OF PAGE 37 AND THE TOP OF PAGE 38 --
9 DO YOU RECALL THIS WAS ONE OF THE CONSTELLATION OF PROVISIONS
10 THAT MR. DESSER DESCRIBED THAT HE SAID INDICATED A CONVEYANCE
11 OR A TRANSFER OF PLAYER NAME, IMAGE, AND LIKENESS RIGHTS FROM
12 THE ORGANIZER TO THE TELECASTER?

13 A. WELL, NO, I DON'T THINK IT -- IT DOES THAT, BUT I THINK IT
14 IS ONE OF A CONSTELLATION OF -- OF PROVISIONS THAT NORMALLY
15 APPEARS IN AGREEMENTS OF THIS TYPE. BUT I DON'T THINK IT --
16 AND I'LL READ IT QUICKLY HERE. SECURING ALL CLEARANCES --
17 YEAH, OKAY.

18 ALL RIGHTS OF ALL --

19 THE COURT: JUST READ IT TO YOURSELF.

20 THE WITNESS: I'M SORRY.

21 THE COURT: BECAUSE OTHERWISE THE COURT REPORTER HAS
22 TO WRITE DOWN EVERYTHING YOU SAY.

23 THE WITNESS: I APOLOGIZE.

24 (REVIEWING DOCUMENT.)

25 THE WITNESS: ALL RIGHT. WELL, I WOULD AGREE WITH

1 MR. DESSER IN PART AND DISAGREE IN PART. MY AGREEMENT IS,
2 YES, IT IS A KIND OF LANGUAGE THAT APPEARS IN MANY AGREEMENTS
3 OF THIS TYPE, BUT I DON'T BELIEVE THE AGREEMENT IS A
4 CONVEYANCE OR A TRANSFER OR A LICENSE OF SO-CALLED NIL RIGHTS.

5 **BY MR. KLAUS:**

6 **Q.** OKAY. AND WITH RESPECT TO -- AND JUST TO -- TO CLOSE THAT
7 OUT, MR. PILSON, THERE'S REFERENCE THERE TO RIGHTS THAT ARE
8 REASONABLE OR NECESSARY FOR THE TELECAST. AND IN YOUR
9 EXPERIENCE, HAS THE TRANSFER OF NIL RIGHTS BEEN UNDERSTOOD IN
10 THE BROADCAST INDUSTRY TO BE REASONABLE OR NECESSARY FOR THE
11 TELECAST TO TAKE PLACE?

12 **A.** NO. MY EXPERIENCE IS WE -- WE DON'T USE THE WORD
13 "TRANSFER," AND THE NIL OF THE PLAYERS IS PART OF THE
14 BROADCAST OF THE EVENT.

15 **Q.** AND THE -- ONE OF THE OTHER CONSTELLATION OF PROVISIONS
16 THAT MR. DESSER USED TO TALK ABOUT THE TRANS- -- OR TO SAY
17 EVIDENCED THE TRANSFER OR THE VALUE OF NAME, IMAGE OR LIKENESS
18 RIGHTS WERE THE RECITALS TO THIS AGREEMENT.

19 DO YOU RECALL THAT TESTIMONY?

20 **A.** YES, I DO.

21 **Q.** AND DO YOU AGREE OR DISAGREE WITH MR. DESSER'S OPINIONS
22 THAT THOSE RECITALS DEMONSTRATE EITHER THE SUBSTANTIAL VALUE
23 OF NIL RIGHTS OR THE TRANSFER OF THOSE RIGHTS IN YOUR
24 EXPERIENCE?

25 **A.** I -- I WOULD DISAGREE. I DON'T THINK THE RECITALS

1 ESTABLISH THE VALUE OF NIL.

2 Q. AND DO YOU THINK THAT THE RECITALS EVIDENCE THE CONVEYANCE
3 OR TRANSFER OF NIL FROM ORGANIZER TO TELECASTER?

4 A. NO. AGAIN, I THINK WE -- WHEN WE USE THESE TERMS, I THINK
5 I SHOULD HAVE SAID "NIL RIGHTS." I DON'T BELIEVE THE CLEAR --
6 THE RECITALS DO THAT, AND I DON'T BELIEVE THERE'S ANY
7 DISCUSSION ABOUT THE TRANSFER OR THE GRANT OR THE LICENSE OF
8 NIL RIGHTS.

9 Q. AND, FINALLY, MR. DESSER'S FINAL CONSTELLATION OF
10 PROVISIONS THAT HE LOOKED TO WERE REPRESENTATIONS AND
11 WARRANTIES AND AGREEMENTS TO INDEMNIFY.

12 AND IN YOUR EXPERIENCE AND -- IN THE BROADCAST INDUSTRY,
13 THERE EVER BEEN A DISCUSSION THAT YOU RECALL THAT THE -- THAT
14 THE REPRESENTATION REGARDING THE RIGHTS TO PERFORM THE
15 AGREEMENT SOMEHOW INDICATED A TRANSFER OR CONVEYANCE OF NIL
16 RIGHTS FROM EVENT ORGANIZER TO TELECASTER?

17 A. NO.

18 Q. I'D LIKE TO TURN TO YOUR -- YOUR OPINIONS REGARDING THE
19 SIGNIFICANCE OF THE BROADCAST INDUSTRY'S UNDERSTANDING
20 REGARDING THE AMATEUR STATUS OF ATHLETES PLAYING COLLEGE
21 SPORTS.

22 AND IN YOUR EXPERIENCE, MR. PILSON, DO PEOPLE IN THE
23 BROADCAST INDUSTRY HAVE AN UNDERSTANDING OF WHAT MAKES AN
24 ATHLETE AN AMATEUR ATHLETE?

25 A. YES.

1 Q. AND WHAT IS THAT UNDERSTANDING IN YOUR EXPERIENCE, SIR?

2 A. THAT THE ATHLETE IS NOT PAID FOR PERFORMANCE.

3 Q. ARE YOU -- LET'S SET ASIDE THE NCAA FOR A MOMENT.

4 ARE YOU FAMILIAR WITH OTHER PARTICIPANTS IN SPORTING
5 EVENTS WHO ARE UNDERSTOOD BY THE BROADCAST INDUSTRY TO BE
6 AMATEURS ACCORDING TO THE UNDERSTANDING YOU JUST DESCRIBED?

7 A. YES, I AM.

8 Q. AND CAN YOU GIVE SOME EXAMPLES OF THAT?

9 A. I WAS WATCHING THE GOLF THIS MORNING, THE START OF THE
10 U.S. OPEN, AND THERE WAS AN AMATEUR PLAYING AT 8:00 O'CLOCK
11 THIS MORNING. HE WAS CLEARLY IDENTIFIED AS AN AMATEUR. HE
12 LOOKED LIKE HE WAS 15 YEARS OLD BUT MUST HAVE BEEN A PRETTY
13 GOOD GOLFER.

14 Q. OKAY. AND HIS -- I TAKE IT HIS -- HIS IMAGE AND HIS NAME
15 WERE CAPTURED ON THE SCREEN, SIR?

16 A. YES, SIR.

17 Q. AND THE -- DO YOU HAVE AN UNDERSTANDING OF THE AGREEMENTS
18 BETWEEN BROADCAST NETWORKS AND THE GOLF ASSOCIATION FOR THE
19 TELECAST OF GOLF EVENTS?

20 A. YES, I NEGOTIATED SEVERAL -- ACTUALLY, I NEGOTIATED ALMOST
21 20 MASTER'S AGREEMENTS WHERE AMATEURS DO PLAY. AND I
22 NEGOTIATED THE CBS AGREEMENT FOR THE PGA CHAMPIONSHIP, WHICH I
23 BELIEVE IS PROFESSIONAL ONLY.

24 Q. DO YOU KNOW WHO CURRENTLY -- WHICH TELECASTER OR
25 TELECASTERS HAVE THE RIGHT TO BROADCAST U.S. GOLF ASSOCIATION

1 EVENTS NOW?

2 **A.** NBC. AND I BELIEVE IT'S THEIR -- IT'S THEIR LAST YEAR.
3 IT'S GOING TO MOVE OVER TO FOX NEXT YEAR.

4 **Q.** AND DO YOU HAVE AN UNDERSTANDING OF WHAT THE AMOUNTS ARE
5 THAT THOSE NETWORKS HAVE PAID FOR THOSE RIGHTS TO TELECAST
6 THOSE EVENTS?

7 **A.** THE PRESS HAS REPORTED THAT FOX IS GOING TO PAY \$100
8 MILLION FOR SEVERAL USGA EVENTS STARTING NEXT YEAR.

9 **Q.** OKAY. AND WHAT IS YOUR UNDERSTANDING OF THE AMOUNT OF
10 THAT MONEY FROM THOSE TELECAST AGREEMENTS THAT WILL BE SHARED
11 WITH THE AMATEUR GOLFERS WHO PARTICIPATE IN THEM?

12 **A.** NONE.

13 **Q.** YOU'VE -- YOU DISCUSSED IN YOUR REPORT -- YOU ANALYZED THE
14 FACT THAT THERE ARE NOW TELECAST AGREEMENTS FOR HIGH SCHOOL
15 SPORTS; IS THAT RIGHT?

16 **A.** YES.

17 **Q.** IN YOUR EXPERIENCE AND UNDERSTANDING, DO -- DOES THE
18 BROADCAST INDUSTRY CONSIDER THE PARTICIPANTS IN HIGH SCHOOL
19 SPORTS TO BE AMATEURS, SIR?

20 **A.** YES, THEY DO.

21 **Q.** AND THERE ARE AGREEMENTS NOW IN PLACE FOR THE TELECAST OF
22 SOME OF THOSE HIGH SCHOOL GAMES, FOOTBALL, BASKETBALL; IS THAT
23 RIGHT?

24 **A.** YES, MR. DESSER REFERRED TO ONE SUCH AGREEMENT.

25 **Q.** OKAY. THINK HE REFERRED TO AGREEMENTS INVOLVING THE

1 CALIFORNIA INTERSCHOLASTIC FEDERATION.

2 DO YOU RECALL THAT?

3 A. YES.

4 Q. ARE YOU AWARE OF SOME SUCH AGREEMENTS OUTSIDE OF
5 CALIFORNIA?

6 A. YES, THERE -- THERE ARE QUITE A FEW NOW AROUND THE
7 COUNTRY, IN NEW YORK, MIDWEST. A LOT OF HIGH SCHOOL
8 CHAMPIONSHIPS ARE NOW BEING TELEVISED, MOSTLY ON REGIONAL
9 SPORTS NETWORKS, BUT THERE IS, I BELIEVE, A -- A HIGH SCHOOL
10 ALL AMERICAN FOOTBALL GAME THAT IS TELEVISED NATIONALLY.

11 Q. WHAT'S YOUR UNDERSTANDING OF THE AMOUNT THAT THOSE HIGH
12 SCHOOL STUDENTS WILL GET FROM THOSE BROADCAST REVENUES?

13 A. NONE.

14 Q. YOU'RE FAMILIAR WITH THE LITTLE LEAGUE WORLD SERIES, SIR?

15 A. YES, I AM.

16 Q. AND DOES THAT GENERATE TELECAST REVENUES?

17 A. YES, IT DOES.

18 Q. AND DO YOU HAVE AN UNDERSTANDING OF WHAT THE MAGNITUDE OF
19 THOSE TELECAST REVENUES NOW ARE FOR THE LITTLE LEAGUE WORLD
20 SERIES?

21 A. I BELIEVE THE NEW AGREEMENT WITH ESPN IS IN THE
22 NEIGHBORHOOD OF \$7.5 MILLION A YEAR, MIGHT BE A LITTLE HIGHER.

23 Q. OKAY. AND HOW MUCH OF THAT TELECAST REVENUE WILL BE PAID
24 TO THE PARTICIPANTS, TO YOUR UNDERSTANDING?

25 A. NONE.

1 Q. HOW MUCH OF IT WILL BE HELD IN TRUST FOR THEM UNTIL THEY
2 BECOME ADULTS?

3 A. NONE.

4 Q. I'D LIKE TO SPEAK -- TO ASK YOU TO COMMENT ON THE
5 OLYMPICS. I THINK YOU SAID YOU HAD HAD SOME EXPERIENCE IN
6 NEGOTIATING BROADCAST LICENSES FOR OLYMPICS?

7 A. YES, SIR, I HAVE.

8 Q. AND CAN YOU -- WOULD YOU PLEASE DESCRIBE GENERALLY WHAT
9 THAT EXPERIENCE HAS BEEN?

10 A. IN BEHALF OF CBS, I PARTICIPATED IN THE NEGOTIATION OF
11 TELECAST RIGHTS TO EVERY OLYMPIC GAMES FROM 1984 -- ACTUALLY
12 STARTING IN 1979 FOR THE 1984 WINTER AND SUMMER GAMES, SUMMER
13 GAMES BEING HERE, THE WINTER GAMES BEING IN SARAJEVO; BOTH
14 1988 SUMMER AND WINTER CALGARY; AND SEOUL, THE '92 WINTER
15 GAMES, WHICH I WAS SUCCESSFUL IN SECURING THE RIGHTS.

16 WE ALSO GOT THE RIGHTS TO THE '94 AND '98 WINTER GAMES. I
17 ALSO PARTICIPATED IN THE NEGOTIATIONS FOR THE '96 SUMMER GAMES
18 WHICH WERE IN ATLANTA. WE DID NOT SECURE THOSE RIGHTS.

19 I HAVE A LONG -- AND I REPRESENTED -- I CONSULTED FOR THE
20 INTERNATIONAL OLYMPIC COMMITTEE IN THEIR NEGOTIATION WITH THE
21 NETWORKS FOR THE GAMES THAT SUBSEQUENTLY WERE HELD IN
22 VANCOUVER AND LONDON.

23 Q. AND DURING THIS TIME, FROM THE '80'S TO THE '90'S, WAS THE
24 BIDDING IN YOUR EXPERIENCE -- CAN YOU PLEASE DESCRIBE THE --
25 THE NATURE AND THE -- THE MAGNITUDE OF THE BIDDING FOR THESE

1 RIGHTS?

2 **A.** WELL, WE -- THE BIDDING BEGAN IN THE \$92 MILLION RANGE FOR
3 SARAJEVO. AND THE RIGHTS FEES CONTINUED TO -- TO GROW. THERE
4 WAS A BUMP FOR CALGARY BECAUSE THAT ACTUALLY WAS BEYOND THE
5 MARKET'S ABILITY TO COVER IT.

6 BUT THE OLYMPIC RIGHTS FEES DURING THAT PERIOD OF TIME
7 WERE BETWEEN 150 TO \$500 MILLION. THEY'VE SUBSEQUENTLY MOVED
8 INTO THE BILLION-DOLLAR CATEGORY.

9 **Q.** OKAY. AND YOU'VE HEARD -- YOU'VE BEEN IN COURT SINCE
10 THE -- THE START OF THE TESTIMONY, CORRECT?

11 **A.** YES.

12 **Q.** AND YOU -- AND YOU ALSO HAVE SOME EXPERIENCE WITH THE --
13 WITH THE CHANGES TO OLYMPIC RULES WHICH HAVE ALLOWED CERTAIN
14 HOST COUNTRY -- OR CERTAIN LOCAL COUNTRIES TO DECIDE THE
15 EXTENT TO WHICH PROFESSIONALS WILL BE PART OF THE OLYMPIC
16 TEAMS.

17 ARE YOU FAMILIAR WITH THAT?

18 **A.** YES. I DON'T BELIEVE IT WAS THE HOST COUNTRIES THAT MADE
19 THAT DECISION. IT WAS THE INTERNATIONAL SPORTS ORGANIZATIONS
20 BECAUSE THE IOC SAID THAT THEY CEDED THOSE RIGHTS. AND THE
21 BEST EXAMPLE WOULD BE THE -- WAS FIBA, WHICH STAGED THE DREAM
22 TEAM GAMES IN BARCELONA IN 1992.

23 **Q.** AND CAN YOU JUST DESCRIBE FOR THE RECORD WHAT THE "DREAM
24 TEAM GAMES" WERE IN THE 1992 OLYMPICS IN BARCELONA?

25 **A.** PARDON?

1 **THE COURT:** THAT ISN'T NECESSARY.

2 **MR. KLAUS:** MAY I JUST --

3 **THE COURT:** JUST VERY BRIEF, PLEASE.

4 **MR. KLAUS:** SURE.

5 **THE WITNESS:** IT WAS THE NBA PROFESSIONALS PLAYING.

6 **BY MR. KLAUS:**

7 **Q.** OKAY. PEOPLE LIKE MICHAEL JORDAN?

8 **A.** YEAH, HE WAS THERE.

9 **Q.** HOW MUCH OF THE BROADCAST REVENUE FROM THE -- FROM
10 THOSE -- FROM THOSE TELECASTS WENT TO MICHAEL JORDAN OR OTHER
11 MEMBERS OF THE DREAM TEAM?

12 **A.** NONE OF IT.

13 **Q.** OKAY. HOW MUCH -- IN YOUR EXPERIENCE AND UNDERSTANDING,
14 HOW MUCH OF THE BROADCAST REVENUE FOR ANY OF THE OLYMPICS HAS
15 BEEN SHARED DIRECTLY WITH THE PARTICIPANTS ON THE U.S. TEAM?

16 **A.** NONE AS FAR AS I KNOW.

17 **Q.** LET ME TURN TO YOUR THIRD SET OF OPINIONS REGARDING THE
18 GROWTH AND REVENUE FROM THE BROADCAST OF COLLEGE SPORTS.

19 WHAT IS -- WHAT IS YOUR OPINION REGARDING THE PRIMARY
20 DRIVERS OF THE INCREASED REVENUE FOR COLLEGE SPORTS?

21 **A.** RIGHT. IN THE INTEREST OF TIME, I'LL TRY TO BE BRIEF,
22 YOUR HONOR, BECAUSE IT IS A VERY LONG STORY, AND I COULD SPEND
23 THE REST OF THE DAY TALKING ABOUT IT.

24 BUT FIRST PREMISE IS THERE'S A HUGE INTEREST IN AMERICAN
25 PUBLIC IN SPORTS. WE'RE A UNIQUE COUNTRY. WE HAVE MORE

1 SPORTS, MORE LEAGUES, MORE TEAMS THAN ANY OTHER COUNTRY IN THE
2 WORLD, BECAUSE WE NOT ONLY HAVE A FULL RANGE OF PROFESSIONAL
3 SPORTS, WE HAVE A FULL RANGE OF COLLEGE SPORTS, WHICH IS
4 UNIQUE TO THE U.S.

5 OVER THE YEARS, SPORTS HAS BEEN A GREAT DRIVER OF
6 AUDIENCE. THE AUDIENCE, GOING BACK TO MY FIRST YEARS,
7 APPRECIATES THE UNCERTAINTY OF SPORTS, THE FACT THAT THE -- IT
8 IS UNSCRIPTED, THE FACT THAT THE RESULTS ARE NOT KNOWN, THE
9 FACT THAT ATHLETES ARE REGARDED AS ROLE MODELS BUT CERTAINLY
10 INTERESTING ENTERTAINMENT INDIVIDUALS.

11 AND SPORTS HAS CAPTURED THE AMERICAN PUBLIC. AND IT'S --
12 IT SEEMS AS IF OUR VIEWERSHIP CONTINUES TO GROW. SO THERE'S
13 ON THE ONE HAND THE POPULARITY OF SPORTS. AND COLLEGE SPORTS
14 IS VERY POPULAR. IT HAS A VERY LOYAL AUDIENCE.

15 BUT MORE IMPORTANTLY THAN THAT, SINCE I GOT INTO THE
16 BUSINESS IN 1976, WHEN THERE WERE THREE NETWORKS, CBS, ABC,
17 AND NBC, AND WE WORKED VERY HARD AND WE PUT ON A THOUSAND
18 HOURS TOTAL OF SPORTS TELEVISION THROUGHOUT THE UNITED STATES.
19 WE WERE THE ONLY NATIONAL DISTRIBUTORS OF SPORTS, A THOUSAND
20 HOURS FROM THREE NETWORKS.

21 TODAY -- AND I'M LEAPING AHEAD, AND I'LL FILL IN THE
22 BLANKS -- ESPN ALONE, ONE COMPANY, PROBABLY BROADCASTS WELL IN
23 EXCESS OF 50,000 HOURS OF SPORTS, JUST ESPN. AND ALONG WITH
24 ALL THE OTHER NETWORKS THAT HAVE DEVELOPED, IT'S MY GUESS THAT
25 OVER A HUNDRED THOUSAND HOURS OF SPORTS ARE TELEVISED AROUND

1 THE COUNTRY. AND THAT PROBABLY DOESN'T INCLUDE REGIONAL
2 NETWORKS.

3 WHAT HAS HAPPENED TO ENABLE THE INDUSTRY TO DO THAT HAS
4 BEEN THE DEVELOPMENT OF NEW TECHNOLOGIES THAT HAVE CREATED
5 MULTIPLE PLATFORMS TO DISTRIBUTE SPORTS PROGRAMMING.

6 RECALL, ORIGINALLY IT WAS JUST THREE NETWORKS. IT'S NOW
7 FOUR NETWORKS WITH FOX, PLUS DOZENS OF CABLE CHANNELS THAT
8 EITHER TELEWISE SPORTS EXCLUSIVELY OR HAVE SPORTS CONTENT.
9 AND THAT'S JUST THE NATIONAL PLATFORM.

10 **THE COURT:** COULD WE GO BACK TO A QUESTION-AND-ANSWER
11 FORMAT?

12 **MR. KLAUS:** SURE. SURE.

13 **Q.** LET ME ASK YOU THIS, MR. PILSON, JUST TO MOVE --

14 **A.** I'M SORRY, YOUR HONOR, BUT I -- I WAS TRYING TO BE BRIEF.

15 **THE COURT:** OKAY.

16 **BY MR. KLAUS:**

17 **Q.** MR. PILSON, YOU MENTION -- IN YOUR EXPERIENCE, HAVE
18 COLLEGE SPORTS BEEN ATTRACTIVE TO ADVERTISERS WHO PAY THE
19 BILLS FOR TELEVISION?

20 **A.** YES, THEY HAVE.

21 **Q.** WHAT IS YOUR UNDERSTANDING OF WHY THEY'RE ATTRACTIVE TO
22 ADVERTISERS?

23 **A.** WELL, SPORTS ATTRACTS -- AGAIN, I'LL BE BRIEF -- A
24 DEMOGRAPHIC THAT IS -- BY "DEMOGRAPHIC," I MEAN BASICALLY AN
25 AUDIENCE THAT ADVERTISERS WANT TO REACH -- MOSTLY MALE. MOST

1 PORTS ARE VIEWED BY MALE AUDIENCES, AND THEY DON'T WATCH A LOT
2 OF OTHER TELEVISION. SO ADVERTISERS CROWD INTO THE SPORTS
3 MARKET TO REACH THESE HIGHLY DESIRABLE MALES.

4 AND THEN IT EVEN BREAKS OUT IN TERMS OF AGE, IN TERMS OF
5 EARNING POWER, IN TERMS OF EDUCATION, IN TERMS OF WHERE THEY
6 LIVE. AND WHEN YOU FACTOR ALL OF THAT INTO THE EQUATION,
7 COLLEGE SPORTS REACHES AN AUDIENCE THAT ADVERTISERS WANT TO
8 REACH. AND THE -- THE NETWORKS BASICALLY SELL THEIR AUDIENCE
9 TO THEIR ADVERTISERS.

10 CABLE IS AN ADDED ELEMENT. THEY HAVE BOTH ADVERTISING
11 REVENUE AND SUBSTANTIAL SUBSCRIBER REVENUE. IN FACT, ESPN
12 GETS 5 -- OVER \$5 PER MONTH PER SUBSCRIBER, AND THEY HAVE
13 APPROXIMATELY 100 MILLION SUBSCRIBERS. SO ESPN IS VERY WELL
14 FINANCED.

15 **Q.** LET ME ASK YOU --

16 **THE COURT:** WHAT'S THE DIFFERENCE BETWEEN THE
17 DEMOGRAPHIC FOR COLLEGE SPORTS AND THE DEMOGRAPHIC FOR
18 PROFESSIONAL SPORTS?

19 **THE WITNESS:** THERE IS A DIFFERENCE. AS MR. --
20 MR. DESSER SAID THEY WERE SUBSTANTIALLY THE SAME, BUT THERE
21 ARE SUBTLE DIFFERENCES.

22 COLLEGE SPORTS TEND TO BE MORE SUBURBAN AND RURAL BECAUSE
23 THEIR TEAMS ARE LOCATED -- SOME OF THEM, MANY OF THEM --
24 OUTSIDE OF MAJOR MARKETS.

25 PROFESSIONAL SPORTS WHERE YOUR TEAM'S ALMOST BY DEFINITION

1 ARE IN MAJOR MARKETS TEND TO GET A MUCH BETTER AUDIENCE,
2 LARGER AUDIENCE IN THE CITIES LIKE NEW YORK AND CHICAGO.
3 WHEREAS IN THOSE CITIES, COLLEGE SPORTS DOES NOT DO AS WELL.

4 BUT IN BIRMINGHAM, ALABAMA OR IN AUSTIN, TEXAS OR IN
5 LINCOLN, NEBRASKA, WHERE NEBRASKA, TEXAS, AND ALABAMA ARE
6 LOCATED, COLLEGE SPORTS DO MUCH BETTER FROM AN AUDIENCE POINT
7 OF VIEW THAN PROFESSIONAL.

8 **BY MR. KLAUS:**

9 **Q.** AND, MR. PILSON, IN TERMS OF -- LET ME JUST FOLLOW UP ON
10 THE COURT'S QUESTION REGARDING DEMOGRAPHICS, DIFFERENCES IN
11 YOUR EXPERIENCE IN THE EDUCATION LEVEL OF COLLEGE SPORTS
12 VERSUS PROFESSIONAL SPORTS VIEWERS?

13 **A.** DEPENDS ON THE PROFESSIONAL SPORT. COLLEGE FOOTBALL AND
14 BASKETBALL HAVE A GOOD, HIGH EDUCATION LEVEL FOR THEIR
15 VIEWERSHIP, NOT AS HIGH IN SOME CASES AS, LIKE, THE NFL, WHICH
16 IS THE -- THE -- THE TIFFANY OF ALL -- OF ALL SPORTS IN TERMS
17 OF ALMOST THE PERFECT DEMO.

18 BUT COLLEGE SPORTS IS ALSO ATTRACTIVE IN THE SOUTHEAST, IN
19 THE SOUTHWEST, WHERE YOUR DEMO TENDS TO BE LESS URBAN AND LESS
20 AFFLUENT THAN NEW YORK, CHICAGO, DENVER, SAN FRANCISCO.

21 **Q.** HOW ABOUT GENDER? IS THERE -- IN YOUR EXPERIENCE HAS
22 THERE BEEN A HIGHER PERCENTAGE OF WOMEN IN THE AUDIENCE FOR
23 COLLEGE SPORTS AS COMPARED TO PROFESSIONAL SPORTS?

24 **A.** AGAIN, DEPENDS ON WHICH SPORT WE'RE LOOKING AT. BUT
25 COLLEGE FOOTBALL AND BASKETBALL DO GET A GOOD FEMALE DEMO, NOT

1 EQUAL TO THE MALE DEMO, BUT IT'S GOOD, AND IT'S ATTRACTIVE TO
2 ADVERTISERS.

3 **Q.** AND WITH RESPECT TO -- YOU BEEN TALKING ABOUT DIFFERENCES
4 IN THE DEMOGRAPHICS. IN YOUR EXPERIENCE, IS THERE AN OVERLAP
5 BETWEEN THE AUDIENCES WHO WATCH COLLEGE SPORTS AND
6 PROFESSIONAL SPORTS?

7 **A.** YES, THERE'S AN OVERLAP, BUT THE AUDIENCES ARE NOT EXACTLY
8 THE SAME.

9 **Q.** OKAY. TO SOME EXTENT, ARE THE -- ARE THE -- ARE THE GAMES
10 COMPETING FOR SOME OF THE SAME VIEWERS IN YOUR EXPERIENCE?

11 **A.** NOT ONLY DO THEY COMPETE; OCCASIONALLY, THEY'RE ON
12 OPPOSITE EACH OTHER, SO THAT THERE'S DIRECT COMPETITION.

13 **Q.** OKAY. AND LET ME JUST TURN FINALLY TO YOUR LAST OPINION
14 JUST BRIEFLY, MR. PILSON, REGARDING WHETHER PAYING BASKETBALL
15 AND FOOTBALL PLAYERS IN COLLEGE THREATENS THE POPULARITY OF
16 COLLEGE SPORTS WITH THE TELEVISION AUDIENCE.

17 JUST BRIEFLY SIR, OVER THE COURSE OF YOUR CAREER IN THE
18 SPORTS BROADCAST INDUSTRY, HAVE YOU COME TO HAVE OPINIONS
19 ABOUT WHY VIEWERS ARE INTERESTED IN COLLEGE SPORTS ON
20 TELEVISION?

21 **A.** YES, I HAVE.

22 **Q.** AND HOW DID YOU COME TO HAVE THOSE OPINIONS?

23 **A.** I BEEN IN THE INDUSTRY FOR 40 YEARS. I'VE ACQUIRED AND
24 TELECAST THOUSANDS OF HOURS OF COLLEGE SPORTS. I WATCH
25 COLLEGE SPORTS AND EVALUATE THEM, SO I HAVE A PRETTY GOOD

1 HANDLE ON THE INDUSTRY. OF COURSE, I HAVE PERSONAL OPINIONS
2 AS WELL, BUT I CERTAINLY -- I'VE WORKED IN THE INDUSTRY A LONG
3 TIME.

4 Q. AND WHAT ARE YOUR OPINIONS REGARDING THE REASONS WHY
5 VIEWERS HAVE BEEN INTERESTED IN COLLEGE SPORTS IN PARTICULAR?

6 A. I THINK VIEWERS APPRECIATE AND -- AND ENJOY THE CONCEPT
7 THAT COLLEGE FOOTBALL PLAYERS ARE PLAYING BECAUSE THEY ENJOY
8 PLAYING COLLEGE FOOTBALL AND THAT THEY VOLUNTEER TO PLAY IT,
9 THAT THEY COMPETE. THEY RISK INJURY. THEY'RE RELATIVELY
10 YOUNG. AVERAGE AGE IS PROBABLY 18 TO 22 OR 23. AND THEY ARE
11 AMATEURS. THEY -- THEY ARE NOT PERCEIVED BY THE PUBLIC -- AND
12 I'M NOT NAIVE IN THAT I THINK THE PUBLIC ISN'T WELL AWARE OF
13 THE AMOUNT OF ATTENTION SOME OF THE COLLEGE FOOTBALL PLAYERS
14 GET.

15 BUT I -- IT'S MY JUDGMENT THAT THE PUBLIC DIFFERENTIATES
16 COLLEGE SPORTS FROM PROFESSIONAL SPORTS AND WATCHES THE
17 COLLEGE GAME FOR MANY REASONS THAT AREN'T NECESSARILY TRUE FOR
18 THE PROFESSIONALS. I'LL MENTION JUST TWO.

19 THERE IS AN IDENTIFICATION WITH A COLLEGE OR UNIVERSITY
20 THAT IS UNIQUE TO COLLEGE, NOT TO PRO. THERE IS ALSO THE FACT
21 THAT THE PLAYERS MOVE THROUGH THE COLLEGE SYSTEM, AND MOST OF
22 THEM ONLY PLAY IN TERMS OF BEING ON TELEVISION FOR ONE OR TWO
23 YEARS. SO THE LOYALTY OF THE TELEVISION AUDIENCE FOR THE MOST
24 PART IS NOT TO THE PLAYERS. IT IS TO THE SPORT, AND IT IS TO
25 THE INSTITUTION.

1 AND I USE THIS EXAMPLE: IF TEXAS LINED UP TO PLAY
2 OKLAHOMA BUT YOU TOOK THE UNIFORMS OFF THE TEAMS, AND YOU
3 SAID, WELL, ONE'S GREEN AND ONE'S BLUE, I DON'T THINK YOU HAVE
4 A TELEVISION SHOW. YOU'D HAVE THE SAME PLAYERS, BUT YOU
5 WOULDN'T HAVE THAT LINK TO THE INSTITUTIONS. AND THAT LINK TO
6 THE INSTITUTIONS IS BOTH FROM ALUMNI; IT'S FROM PEOPLE WHO
7 LIVE IN THE REGION OR THE CONFERENCE. AND IN SCHOOLS LIKE
8 NOTRE DAME, IT'S FOR PEOPLE ALL OVER THE COUNTRY WHO HAVE
9 LOYALTY TO THE SCHOOL, NOT NECESSARILY THE PLAYERS.

10 **Q.** AND YOUR DISCUSSION WAS ABOUT COLLEGE FOOTBALL. BUT IN
11 YOUR EXPERIENCE, WOULD SOME OF THE SAME CONSIDERATIONS COME
12 INTO PLAY WITH COLLEGE BASKETBALL?

13 **A.** YES.

14 **Q.** JUST ASKING YOU SO WE DON'T NEED TO REPEAT --

15 **A.** YES.

16 **Q.** OKAY.

17 AND FINALLY WITH RESPECT TO WHAT -- WHAT IS THE BASIS FOR
18 YOUR CONCLUSION THAT THAT POPULARITY WOULD BE JEOPARDIZED IF
19 COLLEGE FOOTBALL AND BASKETBALL PLAYERS WERE PAID SHARES OF
20 THE BROADCAST REVENUE FOR THESE GAMES?

21 **A.** I HAVE A SUBSTANTIAL CONCERN THAT IT WOULD CHANGE THE
22 FABRIC OF THE SPORT, THAT A SIGNIFICANT NUMBER OF PEOPLE IN
23 THE PUBLIC AREA WHO SEE THE ONE CONCEPT OF COLLEGE SPORTS
24 BEING THAT YOUNG PEOPLE ARE PLAYING FOR THE JOY OF THE GAME,
25 WOULD CONVERT INTO A SENSE THAT, WELL, THIS IS JUST ANOTHER

1 PROFESSIONAL SPORT, AND I'M CONCERNED THAT THE RECRUITING
2 ASPECT OF GETTING YOUNG PLAYERS, HIGH SCHOOL PLAYERS TO PLAY
3 AT COLLEGES COULD, FRANKLY, BE VERY DISTRESSING.

4 BECAUSE I THINK IF -- IF THE RULES WERE ABOLISHED AND
5 THERE WAS NO RULE WITH RESPECT TO NOT PLAYING (SIC) PLAYERS,
6 YOU WOULD HAVE A LAND RUSH OF AGENTS AND BIG MONEY CHASING
7 HIGH SCHOOL SENIORS AND JUNIORS TO GET THEM TO PLAY AT GIVEN
8 SCHOOLS.

9 **Q.** WERE YOU HERE FOR -- WERE YOU HERE FOR DR. NOLL'S
10 TESTIMONY?

11 **A.** I WAS. I WAS, INDEED.

12 **Q.** AND WHERE HE SAID THAT IT WAS A POSSIBILITY UNDER THE
13 WORLD THAT HE WAS SAYING IS REQUIRED BY HIS ANTITRUST ANALYSIS
14 OF A MILLION DOLLARS BEING PAID TO HIGH SCHOOL STUDENTS OR TO
15 YOUNG KIDS IN COLLEGE TO PLAY FOOTBALL AND BASKETBALL?

16 IS -- DO YOU HAVE AN OPINION ABOUT HOW THAT WOULD AFFECT
17 THE POPULARITY OF THE SPORTS BASED ON YOUR EXPERIENCE IN THE
18 BROADCAST INDUSTRY?

19 **MR. ISAACSON:** WE OBJECT. IT MISSTATES THE RECORD,
20 BUT HE CAN GO AHEAD AND ANSWER.

21 **THE COURT:** OKAY. YEAH, I DON'T REMEMBER THAT
22 TESTIMONY, BUT GO AHEAD.

23 **THE WITNESS:** I FELT THAT YES, SUMS OF THAT NATURE
24 AND LARGER WOULD -- BECAUSE OF THE IMPORTANCE OF GETTING TOP
25 HIGH SCHOOL ATHLETES TO GO TO SCHOOLS AND THE PRESSURE THAT

1 WOULD BE PUT ON THEM BY THE FACT THAT NOW THE SCHOOLS ARE
2 EXPENDING A LOT MORE MONEY TO PAY THE PLAYERS, YOU HAVE TO GET
3 THE BEST PLAYERS. AND BY THE WAY, TO GET THE BEST PLAYERS,
4 YOU HAVE TO HAVE THE BEST COACHES.

5 SO I THINK THE NEW -- ANY SYSTEM LIKE THAT WOULD DRIVE
6 COACHES' SALARIES UP RATHER THAN DOWN. AND I -- I'D BE
7 CONCERNED THAT THIS -- THIS WOULD BE A NEGATIVE, NOT
8 NECESSARILY FOR THE ADDED ALABAMA, TEXAS, MICHIGAN FAN WHO
9 PROBABLY WOULD SAY BY ALL MEANS, SPEND THE MONEY.

10 BUT I THINK THERE'S A LARGE NUMBER OF CASUAL FANS AROUND
11 THE COUNTRY WHO -- WHO, CANDIDLY, WOULD BE TURNED OFF BY THE
12 LAND RUSH THAT WOULD BE ALMOST REQUIRED IF THIS WERE TO TAKE
13 PLACE.

14 NOW, I REALIZE DR. NOLL WAS SPECULATING ABOUT, WELL, WE'LL
15 LET THE CONFERENCES MAKE THOSE RULES. THAT -- I WON'T PUT
16 A -- I WON'T JUDGE THAT COMMENT, BUT I'M NOT SURE IF -- IF
17 EVEN IF THAT HAPPENED, YOU WOULDN'T HAVE THIS CHASE -- EXCUSE
18 ME -- CHASE FOR -- FOR RECRUITS.

19 **BY MR. KLAUS:**

20 **Q.** AND AS YOU'VE SEEN --

21 **A.** LET ME HAVE ONE SECOND.

22 **Q.** YES, OF COURSE.

23 **A.** DR. NOLL GOT A LITTLE --

24 (PAUSE IN THE PROCEEDINGS.)
25

1 **BY MR. KLAUS:**

2 **Q.** ARE YOU OKAY, MR. PILSON?

3 **A.** I THINK SO. YEAH, THAT SOUNDS BETTER.

4 **Q.** OKAY. AND HAVE YOU SEEN DR. DENNIS' SURVEY WAS THAT PART
5 OF THE BASIS FOR YOUR OPINION WITH RESPECT TO THE -- THE
6 THREAT TO THE POPULARITY OF COLLEGE SPORTS?

7 **A.** I HAVE SEEN THAT SURVEY, BUT CANDIDLY, WHEN I SAW IT, I
8 HAD ALREADY -- I HAD THESE VIEWS. I'VE HAD THESE VIEWS FOR
9 SOME TIME, AND I JUST FELT THAT A LOT OF THE RESULTS OF HIS
10 SURVEY WERE CONSISTENT WITH VIEWS THAT I ALREADY HAD.

11 **Q.** OKAY.

12 NO FURTHER QUESTIONS, YOUR HONOR.

13 **THE COURT:** ALL RIGHT. WE'LL BREAK TILL 12:15.

14 (RECESS TAKEN AT 12:02 P.M.; PROCEEDINGS
15 RESUMED AT 12:17 P.M.)

16 **THE CLERK:** REMAIN SEATED. COME TO ORDER. THIS
17 COURT IS BACK IN SESSION.

18 **THE COURT:** GO AHEAD.

19 **CROSS-EXAMINATION**

20 **BY MR. ISAACSON:**

21 **Q.** MR. PILSON, LET ME PICK UP WHERE YOU LEFT OFF. I BELIEVE
22 YOU WERE TALKING ABOUT THE RECRUITING ASPECT THAT YOU WERE
23 CONCERNED ABOUT AND THE CHASE FOR RECRUITS. AND I JUST WANT
24 TO CLARIFY YOUR OPINION ABOUT THAT.

25 AS I UNDERSTAND IT, YOU -- IT'S YOUR OPINION THAT IF

1 SCHOOLS ARE PERMITTED TO SHARE BROADCAST REVENUES IN A
2 COMPETITIVE MARKET FOR NIL'S, AS THE PLAINTIFFS HAVE PROPOSED,
3 THAT SCHOOLS WOULD ENGAGE IN BIDDING FOR YOUNG STUDENT
4 ATHLETES, AND YOU THINK THAT'S A NEGATIVE?

5 **A.** I THINK IT'S A NEGATIVE, AND I THINK IT WILL HAPPEN, YES,
6 SIR.

7 **Q.** YOU THINK THAT IF THE SCHOOLS ARE PERMITTED TO SHARE
8 REVENUES FROM BROADCAST CONTRACTS FOR NIL'S, THERE WILL BE
9 COMPETITION AMONGST THE SCHOOLS FOR THE STUDENT ATHLETES IN
10 THE FORM OF BIDDING.

11 DO I HAVE THAT RIGHT?

12 **A.** I THINK THAT'S QUITE LIKELY, YES.

13 **Q.** IN ADDITION TO THAT, IT'S YOUR BELIEF THAT CONFERENCES MAY
14 BID AGAINST ONE ANOTHER. THE LARGE REVENUE CONFERENCES
15 AGAINST SMALL REVENUE CONFERENCES, IF THERE IS -- IF THERE'S
16 THE ABILITY TO SHARE WITH STUDENT ATHLETES NIL MONEY?

17 **A.** WELL, ACTUALLY, THAT WAS DR. NOLL'S SUGGESTION, BUT I
18 HAPPEN TO FEEL THAT THAT'S -- THAT'S QUITE LIKELY, YES.

19 **Q.** AND SO IN -- THE LAST CONCERN YOU'RE EXPRESSING IS
20 ACTUALLY A CONCERN THAT THE SCHOOLS WILL COMPETE FOR THESE
21 STUDENT ATHLETES WITH THE NIL MONEY AND THAT THE CONFERENCES
22 WILL COMPETE FOR THESE STUDENT ATHLETES WITH THE NIL MONEY?

23 **THE COURT:** I'M NOT UNDERSTANDING HOW THE CONFERENCES
24 COULD COMPETE FOR STUDENTS.

25 **MR. ISAACSON:** WELL --

1 **THE COURT:** COMPETE FOR HOW LIBERAL THEIR RULES ARE?

2 **MR. ISAACSON:** OR IS WHAT DR. NOLL EXPLAINED WAS THAT
3 A CONFERENCE COULD SET A RULE WITH A CAP FOR HOW MUCH --

4 **THE COURT:** SO THEY COMPETE ON HOW LIBERAL THEIR
5 RULES --

6 **MR. ISAACSON:** YES, THE LIBERAL -- THE LIBERAL OF THE
7 CAP. AND I'M ASSUMING MR. PILSON KNEW THIS 'CAUSE HE WAS HERE
8 FOR THAT.

9 **THE COURT:** I'M SURE HE DID. IT WAS JUST ME THAT
10 DIDN'T. OKAY. GO AHEAD.

11 **BY MR. ISAACSON:**

12 **Q.** SO WHAT YOU'RE OBJECTING TO IS THE POSSIBILITY OF
13 COMPETITION FOR THESE STUDENT ATHLETES?

14 **A.** I'M NOT OBJECTING TO IT, SIR. I'M SAYING IT WOULD BE
15 UNFORTUNATE BECAUSE I THINK IT WOULD ULTIMATELY DAMAGE THE
16 FABRIC OF SUPPORT THAT COLLEGE SPORTS HAS AROUND THE COUNTRY.

17 **Q.** BUT YOU ARE OF THE FIRM OPINION THAT IF THERE -- IF THE
18 NCAA RULES WERE CHANGED TO PERMIT THE SHARING OF NIL MONEY,
19 THERE WOULD BE AN INCREASE IN COMPETITION FOR THESE STUDENT
20 ATHLETES?

21 **MR. KLAUS:** OBJECTION, YOUR HONOR, VAGUE. CAN HE
22 EXPLAIN WHAT HE MEANS BY THE "NIL MONEY"? I DON'T THINK
23 THAT'S A TERM THAT WE'VE HEARD DEFINED IN THE CASE.

24 **THE COURT:** I -- OKAY. I ASSUME IT'S THE SAME AS
25 HE'S BEEN ASKING RIGHT ALONG SINCE HE WAS JUST REPHRASING IT,

1 BUT THAT'S FINE.

2 SAY IT AGAIN.

3 **BY MR. ISAACSON:**

4 **Q.** YOU ARE OF THE FIRM OPINION IF THE NCAA RULES ARE CHANGED
5 TO PERMIT THE SHARING OF BROADCAST MONEY RELATED TO NIL'S OF
6 STUDENT ATHLETES, THAT THAT WILL INCREASE COMPETITION AMONGST
7 SCHOOLS AND CONFERENCES FOR THOSE STUDENT ATHLETES.

8 **A.** AND YOU'RE ASKING ME WHETHER THAT IS MY OPINION OR --

9 **Q.** YES.

10 **A.** I THINK IT'S -- IT'S POSSIBLE, YES.

11 **Q.** OKAY. WELL, IT IS THE BASIS -- THAT OPINION IS THE BASIS
12 OF YOUR CONCERN THAT THIS WOULD UNDERMINE COLLEGE SPORTS?

13 **A.** IT'S ONE OF MY CONCERNS.

14 **Q.** OKAY. NOW, ANOTHER ONE OF YOUR CONCERNS RELATED TO THE
15 DEFINITION OF "AMATEURISM" AND WHAT I BELIEVE YOU TOLD
16 COUNSEL -- TELL ME IF I HAVE THIS WRONG -- IS THAT ACCORDING
17 TO YOU AND THE PEOPLE IN THE BROADCAST INDUSTRY, THAT THE
18 DEFINITION OF "AMATEURISM" WOULD BE NOT BEING PAID FOR
19 PERFORMANCE.

20 **A.** I DON'T THINK I USED THE WORD "DEFINITION," BUT YES, IT
21 IS -- THAT'S THE -- THE CURRENT BUSINESS MODEL THAT THE
22 BROADCASTERS GENERALLY UTILIZE, THAT IF YOU'RE PAID FOR
23 PERFORMANCE, YOU'RE NOT AN AMATEUR.

24 **Q.** ALL RIGHT. NOW I WANT TO ASK YOU ABOUT ANOTHER DEFINITION
25 OF "AMATEURISM."

1 IF WE CAN LOOK AT PAGE 45 OF MR. PILSON'S REPORT.

2 (DEMONSTRATIVE PUBLISHED.)

3 **BY MR. ISAACSON:**

4 **Q.** IN THE MIDDLE OF THE PAGE, WHERE IT SAYS ITALICIZED
5 "FIRST," AND THE SECOND SENTENCE, "INDEED AS A.P.'S"-- THAT'S
6 ANTITRUST PLAINTIFFS, MAYBE YOU REMEMBER THAT. "INDEED AS
7 ANTITRUST PLAINTIFFS' EXPERTS ADMIT, THIS SENSE OF AVOCATION
8 HAS LONG BEEN AT THE CORE OF THE AMATEUR IDEAL."

9 NOW, "AVOCATION" AS YOU UNDERSTAND IT, DOES THAT REFER TO
10 A HOBBY OR A MINOR PROFESSION?

11 **A.** (REVIEWING DOCUMENT.)

12 I THINK THE FACT IT'S REFERRING BACK TO THE -- THE NOTION
13 THAT STUDENT ATHLETES PLAY FOR THE LOVE OF THE GAME.

14 **Q.** I --

15 **A.** "THIS SENSE OF AVOCATION HAS LONG BEEN AT THE CORE OF THE
16 AMATEUR'S IDEAL."

17 **Q.** RIGHT. I WANT TO KNOW WHAT YOU MEAN WHEN YOU SAY THAT.
18 AND "AVOCATION" IS THE TERM THAT THE NCAA USES. IT'S A TERM
19 THAT YOU USE. AND YOU SAY THAT IT'S BEEN AT THE CORE OF THE
20 AMATEUR IDEAL.

21 WE LOOKED IT UP ON GOOGLE -- MY COLLEAGUE MATT'S GOING TO
22 DO A GOOGLE SEARCH OF "AVOCATION," AND WHAT INSTANTLY COMES
23 UP --

24 **THE COURT:** IF YOU CAN SPELL IT RIGHT.

25 **MR. ISAACSON:** IF HE SPELLS IT RIGHT.

1 Q. YOU CAN SEE THERE IN THE UPPER CORNER "A HOBBY OR MINOR
2 OCCUPATION." AND IF YOU GO THROUGH ALL THESE WEB AND --
3 DICTIONARIES, YOU GET THAT DEFINITION PRETTY MUCH OVER AND
4 OVER AGAIN.

5 DO YOU THINK OF DIVISION I MEN'S FOOTBALL AND MEN'S
6 BASKETBALL AS A HOBBY, AS YOU UNDERSTAND IT?

7 A. NO, I DON'T. AND I PROBABLY WOULD CHANGE THAT WORD BASED
8 ON YOUR OBSERVATION.

9 Q. OKAY. AND YOU WOULD DISAGREE WITH ANYONE AT THE NCAA WHO
10 SAID THAT THE PRINCIPLE OF AMATEURISM SHOULD BE BASED ON THE
11 PRINCIPLE THAT THOSE SPORTS ARE AN AVOCATION?

12 A. I WOULD JUST SUGGEST THAT IT'S NOT MAYBE THE BEST WORD TO
13 USE. I DON'T THINK IT'S A CRITICAL ISSUE.

14 Q. ALL RIGHT. LET'S GO BACK TO YOUR DEFINITION, "PAY FOR
15 PLAY"?

16 A. YEAH.

17 THE COURT: "PAY FOR PERFORMANCE."

18 MR. ISAACSON: "PAY FOR PERFORMANCE."

19 THE WITNESS: YES.

20 BY MR. ISAACSON:

21 Q. PAY FOR PERFORMANCE?

22 A. THANK YOU, YOUR HONOR.

23 THE COURT: WHICH IS ITSELF A LITTLE AMBIGUOUS. I
24 ASSUME WHAT YOU MEAN BY IS PAY -- PAID FOR PERFORMING, NOT --
25 WE'RE NOT TALKING ABOUT PAYING FOR A GIVEN PERFORMANCE.

1 **BY MR. ISAACSON:**

2 **Q.** WOULD YOU TELL ME WHAT YOU -- WHEN YOU SAY "PAY FOR
3 PERFORMANCE," WHAT'S THE "PERFORMANCE" YOU'RE REFERRING TO?

4 **A.** I THINK I-N-G, PAY FOR PERFORMING. IT'S A ONGOING
5 CONTINUOUS ACTIVITY.

6 **Q.** AND ARE YOU REFERRING TO PERFORMING ON THE FIELD, OR ARE
7 YOU REFERRING TO SOMETHING ELSE?

8 **A.** ON THE FIELD, SIR.

9 **Q.** OKAY. AND SO AN -- UNDER YOUR INTERPRETATION OF "PAY FOR
10 PERFORMING," IF SCHOOLS WERE PERMITTED BY THE NCAA TO SHARE
11 LICENSING MONEY FROM BROADCASTS OR OTHER CONTRACTS FOR STUDENT
12 NAMES, IMAGES, AND LIKENESSES, THAT WOULD BE PAY FOR
13 PERFORMING IN YOUR MIND?

14 **A.** YES.

15 **Q.** AND YOUR -- YOUR ARGUMENT ABOUT AMATEURISM DEPENDS UPON
16 THAT ASSUMPTION, THAT SHARING OF WHAT I WILL SAY AS SHORTHAND,
17 NIL MONEY IS A TYPE OF PAY FOR PERFORMING?

18 **A.** WELL, I'VE BEEN FOLLOWING THIS CASE FOR A LONG TIME. AND
19 IT -- TO MY VIEW, PLAINTIFFS' THEORIES HAVE BEEN EVOLVING AND
20 CHANGING OVER QUITE SOME PERIOD OF TIME, SO I'M NOT QUITE
21 SURE --

22 (SIMULTANEOUS COLLOQUY.)

23 **MR. KLAUS:** YOUR HONOR, CAN HE PLEASE FINISH --

24 **THE COURT:** WELL, NO, I DON'T THINK THIS IS THE SORT
25 OF THING --

1 **MR. ISAACSON:** RIGHT.

2 **Q.** I'M ASKING YOU --

3 WE CAN HAVE --

4 **THE COURT:** -- RESPONSIVE TO THE QUESTION.

5 (SIMULTANEOUS COLLOQUY.)

6 **BY MR. ISAACSON:**

7 **Q.** -- SOME OTHER TIME. I WANT TO ASK YOU ABOUT YOUR
8 THEORIES.

9 AND RIGHT NOW, IN TERMS OF "PAY FOR PERFORMING," YOUR
10 ARGUMENT ABOUT "AMATEURISM" DEPENDS UPON THE ASSUMPTION THAT
11 SHARING THAT NIL MONEY THAT WE DISCUSSED IS A TYPE OF PAY FOR
12 PERFORMING.

13 DO I HAVE THAT RIGHT?

14 **A.** WHEN YOU SAY, "SHARING THE NIL MONEY," THAT COULD TAKE ANY
15 NUMBER OF DIFFERENT METHODS OR WAYS OF DOING IT. AND I THINK
16 THERE ARE CERTAIN METHODS THAT CONCERN ME IN TERMS OF THE
17 FABRIC OF COLLEGE SPORTS.

18 **Q.** OKAY. SO ARE THERE CERTAIN -- I WANT TO UNDERSTAND YOUR
19 TESTIMONY ABOUT THIS. SO THERE ARE CERTAIN METHODS OF SHARING
20 NIL MONEY THAT COULD BE -- COME OUT OF A BROADCAST CONTRACT
21 THAT WOULD CONCERN YOU, AND SOME THAT WOULDN'T.

22 WHAT ARE THE ONES -- WHAT ARE THE ONES THAT WOULD CONCERN
23 YOU?

24 **A.** WELL, I'M NOT -- I'M NOT TESTIFYING SOME WOULD, SOME
25 WOULDN'T. BUT YOUR EXPERTS TALKED ABOUT, WELL, WE'LL GIVE ALL

1 THE ATHLETES -- WE'LL CREATE -- THEY'LL ALL GET THE SAME
2 AMOUNT OF MONEY. AND THEN THERE WAS ANOTHER EXPERT WHO TALKED
3 ABOUT NO, WE'LL TAKE 50 PERCENT OF THE MONEY; THE OTHER 50
4 PERCENT WOULD GO TO THE BEST ATHLETES.

5 IT'S -- IT'S, FRANKLY, HARD TO TELL WHICH THEORY THAT
6 YOU'RE TALKING ABOUT.

7 **THE COURT:** OKAY. BUT WE NEED -- WHAT YOU'RE HERE TO
8 TELL US IS YOUR OPINION. SO OTHERS WILL HAVE TO ANALYZE OTHER
9 PEOPLE'S OPINIONS, BUT WHAT HE'S ASKING FOR IS WHAT IS YOUR
10 OPINION.

11 **BY MR. ISAACSON:**

12 **Q.** YEAH, WHEN YOU TELL ME THERE ARE CERTAIN METHODS OF
13 SHARING NIL MONEY THAT COULD COME OUT OF A BROADCAST CONTRACT
14 THAT WOULD CONCERN YOU, I WOULD LIKE TO KNOW WHAT THOSE
15 CERTAIN METHODS ARE.

16 **A.** SO YOU WANT EXAMPLES OF MY -- ONE EXAMPLE --

17 **Q.** I WOULD APPRECIATE THAT.

18 **A.** -- WOULD BE IF -- LET'S TAKE THE HYPOTHETICAL THAT
19 UNIVERSITY OF MICHIGAN DECIDES IT CAN PAY ITS PLAYERS OUT OF
20 THE SO-CALLED NIL MONEY -- PAY ITS QUARTERBACK A MILLION
21 DOLLARS A YEAR, AND MAYBE IT WILL PAY ITS DEFENSIVE BACKS HALF
22 A MILLION DOLLARS AND ITS RUNNING BACK \$400,000, I THINK THAT
23 WOULD HAVE A NEGATIVE IMPACT ON THE PUBLIC'S INTEREST IN
24 COLLEGE SPORTS.

25 **Q.** DO YOU HAVE -- IS ONE OF THE METHODS OF SHARING THAT WOULD

1 CONCERN YOU -- WOULD THAT INCLUDE WHAT'S BEEN CALLED A GROUP
2 LICENSE, A GROUP SHARING OF WHAT -- AMONGST PLAYERS ON A TEAM
3 ON AN EQUAL BASIS?

4 **A.** I THINK THERE AN ISSUE -- A, I DON'T KNOW HOW PRACTICAL
5 THAT IS. BUT ASSUMING THE HYPOTHETICAL, IF -- AND WE DON'T
6 KNOW WHAT THAT NUMBER MIGHT BE, BUT IT'S CONCEIVABLE THAT
7 UNIVERSITY OF MICHIGAN FOOTBALL TEAM -- WELL, LET'S TALK ABOUT
8 BASKETBALL PERHAPS, THAT THE BOSTON COLLEGE BASKETBALL TEAM
9 WILL SHARE REVENUES FROM TELEVISION. AND LO AND BEHOLD, EACH
10 MEMBER OF THE BOSTON COLLEGE BASKETBALL TEAM IS ENTITLED TO
11 \$200,000 AS A RESULT OF SHARING THE NIL MONEY.

12 I JUST THINK THAT'S -- THAT'S A NEGATIVE. I THINK THAT'S
13 A PROBLEM FOR THE PUBLIC.

14 **Q.** AND I'M JUST TRYING TO UNDERSTAND YOUR OPINIONS. SO DOES
15 THE -- YOUR OPINION DEPEND ON THE LEVEL OF THE MONEY, THE
16 \$200,000?

17 **A.** IT'S IMPACTED BY THE LEVEL, YES.

18 **Q.** OKAY. AND WHAT -- DO YOU HAVE A LINE THAT YOU DON'T THINK
19 SHOULD BE CROSSED?

20 **A.** THAT'S A DIFFICULT QUESTION. I HAVEN'T THOUGHT ABOUT THE
21 LINE. AND I --

22 **Q.** WELL --

23 **A.** -- HAVEN'T BEEN ASKED TO RENDER AN OPINION ON THAT. IT'S
24 NOT IN MY REPORT.

25 **Q.** I KNOW THAT, BUT WE'RE ON CROSS-EXAMINATION NOW, AND I'M

1 TRYING TO UNDERSTAND YOUR OPINIONS.

2 DOES THE NUMBER \$25,000 BOTHER YOU FOR EACH ATHLETE ON A
3 TEAM?

4 **A.** I'M NOT SURE. I THINK IT WOULD DEPEND ON WHICH TEAM AND
5 HOW THE MONEY IS -- IS ALLOCATED OR DECIDED UPON. I TELL YOU
6 THAT A MILLION DOLLARS WOULD TROUBLE ME AND \$5,000 WOULDN'T,
7 BUT THAT'S A PRETTY GOOD RANGE.

8 **Q.** ALL RIGHT. THE -- BETWEEN THAT RANGE, YOU'RE NOT SURE
9 WHERE YOU WOULD COME OUT ON DIFFERENT NUMBERS?

10 **A.** NO, I'M NOT.

11 **Q.** OKAY. THE -- THIS -- THE CONCEPT OF A TRUST FUND HAS BEEN
12 DISCUSSED FOR MONEY TO BE SET ASIDE FOR ATHLETES AFTER
13 GRADUATION FROM NIL MONEY.

14 IS THAT A CONCEPT THAT FALLS WITHIN WHAT TROUBLES YOU, OR
15 DOES THAT NOT TROUBLE YOU?

16 **A.** I'M TROUBLED BY IT, BUT NOT, FRANKLY, TO THE EXTENT OF
17 LARGE CASH MONEY MOVING TO INDIVIDUAL PLAYERS 18 YEARS OLD,
18 YES.

19 **Q.** OKAY. NOW, YOUR OPINIONS ABOUT WHY THIS WOULD BE DAMAGING
20 TO THE SPORT ARE BASED ON YOUR -- WHAT YOU THINK VIEWERS
21 APPRECIATE, WHAT THE PUBLIC PERCEIVES. I HAVE THAT CORRECT?

22 **A.** YES. AND I WOULD SUGGEST I'VE BEEN IN THAT BUSINESS
23 MEASURING VIEWERS -- MY WHOLE JOB AT CBS OVER 20 YEARS WAS TO
24 TRY TO FIGURE OUT WHAT THE VIEWERS WANTED TO WATCH AND GIVE IT
25 TO THEM, SO I'M NOT A LAYMAN ON THAT SUBJECT.

1 Q. RIGHT. AND IT'S YOUR OPINION THE PUBLIC DOES NOT WATCH
2 COLLEGE -- I MEAN, IT'S YOUR OPINION THE PUBLIC WATCHES
3 COLLEGE SPORTS BECAUSE THEY PERCEIVE STUDENT ATHLETES AS
4 PLAYING FOR THE LOVE OF THE GAME AND FOR THE VALUE AND
5 OPPORTUNITIES AVAILABLE TO THEM FROM A COLLEGE EDUCATION; IS
6 THAT FAIR?

7 A. ONE OF THE REASONS.

8 Q. OKAY. WHAT -- BUT THAT'S THE REASON THAT YOU THINK WOULD
9 BE JEOPARDIZED IF THERE WAS A SHARING OF NIL MONEY.

10 DO I HAVE THAT CORRECT?

11 A. IT'S ONE OF THE REASONS THAT I THINK WOULD BE JEOPARDIZED.

12 Q. AND YOU THINK ACTUALLY THE VIEWING PUBLIC SUBSCRIBES TO A
13 SENSE OF IDEALISM ABOUT COLLEGE ATHLETES.

14 A. ARE YOU QUOTING ME, OR IS THAT --

15 Q. THAT IS A TERM -- THAT IS A TERM YOU USED IN YOUR REPORT.
16 AND I'M HAPPY TO SHOW IT TO YOU.

17 A. OKAY. I'M NOT UNCOMFORTABLE WITH IT; I JUST WANTED TO
18 KNOW WHERE YOU GOT IT FROM.

19 Q. THE --

20 A. YES, I THINK THE PUBLIC HAS A -- AN APPRECIATION OR A -- A
21 SENSE OF COLLEGE SPORTS THAT IS DIFFERENT FROM PROFESSIONAL
22 AND IT'S AT THE BEDROCK OF THE POPULARITY OF COLLEGE SPORTS.

23 Q. ALL RIGHT. I WANT TO ASK YOU ABOUT THE PUBLIC PERCEPTION
24 OF SPORTS AND TO WHAT -- AND YOU -- YOU THINK THIS PUBLIC
25 PERCEPTION WOULD BECOME EVEN WORSE -- WOULD BE DAMAGED BY THE

1 SHARING OF NIL MONEY IN THE WAYS WE'VE -- IN SOME -- IN
2 CERTAIN -- IN CERTAIN WAYS.

3 **A.** YES. THAT QUESTION, I CAN GIVE A "YES" ANSWER.

4 **Q.** OKAY. AND THAT HINGES ON THE AMERICAN PUBLIC BELIEVING
5 THAT WHAT'S GOING ON RIGHT NOW WITH THESE COLLEGE FOOTBALL
6 PLAYERS AND THESE COLLEGE BASKETBALL PLAYERS IS THEY'RE OUT
7 THERE PLAYING FOR THE LOVE OF THE GAME AND -- AND FOR THAT
8 EDUCATION.

9 **A.** YES. AND THE ANSWER MAY SURPRISE YOU BECAUSE I'M WELL
10 AWARE OF THE SCANDALS THAT HAVE TAKEN PLACE AT NORTH CAROLINA
11 AND IN MIAMI AND COLORADO AND ALL THOSE OTHER SCHOOLS. BUT
12 NOTWITHSTANDING THAT -- AND THE FACT IS THE COLLEGES HAVE
13 REACTED VERY PRO- -- IN A PROACTIVE WAY TO TRY TO PREVENT
14 THAT, BUT IT DOES KEEP COMING UP.

15 BUT I THINK THE PUBLIC STILL BELIEVES -- THE PUBLIC IN
16 GENERAL, THE 300 MILLION FOLKS OUT THERE OUTSIDE THE
17 COURTROOM, STILL HAVE A VISION OF COLLEGE SPORTS THAT IS
18 SIGNIFICANTLY DIFFERENT FROM PROFESSIONAL SPORTS.

19 **Q.** WELL, I WANT TO ASK YOU YOUR OPINION ABOUT WHAT HAPPENS
20 WHEN THE AMERICAN PUBLIC CONFRONTED WITH INFORMATION THAT THE
21 STUDENT ATHLETES ARE NOT STUDENT ATHLETES.

22 YOU MENTIONED MANY FAMOUS COACHES IN YOUR REPORT. YOU
23 MENTIONED BEAR BRYANT. YOU'VE MENTIONED THE UNIVERSITY OF
24 ALABAMA. I WANT TO ASK YOU ABOUT WHAT YOU THINK THE EFFECT ON
25 ALABAMA POPULAR OPINION IS FROM THE STATEMENTS OF BEAR BRYANT.

1 WE CAN SHOW YOU THE STATEMENT.

2 THIS IS FROM HIS BIOGRAPHY, "BEAR, THE HEART AND LIFE AND
3 GOOD TIMES OF ALABAMA'S COACH BRYANT." MAYBE YOU READ IT.

4 AT PAGE 325 --

5 (DEMONSTRATIVE PUBLISHED.)

6 **BY MR. ISAACSON:**

7 **Q.** -- HE SAYS, "I USED TO GO ALONG WITH THE IDEA THAT
8 FOOTBALL PLAYERS ON SCHOLARSHIP WERE STUDENT ATHLETES," QUOTE,
9 "WHICH IS WHAT THE NCAA CALLS THEM, MEANING A STUDENT FIRST
10 AND ATHLETE SECOND. WE WERE KIDDING OURSELVES, TRYING TO MAKE
11 IT MORE PALATABLE TO THE ACADEMICIANS. WE DON'T HAVE TO SAY
12 THAT, AND WE SHOULDN'T. AT THE LEVEL WE PLAY, THE BOY IS
13 REALLY AN ATHLETE FIRST AND A" SECOND -- "A STUDENT SECOND."

14 DO YOU THINK THAT TYPE OF INFORMATION AFFECTS THE
15 UNIVERSITY OF ALABAMA FOOTBALL FANS?

16 DO YOU THINK THAT CAUSES THEM TO -- FOR RATINGS TO GO DOWN
17 FOR THEIR GAMES?

18 **A.** WE'RE TALKING ABOUT THE MOST -- THE STRONGEST POSSIBLE
19 SCHOOL IN TERMS OF PRO FOOTBALL. I READ WHAT BEAR SAYS, BUT
20 I -- I THINK, FRANKLY, THE UNIVERSITY OF ALABAMA FOOTBALL
21 ADVOCATES FOLLOW THEIR TEAM WIN OR LOSE, PAYING THEM OR NOT.

22 BUT THAT'S NOT THE AUDIENCE I WAS TALKING ABOUT.

23 **Q.** ALL RIGHT.

24 **A.** THERE IS A SUBSTANTIAL AUDIENCE BEYOND UNIVERSITY OF
25 ALABAMA.

1 Q. ALL RIGHT. LET'S MOVE OUTSIDE THE -- ALABAMA.

2 YOU'RE, OF COURSE, FAMILIAR WITH THE KNIGHT COMMISSION.

3 A. YES. I'VE SPOKEN AT THE KNIGHT COMMISSION SEVERAL TIMES.

4 Q. MAYBE YOU COULD JUST EXPLAIN IN A FEW SENTENCES WHAT THE
5 KNIGHT COMMISSION IS.

6 A. WELL, IT'S A -- A IT'S GROUP OF INDIVIDUALS WHO HAVE
7 GOTTEN TOGETHER TO FORM KIND OF AN OVERSIGHT COMMITTEE OF
8 COLLEGE ATHLETICS COMPOSED OF SCHOOL PRESIDENTS, FORMER
9 COMMISSIONERS -- IT'S A VERY HIGH-LEVEL GROUP OF -- OF
10 INDIVIDUALS.

11 Q. ALL RIGHT. I WANT TO CALL UP A DOCUMENT FROM THE KNIGHT
12 COMMISSION WEBSITE. THIS IS -- IF YOU BLOW UP THE TOP THERE,
13 THIS IS -- FROM JANUARY -- FEBRUARY 2006. SO THIS IS --

14 (DEMONSTRATIVE PUBLISHED.)

15 BY MR. ISAACSON:

16 Q. -- SOME TIME AGO. THE REPORTING ON ATTITUDES, AND THIS IS
17 FROM -- THIS IS FROM THE KNIGHT COMMISSION. AND I WANT TO ASK
18 YOU HOW THIS SQUARES WITH THE OPINIONS YOU'RE GIVING.

19 IF YOU GO TO THE FIRST BOLDED STATEMENT, "AMERICANS
20 BELIEVE --"

21 (DEMONSTRATIVE PUBLISHED.)

22 BY MR. ISAACSON:

23 Q. "AMERICANS BELIEVE COLLEGE SPORTS ARE LIKE PROFESSIONAL
24 SPORTS." THIS IS A REPORT OF A TELEPHONE POLL BY THE KNIGHT
25 COMMISSION. "BY A TWO-TO-ONE MARGINS (SIC), AMERICANS BELIEVE

1 THAT COLLEGE SPORTS ARE MORE LIKE PROFESSIONAL SPORTS, 60
2 PERCENT, THAN AMATEUR SPORTS, 31 PERCENT."

3 DOES HAVE ANY EFFECT ON THE OPINIONS YOU'RE GIVING IN THIS
4 CASE?

5 **MR. KLAUS:** OBJECTION, YOUR HONOR. I DON'T KNOW IF
6 THIS IS AN EXHIBIT IN THE CASE --

7 **MR. ISAACSON:** NO, IT'S NOT.

8 **MR. KLAUS:** -- ONE SENTENCE OUT OF A DOCUMENT. COULD
9 WE -- COULD WE SEE THE ENTIRETY OF THE DOCUMENT, SIR?

10 **MR. ISAACSON:** OH, SURE. YEAH.

11 (PAUSE IN THE PROCEEDINGS.)

12 **MR. ISAACSON:** I'LL GIVE YOU MINE.

13 **MR. KLAUS:** THANK YOU.

14 **MR. ISAACSON:** SURE.

15 **Q.** DOES THIS AFFECT ANY OF YOUR OPINIONS IN THIS CASE?

16 **A.** NO.

17 **Q.** DO YOU THINK THIS IS CONSISTENT -- THIS IS -- THERE'S BEEN
18 A LOT MORE MONEY GONE INTO COLLEGE SPORTS SINCE 2006; IS THAT
19 FAIR TO SAY?

20 **A.** YES. THAT'S FAIR.

21 **Q.** OKAY. THE --

22 YOU CAN KEEP IT.

23 IS THIS CONSISTENT WITH YOUR UNDERSTANDING OF PUBLIC
24 PERCEPTION OF COLLEGE SPORTS?

25 **A.** LET ME POINT OUT I WAS TALKING ABOUT THE TELEVISION

1 AUDIENCE. I WAS TALKING ABOUT THE IMPACT THAT THIS MIGHT HAVE
2 ON TELEVISION. AND I'VE STUDIED THE AUDIENCES THAT WATCH
3 COLLEGE SPORTS AND WATCH PROFESSIONAL SPORTS. THEY ARE
4 SOMEWHAT DIFFERENT. THERE ARE OBVIOUSLY SOME CROSSOVER AND
5 SOME OVERLAP. I BELIEVE PEOPLE CONTINUE TO WATCH COLLEGE
6 SPORTS IN LARGE NUMBERS BECAUSE IT IS DIFFERENTIATED FROM
7 PROFESSIONAL SPORTS, AND THE FACT THAT COLLEGE -- THIS
8 LANGUAGE HERE, "ARE MORE LIKE PROFESSIONAL SPORTS THAN AMATEUR
9 SPORTS" DOESN'T SAY THEY ARE PROFESSIONAL SPORTS.

10 AND IF COLLEGE MOVED TO A SITUATION WHERE IT WAS A
11 PROFESSIONAL SPORT, I DON'T THINK THIS SURVEY WOULD BE
12 RELEVANT.

13 Q. ALL RIGHT. THE ONLY SURVEY RESULTS THAT ARE FOUND
14 ANYWHERE IN YOUR REPORTS ARE THE SURVEY RESULTS FROM
15 MR. DENNIS, RIGHT?

16 A. I BELIEVE THOSE ARE THE ONLY ONES I'VE CITED, YES.

17 Q. ALL RIGHT. YOU'VE -- YOU'VE NOT BROUGHT FORTH ANY OTHER
18 SURVEYS, POLLS, CONSUMER INFORMATION. YOU'RE JUST SPEAKING
19 FROM YOUR BACKGROUND, NOT PROVIDING ANY CONSUMER RESEARCH,
20 RIGHT?

21 A. MY BACKGROUND AS SOMEWHAT REINFORCED BY THE DENNIS REPORT,
22 YES.

23 MR. ISAACSON: JUST ONE MORE -- THE NEXT BOLDED THING
24 IN THE KNIGHT COMMISSION DOCUMENT.

25 (DEMONSTRATIVE PUBLISHED.)

1 **BY MR. ISAACSON:**

2 **Q.** "COMMERCIAL INTERESTS OFTEN PREVAIL OVER ACADEMIC VALUES
3 AND TRADITION. THREE IN FIVE AMERICANS, 61 PERCENT, SAY THAT
4 COLLEGE SPORTS HAVE BECOME TOO COMMERCIALIZED. THREE IN FOUR
5 AMERICANS AGREE THAT COMMERCIAL INTERESTS OFTEN PREVAIL OVER
6 ACADEMIC VALUES AND TRADITIONS."

7 I WON'T GO ON. YOU CAN SEE THE REST AND READ IT TO
8 YOURSELF.

9 DOES THAT HAVE ANY EFFECT ON ANY OF YOUR OPINIONS IN THIS
10 CASE?

11 **A.** SURELY DOES, BECAUSE IF WE GO DOWN THE ROAD OF PAYING THE
12 PLAYERS, THAT -- THOSE PERCENTAGES WOULD INCREASE, SO THAT
13 WOULD BE A NEGATIVE IMPACT OF PAYING THE PLAYERS. IT WOULD BE
14 MORE COMMERCIALIZED, MORE PEOPLE WOULD BE TURNED OFF, AND
15 THAT'S WHAT I WAS TALKING ABOUT.

16 **Q.** ALL RIGHT. WELL, LET ME UNDERSTAND THAT. THIS IS 2006.
17 THE SPORT WE AGREE HAS BECOME MORE COMMERCIALIZED. 74 PERCENT
18 AGREE WITH THE STATEMENT THAT COMMERCIAL INTERESTS OFTEN
19 PREVAIL OVER ACADEMIC VALUES AND TRADITIONS.

20 BASED ON YOUR EXPERIENCE IN THE INDUSTRY, WHERE DO YOU
21 THINK THAT 74 PERCENT NUMBER IS NOW?

22 **A.** WELL, I WOULD SAY OFF HAND IT'S ALL PRETTY SAD, ISN'T IT?
23 I MEAN, THAT'S UNFORTUNATE THAT THAT'S WHERE (SIC) SOME OF THE
24 PUBLIC FEELS. BUT I FEEL IF YOU GO DOWN THE FINAL STEP AND
25 SAY, ALL RIGHT, LET'S JUST BE FULLY PROFESSIONAL. LET'S PAY

1 THE PLAYERS AND FINISH -- I THINK YOU'D LOSE A PORTION OF YOUR
2 AUDIENCE, WHICH IS WHAT I BEEN TESTIFYING TO FOR THE LAST
3 HOUR.

4 Q. ALL RIGHT. HAVE YOU INTERVIEWED ANYBODY AT THE NCAA ABOUT
5 YOUR OPINIONS ABOUT PUBLIC PERCEPTION?

6 A. NOT RECENTLY.

7 Q. ALL RIGHT.

8 THE -- HAVE YOU REVIEWED ANY OF THE DOCUMENTS IN THE CASE
9 THAT TALK ABOUT THE NCAA'S VIEWS OF PUBLIC PERCEPTION?

10 A. I'M SORRY. HAVE I REVIEWED WHAT DOCUMENTS?

11 Q. HAVE YOU REVIEWED ANY -- THE NCAA HAS MADE DOCUMENTS
12 AVAILABLE IN THIS LITIGATION. AND YOU'RE FAMILIAR ENOUGH WITH
13 LITIGATION TO KNOW -- TO KNOW ABOUT DOCUMENT PRODUCTION. HAVE
14 YOU REVIEWED ANY OF THOSE DOCUMENTS TO -- TO SORT OF TEST YOUR
15 OPINIONS AGAINST WHAT THE NCAA THINKS ABOUT PUBLIC PERCEPTION?

16 A. NO, SIR, I DON'T THINK I HAVE.

17 MR. ISAACSON: CAN WE CALL UP EXHIBIT 424?

18 (EXHIBIT PUBLISHED.)

19 BY MR. ISAACSON:

20 Q. ALL RIGHT. LET'S JUST SHOW MR. PILSON WHAT THIS IS AT THE
21 TOP. THIS IS A DOCUMENT FROM THE NCAA. IT'S A -- AN EMAIL
22 SENT FROM WALLY RENFRO TO MARK EMMERT.

23 NOW, YOU KNOW BOTH OF THOSE INDIVIDUALS?

24 A. I DO.

25 Q. OKAY. AND IN THIS REPORT, IF YOU GO TO PAGE 2, AT THE

1 BOTTOM, THERE'S A DISCUSSION OF COMMERCIAL EXPLOITATION.

2 (DEMONSTRATIVE PUBLISHED.)

3 **BY MR. ISAACSON:**

4 **Q.** AND THIS IS RIGHT AT THE -- MAYBE YOU RECOGNIZE THESE
5 DATES IN -- IN 2010. THIS IS RIGHT WHEN DR. EMMERT IS TAKING
6 OVER AT THE -- AT THE NCAA. AND MR. RENFRO, WHO IS THE -- I
7 THINK YOU KNOW -- THE MULTIPLE DECADES SENIOR POLICY ADVISER
8 AND SENIOR EXECUTIVE AT THE NCAA, IS WRITING TO DR. EMMERT.

9 "COMMERCIAL EXPLOITATION, THIS IS GOING TO BE ONE OF THE
10 MORE DIFFICULT ISSUES IN THE NEAR TERM. THERE'S A GENERAL
11 SENSE THAT INTERCOLLEGIATE ATHLETICS IS AS THOROUGHLY
12 COMMERCIALIZED AS PROFESSIONAL SPORTS. SOME BELIEVE THAT
13 ATHLETICS DEPARTMENTS STUDY HOW TO EMULATE THE PROS ON
14 MARKETING THEIR SPORTS, PRIMARILY FOOTBALL AND BASKETBALL, AND
15 SOMETIMES LEAD THE WAY --"

16 **THE COURT:** IF YOU WANT TO READ THE WHOLE REST OF IT
17 LET'S JUST READ IT TO OURSELVES, SHALL WE?

18 **MR. ISAACSON:** OKAY.

19 IF I CAN JUST READ HIM THE LAST SENTENCE -- MAYBE I
20 SHOULD HAVE STARTED THERE. IT'S A FAIRNESS ISSUE, AND ALONG
21 WITH THE NOTION -- THIS CONTINUES ON THE NEXT PAGE -- THAT
22 ALONG WITH THE NOTION THAT ATHLETES ARE STUDENTS IS THE GREAT
23 HYPOCRISY OF INTERCOLLEGIATE ATHLETICS.

24 DO YOUR VIEWS SQUARE WITH MR. RENFRO'S AS TO THE
25 PERCEPTION OF THE NCAA?

1 **MR. KLAUS:** OBJECTION, YOUR HONOR, TO THE
2 CHARACTERIZATION -- MR. RENFRO'S VIEWS. HE CAN ASK HIM --

3 **THE COURT:** REPHRASE.

4 **MR. KLAUS:** -- AGREES WITH THE STATEMENT.

5 **THE COURT:** REPHRASE.

6 **BY MR. ISAACSON:**

7 **Q.** DO YOU AGREE WITH MR. RENFRO'S STATEMENTS?

8 **A.** WHICH STATEMENT?

9 **Q.** THE STATEMENT IN THE PARAGRAPH ON COMMERCIAL EXPLOITATION
10 THAT I BEGAN READING TO YOU AND THAT ENDS WITH "IT IS A
11 FAIRNESS ISSUE" AND ALONG WITH THE NOTION THAT "ATHLETES ARE
12 STUDENTS IS THE GREAT HYPOCRISY OF INTERCOLLEGIATE ATHLETICS."

13 **A.** I DISAGREE WITH IT.

14 **Q.** OKAY.

15 **A.** AND I'LL TELL YOU WHY QUICKLY. THAT WE TEND TO FOCUS ON
16 THE O'BANNONS OF THE WORLD, WHO ARE SUPERB ATHLETES, GO ON TO
17 PLAY PROFESSIONALLY.

18 THERE IS A WHOLE WORLD OF COLLEGE ATHLETICS THAT'S TAKING
19 PLACE HERE IN THE U.S.A. THAT IS NOT AT THAT LEVEL, AND THE
20 PLAYERS ARE NOT AT THAT LEVEL. AND THE PUBLIC, I THINK,
21 FOCUSES ON NOT ONLY ON THE ALABAMA'S AND -- AND THE MICHIGAN'S
22 AND THE SOUTHERN CALIFORNIA, BUT THERE ARE 120 OR SO
23 DIVISION I SCHOOLS AND HUNDREDS OF DIVISION II AND III
24 SCHOOLS.

25 AND I -- MAYBE I'M NAIVE. MAYBE I BEEN READING THE WRONG

1 STUFF. BUT I TEND TO -- I STILL BELIEVE, NOTWITHSTANDING
2 MR. RENFRO, THAT THE PUBLIC HAS A DIFFERENT PERCEPTION OF
3 COLLEGE ATHLETICS THAN PROFESSIONAL. AND IF WE GO DOWN THE
4 ROAD OF PAYING THE PLAYERS SUBSTANTIAL SUMS, THAT I THINK IN A
5 SENSE ALL WILL BE LOST AND WE'RE JUST DEVELOPING A CADRE OF
6 HIRED GUNS WHO WILL NOT HAVE ANY LINK TO THE COLLEGES OTHER
7 THAN SHOWING UP FOR PRACTICE AND GAMES.

8 **Q.** DO YOU QUESTION YOUR OPINIONS ABOUT PUBLIC PERCEPTION
9 BECAUSE MR. RENFRO, SO LONG WITH THE NCAA, WRITES "THE PUBLIC
10 WOULD GENERALLY AGREE THAT ALL" -- "ALL THIS HAS TAKEN PLACE
11 AT THE EXPENSE OF THE STUDENT ATHLETE WHOSE PARTICIPATION IS
12 EXPLOITED TO MAKE ANOTHER BUCK FOR A BIGGER STADIUM, THE
13 COACHES, THE ADMINISTRATOR, OR FOR OTHER TEAMS WHO CAN'T PAY
14 THEIR OWN WAY."

15 DOES THAT CAUSE -- CHANGE -- HAVE ANY EFFECT ON YOUR
16 OPINIONS?

17 **MR. KLAUS:** SAME OBJECTION, YOUR HONOR, IF HE'S
18 SAYING THIS IS MR. RENFRO AND THE NCAA. HE CAN ASK HIM IF HE
19 AGREES WITH A STATEMENT LIKE THAT AND WHAT HIS OPINION ON IT
20 IS, BUT HE SHOULDN'T --

21 **THE COURT:** QUESTION IS WHETHER IT CHANGES HIS
22 OPINION. AND IF IT WAS PHRASED AS RENFRO'S OPINION, I GUESS
23 WE CAN --

24 **MR. ISAACSON:** NO, I DID NOT.

25 **Q.** I SAID MR. -- I SAID MR. RENFRO WROTE THAT. AND I'M

1 ASKING THE FACT THAT MR. RENFRO WROTE THAT, DOES THAT AFFECT
2 YOUR OPINION IN THIS CASE.

3 **A.** NO.

4 **Q.** OKAY. NOW THAT SAME MONTH OF OCTOBER 2010 --
5 IF WE CAN LOOK AT PX2074.

6 (EXHIBIT PUBLISHED.)

7 **BY MR. ISAACSON:**

8 **Q.** ALL RIGHT. LET ME SHOW YOU THE FRONT OF THIS. THIS IS
9 ANOTHER NCAA DOCUMENT. AND THIS IS --

10 (DEMONSTRATIVE PUBLISHED.)

11 **BY MR. ISAACSON:**

12 **Q.** -- AN EMAIL ATTACHING A NCAA STRATEGIC COMMUNICATION PLAN,
13 THE SAME MONTH AS MR. RENFRO WAS TALKING TO DR. EMMERT.

14 AND IF WE GO TO THE NEXT PAGE AND LOOK AT THE TITLE, WE
15 CAN SEE NCAA STRATEGIC COMMUNICATION PLAN, OCTOBER 1ST, 2010.

16 (DEMONSTRATIVE PUBLISHED.)

17 **BY MR. ISAACSON:**

18 **Q.** AND IN THE SECOND PARAGRAPH -- I WON'T BELABOR THIS, BUT
19 THEY CALL THIS PLAN "A CALL TO ACTION." AND THEY GO THROUGH
20 THEIR MESSAGING FOR MANY PAGES. I WON'T ASK YOU -- I WON'T
21 ASK YOU TO REVIEW THAT. BUT I WANT TO GO TO PAGE 2074-11, THE
22 LAST PART OF THIS REPORT, "HOW WE NEED TO CHANGE."

23 ALL RIGHT. AND THIS SECTION TALKS ABOUT -- THIS IS THE
24 NCAA'S STRATEGIC COMMUNICATIONS PLAN TALKING ABOUT THE
25 CRITICISMS THEY FACE.

1 AND YOU CAN SEE IN PART FOUR -- AND I'LL JUST BRIEFLY
2 REFERENCE THIS IN THE -- THE SECOND SENTENCE, "ONE OF THE MOST
3 DAMAGING CRITICISMS WE FACE IS THE HYPOCRISY IN WHICH WE
4 OPERATE. SOME OF THIS IS DUE TO MEDIA AND THE PUBLIC NOT
5 CLEARLY UNDERSTANDING THE ISSUES." IT GOES ON TO SAY "THAT
6 MAY NOT CHANGE MUCH, BUT WE ARE A FAR BETTER PLACE BY
7 AGGRESSIVELY AND DIRECTLY TELLING OUR STORY."

8 ALSO GOES ON TO SAY THAT "SOME OF IT IS ALSO THE WAY IN
9 WHICH THE NCAA AND ITS MEMBERS DO BUSINESS."

10 SO READ THAT PARAGRAPH, SIR, AND TELL ME WHETHER THAT
11 SQUARES WITH YOUR UNDERSTANDING OF PUBLIC PERCEPTION OF
12 COLLEGE SPORTS IN THE NCAA.

13 **A.** (REVIEWING DOCUMENT.)

14 I'M SORRY, SIR. THIS IS SOME GENTLEMAN'S OPINION, AND I
15 DON'T EVEN KNOW WHOSE IT IS. I'M LOOKING AT IT FOR THE FIRST
16 TIME.

17 **Q.** YES.

18 **A.** I CERTAINLY AGREE THAT THERE HAVE BEEN DAMAGING CRITICISMS
19 OF THE NCAA, CERTAINLY AGREE THE NCAA OVER A PERIOD OF YEARS
20 COULD HAVE ACTED IN -- IN A MORE PROACTIVE WAY IN TERMS OF
21 SOME OF THESE ISSUES.

22 BUT I BEEN AROUND AS LONG AS WALLY RENFRO, SO I DON'T HAVE
23 TO DEFER TO HIS OPINION. THIS DOESN'T CHANGE MY OPINION.
24 THIS IS JUST A CRITICISM HOW THE NCAA MAY HAVE OPERATED FROM
25 ONE OF THEIR EMPLOYEES.

1 Q. RIGHT. NO ONE'S ASKING YOU TO DEFER TO ANYONE, SIR. I'M
2 JUST TRYING TO FIND OUT IF YOUR OPINIONS SQUARE WITH THAT OF
3 THE NCAA.

4 A. "SQUARE" IS -- I DON'T UNDERSTAND THE USE OF THAT TERM.

5 Q. LET ME ASK YOU ABOUT THE SECOND PARAGRAPH, AND THEN --
6 THEN WE'LL BE DONE WITH THIS.

7 A. OKAY.

8 Q. THERE'S A -- THERE'S A LONG LIST OF ISSUES THAT AFFECT HOW
9 INTERCOLLEGIATE ATHLETICS IS VIEWED. AND THEN THERE'S ALL
10 THESE BULLET POINTS, SUCH AS THE 12TH GAME IN DIVISION I
11 FOOTBALL. YOU KNOW THAT'S WHEN THEY ADDED ANOTHER GAME TO THE
12 SEASON. ONE AND DONE RECRUITING IN BASKETBALL. YOU KNOW,
13 THAT THAT'S WHEN COLLEGE BASKETBALL PLAYERS LEAVE AFTER THEIR
14 FIRST YEAR.

15 A. FAMILIAR WITH ALL OF THESE.

16 Q. CONFERENCE REALIGNMENTS, RULES MOVING CONFERENCES,
17 MULTI-MILLION-DOLLAR COACHES SALARIES, RECRUITMENT OF
18 QUESTIONABLE STUDENT ATHLETES, VIOLATIONS OF NCAA RULES,
19 COACH/ADMINISTRATION MISCONDUCT, STUDENT ATHLETE MISCONDUCT.
20 THE FACILITIES ARMS RACE. THAT MEANS BUILDING ALL THOSE BIG
21 FACILITIES --

22 A. I KNOW WHAT IT MEANS, YES, SIR.

23 Q. AND ACADEMIC INTEGRITY AND INITIAL ELIGIBILITY.

24 DO YOU AGREE THAT ALL OF THOSE ISSUES AFFECT HOW
25 INTERCOLLEGIATE ATHLETICS IS VIEWED BY T.V. WATCHERS?

1 **A.** NOT NECESSARILY ALL OF THEM, AND NOT NECESSARILY IN -- IN
2 THIS ORDER.

3 I'M NOT SURE THE 12TH GAME, FOR EXAMPLE, AFFECTS T.V.
4 VIEWERS, OTHER THAN THE, GOOD, WE HAVE ANOTHER GAME TO WATCH
5 ON TELEVISION.

6 SO I DON'T -- THE MULTI-MILLION-DOLLAR COACH SALARIES, I'D
7 BE HAPPY TO ADDRESS THAT SEPARATELY. I DON'T THINK THAT HAS
8 MUCH TO DO WITH -- I THINK THERE'S A SEPARATE MARKET FOR
9 COACHES SALARIES.

10 **Q.** I'M NOT ASKING YOU ABOUT MARKETS, SIR. WE'RE JUST TALKING
11 ABOUT PUBLIC PERCEPTIONS NOW.

12 **A.** YOU'RE ASKING ME WHETHER I AGREE TO ALL OF THIS. AND THE
13 ANSWER IS YES, SOME OF IT IS -- IS VALID CRITICISM, BUT IT
14 DOESN'T CHANGE MY VIEW ABOUT THE PUBLIC'S PERCEPTION OF
15 COLLEGE ATHLETICS.

16 **Q.** I'M NOT EVEN ASKING YOU IF IT'S VALID CRITICISM OR NOT.

17 I'M ASKING YOU WHETHER ALL OF -- WHETHER YOU BELIEVE THOSE
18 FACTORS AFFECT VIEWERS' PERCEPTIONS OF COLLEGE SPORTS?

19 **A.** SOME DO, SOME DON'T, SIR.

20 **Q.** OKAY.

21 **THE COURT:** I DON'T KNOW -- THIS ONE ABOUT CONFERENCE
22 REALIGNMENT THAT WAS FRAMED PUBLICLY AS A MONEY GRAB, I DON'T
23 KNOW WHAT THAT MEANS.

24 **BY MR. ISAACSON:**

25 **Q.** GO AHEAD AND EXPLAIN.

1 **A.** WHAT'S HAPPENED IN COLLEGE SPORTS, YOUR HONOR, IS THAT
2 SCHOOLS HAVE BEEN MOVING TOWARDS THE BIG T.V. MONEY. AND
3 TELEVISION HAS PROVIDED MORE MONEY FOR THE BIGGER CONFERENCES
4 LIKE THE BIG PAC 12, BIG TEN, BIG 12. THESE ARE THE MAJOR
5 CONFERENCES. AND SCHOOLS HAVE BEEN MOVING FROM SMALLER
6 CONFERENCES WHERE THEY GET LESS MONEY TO THE LARGER
7 CONFERENCES WHERE THEY GET MORE MONEY.

8 MARYLAND MOVED, RUTGERS MOVED, AND A NUMBER OF DIFFERENT
9 SCHOOLS. THE PAC TEN BECAME THE PAC 12 WHEN COLORADO AND UTAH
10 MOVED TO THE PAC 12. SO SCHOOLS HAVE BEEN GRAVITATING TO
11 WHERE THE MONEY IS, WHICH SHOULDN'T SURPRISE ANYONE.

12 **Q.** RIGHT.

13 **THE COURT:** THEY CAN BE IN WHATEVER CONFERENCE THEY
14 WANT TO BE?

15 **MR. ISAACSON:** YES.

16 **THE WITNESS:** YES, WITH CERTAIN GEOGRAPHIC
17 LIMITATIONS. AND SOMETIMES THEY'RE LOCKED INTO A CONFERENCE
18 FOR SEVERAL YEARS SO THEY CAN'T MOVE. SOMETIMES THEY MOVE
19 ANYWAY; THEY GET SUED. THERE'S A VERY ACTIVE MARKET, WHICH,
20 FRANKLY, HAS SLOWED DOWN IN THE LAST TWO OR THREE YEARS.

21 BUT WE WERE -- WE WERE EXPERIENCING WHERE SCHOOLS --
22 VARIOUS SCHOOLS WERE MOVING TWO OR THREE A YEAR TO
23 CONFERENCES.

24 **BY MR. ISAACSON:**

25 **Q.** I THINK THIS IS UNDISPUTED TERRITORY. THEY CAN BE LOCKED

1 INTO CONTRACTS. I DON'T KNOW ABOUT THE GEOGRAPHICALLY
2 ANYMORE, BUT --

3 **A.** STILL A FACTOR.

4 **Q.** -- TULANE'S IN THE BIG EAST OR THE UPPER EAST --

5 **A.** NOT THE BIG EAST. THAT'S NOW THE AAC --

6 **MR. KLAUS:** ARE THERE QUESTIONS?

7 (SIMULTANEOUS COLLOQUY.)

8 **THE COURT:** -- SPORTS TALK.

9 **MR. ISAACSON:** I WANT TO MAKE SURE --

10 **Q.** MAYBE YOU CAN EXPLAIN TO THE -- TO THE JUDGE WHAT HAPPENS.

11 **THE COURT:** I -- THAT'S ENOUGH. THAT'S ALL I NEED.

12 GO AHEAD, ASK ANOTHER QUESTION.

13 **MR. ISAACSON:** ALL RIGHT.

14 **Q.** NOW, YOU'VE WRITTEN FOR SOME TIME ABOUT THIS AREA AND
15 THE -- AND THE WAY THAT THE NCAA'S PERCEIVED BY THE PUBLIC.
16 YOU DID THAT WHEN YOU WERE AT CBS BECAUSE YOU WERE ENTERING
17 BIG MONEY CONTRACTS WITH -- WITH THE NCAA; IS THAT A FAIR
18 STATEMENT?

19 **A.** YOU'RE NOT GOING TO GET ME TO QUARREL WITH STUFF THAT I'VE
20 WRITTEN. I'LL HAVE TO LIVE BY THAT.

21 **Q.** AND YOU'VE WRITTEN IN THE PAST ABOUT PROPOSALS THAT
22 WOULD -- PROPOSALS YOU WOULD MAKE THAT WOULD RESTORE THE
23 BALANCE BETWEEN EDUCATION, ATHLETICS, AND HOW PRODUCE TO "WIN
24 AT ALL COST" ATTITUDE AT COLLEGES AND UNIVERSITIES TODAY.

25 **A.** I'M NOT SURE THAT WAS A PROPOSAL THAT I WOULD MAKE, BUT IT

1 WAS SOMETHING THAT I WAS SUGGESTING. IF YOU'RE TALKING THE
2 *NEW YORK TIMES* ARTICLE, THAT --

3 Q. YES.

4 A. -- SHOULD BE CONSIDERED BY THE COLLEGES. AND, IN FACT, I
5 WAS ECHOING THE EXECUTIVE DIRECTOR DICK SCHULTZ'S IDEAS,
6 BASICALLY SAYING I THOUGHT SOME OF THEM WERE GOOD IDEAS.

7 Q. BUT YOU WERE -- YOU ACTUALLY WOULD USE THE PHRASE "THE WIN
8 AT ALL COSTS ATTITUDE AT COLLEGES AND UNIVERSITIES TODAY."

9 YOU DID THAT IN 1990?

10 A. YES, THAT WAS 1990. YEAH.

11 Q. AND THOSE SAME CRITICISMS EXIST TODAY IN YOUR VIEW?

12 A. A LOT OF THEM DO, YES.

13 Q. OKAY. IN FACT, YOU'VE SAID YOUR VIEWS TODAY ON THIS ARE
14 PRETTY MUCH WHAT YOU EXPRESSED IN 1990.

15 A. WHERE DID I SAY THAT?

16 Q. WELL, YOU SAID IT AT YOUR DEPOSITION. IF YOU WANT ME TO
17 SHOW IT TO YOU --

18 A. OH, OKAY. YES, I'LL ACCEPT IT, THEN.

19 Q. A QUICK DETOUR INTO LITTLE LEAGUE, USGA, HIGH SCHOOL
20 TELEVISED -- TELEVISED HIGH SCHOOL GAMES. THE --

21 SIR, YOU DON'T -- YOU WERE HERE FOR DR. NOLL. YOU HEARD
22 DESCRIPTIONS ABOUT MARKET POWER, RELEVANT MARKETS. YOU DON'T
23 HAVE ANY BACKGROUND TO GIVE ANY OPINION ABOUT WHETHER LITTLE
24 LEAGUE HAS MARKET POWER OR IS A RELEVANT MARKET, THE USGA HAS
25 MARKET POWER OR IS A RELEVANT MARKET, OR WHETHER ANY

1 INDIVIDUAL HIGH SCHOOL AMATEUR ORGANIZATION HAS ANY OF THOSE
2 THINGS, RIGHT?

3 **A.** YES, I'M NOT OFFERING MY TESTIMONY AS AN ECONOMIST.

4 **Q.** CORRECT.

5 AND YOU DON'T HAVE ANY INFORMATION ABOUT WHETHER THERE'S A
6 CONSENSUS OF ECONOMICS THAT LITTLE LEAGUE IS A CARTEL. YOU
7 DON'T KNOW ANYTHING ABOUT THAT?

8 **A.** NO, I DON'T.

9 **Q.** OKAY.

10 THE -- AND I WANT TO ASK YOU ABOUT -- AGAIN, RETURNING TO
11 THE CONCEPTS OF AMATEURISM AND PROFESSIONALISM, IS IT YOUR
12 VIEW THAT IF WE TAKE THE PLAYERS OUT OF THE EQUATION -- WITH
13 THE EXCEPTION OF THE PLAYERS, DO YOU AGREE THAT THE NCAA AND
14 ITS BIG SCHOOL MEMBERS HAVE ADOPTED A PROFESSIONAL BUSINESS
15 MODEL FOR THEIR FBS FOOTBALL PROGRAMS AND DIVISION I MEN
16 BASKETBALL PROGRAMS.

17 **MR. KLAUS:** OBJECTION, YOUR HONOR. I THOUGHT THAT
18 THE NATIONAL -- THE NLRB DECISION WAS THE SUBJECT OF A MOTION
19 IN LIMINE THAT YOUR HONOR HAD RULED ON.

20 **MR. ISAACSON:** I DIDN'T SAY "NLRB."

21 **THE COURT:** THE COURT REPORTER THOUGHT HE DID, BUT --

22 **MR. ISAACSON:** OH, I -- I MEANT TO SAY FB -- I SAID
23 FBS.

24 **THE COURT:** REPHRASE IT. SAY IT OVER.

25 **MR. ISAACSON:** IT WOULD BE A VERY CONFUSING QUESTION

1 WITH THE NLRB IN IT, SO I -- I -- SO I --

2 Q. WITH THE EXCEPTION OF THE PLAYERS, WHO YOU'VE SAID ARE
3 AMATEURS, DO YOU AGREE THAT THE NCAA AND ITS BIG SCHOOL
4 MEMBERS HAVE ADOPTED A PROFESSIONAL BUSINESS MODEL FOR THEIR
5 FBS FOOTBALL AND DIVISION I MEN'S BASKETBALL PROGRAMS?

6 A. I CONFESS I DON'T KNOW WHAT MODEL YOU'RE REFERRING TO.

7 Q. OKAY. DO YOU THINK THAT WITH THE EXCEPTION OF THE PLAYERS
8 THAT DIVISION I MEN'S BASKETBALL AND FOOTBALL IS BEING RUN
9 LIKE A PROFESSIONAL LEAGUE?

10 A. NO, I THINK IT'S BEING RUN AS A COLLEGE CONFERENCE AND
11 LEAGUE.

12 Q. DO YOU THINK THERE ARE ANY ASPECTS OF PROFESSIONALISM THAT
13 HAVE BECOME PART OF DIVISION I MEN'S BASKETBALL AND FOOTBALL
14 WITH THE -- AGAIN, TAKING THE PLAYERS OUT OF THE EQUATION?

15 A. WELL, I HAVE TO ASK WHAT YOU MEAN BY "PROFESSIONALISM."

16 DO SPONSORS BUY INTO THE PROGRAM? YES.

17 DO THEY SELL TICKETS? YES.

18 DO THEY GENERATE TELEVISION REVENUES? YES.

19 IF -- IF YOU SAY ANYONE WHO DOES THAT IS A PROFESSIONAL,
20 THAT LEADS US DOWN TO THE OLYMPICS AND LITTLE LEAGUE BASEBALL
21 AND HIGH SCHOOL BASEBALL BECAUSE THEY DO THE SAME THING, SO --

22 Q. DO YOU THINK THE NCAA IS BEING RUN LIKE A PROFESSIONAL
23 BUSINESS?

24 A. I HAVE NOT -- I'M NOT PREPARED TO RENDER AN OPINION ON HOW
25 THE NCAA IS BEING RUN.

1 Q. ALL RIGHT. NOW, I ASKED YOU ABOUT -- WE TALKED ABOUT YOU
2 HAVEN'T CITED ANY SURVEYS IN THE REPORT.

3 YOU HAVE NO BACKGROUND IN CONDUCTING CONSUMER SURVEYS,
4 RIGHT?

5 A. NOT IN CONDUCTING THEM. I HAVE A BACKGROUND IN
6 COMMISSIONING THEM.

7 Q. ALL RIGHT. I'M SURE YOU HAVE A BACKGROUND IN
8 COMMISSIONING MANY THINGS.

9 A. YES, SIR.

10 Q. THE -- AND THEN I WANT TO ASK YOU ABOUT ONE OTHER ASPECT
11 OF THIS -- OF THE BUSINESS OF SPORTS.

12 IS IT YOUR OPINION THAT SUCCESSFUL DIVISION I COLLEGE
13 FOOTBALL OR BASKETBALL PROGRAM IS GOOD MARKETING FOR A SCHOOL?

14 A. YES.

15 Q. ALL RIGHT. AND THE BENEFITS TO A UNIVERSITY FROM A
16 DIVISION I COLLEGE BASKETBALL AND FOOTBALL TEAM ARE NOT
17 LIMITED TO THE DIRECT FINANCIAL REVENUES FROM TICKETS AND
18 BROADCAST CONTRACTS BUT ALSO INCLUDE PROMOTION OF THE
19 UNIVERSITY.

20 A. YES.

21 Q. OKAY. AND I THINK YOU'VE GIVEN THE EXAMPLE OF BUTLER
22 UNIVERSITY. WHEN BUTLER UNIVERSITY DID WELL IN THE NCAA
23 BASKETBALL TOURNAMENT, APPLICATIONS TO BUTLER ROSE AND THEN
24 ITS NUMBER OF COMMERCIAL SPONSORS GREW?

25 A. YES.

1 Q. OKAY.

2 SO YOU MENTIONED THE OLYMPICS. THE OLYMPICS IS NO LONGER
3 AN AMATEUR SPORT; IS THAT CORRECT?

4 A. WELL, THE OLYMPICS IS NOT A SPORT.

5 Q. I'M SORRY.

6 A. THE OLYMPICS IS A COMBINATION OF MANY SPORTS, MORE IN THE
7 SUMMER THAN IN THE WINTER, BUT -- YOU'RE TALKING ABOUT 20 OR
8 30 DIFFERENT SPORTS.

9 Q. RIGHT. DO YOU THINK THERE IS --

10 WELL, YOU TELL ME. ARE ANY OF THE OLYMPIC SPORTS AMATEUR?

11 A. YES, QUITE A FEW, MOST OF THEM.

12 Q. AND THERE'S QUITE A FEW THAT ARE NOT?

13 A. SOME THAT ARE NOT, YES.

14 Q. RIGHT. BASKETBALL IS ONE, IS NO LONGER AMATEUR.

15 A. PROFESSIONALS ARE ALLOWED TO PLAY IN THE BASKETBALL
16 TOURNAMENT, YES.

17 Q. OKAY. AND OLYMPIC ATHLETES ARE ALLOWED TO ENDORSE
18 PRODUCTS AND THE SPONSORS MAY PAY THE ATHLETES, CORRECT?

19 A. IN SOME SPORTS, IN OTHERS NOT. OLYMPICS' VERY COMPLICATED
20 TO -- TO ANALYZE.

21 Q. ALL RIGHT. FROM THE PUBLIC PERCEPTION, WAS THERE A TIME
22 WHEN THE OLYMPICS PRIOR TO 1986 WAS SAYING, WE ARE AMATEUR,
23 AND THEN THEY CHANGED, AND THE PUBLIC NO LONGER PERCEIVED THE
24 OLYMPICS AS AMATEUR?

25 A. WELL, THERE WERE CHANGES IN THE OLYMPICS AT AROUND THE

1 TIME YOU'RE TALKING ABOUT. AND AT ONE TIME, IF YOU REMEMBER,
2 THE U.S. HOCKEY TEAM WAS ALL AMATEURS AGAINST THE RUSSIANS,
3 AND I WAS AT THAT GAME AS A MATTER OF FACT.

4 AND -- AND SINCE THEN, SOME OF THE OLYMPIC SPORTS, BY
5 REASON OF THE DECISION OF THE SPORTS ORGANIZING COMMITTEES,
6 ALLOW PROFESSIONALS.

7 EXCUSE ME ONE SECOND.

8 (PAUSE IN THE PROCEEDINGS.)

9 **THE WITNESS:** THOSE OF YOU WHO HAVE SAT UP HERE
10 REALIZE YOU GET DRY AFTER A WHILE. SORRY.

11 **BY MR. ISAACSON:**

12 **Q.** BUT MY QUESTION WAS ABOUT PUBLIC PERCEPTION. DID THERE
13 COME A TIME AFTER THE MID-'80'S WHERE THE PUBLIC NO LONGER
14 PERCEIVED THE OLYMPICS AS A AMATEUR SET OF SPORTS?

15 **A.** STRICTLY AMATEUR. IN OTHER WORDS, I THINK THE PUBLIC'S
16 PERCEPTION IS NOW THERE ARE SOME OLYMPIC SPORTS WHERE
17 PROFESSIONALS ARE PERMITTED TO PLAY. AND THERE ARE QUITE A
18 FEW WHERE THEY'RE NOT PERMITTED, SO I THINK THE PUBLIC
19 UNDERSTANDS THAT.

20 **Q.** THEN THE PUBLIC KNOWS MORE THAN I DO. THE --
21 YOU MENTIONED -- YOU MADE A SPECIFIC POINT --

22 **A.** WELL, TAKE KAYAKING, SIR, OR CANOEING --

23 (SIMULTANEOUS COLLOQUY.)

24 **THE COURT:** LET'S MOVE ON.

25 **MR. ISAACSON:** I'M SORRY TO INTERRUPT.

1 Q. THE -- YOU MADE A SPECIFIC POINT ABOUT THAT MICHAEL JORDAN
2 DIDN'T TAKE MONEY FOR BEING IN THE OLYMPICS. YOU DON'T THINK
3 THAT MICHAEL JORDAN, WHEN HE PLAYS ON THE DREAM TEAM, IS
4 PERCEIVED TO BE AN AMATEUR BY THE PUBLIC, THOUGH, DO YOU?

5 A. THAT WASN'T MY POINT.

6 Q. I DIDN'T THINK SO.

7 A. AND I AGREE.

8 Q. WE WOULD AGREE WHEN THE DREAM TEAM IS UP THERE, THE
9 AMERICAN PUBLIC IS 100 OR NEARLY 100 PERCENT PERCEIVING THOSE
10 AS PROFESSIONAL ATHLETES.

11 A. YES.

12 Q. AND AFTER THE OLYMPICS MADE ITS TRANSITION, AS YOU'VE
13 DEFINED IT, FROM WHOLLY AMATEUR TO PARTIALLY AMATEUR OR MIXED,
14 BROADCAST CONTRACTS FOR THE OLYMPICS JUST SPIRALED IN VALUE,
15 RIGHT?

16 OKAY. YOU WOULD NOT SAY THAT THAT CHANGE HAD ANY ADVERSE
17 EFFECT ON THE MONEY THAT THE OLYMPICS WAS EARNING?

18 A. YES. AND THE OLYMPICS ARE DISTINGUISHABLE FROM COLLEGE
19 SPORTS.

20 Q. OKAY. A BRIEF QUESTION ABOUT COMPETITION BECAUSE OF OTHER
21 THINGS YOU'VE SAID.

22 NOW, YOU'RE -- I DON'T USUALLY ASK PEOPLE ABOUT CASES, BUT
23 YOU'RE FAMILIAR WITH THE SUPREME COURT DECISION IN NCAA VS.
24 BOARD OF REGENTS BECAUSE IT'S RELATED TO T.V. CONTRACTS, AND
25 YOU WERE AT CBS AT THE TIME?

1 **A.** YES, THAT'S THE 1984 DECISION?

2 **Q.** YES.

3 **A.** I'M VERY FAMILIAR WITH IT.

4 **Q.** RIGHT. YOU NEGOTIATED FOR -- THE CONTRACT YOU NEGOTIATED
5 WITH THE NCAA FOR CBS --

6 **A.** WAS THE CATALYST FOR THE LAWSUIT.

7 **Q.** RIGHT.

8 **A.** YES, SIR.

9 **Q.** OKAY. AND AFTER THAT CASE WAS FILED, YOU KNEW THAT THE
10 MARKETPLACE WOULD CHANGE DRAMATICALLY IF THE COURTS ALLOWED
11 YOU TO NEGOTIATE DIRECTLY WITH INDIVIDUAL SCHOOLS AND
12 CONFERENCES, RIGHT?

13 **A.** THAT IS CORRECT.

14 **Q.** OKAY. AND WHAT THAT MEANT IS IF THE SCHOOLS AND
15 CONFERENCES WERE ALLOWED TO COMPETE, THE PRICES FOR
16 TELEVISION -- YOU THOUGHT PRICES FOR TELEVISION CONTRACTS
17 WOULD FALL.

18 **A.** AND THEY DID.

19 **Q.** THEY DID. ABOUT 50 PERCENT FOR SOME PERIOD OF TIME.

20 **A.** THAT'S CORRECT.

21 **Q.** AND THEN THEY WENT ROARING BACK UP BECAUSE OF WHAT YOU'VE
22 DESCRIBED IN YOUR TESTIMONY.

23 **A.** THE NEW TECHNOLOGIES, NEW PLATFORMS, NEW COMPETITION, YES,
24 SIR.

25 **Q.** ALL RIGHT. AND TODAY, YOU ARE SPEAKING AS AN EXPERT ON

1 BROADCAST LICENSE AND SPORTS BROADCAST AGREEMENTS AND
2 NEGOTIATING SPORTS BROADCAST AGREEMENTS, RIGHT?

3 THAT'S WHAT YOU'RE TESTIFYING AS AN EXPERT TODAY.

4 **A.** WELL, I -- I'M -- YES, AND -- AND I BEEN ASKED TO DISCUSS
5 OTHER TOPICS AS WELL --

6 **Q.** ALL RIGHT.

7 **A.** -- WHICH ARE IN MY REPORT.

8 **Q.** YEAH, THAT'S ACTUALLY WHAT I THINK, TOO. THE --

9 ALL RIGHT. SO LET'S GO BACK TO THE SPORTS BROADCAST
10 CONTRACTS.

11 I DON'T WANT TO -- YOU'VE BEEN ALREADY SHOWN THESE PAGES
12 OF DEPOSITION. I WOULD LIKE TO SHOW HIM A LITTLE BIT MORE AND
13 ASK HIM WHAT HE HAS TO SAY ABOUT IT, SO IF YOU CAN PUT UP PAGE
14 79 AND 80 OF THE DEPOSITION.

15 (DEMONSTRATIVE PUBLISHED.)

16 **BY MR. ISAACSON:**

17 **Q.** ALL RIGHT. AND WHAT I'D LIKE TO KNOW IS HOW MUCH -- IF
18 YOU'RE CHANGING ANY OF THIS TESTIMONY OR IF YOU STAND BY THIS
19 TESTIMONY.

20 SO YOU WERE READ BEFORE ON PAGE 79 AT LINE 12 -- THIS IS
21 AFTER YOU'VE -- AFTER YOU'VE SAID THAT THE -- THAT THE
22 CONTRACTS DON'T HAVE A EXPLICIT REFERENCE TO NIL'S. AND YOU
23 SAY -- AND THE QUESTION IS "AND THAT'S BECAUSE YOU SAY THEY
24 WERE IMPLIED IN THE BROADCAST AGREEMENT."

25 AND YOU ANSWER "YES. IN OUR TELEVISION INDUSTRY, WHEN A

1 BROADCASTER AND RIGHTS HOLDER NEGOTIATE A DEAL, THE NIL'S OF
2 THE PEOPLE WHO -- WHO ARE AN EVENT -- AND WHO ARE IN THE EVENT
3 ARE PART OF THE BROADCAST AGREEMENT."

4 IS THAT TESTIMONY THAT YOU STAND BY?

5 **A.** YES.

6 **Q.** OKAY.

7 AND IF WE CAN GO TO PAGE 80 AT LINE 8.

8 (DEMONSTRATIVE PUBLISHED.)

9 **BY MR. ISAACSON:**

10 **Q.** YOU'RE ASKED, CAN YOU GIVE ME AN EXAMPLE? AND THEN YOU
11 TALK ABOUT THE TENNIS TOURNAMENT, WHICH YOU'VE TALKED ABOUT IN
12 YOUR -- IN YOUR TESTIMONY.

13 AND THEN AT LINE 12, YOU SAY, "BUT WHERE WE BUY THE U.S.
14 OPEN TENNIS RIGHTS OR ANY OTHER SPORTS EVENT OF THAT NATURE,
15 OR A LEAGUE DEAL WITH THE NFL OR AN OLYMPIC DEAL OR A COLLEGE
16 FOOTBALL DEAL WHERE WE'RE PURCHASING THE RIGHTS TO THE EVENT,
17 THEN PART OF THAT PURCHASE UNDER THE PRACTICES OF THE
18 TELEVISION INDUSTRY, THERE ARE INCLUDED THE NAME, IMAGES, AND
19 LIKENESSES OF ATHLETES; ALSO THE COACHES, REFEREES, FANS IN
20 THE STANDS. THAT WAS ALL PART OF THE TELEVISION LICENSE."

21 DO YOU STAND BY THAT TESTIMONY?

22 **A.** YES. AND YOU'LL NOTE THAT I DIDN'T USE THE WORD "NIL
23 RIGHTS." I SAID "NIL," AND THAT WAS TRUE WITH THE PRIOR
24 QUOTE.

25 THE NAME, IMAGE, AND LIKENESS OF THE ATHLETES OBVIOUSLY IS

1 PART OF A TELEVISION PACKAGE. AS MR. DESSER POINTED OUT, YOU
2 JUST AS SOON HAVE THE ATHLETES ON THE FIELD, BUT --

3 Q. WELL, LET ME --

4 A. -- THAT IS ONLY ONE OF THE PARTS OF IT, AND IT HAS NOTHING
5 TO DO WITH THE ISSUE OF WHETHER THERE ARE SO-CALLED RIGHTS.
6 IT'S ONLY THAT THEIR IMAGE AND LIKENESS.

7 Q. WELL, LET ME ASK YOU ABOUT THAT. SO IT'S YOUR TESTIMONY
8 THAT -- IN YOUR MIND THAT THERE ARE -- NIL'S MAY BE DIFFERENT
9 FROM NIL RIGHTS?

10 A. YES, SIR.

11 Q. OKAY. AND YOU HAVE NEVER DISCUSSED THAT IN A NEGOTIATION,
12 CORRECT? YOU'VE NEVER DISCUSSED WHETHER IT'S NIL OR NIL
13 RIGHTS.

14 A. WE HAVE NEVER DISCUSSED A SEPARATE NEGOTIATION OR A
15 SEPARATE DISCUSSION ON WHETHER THE NIL'S WERE INCLUDED.

16 Q. RIGHT. SO YOU'VE NEVER BANDIED BACK AND FORTH IN A
17 NEGOTIATION WHETHER ANYBODY'S TALKING ABOUT IN THESE CONTRACTS
18 NIL'S VERSUS NIL RIGHTS?

19 A. THAT'S CORRECT.

20 Q. OKAY. AND YOUR REPORT DOES NOT ADDRESS WHETHER THERE ARE
21 ACTUALLY NIL RIGHTS.

22 A. IT DOES NOT, 'CAUSE I THINK THAT'S -- IS THAT NOT -- I
23 KNOW YOU'RE ASKING THE QUESTION.

24 ISN'T THAT THE ISSUE THAT WE'RE ALL HERE TO RESOLVE?

25 Q. I'M JUST --

1 **A.** I KNOW.

2 **Q.** I'M TRYING TO GET MY QUESTIONS ANSWERED, SIR.

3 **A.** YEAH.

4 **Q.** ALL RIGHT.

5 AND -- WITH THAT TENNIS MATCH EXAMPLE WHERE THERE WERE
6 ACTUALLY TWO PLAYERS NASTASE AND CONNORS MAYBE, YOU SAID?

7 **A.** YES.

8 **Q.** ALL RIGHT. DID YOU -- DID YOU OR YOUR LAWYERS GO CHECK
9 THE LAW OF THE STATE IN WHICH THE TENNIS MATCH WAS PLAYED TO
10 SEE IF THERE WAS A RIGHT OF PUBLICITY OR NIL RIGHTS IN THAT
11 STATE BEFORE YOU ENTERED THAT CONTRACT?

12 **A.** I DON'T RECALL. SOME OF THE MATCHES WERE IN LAS VEGAS,
13 OTHERS WERE IN PUERTO RICO SO -- BUT I DON'T RECALL CHECKING
14 THE LAWS OF THE STATE.

15 **Q.** ALL RIGHT. AND NOW YOU'VE MENTIONED THAT MOST OF THE
16 CONTRACTS IN THIS CASE CONTAIN PROVISIONS REFERRING TO NIL
17 SPECIFICALLY FOR PROMOTIONAL PURPOSES.

18 **A.** YES.

19 **Q.** ALL RIGHT. AND SO MY QUESTION TO YOU IS -- AND
20 PROMOTIONAL PURPOSES YOU'VE DEFINED AS -- AND THAT WAS VERY
21 HELPFUL BECAUSE THAT TERM HAS BEEN BANDIED AROUND A LOT. WHEN
22 THESE CONTRACTS TALK ABOUT NOT HAVING -- USING AN NIL FOR
23 PROMOTION PURPOSES, THAT'S WHEN YOU PUT A -- SOMEONE HOLDS UP
24 A COKE BOTTLE OR YOU PUT A COKE BOTTLE ON SOMEONE, IS THAT --
25 OR YOU TELL ME.

1 **A.** NO. YOU'RE CONFUSING "PROMOTION" AND "COMMERCIAL."
2 THEY'RE TWO SEPARATE --

3 **Q.** OKAY. I WOULD APPRECIATE IF YOU CLARIFY THAT FOR ME, SIR.

4 **A.** WELL, "PROMOTION" IS WHERE YOU USE THE NAME AND IMAGE OF
5 AN ATHLETE OR A PARTICIPANT IN A SPORTS EVENT IN A -- IN A
6 CLIP THAT PROMOTES THE UPCOMING GAME. AND -- AND IT IS IN
7 THE -- THAT'S THE PROMOTION. I'LL KEEP IT SIMPLE.

8 COMMERCIAL, OBVIOUSLY, IS YOU USE THAT CLIP AND YOU PUT IT
9 ON THE COKE BOTTLE.

10 **Q.** OR YOU PUT THE COKE -- OR YOU HAVE THE ATHLETE HOLD THE
11 COKE BOTTLE AND SAY, "I DRINK COKE"?

12 **A.** YOU COULD -- YEAH, BUT THAT'S ANOTHER PROBLEM, YOU KNOW.
13 YOU DIDN'T WANT TO GO DOWN THAT ROAD EITHER.

14 **Q.** OKAY. THE -- NOW, THE CONTRACT PROVISIONS THAT REFER TO
15 NIL'S FOR PROMOTION PURPOSES, ARE THOSE NIL'S OR NIL RIGHTS?

16 **A.** I WOULD SUGGEST TO YOU THEY'RE NIL'S.

17 **Q.** OKAY. THE -- BUT YOU HAVE NOT REVIEWED THOSE CONTRACT
18 PROVISIONS TO SEE WHETHER THEY REFER TO NIL'S OR NIL RIGHTS.
19 THAT'S NOT SOMETHING YOU'VE DONE?

20 **A.** I HAVE. I'VE REVIEWED QUITE A FEW CONTRACTS, AND I
21 DRAFTED HUNDREDS MORE.

22 **Q.** RIGHT. AND DO YOU KNOW WHETHER THEY REFER TO NIL'S OR NIL
23 RIGHTS?

24 **A.** THE ONES THAT I CAN RECALL SEEING REFERRED TO NIL'S.

25 **Q.** OKAY. THE -- I'M NOT GOING TO SHOW YOU ALL THESE

1 CONTRACTS AGAIN. THE COURT'S SEEN THOSE. THE -- YOU KNOW,
2 WE'VE LOOKED AT THE BIG 12 CONTRACT, THE MARCH MADNESS
3 CONTRACT. YOU USED THE TERM "EXCLUSIVE ACCESS LICENSE," AND
4 COUNSEL WAS USING THAT TERM WITH YOU. AND YOU WERE HAVING
5 YOUR DISCUSSIONS ABOUT EXCLUSIVE ACCESS LICENSES.

6 HAVE YOU SEEN ANY CONTRACT IN THIS CASE WITH THAT TITLE?
7 **A.** NOT NECESSARILY TOGETHER, BUT THAT -- YOU HAVE EXCLUSIVE
8 RIGHTS TO A -- TO A -- YOU HAVE EXCLUSIVE RIGHTS TO AN EVENT,
9 AND YOU HAVE ACCESS TO --

10 **Q.** I HEARD THAT TESTIMONY, SIR. I'M JUST TRYING TO
11 UNDERSTAND WHERE THE PHRASE "EXCLUSIVE ACCESS LICENSE" CAME
12 FROM.

13 IS THAT A DEFINED TERM IN ANY OF THE CONTRACTS YOU SAW?
14 **A.** EXCUSE ME. I USED THE WORDS "EXCLUSIVE ACCESS," BUT I
15 DIDN'T ADD THE WORD "LICENSE." YOU DID.

16 **Q.** WELL --

17 **A.** I THINK.

18 **Q.** IT'S ACTUALLY YOUR COUNSEL DID, AND YOU AGREED A LOT WITH
19 HIM.

20 **A.** WELL --

21 **Q.** THE -- HAVE YOU SEEN THE TERM "EXCLUSIVE ACCESS LICENSE"
22 IN ANY OF THESE CONTRACTS, OR IS THAT A TERM THAT'S JUST BEEN
23 COME UP WITH TODAY?

24 **A.** I DON'T RECALL SEEING IT. IT'S NOT ONE THAT I WOULD USE
25 ORDINARILY.

1 Q. OKAY.

2 A. I USE "EXCLUSIVE ACCESS" BUT NOT "LICENSE."

3 Q. AND YOU ALSO USE THE TERM "EXCLUSIVE TELECAST RIGHTS"?

4 A. YES.

5 Q. RIGHT. THE -- THE ONE PROVISION OF THE -- OH, THERE WAS
6 AN INTERESTING POINT THAT WAS MADE. VISITING TEAMS HAVE
7 BROADCAST RIGHTS, RIGHT?

8 A. YES, IN CERTAIN SITUATIONS.

9 Q. RIGHT.

10 AND CAN YOU EXPLAIN TO ME HOW VISIT -- VISITING RIGHTS, I
11 ASSUME, AREN'T PROVIDING ACCESS TO THE -- TO THE STADIUM.

12 CAN YOU EXPLAIN TO ME WHY THEY HAVE BROADCAST RIGHTS?

13 A. WELL, BECAUSE THEY'RE AGREEING TO COME TO A VENUE AND BE
14 TELEVISED, BUT THERE'S A LONG HISTORY HERE IN -- IN OUR
15 INDUSTRY ABOUT WHAT RIGHTS AND -- A VISITING TEAM HAS.

16 AND MATTER OF FACT, BACK IN 1984, OR '85, I INITIATED OR
17 REQUESTED LITIGATION HERE IN CALIFORNIA BECAUSE WE HAD
18 ACQUIRED RIGHTS TO SOUTHERN CAL AND NOTRE DAME WAS COMING IN
19 TO PLAY THEM, AND THEY WERE NOT IN THE -- IN THE CONFERENCE
20 THAT WE HAD PURCHASED THE RIGHTS TO. AND THIS WAS IN THIS
21 UNSETTLED PERIOD RIGHT AFTER THE SUPREME COURT DECISION.

22 A SHORT WAY OF ANSWERING IT IS, YES, BUT SINCE MOST TEAMS
23 NOW PLAY CONFERENCE GAMES, THAT'S ALL IRONED OUT IN ADVANCE.
24 THE CONFERENCE AGREES, AND YOU DON'T GET INTO THE ISSUE OF
25 VISITING TEAMS.

1 Q. RIGHT. BUT JUST TO -- AT THE VERY SIMPLE LEVEL, VISITING
2 TEAMS HAVE BROADCAST RIGHTS EVEN THOUGH THEY DON'T -- THEY'RE
3 NOT PART OF THE PROCESS OF PROVIDING AN ACCESS.

4 A. I -- I THINK IT DEPENDS ON THE CONTEXT AND THE AGREEMENT
5 AND SO FORTH. THE WAY THAT RESOLVED IS THEY COULD NOT REFUSE
6 TO BE CARRIED ON TELEVISION, BUT THEY WERE FREE TO NEGOTIATE A
7 FEE. THAT WAS THE SETTLEMENT, I BELIEVE. THIS WAS 30 YEARS
8 AGO, SO I'M NOT --

9 Q. THE WAY THEY RESOLVED THE ISSUE OF THEIR BROADCAST RIGHTS
10 WAS TO AGREE THAT THEY WOULD NOT BLOCK THE CARRYING OF THE
11 GAME ON TELEVISION?

12 A. THAT'S MY RECOLLECTION.

13 Q. ALL RIGHT.

14 I DO WANT TO JUST MAKE SURE I HAVE SOMETHING ABSOLUTELY
15 RIGHT ABOUT EXHIBIT 2230, WHICH WE'VE LOOKED AT SEVERAL TIMES
16 SO I'M NOT GOING TO GO THROUGH ALL THE LANGUAGE AGAIN, AND GO
17 TO 2230-37. THIS IS THE CLEARANCES LANGUAGE.

18 (DEMONSTRATIVE PUBLISHED.)

19 BY MR. ISAACSON:

20 Q. AND YOU'RE GOING TO HAVE TO GET BOTH -- IT CARRIES OVER
21 INTO THE NEXT PAGE.

22 (DEMONSTRATIVE PUBLISHED.)

23 MR. ISAACSON: ALL RIGHT.

24 Q. YOU REMEMBER THIS CLEARANCES LANGUAGE? YOU'VE LOOKED AT
25 IT AT LEAST ONCE, MAYBE TWICE.

1 **A.** (REVIEWING DOCUMENT.)

2 **Q.** AND YOU -- YOU'VE SAID THAT THIS IS TYPICAL LANGUAGE THAT
3 APPEARS -- IT'S THE TYPE OF LANGUAGE THAT APPEARS IN MANY
4 AGREEMENTS, RIGHT?

5 **A.** IT IS -- YES, THAT'S WHAT I SAID.

6 **Q.** ALL RIGHT. AND SO YOU DON'T HAVE ANY -- IT OBVIOUSLY SAYS
7 "INCLUDING WITHOUT LIMITATION ALL NAME AND LIKENESSES RIGHTS
8 OF ALL PARTICIPANTS, OFFICIALS," ET CETERA. DOESN'T REFER TO
9 NIL'S. IT REFERS TO RIGHTS, BUT THAT'S TYPICAL LANGUAGE,
10 CORRECT?

11 **A.** WELL, ACTUALLY, WITH THE -- YOU'RE HIGHLIGHTING "RIGHTS,"
12 WHICH I HADN'T -- I HADN'T -- I HADN'T SEEN BEFORE. SOMETIMES
13 THAT -- THAT WORD IS USED; SOMETIMES IT NOT USED.

14 IT'S NEVER A NEGOTIATED ITEM. THERE'S NEVER ANY VALUE
15 ATTACHED TO IT. AND IT ALMOST INVARIABLY IS LANGUAGE THAT IS
16 INSERTED LONG AFTER THE NEGOTIATION TAKES PLACE.

17 **Q.** WELL, LET ME ASK YOU ABOUT THE NEGOTIATION POINT.

18 BY THE WAY, IN ADDITION TO YOUR WORK FOR CBS, ONCE YOU --
19 AS A CONSULTANT, YOU'VE BEEN A CONSULTANT FOR THE PACK TEN,
20 THE BIG TEN, AND NOTRE DAME?

21 **A.** OVER A PERIOD OF ALMOST 20 YEARS, YES.

22 **Q.** ALL RIGHT. YOU'VE CONSULTED WITH THE UNIVERSITY OF
23 MICHIGAN FOR ITS SHOE AND APPAREL CONTRACTS.

24 **A.** YES, I DID.

25 **Q.** OKAY. THE COURT ASKED AT ONE POINT ABOUT HOW THE SHOE AND

1 APPAREL CONTRACTS WORK. CAN YOU GIVE A SHORT ANSWER TO
2 EXPLAIN THAT.

3 **MR. KLAUS:** OBJECTION, YOUR HONOR.

4 **THE COURT:** THE SHOE AND --

5 **MR. ISAACSON:** AND APPAREL.

6 **MR. KLAUS:** OBJECTION, YOUR HONOR. IT'S BEYOND THE
7 SCOPE OF DIRECT.

8 **THE COURT:** IT DOES SEEM --

9 (SIMULTANEOUS COLLOQUY.)

10 **THE WITNESS:** I'M REALLY HOPING TO FINISH.

11 **MR. ISAACSON:** I'M GOING TO FINISH -- I'M GOING TO
12 FINISH -- I'M GOING TO FINISH -- I'M GOING TO FINISH TODAY.

13 BUT BECAUSE YOU ASKED THE QUESTION, I THINK YOU DESERVE
14 THE ANSWER, AND I'M ASKING HIM TO JUST TAKE A MINUTE TO
15 EXPLAIN HOW THAT THAT (SIC) WORKS.

16 AND I DO THINK IT'S RELEVANT TO THE CASE. IT'S NOT THE
17 MOST RELEVANT FACT IN THE CASE. BUT IT DOES RELEVANT -- IT'S
18 RELEVANT TO SUCH THINGS AS THE INTEGRATION OF ACADEMICS --

19 **THE COURT:** -- DEALS WHERE SOMEBODY AGREES THAT
20 EVERYBODY ON THE TEAM IS GOING TO WEAR NIKES THAT DAY --

21 **MR. ISAACSON:** YES. YES. YES. AND HE'S CONSULTED
22 ON THAT, AND SO SINCE HE'S HERE AND YOU'VE ASKED, I WOULD LIKE
23 HIM TO TELL YOU HOW THAT WORKS, AND THEN I'M GOING TO MOVE ON.

24 **THE COURT:** WOULD YOU MIND?

25 **MR. KLAUS:** I THINK IT'S BEYOND THE SCOPE OF THE

1 DIRECT. IF YOU OVERRULE THE OBJECTION --

2 **THE WITNESS:** HAPPY TO DO IT, AND I'LL BE BRIEF.

3 THE SCHOOLS ARE -- GET A LOT OF ATTENTION, A LOT OF
4 VIEWERS, A LOT OF ALUMNI, LOYAL PEOPLE WHO FEEL AFFECTIONATE
5 TOWARDS THE SCHOOLS. AND THE MAJOR APPAREL COMPANIES -- NIKE
6 BEING THE MOST ACTIVE, ADIDAS BEING ANOTHER, UNDER ARMOUR
7 BEING A THIRD -- AGREE TO SUPPLY ALL OF THE ATHLETIC EQUIPMENT
8 FOR A SCHOOL, HAVE THEIR LOGO APPEAR ON ALL OF THIS SO THAT IT
9 SHOWS UP ON TELEVISION, AND THEN THEY PAY THE SCHOOL SEVERAL
10 MILLION DOLLARS -- SOME SCHOOLS GET A LOT MORE THAN THAT -- A
11 YEAR TO GO THROUGH WITH THIS TRANSACTION.

12 **MR. ISAACSON:** THAT IS --

13 **THE COURT:** PAY THE SCHOOL?

14 **THE WITNESS:** YES.

15 **BY MR. ISAACSON:**

16 **Q.** PAY THE SCHOOL.

17 AND AS PART OF THAT, WHEN THE ATHLETES PLAY AND PRACTICE,
18 THEY HAVE TO WEAR THAT GEAR?

19 **A.** PLAY IN PRACTICE? PLAY IN GAMES. IF YOU WATCH A GAME ON
20 NATIONAL TELEVISION, YOU'LL SEE THE NIKE LOGO ON UNIFORM, AND
21 NIKE FEELS VERY GOOD ABOUT THAT. IT HELPS THEM SELL APPAREL
22 AROUND THE COUNTRY.

23 **Q.** RIGHT. AND IF ONE OF THE PLAYERS WOULD PREFER TO WEAR
24 ADIDAS, THAT'S -- THAT'S -- THAT DOESN'T HAPPEN BECAUSE OF THE
25 AGREEMENT WITH NIKE?

IT'S ALSO I WOULD POINT OUT THAT PLAINTIFFS SPECIFICALLY
MOVED SO THAT WE COULD BE -- WE WERE PRECLUDED FROM CALLING
MR. VACCARO, WHO'S BEEN, AS YOU KNOW, WORKING WITH THE
PLAINTIFFS THROUGHOUT THIS CASE, WHO IS THE ORIGINATOR OF --
(SIMULTANEOUS COLLOQUY.)

I DON'T THINK IT'S PROPER FOR COUNSEL TO BE QUESTIONING ON THIS SUBJECT WHEN THEY MOVED TO EXCLUDE THIS ON RELEVANCE GROUNDS AND HAD MR. VACCARO EXCUSED FROM THE TRIAL.

THE COURT: WELL, I'M ACTUALLY THE ONE WHO ASKED, AND IT WAS LARGELY OUT OF CURIOSITY, I GUESS. SO IT'S IF NOT RELEVANT, I WON'T CONSIDER IT. BUT I AM KIND OF CURIOUS WHAT WOULD HAPPEN IF AN ATHLETE, AS YOU SAY, DIDN'T WANT TO WEAR NIKES AND WANTED TO WEAR ADIDAS; HOW WOULD THAT BE ENFORCED?

THE COURT: WHO WOULD TAPE OVER THE LOGO?

RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR (510) 502-6175

1 **MR. ISAACSON:** ALL RIGHT.

2 **Q.** NOW, I'M GOING TO TURN TO THE CONTRACT NEGOTIATIONS OF
3 BROADCAST CONTRACTS. YOU -- NOW, YOU WERE -- YOU ARE NOT --
4 YOU ARE A KEY BUSINESS PERSON OR A KEY BUSINESS PERSON, BUT
5 YOU'RE NOT PART OF THE LEGAL TEAM FOR THE CONTRACTS; IS THAT
6 FAIR?

7 **A.** YES, THAT'S FAIR.

8 **Q.** ALL RIGHT. AND YOU DESCRIBED -- SO AS THE -- AS A
9 PRINCIPAL BUSINESS NEGOTIATOR, YOU'RE WORKING ON A SHORT
10 TWO-TO-THREE-PAGE TERM SHEET OF THE KEY BUSINESS TERMS.

11 **A.** NOT NECESSARILY. I -- I HAVE LEGAL BACKGROUND, SO I'LL
12 WORK ON THE CONTRACTS AS WELL. BUT THE NEGOTIATORS GENERALLY
13 TRY TO NARROW THE -- ESTABLISH THE FRAMEWORK OF THE DEAL IN A
14 TERM SHEET. AND SOMETIMES THAT'S INITIALED, SOMETIMES IT'S
15 SIGNED, SOMETIMES IT'S NOT SIGNED AT ALL.

16 BUT THAT'S HOW YOU SET FORTH THE ESSENTIAL MATERIAL
17 NEGOTIATED TERMS OF A CONTRACT.

18 **Q.** RIGHT. AND THEN YOU HAND OVER THE -- THE TERM SHEET TO
19 LAWYERS OR A LEGAL DEPARTMENT, AND THEN THEY GO CREATE A
20 40-PAGE DOCUMENT, AND THEY NEGOTIATE THAT 40-PAGE DOCUMENT.

21 **A.** NO. THEY CREATE THE 40-PAGE DOCUMENT. THEY GIVE IT BACK
22 TO THE BUSINESS PEOPLE, AND THEY TELL US TO GO NEGOTIATE IT.

23 **Q.** RIGHT. DO YOU NEGOTIATE -- BUT YOU DON'T GO BACK AND
24 NEGOTIATE WHAT YOU'VE CALLED ALL THESE OTHER TERMS LIKE REPS,
25 WARRANTIES, INDEMNIFICATION, YOU LEAVE THAT TO THE LAWYERS,

1 RIGHT?

2 **A.** NO. THE LAWYERS DON'T NEGOTIATE. THE LAWYERS PREPARE THE
3 TEXT, AND THEN THEY ASK US TO GO MEET WITH THE OTHER SIDE AND
4 GET IT ALL WORKED OUT. AND OCCASIONALLY, THERE ARE
5 DISCUSSIONS WITH RESPECT TO WHAT THE LAWYERS HAVE ADDED, BUT
6 THE FACT IS THE LAWYERS GENERALLY WERE NOT IN THE INITIAL
7 CONVERSATION. AND IN SOME CASES, THEY ARE PART OF THE NEXT
8 ROUND; IN SOME CASES, THEY AREN'T.

9 **Q.** AND MAYBE I -- MAYBE -- I DON'T EVEN MEAN TO IMPLY THIS IS
10 THE SIT-DOWN NEGOTIATIONS. THERE'S PROBABLY RED LINES GOING
11 BACK AND FORTH BETWEEN THE -- THE LAWYERS WITH -- ABOUT THOSE
12 REPS AND WARRANTIES AND WHATNOT BY THE TIME IT -- IT GETS TO
13 YOU; IS THAT FAIR?

14 **A.** THEY CERTAINLY HAVE -- YES.

15 **Q.** OKAY. AND THE -- AND BEFORE YOUR REPORT, YOU DID NOT
16 ACTUALLY REVIEW THE CBS BROADCAST CONTRACTS WITH THE NCAA,
17 RIGHT?

18 **A.** I'M SORRY. BEFORE --

19 **Q.** BEFORE YOUR REPORT --

20 **A.** BEFORE I WROTE MY REPORT?

21 **Q.** YEAH.

22 **A.** I DON'T BELIEVE SO. I THINK I SAW THEM AFTER I WROTE THE
23 REPORT. ACTUALLY, I'M NOT SURE. LET ME THINK NOW.

24 **Q.** WELL --

25 **A.** NO, I SAW A SERIES OF REPORTS -- SERIES OF CONTRACTS

1 BEFORE THE REPORT WAS WRITTEN.

2 Q. WELL, IN YOUR DEPOSITION, YOU WERE SHOWN THE 2010 CBS
3 TURNER CONTRACT AND SAID, IT'S BEEN A LONG TIME SINCE I'VE
4 LOOKED AT SOME OF THE CBS AGREEMENTS THAT I NEGOTIATED.

5 MAYBE YOU CAN TELL ME WHAT YOU MEANT BY THAT.

6 MR. KLAUS: CAN WE GET A PAGE AND LINE?

7 MR. ISAACSON: SURE. IT'S AT 119, 24, CARRYING OVER
8 TO 120.

9 Q. AND I'M HAPPY TO SHOW IT TO YOU.

10 A. I'LL ANSWER THE QUESTION. I WAS REFERRING TO THE
11 AGREEMENTS THAT I HAD PREPARED --

12 Q. RIGHT.

13 A. -- COMPARED TO THE AGREEMENTS THAT WERE PREPARED AFTER I
14 LEFT THE COMPANY.

15 Q. OKAY. AND THE -- FOR THE 2010 MARCH MADNESS CONTRACT FOR
16 YOUR REPORT, YOU REVIEWED A HEAVILY REDACTED CONTRACT, RIGHT?

17 A. THAT'S MY RECOLLECTION, YES.

18 Q. GREAT.

19 DO YOU REMEMBER THAT THE REPS AND WARRANTIES WERE
20 REDACTED?

21 A. I SAW A LOT OF CONTRACTS. I REALLY DON'T RECALL UNLESS
22 YOU WANT TO SHOW IT TO ME.

23 Q. SURE. THE --

24 THE COURT: BUT WE ARE -- I MEAN, IF WE ARE GOING TO
25 FINISH -- I DON'T KNOW IF YOU HAVE ANY REDIRECT --

1 **MR. ISAACSON:** THIS WILL JUST -- I'M GOING TO WAIVE
2 THIS DOCUMENT.

3 **MR. KLAUS:** I HAVE A FEW MINUTES OF REDIRECT, YOUR
4 HONOR, BUT I'M HOPING THAT MR. ISAACSON'S ALMOST DONE.

5 **MR. ISAACSON:** YEAH, I DON'T WANT TO KEEP HIM
6 OVERNIGHT. THE --

7 CAN I HAVE 2211? CAN YOU GET -- FROM THE BOX? AND I'LL
8 COME BACK TO THAT ONCE I'M HANDED THAT.

9 **Q.** LET ME JUST ASK YOU ABOUT THIS -- THE -- THE ACCESS POINTS
10 ONE MORE TIME. THE -- YOU BEEN TALKING ABOUT THE VALUE OF
11 ACCESS. AND --

12 WE'LL NEED THE MULTIPLE COPIES OF IT.

13 AND DOES IT MATTER WHETHER THE PLAYERS ARE PLAYING TO THE
14 POPULARITY OF THE GAME AND THE POPULARITY OF THE -- OF THE
15 RATINGS?

16 **A.** YES, IT MATTERS. BUT THERE ARE LOTS OF OTHER THINGS THAT
17 MATTER AS WELL.

18 **Q.** AND DOES THAT -- IT MATTERS TO COMMERCIAL SPONSORS.

19 **A.** SURE, IT MATTERS.

20 **Q.** OKAY.

21 CAN WE JUST LOOK AT 2481-1?

22 (DEMONSTRATIVE PUBLISHED.)

23 **BY MR. ISAACSON:**

24 **Q.** ALL RIGHT. THIS IS AN ADVERTISEMENT FOR THE PAC 12
25 NETWORK. YOU CAN SEE ALL THE PLAYERS. "LET THE SHOW BEGIN."

1 THERE'S A LOGO FOR NEW YORK LIFE.

2 BASED ON YOUR BACKGROUND, CAN YOU EXPLAIN TO ME WHAT THE
3 IMPORTANCE OR UNIMPORTANCE IS OF THE PLAYERS TO THE COMMERCIAL
4 SPONSORS?

5 **A.** LET ME GET THERE IN A MINUTE, BUT YOU'LL NOTE THAT EVERY
6 ONE OF THE PLAYERS IS WEARING THE UNIFORM OF HIS SCHOOL.

7 **Q.** ABSOLUTELY.

8 **A.** RIGHT. IF YOU TAKE THAT UNIFORM OFF AND YOU HAVE THE SAME
9 PICTURE, YOU'VE GOT A VERY INEFFECTIVE PROMOTION.

10 **Q.** HOW'S THE PICTURE -- HOW'S THE PICTURE LOOK WITH AN EMPTY
11 UNIFORM?

12 **A.** OH. BUT MY POINT IS -- MY POINT IS IT'S NOT JUST THE
13 PLAYERS. IF THE PLAYERS AREN'T WEARING THE UNIFORM, I WOULD
14 SUGGEST MOST OF THESE -- AND I DON'T LIVE ON THE WEST COAST --
15 MOST OF THESE PLAYERS, NO ONE WOULD KNOW WHO THEY ARE, SO
16 THERE -- I CAN READ SOME OF THE COLLEGES. IT IS THE PLAYERS
17 AND THE UNIFORM THAT MAKES THE DIFFERENCE.

18 **THE COURT:** OKAY.

19 **MR. ISAACSON:** ALL RIGHT.

20 LET ME ASK IT ABOUT THE NEXT PHOTO. 2481-11.

21 (DEMONSTRATIVE PUBLISHED.)

22 **BY MR. ISAACSON:**

23 **Q.** ALL RIGHT. TOSTITOS, FIESTA BOWL, BAYLOR. WHY IS
24 TOSTITOS -- TELL US, FROM YOUR BACKGROUND, WHY IS TOSTITOS
25 BRANDING ITSELF WITH THE FIESTA BOWL, AND WHY ARE PICTURES OF

1 PLAYERS PART OF THE PROMOTION?

2 **MR. KLAUS:** OBJECTION, YOUR HONOR. WELL BEYOND THE
3 SCOPE OF THE -- IT'S WELL BEYOND THE SCOPE OF THE DIRECT. I
4 MEAN, I DON'T THINK HIS OPINIONS HAD ANYTHING --

5 **THE COURT:** IT WOULD BE QUICKER JUST TO ANSWER IT
6 AND --

7 **THE WITNESS:** QUICK ANSWER, TOSTITOS BOUGHT THE
8 RIGHTS TO THE FIESTA BOWL AND PAID 15 OR \$17 MILLION TO HAVE
9 ITS NAME LINKED TO THE TITLE OF THE GAME.

10 **BY MR. ISAACSON:**

11 **Q.** ALL RIGHT. I'LL ASK YOU ONE LAST QUESTION. IF I MAY
12 APPROACH.

13 **THE COURT:** ALL RIGHT.

14 **MR. ISAACSON:** BECAUSE I CAN'T SHOW THIS ON THE
15 SCREEN.

16 **Q.** AND NOW WHAT I'M GOING TO BE SHOWING VISUALLY IS NOT
17 SENSITIVE BECAUSE IT SAYS, "REDACTED."

18 AND I JUST WANT TO CLARIFY THAT WHEN YOU, BEFORE YOUR
19 REPORT, REVIEWED THE MARCH -- THE MARCH MADNESS CONTRACT WITH
20 CBS FOR APRIL 2010, THIS WAS THE REDACTED DOCUMENT THAT YOU
21 REVIEWED.

22 **A.** (REVIEWING DOCUMENT.)

23 YOU KNOW, I -- IT -- PROBABLY. YOU'VE IDENTIFIED IT, BUT
24 I DON'T RECOGNIZE IT.

25 **Q.** AND THIS IS WHAT'S -- YOU GAVE A LIST OF DOCUMENTS TO YOUR

1 EXPERT REPORT --

2 A. YEAH.

3 Q. -- THAT YOU SAID YOU REVIEWED. WE'VE TAKEN THAT -- THIS
4 DOCUMENT FROM THERE.

5 A. OKAY.

6 Q. AND DO YOU RECALL -- AND YOU RECALL GENERALLY THAT WHEN
7 YOU REVIEWED THE MARCH MADNESS CONTRACT, IT WAS REALLY HEAVILY
8 REDACTED?

9 A. YES, I DO.

10 Q. OKAY. AND AFTER YOU READ THIS HEAVILY REDACTED DOCUMENT,
11 YOU GAVE YOUR OPINIONS IN THIS CASE.

12 A. OKAY.

13 MR. ISAACSON: ALL RIGHT. I'LL LET COUNSEL FINISH UP
14 FOR THE DAY.

15 **REDIRECT EXAMINATION**

16 BY MR. KLAUS:

17 Q. JUST A FEW QUESTIONS TO GET US OUT OF HERE BEFORE 1:30.

18 MR. PILSON, YOU WERE ASKED SOME QUESTIONS ABOUT VISITING
19 TEAMS. DO YOU RECALL THAT?

20 A. YES.

21 Q. AND IS IT YOUR UNDERSTANDING AND EXPERIENCE THAT VISITING
22 TEAMS HAVE TRADEMARKS AND LOGO RIGHTS IN THEIR UNIFORMS AND
23 SUCH?

24 A. YES.

25 Q. YOU WERE ASKED A SERIES OF QUESTIONS THAT HAD PHRASES LIKE

1 "NIL MONEY," "BROADCAST MONEY," "RELATED TO NIL MONEY,"
2 "COMPETITION FOR NIL MONEY."

3 AND DID ANY OF THE QUESTIONS AND ANSWERS IN THAT REGARD
4 CHANGE YOUR VIEW TESTIFIED TO EARLIER AS TO WHETHER THE NIL'S
5 THAT ARE PART OF THE BROADCAST AGREEMENTS YOU'VE BEEN INVOLVED
6 IN NEGOTIATING HAVE VALUE THAT IS -- THAT -- DISCUSSED AND
7 DESCRIBED?

8 DID ANY OF THAT TESTIMONY OR QUESTIONING CHANGE YOUR
9 EARLIER TESTIMONY?

10 **A.** NO, I WAS JUST -- I THOUGHT COUNSEL WAS USING THAT AS A
11 SHORTHAND, THAT IF THEY WERE TO BE SUCCESSFUL HERE AND THEY
12 WERE TO GET MONEY FOR A SHARE OF THE T.V. REVENUE, THAT IT
13 MIGHT BE IDENTIFIED THAT WAY.

14 BUT I CERTAINLY WASN'T -- THE BULK OF MY TESTIMONY HAS
15 SAID VERY CLEARLY THAT NIL IS SIMPLY NAME, LIKENESS AND IMAGE.

16 **Q.** OKAY. AND IN YOUR UNDERSTANDING, MR. PILSON, YOUR
17 EXPERIENCE, AND WHAT YOU'VE TESTIFIED TO REGARDING PUBLIC
18 PERCEPTION OF SPORTS, DO YOU HAVE ANY UNDERSTANDING AS TO THE
19 DEGREE TO WHICH THE PUBLIC WOULD DISTINGUISH PAYMENT FOR NIL
20 FROM PAYMENT FOR PERFORMANCE?

21 **A.** I DON'T THINK THE PUBLIC WOULD DISTINGUISH THAT, NO. I
22 THINK IT WOULD BE PAY FOR PERFORMING.

23 **MR. KLAUS:** ONE MOMENT, YOUR HONOR?

24 (PAUSE IN THE PROCEEDINGS.)

25 **MR. KLAUS:** NO FURTHER QUESTIONS.

1 **MR. ISAACSON:** AND JUST TO COMPLETE THE RECORD WITH
2 THE WITNESS, I DON'T NEED TO ASK HIM QUESTIONS ABOUT THAT.
3 WOULD -- COUNSEL, HE TESTIFIED ABOUT THE NFL, AND I WOULD JUST
4 LIKE TO ADMIT THE NFL PLAYER'S CONTRACT, WHICH IS ACTUALLY ONE
5 OF YOUR EXHIBITS, TOO, 3230.

6 **MR. KLAUS:** WE HAVE NO OBJECTION TO 3230 BEING
7 ADMITTED, YOUR HONOR.

8 **THE COURT:** JUST THE RELEVANT PORTIONS?

9 **MR. ISAACSON:** THIS IS ACTUALLY A MODEL CONTRACT.
10 IT'S VERY SHORT.

11 **MR. KLAUS:** IT'S PUBLICLY AVAILABLE. AND, YOUR
12 HONOR, WE WILL -- IF THERE ARE NO --

13 DO YOU HAVE ANY FURTHER QUESTIONS?

14 MAY MR. PILSON BE EXCUSED?

15 **THE COURT:** YES. YOU'RE EXCUSED. THANK YOU.

16 **THE WITNESS:** THANK YOU, YOUR HONOR.

17 **THE COURT:** YOU MAY STEP DOWN.

18 **MR. KLAUS:** AND, YOUR HONOR, THERE SEVERAL AGREEMENTS
19 AND SUCH THAT WERE REFERENCED TODAY. WE WILL WORK WITH THE
20 PLAINTIFFS' LAWYERS ABOUT GETTING THE REDACTED VERSIONS
21 SUBMITTED AND WORK WITH THE COURT'S CLERK TO MAKE SURE WE HAVE
22 A CLEAR RECORD OF WHAT'S BEEN ADMITTED FOR TODAY.

23 **THE COURT:** OKAY.

24 **MR. KLAUS:** THANK YOU.

25 **THE COURT:** AND TOMORROW, YOU'RE GOING TO HAVE

1 DR. RASCHER BACK?

2 MR. ISAACSON: YES, YOUR HONOR. FIRST THING IN THE
3 MORNING.

4 THE COURT: AND THEN WHO?

5 MR. ISAACSON: CHASE -- CHASE GARNHAM, YOUR HONOR.

6 THE COURT: I'M SORRY.

7 MR. ISAACSON: CHASE GARNHAM, YOUR HONOR, ONE OF THE
8 PLAINTIFFS.

9 THE COURT: OH. AND THEN WHO?

10 MR. ISAACSON: DR. STAUROWSKY.

11 THE COURT: OKAY. NOW, DR. RASCHER WROTE A LOT ABOUT
12 DAMAGES, BUT YOU WON'T BE ASKING HIM ABOUT THAT.

13 MR. ISAACSON: CORRECT. CORRECT. HE'LL BE TALKING
14 ABOUT THE PROCOMPETITIVE -- ALLEGED PROCOMPETITIVE BENEFITS.

15 THE COURT: OKAY. I HAD ANOTHER IDEA YOU CAN GIVE
16 SOME THOUGHT TO. YOU'VE PROBABLY HEARD IN THE JURY TRIALS
17 SOMETIME, THERE'LL BE AN -- INTERIM CLOSING ARGUMENTS FROM
18 TIME TO TIME, EVERY FEW DAYS, MAYBE TEN MINUTES. SO GIVE SOME
19 THOUGHT TO WHETHER THAT MIGHT NOT BE HELPFUL.

20 MR. ISAACSON: ALL RIGHT.

21 THE COURT: MAYBE TOMORROW AT THE END OF THE DAY OR
22 MONDAY.

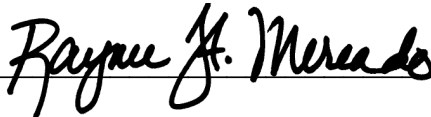
23 MR. KLAUS: YES, YOUR HONOR. THANK YOU.

24 THE COURT: OKAY. THANK YOU.

25 (PROCEEDINGS WERE CONCLUDED AT 1:27 P.M.)

1
2
3 **CERTIFICATE OF REPORTERS**
4

5 WE CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
6 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.
7 WE FURTHER CERTIFY THAT WE ARE NEITHER COUNSEL FOR, RELATED
8 TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH
9 THIS HEARING WAS TAKEN, AND FURTHER THAT WE ARE NOT
10 FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE
11 ACTION.

12
13 

14 RAYNEE H. MERCADO, CSR, RMR, CRR, FCRR, CCRR
15

16
17 

18 DIANE E. SKILLMAN, CSR, RPR, FCRR
19

20 THURSDAY, JUNE 12, 2014
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25