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Game Over for Manatt's Retired Players Litigation Against the NFLPA

For several years Manatt has sought tirelessly to recover licensing royalties for retired professional football players against a fierce legal defense mounted by the National Football League Players Association ("NFLPA"). Manatt ultimately scored a hard-won multimillion-dollar jury verdict. But the NFLPA continued to fight by noticing its appeal. Now, however, as recounted in our first article below, the final whistle has blown. The dispute has ended with a mutually beneficial settlement of over \$26 million. The long-term consequences of this victory in the greater sports law context remain to be seen. But video game-playing football fans may notice one bit of fallout immediately. As reported in our second article below, Electronic Arts' popular Madden NFL 10 game will no longer contain legacy teams of retired players.



The Manatt team was led by three partners: L. Peter Parcher of the NY office, Ronald S. Katz of the Palo Alto office, and Chad S. Hummel of the Los Angeles office.

Manatt Scores Settlement of Retired NFL Players Class Action

Noel S. Cohen

Sport Law Practice Group Chair

Ronald S. Katz
Partner
rkatz@manatt.com
650.812.1346

Newsletter Editors

Jeffrey J. Lokey
Partner
jlokey@manatt.com
650.812.1385

Benjamin G. Shatz
Counsel
bshatz@manatt.com
310.312.4383

Ryan S. Hilbert
Associate
rhilbert@manatt.com
650.812.1347

Our Practice

Behind every athlete's or sports team's highly public endeavors is a multi-billion dollar business infrastructure that operates in complex and specialized ways. It's a world where business judgment, public policy

After more than two years of highly contentious litigation, and on the heels of a \$28.1 million judgment, the historic class-action lawsuit that Manatt prosecuted on behalf of more than 2,000 retired NFL players against their own union finally came to a close last week, as the NFLPA and its licensing arm Players Inc. agreed to dismiss their appeal and pay the players more than \$26 million. Of the settlement, colead trial counsel Chad Hummel commented that “the jury’s verdict in favor of the retired players and ultimate resolution of this case under new players’ union leadership should be the first important step in the healing process that needs to happen between retired players and their union. For a very long time, retired NFL players were not even an afterthought in the big business of licensing player rights. I certainly hope our tireless work on this case, hand in hand with the Dallas-based McKool law firm, will effect a permanent change in that attitude and lead to a sea change in how the League and Union treat the men who built the pro game.”

Herb Adderley filed the lawsuit in 2007, contending that his union failed to actively pursue marketing deals on the players behalf with video games, trading cards and others sport products. Manatt and McKool secured the \$28.1 million verdict (including \$21 million in punitive damages) in November 2008. Earlier this year the NFLPA noticed the appeal of the judgment.

However, in a sign of growing unity between retired players and their union, class representative Herb Adderley and the NFLPA’s new Executive Director, DeMaurice Smith, held a joint [press conference](#) on June 5, 2009, to announce the final resolution of the lawsuit. Adderley was elated to play a prominent role in the healing process between the retired players and the NFLPA, going so far as noting at the press conference that “this is better than running a touchdown back in the Super Bowl.” And this action would not have succeeded without Adderley’s hard work and determination, prompting colead trial counsel Ronald Katz to remark that “Herb Adderley continued for retired players the work that Curt Flood started for active players: achieving recognition of their rights.”

The settlement does still require court approval.

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Electronic Arts Abandons Vintage NFL Teams in Madden

[Ryan S. Hilbert](#)

Ever wonder if the 1985 Chicago Bears could beat the undefeated 1972 Miami Dolphins? Want to relive the glory days of the 1979 Pittsburgh Steelers? Those familiar with Electronic Arts’ [Madden](#) video game know that one of the game’s most popular features

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is the ability to play as one's favorite NFL team from the past. That feature, however, is about to disappear.

According to a recent [Internet report](#), no versions of EA's forthcoming Madden 2010 video game will feature vintage NFL teams. EA's reason, the report states, is consistency. According to an EA spokesperson quoted in the report: "[T]he Xbox 360 and PlayStation 3 versions of Madden have never featured the legacy teams, and removing them from this year's PlayStation 2 version 'was just a matter of getting some consistency across the entire franchise.'" Even if true, one can't help but wonder whether and to what extent legal challenges to EA's "scrambling" of player images played a part in EA's decision.

In November 2008 a class of over 2,000 retired NFL players (represented by Manatt) obtained a \$28.1 million jury verdict against the National Football League Players Association and its licensing arm Players Inc. Though EA was not a party to that lawsuit, one of the key pieces of evidence was a letter from a high-ranking Players Inc. employee to EA instructing EA to "scramble" the images of retired NFL players in Madden. "Scrambling" occurs when certain criteria — including the player's height, weight, position and years in the league — are used to make the game appear more authentic, but the player's name and jersey number are removed to make the player less recognizable. Plaintiffs argued that, by instructing EA to "scramble" the images instead of offering a license to those thousands of retired players for whom Players Inc. already had rights, Players Inc. had breached its fiduciary duties to the retired NFL players. The jury apparently agreed.

Several months after the retired players' verdict, EA found its scrambling practice back in the spotlight, this time in connection with its NCAA basketball and football video games. Just a few weeks ago, on May 5, 2009, former collegiate quarterback Sam Keller brought a class-action lawsuit against EA in the Northern District of California. Keller alleges that EA "scrambles" student athletes by using their likenesses — including the athletes' jersey numbers, height, weight, build, home state, skin tone, hair color and, in some cases, even hair style — despite certain prohibitions on such uses. The case is still in its infant stages. As of the date of this newsletter, EA has yet to answer or otherwise respond to Keller's complaint.

It is unclear what impact the recent lawsuit against EA will have on its NCAA video games. It is also unclear whether EA may someday revisit its decision to feature vintage teams in Madden. But for the time being, not everyone is displeased that Madden will no longer feature vintage teams so long as the players are still scrambled. "I am delighted that EA is no longer using these images without compensating the players," said Ron Katz, the retired NFL players' class counsel. "Hopefully the day will come when EA secures licenses from the players on the vintage teams and resurrects this feature in the game. But until such time, EA should not be allowed to 'scramble' their images and deprive them of the recognition they deserve."

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FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:



Noel S. Cohen Mr. Cohen is a litigator whose practice focuses on general commercial litigation, including complex business litigation, employment litigation, antitrust litigation, class action defense, intellectual property litigation, entertainment litigation and sports law. Mr. Cohen has represented clients in federal and state courts and in arbitration proceedings throughout the country. He is actively involved in all phases of litigation, from pre-litigation counseling through trial and appeal.



Ryan S. Hilbert Mr. Hilbert is an associate in the Firm's Litigation and Intellectual Property Practice Groups. His practice focuses on litigation and counseling in the areas of trademark and unfair competition, copyright, and other intellectual property and commercial matters. He also has experience prosecuting trademarks worldwide, as well as managing domestic and foreign trademark portfolios.

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