

EXHIBIT 18

**NFL PLAYERS**
ASSOCIATION

LEGAL DEPARTMENT

December 11, 2012

VIA EMAIL & FIRST CLASS MAIL

Dennis Curran, Esq.
Senior VP of Labor Litigation & Policy
NFL Management Council
345 Park Ave.
New York, NY 10154

Re: NFLPA v. NFL Clubs and NFLMC (Toradol Waivers)

Dear Dennis:

The NFLPA hereby files this non-injury grievance against the NFL Clubs and NFLMC for allowing certain Club physicians to make unilateral and unprecedented attempts to get players to sign general releases and/or liability waivers as a precondition to its medical staff prescribing ketorolac tromethamine ("Toradol") in contravention of various provisions of the CBA, NFL Player Contract and longstanding custom and practice.

Attached hereto is an example of such a general release and liability waiver of the San Diego Chargers which purports to be by its own terms "a legally binding contract." This document further commits the player to review extrinsic and extensive guidelines and warnings accompanying a Toradol prescription as well as those included in various Toradol websites, Wikipedia and in a lengthy report on Toradol authored by a Task Force appointed by the NFL Physicians Society.

Although the NFLMC has assured the NFLPA that it will instruct NFL Clubs that the Clubs may not ask players to sign such Toradol releases or waivers, the NFLMC has also informed the NFLPA that it will not instruct NFL team physicians to refrain from requiring players to sign such releases or waivers as a condition of administering Toradol. However, since the club physicians are agents and representatives of the NFL Clubs for purposes of providing medical care to players, they too are bound by the terms of the CBA, which prohibits the use of any such waiver. In addition, Article 2, Section 2 of the CBA requires the NFL and NFLMC to "use their best efforts to faithfully carry out the terms and conditions of this Agreement and to see that the terms of this Agreement are carried out in full by players and Clubs."

Paragraph 9 of the NFL Player Contract entitled "Injury" states in relevant part that "if Player is injured in the performance of his services under this contract... then Player will receive

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such medical and hospital care during the term of this contract as the Club physician may deem necessary....” Nowhere in this provision or in the longstanding custom and practice of NFL Club physicians, much less in the practice of the NFLMC and NFLPA (the parties), have such preconditions been requested, much less required, for the administration of Toradol to be given to injured players.

It is the position of the NFLPA that if an NFL Club physician believes that a player would be placed at an unacceptable medical risk by using Toradol as part of the care and treatment of an injury or the Club physician is concerned about the long-term effects of such use, the Club medical staff should inform the player of that opinion and refuse to administer the Toradol. If, on the other hand, there is no such concern on the part of the Club’s medical staff, they should so advise the player that the use of Toradol is appropriate.

This position and practice is underscored in Article 39 of the CBA entitled “Players’ Rights to Medical Care and Treatment.” Section 1(c) of Article 39 entitled “Doctor/Patient Relationship” states in relevant part, “... each Club physician’s primary duty in providing medical care shall be not to the Club but instead to the player-patient.” The waiver language and other preconditions for the administration of Toradol referenced above are obviously not for the benefit of the player-patient, but rather solely to relieve the Club and Club physician from any liability for the administration of Toradol.

Article 39, Section 1(c) further provides that “all Club physicians and medical personnel shall comply with all federal, state and local requirements, including all ethical rules and standards established by any applicable government and/or other authority that regulates or governs the medical profession in the Club’s city.” Moreover in this regard, Article 39, Section 3(e) provides: “Each Club shall use its best efforts to ensure that its players are provided with medical care consistent with professional standards for the industry.” Yet nowhere in the CBA is there language which would permit Clubs or their doctors to mandate the execution of waivers as a prerequisite for complying with these provisions. Further, courts have consistently invalidated contracts releasing physicians from liability for negligent medical care of their patient, because such contracts violate public policy.

Finally, during collective bargaining, the parties to the CBA negotiated over the issue of waivers with the result that the only waivers provided for in the CBA are for prior injuries in Article 44, Section 3(a)(3) and for receipt of a disability benefit. There is no provision allowing for any other type of waiver or release in the CBA. Therefore, these Toradol waivers violate the CBA and are unenforceable.

Accordingly, we file this grievance seeking an order from the arbitrator that all such general releases and liability waivers involving the use of Toradol are null and void and that the Club physicians must cease and desist from requiring players to sign said releases and/or waivers

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as a condition of receiving appropriate medical treatment. In addition, we will ask the arbitrator to immediately restore any compensation, right or benefits lost by any player, including consequential damages, that may result or may have resulted, from the improper enforcement of these invalid waivers and/or releases. Moreover, we ask the arbitrator to issue any additional order or remedy which he or she deems fair and appropriate under the circumstances.

We await your assurance that the Clubs and Club physicians will immediately cease and desist from mandating that players sign these waivers and an acknowledgment that these invalid provisions are null and void or, in the alternative, your answer to this grievance.

Sincerely,

A handwritten signature in cursive script that reads "Tim English". The signature is written in dark ink and is positioned below the word "Sincerely,".

Tim English
Staff Counsel

/Enclosure

cc: All NFL Clubs {via email}

GENERAL RELEASE REGARDING TORADOL

I have requested that I be treated with Toradol (brand name for Ketorolac tromethamine) for an injury or injuries.

Information About Toradol

I understand that Toradol is a potent non-steroidal anti-inflammatory drug (NSAID) designed to blunt the body's inflammatory response to injury, control pain and assist in the return to active sports. I understand that Toradol can have a number of side effects. For example, it can have adverse effects on kidneys and kidney function. It should not be used by persons with kidney problems, active peptic ulcer disease or gastrointestinal bleeding or perforation, or a history of complications related to NSAIDs. It should not be used by persons with closed head injuries and/or bleeding in the brain. It may also increase the risk of internal bleeding in other parts of the body and can negatively impact fracture healing. Toradol should not be used for more than 5 days.

I understand that the above description is **not** a complete description of persons who should not take Toradol or the risks of doing so. Additional important information about Toradol, such as medical conditions of persons who should not take it, symptoms that may indicate negative reactions to it and other guidelines and warnings can be found in the written instructions/warnings accompanying a Toradol prescription and on websites such as <http://www.drugs.com/toradol.html> and <http://en.wikipedia.org/wiki/Ketorolac>.

A Task Force appointed by the NFL's Team Physicians Society studied Toradol and its use and made some recommendations. Paraphrased, those recommendations are:

1. The drug should be administered only under the direct supervision and order of a team physician.
2. It should not be used prophylactically to reduce anticipated pain either during or after football games or practices.
3. Its use should be limited to players who are diagnosed with an injury and listed on the team's latest injury report.
4. It should be given in the lowest effective therapeutic dose and should not be used for more than 5 days.
5. In typical situations, it should be administered orally (i.e. in pill form).
6. It should not be injected (either intravenously or intramuscularly) except after an acute game-related injury in which significant visceral or central nervous system bleeding is not expected and where oral or intranasal pain medications are inadequate or not tolerated.
7. It should not be taken with other NSAIDs or aspirin.
8. It should not be taken by players with a history of allergic reaction or complications due to other NSAIDs or aspirin, nor by players with a history of significant GI bleeding or kidney problems.

The full report is available online at <http://m.sph.sagepub.com/content/4/5/377.full.pdf>.

I have been encouraged to review the information and websites mentioned above and I confirm that I have done so. I further understand that I have the opportunity to discuss the use of Toradol with an independent physician of my choice, my agent, or anyone else. I confirm that the Chargers and their team doctors and trainers are not pressuring me to use it. The decision is entirely mine to make.

I have no history of any problems such as those described above or in the referenced literature, nor of any allergic reaction(s) to NSAIDs or aspirin. I am not currently taking any other NSAID or aspirin and understand I should not do so at the same time as taking Toradol.

Confirmation of No Contraindicators

(Check "yes" or "no" for each of the following. If "yes," explain below:

- | | | |
|------------------------------|-----------------------------|--|
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | History of renal (kidney) problems? |
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | Taking any aspirin or other NSAIDs (such as Celebrex, Naprosyn, Indinor or Ibuprofen - see prescription literature for complete list)? |
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | Taking any other contraindicated drug (such as Prozac or Lexapro - see prescription literature for complete list)? |
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | History of gastrointestinal bleeding or perforation? |
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | History of internal bleeding? |
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | History of closed head injuries or bleeding in the brain? |
| Yes <input type="checkbox"/> | No <input type="checkbox"/> | History of active peptic ulcer disease? |

Add explanations for any "yes" responses:

GENERAL RELEASE FROM LIABILITY

I hereby agree to this Release From Liability as a condition to my being prescribed Toradol in connection with my practicing for and/or playing in professional football games for the San Diego Chargers. I understand and acknowledge that my use of Toradol is entirely voluntary.

I am aware and I acknowledge that there can be serious risks of medical complications and personal injury associated with taking the drug. Despite these risks, I am choosing to take it and **I HEREBY AGREE TO VOLUNTARILY ASSUME AND ACCEPT ANY AND ALL RISKS RELATED TO TAKING TORADOL, WHETHER KNOWN OR UNKNOWN, INCLUDING RISK OF MEDICAL COMPLICATIONS, PERSONAL INJURY AND DEATH.**

I, and anyone acting on my behalf or otherwise exercising my rights, agree not to make a claim against, sue, seek damages from, or attach the property of the Chargers Football Company, LLC ("Chargers"), Oasis MSO, Dr. David Chao, Dr. Daniel Rotenberg, Dr. Calvin Wong and their affiliated organizations, subsidiaries, partners, owners, shareholders, directors, officers, employees, agents, insurers, affiliates, successors and/or assigns, or any other team physician, trainer, employee or other person working for or affiliated with the Chargers, my teammates, or any other person or entity (the "Released Parties") for any injury, damage or death sustained due to taking Toradol.

I, and anyone acting on my behalf or otherwise exercising my rights, agree to release, indemnify, and hold harmless the Released Parties from and against any and all liability claims, losses or damages of any kind, injury, death or damage to myself, or to any other person or property arising either directly or indirectly by reason of the use of Toradol.

I certify here and below that I have no conditions or limitations that would preclude my safe use of Toradol.

This Release is a legally binding contract that is intended to provide a comprehensive release of liability. It supersedes any other agreements or representations, whether written or oral, regarding the subject matter. I further agree that no oral representations, statements or inducements apart from this written agreement have been made to me.

I agree that this Release shall be governed by California law. I further agree that all rights under Section 1542 of the California Civil Code are hereby expressly waived. That section reads as follows:

1542. Certain claims not affected by general release. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

I agree that any disputes regarding this Release will be resolved in San Diego. This Release is intended to be as broad and inclusive as permitted by the laws of the State of California. If any portion of it is held invalid, the balance shall continue in full legal force and effect.

I HAVE CAREFULLY READ THIS DOCUMENT AND FULLY UNDERSTAND ITS CONTENTS. I UNDERSTAND THAT BY SIGNING THIS CONTRACT, I AM COMPLETELY RELEASING THE RELEASED PARTIES FROM ANY AND ALL LIABILITY RELATING TO THE USE OF TORADOL.

I HAVE BEEN GIVEN AN OPPORTUNITY TO CONSULT WITH AND DISCUSS THE USE OF TORADOL WITH A HEALTH CARE PROFESSIONAL OF MY CHOOSING BEFORE SIGNING THIS RELEASE. I HAVE ALSO BEEN GIVEN AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY(S) OF MY CHOOSING PRIOR TO SIGNING THIS RELEASE FROM LIABILITY. I CONCLUSIVELY AGREE THAT IN MAKING MY DECISION TO SIGN THIS RELEASE I HAVE NOT RELIED ON ANY REPRESENTATIONS MADE BY THE RELEASED PARTIES.

I HEREBY SIGN THIS RELEASE OF MY OWN FREE AND EXPRESS WILL.

Full Name (please print)

Date

Signature

101954033.4

EXHIBIT 19

X COPY

ROBERT A. CREO ARBITRATOR

In the Matter of Arbitration

between

JARROD BUNCH,

Player,

and

NEW YORK GIANTS,

Club.

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OPINION AND AWARD

Arbitrator Case No.:

97-013

Player Advocates:

Jack W. Pirozzolo, Esquire
Peter R. Ginsberg, Esquire

Club Advocate:

Wm. Buckley Briggs, Esquire
NFL Management Council

Grievance:

Communication of Medical Information

Date of Hearing:

September 11, 1997

Location of Hearing:

Giants' Stadium
East Rutherford, New Jersey

Record Closed:

November 18, 1997

Opinion and Award Issued:

December 10, 1997

Statement of the Award:

The Grievance is denied and dismissed as untimely filed and therefore not arbitrable.

APPEARANCES

For the Employee:

Jack W. Pirozzolo, Esquire

Peter R. Ginsberg, Esquire

Also Present:

Jarrold Bunch, Grievant

For the Employer:

Wm. Buckley Briggs, Esquire, NFL Management Council

Also Present:

Adolfo Birch, III, Esquire, NFL Management Council

Ronnie Barnes, Head Athletic Trainer, New York Giants

PRELIMINARY STATEMENT

The parties, New York Giants ("Club") and Jarrod Bunch ("Player"), having failed to resolve a dispute involving insufficient communication of medical information concerning an injury, proceeded to final and binding arbitration pursuant to the terms of their collective bargaining agreement, ("Agreement"). The Grievance was filed on April 8, 1996 and moved to arbitration with a timeliness objection by the Club. Robert A. Creo, Esquire was appointed to serve as impartial arbitrator from the permanent panel between the National Football League and the National Football League Players Association. The Arbitrator assigned his own Case Number, 97-013 to the Grievance. An oral hearing was held on September 11, 1997. All witnesses were sworn. Both parties were given full opportunity to present evidence, to cross-examine the witnesses and to argue their respective positions. A stenographic record of the hearing was made. The Arbitrator has full authority to resolve any arbitral challenges or procedural issues. The NFL Management Council, on behalf of the New York Giants, contends that Jarrod Bunch's Grievance should be dismissed prior to a hearing on the merits on the basis that it is untimely filed and that it fails to state a claim upon which relief may be granted. **The Parties agreed that the Arbitrator would rule upon the procedural issues prior to a hearing on any of the substantive portions of the Grievance.** A pre-hearing brief was filed on behalf of the Club on August 29, 1997 and a responsive pre-hearing brief was filed on behalf of Grievant on September 10, 1997. Post-hearing briefs were filed by the parties on November 18, 1997.

BACKGROUND AND SUMMARY OF TESTIMONY

Jarrold Bunch, Grievant, played running back for the University of Michigan from 1987 to 1990 and was selected by the New York Giants in the first round of the 1991 college draft. Grievant participated in all of the Club's games in 1991, playing mostly on special teams, and started 13 of 16 games during the 1992 season. On July 28, 1993, Grievant suffered an injury to his right knee during a scrimmage at the Giant's training camp. The injury was initially described as a "sprained medial collateral ligament" with some complaint of "patellofemoral discomfort." Conservative treatment consisting of ice, anti-inflammatories, compression wraps and physical rehabilitation was implemented by the Giant's medical staff and Grievant was withheld from practice. An MRI was performed by Dr. Anna Kelly on August 3, 1993, which indicated a partially torn medial collateral ligament (Grade III) and medial patellar retinaculum.

On August 6, 1993, Grievant signed a "Medical History Summary" provided by the Club's Team Physician, Dr. Russell Warren, listing all medical problems Grievant had suffered throughout his career with the Giants including "Active Problems." This portion of the document signed by Grievant supplies the initial basis for Grievance's argument. The "Active Problems" section cited a "right medial collateral ligament strain, 7/28/93" and a "right patella tendonitis, 7/28/93." The standard language of the waiver on the Medical History Summary states:

I have received a full explanation from the team physician that to continue to play professional football may result in the aggravation or deterioration of any of the above medical condition(s) during and after my employment by the club.

I fully understand the possible consequences of playing professional football with the medical condition(s) set forth above. Nevertheless, I desire to continue to play professional football and hereby assume the risk of the matters set forth in the paragraphs above.

The condition of Grievant's right knee gradually improved, and he eventually graduated from "straight-ahead" running to bike riding and noncutting activities, and ultimately on August 21st and 22nd of 1993 was cleared by Dr. Callaway to return to practice as symptoms permitted. Prior to returning to practice, Dr. Callaway's assessment was that the MCL injury had healed and that he had chondromalacia patella and persistent effusion of the right knee (which he attributed to the chondromalacia or a missed meniscal injury on the MRI). Grievant's knee was aspirated and he returned to practice. It is Grievant's position that at this point, the Club had failed to inform him specifically that he had suffered a Grade III MCL tear or torn retinaculum and also failed to warn him he would run the risk of additional and permanent damage by playing in the 1993 season pursuant to the Club's clearance, prior to a full recovery from the initial injury.

Grievant played throughout the 1993 season, starting in the first three games and participating in another ten (10). Grievant continued to experience pain throughout the season and was prescribed with Naprosyn by the Team Medical Staff to control swelling. On or about December 1, 1993, medical examination of Grievant's right knee revealed tenderness about the patella. On January 17, 1994, Grievant underwent a post-season physical by the team's physician. The report indicated "no surgery necessary" and that the treatment plan would be to "strengthen per his routine conditioning program." On February 17, 1994, Grievant's 1993 contract with the Giant's expired and he was given a qualifying offer on the same date.

After an X-Ray, ordered by Dr. Warren on or about March 7, 1994, Dr. Warren discussed the possibilities of surgery with Grievant, but informed him that the surgery would keep him out for the season, was not desirable and suggested he wait and observe his progress through weight training. Grievant alleges that the specific nature and extent of his injury, despite his conversations about surgery with Dr. Warren, was never explained at this time. Dr. Warren suggested an alternative surgery referred to as a "lateral release" that would not prevent him from playing the entire season, however suggested he wait. Grievant contends that there was never an indication that he should not have the surgery, only that he should postpone it because of his recent foot surgery. Grievant sought out a second opinion with Dr. Arthur Ting, who recommended the "lateral release" surgery. Grievant informed Dr. Warren, who offered to do the surgery instead, however, Grievant elected to proceed with Dr. Ting. Grievant contends that the Team Physician did not advise against this procedure. On or about March 24, 1994, Dr. Ting performed surgery on his right knee consisting of diagnostic arthroscopy, chondroplasty patellofemoral joint, synovial debridement and lateral release. Grievant saw his personal physician, Dr. Stephen Lombardo, on March 31, 1994, who communicated his post-surgery conditions to the Giant's medical staff.

On April 20 and May 16, 1994 Grievant was examined by the Team Physician, Dr. Warren, and the reports indicated that he was making some progress. On May 24, 1994, Grievant declined an offer to re-sign with the Giant's, however, by August 9, 1994, Dr. Lombardo recommended, in a letter to the Giant's, that he return to workouts in conjunction with his physical therapy. On August 15, 1994 Grievant signed with the Giants and was placed on the Physically Unable to Perform (PUP) List. Club physicians examined Grievant on August 23, 1994 with negative results and the Giants assert he was released on August 29, 1994 due to his failure to pass the pre-season physical. The Grievant contends that his release at this point was the result of a conversation he had with Dan Reeves about Grievant not wanting to be with the Giants.

Following his release, Grievant then arranged try-outs with the Green Bay Packers and the Los Angeles Raiders on September 6 and September 10, 1994, respectively. He was ultimately signed by the Raiders on September 13, 1994 and released on October 25, 1994. Between November 9, 1994 and December 19, 1994, Grievant had three additional try-outs with the Miami Dolphins, Carolina Panthers and Kansas City Chiefs. Grievant alleges that although he had been released by

the Giants, he was not made aware that his play with his injury during the 1993 season had caused his current problems, or that the injury to his right knee was potentially career-ending.

In the Spring of 1996, Grievant consulted additional medical experts, Dr. Jacob Tauber and Dr. Alan Schultz (two separate and independent practices) about the status of his knee. Grievant was advised by both doctors that his knee had deteriorated to such a point prior to the 1994 surgery that it was unlikely he could have returned to professional football regardless of any surgical intervention because the initial injury had not been given the proper time to heal before Grievant had started playing again during the 1993 season. It is Grievant's contention that the Giant's medical staff failed to warn him of the ramifications of playing after his injury in the scrimmage before allowing the "sprain" or "tear" to completely heal. This forms the basis of the Grievance.

Grievant then filed his Grievance on April 8, 1996, alleging that he had been given inadequate and incorrect information on or about August 6, 1993 by the Giant's Medical Staff with regard to the extent of his injury and probable deterioration of his right knee should he proceed with their suggested treatment in conjunction with continued play. Grievant asserts that he only became aware of the substance of the Grievance upon consultation with Dr. Tauber and Dr. Schultz and that the information gained from those consultations falls within 45 days of the filing of the Grievance at hand.

The Grievance was answered in a timely manner by the Giants on April 15, 1996, alleging the Grievance was untimely filed and failed to state a claim upon which relief may be granted. Subsequent to the initial filing, Grievant also sent a letter to the attention of Mr. Wellington Mara, Owner of the Giant's, stating that he was unfamiliar with the relevant sections of the 1993 Bargaining Agreement prior to March of 1996, and explained that he did not have a clear understanding of his rights as a player with the NFL and the New York Giants.

Grievant, Jarrod Bunch, testified that he graduated from high school in 1986 and from the University of Michigan in 1990. Grievant testified he played football while attending college and was picked 27th in the first round of the college draft by the New York Giants, ultimately signing with them. Grievant testified that he started one game his rookie season as an "H" back and was otherwise playing on special teams and that he returned to play during the 1992 season.

Grievant testified that he was presented with a New York Giants Incorporated Medical History Summary in March or April of 1992, that he had read and signed the same, assuming it had been prepared by the Giants and was a routine part of his employment. Grievant testified that the form listed four physical conditions (inactive problems, allergies, medical conditions and active problems) and a statement at the bottom acknowledging the fact that the continuation of the playing of football may aggravate or deteriorate any medical conditions set forth. Grievant testified that at the time, there was nothing listed under medical conditions. Grievant explained that he has never

had a history of atrial fibrillation, no one had given him any indication that would lead him to believe otherwise and all his previous EKG's had been normal.

Grievant testified that he played the entire 1992 season, starting 13 of 16 games as a fullback, gaining 500 yards and suffering from no injuries at the end of the season. Grievant waived his right to a post-season physical, returned in 1993 to play with the New York Giants and underwent a pre-season physical examination in the Spring, with no indications of atrial fibrillation.

Grievant testified that during a scrimmage at practice camp, he was tackled by a defensive tackle who jumped on the back of his leg, he heard two pops, attempted unsuccessfully to get up, was carried off the field and told by trainers and doctors that it was not serious. Grievant was treated with ice, stimulation and anti-inflammatories including Indocin and Naprosyn. Grievant testified that he was told by the Giant's Medical Staff that he suffered from a sprained MCL, it wasn't a problem and no surgery was necessary. Grievant could not recall the specific doctor who advised him on the spot at the time of the injury, but that subsequent treatment was from Dr. Warren and possibly Dr. Callaway.

Grievant testified that all the doctors told him that the injury was not serious and that he had then undergone an MRI. Although Grievant was unable to recall exactly who had specifically explained the results, he testified that he was told there was a tear of the MCL and "I had something going on with patella or my retinaculum", but, was never told about the risks if he were to play with the tear. Grievant affirmed he had only been told the tear was not serious and that he would be back playing shortly, with no warnings or information about the risks involved with playing with a torn retinaculum.

Grievant testified he was then approached by Mike Ryan with a New York Giants Incorporated Medical History Summary to sign and that the information contained on the form currently was not there at the time. Grievant recalled that there was nothing under "allergies", "medical conditions" or "active problems", however, two injuries were typed under "inactive problems", and that there could have been some handwritten information. Grievant testified that he told Mr. Ryan he would not sign if the form was not complete, that Mr. Ryan left the room and returned with additional information on the report which did not include atrial fibrillation. Grievant specified that the "right medial collateral ligament sprain", "right patella tendonitis", "sesamoid/flexor tendonitis" and "left patella tendonitis" language had been added. Grievant acknowledged that it was his signature on the bottom, that he always read the report and testified that he did not receive a copy of the Medical History Summary at the time. Grievant testified that Mr. Ryan explained to him that the injury was not serious, that he would be back playing soon and that it was just like the injury of another player who was now playing football with no problems. Grievant explained that the references to tendonitis on his right knee did not concern him because he had always had tendonitis on his left knee.

Grievant explained it was his understanding that the acknowledgment at the bottom of the report was an explanation and understanding of his medical conditions only, that he had no medical conditions and that he did feel the need to inquire about the meaning because it was self-explanatory. Grievant testified he received a copy of his Medical History only after picking up his entire record in 1996.

Grievant testified that he continued to play throughout the 1993 season, was experiencing pain and was treated with Indocin and Naprosyn. Grievant testified that a trainer and Dr. Warren were present at his post-season physical, who recommended a different strengthening program with no recommendations for surgery. Grievant testified he followed this advise, continued to have problems with his knee and advised Dr. Warren, who told him it would be monitored and they would attempt some new exercises. Grievant explained that when he continued to have problems, Dr. Warren ordered an x-ray, told him he needed surgery that will cut the knee, bring the kneecap back in place and then sewn back down, but that he would rather rehabilitate for a couple more weeks then perform a different surgery that would not take him out the entire season. Grievant testified Dr. Warren told him the lateral release would allow him to play that season and that he sought a second opinion from Dr. Arthur Ting, the San Jose Sharks team physician, on a referral from his agent. Grievant testified he informed Dr. Warren of his intention to proceed with Dr. Ting and that Dr. Warren said that he would rather do the surgery. Grievant proceeded with Dr. Ting and testified that he had instructed him to stay in contact with Dr. Warren. Grievant testified that at no time did Dr. Ting inform him that the damage was so extensive that the surgery would be useless. Grievant testified he had one examination with Dr. Ting before the surgery, underwent an x-ray and was unaware of whether Dr. Ting had reviewed the MRI and report of Dr. Kelly. Grievant testified that he suffered pain after the surgery similar to pain he had experienced after other surgeries, started a rehabilitation program and was never informed by anyone that he would be unable to successfully rehabilitate the knee so that he could play professional football. Grievant was again signed by the New York Giants. Grievant testified that during the 1994 physical, while running on the field, he pulled a hamstring and was then placed on the "Physically Unable to Perform" list.

Grievant testified in August of 1994 he was suffering very little swelling, and was never told that the knee would not get better. Grievant testified he had a conversation with the Giant's Head Coach, Dan Reeves the day he was cut, about the fact that the Coach was well aware Grievant did not want to be with the Giants, so Mr. Reeves put him on waivers. Grievant testified that no one from the Giants informed him specifically why he had been cut, that he left the Giants and was sought out by the Green Bay Packers and the Los Angeles Raiders. Grievant testified he tried out with both teams and ultimately signed with the Raiders, playing with them for seven (7) weeks. Grievant testified that when he was cut by the Raiders he was not told that his knee could not be rehabilitated and was called by other teams (Miami Dolphins and Kansas City Chiefs). Grievant testified that when trying out with the Dolphins, they signed a different player, but asked if he wanted to rehabilitate with them in the off season. Grievant testified that he was invited to a game

by the Kansas City Chiefs along with other players. During the game, their fullback was injured, then afterwards Grievant underwent a physical, including x-rays. The Chiefs opted to bring Grievant in for mini-camp as opposed to signing at the end of the year and Grievant testified his knee reacted badly. Grievant testified that following mini-camp, he continued to rehabilitate.

Grievant testified that although he was progressing he began to worry about his injury not healing and about filing a worker's compensation claim. Grievant testified he spoke with Ronnie Barnes in 1996 when he was in the Stadium to pick up his records, and that Mr. Barnes told him that Dr. Warren stated he should sue Dr. Ting for performing the surgery. Grievant admitted he had considered a malpractice claim against Dr. Ting and that the first indication he had been given that he should not have had the surgery was from Mr. Barnes that day. Grievant testified that after that conversation he had concluded that he should sue Dr. Warren for malpractice, but that on or about March 27 or 28, 1996 he discovered this was not possible. Grievant testified that his investigation revealed Dr. Warren could not be sued because he did not perform the surgery and that Dr. Ting could not be held accountable because he did not perform the wrong surgery. Grievant testified that during his investigation, he saw Dr. Tauber, who, after a review of the surgery tapes, the MRI and all of his records, concluded that the surgery had not performed incorrectly but that the surgery was irrelevant because his career was over from playing in the 1993 season prior to the surgery.

Grievant testified he was not instructed one way or the other as to where to undergo rehabilitation after surgery. Grievant testified that absent his hamstring injury, he believed that he could play for the Giants in the 1994 season and he felt he could play NFL caliber football when he left the Oakland Raiders.

Grievant acknowledged that he contacted the Players Association about filing a grievance and was told they would not proceed because of the timeliness issue, that he had read the Collective Bargaining Agreement and that he did have an agent when entering the National Football League. Grievant testified the NFLPA representative during the 1993 season was Steve Biase (phonetic) and that he was aware of the 1-800 number available to players to ask questions.

Ronnie Barnes, Head Athletic Trainer for the Giants, testified he is aided by assistant athletic trainers and his duties include prevention, treatment and rehabilitation of athletic injuries; maintenance of corresponding records; and overall supervision and coordination of health care for the players. Witness Barnes explained that he works closely with doctors by speaking with them regularly on the health status of players, arranging diagnostic tests, and basically coordinating the health care.

Witness Barnes testified the day of Grievant's injury in the pre-season of 1993, there was an orthopedic specialist present and subsequent care was undergone with Dr. Warren and other doctors. Witness Barnes indicated that Dr. Callaway is an orthopedic specialist who now practices in North

Carolina, Russ Warren is the Chief Team Physician, Tom Wickiewicz is an Associate Team Physician and that they are all orthopedic surgeons.

Witness Barnes testified he was present when Dr. Callaway performed the examination and dictated the note dated July 29, 1993, setting forth a medial collateral sprain of the right knee. Witness Barnes testified he was also present when Dr. Warren saw Grievant on July 30, 1993 and he and his staff were treating Grievant pursuant to the indications on the August 3, 1993 document from Dr. Wickiewicz specifying conservative treatment involving rehabilitation and play when symptoms improved. Witness Barnes explained the reference to "retinacular tear" refers to the ligament, tendon and the sleeve enveloping the joint, and that part of this capsule is called the retinaculum.

Witness Barnes testified each Giants player is presented with the Medical History Summary at the end of the year so they can be made aware of their injuries and discuss them. Witness Barnes explained that his function with regard to this form is to supervise the compilation of the form and to spend time with the players in acquiring their signature on the form. Witness Barnes testified he or another trainer are typically present when the document is being reviewed by a player and if the player requests, a doctor will be brought in to explain the medical information.

Witness Barnes testified that if a player ultimately does not agree with the contents of the document after explanation by a physician, then it may go into the file unsigned. Witness Barnes testified "inactive problems" refers to medical problems in the past for which the player is not currently under treatment. Witness Barnes testified that under "medical conditions" (in reference to the most recent Medical History Summary of Grievant) it lists atrial fibrillation. Witness Barnes has no personal knowledge or recollection of this with regard to Grievant. Witness Barnes explained the "active problems" section sets forth complications the player would be undergoing treatment for at the time of the composition of the document.

Witness Barnes testified that the term "sprain" in reference to Grievant's right knee means he had an injury to the ligament on the inside of his knee, that the medial collateral ligament was torn. Witness Barnes explained that all sprains are tears, that the distinguishing factor is the degree of the injury by grade (I, II, III, IV, A, B, C, D, IA, IIB) and the classification lies with the examiner. The terms sprain, tear and rupture can be otherwise used interchangeably.

Witness Barnes testified he stayed in contact with Grievant after the August 1993 Medical History Summary, the Giants continued to provide medical care and Grievant returned to play in the 1993 season, only missing games because of whooping cough. Witness Barnes testified that in December of 1993 there was again concern about Grievant's right knee and pursuant to a January 17, 1994 exam there is an indication of a Grade II medial collateral ligament. Witness Barnes testified that he was aware of surgery on Grievant's right foot that was performed by Dr. Warren.

Witness Barnes testified he had never discussed surgery with Grievant and he personally became aware of Grievant's surgery in March with Dr. Ting from a call from the physical therapist about where to send the bill. Witness Barnes acknowledged the Club paid for Grievant's surgery and rehabilitation. Witness Barnes testified that Grievant completed his rehabilitation in California, not with the New York Giants, however, Grievant did return periodically to see Dr. Warren and the team checked up on his progress regularly. Witness Barnes testified that they received an August 9, 1994 report indicating Grievant was still having problems. Witness Barnes testified that when Grievant reported to camp he was put on the PUP list and did not pass the Giant's physical in 1994.

Witness Barnes testified that during a discussion with Grievant after his release, Grievant felt that Dr. Warren had not given him the whole story about his knee and thought the team should be held responsible. Witness Barnes affirmed his belief that because Grievant had gone with an independent doctor for surgery and with another team, passing their physical, that the Giant's were not to be held responsible.

Witness Barnes testified that he is not aware of any documentation that says why Grievant was put on PUP in August of 1994 and that there is no documentation of a work-up with regard to atrial fibrillation, but that the reference could have been pursuant to an irregular heartbeat after a game.

Witness Barnes explained that the medical knowledge of football players covers a broad spectrum and trainers and doctors attempt to explain injuries and answer questions presented to the best of their ability. Witness Barnes acknowledged he had never explained to Grievant that if he continued to play with the torn retinaculum and the Grade III collateral ligament tear that he would be risking permanent damage to his knee. Witness Barnes admitted the Medical History Summary says nothing about a Grade level of Grievant's injury.

The following documents were entered into the Record.

1. Letter dated 4/8/96 (Complaint) from Jarrod bunch to New York Football Giants relaying notice of formal grievance.
2. Letter dated 4/15/96 (Answer) to Jarrod bunch from Dorothy C. Mitchell, Labor Relations Counsel, National Football League.
3. New York Football Giants Medical History Summary of Grievant dated 5/18/92.
4. New York Giants Medical History Summary dated 8/11/92.

5. Post-Season Physical Examination Waiver dated 12/26/92.
6. New York Football Giants Health History and Physical Examination dated 4/30/93.
7. Medical Report of Dr. Ayers to New York Giants regarding Grievant dated 4/30/93.
8. Office Note of Dr. Callaway regarding Jarrod Bunch dated 7/29/93.
9. Office Note of Dr. Warren regarding Grievant dated 7/30/93.
10. Office Note of Dr. Wickiewicz / Dr. Mormon regarding Grievant dated 8/3/93.
11. Medical Report of Dr. Anna Kelly dated 8/4/93 regarding medical examination of Jarrod Bunch on 8/3/93.
12. Office Note of Dr. Warren regarding Jarrod Bunch (undated).
13. Office Note of Dr. Warren regarding Grievant dated 8/3/93.
14. New York Football Giants, Inc. Medical History Summary regarding Grievant dated 8/6/93.
15. Office Note of Dr. Warren regarding Grievant dated 8/8/93.
16. Office Note of Dr. Callaway regarding Grievant dated 8/17/93.
17. Office Note regarding Grievant dated 8/21/93 (unsigned).
18. Office Note of Dr. Callaway regarding Grievant dated 8/22/93.
19. Office Note of Dr. Warren regarding Grievant dated 12/1/93.
20. Post-Season Physical Examination Summary dated 1/17/94.
21. Office Note of Dr. Warren regarding Grievant dated 2/28/94.
22. NFL Contract for the period 3/1/94 to 2/29/95 between Jarrod Bunch and New York Football Giants, Inc.
23. Office Note of Dr. Warren regarding Grievant dated 3/7/94.

24. Medical Report of Dr. Pavlov regarding exam of Grievant on 3/7/94 dated 3/8/94.
25. Telephone records of Grievant from 3/10/94 through 3/17/94
26. Video Tape of surgery of Grievant performed by Dr. Ting on 3/24/94.
27. Operation Report of Dr. Ting regarding Grievant dated 3/24/94.
28. Medical Report of Dr. Lombardo regarding evaluation of Grievant dated 3/31/94.
29. Telephone record of Grievant from 4/1/94 through 4/11/94.
30. Office Note of Dr. Warren regarding Grievant dated 4/20/94.
31. Office Note of Dr. Warren regarding Grievant dated 5/16/94.
32. Medical Report of Dr. Samarasinghe regarding examination of Grievant on 5/18/94 dated 6/6/94.
33. Supplemental Report of Dr. Lombardo dated 8/9/94.
34. New York Football Giants Health History and Physical Examination regarding Grievant dated 8/15/94.
35. Office Noted of Dr. O'Brien regarding Grievant dated 8/23/94.
36. Medical Report, Los Angeles Raiders Medical History and 9/9/94 Orthopedic Examination of Dr. Rotenberg dated 9/15/94.
37. Acknowledgment of Physical Examination and of Freedom from Injury form of the Los Angeles Raiders signed by Grievant and Dr. Rotenberg dated 10/26/94.
38. Player Profile dated 7/31/91 through 12/19/94.
39. Undated letter from Grievant to Mr. Mara.
40. Office Note of Dr. Smith regarding Grievant dated 5/7/96.
41. Medical Report of Dr. Tauber regarding Grievant dated 2/11/97.

42. Medical Report of Dr. Schultz regarding Grievant dated 5/2/97.
43. Letter dated 6/17/97 to Mssrs. Bunch and Briggs from Robert A. Creo, Arbitrator.
44. Letter dated 7/21/97 to Mssrs. Bunch and Briggs from Robert A. Creo, Arbitrator regarding hearing.
45. Letter to Mr. Pirozzolo from Dr. Ting regarding Grievant's surgery dated 11/28/97.

CASES AND AWARDS CITED BY THE PARTIES

Management Council

1. John Fourcade v. New Orleans Saints (Stark, 1995)
2. Tripp Welbourne v. Minnesota Vikings (Stark, 1995)
3. Ron Brown v. Los Angeles Raiders (Volz, 1995)
4. Jeff Griffin v. Philadelphia Eagles (Kagel, 1993)
5. Alex Higdon v. Atlanta Falcons (Kasher, 1993)
6. Los Angeles Rams v. Steve Busick (Kagel, 1992)
7. Darryal Wilson v. New England Patriots (Robins, 1992)
8. Jesse Baker v. Houston Oilers (Kagel, 1991)
9. Rich Mauti v. Washington Redskins (Kasher, 1988)
10. Ronald Howard, Steven Niehaus, Ruben Hodges and Richard Harris v. Seattle Seahawks (Kagel, 1986)
11. Ricky Churchman v. San Francisco 49ers (Fisher, 1985)
12. James Otis v. St. Louis Cardinals (Kagel, 1984)
13. Dextor Clinkscale v. Dallas Cowboys (Kagel, 1983)

14. Charles Zapiec v. Kansas City Chiefs (Fisher, 1983)
15. Ken Johnson v. Cincinnati Bengals (Luskin, 1980)
16. Terry Joyce v. Los Angeles Rams (Stark, 1980)
17. Jim Peterson v. Tampa Bay Buccaneers (Searce, 1978)
18. John Hendy v. San Diego Chargers (Robins 1992)
19. Interstate Circuit, Inc. v. United States, 306 U.S. 208, 59 S. Ct. 467 (1939)
20. Piscataway Township Board of Educ., 74 LA 1107, 1110 (Jacobson 1980)
21. Art Schlichter v. Indianapolis Colts (Robins 1989)
22. Johnny Ray Smith v. San Diego Chargers and Indianapolis Colts (Kagel 1989)
23. Tendler v. Jaffe, 203 F.2d 14 (D.C. Cir 1953)
24. UAW v. NLRB, 459 F.2d at 1340
25. United States v. Roberson, 233 F.2d 517 (5th Cir. 1956)

Player

26. Steve Smith v. Los Angeles Raiders (June, 1995)

PERTINENT PROVISIONS OF THE AGREEMENT

ARTICLE IX. NON-INJURY GRIEVANCE

Section 2. Initiation: A grievance may be initiated by a player, a Club, the Management Council, or the NFLPA. A grievance must be initiated within forty-five (45) days from the date of the occurrence or non-occurrence upon which the grievance is based, or within forty-five (45) days from the date on which the facts of the matter became known or reasonably should have been known to the party initiating the grievance, whichever is later. A player need not be under contract to a Club at the time a grievance relating to him arises or at the time such grievance is initiated or processed.

ARTICLE XLIV

Section 1. Club Physician: Each Club will have a board-certified orthopedic physician as one of its Club physicians. The cost of medical services rendered by Club physicians will be the responsibility of the respective Clubs. If a Club physician advises a coach or other Club representative of a player's physical condition which adversely affects the player's performance or health, the physician will also advise the player. If such condition could be significantly aggravated by continued performance, the physician will advise the player of such fact in writing before the player is again allowed to perform on-field activity.

ARTICLE XLIV

Section 4. Players' Right to a Surgeon of His Choice: A player will have the right to choose the surgeon who will perform surgery provided that: (a) the player will consult unless impossible (e.g., emergency surgery) with the Club physician as to his recommendation as to the need for, the timing of and who should perform the surgery; and (b) the player will give due consideration to the Club physician's recommendations. Any such surgery will be at Club expense; provided, however, that the Club, the Club physician, trainers and any other representative of the Club will not be responsible for or incur any liability (other than the cost of the surgery) for or relating to the adequacy or competency of such surgery or other related medical services rendered in connection with such surgery.

POSITIONS OF THE PARTIES

Summary of Player's Position

Grievant argues the Giants violated Article XLIV, Section 1 by not informing Bunch that, if he played during the 1993 season after suffering the Grade III MCL tear and the torn retinaculum, he would run the risk of permanently damaging his right knee. Grievant asserts the Club Medical Staff failed to make the proper disclosures pursuant to the pertinent language of this Section stating "...If such a condition could be significantly aggravated by continued performance, the physician will advise the player of such fact in writing before the player is again allowed to perform on-field activity."

In support of his contention that the Grievance was timely filed pursuant to Article IX, Section 2, Grievant argues that April 8, 1996 was withing forty-five (45) days of when the "facts of the matter," that is, the facts underlying this Grievance became known or reasonably should have been known by him.

Grievant argues the "facts of the matter" are (1) that Bunch suffered permanent damage to his knee as a result of the cumulative trauma to his knee during the 1993 season following the Grade III tear in the MCL and the torn retinaculum, and (2) that he was not informed adequately of the risks he would be running by playing on a knee that had suffered an injury of this type. Grievant argues he first became aware in March and April 1996 that his right knee had become permanently disabled because of the cumulative trauma the knee suffered during the 1993 season following the torn MCL and the torn retinaculum. Grievant asserts that prior to this time he reasonably believed that his slow rehabilitation was the result of the knee failing to respond to surgery, and that the failure to respond might have been due to either the fact the surgery should not have been performed or that the surgery was performed badly. Grievant argues that prior to 1996, he was never given constructive or actual notice of the fact that the real reason he was unable to play professional football was that he had played the 1993 season with the torn MCL and torn retinaculum.

Grievant argues he had consistently been told his slow recovery was the result of his knee failing to respond to surgery, and that he was never told, prior to April 1996, that it would never respond because of his play in 1993. Grievant argues that once these facts were became apparent, he filed a grievance, even prior to actually having the written reports from the doctors he had contacted with regard to additional expert opinions.

Grievant argues that the statute could not have begun to toll on August 6, 1993, when signing the Medical History Summary because his claim includes the cumulative damage incurred during the 1993 season as well as the failure to inform, in addition to the fact that there was no way for Bunch to have known about the damage from the 1993 season prior to its commencement. Secondly, Grievant asserts that the grievance would have been completely different than the one at hand would he have disagreed with the Giants characterizations of his injury back in August of 1993. If Grievant did not want to play pursuant to the Medical History Summary and filed a grievance pursuant to the disagreement, there would be a completely different type of dispute. Grievant argues the Grievance herein is based upon a failure to inform, which lead him to go on to play; if he had been given any indication of the ramifications the grievance would not arise out of this Section of the CBA. Grievant contends that he was clearly told the opposite - that he would be fine playing on the injury - and relied upon this assurance.

In response to the Giant's assertion that Bunch should have been on notice that his knee had become permanently damaged as a result of playing on the MCL tear and torn retinaculum during the 1993 season because of the swelling and pain he experienced one week after surgery, the Grievant's brief states "... [this] reads the 'reasonably should have known' standard into oblivion. If the NFLMC is correct, then any time a football player experiences post-surgical swelling and pain a week after the [sic] surgery, then he has forty five days to file a claim that he was permanently disabled before the surgery." The Grievant also contends that he could not have obtained the knowledge necessary to toll the time limit in the end of March, 1994 because not only was he cleared

to begin practice after the surgical intervention, but he was signed by the Giants for another season (with no indications that anyone believed his injury to be permanent and career-threatening).

Grievant also argues that Dr. Warren and the Giants' Medical Staff approved, paid for, and were kept informed of his surgery, rehabilitation and all medical records from Dr. Ting (Dr. Warren even offered to perform the surgery instead). Therefore, Grievant contends that although he had chosen a different doctor to perform the surgery, he was still under the supervision of the Giants' Medical Staff pursuant to the continued treatment for his injury while employed by the team. Grievant's claim in this matter does not arise out of an allegation that the surgery was either inadequate, contraindicated or incompetently performed, so the Giants' arguments in this respect are incorrect.

Grievant asserts that the relevant inquiry under Article IX at issue is whether Bunch reasonably should have known that he had suffered a permanent injury to his right knee before the 1993 surgery, and that it is not unreasonable for Bunch to follow his doctors' advice throughout the history of his knee injury.

The Giants' also argue that as of August 15, 1994, although again signed with the Giants, when Bunch was placed on the PUP list, he should have known that the damage was permanent. In response, Grievant argues that in addition to the fact that he was again signed by the Club, all the medical reports of the Giants' medical staff attributed his problems to "persistent post-surgical swelling" with no indications that the knees instability was unrelated to the surgery. In addition, Bunch was suffering a hamstring pull at the time which would have caused him to be physically unable to perform.

In response to the Giants' "absolute last trigger date" for the tolling of the time limit - the date he was cut, August 29, 1994, Grievant argues that not only was he still under the reasonable assumption that the problem continued to be slow recovery from the surgery as opposed to a permanent condition, but that the real reason he was cut was because he did not want to play in New York. Grievant also argues that this assertion is misplaced because pursuant to text book labor relations law, rights vest during a contract's terms and do not self-destruct upon the expiration of a contract.

Grievant contends that even after being cut from the Club, he continued to reasonably believe he could rehabilitate his knee, and only after an investigation in 1996 eliminating the possibility that the surgery was performed incorrectly, did he finally come to realize when the permanent damage occurred.

Grievant notes that the fact that evidence exists that the Club placed false information on his Medical History Summary and that this is the document upon which the Giants rely in support of their contention that Bunch was adequately informed of the risks of playing in 1993.

Summary of Club's Position

The Giants argue the Grievance at hand was not filed within the time limit set forth in Article IX, Section 2 of the 1993 Collective Bargaining Agreement (CBA) stating that a grievance must be initiated within forty-five (45) days from the date of the occurrence or non-occurrence upon which the grievance is based, within forty-five (45) days from the date on which the facts of the matter became known or reasonably should have been known to the party initiating the grievance, whichever is the later.

The Giants cite extensive case law illustrating uniform arbitral precedent in the NFL requiring strict compliance with the mandatory filing requirements of the CBA. Specifically, the Club cites Arbitrator James F. Searce in Terry Joyce v. Los Angeles Rams, who denied an injury grievance 12 days after the expiration of the filing deadline, who concluded that the clear language of the provision demanded strict enforcement of the time limit to effectuate the mutual understanding of the parties. Arbitrator Searce goes on to explain that the procedural limits serve an important purpose and that absent unusual or mitigating circumstances, an arbitrator is without authority to apply them without the strictest of application. The Giants also cite Arbitrator Fisher in Ricky Churchman v. San Francisco 49ers with regard to the "clear and unambiguous" language for time limits on injury grievances, in opining that it is not an arbitrator's place to comment on time limits, but only to apply them as mutually agreed to by the parties. Arbitrator Samuel Kagel was cited in Clinksdale v. Dallas Cowboys and Los Angeles Rams v. Steve Busick applying the same strict standard to the time limits for non-injury grievance filing. The applicability of timeliness requirements is equally stringent throughout the relevant Articles of the CBA.

The Giants argue that Bunch cannot successfully assert that his attempts, subsequent to the occurrence upon which his grievance is based, to ascertain the condition of his right knee, or assert a malpractice claim tolls the forty-five (45) day period explicitly stated in Article IX, Section 2, and base this upon Arbitrator Kasher's holding in Alex Higdon v. Atlanta Falcons.

The Giants assert that Bunch should have filed his grievance within forty-five (45) days of August 6, 1993, the date of the signing of the Medical History Summary, and the first occasion upon which the Giant's Medical Staff allegedly failed to inform Grievant of the consequences of his continued participation in professional football. It is the Giant's position that because Grievant signed the Medical History Summary waiver, he was acknowledging a full explanation that further play may aggravate or deteriorate his knee injury, and failed to file a grievance within 45 days if he

did not agree with the assessment.

Additionally, the Giants argue that even if Bunch did not become aware of a failure to disclose at that time, that facts should have become aware to Bunch on March 31, 1994, approximately one week after his surgery with Dr. Ting, when experiencing post-surgical problems. The Giants contend his post-surgical condition should have put Bunch on notice that there may have been a failure to warn of the possibility of future complications and that he should have been prompted at that time to file a grievance, however, he failed to do so withing 45 days. With this in mind, the Giants argue that if Grievant's knee was completely disabled in March of 1994, then Dr. Ting and Dr. Lombardo, Bunch's treating physician, should have known and informed Grievant about the extent of his injury, and that pursuant to Article XLIV, Section 4, the Giant's Medical staff cannot be held liable for the adequacy or competency of the other doctor.

On August 15, 1994, Grievant was placed on the PUP list by the Giants, who argue, if Grievant was not yet aware of the condition of his knee, he should have been at this point, and still failed to file a grievance within 45 days.

The Club insists that the absolute latest date upon which knowledge was known or should have been known with regard to the grievance was August 29, 1994, when Bunch failed his pre-season physical and was released by the Giants. The Giants argue that at no time beyond his release from the Club were they under any obligation or duty to advise Grievant about the status of his knee. Grievant failed to file his Grievance within 45 days of this date. The Giants state in their pre-hearing brief that "The facts alleged by Bunch in his grievance, that the Giants were deficient in their duty to inform Bunch of possible complications regarding his knee, did not change, nor could they have, from the time the Giants released Bunch to the time he filed his grievance 19 months later. The facts of the Giants' treatment of Bunch did not change in the 19 months it took Bunch to become acquainted with the CBA and file this grievance. Any argument that Bunch somehow acquired some additional knowledge concerning the circumstances upon which his grievance is based subsequent to this release by the Giants is nonsensical. In fact, the only additional knowledge Bunch acquired regarding his grievance following her termination by the Giants is an awareness of the various provisions of the CBA as a result of his belated review of the Agreement..."

The Giants argue that Bunch's ignorance to the time limits set forth in the CBA is immaterial to his failure to meet the time limits because the information was available to him at all times in the Agreement, he had access to a player representative if he had any questions and he was a veteran player, entering his third season in the NFL. The Giants also contend the fact that Grievant filed his grievance *pro se* affords him no latitude in the application of procedural guidelines set forth in the CBA because he as a player is granted the ability to initiate a grievance and must be held to the same standard as the MFLMC or the NFLPA.

In arguing that the Grievance must be denied for failure to state a claim upon which relief may be granted, the Giants claim that the Club's conduct, when viewed in light of Article XLIV, Section 1, has been appropriate in all areas. The Giants' employ the use of a board-certified orthopedic surgeon and have paid for the costs of medical services rendered by Club physicians in accordance with this provision.

In defense of the allegation pursuant to Section 1, that Grievant was not advised in writing about the ramifications of continued play on the injury, the Giants argue that the Medical History Summary signed by Grievant on August 6, 1993 supplies the evidence that Grievant was provided with the correct information. The Club asserts that Grievant's actions in signing this document acknowledged his understanding that his knee could be significantly aggravated by continued performance and that such deterioration was potentially foreseeable. The Giants also argue that any assertion by Grievant about inadequate medical care on the part of the Club is directly contradicted by his actions after his August 29, 1994 release from the Club by Grievant's subsequent employment and tryouts with other teams.

The Giants also argue that a subsequent aggravation of the physical injury in question is not a component of an alleged Article XLIV, Section 1 violation; it only addresses the failure to inform not the result of an alleged failure. The Giants rely upon the language "...If such condition could be significantly aggravated by continued performance...", asserting that this addresses the possibility, not the actual occurrence. Therefore, it is argued that the time limit for filing the grievance began to run at the time Grievant was allegedly informed or not informed, August 6, 1993, the date of the signing of the Medical History Summary.

Grievant argues that he should not be held accountable for his signature on this document for two basic reasons: (1) The document was not accurate in its specificity of a tear versus a sprain and did not clarify the severity by grade level of the tear; and (2) The waiver implied that the acknowledgment of possible future aggravation only applied to the "medical conditions" section because it specifically refers to "medical conditions". The Giants' argue that pursuant to the testimony of their witness, Ronnie Barnes, the terms "tear" and "sprain" are used interchangeably and that the players are well aware of their synonymous nature. Additionally, the Giants' assert that the use of the term "patella tendonitis" instead of "torn retinaculum" could be explained by the fact that both are treated in the same manner with ice and compression. The Club holds the position that this argument is completely lacking in merit.

In reference to Grievant's assertions that the waiver only applied to the "medical conditions" section of the Summary, the Club argues that the waiver was obviously intended to cover all "medical conditions" including past problems, current problems and "medical conditions" because of the use of the term "paragraphs" in the plural sense.

The Giants' arguments set forth in their post-hearing brief include the fact that a negative inference should be drawn against Grievant in light of his failure to provide Dr. Tings notes and records requested by the Arbitrator. The Club asserts that they are entitled to an irrebuttable presumption that the evidence would have been adverse to the recalcitrant party.

Finally, the Club asserts that the independent expert medical opinions of both Drs. Tauber and Schultz are unreliable because their review only included a perusal of the medical records and video tapes of the surgery and not an actual physical examination of Grievant. The Club points out that no other doctors, aside from these two, treating or examining Grievant, including the doctors from the other teams with whom he sought employment, found or indicated that Grievant's injury to his knee was career-ending.

The Giants also note that Dr. Tauber referred to the fact that Grievant was never able to return to professional football after his March 1994 surgery, when he actually had played with the Raiders. The Club asserts that this is an indication that Dr. Tauber's report is tainted or unreliable because the facts upon which he based his opinion are incorrect. The Giants' post-hearing brief cites both John Hendy v. San Diego Chargers (Robins 1992) and Art Schlichter v. Indianapolis Colts (Robins 1989) in support of this contention.

ISSUE

Is the Grievance arbitrable?

DISCUSSION AND FINDINGS

The timeliness issue hinges upon when Grievant had actual or constructive knowledge of the alleged breach of the Agreement. The Grievance is untimely for all the other "trigger" dates except for the Grievant's "trigger" dates close to his receipt of the opinions of Drs. Tauber and Schultz. ~~The Arbitrator finds that the Grievant had no actual knowledge of his potential claim prior to filing his Grievance.~~ The Arbitrator finds that the date(s) upon which Grievant should have "reasonably known the facts of the matter" surrounding his Grievance is during March of 1994, the time encompassing his treatment and surgery with Dr. Arthur Ting. As such, the Grievance is untimely since it is not within the 45 day time period mandated by the Agreement.

At the time of Grievant's lateral release surgery, as a matter of law, he had placed his care in the hands of an independent doctor of his own choosing; this imputes the independent doctor's knowledge to Grievant. On or about March 24, 1994, Dr. Ting not only had the same knowledge of Grievant's injury as Dr. Warren or any of the Club's physician, but in light of the surgery actually

performed, possessed knowledge superior to anyone else. If Grievant's inability to successfully continue his professional football career did originate from his premature return to full play following his initial 1993 injury, then Dr. Ting should have had at least this much knowledge after reviewing the records and operating on the knee. The obligation to disclose all information immediately to Grievant is upon the independent physician he personally selected to perform the lateral release since a physician-patient relationship was formed between Dr. Ting and Grievant.

The Arbitrator recognizes the fact that even if Dr. Warren and the Giants' did neglect to detail Grievant's condition on his Medical History Summary by failing to indicate the grade of the injury (and by indicating orally that the injury was not serious or that he would be back playing "soon"), Grievant was subsequently provided with the results of his MRI; Dr. Ting was in possession of all of this information. Assuming *arguendo* that Dr. Warren did (or should have known) from a medical standpoint that Grievant played on his knee prematurely during the 1993 season, then Dr. Ting (with his equal or superior knowledge) should have known also that he was "permanently" injured by the date of the surgery. Grievant loses his right to rely solely upon everything told (or not told to him) by the Club when seeking out a physician independent from the Club.

The issue is not the competency or adequacy of the surgery by Dr. Ting, but rather, when Grievant reasonably should have known the facts which form the basis of his claim. The Arbitrator agrees with Grievant that it is reasonable for him to rely upon his doctors' treatment and information. It is also reasonable to find that Grievant's utilization of a doctor independent from the Club raises the expectations of Grievant's knowledge with regard to his injury because Grievant is actively participating in his course of medical treatment. This is especially true here because Grievant went against Dr. Warren's recommendation of not having the surgery done immediately and then declined the offer of Dr. Warren to perform the operation.

The Arbitrator was not provided with any notes or records from Dr. Ting (except a video tape of the surgery) so a determination about the level of contact between Dr. Ting and Dr. Warren or any other of the Club's medical personnel is difficult to determine. The Arbitrator finds that regardless of the Club's knowledge about the surgery, Dr. Ting always had equal or superior knowledge about the injury and had the physician-patient relationship with Grievant. The fact that the Giants paid for the surgery does not eliminate, nor otherwise, weaken, the relationship between Dr. Ting and Grievant. If it was so clear that the damage was irreparable prior to March of 1994 (as Drs. Tauber and Schultz claim) then Dr. Ting should have not done the surgery and so advised Grievant.

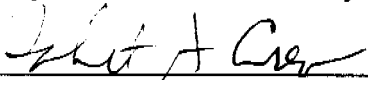
Although the merits of the claim are not reached here, the Arbitrator notes that every doctor who reviewed Grievant's records, and examined him physically between 1993 and 1996, did not find that his knee could not be rehabilitated. Only Dr.'s Tauber and Schultz, whose review of Grievant's medical history did not include a physical examination, made the finding that Grievant's career

effectively ended after playing through the 1993 season. The credibility of these physician's reports cannot be held as gospel under these circumstances.

AWARD

The Grievance is denied and dismissed as untimely filed and therefore not arbitrable.

It is hereby so Ordered this 10th day of December, 1997.



ROBERT A. CREO, Esquire
Arbitrator
Pittsburgh, Pennsylvania

EXHIBIT 20

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 and NFL PROPERTIES LLC

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

VERNON MAXWELL, et al.,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE,
 et al.,

Defendants.

CASE NO. CV 11-08394 R(MANx)

ORDER DENYING PLAINTIFFS'
 MOTION TO REMAND

Date: December 5, 2011
 Time: 10:00 AM
 Judge: Hon. Manuel L. Real

Notice of related cases:
 No. CV 11-08395 R (MANx)
 No. CV 11-08396 R (MANx)

Plaintiffs' motion to remand this action to state court came on for

1 hearing on December 5, 2011, the Honorable Manuel L. Real presiding. After
2 consideration of the briefs and arguments of counsel, and all other matters
3 presented to the Court, the Court DENIES plaintiffs' motion for the reasons that
4 follow.

5 Generally, under the well-pleaded complaint rule, a defendant cannot
6 remove state-law claims to federal court even if the defendant has a defense based
7 on federal law. *Milne Emps. Ass'n v. Sun Carriers, Inc.*, 960 F.2d 1401 (9th Cir.
8 1991). However, the Supreme Court has concluded that the preemptive force of
9 some statutes is so strong that they completely preempt an area of state law. In
10 such cases, any claim purportedly based on that preempted state law is considered a
11 federal claim, and therefore arises under federal law. *Franchise Tax Board v.*
12 *Constr. Laborers Vacation Trust*, 463 U.S. 1 (1983).

13 The Supreme Court has held that federal law exclusively governs suits
14 for breach of a collective bargaining agreement ("CBA"). *Textile Workers Union v.*
15 *Lincoln Mills*, 353 U.S. 448 (1957). In addition, section 301 of the Labor
16 Management Relations Act preempts state law claims that are substantially
17 dependent upon or inextricably intertwined with the terms of a CBA. *Allis-*
18 *Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985).

19 Here, the Court finds the decision in *Stringer v. National Football*
20 *League*, 474 F. Supp. 2d 894 (S.D. Ohio 2007), to be persuasive and concludes that
21 plaintiffs' second cause of action, for negligence against the defendant National
22 Football League ("NFL"), is preempted. Its resolution is inextricably intertwined
23 with and substantially dependent upon an analysis of certain CBA provisions
24 imposing duties on the clubs with respect to the medical care and treatment of NFL
25 players.

26 The CBA provisions that relate to the duties of team physicians are
27 implicated. The CBA places primary responsibility for identifying such physical
28 conditions on the team physicians. *Stringer*, 474 F. Supp. 2d at 910. Plaintiffs'

1 complaint alleges a “[f]ailure to ensure accurate diagnosis and recording of
2 concussive brain injury so the condition can be treated in an adequate and timely
3 manner.” (Compl. ¶ 548.) The physician provisions of the CBA must be taken into
4 account in determining the degree of care owed by the NFL and how it relates to
5 the NFL’s alleged failure to establish guidelines or policies to protect the mental
6 health and safety of its players. The Court reaches a similar conclusion when
7 examining the CBA provisions relating to the teams’ athletic trainers.

8 Having concluded that at least one of plaintiffs’ claims is preempted
9 by section 301, it is unnecessary at this stage of the proceedings to determine
10 whether plaintiffs’ other claims are also preempted. That determination is better
11 left for the motion-to-dismiss stage. As long as at least one federal claim is present,
12 this Court can exercise supplemental jurisdiction over the remaining claims
13 pursuant to 28 U.S.C. § 1367.

14 Thus, defendants’ removal of this action was proper and, therefore,
15 plaintiffs’ motion to remand is denied.

16 IT IS SO ORDERED.

17
18
19 DATED: December 8, 2011


THE HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT COURT