

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE

3 IN RE:) Case No. 11-12010 (KG)
4) Chapter 11
LOS ANGELES DODGERS LLC, et al.)
5) Courtroom No. 3
Debtors.) 824 Market Street
6) Wilmington, Delaware 19801
7)
8) December 8, 2011
9) 9:00 A.M.

10 VOLUME II
11 TRANSCRIPT OF HEARING
12 BEFORE HONORABLE KEVIN GROSS
13 UNITED STATES BANKRUPTCY JUDGE

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1 THE COURT: Good morning, everyone. Thank you and
2 please be seated. It's good to see you all again. And
3 before we begin, just kind of being who I am, I would like to
4 apologize to Mr. Werkheiser and Mr. Teklits. You know, I
5 think that my comments were a little bit certainly more
6 intemperate than they were intended to be, and I think I
7 spoke out of a little bit of frustration at my lack of
8 control of the proceedings, and I do apologize.

9 MR. WERKHEISER: Thank you, Your Honor. And it was
10 obviously a long day for everybody, and I think counsel will
11 certainly be on their, and I'm sure everyone in the courtroom
12 will be on their best behavior today.

13 THE COURT: Especially me, Mr. Werkheiser, yes.

14 MR. WERKHEISER: Thank you.

15 THE COURT: Thank you. All right. Now just for sort
16 of our proceedings, I have an important Judges' meeting at
17 noon today, so we'll have to break around, you know, at noon
18 or so and then obviously we'll continue thereafter and you'll
19 have an opportunity for lunch. But I just wanted to at least
20 alert people for your own sort of timing.

21 And I know that we completed Mr. Coleman's testimony
22 yesterday. And I know that Mr. Bennett was considering
23 whether or not to call Mr. Cohen to the stand.

24 MR. BENNETT: Your Honor, we will not be calling Mr.
25 Cohen to the stand at this time, preserving the right to use

1 him as a rebuttal witness if necessary.

2 THE COURT: All right; understood. Thank you, Mr.
3 Bennett. So it is now, you're turning the proceedings now
4 over to Fox. Is that right?

5 MR. BENNETT: That's correct, Your Honor.

6 THE COURT: Okay.

7 MR. BENNETT: I think we moved our Committee Exhibits
8 into evidence yesterday.

9 THE COURT: You did. All right. Mr. Werkeheiser, or
10 Mr. Stone.

11 MR. STONE: I think it's my turn, Your Honor, thank
12 you.

13 THE COURT: Yes; certainly.

14 MR. STONE: Good morning, Your Honor, Richard Stone.

15 THE COURT: Good morning.

16 MR. STONE: For Fox Sports Prime Ticket. I'd like to
17 call to the stand Ed Desser.

18 THE COURT: All right. Mr. Desser, we'll all be very
19 careful.

20 MR. STONE: Yes.

21 THE COURT: Mr. Desser, if you want to remain
22 standing.

23 MR. STONE: Not to be confused with the furniture.

24 THE COURT: That's right. If you remain standing Mr.
25 Desser, we'll have you sworn, sir.

1 EDWIN STANLEY DESSER, WITNESS, SWORN

2 THE COURT: Good morning, Mr. Desser.

3 MR. DESSER: Good morning, Your Honor. And thank you
4 for having me here with you. It's a pleasure to be here
5 after six months of reading about this case.

6 THE COURT: Yes. Good to have you here, sir.

7 MR. STONE: May I proceed, Your Honor?

8 THE COURT: Mr. Stone, you may.

9 MR. STONE: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. STONE:

12 Q. Good morning, Mr. Desser.

13 A. Good morning, Mr. Stone.

14 Q. Are you president of Desser Sports Media, Inc.?

15 A. Yes I am.

16 Q. Can you tell the Court what Desser Sports Media, Inc.
17 does?

18 A. Certainly. We are engaged in all manners of
19 representation of sports clients, specifically with respect
20 to media arrangements. Our specialty is, excuse me, is
21 negotiating television agreements on behalf of Major League
22 sports teams with people like Fox, Comcast, and other
23 parties, as well as representing a variety of other types of
24 products, whether they be leagues, federations, associations,
25 conferences, in connection with media arrangements.

1 Q. In your capacity as president of Desser Sports Media, for
2 how long have you been engaged in negotiating telecast rights
3 deals on behalf of sports teams?

4 A. It's been about seven years.

5 Q. And you had experience prior to forming Desser Sports
6 Media in that field as well?

7 A. Yes. Prior to starting Desser Sports Media, I was
8 involved -- first, I'll go back to the beginning of my
9 career, if you don't mind. I was the head of broadcasting
10 for the Los Angeles Lakers and Los Angeles Kings, where I was
11 responsible for administering the very sorts of rights that
12 are the subject of these proceedings. I went to the National
13 Basketball Association in 1982, where I was first the
14 director of broadcasting, and executive producer for the
15 National Basketball Association.

16 Q. Did you work in the Commissioner's office for the National
17 Basketball Association?

18 A. Yes I did, I was in the Commissioner's office for 23 years
19 in New York, first as the director of broadcasting, then vice
20 president, general manager of NBA Entertainment, then vice
21 president of television, international television for NBA
22 International, then president of NBA Television, president of
23 NBA Television and New Media Ventures, and finally president,
24 excuse me, executive vice president of strategic planning and
25 business development in the Office of the Commissioner.

1 Q. Now, while you were at the NBA, did you have an
2 opportunity to negotiate media agreements on behalf of the
3 National Basketball Association?

4 A. Yes, I did. I was responsible for the negotiations for
5 agreements with NBC, Turner Broadcasting, ESPN, ABC, CBS, and
6 as well as launching NBA Television, or NBA TV which is a 24-
7 hour all basketball network that is distributed via cable
8 throughout the United States.

9 Q. Well at least when there's not a strike.

10 THE COURT: That's right.

11 MR. DESSER: There is no strike or lockout currently
12 in effect, the games will begin on Christmas Day, I'm happy
13 to say.

14 BY MR. STONE:

15 Q. All right. I'm sorry, I didn't mean to interrupt. Please
16 continue.

17 A. So I was in the Commissioner's office until 2005 when I
18 moved back to California to start Desser Sports Media.

19 Q. Now, you mentioned that prior to joining the NBA you
20 worked for the Los Angeles Kings and the Los Angeles Lakers.

21 A. Yes.

22 Q. And was that involved in their media relationships?

23 A. Yes. I was responsible for all of the day-to-day
24 administration of the television radio agreements, with at
25 that time local over the air stations, nonstandard television

1 operations. At that time it was subscription television, it
2 was before the days of widespread cable. And actually I was
3 responsible for some of the very early work on behalf of the
4 Lakers looking at the regional sports television business.
5 And I recently came across a document I sent to the owner of
6 the team projecting that it would be a good idea to start an
7 RSN. This was dated 1982. That RSN did ultimately get
8 started around 1985 or so, and is currently today called Fox
9 Sports West.

10 Q. So we either have you to thank or blame for being here
11 today.

12 A. You know, in a way of speaking, I suppose.

13 Q. And how many years of experience do you have directly in
14 the Los Angeles sports and media marketplace?

15 A. About 17 years in Los Angeles. Prior to joining the
16 Lakers and Kings, I worked in the broadcasting industry for a
17 number of stations in the Southern California market, was
18 also involved in producing sports broadcasts, Monday night
19 Football, NASCAR races, a variety of other programming and,
20 of course, Lakers games which is how I got into the sports
21 field.

22 Q. So if we laid this all end-to-end, how many years of
23 experience do you have total in the sports media industry?

24 A. I think it's now about 35 in the sports media industry.

25 Q. 35 years?

1 A. Yes.

2 Q. And have you advised professional sports teams with
3 respect to exploiting their media rights?

4 A. Absolutely. That's my bread and butter.

5 Q. Can you give us some examples of transactions or deals
6 that you have worked on with a particular professional sports
7 team?

8 A. Sure. I worked with the Houston Astros and Houston
9 Rockets in connection with what will become a new RSN that's
10 going to be launching in Houston. It's a Comcast branded
11 RSN, it'll be launching next fall, and advised them with
12 respect to the valuation of their rights fees, the
13 appropriate ways to go about setting up the RSN, negotiating
14 strategies with potential parties interested in being a party
15 with the RSN. And that one I can, I'm happy to say, is well
16 along to launching, they just announced the hiring of the
17 president to run the network the last couple of weeks.

18 Q. Without going into the details, can you give us a list of
19 some of the other teams that you have represented in media
20 transactions?

21 A. Certainly. I have, I've worked for the Los Angeles
22 Clippers, the Portland Trailblazers, the Sacramento Kings,
23 Detroit Pistons, Miami Heat, Atlanta Hawks and Thrashers,
24 Dallas Mavericks, San Antonio Spurs, Milwaukee Bucks,
25 Minnesota Timberwolves, Toronto Maple Leafs, Toronto Raptors,

1 Toronto FC, which is a soccer team. I've also worked for a
2 number of leagues, I've done work for the PGA Tour, for Major
3 League Soccer. I was continuing to be a consultant for the
4 NBA for many years, and Canadian Football League, to name
5 just a few.

6 Q. Were you also involved in the Chicago Cubs transaction in
7 any way?

8 A. Yes. One of the things that we do is advise potential
9 owners of sports teams, you know, specifically with respect
10 to their media rights, and looking at the existing deals that
11 are in place for those teams, and projecting forward to see
12 what we think the rights might be worth in the future, you
13 know, very analogous, I think to the exercises that are
14 relevant to this Court. It's precisely the kind of thing
15 that we do for team owners. I would add that we did the same
16 thing for the recently approved, and I'm not sure if the
17 transaction is closed yet, but the new owners of the Houston
18 Astros retained us for similar purposes.

19 Q. So what you would do is you would come in as a consultant
20 and analyze the existing media rights contract and advise the
21 potential buyers to the value of those rights?

22 MR. BENNETT: Objection, Your Honor. It may not make
23 a big difference now, but there's been a lot of witness
24 leading and this is direct examination, and I object to that
25 question.

1 MR. STONE: If I may respond, Your Honor?

2 THE COURT: Yes.

3 MR. STONE: First of all, under the Federal Rules of
4 Evidence you're permitted to lead an expert witness. I will
5 proffer him shortly. Secondly, I've taken Your Honor's
6 admonition yesterday seriously and I thought for non-
7 controversial matters we could move this along pretty
8 quickly, I'm trying to be as efficient as possible. If
9 counsel would like me to lay a complete open-ended question
10 foundation for every topic, I can do that, but it would
11 lengthen things unduly, I believe.

12 THE COURT: Was it that particular question, Mr.
13 Bennett, that caused you to object?

14 MR. BENNETT: No, it's just that it's been happening
15 a lot and I want it to stop. And there is no exception for
16 experts, the experts probably, want to hear what he has to
17 say, not what counsel has to say.

18 THE COURT: All right. I thought it was just laying
19 the basics. But why don't we --

20 MR. STONE: I can do it another way.

21 THE COURT: Yes, I'll sustain that objection, Mr.
22 Stone, and please.

23 MR. STONE: Thank you, Your Honor.

24 BY MR. STONE:

25 Q. Mr. Desser, can you explain to the Court the role that you

1 play in advising potential purchasers of sports teams
2 specifically as it relates to media rights?

3 A. Certainly. We will look at and assess the current
4 agreements that are in place, whether they be cable,
5 broadcast, radio, radio networks, etc., look at the variety
6 of terms in those agreements, not only the financial aspects,
7 but the important non-financial aspects. We will assess the
8 marketplace, whether there is sufficient competition in the
9 marketplace, whether there's an opportunity to potentially
10 create an additional distribution outlet, like an original
11 sports network. Really, looking at the variety of
12 opportunities that exists for that team and its rights, and
13 then advising the team as to what our belief is as to the
14 fair market value of those rights, and the opportunities that
15 they have going forward should they wish to buy the team.

16 Q. And you have done that on numerous occasions.

17 A. Yes I have.

18 Q. Over the course of your career, how many sports team media
19 rights deals have you negotiated directly?

20 A. Certainly, you know, several dozen, I don't know the
21 specific number offhand, but quite a number.

22 Q. Have you ever served as an expert witness in media rights
23 litigation?

24 A. In terms of litigation, there was one case that didn't
25 actually go to trial that I was an expert in, and I have

1 served as an expert in a number of arbitrations in various
2 expert-like roles.

3 MR. STONE: Your Honor, at this time I would proffer
4 Mr. Desser as an expert in sports media rights and sports
5 media rights negotiation.

6 THE COURT: Mr. Levinson?

7 MR. LEVINSON: No objection, Your Honor.

8 THE COURT: All right. He is so qualified. Thank
9 you.

10 MR. STONE: Thank you, Your Honor.

11 BY MR. STONE:

12 Q. Prior to this engagement, have you ever been employed by
13 Fox?

14 A. No.

15 Q. Have you ever served as a consultant for Fox?

16 A. No.

17 Q. Have you ever been hired as an expert by Fox prior to this
18 engagement?

19 A. No.

20 Q. What has your relationship been with Fox prior to this
21 engagement?

22 A. For the most part, I would say that they have been an
23 adversary. Maybe that's a little bit too, you know, too
24 strong, but I have been on the other side of the table from
25 Fox in a large number of negotiations, and you know, I'm

1 usually representing the team and Fox is on the other side
2 usually as an incumbent rights holder.

3 Q. And how many times have you negotiated against Fox for a
4 media rights deal approximately?

5 A. Oh, well over a dozen. Is that close enough?

6 Q. Close enough, if that's your best estimate. Sure. And
7 why did you decide to serve as a witness on behalf of Fox in
8 this matter?

9 A. Because when I heard about what was going on with this
10 case, it offended my sensibilities. I didn't think that what
11 was happening was fair to Fox, and I'm hardly an apologist
12 for Fox. It just didn't seem right to me.

13 Q. And you are, of course, getting paid for your services as
14 well.

15 A. Yes I am.

16 Q. And are you being paid on an hourly basis?

17 A. Yes.

18 Q. Now let's talk a little bit just generally about what
19 we've been referring to as backend rights or future telecast
20 rights. In your declaration that's been submitted to the
21 Court, in paragraph 9, you had stated, the current Fox
22 telecast rights agreement gives Fox valuable and important
23 rights with respect to Dodgers games in the 2014 season and
24 beyond. Just for clarity, those are the so-called future
25 telecast or backend rights?

1 A. Yes, the terms are used somewhat interchangeably.

2 Q. All right. And we're going to get into the specifics in a
3 moment. But in general, why are backend rights important in
4 any sports telecast rights agreement?

5 A. Well you have to understand the nature of these
6 agreements. And they're somewhat unique. There's a
7 relationship between team and network that is unlike the
8 typical vendor relationship. This is not like somebody who
9 provides the team with its copying machines, you know, or its
10 hotdog buns. It is a relationship that is symbiotic. It is
11 a relationship where the better the team does, the better it
12 is for the network partner. The better the network does its
13 job, the better it promotes. The better it produces, the
14 more viewers it attracts, the better that is for the team.
15 And that's a unique relationship that, you know, while it is
16 a business relationship, it is a special kind of business
17 relationship.

18 Q. And how do the backend rights tie in to that special
19 nature of the relationship?

20 A. The backend rights are designed to reward the network for
21 its good efforts in providing all of those things I just
22 mentioned to the team, and at the same time to increase the
23 likelihood that the partnership will endure, that there will
24 be subsequent renewals of agreements, you know, over and over
25 again, over an extremely long period of time.

1 Q. Based on your experience and your opinion, do future
2 telecaster backend rights, provide a meaningful assurance
3 that the incumbent will retain the rights?

4 A. Yes. They provide a very high likelihood, far more often
5 than not, the team and the network continue their
6 relationship. It is truly the exception to the rule that
7 incumbents don't, when an incumbent doesn't renew.

8 Q. In general, how typical are backend rights in sports
9 telecast rights agreements?

10 A. Practically universal with respect to you know major
11 league team rights. I cannot think of a single agreement
12 that I'm aware of that doesn't have some sort of backend
13 rights. It is extremely common.

14 Q. You've analyzed the Fox backend rights, or future telecast
15 rights in this matter. Correct?

16 A. Yes I have.

17 Q. And in your opinion, do those provisions, as written,
18 provide meaningful assurance that Fox will be able to retain
19 the rights to the Dodger telecast after the 2013 season?

20 A. Yes, they do. I would expect that if the process that is,
21 you know, that is in the contract were followed, that the
22 likelihood would be that Fox would retain the rights albeit
23 at quite likely a far higher price.

24 Q. Are the backend rights in the current contract between Fox
25 and the Dodgers designed to maximize the likelihood that Fox

1 will indeed retain a binding agreement with the Dodgers for
2 future telecast rights?

3 MR. LEVINSON: Objection to foundation, Your Honor.

4 THE COURT: Sustained.

5 BY MR. STONE:

6 Q. Mr. Desser, have you not had an opportunity to review the
7 contract between Fox and the Dodgers in this matter?

8 A. Yes I have.

9 Q. And have you analyzed each of the backend, each of the
10 components of the backend rights in that agreement?

11 A. Yes I have.

12 Q. And have you brought your experience and expertise to bear
13 to understand how those components would work in the
14 marketplace?

15 A. Yes.

16 Q. And based on your experience and expertise, is it your
17 opinion that those provisions are designed to maximize the
18 likelihood that Fox will indeed be able to reach a binding
19 deal with the Dodgers for seasons after 2013?

20 THE COURT: Mr. Levinson?

21 MR. LEVINSON: Objection, Your Honor, foundation. I
22 don't think there's any testimony that he was involved in a
23 negotiation of this agreement.

24 MR. STONE: Well he's an expert and as Mr. Coleman
25 opined yesterday, he has the right to opine based on his

1 experience and expertise.

2 MR. LEVINSON: Again, I think the question was, how
3 were they designed as opposed to say what affect might they
4 have. I don't think he has any personal knowledge as to --

5 THE COURT: Of the design. I see.

6 MR. STONE: Well he can analyze them and analyze
7 whether objectively they are designed to accomplish that
8 based on his expertise directly in negotiating, which is more
9 expertise frankly than Mr. Coleman had yesterday who opined
10 on almost identical matters.

11 THE COURT: I'm going to overrule the objection. I
12 think it's a fine line. I think how are they designed, I
13 think the question could have been asked what, what is in the
14 contracts, etc. But I understand the nature of the question,
15 so I'll overrule the objection.

16 BY MR. STONE:

17 Q. You may answer sir.

18 A. These terms, the terms in the Fox Dodgers Agreement are
19 typical of Fox future telecast rights in many other
20 agreements that I've seen. And they are designed to increase
21 the likelihood that Fox and the team will reach an agreement.
22 There are a series of steps that are encompassed in those
23 rights, and the purpose of which is to allow Fox to maintain
24 its business. When you consider that the sports rights are
25 sort of the essential ingredient in having and operating a

1 regional sports network business, holding on to rights is
2 vital to maintain your business. So they are designed for
3 that purpose, and yet are designed to allow teams to reset
4 their rights based upon the development of the marketplace.

5 Q. And I'm going to get into, I promise, a comparison of what
6 Debtors are proposing versus the actual contract as written
7 very shortly. But in general, can you explain for the Court
8 the contours or the construct of the backend rights that you
9 believe lead to this chance or maximization of a likelihood
10 that Fox will retain the rights?

11 A. I'm not sure if I understand when you said the context.

12 Q. The various components of the backend, I should have been
13 clearer.

14 A. Certainly. Okay. So first, there is the exclusive
15 negotiating period that causes the parties to get together
16 and seriously look at coming to a deal, followed by a final
17 offer requirement, a window of opportunity to go to the
18 marketplace, a final -- excuse me, I got those out of order.
19 The window of opportunity precedes the team final offer, then
20 Fox has a period of time to consider the final offer and
21 accept, and accept it or reject it. And during that period,
22 the team can also have further discussions with third parties
23 subject to a Fox right to match lesser offers.

24 Q. And does that create incentives or dynamics to reach a
25 binding agreement?

1 A. Yes. That's what it is designed to do. And in fact in my
2 experience, you know, more often than not, teams do renew
3 their agreements with Fox and with other operators of
4 regional sports networks.

5 Q. Now you testified you negotiated several deals directly
6 against Fox. Correct?

7 A. Yes.

8 Q. And based on your experience and negotiating sports rights
9 deals with Fox, have you formed an opinion as to whether
10 backend rights are important to Fox based on your
11 negotiations?

12 A. Yes I have.

13 Q. What do you base that on?

14 A. Well I base it upon you know hours and hours and hours
15 spent in conference rooms and on calls and you know in
16 ongoing negotiations with various of the executives at Fox,
17 from their actions, from their proposals, from really the
18 whole body of my work over you know 20, 30 some years. These
19 are extremely valuable and extremely important rights. And
20 they, I think it's inappropriate for people to think of these
21 rights as, you know, just the boilerplate in the back of a
22 contract. They're far more important and take on more
23 importance in the context of a negotiation than frankly some
24 of the other terms which you might think are more important,
25 like you know selection of the announcers, or determination

1 of camera locations and things of that nature, which are
2 important too, but don't require, you know, nearly as much
3 time in a negotiation.

4 Q. In your negotiations with Fox, has it been made clear to
5 you that not having backend rights in a Fox deal was a
6 nonstarter?

7 A. Yes. They, they have never accepted a deal that I have
8 negotiated that did not contain backend rights in one form or
9 another. And it's my opinion that as a matter of policy they
10 simply wouldn't do it.

11 Q. Now based on your experience, what percentage of telecast
12 rights agreements with backend rights result in the incumbent
13 retaining the telecaster rights?

14 A. I'd say roughly 90 percent.

15 Q. Of course those would be instances where the incumbent
16 wanted to retain the rights.

17 A. Yes. But I can't think of too many cases where the
18 incumbent doesn't want to retain the rights.

19 Q. And to what do you ascribe that success rate?

20 A. I think it's based upon several factors, and the backend
21 rights are an important one. Another one is that Fox is
22 generally a very good partner for teams, they're very good at
23 running regional sports networks, they have been doing it for
24 years. They know and understand things that teams care about
25 and that are important to the teams' business. They

1 understand the fine line between you know editorializing and
2 presenting the team and its play on the field or the court or
3 the ice in a fair and unbiased way. So they're very good at
4 fostering the relationship. So the relationship coupled with
5 the fact that Fox RSNs typically are, if not the best, one of
6 the best distributors of sports in each of the various
7 markets, and then the backend rights. So you take all of
8 that together, it's highly likely, you know, as long as
9 they're willing to pay a fair market price, it's highly
10 likely they're going to keep the rights because it's vital
11 for their business and it's good for the team.

12 Q. Now, are backend rights usually separately valued in
13 telecast rights agreements?

14 A. No, they're part of the basic essence of the agreement
15 that the team reaches with the network. There is a separate
16 provision covering it but it doesn't have specific
17 compensation, it's part of the compensation of the entire
18 arrangement, so it's embedded in the rights fee that is being
19 paid for the games.

20 Q. And you've analyzed the Fox Dodgers contract that is at
21 issue here. Correct?

22 A. Yes.

23 Q. And does that separately value the backend rights in that
24 agreement?

25 A. No, it does not.

1 Q. Now you're familiar with the Debtors' amended motion for
2 marketing procedures. Correct?

3 A. Is this the one that came in the night before last?

4 Q. Well that's the amended amended. We'll get to that in a
5 minute. But are you familiar with --

6 A. Okay. So I just want to make sure, it's been a little
7 hard to follow.

8 Q. Yes, I understand. There's the original motion that
9 sought the first set of amended marketing procedures. Are
10 you familiar with those?

11 A. Yes.

12 Q. Okay. And both in those procedures, and you heard in
13 Court yesterday the Debtors contend that the marketing
14 procedures they propose are "the functional equivalent of the
15 process for marketing and telecast rights that is
16 contemplated under the existing Fox contract in every respect
17 but one, the timing period." Do you agree with that
18 statement?

19 A. I do not.

20 Q Why not?

21 A. I think there are a number of elements that have been
22 materially changed and, you know, over and above the change
23 with respect to the time period, they have made changes to a
24 number of the other aspects of the provisions which are
25 material, which have a significant impact on the package of

1 rights that Fox purchased.

2 Q. Now you mentioned that there was an amendment to these
3 marketing procedures that was provided late the night before
4 the hearing started yesterday. Correct?

5 A. Yes.

6 Q. And you've had a chance to analyze those now?

7 A. I have.

8 Q. And have you had a chance to review and analyze a chart
9 that compares those amended marketing procedures with the
10 current Fox contract?

11 A. Yes I have.

12 MR. STONE: Your Honor, for the record, we had as
13 Exhibit 2 such a chart, but then the procedures changed. So
14 I have a revised chart I'd like to mark for identification as
15 Exhibit 24 for Fox Sports. And for the record, I provided a
16 copy to counsel, and then I would like to approach the
17 witness. And, Your Honor, if I may?

18 THE COURT: Yes, you may. Thank you.

19 (several counsel speaking softly)

20 MR. LEVINSON: Well let me just clear the record up
21 on one thing, Your Honor --

22 THE COURT: Yes.

23 MR. LEVINSON: -- because there was some inaccurate
24 testimony. What they're calling the amended amended
25 procedures were provided on Monday in connection with the

1 original exhibit book. What we provided on Tuesday was a
2 blackline just to show the changes because we thought, you
3 know, there were a few changes that had come out of the reply
4 brief that we had filed in response to their objection.

5 THE COURT: That's your Exhibit 7?

6 MR. LEVINSON: That's our Exhibit 7. But Exhibit 6
7 was provided two days before. This, on the other hand, I'm
8 like getting now. So I'm going to read it I guess while he
9 examines the witness.

10 THE COURT: Very well.

11 MR. STONE: There are a lot of similarities between
12 Exhibit 2 and Exhibit 24, Your Honor. We simply had to
13 adjust it given the Exhibit 7, so it now conforms to what
14 they added in Exhibit 7 that was provided late Tuesday.

15 MR. LEVINSON: Again, Your Honor, on Monday, just to
16 be clear, only because I prepared a cross-examination based
17 on another exhibit. So I'll do my best here.

18 THE COURT: And Exhibit, in other words, Exhibit 7,
19 which is the blackline, is the blackline of Exhibit 6.

20 MR. LEVINSON: Compared, right, exactly, compared to
21 what was in our amended motion on November 12th.

22 THE COURT: All right.

23 MR. LEVINSON: So I just, actually we had had, I
24 think we had one, I think there had been one minor change, we
25 had the wrong date when we did the blackline, we put 2011

1 instead of 2012.

2 THE COURT: 12, okay.

3 MR. LEVINSON: That was the only change.

4 THE COURT: Thank you Mr. Levinson. If you need a
5 little recess in order to do the work.

6 MR. LEVINSON: Well not right now, maybe before we
7 start cross-examination.

8 THE COURT: Sure.

9 MR. STONE: I have a blackline too of the changes.

10 THE COURT: Yes, thank you. That would be helpful,
11 Mr. Stone.

12 MR. STONE: Thank you, Your Honor.

13 MR. WERKHEISER: Your Honor, may I approach?

14 THE COURT: Please, please Mr. Werkheiser, thank you.
15 Thank you, sir. I appreciate it. Whenever you're ready, I'm
16 ready to proceed.

17 MR. STONE: Thank you, Your Honor.

18 THE COURT: Sure.

19 BY MR. STONE:

20 Q. All right, Mr. Desser, looking at Exhibit 24, do you
21 recognize it?

22 A. Yes I do.

23 Q. And does this accurately reflect the changes that you have
24 identified between the existing contract and the amended
25 marketing procedures from Exhibit 7?

1 A. Yes it does.

2 MR. STONE: Your Honor, I move Exhibit 24 into
3 evidence.

4 THE COURT: Would you like an opportunity to review
5 it first, Mr. Levinson?

6 MR. LEVINSON: I would, Your Honor, if I could
7 reserve --

8 THE COURT: Let's --

9 MR. STONE: Let's proceed.

10 THE COURT: Let's proceed, yes.

11 BY MR. STONE:

12 Q. All right. Looking at the column number 1 on Exhibit 24,
13 Mr. Desser, do you have that?

14 A. Yes.

15 Q. And briefly, can you explain the contract right at issue
16 between Fox and the Dodgers and how that relates to the
17 change proposed in the amended procedures?

18 A. So this document is set up in three columns as you can
19 see. The left hand column is I think the essence of the
20 rights that Fox bargained for with the Dodgers in or about
21 2004. The middle column is from the most recently amended
22 motion of the Debtors. And then the right hand column is the
23 contractual language lifted verbatim from the Fox Dodgers
24 contract, so that's more or less for reference. So under the
25 Fox contract rights column, there are a series of elements,

1 and so we've taken the rights and broken them down into
2 pieces to make it a little bit easier to talk about the
3 impact of each of these pieces, or how they work together and
4 how they impact the process.

5 Q. Taking number 1, can you explain the impact of the
6 proposed marketing procedures on the first point in column 1?

7 A. Certainly. Point 1 has to do with the period of time from
8 the execution of the agreement in 2004 through to November
9 30, 2012. And basically it says that the Dodgers can't go
10 about marketing these rights and undertaking negotiations
11 with respect to those rights with any party other than Fox in
12 that, call it eight year window.

13 Q. And what did the amended marketing procedures do to that
14 provision?

15 A. They modify that by, they essentially truncate them and
16 cut it down to this, you know, what would be 38 days after
17 the approval by the Court of the motion. So assuming a
18 fairly quick entering of an order, it cuts it down by about
19 you know ten, ten and a half months.

20 Q. Now let's talk a little bit about that timeframe, that
21 negotiated timeframe. Have you negotiated similar provisions
22 in agreements with Fox?

23 A. Yes.

24 Q. And based on that experience, do you have an opinion
25 whether this provision is material to a sports telecast

1 rights agreement?

2 A. Yes. Again, this is a provision that is part of the set
3 of provisions that is designed to perpetuate a marriage. And
4 this one basically, you know, we could euphemistically call
5 it an anti-cheating provision. It's, you know, you're not
6 going and date somebody else, while you're in business with
7 Fox. So this is, this is designed to sort of keep the
8 partners, you know, together and monogamous if you don't mind
9 the euphemism. And to just finish the point, it is material
10 because you know that prevents the Dodgers from entertaining
11 offers, being seduced by third parties, by potentially making
12 arrangements to replace Fox at a later time.

13 Q. In your experience in the past, has Fox negotiated hard
14 for such a timeframe for exclusive negotiations?

15 A. I cannot think of a single Fox agreement that does not
16 have an exclusive negotiating period in it and similar
17 language with respect to forbidding discussions with third
18 parties, it is sort of one of the tent poles of these sorts
19 of provisions, and I believe them to be highly material to
20 Fox.

21 Q. And to be clear, this is a negotiated set timeframe for
22 those negotiations.

23 A. It's both a timeframe to, it does a couple of things. One
24 is it elongates the period of time during which Fox is not
25 able to go, the team, excuse me, is not able to go and talk

1 to other parties, and at the same time, it limits the amount
2 of time remaining in the agreement when you know between that
3 period of time and the end of the agreement. And so it sort
4 of concentrates attention for both parties, frankly, on a
5 particular moment in time. And that is important in terms of
6 not letting negotiations linger, and in terms of kind of
7 highlighting the importance. You've got to make arrangements
8 for your telecast rights in advance, you can't do so the
9 night before the game. And therefore it is important on both
10 sides of that date.

11 Q. Now let's move down to column number 2 on Exhibit 24.

12 This is addressing a different component of the Fox backend
13 rights versus the proposed amended procedures. Correct?

14 A. Yes.

15 Q. And can you explain first the, in general, the Fox
16 provision? And then we'll get to the difference that's being
17 proposed.

18 A. Sure. So this is what's called the exclusive negotiating
19 period. So this is the first time at least obligated in the
20 contract for the parties to get together in earnest to
21 discuss, negotiate and to potentially reach agreement on an
22 extension. It is a 45 day process and it obligates the team
23 to negotiate in good faith and it doesn't, of course,
24 obligate the team to reach an agreement, but it does set
25 certain ground rules for them to negotiate a deal. And in

1 fact in many cases I have worked with clients that have
2 negotiated, have completed deals within an exclusive
3 negotiating period. It is, it's not just a perfunctory sort
4 of thing, it's a real important part of this process.

5 Q. There's been some contention in here that because the
6 agreement does not contain the word binding, that any offer
7 and acceptance reached between the parties during this
8 exclusive negotiating agreement is not a binding contract.
9 Do you share that?

10 MR. LEVINSON: I object, Your Honor. I don't think
11 this witness has been qualified as an expert in the field of
12 law, he's not a lawyer. And I don't think there's any
13 foundation that he was involved in negotiating this
14 particular agreement.

15 MR. STONE: There's foundation that he's involved in
16 negotiating similar backend rights repeatedly with both Fox
17 and with others. He's qualified to testify about the meaning
18 of terms based on his experience in those negotiations. In
19 fact, more qualified than the opinions we heard from Mr.
20 Coleman yesterday on the same topic.

21 THE COURT: I'll overrule the objection. I'll allow
22 the answer based on Mr. Desser's experience.

23 MR. DESSER: Thank you, Your Honor. And now of
24 course I've forgotten the question.

25 MR. STONE: Unfortunately, so have I, so let me

1 recreate it.

2 BY MR. STONE:

3 Q. There's been a contention in these proceedings that
4 because the contract does not use the word binding that if an
5 offer and acceptance are in fact reached by Fox and the
6 Dodgers in this exclusive negotiating window that somehow
7 that is not an actual binding bilateral contract.

8 THE COURT: You know, I've now reheard the question.
9 I have to sustain the objection, because whether an agreement
10 is binding or not is clearly a --

11 MR. STONE: Can I go back to my original question
12 then?

13 THE COURT: Let me --

14 MR. STONE: I am kidding, Your Honor.

15 THE COURT: I think as I've now reheard the question,
16 the way it's been phrased --

17 MR. STONE: Let me come at it a different way, Your
18 Honor, I think I can do that.

19 THE COURT: All right. Thank you.

20 BY MR. STONE:

21 Q. Have you had a chance to review the exclusive negotiating
22 window provisions in the Fox contract?

23 A. Yes.

24 Q. And when you said there's an obligation to negotiate in
25 good faith, that's to negotiate in good faith towards what

1 under the terms of that contract?

2 A. To negotiate or attempt to reach an agreement that you
3 know in my lay understanding is a, you know, is a deal, it's,
4 there would be under this circumstance an offer or series of
5 offers and ultimately if it's successful, an acceptance.

6 Q. An acceptance by --

7 A. And to me that's what, you know, that's binding, I'm not
8 going to opine as to what, you know, what the legal
9 significance is, but as a business person that negotiates
10 contracts for a living, and these specific kinds of contracts
11 in particular, to me it's a deal.

12 Q. And have you had experience where the parties have
13 extended offers and Fox has accepted them under similar
14 provisions and there has been an actual agreement?

15 A. Yes.

16 Q. And that agreement has been, gone into force and effect?

17 A. Subject to, you know, all leagues have requirements that
18 once that agreement is reached between the team and the
19 network, the league has to bless it, but that's a fairly
20 perfunctory process in virtually all cases, you know, with
21 the obvious exception of what brings us here today.

22 Q. Now in this provision does it require confidential
23 negotiations?

24 A. Yes.

25 Q. What does that mean?

1 A. That means that the team knows about it, that the, that
2 Fox knows about it and that third parties, whether they be
3 potential suitors or others even you know potential
4 consultants like myself if they're not working on the deal
5 don't know about it, don't know what's being discussed, it's
6 not publicized, it's confidential.

7 Q. And is this provision of the agreement that's part of the
8 backend rights material?

9 A. Yes.

10 Q. Then how does the Debtor propose to change these backend
11 rights in item number 2 on Exhibit 24?

12 A. Well I think the most important part of the change here is
13 that under these provisions if an agreement is reached
14 between the Debtors and Fox, they don't have a deal, they
15 have, they have the outlines of a deal, they may even have,
16 you know, they may even have writings of a deal, but the
17 dynamics are different because in addition to the blessing or
18 not by Major League Baseball, it's also now subject to, you
19 know, having to be accepted or rejected by each and every one
20 of the potential buyers of the team. I don't know how many
21 that might be, but just to reading the papers, there might be
22 quite a number of potential buyers. So, you know, that could
23 be a very large number of people who are now, you know,
24 involved in the decision-making and it renders, you know, it
25 renders that arrangement that is reached between the parties,

1 sort of, you know, nothing more than a stalking horse kind of
2 bid.

3 Q. Let's go to item number 3 on Exhibit 24 if we may. Now
4 this, we're still dealing with the same component of the
5 backend rights, the exclusive negotiating period of October
6 15th, 2012 until November 30th, 2012. Correct?

7 A. Yes.

8 Q. And does this identify yet a different additional change
9 that the Debtors propose to make to that component of the
10 backend rights?

11 A. Yes. This is, this particular portion deals with, just a
12 second, let me finish reading it. Yes, this has to do with
13 the confidentiality of the negotiations.

14 Q. And if you need to, Exhibit 7 by the Debtors should be in
15 the book, and I think this references Part C of their
16 proposed amended marketing procedures if that helps you at
17 all.

18 A. Okay. Seven in this book?

19 Q. 7 in the Debtors Exhibits, I believe.

20 THE COURT: It's a thinner supplemental binder.

21 MR. DESSER: Thank you, Your Honor.

22 MR. STONE: For the record, Mr. Desser, Item C on
23 Exhibit 7 is entitled, disclosure to perspective team owners.

24 MR. DESSER: Yes. I have it in front of me.

25 BY MR. STONE:

1 Q. And you had a chance to review that language prior to
2 today?

3 A. Yes. And, you know, here is where, you know, I think one
4 has to sort of think through the ramifications of the
5 language. You know, obviously it is typical in one of these
6 deals for the ownership of the team to approve the deal, or
7 you wouldn't have that, you know, binding agreement. Here
8 you got, you know, you got the Debtors or the outgoing owner
9 negotiating something that then gets presented to a number of
10 perspective owners and those owners have the opportunity to
11 accept or reject under the provisions. But who are those
12 people? Who are those prospective owners? They could very
13 well be and in fact from press reports, might very well be
14 competitors of Fox. We've seen that speculation that Time
15 Warner Cable, for example, might become a bidder for the team
16 in order to obtain the telecast rights. It would be, you
17 know, quite improper if they were able to access the
18 confidential proceedings of Fox in connection with the
19 negotiations with the Dodgers.

20 Q. All right. So if I understand it correctly, Part C of
21 Exhibit 7 allows any prospective licensee of the telecast
22 rights including competitors to have access to discussions
23 about an agreement between Fox and the Dodgers during the
24 confidential exclusive negotiating window.

25 A. Yes. I mean I could say that as being very detrimental to

1 the negotiating process if you've got a variety of folks who
2 are interested in buying the team, and one of the principal
3 assets of the team being the media rights, and you know, it's
4 sort of it really eviscerates the whole, you know,
5 exclusivity and confidentiality of those negotiations. I
6 recognize that there are some provisions in the marketing
7 procedures that call for those parties to execute
8 confidentiality agreements, nondisclosure agreements. But
9 once they know what the particulars are, it can very well
10 impact their decision-making and what they choose to do.

11 Q. All right. Going back to Exhibit 24, if we can move on to
12 item number 4.

13 A. All right.

14 Q. Now in column number 4 on Exhibit number 24, this is
15 dealing with what provision of the backend rights in the
16 current agreement?

17 A. This is, this is the so-called final team offer provision.

18 Q. And what in essence does that provision provide?

19 A. It's really important, and in fact in my mind it's
20 perhaps, it's hard to say which one is the most important,
21 but it is one of the most important parts of the process, and
22 I'd like to explain why.

23 Q. Please.

24 A. It creates parameters around which the teams offer to Fox
25 has to meet. And so it is set up in a way to prevent monkey

1 business between the team and Fox, and you know by requiring
2 a certain number of games to be included, by requiring that
3 the agreement be for exclusive cable television rights, by
4 requiring the agreement to be at least five years, by
5 requiring it to begin in 2014. There are many other things
6 that can be included or not included, but these form the
7 basics. And it basically is designed to prevent Fox's rights
8 from being undermined, and that they get a package of rights
9 that resembles the package of rights that they currently
10 have.

11 Q. And it is a material provision I assume?

12 A. Very material.

13 Q. And do the Debtors' proposed amended marketing procedures
14 propose to change that in two ways? At least two ways.

15 A. Yes. So there are a number of things that are, that are
16 omitted, which is to say that while they do provide that an
17 offer be five years, and they do provide that Fox can, you
18 know, would get, you know, rights to presumably 100 games, it
19 doesn't say that they'll get exclusive cable television
20 rights. And --

21 Q. Why is that important?

22 A. Because that opens the door for the Dodgers to sell the
23 rest of the games. Don't forget, there's another package of
24 games out there. It's currently owned by KCOW (phonetic)
25 which is an over the air television station. So the current

1 language basically says we, Fox, are the only ones you can
2 sell cable rights to, we won't have another cable competitor.
3 The way they've drafted this, it appears to me that they are
4 not under that obligation. So they could very well offer Fox
5 100 games and still offer Time Warner Cable the other 50
6 games, so obliterating that cable exclusivity which is highly
7 material.

8 Q. Do the amended procedures even require them to offer the
9 100 games?

10 A. It's not clear to me. I know there was testimony on this
11 yesterday. It's not clear to me that it does require them to
12 do so because it doesn't say so. It says that the motion
13 overall is with respect to 150 games, but nowhere does it say
14 Fox is going to get an offer for 150 or for 100. I heard Mr.
15 Coleman say, you know, they wouldn't just offer 25, but they
16 could, and so it's clearly not the same thing. And then
17 another aspect, the marketing proposal calls for an offering
18 of really rights in any fashion that the Debtors wish to
19 provide them. So conceivably they can offer Fox Spanish only
20 rights, even though Fox doesn't operate a Spanish language
21 network in Los Angeles. Or they could offer English rights,
22 but retain the Spanish rights, and then sell those same games
23 that Fox just bought to Time Warner for its Spanish language
24 network. So there's a lot of room for an outcome here under
25 these provisions that really isn't what Fox bargained for.

1 Q. Now the other change is, if I understand it correctly
2 under the team final offer should Fox choose to accept that,
3 there is then an agreement.

4 A. Again, I'm not going to opine on the law. But from my
5 business experience when you've got the team and the network
6 coming to terms you have a binding agreement subject only to
7 the approvals that are necessary with the league. Here, as I
8 mentioned before, it might be a deal, it might not be a deal
9 depending on who ultimately owns the team.

10 Q. And it looks like if we go to number 5 on Exhibit 24,
11 correct me if I'm wrong, but I think you've covered that in
12 your prior answer about allowing the Dodgers under the
13 amended marketing procedure to split up the rights for
14 Spanish language or English.

15 A. Yes. When you negotiate these arrangements in the normal
16 course, you think about how should you allocate the rights.
17 I mean this is what I would typically do. I'd look at the
18 marketplace and I'd say you know, okay, Time Warner's
19 launching a Spanish language network, you know, do I want to
20 change the way I've always allocated these rights, you know,
21 historically it's been 100 games for cable and 100 games for
22 broadcast. Maybe with this new Spanish network, I want to do
23 it differently. And there's nothing wrong with that. That's
24 what the teams should be doing. The problem comes in insofar
25 as that's not what Fox bargained for in this particular

1 agreement. They bargained for the opportunity to get these
2 hundred games, be the only you know cable operator. And by
3 the way, the reason the cable operator part is important is
4 because the cable operators are in a position, the cable
5 network operators are in a position to pay more than the
6 broadcasters because they have subscriber fees as a revenue
7 source. And so that's the whole reason that we've seen this
8 shift. You know, if you think back many years ago, the
9 broadcast television, over the air stations, like in, you
10 know, channel 17 in Philadelphia carried Sixers games I
11 remember for years and years and years. But that's no longer
12 the case because the cable networks are in a position to
13 outbid them. And that's the reason sports has moved to
14 cable. Same has happened on the national basis, you know,
15 with ESPN outbidding, you know, broadcast networks. All the
16 BCS games are on ESPN because ESPN has more ability to bid.
17 In fact, Monday Night Football is on ESPN. So the fact that
18 these provisions in the agreement called for cable
19 exclusivity really constrains the Dodgers' ability to go and
20 shop their rights to other parties and not give Fox a fair
21 shake at getting them. And that's why I see a major
22 difference and a material, here on these procedures.

23 Q. Now it seems to me overarching all of these amended
24 marketing procedures should they be implemented is that if
25 Fox were required to negotiate now, would it be negotiating

1 with the actual future owner of the team?

2 A. No. I mean they're going to negotiate with
3 representatives of the Debtors who have said that they're
4 selling the team and that's the agreement I gather between
5 Baseball and the team says. So you're negotiating with
6 somebody that you're not going to have a relationship with in
7 the future, you know, they're merely an agent, they're not
8 the principal. And I spoke earlier about the importance of
9 these marriages, you know, this is, this is sort of more like
10 an arranged marriage, you're, you know, the Debtors would be
11 basically arranging the marriage for the future buyer. And
12 it may not be you know it may not make a difference in terms
13 of the dollars, but it does make a difference in terms of the
14 nature of the relationship.

15 Q. In your opinion, will Fox suffer significant harm if the
16 amended marketing procedures are approved?

17 A. No question about it.

18 Q. Would this include in your opinion, collateral damage?

19 A. I think so. And let me explain why. The RSN businesses
20 are hugely important to Fox Incorporated. So these, the RSNs
21 that they run in Los Angeles, that is their single largest
22 RSN market in the country. This is one of their two RSNs in
23 that market. They use their RSNs as part of their whole
24 fleet of cable networks to negotiate attractive deals with
25 cable operators, the Comcasts, Coxes, Director TVs, Time

1 Warner Cables, etc. Having these networks as tent poles and
2 key elements of the programming package that they offer to
3 distributors gives them leverage in the marketplace. And
4 this would be, you know, if taking it to its logical
5 extension, one can see, you know, significant decay in prime
6 ticket if they are unable to maintain these rights, and that
7 that could be highly detrimental to Fox's overall cable
8 operation business. Mr. Thompson can probably speak to that
9 even greater later today.

10 Q. Now, let me ask you, with Fox's backend rights intact with
11 no change, what do you assess to be the likelihood that Fox
12 would retain the future telecast rights?

13 A. In my experience, the incumbents renew deals with teams at
14 about a 90 percent rate. There are clearly cases where
15 rights are not renewed for very many reasons. But the
16 incumbent nine times out of ten approximately renews its
17 rights and extends them.

18 Q. Now, are you familiar with the Debtors' argument that
19 because Fox argues the value of telecast rights are going up
20 each year that Fox will not be prejudiced by moving forward
21 the negotiating window?

22 A. I have heard that argument.

23 Q. Do you agree with the contention that Fox will not suffer
24 prejudice if the telecast rights have less value today than
25 in 14 months?

1 A. I don't agree. I think, there are a number of things
2 going on here, and one is value of the rights does just keep
3 on growing. But the value of owning those rights is not
4 getting any less. And the various things that these new
5 marketing provisions do, substantially lower the likelihood
6 that Fox is going to be able to renew. And so if they're not
7 able to renew, then they are going to be substantially
8 harmed. And therefore, I do not believe it is fair to say
9 that, you know, that Fox is going to be undamaged by the
10 implementation of these procedures.

11 Q. So a cheaper deal today that Fox loses is not better than
12 a more expensive deal that Fox retains in the future?

13 A. Clearly, that is true.

14 Q. Are you aware of any team that has ever held an auction of
15 media rights as suggested by the Debtors here?

16 A. I am not. You know, I've been around this business as
17 we've discussed for a long time. And teams, if they wanted
18 to, and if you know if they ask me you know if I would
19 recommend to them that they, you know, get involved with an
20 auction, I would say no. And the reason is that if all you
21 care about is the price, and you can have, you know, a number
22 of people bidding, then an auction is fine. But the rights
23 here, the telecasting of the games is sort of so fundamental
24 to the success of your team and the ability of your broadcast
25 partner to get your games in a first class way out to your

1 fans to create interest among new fans, to market tickets, to
2 help you sell sponsorships, to improve the image of the team.
3 All comers are not created equal, and somebody could outbid
4 Fox, you know, somebody for whom price is no object, let us
5 say, could outbid Fox, but not be a good broadcast partner.
6 They might, you know, imagine somebody who doesn't even have
7 a network today, or doesn't plan to launch one, you know, in
8 the fall already. They could hugely harm the Dodgers by
9 basically rendering their games unavailable to fans if they
10 weren't able to distribute them. And I know light was made
11 yesterday of, you know, in today's technology it's no big
12 deal to start RSNs. It actually is, it's a very labor
13 intensive, time intensive process, and it isn't always a
14 successful process. There have been Major League Baseball
15 teams that have started regional sports networks, or
16 attempted to start regional sports networks and have failed,
17 and ended having to go back to put games on broadcast, put
18 games on their previous rights holder, go back to Fox in at
19 least two cases I can think of, three. So it is an arduous
20 process and shouldn't be taken lightly. And the team ends up
21 being, you know, potentially taken hostage in the process.
22 Because if somebody buys the rights, somebody is the high
23 bidder, and they're not equipped, they're not experienced,
24 they don't have the distribution, then the teams, the actions
25 of the teams, the games of the teams become, you know, almost

1 anonymous. If you're not out there in the marketplace, you
2 don't exist as a sports team. And I'm probably overstating
3 that just a little bit, but the fact is television has become
4 so vitally important to the sports industry, to the
5 expectation of fans, that, you know, games that are only
6 available Pay Per View, or games that are only available you
7 know for example, I think in this market Direct TV is not
8 historically offered, Comcast SportsNet. So that limits the
9 available audience of the Phillies, of the Sixers, of the
10 Flyers. And so somebody could buy games from, you know, be
11 the high bidder here, and decide, you know what, I'm not
12 going to offer those games to third parties because I'm going
13 to use it to attract new subscribers. That's exactly what
14 Comcast did here for many, many years, and is exactly what
15 could happen in Los Angeles.

16 Q. So would it be better for the team to follow the Fox
17 contract and conduct negotiations on the timeframes specified
18 in the contract.

19 A. I believe that the team will do exceptionally well
20 following the contract, not opening itself up to damages
21 claims. There's no question in my mind that the Dodgers are
22 going to be very handsomely compensated for their rights
23 beginning in 2014. And anything that could derail that, that
24 could create you know damages claims is not in their best
25 interest in my opinion.

1 Q. If you could choose a time to negotiate media rights,
2 would you want to negotiate a deal when the fans and the
3 market turned against the owner and the team, when attendance
4 was down and there was a need to improve the stadium and
5 acquire players?

6 A. The Dodgers today are in a less than ideal situation. I
7 think we can all agree on that. Ideally you want to be
8 negotiating when you know the team's strength is maximized.
9 Now is it true that sometimes because of the calendar teams
10 negotiate you know at times when their fortunes on the field
11 aren't necessarily great. But that isn't typically self-
12 inflicted. They, you know, they, it's a function of the
13 performance and a function of the contractual obligation and
14 negotiated a particular time. Here I would say that when the
15 overhang is done with and there is, you know, sufficient time
16 to go through the process, negotiate with Fox, make the
17 offers that the agreement calls for, and if necessary go to
18 the market of third parties. The Dodgers are going to be
19 very, very well compensated, they are going to do very
20 nicely, I don't think there's any question about that. And
21 in fact there's already an indication of that in the
22 agreement that was reached before all of this started between
23 Fox and the Dodgers.

24 Q. If the Dodgers, as opposed to the current owner, were
25 handsomely compensated in 2014 and assuming their new owner

1 was committed to the team, that would be an opportunity to
2 reinvest those proceeds into the team itself. Correct?

3 A. Yes. The new revenue goes to the team, allowing the team
4 to invest in players. It's this virtuous circle, and it's
5 one of the things that incentivizes networks to make
6 investments. I mean writing the check to the Dodgers to
7 allow the Dodgers to spend it on better players gets Fox or
8 whoever their partner is, a better product to put on the air.
9 So any time you're, you know, you're incentivized to pay more
10 for rights knowing that some of that is coming back to you in
11 a better quality product.

12 Q. In summary, do you believe the amended marketing
13 procedures as proposed by the Debtors are in the best
14 interest of the Dodgers?

15 A. I do not believe so for a variety of the reasons that I've
16 set forth.

17 Q. Do you believe the amended marketing procedures as
18 proposed by the Debtors are necessary to a successful sale of
19 the team?

20 A. I really don't, because I think that anybody who's going
21 to buy this team just like people who are going to buy the
22 Astros and people who are going to buy the Cubs, they'll
23 retain somebody like me who will look at the market, who's
24 knowledgeable about recent transactions, and will be able to
25 estimate within a fairly reliable range, not perfectly, but a

1 fairly reliable range, what those rights are worth. And
2 that's going to factor into what they're going to bid for the
3 team, and that's what's going to inform and ultimately, you
4 know, enrich the Debtors. They're going to be the
5 beneficiaries with or without these procedures. So I don't
6 think it is necessary, I don't think it is in their best
7 interest, and I don't believe that Your Honor should approve
8 them.

9 Q. Have those, these types of procedures the Debtors have
10 been proposing necessary to any prior sale of any team prior
11 to this point of time?

12 MR. BENNETT: Objection, foundation. Of all the
13 experience we heard about, we didn't hear about any
14 experience in connection with sales of teams.

15 MR. STONE: I think we did actually, but I'll leave
16 it to Your Honor's memory.

17 THE COURT: I'm going to sustain that objection. I
18 know that Mr. Desser talked about representing parties in
19 negotiations, but I don't remember --

20 MR. STONE: I can lay foundation. I can lay
21 foundation, Your Honor.

22 THE COURT: Yes, please.

23 MR. STONE: I apologize.

24 BY MR. STONE:

25 Q. Mr. Desser, as part of your duties, do you take it upon

1 yourself to keep track of the sale of professional sports
2 teams and the media rights in connection with those sales?

3 A. Yes.

4 Q. Is that something you constantly monitor?

5 A. I regularly monitor, I'm not sure that I do so each and
6 every day.

7 Q. And is that important for you to perform your services as
8 a consultant?

9 A. Yes. There's a relationship between media rights, which
10 is sort of my chief specialty, and the asset rights of teams.
11 This goes back to my experience at the NBA where I was
12 regularly involved in the process of looking at new ownership
13 for teams in the context of sales. I don't mean to suggest
14 that that was my chief responsibility there, but it was
15 something that I did, I was involved with from time to time.
16 And obviously media rights being one of the key revenue
17 screens is important for those transactions.

18 MR. BENNETT: Your Honor, if this is a little *voir*
19 *dire*, may I ask a question or two?

20 MR. STONE: Just to visit my last question, I think,
21 you'll have a chance to do cross in a second here.

22 MR. BENNETT: We object to the question. Well, I'll
23 let him ask the question and then we'll see where it goes.

24 THE COURT: All right. And then we'll --

25 MR. STONE: This is merely foundational to the

1 question, Your Honor.

2 THE COURT: Yes.

3 MR. STONE: And then I will turn it over to counsel.

4 THE COURT: All right.

5 BY MR. STONE:

6 Q. The final question is based on your experience, expertise,
7 and knowledge of the industry, have you ever become aware of
8 procedures such as those proposed by Debtors being necessary
9 to a successful sale of a team?

10 A. No. I have not. Typically when a team is sold it is sold
11 as a going concern. Buyers will look at performance metrics
12 of the team across a variety of aspects. They will make an
13 assessment about the things that they're going to change and
14 the opportunities that they have. They will factor that in
15 to what they're willing to pay, and in a competitive
16 marketplace it is not something that is necessary to complete
17 the sale of a team, and I don't believe it is necessary to
18 complete the sale of the team in this context. And further,
19 I seriously doubt that it is necessary in order to pay off
20 the Debtors' debts.

21 MR. STONE: Thank you. No further questions of this
22 witness, Your Honor.

23 THE COURT: Thank you. Thank you. Is this a good
24 time for maybe a ten minute recess, Mr. Desser?

25 MR. DESSER: Yes please.

1 THE COURT: And I'll just caution you, Mr. Desser, as
2 you heard yesterday not to discuss your testimony or any
3 aspect of the case with anyone during the recess. All right?

4 MR. DESSER: Yes, Your Honor.

5 THE COURT: We'll take a ten minute recess. Thank
6 you.

7 MR. STONE: Thank you, Your Honor.

8 (Recess 10:23 A.M. to 10:41 A.M.)

9 THE CLERK: Please rise.

10 THE COURT: Thank you, everyone. Please be seated.
11 Thank you. Mr. Levinson.

12 MR. LEVINSON: Thank you, Your Honor.

13 THE COURT: Whenever you're prepared, you may begin.
14 Certainly.

15 THE COURT: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. LEVINSON:

18 Q. Good morning, Mr. Desser.

19 A. Good morning.

20 Q. Mr. Desser, you testified your background is in strategic
21 media planning and negotiating sports media contracts.

22 A. Yes.

23 Q. Have you ever been engaged to sell a sports team?

24 A. No, I have not specifically been engaged for that purpose.

25 Q. Have you ever been engaged to provide M&A advice regarding

1 the sale of any company?

2 A. Yes.

3 Q. Sports team?

4 A. Yes.

5 Q. But not engaged to sell a sports team; M&A advice in
6 connection with media rights?

7 A. With media rights and the potential sale of a sports team
8 and its assets.

9 Q. But you were providing advice, and I'm sorry, I didn't
10 mean to cut you off, my apologies. You were providing advice
11 in connection with the media rights aspect. Correct?

12 A. With, predominantly with respect to the media rights, but
13 not exclusively with respect to the media rights.

14 Q. Does your background, have you ever been engaged to sell a
15 distressed company in a chapter 11 proceeding?

16 A. No.

17 Q. Mr. Desser, do you recall signing declarations, and two
18 declarations in connection with this bankruptcy case?

19 A. Yes.

20 Q. Okay. And the first one, your original declaration was
21 provided in October when you were engaged as an expert by
22 Major League Baseball.

23 A. Yes, that's correct.

24 Q. And the second one, the new declaration, was provided in
25 November when you were engaged by Fox.

1 A. Yes.

2 Q. What I'd like to do is I'm going to hand you copies of
3 both of those because I think we'll be referring to those
4 during your cross-examination.

5 MR. LEVINSON: Your Honor, if I may approach?

6 THE COURT: You may. Oh, thank you. All right.
7 I'll use this one. Thank you, sir.

8 MR. LEVINSON: And, Your Honor, I didn't pre-mark the
9 exhibits, but if I, just for ease of purpose if we could mark
10 the Major League Baseball declaration as Exhibit 8 and the
11 Fox Declaration as Exhibit 9.

12 THE COURT: Okay.

13 BY MR. LEVINSON:

14 Q. Mr. Desser, what I've handed you are those copies of the
15 declarations, the two declarations that you have submitted in
16 connection with this case.

17 A. They appear to be.

18 Q. Now in the, and I'll refer to the declaration you did for
19 Fox as the Fox declaration. And also I think in your
20 testimony today you opine that the marketing procedures that
21 have been proposed by the Debtors are unnecessary in
22 connection with the sale of the team.

23 A. I believe so.

24 Q. But you would agree that in order to maximize the value of
25 the media rights, the sale transaction of the media rights

1 should occur in an open market. Correct?

2 A. I testified in my first declaration for Major League
3 Baseball that as opposed to a situation where the rights were
4 under a cloud of uncertainty, given the situation with Mr.
5 McCourt, given the situation with Baseball, given the
6 litigation by Fox, that the team would be better off not
7 negotiating its rights at that time and under those
8 circumstances.

9 Q. If you could take a look at the MLB declaration, exhibit,
10 the one we're going to call Exhibit 8, but it's the one
11 entitled Major League Baseball. Your declaration in support
12 of Major League Baseball at the top. Do you see that?

13 A. Okay.

14 Q. Okay. And if you could turn to page 7, paragraph 13. And
15 the heading E, under the heading E where it says, an open
16 market is required to maximize the value of the media rights.
17 Was it your testimony on behalf of Major League Baseball that
18 "in order to maximize the value of media rights, the sale
19 transaction should occur in an open market."

20 A. Yes.

21 Q. And would you agree that a team practicing sound business
22 judgment diligently explores all the options which are
23 available?

24 A. Yes.

25 Q. And would you agree that a team practicing sound business

1 judgment has in-depth discussions to get to know and estimate
2 the interest level of various potential parties to a deal or
3 deals?

4 A. Yes.

5 Q. And that after determining the best allocation and
6 division of rights between one or more of those parties in a
7 manner designed to maximize revenues and all other benefits
8 flowing from such arrangements and after balancing intended
9 risks, a team practicing sound business judgment commences
10 detailed negotiations covering a wide variety of customized
11 issues that are particular to the team and those parties
12 specific needs. Would you agree with that?

13 A. That is what I wrote and that is what I believe.

14 Q. Would you further agree that by virtue of the Fox
15 contract, the provision regarding the exclusive negotiating
16 period, in the 45 days, that it's not going to be until the
17 end of the exclusive negotiating period when the Dodgers are
18 free to solicit offers from and negotiate with other parties
19 regarding the sale of the media rights, that the Dodgers
20 should expect to receive the best offer for a new media
21 rights deal from Fox Sports.

22 A. I think that's right and I don't think it's inconsistent.

23 Q. Do you agree with that?

24 A. Yes.

25 Q. Now you testified, and I think today, and in fact I heard

1 you say it today, also in your declaration, that buyers of
2 the team can use the proposed Fox transaction as a benchmark,
3 the one that was pre-bankruptcy. Correct?

4 A. Yes, I think that provides a very valuable piece of
5 marketplace information, and I think that would allow them
6 good insight into the value of the Dodgers and the, and
7 inform their judgment as to what to pay for the team even
8 without a, you know, a signed and binding agreement at this
9 time.

10 Q. But that would be a conservative estimate, wouldn't it?

11 A. I think it is at this point a conservative estimate. I
12 think it's a pretty good deal, and it was negotiated using
13 some well known experts that I'm familiar with, and so I
14 believe they did a pretty good job.

15 Q. But a conservative estimate.

16 A. It is conservative insofar as it was not subject to the
17 open market kind of negotiation that we, you know, spoke
18 about a few moments ago.

19 Q. And isn't it your opinion that the proposed Fox
20 transaction resulted in less value to the team because the
21 team needed upfront cash and Fox used that need as leverage?

22 A. I believe that the way that deal was structured with the
23 large advanced payment, you know, that that caused the deal
24 to be different than what would have ordinarily taken care,
25 taken if the process had gone through in the normal course,

1 so you know in that respect, that's right.

2 Q. In your opinion resulted in less value of the team.

3 A. I think that it was baked into the calculation, there
4 would certainly have been a discounting appropriate for
5 receiving funds early, and that puts aside the fact where the
6 funds were ultimately going which is a different issue.

7 Q. But again, less value to the team.

8 A. There would be somewhat less value to the team in that
9 circumstance, that's why it would be considered conservative.
10 It wouldn't be that hard to take that though and apply some
11 sort of an increment to it to make it less conservative. And
12 that's the sort of thing that professionals such as myself
13 might very well do.

14 Q. Right. But again, the open market, in order to maximize
15 the value of the media rights, the sale transaction should
16 occur in an open market.

17 A. That is the best way to get the highest price, all other
18 things being equal.

19 Q. And that's --

20 A. That should not be inferred to suggest that I'm a big fan
21 of the auction process.

22 Q. But again, your testimony to this Court, I just want to be
23 clear, your testimony to this Court was that in order to
24 maximize the value of the media rights, the sale transaction
25 should occur in open market. Correct?

1 A. Yes.

2 Q. Okay. Why don't we turn to the Fox contract. Now this is
3 Exhibit 1 in the small binder.

4 A. Okay.

5 Q. You were not involved in the negotiation of the language
6 of this agreement, correct?

7 A. I was not.

8 Q. And have you ever done any work in connection with the
9 media rights of the Dodgers other than in this case?

10 A. No, I have not, though I would hasten to add that media
11 rights agreements for teams are very similar across sports
12 and across teams in the same sport.

13 Q. By the way, you should feel free to fully answer the
14 questions, but to the extent you can limit your answers to my
15 questions that'll be, that'll help us move things along. You
16 don't have any personal knowledge of what Fox had in mind
17 when they agreed to the original Fox contract in 2001, do
18 you?

19 A. I don't know what was in their minds.

20 Q. Or when the contract was amended in 2004 when Mr. McCourt
21 purchased the team?

22 A. I don't know specifically what they were thinking. I
23 would have to infer what they were thinking, which I don't
24 think was your question.

25 Q. Now, you had, you testified today and you testified in the

1 declaration that you submitted that the, what we would call
2 the negotiation rights, when they were amended at the time
3 that Mr. McCourt purchased the team, and I think I'm quoting
4 you, were likely essential to protect Fox in entering into
5 the agreement given that it was concurrently selling the team
6 to Mr. McCourt, and thereby giving up some control over the
7 future media rights of the team at that time. Do you recall
8 that testimony --

9 A. Yes.

10 Q. -- in your declaration. But in fact those negotiation
11 rights were weakened when the Fox contract was amended.
12 Correct?

13 A. They were modified. They, the previous agreement took
14 place at a time when Fox owned the team and therefore
15 probably wasn't as concerned about exactly what was in the
16 agreement. When the third party was going to be involved
17 prospectively, I suspect that there was more focus given to
18 that language.

19 Q. There was more focus, but whereas Fox originally had the
20 team and may not have been so worried, the language was
21 actually weakened when the team was sold to Mr. McCourt.
22 Correct?

23 A. There are aspects that are weaker; there are aspects that
24 are stronger.

25 Q. Well let's, I'll tell you what, let's start with section

1 2B. And I take it you've read the original version of the
2 Fox contract.

3 A. I read the agreement some time ago. Yes.

4 Q. Recently?

5 A. It's been several weeks.

6 Q. So not since, you've haven't re-read the original
7 agreement since Fox engaged you in connection with this
8 matter?

9 A. I did read the agreement since Fox engaged me, but that
10 was a few weeks ago.

11 Q. Okay. Well let's, if you could in Exhibit 1, turn to
12 section 2B. I'll tell you what, well, why don't we, let's go
13 and turn to it.

14 A. Okay. Just to be clear, are we talking about the second
15 amended I think it's called.

16 Q. No, no. We're actually, we're talking about the original
17 agreement.

18 A. Okay.

19 Q. So, page 4, section 2B. I'm not going to give you a
20 memory test.

21 A. Pardon me?

22 Q I'm not going to give you a memory test, you can turn to
23 the provision, you'll have it in front of you. If you
24 remember it, that's fine, but I'm --

25 A. Okay. If the Court can indulge me for just a moment, I'm

1 looking at that agreement and there's something strange about
2 page 5, and I don't know if we're going to go on to page 5,
3 but --

4 Q. We are not going to go on to page 5, so we're going to
5 stick to page 4.

6 A. Okay. I have it in front of me.

7 Q. Okay. Section 2B, under the original Fox agreement, under
8 the original Fox contract, how long was the exclusive
9 negotiation period between the parties?

10 A. Looks like about three months.

11 Q. Three months. And under the amended agreement, it's 45
12 days?

13 A. Approximately 45 days.

14 Q. So --

15 A. I think it's actually 46, but we'll call it 45.

16 Q. You might be right, you might be right. But is the 45 day
17 period under the amended Fox contract better or worse for
18 Fox?

19 A. I don't think it's materially different. You could make
20 an argument that it is slightly better for Fox. But as a
21 practical matter, in my experience whether you have a 45 day
22 period or you have a 60 or 70 day period doesn't change
23 materially what happens within the period. So I'll grant you
24 that having a little bit more of a period might be a little
25 bit better, but I don't want to suggest it's hugely better.

1 Q. Double, right? I mean we've gone from 45 or so days to 90
2 days, right?

3 A. No, we went the other way around, we went from 90 to 45.

4 Q. I'm sorry, you're right, we went from 90 to 45 days,
5 exactly.

6 A. Yes. It's a --

7 Q. It's half.

8 A. -- more concentrated period, and that means that
9 negotiations have to, you know, be more concentrated as a
10 result.

11 Q. I mean you had testified negotiation, these are not a mere
12 formality, correct?

13 A. No, I don't think they're a formality at all.

14 Q. Right. Parties devote significant, significant resources
15 to this process. Correct?

16 A. They do.

17 Q. So to the extent that Fox had double the amount of time,
18 originally that would give Fox an extra 45 days to try reach
19 an agreement. Correct?

20 A. Yes.

21 Q. Now, under section 2B of the original contract, when did
22 the non-solicitation period, the no shop period expire?

23 A. Let me just read the paragraph to refresh my recollection
24 if --

25 Q. Please.

1 A. -- you don't mind.

2 Q. No, please.

3 A. So in the previous agreement the no shop ends at the end
4 of the exclusive negotiating period which is consistent with
5 the current version of the agreement. However, the Dodgers
6 have wider latitude with respect to unsolicited offers, and
7 can receive unsolicited offers prior to such time.

8 Q. Is there anything in the existing agreement that precludes
9 the Dodgers from, or in the amended agreement from receiving
10 unsolicited offers?

11 A. I'll have to go look at the document. I think that in
12 form the idea is that the Dodgers are not to engage in
13 negotiations. I can go and refer to that language if you'd
14 like me to look at it. But the intent I believe is to keep
15 the Dodgers out of the marketplace and not be in a position
16 to be soliciting such proposals.

17 Q. Well let me, I'm going to read from the original
18 agreement. It says, LAD shall not solicit offers from or
19 negotiate with any person or entity other than Fox Sports for
20 cable television rights with respect to any future games at
21 any time preceding April 30, 2006. That's the original. The
22 new one, LAD shall not solicit offers from or negotiate with
23 any person or entity other than Fox Sports for cable
24 television rights with respect to any future games at any
25 time preceding November 30th, 2012. Is that any different

1 other than the date?

2 A. I don't have the language susceptible to doing a compare
3 right now. It sounds like about the same thing. But my
4 recollection is that the old language was structured
5 differently insofar as the Dodgers were obligated to bring
6 offers that they received to Fox.

7 Q. Well we'll get to that. That's coming up after the
8 exclusive negotiation period, so that may be where your
9 confusion is. But --

10 MR. STONE: Your Honor, I'm going to object. The
11 document is the best evidence, and it does say, the witness
12 just stated in section 2B of the exhibit we're looking at, so
13 the statement is argumentative, it's editorializing and it's
14 contrary to the document.

15 MR. LEVINSON: I had, the witness had added that
16 statement, I was really just trying to assist him in his
17 obvious confusion. But correct, the document does speak for
18 itself.

19 THE COURT: Yes.

20 MR. LEVINSON: I think Your Honor will be able to
21 read both those provisions.

22 THE COURT: Yes.

23 MR. LEVINSON: I want to focus on the dates.

24 MR. STONE: In which case, maybe this is irrelevant.
25 I should object on that ground if that's the only point of

1 this.

2 THE COURT: Well --

3 MR. LEVINSON: May I proceed Your Honor?

4 THE COURT: Yes.

5 MR. LEVINSON: Thank you.

6 BY MR. LEVINSON:

7 Q. The date, I'd like to focus on the date, April 30th, 2006.
8 This is under the original agreement. Okay. What was the
9 term of the original agreement?

10 A. It ran through the 2006 season.

11 Q. Okay. So how much time was there on the backend between
12 this April 30th, 2006 date and the beginning of the 2007
13 season?

14 A. About 11 months.

15 Q. Okay. And under the amended agreement, how long is that
16 period of time?

17 A. I believe it's, well we're talking about from the end of
18 the exclusive negotiation period which is October 30, I'm
19 sorry, November 30 to the following season, so it's 3, 4, so
20 that's 16 months I believe.

21 Q. Okay. So the increase in that period from 11 to 16
22 months, was that better or worse for Fox?

23 A. That would have been worse for Fox.

24 Q. Let's take a look at section 2C, the right of first
25 refusal. And this is, again, I want to focus on the original

1 contract.

2 A. Okay.

3 Q. Do you need an opportunity to review this to understand
4 how it operated here, or are you prepared to testify without
5 refreshing your recollection?

6 A. Well I think it's probably best that I re-read it to
7 refresh my recollection. Okay.

8 Q. Okay. And how do you understand this provision to
9 operate?

10 A. Essentially what this gives Fox is a matching right.

11 Q. A matching right under any circumstances?

12 A. Well it's a matching right under the circumstances that
13 they receive, that the teams receives a matchable offer.

14 Q. And a matchable offer is any bona fide arms length offer
15 from such a third party for the cable television rights for
16 future games for such a subsequent term?

17 A. That the Dodgers desire to accept.

18 Q. That the Dodgers desire to accept. Basically any offer
19 the Dodgers got, Fox would have a right to match under this
20 provision.

21 A. No.

22 Q. That met this --

23 A. Any offer that the Dodgers wished to accept. If somebody
24 makes a lowball offer they're not under any obligation to
25 provide the match in that case.

1 Q. Right. Correct. And thank you for that clarification.

2 So any offer that the Dodgers want to enter into they have to
3 take it to Fox first no matter what.

4 A. I'm not sure no matter what, but yes --

5 Q. You didn't see any --

6 A. -- Fox has a matching right.

7 Q. I'm sorry, I didn't mean to interrupt you. There was
8 nothing in the section C you saw in re-reading it that would
9 provide a no matter what, that would provide an exception to
10 the no matter what.

11 A. As long as it was a matchable offer.

12 Q. Would you agree that third parties are less likely to
13 spend the time and money on due diligence in negotiations, if
14 Fox could simply take for its own through a matching
15 [indiscernible].

16 A. Yes, that is my testimony I believe in the declaration.

17 Q. Now, does Fox have the right under the amended contract to
18 match any offer that is received by the Dodgers?

19 A. They have the right to match offers that are less than the
20 team offer assuming that Fox did not accept the team offer at
21 the end of the exclusive negotiating period.

22 Q. And would you say that the amended agreement as drafted is
23 better or worse for Fox?

24 A. The backend rights provision in the more recent agreement
25 are I would say on the whole less advantageous to Fox, but

1 are still valuable and still quite material to Fox.

2 Q. Now, I'd like to, if I could, turn your attention in
3 section 2C, it's about two-thirds of the way down, it's the
4 second to last sentence. I'm just going to read it to you.
5 If Fox Sports accepts the matchable offer, the terms of the
6 matchable offer will serve as a binding agreement between LAD
7 and Fox Sports. Do you see that?

8 A. Yes.

9 Q. Okay. And in your, I think in your declaration you said
10 that Fox has a right to receive a final binding team offer
11 following the exclusive negotiating period. Was that your
12 testimony?

13 A. That sounds like my testimony.

14 Q. Okay. And do you remember underlining the words, final
15 binding team offer, in your declaration?

16 A. I remember there being an underline, I would have to go
17 back and look and see exactly which words were underlined.

18 Q. Okay. Now if I could, I'd like to turn your attention to
19 the amended, the first amended agreement. And to find it, I
20 don't know if your version up there has a tab on it, but if
21 not, go to page 35 of the original agreement and then go to
22 page 2 of the next document and you will be there.

23 A. All right. I think I have that.

24 Q. Okay. And in section 2C of the, what would be the amended
25 version of section 2C in the right of first refusal, would I

1 find the word binding underlined in that particular
2 provision? Or for that matter, let me ask a different
3 question. Would I find the word binding anywhere in that
4 provision?

5 A. I'd have to re-read the entire paragraph to see if the
6 word binding is here. I --

7 Q. Please --

8 A. -- believe it is not here. What's here is the concept of
9 offer and acceptance as I interpret as being binding, but I
10 will concede that the particular words may not be in this
11 paragraph.

12 Q. Wouldn't you suspect that Fox and the Dodgers spent
13 extensive time negotiating the details of these provisions?

14 A. I would expect that they did.

15 Q. Is it better or worse for Fox that the language of the Fox
16 contract no longer says that if Fox accepts the team final
17 offer, it will serve as a binding agreement?

18 A. Are you asking for a legal conclusion?

19 Q. I'm asking for your opinion with respect to that issue.
20 Is it better or worse for Fox?

21 A. I don't think it makes a difference because I think the
22 way the language reads to me the process sets up the team
23 making an offer with Fox having the opportunity to accept it,
24 thereby creating an agreement. It then goes on to say what
25 happens if they don't accept it. But this whole process is

1 really set up so that Fox, so that the team knowing that this
2 is the end of the exclusive negotiating period, is going to
3 make an offer, it may be less than the offer that they were
4 discussing in the exclusive negotiating period, but with the
5 knowledge that Fox has the opportunity to match or not. It's
6 an offer that's much more likely to be accepted. The parties
7 in this situation are reaching for each other, and that
8 creates an environment where it's more likely that they make
9 a deal. The fact that the words binding may not be in this
10 agreement, I don't think changes that.

11 Q. You don't think the fact that it was in the original
12 agreement, and is no longer in this agreement, which was the
13 subject of I think you suspect extensive time negotiating the
14 details, you don't think that's worse for Fox.

15 A. No, I really don't.

16 Q. Okay. Now would you agree that any agreement by a Major
17 League Baseball team such as the Dodgers to license telecast
18 rights is subject to the approval of the Commissioner?

19 A. Yes.

20 Q. That's a condition of any agreement.

21 A. That's my understanding.

22 Q. And are you aware that the Commissioner rejected the
23 proposed Fox transaction prior to the filing of the Debtors'
24 bankruptcy case?

25 A. I think everyone in the room is aware of that.

1 Q. Have you seen a copy of the letter? I mean I know you
2 were engaged by Major League Baseball before you were engaged
3 by Fox, either then or since or before, have you seen a copy
4 of the letter that Commissioner Selig sent to Mr. McCourt on
5 June 20th of 2011 setting forth the reasons for rejecting the
6 proposed Fox transaction?

7 A. I recall reviewing that letter during the time that I was
8 retained by Major League Baseball.

9 Q. And in reviewing that letter, did you become aware that
10 one of the reasons offered by the Commissioner for rejecting
11 the proposed Fox transaction was that there was a possibility
12 of a sale of the team, and that a potential purchaser of the
13 team might want a say in any future telecast rights
14 agreement?

15 A. I don't recall the details of the letter. It's been some
16 time since I looked at it.

17 Q. I want to, in the amended agreement, turn your attention
18 to page 3 of that agreement. And this is specifically to
19 section 2C, roman number ii. Do you see that provision?

20 A. Okay, is that the one in the middle of the page?

21 Q. It is, yes.

22 A. Okay.

23 Q. I didn't hear any testimony from you today or any
24 reference in your declaration to this particular provision.
25 Are you familiar with this provision? Have you read it?

1 A. Yes.

2 Q. And what does this provision provide?

3 A. This is the what I'd call a carve out that pertains to the
4 possibility that the Dodgers could start an RSN on their own.

5 Q. Okay. And any other description that you could offer
6 beyond that?

7 A. I can offer a description at length if that's what you're
8 looking for.

9 Q. Again, I just want to make sure I have your full
10 understanding of the provision.

11 A. The provision is I believe designed to if the Dodgers wish
12 to invest in an RSN, and wish to be the majority owner of
13 such RSN, that after they go through the backend rights
14 process, assuming that there hasn't been offer and
15 acceptance, they are then in a position to go about
16 considering to start an RSN, and doing so would not be
17 limited by Fox's rights provided that they didn't partner
18 with many of the key, any of the key entities most likely to
19 be interested in getting into the business with them. So
20 while it appears to be, you know, you might call it a
21 loophole, it's a relatively limited loophole because as a
22 practical matter, most, it excludes some of the most likely
23 suspects.

24 Q. And who are those?

25 A. Well they're not specifically referenced in this

1 agreement. I believe there's a side letter or something that
2 contains them, but my understanding is that it's Comcast
3 which owns quite a number of RSNs, Time Warner which is
4 starting an RSN, two RSNs in the LA market, and ESPN which
5 has considered starting RSNs in the LA market before.

6 Q. In fact, if you turn to schedule 1 of this particular
7 exhibit, it's actually a schedule to this amendment, isn't
8 it, if you turn about 6, 7 pages back.

9 A. Yes, I see that.

10 Q. Okay. Now, the beginning of this, what you call the carve
11 out provision, it says notwithstanding the foregoing, LAD
12 shall have no obligation under subsection C1 in the event
13 that LAD enters into a television rights agreement that
14 includes all of its cable television rights for a subsequent
15 term of at least five MLB seasons with any entity that will
16 telecast team games. I'm going to just stop there because I
17 want to focus on the beginning language. Notwithstanding the
18 foregoing, LAD shall have no obligation under subsection C1.
19 Based on that language, wouldn't you understand that to mean
20 that there is no obligation of LAD to go forward with any of
21 its obligations under subsection C1 if it decides to form its
22 own RSN?

23 A. I'll just look at C1 again for a moment. So after the
24 period of exclusive negotiation and after the I think it's
25 been referred to as the no shop, then provision 2C kicks in,

1 which is that right of first refusal pertaining to the final
2 offer.

3 Q. So, but this provision C2 says notwithstanding the
4 foregoing, which is of course C1, LAD shall have no
5 obligation under subsection C1 in the event that LAD enters,
6 etc. You see that language?

7 A. Yes.

8 Q. And so would you understand that to mean that LAD could --
9 strike that. In your declaration, I want to take a look at
10 paragraph 12D of your, of the Fox declaration, which will be
11 the one marked as Exhibit 9, but it's the one that is
12 entitled declaration of Edwin Desser in support of Fox Sports
13 Netwest. Do you see that?

14 A. Talking about on page 7?

15 Q. Yeah, page 7, paragraph 12.

16 A. Okay, I have page 7 in front of me.

17 Q. Okay. And if you go to 12D, at the very bottom of the
18 page, you've said, Fox has a right of first refusal on any
19 media rights transaction of less value than the team final
20 offer. Do you see that?

21 A. Yes, from a third party.

22 Q. I'm sorry, I didn't see from a third party. It doesn't
23 say that in here. In order for this to be accurate, wouldn't
24 it need to refer to the carve out that we've just described?

25 A. Well I think what you're getting at is that if the Dodgers

1 seek to negotiate with themselves, then this part doesn't
2 happen. But this is all about an offer that they get from a
3 third party. You can't expect Fox to match an offer that the
4 Dodgers make to themselves.

5 Q. In terms of -- well that agreement is with an RSN that is
6 owned, the largest ownership --

7 A. Largest owned by the Dodgers. Okay.

8 Q. -- is by an affiliate. But that's still a third party.
9 Correct? That's an RSN.

10 A. You know, you don't want me to make a legal judgment to
11 this, to whether that's a third party. It's certainly a,
12 it's not an unrelated third party.

13 Q. But you would agree that right of first, when it says
14 right of first refusal on any media rights transaction of
15 less value in a team final offer, that would not apply to a
16 media rights transaction subject to the carve out. Would you
17 agree with that?

18 A. In the case where the Dodgers decide to keep the rights
19 themselves, then that wouldn't apply.

20 Q. Now, under, you had identified three entities that under
21 the carve out wouldn't be permitted to own an equity interest
22 in order for that carve out to apply, Comcast, Time Warner,
23 ESPN. Correct?

24 A. Yes.

25 Q. So for example, under that carve out provision, if the

1 owners of the Dodgers own the largest stake in the RSN, they
2 could form an RSN with for example, Direct TV.

3 A. Yes, they could.

4 Q. Or AT&T.

5 A. Yes, that's possible.

6 Q. Verizon?

7 A. Conceivably.

8 Q. Yeah, CBS?

9 A. Yes. Though I think, the ones you're listing are less and
10 less likely to actually be suitable partners because of
11 their, the amount of distribution that they have or don't
12 have in the LA market. But there are clearly other parties
13 out in the marketplace that the Dodgers could get into
14 business with.

15 Q. Right. And when you represented the Lakers in the recent
16 sale of their media rights, you negotiated and discussed the
17 potential Lakers business relationship with each of those
18 four parties I just listed. Correct?

19 A. Yes.

20 Q. And again, under Section 2C(ii) so long as the owner of
21 the team holds the largest stake in the RSN. By the way it
22 doesn't say majority, it just says largest stake, but the
23 document speaks for itself. Each of the parties I listed
24 could participate. Correct?

25 A. Yes, there are a number of parties that the Dodgers could

1 get into business with. I think though it's important to
2 recognize that the likelihood of any of them doing so and the
3 likelihood of them being successful are all not equal. And
4 risk is a very important part of this equation. That doesn't
5 seem to show up in these documents. When you're a team and
6 you're in the business of delivering your product to the
7 fans, anything that increases the risk that doesn't happen is
8 something that you have to very carefully weigh. And for
9 example, you're not going to want to take, take the risk that
10 somebody who doesn't have broad distribution is going to have
11 your rights and be unable to offer it to the majority of your
12 fans.

13 Q. Does Direct TV have distribution in Los Angeles?

14 A. Direct TV does have distribution in Los Angeles. Many of
15 the others do not have nearly as much distribution.

16 Q. You've represented teams that formed RSNs in which they've
17 owned a majority interest. Correct?

18 A. Yes I have.

19 Q. I mean in fact I think you testified that you had
20 represented the Rockets and the Houston Astros. Did you
21 represent them in connection with their recent RSN
22 transaction?

23 A. Yes I did.

24 Q. And I think you said it was going to launch next fall?

25 A. Yes.

1 Q. And they own a majority interest in that particular RSN
2 along with Comcast as a minority interest holder.

3 A. The two teams own a majority together. I don't recall
4 whether either one of them is a larger owner or not. They
5 may be. I'd have to double-check.

6 Q. By the way, you were, just going back to one of your
7 earlier questions, you were talking about potential partners
8 that have distribution. I think you said Direct TV has
9 distribution, AT&T, Verizon, CBS, you said others don't
10 necessarily. Does Fox have its own distribution?

11 A. Well Fox actually has the broadest distribution of many.
12 It just happens to be as a result of affiliation agreements.
13 But Fox has distribution into virtually every nonstandard
14 television home, which Direct TV does not, which Verizon does
15 not, AT&T does not. So in effect, Fox eliminates
16 distribution risks to a very large extent for a team. And
17 frankly, that's one of its advantages when it goes about
18 negotiating with teams, and an additional reason why the
19 incumbency is important.

20 Q. But it doesn't have its own distribution in a sense of the
21 providers, it just happens to, as a sort of middleman entered
22 into agreements with those that actually do provide
23 distribution, like for example, Time Warner or Direct TV.

24 A. That is true. They are not, they are not so called MVPDs.
25 So they don't have that direct consumer relationship, the

1 subscriber relationship. But they have distribution
2 agreements that cover all of the MVPDs in the market, and
3 therefore, they're in a position to with a single deal
4 provide you full distribution to all of the fans.

5 Q. Going back to the RSNs, I mean in addition to the Rockets
6 and the Astros, do I remember also reading that you
7 represented the Sacramento Kings in setting up their RSN?

8 A. Yes. But that was not one that was majority owned by the
9 team.

10 Q. Did I hear, I heard you testify I think that you actually
11 came up with the idea of RSNs in 1982. Is that what you said
12 this morning?

13 A. No, I did not come up with the idea --

14 Q. Okay.

15 A. -- of RSNs, I created what was some of the initial
16 research surrounding the creation of the RSN that is
17 currently known as Fox Sports West. Fox Sports West was
18 originally called ironically Prime Ticket and was owned by
19 the owner of the Los Angeles Lakers and a cable pioneer by
20 the name of Bill Daniels. They started it together. It was
21 later sold to Liberty and ultimately sold to Fox.

22 Q. Now some of these RSNs that we've discussed, the Rockets,
23 the Astros, the Kings, in those circumstances, each of those
24 teams had prior agreements with Fox branded RSNs before
25 forming their own RSNs. Correct?

1 A. Yes, that's correct.

2 Q. Now I want to, in paragraph 19 of your declaration that
3 you submitted, you had --

4 A. Which one? I'm sorry.

5 Q. This is the Fox declaration. You had complained that the
6 amended, one of the complaints that you had about the amended
7 marketing procedures was that it would give LAD the right to
8 value the non-cash consideration if there were a competing
9 offer, and that Blackstone was replacing the independent
10 appraiser which you said had a clear conflict of interest.

11 A. You're referencing paragraph 19?

12 Q. I am, yes.

13 A. I don't think that's what that paragraph is about. You're
14 talking about the Fox declaration.

15 Q. I am, yes.

16 A. Paragraph 19 --

17 Q. I may have given you the wrong --

18 A. -- has to do with the timing of the exclusive negotiating
19 period.

20 Q. Well let me ask, let me ask this. And I'll find the
21 reference. Is it your view that, that with respect to the
22 provision under which Blackstone is going to value the non-
23 cash consideration, that that is different than what is
24 provided under the Fox contract as amended?

25 A. Well, it's different insofar as the agreement calls for

1 that to be done by the Dodgers, subject to providing various
2 support for a good faith estimate. In the revised
3 procedures, it substitutes Blackstone for doing that process.
4 Then I gather later a subsequent amendment then has the Court
5 taking the next stab at it as opposed to you know than an
6 appraiser such as myself.

7 Q. Just so I understand and maybe it was Mr. Thompson who had
8 said this, I thought it was in your declaration as well. But
9 other than the change of the appraiser's role to the
10 Bankruptcy Court's role, is there anything about that process
11 that's different under the amended marketing procedures that
12 have been proposed by the Dodgers?

13 A. I think there's a difference in timing if I recall. I
14 think there was originally the appraiser was supposed to be
15 selected by the two parties after I think it was a ten day,
16 within ten days. Here, Blackstone is going to do the first
17 cut at it, and then there's a I believe a shorter period in
18 which the Court can get involved.

19 Q. So, let's just take a language at the --

20 A. Sure.

21 Q. And that probably would be the -- what I'd like to if I
22 could, it is about, on page 2, about two-thirds of the way
23 down provision. Do you see that?

24 A. I'm going to need you to point me to the right document.

25 Q. It's going to be right after less favorable. It's right

1 after less favorable offer. It's exhibit 1, the amended Fox
2 contract, page 2, about two-thirds of the way down, the right
3 of first refusal provision.

4 A. Okay. I thought we were on the declaration. Okay.
5 Amended Fox contract meaning the 2004 amendment.

6 Q. Correct.

7 A. Okay. I have the document.

8 Q. Okay, and if you could skip down to where the words less
9 favorable offer are in quotations. Do you see that?

10 A. Give me a moment; the typeface is very small on this one.
11 All right. Can you repeat the question? I've looked at the
12 document.

13 Q. Sure. I'm going to read the language to you, and then I
14 just want to make sure that your understanding is consistent
15 with the language so that we can -- what I want to try to do
16 here is clear up whether there are really any differences
17 between the, you had testified there were differences between
18 the amended marketing procedures versus the contract. So I'm
19 going to read the language from the contract.

20 A. Okay.

21 Q. It says LAD shall together with delivery to Fox Sports of
22 the less favorable offer, set forth the cash value of any of
23 the terms of such less favorable offer that could only be
24 reasonably be met by the third party making or receiving the
25 offer which determination by LAD shall be commercially

1 reasonable and be supported in reasonable detail by
2 appropriate documentation provided concurrently to Fox Sports
3 the cash determination. Do you see that?

4 A. Yes.

5 Q. So under this provision, it provides for LAD to make that
6 determination. Right?

7 A. That's right, LAD not Blackstone.

8 Q. Right. But if Blackstone has been engaged by LAD to do
9 that that would be on behalf of LAD. Correct?

10 A. I would think so.

11 Q. Right, and if, it's not the appraiser who's doing this
12 under this provision but rather LAD. Correct?

13 A. That's correct.

14 Q. Okay.

15 A. At this point in the process.

16 Q. At this point in the process.

17 A. That's correct.

18 Q. Okay. And then as we skip down towards the second to last
19 line of the page, if Fox Sports believes that the cash
20 determination was not commercially reasonable, Fox Sports
21 shall provide notice of objection to LAD within ten days
22 after receipt of such less favorable offer. Do you see that?

23 A. Yes.

24 Q. I'm going to keep reading. In such event, the parties
25 shall deliver the less favorable offer to the appraiser, and

1 the appraiser shall determine within 30 days after submission
2 whether the cash determination was commercially reasonable.

3 Do you see that?

4 A. Yes.

5 Q. So there what the appraiser is doing is determining
6 whether that cash determination that was made by LAD or in
7 this case, Blackstone, was commercially reasonable. Correct?

8 A. Yes. But you left out the part about choosing the
9 appraiser which was earlier in the language.

10 Q. All right.

11 A. And that is different.

12 Q. That is different. What is different is that the
13 Bankruptcy Court is now assuming the role of the appraiser
14 under the amended marketing procedures. Correct?

15 A. Yeah, I think when I wrote my declaration, it was before
16 you had made that change. There have been so many changes,
17 it's been a little hard for me to track it, but I think that
18 was the case when I wrote this.

19 Q. Okay. So but just so we're all clear, and I don't think
20 you're correct about that, but that's fine. Just so we're
21 clear here, what is different, and the only thing that is
22 different is that the role of the appraiser is being assumed
23 by the Bankruptcy Court, but that what Blackstone is doing is
24 consistent with what LAD was called upon to do under this
25 provision. Would you agree with that?

1 A. Yes, that sounds right.

2 Q. Okay. What I'd like to do now is direct your attention to
3 Exhibit 24, Fox Exhibit 24, the Exhibit Mr. Stone walked
4 through with you. I'm not sure, I don't know where your copy
5 of it is. It was the new exhibit that was presented this
6 morning.

7 A. Oh, okay.

8 THE COURT: Your comparison.

9 MR. DESSER: Got it. Thank you.

10 BY MR. LEVINSON:

11 Q. I'd like to just sort of walk our way through this chart
12 if I may.

13 A. All right. Sure.

14 Q. Starting with number 1, LAD cannot solicit third party
15 offers until November 30th, and under our procedures that day
16 would be moved up to January 14th, 2012.

17 A. Roughly. I think it all depends on the dates of the order
18 of the Court. But you know I'll accept that as an
19 approximation.

20 Q. Okay. And that is different, those are two different
21 dates. So let's go to number 2. The description on the left
22 column, it says LAD is obligated to have exclusive
23 confidential negotiations with Fox from October 15, 2012
24 until November 30, 2012 in good faith with respect to terms
25 and conditions on which Fox Sports may retain exclusive cable

1 television rights for at least five seasons. You see that?

2 A. Yes.

3 Q. Okay. And one of the words there, terms and conditions.

4 You see that?

5 A. Yes.

6 Q. Okay. And you testified earlier one condition of any such

7 agreement here is the approval of Major League Baseball.

8 A. Well I don't think that's something that the Dodgers are

9 able to negotiate about. I think that's a requirement of

10 Baseball. So that clearly is a condition precedent to having

11 the deal take place, but it's not something that could be

12 discussed in those negotiations.

13 Q. Right. And if the condition of MLB's approval was that

14 any buyer of the team have the ability to approve that sale,

15 that would be consistent with the condition that MLB approve

16 the agreement.

17 A. It's a pretty unusual situation. But you know Baseball

18 can decide how, upon what they're going to base their

19 approval, they have pretty wide latitude to do so.

20 Q. So let's now go to number 3, this is in the blackline,

21 blackline number 3. And actually, as we go through this one,

22 I'd like to --

23 A. I'm sorry, I don't have the blackline version.

24 Q. Oh, well how did --

25 A. If you need me to refer to that, then I'd need something

1 different than what I have.

2 Q. Yeah, did you not have it when you were testifying
3 earlier? Exhibit 24.

4 A. No, I think that was given to you.

5 Q. Oh, you have the clean version.

6 A. I have the clean version.

7 Q. Okay.

8 MR. STONE: I'll sacrifice mine.

9 MR. DESSER: Thank you.

10 BY MR. LEVINSON:

11 Q. Okay. Why don't we, just for ease of reference, we'll
12 mark this as Exhibit, I guess it'll be our exhibit.

13 THE COURT: It's already been marked.

14 MR. LEVINSON: As 25, the blackline?

15 THE COURT: Blackline is marked as DX, no I
16 guess, I'm sorry, it wasn't, Mr. Levinson, you're right. I
17 wrote it on the copy, but --

18 MR. LEVINSON: Probably Fox 25.

19 THE COURT: That's right. It's Fox 24 is the un-
20 blacklined. Do you want to make this DX 25?

21 MR. LEVINSON: Yes please.

22 THE COURT: Or DX, no, DX, what's your next
23 number? That would be 9.

24 MR. STONE: We're 9.

25 MR. LEVINSON: Okay, we could do it ours, either

1 way.

2 THE COURT: DX 9.

3 MR. LEVINSON: We'll call it DX. I think we're
4 10.

5 MR. STONE: Perhaps for clarity we should call it
6 DX 24A.

7 THE COURT: That's fine with me.

8 MR. LEVINSON: That'll be fine.

9 THE COURT: All right.

10 MR. LEVINSON: Okay.

11 BY MR. LEVINSON:

12 Q. Now these are the blackline changes from the version that
13 was originally marked as Exhibit 2 to MLB's exhibit binder.

14 A. That's my understanding, but I've not actually ever seen
15 this particular version.

16 Q. Now, I'd like to if I could just before we get into this,
17 if I could turn your attention to Exhibit 7 of our binder, of
18 the Debtors exhibits, the amended marketing procedures.

19 A. That's the small binder?

20 Q. Yeah, the small binder, Exhibit 7.

21 A. Okay. I have that.

22 Q. Okay, and if you can turn to the second page of that
23 Section C. I think you've cited to section, Exhibit 7,
24 section C in this exhibit 24A. Correct? Well if you go to
25 the -- there's a citation at the bottom of the blackline

1 chart.

2 A. Yes, I see that.

3 Q. Okay. Exhibit 7, section C, you see that?

4 A. Yes.

5 Q. Okay. And now if you look at Exhibit 7, section C, do you
6 see any blackline changes in that document?

7 A. In --

8 Q. In Exhibit 7, section C.

9 A. I see no blackline changes in C.

10 Q. Okay. And isn't in fact this provision verbatim from what
11 was in the motion filed by the Debtors on November 12th, this
12 provision C. And I think you cited to it conveniently,
13 amended motion, section 24.

14 A. I'll accept your representation that it is, it looks
15 substantially similar.

16 Q. Okay. Now as I understand the issue that you've raised
17 with respect to this new addition in Exhibit number 3, the
18 concern is that buyers, potential buyers of the team will
19 receive information about the confidential exclusive
20 negotiations that are taking place during the 45 day
21 negotiating period. Correct?

22 A. Yes.

23 Q. That's the concern. So, if it were in fact the case that
24 those, that the negotiations that took place during the 45
25 days were kept confidential by the Debtors and that the

1 information as to those discussions was not shared with the
2 buyers, that would resolve that particular concern. Correct?

3 A. I believe so. But, I haven't thought about it for very
4 long, but that seems to be addressing that issue.

5 Q. Okay. Now I'm going to ask this. If, do you have any
6 knowledge as to whether or not Fox has had any discussions
7 with potential buyers of the team?

8 A. I haven't spoken with Fox about that. So I don't know,
9 though it wouldn't surprise me.

10 Q. Would you have any concerns with information discussed
11 during the exclusive negotiating period being shared with
12 those buyers if Fox were talking to those potential buyers as
13 well and sharing information?

14 A. I can, I don't think that Fox is under the same precise
15 restrictions, but I want to go back and look at the
16 agreement.

17 Q. Well, let's do that.

18 A. I know that the parties have to negotiate exclusively in
19 good faith, etc.

20 Q. Let's take a look at the amended Fox contract, page 2, the
21 revised section 2B, provision, end of term right of first
22 negotiation, and I'll, I'll let you get to it before I read
23 it.

24 A. I appreciate it, we got a lot of paper up here.

25 Q. Just tell me when you're there.

1 A. Okay. It says in 2B, okay.

2 Q. It says from October 15, 2012 through November 30, 2012,
3 the exclusive negotiating period, LAD and Fox Sports shall
4 negotiate confidentially, exclusively and in good faith,
5 etc., etc. So doesn't that apply equally to the Dodgers and
6 Fox?

7 A. Looks like it does.

8 Q. All right. So if Fox is talking to potential buyers,
9 would you, would you have any concern under those
10 circumstances about the Dodgers engaging in discussions with
11 potential buyers regarding their discussions with Fox?

12 A. Well, I would, since I know just how important these
13 provisions are, I am quite confident that Fox would not have
14 a discussion during that period that would put them off side
15 with this language. So you're sort of presupposing a Fox
16 breach which I'm quite confident they would make sure not to
17 do.

18 Q. Or any discussions that Fox may be having now. I mean if
19 they were talking to buyers, would you, my real question is
20 would you have a concern with respect to the procedures and
21 the way they operate of having the Dodgers share with those
22 buyers the discussions taking place with Fox if Fox is also
23 having discussions with those buyers?

24 A. Well, I think it's different. You know, there's already
25 been allegations about you know Blackstone having certain

1 conversations. I don't have any of the fact, I've only been
2 following the case, so I don't know what's going on there.
3 In the case of Fox, I'm quite sure that some of the
4 prospective bidders might have reached out to them. I don't
5 know that for a fact, it hasn't been shared with me. And I
6 wouldn't know the identities of those parties one way or the
7 other. But you know it wouldn't surprise me that such a
8 conversation might have taken place, but it's speculation.

9 Q. My focus is really on the procedures, trying to make sure
10 that we get the right procedures. You've raised in number 3
11 a concern about the manner in which our amended marketing
12 procedures operate. And my question is, I'm not asking you
13 whether you have any knowledge or not. If Fox is talking to
14 potential buyers, would you, in connection with the operation
15 of these procedures, have any concern as an expert with
16 respect to the Dodgers also being able to share with those
17 buyers the content of their discussions with Fox?

18 A. That was sort of a long question. And if I understood it
19 correctly, I would have a concern, but I'm quite confident
20 that Fox would be very careful to avoid doing anything which
21 put them in breach.

22 Q. You'd have a concern even if Fox is engaging, without
23 saying whether or not they're breaching, just if they were
24 engaged in those discussions with buyers, you have a concern
25 with the Dodgers talking to those buyers about their

1 discussions with Fox?

2 A. I think that it is likely that buyers would call Fox to
3 talk to them about and help form their decisions. I can
4 appreciate that, you know, Fox would be very reluctant to
5 have those conversations. But you know as it relates to
6 these particular procedures, the key issue is the Dodgers
7 aren't supposed to be out talking to third parties, and
8 during the exclusive negotiating period, neither Fox nor the
9 Dodgers, as we've just reviewed the language, is supposed to
10 be telling third parties about those discussions.

11 Q. Why don't we move to number 4 on the blackline, Exhibit
12 24A. This is the concern that if no agreement is reached
13 that what it says in the left hand column, if no agreement
14 reached in exclusive window, LAD makes final written offer
15 for exclusive cable rights for comparable number of future
16 games, 100 games per season for at least five years beginning
17 with the 2004 season if Fox makes that. You see that?

18 A. Yes.

19 Q. Okay. Let's start with, there are two concerns here that
20 were raised. Let's start with the second concern. The final
21 offer is not constrained to comparable number of games for at
22 least five years of rights or for exclusive cable television
23 rights. So if, you recall section A talked about a sale that
24 was going to include 150 games. Correct?

25 A. The overarching procedures have to do with all of the

1 games. We're talking now about the proposal that Fox is
2 entitled to receive, and the constraints around that. But
3 those two things weren't matched --

4 Q. Okay.

5 A. -- perfectly in the procedures.

6 Q. Okay. And I understand the comment and to the extent it's
7 a clarification, if there were a clarification made in the
8 procedures that says the team final offer will be exclusive
9 for a comparable number of games for at least five years.
10 That would, again exclusive cable television rights. I mean
11 because that doesn't include on the air necessarily, or over
12 the air.

13 A. Over the air.

14 Q. Over the air. But assuming we put that language in, that
15 would fix that issue. Right?

16 A. I believe that would address the issue. I'd have to see
17 precisely how it's drafted. You know, this is just another
18 point that you know I disagreed with Mr. Coleman where he
19 says it's you know the functional equivalent, it's the same
20 thing, this is a pretty significant case where it is not.

21 Now --

22 Q. I think Mr. Coleman was saying the intent was that it was
23 supposed to be the same. So if we just took the language out
24 of the team final offer provision, say we just plopped that
25 right in the amended marketing procedures, problem solved?

1 A. Well I think that's, that may address that particular
2 issue, but you know --

3 Q. And I only want to focus --

4 A. -- I don't frankly understand why you didn't just do that
5 to begin with, take the whole as is, change the date and it
6 really would have been what you had proposed.

7 Q. Just focusing on that particular point, that would solve
8 it. Right? I'm just trying to solve problems here. Would
9 that solve them? I'm trying to solve your issues. Is that
10 going to solve it?

11 MR. STONE: May I make a suggestion, Your Honor?

12 THE COURT: We'll let Mr. Levinson continue.

13 BY MR. LEVINSON:

14 A. You know, I'd be happy to take the time on behalf of the
15 Court to make this more closely comport. It's hard for me to
16 draft orally and be comfortable that the change has, you
17 know, is complying with the spirit and the terms of the
18 agreement.

19 Q. Okay.

20 A. So I'm just not comfortable jumping to the conclusion that
21 it solves the problem.

22 Q. Subject to reviewing the language, if we had exclusive
23 comparable number of games, at least five years, those are
24 the three things identified in your Exhibit 24A.

25 A. Cable television rights.

1 Q. Exclusive cable television rights.

2 A. Five years comparable number of games. Those were the,
3 those were three of the key issues. I agree.

4 Q. Yes. Okay, thank you. Now the other issue that's raised
5 in number 4, it says LA final offer following exclusive
6 window cannot be accepted by Fox, it is subject to sole
7 discretion of new owner. Again, I think we've already
8 addressed this issue on number 2. This goes to the condition
9 of every agreement that it be approved by Baseball, and
10 Baseball has said the proposed buyer has to be in a position
11 to approve the agreement. Correct?

12 A. The problem here is that --

13 Q. I'm sorry. Before you give the full answer, if you could
14 just answer that question.

15 MR. STONE: Can the witness give a complete
16 answer?

17 THE COURT: Well, I think Mr. Levinson would like
18 a yes or no and then an explanation. And I'll overrule that
19 objection.

20 BY MR. LEVINSON:

21 A. You're looking for agreement that changing -- excuse me,
22 why don't you ask the question again, we'll make it simple.

23 Q. The, to the extent that the concern is that any final
24 offer is subject to sole discretion of new owner, isn't this
25 the same issue that we looked at in connection with your

1 point number 2 that, you know, there the agreement was
2 conditioned on MLB approval which is in turn subject to the
3 approval of a potential buyer. Isn't that the same issue
4 that's raised in the first part of section 4?

5 A. In the first part of section 4 in the left hand column?

6 Q. In the middle column.

7 A. Okay. Let's see. Yes, that's the, that's the issue, but
8 the problem here is you've got a number of potential owners,
9 and some might agree, some might not agree, it changes the
10 dynamics of that process of the parties reaching towards each
11 other. Fox has less reason to reach and meet the team final
12 offer if it doesn't know that it's going to have a deal
13 subject to only Baseball approval. I mean this whole issue
14 of Baseball's approval being further subject to the new
15 owners is, at least in my experience, unprecedented in this
16 sort of approval process. Typically, if the team has
17 negotiated the deal the right way, has been well represented,
18 in virtually every case but perhaps for the case at issue
19 here, approvals are fairly routine. So you're changing the
20 dynamic of the process by disincentivizing Fox to make its
21 true, you know, to reach for and accept terms that maybe it
22 would rather not reach for. So by changing that, you change
23 the dynamics of the process and you've created this
24 uncertainty with all of these various potential owners. And
25 I understand that it's something that Baseball has insisted

1 upon and that that's, you know, and that's unfortunate. I
2 suspect however, that that would go away if this whole
3 process happened as originally contemplated next year.

4 Q. But again, the contract is as you've said conditioned on
5 Baseball approval. And Baseball can do what it wants. I
6 think that was your testimony.

7 A. Baseball has its own procedures for deciding what is
8 acceptable and what is not, and I'm not in a position to take
9 their place on that.

10 Q. Let me, just, I want to stay with number 4 just for a
11 second, or a couple of seconds. Do you understand that if
12 under the amended marketing procedures, if Fox were to accept
13 the team final offer, then under the procedures themselves,
14 the Dodgers would not be in a position to enter into an
15 agreement with Time Warner to present to the prospective
16 buyers. Do you understand that to be the case?

17 A. Under these provisions, as you proffered them, there is,
18 there's still 50 games out there, and without granting cable
19 exclusivity to Fox, the Dodgers could sell those other 50
20 games to Time Warner. And in fact could offer 150 games to
21 Time Warner in Spanish which is clearly not something that
22 Fox bargained for.

23 Q. Okay. We're going to solve the exclusivity problem. If I
24 didn't make that clear, we're going to solve the exclusivity
25 problem. I'm saying it now on the record. So take that out

1 of the equation. Is it in fact the case that if Fox accepts
2 the team final offer under our amended marketing procedures
3 that the Debtors cannot then go to time Warner and say give
4 me a better offer ad take that to the prospective buyers?

5 A. At that moment, and for some period of time, I think that
6 should be true. However, it doesn't foreclose the
7 opportunity because some future buyer could say no. And you
8 know whether or not that future buyer is Time Warner or not
9 that future buyer could in effect reset this whole process,
10 and you know, Fox would not have gotten the benefit of that,
11 you know, offer and acceptance.

12 Q. Well but it's going to, it's going to get to go through
13 the whole process again under those circumstances at the end
14 of 2012. It's going to get another team final offer after
15 another exclusive negotiation period which I think you had
16 already testified to.

17 A. Well, which certainly makes the first one not, you know,
18 it certainly changes the whole complexion of the process, so
19 you're going to have an exclusive, you're going to have two
20 exclusive negotiating periods under that circumstance.
21 You're going to have two team final offers, one that was a
22 final offer that is now the second to final offer, you know,
23 you're monkeying with a lot of the things here that
24 complicate the process and I think make it more difficult and
25 far less likely Fox gets the benefit of its bargain.

1 Q. I want to get back to my question. I'm not sure I ever
2 got the answer. Maybe I did, and if I did, I apologize. But
3 under the scenario where Fox accepts this in final offer the
4 Debtors will not be in a position to go to Time Warner, enter
5 into an agreement with Time Warner and send that to the
6 prospective buyers. Is that correct? Is that your
7 understanding of our marketing procedures as amended?

8 A. I believe that is correct. I'd like to think about that
9 during the break. I'm looking right at the clock and I know
10 Your Honor has to go, so it just occurred to me that it
11 wouldn't be a bad thing for me to think about that, but I'll
12 give a provisional yes.

13 THE COURT: Is this a good time to stop, Mr.
14 Levinson?

15 MR. LEVINSON: It is.

16 THE COURT: Okay. All right. We'll take our
17 recess. I won't be able to get back before 1:30.

18 MR. LEVINSON: Okay.

19 THE COURT: And obviously again, Mr. Desser,
20 don't discuss your testimony or the case with anyone which
21 will make it a nicer lunch for you I suppose.

22 MR. DESSER: Thank you, Your Honor.

23 THE COURT: And we'll return at 1:30.

24 MR. LEVINSON: Thank you, Your Honor.

25 THE COURT: All right, everyone. Thank you.

1 THE CLERK: Please rise.

2 THE COURT: Thank you everyone, please be seated.

3 Mr. Desser, thank you. Mr. Levinson, whenever you're ready
4 and when Mr. Desser get's a chance to take a breath, we're
5 ready to go.

6 BY MR. LEVINSON:

7 Q. Thank you, Your Honor, I think just before the break, Mr.
8 Desser you had wanted to consider more carefully the last
9 question, do you recall that question?

10 A. Can't say that I do.

11 Q. Okay, the question was whether or not it was correct that
12 if a team under our amended marketing procedures, if a team
13 final offer were accepted by Fox than the Debtors, or would
14 not be a position to negotiate with Time Warner and present a
15 higher or other offer from Time Warner to the perspective
16 buyer?

17 A. I believe that is correct as to that portion of the
18 process, but to the extent that a owner were not to accept
19 the terms of that -- perspective owner were to not accept the
20 terms of that agreement, the Dodgers would be in a position
21 to have such a negotiation at a later time.

22 Q. Yeah my question was as to the Debtors. The Debtors
23 would not be in a position?

24 A. Not for that period of time. Okay, so you're talking
25 about after the case is concluded, the team would be in a

1 position to do so, but not the Debtors.

2 Q. And the team only after it went through the process that
3 you've outlined as providing all the protections set out in
4 the Fox contract?

5 A. That's correct.

6 Q. Okay, and the same would be true in the circumstance
7 where a team final offer is rejected by Fox. A less
8 favorable offer is obtained from Time Warner that's presented
9 to Fox, Fox accepts that offer. At that point in time would
10 the Debtors be in a position to present a higher offer from
11 Time Warner or for that matter any offer from Time Warner to
12 the perspective buyers?

13 A. Not if we're talking about a lesser offer. If it was a
14 greater offer, they certainly would be.

15 Q. Right, but that's under the contract in any event?

16 A. Yes.

17 Q. Okay. Exhibit 24, the version that you were looking at
18 during your direct examination, did you prepare that chart?

19 A. Are you talking about 24(a), or?

20 Q. 24.

21 A. 24 the original -- the non --

22 Q. The non blackline version.

23 A. -- non blackline version.

24 Q. Yes.

25 A. That was prepared by counsel, but I've reviewed it.

1 Q. Did you make revisions to it before it was finalized or
2 did you review it before it was finalized I should ask?

3 A. I did review it before it was finalized. In fact it was
4 let's see 24(a). I reviewed a previous version that had to
5 be updated because of the changes in the motion, and that's
6 what gave rise the blackline version to begin with.

7 Q. Right which we figured out actually weren't changes in
8 the motion when we went through here earlier in the cross
9 examination right?

10 A. No I think well -- it's a question of which changes at --
11 if we're talking about the Court's involvement as opposed to
12 the Assessor, that changed is what I was talking about.

13 Q. And again the revisions that were made in the blackline
14 as 24(a) did you prepare those revisions or was that counsel
15 that prepared that as well?

16 A. I was involved in reviewing the document, counsel made
17 the changes.

18 Q. And you -- you testified during direct that you, you
19 thought there was going to be an auction as part of the
20 amended marketing procedures of the media rights, is that
21 your impression?

22 A. Yes that's my impression.

23 Q. I mean you were here when Mr. Coleman testified yesterday
24 correct?

25 A. Yes.

1 Q. And Mr. Coleman testified that although the original
2 procedures provided for an auction process, these new
3 procedures as to the media rights; that's what I'm talking
4 about, that they do not provide for an auction. Do you have
5 a different understanding of these procedures?

6 A. Well what's going to happen after we go through the, you
7 know, after the 45 day process, after the team offer. Is
8 there not going to be a period of time in which some sort of
9 process is going to be commenced with third parties assuming
10 that there isn't an agreement reached earlier. That's my
11 assumption, if I'm misinformed than please correct me.

12 Q. Let me ask this, where did you get the impression that
13 there is going to be an auction process as part of the
14 amended marketing procedures?

15 A. My understanding of this process has been -- the original
16 provisions were it called for an auction. It was then
17 amended based upon following certain of the elements in the
18 Fox back end. Now my expectation and it's a logical
19 conclusion is that the object here is to go through the back
20 end rights period, and than get as many people as might be
21 interested to bid for the rights at a later time such that
22 the Debtors would get the maximum possible bid. That makes
23 sense to me I don't think I understand, you know, if there's
24 not a formal auction process I don't what it is that your
25 intending to do.

1 Q. Well again where did you get the impression that there
2 was going to be an auction process as part of the amended
3 marketing procedures?

4 A. Probably from the fact that the original procedures
5 contained an auction provision, and the process seemed geared
6 towards getting to a point where the Debtors would be in open
7 market place, and would conduct some sort of auction, or
8 auction like procedure.

9 Q. You've testified you've been involved in a number of
10 transactions involving sports team that previously had
11 telecast agreements with Fox owned RSN's correct?

12 A. I think I said Fox owned or branded.

13 Q. Fox owned or branded, correct?

14 A. Yes that's correct.

15 Q. The number of dozen sticks in my mind, but I may have
16 read it somewhere.

17 A. That sounds approximately correct.

18 Q. And based on that experience you testified that there is
19 a, and this is what I wrote down, very high likelihood Fox
20 will retain the rights, that was your testimony?

21 A. Well I think what my testimony about the high likelihood
22 was with respect to this particular case. Not necessarily
23 with respect to those 12 other deals --

24 Q. No I am talking --

25 A. Now it is true that in many of the previous deals, in

1 fact I think the majority of those cases, the incumbent did
2 retain the rights, but there have been several cases where
3 they did not.

4 Q. And I think you said 90% of the time they retain the
5 rights, was that your testimony?

6 A. That sounds about right.

7 Q. And in your declaration the one you submitted in on
8 behalf of Fox in connection with this proceeding, you said
9 that they language that Fox has in it's agreements usually,
10 and I'm going to quote now "usually provides even greater
11 protection than the procedures and requirements contained in
12 it's telecast rights agreement with LAD." Do you recall
13 making that statement in your declaration?

14 A. I think you've only included a portion of the statement.
15 My recollection is that the statement says that language that
16 Fox typically proposes is more extensive than that contained
17 in the Dodgers agreement.

18 Q. I'll read the language, and if you'd like to take a look
19 at exhibit 9, paragraph 15 to follow along. It says, Fox
20 typically proposes two teams, future rights and language that
21 is highly protective of its telecast rights investments,
22 giving it the opportunity to extend the license rights beyond
23 the initial term usually providing even greater protection
24 than the procedures and requirements contained in its
25 telecast rights agreement with LAD. Did I read that sentence

1 correctly from that declaration?

2 A. That sounds correct, and that sentence starts with
3 proposes.

4 Q. Well let me ask this. Why don't we start -- let's talk
5 about the Lakers who you represented in their recent TV
6 rights transaction. Under the prior agreement between the
7 Lakers and Fox, did Fox have back end rights?

8 A. Fox had some back end rights, but they were more limited
9 than the one's in this agreement.

10 Q. And what were the back end rights under the Fox Lakers
11 agreement?

12 A. I'm subject to a confidentiality agreement with respect
13 to my work on behalf of the Lakers and with respect between
14 the Lakers and Fox. So unless somebody from Fox wants to
15 waive that I'm not sure I can answer.

16 Q. Of if, Your Honor, I would ask that you direct the
17 witness to answer given that Fox; a. we're talking about an
18 old contract that's no longer in existence, Fox lost the
19 Lakers, and b. this witness has testified that based on his
20 vast experience with other teams, and the specific language
21 that contained in those agreements he's opined as to the
22 likelihood of what may or may not happen. So I think Fox has
23 opened the door pretty wide on this one. So we would request
24 that the witness answer the question.

25 MR. STONE: I did not ask questions about the Lakers,

1 specifically and for that reason I'm not the business person
2 with authority to waive the confidentiality provisions in the
3 agreement with -- between Fox and the Lakers as it continues
4 for a year. I just don't have that ability to waive that,
5 he's free to talk about the other that he has, surely.

6 MR. LEVINSON: Your Honor, we would ask that the
7 witness be required to answer the question.

8 THE COURT: I will direct the witness to answer the
9 question which obviously gives you the protection that you
10 need, and I think that we will seal this portion of the
11 record if necessary, all right.

12 MR. WERKHEISER: Your Honor?

13 THE COURT: Mr. Werkheiser, yes.

14 MR. WERKHEISER: Your Honor, there are members of the
15 press in the Courtroom.

16 THE COURT: All right. You know, you got the witness
17 to say it was a less favorable contract. How about you save
18 this for the end of Mr. -- you know, I don't want to clear
19 the Courtroom I hate to clear the Courtroom at this point,
20 but I will do that if it's going to throw off your
21 presentation in some way.

22 MR. LEVINSON: No, you know what, Your Honor, we'll
23 talk about it and --

24 THE COURT: All right.

25 MR. LEVINSON: -- we'll work around it.

1 THE COURT: Okay.

2 BY MR. LEVINSON:

3 Q. Was Fox -- Fox was not successful in its efforts to
4 acquire future rights in the Lakers was it?

5 A. Fox had acquired future rights with the Lakers under its
6 previous agreement. It had certain back end rights. It was
7 not successful in extending the term of that agreement
8 however.

9 Q. Yes, that is they were not successful, but those back end
10 rights did not translate into an agreement with the Lakers
11 beyond the 2011-2012 season?

12 A. That's correct.

13 Q. And it was Time Warner that obtained those rights?

14 A. Yes, that's correct.

15 Q. Now you've also represented the Los Angeles Galaxy?

16 A. At one time yes.

17 Q. Okay, but did you represent them recently in connection
18 with the, with their media rights, their recent media rights
19 transactions?

20 A. No I could not.

21 Q. Okay. Based on your prior representation do you know
22 whether or not they had an agreement with Fox?

23 A. They did.

24 Q. And did Fox have back end rights under that agreement?

25 A. I don't recall.

1 Q. You don't recall whether there were any back end rights?

2 A. I don't recall if that particular agreement had back end
3 rights that was several years ago. I haven't reviewed the
4 contract recently.

5 Q. Did Fox succeed in obtaining the -- an extension of the
6 rights beyond the term of the current agreement?

7 A. My understanding is that Time Warner obtained the rights.

8 Q. Okay. Now lets kind of take it -- I know you had said
9 90% of these deals, or 90% of the renegotiations for Fox has
10 back end rights result in, you know, result in extension of
11 those rights. Based on what's happened in Los Angeles this
12 year, in the calendar year 2011, how much success has --
13 what's that percentage for Fox in connection with those
14 renegotiations?

15 A. Well let's see, Fox has extended an agreement with Kings.
16 Fox --

17 Q. I mean I'm going to stop you, and we'll go through them
18 one at a time. Were the Kings had -- had the back end rights
19 for the Kings kicked in during the year 2011?

20 A. I believe that contract still had a few years to run.

21 Q. Okay. I'm sorry I didn't mean to interrupt I just wanted
22 to ask that, please continue.

23 A. Fox has -- it's my understanding that there is a new deal
24 with the Angels.

25 Q. Are you involved in that transaction?

1 A. I am not involved in the transaction, so in fairness I
2 would characterize that information as hearsay.

3 Q. And when does -- when is the current Angel's term
4 scheduled to expire?

5 A. My understanding of that agreement is that it had an out
6 clause that was effective a year ago, that was exercised, and
7 the parties agreed to extend the deal for one year. So in
8 effect it has expired, and once the new agreement is made it
9 will be extended, but I'm not personally privy to the
10 specifics of that agreement, and I have not been involved in
11 negotiating it.

12 Q. But you don't whether that agreement -- you don't know
13 back end rights may even exist under that agreement?

14 A. Under the new agreement or under the old agreement?

15 Q. Under the old agreement.

16 A. The old agreement had some back end rights, I don't know
17 in detail what they amounted to, but there were some back end
18 rights. But the team had an early out option which it which
19 it exercised. Which was subject to certain other
20 requirements I'm not -- that I'm not privy to.

21 Q. Okay. So of agreements where the back end -- where the
22 period of time where the back end rights were to be put into
23 effect, the Lakers obviously being an example, the Galaxy
24 being an example. What would be the percentage in Los
25 Angeles over 2011 for those agreements?

1 MR. STONE: Objection, those facts are not in
2 evidence as to the Galaxy.

3 THE COURT: Well I thought - did, I thought the
4 witness testified that he knew that they did not get the
5 renewed contract.

6 MR. STONE: He testified he was not aware of any back
7 end rights of any of the Galaxy deals included.

8 THE COURT: I'll sustain the objection on that
9 ground, yes.

10 BY MR. LEVINSON:

11 Q. The percentage 0% with respect to the Lakers and the
12 Galaxy correct?

13 A. That is correct.

14 Q. That is correct, and both times Time Warner being the
15 party that acquired the rights?

16 A. That is correct, but with a very narrow window there are
17 not that many transactions in the LA market in any given
18 year, and my 90% figure was over a, you know, the past decade
19 or so, and across the entire industry.

20 Q. Well you represented the Astros and the Rockets, did Fox
21 have back end rights under that agreement?

22 A. My recollection is that there were some back end rights
23 with respect to the Astros. I think there was a early
24 termination provision similar to what we were talking about a
25 moment ago with the Angels. I'm fairly certain there wasn't

1 such a provision with the Rockets, but I know that the two of
2 them formed a partnership to market their rights together,
3 and so that may have had some additional impact on that
4 procedure.

5 Q. Did -- and I think you already testified the Astros and
6 the Rockets, that Fox did not end up succeeding in extending
7 the agreements of those two teams, correct?

8 A. In the most recent transaction they did not, and the
9 immediately previously one they did.

10 Q. But in the recent one being 2009, 2010?

11 A. I think it was late 2010.

12 Q. And who ended up with those rights?

13 A. They ended up in a new RSN that is branded Comcast Sports
14 Net Houston.

15 Q. Now the Sacramento Kings did -- under the agreement that
16 they previously had with the Fox, did Fox have back end
17 rights?

18 A. That agreement provided for back end rights as well, and
19 the back end rights were so complete as to affectively
20 discourage Fox from bidding and the result was that a new RSN
21 got started in Sacramento. It's a case where you can
22 actually have too much back end rights.

23 Q. Too much back end rights?

24 A. Yup, I'm not sure it's relevant here, I understand you're
25 trying to identify cases where back end rights did not result

1 in an agreement. You could probably go through many examples
2 where, and many more examples where they do, but I'll leave
3 that to you.

4 Q. You expressed the opinion that the 16 month period under
5 the amended Fox contract between November 30th, 2012 and the
6 beginning of the 2014 baseball season decreases the
7 likelihood that the Dodgers will choose to partner with
8 another entity and/or launch a new RSN on its own. Is that
9 your testimony?

10 A. Yes that is my testimony.

11 Q. Okay. Let's just say that time period were left in
12 place. Is that really going to matter the 16 months, is it
13 really going to matter with respect to Time Warner?

14 A. Well Time Warner wasn't included in that group because
15 that wouldn't be a new RSN for purposes of the Dodgers. Time
16 Warner is starting a new RSN as a result of the deal with the
17 Lakers and the Galaxy, and California and its scholastic
18 federation, and potentially others.

19 Q. Do you think that this existence of the 16 month period
20 is going to discourage the Dodgers from entering into an
21 agreement with, you know, any party other than Fox including
22 the one -- not necessarily forming its own RSN just entering
23 into a licensing agreement based on the existence of that 16
24 month period?

25 A. The 16 month period would not impact them in entering

1 into an agreement with an already existent entity. When I
2 expressed concern about the period it was focused solely on
3 the notion of starting a new RSN which requires a great deal
4 of lead time. We can debate exactly how much is necessary,
5 but when you're doing -- when you're starting it from scratch
6 it does take quite a bit of time. Time Warner is going to
7 have 20 months to start up its new RSN. In Houston they will
8 have had 24 months to start up the new RSN. As you get to
9 less and less time, and a portion of that 16 month period
10 would be used to negotiate all the deals, and that takes a
11 fair amount of time. And it just compresses the time frame,
12 it's certainly not impossible, but it creates time pressures,
13 and that's one of the things that the back end rights are
14 designed to do.

15 Q. But in terms of entering an agreement if the Dodgers were
16 -- if the exclusive negotiating period did not result in an
17 agreement with Fox, the Dodgers will then be free to market
18 the rights to, you know, go forward and market the rights.
19 Do you think that the fact that there was a 16 month period
20 that the length of that period would in any way discourage
21 the Dodgers from entering in an agreement with Time Warner,
22 or a Direct TV, or a Comcast or any of those other parties?

23 A. Well depending on the party it could very well because of
24 the amount of time that would be necessary. I was careful in
25 my testimony to differentiate between a start up, new Dodgers

1 RSN, and one that is either already operational or is about
2 to start anyway.

3 Q. So for the Time Warner the 16 month's is plenty of time?

4 A. Yes.

5 Q. Okay, and likewise at Comcast?

6 A. Comcast has certain RSN, you know, operational facilities
7 that they could lean on, but as I mentioned a little while
8 ago they -- their using 24 months in Houston. They could
9 probably do it in less time, and they have done it in less
10 time when they needed to.

11 MR. LEVINSON: I want to mark if I could this Exhibit
12 11, an article that was published in the Sports Business
13 Journal? May I approach, Your Honor.

14 THE COURT: Yes, absolutely, of course, Mr. Levinson,
15 anytime. Thank you, Mr. Levinson.

16 BY MR. LEVINSON:

17 Q. This is a -- what's been marked as Exhibit 11 is an
18 article published February 23rd, 2011 in this Sports Business
19 Journal entitled Lakers/Time Warner Cable run fast break. I
20 don't know have you seen this article before?

21 A. Looks familiar.

22 Q. Yeah, I take it you keep abreast of current events in the
23 sports media industry particularly when you're personally
24 involved in them?

25 A. Indeed.

1 Q. Now the article mentions you by name as part of the Laker
2 team that negotiated the media rights with Time Warner. I
3 know you testified that you did that work as well. There is
4 a -- on page 3, there's a reference of this article, there's
5 a reference to a meeting that you and Tim Harris, and Tim
6 Harris is with the Lakers correct?

7 A. Yes.

8 Q. And Melinda Whitmere, and Ms. Whitmere is with Time
9 Warner Cable?

10 A. Yes.

11 Q. Okay, a 19 hour meeting that took place at the beginning
12 of this year on January 11th and 12th, did that meeting take
13 place?

14 A. I remember the meeting. I can't say for sure if it's on
15 those dates, but let's assume it's true.

16 Q. Okay. And the article also says, and this is in the
17 middle of page 3. It says Ms. Whitmere had come up with the
18 idea of a Spanish language RSN to go along side the English
19 language RSN. There's a quote from Mr. Harris that says
20 "That was all Melinda, and it was an awesome idea, that
21 really puts the clicking point." Is that all consistent with
22 your recollection of what was discussed at those meetings?

23 A. I remember the Spanish language concept coming up in
24 earlier conversations. It was certainly discussed at the
25 meeting in January, but that was not the first discussion

1 that took place between the parties. The parties began
2 discussions shortly after Thanksgiving, is my recollection,
3 when the first exclusive negotiating period had expired.

4 Q. According to this article the exclusive -- although there
5 was an initial call on Thanksgiving, the exclusive
6 negotiating period didn't expire until the end of 2010. Is
7 that consistent with your recollection?

8 A. No, that's incorrect. There were two separate exclusive
9 negotiating periods because there were two separate packages,
10 and they didn't -- they were not coterminous. So the
11 discussions began during the -- shortly after the expiration
12 of the first exclusive negotiating period that pertained to
13 rights that were held by, or currently held by KCAL.

14 Q. Oh so that was the on the air, I meant to -- I was trying
15 to focus just on the exclusive cable rights. That exclusive
16 negotiation period ended at the end of 2010 correct?

17 A. Yes.

18 Q. Okay. And it -- there's a quote from Ms. Whitmere about
19 launching the Spanish language RSN. It says, she says it's
20 something that's been on our minds for awhile, and she goes
21 onto to say we would be crazy to recognize the importance of
22 this to our consumers given our footprint. Again is that
23 consistent with your recollection of the discussions that
24 took place with Ms. Whitmere?

25 A. Generally consistent with the discussions with her over a

1 period of time.

2 Q. The article goes on to say that the Lakers wanted
3 assurance that Time Warner could run an RSN with a valuable
4 brand like the Lakers in a marquis market like Los Angeles.
5 Is that consistent with your recollection?

6 A. Yes.

7 Q. And can I presume by the fact that Time Warner succeeded
8 in entering into an agreement with the Lakers that Time
9 Warner was successful in providing that assurance to the
10 Lakers?

11 A. Among other things, yes.

12 Q. Now the article also refers to a 4 day marathon that took
13 place in the Lakers El Segundo offices in early February of
14 this year, do you recall that?

15 A. Vividly.

16 Q. Okay, so I think the article said you went at it 12 hours
17 a day for 4 straight days. Does that sound about right?

18 A. I think it was even longer than that, but you know, it is
19 a little -- I remember being there I don't remember every
20 moment of it.

21 Q. Okay. Now the deal was announced on Valentines Day on
22 February 14th, that's you -- is that consistent with your
23 recollection?

24 A. Yes.

25 Q. And the article closes on page 4 by saying that Ms.

1 Whitmere is determined to build up these channels in Los
2 Angeles, is that consistent based on the lengthy meetings
3 that you with Time Warner and Ms. Whitmere during this period
4 of time is that consistent with your understanding of Time
5 Warner's intent?

6 A. Yes.

7 Q. And in fact since that time, Time Warner has acquired the
8 rights to the Los Angeles Galaxy?

9 A. That's correct.

10 Q. Based on your personal experience dealing with Time
11 Warner in the context of the Lakers, and given your
12 experience in the sports media business, is there any doubt
13 in your mind that Time Warner's going to be very aggressive
14 in seeking to acquire the rights to the Dodgers?

15 A. I expect them to bid vigorously, when the opportunity is
16 available to them and they're not doing anything to trample
17 on anyone's rights.

18 Q. And particularly where they have -- where they are
19 forming not only an English RSN, but also a Spanish RSN, does
20 that particularly resonate with respect to the Dodgers
21 opportunity given the very broad fan base of the Dodgers and
22 the Hispanic community?

23 A. I think it's a factor.

24 Q. Given where, given Time Warner's -- what they've done
25 with respect to the Lakers, the Galaxy and the meetings that

1 you had with them. Is it fair to say that, and I think
2 you've already conceded this, but that the existence of the
3 16 month period at the back end with respect to Time Warner,
4 isn't going to provide the slightest amount of protection to
5 Fox against Time Warner which was sort of effectively the
6 tsunami that's already swept through the Lakers and Galaxy,
7 and is now heading toward Prime Ticket's rights with respect
8 to the Dodgers?

9 A. I don't think it's fair to say will not provide the
10 slightest protection, but if your point is will they be a
11 bidder, I would expect them to be a bidder. But I wouldn't
12 necessarily expect that they will be the successful bidder.

13 Q. Do you think that the fact that there's going to be a 16
14 month period, do you think that's going to make any
15 difference whatsoever in connection with Time Warner's --
16 whether or not Time Warner is interested in whether the
17 Dodgers may or may not be interested in talking to Time
18 Warner at that period in time?

19 A. Time is always a factor in these things. You cannot
20 completely dismiss it as a factor. Having said that I expect
21 that Time Warner is going to be very interested and Fox is
22 well aware of that. And that had probably had a great deal
23 to do with Fox originally agreeing with the Dodgers to the
24 deal that was ultimately not approved. You know, remember
25 that happened just a few months after the Lakers deal was

1 announced. So it clearly provided some motivation for Fox,
2 and I suspect it will continue to.

3 Q. I think I made it clear earlier in the cross examination
4 that we will clarify the procedures to make clear that what
5 is being marketed is exclusive cable television rights. So
6 given that their going to be exclusive, there's only going to
7 be one winner with respect to those rights correct?

8 A. Now are you also saying that those exclusive rights would
9 include multiple languages? I mean you could conceivable
10 sell exclusive English language to one, and exclusive Spanish
11 to another.

12 Q. They will be as exclusive as the contract provides. So
13 given that with respect what the contract provides is it fair
14 to say that if you have only one winner and you have two
15 bidders who are very interested in this particular
16 opportunity that -- and you have and one of the bidders has
17 now come out on top in the last two competitions, that there
18 is a significant likelihood that they will come out on top a
19 third time?

20 A. I don't think I would say there is a significant
21 likelihood, I mean there is a significant possibility, it's
22 somewhere between those two.

23 Q. You've opined and you testified also earlier that the
24 value of the media rights you expect it to increase over
25 time?

1 A. That has been my experience for more than the last
2 decade, and based upon my understanding of the affiliation
3 agreements between the cable networks, and cable operators it
4 should continue for at least several more years.

5 Q. And I think you've testified that your prediction for the
6 next year is a 10% growth rate?

7 A. What I said was that rights have been growing at a 10%
8 rate, when you consider deal over deal increases and intra-
9 deal increases.

10 Q. So all things being equal, your prediction would be a 10%
11 growth rate during that period of time?

12 A. That's what's been happening in the market in the last
13 decade or so.

14 Q. And if that turns out to be the case, will Fox pay more
15 or less if it enters into an agreement with the Dodgers at
16 the end of 2012 rather than now?

17 A. Well with respect to what they pay for the 2014 season,
18 I'm not sure that would be hugely different. I mean we're
19 sort of confusing two things, one is, you know, the
20 underlying growth rate of the value of rights, and then the
21 period of time at which, you know, you crystallize that in a
22 deal. So with respect to 2014, and further assuming that all
23 the ownership issues and the issues with baseball and all of
24 that have been cleared up, then I would expect 2014 to be
25 worth more than when I originally made that observation when

1 the circumstances were much different.

2 Q. You said in your direct examination that the Dodgers
3 would be very, very well compensated you get two very's, with
4 respect to the telecast rights. Do you have an opinion as to
5 what the Dodgers -- what the fair market value of the Dodgers
6 rights are going to be worth if -- at this time?

7 A. Well I have not performed the kind of analysis that I
8 would normally perform for a team if I was retained by that
9 team, but I would say back of the envelope I would expect the
10 rights to be at least in the neighborhood of \$100 million a
11 year.

12 MR. LEVINSON: Your Honor just -

13 THE COURT: Yes.

14 MR. LEVINSON: I have no further questions at this
15 time, Your Honor.

16 THE COURT: Were you --

17 MR. LEVINSON: Oh may I move in evidence Exhibits 11?

18 THE COURT: Yes.

19 MR. LEVINSON: I'm trying to recall Exhibit 10, was
20 there an Exhibit 10? I'm sorry I should have written this
21 down. I may have skipped to 11.

22 THE COURT: Oh we -- that's right we did 24(a)
23 instead.

24 MR. LEVINSON: Yes, so if I could move these Sports
25 Business Journal article into evidence along with Exhibit

1 24(a) .

2 THE COURT: Yes. Any objection?

3 MR. STONE: Yes, hearsay.

4 THE COURT: The newspaper article you mean?

5 MR. STONE: I mean he asked he asked questions about
6 it, but the article itself is hearsay.

7 THE COURT: Mr. Levinson.

8 MR. LEVINSON: I think the article is -- the witness
9 testified that he has seen the article, that he reviewed at
10 the time, and I -- and again I think it's really just for the
11 benefit of Your Honor being able to refer to it in connection
12 with -- in conjunction with his testimony.

13 THE COURT: All right.

14 MR. LEVINSON: Not asking for it to be -- I'm not
15 offering it for truth of the matter, sir.

16 THE COURT: Well I'm going to sustain the objection
17 because I think that it is largely hearsay, the witness
18 obviously didn't go through it line by line as to the truth,
19 and I think certainly he confirmed certain testimony, but
20 I'll overrule -- I'll sustain the objection to the
21 introduction.

22 MR. LEVINSON: Thank you, Your Honor.

23 THE COURT: Mr. Stone.

24 MR. STONE: May I proceed?

25 THE COURT: Yes sir, you bet.

1 MR. STONE: I'll try to be very brief, Your Honor,
2 and Mr. Desser, and I'm going to move around a little bit I
3 apologize, but this will be quick.

4 REDIRECT EXAMINATION

5 BY MR. STONE:

6 Q. On the Sacramento Kings situation I am correct in
7 understanding that the RSN was not owned by Fox, it was
8 simply branded?

9 MR. LEVINSON: Objection, leading.

10 BY Mr. STONE:

11 Q. Simply branded by Fox?

12 THE COURT: I'll sustain --

13 MR. LEVINSON: It is leading --

14 THE COURT: It is leading it is --

15 MR. LEVINSON: -- and it's so --

16 THE COURT: -- it's true.

17 MR. LEVINSON: We tried to be -- we tried to be
18 generous.

19 MR. STONE: Yes with Mr. Coleman they were generous
20 in their leading questions, but in any event I ask.

21 BY MR. STONE:

22 Q. Do you know who owned the Sacramento Kings RSN?

23 A. My recollection is that at the time it was owned by
24 Rainbow which is an affiliate or was at the time of
25 Cablevision that network today is owned by Comcast.

1 Q. And the RSN was branded under the Fox name even though it
2 was owned by Rainbow. Is that your understanding?

3 MR. BENNETT: Really once again that is absolutely
4 leading --

5 THE COURT: I'll sustain.

6 MR. BENNETT: -- and I really want to hear what the
7 witness knows, we've learned a little bit less than we
8 thought so.

9 THE COURT: All right, I'll sustain the objection as
10 leading.

11 BY MR. STONE:

12 Q. Do you know under whose name the RSN was branded, it was
13 owned by Rainbow as you have just testified to?

14 A. That RSN was a owned and operated -- I'm sorry, it was
15 owned by Rainbow it was branded I think Fox Sports Net Bay
16 Area.

17 Q. So when you testified earlier about back end rights,
18 you're referring to the back end rights held by the owner of
19 the RSN?

20 A. Yes.

21 Q. And that was not Fox?

22 A. No it was Rainbow.

23 Q. So Fox was on the outside trying to get in?

24 MR. BENNETT: Objection.

25 THE COURT: Sustained.

1 MR. STONE: I'm sorry, Your Honor, the -- I didn't
2 hear what the objection was?

3 THE COURT: Well it was the -- yeah the first couple
4 of words indicated it.

5 MR. STONE: It's recross of an expert, but you know,
6 if you want to slow us down fine.

7 BY MR. STONE:

8 Q. Now, sir, have you had a chance to read the 2004
9 amendment to the Fox telecast rights agreement?

10 A. Yes.

11 Q. And you were asked earlier about some differences, some
12 modifications in the back end rights, do you recall that?

13 A. Yes.

14 Q. Were there other changes made in that agreement with
15 respect to the number of games that Fox would be allowed to
16 telecast in the 2004 amendment?

17 A. My recollection is there were several changes made in
18 that agreement. In addition, you know the back end rights
19 changed somewhat. There were additional games added. There
20 was I think well there was a lot of additional consideration
21 added. Those are the things that come to mind.

22 Q. Now the original agreement in 2001 ended in approximately
23 2006.

24 MR. BENNETT: Objection, once again.

25 THE COURT: Sustained.

1 BY MR. STONE:

2 Q. Do you recall when the original agreement ended?

3 A. I don't recall off hand, I know it was extended in 2007
4 for additional games and additional years, and obviously this
5 change in the back end language.

6 Q. And how many years were added approximately do you
7 recall?

8 A. Well it -- I think it ended at around in '07, and it went
9 to through 13, so it's seven or eight years, a substantial
10 amount of time.

11 Q. Now on cross you were asked questions about Major League
12 Baseball approval of media rights transactions, do you recall
13 that?

14 A. Yes.

15 Q. You were asked about those specifically as it relates to
16 the amended marketing procedures, do you recall those
17 questions?

18 A. Yes, generally.

19 Q. Now have you had an opportunity in this case to review
20 the settlement agreement that was attached to a motion to
21 approve the settlement agreement between Major League
22 Baseball and the Debtors, and Mr. McCourt?

23 A. That was the thing that was filed with the Court
24 yesterday I think -

25 Q. Yes.

1 A. -- or the day before?

2 Q. The day before.

3 A. I did take a quick look at that.

4 Q. Did you see anything in a settlement agreement where in
5 Major League Baseball is requiring the Debtors to undergo
6 this marketing process that they proffered to the Court?

7 A. No.

8 Q. And with respect to the MLB terms governing media rights
9 transactions were those part of the settlement agreement that
10 you read?

11 A. Well I seem to recall there were a bunch of secret
12 provisions, and I took from reading the agreement that some
13 of those provisions impacted the media rights sales process.
14 I'm not privy to what they are, I can only imagine and I'm
15 sure the Court doesn't want me going about imagining.

16 Q. You have not had to review those so called special terms?

17 A. No I haven't, I'd very much like to.

18 Q. And does the Fox contract provide any market check in it
19 in the back end rights?

20 A. Market check --

21 Q. Yes.

22 A. -- did I hear you correctly?

23 Q. Yes.

24 A. Well in affect what the whole provision is about is
25 creating an environment for the parties to determine what the

1 -- what fair market value is for the rights in the succeeding
2 several year period, at least 5 years, etc. I consider that
3 to be a market check.

4 MR. STONE: No further questions, thank you.

5 THE COURT: All right, Mr. Stone. Any recross?

6 BY MR. LEVINSON:

7 Q. Mr. Desser in your review of the - your quick review of
8 the MLB agreement, did you see the provision that says "the
9 decision to enter into a telecast rights agreement shall be
10 in the sole and exclusive discretion of the buyer?"

11 A. I remember language to that affect, I can't recall
12 exactly the context of it, but that sounds familiar.

13 MR. LEVINSON: Yeah. That's all I have, Your Honor.

14 THE COURT: All right, thank you, Mr. Levinson.

15 Nothing further?

16 MR. STONE: Nothing further, Your Honor.

17 THE COURT: All right, Mr. Desser, thank you for your
18 testimony and you may step down sir.

19 MR. DESSER: Your Honor, thank you very much for your
20 hospitality --

21 THE COURT: Certainly.

22 MR. DESSER: -- and anything I can do to help the
23 Court.

24 THE COURT: Thank you, thank you much, and your --

25 MR. STONE: Is the witness excused?

1 THE COURT: Yes. Good afternoon.

2 MR. KLEIN: Good afternoon, Your Honor, my name is
3 Kenneth Klein, and our next witness is Robert Thompson.

4 THE COURT: Mr. Thompson.

5 ROBERT L. THOMPSON, WITNESS, SWORN

6 DIRECT EXAMINATION

7 THE COURT: Thank you, Mr. Thompson.

8 MR. THOMPSON: Thank you, Judge.

9 THE COURT: Mr. Klein, whenever you're ready sir.

10 MR. KLEIN: Thank you, Your Honor.

11 BY MR. KLEIN:

12 Q. Mr. Thompson could you briefly tell us your professional
13 background please?

14 A. Absolutely, upon graduation from college I entered the
15 cable television business in 1981 in Portland, Oregon. I
16 spent 8 years with a cable company called Storer
17 Communications. Upon the sale of that company in 1989 I went
18 to work for a company called Prime Sports Network in Denver,
19 Colorado. Prime Sports Network is a regional sports network
20 much along the lines of Prime Ticket, just in a Rocky
21 Mountain portion of the country. In 1994 at Prime Sports I
22 was the Vice President and General Manager. In 1994 I was
23 named Senior Vice President of Regional Network Operations
24 for Liberty Sports, which is an entity that owned Prime
25 Sports as well eight other RSN's around the country.

1 In 1996 Fox purchased Liberty Sports, or they merged
2 and Fox ultimately purchased the remaining portion of
3 Liberty. And I was Senior Vice President Regional Network
4 Operations and Rights Acquisitions for Fox Sports. In 1998 -
5 - 1997 somewhere in there, '97, '98 I was named Executive
6 Vice President with the same responsibilities. In '98 I
7 added responsibilities for Fox -- Fox's international sports
8 businesses as well as Executive Vice President and Chief
9 Operating Officer. In 2000 I was named President of Fox
10 Sports Networks in the U.S. as well as Fox Sports
11 International. I retained those rights through 2007 when I
12 was named President of Fox Sports National Networks
13 concentrating my area of Fox's National Networks, as well as
14 International Networks. I retired full time from Fox in July
15 of 2009.

16 Q. Now when you were at Fox, what were your duties with
17 respect to media rights?

18 A. From basically 1994 on with Liberty and Fox I was the
19 primary individual responsible for negotiating media rights
20 agreements for foreign networks in the U.S. and abroad.

21 Q. And you said you retired in 2009?

22 A. Yes.

23 Q. And after you retired between 2009 and today have -- what
24 have you been doing?

25 A. I still consult for Fox on a part time basis, and I also

1 have consulting firm, although Mr. Desser called Thompson
2 Sports Group.

3 Q. Are you still negotiating media rights agreements as of
4 2011?

5 A. Yes.

6 Q. On whose behalf?

7 A. On Fox, Fox's behalf. I've been involved in a number of
8 recent collegiate rights deals. I've also been involved for
9 some third parties, most recently the Yes Network in
10 negotiation on a New Jersey Nets arbitration renewal process.

11 Q. And the question to your career, can you give us some
12 understanding of how many media rights agreements you've
13 negotiated for either professional or collegiate sports?

14 A. Roughly 180.

15 Q. And how many years have you spent doing that?

16 A. Since 1989.

17 MR. KLEIN: Your Honor, at this time I proffer Mr.
18 Thompson as an expert on media rights agreements.

19 MR. LEVINSON: No objection.

20 THE COURT: No objection. All right, Mr. Thompson
21 you are so qualified, sir.

22 MR. THOMPSON: Thank you.

23 BY MR. KLEIN:

24 Q. We've heard a lot about RSN's, what RSN's does Fox
25 currently have in Southern California?

1 A. Fox currently has two RSN's in Southern California. FS
2 West previously known as Prime Ticket, as well as what's now
3 known as Prime Ticket which use to be known as FS West II.

4 Q. Okay, to simplify it right now they have Prime Ticket and
5 Fox Sports West, those are the two RSN's?

6 A. Correct.

7 Q. Now when you were at Fox, what was your involvement with
8 Prime Ticket?

9 A. After Prime Ticket was launched, and before Prime Ticket
10 was launched I was the individual responsible for day to day
11 operations of Fox's RSN's, and the general manager of those
12 networks reported directly to me.

13 Q. And when you say the general manager of those networks,
14 you mean Fox Sports West and Prime Ticket?

15 A. Yes.

16 Q. He reported to you?

17 A. In this case it was a she, but yes.

18 Q. She reported to you, sorry.

19 A. Yes.

20 Q. Now are baseball games important to the general sports
21 networks?

22 A. Extremely important.

23 Q. Why?

24 A. Well they provide two things, number 1 they provide bulk
25 in that there are 160 -- there's a 162 games in each baseball

1 season, and oppose that to 82 games in a normal NBA season,
2 this year we're only going to have 66, and 82 games in a
3 normal NHL season. So it's literally twice as many games as
4 NBA or NHL, so there's the bulk. The other thing that it
5 provides is baseball plays at a time of year where there's
6 not a lot other sporting events staged throughout the
7 country.

8 In the period of when NBA and NHL plays roughly from
9 October through May regular seasons, there's a variety of
10 other collegiate events obviously college football, college
11 basketball, college hockey, things along those lines that can
12 more easily be substituted for professional basketball and
13 professional hockey. You do not have that situation other
14 than the month of September during the baseball season when
15 college football is playing, so for a good portion of the
16 summertime baseball is literally the only game in town.

17 Q. When did Fox Sports acquire the Dodgers television rights
18 for the first time?

19 A. The rights were originally acquired in 1996 for air for
20 the first time in 1997.

21 Q. When was Prime Ticket launched by Fox?

22 A. Just prior to the 1997 baseball season, so late March.

23 Q. Were you involved in the decision by Fox to launch Prime
24 Ticket?

25 A. Yes I was.

1 Q. What if any relationship was there between Fox Sports
2 acquiring the rights to telecast Dodger games in 1996, and
3 Fox Sports decision to launch Prime Ticket in 1997?

4 A. The reason that Prime Ticket was launched in 1997 was
5 directly related to the acquisition of the Dodgers in 1996.

6 Q. When Prime Ticket was launched what was the marquee team?

7 A. The Los Angeles Dodgers.

8 Q. Now we've talked a lot about back end rights, are they
9 important to Fox?

10 A. Extremely.

11 Q. Why?

12 A. Back end rights are designed to give Fox the greatest
13 likelihood to renew its existing agreements, and continue on
14 with the teams that we have helped to build, and have helped
15 to build our business.

16 Q. Now when Fox is negotiating with a team for media rights,
17 what are the key elements to Fox in those negotiations?

18 A. Well ultimately back end rights, term or length of the
19 agreement as well as the number of the events in the
20 agreement. Those three things conspire to ultimately
21 determine what we're prepared to pay for that rights
22 agreement.

23 Q. So back end rights are right up there with the number of
24 events and the length of the season?

25 A. Absolutely.

1 Q. When the Dodgers were sold to Mr. McCourt in 2004, were
2 the back end rights amended at that time?

3 A. Yes they were.

4 Q. And did Fox Sports at that time agree to some changes in
5 the back end rights in those 2004 amendments?

6 A. Yes we did.

7 Q. Did Fox Sports receive anything in return for agreeing to
8 those changes in the back end right in that 2004 amendment?

9 A. Yes.

10 Q. What did you receive?

11 A. We received an extension of seven years over the 2001
12 agreement, and we received I think at that time an additional
13 20 games per season for the next seven years to take our
14 total to 100 games per season versus the prior 80.

15 Q. You prepared a declaration in this case?

16 A. I did.

17 Q. And did you know when you wrote your declaration that the
18 media rights were renegotiated in 2004 when Mr. McCourt
19 purchased the Dodgers?

20 A. I did and I believe I stated somewhere in my declaration
21 that that in fact happened.

22 Q. Did you believe that your declaration -- well I on that
23 day, do you believe your declaration was written as clearly
24 as it could have been on that point?

25 A. There was one aspect where I could have definitely been

1 more clear.

2 Q. What was that?

3 A. Well I stated in my declaration that I have lived through
4 85 franchise sales, and that during those 85 franchise sales
5 no owner had changed back end, or future rights that Fox
6 and/or Liberty had negotiated. What -- to be more clear what
7 I should have said is that during my career and living
8 through 85 different ownership changes, there was never an
9 owner who unilaterally without Fox's consent changed the back
10 end rights, or rights going forward.

11 There's a number of occasions including in 2004 with
12 the sale of the Dodgers whereby Fox agreed to open up its
13 deal and renegotiate the terms of that deal with the new
14 owner. But in every one of those situations Fox received
15 additional rights, i.e., additional games, additional term,
16 and in every one of those situations I might add we also paid
17 more money, but in no case did we ever deal with the previous
18 owner, we always dealt with the new owner.

19 Q. Now I think you have Exhibit 24 somewhere up there right?

20 A. I do.

21 Q. You see it?

22 A. Yes.

23 Q. Did you have a chance to review that document?

24 A. I have.

25 Q. And you heard Mr. Desser testify at length about that

1 document?

2 A. Yes, I did.

3 Q. What I'm going to do is I'm going to try and save a
4 little time here. I'm not going to have you go through
5 everything in there, but I am going to ask you about a few
6 things that Mr. Desser testified about and ask you for your
7 thoughts on them.

8 First of all, you look at number one and Mr. Desser
9 testified that there was a change and that there's a 10 month
10 change in the period. Instead of November of 2012, the Los
11 Angeles Dodgers proposed marketing procedures as amended have
12 January 14th, 2012, do you see that?

13 A. Yes.

14 Q. Is that 10 month change between what was in the 2004
15 agreement and what's in the proposed marketing procedures as
16 amended, is it material?

17 A. Yes, it is.

18 Q. Why?

19 A. For a couple of reasons. First of all, Fox likes the
20 back end rights to have the shortest of window to the end of
21 the agreement as possible. Secondly, as a result of these
22 moving forward, I think an element of doubt is introduced
23 into whether or not Fox is going to renew the agreement going
24 forward. That element of doubt extends to every facet of our
25 business with our negotiations with cable operators, for not

1 only a channel like Prime Ticket, as Mr. Desser testified, we
2 use these RSN's to now only sell products in the local Los
3 Angeles, southern California region. But it's also important
4 and is used as leverage in selling our services nationwide,
5 such as FX or Fox News Channel.

6 So in most cases, while there may be a deal between Prime
7 Ticket and Comcast for Southern California, that agreement
8 goes well beyond a deal just for Prime Ticket. It may
9 include up to 15 other channels that Fox has, that Fox owns
10 and/or distributes around the country, not just Southern
11 California. So to the extent a question as to whether or not
12 Fox is going to retain those rights going forward is
13 introduced into the marketplace that has a broad effect on
14 our business, not just in Southern California, but across the
15 U.S., not only with cable distributors and satellite
16 distributors, but with advertisers, production companies,
17 talent. It runs the whole gamete.

18 Q. Well if you affiliates and your advertisers have some
19 doubt as to whether Fox is going to retain those rights, how
20 does that affect Fox?

21 A. They'll start to put pressure on us as it relates to
22 right's fees. For the most part, the expectation is always
23 Fox will renew their rights. We have a history of doing
24 that. And I would actually take exception to Mr. Desser's
25 90% and would put our success rate more at 95%.

1 Q. And so affiliates and advertisers will start thinking as
2 a result of this process that maybe you won't be able to
3 retain the rights?

4 A. Certainly an element of doubt has been introduced to the
5 equation 10 months earlier.

6 Q. Okay let's look at number 2. What Mr. Desser testified
7 was that the difference was that the fact that under the Los
8 Angeles Dodgers proposed marketing procedures as amended, the
9 proposal was subject to the sole and exclusive discretion of
10 a new team buyer to accept or reject, do you see that?

11 A. Yes.

12 Q. Is that a material change?

13 A. Yes.

14 Q. Why?

15 A. In the existing deal, the Dodgers we assume that if we
16 negotiate with the Dodgers prior or during -- prior to or
17 during the exclusive negotiating period and we reach an
18 agreement and that agreement is accepted by the Dodgers that
19 we have a deal. So we go through that process outside of the
20 window or not or in the window. It's quite clear that even
21 if we reach an agreement with the Dodgers other than subject
22 to Major League Baseball, which is typical, has been
23 mentioned several times, it's now also subject to the
24 approval of the perspective buyers as well.

25 Q. Prior to this latest agreement with Mr. McCourt that

1 Major League Baseball did not approve, prior to that, had you
2 ever been concerned before as to whether Major League
3 Baseball would approve an agreement negotiated with a major
4 league team?

5 A. No I have not.

6 Q. And going forward do you have any concerns as to whether
7 Major League Baseball is going to approve the media rights
8 agreement in the future?

9 A. No I do not.

10 Q. Let's look at number 3 on Exhibit 24. That's the
11 provision that Mr. Desser testified, involves
12 confidentiality. Where other entities can get access to the
13 terms of any telecast rights agreements under discussion
14 between the Dodgers and a perspective licensee of the
15 telecast rights, do you see that?

16 A. Yes.

17 Q. Is that change material?

18 A. Yes, I believe it is.

19 Q. Why?

20 A. Well the way it's set up my belief is that without
21 changes to the most recent amended marketing procedures that
22 I've seen that would be possible that if one of our
23 competitors qualified as a potential bidder they would have
24 the ability to see what we are proposing during the exclusive
25 45 day window.

1 Q. So, for example, Time Warner has been mentioned many,
2 many times here if they somehow were either a bidder or in
3 partner with the bidder, you're concerned that they would
4 know the discussions going on between Fox and the Dodgers?

5 A. It would be possible, yes.

6 Q. Let's look at number 4. Now this is the one that counsel
7 has told us is going to be taken care, but just in case he's
8 wrong and it's not I'll just quickly ask you. Number 4 deals
9 with the fact that there's no statement about a comparable
10 number of games as there was in the 2004 amended agreement.
11 Let's take that one first; material?

12 A. Yes.

13 Q. Why?

14 A. Our ability to generate income from our RSN's is directly
15 tied to the number of events that we have to offer to cable
16 operators and satellite distributors. No games, no money;
17 it's simple as that. So based on the fact that we don't know
18 we're going to have a 100 games or 20 games that's certainly
19 a material change.

20 Q. From the previous contract when you had a number of about
21 a 100?

22 A. Correct.

23 Q. Number 4 also has that provision where there's nothing
24 about exclusive cable television rights. Did you hear Mr.
25 Desser testify about that?

1 A. I did.

2 Q. Material?

3 A. Extremely.

4 Q. Why?

5 A. This is what we refer to as a basket of rights, i.e.,
6 what has Fox bought from the team or teams. Our normal
7 purchase route is what's called exclusive non-standard
8 television. So we buy everything other than games that are
9 delivered over the air. And in the case of the Dodgers right
10 now, we buy a 100 games exclusive. We're the only ones who
11 can air those games on non-over the air television. There's
12 a second package: 50 games which has been mentioned, which
13 goes to KCAL which is a standard typical over-the-air
14 television station.

15 Exclusivity for us is paramount. It goes to the heart of
16 our business. We don't like people having the same rights we
17 have or even the same rights and the same -- different rights
18 in the same technology. So, for instance, it was a situation
19 where there is 50 games on Prime Ticket, 50 games on let's
20 use Comcast instead of Time Warner on Comcast Sports Net L.A.
21 and 50 games on KCAL; that's an entirely different package,
22 an entirely different set of economics than a 100 games on
23 Prime Ticket and 50 games on KCAL.

24 Q. And the last one looking at number 5, it talks about the
25 fact that the proposed marketing procedures as amended allows

1 teams to split up the packages like less than all permitted
2 distribution platforms, less than all permitted languages; a
3 material change?

4 A. Yes.

5 Q. Why?

6 A. Again, as with the prior sentence with the prior section
7 right now we have exclusive rights and we know how many
8 rights we're going to have. This is, why I understand it's
9 going to be change, right now it's a pretty large hole to
10 drive a truck through.

11 Q. How important is it to Fox that the team final offer
12 provision in the current agreement?

13 A. Extremely.

14 Q. Why?

15 A. We've had the Dodgers' rights since 1996. We built a
16 very nice business based on that fact, along with a variety
17 of other sports properties that we have with Prime Ticket.
18 To not have the Dodgers for that network puts Prime Ticket,
19 in my mind, at risk in its entirety. I say that primarily
20 because in this situation where we have another network in
21 the market and we have another team leaving that other
22 network, Fox Sports West. I can see a situation where if the
23 Dodgers are gone that the distributors would likely push for
24 Prime Ticket to be shuttered and to move the other two
25 remaining professional products off of Prime Ticket onto Fox

1 Sports West, which used to house those two teams as well.

2 And by those two teams I'm speaking of the Los Angeles

3 Clippers and the Anaheim Ducks NHL team.

4 If that happens, it opens up a whole different can of
5 worms with the cable operators who have the ability to accept
6 or reject programming of a professional nature that goes
7 from, you know, onto an existing channel. So in the past Fox
8 Sports West has the Angels, the Lakers, and the Kings.

9 Taking the Ducks and the Clippers and putting them on over to
10 West is not fata complea. It requires what is termed as a
11 surcharge agreement, which is written into affiliation
12 agreements in advance with the cable operators with the
13 satellite distributors that basically require us to go seek
14 permission in order to move that programming back.

15 If the Dodgers are gone, the distributors, and if I was a
16 distributor and I was a distributor for eight years, I would
17 certainly say pull Prime Ticket, put the Ducks and the
18 Clippers back onto West. You're going to lose the Lakers in
19 a year anyway. You got some room and they used to be there.
20 And Prime Ticket would respond to -- or FS West would respond
21 to me okay thank you very much, Mr. Thompson, for your
22 constructive criticism, but we would like to be paid 60 cents
23 per sub per month in order to do that. And I as the cable
24 operator or the person being surcharged have complete option
25 to accept that or reject it.

1 And no offense to my friends at the Ducks or the Clippers,
2 but they're not the Dodgers. They're not the most highly
3 rated product in Southern California. In fact, the Clippers
4 and the Ducks are two of the lowest rated products in their
5 respective leagues. So now Fox is looking at a situation
6 where the Dodgers are gone. It was the marketing piece of
7 product for Prime Ticket. The Clippers and the Ducks are
8 sort of out there dangling in the wind without a home and no
9 guarantee that the cable operators are going to give them a
10 home. In essence, Fox loses an asset that's currently
11 generating \$70 million dollars a year.

12 Q. Do you have any understanding as to the lost enterprise
13 value to Fox if Prime Ticket were shuttered?

14 A. Regional sports networks are some of the most highly
15 valued media properties out there. They engender extremely
16 passionate fan bases. They're amongst the highest per sub
17 networks out there. And by that I mean the fees that are
18 garnered from the cable operators to the network RSN's, other
19 than ESPN, are the highest per sub per month networks. So a
20 multiple or a per sub fee, whatever you want to call it, a
21 multiple is 15 times cash flow is typical and accepted. I've
22 seen them higher some slightly lower, but for a market like
23 Southern California with an RSN with three teams and a couple
24 hundred professional events, a 15 times multiple is very
25 achievable. You take 15 times \$70 million you get

1 \$1,050,000,000.00.

2 Q. Now based on your many years negotiating telecast rights,
3 a 180 television right's agreements you've negotiated, in
4 your experience does the value of television rights, these
5 media rights typically go up, go down or stay the same as the
6 years go by?

7 A. I quit predicting that they would stay flat or go down.
8 So I'm now and have been for the last 15 years only said
9 they've gone up which is, in fact, is what has happened.

10 Q. Are you aware of any instance where a baseball franchise
11 has received less in terms of total compensation for the
12 extension or renewal of their media rights than they were
13 receiving for the existing contract?

14 A. No, I have not.

15 Q. Any reason to believe that situation is going to change
16 in the next year or two?

17 A. No, I do not have any reason to believe that.

18 Q. Now do you believe based on that past history that the
19 Dodgers will get higher bids for the media rights in 2013
20 than they would get under the amended marketing procedures in
21 2012?

22 A. Yes.

23 Q. Well if that's the case then why isn't Fox welcoming
24 moving up the process so that they can pay the money in 2012
25 and, according to you, get a low price?

1 A. Fox is in the business of televising sporting events be
2 it on our regional sports network or Fox Broadcasting.
3 Without those events, obviously, you're in a bind on a 24-
4 hour a day, 7-day a week regional sports network. So, while
5 it may seem contrary to typical business principles of trying
6 to get the best deal, I want the deal that's going to give me
7 the most likelihood of retaining the rights and extending
8 those rights for a number of a years to keep my businesses
9 growing and prospering. So in this case, I think Fox would
10 rather pay more and have a greater likelihood of renewing the
11 deal then paying less and have a greater likelihood of not
12 renewing the deal.

13 Q. Now you talked about the damages that Fox would encounter
14 if you had to close Prime Ticket.

15 A. Yes.

16 Q. If the motion before the Court, the amended marketing
17 procedures agreement were approved by the Court, are there
18 any other damages that you believe Fox would incur?

19 A. Yes.

20 Q. What are they?

21 A. Well we've paid the Dodgers or will have paid the Dodgers
22 -- this isn't counting -- I'm not talking about loans,
23 advances, whatever -- \$300 million dollars in right's fees, I
24 believe from the 2004 amendment going forward. To the extent
25 we don't get the benefit of that entire bargain, i.e., our

1 back end rights, our eviscerated or gutted or circumvented or
2 whatever you wanted to call it. I can tell you that had I or
3 had Fox known that or certainly had I been the one
4 negotiating that deal in 2004, which I was not, I would have
5 paid 25% less. And I would have paid 25% less because the
6 rights are, back end rights are much less stringent than
7 other deals where we've paid more.

8 So I think that a 25% number based on my experience
9 negotiating every type of back end right imaginable, is a
10 very valid number, a very defensible number and ultimately
11 equates to \$75 million dollars over the course of -- 25% of
12 \$300 is \$75 million if I did my math right.

13 Q. What you're saying is if back in 2004 if Fox had known
14 that this amended marketing procedures agreement was going to
15 be accepted as proposed, then Fox would have paid 25% less
16 for that media rights agreement?

17 A. Yes.

18 Q. Any other damages that Fox would incur other than the
19 fact that Prime Ticket may be shuttered, which you explained,
20 and what you just told us about paying less for the rights to
21 begin with?

22 A. Well I think it does raise questions across our entire
23 business of, you know, Fox's do they not have the stomach for
24 this anymore. You know, we've lost some teams, but we've
25 lost teams for the most part other than a couple situations

1 when we decided to lose the team; in that the final offer so
2 draconian, so out there, and so economically untenable was
3 put to us, we made the prudent business decision to pass, to
4 walk. We've only had a couple occasions where they just went
5 away. And that's why I put my success rate at a little
6 higher than Mr. Desser does, 95%.

7 And so to the extent that is sort of running through the
8 marketplace or the teams feel that, you know, a way to get
9 out of deals with Fox is to stick their team in bankruptcy
10 and, you know, you'll be able to discharge the back end
11 rights and get to a situation where you go sell to whoever
12 you want, that's a material effect on Fox. I mean this
13 regional sports business, we have 19 regions. And as I
14 mentioned, you know, I can the case that Prime Ticket is
15 worth a billion fifty million dollars. Are they all worth a
16 billion fifty million dollars? No. But to the extent this
17 spreads across a variety of RSN's, yeah it's a significant
18 issue and a significant material damage.

19 Q. Are you concerned your affiliates will pay less?

20 A. Affiliates will always attempt to pay less. And to the
21 extent we lose teams that's a possibility, yes.

22 MR. KLEIN: Your Honor, may I have one moment please?

23 THE COURT: Certainly, Mr. Klein.

24 MR. KLEIN: Thank you very much. Your Honor, I have
25 no further questions.

1 THE COURT: Thank you, Mr. Klein.

2 UNKNOWN: May I propose a quick break?

3 THE COURT: You bet; let's take a 10 minute recess
4 and we'll be back about five after.

5 (Recess 2:55:43 to 3:10:17)

6 THE CLERK: Please rise.

7 THE COURT: Thank you, everyone; please be seated.
8 All right, Mr. Bennett.

9 MR. BENNETT: Good afternoon, Your Honor; good
10 afternoon, Mr. Thompson.

11 MR. THOMPSON: Good afternoon

12 CROSS EXAM

13 BY MR. BENNETT:

14 Q. I'd like to start with just clearing up some things from,
15 so that the record is clear. In answering many, many
16 questions put to you by your counsel you responded we. And I
17 think you were describing yours and Fox's attitude and views
18 with respect to things. I just want to make sure I've got
19 that right.

20 A. That's correct.

21 Q. So I gather from the terminology that you still consider
22 yourself part of the Fox organization, is that right?

23 A. I'm still an employee of Fox.

24 Q. And so you're not presented here as an independent
25 expert? You're a Fox house expert, is that right?

1 A. Yes.

2 Q. And just to be clear are you the person within Fox that
3 is most knowledgeable about the determination of damages Fox
4 will suffer in your view by reason of the acceleration or
5 shifting of the time schedule for the negotiation terms?

6 A. I don't know.

7 Q. Well who might be more knowledgeable?

8 A. I'm sure there's a number of people who would say they
9 are more knowledgeable than I am.

10 Q. Okay can you give me --

11 A. It's Fox.

12 Q. Give me three candidates? How about three candidates?

13 A. Three candidates?

14 Q. Yeah.

15 MR. KLEIN: Objection as to foundation, Your Honor.

16 THE COURT: I'll overrule that.

17 MR. BENNETT: Thank you.

18 BY MR. BENNETT:

19 A. You want finance guys, you want lawyers, you want Rupert?

20 Q. I want the three people, the three people you think are
21 most likely to have views as informed as yours or better
22 concerning the damages that Fox might suffer? Is Rupert one
23 of those people?

24 A. No. I would say John Charlton, Brandy Frear [*phonetic*],
25 probably Mike Hopkins.

1 Q. Okay and do you think they would be more knowledgeable
2 than you, about the same level of knowledge, or a little
3 less?

4 A. About the same.

5 Q. Okay another thing from your testimony, unless Mr. Desser
6 got it wrong it sounds like this year in terms of end of term
7 renewals in Los Angeles, Fox is batting zero. Did Mr. Desser
8 get that wrong?

9 A. Fox and Los Angeles, well slightly.

10 Q. How would we make it better?

11 A. How would I make it better? I would call it one loss,
12 one walk away.

13 Q. So but you failed to renew both?

14 A. That's correct.

15 Q. Were there terms in which you'd be interested in -- and
16 by the way I'm going to use you in the same way you used we
17 just to make it easy.

18 A. Fair enough.

19 Q. Okay were there terms in which you would have renewed the
20 Galaxy or you were not interested on any terms?

21 A. I was not involved, so and I can't surmise what those who
22 were involved were thinking.

23 Q. Do you know whether Fox bid at all?

24 A. No, I do not.

25 Q. So they might have bid, you just don't know?

1 A. Correct.

2 Q. Okay so walk away means at some point they walked away,
3 but you don't know whether Fox was ever interested in the
4 Galaxy?

5 A. Correct.

6 Q. So now let's go back to my assertion that in Los Angeles,
7 in Mr. Desser's assertion, that in Los Angeles you're zero in
8 end of term or Fox is zero in end of term of renewals. How
9 do you square that with your 95% number?

10 A. I was a lot more successful early on.

11 Q. Well that may be, right. Isn't it that time has passed
12 and times have changed?

13 A. Time has passed. I don't know that time has changed. I
14 mean it just so happens that so far this year they lost two.
15 It doesn't mean that next year they won't win them all.

16 Q. Okay but Mr. Desser took pains to say that his 90% was
17 based on a decade of experience. Your 95% is based on how
18 long a term?

19 A. Twenty years of experience.

20 Q. Okay but right now this year it's not bearing out that
21 way, is it?

22 A. Correct.

23 Q. Okay it's not really a secret that the Lakers didn't
24 renew with Fox, is it?

25 A. No.

1 Q. Does every single cable provider -- I'm a little new to
2 the terminology so help me if I get it wrong -- but cable
3 provider in and around Los Angeles know that the Lakers have
4 gone?

5 A. You mean a distributor who sells to the people in their
6 houses?

7 Q. Yes.

8 A. By a provider?

9 Q. Okay; yes.

10 A. I would assume so, yes.

11 Q. Okay and does every cable distributor, is that better?

12 A. Yes.

13 Q. Okay is every cable distributor in Los Angeles know that
14 Galaxy is leaving Fox?

15 A. That I don't know, because some may not know. They may
16 not care.

17 Q. All right, now is there any cable distributor in Los
18 Angeles that doesn't know that the Dodgers are up for
19 renegotiation in '12 and that Fox does not yet have the
20 rights to '14 and thereafter?

21 A. I think they know that the Dodgers' rights are up for
22 renewal. As to whether or not they know that Fox does not
23 have the rights to '14 and after, that I don't know. You'd
24 have to ask them.

25 Q. You think that's a secret?

1 A. It's not a secret. You're asking me whether they know or
2 not, and I don't know that they know.

3 Q. Okay true enough.

4 A. It's been widely recorded, how's that?

5 Q. And let me say this, let's just narrow the world to the
6 cable distributors in Los Angeles whom you respect, do you
7 think they know?

8 A. Cable operators who I respect, I would assume they know,
9 yes.

10 Q. So don't the cable distributors in Los Angeles that you
11 respect already have some doubt as to whether Fox will retain
12 the Dodgers in '14 and beyond?

13 A. I think they're waiting to see how this plays out first.

14 Q. Really, don't you think that they understand there's some
15 risk that Fox isn't going to have it in '14, irrespective of
16 how this turns out?

17 A. There's always a risk.

18 Q. Well they know you're 0 and 2.

19 A. That's irrelevant to me.

20 Q. Okay. Do you think it's completely irrelevant to them?

21 A. Probably not.

22 Q. Okay so they know that there's an 0 and 2. They know
23 that it's up for grabs. They know that Time Warner Cable is
24 out there on the prowl and you're saying the people you
25 respect don't know that there's a chance that Fox isn't

1 renewing in '14?

2 A. I think the people I respect also know that we have back
3 end rights that we intend to fully exercise and fully pursue.

4 Q. Okay and those people knew you had back end rights with
5 the Lakers?

6 A. Different back end rights.

7 Q. Did they know they were different?

8 A. Since a number of them bid on it, I assume.

9 Q. But do they know what the Dodgers' rights are?

10 A. They shouldn't.

11 Q. Right. And no one testified as to what the Lakers'
12 rights were, did they, because they were supposedly a secret?

13 A. Correct.

14 Q. So isn't there a lot of room for doubt out there?

15 A. There is room for doubt, yes.

16 Q. Okay, some more background from me about your business.
17 Did any of the RSN's that you've worked with you inside of
18 all of your responsibilities ever enter into telecast right
19 deals that turned out not to be profitable?

20 A. Define profitable?

21 Q. Well why don't you, you're the business guy I'm just a
22 lawyer.

23 A. Well profitable to me is at the end of the day did the
24 enterprise make money. While an individual property might
25 not necessarily bring in enough ad revenue to offset the

1 costs of production and rights, i.e., that would be a losing
2 proposition, but that does not mean that the business did not
3 make money.

4 Q. Okay so now let's look at the losing -- adopting your
5 term of losing proposition with respect to a contract, have
6 there been any of them that you've been involved in, in your
7 entire time?

8 A. Yes.

9 Q. By percentage terms how often does it happen?

10 A. Seldom.

11 Q. Happening lately?

12 A. Is it happening lately? Well, at the point that deals
13 are renewed there's frequently a large increase in rights.
14 And so for a snapshot in time, the deal might not be
15 profitable. But over the course of the deal, 10 years or
16 more, as affiliate revenues catch up to the right's fees
17 related to that deal it becomes profitable. So there's an
18 ebb and flow based on renewal of deals. Where initially they
19 might be not profitable, but we enjoy the benefits at the
20 back end when they're very profitable.

21 Q. So there's risk in the business?

22 A. There's risk in every business.

23 Q. And even at the pro deal level, they can turn out to be
24 unprofitable?

25 A. Yes.

1 Q. And now of the ones that are profitable, they're not all
2 equally profitable, are they?

3 A. No there's a variety of things to go into determining
4 profit.

5 Q. So some are pretty skinny, some are better than others,
6 correct?

7 A. Yes.

8 Q. Okay and looking at the front end, are you really good at
9 predicting how there be or is there a variance because it's a
10 risky business?

11 A. I'm pretty good at predicting how good they would be
12 based on the network.

13 Q. Okay but is there variance?

14 A. Oh yes.

15 Q. Now I want to go back to your role in the 2004
16 amendments. Were you personally directly involved in the
17 2004 amendments of the Dodgers?

18 A. No, I was not.

19 Q. Were people who report to you directly involved?

20 A. No, they were not.

21 Q. So how do you know all about it?

22 A. It was provided to me upon execution.

23 Q. So you saw at the end?

24 A. I saw it at, yes; upon execution.

25 Q. And do you remember the terms?

1 A. Some of them.

2 Q. Would it help to look at the document?

3 A. Absolutely.

4 Q. Okay. I think the two versions are Exhibit 1. If you
5 were listening to the testimony this morning, you know that
6 the original document is in the front.

7 A. Skinny book?

8 Q. Skinny book, tab one, and then this is the exhibit where
9 if you go past page 35 the numbers start all over again and
10 the numbers that start all over again are the amendment.

11 Okay and the places to kind of toggle between are the
12 Sections 2.2 of the main agreement and page 2 of the
13 amendment. Are you with me?

14 A. No. Two point what?

15 Q. I'm sorry section, the so called back end rights are in
16 section 2 on page 4 of the original agreement. And also the
17 amended versions are on page 2 after the page 35. So you go
18 all the way to page 35 and then you go to two pages. And if
19 it's okay my colleague Mr. Levinson will show you.

20 A. That might be helpful. I'm sort of confused here.

21 (Mr. Levinson is helping the witness find the page)

22 BY MR. BENNETT:

23 A. All right, I'm sorry.

24 Q. Okay I just want to confirm for purposes of other
25 testimony that you know the same things Mr. Desser

1 acknowledged. First of all, the original contract in 2001
2 the right of first negotiation lasted 90 days, is that right?

3 A. That is my recollection, yes.

4 Q. Okay. And then in the first amendment it was reduced to
5 45 or 46 days; I understand there's a dispute there, but I'm
6 going to leave that one alone.

7 A. I agree.

8 Q. Okay. And also under the original contract the no-shop
9 period ran until April 30, 2006, right?

10 A. Correct.

11 Q. And that was roughly 11 months before the end, right?

12 A. Correct.

13 Q. Okay now I should have asked before, the difference
14 between the 90 day exclusive negotiation period and 45 days
15 that reduction was disadvantageous to Fox? That was a
16 weakening of rights, is that correct?

17 A. I don't consider material.

18 Q. Not material?

19 A. No.

20 Q. Okay and then when the -- okay we've just established the
21 no-shop period was roughly 11 months. How long is the period
22 under the first amendment? And I will tell you that Mr.
23 Desser calculated it at 16 months, that one.

24 A. It goes from right now November 30th, 2012 through I guess
25 the end of the '13 baseball season which is September 30th,

1 2013.

2 Q. Or October 30th if you're an optimist.

3 A. We're still in first place. The season hasn't started;
4 yes if you're an optimist yes because technically it's the
5 end of the major league baseball season.

6 Q. Okay but is that really the right period because isn't it
7 really, for terms of someone else getting up to speed, it's
8 really April of the following year, correct?

9 A. To start a new network?

10 Q. Yes.

11 A. Yes; correct.

12 Q. And that's how long?

13 A. That would be 12 months plus five, so I'm going to go 17.

14 Q. He said 16, okay. Which is better for Fox?

15 A. What do you mean longer or shorter?

16 Q. Which of the two alternatives was better; the original,
17 which was shorter, or the second one, which is longer?

18 A. I prefer shorter.

19 Q. Okay so this also was -- well the first one was an
20 immaterial change. Was this change material from Fox's
21 perspective?

22 A. I think this one would be more of a concern to me yes or
23 concern to Fox.

24 Q. And the longer period is disadvantageous, correct?

25 A. Yes.

1 Q. Because it kind of chills a little bit of the
2 competition?

3 A. Well no so much that it chills. I think it provides
4 competition with more opportunities to be competition.

5 Q. I'm saying the longer period creates more opportunities;
6 the shorter period chills competition?

7 A. Correct.

8 Q. Okay I may have been responsible for that confusion; I
9 apologize. All right and then the next area of change was
10 the right of first refusal. Now it's my impression, but I
11 want you to satisfy yourself that under the original Fox deal
12 there was basically a right of first refusal that applied to
13 any deal presented to the Dodgers that the Dodgers wanted to
14 do, is that the way you understood it?

15 A. Yes.

16 Q. Okay and that's not true anymore, right?

17 A. Are you asking me if that's true under the 2004
18 amendment?

19 Q. Correct.

20 A. No, it is not true.

21 Q. Okay so now there's only a right of first refusal if Fox
22 rejects the final offer?

23 A. No that's -- if an offer is put to Fox -- ask the
24 question again?

25 Q. Okay what are the terms of the first right of refusal

1 under the amendment?

2 A. Under the amendment is we have an exclusive negotiating
3 period. If we don't reach an agreement, then the team puts
4 an offer to Fox.

5 Q. That's called the final -- that's what I've been calling
6 the final offer. I apologize.

7 A. You can call it the final offer, that's fine; team offer,
8 whatever.

9 Q. Okay and there's only a right of first refusal if the
10 team offer is rejected by Fox, is that correct?

11 A. No that is the right of first refusal. They put an offer
12 to us. We have the right to accept or refuse it.

13 Q. Okay and if you refuse it, what happens?

14 A. Then they're free to go do a deal with someone else at
15 that level or higher, but not less. If it's less, they have
16 to come back to us again and the process starts over.

17 Q. That's what I meant for the right. If it's less, you get
18 the right to match it, correct?

19 A. I wouldn't -- well yes. The right to match yes. You
20 should call it that.

21 Q. Now but that, I call that a right of first refusal and
22 now call it a right to match. That right to match doesn't
23 apply to everything, right?

24 A. As opposed to?

25 Q. Well it doesn't apply to RSN's in which the Dodgers are

1 the largest owner and which does not include other
2 participants?

3 A. Oh correct, yes there is as Mr. Desser said a carve out
4 for a team owned RSN.

5 Q. Okay so the somewhat more complicated collection of
6 rights under the amendment is different than the flat out
7 first right of refusal under the original Fox agreement,
8 correct?

9 A. That's correct.

10 Q. And which is better?

11 A. Well I prefer to have the first over the second.

12 Q. Okay is there a material difference in your mind or are
13 they both okay?

14 A. I think the first gives us more protection. I don't know
15 that I would call it a material right.

16 Q. Okay under the original agreement and what I want to look
17 at, this is in 2C.

18 A. On which? On the original?

19 Q. On the original agreement, page 4, 2C.

20 A. Okay I got it.

21 Q. There's language that says that if Fox matched the offer,
22 the terms of that offer "will serve as a binding agreement
23 between LAD and Fox Sports," do you see those words?

24 A. No I don't, where? Give me a hint in the paragraph?
25 Halfway, bottom third?

1 Q. It's kind of halfway.

2 MR. LEVINSON: May I approach, Your Honor.

3 THE COURT: Yes.

4 MR. BENNETT: That would be helpful.

5 (Mr. Levinson helping the witness)

6 BY MR. BENNETT:

7 A. Okay I see it, okay. I got it, all right. Okay can I
8 read it real quick? Okay I see it.

9 Q. Okay now does the terms binding agreement appear in the
10 amended version of Section 2C that was negotiated with Mr.
11 McCourt in 2004?

12 A. No it does not.

13 Q. And do you also adopt Mr. Dessser's testimony that these
14 terms and conditions are really important and they're really
15 negotiated very carefully and very hard?

16 A. Well I can say that when I negotiate them. I negotiate
17 them very carefully and very hard. I didn't negotiate this
18 one, but generally yes. I agree with Mr. Dessser's.

19 Q. Do you know who negotiated this one?

20 A. This was outside of my group for the reason that this was
21 part of the sale of the team. And Fox was the owner of the
22 team, and Fox was selling the team to Mr. McCourt and Fox
23 wanted to ensure that it had a right's deal going forward
24 since it was no longer going selling the team. Therefore,
25 this was handled by without going through the News Corp

1 lawyer hierarchy, it was handled by News Corp Deal lawyers as
2 opposed to Fox Sports Deal lawyers with the sole express
3 intent of Fox Sports Deal lawyers not mucking up the sale of
4 the team.

5 Q. So they weren't careful?

6 A. I didn't say that.

7 Q. Okay is there any reason to think that they weren't
8 really careful lawyers involved in the \$400 million dollar
9 transaction which back then was a lot of money?

10 A. It's still a lot of money today.

11 Q. Good.

12 A. But I don't know what they paid attention to, because I
13 was not responsible for those attorneys. They did not report
14 to me. They did not ask for my input, and I didn't see this
15 deal until after it had been signed.

16 Q. It sounds like you think this difference is worth note?

17 A. Had I been brought in, I probably would have mucked up
18 the deal because --

19 Q. So it's a distinction with a difference?

20 A. There is a difference.

21 Q. Okay, let's move on. Now I want to turn to your
22 declaration. And, again I'm going to enlist Mr. Levinson to
23 give us all copies.

24 A. Do I have one up here?

25 Q. Whether you do or don't we're going to give you a fresh

1 one so it's easy to find.

2 MR. LEVINSON: You don't.

3 (Mr. Levinson helping the witness)

4 MR. LEVINSON: May I approach?

5 THE COURT: Yes, sir, you may. Thank you, Mr.
6 Levinson, thank you.

7 BY MR. BENNETT:

8 Q. Okay I want to look at paragraph 13(b) if you could. I'm
9 sorry, wrong paragraph; 13(c). We'll get to 13(b) in a
10 minute. Now this is referring, of course, to the amended Fox
11 contract, is that correct?

12 A. As amended in '04, yes.

13 Q. A final binding team offer is underlined, isn't it?

14 A. Yes, it is.

15 Q. How'd that happen?

16 A. I don't know.

17 Q. Did you write this?

18 A. I was involved in the drafting of this, yes.

19 Q. Okay let's kind of unpack that a little bit. You didn't
20 prepare the first draft?

21 A. I commented on the first draft.

22 Q. So someone else prepared the first draft, who was that?

23 A. I don't know.

24 Q. Was it a lawyer?

25 A. With my aid, yeah.

1 Q. Okay so this particular sentence, did you write this
2 particular sentence or is this particular sentence written by
3 a lawyer?

4 A. I did not write this particular sentence.

5 Q. Who else had a hand in this?

6 A. It must have been an attorney, yes.

7 Q. Okay and when the attorney put this in front of you to
8 sign it, did you guys talk about it?

9 A. I don't recall that we talked about this.

10 Q. Okay so no one said to you do you really think it meant
11 binding even though the word binding isn't there?

12 A. No, no one said that to me.

13 Q. In paragraph 18 of your declaration the second line this
14 time it's bold and underlined.

15 A. Yes.

16 Q. Did you do the bold part?

17 A. No I didn't type it.

18 Q. Okay well did you indicate that it should be emphasized
19 in any way?

20 A. No, I did not.

21 Q. So that's someone else also?

22 A. Yes.

23 Q. And you didn't choose the word?

24 A. Well did I choose the word, no. I mean I read it and I
25 agreed with it.

1 Q. Based on what?

2 A. Based on the fact that when we make an offer to or
3 someone provides us with an offer as part of a first right of
4 refusal process and we accept that offer that it's binding.

5 Q. So that's based on your experience, that's not based on
6 your analysis of these documents, correct?

7 A. Correct.

8 Q. And that's like when you testified before on direct
9 examination you said I assume it would be binding. That too
10 was a product of your experience not analysis of the
11 document?

12 A. I'm not an attorney so yes I guess you're correct.

13 Q. And you work with these documents all the time. You're
14 not a stranger to --

15 A. I've been around a few of them yes.

16 Q. Okay now further down in the paragraph, again, just for
17 completeness.

18 A. Where it says not binding?

19 Q. Yeah drawing a distinction. Just curious, was that you
20 making that distinction or, again, was this someone else?

21 A. It was someone else with my agreement.

22 Q. Okay you weren't responsible for the underlying and
23 bolding either?

24 A. No.

25 Q. Okay now in light of the fact that the word binding shows

1 up in the original agreement, again, you had nothing to do
2 with it so you didn't have an independent recollection.

3 Binding shows up in the original agreement, binding
4 disappears in the second agreement. Isn't it a little much
5 to be emphasizing it as a description or --

6 A. I did have something to do with binding in the original
7 agreement.

8 Q. Oh so you did think it was important to include that.
9 But you didn't have anything to do with it being taken out?

10 A. I wasn't involved in the amended agreement.

11 Q. And you didn't ask anyone about why they took it out?

12 A. The ship had sailed.

13 Q. Okay but even when you prepared this you didn't ask
14 anyone?

15 A. Oh no. I mean that was just an oversight on my part.

16 Q. You hadn't even noticed the difference?

17 A. No.

18 Q. Okay can we turn to paragraph 13(d) of your declaration?
19 That's on the top of page 6.

20 A. Yes.

21 Q. Okay why don't you take a look at that for a second.

22 A. Fox has a right of first refusal on any media rights
23 transaction of less value than the team final offer?

24 Q. Right.

25 A. Yes.

1 Q. And now that we've talked about this a little bit, is
2 that an accurate and complete statement of the terms of the
3 right of first refusal?

4 A. The biggest, I guess you're correct in that the carve out
5 for the team owned RSN could be outside of this. But to the
6 extent we get to what is considered a right of first refusal
7 when we get to that point and they put the offer to us, I
8 assume upon the putting of the offer that if I accept that
9 deal we have a deal. And I consider it a binding deal, and
10 whether that is legally binding or not that's, you know,
11 above my pay scale.

12 Q. Okay but I'm not talking about that right now. I'm just
13 talking about the fact that the first refusal doesn't
14 recognize the fact that it's not applicable to any media
15 rights transaction of less value than the final team offer.
16 It's applicable to certain --

17 A. Well I don't know that that, I don't know that that's the
18 case.

19 Q. Okay why don't we take a look. Go to the amendment, page
20 2; sorry the type is really small.

21 A. Is this page 2 of the amended agreement?

22 Q. Of the amended so it's like past 35.

23 A. Got it.

24 Q. Okay and then I'd like you to turn the page, actually
25 it's page 3 which is where this provision starts and it's the

1 two little i's, kind of in the middle of the page.

2 A. Okay I see it.

3 Q. And just to give you -- again, because I want to speed it
4 up too. When you get to Cli at the end of the line that's
5 the right of first refusal provision that we were talking
6 about.

7 A. You're correct. It is -- I don't look at them in total
8 because I look at right of first refusal as one thing. But I
9 guess legally speaking that you're right it is under given
10 its little 2i that it is under right of first refusal site.

11 Q. So even the first offer -- excuse me, even the final team
12 offer doesn't have to be given if we're dealing with a
13 transaction within Cii on page 3?

14 A. That is correct.

15 Q. Okay so now going back to 13(c) of your declaration.

16 A. Of my declaration, okay.

17 Q. Paragraph 13(c). That wasn't mentioned either, was it?
18 There isn't always the right to a final binding team offer.
19 There is sometimes the right to a final binding team offer.

20 A. Correct.

21 Q. Okay let's turn to another area that's bedeviled us
22 previously today which is covered in paragraph 19 of your
23 declaration. I'll give you a chance to read it, but I think
24 that as I see it, it's kind of a complaint or concern with
25 the provisions of the proposed amended back end rights that

1 somehow the Debtors have changed them to put Blackstone
2 Advisory in a wrong position. And I guess maybe make this
3 quicker, I'd like you to read this paragraph and ask whether
4 you still stand by this testimony after what you've heard Mr.
5 Desser.

6 A. This paragraph in my declaration or in the proposed
7 amendment?

8 Q. No the paragraph in your declaration, paragraph 19.

9 A. Okay.

10 Q. So you listened to the testimony this morning by Mr.
11 Desser about this aspect of section 2(c) of the amendment?

12 A. Yes.

13 Q. And based upon what you heard this morning do you stand
14 by your testimony in paragraph 19?

15 A. Well the difference I think is when I wrote my
16 declaration at least the amended or the motion, the amended
17 procedures that I saw did not have the fall back of the
18 Court. And at that -- so yes I felt that. I would still
19 feel that way without that.

20 Q. Okay and based upon where we are now?

21 A. I feel much better.

22 Q. And do you have any continuing objection to at least this
23 one element of the marketing procedures?

24 A. No I do not.

25 Q. Okay progress. Okay could we go down -- well actually

1 and I'll skip that too in light of this, where we are. Okay
2 I think you can put your declaration away for a little while
3 because we're going to talk about some other things. We'll
4 come back to it.

5 A. Okay.

6 Q. Assume for a moment that negotiations between Fox and the
7 Dodgers don't start until October 2012 which is October 15th,
8 2012 which is when --

9 A. What's in the existing agreement.

10 Q. Which is when they would start according to the existing
11 agreement.

12 A. Okay.

13 Q. And if the parties begin the 45 day negotiation period
14 exactly on schedule, I want you to assume that first of all
15 for all the questions that are going to follow.

16 A. Okay.

17 Q. So we'll go off the topic okay. Do you know whether or
18 not Prime Ticket or Fox -- I'll use Fox, this will be
19 consistent -- and the Dodgers will make a deal during that
20 specific negotiating period?

21 A. For certain?

22 Q. Uh huh.

23 A. Not for certain, no.

24 Q. It's impossible to know, isn't it?

25 A. Yes.

1 Q. So okay and I suppose it's also impossible to know what
2 the terms of any deal that Fox and the Dodgers might make
3 think would be, isn't that right?

4 A. That's correct.

5 Q. And so you couldn't even hazard to guess as to how many
6 years would be involved?

7 A. I couldn't, I could guess, but I don't know that I'll be
8 correct.

9 Q. Okay same thing for what would be the right's fee of the
10 first year?

11 A. More than it is now.

12 Q. How specific could you get if you had to?

13 A. You know until I sat down across the table from the
14 Dodgers, I couldn't.

15 Q. Right. And what about will there be an escalation
16 factor?

17 A. Excuse me?

18 Q. Will there be an escalation factor?

19 A. In the right's agreement?

20 Q. Yeah.

21 A. Chances are yes.

22 Q. Okay do you know what it would be?

23 A. Exactly?

24 Q. Uh huh.

25 A. No.

1 Q. Okay do you think they'll be an interest in an RSN
2 included as part of the consideration flowing to the team or
3 an affiliate of the team?

4 A. I have no idea.

5 Q. If they do reach a deal during that 45 day period, do you
6 know whether it would be profitable or unprofitable to Fox?

7 A. I could have a pretty good idea if I knew what the deal
8 was, but --

9 Q. But you don't know --

10 A. -- no I would not know if it would be profitable or
11 unprofitable to Fox or anybody else.

12 Q. Now assume that no deal is made during the first 45 day
13 period, we don't know whether one will be made or not, right?

14 A. Correct.

15 Q. Do you know what the terms of the final team offer will
16 look like?

17 A. Based on the promises that have been made as to how the -
18 - do I know -- are you talking about under the existing deal
19 or under your proposed deal?

20 Q. No existing deal.

21 A. Do I know what the terms of the final team offer will be,
22 no.

23 Q. Okay do you know -- and I'm going to rattle off the
24 different terms. You don't know how many years it will be
25 except they'll be more than five?

1 A. Correct.

2 Q. Okay you don't know what the first year price will be?

3 A. Correct.

4 Q. You don't know whether there will be an escalation
5 factor, but you think there probably will be?

6 A. Correct.

7 Q. You don't know what the escalation factor will be?

8 A. Correct.

9 Q. You don't know whether there's going to be an interested
10 in RSN included as part of that consideration?

11 A. That's correct.

12 Q. You don't know whether the deal if accepted by Time
13 Warner oh, excuse me, by Fox would ultimately be profitable
14 or unprofitable to Fox?

15 A. That one I might know. I might think that, you know, Fox
16 is going to certainly look at it in such a manner that if
17 they accept it, it would be profitable to them.

18 Q. But there will be risks attached to that, won't there?

19 A. Well there's always risks.

20 Q. So do you know whether Fox would accept that final offer
21 or not?

22 A. It depends what the offer is.

23 Q. Okay. And if Fox doesn't accept the final offer will its
24 limited rights of first refusal ever have an impact or will
25 all subsequent offers exceed the final offer or do you just

1 not know?

2 A. That I do not know.

3 Q. Okay so is it fair to say as we sit here today that you
4 don't know whether Fox will ever get the rights to telecast
5 Dodger games for any period beyond the 2013 season?

6 A. I don't know that I've ever maintained that they would.

7 Q. Okay but it's clear that there's a lot of uncertainty as
8 to whether they will, when they will, and what the terms will
9 be?

10 A. That is correct.

11 Q. And to insert any of those numbers would involve
12 speculation wouldn't it?

13 A. Yes.

14 Q. I have questions regarding the value of the 2012 and 2013
15 rights. And so you might want to take a look at the schedule
16 that's attached to the back of the amendment.

17 A. The 2004 amendment?

18 Q. Yes.

19 A. Which lays it out by years?

20 Q. It lays it out by year and it's on page 5. And you see
21 that it says, and I'm zeroing on the numbers for 2012 --

22 A. I got it.

23 Q. Pardon?

24 A. I've got it.

25 Q. Okay 2012, 36,900,000 I'm dropping the rest of the

1 digits.

2 A. Right.

3 MR. KLEIN: Could you just give us the number,
4 catch up to you here.

5 MR. BENNETT: Oh sure. It's page 5 of the --

6 MR. KLEIN: Of the amendment?

7 MR. BENNETT: Of the amendment.

8 BY MR. BENNETT:

9 Q. Okay I'm only interested in the last two lines.

10 A. You mean 2012 and '13?

11 Q. 2012 and '13.

12 A. Yes.

13 Q. Those are the two years left, right?

14 A. Correct.

15 Q. And the right's fee for 2012 is \$36,900,000.00. And so
16 that I don't ask what's called a compound question and get in
17 trouble, is that number above market or below market for the
18 2012 rights?

19 A. Above or below what market; baseball, L.A.?

20 Q. For these --

21 A. Like Galaxy --

22 Q. I'm saying; I'm sorry. In your opinion based upon all of
23 your expertise for the 2012 season a 100 games, Los Angeles
24 Dodgers all other rights as provided in this agreement?

25

1 A. At the time the deal was done I would have said their
2 high. Now I would say they are -- I would say they're fair
3 market.

4 Q. Fair market. So I don't understand. When Fox said that
5 they would be willing to pay \$85.4 million dollars for the
6 '04 rights they're projecting this like monstrous jump or?

7 A. I don't believe Fox said they paid \$84 million for the
8 2004 rights.

9 Q. I'm sorry 2014.

10 A. Okay.

11 Q. I apologize; 2014.

12 A. First of all, I don't know anything about that deal. I
13 haven't looked it. I haven't read it, smelled it, sniffed
14 it, nothing. So I'm not one to say whether or not Fox
15 offered that or not. If you tell me that you've read the
16 deal and that's what they offered, I guess I'll take that.

17 Q. Okay so, again, so you're testimony is 36,9 is about
18 market for 2012?

19 A. For 2012, yes.

20 Q. And is --

21 A. Would you like me to explain why?

22 Q. Sure.

23 A. The dollars that Fox proposed to pay for 2012 and going
24 forward for, I believe, I don't know -- again, I don't know
25 the deal. Is it 15 years, 20 years, 10 years? Let's put it

1 this way it extends well beyond, so right now if you look
2 around baseball and compare baseball team to baseball team,
3 based on my knowledge of a variety of rights deals that were
4 done at or about the same time as this Dodgers' deal, this is
5 market.

6 Q. Okay let me ask the question differently.

7 A. Okay.

8 Q. If it were the case that the Dodgers were not subject to
9 any contract with Fox at a 100 games to sell to be broadcast
10 on the same terms and conditions in this document, but no
11 other terms, you know, were the same and they came up to and
12 they were free to market them, not under any restriction, and
13 they invited into the room Fox, Time Warner Cable, ESPN,
14 Comcast, and anyone else you would want to invite into the
15 room. Is the price that everyone is going to come out with
16 higher or lower than 36, just for that one year,
17 \$36,900,000.00?

18 A. One year, not 10, no back end rights, no nothing --

19 Q. Just one year --

20 A. -- just buy my 100 games, we can pay me \$36 million?

21 Q. Uh huh.

22 A. It might be higher. I don't know it's going to be
23 appreciably higher because there's various significant lack
24 of certainty going forward that you're going to have the
25 rights. And to blow \$40 million dollars on just a 100 Dodger

1 games without the opportunity to recoup your investment over
2 a longer period of time would, to me, chill the bidding.

3 Q. Okay and would your answer be different if two years were
4 offered?

5 A. Every time you add a year my answer would be different.
6 You're not just buying rights, you're buying certainty
7 rights. And as I mentioned in my direct testimony it's not
8 just buying games. You're buying back end rights. You're
9 buying number of games. You're buying length of term. So to
10 the extent you're just going to throw one year at me, I'm
11 going to say no. It's probably not going to be significantly
12 higher. If you turn around and said what's the deal for 15
13 years that has solid back end rights and, you know, a
14 reasonable expectation on number of games, standard or
15 exclusive non-standard rights, typical baskets of rights then
16 I might say this is below market.

17 Q. Okay I'm just asking about one year and two year rights.

18 A. Yeah I understand --

19 Q. So why don't we talk about my questions.

20 A. I think you're asking it's a little, it's not how the
21 business is looked at.

22 Q. I don't know is an acceptable answer.

23 A. Excuse me?

24 Q. I don't know is an okay answer.

25 A. What's the question?

1 Q. What is the -- if we were able to sell separately two
2 years, 2012, 2013 not encumbered by any rights, just alone to
3 be broadcast in accordance with the broadcast terms and
4 conditions contained in this agreement opens it up to Fox,
5 Time Warner Cable, Comcast, ESPN and anyone else you would
6 want to invite to the room, Dodgers can do better or worse
7 than these numbers?

8 A. I don't know.

9 Q. Okay. On the assuming the rights, on the right's fee of
10 \$36,900,000.00 and changes, is Fox going to make money or
11 lose money broadcasting Dodger games next year?

12 A. You know, again, are you asking me based on, is Prime
13 Ticket going to make money, are we going to make money when
14 we take the ad revenue generated by the Dodgers minus the
15 right's fees and the production expenses?

16 Q. Let's do it that way first.

17 A. No, we'll lose money.

18 Q. Then why is it that it will be good for you to do that?

19 A. Because besides revenues from advertising, you receive
20 significant revenues from affiliate fees paid by the cable
21 operators that aren't specifically attributable to the
22 Dodgers, but do go into the revenue pile that comprises Prime
23 Ticket.

24 Q. So none of that revenue is allocated to the Dodgers or --

25 A. No we don't allocate. We don't attribute affiliate fees

1 to specific teams in the case of, you know, once they're in
2 the tent it's just money in.

3 Q. So it would depend on -- so whether or not it would be
4 profitable in 2012 will depend on how you allocate on how you
5 would allocate the subscription fees that are collected by a
6 vast array of different Fox channels?

7 A. No that's not what I said. I said that it would be
8 attributed to the revenue that's the cable operators and
9 cable distributors and satellite distributors pay for Prime
10 Ticket.

11 Q. Okay so it's paid separately to Prime Ticket?

12 A. Correct. There's a distinct separate fee for Prime
13 Ticket.

14 Q. And so then the allocation is just between the different
15 teams that are being broadcast on Prime Ticket?

16 A. We don't allocate. I think I mentioned that. We don't
17 allocate between teams.

18 Q. So do you even try to figure out whether individual
19 contracts are profitable or not?

20 A. We look at it on an ad revenue basis versus rights and
21 production, our expenses. And then the only time we look at
22 whether or not a team specific is profitable when it's a new
23 team that we add to the stable, so to speak, a product, and
24 we have to go out to a cable operator and ask for a separate
25 distinct fee to carry that channel or to carry that product.

1 That's what's known in the business as surcharge programming.

2 To the extent we have surcharge programming, so to use an
3 example. When the Oklahoma City Thunder relocated from
4 Chicago -- oh no they came from Seattle, excuse me, when they
5 relocated from Seattle to Oklahoma City that was a new piece
6 of product for Fox Sports Southwest RSN. In order to have
7 that product carried by the cable operators, we don't just
8 have the right to jam it down their throat. We have to go
9 through and have a system by system, company by company
10 negotiation over their desire to carry the product and pay
11 the fee that we're asking. That's called surcharge because
12 it's a separate surcharge.

13 Now that we've added Oklahoma City Thunder into our
14 package down there along with the Mavericks and the Rangers
15 and the Astros and the Rockets, which we do have for another
16 year, and the San Antonio Spurs, that surcharge is now baked
17 into the total overall rate for Sports Fox Southwest. So
18 from that point forward, once they're in the house, we don't
19 ascribe a particular portion of our affiliate fees to one
20 team or another.

21 Q. Okay so as you sit here today year 2012 using the
22 \$36,936,385.00 number for right's fees on this column, you
23 can't tell me whether or not this particular contract is
24 profit contributing to Prime Ticket?

25 A. It's a contract that contributes to the profitability of

1 Prime Ticket. On a straight attributable revenue versus
2 expense, which are production and right's fees and marketing
3 expenses, it does not.

4 Q. How much does it contribute to the profitability of Prime
5 Ticket?

6 A. I don't know.

7 Q. Okay for the year 2013 right's fees \$38,783,205.00; first
8 question, profitable or not profitable to Prime Ticket?

9 A. I just said that I can't look at a right's deal and say
10 how much of a profit, if any, so how can I say profitable or
11 not profitable.

12 Q. I just need to ask the question for each year, otherwise,
13 I get in trouble.

14 A. Oh we're going to do that okay. Go ahead, I'm sorry.

15 Q. I'm just asking question for different year; 2013.

16 A. I don't know.

17 Q. Okay. And then how profitable -- oh wait you don't even
18 know if it's profitable in 2013?

19 A. I don't know.

20 Q. So you can't tell me how profitable it is or how much the
21 loss is?

22 A. That's correct.

23 Q. In paragraph 16 of your declaration, let's go back to it
24 very briefly.

25 A. Yes.

1 Q. Okay this is the paragraph where you talk about the fact
2 that a new ownership group could do appropriate due
3 diligence, can hire a consulting company, and there's a
4 little advertisement, yours included?

5 A. Yes.

6 Q. Have you done the work yet?

7 A. Have I done what work?

8 Q. The work you suggest in that paragraph?

9 A. I've not been asked to.

10 Q. Okay but have you kind of because you were professionally
11 curious poked around at it a little bit?

12 A. No.

13 Q. So you have no view at all as to what the value of these,
14 of the rights would be if marketed at the end of the year?

15 A. I guess I don't have that level of curiosity that Mr.
16 Desser does.

17 Q. Okay.

18 A. If I was asked, I would do it, but I have not been asked
19 and I won't be a part or I can't be approached by the
20 ownership group so I won't do it. I'll wait and read about
21 it.

22 Q. Okay; paragraph 20 of your declaration. This is the
23 paragraph where you talk about and you discuss this in your
24 direct testimony I want to zero in on the sentence right in
25 the middle of the paragraph: There are a number of deals with

1 providers to be negotiated between now and 2013.

2 A. Yes.

3 Q. How many?

4 A. I don't know. I just know that Prime Ticket has in
5 excess of 200 affiliates and those deals are constantly
6 coming up. That's why I specifically didn't put a value, you
7 know, against those deals. I just know and there are always
8 negotiating deals, and I'm sure a number of them come up over
9 that time. When you have 200 affiliates, I guess it's
10 expected that there will be some up.

11 Q. So this is just a guess?

12 A. I wouldn't call it a guess. I would call it an educated
13 supposition based on 20 years in the business and knowing
14 affiliate right's deals on RSN's work.

15 Q. I'll take supposition. How many subscribers did you
16 suppose were affected? Because if there are 200 of these --

17 A. I -- go ahead.

18 Q. My mistake, I interrupted.

19 A. I didn't suppose a number of subscribers. I know that
20 Prime Ticket has roughly 6 million subscribers which are
21 covered by in excess of 200 different, separate, distinct
22 affiliation agreements with cable distributors, satellite
23 distributors, etc. I don't know that -- I have no idea how
24 many deals that come up, which I suppose deals do come up
25 given there's 200, I have no idea how many subscribers might

1 be covered by those supposed deals.

2 Q. And some of those deals are pretty small, right?

3 A. Yes, very small to very large, yes.

4 Q. So we have no idea how big a factor this is or isn't?

5 A. Not that I can put a number to.

6 Q. Okay so now let's turn to your damages assertion. You
7 said there were three kinds of damages. Your first was this,
8 you expressed concern that if Fox loses the rights it will be
9 forced to conceive lower rates for renewals of Fox rights in
10 2012 and 2013, but actually you don't have any idea how many.

11 A. Well that's what I said in my declaration, yes. I also
12 mentioned in my cross that this could spread beyond just the
13 borders of Prime Ticket to other Fox channels.

14 Q. I want to focus on Prime Ticket for the time being. You
15 said that Fox would be forced to conceive lower rates in 2012
16 and 2013, but you just testified you have no idea how much
17 that would be because you don't know how many are rolling
18 over and how many subscribers are affected by deals with
19 cable distributors that have the right to negotiate for lower
20 rates, correct?

21 A. Correct.

22 Q. Okay so let's skip that one because it's completely
23 hypothetical so I can save a lot of time.

24 A. Which is why I did not put a dollar figure to it.

25 Q. Okay your second source of damages was the estimated 25%

1 devaluation of the consideration received over the term of
2 the agreement. That was a 25% equaling \$75 million dollars.
3 Could you tell me how you calculated that?

4 A. The total right's fee paid over the course of the deal
5 were around \$300 million dollars.

6 Q. Right.

7 A. Correct. 25% of \$300 million is \$75 million.

8 Q. Well where do you get 25%?

9 A. I've negotiated a 180 deals. I've negotiated back end
10 rights in a 180 deals. I know the value of back end rights
11 being there or not being there, and I know how I would have
12 approached this deal had I been involved on the negotiation
13 if the back end rights we're all sitting here arguing about
14 now had not been present in the deal. I know in my mind,
15 based on my experience, that I would have discounted like
16 25%.

17 Q. Okay so the fact that they've been undisturbed for eight
18 tenths of the term that didn't influence you?

19 A. Look at the back end rights are only important at the
20 back end.

21 Q. I see. And there was no --

22 A. Are most important, excuse me.

23 Q. And the 25% was the discount or versus having back ends
24 rights versus not having back end rights, right?

25 A. Correct.

1 Q. So the fact that you're getting back -- you didn't do a
2 calculation for back end rights versus back end rights ten
3 and a half months earlier, did you?

4 A. No.

5 Q. Okay and it struck me that you decided to put the 25%
6 against revenue. Revenue doesn't drop to the bottom line
7 automatically, does it?

8 A. No, I did not put it against revenue.

9 Q. I'm sorry, cost. You did it just cost.

10 A. Because that's what we pay, yes.

11 Q. Okay but that's not, I mean -- you're saying that you
12 should have paid less but I mean --

13 A. Right --

14 Q. -- is that a measure of any actual harm or that's just
15 like kind of your idea of what you might have charged
16 differently if you had no back end rights?

17 A. It's not what I would have charged differently. It's
18 what I would have paid differently.

19 Q. I'm sorry paid.

20 A. Right. Yes.

21 Q. Okay.

22 A. And I guess theoretically yes that would have dropped to
23 the bottom line.

24 Q. Okay did you, when you -- just for future reference, did
25 you prepare like a schedule where you kind of looked at deals

1 to figure out that 25% or it was just feeling?

2 A. Based on 20 years and a 180 deals, I have a pretty good
3 feel. It was based on feel.

4 Q. So you didn't pull comparables, you didn't try to compare
5 comparable transactions, look at differing values of
6 differing kinds of back end rights? Just said if I didn't
7 have any, it would be 25% less?

8 A. No I considered various types of back end rights and how
9 these back end rights compared to other back end rights and
10 then ascribed a percentage of the total value of the deal.
11 Some back end rights are stronger than others. There are
12 rights stronger than this that I would ascribed a much higher
13 percentage. And there are other rights that I would have
14 ascribed a lower percentage.

15 Q. What percentage would you have ascribed to the rights
16 that were in the original Dodger deal?

17 A. A higher percentage.

18 Q. How high?

19 A. Thirty.

20 Q. So five percent difference for the, the months spread,
21 for all those things the total difference would be five
22 percent?

23 A. I mean I'd have to look at all the specifics again, but
24 if you're talking about 2001 versus 2004 --

25 Q. Yeah.

1 A. -- that sort of went out of mind. But I mean -- 30 is
2 probably not far off.

3 Q. Okay so five points of difference for the difference
4 between the 45 -- excuse me, three month versus 45 day
5 negotiation period; the 17 month -- excuse me, 11 month
6 versus 17 month period before the end of the term; and for
7 the differences in the first right of refusal, that's worth
8 five points?

9 A. Yeah and the words binding.

10 Q. Oh the word binding is part of that too?

11 A. Right.

12 Q. All right, good. Okay can I go to paragraph 22 of your
13 declaration please. I want to remind you of your testimony
14 not too long ago that you have no idea whether the Fox and
15 the Dodgers will make a deal in their exclusive negotiating
16 period. You have no idea whether they'll make a deal at the
17 time of the final offer. You have no idea whether Fox will
18 actually ever get a chance to exercise limited rights of
19 first refusal. You don't know whether the deal negotiated
20 would be profitable. You don't know anything about the terms
21 of that deal. How did you come to the conclusion you reached
22 in paragraph 22?

23 A. Because I believe if the rights are breached, we have
24 less than a likelihood of doing the deal.

25 Q. How do you calculate a less likelihood when you don't

1 know what the likelihood is to start with?

2 A. I don't know.

3 Q. Paragraph 23; same question.

4 A. Okay what's the question?

5 Q. The question is if you don't know whether or not Fox will
6 and the Dodgers will make a deal in the negotiating period in
7 2012. You don't know whether they will exclusive negotiating
8 period in 2012. You don't know whether what the terms of the
9 final offer will be. You don't know whether Fox will accept
10 it. You don't know whether Fox will be able to exercise the
11 rights at the end, the rights of -- limited rights of first
12 refusal at the end. You have no idea what the terms and
13 conditions of any of the deals that are going to be talked
14 about during that timeframe. You have no idea whether it
15 will be profitable, how do you reach the conclusion in
16 paragraph 23?

17 A. I know that if we don't do a deal, there will be harm. I
18 don't know that we will do a deal, as well. But I know if
19 there is no deal, these things will happen.

20 Q. But there could be no deal --

21 A. I realize that. I just said that. I said I'm not saying
22 that there's going to be a deal, and I'm not saying there's
23 not going to be a deal. But if there is not a deal, these
24 things happen.

25 MR. BENNETT: Can I have a minute to consult with

1 my colleague?

2 THE COURT: Sure.

3 MR. BENNETT: Pass the witness.

4 THE COURT: All right, thank you. Mr. Klein, yes
5 sir.

6 REDIRECT EXAMINATION

7 BY MR. KLEIN:

8 Q. And you said on cross examination that you don't know if
9 there will be a deal if the 2004 agreement is in place and
10 the supposed marketing procedures are not approved, correct?
11 You don't know for sure if there's going to be a deal?

12 A. Correct.

13 Q. Okay now can you tell us is there a greater likelihood,
14 in your opinion, that there will be a deal between Fox and
15 the Dodgers if the 2004 amended agreement is in place as
16 opposed to if the marketing procedures that we're talking
17 about here today are in place?

18 A. I think that the likelihood of Fox being able to reach an
19 agreement for a renewal of the 2004 agreement is more likely
20 under the existing rights and less likely under the amended
21 rights based on the last version I saw.

22 Q. Now when you say its more likely under the 2004 amended
23 agreement as opposed to the marketing procedures agreement
24 before the Court today, are we talking about a little more
25 likely, a lot more likely, very, very substantially more

1 likely? Can you give some understanding of that?

2 A. I would say significantly more likely. It's not a
3 guarantee. I mean as I mentioned there is no guarantee that
4 we'll have the rights at the end of either agreement. But I
5 do believe that if we go through this process with the new
6 owners as is usually the case in a right's deal of a team
7 that's being sold that we can reach an agreement with the new
8 owner as has been our history in the past.

9 Q. And that was the 95% number you gave before?

10 A. Yes.

11 Q. Now there was some talk about the fact that the word
12 binding had been removed from the 2004 amended agreement, do
13 you recall that?

14 A. Yes.

15 Q. And you negotiated a 180 of these agreements, right?

16 A. Yes.

17 Q. You're familiar with the wording of these agreements? In
18 fact, you negotiate the wordings of these agreements, right?

19 A. Well I try not to get down to specific words, but I'm
20 involved, yes.

21 MR. BENNETT: Objection; relevance. The cross
22 examination was limited to this agreement. I didn't ask
23 about anybody else's agreements. This is beyond the scope of
24 cross.

25 MR. KLEIN: Your Honor, I think his experience in

1 a 180 agreements certainly has relevance on his ability to
2 understand and read those agreements.

3 MR. BENNETT: That was correct.

4 THE COURT: Right, I'll sustain the objection.

5 BY MR. KLEIN:

6 Q. Based on your background, your experience does the
7 absence of the word binding in the 2004 amended agreement
8 change the meaning of the agreement for you as if -- from
9 what it mean if the word binding was in there?

10 MR. BENNETT: Your Honor this calls for an
11 assumption but this is also beyond the scope of cross.

12 MR. KLEIN: Your Honor --

13 MR. BENNETT: I didn't ask him what he thought.

14 THE COURT: Well we went into the word binding on
15 cross and I'll overrule that objection.

16 BY MR. KLEIN:

17 Q. You can answer.

18 A. I'm not an attorney. I never pretended to be one. I
19 know that when someone makes an offer to us as part of a
20 right of first refusal, right of last refusal, whatever
21 refusal, an offer is put to Fox and we accept it we have a
22 binding deal. Now, again, I'm not an attorney and I'll leave
23 that for others to argue, but my expectation at that point
24 just as much as when I shake somebody's hand is we have a
25 deal.

1 Q. Did you ever have a doubt in your mind when you did read
2 the 2004 amended agreement as to whether it was binding?

3 A. No. Well the deal is clearly binding. The question is
4 whether or not the right of first refusal offer is binding.
5 And there was no doubt in my mind. It was not something that
6 stuck out as a flare and said, you know, look out.

7 Q. Now there was some talk about how much money the Dodgers
8 would make with respect, well how much money Fox would make
9 with respect to 2012 and 2013. You were shown the \$30 some
10 odd million dollar figure, do you recall that?

11 A. Correct.

12 Q. And you said, let me withdraw that. In 2012 do you know
13 if Prime Ticket is expected to make money?

14 A. Yes I do.

15 Q. How much?

16 A. Roughly \$70 million dollars and change.

17 Q. In 2013 do you know if Prime Ticket is expected to make
18 money?

19 A. That's not a number I requested, but based on the fact
20 that these right's fees are only going up about, I don't know
21 it looks like 5% more or less and knowing where their other
22 right's agreements are in their term for Prime Ticket not Fox
23 Sports West, I would assume that they'll probably see a 5 to
24 7% increase in that as well. The operating profit of Prime
25 Ticket so, go from \$70 million to \$73,500,000.00.

1 Q. And based on your knowledge and experience does the
2 Dodger -- having the Dodger contract for those years 2012 and
3 2013 play -- can I finish the question? Does that play any
4 role in the expected profits for Prime Ticket in those years?

5 MR. BENNETT: Objection, Your Honor; at least as
6 far as '13 this witness testified that he was making
7 assumptions, so there's clearly no foundation based upon the
8 past, the witness's past answer for anything about '13.

9 THE COURT: Yes Mr. Klein.

10 MR. KLEIN: Okay I'll just leave it for 2012,
11 Your Honor.

12 MR. BENNETT: He said '12 is also a forecast year.
13 He said he doesn't know anything about that either.

14 MR. KLEIN: I'll do it 2011.

15 BY MR. KLEIN:

16 Q. For 2011 how much did Prime Ticket make?

17 A. \$70 million dollars. We have a fiscal year that runs
18 June to June so it crosses multiple years. So 11, 12
19 whatever time you want to call it. The current fiscal year
20 which expires June 30th, 2012 Prime Ticket will make \$70
21 million dollars.

22 Q. What part having the Dodger contract play in that?

23 A. It's a significant part.

24 Q. The most significant part? Is there any other in single
25 sports team that --

1 A. There's no single other sports team that is that I would
2 say creates as much value that allows Prime Ticket to make
3 those profits as the Dodgers do.

4 Q. And I just want to clear something up. When you
5 testified on cross you talked about the fact that you, the
6 2004 agreement would have been worth less if and I think you
7 might have said no back end rights. Were you talking about
8 just the back end rights that are now in the amended
9 marketing procedures? If they had been in that agreement, is
10 that where you get the 25% less?

11 A. Yes.

12 Q. And you were also asked why didn't you try to pull some
13 comparatives to figure out if that 25% was the correct
14 number. Why didn't you do that?

15 A. I didn't feel it was necessary. I've done enough of
16 these deals where I know the value of certain back end
17 rights. And, you know, people can question my valuations all
18 they want, I'm going to stick by them. I don't know anybody
19 who's done as many of them as I have.

20 MR. KLEIN: Just one moment, Your Honor.

21 THE COURT: Of course, Mr. Klein.

22 MR. KLEIN: Thank you very much, Your Honor. I
23 have no further questions for the witness.

24 THE COURT: All right thank you, Mr. Klein. Any
25 recall?

1 MR. BENNETT: None.

2 THE COURT: All right, Mr. Thompson, thank you,
3 sir.

4 MR. THOMPSON: Thank you, Your Honor.

5 THE COURT: You can be excused.

6 MR. KLEIN: Your Honor, may the witness be
7 excused?

8 THE COURT: Yes; yes. I did invite him to be
9 excused. Thank you, Mr. Klein. Yes, Mr. Levinson are we?

10 MR. LEVINSON: None for us, Your Honor.

11 THE COURT: No rebuttal?

12 MR. LEVINSON: No rebuttal, Your Honor.

13 THE COURT: Okay, all right. So I guess the
14 evidence -- Mr. Werkheiser, I'm sorry.

15 MR. WERKHEISER: Your Honor, we have some
16 exhibits to offer for the record.

17 THE COURT: Yes, let's clean up the record here.

18 MR. WERKHEISER: To offer for the record. We're
19 not moving ours in as we went along, so I think some of them
20 are duplicative.

21 THE COURT: Are you going from your book?

22 MR. WERKHEISER: From our book; yes, Your Honor.
23 You ready?

24 THE COURT: I'm ready, yes.

25 MR. WERKHEISER: So we would move in Exhibit 1,

1 the telecast right's agreement.

2 MR. LEVINSON: I think it's already in evidence
3 as our Exhibit 1, so I'm not sure. I think having one is
4 plenty.

5 MR. WERKHEISER: Yeah I mean if you want I'll try
6 to edit to anticipate ones that you've already moved in.

7 THE COURT: Do you want to move it in any event?

8 MR. WERKHEISER: We're fine to have Debtors'
9 Exhibit of the telecast agreement, Your Honor.

10 THE COURT: That makes sense.

11 MR. LEVINSON: I think that's the one everybody's
12 been looking at, Your Honor --

13 THE COURT: Yes, of course with the amendment
14 attached.

15 MR. LEVINSON: Yes.

16 MR. WERKHEISER: Yes, Your Honor. We move in
17 Exhibit 3, the Court entity structure.

18 MR. LEVINSON: No objection to Exhibit 3, Your
19 Honor.

20 MR. WERKHEISER: We move in Exhibit 4, binding
21 term sheet dated November 3rd, 2011 for the divorce settlement
22 of McCourt.

23 MR. LEVINSON: Objection, Your Honor; lack of
24 foundation and relevance.

25 MR. WERKHEISER: Your Honor, as to the relevance

1 objection we've had a lot of discussion about the April 30th,
2 2012 date which has found its way into the MLB settlement and
3 not coincidentally appeared to this document. I think it is
4 relevant and Your Honor can give it whatever weight is
5 appropriate in making a determination. As far as foundation,
6 I do have a certified copy of that particular document if
7 there's a question as to foundation or authenticity.

8 THE COURT: You know, I'm going to admit the
9 document for purposes of the date of the document as much as
10 anything. Is that basically what your purpose is?

11 MR. WERKHEISER: There is that and then it also
12 does indicate an obligation on Mr. McCourt's part to pay a
13 \$131 million dollars by April 30th, 2012 and puts him at risk
14 of having to sell the team if he hadn't made the separate
15 commitment.

16 MR. LEVINSON: Again, Your Honor, I mean really
17 the lack of foundation here. It's about authenticity. I
18 didn't object on the authenticity. It's the lack of
19 foundation as to, if anything, having to do with this
20 particular document. All that they've shown is it was filed
21 in a Courtroom without any context and they haven't put on a
22 witness that can say anything about, so we would continue to
23 object to it.

24 MR. WERKHEISER: Your Honor, we can say the same
25 thing about the MLB agreement.

1 THE COURT: I will admit Exhibit 4.

2 (Fox's Exhibit #4 received into evidence).

3 MR. WERKHEISER: Thank you, Your Honor. Your
4 Honor, Exhibits 5, 6, 7, 8, 9, 10 are all a series of various
5 financial projections and valuation presentations that were
6 made relative to evaluate Dodger entities and the team.

7 THE COURT: My recollection is the witness didn't
8 know anything about these documents?

9 MR. LEVINSON: Yeah and that is correct and it
10 was only with respect to the ones that were shown. Not all
11 of these were even shown and as to the ones that were shown,
12 the witness said he never seen them before, so we object.

13 MR. WERKHEISER: Well they all came from the
14 Debtors, Your Honor, from their production and presumably
15 maintained by the Debtors in the ordinary course of business.
16 We, obviously, not had an opportunity for discovery as would
17 be traditional before we would offer documents like this.

18 MR. LEVINSON: That's not correct, Your Honor.
19 They got these documents through discovery and had an
20 opportunity through Your Honor's scheduling order originally
21 and chose not to pursue it. So, again, Your Honor, with
22 respect to these documents we would object to their
23 admission.

24 THE COURT: Yeah I'm going to sustain the
25 objection of these documents and for purposes of this

1 hearing, I don't that they, they never substantiated. I
2 don't know really what purpose they would serve so.

3 MR. WERKHEISER: Your Honor, they go to valuation
4 and what is the value of the team asset in here which has
5 been put at issue by their motion and the question whether
6 they really need the relief that they're seeking.

7 MR. LEVINSON: Your Honor, there's again just no
8 foundation with respect to any of this.

9 THE COURT: There's no foundation here, Mr.
10 Werkheiser, I'm sorry. This isn't a valuation hearing. So
11 I'm going to sustain the objection to these documents.

12 MR. WERKHEISER: Understood, Your Honor. Your
13 Honor, we offer the declaration of Jeffrey J. Ingram in
14 support of the first day petitions. Mr. Ingram is an
15 officer of the Debtors.

16 MR. LEVINSON: Objection, Your Honor. Again, a)
17 relevance and b) I don't think that, you know, simply the
18 fact that he's an officer entitles them to submit a
19 declaration. There's no federal rule of evidence that
20 applies to declaration. This isn't a deposition, Your Honor.

21 MR. WERKHEISER: If I may finish my proffer, Your
22 Honor.

23 THE COURT: Yes, please.

24 MR. WERKHEISER: Mr. Ingram testified to among
25 other things the solvency of the Debtors and if at the time

1 of the filing as well as -- well I'll just leave it at that,
2 Your Honor. And we asked to have Mr. Ingram here as a
3 witness today. Your Honor made a ruling limiting testimony
4 to the experts, so we've not been able to ask him directly.
5 He's not available.

6 THE COURT: I will admit it.

7 MR. WERKHEISER: Thank you, Your Honor. Your
8 Honor, the next item is Fox Exhibit 12. That's the June 28th
9 transcript. I believe that's a statement of counsel from LAD
10 making an admission as to solvency. We'd ask that that be
11 admitted to the record as well. It is a statement against
12 interest by a party opponent.

13 MR. LEVINSON: Objection, Your Honor. I, a)
14 again I don't think it fits within that particular rule of
15 evidence and, b) it's just a transcript of counsel arguing.
16 I don't know what possibly this would have to do with respect
17 to the issue.

18 MR. WERKHEISER: Counsel made an admission of --
19 I'm sorry I didn't mean to cut you off.

20 THE COURT: No, go ahead.

21 UNKNOWN: I'm available, why didn't they call me.

22 THE COURT: I would say look -- I can, can't I
23 take judicial notice of all of these?

24 MR. WERKHEISER: I think Your Honor can. And if
25 you want to receive it that way, that would be fine by us.

1 MR. LEVINSON: That'd be fine, Your Honor.

2 THE COURT: As opposed to actually admitting it
3 as evidence, a piece of evidence, yes.

4 MR. LEVINSON: And that answered that question,
5 Your Honor.

6 MR. WERKHEISER: Your Honor, Exhibit 13 is
7 testimony of Mr. Ingram from the first -- from, I'm sorry,
8 the July 20th hearing. The proffer of what he is discussing
9 was the Dodgers pre-filing plan I believe in 2010 to develop
10 their own RSN and their intention to try to do that in
11 conformity with the deadlines and the Fox telecast agreement.

12 MR. LEVINSON: Your Honor, I thought that the
13 judicial notice would apply to all the transcripts. There's
14 five here, so; 12, 13, 14 to 15, 16, we have no objection to
15 Your Honor taking judicial notice.

16 MR. WERKHEISER: To be clear, though, that that
17 will be evidence for the record that Your Honor can consider
18 in connection with ruling on this motion or if there's a
19 subsequent appeal.

20 THE COURT: This portion of that transcript is
21 the proffer?

22 MR. WERKHEISER: It was Mr. Ingram's direct or,
23 excuse me, testimony -- I don't recall whether it was direct
24 or cross. It's direct, Your Honor.

25 MR. LEVINSON: I'm not sure. I mean normally,

1 Your Honor, when you're offering this kind of testimony it's
2 in the context of a prior inconsistent statement when you
3 have a witness on the stand. I mean there's a specific
4 federal rule of evidence that applies here. To shortcut
5 this, Your Honor, you suggested judicial notice. We're fine
6 with that, but we're objecting with respect to whatever
7 admissibility they're seeking. Again, Your Honor can look at
8 it and take judicial notice, that's fine, Your Honor.

9 MR. WERKHEISER: Again, so long as judicial
10 notice is going to be sufficient for it to allow, become part
11 of the evidentiary record in connection with this hearing so
12 that it can have some probative effect, we're fine with it
13 coming in that way, Your Honor.

14 THE COURT: Well I think that is what Mr.
15 Levinson is opposed to is having it as.

16 MR. LEVINSON: Well Your Honor can certainly --
17 you know, to the extent Your Honor takes judicial notice of
18 it, Your Honor will take judicial notice. It will be in the
19 record, but to the extent that they're trying to ascribe some
20 additional evidentiary value to it that's a different story,
21 and so that we would object to, but we don't object to Your
22 Honor taking judicial notice.

23 MR. WERKHEISER: Your Honor, this is testimony of
24 a witness that we sought to have here today. The Debtors
25 opposed and argued that the record should be limited. They

1 made the witness unavailable to us and so we are simply
2 trying to rely on the prior testimony in the same proceeding
3 of this witness.

4 MR. LEVINSON: I think this was the DIP hearing,
5 Your Honor. Number 13 was from the DIP hearing. It wasn't
6 from this proceeding.

7 MR. WERKHEISER: I'm sorry, the same case, Your
8 Honor.

9 THE COURT: Let's move on and let me look at this
10 and reserve ruling while you're proceeding, Mr. Werkheiser.

11 MR. WERKHEISER: Thank you, Your Honor. Again, I
12 think Your Honor I would accept that because of the statement
13 of counsel that tab, Exhibit 14 and 15 -- there's also
14 statement of counsel, yes it is -- can come in through
15 judicial notice. The point there is counsel is admitting
16 solvency.

17 THE COURT: Okay.

18 MR. WERKHEISER: Your Honor, that also applies to
19 Tab 16, I'm assuming there is no objection to, Your Honor
20 considering that.

21 THE COURT: And I'm going to admit Exhibit 13.
22 That was testimony of a witness who was unavailable to
23 testify today, and I will accept that as evidence, as prior
24 testimony in this Courtroom.

25 (Fox's Exhibit 13 received into evidence)

1 MR. WERKHEISER: Thank you, Your Honor. Your
2 Honor, I think that brings us to Exhibit 17. That was the
3 offer letter dated August 30th, 2011 and this was examined
4 with respect to that.

5 MR. LEVINSON: No objection, Your Honor.

6 THE COURT: It's admitted

7 (Fox Exhibit #17 received into evidence)

8 MR. WERKHEISER: Exhibit 18, Your Honor, is the
9 joint press release of Major League Baseball and the Dodgers
10 did in November 2nd, 2011.

11 MR. LEVINSON: No objection to 18, Your Honor.

12 THE COURT: All right.

13 (Fox Exhibit #18 received into evidence)

14 MR. WERKHEISER: Exhibit 19, Your Honor, is a
15 news story that was retrieved from the Dodgers' website that
16 announced the finalization of a 8 year \$160 million dollar
17 deal with Matt Kemp.

18 MR. LEVINSON: I don't know where Mr. Stone went,
19 but according to Mr. Stone this is hearsay, so I will object.

20 MR. WERKHEISER: Your Honor, it comes from their
21 own website.

22 THE COURT: Well --

23 MR. LEVINSON: It's hearsay, Your Honor.

24 THE COURT: I'm going to sustain the objection.
25 That will not be admitted.

1 MR. WERKHEISER: Your Honor, item 20 is an income
2 and expense declaration filed about Mr. McCourt in connection
3 with the divorce proceeding. The relevance here is obviously
4 one of our positions is that this is being connected to Mr.
5 McCourt's benefit and not for the benefit of the other
6 constituents.

7 MR. LEVINSON: Object on foundation, grounds and
8 relevance. I'm assuming that he has an authenticated copy so
9 assuming that's the --

10 THE COURT: But that's not the issue.

11 MR. LEVINSON: -- I've never seen this exhibit.

12 THE COURT: All right I'm not going to admit that
13 document.

14 MR. WERKHEISER: Your Honor, item 21 is the order
15 to show cause document, but the relevant portion of it that
16 we seek to have admitted is the declaration of Frank H.
17 McCourt. Again, a witness that we sought to have here today,
18 but we were precluded from doing so. And the relevance of
19 this, and this was a Court filed document, the relevance of
20 this is Mr. McCourt is stating that Blue Landco is his
21 primary source of income and that he needs to have an adjust
22 -- and he's doing asking for an adjustment of his support
23 obligation. And, again, it blusters our theory that there's
24 not bankruptcy purpose here. That the reason for these
25 actions are to benefit Mr. McCourt personally.

1 MR. LEVINSON: I'm, again, Your Honor, object to
2 foundation. I'm going to object on grounds of lack of
3 relevance. And, here, this particular declaration unlike the
4 testimony of Mr. Ingram in this proceeding, this is just a
5 declaration from somewhere else.

6 THE COURT: Yeah I will sustain that objection.

7 MR. WERKHEISER: Item 22, Your Honor, again, is a
8 financial statement from Mr. McCourt filed in connection with
9 the divorce proceeding. I'll incorporate my prior
10 statements in support of similar exhibits. I expect there's
11 an objection.

12 MR. LEVINSON: I object on lack of foundation and
13 as to relevance.

14 THE COURT: Sustained.

15 MR. WERKHEISER: Your Honor, I would also offer
16 the declaration, and these were included -- they were not in
17 our binder -- but they were included in the agenda materials
18 transmitted to Your Honor, the declaration of Edwin Desser
19 which is docket item 836 that we filed on November 24th, 2011
20 and the declaration of Bob Thompson, docket item 837 also
21 filed on the same date. I'm sorry I can do that
22 individually. Why don't we do Mr. Desser first.

23 MR. LEVINSON: Yeah objection, Your Honor. I
24 know they were the subject of questioning, but that's
25 obviously different context. Here, they're seeking -- those

1 were prior to establish prior inconsistent statements of
2 witnesses that were cross examining who were testifying here
3 in trial. Here, they're offering it for the affirmative
4 purpose in support of their case, so we would object to the
5 admissibility of both exhibits of both of those two exhibits.

6 MR. WERKHEISER: Your Honor, I mean in some
7 degree this is duplicative, but Mr. Desser was here. He
8 testified for hours. He was subject to cross examination for
9 more hours. None of the reasons that would normally warrant
10 keeping an out of Court statement out of the record would
11 apply here.

12 MR. LEVINSON: Your Honor, the witness was here
13 and testified and they had every opportunity to ask whatever
14 questions they wanted to on direct examination. And so and,
15 in fact, I want to say maybe even object it in terms of going
16 outside the scope of the cross or of the direct at certain
17 times, so I would object to the admissibility of those
18 declarations.

19 THE COURT: We do have the testimony. The
20 gentlemen were here. I will sustain those objections.

21 MR. WERKHEISER: Your Honor, we also move to
22 introduce the Cohen declaration which is tab 2 in the
23 Debtors' exhibit binder. Again, this is something they filed
24 in connection with their own motion and included in their own
25 exhibit binder. It appears at docket item 444 on the Court's

1 docket. Mr. Cohen testifies, to among other things, the
2 expected solvency and lack of any sort of liquidity issue had
3 they done a deal like the Fox deal immediately before the
4 bankruptcy.

5 MR. LEVINSON: Objection, Your Honor, these are
6 expert witnesses, although we did include the declarations in
7 our binder. Ultimately, we decided to put the live testimony
8 on, which we did. With respect to Mr. Coleman, with respect
9 to Mr. Cohen we didn't call him. They're our experts and so
10 there's no basis on which they should be entitled to offer
11 our declarations, our expert declarations so we would object
12 to their admissibility.

13 MR. WERKHEISER: Your Honor, they offered it in
14 support of their motion. They filed it in connection with
15 their motion. It constitutes admissions by a party opponent
16 as to value which is a relevant issue in a matter of
17 litigating. I just simply don't see the basis to keep it
18 out, Your Honor.

19 THE COURT: It's referred to in your moving
20 papers.

21 MR. LEVINSON: It is --

22 THE COURT: And relied upon.

23 MR. LEVINSON: Yeah in our original moving papers
24 not -- yes, but --

25 THE COURT: When you say the original you don't

1 mean the amended motion?

2 MR. LEVINSON: They were actually they were
3 referred also in the amended motion.

4 THE COURT: I'm going to admit those two the --

5 MR. WERKHEISER: We offer just the Cohen
6 declaration.

7 THE COURT: Oh I'm sorry, Mr. Werkheiser. All
8 right that is admitted.

9 (Fox Exhibit, Declaration of Cohen received into evidence)

10 MR. WERKHEISER: Thank you, Your Honor. Let me
11 just make sure I haven't missed any.

12 THE COURT: And then I'll make -- that will make
13 Fox 26 by the way, the Cohen.

14 MR. WERKHEISER: Thank you, Your Honor. Your
15 Honor, I'm not sure if the record is clear whether we had a
16 ruling on Thompson. I talked about it.

17 THE COURT: Yes I did I --

18 MR. WERKHEISER: I probably confused everybody
19 talking about it at the same as Mr. Dessser's declaration.

20 THE COURT: I sustained that objection; I'm
21 sorry.

22 MR. WERKHEISER: Okay.

23 THE COURT: Yes I did.

24 MR. WERKHEISER: All right. I think that
25 concludes our exhibits for the record, Your Honor.

1 THE COURT: All right.

2 MR. WERKHEISER: Subject to Your Honor keeping
3 various matters out and reserving our rights with respect to
4 those rulings.

5 THE COURT: I assume we want to go to argument.

6 MR. BENNETT: Yes, Your Honor and actually given
7 that I want to split mine and given that I think Your Honor
8 wants to because I want to deal with my affirmative case. I
9 propose you adopt time limits and I'll consent to time limits
10 so long as they're scrupulously and rigorously enforced.

11 THE COURT: Yes, I will rigorously enforce them
12 and give notice of them, but let me do this. Rather than put
13 Mr. Werkheiser or Fox on the spot let's take a 10 minute
14 recess. You can -- for other purposes obviously, but during
15 that recess you can discuss those time limits and whether or
16 not, you know, they are workable for both sides.

17 MR. BENNETT: How much time do you have and want
18 to devote to this?

19 THE COURT: Well I would say, you know, I have --
20 I hate to tell you this I'm going to regret it, but I have
21 tonight until 6:30.

22 MR. BENNETT: I think that will be more than
23 adequate, Your Honor.

24 THE COURT: And the guards, you know, we're on
25 this budget crunch and the guards have to leave by 7:00. We

1 can all pitch in, you know, and probably pay overtime.

2 MR. BENNETT: So the maximum is 45 minutes each.

3 THE COURT: It will be a little more than that,
4 but roughly yes.

5 MR. WERKHEISER: That sounds fine, Your Honor,
6 thank you.

7 THE COURT: Let's stand in recess for 10 minutes.

8 (Recess 4:43:38 to 4:54:06)

9 THE CLERK: Please rise.

10 THE COURT: All right, everyone, thank you.
11 Please be seated. And have you discussed timing and --

12 MR. BENNETT: Okay what we've decided is 40 and
13 40, 10 for Mr. Marinuzzi for the Creditor's Committee. What
14 I propose was is that I would 20 in front, 20 in the back. I
15 think Mr. Werkheiser wants to do a sur reply; split his time
16 and have a sur reply. If that's what Your Honor wants; it's
17 a little unusual, but I'm amenable today.

18 THE COURT: All right that's fine. How would you
19 like to split yours 30 and 10 or --

20 MR. WERKHEISER: Thirty and 10 was what I was
21 thinking, Your Honor, thank you.

22 THE COURT: Okay.

23 THE COURT: And, Mr. Marinuzzi, if you'll argue
24 obviously before Mr. Werkheiser argues.

25 MR. MARINUZZI: Of course, Your Honor.

1 THE COURT: Okay, good. All right, Mr. Bennett.

2 MR. BENNETT: If I was a carpenter I would build
3 a little ledge over here. You can't put anything --

4 THE COURT: Oh we'll take care -- I'll get that
5 fixed. We'll call it the Bennett ledge.

6 MR. BENNETT: That's probably would make me, you
7 know, held to a higher esteem in Delaware than anything else
8 we've done here.

9 THE COURT: Okay.

10 MR. BENNETT: Okay I want to make this as brief
11 as possible and I'm going to focus on what I think are the
12 central issues. I do want to say, Your Honor, if I would
13 focus you on our papers the place I would focus on is our
14 reply papers where we discuss a lot of the cases and so
15 compacting I'm going to skip over that. But we're going to
16 talk about on this part the best interest of the estate.

17 And the best interest of the estate has two
18 components in which I'm going to fit I think most of
19 everything that we heard today. On the one hand is what's to
20 be gained. And then on the other hand is what are the
21 potential losses. And Your Honor heard extensive testimony
22 about both of those things.

23 But first I want to say that Your Honor commented
24 yesterday about an irony connected to the current situation
25 and I have another one, and I think it's even more

1 pronounced. It's the irony in a counterparty, Fox is a
2 counterparty with the Debtors in a business transaction in a
3 potential new business transaction. And they are claiming
4 that some action it's determined to resist by the Debtors is
5 not in the best interest of the estate or an appropriate
6 business judgment of the Debtors. And they do that when the
7 Creditor's Committee is sitting here which ought to be
8 sitting in the right position to make that determination has
9 said therefore they're looked at it. They think it's
10 reasonable.

11 So we have Fox saying that it will really suffer
12 if the marketing procedures are implemented, but it's not in
13 the Debtors' best interest. Those two things cannot be true.
14 Either it's in the Debtors best interest and its bad for Fox
15 or it's in -- it's possible it's in Debtors best interest and
16 it's not bad for Fox at all. But it's not really possible
17 okay for the Debtors to suffer and Fox to suffer. That one
18 position could never be sustained.

19 And so it's partly amusing when we hear a lot of
20 testimony about how this great would be for a future owner
21 and the benefits should go there instead of the current
22 estate. And how great this would be for the fans as if they
23 know how money would be used by a future owner. And it's --
24 and then, of course, they've got all kinds of comments about
25 my estate. And so when evaluating everything that Fox has to

1 say about best interest remember where they stand and where
2 they sit. It's very informative.

3 The law, of course, is that a Debtor that files
4 in good faith and I'm not going to go into that until reply
5 if I have to -- files in good faith is supposed to maximize
6 value. And it's common sense, as we said, in our opening
7 statements and in Mr. Coleman's testimony that improving a
8 Debtor and its business will increase its value. Mr.
9 Coleman's testimony was clear the marketing procedures will
10 benefit the estate. By the way, the first declaration filed
11 by Mr. Desser was also clear the best way to get maximum
12 value out of media rights is to somehow get them exposed to a
13 competitive marketplace. I'm paraphrasing; those are not
14 exact words. That's their witness, not our witness.

15 So we've established that the new telecast
16 right's deal will improve the business and financial
17 condition of L.A. Dodgers. That was not something that was
18 opposed effectively. They said, at most, that you might be
19 able to improve the business even more if you wait because
20 right fees will go up. We'll talk about that more in a
21 second. Most of the complaint is the idea that equity can't
22 benefit from use of bankruptcy powers to improve the business
23 and improve values.

24 I said in opening statement, I want to repeat it
25 now so that Your Honor doesn't forget it, but I think it's a

1 really important point. All of Fox's rhetoric skips a step.
2 Their story is you're doing this so you can get more money
3 from Fox and hand it to Frank McCourt. That's their story;
4 that's their imagery. Nothing could be further from what's
5 going on here.

6 What is happening here is the Debtors are trying
7 to do a better rights deal. The Debtors would like to see
8 the \$100 million dollars a month in right's payments bolted
9 down for the years 14, 15, 16 with escalators, you know,
10 going on. That money is going to come to the team in the
11 future. All other benefits from the contract is either going
12 to go to the team or to a Debtor affiliate, not going outside
13 a Debtor affiliate of the team.

14 Then there's the next step because someone is
15 going to look at this stuff and they're going to decide what
16 to pay for it. They're going to reach into their pocket and
17 pay for it. That money can go all kinds of different places.
18 But the money that is going to be raised by reason of all of
19 this is going to go to the Dodgers, the Dodgers' estate, and
20 to the reorganized business, if we be so lucky to get there
21 from here. That someone will pay more is recognition that
22 the business improvement is really working. It's not a bad
23 thing. It's a good thing. It's effectively a seal of
24 approval.

25 And as I said before, the very best evidence Your

1 Honor is going to take judicial notice of lots of things that
2 have been happening in this case. Your Honor should also
3 take judicial notice about the fact that this motion was
4 filed before a sale was on our agenda. This motion was filed
5 at a time when a sale was the last priority of the Debtors in
6 possession. And it has been carried through the entire
7 process and is being continued to be pursued after there's an
8 agreement for a sale.

9 So the entire assertion that this is number one,
10 something to do with the sale solely; we agree. It's going
11 to help the sale process because it's going to make things
12 clear, but what we were doing is improving the Debtors and
13 whether it be ultimately to get that sale of approval of a
14 higher purchase price.

15 THE COURT: As I recall the, your effort to
16 market the telecast rights was to avoid a sale.

17 MR. BENNETT: Exactly, Your Honor. It was to fix
18 the business so much that a sale would not be necessary. Now
19 we have to fix and we're going to fix the business and have
20 to sell it anyway. No one should think it's the first
21 choice, but it's still part of the same program.

22 I'm not going to spend time dwelling on the case
23 law. It's cited in our reply. It's dealt with in our reply.
24 And I'm just going to pause to say that numerous cases say
25 that solvency on a value basis is not an indication of bad

1 faith. I said before it's got to be solvency on a value
2 basis and no financial distress. Those words I wish they
3 will someday describe us. They do not describe us yet.

4 There's also a little bit in the rhetoric again
5 about the identity of the person whose going to get the money
6 matters. They're technically wrong. They keep talking all
7 this money is going to Frank McCourt. That he's the seller.
8 He's not; it's an entity. The entities have creditors and
9 other interests too. It's a small point. I don't want to
10 belabor it, but it is a manner in which some of the PR
11 surrounding the case is being -- someone is attempting to use
12 it to influence Your Honor's decision for all of the wrong
13 reasons.

14 There's another benefit and we've been saying
15 this in our papers for a long time and Mr. Coleman touched on
16 it as well in his testimony and that is reducing risk. Every
17 Fox witness is confident that the value is going to go up;
18 that the value cannot go down. Your Honor and I were both
19 alive in 2003, 2004, 2005 and the first half of 2006. And at
20 some point in 2006 or early 2007 was the first time people
21 were willing to admit that residential real property could go
22 down. I fear the same thing coming here. I don't know when.
23 But, once again, we are a Debtor in possession. Everyone
24 agrees that things are pretty damn good right now; pardon the
25 expression. And, frankly, it's time to capture us.

1 If there's additional money being left on the
2 table that might be, but it is as likely that prices can go
3 up as prices can go down. And the people who aren't supposed
4 to be taking the risks to get the last incremental dollars
5 are Debtors before Your Honor. So the reckless thing
6 arguably and consistent with Mr. Coleman's testimony would be
7 to sit here and wait to get to try to catch the top of the
8 market or to try to write it up still further. And, Your
9 Honor, in the testimony and in the declarations I think
10 you've seen there's hedging in the words that people use.
11 And when they use hedging words, it means there's real risks
12 that they're not talking about.

13 Now let's turn to the cost side and weighing
14 potential costs. And we say, Your Honor, the cost is zero to
15 very small. And in this category is all of the different
16 things that you've been hearing about today with the most
17 time. First, the negotiation terms that they start with are
18 of questionable value to begin with. You heard the
19 testimony. We went through it very carefully about whether
20 or not Fox today can figure out what's going to happen as a
21 result of the implementation of their terms; one of their
22 most knowledgeable experts. What can they figure out about
23 the future based upon those terms; nothing.

24 At the ends of the examination, I said if you
25 were going to fill in any of this what would you be doing;

1 speculating. I don't remember exactly how the word came out.
2 That was a business conclusion. That word happens to be the
3 same word the Courts have used to eliminate the idea that
4 there were going to be damages for breaches of negotiation
5 provisions. Those damages are termed speculative. Why are
6 they termed speculative? We can talk about the cases. They
7 were given to you. You saw a concrete demonstration about
8 why it is that Courts determine that damages from breaches of
9 negotiation provisions are speculative. You cannot figure
10 out what can happen. You heard Fox's best internal expert
11 could not figure out what was going to happen. And, of
12 course, at the very end he repudiated his entire damage
13 analysis. He just said I don't know how I get there from
14 here, which, frankly, is what a Court would do when
15 confronted with genuine truthful testimony concerning what
16 the situation really is.

17 So and besides that, forgetting that, you have
18 the evidence that the batting average in Los Angeles for this
19 year is zero. We heard what, you know, 90% over a long
20 period of time; 95% over a long period of time. Frankly,
21 Your Honor, that was emblematic for something that happened
22 all day today. The expert witnesses produced by Fox, one in-
23 house expert so not really an expert the we think of an
24 expert; the other somewhat more independent, although he had
25 an interesting sales pitch that he focused on Fox about how

1 he was really personally felt about this case. You know,
2 they were great about generalities.

3 When they were testifying on direct, they had
4 general statements about lots of things that, of course,
5 incapable of being tested. And then when they were tested
6 about the specifics everything started to fall apart, and I
7 mean everything. If I had time we would talk about examples.
8 One of the things that should fix into your mind, Your Honor,
9 is the last witness Mr. Thompson when he threw out this idea
10 that there might be contracts for carriage; contracts between
11 Fox and cable distributors that might be expiring in the very
12 near future and it would, of course, cause damages. Did he
13 know of any; no. Did he check; no. Do you know how many
14 subscribers were affected; no. So the grand broad statements
15 all disintegrated with even the slightest bit of pushing; by
16 the way no discovery; no discovery that happened. Imagine
17 where we would be. How many corrections to the declaration
18 we would have heard if there had been discovery.

19 Okay so we talked about all the different
20 provisions. They're weaker than the ones in the original Fox
21 contract, so I'm going to move on. To begin with, the
22 provisions we're dealing with are just not that strong. Okay
23 secondly, the procedures; all they do is shift in time.
24 There was extensive testimony on that point as well. I told
25 Your Honor the only thing I said in rebuttal at the beginning

1 was if there are changes we need to make we're going to make
2 them. The only change I think we need to make based upon all
3 of the testimony is to make clear there's a 100 games, that
4 it's cable exclusive. We think it's clear already. We will
5 use the exact words. We will fix that.

6 We will accept Your Honor's order on the issue of
7 disclosure. Now it's really interesting disclosure of
8 bidders. There was some testimony that -- Fox may be talking
9 to bidders and it might be different. I would say to Your
10 Honor that if there's an order one way or the other on that,
11 it's the same. Neither side talks to bidders. That would be
12 -- we would live with that just fine. And another approach
13 is to let both sides talk to bidders, but have a carve out
14 that no one talks to competitors who are bidders. That seems
15 reasonable under the circumstances.

16 THE COURT: ESPN, TW and whose the third?

17 MR. BENNETT: ESPN.

18 THE COURT: Thank you.

19 MR. BENNETT: And by the way, the party -- this
20 is important someone representing someone else sent me an e-
21 mail during the hearing. There's Time Warner, which is the
22 person on the list is Time Warner and Time Warner Cable.
23 Time Warner Cable is a different company so we have to be
24 careful if we're going to write an order that if we're trying
25 to capture the entity on the schedule it's Time Warner is the

1 difference.

2 THE COURT: Not Time Warner Cable?

3 MR. BENNETT: Time Warner Cable happens to be the
4 one that did the Lakers, but Time Warner Cable is not the one
5 listed. And I don't know whether that difference is
6 significant for purposes of application of the agreement.
7 I'm only interested in being accurate; that's all.

8 Okay so the other criticisms of the procedures
9 are wrong. As I said before, we're going to make the
10 changes. The binding, you know, in a world where the word
11 binding appeared in one agreement distinguishes one provision
12 for another and then binding disappears. Binding was never
13 part of this -- is not part of the current deal. It's too
14 much in the core of basic contract interpretation. You
15 rarely get it to be this crisp where it was a word used to
16 make a distinction, then the word disappeared entirely. And
17 so it has to be that it had significance that it was removed.

18 THE COURT: What is the significance? I wanted
19 to ask you about that because to me an offer and an
20 acceptance creates a binding agreement.

21 MR. BENNETT: Except here that's never true.
22 There was always baseball approval. And the contention --
23 they tried to make a contention that baseball approval was a
24 formality that happened all the time, and it wasn't a big
25 deal. Well, of course, the only experience that the sport

1 actually knows about is quite the contrary. The only
2 experience that I've lived through is quite the contrary.
3 And so what they're saying is, is that they're saying is well
4 yes it was always conditional upon approval of baseball.
5 They don't want it to be conditional upon approval of
6 baseball and approval of the buyer even though that's a
7 baseball requirement.

8 THE COURT: Right.

9 MR. BENNETT: And by the way, we can manage that
10 in the sale process very well. I'm not really worried about
11 it because I'll get baseball comfortable with what they need
12 to be comfortable with.

13 The point here is that there are two reasons why
14 the additional buyer approval is nothing Fox can complain
15 about. Number one, there was never a requirement of binding.
16 Everybody knew there was going to be conditionality of at
17 least some kind all the time. If they meant to eliminate the
18 conditionality, they knew how to do it. They had the word
19 binding they could have used.

20 Secondly, it turns out that the incremental
21 conditionality or what they contend is incremental
22 conditionality is actually a baseball requirement. So and
23 they testified that baseball they can do whatever they want.
24 And by the way, before Your Honor when they joined baseball's
25 pleadings baseball, of course, said they could do whatever

1 they want and Fox joined that pleading. So it's very, very
2 hard -- it's not going to stop them for Fox to say that
3 you're stuck; that you're stuck on offer and acceptance when
4 they knew baseball approval was required, and they knew that
5 baseball could do whatever they want, and this time what they
6 wanted was to make sure the buyer was on board. That's all
7 there is to that particular issue.

8 And so we think that the terms are right.
9 They're consistent with what the agreement says. That there
10 really isn't a change and that one shouldn't be disturbed.
11 And it would only be the time shift.

12 Okay so next point in the way I think about this
13 is that since -- it's really important. I said this in the
14 opening that the shifting of timing only eliminates the
15 effect of a no-shop provision and that's about one of the
16 most important things. And I want to spend -- this is the
17 only long one I'm going to talk about and I'm going to talk
18 about it a little bit differently that's been discussed in
19 the brief.

20 First of all, Big Rivers; I'm sure you read it.

21 THE COURT: Yes.

22 MR. BENNETT: There are two kinds of cases that
23 are before Your Honor. There are cases that announce several
24 of the bad faith cases that says that this opinion is
25 confined to the facts of this case. They say it. The Judge

1 says I don't want this to be precedential because this is
2 like unusual and different. And then there's Big Rivers
3 where a District Judge says, he recites a whole bunch of
4 facts and then he says this is what I think about no-shops.
5 And he's right. They're not good. And he notes that in
6 Delaware law they're disfavored and in bankruptcy, he's
7 disfavoring them as well.

8 And I do understand that the circumstances that
9 the Court recites up front about it being a sale transaction.
10 It having been negotiated a month or two before the
11 proceeding. Those are all facts that are recited in the fact
12 section. Those facts are not mentioned at all in the section
13 where the Judge is deciding the case. You can't even tell
14 from the opinion whether the provisions relating to the no-
15 shop were effective and not require Bankruptcy Court approval
16 or whether they've been approved in an earlier stage. You
17 can't tell. He doesn't discuss it; not part of his holding.
18 All he said, all he does is confront break ups.

19 And I want to bring two more things into this.
20 One is Mr. Coleman's testimony and he's never seen anything
21 like this before, this long a term, and I haven't either.
22 And I kind of think about this and say how apart is this
23 really and I'm saying to myself that if Your Honor says that
24 these things are okay there's now another tool. For not
25 every kind of contracting party, but many kinds of

1 contracting parties to entrench themselves and hurt unsecured
2 creditors because they can put no-shops to any asset they can
3 think of or no-shops to any asset that's in any way connected
4 to the contract. And if those are valid whose going to lose;
5 everybody involved in a bankruptcy case. And the idea in
6 Section 363 and 1123 that estate assets can be sold, that
7 goes out the window. That's not what we mean.

8 I will say something else, it's kind of one of
9 the most effective disguise liens you can imagine because
10 look at the facts in this case. This no-shop is in a
11 confidential agreement. There's no filing -- it's not like
12 there's on filing. No one's supposed to talk about the
13 agreement with anyone. Why is that okay? We got away from
14 that, I think, many, many years ago. I don't have to say any
15 of this extend Judge McKinley's opinion. It just is
16 additional support things he didn't even think of which,
17 frankly, support the opinion. There is no reason to depart
18 from it. He certainly doesn't invite the Court to restrict
19 it to the specific facts of that case.

20 Clearly, that's something our -- it's
21 interesting. Our opponents want to take that opinion which
22 has no indication that it's supposed to be restricted to
23 facts and restricted to facts, yet they want to take all of
24 the bad faith cases which you really are restricted to the
25 specific facts and apply them here. I think they've got the

1 law exactly backwards.

2 The last point I'm going -- I'm running out of
3 time so I'm going to lump it together; damages. I could have
4 a lot of very, very specific things to say about damages. I
5 will say this. We heard today that none of the claims that
6 have asserted before the Court concerning damages are going
7 to stand up ever because they were not damage models that
8 anyone would ever in a million years accept. The Courts have
9 held that even if you just breach negotiation provisions
10 outright expectancy damages are speculative. Everything you
11 heard about today was expectancy damages except for that
12 crazy cost change theory, which I don't think is recognized
13 by any Court.

14 And so the bottom-line is, is that there isn't
15 going to be a material damage claim. There may well be a
16 zero damage claim and the law I just recited is for
17 eliminating the negotiating rights entirely. All we're doing
18 is shifting them. So there are two ways to get here for the
19 Court. One is to find they're unenforceable under Big
20 Rivers. The other is to say there's no damages and that's
21 the other half of the best interest test. We don't have the
22 -- we're not taking on cataclysmic risk. All we're doing is
23 embarking on a path to maximize value and I've used 20.

24 THE COURT: Thank you; yes, Mr. Marinuzzi.

25 MR. MARINUZZI: Good evening, Your Honor. I'll

1 be brief. It's not always that we agree with the Debtors and
2 their arguments, but tonight I have to say, Your Honor, we
3 do. We think Mr. Bennett's right. We heard two days of
4 testimony on some of the important issues in the case that
5 were raised in Fox's objection, and we agree with Mr.
6 Bennett's conclusions.

7 Now yesterday, Your Honor, I stood up here on
8 behalf of the Committee in support of a process, and I
9 thought the process made sense for a number of reasons. We
10 keep hearing that we're going to get paid in full and
11 unsecured creditors will be unimpaired and it's all great to
12 hear, but as I said yesterday sometimes you're surprised and
13 when you're expecting a hundred cents any surprise is a bad
14 surprise.

15 THE COURT: Yes.

16 MR. MARINUZZI: Mr. Bennett just described the
17 real estate market and the crash in '06 -- well after '06
18 when everybody thought the market was spectacular, we don't
19 know what's going to happen between now and the time this
20 case ends. We don't know what the value of these
21 intellectual property rights might be in a year or two.

22 But we do know that today we heard testimony that
23 was quite different from the alleged significant damage
24 claims that Fox would suffer if the Debtors embarked on this
25 strategy. And that was a, and still remains a concern of the

1 Committee. And I thought a process outlined in the Debtors'
2 papers that allowed us to have a hearing where Your Honor
3 would decide were there damages and were they significant
4 would give us an opportunity to tell the Debtors stop. This
5 doesn't make any sense. You're creating additional claims.
6 It's not clear to us that the value we're going to get from a
7 sale of the team is going to offset that additional damage
8 claim.

9 Now I'm still hopeful. I mean the Committee is
10 still hopeful that at the end of the day we'll have a hundred
11 cents. But this process can only increase value. If the
12 amount of additional claims as we believe it will be based on
13 the testimony we heard today will not be increased by
14 whatever damage claim Fox will assert. For us it's a win/win
15 for the unsecured creditors. It helps ensure that hundred
16 percent recovery.

17 We heard the changes that Mr. Bennett talked
18 about that the Debtors will implement in the process to try
19 to address some of the concerns that Fox raised. From our
20 perspective, the information we learned from the Debtors, the
21 changes they're prepared to make, the testimony from Fox's
22 own witnesses has just made us more convinced that this was
23 the right process and the unsecured creditors remain behind
24 it. Thank you, Your Honor.

25 THE COURT: And if I'm not mistaken, Mr. Marinuzzi,

1 I should have asked Mr. Bennett this, but this is a may
2 approval. In other words if a buyer of the Dodgers comes
3 along and says we're very happy with what the Fox deal is in
4 its present form, that's the deal.

5 MR. MARINUZZI: Correct.

6 THE COURT: Yeah. Okay. Thank you. Mr. Werkheiser.

7 MR. WERKHEISER: Give me just a second here to get
8 set up, Your Honor.

9 THE COURT: The clock has not started.

10 MR. WERKHEISER: Let's see. By my watch it is 5:21
11 p.m.

12 THE COURT: All right.

13 MR. WERKHEISER: Thank you, Your Honor. So obviously
14 appearing on behalf of Fox Sports Prime Ticket, we've covered
15 a lot of ground. What do we know now after two days of
16 testimony? We've had testimony from Mr. Coleman, the
17 Debtors' advisor, who testified that he's never done an M&A
18 deal for a baseball team before, that he's never negotiated a
19 media rights contract for a baseball team before or any
20 sports team, and that he hadn't read a telecast agreement
21 before this deal.

22 We also have unrebutted testimony from Mr. Desser,
23 who has 35 years of experience in the industry and makes his
24 living counseling teams with respect to media rights and
25 telecast rights agreements. And Mr. Thompson, who has done

1 that many years for Fox and testified that he negotiated 180,
2 at least 180 contracts and 85 franchise sales. What have
3 they told us? They told us that every one of these changes
4 that was in the procedures as proposed, and I understand they
5 backed off on some of them now, we'll talk about that, was
6 material. Most critically for the first time in the history
7 of the parties' relationship, any deal is not just subject to
8 MLB approval, it's now subject to approval to a potential
9 team buyer. We don't know who that is. We heard it's
10 possibly a competitor of Fox, we don't know. And the
11 testimony we got today made it very clear that this was
12 tremendously material to Fox that this provision, the end
13 agreement and not the altered. I think Mr. Dessser's
14 testimony was that these rights are practically universal in
15 telecast agreements, excuse me, and that not having backend
16 rights like those that Fox negotiated is basically a non-
17 starter for Fox. And what do we know if Fox would have these
18 rights based on the history what was the testimony?
19 Historically 90 percent by Mr. Dessser, 95 percent by Mr.
20 Thompson of those backend right would contract deals result
21 in a binding agreement. Yet, they want to gut that here.

22 Your Honor, the second piece of course is, and let me
23 just step back, that's the piece they won't acknowledge. If
24 you recall yesterday, my partner, Dave Teklits, tried to get
25 Mr. Coleman to acknowledge that, and he simply just would not

1 admit that an element of the process was to make it subject
2 to a team buyer approval, although it says it in black and
3 white in their documents. And I also, I need to respond to
4 the comment that this is in there because MLB required it.
5 There is nothing in the record to the effect that MLB
6 required it. What their settlement agreement says, Your
7 Honor, it says the decision to enter into the telecast
8 agreement, telecast rights agreement, excuse me, shall be the
9 sole exclusive discretion of the buyer. They stipulated to
10 it, but that's not evidence of who required it or why it's
11 there. They agreed to that, they imposed that condition, but
12 MLB has not put a witness on that said this was the decision
13 of the Commissioner.

14 Your Honor, you heard testimony as well about the
15 damage done by the advancement of the schedule by nearly 11
16 months, and how that disrupts the process that is
17 contemplated by the telecasting agreement backend rights.
18 And I think Mr. Desser called it a marriage, it's designed to
19 prevent cheating and if the parties are not able to do that
20 near the end of the term, then that doesn't work.

21 We heard that testimony about the damaging impact of
22 not having a confidentiality agreement, Your Honor, I
23 understand that has been changed now.

24 And we also heard damaging testimony about, excuse
25 me, testimony about the elimination of the, I call it the

1 apples to apples component of the team final offer. And I
2 understand they've backed up, backed off on this stuff, Your
3 Honor, but these are very intelligent, very savvy people.
4 And I think if it was drafted that way, there as tremendous
5 thought put into it. That wasn't accidental. They knew what
6 they were doing when they put those procedures together.
7 It's changed now because they've been called on it. But
8 there was no accident in that process. Excuse me Your Honor.

9 Let's talk about the issue of how Fox is harmed here.
10 Now, they've glossed over a lot of issues with damages and
11 they've glossed over the fact that the damage testimony was
12 un rebutted. What is going to happen here, is that there's
13 going to be a breach first of the exclusive negotiation
14 provision, then of the right of final team offer provision,
15 and then ultimately a breach of the matching right provision,
16 because all of those now are made subject to the consent of a
17 potential team buyer, among other changes that they did. So
18 you know, to say that this is just an exclusive negotiation
19 provision, and therefore there would never be any damages
20 associated with that, that's not accurate. There are other
21 material backend right provisions that will be breached over
22 and above that. And Mr. Bennett conveniently glosses over
23 the fact that there was testimony today that is un rebutted
24 and I don't think they made any success in knocking it down,
25 Mr. Thompson, when he said, look, if I had to negotiate this

1 agreement again, knowing that it was vulnerable to this sort
2 of attack and somebody could destroy my backend rights by the
3 expediency of filing a chapter 11 petition, I would have
4 reduced the value by 25 percent. That translates into
5 \$75,000,000, Your Honor. And that is the direct damage
6 simply from not honoring backend rights. That's the benefit
7 of the bargain that Fox didn't get. That's not speculative,
8 there's no argument to be made that that's speculative,
9 that's just denial of their benefit of the bargain.

10 Our witnesses also testified to the potential loss
11 of the Prime Ticket RSN and the, excuse me, the waterfall of
12 damages if you will to the enterprise if they lose this, and
13 that number was north of a billion dollars, Your Honor. And
14 then there's of course a question of whether they would honor
15 their obligations of 2012/2013 season, and mitigation, but we
16 can leave that aside for now. That's been addressed in the
17 papers.

18 THE COURT: I thought they said they would.

19 MR. WERKHEISER: Well. So, I have to watch my time.
20 Okay.

21 THE COURT: You've only used seven minutes.

22 MR. WERKHEISER: Thank you, Your Honor. So let's
23 talk about, let's talk about their burden in the bankruptcy.
24 Obviously we've argued in our papers and we've attempted to
25 prove, although the record has been limited, by the witnesses

1 we could bring, the exhibits we could get in, that this is a
2 self-interested transaction, Your Honor, I'll have to apply
3 the entire [indiscernible] standard. Whichever standard you
4 apply, I don't think they've met it here.

5 The only offerings we've had are counsel statements
6 about what he supposes might happen or might not happen. We
7 heard you know Mr., we heard argument that, and I'm sorry,
8 Your Honor, in Mr. Coleman's testimony where he among other
9 things, disputed solvency on the basis that maybe they might
10 have been kicked out of Baseball if they had gone a different
11 route. Well they didn't go a different route, Your Honor,
12 they committed to sell the team. Mr. McCourt committed to
13 sell the team in his divorce settlement with his wife, and
14 then he caused the team, the Debtors to commit to sell the
15 team in their agreement with MLB. So I'm not sure where that
16 is at all relevant to any analysis. More importantly, I
17 don't understand how they can claim to have satisfied their
18 duty of business judgment or entire fairness when they
19 haven't supported the decisions with any valuations
20 whatsoever.

21 And that was the testimony yesterday from Mr.
22 Coleman, Your Honor, that they hadn't done a valuation, they
23 hadn't valued it with the Fox contract in place, and they
24 hadn't valued it trying to market it without the Fox
25 contract. They just went off and took on this enterprise so

1 the consequences be damned and, you know, maybe there's going
2 to be damages, maybe not, but we'll subject Fox to an
3 estimation process that I'll talk about in a minute which is
4 just, cannot happen under the Bankruptcy Code. And we'll do
5 that. So I don't believe, and I don't think they carried
6 their burden.

7 The contrary testimony on that from Mr. Desser was
8 that these are very sophisticated parties that will be
9 looking at these assets, and these are sophisticated parties
10 that have access to advisors like himself. And even Mr.
11 Coleman had to acknowledge on cross that there was lots of
12 information out in the marketplace. He testified yesterday
13 that everybody knows everything, so I think people like Time
14 Warner are obviously, I don't know this, they don't call me,
15 but they must be aware of what's happening. And then again,
16 he testified later on yesterday -- I can give you transcript
17 references, Your Honor, but it's an unofficial transcript, I
18 don't know that they'll be consistent. Mr. Teklits asked him
19 again, but there's a lot of information out there on
20 comparable teams. And the answer, I think there's a lot of
21 information in the marketplace about Baseball, Baseball
22 assets and everything else. So I think we all agree that
23 there's lots of information out there, and sophisticated
24 parties can value the assets without violating Fox's rights.
25 Okay.

1 Let's talk about whether in fact they can do what
2 they want to do, Your Honor. The first problem they have,
3 which Mr. Bennett didn't speak to at all, is the secret
4 settlement. Now, for 34, 35 days, none of us got to see it.
5 The day before the hearing, they file it, but they're the
6 special terms that nobody can still see. What we do know
7 about the settlement is that among other things, it delegates
8 Your Honor's authority to retire Judge Farnan. There's a
9 provision in the settlement that says there are disputes with
10 the sale process. Your Honor doesn't get to deal with them,
11 Judge Farnan deals with them. This is not disputes with
12 respect to the consummated sale, this is the actual
13 disposition of the assets of the estate. That can't be.
14 That's as far as I know unprecedented in a bankruptcy case.

15 THE COURT: I don't think that's -- well I'll ask. I
16 didn't think that was the case about the sale issues. I
17 thought it was the settlement issues that would be resolved,
18 but we'll talk about that.

19 MR. WERKHEISER: Okay. Sure, Your Honor. And just
20 for your reference --

21 THE COURT: Yes.

22 MR. WERKHEISER: -- that provision is on the first
23 page of the settlement, one, two, three, four paragraphs
24 down.

25 THE COURT: Okay.

1 MR. WERKHEISER: And, let's see, any disputes arising
2 in connection with the sale of the team and in connection
3 with that valuation of prospective purchasers are subject to
4 review by the mediator only.

5 MR. BENNETT: Can I just state, I'll give him extra
6 seconds, that's between these parties.

7 MR. WERKHEISER: But that's --

8 MR. BENNETT: [indiscernible]

9 MR. WERKHEISER: But that fundamentally is the point,
10 Your Honor. This is a settlement with a Debtor. And the
11 Debtor is a fiduciary, and the Debtor is subject ultimately
12 to the supervision of this Court for anything that is outside
13 the ordinary course. And that, you know, really runs into
14 the problem with the settlement itself. The settlement, one,
15 was not filed and not disclosed to anybody even in part until
16 the day before the hearing, and they're essentially asking
17 Your Honor to approve this process which is entirely
18 predicated on the settlement without ruling on the settlement
19 which he won't do for another three weeks. And I don't know
20 how the Court can exercise its duties under [indiscernible]
21 request to carefully examine the settlement under those
22 circumstances.

23 THE COURT: Thank goodness I don't have to worry
24 about that today.

25 MR. WERKHEISER: But you do because --

1 THE COURT: Tell me why.

2 MR. WERKHEISER: -- they put the cart before the
3 horse. I mean the procedures are baked into the settlement,
4 and the settlement is baked into the procedures, and so
5 there's, one cannot be approved without considering the
6 other. So I, that alone is a reason that this cannot be
7 approved today, Your Honor.

8 Let's talk about the estimation concept here. Excuse
9 me. Estimation under 502(c), Your Honor, is designed for --

10 THE COURT: Voting purposes.

11 MR. WERKHEISER: -- prepetition claims.

12 THE COURT: Oh.

13 MR. WERKHEISER: If Your Honor is comfortable with
14 that proposition, I won't go into details.

15 THE COURT: No, no, go ahead.

16 MR. WERKHEISER: But section 502(c) says that
17 estimation is for claims, sorry Your Honor, under this
18 section in 502(a) says a claim or interest proof which is
19 filed under section 501 of this title. And then you put the
20 501, and that says a creditor or indentured trustee may file
21 a proof of claim. And a creditor of course we know is
22 defined as someone who holds a claim --

23 THE COURT: That's right.

24 MR. WERKHEISER: -- before the case is filed. So
25 their concept of estimation, Your Honor, is predicated on the

1 idea that they can subject to an estimation process for
2 claims that result from their post-petition breaches of our
3 agreement. And there's no bases in law to do that under
4 502(c).

5 Your Honor, decisions such as *In Re HNRC Dissolution*,
6 371 Br. 210, and *In Re Indian Motorcycle Company*, 261 Br.
7 800, both support that proposition. A handful of courts have
8 considered estimation of administrative claims in a very
9 narrow context of like determining feasibility on a plan.
10 But those courts have stated very explicitly that you cannot
11 cap a claim, you cannot disallow a claim for allowance and
12 distribution in an estate. That is essentially just for
13 planning purposes. So if you're going to have an estimation,
14 you can't do it under the authority of these decisions. And
15 one is *In Re Adelphia*, 341 Br. 415, and the other one is *In*
16 *Re McDonald*, 128 Br. 161. Even if you look within the four
17 corners of 502(c), Your Honor, they can't satisfy it. Your
18 Honor, we dealt with this issue back in the 15375 *Memorial*
19 case where there was [indiscernible] motion filed that Your
20 Horn denied, and if I can approach, I have a copy of that
21 order.

22 THE COURT: Yes sir. Thank you Mr. Werkheiser, thank
23 you.

24 MR. WERKHEISER: And Your Honor was really
25 summarizing law, but in much of the order, but to make it

1 clear the Debtors have the burden of establishing an undue
2 delay in administering a case will result from fixing or
3 liquidating Pepco's claim in that case, through the
4 litigation that was ongoing there, or contemplated. And then
5 Your Honor says later, in the last page of the order, any
6 delay will not [indiscernible] fresh start. Now I'm not
7 suggesting this is all on all fours with *15375 Memorial*, but
8 it's close enough, because here they've committed to sell the
9 team. And the team will be sold no matter what, and
10 estimation is not going to affect that outcome at all.

11 Your Honor, I also need to note a couple of cases
12 that I think significantly restrict the jurisdiction of this
13 Court to conduct estimation proceedings in circumstances like
14 this. In *Orion Pictures*, 4 F3d, 1095 1098-1100, that's a
15 Second Circuit Decision, the Court made very clear that
16 estimation was not permissible when they were seeking in
17 effect to estimate a cure claim under contract, which is I
18 think essentially what they're contemplating here, and that
19 was outside the power of the Bankruptcy Court. And in that
20 context, the Bankruptcy Court was simply supposed to evaluate
21 the Debtors' business judgment on the likelihood that there
22 would be a claim or not, and then the actual liquidation of
23 the cure claim would be left for later in an appropriate
24 proceeding where it could be resolved fully on the merits.
25 There is similar, although they're not exactly the same

1 authority in the Third Circuit, the *Rhone-Paulenc* Decision,
2 249 F.3d 175 at 182. And, Your Honor, I think everyone on
3 their side acknowledges that this whole process falls apart
4 without the estimation, and the estimation is just plainly
5 improper here. Excuse me, Your Honor. We heard that from
6 the Committee's counsel yesterday who said importantly
7 because we didn't want to wind up with the process that
8 resulted in the creation of hundreds of millions of dollars
9 of additional claims that Fox would assert because then we
10 were probably worse off because on this day we wanted
11 estimation built in. Later on Mr. Coleman is being examined,
12 he testifies it's very important to the company, it's
13 important to know what the size of the claim may be. They
14 can't do it, but they propose it just isn't feasible, it's
15 not going to work, Your Honor, under the laws that exist in
16 Third Circuit.

17 Let's talk about materiality, Your Honor, and why
18 there is no basis for what they want to do here. I assume
19 from Mr. Bennett's comments that I don't need to revisit the
20 fact that there's an absence of any specific statutory
21 authority for what they want to do. The only case they rely
22 on is, excuse me, I'm sorry, Your Honor, is *Bay Rivers* and as
23 much as Mr. Bennett would like it to say something different
24 than it does, it says explicitly that the case only involves
25 a situation where somebody entered into a contract shortly

1 before bankruptcy in contemplation of a bankruptcy. The
2 lockup was designed specifically to lock up the assets in
3 bankruptcy and that the Bankruptcy Court found expressly that
4 the agreement was not an enforceable executory contract
5 because it was subject to Court approval. So it was
6 considering all those factors that the Court took issue with
7 the lockup agreement there. Obviously, it's not binding on
8 this Court. It has whatever persuasive value it has. I
9 don't think that's very much at all. And to the extent it
10 comments on Delaware law, I think Your Honor probably knows
11 the Delaware law better than that Judge did. But Delaware
12 law does not say as has been suggested that lockups are
13 impermissible. They are permissible in certain situations
14 and they are permissible when somebody actually makes the
15 record that they're appropriate and that the minority equity
16 holders, usually when it's a Delaware case, are not going to
17 be harmed by the lockup and that it promotes the process.
18 And we've had that evidence here today.

19 Your Honor, they can't do what they want to do
20 because there's nothing in the code that allows them to do
21 it. And I talked about it in the opening, there's no roving
22 equity power that lets them do it. And at minimum to do it
23 they have to show that the changes, if they can find some
24 source in the code to do it, they would at minimum have to
25 show that the changes were not material. All the evidence

1 has been to the contrary. And just to foot a finer point on
2 that, the Third Circuit standard on materiality makes very
3 clear that you don't need to show specific economic harm. It
4 says the resolution of this dispute, this is talking about
5 funding, does not depend on whether a term is economically
6 material, rather the focus is rightly placed on the
7 importance of the term within the overall bargain or
8 exchanges. And we heard from Mr. Desser and Mr. Thompson
9 that these provisions go in virtually every telecast
10 agreement, and that you cannot function in this media rights
11 environment without having these provisions to ensure that
12 the marriage stays together long term. And we also heard
13 that these are negotiated provisions, and that they allow for
14 the limited market check to ensure that everybody can get
15 value in that arrangement. So they accomplish two things.
16 They keep the parties together and they ensure that maximize
17 value is obtained because they get to go look at the market.

18 Let's talk about some of the points that Mr. Bennett
19 has attempted to have made about the elimination of the word
20 binding. So we know binding was in the original version of
21 the agreement, and we know that that agreement was put
22 together at a time that Fox was negotiation with Fox. Then
23 Fox had to negotiate with an independent third party owner of
24 the team, reputed owner of the team and things got
25 renegotiated as one might often happen and provisions got

1 changed as a result of that. But it is not accurate to say
2 that the result of that negotiation was that everything that
3 was binding before became nonbinding. One, when they had the
4 original agreement, Your Honor, it was still subject to MLB
5 approval then, but they used the word binding. So to suggest
6 that something changed because they took binding out doesn't
7 really fit what we know of this case. And two, binding here,
8 the elimination of the word binding is essentially parole
9 evidence of the agreement, Your Honor. The agreement on its
10 face is clear, it's not ambiguous. If you look at section
11 2C, Your Honor, you'll see it has the word, it commits the
12 Los Angeles Dodgers to make a final written offer and then it
13 commits, let's see, one, two, three, four, five times, it
14 uses the word accept. And that's A-C-C-E-P-T in reference to
15 Fox, either accepting or not accepting the offer. So it
16 clearly describes a situation where there's going to be offer
17 and acceptance. And yes, it is presumed and there is other
18 MLB language in the agreement that says we have to go to MLB
19 and ask for their approval, but the unrebutted testimony was
20 that except for this one transaction, just before the
21 petition date with Mr. McCourt, they have never had or
22 affected any problem with obtaining MLB approval in Fox
23 transactions.

24 THE COURT: You've got five minutes by the way.

25 MR. WERKHEISER: Thank you, Your Honor. I do want to

1 speak to one other point, Your Honor. Right. So, this idea
2 was presented in the reply that time is of the essence
3 doesn't really apply here. The idea that the deadlines don't
4 matter because the words time of the essence don't actually
5 appear in our contract. But that's not reflective of
6 California law, Your Honor. And what California law says on
7 the subject is that you just look at the nature of the
8 contract. I told you about the *Johnson vs. Alexander*
9 Decision in our opening. I think an even more applicable
10 decision is *Simons vs. Young*, it's 93 Cal. App. 3d, 170. It
11 was an option contract like in the *Empire Equity's* case that
12 we talked about where the, excuse me, the Court did not allow
13 the Debtor to vary the terms. But this one didn't actually
14 use the words time is of the essence in exercising an option.
15 And the Court goes on at length to talk about the requirement
16 of abiding for the contract terms and that under California
17 law, there is no equitable basis to adjust them because the
18 nature of the contract says that the deadlines are important.
19 And that's true here too, Your Honor. The nature of the
20 contract says that the deadlines are important. All the
21 testimony unrebutted was that these deadlines are important
22 to keeping the parties together and they're important to Fox
23 getting the benefit of its [indiscernible].

24 Let me just make sure I have covered everything else.
25 Your Honor, we've obviously argued no bankruptcy purpose. We

1 cite a bunch of cases to support that proposition. You know,
2 I think two of them that I would refer Your Honor back to
3 before you decide this matter --

4 THE COURT: Please.

5 MR. WERKHEISER: -- are the *Dunes* Decision 245 Br.
6 492 506-512, it has some common issues with this case because
7 you had a debtor that claimed to be in financial distress
8 when it arrived, that had clearly resolved some point into
9 the case, and then the Debtors still tried to use bankruptcy
10 powers to negate the contract rights of really its principal
11 remaining creditor. Of similar important, *In Re Xianzhi Wang*
12 (phonetic), my Chinese is not good, so I probably butchered
13 that, but it's 23 Br. 798, 803, that's a Ninth Circuit case.
14 The Court there says that if the estate is solvent and the
15 unsecured creditors would receive 100 percent of their claim
16 rejection would then accomplish nothing for the unsecured
17 creditors, circumstances rejection by the only imposed
18 unwarranted administrative expenses.

19 Let me then wrap up by responding to a couple of Mr.
20 Bennett's comments. I understand the Committee supports this
21 transaction. I think, and it is not suggesting anybody is
22 breaching fiduciary duties, but, you know, they come out fine
23 under any scenario, and the evidence in the record any
24 scenario short of a total meltdown, the evidence in the
25 record is that they could do the old Fox contract, they could

1 sell the team without disturbing the Fox contract, and
2 they're going to be fine. Mr. Bennett said something
3 curious, it's not possible that the Debtor could suffer, and
4 Fox could suffer. But that scenario is very possible here,
5 because the Debtor could undertake this process and bidders
6 could be deterred by the uncertainty in this process, and by
7 the fact that they have to deal with the team owner who is
8 not going to be involved going forward, and not be willing to
9 participate in the process. And in fact there's an incentive
10 for them to hang back and see what happens, and really wait
11 for the process to fail. So that process could fail. And
12 then Fox could be harmed because they've breached our rights
13 and they've subjected us to a process that we've never
14 expected to be subjected to based on our backend rights.

15 Mr. Bennett talked about what he perceived as the
16 dangers of waiting. But they're not waiting, they're going
17 to sell the team no matter what. And what you heard today is
18 that they will sell the team and the team buyers will show up
19 and that the team buyers will be armed with their information
20 and they'll get access to the Debtors' information and they
21 will have their own advisors and they will be able to value
22 the deal. Because remember we're not selling the media
23 rights separately. That's not what they're proposing.
24 They're just proposing the sale of the team but they want to
25 breach our contract along the way to do that because they

1 perceive somehow that's going to create more value for them.
2 And I think that also goes to Mr. Bennett's comment about
3 reducing risks. Again, no matter what, this team gets sold
4 by April 30th, and so there is no risk, they're done. Mr.
5 McCourt and the entities that are in bankruptcy are done in
6 the baseball business on April 30th.

7 Your Honor, I addressed damages, so I don't think I
8 need to respond specifically to any of Mr. Bennett's
9 comments.

10 One thing I will point out. He picked at the
11 testimony of our witnesses quite a bit. But the point is
12 that this is not a damages trial, we're not liquidating the
13 claims today. We are trying to make a proffer of evidence to
14 Your Honor that yes, if this goes forward, there's a risk.
15 And there's a fairly substantial risk that this is going to
16 happen. It's not proof beyond a reasonable doubt. Your
17 Honor doesn't need to decide whether the claims will be
18 allowed or not allowed today. But I think Your Honor is
19 either applying the entire fairness standard or the business
20 judgment standard in deciding whether by subjecting the
21 estate to this risk, they put the estate in an untenable
22 position. I need to clarify one thing, Time Warner versus
23 Time Warner Cable on the agreement.

24 THE COURT: Yes.

25 MR. WERKHEISER: That exhibit was prepared at a time

1 before, it is my understanding that those two entities split
2 off from one another, so there was just Time Warner then, so
3 the fact that there are two separate entities now doesn't
4 necessarily free them up to do things with one and not the
5 other.

6 THE COURT: I think your time is up for now.

7 MR. WERKHEISER: I think so. okay, Your Honor. I
8 think I have a --

9 THE COURT: Unless you want to borrow, you can borrow
10 but --

11 MR. WERKHEISER: Well, I, I'm sure everybody's in a
12 charitable mood, but I have my I think ten minutes, so I'll
13 preserve that for the end, Your Honor.

14 THE COURT: You bet. Okay. Very well. Mr. Bennett,
15 I'm not going to count this time against you yet. But I do
16 have a question that's troubling me, and it's this. On
17 December the 27th, I am supposed to have a hearing on a motion
18 to dismiss, a motion to estimate claims, a motion to
19 terminate exclusivity, and I know there's some of them up on
20 those, on the dismissal and the exclusivity issues. But how
21 are we going to do that?

22 MR. BENNETT: Okay. First of all, the estimation is
23 not on for the 27th.

24 THE COURT: Oh.

25 MR. BENNETT: So --

1 THE COURT: Oh thank goodness. When is it?

2 MR. BENNETT: I think we were holding February 8th
3 and thinking about moving it into January.

4 THE COURT: Good.

5 MR. BENNETT: And so that is not your problem.

6 THE COURT: Okay. Thank goodness.

7 MR. BENNETT: Your Honor, again, I'm glad I'll be
8 calm about this because this, the motion to dismiss, they
9 have the right to do it, I can't stop them. By the way,
10 there's an attorneys fees provision that applies to, you
11 know, things that they lose and we may well actually be
12 presenting a bill as a result of this hearing, as a result of
13 exclusivity hearing, we may have to start implementing that
14 provision in order to get closure from some of this. So we
15 honestly believe and the facts will show, you know the facts,
16 or most of them, you know, there's part of this case is not
17 happening in this courtroom to be sure, but part of the case
18 has. There is no basis whatsoever for dismissal motion.
19 It's just tactical. There's no basis at all for, I don't
20 even know what the grounds are going to be for the
21 termination motion because they can't be the same ones as
22 Major League Baseball did that they supported because of
23 course they supported the idea that there should be a plan
24 for the sale of the company. There are consequences to these
25 joinders that they want to stand on. So I am sorry that the

1 rules compel you to set at least the termination hearing for
2 the 27th, and it's up to them, I will be very courteous to
3 move it if they want to move it. And frankly I think it
4 should be. It's not a religious problem for me, or for Mr.
5 Levinson, but it is for others.

6 THE COURT: Yes.

7 MR. BENNETT: And, I was going to call it the third
8 day of Christmas, but I don't know when you're supposed to
9 start counting.

10 THE COURT: Christmas.

11 MR. BENNETT: So in any event, so I don't think it's
12 even at those two things, the 27th looks like a fairly busy
13 day to put it, as mildly as I possibly can.

14 THE COURT: Yes.

15 MR. BENNETT: But estimation is not there, or
16 whatever steps we take to cap the claim or disallow the
17 claim, it's not there.

18 THE COURT: Maybe I should speak to Mr. Werkheiser's
19 wife.

20 MR. BENNETT: You know, actually if you put all of
21 the wives in the room --

22 THE COURT: Yes.

23 MR. BENNETT: -- I think this would get results.
24 There's strong interest in the Bennett household on this
25 topic as well.

1 THE COURT: Yes.

2 MR. BENNETT: Okay, now I'll start my time. I
3 actually set my --

4 THE COURT: Yes, now you'll start it.

5 MR. BENNETT: I actually set my timer this time so
6 that should tell me what I'm doing.

7 THE COURT: Okay.

8 MR. BENNETT: Okay. I don't think I'm going to need
9 all of it, at least I'll try not to take all of it. First
10 order of business, the agreement, the Major League Baseball
11 agreement. There's a really important term in the public
12 document. Your Honor will find it and read it yourself, but
13 it's the other provision section, and it says, except as set
14 forth herein, the parties have no agreements regarding Fox.
15 And the only thing that's set forth herein is the withdrawal,
16 the provisions withdrawing things and the provision that says
17 that Major League Baseball is going to be neutral.

18 THE COURT: Right.

19 MR. BENNETT: And again, I say this because it is
20 incontrovertible, and every single time Mr. Werkheiser stands
21 up, he ignores it. This isn't predicated on a settlement.
22 Not because I'm saying it's not predicated on a settlement,
23 it's because it was a year before the settlement. We made a
24 site modification favoring Fox as a result of the supplement.
25 We did not do anything to expand the relief. So the idea of

1 predicated on the settlement it's just not true. And so I'm
2 going to put that aside. We'll have an issue with respect to
3 approval of the agreement maybe, I can't even imagine what
4 the issues are going to be. When they are raised, we will
5 deal with them.

6 I think also, very important, I know Your Honor
7 understands this. We're not eliminating the backend rights.
8 And so a lot of the testimony you heard at least in direct
9 examination was the backend rights are worth, and then they
10 said, that's what you're taking away from me. And we're not.
11 We're just moving them. So even if moving them is a problem,
12 it's a subset of the backend rights. So there was a little
13 bit of bait and switch that I actually thought I revealed on
14 cross-examination. But as he said, oh, 25 percent, is that
15 for the backend rights for all them. He said yes, it's for
16 all of them. Okay, and then he said well not just for moving
17 them, he said no, 25 percent is for all of them. And then I
18 said put a number on the difference between the old ones and
19 the new ones. Five percent. Remember, the old ones were
20 better, the new ones were less good and the old ones include
21 one time deferral exactly the same. It was one of the
22 decrements. So remember we dealt with an estimate that was
23 taken out of the air, he couldn't justify the 25 percent
24 except it's kind of how he felt, no comparables consulted,
25 none of the things we usually do. I don't think in my

1 experience, that's what the damages are is going to cut it in
2 any court in the land, much less in this Court. But even
3 accepting that basis of calculating damages, it's like it
4 shrinks, it shrinks, it shrinks, it shrinks, which is why we
5 say not material.

6 Also on the materiality point, remember there was
7 discussions about shrinking the exclusive negotiation period
8 by 50 percent.

9 THE COURT: Um-hum.

10 MR. BENNETT: Not material. So it can't be that
11 every single term and condition defined exactly the way they
12 say, is material. Once again, this is Mr. Werkheiser
13 crediting his general direct examination and forgetting when
14 the specifics were drilled down in cross-examination, all
15 kinds of things started to scatter around. By the way, Your
16 Honor, Mr. Coleman did in fact testify that the buyer consent
17 things is an MLB demand. And by the way, why would we ever
18 restrict our own flexibility. It's a common sense issue.
19 But the evidentiary record is complete. Mr. Levinson found
20 it, but in the unofficial transcript. If the Court has
21 problems, you know how to reach out to us, we will file
22 something.

23 All, there's also a huge disconnect between the
24 feelings by the two experts, one the Fox expert, one the more
25 independent expert, not saying completely independent, just

1 more independent expert. These things are important. They
2 can say that until they're blue in the face. These are not
3 issues of first impression. The courts have dealt with this.
4 The courts are sending the opposite message. The courts --
5 and this is actually, this is actually the second time I've
6 stumbled onto something like this in my career. In the movie
7 industry, they have terms and conditions in their contracts,
8 they're like things that don't look like anything normal
9 commercial lawyers seen. They kind of grow up in the
10 industry and they think they have meaning. They have a
11 different meaning for secured, for example, that doesn't
12 involve recording anyplace, and they actually think they have
13 rights that they don't have. Because in their little world
14 of confidential documents, they started doing things certain
15 ways thinking they really meant something, but never having
16 really hit the crucible of actual law enforcing under the
17 law. We may be having the same problem here. They think all
18 this stuff is important, but if they went to their lawyers,
19 and they have good ones, and asked them, what's the law in
20 negotiation rights? Are we supposed to be putting all of
21 this materiality on such things? They would run into the
22 word speculative, not once, not twice, but over and over and
23 over again, in cases in California, in cases in Delaware. A
24 cute case involving the Rockets by the way, they decided in
25 Delaware how that happens, different story. New York. Every

1 jurisdiction gets this the same way. You run into the word
2 speculative over and over and over again. You can't say
3 these are material against the legal backdrop that's not
4 ambiguous. You have to pay attention to the legal backdrop.

5 The assertion that damages issue was not rebutted is
6 insane. Maybe it wasn't the subject of rebuttal testimony,
7 but the cross-examination, the cross-examination of Mr.
8 Thompson concerning how he built his damage models and when
9 he had to say as to how did he justify paragraph 23 of his
10 declaration after he could not figure out what the baseline
11 was going to be much less the size of the increment, his
12 answer was I don't know. Okay. That is the end of that
13 damage theory. I've never accomplished that before in cross-
14 examination, I probably will not accomplish that again. But
15 I think we know a lot about damages.

16 So now let's talk about the whole issue of estimation
17 just for a second. Of course, criticism of estimation didn't
18 come up until today. We still believe we're dealing with
19 what will be a prepetition claim as a result of if any, as a
20 result of a contract provision that Your Honor will say is
21 invalid. Under Delaware law, there's a severability
22 provision that protects us, off we go. If on the other hand,
23 we have a damage claim to deal with, if estimation applies,
24 which we think it does, that's one procedure. There's
25 something called summary judgment 2. Remember we're talking

1 about negotiation rights, we're talking about a no shop,
2 which is a form of negotiation restriction. We are, we have
3 simplified this case, we are only talking about the no shop.
4 I have been actually impressed at the extent and range of
5 creativity Fox has been willing to go to state damage claims.
6 But you saw today we dealt with someone who is tied for most
7 knowledgeable inside the Fox empire on this subject. This is
8 it. This was state of the art knowledge. I'm sure they're
9 going to try something else. I think they're really pretty
10 good at trying this time. This probably is the best they can
11 do. So we can think about whether or not demolishing this
12 damage claim or putting it into a sensible dimension is going
13 to be a big challenge or a little challenge.

14 Also, delayed administration by the way, is used in
15 estimation, it's not delay the sale, it's not delay the plan,
16 it's delay administration, which is lots of things we have to
17 do here including make distributions.

18 And by the way, your opinion, I read it quickly, it's
19 a case that had no operations, and was liquidated.

20 THE COURT: That's correct.

21 MR. BENNETT: Okay. *Dunes*, two cases they cite,
22 *Dunes*, *Xianzhi Wang*. *Dunes*, worth reading, it involves a
23 hotel with unrecorded lease and one creditor who was secured,
24 fully covered as to value. And here's the kicker. The owner
25 was a \$23 billion, \$23 billion dollar fund. The \$23 billion

1 fund in the middle of the case bought the loan from the
2 creditor. So the case gets to the Judge where the creditor,
3 he's not sure, taken out, or there's an agreement to take it
4 out by the person who owns the equity. Okay. Does that
5 sound like my case? I don't have anybody writing those kind
6 of checks. So that's what *Dunes* is about. Xianzhi Wang,
7 written by Judge Peter Elliott, he's passed away, he's a
8 Judge in California. That case is good reading because it
9 basically says in that case the Court rejected it because
10 there was a damage claim that would sop up every bit of the
11 benefit. Okay. We don't have that case. We have a case
12 where there is no damage claim or there is a very small
13 damage claim. And that got proved to you today. So *Xianzhi*
14 *Wang*, if that's the bad faith case they're relying upon,
15 that's not it either.

16 We dealt with time is of the essence in our brief. I
17 want to propose a way for Your Honor to think about it that I
18 think is consistent with the way you may be thinking already.
19 This is kind of what we're saying in our brief, but I think
20 it gives it a little bit of edge. One of the big questions
21 here is materiality. One way to read the time is of the
22 essence cases, is that the words time is of the essence takes
23 something that is ordinary not material and proposes it to be
24 material. That is, if Your Honor takes a look at the cases
25 and I can't take him through it now because on the proponents

1 of time limits, you will find that that explains results very
2 nicely, and is a good way to give sense to a lot of the cases
3 that were decided in the area.

4 Conditionality, people accept conditional deals all
5 the time, accept is not the decisive word. The decisive word
6 would have been binding. The decisive word binding was in
7 another document, it is not in any of the documents that we
8 are dealing with.

9 THE COURT: Well not only was it in another document,
10 but it interestingly it was in a document between affiliated
11 parties.

12 MR. BENNETT: The same -- it was in the same document
13 before it was amended.

14 THE COURT: Right.

15 MR. BENNETT: In the same sections that were amended.

16 THE COURT: Right.

17 MR. BENNETT: It's as close as it gets.

18 THE COURT: Yeah.

19 MR. BENNETT: We're not reaching to something on the
20 back of page 50 to reconcile something on page 2, which I've
21 tried before. But no, this is the same exact, this is the
22 same exact sentence.

23 Okay. Lastly, how to run a sale. Actually next to
24 the last, I have time, so I'll cover two things, and I'll
25 still have leftover time. One, we, the accusation was made

1 that we want to go through with this consequences be damned.
2 That's kind of insulting to me and my team as well as to
3 Blackstone, as well as to all the other professionals in this
4 case. I think one thing that we've demonstrated throughout
5 the filing of the initial motion, the supplement which made
6 modifications to make Your Honor's job easier to cut back on
7 the relief requested is we decided we could get this done a
8 little bit more simply. Our proposal made at the closing of
9 opening argument that if there were any issue that we didn't
10 cover right in the procedures. And by the way, the only
11 reason we didn't copy the old agreement and put it there is
12 because the old agreement was confidential. So we didn't
13 want to copy it and put it there. We wanted to try to
14 replicate without copying. That was kind of what we were
15 trying to do here. So we, if we made any mistakes on the
16 issues that we talked about, they were not intentional, and
17 we will fix them. So the exact contract language with
18 respect to items 4 and 5, we'll adopt it. The
19 confidentiality I propose two different solutions for it. No
20 one talks to anybody, everyone talks except to competitors.

21 THE COURT: Right. Yes.

22 MR. BENNETT: Either one I'll live with.

23 THE COURT: Yes.

24 MR. BENNETT: And if there were any other problems
25 which we think there are none, we're okay. But there's

1 consequences be damned is not appropriate description of
2 anything that happened here.

3 And now my final point, and I'll have leftover time.
4 How to run a sale. You had two witnesses, and that's part of
5 what this is about, how to run a sale. You had Mr. Coleman
6 from Blackstone who's run more sales than I can count. I've
7 done every side of them, I've been a bidder, a disappointed
8 bidder, an objector and I've been on the side, all different
9 ways. And he's been in this business for a good long time.
10 He so testified, and it's actually interesting on cross-
11 examination one of the lawyers for Fox actually elicited from
12 Mr. Coleman testimony about how often he's been doing this
13 and how many deals he's done. And it's, and it's an
14 incredibility impressive list. He's probably older than he
15 looks, given the number of things that he's been involved in.
16 And he wasn't really affectively touched on cross-
17 examination. And then the other side of that question we
18 didn't have Mr. Thompson, we had Mr. Desser, who could
19 testify to a participation in one M&A deal that didn't
20 happen, and he was consulted, not the person in charge, and
21 he was mostly about media rights. And we also should think
22 about how those witnesses fared on cross-examination. Your
23 Honor is one of the nicest men in the world, and it's hard to
24 do this.

25 THE COURT: I have my moments too.

1 MR. BENNETT: It's hard to do this, but credibility
2 has to be a factor --

3 THE COURT: Yes.

4 MR. BENNETT: -- in everything. And Your Honor was
5 here listening, I was listening from a slightly different
6 vantage point, I was participating to some extent. And
7 again, you had direct testimony of sweeping generalizations
8 about how, about things very untestable statements about the
9 way the world is and the way the world should be, and
10 perceptions and what have you, and then with respect to most
11 if not all of those generalizations, there were specifics
12 that could be drilled down on. And when you drill down the
13 specifics, you found declarations riddled with errors,
14 declarations that weren't read very carefully, adoptions of
15 attorney arguments in the review process. You found
16 everything wrong with testimony that can be wrong with
17 testimony, you found sentences that people didn't ever find
18 support for. You didn't find that with Mr. Coleman's
19 testimony. So when you have conflicts between Mr. Coleman's
20 testimony with his experience notwithstanding less experience
21 to be sure on the media rights things, but his experience in
22 selling a company and what you need to do in connection with
23 that, fixing a company, what you need to do in connection
24 with that, and then media rights experts trying to do Mr.
25 Coleman's business, you have very, very different levels of

1 expertise, and candidly, very different levels of credibility
2 as a result of what Your Honor listened to.

3 The way I'm supposed to close is tell you what we
4 want to do, we want you to do. We want you to enter the
5 order in the form that we submitted, with such modification
6 as you see fit, authorizing the Debtors to proceed with the
7 revised marketing procedures with such amendments as you see
8 fit. We reached a deal that the first seven days have
9 started already by reason of this continuance.

10 THE COURT: That's right.

11 MR. BENNETT: So we want to get back on schedule. We
12 have a lot of work to do. As you know, there's a mediation
13 ongoing, we will continue to be ongoing with Fox. I'm going
14 to say this on the record, because it's been misinterpreted
15 before, we are available to talk about anything any
16 reasonable place, any reasonable time, no preconditions, no
17 particular list of topics, with mediation, without mediation.
18 So I think that eliminates all the ambiguity I've been
19 previously accused of in that regards.

20 And with that I have leftover time, and I thank Your
21 Honor for the time you've given us the past few days.

22 THE COURT: Thank you, Mr. Bennett. Thank you sir.
23 Mr. Werkheiser.

24 MR. WERKHEISER: Yes Your Honor. It's getting late,
25 so I'll try to be quick. I'll start at the end actually.

1 Coleman testimony, Your Honor, what he testified to, he sort
2 of just waxed poetic about what he thought the process should
3 be and what he thought might or might not create more value.
4 But on cross, when we were going to try to dig down and how
5 did he get there, we found out he never did a valuation. He
6 didn't want to do a valuation, at least not one that he was
7 willing to shore with anybody in the courtroom today. So you
8 know credibility, take what you want from that, Your Honor,
9 but that causes questions in my mind. Materiality, Your
10 Honor, the elephant in the room is that they've taken an
11 agreement that has offer and acceptance and results in the
12 parties binding themselves, and yes there's an MLB condition,
13 there always has been, that was there before the amendment
14 that's there now. And it's never been a problem before
15 except with one court transaction. They've taken that
16 agreement and they've gutted it because they said among other
17 things, in addition to moving it up, we're going to take
18 whatever you agree to with us and shop it to the world of
19 people who have signed this in the case. And that's never
20 what we bargained for, it completely as you heard through the
21 testimony changed the dynamics of the deal. It's material.
22 There is no getting around the fact that it's material. And
23 when it's material that means that they can't assume the
24 agreement, they can't modify it, they have to live with it.

25 THE COURT: Well they were entitled to shop before.

1 MR. WERKHEISER: Within a limited window, Your Honor.

2 THE COURT: Yes.

3 MR. WERKHEISER: Right. They had a five business day
4 window as --

5 THE COURT: That's right.

6 MR. WERKHEISER: -- I understand it before they made
7 their team final offer, and then if we didn't accept that,
8 then they went out to shop after that. But as Mr. Desser
9 testified, that's all structured very carefully to promote
10 the marriage of the parties because of the capital investment
11 that everybody makes here. And because it's a relationship
12 of trust and confidence, and if you aren't comfortable with
13 your team partner, it's not going to work.

14 THE COURT: Well this marriage, I'm telling you --

15 MR. WERKHEISER: Well sometimes marriages end in
16 divorce, I mean --

17 THE COURT: That's right.

18 MR. WERKHEISER: -- that's been a running theme in
19 this case, Your Honor. Damages, I'll say it again, it's not
20 a damages trial.

21 THE COURT: No, it's not.

22 MR. WERKHEISER: We're here because we're testing at
23 minimum the Debtors business judgment or whether it's
24 entirely fair. And in that context, they have to show that
25 the estate is not likely to be harmed. And there was

1 testimony, and I, it was attacked, but there was testimony
2 that's unrebutted that at the very minimum, there's likely
3 going to be a significant reduction in value based on the
4 benefit [indiscernible]. And that is, this is different than
5 the cases that they talk about whether there's an agreement
6 to agree or an agreement to negotiate in good faith, because
7 one we had more than that. We had the agreement to
8 negotiate, we had the right to get the team final offer, and
9 we had the matching right. That's way more than that, and
10 that was value, and as you heard from the experts today,
11 that's value that was baked into \$300,000,000 that Fox paid
12 over the term of this agreement thus far.

13 Your Honor, on, I touched on binding. Yes, Your
14 Honor, it looks like you have a question.

15 THE COURT: No, no, no.

16 MR. WERKHEISER: Okay.

17 THE COURT: I'm thinking about a matter of concern,
18 but I won't burden you with it.

19 MR. WERKHEISER: okay, Your Honor. Your Honor, on
20 *Dunes* --

21 THE COURT: Binding, yes.

22 MR. WERKHEISER: -- the fact of the recitation is
23 correct, but the theme is precisely the same. There is a
24 claim in financial distress. They were facing a foreclosure,
25 the foreclosure gets resolved mid-case, there's no reason for

1 the entity to be in bankruptcy at that point or to use the
2 avoidance powers, in that case to invalidate a contract, a
3 long term lease of the operator of the hotel. And what the
4 Court said at that point is you know technically, yeah, you
5 can do this which isn't even this case, because technically
6 they can't do this. But because it's only going to serve the
7 equity, I'm not going to let you do that. And that's
8 precisely the situation we have here. It's only going to
9 serve the equity because they know they can sell the team
10 with the contract intact, and produce enough value to pay off
11 all the creditors. Your Honor, and I hope Mr. Bennett won't
12 jump all over me because I did forget to mention this in my
13 primary argument. But I just, I hope you will rule for us,
14 but in the event that you don't, I do want to mention our
15 view on not waiving the stay. Our rights can begin being
16 prejudiced immediately because of the exclusivity negotiating
17 period will begin to run, and this process will continue.
18 And we do --

19 THE COURT: Do you not agree that the negotiation, if
20 I find for the Debtors, the negotiating process has already
21 begun? It began on November 30th.

22 MR. WERKHEISER: We did stipulate to let them have
23 seven days to start it on November 30th. However, I think in
24 the procedures they've now proposed, they've changed that
25 back again, so I'm not sure where we are in the blackline

1 that was circulated. I think it has the 45 days running from
2 the date of the order. So there's some ambiguity I think on
3 that point, Your Honor.

4 MR. LEVINSON: We didn't intend to change. It starts
5 on November 30th.

6 MR. WERKHEISER: Your Honor, to close, I think, we
7 think you should deny. I'm sorry, where I was going before
8 you asked your question was just on the issue of the 14 day
9 stay.

10 THE COURT: Yes, please.

11 MR. WERKHEISER: We ask Your Honor not to waive that,
12 we don't think they're prejudiced. The only deadlines they
13 have are self-imposed pursuant to their agreement with MLB
14 and pursuant to Mr. McCourt's agreement with his wife and his
15 divorce. Those are not estate issue. There is no external
16 pressure that forces them to go forward immediately.

17 But to close my comments, I want to suggest to Your
18 Honor what they should have proposed if in fact they were
19 being accurate in their statement that they really aren't
20 trying to do anything except advance from the timing. And
21 we're not agreeing to this, but this is what the order should
22 have said if that's what they wanted, notwithstanding any
23 other provision in the telecast rights agreement, dated
24 November 1st, 2001 between LAD and Fox as amended from time to
25 time the exclusive negotiation period, which is a defined

1 term in their motion, provided in Section 2B of the telecast
2 agreement shall run from November 30th, 2011 to January 14,
3 2012. No other provision of the telecast agreement shall be
4 modified in any manner whatsoever. And there should be
5 another decree paragraph that says LAD is authorized and
6 directed to proceed under sections 2B and 2C of the telecast
7 agreement as modified by this order. Based on what they told
8 you what they want out of this process, that's the order that
9 they should have submitted. We don't think they're entitled
10 to go forward at all, but that's the order that should be
11 submitted if they forward at all. Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Werkheiser.

13 MR. BENNETT: Three minutes.

14 THE COURT: But it seems to me that if we only
15 advance the exclusive negotiating period, there won't be much
16 incentive for Fox --

17 MR. BENNETT: You're paying attention. I wanted to
18 point that out.

19 THE COURT: For Fox to negotiate.

20 MR. BENNETT: That's right. Your Honor.

21 THE COURT: Yeah.

22 MR. BENNETT: And the other thing on the stay. We
23 want to move continuously for those last seven days and move
24 to the end of the 45 days, and the problem with the stay is
25 that that completely disrupts the schedule. So we actually,

1 the form of order has the stay waiver, the brief, the reply
2 brief has in it our position with respect to why the waiver
3 of the stay provision is important. And for the same it's
4 important that we get an order from Your Honor is that we
5 can.

6 THE COURT: Is it possible to waive just a portion of
7 the relief? In other words, to waive the stay, I'm sorry, to
8 waive the stay just for example with respect to the exclusive
9 negotiating period?

10 MR. BENNETT: I think so. I'd want to talk to Mr.
11 Werkheiser exactly about it from what he wants to achieve,
12 but I think that's achievable, I want to think about it and I
13 want to talk to Mr. Werkheiser about it.

14 THE COURT: All right. Thank you, Mr. Bennett. Is
15 there anything further? Anything else?

16 MR. BENNETT: Good night.

17 THE COURT: Well look, I've heard a lot of good
18 testimony and seen a lot of good lawyering and I know the
19 parties would love me to rule right now. But I couldn't do
20 justice on the record to a discussion of the facts here that
21 would give anyone any sort of peace of mind in proceeding if
22 there were an appeal or whatever. So I will say this. And
23 it always pains me to kind of make a ruling with a lot of
24 anxious people looking at me. I'm going to approve the
25 motion. I stayed here last night until around midnight

1 researching and writing and working on this thing, and I am
2 satisfied that the proposed modifications are not material.
3 And that to me is the key. I'm also satisfied that the
4 arguments relating, that the Debtors' arguments relating to
5 the no shop provision are appropriate. But your time for
6 appeal is not running as of this moment because I want a
7 couple of days to write something. The danger in writing
8 something, I will tell you, and writing something somewhat
9 quickly is that the deeper I go the deeper I get, you know,
10 and it's hard to pull out. But it just seems to me that
11 something has to be written, some analysis. Or it's really
12 going to be unfair to all of us for me to right now at the
13 end of the day to try to rule verbally on what the facts are
14 and what the law is and that sort of thing. First of all, it
15 would take forever to do it. And secondly, even then I don't
16 think I could be quite precise enough so I do think it's
17 appropriate here to grant the relief, and I will explain why
18 in detail. And that is the time that your time for appeal or
19 whatever would start to run Mr. Werkheiser, not from right
20 now, I'm not, you know, entering an order in any respect.
21 But I just think that it is in the Debtors' best interest.
22 It has the support of the Committee. I think that business
23 judgment was properly exercised in evaluating the pros and
24 the cons and the risks involved. So but I will put that on
25 paper.

1 MR. WERKHEISER: Your Honor, obviously we're
2 disappointed.

3 THE COURT: I understand.

4 MR. WERKHEISER: But there's an issue that comes up,
5 and I do think it's appropriate for Your Honor to take some
6 time to formulate your thoughts on whatever decision you're
7 making and --

8 THE COURT: Please, go ahead.

9 MR. WERKHEISER: If you know there's divine
10 intervention, you may change your mind between now and
11 issuing whatever ruling you're issuing, the issue comes up
12 with the fact that the parties stipulated to essentially one
13 week period of running the exclusive negotiating period to
14 allow for the mediation process to happen when it did and for
15 this hearing to go forward starting yesterday.

16 THE COURT: Right.

17 MR. WERKHEISER: If Your Honor wants to take some
18 time, that's certainly appropriate. I just don't want us to
19 be prejudiced on the exclusive negotiating period if --

20 THE COURT: No, I think the Debtors themselves want
21 it to be running now and want you to be negotiating now.
22 Maybe I'm misunderstanding Mr. Werkheiser's point.

23 MR. WERKHEISER: Well the Debtors have said that the
24 period started on November 30th.

25 THE COURT: Right.

1 MR. WERKHEISER: And so it's, we're eight days in
2 now, and I know Your Honor wants to take some time to
3 formulate your thoughts --

4 THE COURT: I'm talking about a few days, I'm not
5 talking about a month.

6 MR. WERKHEISER: Whatever your ruling is going to be.
7 But that's, you know, it's Tuesday or Wednesday, whatever it
8 is you issue your ruling that's another week off of that
9 period and it's another week that we're prejudiced in the
10 process that I don't think we bargained for or agreed to when
11 we agreed to push things back a week to have the mediation to
12 this hearing today, or yesterday.

13 THE COURT: Well one of the reasons I told you where
14 I'm heading is so that you would understand that the time is
15 running, you would be involved in negotiation. This is the
16 45 days for negotiating. I don't under -- you know, it would
17 be one thing if I said you know what Mr. Werkheiser, I'm
18 coming out on your side in favor of, in favor of Fox --

19 MR. WERKHEISER: Yes, Your Honor.

20 THE COURT: -- and then issue a ruling three weeks
21 from now going the other way, then you would be prejudiced.

22 MR. WERKHEISER: Well --

23 THE COURT: Maybe I don't understand, but I don't
24 understand the prejudice.

25 MR. WERKHEISER: I think we'd be conducting ourselves

1 the same why whether Your Honor was silent or previewed where
2 you were headed with the ruling, but the fact of the matter
3 is that we're prejudiced because in all likelihood we're
4 going to pursue appellate rights.

5 THE COURT: Sure.

6 MR. WERKHEISER: And the exclusive negotiating period
7 is prejudiced to us, but once you get beyond that, the
8 prejudice compounds exponentially to us. So because they,
9 you know, they go out to the market, they start talking to
10 people on their procedures, you know confidentiality gets
11 relaxed, etc., etc., and so prejudice is compounded to us
12 once you get beyond that. So it is prejudicing us especially
13 with respect to appellate rights and anything else, even
14 though Your Honor hasn't yet issued a formal order. So
15 that's, I was just going to ask if Your Honor would suspend
16 it for the short period of time between today and a couple of
17 days from now when presumably Your Honor issues a ruling.

18 MR. BENNETT: Your Honor, there are a couple of
19 things. On the law, you were told today by their witnesses
20 that a change in an exclusive negotiating period from three
21 months to 45 days was not material. And we're talking about
22 a couple of days. I will say this, because sometimes
23 communications aren't as good as they should be. There was a
24 session yesterday, not supervised by Judge Farnan, because I
25 think he was here, but there were people in New York together

1 talking about this. I got a report, and I assume you guys
2 got a report --

3 MR. WERKHEISER: I understand there were
4 communications, I don't know the result, Your Honor..

5 MR. BENNETT: Okay. So I didn't think things had
6 stopped and I'm troubled that anything about this ruling that
7 the first reaction to this ruling is let's stop as opposed to
8 let's continue. We're prepared to continue. If there's a
9 good reason why you want to stop other than you just don't
10 want to talk anymore, I'm game to listen to it, and maybe
11 we'll work something out.

12 MR. WERKHEISER: May I respond Your Honor?

13 THE COURT: Sure.

14 MR. WERKHEISER: I think Mr. Bennett is conflating
15 two different issues. There's the issue of will we
16 communicate and hope that people will be reasonable and find
17 some way to resolve this, which is yes, we're willing to do.

18 THE COURT: Sure.

19 MR. WERKHEISER: But then there's the issue are we
20 prejudiced because this matter is still under advisement and
21 hasn't been decided. So we're happy to communicate with
22 them, but the idea here now is that the period continues to
23 run so we're doing it even more under the gun, without a
24 ruling yet, a formal ruling yet from the Court. And that's,
25 that doesn't strike me as fair to us, Your Honor.

1 THE COURT: Well, here's what's peculiar about your
2 position. If I hadn't said anything, and just issued my
3 ruling on Tuesday or Wednesday or sooner --

4 MR. WERKHEISER: Yes, Your Honor. I would be up here
5 anyway at the end of the hearing probably taking this
6 position, if you hadn't said anything, Your Honor.

7 THE COURT: Oh. Well I am, I must admit I don't, I
8 truly don't understand it. It's not you know four days, it's
9 45 days, the parties have already been negotiating, and in
10 fact I believe were negotiating well in advance of November
11 30 in mediation. So --

12 MR. WERKHEISER: Yes, and Your Honor, from --

13 THE COURT: -- what would you like me to put in the
14 order? Tell me the language that you're suggesting so I'll
15 better understand your point.

16 MR. WERKHEISER: Well if I had my druthers, I'd say
17 it was denied, but --

18 THE COURT: I know that. I know that.

19 MR. WERKHEISER: But what I'm asking you to say is
20 that from today until whatever date you issue your order,
21 that period of time does not count against the exclusive
22 negotiating period. It's not that we're not going to talk to
23 them during that period, we would, we were frankly having
24 communications even before the period started to run, it's
25 just that we shouldn't be prejudiced by that. And that

1 prejudice, is because when that ends, they go out to the
2 market under the procedures and start talking to people and
3 they start defeating precisely the issue we've been
4 litigating about for the last few days, and well beyond that,
5 and we're prejudiced. That's, that for certain at that point
6 is irreparable harm. I think we're suffering irreparable
7 harm immediately, but it gets compounded when that event
8 occurs. And look, I'll be direct with you, we're going to
9 appeal, Your Honor.

10 THE COURT: Sure.

11 MR. WERKHEISER: And we're going to seek a stay.

12 THE COURT: Yes.

13 MR. WERKHEISER: Here and in the District Court if we
14 can't get one here.

15 THE COURT: Yes.

16 MR. WERKHEISER: And presumably if Your Honor is not
17 going to give us the 14 day stay, that is mandated by the
18 rule, absent a showing it should be waived, I assume you're
19 not going to give us a further stay pending appeal, and
20 perhaps Your Honor should make that clear in your ruling so
21 that we can go directly to the District Court at that point.

22 THE COURT: Well --

23 MR. WERKHEISER: Because we want to make sure we have
24 a chance to be heard by an appellate Court.

25 THE COURT: Yes.

1 MR. WERKHEISER: Before we've gotten so far down the
2 process that we can't get effective relief.

3 THE COURT: Well first of all, I always include, what
4 I call a courtesy stay, which then gives the District Court
5 an opportunity not to be faced with lawyers running in, you
6 know, on no notice basically because it's you know it's got
7 to be there right away, they've got to get the stay right
8 away from the District Court.

9 MR. WERKHEISER: Yes, Your Honor.

10 MR. BENNETT: May I make a suggestion? I think I'm
11 going to cut through, first of all I don't want to rush them
12 or you.

13 THE COURT: Right.

14 MR. BENNETT: Or any appellate tribunal. So I'm of a
15 mood to try to find a way to make a deal on the 14 days that
16 also provides for negotiations to happen continuously so they
17 could have time to have the appellate guys doing their
18 appellate things.

19 THE COURT: Right.

20 MR. BENNETT: Or the business guys will do their
21 business thing. Rather than do it right now, and besides I
22 don't think there's a whole bunch of lawyers left, I would
23 propose that we confer tomorrow and give a joint report to
24 Your Honor whether we were or weren't able to settle this
25 issue. And if we weren't, there will be two alternative

1 forms of order as to what this, how this issue should be
2 resolved.

3 THE COURT: That would be helpful. Here's the other
4 point though that I would like to make. I am going to
5 impose, the confidentially on both sides as far as
6 discussions with third parties are concerned. I think that's
7 only fair, and particularly when Fox is going to pursue an
8 appeal, you know, we shouldn't get involved in disclosures to
9 third party at this point. Do you agree with that Mr.
10 Werkheiser?

11 MR. WERKHEISER: Your Honor, I think Your Honor is
12 making a ruling and I'll accept it, but I need to evaluate
13 that in the context of the other rulings that Your Honor is
14 proposing to make.

15 THE COURT: Okay.

16 MR. WERKHEISER: So if I can reserve. Thank you.

17 THE COURT: That's fine. All right. Counsel --

18 MR. BENNETT: We'll figure out who to talk to and --

19 THE COURT: I thank you. I wish everyone a safe trip
20 home and you will hear from me in a few days.

21 MR. WERKHEISER: Thank you, Your Honor.

22 THE COURT: Good evening to everyone.

23 (Hearing adjourned at 6:32 P.M.)
24
25

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/Mary Zajackowski
Mary Zajackowski, CET**D-531

December 11, 2011
Date