

## ***Breach of Contract and Fiduciary Duty Case Study***

### **Objectives.**

More than 2,000 retired NFL players led by Anthony “Herb” Adderley (a Hall of Fame NFL player) filed a class action lawsuit against the National Football League Players Association claiming the NFLPA breached its fiduciary duty to obtain player licensing and marketing opportunities in a fair and equitable manner consistent with the best interests of the retired players, and breached its contracts with the players to include them in group licensing deals. The suit claimed that the NFLPA owed and owes each represented player a share of the more than \$100 million in annual revenues the NFLPA (through Player’s Inc) received from promoting and marketing active and retired NFL players.

### **Challenges & Methodologies.**

While the claims were multi-faceted and involved an assessment of the size of the revenues generated by Player’s Inc and the potential damages resulting from those licensing revenues that was due to the retired players, Dr. Rascher was asked to opine and to serve as an expert witness on issues related to sports economics. The four issues he focused on were to: 1) examine the importance of retired players in building the NFL brand and therefore in generating revenues from licensed merchandise related to that brand (including econometric analysis), 2) to determine a range of commissions in sports related to selling licensed merchandise, 3) to determine the amount of group licensing revenues active players receive through the NFLPA versus what the NFLPA kept and to compare that percentage “commission” to other professional sports leagues, and 4) to analyze the Department of Labor’s LM-2 filings and NFLPA financials to understand the size of the players’ licensing business and what share of this business should be shared with the retired players.

Through the work of Dr. Rascher, the Plaintiffs argued that the damages could come from a fund of nearly \$68 million in group licensing revenues that had been built up over recent years, but were unallocated for any particular task of the NFLPA. Dr. Rascher also found that the NFLPA kept 69 percent of group licensing revenues where as other entities such as MLBPA typically kept between 10 and 40 percent.

**Outcomes.** Dr. Rascher filed two expert reports, testified at deposition, and at trial. After brief deliberations following the three-week trial and nearly 20 months after the suit was filed, a federal jury ordered the NFL Players Association to pay \$28.1 million to retired players after finding the union failed to properly market their images. The jury said the union owed the retirees \$7.1 million in actual damages for failing to include them in lucrative marketing deals with Electronic Arts Inc., sporting card companies and other sponsorship agreements.