

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

FERNANDA GARBER, MARC
LERNER, DEREK RASMUSSEN,
ROBERT SILVER, GARRETT TRAUB,
and VINCENT BIRBIGLIA, representing
themselves and all others similarly situated,

Plaintiffs,

v.

OFFICE OF THE COMMISSIONER OF
BASEBALL, et al.,

Defendants.

Civil Action No. 12-cv-3704 (SAS)

DECLARATION OF IAN AYRES

[REDACTED – PUBLIC VERSION]

~~CONFIDENTIAL — SUBJECT TO PROTECTIVE ORDER~~

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I. INTRODUCTION

1. I have been asked by counsel for Plaintiffs to review and comment upon the proposed Class Action Settlement¹ (“Settlement Agreement”) filed January 20, 2016 in the above captioned matter between Plaintiffs Fernanda Garber, Marc Lerner, Derek Rasmussen, Robert Silver, Garrett Traub, and Vincent Birbiglia (collectively, “Plaintiffs”), on behalf of themselves and all other Class Members (collectively, “Class Members”), and Defendants Office of the Commissioner of Baseball, Major League Baseball (“MLB”) Properties Inc., as successor by merger to Major League Baseball Enterprises Inc., MLB Advanced Media L.P., MLB Advanced Media, Inc., Athletics Investment Group, LLC, the Baseball Club of Seattle, L.L.L.P., Chicago Cubs Baseball Club, LLC, Chicago White Sox, Ltd., Colorado Rockies Baseball Club, Ltd., The Phillies, Pittsburgh Baseball, Inc., San Francisco Baseball Associates, L.L.C., New York Yankees Partnership, Yankees Entertainment and Sports Network, LLC, Comcast Corporation, Comcast SportsNet California, LLC, Comcast SportsNetChicago, LLC, Comcast SportsNet Philadelphia, L.P., DIRECTV, LLC, DIRECTV Sports Networks, LLC, DIRECTV Sports Net Pittsburgh, LLC d/b/a Root Sports Pittsburgh (“Root Sports Pittsburgh”), DIRECTV Sports Net Rocky Mountain, LLC d/b/a Root Sports Rocky Mountain (“Root Sports Rocky Mountain”), and DIRECTV Sports Net Northwest, LLC d/b/a Root Sports Northwest (“Root Sports Northwest”) (collectively, “Defendants”). I have reviewed the Settlement Agreement and the Second Amended Class Action Complaint for this case filed September 11, 2013 in the

¹ Class Action Settlement Agreement, Garber v. Office of the Commissioner of Baseball, Case No. 12-cv-3704 (SAS) (filed January 20, 2016) [hereinafter *Settlement Agreement*].

Southern District of New York.² These and other materials that I rely upon in forming my opinions are listed in Appendix 1.³

2. Plaintiffs have brought a case on behalf of themselves and all individuals who (1) have purchased programming from DIRECTV and/or Comcast since four years prior to the filing of the Complaint that “included channels carrying video presentations of live major league baseball games that were not available through a sponsored telecast,” and (2) all individuals who purchased MLB.tv in the United States since four years prior to the filing of the Complaint.⁴ MLB.tv is the consumer product that has been offered to consumers enabling them to view, over the Internet, games designated as “out-of-market” by the MLB and its teams.⁵ Plaintiffs allege that Defendants have engaged in anti-competitive behavior that has eliminated competition in the distribution of live MLB games over the Internet and television.⁶ Plaintiffs allege that Defendants have created exclusive territories for each MLB team for purposes of live-game video presentation, such that other teams agree not to compete in other teams’ exclusive territories.⁷ Plaintiffs allege that the only way for consumers to view live presentations of games for teams outside their exclusive territories is to subscribe to MLB.tv (for viewing live games over the Internet) or MLB Extra Innings (which is distributed by cable and satellite providers).⁸ Each of these packages consists of programming for all out-of-market teams, and a consumer cannot subscribe to a more limited package that would include fewer teams (such as a single

² Second Amended Class Action Complaint, *Garber v. Office of the Commissioner of Baseball*, Case No. 12-cv-3704 (SAS) (filed September 11, 2013) [hereinafter *Complaint*].

³ Jeffrey West, a consultant working under my supervision, provided substantial assistance in the preparation of this report.

⁴ *Complaint*, ¶42.

⁵ *Settlement Agreement*, at ¶¶33-34.

⁶ *Complaint*, ¶2.

⁷ *Id.* at ¶9.

⁸ *Id.* at ¶10.

favorite team of the consumer that is out-of-market).⁹ Therefore, Plaintiffs allege, many consumers are forced to pay for more games than they want. Plaintiffs allege that these practices are anti-competitive.

3. I have been asked to calculate the value of the Settlement Agreement to consumers. Based on the calculations described in this report, I estimate that the Settlement Agreement will benefit future MLB.tv and MLB Extra Innings subscribers by \$178.4 million to \$213.8 million, not including attorneys' fees or costs.

II. QUALIFICATIONS

4. I am the William K. Townsend Professor at Yale Law School, and a Professor at Yale's School of Management. I was the editor of the Journal of Law, Economics and Organization for seven years. I have previously taught at Harvard, Illinois, Northwestern, Stanford, and Virginia law schools and have been a research fellow of the American Bar Foundation. In 2006, I was elected to the American Academy of Arts and Sciences. I regularly teach courses in Contract Law and Quantitative Corporate Finance. I received my B.A. in Russian Studies and economics and J.D. from Yale University and my Ph.D. in economics from M.I.T.

5. I am the co-author of a widely-adopted contracts casebook, *Studies in Contract Law*, which is now in its 8th edition. In the Spring of 2010, together with Barry Nalebuff, I published a book with Basic Books on retirement investments entitled *Lifecycle Investing: A New, Safe, and Audacious Way to Improve the Performance of Your Retirement Portfolio*. My book with Gregory Klass, *Insincere Promises: The Law of Misrepresented Intent*, won the

⁹ *Id.* at ¶¶10-11.

2006 Scribes book award “for the best work of legal scholarship published during the previous year.” I have published 11 books and over 100 articles on a wide range of topics.

6. I am the author of several empirical studies that include econometric analysis and work with large datasets: *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 Stanford Law Review 1807 (2005) (with Richard Brooks); *To Insure Prejudice: Racial Disparities in Taxicab Tipping*, 114 Yale Law Journal 1613 (2005) (with Fred Vars and Nasser Zakariya); *A Separate Crime of Reckless Sex*, 72 University of Chicago Law Review 599 (2005) (with Katharine Baker); *Shooting Down the More Guns, Less Crime Hypothesis*, 55 Stanford Law Review 1193 (2003) (with John J. Donohue III); *Measuring the Positive Externalities from Unobservable Victim Precaution: An Empirical Analysis of Lojack*, 113 Quarterly Journal of Economics 43 (1998) (with Steven D. Levitt); *Pursuing Deficit Reduction Through Diversity: How Affirmative Action at the FCC Increased Auction Competition*, 48 Stanford Law Review 761 (1996) (with Peter Cramton); *A Market Test for Race Discrimination in Bail Setting*, 46 Stanford Law Review 987 (1994) (with Joel Waldfogel); and *Racial Equity in Renal Transplantation: The Disparate Impact of HLA-Based Allocation*, 270 Journal of American Medical Association 1352 (1993) (with Robert Gaston, Laura Dooley, and Arnold Diethelm).

7. My curriculum vitae is included as Appendix 2. I have previously testified as an expert witness in a variety of antitrust, contract, and civil rights cases. I have attached a list of cases on which I have given sworn testimony (Appendix 3).

8. I file this report in my individual capacity and have no financial stake in the outcome of this case. My hourly rate in this matter is \$850. My compensation is not contingent

on any action or event resulting from the analyses, opinions or conclusions in, or the use of, this report.

9. My review of materials and data is continuing, and I reserve the right to modify my opinions as new materials emerge.

III. SETTLEMENT AGREEMENT TERMS

10. The Settlement Agreement includes injunctive relief consisting of new unbundled programming packages and price relief on existing bundle programming packages. In this section, I briefly describe these terms.

A. MLB.tv Unbundled Programming

11. Under the terms of the Settlement Agreement, beginning with the 2016 season and continuing for four additional seasons, MLB will offer unbundled live game programming that is included in the full, bundled MLB.tv package.¹⁰ The unbundled live game programming included in this portion of the Settlement Agreement will allow consumers to purchase programming for a single “out-of-market” team rather than the bundled MLB.tv package (“MLB.TV Package”) that consists of all teams. The consumer price of the unbundled MLB.tv programming for any individual team (“Internet Single-Club Programming”) shall be \$84.99 for the 2016 MLB season. Thereafter, through the 2020 MLB season, the price of the Internet Single-Club Programming may increase by no more than 3% or that year’s Cost of Living

¹⁰ *Settlement Agreement*, at ¶¶49, 55. MLB will also offer the right to sell unbundled MLB Extra Innings programming (“Single-Club Programming”) for each and every MLB team to Comcast and DIRECTV. *Id.* at ¶¶49, 56. Neither Comcast nor DIRECTV is required to offer this unbundled programming under the terms of the Settlement Agreement. If either Comcast or DIRECTV chooses to offer Single-Club Programming, it cannot be priced higher than 80% of the residential consumer price for the full-season MLB Extra Innings package.

Adjustment (“COLA”), as determined by the Social Security Administration, whichever is greater.¹¹

B. MLB.tv and MLB Extra Innings Price Relief

12. In addition to the unbundled MLB.tv package, the terms of the Settlement Agreement include provisions for the pricing of the full, bundled MLB.TV and MLB Extra Innings Packages.¹² Under those provisions, MLB will provide the MLB.TV Package at a price of \$109.99 for the 2016 season. Thereafter, through the 2020 MLB season, the price of the MLB.TV Package may increase by no more than 3% or that year’s COLA, whichever is greater.¹³ Comcast and DIRECTV will provide full-season MLB Extra Innings Packages for the 2016 and 2017 seasons to residential customers at a 12.5% discount off of their corresponding full-season MLB Extra Innings prices to residential customers for the 2015 season.¹⁴

C. MLB.tv “Follow-Your-Team” Add-On Feature

13. Under the provisions of the settlement, MLB will offer its MLB.TV Package subscribers a “Follow-Your-Team” Package for an additional \$10 beyond the regular MLB.TV Package under the settlement.¹⁵ The “Follow-Your-Team” feature would enable those MLB.TV Package subscribers the ability to view, via the internet, the out-of-market local broadcast of a game between the subscriber’s selected out-of-market team and a team within the subscriber’s market. This feature will be available subject to agreements between MLB and the regional sports networks carrying the games.

¹¹ *Id.* at ¶55.

¹² *Id.* at ¶57.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at ¶58.

IV. VALUE OF SETTLEMENT AGREEMENT TO CLASS MEMBERS

14. The Settlement Agreement includes savings for both Class Members who continue to subscribe to the bundled MLB.TV and MLB Extra Innings Packages in the future as well as savings for Class Members who switch from the bundled packages to the MLB's unbundled Internet Single-Club Programming. Therefore, the key inputs to my calculation of the value to Class Members of the terms of the Settlement Agreement are (1) the number of subscribers, (2) the prices, and (3) the share of Class Members who switch from the bundled package to the unbundled package.

15. Based on materials produced by Defendants, the number of full-season subscribers to MLB.tv, DIRECTV MLB Extra Innings, and Comcast MLB Extra Innings for the 2015 season was [REDACTED] respectively.¹⁶ Through 2015, MLB.tv offered two tiers of programming: "Basic" and "Premium". MLB.tv Basic included only the home team's broadcast, whereas MLB.tv Premium included the broadcasts of both the home and visiting teams.¹⁷ Of the [REDACTED] MLB.tv subscribers in 2015, [REDACTED] subscribed to the Basic package, and [REDACTED] subscribed to the Premium package. The 2015 full-season price for the MLB.tv Basic and Premium packages were \$109.99 and \$129.99, respectively.¹⁸ The 2015 full-season prices for DIRECTV's and Comcast's MLB Extra Innings packages were \$197.94 and \$199,

¹⁶ E-Mail from William Durbin, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Feb. 29, 2016; E-Mail from John Vazquez, Kirkland & Ellis LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Feb. 29, 2016; E-Mail from Andrew DeLaney, Davis Polk & Wardwell LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Jan. 29, 2016.

¹⁷ MLB.tv Basic also did not permit viewing on all devices available for MLB.tv Premium. See, e.g., *Complaint*, ¶83; Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement, Garber v. Office of the Commissioner of Baseball, Case No. 12-cv-3704 (SAS) (filed January 20, 2016), at 10 n.7.

¹⁸ See, e.g., Mark Newman, *Signups for 2015 MLB.TV are underway*, MLB.COM, Feb. 3, 2015, <http://m.mlb.com/news/article/108190358/signups-for-2015-mlbtv-are-underway>.

respectively.¹⁹ The Settlement Agreement does not include any terms related to partial season packages. Therefore, I only consider full-season subscriber and pricing data in my analysis.

16. For purposes of valuing the settlement terms, I assume that the number of MLB.tv subscribers (excluding any subscribers who switch from MLB Extra Innings to Internet Single-Club Programming) would [REDACTED] per year from 2016 through 2020. This matches [REDACTED] in the number of MLB.tv subscribers from 2012 to 2015 (as shown in Table 1 below). I understand that MLB is not offering the MLB.tv Basic Package in 2016 under the terms of the settlement. However, I assume that MLB would have offered the MLB.tv Basic Package had no settlement occurred, and I categorize these but-for MLB.tv Basic Package subscribers under the “MLB.TV Basic” label in my settlement and no settlement calculations described herein. I assume that the number of MLB.tv Basic subscribers would [REDACTED] [REDACTED] from 2016 to 2020, matching [REDACTED] in subscribers from 2012 to 2015, as shown in Table 1. The number of MLB.tv Premium subscribers each year is equal to the difference between the total number of MLB.tv subscribers and the number of MLB.tv Basic subscribers in that year. Finally, I assume that the number of subscribers to DIRECTV MLB Extra Innings and Comcast MLB Extra Innings (before subtracting subscribers who would switch to Internet Single-Club Programming) remain at the 2015 levels.²⁰ These assumptions are conservative, given that the rate of increase in subscriptions will likely

¹⁹ See, e.g., Phillip Swann, *DIRECTV Holds Price For 2015 MLB Extra Innings*, TVPREDICTIONS.COM, Feb. 13, 2015, <http://www.tvpredictions.com/mlb021315.htm>; Posting of ComcastTeds to Comcast Help & Support Forums, <http://forums.xfinity.com/t5/Channels-and-Programming/MLB-Extra-Innings/td-p/2488259> (Mar. 18, 2015, 15:38 EST).

²⁰ Besides 2015 subscriber figures, I have reviewed MLB Extra Innings subscriber figures for 2008-2012 for DIRECTV and 2006-2012 for Comcast. Between 2008 and 2012, the number of DIRECTV MLB Extra Innings subscribers ranged from [REDACTED] [REDACTED]. MLB0007163-7167, at MLB0007163. Between 2006 and 2012, the number of Comcast MLB Extra Innings subscribers ranged from [REDACTED] [REDACTED].

accelerate as a result of the lower prices and additional choices coming from the proposed settlement.

17. For purposes of valuing the settlement terms, I assume that the undiscounted prices of the MLB Extra Innings packages will remain at their 2015 levels (\$197.94 for DIRECTV and \$199.00 for Comcast) through the 2020 season. I assume that the MLB.TV Package (Basic and Premium) would increase by 3% each year from 2016 to 2020 if no settlement had occurred. I consider two scenarios of price increases under the terms of the settlement for purposes of valuing the Settlement Agreement to Class Members. Under Scenario 1, I assume that the MLB.TV Package price would increase by 3% each year from 2016 to 2020. Under Scenario 2, I assume that the MLB.TV Package price would remain constant (increase by 0%) from 2016 to 2020. Based on the terms of the Settlement Agreement, MLB would be forbidden from implementing any price increase in the MLB.TV Package if it could not obtain in-market streaming rights for local game broadcasts on all the Regional Sports Networks of DIRECTV, Comcast, and 21st Century Fox.²¹ Therefore, the difference between total subscriber benefits under the two scenarios is a representation of the value of the in-market streaming provision of the Settlement Agreement.

18. For purposes of valuing the settlement terms, I assume that 30% of the MLB.tv Premium and MLB Extra Innings subscribers that would exist without the settlement will switch to the less expensive Internet Single-Club Programming under the terms of the settlement. I assume that MLB.tv Basic subscribers are more price sensitive than MLB.tv Premium and MLB Extra Innings subscribers, by virtue of their choice to subscribe to the less expensive MLB.tv offering but-for the settlement. Therefore, I assume that 50% of MLB.tv Basic subscribers that

²¹ *Settlement Agreement*, at ¶59.

would exist without the settlement will switch to the less expensive Internet Single-Club Programming under the terms of the Settlement. I assume that these consumers with a strong team preference who switch value the unbundled team package as much as the bundle package. Because Comcast and DIRECTV are not required to offer the unbundled package to their MLB Extra Innings subscribers, I assume that the unbundled package is available only through MLB.tv under the terms of the Settlement Agreement.

19. My assumptions regarding the number and valuations of unbundled MLB.tv Internet Single-Club Programming subscribers are likely to be conservative because they do not take into account new consumers who will enter (or re-enter) the market. For the purposes of valuing the settlement in monetary terms, what matters is the absolute number of consumers who purchase the single team package instead of the traditional package, not any given percentage of preexisting subscribers. My calculations of the value of the unbundled MLB.tv Internet Single-Club Programming package to the 30%-to-50% share of subscribers who would exist without a settlement does not include the value to the additional consumers who would enter the market once an unbundled package becomes available.

20. Table 1 summarizes the data and assumptions regarding MLB.tv upon which I rely in calculating the value of the terms of the Settlement Agreement to Class Members, as described above.

TABLE 1: MLB.TV MODEL INPUTS

		MLB.tv Basic	MLB.tv Premium	Total MLB.tv
[1]	Subscribers, 2012			
[2]	Subscribers, 2015			
[3]	% Increase, 2012-2015			
[4]	Average Annual % Increase, 2012-2015			
[5]	Price of MLB.TV Package, 2015	\$109.99	\$129.99	
[6]	Price of MLB.TV Package under Settlement, 2016	N/A	\$109.99	
[7]	Price of Internet Single-Club Programming under Settlement, 2016	N/A	\$84.99	
[8]	Assumed % of MLB.TV Package Subscribers who Switch to Internet Single-Club Programming	50%	30%	
[9]	Assumed Annual % Change in Subscribers, 2016-2020			
	Assumed Annual Price Change of MLB.TV Package (Bundled) & Internet Single-Club Programming (Unbundled) under Settlement, 2016-2020			
[10]	Scenario 1	N/A	3%	3%
[11]	Scenario 2	N/A	0%	0%
[12]	Assumed Annual Price Change of MLB.TV Package (Bundled) under No Settlement, 2016-2020	3%	3%	3%

Sources:

[1] MLB0357678. Does not include monthly subscribers.

[2] E-Mail from William Durbin, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Feb. 29, 2016. Does not include monthly subscribers.

[3] = ([2] - [1]) / [1]

[4] = (1 + [3])^{1/3} - 1

[5] Mark Newman, *Signups for 2015 MLB.TV are underway*, MLB.COM, Feb. 3, 2015, <http://m.mlb.com/news/article/108190358/signups-for-2015-mlbtv-are-underway>.

[6] *Settlement Agreement*, at ¶57. MLB.tv Basic will no longer be offered under the settlement terms.

[7] *Settlement Agreement*, at ¶55.

[8] Assumption.

[9] = [4] for MLB.tv Basic and Total MLB.tv (Basic plus Premium). The annual percent increase in MLB.tv Premium subscribers will vary by year to be consistent with the assumed decrease in Basic subscribers and assumed increase in total MLB.tv subscribers. This assumed percentage increase excludes any Comcast or DIRECTV MLB Extra Innings subscribers who would switch to the Internet Single-Club Programming under the settlement.

[10] *Settlement Agreement*, at ¶¶55, 57.

[11] *Settlement Agreement*, at ¶¶55, 57, 59.

[12] Assumption.

21. Table 2 summarizes the data and assumptions regarding DIRECTV MLB Extra Innings and Comcast MLB Extra Innings upon which I rely in calculating the value of the terms of the Settlement Agreement to Class Members, as described above.

TABLE 2: MLB EXTRA INNINGS MODEL INPUTS

	DirecTV MLB Extra Innings	Comcast MLB Extra Innings
[1] Subscribers, 2015		
[2] Price of MLB Extra Innings Package, 2015	\$197.94	\$199.00
[3] % Discount of MLB Extra Innings Package Price, Relative to 2015		
2016	12.50%	12.50%
2017	12.50%	12.50%
2018	0.00%	0.00%
2019	0.00%	0.00%
2020	0.00%	0.00%
[4] Discount of Unbundled Package, relative to MLB Extra Innings Package	N/A	N/A
[5] Assumed % of MLB Extra Innings Package Subscribers who Switch to Internet Single-Club Programming (MLB.tv)	30%	30%
[6] Assumed Annual % Change in Subscribers, 2016-2020	0%	0%
[7] Assumed Annual Price Change of MLB Extra Innings Package, 2016-2020 (Before Any Settlement-Related Discounts)	0%	0%

Sources:

[1] E-Mail from John Vazquez, Kirkland & Ellis LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Feb. 29, 2016.

[2] E-Mail from Andrew DeLaney, Davis Polk & Wardwell LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Jan. 29, 2016.

[3] *Settlement Agreement*, at ¶57.

[4] *Settlement Agreement*, at ¶56. DIRECTV and Comcast are not required to offer unbundled MLB Extra Innings packages to their customers. Therefore, I assume that the unbundled package is only offered through the Internet Single-Club Programming of MLB.tv.

[5] Assumption.

[6] Assumption.

[7] Assumption.

22. To calculate the benefit of the settlement to consumers, I calculate the customer programming costs for all MLB.tv, DIRECTV MLB Extra Innings, and Comcast MLB Extra Innings subscribers for each of the five seasons beginning with the 2016 season. I calculate these customer costs under the terms of the Settlement Agreement, and I compare these costs to the costs that would be incurred by subscribers without the settlement. The value of the Settlement Agreement is equal to the difference between these two costs.

23. Appendix 4-1 illustrates the programming price per subscriber in my model if the terms of the Settlement Agreement are implemented (“Settlement”) and the programming price per subscriber if the terms of the Settlement Agreement are not implemented (“No Settlement”) under Scenario 1. Appendix 4-2 illustrates the programming price per subscriber in my model if the terms of the Settlement Agreement are implemented and the programming price per subscriber if the terms of the Settlement Agreement are not implemented under Scenario 2. Through a comparison of these sets of Settlement and No Settlement prices, Appendices 4-1 and 4-2 illustrate the cost savings from the Settlement Agreement to each subscriber who either remains a bundle package subscriber or switches to an unbundled package. Table 3 summarizes these cost savings under Scenarios 1 and 2 for each type of subscriber.

TABLE 3: SETTLEMENT BENEFIT TO A BUNDLED & UNBUNDLED PACKAGE SUBSCRIBER

		2016	2017	2018	2019	2020
<i>Settlement, Scenario 1</i>						
	MLB.tv Basic					
[1]	Bundled	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
[2]	Unbundled	\$25.00	\$25.75	\$26.52	\$27.32	\$28.14
	MLB.tv Premium					
[3]	Bundled	\$20.00	\$20.60	\$21.22	\$21.85	\$22.51
[4]	Unbundled	\$45.00	\$46.35	\$47.74	\$49.17	\$50.65
[5]	DIRECTV MLB Extra Innings	\$24.74	\$24.74	\$0.00	\$0.00	\$0.00
[6]	Comcast MLB Extra Innings	\$24.88	\$24.88	\$0.00	\$0.00	\$0.00
<i>Settlement, Scenario 2</i>						
	MLB.tv Basic					
[7]	Bundled	\$0.00	\$3.30	\$6.70	\$10.20	\$13.80
[8]	Unbundled	\$25.00	\$28.30	\$31.70	\$35.20	\$38.80
	MLB.tv Premium					
[9]	Bundled	\$20.00	\$23.90	\$27.92	\$32.05	\$36.31
[10]	Unbundled	\$45.00	\$48.90	\$52.92	\$57.05	\$61.31
[11]	DIRECTV MLB Extra Innings	\$24.74	\$24.74	\$0.00	\$0.00	\$0.00
[12]	Comcast MLB Extra Innings	\$24.88	\$24.88	\$0.00	\$0.00	\$0.00

Notes:

- [1] = Appendix 4-1, row [3]
- [2] = Appendix 4-1, row [5]
- [3] = Appendix 4-1, row [8]
- [4] = Appendix 4-1, row [10]
- [5] = Appendix 4-1, row [13]
- [6] = Appendix 4-1, row [16]
- [7] = Appendix 4-2, row [3]
- [8] = Appendix 4-2, row [5]
- [9] = Appendix 4-2, row [8]
- [10] = Appendix 4-2, row [10]
- [11] = Appendix 4-2, row [13]
- [12] = Appendix 4-2, row [16]

24. As Table 3 shows, an MLB.TV Package subscriber would save \$20.00 for the 2016 season under the terms of the Settlement Agreement relative to what the subscriber would have paid for MLB.TV Premium under no settlement (\$109.99 vs. \$129.99). An MLB.TV

Package subscriber would pay the same amount in 2016 under the terms of the Settlement Agreement as the subscriber would have for MLB.tv Basic under no settlement. MLB.tv subscribers who switch to the unbundled Internet Single-Club Programming save an additional \$25 from the discounted bundled package in 2016. The benefits to MLB.tv subscribers increase each year from 2016 to 2020. Benefits are larger under Scenario 2 relative to Scenario 1 from 2017 to 2020 because the MLB.TV Package and Internet Single-Club Programming prices under the terms of the Settlement Agreement do not increase over that period in Scenario 2, whereas they increase by 3% each year in Scenario 1.

25. Table 3 also shows that the 12.5% discount for MLB Extra Innings programming lowers the total price of MLB Extra Innings programming by almost \$25 for the 2016 and 2017 seasons. This represents an approximate \$25 benefit per MLB Extra Innings subscriber who remains with the bundled MLB Extra Innings package of either Comcast or DIRECTV.

26. Appendix 5 illustrates the number of subscribers to the MLB.TV and MLB Extra Innings bundle packages who either (1) remain bundle package subscribers under the terms of the Settlement Agreement, or (2) switch to the unbundled Internet Single-Club Programming package. Table 4 summarizes the subscriber estimates from Appendix 5.

TABLE 4: FORECASTED BUNDLE PACKAGE AND UNBUNDLED PACKAGE SUBSCRIBERS FOR EACH SEASON, 2016-2020

	2016	2017	2018	2019	2020
[1] <i>No Settlement</i>					
<i>Settlement</i>					
[2] Bundled					
[3] % of Total	69.5%	69.6%	69.7%	69.8%	69.8%
[4] Unbundled					
[5] % of Total	30.5%	30.4%	30.3%	30.2%	30.2%
[6] Total					

Notes:

- [1] = Appendix 5, row [6]
- [2] = Appendix 5, row [12]
- [3] = [2] / [6]
- [4] = Appendix 5, row [18]
- [5] = [4] / [6]
- [6] = [2] + [4]

27. As Table 4 shows, of the [REDACTED] total MLB.tv, DIRECTV MLB Extra Innings, and Comcast MLB Extra Innings subscribers in 2016, [REDACTED] (69.5% of the total) are forecasted to remain bundle package subscribers when the terms of the Settlement Agreement are implemented. Approximately 30% of the total subscribers in each year are forecasted to switch to the unbundled Internet Single-Club Programming package.

28. Using the pricing and subscriber calculations illustrated in detail in Appendices 4-1, 4-2, and 5, and summarized in Tables 3 and 4, I calculate the benefit to MLB.tv and MLB Extra Innings subscribers from the Settlement Agreement. Appendix 6-1 illustrates my calculations under the assumptions of Scenario 1, whereas Appendix 6-2 illustrates my calculations under the assumptions of Scenario 2. Table 5 summarizes my results of the value of the Settlement Agreement to all MLB.tv, DIRECTV MLB Extra Innings, and Comcast MLB Extra Innings subscribers.

TABLE 5: SUMMARY OF SETTLEMENT AGREEMENT BENEFITS TO BUNDLE PACKAGE AND UNBUNDLED PACKAGE SUBSCRIBERS, 2016-2020

Scenario 1		
[1]	Bundle Subscriber Benefit	
[2]	Unbundled Subscriber Benefit	
[3]	Total Subscriber Benefit	\$178,389,441
Scenario 2		
[4]	Bundle Subscriber Benefit	
[5]	Unbundled Subscriber Benefit	
[6]	Total Subscriber Benefit	\$213,770,690

Notes:

- [1] See Appendix 6-1, row [21]
- [2] See Appendix 6-1, row [22]
- [3] = [1] + [2]
- [4] See Appendix 6-2, row [21]
- [5] See Appendix 6-2, row [22]
- [6] = [4] + [5]

29. Table 5 shows that under the assumption of Scenario 1 that the MLB.TV Package and Internet Single-Club Programming prices increase by 3% each year from 2016 to 2020, the total benefit from the Settlement Agreement to subscribers who remain bundle package subscribers is \$ [REDACTED] from the 2016 to the 2020 seasons. The total benefit to subscribers who switch to the unbundled package is \$ [REDACTED] under Scenario 1. The total benefit to all MLB.tv, DIRECTV MLB Extra Innings, and Comcast MLB Extra Innings subscribers is \$178.4 million under Scenario 1.

30. Under the assumption of Scenario 2 that the prices of the MLB.TV Package and Internet Single-Club Programming do not increase from 2016 to 2020, the total benefit from the Settlement Agreement to subscribers who remain bundle package subscribers is \$ [REDACTED] from the 2016 to the 2020 seasons. The total benefit to subscribers who switch to the unbundled package is \$ [REDACTED] under Scenario 1. The total benefit to all MLB.tv, DIRECTV MLB Extra Innings, and Comcast MLB Extra Innings subscribers is \$213.8 million under Scenario 1.

31. The valuation range of \$178.4 million to \$213.8 million illustrated in Table 5 is a conservative estimate of the overall benefit of the Settlement Agreement to consumers. First, the valuation is conservative because I assume that the rate of increase in total number of subscribers to the bundled and unbundled packages does not increase over time. It is likely that additional consumers (including Class Members who were not active subscribers in 2015 but had been subscribers in earlier years) would subscribe to these packages due to the decrease in price and increase in programming package choice. Second, I assume in my calculations that MLB Extra Innings prices without the settlement discounts remain constant over time. If the undiscounted price were to increase, then the dollar value of the discounts would increase, thus increasing the value of the settlement to subscribers. Third, my calculations do not include the benefit to MLB.TV Package subscribers who would choose the “Follow-Your-Team” feature that was not available without the Settlement.

V. CONCLUSION

32. In summary, I find that subscribers to MLB.tv and MLB Extra Innings will save approximately \$178.4 million to \$213.8 million over the five seasons beginning with the 2016 season and ending with the 2020 season under the terms of the Settlement Agreement. The Settlement Agreement provides further benefits to subscribers by introducing the choice of an unbundled package that has not been offered previously. Therefore, I conclude that the Settlement Agreement benefits Class Members.

* * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 10, 2016.

A handwritten signature in blue ink, reading "Ian Ayres", is written over a horizontal line. The signature is stylized, with the first name "Ian" and the last name "Ayres" clearly legible.

Ian Ayres

APPENDIX 1: MATERIALS RELIED UPON

Legal Filings & Expert Reports:

- Second Amended Class Action Complaint, Garber v. Office of the Commissioner of Baseball, Case No. 12-cv-3704 (SAS) (filed September 11, 2013).
- Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Action Settlement, Garber v. Office of the Commissioner of Baseball, Case No. 12-cv-3704 (SAS) (filed January 20, 2016).
- Class Action Settlement Agreement, Garber v. Office of the Commissioner of Baseball, Case No. 12-cv-3704 (SAS) (filed January 20, 2016).

Letters, E-Mails, and Other Correspondences

- E-Mail from Andrew DeLaney, Davis Polk & Wardwell LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Jan. 29, 2016.
- E-Mail from William Durbin, Paul, Weiss, Rifkind, Wharton & Garrison LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Feb. 29, 2016.
- E-Mail from John Vazquez, Kirkland & Ellis LLP, to Peter Leckman, Langer, Grogan & Diver, P.C., Feb. 29, 2016.

Document Production

- MLB0007161-7167.
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- Posting of ComcastTeds to Comcast Help & Support Forums, <http://forums.xfinity.com/t5/Channels-and-Programming/MLB-Extra-Innings/td-p/2488259> (Mar. 18, 2015, 15:38 EST).

APPENDIX 2: CURRICULUM VITAE OF IAN AYRES

Yale Law School
PO Box 408415
New Haven, CT 06520-8415
(203) 432-7101 (VOICE)
(203) 432-4769 (FAX)

15 Loomis Place
New Haven, CT 06511
(203) 624-5654
ian.ayres@yale.edu
www.law.yale.edu/ayres/ (DOWNLOAD PUBLICATIONS)

EDUCATION

- Ph.D. (Economics) Massachusetts Institute of Technology, 1988.
Major Fields: Industrial Organization, Econometrics.
Dissertation: Essays on Vertical Foreclosure, Cartel Stability and the
Structural Determinants of Oligopolistic Behavior.
- J.D. Yale Law School, 1986.
Articles Editor, Yale Law Journal.
- B.A. Yale University, 1981.
Majors: Russian and East European Studies (Distinction).
Economics (Distinction).
Summa Cum Laude, 1981.
Phi Beta Kappa, 1980.

PROFESSIONAL APPOINTMENTS

- William K. Townsend Professor, Yale Law School, 1994 - present.
- Professor, Yale School of Management, 1994 - present.
- Anne Urowsky Professorial Fellow, 2009 – present.
- Research Associate, National Bureau of Economic Research, 2005 - present.
- Editor, JOURNAL OF LAW, ECONOMICS AND ORGANIZATION, 2002 - 2009.
- Adviser, The Center for Cost-Effective Consumerism, 2008 – present.
- Robert B. and Candice J. Haas Visiting Professor, Harvard Law School, Winter Term 2008.
- Visiting Professor, University of Illinois, School of Law, 1997-98.

Lecturer, University of Toronto, Faculty of Law, January 1995.

Professor, Stanford Law School, 1992 - 1994.

Lecturer, University of Illinois, School of Law, Summers 1994 and 1995.

Board of Editors, SUPREME COURT ECONOMIC REVIEW, 1993 - .

Lecturer, University of Iowa, School of Law, January Term 1993.

Lecturer, Moscow State Institute of International Relations (MGIMO) -- Cardozo Law Institute, Summer 1992.

Visiting Professor, Yale Law School, Fall 1991.

Visiting Professor, University of Virginia, School of Law,
Fall 1990 - Spring 1991.

Guest Scholar, Brookings Institution, Summer 1990 - Spring 1991.

Associate Professor, Northwestern University, School of Law,
1990 - 1991; (Assistant Professor, 1987-1990).

Research Fellow, American Bar Foundation, 1987 - 1991.

Scholar in Residence, Sonnenschein Nath and Rosenthal - Summer 1990.

Associate Editor, *Law and Social Inquiry*, 1990.

Clerk to the Honorable James K. Logan, Tenth Circuit Court of Appeals, 1986-1987.

Olin Summer Research Fellow, Yale Law School Program in Law, Economics, and Public Policy, May to August 1986.

COURSES TAUGHT

Antitrust, Civil Rights, Commercial Law, Contracts, Corporations, Corporate Finance, Intellectual Property, Law and Economics, Empirical Law and Economics, LGBT Litigation Seminar, Property, Quantitative Methods.

PUBLIC INTEREST

Rothe Dev. Corp. v. United States, SA-98-CA-1011-EP, U.S. District Court Western District of Texas, testifying expert concerning narrow tailoring of affirmative action in government procurement, 1999.

Advisor, Justice and Commerce Departments on post-Adarand review of Affirmative Action, 1998.

Member, Board of Directors, Yale Law School Early Learning Center, 1996 - 1997.

Member, Board of Directors, East Palo Alto Community Law Project, 1993 - 1994.

In re Insurance Antitrust Litigation, consulting expert; regarding antitrust claims of 17 state Attorneys General against major commercial insurers, 1988 - 1991.

Counsel in Illinois post-conviction petition, *People v. Titone*, 83-C-127, 1988 to 1992 (Death sentence vacated September 7, 1990; argued claims concerning underlying conviction to Illinois Supreme Court, March 14, 1992).

New Haven Battered Women's Temporary Restraining Order Project, September 1985 to April 1986.

Harvard Prison Legal Assistance Project, October 1983 to May 1984.

Legal Services of Western Missouri, June to August 1983.

Jerome Frank Legal Services Organization, January 1983 to October 1984.

PUBLICATIONS

Books

STUDIES IN CONTRACT LAW (8th edition, Foundation Press, 2012) (with Greg Klass).

THE \$500 DIET: WEIGHT LOSS FOR PEOPLE WHO ARE COMMITTED TO CHANGE (Kindle Select, 2011).

CARROTS AND STICKS: UNLOCK THE POWER OF INCENTIVES TO GET THINGS DONE (Bantam Books, 2010).

LIFECYCLE INVESTING: A NEW, SAFE, AND AUDACIOUS WAY TO IMPROVE THE PERFORMANCE OF YOUR RETIREMENT PORTFOLIO (Basic Books, 2010) (with Barry Nalebuff).

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BOOKS 2007).

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WHY NOT?: HOW TO USE EVERYDAY INGENUITY TO SOLVE PROBLEMS BIG AND SMALL (Harvard Business School Press, 2003) (with Barry Nalebuff) *also published in Portugese* as "Você Pode Tudo" (Negocio Editora), *in Spanish* as "¿Y por que NO" (Empresa Activa), *in Korean* (Sejong), *in Japanese* (Hankyu), *in Chinese* (The Commercial Press), *in Bulgarian* (Klasika and Still), *in Chinese* (China Times), *in Estonian* (Tanapaev), *in Italian* (Il Sole), *in Korean* (Sejong Books), *in Russian* (Williams Publishing), and *in Thai* (AR Business Press).

Book Excerpt: Ideas Waiting to Happen, FORBES 127 (Oct. 27 2003) (with Barry Nalebuff).

Book Excerpt: A Role on the Board for the 'Loyal Opposition,' DIRECTORS & BOARDS 32 (Fall 2003).

Book Excerpt: Problem Solving: What Would Croesus Do?, DARWIN (Nov. 2003).

STUDIES IN CONTRACT LAW (6th edition, Foundation Press, 2003) (with Edward J. Murphy & Richard E. Speidel).

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PERVASIVE PREJUDICE?: UNCONVENTIONAL EVIDENCE OF RACE AND GENDER DISCRIMINATION (University of Chicago Press, 2002).

STUDIES IN CONTRACT LAW (5th edition, Foundation Press, 1997) (with Edward J. Murphy & Richard E. Speidel).

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Scholarly Articles and Chapters

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Effect of Perineal Self-Acupressure on Constipation: The PSAC Randomized, Controlled Trial, JOURNAL GENERAL INTERNAL MEDICINE (November 2014) (with Ryan Abbott, Ed Hui and Ka-Kit Hui)

Innovation Sticks: The Limited Case for Penalizing Failures to Innovate, U. CHI. L. REV. (forthcoming 2015) (with Amy Kapczynski).

Book Review of *The Behavior of Federal Judges: A Theoretical and Empirical Study of Rational Choice*. By Lee Epstein, William M. Landes, and Richard A. Posner. Harvard University Press, 2013. 52 (LII) JOURNAL OF ECONOMIC LITERATURE 866 (September 2014).

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Comment on Jolls's Behavioral Law and Economics, in BEHAVIORAL ECONOMICS AND ITS APPLICATIONS (Peter Diamond & Hannu Vartiainen, eds., 2007).

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The Brennan Center Jorde Symposium Issue on BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE REFORM, 91 CALIFORNIA LAW REVIEW 641 (2003) and *The New Paradigm Revisited*, 91 CALIFORNIA LAW REVIEW 743 (2003) (with Bruce Ackerman).

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Symposium Issue Commentaries on BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE REFORM, 37 UNIVERSITY OF RICHMOND LAW REVIEW 935 (2003) and *Why a New Paradigm?*, 37 UNIVERSITY OF RICHMOND LAW REVIEW 1147 (2003) (with Bruce Ackerman).

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1998 LADD LECTURE: *Empire or Residue: Competing Visions of the Contractual Canon*, 26 FLORIDA STATE LAW REVIEW 897 (1999).

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Dialing for Thieves, FORBES 76 (April 19, 2004) (with Barry Nalebuff).

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Patriot Dollars Put Money Where the Voters Are, L.A. TIMES at 15 (July 17, 2003) (with Bruce Ackerman).

An Educated Consumer. FORBES 95 (June 09, 2003) (with Barry Nalebuff).

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The Virtues of a Virtual Strike, FORBES 128 (Oct. 25, 2002) (with Barry Nalebuff).

Virtual Strikes (Oct. 4, 2002) (public radio commentary with Barry Nalebuff).

Price-Protect Your Home, FORBES 101 (Sept 16, 2002) (with Barry Nalebuff).

Disclosing Hidden Fees to Consumers (Aug. 28, 2002) (public radio commentary with Barry Nalebuff).

An Alternative to Expensing Stock Options (July 24, 2002) (public radio commentary with Barry Nalebuff).

Campaign Reform's Worst Enemy, NEW YORK TIMES, p. A19, col. 2 (July 6, 2002) (with Bruce Ackerman).

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A Community of Ideas, FORBES 173 (May 9, 2002) (with Barry Nalebuff).

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The Donation Booth, 22 BOSTON REVIEW 26 (December-January 1997-98) (with Jeremy Bulow) (available at <http://bostonreview.mit.edu/BR22.6/ayres.html>), *reprinted in* 47 YALE LAW REPORT 62 (2000) and THE NEWS-GAZETTE, B1 (Sept. 27, 1998).

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Car Buying, Made Simpler, NEW YORK TIMES F12 (April 13, 1997) (with Peter Schuck).

Aid Diversity, and the Treasury, NEW YORK TIMES F13 (May 21, 1995) (with Peter Cramton).

Price and Prejudice, THE NEW REPUBLIC 30 (July 6, 1992).

Colleges in Collusion, THE NEW REPUBLIC 19 (October 16, 1989).

NAMED LECTURES

The W. D. Carpenter Lecture, "Diversifying Time: Why Buying Stock With Borrowed Money Can Reduce Risk?," Middlebury College, Department of Economics, April 26, 2010.

The Meador Lecture, "Freedom and Commitment," University of Alabama, School of Law, April 19, 2010.

The 46th Henry J. Miller Lecture, "Barriers to Diversification," Georgia State University, School of Law, March 18, 2010.

The Schwartz Lecture on Dispute Resolution, "Never Say No: The Law, Economics and Psychology of Counteroffers," Ohio State University, Moritz College of Law, April 2, 2009.

The Biddle Lecture, "A New Test for Race Discrimination," Harvard Law School, November 12, 2008.

The Hart Lecture, "The Secret Refund Booth," Georgetown University Law Center, March 22, 2006.

The Henry Schneider Lecture, "Mark(et)ing Nondiscrimination," Columbia Law School, March 8, 2005.

The Hazard Lecture, "Can Creativity be Taught?: Why Not!," Pembroke Hill High School, September 17, 2004.

The John M. Olin Lecture in Law and Economics, "Why Not?: Can Legal Creativity Be Taught?," Michigan Law School, September 11, 2003.

The Monsanto Lecture in Tort Reform and Jurisprudence, "Using Tort Settlement To Cartelize," Valparaiso University, School of Law, March 26, 2000.

The John M. Olin Public Lecture in Law and Economics, "Coveting Thy Neighbor's Stock: Substitute Trading as Evasion and as Policy Tool," University of Toronto, September 24, 1999.

The Ladd Lecture, "Empire or Residue: Competing Visions of the Contractual Canon," Florida State College of Law, October 22, 1998.

The Monsanto Lecture in Tort Reform and Jurisprudence, "Protecting Property with Puts," Valparaiso University, School of Law, March 26, 1998.

Inaugural Lecture for William K. Townsend Chair, "Solomonic Bargaining," Yale Law School, November 15, 1994.

The Mirikitani Lecture in Law and Economics, "Back to Basics," University of Hawaii, March 9, 1990.

PROFESSIONAL MEMBERSHIP

James W. Cooper Fellow, Connecticut Bar Foundation, 2009 – present.

Fellow, American Academy of Arts & Sciences, 2006 - present.

Member, American Law Institute, 1997 - present.

Board of Directors, American Law and Economic Association, 1995-1999.

Admitted, Illinois Bar, 1987.

AWARDS

Bernstein Fabozzi/Jacobs Levy Outstanding Article Award for *Diversification Across Time* (with Barry Nalebuff), 2013.

Scribes Book Award (INSINCERE PROMISES) – "for the best work of legal scholarship published during the previous year," 2006

Research in the Public Interest, The Center for Public Representation, 1991.

ACTIVITIES

1st Place, Law and Society Association -- 5 kilometer fun run, 1989, 2002 and 2003.

Completed 1984 Boston marathon in 3 hours, 12 minutes.

Whiffenpoofs, 1980-81.

Yale Russian Chorus, 1977-80.

Semester in Soviet Union, Moscow's Pushkin Institute, Spring 1979.

CURRENT AS OF OCTOBER 12, 2015

APPENDIX 3: CASES IN WHICH IAN AYRES HAS TESTIFIED OR WRITTEN A DISCLOSED REPORT

1. City of Miami Gardens v. Wells Fargo & Co. (2016), Case No. 1:14-cv-22203-MORENO (S.D. Fla.) (testifying expert; re: disparate impact of mortgage lending practices).
2. Laumann v. National Hockey League (2015), Case No. 12-1817 (SAS) (S.D. N.Y.) (expert estimating value of proposed settlement to class members).
3. City of Los Angeles v. Wells Fargo & Co. (2015), Case No. 2:13-cv-09007-ODW (RZx) (C.D. Cal.) (testifying expert; re: disparate impact of mortgage lending practices).
4. City of Los Angeles v. Bank of America Corp. (2015), Case No. 2:13-cv-09046-PA (AGRx) (C.D. Cal.) (testifying expert; re: disparate impact of mortgage lending practices).
5. Cave v. Saxon Mortgage Services, Inc. (2014) No. 2:11-cv-04586-JP & No. 2:12-cv-05366-JP (E.D. Pa) (testifying expert; re: mortgage modification policies).
6. Adkins v. Morgan Stanley (2014) No. 1:12-cv-7667-VEC (S.D. N.Y.) (testifying expert; re: disparate impact of mortgage lending practices).
7. Saint-Jean v. Emigrant Mortgage Co. (2013) No. 1:11-cv-02122-SJ (E.D. N.Y.) (testifying expert; re: disparate impact and disparate treatment of mortgage lending practices).
8. In Re: Bank of America Home Affordable Modification Program (HAMP) Contract Litigation (2013), No. 1:10-md-02193-RWZ (D. Mass.) (testifying expert; re: mortgage modification policies).
9. In Re: CitiMortgage, Inc. Home Mortgage Affordable Modification Program (“HAMP”) Litigation (2013), No. 11-md-2274-DSF (PLAx) (C.D. Cal.) (testifying expert; re: mortgage modification policies).
10. In re JPMorgan Chase Mortgage Modification Litigation (2012), No. 11-md-02290-RGS (D. Mass.) (testifying expert; re: mortgage modification policies).
11. Reso v. Artisan Partners Limited Partnership (2012) No. 2:11-cv-00873-JPS (E.D. Wis.) (testifying expert; re: competition in the mutual fund industry).
12. Guerra v. GMAC LLC (2011) No. 2:08-cv-01297-LDD (E.D. Pa.) (testifying expert; re: disparate impact of discretionary pricing policies).
13. In re Wells Fargo Mortgage Lending Practices Litigation (2010) No. 08-CV-01930-MMC (JL) (N.D. Cal.) (submitted declaration responding to a motion to exclude the testimony of another expert re: disparate impact of discretionary pricing policies).

14. In re Countrywide Financial Mortgage Lending Practices Litigation (2010) MDL No. 1974 (W.D. Ky.) (testifying expert; re: disparate impact of discretionary pricing policies).
15. Barrett v. Option One Mortgage Corp. (2010) No. 08-10157 (D. Mass.) (testifying expert; re: disparate impact of discretionary pricing policies).
16. In re First Franklin Financial Corp. Litigation (2010) No. C08-01515JW (HRL) (N.D. Ca.) (testifying expert; re: disparate impact of discretionary pricing policies).
17. In re Federated Mutual Funds Excessive Fee Litigation (2009) Consolidated No. 2:04-cv-352-DSC (W.D. Pa.) (testifying expert; re: competition in the mutual fund industry).
18. Connecticut Podiatric Medical Association v. Health Net of Connecticut (2008) No. X01-CV-05-005900-S (CT SUP. CT.) (analyzed business justifications for discriminatory pricing in reimbursement rates paid to podiatrists and medical doctors).
19. INEOS Fluor Americas LLC, v. Honeywell International Inc. (2006) Civil Action No.: 06-189-SLR (DC. Del.) (expert concerning competition in the market for hydrofluoric acid).
20. Techold Participações S.A. v. Telecom Italia International N.V. (2006) International Chamber of Commerce Arbitration Nos.: 13960/CCO, 14048/CCO, 14376/CCO and 14393/CCO (expert concerning breach of corporate fiduciary duties).
21. Regarding Cayuga Nation's Land in Trust Application (2006) (expert concerning economic impact of placing certain lands in trust).
22. Blanchard & Co. v. Barrick Gold Corp. (2005) NO.: 02-3721 c/w 04-2610 (E.D. Louisiana) (expert concerning derivative trading strategies).
23. Claybrooks v. Primus Automotive Financial Services, Inc. (2005) No. 3-02-0382(M.D. Tenn.) (Testifying expert concerning disparate impact of finance markups).
24. Owens v. Nationwide Mutual Insurance Co. (2005) No. 3-03CV1184-H (N.D. Texas) (expert concerning disparate impact of credit scoring mechanism).
25. Russell v. Bank One (2004), No. 3-02-0365 (M.D. Tenn.) (testifying expert concerning disparate impact of finance markups).
26. Fishback and Willis vs. AHFC (2004), No. 3-02-0490 (M.D.Tenn.) (Testifying expert concerning disparate impact of finance markups).
27. Smith v. CFC (2004) No. 00-6003 (D.N.J.) (expert concerning disparate impact of finance markups).
28. Jones v. FMCC (2004) No. 00 CIV 8330 (S.D.N.Y.) (testifying expert concerning disparate impact of finance markups).

29. Coleman v. GMAC (2003) No. 3-98-0211 (M.D. Tenn) (testifying expert concerning disparate impact of finance markups).
30. Monsanto v. Scruggs (2002) Civil Action No. 3:00CV-161-P-A (N.D. Miss) (testifying expert concerning GM seed antitrust and patent abuse claims).
31. Rodriguez v. FMCC (2002) No. 01 C 8526 (N.D. Ill.) (submitted report concerning disparate impact of finance markups).
32. Cisco System, Inc (2001) (transfer pricing report prepared for IRS).
33. Cason v. Nissan Motor Acceptance Corp (2001) 3-98-0223 (M.D. Tenn.) (testifying expert concerning disparate impact of finance markups).
34. Star Scientific v. Steve Carter (2001) IP01-0838 C T/G (S. D. Indiana) (testifying expert concerning MSA qualifying statute).
35. Johnson v. City of Tulsa (2001) 94-C-39-H (N.D. Okla.) (submitted report concerning racial profiling by Tulsa Police Department).
36. Wisconsin v. Rent-a-Center (2000) (testifying expert concerning rent-to-own transaction).
37. Dynalantic Corp. v. United States Department of Defense (1999) (submitted report concerning narrow tailoring of affirmative action in government procurement).
38. Colon v. Rent-a-Center (1999) (wrote report concerning rent-to-own transaction).
39. Rothe Dev. Corp. v. United States, (1999) (testifying expert concerning narrow tailoring of affirmative action in government procurement).
40. Chiron Corp. v. Hoffman-La Roche (1999) (submitted report concerning interpretation of contract releasing certain claims concerning Hepatitis C patent).
41. Teledyne v. Boeing (1998) (testifying expert re: contractual and antitrust issues of Apache attack Helicopter fuselage procurement).
42. Connecticut Municipal Electric Energy Cooperative v. Connecticut Light & Power Co. (February 1998) (submitted report concerning interpretation of Life-of-Unit nuclear power output contract).
43. F. Buddie Contracting Ltd. v. Cuyahoga Community College District (March 1998) (submitted expert report re: narrow tailoring of procurement affirmative action plan).
44. Lufkin v. IDES and CMS (January 1998) (consulting expert; re: disparate impact and Equal Pay Act challenge to Illinois compensation plan).
45. DOJ's PCS Auction Investigation (June 1997) (non-testifying expert on competitive effects of auction bidding strategies).

46. Cassandra Burney et al. v. Rent-a-Center (1996-97) (testifying expert; re: excess interest charged in rent-to-own agreements).
47. Mother Bertha Music, Ltd. v. Bourne Music Ltd. (May 1996) (consulting expert; re: interpretation of copyright assignment contract).
48. U.S. v. Christopher Barnes (March 1996) (testifying expert, re: statistical representation of minorities in federal criminal venires).
49. U.S. v. John M. Purdy, Jr. (February 1996) (testifying expert; re: statistical representation of minorities in federal criminal venires).
50. Johnson v. Apple (July 1994) (testifying expert; re: disparate treatment and damages).
51. Williams v. Du Pont (July 1993) (affidavit expert; re: appropriate prejudgement interest rate).
52. AT&T (September 1993) (consulting expert; re: appropriate preconditions for lifting interexchange restriction).
53. James E. Gilleran, et al. v. Deno Evangelista, et al. (October 1992) (testifying expert; re: fiduciary duties of officers and directors).
54. Neiman Marcus Group v. Federated Department Stores (January 1992) (consulting expert; re: covenant not to compete).
55. In re Fare Box Litigation (1989) (testifying expert; re: relevant market and merger to monopoly).
56. In re Insurance Antitrust Litigation (1988 - 1991) consulting expert; re: antitrust claims of 17 state Attorneys General against major commercial insurers.

APPENDIX 4-1: PRICES OF BUNDLED & UNBUNDLED PACKAGES (SCENARIO 1)

		2016	2017	2018	2019	2020
<i>MLB.TV Basic</i>						
[1]	No Settlement, Bundle Package	\$109.99	\$113.29	\$116.69	\$120.19	\$123.79
[2]	Settlement, Bundle Package	\$109.99	\$113.29	\$116.69	\$120.19	\$123.79
[3]	<i>Bundle Subscriber Benefit</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$0.00</i>
[4]	Settlement, Unbundled Package	\$84.99	\$87.54	\$90.17	\$92.87	\$95.66
[5]	<i>Unbundled Subscriber Benefit</i>	<i>\$25.00</i>	<i>\$25.75</i>	<i>\$26.52</i>	<i>\$27.32</i>	<i>\$28.14</i>
<i>MLB.TV Premium</i>						
[6]	No Settlement, Bundle Package	\$129.99	\$133.89	\$137.91	\$142.04	\$146.30
[7]	Settlement, Bundle Package	\$109.99	\$113.29	\$116.69	\$120.19	\$123.79
[8]	<i>Bundle Subscriber Benefit</i>	<i>\$20.00</i>	<i>\$20.60</i>	<i>\$21.22</i>	<i>\$21.85</i>	<i>\$22.51</i>
[9]	Settlement, Unbundled Package	\$84.99	\$87.54	\$90.17	\$92.87	\$95.66
[10]	<i>Unbundled Subscriber Benefit</i>	<i>\$45.00</i>	<i>\$46.35</i>	<i>\$47.74</i>	<i>\$49.17</i>	<i>\$50.65</i>
<i>DIRECTV MLB Extra Innings</i>						
[11]	No Settlement, Bundle Package	\$197.94	\$197.94	\$197.94	\$197.94	\$197.94
[12]	Settlement, Bundle Package	\$173.20	\$173.20	\$197.94	\$197.94	\$197.94
[13]	<i>Bundle Subscriber Benefit</i>	<i>\$24.74</i>	<i>\$24.74</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$0.00</i>
<i>Comcast MLB Extra Innings</i>						
[14]	No Settlement, Bundle Package	\$199.00	\$199.00	\$199.00	\$199.00	\$199.00
[15]	Settlement, Bundle Package	\$174.13	\$174.13	\$199.00	\$199.00	\$199.00
[16]	<i>Bundle Subscriber Benefit</i>	<i>\$24.88</i>	<i>\$24.88</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$0.00</i>

Notes:

- [1] See Table 1, rows [5] & [12]
- [2] See Table 1, rows [6] & [10]
- [3] = [1] – [2]
- [4] See Table 1, rows [7] & [10]
- [5] = [1] – [4]
- [6] See Table 1, rows [5] & [12]
- [7] See Table 1, rows [6] & [10]
- [8] = [6] – [7]
- [9] = See Table 1, rows [7] & [10]
- [10] = [6] – [9]
- [11] See Table 2, rows [2] & [7]
- [12] = [11] discounted by Table 2, row [3]
- [13] = [11] – [12]
- [14] See Table 2, rows [2] & [7]
- [15] = [14] discounted by Table 2, row [3]
- [16] = [14] – [15]

APPENDIX 4-2: PRICES OF BUNDLED & UNBUNDLED PACKAGES (SCENARIO 2)

		2016	2017	2018	2019	2020
MLB.TV Basic						
[1]	No Settlement, Bundle Package	\$109.99	\$113.29	\$116.69	\$120.19	\$123.79
[2]	Settlement, Bundle Package	\$109.99	\$109.99	\$109.99	\$109.99	\$109.99
[3]	Bundle Subscriber Benefit	\$0.00	\$3.30	\$6.70	\$10.20	\$13.80
[4]	Settlement, Unbundled Package	\$84.99	\$84.99	\$84.99	\$84.99	\$84.99
[5]	Unbundled Subscriber Benefit	\$25.00	\$28.30	\$31.70	\$35.20	\$38.80
MLB.TV Premium						
[6]	No Settlement, Bundle Package	\$129.99	\$133.89	\$137.91	\$142.04	\$146.30
[7]	Settlement, Bundle Package	\$109.99	\$109.99	\$109.99	\$109.99	\$109.99
[8]	Bundle Subscriber Benefit	\$20.00	\$23.90	\$27.92	\$32.05	\$36.31
[9]	Settlement, Unbundled Package	\$84.99	\$84.99	\$84.99	\$84.99	\$84.99
[10]	Unbundled Subscriber Benefit	\$45.00	\$48.90	\$52.92	\$57.05	\$61.31
DIRECTV MLB Extra Innings						
[11]	No Settlement, Bundle Package	\$197.94	\$197.94	\$197.94	\$197.94	\$197.94
[12]	Settlement, Bundle Package	\$173.20	\$173.20	\$197.94	\$197.94	\$197.94
[13]	Bundle Subscriber Benefit	\$24.74	\$24.74	\$0.00	\$0.00	\$0.00
Comcast MLB Extra Innings						
[14]	No Settlement, Bundle Package	\$199.00	\$199.00	\$199.00	\$199.00	\$199.00
[15]	Settlement, Bundle Package	\$174.13	\$174.13	\$199.00	\$199.00	\$199.00
[16]	Bundle Subscriber Benefit	\$24.88	\$24.88	\$0.00	\$0.00	\$0.00

Notes:

- [1] See Table 1, rows [5] & [12]
- [2] See Table 1, rows [6] & [11]
- [3] = [1] – [2]
- [4] See Table 1, rows [7] & [11]
- [5] = [1] – [4]
- [6] See Table 1, rows [5] & [12]
- [7] See Table 1, rows [6] & [11]
- [8] = [6] – [7]
- [9] = See Table 1, rows [7] & [11]
- [10] = [6] – [9]
- [11] See Table 2, rows [2] & [7]
- [12] = [11] discounted by Table 2, row [3]
- [13] = [11] – [12]
- [14] See Table 2, rows [2] & [7]
- [15] = [14] discounted by Table 2, row [3]
- [16] = [14] – [15]

APPENDIX 5: FORECASTED BUNDLE PACKAGE & UNBUNDLED PACKAGE SUBSCRIBERS

		2016	2017	2018	2019	2020
No Settlement						
[1]	MLB.TV Basic					
[2]	MLB.TV Premium					
[3]	<i>MLB.TV Total</i>					
[4]	DIRECTV MLB Extra Innings					
[5]	Comcast MLB Extra Innings					
[6]	<i>Total, No Settlement</i>					
Settlement						
Bundled						
[7]	MLB.TV Basic					
[8]	MLB.TV Premium					
[9]	<i>MLB.TV Total</i>					
[10]	DIRECTV MLB Extra Innings					
[11]	Comcast MLB Extra Innings					
[12]	<i>Total Bundled</i>					
Unbundled						
[13]	MLB.TV Basic					
[14]	MLB.TV Premium					
[15]	<i>MLB.TV Total</i>					
[16]	DIRECTV Switchers					
[17]	Comcast Switchers					
[18]	<i>Total Unbundled</i>					
[19]	<i>Total, Settlement</i>					

Notes:

[1] = (Table 1, row [2]) × [1 + (Table 1, row [9])] for 2016;
= Prior Year's [1] × [1 + (Table 1, row [9])] for 2017-2020
[2] = [3] - [1]
[3] = (Table 1, row [2]) × [1 + (Table 1, row [9])] for 2016;
= Prior Year's [1] × [1 + (Table 1, row [9])] for 2017-2020
[4] = (Table 2, row [1]) × [1 + (Table 2, row [6])] for 2016;
= Prior Year's [4] × [1 + (Table 2, row [6])] for 2017-2020
[5] = (Table 2, row [1]) × [1 + (Table 2, row [6])] for 2016;
= Prior Year's [5] × [1 + (Table 2, row [6])] for 2017-2020
[6] = [3] + [4] + [5]
[7] = [1] × [1 - (Table 1, row [8])]

[8] = [2] × [1 - (Table 1, row [8])]
[9] = [7] + [8]
[10] = [4] × [1 - (Table 2, row [5])]
[11] = [5] × [1 - (Table 2, row [5])]
[12] = [9] + [10] + [11]
[13] = [1] × (Table 1, row [8])
[14] = [2] × (Table 1, row [8])
[15] = [13] + [14]
[16] = [4] × (Table 2, row [5])
[17] = [5] × (Table 2, row [5])
[18] = [15] + [16] + [17]
[19] = [12] + [18]

APPENDIX 6-1: VALUE OF SETTLEMENT AGREEMENT TO MLB.TV AND MLB EXTRA INNINGS SUBSCRIBERS (SCENARIO 1)

	2016	2017	2018	2019	2020	Total 2016-2020
<i>MLB.tv Basic</i>						
[1] Bundle Subscribers						
[2] Savings per Bundle Subscriber	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
[3] Total Savings for Bundle Subscribers	\$0	\$0	\$0	\$0	\$0	\$0
[4] Unbundled Subscribers						
[5] Savings per Unbundled Subscriber	<u>\$25.00</u>	<u>\$25.75</u>	<u>\$26.52</u>	<u>\$27.32</u>	<u>\$28.14</u>	
[6] Total Savings for Unbundled Subscribers						
[7] Total Savings for MLB.TV Basic Subscribers						
<i>MLB.tv Premium</i>						
[8] Bundle Subscribers						
[9] Savings per Bundle Subscriber	<u>\$20.00</u>	<u>\$20.60</u>	<u>\$21.22</u>	<u>\$21.85</u>	<u>\$22.51</u>	
[10] Total Savings for Bundle Subscribers						
[11] Unbundled Subscribers						
[12] Savings per Unbundled Subscriber	<u>\$45.00</u>	<u>\$46.35</u>	<u>\$47.74</u>	<u>\$49.17</u>	<u>\$50.65</u>	
[13] Total Savings for Unbundled Subscribers						
[14] Total Savings for MLB.TV Premium Subscribers						
<i>DIRECTV MLB Extra Innings</i>						
[15] Bundle Subscribers						
[16] Savings per Bundle Subscriber	<u>\$24.74</u>	<u>\$24.74</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
[17] Total Savings for Bundle Subscribers						
<i>Comcast MLB Extra Innings</i>						
[18] Bundle Subscribers						
[19] Savings per Bundle Subscriber	<u>\$24.88</u>	<u>\$24.88</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
[20] Total Savings for Bundle Subscribers						
[21] Total Savings for MLB.tv & MLB Extra Innings Bundle Subscribers						
[22] Total Savings for MLB.tv & MLB Extra Innings Unbundled Subscribers						
[23] Total Savings for MLB.tv & MLB Extra Innings Subscribers						\$178,389,441

Appendix 6-1 Notes:

[1] = Appendix 5, row [7]

[2] = Appendix 4-1, row [3]

[3] = [1] × [2]

[4] = Appendix 5, row [13]

[5] = Appendix 4-1, row [5]

[6] = [4] × [5]

[7] = [3] + [6]

[8] = Appendix 5, row [8]

[9] = Appendix 4-1, row [8]

[10] = [8] × [9]

[11] = Appendix 5, rows [14] + [16] + [17]. Includes DIRECTV & Comcast MLB Extra Innings subscribers who would switch to the unbundled MLB.TV Internet Single-Club Programming under the assumptions of Scenario 1.

[12] = Appendix 4-1, row [10]. I assume the financial benefit to MLB Extra Innings subscribers who switch to the Internet Single-Club Programming is the same as the benefit for MLB.tv Premium subscribers who switch to Internet Single-Club Programming. This is conservative, in that the difference between MLB Extra Innings (without settlement) and Internet Single-Club Programming is greater than the difference between the price of MLB.tv Premium (without settlement) and Internet Single-Club Programming.

[13] = [11] × [12]

[14] = [10] + [13]

[15] = Appendix 5, row [10]

[16] = Appendix 4-1, row [13]

[17] = [15] × [16]

[18] = Appendix 5, row [11]

[19] = Appendix 4-1, row [16]

[20] = [18] × [19]

[21] = [3] + [10] + [17] + [20]

[22] = [6] + [13]

[23] = [21] + [22]

APPENDIX 6-2: VALUE OF SETTLEMENT AGREEMENT TO MLB.TV AND MLB EXTRA INNINGS SUBSCRIBERS (SCENARIO 2)

	2016	2017	2018	2019	2020	Total 2016-2020
MLB.tv Basic						
[1] Bundle Subscribers						
[2] Savings per Bundle Subscriber	<u>\$0.00</u>	<u>\$3.30</u>	<u>\$6.70</u>	<u>\$10.20</u>	<u>\$13.80</u>	
[3] Total Savings for Bundle Subscribers						
[4] Unbundled Subscribers						
[5] Savings per Unbundled Subscriber	<u>\$25.00</u>	<u>\$28.30</u>	<u>\$31.70</u>	<u>\$35.20</u>	<u>\$38.80</u>	
[6] Total Savings for Unbundled Subscribers						
[7] Total Savings for MLB.TV Basic Subscribers						
MLB.tv Premium						
[8] Bundle Subscribers						
[9] Savings per Bundle Subscriber	<u>\$20.00</u>	<u>\$23.90</u>	<u>\$27.92</u>	<u>\$32.05</u>	<u>\$36.31</u>	
[10] Total Savings for Bundle Subscribers						
[11] Unbundled Subscribers						
[12] Savings per Unbundled Subscriber	<u>\$45.00</u>	<u>\$48.90</u>	<u>\$52.92</u>	<u>\$57.05</u>	<u>\$61.31</u>	
[13] Total Savings for Unbundled Subscribers						
[14] Total Savings for MLB.TV Premium Subscribers						
DIRECTV MLB Extra Innings						
[15] Bundle Subscribers						
[16] Savings per Bundle Subscriber	<u>\$24.74</u>	<u>\$24.74</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
[17] Total Savings for Bundle Subscribers						
Comcast MLB Extra Innings						
[18] Bundle Subscribers						
[19] Savings per Bundle Subscriber	<u>\$24.88</u>	<u>\$24.88</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	
[20] Total Savings for Bundle Subscribers						
[21] Total Savings for MLB.tv & MLB Extra Innings Bundle Subscribers						
[22] Total Savings for MLB.tv & MLB Extra Innings Unbundled Subscribers						
[23] Total Savings for MLB.tv & MLB Extra Innings Subscribers						\$213,770,690

Appendix 6-2 Notes:

[1] = Appendix 5, row [7]

[2] = Appendix 4-2, row [3]

[3] = [1] \times [2]

[4] = Appendix 5, row [13]

[5] = Appendix 4-2, row [5]

[6] = [4] \times [5]

[7] = [3] + [6]

[8] = Appendix 5, row [8]

[9] = Appendix 4-2, row [8]

[10] = [8] \times [9]

[11] = Appendix 5, rows [14] + [16] + [17]. Includes DIRECTV & Comcast MLB Extra Innings subscribers who would switch to the unbundled MLB.TV Internet Single-Club Programming under the assumptions of Scenario 2.

[12] = Appendix 4-2, row [10]. I assume the financial benefit to MLB Extra Innings subscribers who switch to the Internet Single-Club Programming is the same as the benefit for MLB.tv Premium subscribers who switch to Internet Single-Club Programming. This is conservative, in that the difference between MLB Extra Innings (without settlement) and Internet Single-Club Programming is greater than the difference between the price of MLB.tv Premium (without settlement) and Internet Single-Club Programming.

[13] = [11] \times [12]

[14] = [10] + [13]

[15] = Appendix 5, row [10]

[16] = Appendix 4-2, row [13]

[17] = [15] \times [16]

[18] = Appendix 5, row [11]

[19] = Appendix 4-2, row [16]

[20] = [18] \times [19]

[21] = [3] + [10] + [17] + [20]

[22] = [6] + [13]

[23] = [21] + [22]