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and the NFL Management Council*

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
NEWPORT NEWS DIVISION**

\_\_\_\_\_  
)  
**In re** )  
)  
**Michael D. Vick,** )  
)  
**Debtor.** )  
\_\_\_\_\_  
)  
**National Football League and** )  
**NFL Management Council,** )  
)  
**Movants,** )  
)  
**v.** )  
)  
**Michael D. Vick,** )  
)  
**Respondent.** )  
\_\_\_\_\_

**Case No. 08-50775 FJS  
Chapter 11**

**Contested Matter**

**MOTION OF THE NATIONAL FOOTBALL LEAGUE AND THE NFL MANAGEMENT COUNCIL FOR DETERMINATION THAT AUTOMATIC STAY DOES NOT APPLY TO PENDING APPEAL AGAINST NON-DEBTOR, OR, IN THE ALTERNATIVE, TO MODIFY THE STAY TO ALLOW CONTINUATION OF APPEAL**

**LBR 4001(a)-1 NOTICE**

Pursuant to LBR 4001(a)-1(c), the National Football League and the NFL Management Council hereby provide the following notice:

**NOTICE**

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then within fifteen (15) days from the date of service of this motion, you must file a written response explaining your position with the court and serve a copy on the movants. Unless a written response is filed and served within this fifteen (15) day period, the court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the court for filing, you must mail it early enough so the court will receive it on or before the expiration of the fifteen (15) day period.

**You will be notified separately of the hearing date on the motion.**

The National Football League (“NFL”) and the NFL Management Council (“NFLMC,” and, collectively with the NFL, the “League”) bring this motion pursuant to sections

362(a) and (d) of the Bankruptcy Code for a determination that the automatic stay does not apply to an appeal between non-debtors currently pending in the United States Court of Appeals for the Eighth Circuit; or, in the alternative, for an order modifying the stay to permit the appeal to proceed.

The appeal is from two district court decisions that concern important issues under the League's collective bargaining agreement ("CBA") with its players' union. The debtor, Michael Vick, has informed the League of his view that the automatic stay applies to the appeal. As explained below, Vick is mistaken. Vick is not a party to the appeal, the appeal does not seek a judgment or other relief or remedy against Vick, and no property of Vick's bankruptcy estate is at issue in the appeal. Nor is he incurring any legal fees or costs in connection with the appeal. As a matter of controlling Fourth Circuit authority, the automatic stay does not apply in these circumstances, and the Court should so rule.

In the alternative, the League requests that the Court modify the automatic stay for cause pursuant to 11 U.S.C. § 362(d) to allow the appeal to continue. The League will suffer severe prejudice if it is unable to obtain prompt review from the Eighth Circuit of the district court's assertion of jurisdiction to resolve disputes under the CBA. Moreover, absent prompt review, the League and its member clubs will suffer severe prejudice from the district court's orders construing the CBA. Those orders have broad implications on the contractual and bargaining relationship between numerous NFL teams and many current players, and will serve as adverse precedent against the League in ongoing and future disputes with the players' union concerning the CBA. Conversely, permitting the appeal to proceed will have no adverse effect on Vick or his estate.

### **FACTUAL BACKGROUND**

1. The Eighth Circuit appeal involves the collective bargaining agreement entered into pursuant to the National Labor Relations Act between the NFLMC<sup>1</sup> and the National Football League Players Association (“Players Association”). The CBA, the product of collective bargaining between the NFLMC and the Players Association, establishes the terms and conditions of player employment within the National Football League. It incorporates portions of a 1993 stipulated settlement agreement (“SSA”) that resolved an antitrust class action brought on behalf of players employed by NFL clubs in the late 1980s and early 1990s; the antitrust claim alleged restraints of trade on free-agency-related matters (the “Antitrust Class Action”). The CBA covers such topics as the form and content of player contracts, player free agency rights, player benefits, employer discipline, and player safety. The SSA covers some, but not all, of those subjects. *See* Declaration of Dennis Curran (“Curran Decl.”) ¶¶ 3-4 (Exhibit A).

2. The CBA also establishes dispute resolution procedures for grievances between football clubs and players, and for disputes between the Players Association and the NFLMC. In particular, the CBA provides for appointment of a Special Master to resolve certain categories of disputes between the NFLMC and the Players Association arising under the agreement. Professor Stephen Burbank of the University of Pennsylvania is the current CBA Special Master. (The SSA includes a parallel dispute resolution procedure.) The CBA further provides for grievance arbitrators to resolve other categories of disputes between individual member clubs and their player employees. Curran Decl. ¶ 5.

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<sup>1</sup> The NFLMC is a not-for-profit association comprised of the 32 NFL member clubs. The NFLMC serves as the exclusive collective bargaining representative of the NFL clubs. *See* Exhibit A ¶ 1.

3. In 2007, Vick admitted to felony criminal activity involving operation of an illegal dogfighting business. After the NFL suspended Vick, the NFLMC, on behalf of the Atlanta Falcons football club, initiated a grievance (*i.e.*, arbitration) proceeding against him, in which it sought to recover substantial bonus monies based on Vick's breach of his 2006 employment contract with the team. The Players Association objected, contending that a provision of the CBA forecloses the Falcons from recovering most, but not all, of those amounts. The grievance proceeding was effectively stayed pending resolution of the threshold issue raised by the Players Association. Curran Decl. ¶ 6.

4. In order to resolve the threshold issue, which is under the Special Master's jurisdiction, the League initiated a proceeding against the Players Association before Special Master Burbank on September 5, 2007, seeking a declaration regarding the meaning of the relevant provision of the CBA, so-called "Section 9(c)." The declaratory action instituted by the League against the Players Association is separate from the grievance proceeding against Vick initiated on behalf of the Falcons. The declaratory action neither includes Vick as a party, nor seeks a judgment or other remedy against him. Curran Decl. ¶ 7.

5. On October 23, 2007, Special Master Burbank issued a declaration in the declaratory action that Section 9(c) does not preclude the Falcons from pursuing in a separate grievance proceeding recovery from Vick based on the default clauses of his 2006 employment contract (the "Special Master Decision"). Curran Decl. ¶ 8.

6. The Players Association, joined by counsel representing the plaintiff class in the Antitrust Class Action, requested that the Honorable David Doty of the United States District Court for the District of Minnesota review the Special Master's Decision. (Judge Doty

had presided over the Antitrust Class Action and retained jurisdiction to resolve disputes arising under the SSA.) After briefing and argument, Judge Doty issued an Order dated February 1, 2008, reversing the Special Master and holding that Section 9(c) of the CBA does bar the Falcons from pursuing a claim for forfeiture of most of the bonus monies paid to Vick. Curran Decl. ¶ 9.

7. The NFL and the NFLMC then filed a motion to vacate that judgment. They argued that the district court lacks jurisdiction to review issues arising under the CBA. That argument was based, *inter alia*, on a 1996 Supreme Court decision holding that antitrust courts have no authority to oversee terms and conditions of employment in unionized industries like the NFL; the League argued that the Final Judgment in the 1993 antitrust action should be modified accordingly. *See Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996). The League also argued that Judge Doty's February 1, 2008 Order was tainted by conduct requiring his recusal, including *ex parte* meetings with union representatives and public statements about the dispute. The Players Association and counsel for the plaintiff class asserted that the Supreme Court's decision in *Brown* was not a sufficient basis to modify the 1993 Final Consent Judgment, and they disputed the allegations underlying the League's recusal arguments. Curran Decl. ¶¶ 10-11.

8. Judge Doty then issued a second order dated April 22, 2008, denying the League's motion to vacate the February 1, 2008 order. Curran Decl. ¶ 12.

9. The NFL and NFLMC filed a timely Notice of Appeal regarding Judge Doty's orders on April 28, 2008, and filed their opening brief with the Eighth Circuit on July 3,

2008, four days before Vick filed his bankruptcy petition.<sup>2</sup> The League argues on appeal that the federal district court lacked jurisdiction to decide the CBA issue based, *inter alia*, on the Supreme Court's decision in *Brown*. In the alternative, the League contends that Judge Doty should have recused himself from the case based on repeated *ex parte* contacts with members of the Players Association and numerous comments to the media demonstrating bias against the League. Finally, the League argues that, if the Eighth Circuit deems it necessary and appropriate to reach the merits of the parties' dispute regarding construction of the CBA, it should determine that Section 9(c) does not preclude an NFL team from pursuing, in a separate grievance proceeding, forfeiture of bonus monies based on a player's breach of his player contract. Curran Decl. ¶¶ 13-14. A copy of the League's Eighth Circuit brief is attached as Exhibit B.<sup>3</sup> Absent an extension (to which the League's counsel expects to agree), the appellees' responding brief would be due in early August, and the League's reply would be due soon thereafter. Curran Decl. ¶ 14.

10. On June 28, 2008, before Vick filed his petition in this Court, the Arbitrator presiding over the grievance proceeding confirmed that the Falcons could not proceed with any claims that were affected by the subjects at issue in the Eighth Circuit appeal. (The arbitrator invited the parties to submit dates for hearing the Falcons' other claims, but in light of the bankruptcy filing, arbitration of those claims has been effectively stayed as well. Curran Decl. ¶ 16.)

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<sup>2</sup> Because Judge Doty's decisions were ostensibly rendered in the Antitrust Class Action, the named plaintiffs in that action, all of whom are retired or deceased, are the appellees in the Eighth Circuit appeal. Curran Decl. ¶ 11.

<sup>3</sup> The addendum to the brief includes, *inter alia*, the Special Master Decision and Judge Doty's orders dated February 1, 2008 and April 22, 2008.

11. On July 7, 2008 — months after the League filed its Notice of Appeal and four days after it filed its appeal brief — Vick filed a voluntary petition in this Court for relief under Chapter 11 of the Bankruptcy Code.

12. Neither the NFL nor the NFLMC is pursuing any claim against Vick in the Eighth Circuit appeal. Nor will a ruling in their favor on appeal result in any judgment, remedy or other relief against Vick or his property. The NFL and NFLMC simply seek to set aside an unauthorized and erroneous district court declaratory judgment construing the League's collective bargaining agreement with the Players Association. Curran Decl. ¶ 15; *see also* Exhibit B.

### **JURISDICTION**

13. The Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(G). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The statutory predicate for the relief requested through this Motion is 11 U.S.C. §§ 362(a) and (d).

**BASIS FOR RELIEF**

**A. The Automatic Stay Does Not Apply.**

15. The automatic stay is inapplicable, and, accordingly, the NFL and NFLMC may continue the Eighth Circuit appeal. The relief that the League seeks in the Eighth Circuit appeal does not fall within any of the categories of acts against the debtor or property of the estate that are stayed by 11 U.S.C. § 362(a). Vick is not a party to the appeal, nor does the appeal seek a judgment or other remedy or relief against Vick or his property, directly or indirectly. The automatic stay does not apply in these circumstances. *See, e.g., Credit Alliance Corp. v. Williams*, 851 F.2d 119, 121 (4th Cir. 1988) (“The plain language of § 362 . . . provides only for the automatic stay of judicial proceedings and enforcement of judgments against the debtor or the property of the estate”) (citation and internal quotation marks omitted).

16. This is not a case where ongoing litigation against a non-debtor could, in practical effect, result in a judgment against the debtor or in the exercise of control over estate property. *Cf. A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986) (stay can apply to litigation against non-debtor only in “unusual circumstances,” such as where non-debtor litigant is “entitled to absolute indemnity by the debtor”). The separate grievance action to recover bonus monies paid to Vick filed on the Falcons’ behalf is stayed by the bankruptcy, and, regardless of the appeal’s outcome, will be subject to any contractual defenses Vick may have. In no event could a successful appeal by the League in the Eighth Circuit itself result in a judgment or liquidated award against Vick or his estate. *See Kreisler v. Goldberg*, 478 F.3d 209, 213-14 (4th Cir. 2007) (rejecting application of stay to litigation against wholly-owned, non-

debtor subsidiary of debtor where litigation could not result in judgment against the debtor or in the exercise of control over estate property).

17. The principal issues in the appeal — whether federal courts have a legitimate role supervising the terms and conditions of employment in a unionized industry like the NFL and, if so, whether there are grounds requiring recusal of Judge Doty, who has exercised such oversight for fifteen years — are matters of broad applicability and great importance under the collective bargaining agreement; those matters affect in a myriad of ways the NFL, the NFLMC, 32 NFL teams, and more than 1,500 current NFL players. They are not specific to Vick, his property, or his bankruptcy estate.

18. While a successful appeal could affect Vick’s ability to assert Section 9(c) of the CBA as a defense to the Falcons’ claim for recovery of certain bonus monies, that potential impact in the separate grievance proceeding is too incidental and tangential to implicate the stay. *See, e.g., 3 Collier on Bankruptcy* ¶ 362.03[3], at 362-15 (15th ed. rev. 2006) (“Litigation in which the debtor is not a party and that only collaterally affects the debtor is not stayed.”); *see also Kreisler*, 478 F.3d at 214 (litigation that only affects the value of a debtor’s interest in property is not stayed by section 362(a)).

**B. In the Alternative, the Court Should Modify the Stay to Permit Continuation of the Appeal.**

19. If the Court determines that the automatic stay does apply, it should nonetheless enter an order modifying the stay to permit the NFL and NFLMC to continue their appeal.

20. Section 362(d) of the Bankruptcy Code provides that the automatic stay shall be modified for “cause.” In determining whether cause is present, the Fourth Circuit has

held that the bankruptcy court “must balance potential prejudice to the bankruptcy debtor’s estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied.” *Robbins v. Robbins (In re Robbins)*, 964 F.2d 342, 345 (4th Cir. 1992). In applying this balance, “it will often be more appropriate to permit proceedings to continue in their place of origin, when no great prejudice to the bankruptcy estate would result, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.” *Id.*, quoting S. Rep. No. 989, 95th Cong. 2d Sess. 50 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5836.

21. The balance of hardships tips decidedly in favor of stay relief here. The district court’s final orders adverse to the League are binding on the League and its member clubs unless and until they are reversed on appeal. The issues on appeal — whether federal courts have jurisdiction to oversee terms and conditions of employment in unionized industries; whether, in particular, federal judges have jurisdiction to review decisions of the Special Master regarding the CBA; whether Judge Doty should otherwise be disqualified from presiding over NFL-related matters based on *ex parte* meetings and statements he has made to the media demonstrating bias against the NFL; and whether Section 9(c) of the CBA precludes NFL teams from pursuing bonus-forfeiture claims where a player is in breach of contract — are matters of vital importance to the NFL, the NFLMC and its member clubs that transcend the Vick case. Judge Doty’s rulings shape the contractual and bargaining relationship between 32 NFL clubs and their 1,500 players, and, if left undisturbed, will be used against the League in other disputes with the Players Association. The only court with subject matter jurisdiction to review Judge Doty’s orders is the Eighth Circuit. 28 U.S.C. §§ 1291, 1294(1); see also *In re Porter*, 371 B.R.

739, 744 (Bankr. E.D. Pa. 2007) (bankruptcy court lacks authority to review district court's decision). Accordingly, unless the League is permitted to prosecute the Eighth Circuit appeal, it will have no forum in which to seek and obtain relief in its dispute with the Players Association. *See, e.g., Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997) (modifying stay to allow continuation of appeal because seeking appellate review was only avenue available for moving party to obtain relief from lower court's ruling).

22. By contrast, Vick will not be prejudiced if the stay is lifted. He is not a party to the Eighth Circuit appeal. He will not need to expend any resources in connection with that proceeding. Moreover, the Eighth Circuit appeal will not and cannot result in a judgment against Vick, directly or indirectly. Further, enforcing a stay would not promote any of the purposes of section 362(a) such as "protect[ing] property that may be necessary for the debtor's fresh start and . . . provid[ing] breathing space to permit the debtor to focus on its rehabilitation or reorganization . . . [and] prevent[ing] the dismemberment of a debtor's assets by individual creditors levying on the property." *Collier, supra*, ¶ 362.03, at 362-13. The stay should be lifted where those policies would not be served by leaving the stay in effect. *See, e.g., American Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.)*, 152 B.R. 420, 426 (D. Del. 1993); *Rehabilitated Inner City Housing, LLC v. Mayor of Baltimore City (In re Lesick)*, No. 03-00038, 2006 Bankr. LEXIS 1571, at \*22 n. 10 (Bankr. D.D.C. July 19, 2006).

23. Other factors considered by the Fourth Circuit in determining whether there is cause for stay relief similarly weigh decidedly in favor of stay relief. Those factors are:

- (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary;
- (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy

case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

*Robbins*, 964 F.2d at 345.

24. As to the first factor, the expertise of the bankruptcy court is unnecessary to resolve the issues on appeal here, none of which have anything to do with the Bankruptcy Code or with the kind of non-bankruptcy issues bankruptcy judges customarily address. Indeed, labor law disputes should typically be resolved in arbitration, not by bankruptcy courts, and there is no reason for bankruptcy courts to be burdened with resolving issues of this kind. *See, e.g., Garland Coal & Min. Co. v. United Mine Workers of Am.*, 778 F.2d 1297, 1304 (8th Cir. 1985).

25. Modifying the stay will also promote judicial economy. The League has already expended considerable resources briefing the issues before the Eighth Circuit. Appellees' brief is due to be filed in early August. The issues on appeal can be expeditiously resolved in the Eighth Circuit, and continuation of the appeal in that forum will in no way delay or interfere with the bankruptcy case.

26. Finally, as explained above, in no event will the Eighth Circuit appeal result in a judgment, or other relief or remedy, against Vick or his property. The Falcons' separate claim for forfeiture of bonus monies paid to Vick is stayed by the bankruptcy. Accordingly, not only will no judgment be *enforced* through the Eighth Circuit proceeding — no judgment against Vick could even be *entered* in that proceeding.

27. After applying these and similar factors, courts have repeatedly modified the stay for cause to permit appeals in other courts to proceed; indeed, they have done so with respect to appeals in which the debtor was a party, and which could have resulted in the entry or

affirmance of a judgment or other remedial action against the debtor.<sup>4</sup> It is all the more clear that the automatic stay should be modified in this case because the pending appeal involves only non-debtors and cannot result in a judgment against Vick or in the exercise of control over estate property.

### **SERVICE**

Pursuant to Fed. R. Bankr. P. 4001(a)(1) and Local Rule 4001(a)-1(F), copies of this Motion are being served upon (a) the Office of the United States Trustee; (b) counsel to the debtor; and (c) counsel to the Official Committee of Unsecured Creditors..

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<sup>4</sup> See, e.g., *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997) (modifying stay to allow continuation of appeal because seeking appellate review was only avenue available for moving party to obtain relief from lower court's ruling); *In re Meredith*, 337 B.R. 574, 577-79 (Bankr. E.D. Va. 2005) (modifying stay to allow appeal in defamation action against the debtor), *aff'd*, No. 3:05CV332-JRS, 2005 U.S. Dist. LEXIS 40242 (E.D. Va. Aug. 19, 2005); *In re Porter*, 371 B.R. 739, 751 (Bankr. E.D. Pa. 2007) (granting relief from stay to allow continuation of pending Third Circuit appeal); *In re Moore*, No. 04-15363-B, 2005 Bankr. LEXIS 2742 (Bankr. D.S.C. Dec. 14, 2005) (finding cause to lift automatic stay where appeal was only method available for judicial review of lower court's judgment); *In re Star Broadcasting, Inc.*, 336 B.R. 825, 832-33 (Bankr. N.D. Fla. 2006) (modifying stay to permit continuation of pending Eleventh Circuit appeal); *accord Metz v. Poughkeepsie Sav. Bank, FSB (In re Metz)*, 165 B.R. 769, 771 (Bankr. E.D.N.Y. 1994); *In re Escondido West Travelodge*, 52 B.R. 376, 382 (Bankr. S.D. Cal. 1985).

**CONCLUSION**

For the foregoing reasons, the Motion should be granted and the Court should either (a) hold that the automatic stay does not apply; or (b) modify the automatic stay to permit the NFL and NFLMC to pursue their pending appeal in the Eighth Circuit.

Respectfully submitted,

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*Attorneys for the National Football League  
and the NFL Management Council*

July 29, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on July 29, 2008, I caused a true and correct copy of the foregoing MOTION OF THE NATIONAL FOOTBALL LEAGUE AND THE NFL MANAGEMENT COUNCIL FOR DETERMINATION THAT AUTOMATIC STAY DOES NOT APPLY TO PENDING APPEAL AGAINST NON-DEBTOR, OR, IN THE ALTERNATIVE, TO MODIFY THE STAY TO ALLOW CONTINUATION OF APPEAL to be served on the following parties via first class mail:

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