



From Touchdown to Touchback

The Crucial Role of Financial Experts in the Legal Battle Over the NFL "Sunday Ticket" Package

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Introduction

The NFL "Sunday Ticket" case has become one of the most significant litigations in recent memory, attracting widespread attention due to the substantial financial implications and the potential changes in the management of sports broadcasting rights in the United States. The case centers around allegations that the NFL's "Sunday Ticket" package, which offers exclusive access to out-of-market games, violated antitrust laws and led to inflated prices charged to subscribers.

In the landmark decision, the federal jury initially awarded the plaintiffs a \$4.7 billion verdict against the NFL. The ruling was seen as a major victory for consumers and a potential catalyst for significant changes in the packaging and selling of broadcasting rights of the NFL and other sports leagues. However, the California federal court later overturned the verdict,¹ introducing new complexities to the case and raising questions about the role of expert testimony in such a high-stakes litigation.

This article will explore the initial ruling, the subsequent overturning of the verdict, and the critical role of financial experts in the litigation process.

Summary of Ruling

The league began offering its NFL "Sunday Ticket" package in 1994 as an option for sports bars, restaurants, and fans to watch "out-of-market" games at their homes. The "out-of-market" games refer to NFL matchups not broadcasted by local television networks, as they are typically considered less relevant to local viewers. However, many local fans are interested in these games, particularly if they support teams outside their region or want to watch more games during the season.²

The NFL "Sunday Ticket" case is a class action filed on behalf of more than 2.4 million residential subscribers and 48,000 businesses that bought the package between June 17, 2011 and February 7, 2023. The plaintiffs claim that the NFL and its broadcast partners, including DirecTV, violated antitrust laws by establishing an exclusive arrangement that limited fans' options to watch the "out-of-market" NFL games and led to inflated subscription prices charged to consumers to watch these games.³

The plaintiffs presented two expert opinions in support of their claim. The first expert used college football as the basis of developing the but-for world in his analysis.

He calculated the subscribers' damages to be \$7.0 billion based on the assumption that the NFL games (like college football games) would become available on over-the-air channels for no extra cost to the customers.⁴ The second expert assumed that alternative "direct-to-consumer" service provider(s) would compete with DirecTV and reduce consumer prices by 49.7%, or \$3.48 billion, to 67.8%, or \$4.75 billion.⁵

The federal jury found that the NFL's conduct had indeed constituted an illegal monopoly and awarded damages of \$4.7 billion. While the jury did not adopt the opinion of the plaintiffs' experts, the damages award was purportedly based on the testimony provided by the experts. The large award reflected the jury's determination that the NFL's practices caused substantial harm to many consumers by limiting competition and keeping prices "artificially" high.^{6,7}

Post-Trial Ruling

Shortly after the jury's decision, the NFL filed post-trial motions seeking to overturn the verdict. A critical aspect of the post-trial proceedings was the role of expert testimony. U.S. District Judge Beverly Reid O'Connell overturned the jury's verdict in a detailed ruling.⁸

Judge O'Connell found that the first expert proposed multiple variations of the but-for world "*without analysis of how the economically rational actors would have acted*".⁹ Judge O'Connell also found that the expert failed to present "*a but-for world grounded in economic rationality*".¹⁰ Judge O'Connell also found that the second expert "*failed to define an assumption that was necessary for evaluating the rationality and reliability of his models*" and "*[w]ithout that information, the Court cannot determine whether the but-for worlds were modeled reliably.*"¹¹

Based on its review of the evidence presented, the Court excluded the testimony of both experts and overturned the jury's verdict of awarding damages of \$4.7 billion to the plaintiffs.

Role of Financial Experts

The court's decision to overturn the \$4.7 billion verdict highlights the importance of robust and credible expert testimony in litigation.

Financial experts are tasked to assist the trier of fact in their deliberations by:

- 1. Providing independent and objective evidence:** Although generally retained by a party of the dispute, an expert witness provides an independent and objective conclusion to assist the trier of fact. An expert witness cannot advocate for their client and must provide an unbiased opinion.
- 2. Assessing an economic damages claim:** Each damages claim is unique. However, a general damages framework quantifies the difference between counterfactual (i.e., but-for) and actual scenarios. The difference represents the quantum of damages suffered by the plaintiff. Such a framework is commonly applicable for breach of contract, infringement of intellectual property, or loss of player earnings due to termination of employment contracts or injuries, among others.
- 3. Address uncertainties and the impact thereof in an economic damages claim:** Uncertainties are often inherent in assessing a counterfactual scenario, given that certain expected events did not transpire. Financial experts rely on contemporaneous evidence, independent research, and impartial analyses to address such uncertainties and support their assessment.
- 4. Providing a holistic assessment of the quantum of economic damages:** A helpful exercise for financial experts is to conduct and present several scenarios. This provides comfort to the trier of fact that the quantum of damages is grounded and not reflective of only one indication of quantum. For example, if

valuing an asset, a financial expert can provide a primary conclusion along with several alternative scenarios (e.g., arising from changes to key economic assumptions and inputs) and value indicators (e.g., arising from different valuation approaches, recent transactions, market coverage, etc.).

In the "Sunday Ticket" case, the initial \$4.7 billion jury verdict against the NFL was significant for consumer rights, reflecting the perceived harms of exclusive broadcasting agreements. However, the Court deemed the analyses of the plaintiffs' experts to be speculative, overturning the jury's verdict on economic damages.

The NFL "Sunday Ticket" litigation highlights the critical need for financial experts to provide tribunals with dynamic, objective, and evidence-based assessments that fully capture the complexities of the market.

ENDNOTES

1. The Associated Press, [Federal judge overturns \\$4.7 billion jury verdict in 'Sunday Ticket' lawsuit and rules for NFL](#), August 2, 2024.
2. The Athletic, [What to know about 'NFL Sunday Ticket' case that could cost the league billions](#), June 25, 2024.
3. The Associated Press, [Federal judge overturns \\$4.7 billion jury verdict in 'Sunday Ticket' lawsuit and rules for NFL](#), August 2, 2024.
4. Law360, [NFL Sunday Ticket Monopoly Cost Fans \\$7B, Expert Testifies](#), June 11, 2024.
5. Law360, [DirecTV's 'NFL Tax' Gouged Sunday Ticket Buyers, Jury Told](#), June 13, 2024.
6. The Washington Post, [Judge overturns jury's \\$4.7 billion verdict in NFL Sunday Ticket case](#), August 1, 2024.
7. Reuters, [NFL hit with \\$4.7 billion verdict in 'Sunday Ticket' antitrust trial](#), June 28, 2024.
8. CBS News, [Judge overturns \\$4.7 billion verdict in "Sunday Ticket" case against NFL](#), August 1, 2024.
9. Order of the US District Court of California in NFL "Sunday Ticket" Antitrust Litigation dated August 1, 2024, page 8.
10. Order of the US District Court of California in NFL "Sunday Ticket" Antitrust Litigation dated August 1, 2024, page 9.
11. Order of the US District Court of California in NFL "Sunday Ticket" Antitrust Litigation dated August 1, 2024, page 11.



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