



# RETIRED ABA PLAYERS



## SIGNED PETITION FOR BENEFITS

APRIL 5, 2017

TO: NATIONAL BASKETBALL ASSOCIATION  
NATIONAL BASKETBALL PLAYERS ASSOCIATION



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## INTRODUCTION

This Petition is being submitted by the undersigned former players of the American Basketball Association. The American Basketball Association and its players were the forefathers of the modern pace-and-space NBA, played at blinding speed, above the rim and outside the three-point line. Since the league was merged into the NBA in 1976, the ABA's players—instead of being celebrated for their contributions to the modern game—have instead been largely ignored. The ABA Players' Union was assured at the time that they would be taken care of by the NBA and believed, perhaps foolishly, that the merger agreement included language that would provide for their well being.

Today, the former ABA players come forward and seek an audience to claim what they were promised, induced to give up, and what should be rightfully theirs: the same benefits enjoyed by NBA players - benefits commensurate with their contribution to the game of basketball and commensurate with the benefits provided to the pre-1965 NBA players who are similarly situated and who were also previously left without a pension (now gratuitously remedied by the NBA and NBPA).

The sad truth is that the ABA players were largely forgotten. Their pension plan was never integrated. The NBA has done anything but take care of these ABA legacy players. The NBA simply pillaged the best rules, playing style, and players and left the others without jobs and ultimately their dignity. To make matters worse, the NBA gratuitously took care of the pre-1965 players, but left the other pioneers of the game uncompensated and disenfranchised. This cherry picking of reparations is not in the spirit of the league and



what it claims to stand for. In the era of big bucks and showtime, the forefathers who were promised much but given little should not be left forgotten and largely in poverty. We respectfully ask for a remedy. We ask for a showing of humanity, of community and of equity that the NBA so boasts as core principles of its billion dollar league enterprise.

### **HISTORY OF THE AMERICAN BASKETBALL ASSOCIATION**

In 1967, the ABA was founded and began its inaugural season with eleven teams. The NBA had ten teams in 1967. The ABA's existence resulted in increased salaries for players in both leagues as the ABA and NBA competed with each other to sign players. The ABA's caliber of play was more than competitive with the NBA, as the ABA proved itself superior to the NBA in exhibition matches between the leagues' teams: in 1973, the ABA won 15 of its 25 games against the NBA; in 1974, the ABA won 16 of the 23 games; and in 1975, the ABA won 31 of the 48 games.





The ABA was also all about style. With its red, white, and blue ball, the ABA popularized a much more free-flowing and exciting style of play than the NBA was featuring in the late 1960s and early 1970s. The ABA featured the three-point shot when the NBA did not, and the ABA teams played at a faster pace with an increased emphasis on playing above the rim. The pre-merger ABA resembled the modern NBA much more than the pre-merger NBA did. The ABA also popularized All-Star Weekend, including the slam dunk contest and three-point shootout.





## HISTORY OF THE “MERGER” AND ITS PROMISED BENEFITS

In 1970, the NBA owners voted 13-4 to work toward a merger with the ABA. In response to the NBA’s vote in favor of a merger with the ABA, the ABA Players’ Association compiled a list of benefits that the merger would provide to ABA players, importantly, that the merger would open the door for ABA players to get the same benefits NBA players got in minimum salary, pension, per diem allowances, travel and accommodations, and severance pay.

The NBA and the ABA’s early attempt at a merger was stalled by the NBA Players Association’s (“NBAPA”) antitrust lawsuit, which was filed in April of 1970. The lawsuit was settled on February 3, 1976. *See Robertson v. Nat’l Basketball Ass’n*, 556 F.2d 682 (2d Cir. 1977). The ABA’s existence resulted in increased salaries for players in both leagues as the ABA and NBA competed with each other to sign players.

On December 8, 1975, the ABAPA instituted a lawsuit against the NBA, Nuggets, and Nets, which was amended to include the ABA, Pacers, and Spurs. (*See Am. Basketball Ass’n Players Ass’n v. Nat’l Basketball Ass’n*, 72 F.R.D. 594, 595 (S.D.N.Y. 1976)). The complaint’s allegations substantially tracked the NBAPA’s allegations in the *Robertson* suit, and the ABA’s cross-claims against the NBA. The NBA was charged with an unlawful conspiracy and combination to effectuate a monopoly in professional basketball, to eliminate the ABA as a viable organized league, and restraint of trade for player skills through the college draft. The ABA, Spurs, Nets, Nuggets, and Pacers were charged with aiding and abetting the NBA’s attempt to destroy the ABA.



On April 16, 1976, former ABA Commissioner Dave DeBusschere sent a letter to former NBA Commissioner Lawrence O'Brien, wherein a written proposal as requested by the NBA was enclosed. The letter provided that if the proposal was acceptable to the NBA, it would form the basis of the settlement of the outstanding claims between the ABA and NBA. The ABA's proposal provided in part that the **“ABA will meet and conform to all present collective bargaining conditions of the NBA Players Association contract with the NBA.”**

On April 29, 1976, the NBA's 1976 Collective Bargaining Agreement (the “NBA's 1976 CBA”) was entered into between the NBA and NBAPA. The NBA's 1976 CBA made, in part, the following changes to the NBA's Pension Fund:

Article IX, National Basketball Association Players' Pension Plan:

Section 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended so as to effectuate the following changes:

(a) Providing for a reduction in the Normal Retirement Date to age 50, effective February 2, 1978.

(b) Crediting players with a year of credited service for each year (from and after 1965) they were on the Injured List on February 2, without regard to the period spent on the Active List during such year.

...

(d) Providing for Normal Retirement Pension benefits as follows:

(1) For players who become eligible to receive the payment of Normal Retirement Pension benefits between June 1, 1976 and May 31, 1979 - \$75 per month for each year of credited service.



(2) For players who become eligible to receive the payment of Normal Retirement Pension benefits on or after June 1, 1979 and on or before December 1, 1980 - \$75 plus a cost-of-living adjustment ... per month for each year of credited service.

(3) For players who become eligible to receive the payment of Normal Retirement Pension benefits on or after December 2, 1980 - the amount provided in Section 1(d)(2) above plus a cost-of-living adjustment ... per month for each year of credited service.

...

Section 2. The Players Association agrees that it will not request any further changes in the National Basketball Association Players' Pension Plan to take effect prior to June 2, 1982.

After the NBA and NBAPA entered into the NBA's 1976 CBA, the NBA Pension Fund provided players who became eligible to receive payment of Normal Retirement Pension benefits prior to June 1, 1976 \$60 per month for each year of credited service; and for players who became eligible to receive the payment of Normal Retirement Pension benefits between June 1, 1976 and May 31, 1979, they would receive \$75 per month for each year of credited service. In other words, NBA players that retired prior to the 1976-77 NBA Season, would receive \$60 per month for each year of service, and players that retired during or after the 1976-77 NBA season would receive \$75 per month for each year of credited service.<sup>1</sup>

In June of 1976, an agreement was reached amongst the NBA, Spurs, Nets, Nuggets, Pacers, the ABA, St. Louis Spirits of the ABA, and Kentucky Colonels of the ABA, to allow the Spurs, Nets, Nuggets, and Pacers to move into the NBA. The four teams were required to pay the NBA a \$3.2 million entry fee by September 15, 1976, along with making other concessions to the NBA. The ABA's Kentucky Colonels received \$3 million from the four teams entering the NBA, in exchange for folding the team. Daniel and Ozzie Silna, owners of the ABA's St. Louis Spirits received four-sevenths of a share (one-seventh from each of

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<sup>1</sup> This was later upped to \$117/month in a cost-of-living adjustment).





the Spurs, Nets, Nuggets, and Pacers) of the NBA's annual television revenue for as long as the NBA is in existence; the Silnas are estimated to have cleared approximately \$800 million from this deal, including \$300 million in rights payments and a \$500 million buyout from the NBA.

On June 28, 1976, writer Frank Deford penned an article for Sports Illustrated titled "One Last Hurrah in Hyannis,"<sup>2</sup> wherein it was noted that as part of the agreement which allowed the Spurs, Nets, Nuggets, and Pacers to move into the NBA, they "agreed to provide the moneys to bring the ABA players into the NBA pension program." **ABA players, the public, and the sports media were being told and otherwise believed that all ABA players were being integrated into the NBA pension plan. As it turns out, this could not be further from the truth.**

On July 26, 1976, the ABA and the ABAPA entered into, as part of the settlement of the ABAPA's antitrust action, a collective bargaining agreement. The collective bargaining agreement was the mechanism designed to effectuate the provisions of the Settlement Agreement that protected the compensation payable to then-ABA players and pension obligations payable to then-former ABA players. **The collective bargaining agreement expressly provided that, even if the ABAPA ceased to function, any person benefitted by its terms has standing, either individually or as representative of a class, to seek enforcement.**

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2 The reference is to Hyannis, Massachusetts. The ABA-NBA "merger" was consummated on June 17, 1976 at the NBA league meetings in Hyannis.



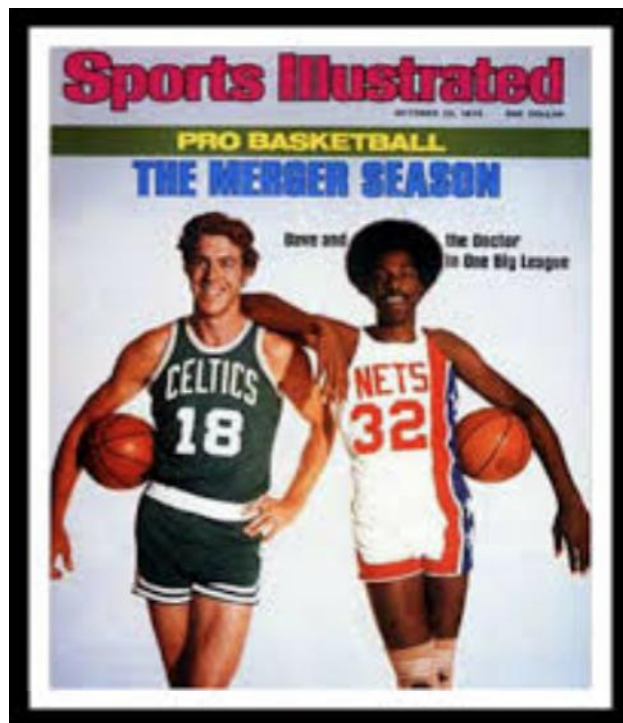
On July 29, 1976, the ABAPA entered into the Settlement Agreement with the NBA (on behalf of itself and its members), the ABA (on behalf of itself and its members), and the Spurs, Nets, Nuggets, and Pacers. The Settlement Agreement provided numerous benefits to the individuals that played professional basketball in the ABA, **including a pension fund equivalent to that provided to NBA players.** In the 1976 Stipulation and Settlement Agreement, the Spurs, Nets, Nuggets, and Pacers **promised to provide the former ABA players the same pension rights and privileges equivalent to that provided to NBA players.**

As understood from the terms of the Settlement Agreement, the former ABA players would receive the benefits of a Pension Fund that would be equivalent to the NBA Pension Fund in all regards. The United States District Court sitting in the Southern District of New York (Manhattan) approved the Settlement Agreement, and in doing so, provided that the Settlement Agreement ensured **“pension rights and privileges for ABA players equivalent to that provided NBA players.”** The Settlement Agreement required the **pension payable from the Pension Fund for the ABA players to include the same benefits and privileges that were provided to NBA players, pursuant to the NBA’s Collective Bargaining Agreement.**

The NBA’s CBA was to govern the ABA Pension Fund. The purpose of using the NBA’s CBA was to provide equality between the ABA players and NBA players. The purpose of the Settlement Agreement was to resolve an antitrust lawsuit brought on behalf of the ABA Players Association, against the NBA, NBA Teams, Spurs, Nets, Nuggets, Pacers, and the ABA. **Consequently, the promises made as part of the Settlement**



Agreement, specifically the promise of equality, compelled the ABAPA to settle its antitrust lawsuit. The Settlement Agreement allowed the Spurs, Nets, Nuggets, and Pacers to join the NBA, and the NBA and its member teams to reap numerous and substantial benefits from the ABA, including the talents of the many ABA players that played in the NBA after the “merger” between the leagues (as referred to by the NBA’s website; see <http://www.NBA.com>). The Spurs, Nets, Nuggets, and Pacers also directly paid the NBA a \$3.2 million entry fee as a condition of the settlement. **The ABA players were not integrated, they were discarded. Their promised pension integration never occurred, they received no payments, and in fact, promised payments in player contracts were never made.** The “merger” was anything but a “merger” for the vast majority of ABA players. It amounted to an unceremonious pink slip without a pat on the backside.





The NBA gained immediate and substantial benefits from the dissolution of the ABA, and the Spurs, Nets, Nuggets, and Pacers and numerous ABA players coming into the NBA -- the least of which was the removal of any business competition, while the quality of competition on the court was profound. For example, in the first NBA Finals after the merger, five of the ten starting players were from the ABA. Of the 84 players in the ABA at the time of the merger, 63 played in the NBA during the 1976-77 season. Overall, at least 97 players played in both the ABA and NBA. Also, in the first season after the merger, four of the top ten scorers in the NBA were former ABA players. Further, former ABA player Don Buse of the Indiana Pacers led the league in steals and assists. The Nuggets, a team that never won an ABA Championship, finished with the NBA's second-best record in the first season after the merger. The Spurs, a team that never got past the first round of the ABA playoffs, won division titles in five of their first six seasons in the NBA. In all, the Spurs, Nets, Nuggets, and Pacers have won 5 NBA Championships and appeared in the NBA Finals 4 other times. Countless former ABA players have competed for NBA teams in the NBA Finals.

Notwithstanding those contributions, perhaps the most tangible improvement born by the ABA merger was to the style of play in the NBA: the three-point field goal, an increased emphasis on dunking, the slam dunk contest, pressing and trapping defenses, drafting underclassmen, and a faster pace of play. The style of basketball play that has made the NBA exciting has more in common with the style of play in the ABA than that of the pre-merger NBA; and of course the All-Star Weekend.



## ABA PLAYERS' PLIGHT POST-MERGER

Very simply, the promises made to the ABA players to finalize the “merger” have been broken, time and again. ABA players were told they would be treated the same as NBA players; they weren't. ABA players were told that their pension fund would be equal to the NBA pension fund; it wasn't.

In the meantime, ABA players have had to scratch and claw for their benefits, as they live their golden years. Some ABA players have only recently been able to obtain long-sought pension benefits. Others have not been so lucky. This is a partial list of the former ABA players who have passed away since the fight for ABA pension benefits started; many of these men never received pension benefits in their lifetime.

<b>PLAYER</b>	<b>DATE OF DEATH</b>	<b>AGE</b>
1. MARVIN BARNES	2014	62
2. ZELMO BEATTY	2013	73
3. CALDWELL JONES	2014	64
4. MAURICE LUCAS	2010	58
5. ED MANNING	2011	68
6. CHICO VAUGHN	2013	73
7. JOHN BARNHILL	2013	75
8. MIKE BARRETT	2011	67
9. BOB BEDELL	2015	70
10. WES BIALOSUKNIA	2013	68
11. MEL DANIELS	2015	71
12. DWAIN DILLARD	2008	59
13. ROY EBRON	2014	63
14. LARRY FINCH	2011	60
15. BILLY HARRIS	2010	58
16. JIM HAYES	2009	61
17. SIMMIE HILL	2013	66
18. WARREN JABALI	2012	65
19. MERV JACKSON	2012	65
20. EDGAR LACEY	2011	66
21. JONNIE LYNN	2014	71
22. MIKE MALLOY	2009	59
23. ELTON MCGRUFF	2011	69



24. DEWITT MENYARD	2009	64
25. LELAND MITCHELL	2013	72
26. MARLBERT PRADD	2014	69
27. RED ROBBINS	2009	65
28. REGGIE ROYALS	2009	58
29. ERV STAGGS	2012	64
30. RED STROUD	2008	66
31. GEORGE SUTOR	2011	67
32. LAVERN TART	2010	68
33. BOB WARREN	2014	68
34. AL WILLIAMS	2007	59
35. LONNIE WRIGHT	2012	67
36. MOSES MALONE	2015	60

Essentially, these players were left to perish by a league and a system that did not value them, and which viewed them as fungible commodities—not human beings. To this day, some former ABA players are still seeking benefits—decades after the ABA ceased to exist.

**Many of the former ABA players alive today are in poor health, poor financial condition, or both. The NBA has never taken care of them, despite numerous inquiries and proposals.**

Contrast the ABA players' situation to that of those who played in the NBA before 1965. About 10 years ago, the NBA gratuitously paid pre-1965 NBA players pensions equal to \$300 per year of service, per month, along with a lump sum retroactive payment. According to a Chicago Tribune story about the arrangement, the “relatively paltry amounts for the older retired players had become an embarrassing issue for the NBA given that current players average more than \$4 million in salary per season and how little the league had set aside for the pioneers.”

Today, the average NBA salary is over \$5 million per year. As laid out in detail above, the former ABA players—the true “pioneers” of the modern game—are stuck with exceedingly “paltry” benefits. **Rather than compensating the former ABA players like the pre-1965 players, the NBA has left these men behind.**

Of course, this hasn’t stopped the NBA and its teams from profiting off of the legacy of the ABA and its players.



In recent years, the former ABA teams have taken advantage of the market for throwback jerseys, by focusing on the ABA years. In addition to selling ABA-branded apparel like the t-shirts above, the former ABA teams have also sold and played in throwback ABA jerseys. For example, former ABA players’ jerseys recently for sale in the Indiana Pacers team shop during a game:

**MEL DANIELS**



**BOB NETOLICKY**





**ROGER BROWN**

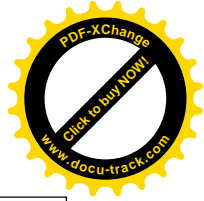


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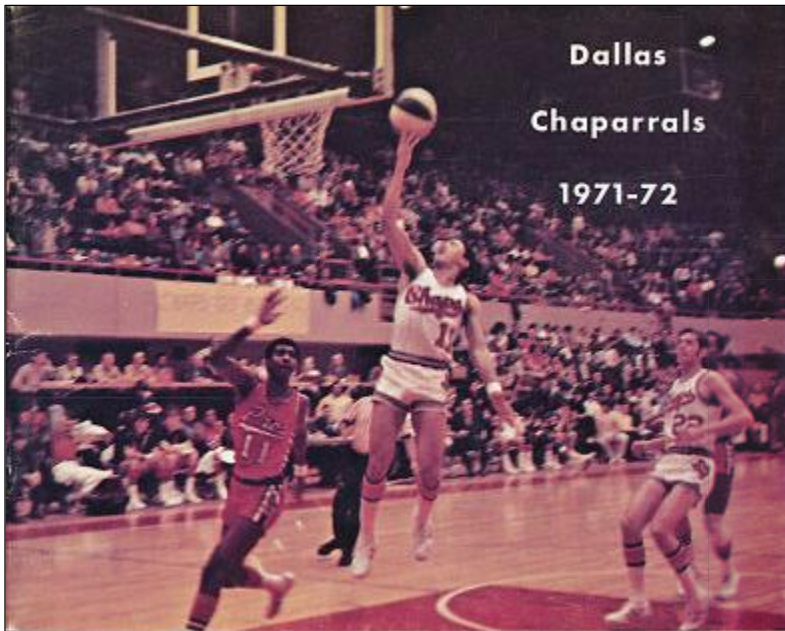
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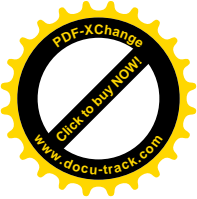
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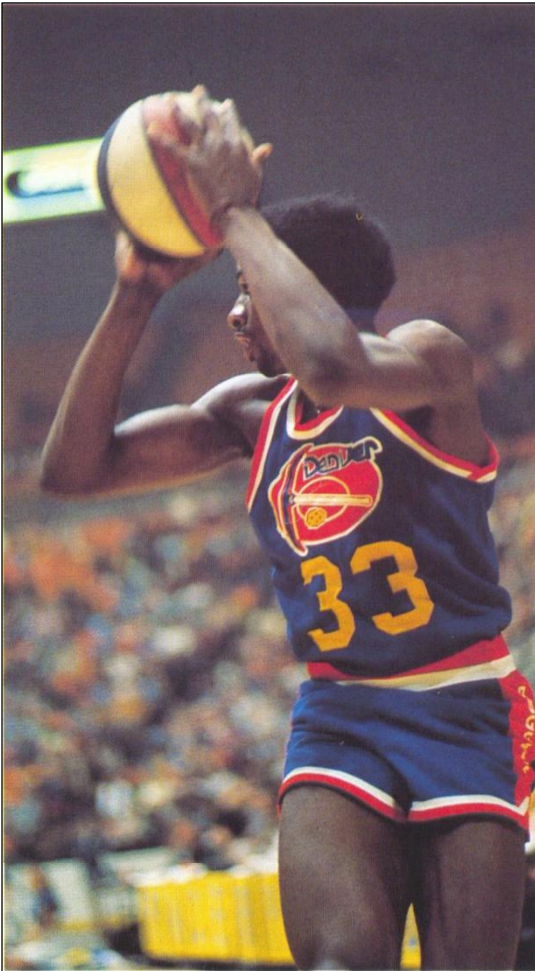
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#### DESCRIPTION

Tomorrow's basketball player will dream about the players of today. Today's players dreamed about those who came before them... those who laid the path of success through passion and commitment. Julius Erving, most notably known as "Dr. J," is widely considered one of the greatest to ever play the game of basketball. He is the fifth-highest scorer in professional basketball history, winning three championships and four Most Valuable Player awards during his career in the ABA and NBA. He was inducted into the Basketball Hall of Fame in 1993, had his #6



### **THE MONEY DOES NOT TRICKLE DOWN TO THE FORMER ABA PLAYERS**

What have the former ABA players realized monetarily from the advertisement of their legacy and playing days? Nothing, not a dime! It's not like the teams cannot afford it. Recently, Forbes valued the Nets at \$1.7 Billion; the Spurs at \$1.15 Billion; the Nuggets at \$855 Million; and the Pacers at \$840 Million. The Clippers were sold for \$2 Billion dollars. These figures of course pale in comparison to the NBA itself, which is projected to bring in an estimated \$8 Billion a year in Basketball-Related Income alone.



The former ABA players do not ask for much—they merely want to be heard, in a meaningful way, to fashion a remedy that justly compensates them consistent with the way the NBA has gratuitously compensated similar “pioneers” in the past. What they seek is a modest monetary acknowledgement compared to the money running through the modern NBA.

### ACTUARIAL ANALYSIS OF BENEFITS

Attached to this petition are two separate spreadsheets. The first includes years of service (ABA only) and which benefit a former player was entitled to based on his situation (\$60/month or \$117/month) (described in detail above). There are 151 players total; 96 would have been entitled to \$60/month and 55 entitled to \$117/month.

We know that many of these former ABA players did not receive their promised benefits even under the extremely modest numbers included in this spreadsheet, and some are still fighting for them. The pre-1965 deal resulted in back pay and was, in most cases, at a level up to 5 times higher than the players that received an ABA pension: a pre-1965 player received about \$300 per month per year of service, compared to a similarly aged ABA player getting \$60 per month (and the pre-1965 payments may have gone up). Of course, post-1965 NBA players receive pensions over 25 times higher than their ABA counterparts.

The second spreadsheet is an actuarial analysis, with numbers for each player based on years played. Included are separate columns for past and future payments. We believe the numbers represent the actual cost of a plan through an independent administrator. The actual cost is relatively small, especially compared to the contributions of the former ABA players viewed in the context of what they helped create: a global moneymaking machine.



## CONCLUSION

The players of the former ABA seek one thing, nothing more, nothing less: to be treated with the same compassion that the NBA displayed for its other forefathers in the pre-1965 deal. They ask the NBA to not only talk the talk but to walk the walk on their stated principles and mantra. They ask to be treated with basic decency and with a sense of fair play. To achieve their goals, the former ABA players have a modest request, and that is to be heard on these issues, and that a remedy be fashioned that is commensurate with their contribution to the game.

I look forward to speaking with you in more detail on this matter on behalf of the former ABA players.

Respectfully submitted,

Steven A. Hart and the proud ABA player signatories below