If there is one thing you can read into the extension of the current collective bargaining agreement by the NFL Players Association and the NFL owners it's that as tough as each talks, they're both afraid of what comes next if they don't get a deal done.

The union, under the guidance of a way-in-over-his-head new executive director, DeMaurice Smith, has vowed as usual to decertify as a union and then file a lawsuit against the owners should they be locked out if no deal is reached when the contract does expire.

The owners, under the guidance of a far savvier dealmaker, Commissioner Roger Goodell, nonetheless know that when it comes to litigation, particularly before Judge David Doty, their success rate is actually worse than the Cleveland Browns' third down conversion rate, pick a year.

Which means, of course, that in the course of these negotiations, this week represents the last best chance for the parties to strike a deal before a whole host of consequences, intended and otherwise, are released.

Negotiations are far more art than science certainly but there is one thing that is true in negotiations of any sort. The two sides to the dispute, be they the NFLPA and the owners arguing over splitting over $9 billion in revenues, or a husband and wife arguing over whether or not it's really necessary to visit her mother again next weekend, are most amenable to resolution when uncertainty is highest.

That would be now.

Two weeks ago, the NFL owners were dealt another setback by Judge Doty (who retains continuing jurisdiction over the two parties by virtue of a previous settlement years ago) with respect to whether or not the owners maximized television revenues in their last negotiations with the various networks that have broadcasting rights.

What led to that dispute was the fact that the owners were able to get access to a huge pile of cash from the networks even if next season is cancelled. Essentially the owners traded off more cash down the road and additional games and scheduling flexibility for the networks in exchange for broadcast payments continuing even in the event of a work stoppage.

From a business standpoint, it sounds like a good tradeoff for both sides. The NFLPA disagreed because they felt that the owners took less money, and hence have less money available to share with the union, in exchange for being able to sustain their operations through a work stoppage. In other words, they felt like the owners left revenue on the table just so that they could have a decent war chest and wait out a lengthy lockout or strike.

A special master felt that the owners had the right to make that deal and that it represented sound business judgment. Judge Doty, on the other hand, who heard the appeal from the special master, disagreed and found that the owners had basically violated their obligations under the collective bargaining agreement by not maximizing the revenues or, at least, taking less money in exchange for payments during the expected lockout.

While that decision will get appealed, the basic point here is that it served as another reminder to the owners that Judge Doty has a very jaundiced view of how they operate their businesses and that their chances in future litigation with the union isn't likely to be any more successful.

That decision frankly was a game changer for these negotiations. It certainly heightened the uncertainty for the owners and has basically forced them to stay at the bargaining table. It makes them more amenable now to a deal than at any point in the last two years.

All of that doesn't mean that the union feels that it has all the leverage, because they don't. While they have enjoyed great success in litigation, not one of those victories has come easily, cheaply or, more importantly, timely. Moreover, one of the great truisms in litigation, as in investing, is that prior results should not be counted on to predict future performance.

The union's litigation strategy this time around is fraught with its own difficulty. The basis of a potential lawsuit by the players is that it is an antitrust violation for a group of separately owned businesses, like NFL teams, to constrain the market through collective action when dealing with matters such as setting wages and working conditions for the employees. But if there is a National Labor Relations Board-certified bargaining representative of those employees, like the NFLPA is for the players, then there is no antitrust violation even if the owners lock them out.

Success for the players thus hinges on their ability to successfully convince the NLRB that the decertification they'll be seeking is legitimate and that the NFLPA fully intends to relinquish its rights to act as the exclusive bargaining representative for the players.

When the union went the decertification route 20 years ago, it was under far different circumstances and even then the NLRB raised doubts about whether or not it was a legitimate decertification. As it played out in the years since, it obviously was not. This time around, there is a much more likely that the NLRB will have a better view of what is taking place and find that the decertification isn't legitimate. If that's the case, then the entire underpinnings of the players' potential lawsuit against the owners would be lost.

In other words, for all of the bragging that Smith has done for the players about decertifying as the way to force a settlement, even Smith knows that it is hardly a sure bet, meaning that the union and the players are having their own bouts with uncertainty at the moment.

But if heightened uncertainty makes parties most likely to settle, it hardly means they will. The owners have a group of hard liners that want nothing more than to have the players knuckle under again to their collective will. And why not? It's worked in the past.

The players, for their part, are hyper-competitive types who feel that there is no obstacle they

can't overcome, even their own hubris. That's what makes them professional athletes in the first place.

Still, I tend to believe in the better angels and think the parties will use this heightened uncertainty on both sides to actually come up with a framework for a deal before the contract is allowed to expire. As much as the owners want to reign supreme over their serfs, they value more the flow of cash that's needed to sustain their operations. And as much as the players want to finally beat the owners at this game, they know that the litigation route, if allowed to go the full distance, is going to end a lot of careers and for what, better access to owners' financial records or to tell the grandkids that your career ended prematurely over a labor dispute?

There is an adage that says that no amount of money is too small to fight about when it's mine and because of that it will keep the parties going at each other hammer and tong this week. But as both sides play out the doomsday scenarios in their minds they'll realize that what's worse than fighting over every penny is not having any pennies to fight about at all.