Drafting of Player Contracts & Clauses

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DRAFTING OF PLAYER CONTRACTS & CLAUSES

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I. INTRODUCTION

Did you ever say something that you really didn’t mean? Did you ever write something that you did not mean to write?

Sports contracts deserve the same precision of draftsmanship as any other legal document. When drafting sports contracts our goal as lawyers should be precision in expression, conferring a singular meaning. The document should be clear on its face so that it is not subject to third-party intervention. In essence, when drafting sports contracts, we should adopt the principle of S.U.C.S. (Simplicity - Understanding - Clarity - Standardization) or K.I.S.S. (Keep it Simple Stupid.)

As lawyers, we need to eliminate from our drafting the legalese, the parody of our legal prose, and the antiquity of verse derived from our English ancestry. We could start with the elimination of such words and phrases as “notwithstanding,” “provided that,” “without limitation,” and “as hereinafter provided”; just to name a few.

One of my favorite examples of lawyers making the simple incredibly complex is Joe Market’s desire to sell to John Smith one (1) orange for $1. Give it to a lawyer and it may sound something like this:

Know all men by these presents, that Joe's Market, a Michigan corporation (“Seller”), in consideration of one dollar and other good and valuable considerations paid by John Smith (“Purchaser”), the receipt whereof is hereby acknowledged, does hereby grant, sell, assign, transfer and deliver unto Purchaser, its successors and assigns, to have and to hold unto Purchaser, its successors and assigns forever, one orange, together with all its rinds, skin, juice, pulp and pits and with all right and advantages therein, with full power to bite, cut, suck and otherwise to eat the same; and Seller hereby covenants with Purchaser that Seller is the true and lawful owner of the said goods and chattels; that they are free from all encumbrances and security interests; that Seller has good right to sell the same as aforesaid; and that Seller will warrant and defend the same against the lawful claims and

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demands of all persons, anything hereinbefore or hereinafter or in any other means of whatever nature or kind whatsoever to the contrary in any wise notwithstanding.\(^1\)

II. Dispute Resolution

Contracts that don't adhere to the principles of S.U.C.S. will land the draftsman, player, and team in dispute resolution. Such dispute resolution procedures relative to contract interpretation in professional sports are dictated by the particular sport's Collective Bargaining Agreement and Uniform Player Contract.

For example, Article IX, Section 1 of the National Football League's (NFL) Collective Bargaining Agreement defines an arbitrable non-injury grievance as:

Any dispute (hereinafter referred to as a "grievance") arising after the execution of this Agreement and involving the interpretation or application of, or compliance with, any provision of this Agreement, the NFL Player Contract, or any applicable provision of the NFL Constitution and Bylaws pertaining to terms and conditions of employment of NFL players, will be resolved exclusively in accordance with the procedure set forth in this Article, except wherever another method of dispute resolution is set forth elsewhere in this Agreement, and except wherever the Settlement Agreement provides that the Special Master, Impartial Arbitrator, the Federal District Court or the Accountants shall resolve a dispute.\(^2\)

Another example is contained in the Collective Bargaining Agreement of the National Basketball Association (NBA). Disputes will be arbitrable under the league's grievance-arbitration procedure if they involve:

the interpretation or application of, or compliance with, the provisions of this Agreement or the provisions of a Player Contract (except as provided in paragraph 9 of a Uniform Player Contract), including a dispute concerning the validity of a Player Contract . . . however . . . disputes arising under Articles IV, V, VI, VII, VIII, IX, X, and XII shall be determined by the Special Master provided for in Article XIV of the Stipulation and Settle-

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\(^1\) CARL FELSENFELT and ALAN SIEGEL, WRITING CONTRACTS IN PLAIN ENGLISH 1 (1981).

\(^2\) NATIONAL FOOTBALL LEAGUE COLLECTIVE BARGAINING AGREEMENT, Art. 9, § 1 (1982).
ment Agreement, except where the Stipulation and Settlement Agreement expressly provide otherwise.\(^3\)

A final example is contained in the Basic Agreement of Major League Baseball (MLB). A dispute will be arbitrable under the league’s grievance system if it:

- involves the existence or interpretation of, or compliance with, any agreement, or any provision of any agreement, between the Association and the Club or any of them or between a Player and a Club, except that disputes related to the following agreements between the Association and the Clubs shall not be subject to the Grievance Procedure set forth herein: (i) The Major League Baseball Players Benefit Plan; (ii) The Agreement Regarding Major League Baseball Players Benefit Plan; (iii) The Agreement regarding dues check-off.\(^4\)

The NFL, MLB, and NBA Uniform Player Contracts all contain a provision recognizing the arbitration provisions that are contained in their respective Collective Bargaining Agreements.

For example, the National Football League Uniform Player Contract, in Paragraph 19, states that during the term of any Collective Bargaining Agreement, any dispute between player and club involving the interpretation or application of any provision of this contract will be submitted to final and binding arbitration in accordance with the procedure called for in any Collective Bargaining Agreement in existence at the time the event giving rise to any such dispute occurs.\(^5\)

As another example, the National Basketball Association Uniform Player Contract, in Paragraph 21, states that in the event of any dispute arising between the player and the club relating to any matter arising under this Contract, or concerning the performance or interpretation thereof (except for a dispute arising under Paragraph 9 hereof) such dispute shall be resolved in accordance with the grievance and arbitration procedures set forth in the Agreement currently in effect between the National Basketball Association and the National Basketball Association Players Association (hereinafter NBPA.).\(^6\)

As a further example, Section 9(b) of the Major League Baseball Uniform Player Contract states that all disputes between the player and

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the club are required to be resolved in accordance with the grievance procedures outlined in Article 11 of the Basic Agreement.\textsuperscript{7}

When disputes are brought to arbitration, an arbitrator then appointed, pursuant to the provisions of the particular Collective Bargaining Agreement, will be charged with determining questioned or ambiguous contract language. However, it is not necessary for the arbitrator to engage in language interpretation unless the language of the agreement is ambiguous. Where the language is clear, it is the responsibility of the arbitrator to simply enforce such language even though the results could be harsh.

"An agreement is not ambiguous if the arbitrator can determine its meaning without any other guide than a knowledge of the simple facts on which, from the nature of language in general, its meaning depends."\textsuperscript{8} Rather, an ambiguity occurs when "plausible contentions may be made for conflicting interpretations."\textsuperscript{9} The cardinal rule of arbitration in these instances is that the interpreter must ascertain and give effect to the \textit{mutual intent} of the parties. To determine the intent of the parties, the inquiry should be made as to what the language meant to the parties at the time the agreement was written. This meaning is controlling.\textsuperscript{10}

In his efforts to discover the mutual intent of the parties, the arbitrator is guided by several rules of interpretation: (1) give effect to the Collective Bargaining Agreement and, whenever two interpretations are possible, one making the agreement unlawful and the other making it valid, the latter should control; (2) use normal and customary usage in interpreting words; (3) view the agreement as a whole (integration of documents); (4) avoid harsh, absurd or nonsensical results; (5) remember the principle that expressly stating something is to exclude something else; (6) allow specific language to govern over general language; (7) consider the custom and past practice of the parties; (8) consider the industry practice and standards; (9) interpret against the party selecting the language (the draftsmen's rule); and (10) permit the writing to govern where conflict exists between pre-printed words and written words.\textsuperscript{11}

Each League has a "check-off" procedure wherein the Commissioner or League President has the right to veto or disapprove a player's contract.

\textsuperscript{7} Major League Baseball Uniform Player Contract, § 9b (1990-1993).
\textsuperscript{8} Frank and Edna Felkouri, How Arbitration Works 342 (1985).
\textsuperscript{9} \textit{Id.}
\textsuperscript{10} \textit{Id.} at 343.
\textsuperscript{11} \textit{Id.} at 342-365.
For instance, Paragraph 18 of the National Football League Uniform Player Contract provides:

FILING. This contract will be valid and binding upon Player and Club immediately upon execution. A copy of this contract, including any attachment to it, will be filed by Club with the League Commissioner within 10 days after execution. The Commissioner will have the right to disapprove this contract on reasonable grounds, including but not limited to an attempt by the parties to abridge or impair the rights of any other club, uncertainty or incompleteness in expression of the parties' respective rights and obligations, or conflict between the terms of this contract and any collective bargaining agreement then in existence. Approval will be automatic unless, within 10 days after receipt of this contract in his office, the Commissioner notifies the parties either of disapproval or of extension of this 10-day period for purposes of investigation or clarification pending his decision. On the receipt of notice of disapproval and termination, both parties will be relieved of their respective rights and obligations under this contract.\textsuperscript{12}

In baseball, upon the execution of a Uniform Player Contract by the Club and Player, the Club, pursuant to Article 4 of the Basic Agreement, is required to promptly submit the contract, in duplicate, to the appropriate League President for approval. Within twenty (20) days after receipt of the contract, the League President is required to approve or disapprove the contract. In the event that the contract is not approved, the League President is required to provide the Association with a written explanation of his reasons for disapproving the contract.\textsuperscript{13}

Similarly, in basketball upon the execution of the contract, the Club and Player are required to file a copy of the contract with the Commissioner for approval purposes, pursuant to Paragraph 14 of the Uniform Player Contract. After the filing, the Commissioner has ten (10) days in which to disapprove the contract as being in violation of the NBA Constitution or By-Laws. If disapproved, the Contract is then deemed to be terminated and of no further force or effect.\textsuperscript{14}

A good example of a contract that was disapproved by a Commissioner is the contract that Chris Dudley entered into on August 5, 1993, with the Portland Trail Blazers. The contract is for seven (7) years, totaling approximately $10.5 million in compensation. For the first year of

\textsuperscript{12} NATIONAL FOOTBALL LEAGUE UNIFORM PLAYER CONTRACT, Par. 18. 
\textsuperscript{13} MAJOR LEAGUE BASEBALL BASIC AGREEMENT, Art. 4. 
\textsuperscript{14} NATIONAL BASKETBALL ASSOCIATION UNIFORM PLAYER CONTRACT, Par. 14.
the contract, Dudley's compensation is $790,000, i.e., the salary cap slot
that Dudley filled. While the $790,000 is less than the $1.2 million Dudley
made the previous season with the New Jersey Nets, the deal was
attractive to Dudley because the contract contained an opt-out escape
clause (or early termination provision) that permitted him to become a
free-agent after the first year of play. The attractiveness was that under
the National Basketball Association's current salary cap, teams can re-
sign their free-agents without regard to the salary cap.15

After reviewing the contract, Commissioner David Stern labeled it a
"blatant" and "transparent" attempt to circumvent the salary cap.16 The
NBA position rested on a clause in the league's Collective Bargaining
Agreement that prohibits "...any terms that are designed to serve the
purpose of defeating or circumventing such agreement..."17 Dudley ap-
pealed the decision and both Special Master, Merrill Clark, and Arbitra-
tor, Daniel Collins, upheld the contract.18 The rulings were then
appealed to U.S. District Judge Dickenson R. Debevoise. On October
27, 1993, Debevoise upheld the contract even though one year out provi-
sions in multi-year contracts might "have presently unascertainable ad-
verse effect on the very legitimate object of the salary cap."19 However,
Debevoise concluded that Dudley's contract does not violate the provi-
sions of the National Basketball Association's Collective Bargaining
Agreement.20

Another example of a Commissioner voiding a contract between a
club and a player involved Rick Mirer's contract with the Seattle
Seahawks. On August 13, 1993, National Football League Commis-
sioner Paul Tagliabue called the contract "a sham" that violates the

15. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, Art.
VII, Part F.
E1.
17. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, Art.
VII, Part H.
18. Arbitrator's Ruling Helps Green, LOS ANGELES TIMES, September 10, 1993, at C2;
Arbitrator Says He'll Approve Dudley Pact, UPI, September 9, 1993, BC Cycle; VALID, USA
19. Judge Sides With Dudley/League Loses In Flap About Blazer's Deal, USA TODAY,
October 28, 1993, at 6C.
20. Judge OKs Blazer Pact With Dudley, SAN DIEGO UNION-TRIBUNE, October 28, 1993,
at D-2; Dudley's Contract Validated By Court, THE ORLANDO SENTINEL, October 28, 1993,
at D10; Judge Upholds Dudley Contract With Blazers, UPI, Sports News, October 27, 1993, BC
Cycle; Trail Blazing in Salary Cap Evasion, THE FINANCIAL POST, November 11, 1993, at 47;
Judge Upholds Deal of Blazers Dudley, THE ATLANTA JOURNAL AND CONSTITUTION, October
28, 1993, at E3; Judge Rulings on Dudley Contract Gives Player Victory on Two Points, THE
DALLAS MORNING NEWS, October 31, 1993, at 3B.
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league's new labor agreement. Mirer's contract is worth approximately $7.6 million for the first three (3) years, and if he chooses to exercise the options for the fourth and fifth years, the five (5) year deal is worth approximately $15.6 million. Mirer's base salary in the first three (3) years of the contract is guaranteed. While the contract did not contain a signing bonus, Mirer reportedly was to earn a one-time bonus of $3,007,500 if he or the team met any one of a number of goals. Some of the easiest incentives to achieve in the contract were ones that could be achieved by the team, even if Mirer was injured or not playing, such as: winning three (3) games in a season, ranking higher than 28th on offense, giving up fewer sacks than in 1992, and allowing fewer interceptions than in 1992. The contract provided that if none of the criteria were met in 1993, they would carry over to the 1994 and 1995 seasons. Mirer's first year salary of $1.24 million represents all of the money that the Seahawks had remaining from their rookie salary pool limitation of $2.36 million.\(^{21}\)

Commissioner Tagliabue thought that the incentive bonus provision was a loop-hole in the rookie salary cap, in that, if the incentives were reached during the 1993 season, the bonuses would not count in determining the salary cap for 1994. Tagliabue also noted that the contract included no signing bonus, although it commits Mirer to five (5) seasons. Salary bonuses under the new National Football League Collective Bargaining Agreement are pro-rated over the term of the contract and count against the salary cap. Mirer has the right to cancel the contract, by the use of a voidable clause, for the 1996 and 1997 season if he earns the incentives. Seattle has the right to buy back those two (2) remaining years effected by the voidable clause by paying Mirer $3,335,000. Furthermore, Tagliabue said that the contract included a series of incentives that are certain to be reached, including 59 contingencies that do not require Mirer to play one down. These incentives are the functional equivalent of a signing bonus that put the Seahawks over their rookie pool allocation.\(^{22}\)

The Mirer contract was scheduled to be arbitrated before Federal Judge David Doty in Minneapolis on September 7, 1993. However, on November 3, 1993, the League and the National Football League

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Player’s Association reached a settlement agreement relative to the Mirer contract. With respect to Mirer, the settlement requires that the bonus clause count on a pro-rated basis toward the salary cap that kicks in for the 1994 season. In other words, if Mirer earned the bonus during the 1993 season, approximately $600,000 of his earned bonus would count against Seattle’s salary cap in each of the next four (4) seasons. In essence, the settlement agreement makes Seattle treat the incentive clause as though it were a signing bonus for purposes of future salary caps, but not for purposes of this season’s Rookie Pool. Mirer has already earned the bonuses for this season and, as a result, he has earned the option to void the last two (2) years of his contract. The Seahawks can reinstate those years by paying Mirer $3,335 million, half of which would count toward their salary cap in 1996, the other half in 1997. The net result of the pro-rating of the incentive bonus will be to deprive Seattle of the chance of signing a $1.5 million player each of the next four (4) seasons.2

After review of numerous bonus provisions and sports contracts, what follows are typical problems in team-player contracts.

1. **Shorthand Style - Use of Non-Definitional Words** - Often, words that are peculiar to the sports industry are employed. Non-definitional in themselves possessing different definitions depending upon the context of their use. Such words might include; “cut,” “league year,” “active list,” “salary guarantee,” “season,” “roster,” and “plays.”

2. **The Use of Excessive Legal Verbiage and the Absence of Specificity** - Legal verse and prose lead to drafting confusion and excessive verbiage. It is essential that any condition precedent or condition subsequent be stated with specificity, providing for the time, and upon which events, the condition will be met or will fail.

3. **Failure to State with Specificity the Rating or Assessment System that Will Earn the Player the Bonus** - For example, in the bonus clause “. . . player will receive $25,000 if he leads the League in pass receptions. . . .” does this bonus clause mean that the player will earn the bonus if he leads the league in the number of passes caught, or if he leads the league in the average yards per reception, or if he leads the league in total yardage as a result of a total number of receptions caught?

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4. **Awarding of Bonuses that Are Subject to Ambiguous or Nonexistent Statistical Achievements** - Such as the number of tackles (assisted or unassisted), or quarterback ratings.

5. **Failure to State whether the Bonuses, Regardless if within a Performance or Honors Bonus Category, Are Cumulative or Noncumulative.**

6. **In the Case of Honor Bonuses, a Failure to State which Reporting Agency Qualifies the Player for the Bonus** - Such as Associated Press, United Press International, Newspaper Enterprise Association, Sporting News, Pro Football Weekly, USA Today and Pro Football Digest to name a few.

7. **Failure to State whether the Particular Bonus Provision Is Subject to a Qualifying Standard** - For example, Player is to receive a bonus of $25,000 if he leads the league in kick-off returns. Player may have one kick-off return and lead the league, but what is intended is that the player have a minimum number of kick-off returns in order to qualify for the bonus.

8. **Failure to State what Happens to the Contract Provision in the Event that the Player is Traded or Assigned.**

9. **Failure to State which Records Will Constitute the Official Records to Determine Achievement of a Performance Bonus, Such as Conference, League, or Team Records.**

10. **Failure to State What Effect, if Any, Injuries May Have upon the Player's Opportunity to Either Achieve or Earn Bonuses.**

I have drafted several clauses that appear clear and simple enough on their face, but they are subject to interpretation and ultimately could result in a dispute. Some of those clauses are provided below. Following the clauses are analyses of the draftsmanship and, in some cases, arbitration and court decisions that discuss the subject clause:

A. **ESCALATOR CLAUSE** - In the event Player is selected to the Pro Bowl following the 1992 NFL regular season, Player’s salary shall be adjusted to the average salary of the twelve (12) linebackers that are selected to the Pro Bowl.

**POTENTIAL DISPUTES**

1. When is the bonus paid and who certifies as to the calculation for determination of the adjusted pay?

2. Does the player receive the adjustment if he is chosen as an alternate to the Pro Bowl or only if chosen to the initial balloting?

3. Does the word "salary" pertain only to base salary pursuant to Paragraph 5 of the National Football League’s Uniform Player Contract,
or does it mean the player's total compensation package which might not include base salary; plus bonuses earned, plus deferred compensation, plus miscellaneous compensation (such as tickets, accommodations, automobile)?

4. What does the use of the term "average" mean and how is average calculated? Does it mean the total base salary of the affected linebackers, divided by the total number of linebackers affected?

5. Should the language contain both a bottom-out and cap provision? What happens if the average of the twelve (12) linebackers salaries is less than the salary currently being received by the player? If the average base salary of the twelve (12) linebackers is more than the base salary of the affected player, is there a cap amount that the player will be paid by virtue of the bonus provision?

B. TERMINATION CLAUSE - The University shall have the right to terminate this Employment Agreement at any time if the head coach commits an act of moral turpitude or if the head coach engages in conduct seriously prejudicial to the best interests of the University or its Athletic Program.

POTENTIAL DISPUTES

1. The terms "moral turpitude" and "seriously prejudicial to the best interests of the University or Athletic program" are non-definitional terms. With respect to one coach's contract negotiation, it took approximately two (2) years to define those terms. With respect to the word "moral turpitude," some of the activities that were attempted to be defined as constituting moral turpitude included:
   a. Urinating on a street.
   b. Intercourse with a female student.
   c. Use of profanity.
   d. Display of sexually explicit pictures on office walls.
   e. Solicitation of a prostitute.
   f. Deceit.

2. If the coach commits an act of moral turpitude or an act that is seriously prejudicial or not in the best interests of the University, does the coach's compensation cease or does he continue to get paid?

C. GUARANTEE - Notwithstanding anything to the contrary, player's contract shall be deemed to be a guaranteed no-cut contract.
POTENTIAL DISPUTES

1. Does guarantee as used herein mean that the player will get paid for the unexpired term of his contract even though the contract is terminated?

2. What events trigger the guarantee, i.e., lack of skill, personal conduct, death, disability, unfitness to play, re-injury of preexisting injury or engagement in ultrahazardous activities?

3. Does the use of the term "no-cut" constitute a different concept than "guarantee" by permitting the player to remain on the roster in addition to getting paid?

In the arbitration of John S. Vallely, the issue was a clause in a rider attached to the Uniform Player Contract stipulating in part that Vallely accepts employment on a no-cut guaranteed basis. In May 1970, Vallely executed a three-season contract with the Atlanta Hawks. After one and a quarter seasons, Vallely was traded to the Houston Rockets. In September 1972, Houston released Vallely from the team's roster, but continued to pay his salary pursuant to the contract. Vallely's presence on the team roster would have qualified him automatically for the league's pension plan. The NBPA argued that the team could not obviate its responsibilities to a player under a no-cut contract by simply removing the player from the team's roster. In the arbitrator's opinion, a no-cut provision essentially assures the player that the club cannot cut him from the team so long as he has not breached the contract. The arbitrator determined that Vallely should have been on the roster and the active list of the club for the three seasons stipulated in the contract. As a result, he would have been eligible to participate in the pension plan.24

Another illustration of a dispute over a guarantee clause can be found in the arbitration decision involving Dan Pastorini. At issue was whether the Oakland/Los Angeles Raiders Football Club was entitled to an offset against a guaranteed salary obligation to Pastorini, specifically the amounts Pastorini received from other NFL teams after the Raiders released him in September of 1981. Pastorini had a guaranteed salary clause with the Raiders for the 1980 through 1983 seasons. In 1981, the Raiders waived Pastorini under Paragraph 11 of the National Football League's Uniform Player Contract, which cites unsatisfactory skill or performance. Later that year, Pastorini signed with the Los Angeles

Rams. He then played for the Philadelphia Eagles during the 1982 and 1983 seasons. The Raiders took the position that once Pastorini signed with the Rams, the Raiders were no longer liable for Pastorini's guaranteed salary. The Raiders argued that Pastorini had a duty to mitigate damages as an offset to the terminated guarantee clause in his contract. The court ruled that damages were not applicable because there was no wrongful termination of the contract. While the Raiders had a right to discharge Pastorini, they also had an obligation to pay him the salary specified in the contract. Finally, the court ruled that, while it may be league policy to offset the obligation of the club waiving a player with the salary paid by the club picking up the player, in Pastorini's case, the contract did not provide for such an offset. Thus, the Raiders were held liable for Pastorini's guaranteed salary.⁵

D. DEFERRED COMPENSATION - The balance of the salary to which Player is entitled under the National Basketball Association's Uniform Player Contract, Paragraph 1, which contract is for the 1977-78 season, shall be deferred until June 15, 1984, over a twelve (12) year period in equal monthly installments beginning with the first of said payments on June 15, 1984, and continuing with such payments on the 15th of each month until June 15, 1996. Said deferred compensation is to earn interest at the prime interest rate in effect at the Chase Manhattan Bank on the second of January of each year, provided, however, that in no event shall such interest be less than six percent (6%) or greater than nine percent (9%).

POTENTIAL DISPUTES

1. When does interest on the deferred compensation start to accrue? Obviously the team will take the position based on the contract clause as drafted, that interest begins to accrue only after the date the deferred compensation became payable, i.e., June 15, 1984. On the other hand, the player will take the position that the interest should commence to accrue when the deferred compensation is earned, i.e., commencing in 1977.

2. Is the interest to be paid on the deferred compensation calculated as simple interest or compound interest?

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The arbitration case of *Swen Nater v Los Angeles Clippers* deals with a dispute concerning the computation of interest on deferred compensation. Nater had signed a seven-year contract with the Buffalo Braves, covering the 1977-78 season through the 1983-84 season. After the first season, Nater was traded to the San Diego (later to become the Los Angeles) Clippers. For reasons not relevant to Nater's arbitration, the Boston Celtics agreed to assume the Braves' obligation for the first year of the contract (the 1977-78 season). Nater was traded to the Los Angeles Lakers for the last season of the contract (the 1983-84 season).

A rider to Nater's National Basketball Association Uniform Player Contract provided:

1. Club does hereby employ Player and Player hereby agrees to play for the Club for a seven (7) year term, which term shall commence as of September 1, 1977, and shall end on August 31, 1984 (each year of which shall be termed a season). Player shall be compensated in the form of salary in the manner following:
   (a) For the 1977-78 season: $135,000
   (b) For the 1978-79 season: $160,000
   (c) For the 1979-80 season: $170,000
   (d) For the 1980-81 season: $175,000
   (e) For the 1981-82 season: $180,000
   (f) For the 1982-83 season: $190,000
   (g) For the 1983-84 season: $190,000

2. The salary which Player is entitled to receive in Paragraph 1 of this Rider shall be payable as follows:
   (a) The first Eighty Thousand Dollars ($80,000) for each season shall be paid on a current basis in twelve equal semi-monthly payments beginning with the first of said payment on November 1st of such season and continuing with such payments on the first and fifteenth of each month until the sum of $80,000 is paid in full.
   (b) The balance of the salary which Player is entitled under Paragraph 1 of the Rider shall, subject to Paragraph 2(d) below, be deferred until June 15, 1984 over a twelve-year period in equal monthly installments beginning with the first of said payments on June 15, 1984 and continuing with such payments on the fifteenth of each month until June 15, 1996 (that is, the last monthly installment is to be made on June 15, 1996). Said deferred compensation

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is to earn interest at the prime interest rate in effect at the Chase Manhattan Bank on the second of January of each year; provided, however, that in no event shall such interest be less than six percent (6%) or greater than nine percent (9%).

Thus, the deferred compensation owed by each of the respective teams was as follows: Celtics $55,000 plus interest; Clippers $475,000 plus interest; Lakers $120,000 plus interest. Two points of contention developed between Nater and the Clippers, the club that had the largest liability.

First, the Clippers interpreted the language of Section 2 of the contract rider to provide for interest to be accrued only after the date that deferred income first became payable (June 15, 1984). Nater took the position that interest should start to accrue when the deferred compensation was earned, i.e., 1977.

Second, the Clippers took the position that the interest paid should be “simple interest.” This means that interest is paid only on the portion of the deferred compensation that is unpaid. No interest is paid on interest that has accrued but is unpaid. Conversely, Nater felt that the interest should be compounded. In other words, interest should be paid on the total amount due to Nater. This includes interest on the amount of unpaid deferred compensation and interest on interest that has been earned but not yet paid.

Arbitrator Daniel Collins found that there was no intent on behalf of the parties to compound the interest. However, Collins did find that interest started to accrue on the deferred income at the time it was earned. Thus, interest started to accrue in 1977.

E. **BONUS CLAUSES**

1. Player shall receive a bonus of $25,000 if he leads the conference in punt returns.

**POTENTIAL DISPUTES**

a. Does the term “lead the conference in punt returns” mean that the player achieves a bonus if he leads the league in average punt returns, number of punt returns or total yardage for all punt returns?
b. Should the clause contain a minimum number of punt returns to qualify?

2. Should player lead league in tackles during the 1992 season, a bonus will be paid in the amount of $20,000.

**POTENTIAL DISPUTES**

a. Does use of the term “league” mean the player’s conference or the entire league?
   b. Does the player achieve the bonus if the tackles are both assisted and unassisted?
   c. Does the player achieve the bonus if he is tied with another player?
   d. Does the word “season” mean regular season or post-season?
   e. When is the bonus to be paid?

3. Player shall receive a bonus of $50,000 if he gains 1,000 yards during the season.

**POTENTIAL DISPUTES**

a. Presuming that the player who is to receive the bonus is a running back, does the running back achieve the 1,000 yard requirement through rushing only and/or through receiving and/or punt returns and/or kick-off returns?

4. Player shall receive a bonus of $25,000 if he gains 750 yards rushing;
   Player shall receive a bonus of $30,000 if he gains 900 yards rushing;
   Player shall receive a bonus of $50,000 if he gains 1,000 yards rushing;
   Player shall receive a bonus of $75,000 if he gains 1,500 yards rushing.

**POTENTIAL DISPUTES**

a. These types of clauses need to qualify the bonus as either cumulative or noncumulative. If the bonuses are noncumulative, the player can collect only one (1) of the greater clauses as earned (i.e., the greatest of the performance bonus set forth in the list of qualifying bonuses) but is not entitled to earn more than one of the said performance bonuses.
b. What happens if the player gains yardage that is in between the yardage as specified in the bonus clause? For instance, what happens if the player gains 850 yards or 1,250 yards?

In Alan Page's (former defensive tackle for the Minnesota Vikings) Uniform Player Contract for 1972, a clause was inserted that read, "said player shall receive a bonus in the amount of $25,000 if he is selected 'All Pro' by the following: Associated Press, United Press International, Pro Football Weekly or the Sporting News." When Page was selected to Associated Press's second team All-NFL squad and was chosen as one of the two defensive tackles on the All-NFC teams selected by United Press International and the Sporting News, he requested payment of his bonus from the Minnesota Vikings.

The dispute centered upon the interpretation of "All Pro." Jim Finks, former General Manager of the Vikings, who wrote the clause in question, testified that All Pro signified to him that a player was selected as the very best performer in his position in the entire league. In contrast, Page believed that any honorary selection, including honorable mention, would entitle him to the bonus.

Former National Football League Commissioner, Pete Rozelle, ruled that "All Pro" did not have the sweeping connotation that Page ascribed to it. However, the Vikings had specifically designated the United Press International and The Sporting News as agencies whose selections would determine Page's eligibility. These two agencies did not select a true All-Pro team, but chose two All-Conference teams. Since Page was named to the All-NFL Conference team, he was selected to the highest honorary plateau that a player could reach under the agencies' formats. Since the Vikings designated these agencies, Rozelle held that Page was entitled to his bonus and ordered payment of the $25,000.

At issue in a 1977 arbitration involving Russ Bolinger and the Detroit Lions were two incentive bonus clauses in Bolinger's 1976 contract:

- Player shall receive a bonus of $3,500 if he starts seven (7) games as an offensive player, excluding special teams, during the 1976 regular season.
- Player shall receive a bonus of $3,500 if he is named to the official All-Rookie Team by either the Associated Press, United

31. In Re: Alan Page v. Minnesota Vikings (1973) (Commissioner Rozelle, Arb.)
32. Id.
33. Id.
34. Id.
Press International or Newspaper Enterprise Association news services in the 1976 season.\textsuperscript{35}

Bolinger's position was that he had earned the "games-started" bonus because he had started six regular season games as an offensive lineman and a seventh regular season game, the last one of the season, as a member of the goal-line offensive team on the first offensive play of the game following the reception by the Lions. The Lions position was that he had started only six regular season games as an offensive player and that the seventh should be excluded because the goal-line offense is a "special team."\textsuperscript{36}

Bolinger's position on the "All-Rookie" bonus was that he had earned it because he was chosen to the second team of the All Rookie Team selected by the Professional Football Writers of America. The Lions position was that second team selection was not being named to an official "All-Rookie Team," and in any event, Bolinger was not picked to an All-Rookie Team by Associated Press, United Press International, or the Newspaper Enterprise Association as specified in the bonus clause.\textsuperscript{37}

After discussion, the PCRC resolved the grievance by mutual agreement, as follows:

1. Bolinger is entitled to a $3,500 "games-started" bonus. He started seven (7) regular season games as an offensive player. A goal-line offense may be considered a special circumstance but is not a "special team" within the meaning of the exception to the bonus clause.\textsuperscript{38}

The drafting of contract clauses is an area that needs both legal and accounting assistance. For instance, what occurs if a bonus clause is not properly drafted and the player receives an adverse arbitration decision? Is the agent or lawyer responsible for drafting liable for negligence? Certified agents should consult a third-party lawyer to review contract language to make certain that the same is not subject to another interpretation, uncertainty or ambiguity.

In addition, this may also be an area where an accountant might be consulted to make certain that the contract provisions as drafted have the proper tax effect for the player. For instance, if the player is entitled to a signing bonus, i.e., player to receive a signing bonus of $100,000

\textsuperscript{36} Id.
\textsuperscript{37} Id.
\textsuperscript{38} Id.
upon execution of the Uniform Player Contract, a qualified Certified Public Accountant would make certain that the signing bonus is not subject to withholding tax. An accountant might suggest additional language for the subject signing bonus clause;

A. No requirement to perform services,
B. The signing bonus is not wages subject to withholding,
C. The signing bonus is consideration for simply signing the contract,
D. The signing bonus is not considered part of player's salary.

Finally, in deferred compensation situations, an accountant should review the language to make certain that the player will not be subject to the concept of constructive receipt, which could result in immediate taxation without the player actually receiving the subject compensation.

Although each league's Collective Bargaining Agreement proscribes the use of a standard form contract, other non-pre-printed contract provisions are normally added to the standardized contract by an Addendum or Rider which, thereafter, becomes part of the contract. For instance, the National Basketball Association Collective Bargaining Agreement provides that certain paragraphs of the Uniform Player Contract (UPC in the following) may be modified by amendments in the form of an Addendum or Rider thereto, which modifications are referred to in the Collective Bargaining Agreement as "Allowable Amendments." Such amendments may include:

1. Provisions with respect to compensation (in the form of money, property or investments to be paid to player for rendering services.)
2. Provisions with respect to Specialized Compensation arrangements such as single rooms, king size beds, personal guarantees, bonuses, game tickets, extra promotional appearances and the consideration therefor, automobiles, loans, stock, investment opportunities, pension credit, and other items of value.
3. Compensation payment schedule different from that provided for by Paragraph 2 of the UPC.
4. Provisions providing that the player's compensation is not subject to any conditions of limitations in the event such a contract is terminated by the team or by reason of the player's lack of skill, personal conduct, death, disability, or unfitness to play. (GUARANTEE CLAUSES.)
5. Provisions limiting or eliminating the player's right to receive compensation when the player's disability or unfitness to play
skilled basketball is caused by the re-injury of an injury sustained prior to, or by the aggravation of, a condition that existed prior to the execution of the UPC.

6. By agreeing upon a provision entitling a player to receive money, property or investment upon the sale, exchange, assignment, or transfer of the UPC.

7. By agreeing upon a provision permitting the player to participate or engage in some or all of the "ultra-hazardous" activities otherwise prohibited by Paragraph 17 of the UPC.

8. By agreeing to delete Paragraph 5(d) in its entirety in the UPC, which states, "to be neatly and fully attired in public and always to conduct himself on and off the court according to the highest standards of honesty, morality, fair play and sportsmanship."

9. By agreeing to delete Paragraph 6(a) of the UPC in its entirety (physical condition, unfit to play, not skilled, resulting in suspension and no payment.)

10. By agreeing to delete the third sentence of Paragraph 18(a), or the last 16 words, or the third Paragraph of 18(a) (by eliminating the consent provision for the player to participate in commercial endorsements, public appearance and other uses of his name or image for commercial purposes.)

11. After the 56th day following the first game of any scheduled session, and solely for the purpose of replacing an injured player, a team may enter into a player contract with another person, which provides for compensation only for the period actually spent in the service of such team, which shall be limited to ten days or a period encompassing three games played by such team whichever is longer notwithstanding the provisions of Paragraph 20(b)(2) of the UPC.39

Attached to the Collective Bargaining Agreement and to be used with the Uniform Contract are Exhibits 1 through 6 which consist of standardized language to be utilized for drafting purposes for the Allowable Amendments. Exhibit 1 deals with compensation, Exhibit 2 deals with salary protection, Exhibit 3 deals with prior injury exclusion, Exhibit 4 deals with assignment payments, Exhibit 5 deals with other sports and activities, and Exhibit 6 deals with a substitute for Paragraph 6.A. It is strongly suggested that lawyers from union and management draft

39. NATIONAL BASKETBALL ASSOCIATION COLLECTIVE BARGAINING AGREEMENT, Art.1, § 3b-3j.
standardized rider clauses that are mutually agreeable and acceptable in term and meaning to both parties to the contract equation. The standard drafting clauses would be used universally by the Team, the Player and his Agent and would be deemed to be the standardized clauses for that particular contract provision or bonus.

III. Conclusion

In conclusion, we, as lawyers, owe our sports clients special duties to make certain that their contracts truly say what was negotiated. We have a duty to keep our clients out of the mediation or arbitration arena through our draftsmanship. What follows are some drafting recommendations that may be helpful in sports contract drafting:

1. Avoid legalese and unnecessary language.

2. Follow the dictates of the so-called plain english statutes which require that certain documents are written in non-technical language and in a clear and coherent manner, using words with common and everyday meanings.

3. Clearly define terms that are particular to the sport and that may have meaning to the contracting parties by virtue of their participation in the sport but may be unclear to anybody else who may read the language.

4. Draft with specificity and clearness any clauses that are subject to conditions precedent or subsequent.

The object of this is to simply make certain that the team and player's agreement is truly reflected on the page. Therefore, it is the agent-lawyer's job to make certain that documents we draft adhere to the principle of S.U.C.S., i.e., are characterized by Simplicity, Understanding, Clarity and Standardization.