

SPORTS LAW—SALARY CAPS AND NEW MEDIA EXPAND THE PLAYING FIELD

Nina Schuyler

A glance at the topics discussed at a recent sports law seminar gives you a sense of the breadth of this area of practice: stadium development issues, venue and fan management issues, sports and entertainment licensing, and athlete representation.

But there is a common denominator running through it all: money. With the commercialization of the sports industry and the athletes, coupled with the massive contracts for the top-tier players, there's lots of money involved. For sports attorneys, that means the stakes are a lot higher these days, regardless of what's being negotiated or in dispute.

SALARY CAPS AND CONTRACTS

Fifteen years ago, the sports industry was rocked by NBA franchise player Charles Barkley's jump from the Philadelphia 76ers to the Phoenix Suns. Now franchise players in many sports move just as often as other players. With free agency comes a plethora of contracts and negotiations. In football, those negotiations were made more complex with the institution of salary caps. In 1994, the National Football League Player's Association agreed to salary caps in exchange for unrestricted free agency. Owners agreed to the deal to gain some control of labor costs. (The NBA also has a cap.) The cap is a fixed amount of money that each of the NFL's thirty-two teams is allowed to spend on player salaries for any given year. This year, it's \$109 million.

"With salary caps and free agency, contracts are much more complex," says Stephen Baker, founder of Baker Sports Management, who has practiced sports law for twenty-one years and specializes in negotiating contracts for top-tier athletes, primarily football players. "Star players are not so

much searching for a job as they are searching for the best contract in the best playing situation," says Baker.

For Baker that means finding creative exceptions to the salary cap and protecting his clients. For instance, signing bonuses can be structured so they don't count toward a team's cap for a given year. When Jeff Garcia played for the San Francisco 49ers, Baker negotiated Garcia's contract, creating a unique escalation and termination clause that made him the first quarterback in NFL history to earn more than \$20,000,000 over two years; in 1988, Baker negotiated the largest linebacker contract at that time between Ken Harvey and the Washington Redskins. And in 1998, he completed the highest paid special teams player deal between Brian Mitchell and the Redskins.

"My guiding principle is to represent my clients the way I'd want to be represented."

Steve Baker

to play for a team with a West Coast offense? Where would you like to live? Which coach can best utilize your talents? What city can you best develop a second career opportunity? My guiding principle is to represent my clients the way I'd want to be represented."

THE LEGAL NEEDS OF INDIVIDUAL PLAYERS

That heightened personal attention also characterizes Eric Farber's practice. Farber, who launched Farber & Company ten years ago, focuses on the legal issues unique to high-profile athletes, handling just about everything except their contracts with teams. In addition to intellectual property, real estate, and business transactions and litigation, Farber brings expertise in the areas of right of publicity, copyright, trademark, contracts, and litigation.

“As my clients have earned more money, they are doing more sophisticated things,” says Farber. For instance, Farber assists clients to set up and maintain charitable foundations, buy real estate, and start companies.

Moreover, as the entertainment and sports worlds have merged, opportunities for athletes have exploded. In addition to television and radio, there’s the Internet, independent films, and the music industry, all of which have increasingly turned to athletes to sell products or services. That means more contracts and contract negotiations, and also potential violations. Farber recently negotiated a license in which an athlete’s voice was used in a radio commercial. At the time, the client was new to the league. When the client became a Pro Bowl player, the radio station ran the ad again, after the license had expired. “The ad, which had originally been worth \$20,000, was worth \$100,000 at the time of the violation,” he says.

THE LEGAL NEEDS OF A TEAM

Edward Goines, who served as the general counsel and vice president of business affairs for the San Francisco 49ers, has seen sports law change from the team’s perspective. “Sometime in the late ’70s and early ’80s, Madison Avenue recognized the NFL as a great marketing vehicle,” says Goines, who recently



Ed Goines

founded his own firm, Sui Generis, PC, and represents athletes, in addition to providing legal services to the 49ers.

At that time, the NFL commissioner aggregated the intellectual property of the NFL and made the league the marketing agent. The legal questions that Goines grappled with included: What were the rights of the advertisers to use the NFL brand? With what products would the NFL be associated? How should the teams split the revenue? What are the players’ rights to the revenue? “For the most part, all these issues are negotiated,”

says Goines. “With the commercialization of sports, contracts have to be very precise and consistent as to rights and limitations.”

New technology is also affecting sports law and existing contracts. For instance Sling Media’s product Slingbox features the ability to broadcast and watch a game anywhere in the world. Yet Slingbox has its own advertisers, which may conflict with the football team’s existing contracts with advertisers. Another example is satellite radio. In the past, each team could negotiate an exclusive license for the radio broadcast of a game to a local station. “With satellite radio, what happens to the exclusive right to broadcast in a particular market?” he poses. “Radio was paying a lot of money for this exclusive right, but satellite radio has reduced the value of these contracts.”

The constant change is what Goines likes about the area of sports law. “It draws very creative minds to the practice,” he says, “not to mention the excitement of the game itself.”



Ayana Jenkins-Toney

HOW TO GET STARTED

In law school, Ayana Jenkins-Toney knew she wanted to practice sports law. She'd worked as a professional model for years and knew what it was like to be the talent. "I know how daunting it is to find someone who represents your interests," she says.

She took Steve Baker's sports law class at Golden Gate University's School of Law. Baker invited speakers from the legal industry to come to the class and talk about sports law. "I networked after class," she says. "When people see that you are genuinely interested, they volunteer information. You have to be fearless and believe in yourself." Taking her own advice, she recently launched her own practice, the Law Office of

Ayana Jenkins-Toney. She currently represents athletes, primarily reviewing their contracts with the team. She also handles individual athlete's legal issues, such as custody and child-support issues. "When you're dealing with clients like these, they want to feel the person is a star too, someone who can get them the best deal."

"Success in this business is generally based on a combination of building skills and relationships," says Baker, who got his start working for sports agent Leigh Steinberg and established a small list of clients, primarily Cal and Stanford players. "There is a primacy on relationship building in sports that is probably greater than most other areas of the law. The most important relationship is the one with the client and his family."

Nina Schuyler is a lawyer whose first novel, The Painting, was published in 2004. She is currently working on her second novel. She can be reached at ninashuyler@hotmail.com.

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